

DATED 2012

Between

New Southern Railway Limited as Depot Facility Owner

- and -

First Capital Connect Limited as Beneficiary

Selhurst Depot

DEPOT ACCESS AGREEMENT

(Access to a passenger service
operator's depot)

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THIS AGREEMENT is made on 2008

BETWEEN:-

- (1) The party specified in paragraph 1 of Schedule 1 (the "Depot Facility Owner"); and
- (2) The party specified in paragraph 2 of Schedule 1 (the "Beneficiary").

WHEREAS:-

- (A) The Depot Facility Owner is the facility owner of the Depot.
- (B) The Beneficiary is a train operator who wishes to obtain permission to use the Depot.
- (C) The Depot Facility Owner has agreed to grant the Beneficiary and its Associates such permission on the terms and conditions of this Agreement.
- (D) This Agreement is entered into pursuant to directions given by the Office of Rail Regulation in the exercise of its powers under the Act.

IT IS AGREED as follows:

1 INTERPRETATION

1.1 Definitions

Unless the context otherwise requires:

"Aggregate Beneficiary Minutes Delay" means, in respect of any Accounting Period, the aggregate number of Beneficiary Minutes Delay in that Accounting Period, subject to the proviso in Clause 8.1.4(a)(i);

"Aggregate DFO Minutes Delay" means, in respect of any Accounting Period, the aggregate number of DFO Minutes Delay in that Accounting Period, subject to the proviso in Clause 8.1.9(a)(i);

"Allowable Beneficiary Minutes Delay" means the number of Beneficiary Minutes Delay per Accounting Period specified in Part A of Schedule 13;

"Allowable DFO Minutes Delay" means, the number of DFO Minutes Delay per Accounting Period specified in Part A of Schedule 14;

"Applicable Systems Interfaces" means the Systems Interfaces described in Schedule 4;

"Beneficiary Depot Services" means all those services described in Schedules 5 to 12 inclusive together with any temporary holding, shunting or marshalling required from time to time in the provision of such services;

"Beneficiary Event of Default" has the meaning attributed to it in Clause 6.2.1;

"Beneficiary Minutes Delay" means either:

- (a) the difference, expressed as a number of minutes and rounded up to the nearest whole minute, between the Diagram Departure Time and the Train Ready Time of any train other than one operated by or on behalf of the Beneficiary; or
- (b) where a train other than one operated by or on behalf of the Beneficiary is cancelled or for any other reason no Train Ready Time occurs in respect of it, the number of minutes comprised in the Beneficiary Minutes Delay Cap;

to the extent only (in either case) that the incidence of delay represented by such number of minutes is caused by a breach by the Beneficiary of its obligations under this Agreement (not being a breach caused by an event of Force Majeure affecting the Beneficiary);

"Beneficiary Minutes Delay Cap" means, in respect of any Beneficiary Minutes Delay, the cap specified in Part B of Schedule 13;

"Beneficiary Minutes Delay Threshold" means, in respect of any Beneficiary Minutes Delay, the relevant de minimis threshold specified in Part C of Schedule 13;

"Collision Damage" means damage to Fleet Vehicles caused by collision with another object or by derailment;

"Commencement Date" means the date upon which this Agreement becomes fully effective in accordance with Clause 2.3.2;

"Depot" means the light maintenance depot specified in paragraph 4 of Schedule 1;

"Depot Access Conditions" means in respect of the Depot:

- (a) the South Central Depot Access Conditions dated 3 July 2003 (ORR Reference DAC/14/03/01); and
- (b) the London Selhurst Depot Access Annexes dated 20 March 1996 (ORR Reference: DSA/14/04/95/01) which annexes for the purposes of this Agreement shall be the annexes referred to in the depot access conditions referred to in paragraph (a)

as each is modified from time to time with approval of the Office of Rail Regulation;

"Depot Facility Owner Event of Default" has the meaning attributed to it in Clause 6.2.3;

"DFO Minutes Delay" means either:

- (a) the difference, expressed as a number of minutes and rounded up to the nearest whole minute, between the Diagram Departure Time and the Train Ready Time of any train operated by or on behalf of the Beneficiary; or
- (b) where a train operated by or on behalf of the Beneficiary is cancelled or for any other reason no Train Ready Time occurs in respect of it, the number of minutes comprised in the DFO Minutes Delay Cap;

other than to the extent (in either case) that the incidence of delay represented by such number of minutes is caused by either:

- (i) a breach by the Beneficiary or any of its Affiliates of any contractual obligation owed to the Depot Facility Owner; or
- (ii) an event of Force Majeure affecting the Depot Facility Owner;

"DFO Minutes Delay Cap" means, in respect of any DFO Minutes Delay, the relevant cap specified in Part B of Schedule 14;

"DFO Minutes Delay Threshold" means, in respect of any DFO Minutes Delay, the de minimis threshold specified in Part C of Schedule 14;

"Event of Default" means a Beneficiary Event of Default or a Depot Facility Owner Event of Default, as the context requires;

"Excess Beneficiary Minutes Delay" means, in respect of any Accounting Period, the number of Beneficiary Minutes Delay by which the Aggregate Beneficiary Minutes Delay for that Accounting Period exceeds the Allowable Beneficiary Minutes Delay for that Accounting Period;

"Excess DFO Minutes Delay" means, in respect of any Accounting Period, the number of DFO Minutes Delay by which the Aggregate DFO Minutes Delay for that Accounting Period exceeds the Allowable DFO Minutes Delay for that Accounting Period;

"Fleet Vehicle" means those railway vehicles operated by or on behalf of the Beneficiary and of a type specified in Schedule 3;

"Insolvency Event" means, in relation to either of the parties, where:

- (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:
 - (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there were substituted "£50,000" or such higher figure as the parties may agree from time to time in writing; and
 - (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiration of 21 days from such demand;
- (c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a

general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;

- (d) any step is taken to enforce Security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that Security;
- (e) any step is taken by any person with a view to its winding-up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or
- (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above,

unless:

- (i) in any case, a railway administration order (or application for it) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be) in relation to that party pursuant to sections 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or
- (ii) in the case of paragraphs (a), (d), (e), or (f) in relation to matters analogous or equivalent to the matters referred to in paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

"Long-stop Date" means the date specified in paragraph 3 of Schedule 1;

"Network Rail" means Network Rail Infrastructure Limited, a company registered in England under number 2904587 having its registered office at 40 Melton Street, London,

NW1 2EE (formerly named “Railtrack PLC”, and referred to as “Railtrack” in the Depot Access Conditions).

"Operating Notice" means any notice to be given by one party to this Agreement to the other in respect of any matters contained or referred to in Clauses 8.1.1, 8.1.2 and 8.1.3 and Schedules 5 to 12 inclusive and in respect of any matters contained or referred to in Conditions N3.3, N3.5, N3.9, N3.10 and N3.13;

"Planned Core Block" means, any restriction of use that has gone through any engineering access process as outlined within the Network Code that prevents through services between Bedford and Brighton, Luton and Sutton or Wimbledon

"Safety Authorisation" and **"deemed Safety Authorisation"** have the meanings ascribed to them by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"Safety Certificate" and **"deemed Safety Certificate"** have the meanings ascribed to them by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"Security" means any mortgage, pledge, lien (other than a lien arising by operation of law), hypothecation, security interest or other charge or encumbrance;

"Suspension Notice" means a notice served by one party on the other pursuant to Clause 6.3;

"Termination Notice" means a notice served by one party on the other pursuant to Clause 6.4.1 or 6.4.2, as the case may be;

"Track Access Agreement" means the agreement for use of track, referred to in paragraph 6 of Schedule 1; and

"Unit" means those units comprising 4 Fleet Vehicles operated for or on behalf of the Beneficiary and of a type specified in Schedule 3.

1.2 **References**

References to this Agreement include its schedules and, unless otherwise indicated, references to recitals, Clauses, sub-Clauses, Schedules, Appendices and paragraphs are to recitals, clauses and sub-clauses of, and schedules to and appendices to schedules to, this Agreement and paragraphs of such schedules. References to this Agreement include, unless otherwise indicated, the Depot Access Conditions. References to any Condition shall be construed as a reference to the relevant Depot Access Condition.

1.3 **Sub-contractors**

Where a party has sub-contracted its rights or obligations under this Agreement to any third party in accordance with Clause 9.5, references to that party in this Agreement shall, with the exception of Clause 7 and without prejudice to Clause 9.5, include references to any sub-contractor so appointed.

1.4 **Depot Access Conditions**

Unless the context otherwise requires, words and expressions defined in the Depot Access Conditions or which fall to be construed in accordance with such Conditions shall bear the same meanings and constructions in this Agreement and the rules of interpretation set out in the Depot Access Conditions shall apply throughout this Agreement.

2 **CONDITIONS PRECEDENT**

2.1 **Conditions Precedent**

Subject to Clauses 2.2 to 2.4, the provisions of this Agreement shall not have effect until the following conditions precedent (so far as they are applicable to each party) shall have been satisfied in full:

- 2.1.1 the Beneficiary has executed a Collateral Agreement in relation to the Depot and delivered it to the Depot Facility Owner for exchange thereof with Network Rail;
- 2.1.2 the Depot Facility Owner is authorised to be the operator of the Depot by a light maintenance depot licence granted under section 8 of the Act or is exempt from the requirement to be so authorised under section 7 of the Act;
- 2.1.3 the Track Access Agreement becoming effective in accordance with its terms (save for any condition relating to this Agreement becoming effective);

2.1.4 the Beneficiary holds a Safety Certificate, deemed Safety Certificate, Safety Authorisation or deemed Safety Authorisation in relation to its operation of trains;

2.1.5 an Insolvency Event not having occurred in relation to either of the parties; and

2.1.6 the Connection Agreement becoming effective in accordance with its terms (save for any condition relating to this Agreement becoming effective).

