

DATED _____ 20[]

Between

[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 []

B E T W E E N:-

- (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").

BACKGROUND

- (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.] [a general approval issued by the Office of Rail Regulation under section 22 of 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;

"**Core Route**" means the route from London Blackfriars to Kentish Town inclusive;

"**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 03]] (ORR Reference: [DAC/14/03/01]); and
- (b) the [London Selhurst] Depot Access Annexes dated [20 March 2006] (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;

"D-26" shall have the same meaning as in Part D of the Network Code, as that part is modified from time to time;

"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 Kings Place, 90 York Way, London N1 9AG (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;

"Previous Agreement" means the depot access agreement dated 2 December 2008 between the Depot Facility Owner and the Beneficiary;

"Rules" shall have the same meaning as in Part D of the Network Code, as that part is modified from time to time;

"Safety Certificate" and **"deemed Safety Certificate"** have the meanings given to "safety certificate" and "deemed safety certificate" in the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"Secretary of State" means, the Secretary of State for Transport;

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

"**SNRP**" has the meaning given to it by the Railways (Licensing of Railway Undertakings) Regulations 2005;

"**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; and

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

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 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 or deemed Safety Certificate in relation to its operation of trains;
- 2.1.5 an Insolvency Event not having occurred in relation to either of the parties;
- 2.1.6 the Connection Agreement becoming effective in accordance with its terms (save for any condition relating to this Agreement becoming effective);
- 2.1.7 a copy of this Agreement has been sent to the Office of Rail Regulation in hard copy or by email within 14 days of this Agreement being signed and dated by the parties; and
- 2.1.8 the Previous Agreement has been terminated by the Beneficiary in accordance with Clause 6.7 of that agreement.

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 this Agreement being signed and dated by the parties .

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 of them) 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 or recognised under section 8 of the Act or by a licence or SNRP granted under to Railway (Licensing of Railway Undertakings) Regulations 2005 (whether by revocation or otherwise) unless it is exempt from the requirement so to be authorised;
- (e) **Loss of Safety Certificate**

The Beneficiary ceases to hold a Safety Certificate or deemed Safety Certificate whether because it has been revoked or otherwise;

(f) **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);

(g) **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

(h) **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 of them) 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, AMENDMENT 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 Amendment

9.2.1 No amendment of any provision of this Agreement shall be effective unless:

(a) such amendment is in writing and signed and dated by, or on behalf of, the parties; and

(b) if it is an amendment which requires the Office of Rail Regulation's approval under section 22 of the Act, the amendment has been approved by the Office of Rail Regulation.

9.2.2 Clause 9.2.1(b) does not apply to an amendment made by virtue of a general approval issued by the Office of Rail Regulation under section 22 of the Act.

9.2.3 A copy of any amendment to this Agreement shall be sent to the Office of Rail Regulation within 14 days of such amendment being made.

9.3 **Assignment**

Subject to Clause 9.4, 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.

9.4 **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 his nominee, if and to the extent necessary to enable the Secretary of State to perform his 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:

9.4.1 the Secretary of State or his 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);

9.4.2 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 his 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

9.4.3 neither the Secretary of State nor his 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 9.4.2.

9.5 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.

9.6 Ceasing to be a facility owner

9.6.1 In this Clause 9.6 "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.

9.6.2 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.

9.6.3 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.

9.6.4 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 **RIGHTS OF THIRD PARTIES**

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 (whether by virtue of any enactment that is part of the applicable law of this Agreement or otherwise) to enforce any term of this Agreement.

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 (whether by virtue of any enactment that is part of the applicable law of this Agreement or otherwise) to directly enforce such rights as have been granted to them under this contract.

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

SCHEDULE 1
CONTRACT PARTICULARS

1. **Depot Facility Owner:**

Name: 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 6LG

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

Rail Group

76 Marsham Street

London

SW1P 4DR

6. **Track Access Agreement:**

Access contract dated [2 May 2004 until its expiry and replacement by Access contract dated 3 Feb 2006 – which comes into affect 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 8660

Address for service on the Beneficiary:

(Attention: Jonathan Bridgewood, Engineering and New Trains Director)

Hertford House, 1 Cranwood Street, London EC1V 9QS

Fax No. 0207 31310396

2. Operating Notices

Details for Service on the Depot Facility Owner:

Relevant Employee Iain Nairne, Depot Manager Selhurst

Fax No. 0208 6665348

Details for Service on the Beneficiary:

