

DL

ALS
RSH

Standard Depot Lease Document – 2004

Lease Document

between

Network Rail Infrastructure Limited
as Network Rail

and

[Insert name of Relevant Franchise Operator] Limited
as Depot Facility Owner

relating to

Leases of depots in [*insert name of franchise*] franchise,
England and Wales

Term: Starting on the Lease Start Date and expiring on [*insert date*]
subject to earlier termination in accordance with the terms of this
Lease Document

Simmons & Simmons

CityPoint One Ropemaker Street London EC2Y 9SS
T +44 (0)20 7628 2020 F +44 (0)20 7628 2070 DX Box No 12

CONTENTS

PARTICULARS	1
1. Demise.....	4
2. Incorporated Matters	4
3. Conflicts	4
4. Mutual Covenant.....	4
5. References in incorporated Documents to Railtrack; the Franchising Director and the Rail Regulator 5	
6. New Depots	5
7. Exclusion of Landlord and Tenant Act 1954	5
8. Contracts (Rights of Third Parties) Act 1999	6
9. Costs 6	
THE SCHEDULE : RELEVANT SPECIAL CONDITIONS	7

PARTICULARS

1. **Date:** *[Insert date]*
2. **Network Rail:** **NETWORK RAIL INFRASTRUCTURE LIMITED**, (company registration no. 2904587) whose registered office is at 40 Melton Street, London NW1 2EE.
3. **Depot Facility Owner:** *[Insert name of Relevant Franchise Operator]* **LIMITED**, (company registration no. *[Insert Company number]*) whose registered office is at *[Insert registered office]*.
4. **Guarantor:** [].
5. **The Depots:** The depots named in the relevant column of the Depots Table and more particularly described in the Depot Access Conditions applicable to each of them and references in this Lease Document to "Depot" shall be read and construed as being references to each such Depot or to the relevant Depot as applicable.
6. **Lease Start Date:** *[Note: In some cases this will be the Franchise Commencement Date (including, if specified, a time). In all other cases it will be the date of the Lease Document].*
7. **Term:** The term of years commencing on the Lease Start Date and ending at 02.00 hours on *[Insert Date]*.
8. **Yearly Rent:** The Property Rent and the Equipment Rent.
9. **Property Rent:** In respect of each Depot the annual sum set out in the relevant column of the Depots Table against the relevant Depot subject to adjustment as provided in paragraph 8 of the Standard Depot Letting Conditions.
10. **Equipment Rent:** In respect of each Depot the annual sum set out in the relevant column of the Depots Table against the relevant Depot subject to adjustment as provided in paragraph 9 of the Standard Depot Letting Conditions.
11. **Rent Start Date:** The Lease Start Date.
12. **Rent Adjustment Dates:** 01 April [200A] and each following 01 April.

[Note:

- (a) *If the Lease Document is dated before 01 April in any calendar year, insert at "A" the same calendar year as that in which the grant of the tenancies created by the Lease Document occurred.*
- (b) *If the Lease Document is dated on or after 01 April in any calendar year, insert at "A" the calendar year following that in which the grant of the tenancies created by the Lease*

Document occurred.

13. **Standard Depot Letting Conditions:** The Network Rail Standard Depot Franchise Letting Conditions 2004.
14. **Depot Access Conditions:**
 - (a) The National Depot Access Conditions (December Standard), which are applicable to all of the Depots; and
 - (b) in respect of each Depot, the Annexes applicable to such Depot (each of the ORR reference numbers for which, as at the date of this Lease Document, are set out in the relevant column of the Depots Table)

as each has been or is modified or amended in respect of the Depots, or any of them, prior to the date of this Lease Document or from time to time, in either case with the approval of ORR.
15. **Relevant Special Conditions:** Any special conditions applicable to the Depots, or any of them, identified in the Depots Table.
16. **Franchise Agreement:** The franchise agreement made between the SRA and [Name of Franchisee] dated [Insert Date] including any modification of that agreement.
17. **SRA:** The Strategic Rail Authority established under s.201 of the Transport Act 2000 or the appropriate person or body being the successor or successors to the relevant functions of the Strategic Rail Authority.
18. **ORR:** The Office of Rail Regulation as established under the Railways and Transport Safety Act 2003 or the appropriate person or body being the successor or successors to the relevant functions of the Office of Rail Regulation.
19. **Depot Facility Owner's Surveyor:** [Insert details provided by Relevant Franchise Operator] of [Insert address].
20. **Rent Adjustment Threshold;** The percentage or amount set out in the relevant column of the Depots Table.
21. **Depots Table:**

The Depots					
Name	Property Rent	Equipment Rent	ORR Reference number for Annexes	Relevant Special Conditions	Rent Adjustment Threshold

				[none] Schedule]	[see [(Where expressed as a percentage) insert percentage taken from paragraph 1 of Schedule 1 (Relevant Special Conditions) of Prior Lease and (where expressed as an amount) insert amount taken from paragraph 2 of Schedule 1 (Relevant Special Conditions) of Prior Lease.]