2.2 Obligation to satisfy Conditions Precedent

The parties shall use all reasonable endeavours to secure that the following conditions precedent are respectively satisfied in full by them (and that notice of such satisfaction is promptly given by each party to the other party) as soon as practicable and, in any event, not later than the Long-stop Date:

2.2.1 in the case of the Depot Facility Owner, the conditions precedent contained in Clause 2.1.2 and 2.1.6; and

2.2.2 in the case of the Beneficiary, the conditions precedent contained in Clauses 2.1.1, 2.1.3 and 2.1.4.

2.3 Entry into effect

2.3.1 Clauses 1, 2, 4, 6, 9, 11 and 12 and Conditions A1, Q1 and Q3 shall come into effect and be binding on the parties immediately upon signature of this Agreement.

2.3.2 All other Clauses and Conditions shall come into effect and be binding on the parties on the date on which the last of the conditions precedent contained in Clause 2.1 has been satisfied.

2.4 Non-satisfaction

2.4.1 If any of the conditions precedent in Clause 2.1 shall not have been satisfied in full on or before the Long-stop Date, this Agreement (except Clause 2.4.2) shall lapse and neither party shall have any liability to the other under or in respect of it, save in respect of a pre-existing breach of any of Clauses 2, 4, 6, 9, 11 and 12 and Conditions A1, Q1 and Q3.

2.4.2 The obligations of confidence provided for in the Depot Access Conditions shall continue in force for the period specified in Condition Q1.1 after this Agreement has otherwise ceased to have effect pursuant to Clause 2.4.1.

3 PERMISSION TO USE THE DEPOT

- 3.1 The Depot Facility Owner hereby grants the Beneficiary and its Associates permission to use the Depot.
- 3.2 The Depot Facility Owner undertakes to provide to the Beneficiary and its Associates the Beneficiary Depot Services in accordance with this Agreement and shall comply with its other obligations contained in this Agreement.
- 3.3 In consideration of the permission granted to the Beneficiary and its Associates by the Depot Facility Owner in Clause 3.1 and the performance by the Depot Facility Owner of its other obligations under this Agreement, the Beneficiary shall pay the Access Charge in accordance with Clause 7 and Part F of the Depot Access Conditions and shall comply with its other obligations contained in this Agreement.

4 DEPOT ACCESS CONDITIONS

- 4.1 The Depot Access Conditions are incorporated in and shall form part of this Agreement.
- 4.2 Except where the Office of Rail Regulation shall have directed otherwise in the exercise of its powers under the Act, the Depot Facility Owner shall ensure that all operators of trains having permission to use the Depot agree to comply with the Depot Access Conditions.
- 4.3 During the term of this Agreement, each of the parties shall duly and punctually perform, observe and comply with its obligations set out in the Depot Access Conditions as incorporated in this Agreement pursuant to Clause 4.1.

5 CONTRACT REVIEWS

5.1 Reviews by the parties

- 5.1.1 The parties shall:
- (a) at intervals of not more than three months during the period specified in Clause 5.1.2, formally review with each other, and in consultation with the Secretary of State, the operation of this Agreement; and
 - (b) at the conclusion of any such review, negotiate in good faith and on a reasonable basis with a view to reaching agreement (subject to Condition B9) on any amendments to

this Agreement which either party may, in the light of experience gained as to the operation of this Agreement, reasonably consider necessary or desirable.

5.1.2 The period referred to in Clause 5.1.1(a) shall be the period of 12 months from the Commencement Date, provided that, if either party commences to provide passenger railway services pursuant to a franchise agreement during such period (or if both of them do so), such period will be extended until the date 12 months after the date of commencement of such passenger railway services.

5.1.3 Either party may, by not less than 150 days' notice to the other and the Office of Rail Regulation, effective not later than 60 days prior to the date on which the Secretary of State issues an invitation to tender pursuant to section 26 of the Act in respect of the railway passenger services (or part thereof) operated by either party, terminate this Agreement if it fails to reach agreement with the other party on any amendments it wishes to make to this Agreement.

5.2 Consequential modifications following changes to Depot Access Conditions

5.2.1 This Agreement shall have effect with the modifications specified in a notice given by the Office of Rail Regulation for the purposes of this Clause 5.2, provided that the Office of Rail Regulation shall be satisfied as to the need for the modifications as provided in Clause 5.2.2, the procedural requirements of Clause 5.2.3 shall have been satisfied, and the modifications shall have effect in accordance with Clause 5.2.4.

5.2.2 A notice given by the Office of Rail Regulation under Clause 5.2.1 shall have effect only if the following conditions shall have been satisfied:

- (a) not earlier than 30 days before the notice shall have been given, the Office of Rail Regulation shall have given a notice to the parties pursuant to Condition B6.1 of the Depot Access Conditions; and
- (b) the Office of Rail Regulation shall be satisfied on reasonable grounds that the modifications specified in the notice shall:
 - (i) be necessary or expedient for the purpose of giving full effect to the purposes of the modifications specified in the said notice under Condition B6 of the Depot Access Conditions; and

- (ii) not be of a nature or effect which is likely materially to prejudice the interests of either party under this Agreement.

5.2.3 The procedural requirements which require to have been followed for the purposes of Clause 5.2.1 are those specified in Condition B6.4 of the Depot Access Conditions mutatis mutandis.

5.2.4 A notice given under Clause 5.2.1 shall have effect upon such date, or the happening of such event, as shall be specified in the notice, provided that it shall in no circumstances have effect:

- (a) earlier than 60 days after the date upon which it shall have been given; or

- (b) later than the date which is 180 days after the Commencement Date.

6 TERM AND TERMINATION

6.1 Term

This Agreement shall continue in force until the earliest to occur of:

- 6.1.1 lapse pursuant to Clause 2.4;

- 6.1.2 termination pursuant to Clause 5 or this Clause 6; and

- 6.1.3 the Depot Facility Owner ceasing to be the facility owner of the Depot.

6.2 Events of default

6.2.1 Beneficiary Events of Default

The following shall be Beneficiary Events of Default:

- (a) Insolvency

- An Insolvency Event occurs in relation to the Beneficiary;

- (b) Breach of the Agreement

- The Beneficiary commits a material breach of its obligations under this Agreement;

- (c) Force Majeure

- The Beneficiary fails to perform its obligations under this Agreement to any material extent for a continuous period of 90 days as a result of an event of Force Majeure;

(d) Loss of Licence

The Beneficiary ceases to be authorised to be the operator of trains by a licence granted under section 8 of the Act (whether by revocation or otherwise) unless it is exempt from the requirement so to be authorised under section 7 of the Act;

(e) Track Access Termination

Termination of the Track Access Agreement unless the Beneficiary shall become a party to an access agreement in relation to track which is contiguous to the Depot on or before the date which is not later than 30 days after the termination of the Track Access Agreement (any such agreement being thereafter treated as the Track Access Agreement);

(f) Non operation

The Beneficiary does not require the Depot Facility Owner to carry out at least an average of ninety-five per cent. (95%) by value of the Minimum Level of Services in six consecutive Accounting Periods; and

(g) Franchise Agreement Termination

Termination of the franchise agreement pursuant to which the Beneficiary provides passenger railway services unless the Beneficiary and the Secretary of State shall have entered into a further franchise agreement on or before the date of such termination.

6.2.2 The Beneficiary shall notify the Depot Facility Owner promptly on becoming aware of the occurrence of a Beneficiary Event of Default.

6.2.3 Depot Facility Owner Events of Default

The following shall be Depot Facility Owner Events of Default:

(a) Insolvency

An Insolvency Event occurs in relation to the Depot Facility Owner;

(b) Breach of the Agreement

The Depot Facility Owner commits a material breach of its obligations under this Agreement;

(c) Force Majeure

The Depot Facility Owner fails, for a continuous period of 90 days, to perform its obligations under this Agreement to any material extent as a result of an event of Force Majeure;

(d) Loss of Licence

The Depot Facility Owner ceases to be authorised to be the operator of the Depot by a licence granted under section 8 of the Act (whether by revocation or otherwise) unless it is exempt from the requirement so to be authorised under section 7 of the Act; and

(e) Connection Agreement

Termination of the Connection Agreement unless the Depot Facility Owner shall become a party to an agreement for connection of the Depot to the Network on or before the date which is not later than 30 days after the termination of the Connection Agreement.

6.2.4 The Depot Facility Owner shall notify the Beneficiary promptly on becoming aware of the occurrence of a Depot Facility Owner Event of Default.

6.3 Suspension

6.3.1 Right to suspend

(a) The Depot Facility Owner may serve a Suspension Notice where a Beneficiary Event of Default has occurred and is continuing, provided the relevant Event of Default is reasonably capable of remedy.

(b) The Beneficiary may serve a Suspension Notice where a Depot Facility Owner Event of Default has occurred and is continuing, provided the relevant Event of Default is reasonably capable of remedy.

6.3.2 Contents of a Suspension Notice

A Suspension Notice shall specify:

(a) the nature of the relevant Event of Default;

(b) the date and time at which suspension is to take effect;

- (c) in the case of a Suspension Notice served on the Beneficiary, reasonable restrictions imposed on the grant to the Beneficiary and its Associates of permission to use the Depot and the provision of the Beneficiary Depot Services while the Suspension Notice is in force;
- (d) in the case of a Suspension Notice served on the Depot Facility Owner, details of any suspension of the grant to the Beneficiary of the permission to use the Depot and of the provision of the Beneficiary Depot Services while the Suspension Notice is in force;
- (e) the steps reasonably required to remedy the relevant Event of Default; and
- (f) a reasonable grace period for the defaulting party to remedy it (and where the relevant Event of Default is a failure to pay any part of the Access Charge, seven days shall be a reasonable grace period unless otherwise agreed).