Relevant Employee Jonathan Bridgewood **Fax No.** 0207 31310396

**SCHEDULE 3
FLEET VEHICLES**

Type of Railway Vehicle

**Running Maintenance Programme (as
defined in Schedule 5)**

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

1 Definitions

In this Schedule:

"Abnormal Work" means that work which needs to be carried out on any Part which is Incomplete in order to restore that Part to a condition in which Repair Work may properly be performed on it;

"Abnormal Work Costs" means, in respect of any Abnormal Work, the reasonable costs and expenses reasonably and properly incurred in carrying out or procuring that Abnormal Work;

"Appendix" means an appendix to this Schedule;

"Component" means any spare part of a type specified in paragraph 6 of Appendix 1 fitted to a Fleet Vehicle by the Depot Facility Owner in the performance of Vehicle Maintenance, Work Arising or Vehicle Repairs;

"Incomplete" means missing material components or being otherwise materially damaged, fair wear and tear excepted;

"Part" means any item of a type which when removed (other than temporarily) from a Fleet Vehicle is, as part of normal Depot procedures, ordinarily returned to its supplier for Repair Work;

"Repair Work" means that work normally carried out on a Part in order to overhaul it and return it to a condition in which it can properly be resupplied for use on or in connection with railway vehicles;

"Running Maintenance Programme" means, in respect of each type of Fleet Vehicle, the specification for Vehicle Maintenance and Work Arising set out in the documentation supplied to the Beneficiary by the owner of that Fleet Vehicle, as listed in column 2 of Schedule 3;

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

"Vehicle Maintenance" means the maintenance work and procedures set out in paragraph 1 of Appendix 1 to be carried out by the Depot Facility Owner as more fully described in the relevant Running Maintenance Programme;

"Vehicle Repairs" means any repair work and procedures required to be carried out on a Fleet Vehicle to prepare such Fleet Vehicle for service (whether or not arising from Vehicle Maintenance) and for which a Minimum Level of Services has not been specified; and

"Work Arising" means further maintenance and repair work and procedures required to be carried out on a Fleet Vehicle to prepare such Fleet Vehicle for service and arising from Vehicle Maintenance as specified in Appendix 1 to Schedule 5.

2 **Vehicle Maintenance**

2.1 The Depot Facility Owner shall provide the Beneficiary with Vehicle Maintenance up to the Minimum Level of Services as specified in paragraph 2 of Appendix 1.

2.2 The Depot Facility Owner shall provide the Beneficiary with additional Vehicle Maintenance up to the Maximum Level of Services as specified in paragraph 3 of Appendix 1 and for such of the Fleet Vehicles, in each case 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 Vehicle Maintenance specified in paragraph 2 of Appendix 1 to be provided in an Accounting Period, the Beneficiary may request that the unperformed Vehicle Maintenance 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 Vehicle Maintenance of an amount equal to the unperformed Vehicle Maintenance carried forward except where, and to the extent that:

2.3.1 the unperformed Vehicle Maintenance carried forward exceeds 5% by value of the Vehicle Maintenance specified in paragraph 2 of Appendix 1 to be provided in the Accounting Period from which that Vehicle Maintenance is carried forward; or

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

3 Work Arising

3.1 The Depot Facility Owner shall provide the Beneficiary with Work Arising up to the Minimum Level of Services as specified in paragraph 2 of Appendix 1.

3.2 The Depot Facility Owner shall provide the Beneficiary with additional Work Arising up to the Maximum Level of Services as specified in paragraph 3 of Appendix 1 and for such of the Fleet Vehicles, in each case 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.

3.3 If the Beneficiary does not receive or anticipates that it will not require to receive the whole of the Work Arising specified in paragraph 2 of Appendix 1 to be provided in an Accounting Period, the Beneficiary may request that the unperformed Work Arising 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 Work Arising of an amount equal to the unperformed Work Arising carried forward except where, and to the extent that:

3.3.1 the unperformed Work Arising carried forward exceeds 5% by value of the Work Arising specified in paragraph 2 of Appendix 1 to be provided in the Accounting Period from which that Work Arising is carried forward; or

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

4 Depot Facility Owner's Obligations

4.1 If the Depot Facility Owner reasonably believes that any Work Arising or Vehicle Repairs are required it shall:

4.1.1 carry out such Work Arising or Vehicle Repairs if the applicable Variable Charges or Contingent Charges in respect of such Work Arising or Vehicle Repairs are, in the reasonable opinion of the Depot Facility Owner, likely to be equal to or less than the amount set out in paragraph 4 of Appendix 1; or

4.1.2 inform the Beneficiary of the requirement for such Work Arising or Vehicle Repairs if the applicable Variable Charges or Contingent Charges in respect of such Work Arising or Vehicle Repairs are, in the reasonable opinion of the Depot Facility Owner, likely to be more than the amount set out in Paragraph 4 of Appendix 1 and carry out such Work Arising or Vehicle Repairs only at the request of the Beneficiary;

except, in relation to Work Arising in excess of the Minimum Level of Services and Vehicle Repairs, 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.

4.2 On receipt of a request for Vehicle Maintenance or Work Arising in excess of the Minimum Level of Services or for Vehicle Repairs, the Depot Facility Owner shall, as soon as reasonably practicable, notify the Beneficiary of the date and time for the completion of such Vehicle Maintenance, Work Arising or Vehicle Repairs. The Depot Facility Owner shall provide the Vehicle Maintenance, Work Arising or Vehicle Repairs 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.

4.3 The Depot Facility Owner shall:

4.3.1 inform the Beneficiary of:

(a) any further work which the Depot Facility Owner reasonably considers necessary or expedient:

(i) as a consequence of any modifications which shall have been made, or which the Beneficiary shall notify the Depot Facility Owner it intends to make, to any Fleet Vehicle; or

(ii) otherwise as a result of any matter which the Depot Facility Owner has discovered in the course of carrying out any Vehicle Maintenance, Work Arising or Vehicle Repairs;

(b) any defect in a Fleet Vehicle which the Depot Facility Owner has discovered in the course of carrying out any Vehicle Maintenance, Work Arising or Vehicle Repairs and which, in the opinion of the Depot Facility Owner, requires that Fleet Vehicle to be removed from the relevant train and seek consent to such removal from the Beneficiary;

4.3.2 use only new goods and materials or goods and materials refurbished in accordance with appropriate industry standards on, or in relation to, Fleet Vehicles, unless otherwise agreed by the Beneficiary;

4.3.3 reimburse to the Beneficiary on demand any Abnormal Work Costs paid by the Beneficiary from time to time if, and to the extent that, the Part in respect of which those Abnormal Work Costs are incurred is Incomplete by reason of a breach by the Depot Facility Owner of its obligations under this Agreement.

4.4 The Depot Facility Owner, having carried out Vehicle Maintenance, Work Arising or Vehicle Repairs, shall present trains for service in compliance with the Train Presentation Specification.

5 Beneficiary's Obligations

5.1 The Beneficiary shall:

5.1.1 as soon as available, provide the Depot Facility Owner with such information in respect of the planned and actual usage of, and known and suspected defects in, the Fleet Vehicles as is reasonably necessary to enable the Depot Facility Owner to plan its Vehicle Maintenance, Work Arising and Vehicle Repairs workload;

5.1.2 as soon as available and from time to time, supply to the Depot Facility Owner a copy of the relevant Running Maintenance Programme for each type of Fleet Vehicle; and

5.1.3 reimburse to the Depot Facility Owner on demand any Abnormal Work Costs paid by the Depot Facility Owner from time to time if, and to the extent that, the Part in respect of which those Abnormal Work Costs are incurred is Incomplete other than by reason of a breach by the Depot Facility Owner of its obligations under this Agreement.

6 Performance Information

- 6.1 The Depot Facility Owner shall on a daily basis supply to the Beneficiary the performance information referred to in paragraph 5 of Appendix 1.

7 Warranty

- 7.1 The Depot Facility Owner warrants that it shall carry out Vehicle Maintenance, Work Arising and Vehicle Repairs in accordance with the relevant Running Maintenance Programme.

- 7.2 If the Depot Facility Owner has the benefit of any warranty from its contractor or supplier that a Component will not fail in service for a certain period or will be repaired or replaced in certain circumstances, then, if and to the extent that such warranty is, or becomes, assignable, the Depot Facility Owner, if and when requested by the Beneficiary, shall assign the benefit of and any rights arising under such warranty to the Beneficiary (or to such third party as the Beneficiary may nominate) and any such assignment will be in full and final settlement of any claim by the Beneficiary against the Depot Facility Owner in respect of that Component pursuant to Condition N1.4 or pursuant to Clause 8.5 in respect of a breach of obligation under or arising pursuant to Condition N1.4.