6.3.3 Effects of a Suspension Notice served by the Depot Facility Owner

Where the Depot Facility Owner has served a Suspension Notice on the Beneficiary:

- (a) it shall have the effect of suspending the permission to use the Depot and the provision of the Beneficiary Depot Services to the extent specified in such Suspension Notice;
- (b) the Beneficiary shall comply with any reasonable restriction thereby imposed on it;
- (c) the Suspension Notice shall remain in full force and effect until it has been revoked either in whole or in part by notice from the Depot Facility Owner to the Beneficiary pursuant to Clause 6.3.5(d); and
- (d) service of a Suspension Notice shall not affect the Beneficiary's continuing obligation to pay the Access Charge.

6.3.4 Effect of a Suspension Notice served by the Beneficiary

Where the Beneficiary has served a Suspension Notice on the Depot Facility Owner:

- (a) it shall have the effect of suspending the permission to use the Depot and the provision of the Beneficiary Depot Services to the extent specified in such Suspension Notice;
- (b) the Suspension Notice shall remain in full force and effect until it has been revoked either in whole or in part by notice from the Beneficiary to the Depot Facility Owner pursuant to Clause 6.3.5(d); and
- (c) without prejudice to the Beneficiary's rights under Clause 8, the Beneficiary shall not be obliged to pay the Access Charge in respect of such Beneficiary Depot Services.

6.3.5 Suspension to be proportionate to breach

- (a) A Suspension Notice served pursuant to Clause 6.3.1 in respect of any Beneficiary Event of Default which relates only to particular Beneficiary Depot Services shall, so far as reasonably practicable, apply only to those Beneficiary Depot Services (or (as the case may be) parts or part of them) and the remainder of the rights and obligations of the parties shall remain in full force and effect.
- (b) A Suspension Notice served pursuant to Clause 6.3.1 in respect of any Depot Facility Owner Event of Default which relates only to particular Beneficiary Depot Services shall, so far as reasonably practicable, apply only to those Beneficiary Depot Services (or (as the case may be) parts or part thereof) and the remainder of the rights and obligations of the parties shall remain in full force and effect.
- (c) The party served with a Suspension Notice shall, with all reasonable diligence, take such steps as shall be reasonable and necessary to remedy the Event of Default and shall keep the party serving the Suspension Notice fully informed of the progress which is being made in remedying the Event of Default.
- (d) Where a party served with a Suspension Notice has complied with its obligations under Clause 6.3.5(c) (whether in whole or in part) and it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the party which shall have served the Suspension Notice shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question, by notice to the other party specifying the extent of the revocation and the date on which it shall have effect.

6.4 Termination

6.4.1 The Depot Facility Owner's right to terminate

The Depot Facility Owner may serve a Termination Notice on the Beneficiary where:

- (a) the Beneficiary fails to comply with any material restriction in a Suspension Notice provided that the relevant Beneficiary Event of Default is continuing;
- (b) the Beneficiary fails to comply with its obligations under Clause 6.3.5(c) provided that the relevant Beneficiary Event of Default is continuing;
- (c) except during the period of a Suspension Notice relating to it, a Beneficiary Event of Default has occurred and is continuing; or
- (d) the period of 12 months has elapsed from the date upon which a franchise agreement entered into by either the Depot Facility Owner or the Beneficiary becomes effective.

6.4.2 The Beneficiary's right to terminate

The Beneficiary may serve a Termination Notice on the Depot Facility Owner where:

- (a) the Depot Facility Owner fails to comply with its obligations under Clause 6.3.5(c) provided that the relevant Depot Facility Owner Event of Default is continuing; or
- (b) except during the period of a Suspension Notice relating to it, a Depot Facility Owner Event of Default has occurred and is continuing; or
- (c) the period of 12 months has elapsed from the date upon which a franchise agreement entered into by either the Depot Facility Owner or the Beneficiary becomes effective.

6.4.3 Contents of Termination Notice

A Termination Notice shall specify:

- (a) the nature of the relevant Event of Default or other matter entitling termination under Clause 6.4.1 or 6.4.2 as the case may be;
- (b) the date and time at which termination is to take effect, which in the case of a notice under Clause 6.4.1(d) or Clause 6.4.2(c) shall not be earlier than 6 months after such

notice is given and in the case of any other notice shall not be earlier than the expiry of any relevant grace period under Clause 6.4.3(c)(ii); and

- (c) where the relevant Event of Default is capable of remedy:
 - (i) the steps reasonably required to remedy the Event of Default; and
 - (ii) a reasonable grace period within which such steps may be taken (and where the Event of Default is a failure of the Beneficiary to pay the Access Charge, seven days shall be a reasonable grace period unless otherwise agreed).

6.4.4 Effects of a Termination Notice

Where either party has served a Termination Notice on the other:

- (a) the service of the Termination Notice shall not affect the parties' continuing rights and obligations under this Agreement up to the date of termination as specified in the Termination Notice or such later date as the party which has served the Termination Notice may notify to the other following the service of the Termination Notice but prior to the date upon which it shall have been specified to have effect;
- (b) the party which has served the Termination Notice shall withdraw it by notice to the other party upon being reasonably satisfied that any relevant Event of Default has been remedied;
- (c) this Agreement shall terminate on the later of:
 - (i) the date and time specified in the Termination Notice or such later date and time as the party which has served the Termination Notice may notify to the other prior to the date and time upon which it shall have been specified to have effect; and
 - (ii) 28 days after the date upon which a copy of the Termination Notice shall have been given to the Office of Rail Regulation;
- (d) promptly after it has been served, a copy of the Termination Notice shall be sent by the party serving such notice to the Secretary of State at the address set out in paragraph 5 of Schedule 1, or such other address as shall be notified by it to the parties from time to time; and

- (e) termination of this Agreement by either party shall be without prejudice to any right of action that may have arisen prior to, or may arise in consequence of, such termination, provided always that no termination by the Beneficiary under Clause 6.4.2(c) or by the Depot Facility Owner under Clause 6.4.1(d) shall of itself give rise or be deemed to give rise to any right of action by the Depot Facility Owner or the Beneficiary respectively.

6.5 Exclusion of common law termination rights

The suspension and termination rights set out in this Clause 6 and Clause 5 shall be the parties' only rights to suspend or terminate this Agreement, whether pursuant to its terms, at law or otherwise.

6.6 Office of Rail Regulation's termination

6.6.1 This Agreement shall terminate upon:

- (a) the date specified in a notice (the "Office of Rail Regulation's Termination Notice") given to the parties by the Office of Rail Regulation for the purposes of this Clause 6.6; or
- (b) the happening of such event as shall be specified in such a notice.

6.6.2 An Office of Rail Regulation's Termination Notice shall have effect if the following conditions shall have been satisfied:

- (a) the Office of Rail Regulation shall have given to the parties a review notice complying with Clause 6.6.3 by a date which is not earlier than 1 April 1998; and
- (b) either:
 - (i) the parties shall have failed to submit to the Office of Rail Regulation for its approval within 90 days of the giving of the review notice or such longer period as the Office of Rail Regulation may specify proposed amendments to this Agreement which they shall have agreed in respect of all of the matters referred to in the review notice; or
 - (ii) the parties having submitted proposed amendments to it, the Office of Rail Regulation shall have failed or refused to approve them within 150 days of

the giving of the review notice or such longer period as the Office of Rail Regulation may specify; and

- (c) the Office of Rail Regulation shall have specified in the Office of Rail Regulation's Termination Notice the date or the happening of an event upon which it shall have effect, which date or event shall not be earlier than 150 days after the giving of the said notice.

6.6.3 A review notice shall be a notice given by the Office of Rail Regulation stating its conclusions in relation to its review of the parties' arrangements under this Agreement in respect of any matter.

6.7 Termination by either party

Either party may terminate this Agreement by not less than 180 days' notice to the other and the Office of Rail Regulation to be effective not earlier than the first date upon which significant changes may be made to a timetable of railway passenger services published or procured to be published to the public by Network Rail, such date being one specified by the European Passenger Timetable Conference.

7 CHARGES FOR PERMISSION TO USE THE DEPOT

The Access Charge incorporating the specific charges set out in the relevant Appendices to Schedules 5 to 12 shall be calculated and paid in accordance with Part F.

8 REMEDIES

8.1 Delays and specified performance defaults

8.1.1 The Depot Facility Owner, within 5 Business Days following each relevant Diagram Departure Time, shall notify to the Beneficiary:

- (a) the Train Ready Time or other fact as recorded by the Depot Facility Owner pursuant to Condition L1.1, in respect of each train operated by or on behalf of the Beneficiary, in any case where either:
 - (i) the Train Ready Time is later than the relevant Diagram Departure Time for that train; or

- (ii) that train is cancelled or for any other reason no Train Ready Time occurs in respect of it;

together with (in any such case), where relevant,

- (b) both:

- (i) the relevant number of DFO Minutes Delay; and
- (ii) particulars sufficient to enable the Beneficiary to make a proper assessment of how and the extent to which the Depot Facility Owner considers that any delay referred to in Clause 8.1.1(a)(i) or (a)(ii) but not included in the computation of DFO Minutes Delay was caused by either
 - (1) a breach by the Beneficiary or any of its Affiliates of any contractual obligation owed to the Depot Facility Owner; or
 - (2) an event of Force Majeure affecting the Depot Facility Owner.

8.1.2 The Depot Facility Owner, within 5 Business Days following each relevant Diagram Departure Time, shall notify to the Beneficiary, together with the information notified pursuant to Clause 8.1.1:

- (a) the Train Ready Time or other fact as recorded by the Depot Facility Owner pursuant to Condition L1.1, in respect of each train other than one operated by or on behalf of the Beneficiary, in any case where both:
 - (i) either:
 - (1) the Train Ready Time is later than the relevant Diagram Departure Time for that train; or
 - (2) that train is cancelled or for any other reason no Train Ready Time occurs in respect of it; and
 - (ii) (in either case) the Depot Facility Owner considers that such delay was wholly or partly caused by a breach by the Beneficiary of its obligations

under this Agreement (not being a breach caused by an event of Force Majeure affecting the Beneficiary):

together with (in any such case).

(b) both:

(i) the relevant number of Beneficiary Minutes Delay; and

(ii) particulars sufficient to enable the Beneficiary to make a proper assessment of how and the extent to which the Depot Facility Owner considers that any delay referred to in Clause 8.1.2(a)(i)(1) or (2) was caused by a matter referred to in Clause 8.1.2(a)(ii).

8.1.3 The Beneficiary shall be deemed to have agreed any DFO Minutes Delay, any Beneficiary Minutes Delay and any associated particulars of causation or contribution so notified to it, unless and to the extent that, within 5 Business Days of the time of service of the relevant notice, the Beneficiary shall have notified to the Depot Facility Owner that it disputes any of its contents. Any such notice by the Beneficiary shall specify what is disputed, and state reasons.

8.1.4 Within 5 Business Days of the end of each Accounting Period, the Depot Facility Owner shall:

(a) notify the Beneficiary of the:

(i) Aggregate Beneficiary Minutes Delay for that Accounting Period, provided that there shall not be included in the calculation of Aggregate Beneficiary Minutes Delay any Beneficiary Minutes Delay which are less than the relevant Beneficiary Minutes Delay Threshold or in excess of the Beneficiary Minutes Delay Cap; and

(ii) Excess Beneficiary Minutes Delay for that Accounting Period; and

(b) submit an invoice to the Beneficiary covering:

- (i) all such Excess Beneficiary Minutes Delay, charged at the rates specified in Part D of Schedule 13 (or at such higher rates as for the time being shall have taken effect pursuant to Clause 8.1.5); and
- (ii) such other performance related payments as shall be due from the Beneficiary in accordance with Clause 8.2.

8.1.5 The Allowable Beneficiary Minutes Delay shall be decreased or the rates of payment specified in Part D of Schedule 13 shall be increased from time to time in such manner, on such conditions, and for such purposes as shall have been specified by the Office of Rail Regulation by notice in writing to the Depot Facility Owner and the Beneficiary within 28 days after the giving of any directions by the Office of Rail Regulation under section 17 or 18 of the Act requiring the Depot Facility Owner to enter into another Depot Access Agreement.

8.1.6 All invoices submitted under Clause 8.1.4(b) shall:

- (a) be in sufficient detail to enable the Beneficiary to make a proper assessment of the amounts being levied;
- (b) be accompanied by reasonable supporting information (save to the extent already supplied by the Depot Facility Owner to the Beneficiary); and
- (c) be sent by electronic or facsimile transmission (with confirmation copy by prepaid first class post) to the Beneficiary's address for service set out in this Agreement.

8.1.7 Subject to Clause 8.1.8, the Beneficiary shall pay each such invoice within 28 days of receipt of the confirmation copy of the invoice delivered to the Beneficiary in accordance with Clause 8.1.6(c).

8.1.8 If the Beneficiary shall dispute its liability to pay any part of any such invoice, it shall not pay that part which shall be in dispute (pending final resolution of any dispute resolution proceedings which may have been commenced in relation to the matters in dispute) but shall pay the balance. If and to the extent that it is finally determined that the part so unpaid was properly payable by the Beneficiary, so much of the part as should have been paid shall bear interest in accordance with Condition Q2.1 as though the Beneficiary had defaulted in the payment of it when originally due.

8.1.9 Within 15 Business Days of the end of each Accounting Period, the Beneficiary shall:

- (a) notify the Depot Facility Owner of the:
 - (i) Aggregate DFO Minutes Delay in respect of that Accounting Period, provided that there shall not be included in the calculation of Aggregate DFO Minutes Delay any DFO Minutes Delay which are less than the relevant DFO Minutes Delay Threshold or any DFO Minutes Delay to the extent that they are more than the relevant DFO Minutes Delay Cap; and
 - (ii) Excess DFO Minutes Delay in respect of that Accounting Period; and
- (b) submit an invoice to the Depot Facility Owner covering:
 - (i) all such Excess DFO Minutes Delay, charged at the rates specified in Part D of Schedule 14 (or at such higher rates as for the time being shall have taken effect pursuant to Clause 8.1.10); and
 - (ii) such other performance related payments as shall be due from the Depot Facility Owner in accordance with Clause 8.2.

8.1.10 The Allowable DFO Minutes Delay shall be decreased or the rates of payment specified in Part D of Schedule 14 shall be increased from time to time in such manner, on such conditions, and for such purposes as shall have been specified by the Office of Rail Regulation by notice to the Depot Facility Owner and the Beneficiary within 28 days after the giving of any directions by the Office of Rail Regulation under section 17 of the Act requiring the Depot Facility Owner to enter into another Depot Access Agreement.

8.1.11 All invoices submitted under Clause 8.1.9(b) shall:

- (a) be in sufficient detail to enable the Depot Facility Owner to make a proper assessment of the amounts being levied;
- (b) be accompanied by reasonable supporting information (save to the extent already supplied by the Beneficiary to the Depot Facility Owner); and

- (c) be sent by electronic or facsimile transmission (with confirmation copy by prepaid first class post) to the Depot Facility Owner's address for service set out in this Agreement.

8.1.12 Subject to Clause 8.1.13, the Depot Facility Owner shall pay each such invoice within 28 days of receipt of the confirmation copy of the invoice delivered to the Depot Facility Owner in accordance with Clause 8.1.11(c).

8.1.13 If the Depot Facility Owner shall dispute its liability to pay any part of any such invoice, it shall not pay that part which shall be in dispute (pending final resolution of any dispute resolution proceedings which may have been commenced in relation to the matters in dispute) but shall pay the balance. If and to the extent that it is finally determined that the part so unpaid was properly payable by the Depot Facility Owner, so much of the part as should have been paid shall bear interest in accordance with Condition Q2.1 as though the Depot Facility Owner had defaulted in the payment of it when originally due.

8.2 **Performance incentives**

8.2.1 The Depot Facility Owner shall pay the Beneficiary such amounts, by reference to such performance criteria, as are specified in Schedule 16.

8.2.2 The Beneficiary shall pay the Depot Facility Owner such amounts, by reference to such performance criteria, as are specified in Schedule 15.

8.3 **Indemnities**

8.3.1 Subject to Clause 8.4, the Depot Facility Owner shall (on an after tax basis) indemnify the Beneficiary, and keep it indemnified, against all damage, losses, claims, proceedings, demands, liabilities, reasonable costs, damages, orders and reasonable out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) incurred or suffered by it as a result of any breach by the Depot Facility Owner of any of its obligations under this Agreement.

8.3.2 Subject to Clause 8.4, the Beneficiary shall (on an after tax basis) indemnify the Depot Facility Owner and keep it indemnified, against all damage, losses, claims, proceedings, demands, liabilities, reasonable costs, damages, orders and reasonable out of pocket expenses (including costs reasonably incurred in investigating or defending any claim, proceedings, demand or order and any expenses reasonably incurred in preventing, avoiding or mitigating

loss, liability or damage) incurred or suffered by it as a result of any breach by the Beneficiary of any of its obligations under this Agreement.

8.4 **Limitation on claims**

8.4.1 Neither party shall be liable, in respect of any breach of this Agreement, under the indemnities specified in Clause 8.3:

- (a) unless notice of such breach is given by or on behalf of the claimant to the respondent setting out detailed particulars of the grounds on which the relevant claim is based within 6 months after the facts giving rise to such claim first became known by the claimant;
- (b) arising from any single occurrence or circumstance (or connected series of occurrences or circumstances) if the amount of the relevant claim does not exceed:
 - (i) in the case of a claim against the Depot Facility Owner, the amount specified in paragraph 1 of Schedule 17; and
 - (ii) in the case of a claim against the Beneficiary, the amount specified in paragraph 2 of Schedule 17;
- (c) unless the aggregate amount of all claims for which the respondent would otherwise be liable to the claimant exceeds:
 - (i) in the case of a claim against the Depot Facility Owner the amount specified in paragraph 3 of Schedule 17; and
 - (ii) in the case of a claim against the Beneficiary, the amount specified in paragraph 4 of Schedule 17;

in any Accounting Year, in which case the liability of the respondent to the claimant shall be limited to the amount of the excess over those amounts respectively;

- (d) arising from a single occurrence or circumstance (or connected series of occurrences or circumstances) to the extent that the amount of the relevant claim exceeds:

- (i) in the case of a claim against the Depot Facility Owner, the amount specified in paragraph 5 of Schedule 17; and
- (ii) in the case of a claim against the Beneficiary, the amount specified in paragraph 6 of Schedule 17,

provided that Clause 8.4.1(d) shall not apply to any liability in respect of physical damage to property;

- (e) in respect of any incidence of delay to a train operated by or on behalf of the Beneficiary, the Depot Facility Owner or any other User under a Depot Access Agreement,

provided that Clause 8.4.1 shall not apply to any liability in respect of death or injury to persons caused by negligence.

8.4.2 The Beneficiary shall not be liable under the indemnity specified in Clause 8.3.2:

- (a) in respect of any incidence of delay to a train operated by or on behalf of a Relevant Operator; or
- (b) for any liquidated damages which the Depot Facility Owner shall have been required to pay any other User under a Depot Access Agreement.

8.4.3 The Depot Facility Owner shall not be liable under the indemnity specified in Clause 8.3.1:

- (a) in respect of any incidence of delay to any train operated by or on behalf of the Beneficiary; or
- (b) for any liquidated damages which the Beneficiary shall have been required to pay to the Depot Facility Owner.

8.4.4 Without prejudice to the provisions of Clauses 8.1 and 8.2, neither party to this Agreement shall be liable to the other, under the indemnities specified in Clause 8.3, for any loss of revenue suffered by the other (including fare revenue, subsidy, access charge revenue and incentive payments).

- 8.4.5 The remedies provided for in this Agreement and, to the extent applicable, the Access Dispute Resolution Rules shall be the sole remedies available to the parties in respect of any matters for which such remedies would, but for the limitations in Clauses 8.4.1, 8.4.2, 8.4.3 and 8.4.4, be available.