- 7.3 If and when requested by the Beneficiary from time to time, the Depot Facility Owner shall use all reasonable endeavours to establish and shall advise the Beneficiary whether and on what terms the Depot Facility Owner's contractor or supplier will offer to the Depot Facility Owner an assignable warranty in respect of any Component for an alternative period or of an alternative extent to any warranty in respect of such Component given by the contractor or supplier in question to the Depot Facility Owner as at the date of the Beneficiary's request. The Depot Facility Owner shall use all reasonable endeavours to obtain from its contractor or supplier any such warranty requested by the Beneficiary and the Depot Facility Owner shall assign to the Beneficiary (or to such third party as the Beneficiary may nominate) on the same terms as under paragraph 7.2 the benefit of and any rights arising under any warranty so obtained by it, provided that the Beneficiary shall reimburse to the Depot Facility Owner any additional costs and expenses incurred by the Depot Facility Owner in obtaining such warranty.

8 Charging

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

- 8.4.1 the charges set out in paragraph 1 of Appendix 2 in respect of Vehicle Maintenance up to the Minimum Level of Services; and
- 8.4.2 the charges set out in paragraph 2 of Appendix 2 in respect of Vehicle Maintenance comprised in the Variable Level of Services; and
- 8.4.3 the charges set out in paragraph 3 of Appendix 2 in respect of Work Arising up to the Minimum Level of Services; and
- 8.4.4 the charges set out in paragraph 4 of Appendix 2 in respect of Work Arising comprised in the Variable Level of Services; and
- 8.4.5 the charges set out in paragraph 5 of Appendix 2 in respect of Vehicle Repairs comprised in the Contingent Services.

**APPENDIX 1 TO SCHEDULE 5
Fleet Maintenance and Level of Services**

Not used

APPENDIX 2 TO SCHEDULE 5
Charges

Not used

APPENDIX 3 TO SCHEDULE 5
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; and

Prepared for traffic

Except to the extent that a specific concession has been obtained from First Capital Connect

**SCHEDULE 6
FUELLING AND FUEL POINT EXAMS**

Not used

APPENDIX 1 TO SCHEDULE 6

Not used

APPENDIX 2 TO SCHEDULE 6

Not used

APPENDIX 3 TO SCHEDULE 6
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; and

Prepared for traffic

Except to the extent that a specific concession has been obtained from First Capital Connect

SCHEDULE 7 EXTERIOR CLEANING

1. Definitions

In this Schedule:

"Appendix" means an appendix to this Schedule;

"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

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

3. Depot Facility Owner's Obligations

- 3.1 On receipt of a request for Machine Washing in excess of the 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. The Depot Facility Owner shall use all reasonable endeavours to provide the Machine Washing 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 Hand Washing should be applied to a Fleet Vehicle, it shall:

3.2.1 carry out such Hand Washing if the applicable Access Charges in respect of such Hand Washing 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

3.2.2 notify the Beneficiary of the requirement for such Hand Washing if the applicable Access Charges in respect of such Hand Washing 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 Hand Washing 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 Washing, 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 the charges set out in paragraph 1 of Appendix 2 in respect of Machine Washing up to the Level of Services.

APPENDIX 1 TO SCHEDULE 7
Exterior Cleaning

1. Level of Service

SERVICE: CET/CWM	Block : 24 hrs
Number of vehicles	24
Charge	£14.42 per unit CET £28.88 CWM per vehicle

SERVICE CET and CWM	Block : 24 - 104 hrs
Number of vehicles	24
Charge	£14.42 per unit CET £28.88 CWM per vehicle

APPENDIX 2 TO SCHEDULE 7
Charges

1. **As set out in paragraph 1 to Appendix 1.**

APPENDIX 3 TO SCHEDULE 7
Washing Specification

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 Facility Owner shall be responsible for ensuring that all the 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; and

Prepared for traffic

Except to the extent that a specific concession has been obtained from First Capital connect

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 Level of Services as specified in paragraph 1 of Appendix 1.