8.5 **Replacement or repair of parts**

Without prejudice to Clauses 8.1 to 8.4, if the Beneficiary requests the Depot Facility Owner to replace or repair any parts in relation to which the Depot Facility Owner shall be in breach of any of its obligations under or arising pursuant to Conditions N1.2, N1.3 and N1.4, the Depot Facility Owner shall comply with such request within 5 Business Days of receipt of such request except where, and to the extent that, the Depot Facility Owner shall, having due regard to the Decision Criteria, determine that it should not do so.

9 **WHOLE AGREEMENT, VARIATION AND ASSIGNMENT**

9.1 **Whole agreement**

This Agreement contains the entire agreement between the parties in relation to the subject matter of this Agreement and supersedes all prior agreements and arrangements. This Clause 9.1 shall not have the effect of excluding any term implied by law.

9.2 **Assignment**

Subject to Clause 9.3, this Agreement shall be binding on and enure to the benefit of the parties and their successors and permitted assignees but neither party may assign or transfer all or any part of its rights or obligations under this Agreement without the prior written consent of the other party and the Office of Rail Regulation.

9.3 **Novation**

Each party agrees to take all such steps as may be necessary to give effect to the novation of either party's rights and obligations under this Agreement by and in favour of the Secretary of State or its nominee, if and to the extent necessary to enable the Secretary of State to perform its duty to secure the provision of services for the carriage of passengers by railway pursuant to section 30 of the Act, provided that any such novation shall have been approved by the Office of Rail Regulation pursuant to the Act and shall be on terms that:

- 9.3.1 the Secretary of State or its nominee shall have satisfied all relevant conditions precedent which are specified in Clause 2.1 (unless and to the extent that such conditions precedent shall have been waived);

9.3.2 the party whose rights and obligations are being novated shall not be released from any accrued but unperformed obligation, the consequences of any breach of this Agreement which is the subject of arbitration or litigation between the parties or any liability in respect of any act or omission under or in relation to this Agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or its nominee agrees to assume and be responsible for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and

9.3.3 neither the Secretary of State nor its nominee shall be obliged, in connection with the novation, to agree to assume and be responsible for any unperformed obligation, liability or consequences of a breach referred to in Clause 9.3.2.

9.4 **Sub-contracting**

Either party may subcontract the performance of any of its obligations under this Agreement without thereby relieving it of any such obligations to the other party.

9.5 **Ceasing to be a facility owner**

9.5.1 In this Clause 9.5 "a relevant disposal" means the disposal or the creation of any estate, interest, right or title in or to the Depot which, whether or not with the passage of time or the giving of notice, may result in another person becoming the facility owner in respect of the Depot but does not include the creation of Security over the Depot.

9.5.2 The Depot Facility Owner shall not make a relevant disposal otherwise than to a person holding a light maintenance depot licence in respect of the Depot who prior to the making of the relevant disposal has taken a novation of this Agreement on terms approved by the Office of Rail Regulation.

9.5.3 The Depot Facility Owner shall not create or permit to subsist Security over the Depot otherwise than on terms approved by the Office of Rail Regulation.

9.5.4 A relevant disposal shall not release the Depot Facility Owner from any accrued but unperformed obligation, the consequences of any breach of this Agreement or any liability in respect of any act or omission under or in relation to this Agreement arising prior to the date of that relevant disposal.

10 DEPOT WORK PLAN

The Depot Facility Owner represents, warrants and undertakes that the copy of the Depot Work Plan entered in the Depot Register is true and accurate in all material respects and has not been superseded.

11 NOTICES AND COMMUNICATIONS

11.1 Any notice or other communication, with the exception of Operating Notices, under or in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the party on whom the notice is to be served at the relevant address for service set out in paragraph 1 of Schedule 2, or to such other address in the United Kingdom as that party may specify by notice to the other party to this Agreement.

11.2 Any Operating Notice shall be in writing and given to the person set out in paragraph 2 of Schedule 2, or to such other person in the United Kingdom as that party may specify by notice to the other party to this Agreement in accordance with the relevant provision of this Agreement or the Depot Access Conditions and shall be deemed to have been received by the party to whom it is addressed if sent by facsimile, upon sending (where such transmission occurs before 17.00 hours on the day of transmission) and (in any other case) on the day following the day of transmission, provided that the sender obtains, and if required to do so by the person to whom the notice is alleged to have been sent produces, confirmation of uninterrupted transmission by a transmission report generated by the facsimile machine in question, or other sufficient evidence of transmission.

11.3 Any notice or other communication made in accordance with this Clause 11 shall be, or shall be deemed to have been, received by the party to whom it is addressed if sent by hand or recorded delivery when so delivered or in the case of pre-paid first class post, 2 days after posting.

12 GOVERNING LAW AND SUBMISSION TO JURISDICTION

12.1 Governing law

This Agreement shall be governed by and construed in accordance with English law.

12.2 Jurisdiction

Subject to the Depot Access Conditions, the parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with, this Agreement.

13 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

13.1 Application to Third Parties

Except as provided in this Clause 13 or as expressly provided elsewhere in this contract, no person who is not a party to this contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract.

13.2 Application to the Office of Rail Regulation and the Secretary of State

The Office of Rail Regulation and the Secretary of State shall have the right under the Contracts (Rights of Third Parties) Act 1999 to directly enforce such rights as have been granted to them under this contract.

14 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which, when executed, shall be an original and which together shall have the same effect as if each Party had executed the same document.

IN WITNESS whereof this Agreement has been signed by or on behalf of the parties.

SCHEDULE 1
CONTRACT PARTICULARS

1 Depot Facility Owner:

Name: New Southern Railway Limited

Registered office: 3rd Floor, 41-51 Grey Street, Newcastle-upon-Tyne, NE1 6EE

2 Beneficiary:

Name: First Capital Connect Limited

Registered office: 50 Eastbourne Terrace, Paddington, London, W2 6LX

3 Long-stop Date:

The date which is 1 calendar month from the date of this Agreement.

4 Depot:

The light maintenance depot known as London Selhurst as more particularly described in the Depot Access Conditions.

5 Address of Secretary of State:

The Secretary of State for Transport
76 Marsham Street
London
SW1P 4DR

Tel: 0207 944 5955

Fax: 0207 944 2177

6 Track Access Agreement:

Access contract dated 3 February 2006 (which came into effect on 11 June 2006) between Network Rail and the Beneficiary providing permission for the Beneficiary to use track in order to operate trains to and from the entrance to the Depot.

SCHEDULE 2

NOTICES

1 Formal Notices

Address for service on the Depot Facility Owner:

(Attention: Gerry McFadden, Director Engineering)

Go Ahead House, 26-28 Addiscombe Road, East Croydon CR9 5GA

Fax No. 0208 929 8783

Address for service on the Beneficiary:

(Attention: Andy Cope)

Hertford House, 1 Cranwood Street, London EC1V 9QS

Fax No. 0207 713 2153

2 Operating Notices

Details for Service on the Depot Facility Owner:

Relevant Employee

Fax No.

James Pinder, Depot Manager Selhurst

0208 666 5348

Control Manager

Details for Service on the Beneficiary:

Relevant Employee

Fax No.

Andy Cope

0207 713 2153

SCHEDULE 3
FLEET VEHICLES

Type of Railway Vehicle				
Class 319				
Units	Vehicles			
	DTS A	PMS	ATS	DTS B
319001	77291	62891	71772	77296
319002	77293	62892	71773	77292
319003	77295	62893	71774	77294
319004	77297	62894	71775	77296
319005	77299	62895	71776	77298
319006	77301	62896	71777	77300
319007	77303	62897	71778	77302
319008	77305	62898	71779	77304
319009	77307	62899	71780	77306
319010	77309	62900	71781	77308
319011	77311	62901	71782	77310
319012	77313	62902	71783	77312
319421	77331	62911	71792	77330
319422	77333	62912	71793	77332
319423	77335	62813	71794	77334
319424	77337	62814	71795	77336
319425	77339	62815	71796	77338
319426	77341	62816	71797	77340
319427	77343	62817	71798	77342
319428	77345	62818	71799	77344
319429	77347	62819	71800	77346
319430	77349	62920	71801	77348
319431	77351	62921	71802	77350
319432	77353	62922	71803	77352
319433	77355	62923	71804	77354
319434	77357	62924	71805	77356
319435	77359	62925	71806	77358
319436	77361	62926	71807	77360
319437	77363	62927	71808	77362

319438	77365	62928	71809	77364
319439	77367	62929	71810	77366
319440	77369	62930	71811	77368
319441	77371	62931	71812	77370
319442	77373	62932	71813	77372
319443	77375	62933	71814	77374
319444	77377	62934	71815	77376
319445	77379	62935	71816	77378
319446	77381	62936	71817	77380
319447	77431	62961	71866	77430
319448	77433	62962	71867	77432
319449	77435	62963	71868	77434
319450	77437	62964	71869	77436
319451	77439	62965	71870	77438
319452	77441	62966	71871	77440
319453	77443	62967	71872	77442
319454	77445	62968	71873	77444
319455	77447	62969	71874	77446
319456	77449	62970	71875	77448
319457	77451	62971	71876	77450
319458	77453	62972	71877	77452
319459	77455	62973	71878	77454
319460	77457	62974	71879	77456
319361	77459	63043	71929	77458
319362	77461	63044	71930	77460
319363	77463	63045	71931	77462
319364	77465	63046	71932	77464
319365	77467	63047	71933	77466
319366	77469	63048	71934	77468
319367	77471	63049	71935	77470
319368	77473	63050	71936	77472
319369	77475	63051	71937	77474
319370	77477	63052	71938	77476
319370	77479	63053	71939	77478
319372	77481	63054	71940	77480
319373	77483	63055	71941	77482

319374	77485	63056	71942	77484
319375	77487	63057	71943	77486
319376	77489	63058	71944	77488
319377	77491	63059	71945	77490
319378	77493	63060	71946	77492
319379	77495	63061	71947	77494
319380	77497	63062	71948	77496
319381	77973	63093	71979	77974
319382	77975	63094	71980	77976
319383	77977	63095	71981	77978
319384	77979	63096	71982	77980
319385	77981	63097	71983	77982
319386	77983	63098	71984	77984