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:

6.2.1 to another part of the Depot; or

6.2.2 to different premises of the Depot Facility Owner; or

6.2.3 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 the charges set out in paragraph 1 of Appendix 2 in respect of Stabling up to the Level of Services

APPENDIX 1 TO SCHEDULE 8
Stabling Specification

1. Level of Service

SERVICE: Stabling	Block : 24 hrs
Number of vehicles	24
Charge	£73.67 per vehicle per day

SERVICE Stabling	Block : 24 – 104 hrs
Number of vehicles	24
Charge	£73.67 per vehicle per day

2. **Covered Accommodation**

Not used

3. **Road Access**

Not used

4. **Traction Current**

Yes/No If yes, type = third rail

5. **Security arrangements required by the Beneficiary**

Fleet Vehicle:

In line with TRANSEC requirements for Depot

APPENDIX 2 TO SCHEDULE 8
Charges

1. As set out in paragraph 1 to Appendix 1.

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; and

Prepared for traffic

Except to the extent that a specific concession has been obtained from First Capital Connect

SCHEDULE 9
WHEEL RE-PROFILING

1. Definitions

In this Schedule:

"Appendix" means an appendix to this Schedule;

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

"UAT" means ultra-sonic axle testing;

"Wheel Re-Profiling" means the re-profiling of the wheels of Fleet Vehicles by the operation of either a ground wheel lathe or a centre wheel lathe; and

"Wheel Repairs" means any work required in relation to the wheels or the Fleet Vehicles in consequence or as a result of, or in addition to, Wheel Re-Profiling and/or UAT.

2. Wheel Re-Profiling and UAT

2.1 The Depot Facility Owner shall provide the Beneficiary with Wheel Re-Profiling for such of the Fleet Vehicles and at such times 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.

2.2 The Depot Facility Owner shall provide the Beneficiary with UAT for such of the Fleet Vehicles and at such times 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 The Depot Facility Owner shall, upon prior request from the Beneficiary, notify the Beneficiary in writing of the dimensions of the wheels which shall have been subject to Wheel Re-Profiling within 3 Business Days of the Wheel Re-Profiling in question having been carried out.

3. Depot Facility Owner Obligations

3.1 If the Depot Facility Owner reasonably believes that any Wheel Repairs are required it shall:

3.1.1 carry out such Wheel Repairs if the applicable Access Charges in respect of such work are, in the reasonable opinion of the Depot Facility Owner, likely to be equal to or less than the amount set out in paragraph 1 of Appendix 2; or

3.1.2 inform the Beneficiary of the requirement for such Wheel Repairs if the applicable Access Charges in respect of such Wheel Repairs are, in the reasonable opinion of the Depot Facility Owner, likely to be more than the amount set out in paragraph 1 of Appendix 2, and only carry out such Wheel Repairs 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.

3.2 The Depot Facility Owner, having carried out UAT, Wheel Re-Profiling or Wheel Repairs, shall present trains for service in compliance with the Train Presentation Specification.

4. **Warranty**

4.1 The Depot Facility Owner warrants that all Wheel Re-Profiling carried out in accordance with this Schedule shall have been carried out in accordance with the relevant Railway Group Standard.

4.2 The Depot Facility Owner warrants that all UAT carried out in accordance with the Schedule shall have been carried out in accordance with appropriate industry standards.

5. **Charging**

The Beneficiary shall pay to the Depot Facility Owner:

5.1 the charges set out in paragraph 1 of Appendix 1 in respect of Wheel Re-Profiling;

5.2 the charges set out in paragraph 2 of Appendix 1 in respect of UAT; and

5.3 the charges set out in paragraph 3 of Appendix 1 in respect of Wheel Repairs.

**APPENDIX 1 TO SCHEDULE 9
Charges**

1. Wheel Re-Profiling

DTOS		4
wheels	£1,653.03	PAIRS
		4
ATOS wheel	£1,697.23	PAIRS
		4
PMOS wheel	£3,269.24	PAIRS

2. UAT

£31.30 per axle.

3. Wheel Repairs

Task

Fixed labour charge (£)

Material

Unit Cost (£)

Labour charge per hour

[£•]

APPENDIX 2 TO SCHEDULE 9
Authority

1. Limit of Authority

Fleet Vehicle

Limit

[]

[£1000]

APPENDIX 3 TO SCHEDULE 9
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; and

Prepared for traffic

Except to the extent that a specific concession has been obtained from First Capital connect

SCHEDULE 10 INTERIOR CLEANING

1. Definitions

In this Schedule:

"Appendix" means an appendix to this Schedule;

"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 Level of Services as specified in paragraph 1 of Appendix 1.

3. Depot Facility Owner's Obligations

- 3.1 On receipt of a request for Regular Cleaning in excess of the 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 the charges set out in paragraph 1 of Appendix 2 in respect of Regular Cleaning up to the Level of Services

APPENDIX 1 TO SCHEDULE 10
Regular Cleaning

1. Level of Service

SERVICE: Interior Cleaning	Block : 24 hrs
Number of vehicles	24
Charge	£96.84 per unit

SERVICE Interior Cleaning	Block : 24 - 104 hrs
Number of vehicles	24
Charge	£96.84 per unit

3. **Limit of Authority**

Fleet Vehicle

Limit

[]

[£500]

APPENDIX 2 TO SCHEDULE 10
Charges

1. As set out in paragraph 1 to Appendix 1.

APPENDIX 3 TO SCHEDULE 10
Cleaning Specification

As per previous 31st march 2006 contract

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;

Made up of the correct sub class on each diagram

Free from dirt and stains arising from maintenance activities; and

Prepared for traffic

Except to the extent that a specific concession has been obtained from First Capital connect

SCHEDULE 11
OFF-DEPOT SERVICES

1. Definitions

In this Schedule:

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

"**Off-Depot Services**" means those services referred to in paragraph 1 of Appendix 1;

"**Services Specification**" means the specification referred to in paragraph 2 of Appendix 1; and

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

2. Depot Facility Owner's Obligations

2.1 The Depot Facility Owner shall provide the Beneficiary with Off-Depot Services for such of the Fleet Vehicles and at such times as the Beneficiary may in each case 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.

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

3. Warranty

The Depot Facility Owner warrants that it shall carry out all Off-Depot Services in accordance with the Services Specification.

4. Charging

The Beneficiary shall pay to the Depot Facility Owner the charges set out in paragraph 1 of Appendix 2 in respect of the Off-Depot Services.

APPENDIX 1 TO SCHEDULE 11
Off-Depot Services

As per previous 31st march 2006 contract

1. **Description of Services**

2. **Services Specification**

APPENDIX 2 TO SCHEDULE 11
Charges

1. Off-Depot Services

Fleet Vehicle []

Services

Charge (£)

APPENDIX 3 TO SCHEDULE 11
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; and

Prepared for traffic

Except to the extent that a specific concession has been obtained from First Capital connect

SCHEDULE 12 DEPOT ACCESS

1. Definitions

In this Schedule:

"Access" means the right for Fleet Vehicles to enter and leave the Depot as specified in paragraph 3 of Appendix 1;

"Adjacent Network" means network (other than the Network) of which the Depot Facility Owner is not the facility owner and which is situated adjacent to the Depot Network;

"Adjacent Network Connection" means the physical, electrical and electronic connection severally and integrally between all relevant elements of the Adjacent Network and the corresponding relevant elements of the Depot Network;

"Appendix" means an appendix to this Schedule; and

"Depot Network" means network of which the Depot Facility Owner is the facility owner and which is situated on the Depot.

2. Provision of Access

- 2.1 The Depot Facility Owner shall provide the Beneficiary with Access up to the Level of Services as specified in paragraph 1 of Appendix 1 of Schedules 7, 8 and 10.

3. Access to the Depot requested prior to the Commencement Date

- 3.1 If, prior to the Commencement Date, the Beneficiary has requested in writing access to the Depot on the date of any planned possession of the Core Route set out in the Rules in effect at the date on which the Previous Agreement terminated, the Depot Facility Owner shall grant the access requested for periods not exceeding 104 hours and not less than 24 hours.

4. Access to the Depot required following the Commencement Date

- 4.1 Following the Commencement Date, if new Rules come into effect:

4.1.1 as soon as possible after the new Rules come into effect and in any case no later than D-26, the Beneficiary shall notify the Depot Facility Owner in writing of any date during which the Beneficiary requires access to the Depot, as a result of a possession of the Core Route; and

4.1.2 the Depot Facility Owner shall grant the access requested in paragraph 4.1.1 for periods not exceeding 104 hours and not less than 24 hours.

5. Depot Facility Owner's Obligations

5.1 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 Access.