Type of Railway Vehicle				
Class 377				
Units	Vehicles			
	DMOS A	MOSL	PTOSLW	DMOS B
377501	73501	75901	74901	73601
377502	73502	75902	74902	73602
377503	73503	75903	74903	73603
377504	73504	75904	74904	73604
377505	73505	75905	74905	73605
377506	73506	75906	74906	73606
377507	73507	75907	74907	73607
377508	73508	75908	74908	73608
377509	73509	75909	74909	73609
377510	73510	75910	74910	73610
377511	73511	75911	74911	73611
377512	73512	75912	74912	73612
377513	73513	75913	74913	73613
377514	73514	75914	74914	73614
377515	73515	75915	74915	73615
377516	73516	75916	74916	73616

377517	73517	75917	74917	73617
377518	73518	75918	74918	73618
377519	73519	75919	74919	73619
377520	73520	75920	74920	73620
377521	73521	75921	74921	73621
377522	73522	75922	74922	73622
377523	73523	75923	74923	73623

SCHEDULE 4
APPLICABLE SYSTEMS INTERFACES

The Applicable Systems Interfaces are such Systems Interfaces as are in full operational use by the parties at the Commencement Date for the exchange between the parties of all relevant information in respect of the following matters:

TACT XV

Gemini

RAVERS

together with, when fully developed and operational, the following specific Systems Interfaces:

SPEAR

SCHEDULE 5
FLEET MAINTENANCE

Not Used.

SCHEDULE 6
FUELLING AND FUEL POINT EXAMS

Not used.

SCHEDULE 7

EXTERIOR CLEANING

1 Definitions

In this Schedule:

"Appendix" means an appendix to this Schedule;

"Beneficiary's Nominated Representative" means the representative identified as such by the Beneficiary to the Depot Facility Owner from time to time, who will be available either at the Depot or on call and to whom items should be reported in accordance with the Washing Specification in Appendix 3;

"CET Services" means vacuum extraction of controlled emission toilets;

"Hand Washing" means the cleaning of the exterior of a Fleet Vehicle by hand in accordance with methods and practices customarily used in good and prudent railway practice (including, where applicable, Railway Group Standards);

"Machine Washing" means the cleaning of the exterior of a Fleet Vehicle by the passage of that Fleet Vehicle through a fully operational mechanised washing plant operated, stocked and maintained in accordance with methods and practices customarily used in good and prudent railway practice (including, where applicable, Railway Group Standards);

"Train Presentation Specification" means the specification referred to in Appendix 4;

"Washing" means Machine Washing and Hand Washing; and

"Washing Specification" means the specification referred to in Appendix 3.

2 Provision of Machine Washing and CET Services

2.1 The Depot Facility Owner shall provide the Beneficiary with Machine Washing and CET Services up to the Minimum Level of Services as specified in paragraph 1 of Appendix 1.

2.2 The Depot Facility Owner shall provide the Beneficiary with additional Machine Washing and CET Services up to the Maximum Level of Services as specified in paragraph 2 of

Appendix 1 for such of the Fleet Vehicles as the Beneficiary may request except where, and to the extent that, the Depot Facility Owner shall, having due regard to the Decision Criteria, determine that the work should not be carried out.

2.3 If the Beneficiary does not receive or anticipates that it will not require to receive the whole of the Washing and CET Services specified in paragraph 1 of Appendix 1 to be provided in an Accounting Period, the Beneficiary may request that the unperformed Washing and CET Services from that Accounting Period be carried forward to the next Accounting Period whereupon, in that Accounting Period, the Depot Facility Owner shall provide the Beneficiary with additional Washing and CET Services of an amount equal to the unperformed Washing and CET Services carried forward except where, and to the extent that:

- (a) the unperformed Washing and CET Services carried forward exceeds 5% by value of the Washing and CET Services specified in paragraph 1 of Appendix 1 to be provided in the Accounting Period from which that Washing and CET Services is carried forward; or
- (b) the Depot Facility Owner shall, having due regard to the Decision Criteria, determine that the work should not be carried out.

3 Depot Facility Owner's Obligations

3.1 On receipt of a request for Machine Washing or CET Services in excess of the Minimum Level of Services, the Depot Facility Owner shall as soon as reasonably practicable notify the Beneficiary of a date and time for the completion of such Machine Washing or CET Services. The Depot Facility Owner shall use all reasonable endeavours to provide the Machine Washing or CET Services in question at a time which is reasonably convenient for the Beneficiary, except where, and to the extent that, the Depot Facility Owner shall, having due regard to the Decision Criteria, determine that the work should not be carried out.

3.2 No Hand Washing shall be carried out to any Fleet Vehicles.

3.3 The Depot Facility Owner, having carried out Washing and CET Services, shall present trains for service in compliance with the Train Presentation Specification.

4 Warranty

- 4.1 The Depot Facility Owner warrants that it shall carry out Washing in accordance with the Washing Specification.
- 4.2 Notwithstanding the provisions of Clause 8, the Depot Facility Owner shall not be liable for any failure to clean the exterior of a Fleet Vehicle which arrives at the Depot in a condition such that it cannot be cleaned by Washing.

5 Charging

- 5.1 The Beneficiary shall pay to the Depot Facility Owner:
 - (a) the charges set out in paragraph 1 of Appendix 2 in respect of Machine Washing and CET Services up to the Minimum Level of Services; and
 - (b) the charges set out in paragraph 2 of Appendix 2 in respect of Machine Washing and CET Services comprised in the Variable Level of Services.

Limitation on Depot Facility Owner's Obligations

- 6.1 In relation to Washing:
 - 6.1.1 where the relevant Diagram allows for Machine Washing to be carried out, the Depot Facility Owner shall procure that such Washing is carried out; and
 - 6.1.2 where the relevant Diagram does not allow for Machine Washing to be carried out, the Depot Facility Owner shall use its reasonable endeavours to procure that such Washing is carried out. When such Washing is not carried out, the Depot Facility Owner shall notify the Beneficiary.
- 6.2 This paragraph 6 shall over-ride any provision inconsistent with it contained elsewhere in this Schedule 7 and its Appendices.

APPENDIX 1 TO SCHEDULE 7

EXTERIOR CLEANING

1. A) Normal Operation

1) Minimum level of Service without "planned core block"

Consecutive Accounting periods in each accounting year	1	2	3	4	5	6	7	8	9	10	11	12	13
No of units for Exterior wash	0	0	0	0	0	0	0	0	0	0	0	0	0
No of Units fro CET services	0	0	0	0	0	0	0	0	0	0	0	0	0

2) Maximum level of Services without "planned core block"

Consecutive Accounting periods in each accounting year	1	2	3	4	5	6	7	8	9	10	11	12	13
No of units for Exterior wash	40	40	40	40	40	40	40	40	40	40	40	40	40
No of Units fro CET services	40	40	40	40	40	40	40	40	40	40	40	40	40

B) Operation when there is a "Planned Core Block"

1) Minimum level of Service with "planned core block"

Consecutive Accounting periods in each accounting year	1	2	3	4	5	6	7	8	9	10	11	12	13
No of units for Exterior wash	18	18	18	18	18	18	18	18	18	18	18	18	18
No of Units for CET services	18	18	18	18	18	18	18	18	18	18	18	18	18

2) Maximum level of Services with "planned core block"

Consecutive Accounting periods in each accounting year	1	2	3	4	5	6	7	8	9	10	11	12	13
No of units for Exterior wash	40	40	40	40	40	40	40	40	40	40	40	40	40
No of Units for CET services	40	40	40	40	40	40	40	40	40	40	40	40	40

2 Limit of Authority

Not used.

**APPENDIX 2 TO SCHEDULE 7
CHARGES**

1 CET Services up to the Minimum Level of Services

£14.42 per Fleet Unit

2 CET Services comprised in the Variable Level of Services

Not applicable

3 Machine Washing up to the Minimum Level of Services

Machine Washing Charge per Fleet Vehicle £23.88

4 Machine Washing comprised in the Variable Lever of Services

Not Applicable

**APPENDIX 3 TO SCHEDULE 7
WASHING SPECIFICATION**

**EXTERIOR CLEANING
SPECIFICATION – MACHINE WASHING**

1 Method

The Fleet Vehicles shall be cleaned by passing through a carriage washing machine.

2 Windows

Other than when Fleet Vehicles are washed on entering the Depot, the Depot Facility Owner shall be responsible for ensuring that all windows are closed prior to the Fleet Vehicles entering the carriage washing machine.

3 Materials

DP17 or a suitable alternative cleaning agent shall be used.

APPENDIX 4 TO SCHEDULE 7
TRAIN PRESENTATION SPECIFICATION

On departure from the depot all Units must be:-

- safe to enter traffic with all systems functioning correctly;
- made up of the correct sub class on each diagram;
- free from dirt and stains arising from maintenance activities;
- prepared for traffic,

except to the extent that a specific concession has been obtained from First Capital Connect Business Control.

SCHEDULE 8

STABLING

1 Definitions

In this Schedule:

"**Appendix**" means an appendix to this Schedule;

"**Custody Period**" means the period of time for which Fleet Vehicles are Stabled in accordance with this Schedule;

"**Stabling**" means the parking or laying up of Fleet Vehicles in accordance with paragraphs 3 to 6 of Appendix 1 between the time of delivery to the Depot as stated in the relevant Diagram and the time of collection from the Depot as stated in the relevant Diagram (other than as required in connection with the provision of Beneficiary Depot Services in accordance with Schedules other than this Schedule), together with ancillary shunting and marshalling and "Stabled" and "Stable" shall be construed accordingly; and

"**Train Presentation Specification**" means the specification referred to in Appendix 3.

2 Provision of Stabling

2.1 The Depot Facility Owner shall provide the Beneficiary with Stabling up to the Minimum Level of Services as specified in paragraph 1 of Appendix 1.

2.2 The Depot Facility Owner shall provide the Beneficiary with additional Stabling up to the Maximum Level of Services as specified in paragraph 2 of Appendix 1 for such of the Fleet Vehicles as the Beneficiary may request except where, and to the extent that, the Depot Facility Owner shall, having due regard to the Decision Criteria, determine that it should not do so.

2.3 If the Beneficiary does not receive or anticipates that it will not require to receive the whole of the Stabling specified in paragraph 2 of Appendix 1 to be provided in an Accounting Period, the Beneficiary may request that the unperformed Stabling from that Accounting Period be carried forward to the next Accounting Period whereupon, in that Accounting Period, the Depot Facility Owner shall provide the Beneficiary with additional Stabling of an amount equal to the unperformed Stabling carried forward except where, and to the extent that:

- (a) the unperformed Stabling carried forward exceeds 5% by value of the Stabling specified in paragraph 1 of Appendix 1 to be provided in the Accounting Period from

which that Stabling is carried forward; or

- (b) the Depot Facility Owner shall, having due regard to the Decision Criteria, determine that it should not do so.

3 Depot Facility Owner's Obligations

- 3.1 The Depot Facility Owner shall inform the Beneficiary as soon as reasonably practicable of any loss of, damage to, or material deterioration in the condition of, the Fleet Vehicles of which it becomes aware during the Custody Period.
- 3.2 The Depot Facility Owner shall allow the Beneficiary's representatives reasonable access to the Depot at all reasonable times and upon reasonable prior notice in order to permit such representatives to review the condition of and, if appropriate, carry out any work on the Fleet Vehicles which the Beneficiary considers to be necessary or expedient provided that the Beneficiary's representatives shall not be entitled to carry out light maintenance services to the Fleet Vehicles whilst at the Depot.
- 3.3 The Depot Facility Owner, having carried out Stabling, shall present trains for service in compliance with the Train Presentation Specification.

4 Beneficiary's Obligations

- 4.1 Except to the extent that the Fleet Vehicles in question shall be awaiting the provision of Beneficiary Depot Services (other than Stabling) or awaiting collection following the provision of Beneficiary Depot Services (other than Stabling) the Beneficiary shall ensure that all Fleet Vehicles are in a safe condition and appropriately maintained during the Custody Period.
- 4.2 The Beneficiary shall ensure that nothing is stored on any Fleet Vehicle unless the Depot Facility Owner has given its prior consent in writing.
- 4.3 The Depot Facility Owner shall be entitled to refuse to take delivery of a Fleet Vehicle which does not comply with paragraphs 4.1 or 4.2.

5 Movements of Fleet Vehicles within the Depot

- 5.1 The Depot Facility Owner may, during the Custody Period, move Fleet Vehicles which are the subject of Stabling within the Depot, provided always that the relevant Fleet Vehicles shall be stored in accordance with paragraphs 3 to 6 of Appendix 1.

6 Failure to Collect

- 6.1 If the Beneficiary fails to collect any Fleet Vehicle at the time appointed for such collection in the relevant Diagram, the Depot Facility Owner shall be entitled to charge for the Stabling of such Fleet Vehicle in accordance with the charges referred to in paragraph 7 until such time as the Fleet Vehicle is collected by the Beneficiary.

- 6.2 If the Beneficiary fails to collect any Fleet Vehicle for a period of 5 Business Days after the time appointed for such collection in the relevant Diagram, the Depot Facility Owner, upon informing the Beneficiary, shall be entitled to move such Fleet Vehicle:

- (a) to another part of the Depot; or
- (b) to different premises of the Depot Facility Owner; or
- (c) to premises of another responsible person, in which case the Beneficiary shall reimburse the Depot Facility Owner for all associated costs involved in such a move,

and in all such cases the Depot Facility Owner shall not be obliged to effect Stabling in accordance with paragraphs 3 to 6 of Appendix 1 and all movements of such Fleet Vehicle shall be at the risk of the Beneficiary except in the case of a negligent act or omission of the Depot Facility Owner or its Associates.

- 6.3 If the Depot Facility Owner has moved any Fleet Vehicles to different premises in accordance with paragraph 6.2, the Depot Facility Owner shall return the relevant Fleet Vehicles to the Depot for collection by the Beneficiary within a reasonable period of receiving notice from the Beneficiary requesting such return.

- 6.4 The Beneficiary shall reimburse the Depot Facility Owner for all associated costs involved in complying with paragraph 6.3.

7 Charges

- 7.1 The Beneficiary shall pay to the Depot Facility Owner:

- (a) the charges set out in paragraph 1 of Appendix 2 in respect of Stabling up to the Minimum Level of Services; and
- (b) the charges set out in paragraph 2 of Appendix 2 in respect of Stabling comprised in the Variable Level of Services.

APPENDIX 1 TO SCHEDULE 8

STABLING SPECIFICATION

A) Normal Operation

1) Minimum level of Service without "planned core block"

Consecutive Accounting periods in each accounting year	1	2	3	4	5	6	7	8	9	10	11	12	13
No of units for Stabling	0	0	0	0	0	0	0	0	0	0	0	0	0

2) Maximum level of Services without "planned core block"

Consecutive Accounting periods in each accounting year	1	2	3	4	5	6	7	8	9	10	11	12	13
No of units for stabling	40	40	40	40	40	40	40	40	40	40	40	40	40

B) Operation when "Planned Core Block"

1) Minimum level of Service with "planned core block"

Consecutive Accounting periods in each accounting year	1	2	3	4	5	6	7	8	9	10	11	12	13
No of units for Stabling	18	18	18	18	18	18	18	18	18	18	18	18	18

2) Maximum level of Services with "planned core block"

Consecutive Accounting periods in each accounting year	1	2	3	4	5	6	7	8	9	10	11	12	13
No of units for stabling	40	40	40	40	40	40	40	40	40	40	40	40	40

8 **Covered Accommodation**

Not used.

9 **Road Access**

Not used.

10 **Traction Current**

Yes/No If yes, type:

Yes. Type = 750 volt/DC.

11 **Security arrangements required by the Beneficiary**

Unit

Class 319 EMU

In line with TRANSEC requirements for the Depot.

Class 377 EMU

In line with TRANSEC requirements for the Depot.

**APPENDIX 2 TO SCHEDULE 8
CHARGES**

1 Stabling up to Minimum Level of Services

Stabling charge per Fleet Vehicle: £63.25

2 Stabling comprised in the Variable Level of Services

Not Applicable

APPENDIX 3 TO SCHEDULE 8
TRAIN PRESENTATION SPECIFICATION

On departure from the depot all Units must be:-

- safe to enter traffic with all systems functioning correctly;
- made up of the correct sub class on each diagram;
- free from dirt and stains arising from maintenance activities;
- prepared for traffic,

except to the extent that a specific concession has been obtained from First Capital Connect Business Control.

SCHEDULE 9
WHEEL RE-PROFILING

Not Used

SCHEDULE 10 INTERIOR CLEANING

1 Definitions

In this Schedule:

"Appendix" means an appendix to this Schedule;

"Beneficiary's Nominated Representative" means the representative identified as such by the Beneficiary to the Depot Facility Owner from time to time, who will be available either at the Depot or on call and to whom items should be reported in accordance with the Cleaning Specification in Appendix 3;

"Cleaning" means Exceptional Cleaning and Regular Cleaning;

"Cleaning Specification" means the specification referred to in Appendix 3;

"Exceptional Cleaning" means the non-periodic cleaning of the interior of a Fleet Vehicle in accordance with methods and practices customarily used in good and prudent railway practice;

"Regular Cleaning" means the periodic cleaning of the interior of a Fleet Vehicle in accordance with methods and practices customarily used in good and prudent railway practice; and

"Train Presentation Specification" means the specification referred to in Appendix 4.

2 Provision of Regular Cleaning

2.1 The Depot Facility Owner shall provide the Beneficiary with Regular Cleaning up to the Minimum Level of Services as specified in paragraph 1 of Appendix 1.

2.2 The Depot Facility Owner shall provide the Beneficiary with additional Regular Cleaning up to the Maximum Level of Services as specified in paragraph 2 of Appendix 1 for such of the Fleet Vehicles as the Beneficiary may request except where, and to the extent that, the Depot Facility Owner shall, having due regard to the Decision Criteria, determine that the work should not be carried out.

2.3 If the Beneficiary does not receive or anticipates that it will not require to receive the whole of the Regular Cleaning specified in paragraph 2 of Appendix 1 to be provided in an Accounting Period, the Beneficiary may request that the unperformed Regular Cleaning from that Accounting Period be carried forward to the next Accounting Period whereupon, in that Accounting Period, the Depot Facility Owner shall provide the Beneficiary with additional Regular Cleaning of an amount equal to the unperformed Regular Cleaning carried forward except where, and to the extent that:

- (a) the unperformed Regular Cleaning carried forward exceeds 5% by value of the Regular Cleaning specified in paragraph 1 of Appendix 1 to be provided in the Accounting Period from which that Regular Cleaning is carried forward; or
- (b) the Depot Facility Owner shall, having due regard to the Decision Criteria, determine that the work should not be carried out.

3 **Depot Facility Owner's Obligations**

3.1 On receipt of a request for Regular Cleaning in excess of the Minimum Level of Services, the Depot Facility Owner shall as soon as reasonably practicable notify the Beneficiary of a date and time for the completion of such Regular Cleaning. The Depot Facility Owner shall use all reasonable endeavours to provide the Regular Cleaning in question at a time which is reasonably convenient for the Beneficiary, except where, and to the extent that, the Depot Facility Owner shall, having due regard to the Decision Criteria, determine that the work should not be carried out.