5.2 The Depot Facility Owner shall not sever, nor do or (within the Depot) permit anything which might otherwise terminate, restrict, impair or impede, the Adjacent Network Connection (or any part of it) without the prior agreement of the Beneficiary (which shall not be withheld or delayed unreasonably taking into account both the Depot Facility Owner's need to operate the Depot and the Beneficiary's need for Access) save if and to the extent that any such act or permission is necessary (and in any such case giving to the Beneficiary such notice as is reasonably practicable in all the circumstances) to enable:

5.2.1 the Depot Facility Owner to carry out any works, Repair or Maintenance which it is obliged or entitled to carry out pursuant to the Depot Access Conditions;

5.2.2 Network Rail to carry out works, Repair or Maintenance which it is obliged or entitled to carry out pursuant to the Depot Access Conditions; or

5.2.3 any person to deal with the requirements of an Emergency.

5.3 The Beneficiary shall not sever, nor do or (within the Adjacent Network) permit anything which might otherwise terminate, restrict, impair or impede the Adjacent Network Connection (or any part of it) without the prior agreement of the Depot Facility Owner (which shall not be withheld or delayed unreasonably taking into account both the Depot Facility Owner's need to operate the Depot and the Beneficiary's need to operate the Adjacent Network), save if and to the extent that any such act or permission is necessary (and in any such case giving to the Depot Facility Owner such notice as is reasonably practicable in all the

circumstances) to enable any person to deal with the requirements of an Emergency.

6. **Beneficiary's Obligations**

The Beneficiary shall ensure that all Fleet Vehicles are in a safe condition and appropriately maintained during Access.

7. **Charges**

7.1 The Beneficiary shall pay to the Depot Facility Owner the charge set out in paragraph 1 of Appendix 1 of Schedules 7, 8 and 10 in respect of Access to the depot.

APPENDIX 1 TO SCHEDULE 12
Depot Access

1. Depot access Levels of Service are specified in Schedules 7, 8 and 10.

APPENDIX 2 TO SCHEDULE 12
Charges

1. **Access to the depot**

As per the charges set out in Paragraphs 1 to Appendix 1 in Schedules 7, 8 and 10.

SCHEDULE 13
BENEFICIARY MINUTES DELAY

As per March 2008 contract

Part A Allowable Beneficiary Minutes Delay

[] minutes per Accounting Period

Part B Beneficiary Minutes Delay Cap

[] minutes in respect of each incidence of Beneficiary Minutes Delay

Part C Beneficiary Minutes Delay Threshold

[] minutes in respect of each incidence of Beneficiary Minutes Delay

Part D Rates of payment

£[] per minute of Excess Beneficiary Minutes Delay

SCHEDULE 14
DFO MINUTES DELAY

As per march 2008 contract

Part A Allowable DFO Minutes Delay

[] minutes per Accounting Period

Part B DFO Minutes Delay Cap

[] minutes in respect of each incidence of DFO Minutes Delay

Part C DFO Minutes Delay Threshold

[] minutes in respect of each incidence of DFO Minutes Delay

Part D Rates of payment

£[] per minute of Excess DFO Minutes Delay

**SCHEDULE 15
PERFORMANCE RELATED PAYMENTS
BY BENEFICIARY**

As per march 2008 contract

Part 1: Performance Criteria by reference to which liquidated damages payable by the Beneficiary are calculated

Performance Criteria	Rate of Liquidated Damages

Part 2: Performance Criteria by reference to which incentive payments payable by the Beneficiary are calculated

Performance Criteria	Incentive Payments

SCHEDULE 16
PERFORMANCE RELATED PAYMENTS BY
DEPOT FACILITY OWNER

As per March 2008 contract

Part 1: Performance Criteria by reference to which liquidated damages payable by the Depot Facility Owner are calculated

Performance Criteria	Rate of Liquidated Damages

Part 2: Performance Criteria by reference to which incentive payments payable by the Depot Facility Owner are calculated

Performance Criteria	Incentive Payments

**SCHEDULE 17
REMEDIES**

As per March 2008 contract

- (1) The amount referred to in Clause 8.4.1(b)(i) is [].
- (2) The amount referred to in Clause 8.4.1(b)(ii) is [].
- (3) The amount referred to in Clause 8.4.1(c)(i) is [].
- (4) The amount referred to in Clause 8.4.1(c)(ii) is [].
- (5) The amount referred to in Clause 8.4.1(d)(i) is [].
- (6) The amount referred to in Clause 8.4.1(d)(ii) is [].

SCHEDULE 18
NOTIFIABLE CONDITION

As per March 2008 contract