3.2 If the Depot Facility Owner reasonably believes that Exceptional Cleaning should be applied to the vehicle, it shall:

- (a) carry out such Exceptional Cleaning if the applicable Access Charges in respect of such Exceptional Cleaning are, in the reasonable opinion of the Depot Facility Owner, likely to be equal to or less than the amount set out in paragraph 3 of Appendix 1; or
- (b) notify the Beneficiary of the requirement for such Exceptional Cleaning if the applicable Access Charges in respect of such Exceptional Cleaning are in the reasonable opinion of the Depot Facility Owner, likely to be more than the amount set

out in paragraph 3 of Appendix 1 and only carry out such Exceptional Cleaning at the request of the Beneficiary;

except where, and to the extent that, the Depot Facility Owner shall, having due regard to the Decision Criteria, determine that the work should not be carried out.

- 3.3 The Depot Facility Owner, having carried out Cleaning, shall present trains for service in compliance with the Train Presentation Specification.

4 Warranty

- 4.1 The Depot Facility Owner warrants that it shall carry out Cleaning in accordance with the Cleaning Specification.
- 4.2 Notwithstanding the provisions of Clause 8, the Depot Facility Owner shall not be liable for any failure to clean the interior of a Fleet Vehicle which arrives at the Depot in a condition such that it cannot be cleaned by Cleaning.

5 Charging

- 5.1 The Beneficiary shall pay to the Depot Facility Owner:
- (a) the charges set out in paragraph 1 of Appendix 2 in respect of Regular Cleaning up to the Minimum Level of Services;
 - (b) the charges set out in paragraph 2 of Appendix 2 in respect of Regular Cleaning comprised in the Variable Level of Services; and
 - (c) the charges set out in paragraph 3 of Appendix 2 in respect of Exceptional Cleaning.

APPENDIX 1 TO SCHEDULE 10

REGULAR CLEANING

A) Normal Operation

1) Minimum level of Service without "planned core block"

Consecutive Accounting periods in each accounting year	1	2	3	4	5	6	7	8	9	10	11	12	13
No of units for Stabling	0	0	0	0	0	0	0	0	0	0	0	0	0

2) Maximum level of Services without "planned core block"

Consecutive Accounting periods in each accounting year	1	2	3	4	5	6	7	8	9	10	11	12	13
No of units for stabling	40	40	40	40	40	40	40	40	40	40	40	40	40

B) Operation when "Planned Core Block"

1) Minimum level of Service with "planned core block"

Consecutive Accounting periods in each accounting year	1	2	3	4	5	6	7	8	9	10	11	12	13
No of units for Stabling	18	18	18	18	18	18	18	18	18	18	18	18	18

2) Maximum level of Services with "Planned Core Block"

Consecutive Accounting periods in each accounting year	1	2	3	4	5	6	7	8	9	10	11	12	13
No of units for stabling	40	40	40	40	40	40	40	40	40	40	40	40	40

6 Limit of Authority

Unit	Limit
Class 319 EMU	£500
Class 377 EMU	£500

APPENDIX 2 TO SCHEDULE 10

CHARGES

1	Regular Cleaning up to the Minimum Level of Services	
	Charge per Unit	£96.84
2	Regular Cleaning comprised in the Variable Level of Services	
	Not applicable	
3	Exceptional Cleaning	
	Charge per hour:	£22.04

APPENDIX 3 TO SCHEDULE 10

CLEANING SPECIFICATION

1 Frequency

- 1.1 The Depot Facility Owner to carry out Regular Cleaning to the Beneficiary's Fleet Vehicles daily prior to each occasion a Fleet Vehicle goes into operational service following maintenance work or stabling, in accordance with met Maximum and Minimum Levels of Service and Limit of Authority shown in Appendix 1 to Schedule 10 and charge shown in Appendix 2 of same Schedule.

2 Specification

The intention of Regular Cleaning is to remove as many traces of previous use as is practical and possible and that the Fleet Vehicle is ready for operational service in a condition and appearance satisfactory to the Beneficiary's business and Customers.

- 2.1 Fleet Vehicle interior to be free of all traces of any blood, vomit and other unacceptable substances.
- 2.2 Toilets, including toilet basins, toilet seats, wash basins, mirrors, all handles and fittings to be free of new grime, dirt and smears, following wiping and sterilizing/disinfecting. Satisfactory operation of all toilet equipment (e.g. flushing mechanism, pedal/tap controls, hand dryer, towel dispenser, and paper dispenser) to be checked. Any defects discovered to be reported to the Beneficiary's Nominated Representative promptly. All toilet soap, and toilet paper to be replenished and ready for customer use.
- 2.3 All exposed floor areas, including around seat supports/legs to be free of litter and new dirt, grime, and stains, following sweeping and wet mopping as necessary and appropriate.
- 2.4 All carpeted floor areas to be clean to 2.3 above (not wet mopped).
- 2.5 All luggage racks, ledges and other surfaces to be free of litter, new marks, and grime.
- 2.6 All litter bins to be empty with clean unmarked polythene liners inserted if existing are damaged or dirty. The bin interiors to be clean and free of new dirt and debris.
- 2.7 All surfaces to be free of new graffiti, new chewing gum deposits, unauthorized stickers, and other traces of vandalism. Should it not be possible to satisfactorily remove traces of such

damage within the time and prime cost elements allowed within Regular Cleaning the extent of the damage to be reported to the Beneficiary's Nominated Representative as soon as reasonably possible.

- 2.8 All exposed surfaces to be wiped if soiled by dirt, grime, smears or marks which could damage or stain clothing.
- 2.9 All seat covers to be damage free, and edges/crevices free from litter and debris. The procedures as in 2.7 above to apply to exceptional circumstances.
- 2.10 Any damaged or malfunctioning equipment, and safety hazards on the vehicle to be reported to the Beneficiary's Nominated Representative as soon as reasonably possible, and isolated if necessary.
- 2.11 Train crew/driving accommodation to be subject to the above, with special attention being paid to instrumentation and controls to avoid damage or malfunction.
- 2.12 Gangway connection areas to be subject to the above.
- 2.13 All windows to be closed.
- 2.14 All cleaning to be carried out in accordance with procedures to ensure maximum effectiveness, efficiency, and safety with no damage to any of the Fleet Vehicle's equipment, fittings, instrumentation, controls, surfaces, marking, decals and finishes.
- 2.15 Should drugs or syringes be discovered on the Fleet Vehicle they are to be dealt with in accordance with the Depot Facility Owner's procedures covering such eventualities and the incident reported to the Beneficiary's Nominated Representative.

3 Materials

- 3.1 Chemicals, detergents, abrasives, and solutions used, and method of application, to be safe to the Fleet Vehicle's users, approved by the Beneficiary, and not to cause immediate or long-term damage to any of the vehicle's equipment, fittings, instrumentation, controls, surfaces, markings, decals and finishes.

4 **Monitoring and Quality Standards Measurement**

All to be monitored to ensure satisfactory standards, finish, contract compliance, and performance in accordance with prudent industry standards and practice and Beneficiary's operational and Customer acceptability.

APPENDIX 4 TO SCHEDULE 10
TRAIN PRESENTATION SPECIFICATION

On departure from the depot all Units must be:-

- safe to enter traffic with all systems functioning correctly;
- correct sub class on each diagram;
- free from dirt and stains arising from maintenance activities; and
- prepared ready for traffic,

except to the extent that a specific concession has been obtained from First Capital Connect Business Control.

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SCHEDULE 11
OFF-DEPOT SERVICES

Not used.

SCHEDULE 12
DEPOT ACCESS

Not used

SCHEDULE 13 **BENEFICIARY MINUTES DELAY**

Part A Allowable Beneficiary Minutes Delay

36 minutes per Accounting Period

Part B Beneficiary Minutes Delay Cap

15 minutes in respect of each incidence of DFO Minutes Delay

Part C Beneficiary Minutes Delay Threshold

Diagram Departure Time	de minimis threshold
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Any time	3 minutes
----------	-----------

Diagram Departure Time	de minimis threshold
-------------------------------	-----------------------------

Any time	3 minutes
----------	-----------

Part D Rates of payment

Number of Excess DFO Minutes Delay	£ per minute
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Up to 1500 minutes	£3
--------------------	----

From 1500 to 3000 minutes	£2
---------------------------	----

Over 3000 minutes	£1
-------------------	----

SCHEDULE 14

DFO MINUTES DELAY

Part A Allowable DFO Minutes Delay

36 minutes per Accounting Period

Part B DFO Minutes Delay Cap

15 minutes in respect of each incidence of DFO Minutes Delay

Part C DFO Minutes Delay Threshold

3 minutes in respect of each incidence of DFO Minutes Delay

Part D Rates of payment

£ per minute

Number of Excess

DFO Minutes Delay

Up to 1,500 minutes

£3

From 1,500 to 3,000 minutes

£2

Over 3,000 minutes

£1

Delay minutes attributed to the Depot Facility Owner in respect of lateness against the train ready times must be net of the lateness by which the Beneficiary delivered that unit to the depot against the diagrammed arrival times specified in Attachment A to this Agreement

SCHEDULE 15
PERFORMANCE RELATED PAYMENTS BY BENEFICIARY

Not used

SCHEDULE 16
PERFORMANCE RELATED PAYMENTS BY DEPOT FACILITY OWNER

Not used

SCHEDULE 17
REMEDIES

- (1) The amount referred to in Clause 8.4.1(b)(i) is £5,000.
- (2) The amount referred to in Clause 8.4.1(b)(ii) is £5,000.
- (3) The amount referred to in Clause 8.4.1(c)(i) is £30,000.
- (4) The amount referred to in Clause 8.4.1(c)(ii) is £30,000.
- (5) The amount referred to in Clause 8.4.1(d)(i) is £500,000.
- (6) The amount referred to in Clause 8.4.1(d)(ii) is £500,000.

SCHEDULE 18
NOTIFIABLE CONDITION

Any defect which the Depot Facility Owner may reasonably consider affects the safety of the Fleet Vehicles in question.

Signed by)
)
duly authorised for and on behalf of)
the Depot Facility Owner)

Signed by)
)
duly authorised for and on behalf of)
the Beneficiary)