THIS LEASE DOCUMENT is made between Network Rail and the Depot Facility Owner and (where applicable) the Guarantor.

1. **Demise**

Network Rail demises to the Depot Facility Owner separately each of the Depots for the Term YIELDING AND PAYING the Yearly Rent applicable to the relevant Depot TOGETHER WITH the rights set out in Part J of the Depot Access Conditions and EXCEPT AND RESERVING the rights set out in Part K of the Depot Access Conditions. This Lease Document takes effect as the grant of a separate lease in relation to each of the Depots, and references in this Lease Document to "this Lease" and "the Term" shall be read and construed respectively as being references to each such separate lease and to the term of each such lease.

2. **Incorporated Matters**

This Lease incorporates and is subject to:

- 2.1 the Particulars;
- 2.2 the Standard Depot Letting Conditions;
- 2.3 the Depot Access Conditions; and
- 2.4 the Relevant Special Conditions,

all of which shall be read as one with this Lease as if set out in full in it (but in the case of the Depot Access Conditions and the Relevant Special Conditions, in respect of the letting of the Depot to which each of them relates).

[2A. Subject to and without prejudice to paragraphs 2 and 3 of the Standard Depot Letting Conditions, this Lease is granted subject to all leases, underleases, agreements for lease, agreements for underlease, licences and all other rights of occupation or other rights over or in respect of the Depot granted by any previous depot facility owner or tenant of the Depot (or any part thereof) whether or not Network Rail is also a party to such arrangement and the Depot Facility Owner covenants with Network Rail to observe and perform all of the obligations on the part of the previous depot facility owner or tenant of the Depot (or any part thereof) given or undertaken in any such lease, underlease, agreement, licence or other document or arrangement as aforesaid.]

3. **Conflicts**

In case of conflict:

- 3.1 the Relevant Special Conditions take priority over the Standard Depot Letting Conditions; and
- 3.2 the Depot Access Conditions take priority over the Relevant Special Conditions and the Standard Depot Letting Conditions.

4. **Mutual Covenant**

Network Rail and the Depot Facility Owner covenant each with the other under this Lease to perform and observe their respective obligations contained in this Lease.

5. **References in incorporated Documents to Railtrack, the Franchising Director and the Regulator**

Any reference to "Railtrack", the "Franchising Director" or the "Regulator" in any document incorporated in this Lease (including any definitions incorporating them and any headings) shall be read and construed as references to "Network Rail", the "SRA" and the "ORR" respectively.

6. **New Depots**

Network Rail and the Depot Facility Owner acknowledge that if in the future they enter into any additional lease or leases of a Depot or Depots (in this clause referred to as the "New Depot" or "New Depots") that incorporates (save as to the land demised and the rents reserved) the terms and conditions of this Lease Document, then Network Rail and the Depot Facility Owner shall by way of record (but not by way of variation of the Lease Document) re-state the Depots Table from time to time showing details not only of the Depots but also of the New Depot or New Depots being the name, Property Rent, Equipment Rent, ORR Reference number for Annexes, any Relevant Special Conditions and the Rent Adjustment Threshold applicable to the New Depot or to each such New Depot.

7. **Exclusion of Landlord and Tenant Act 1954**

[The Depots are to be used for or in connection with the provision of the services for the carriage of passengers by railway which are to be provided by the Depot Facility Owner pursuant to the Franchise Agreement and therefore pursuant to s.31 of the Act Part II of the Landlord and Tenant Act 1954 shall not apply to any tenancy created by this Lease [except for those Depots mentioned in the following paragraph]].

7.1 [The Depot Facility Owner hereby confirms that before [the date of this Lease]/[it became contractually bound to enter into the tenancy created by this Lease] *[Note: select first alternative if going straight to lease, second if there is an agreement for lease]:*

- (A) Network Rail served on the Depot Facility Owner a notice dated 200[] in relation to the tenancy created by this Lease ("the Notice") in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("the Order"); and
- (B) the Depot Facility Owner, or a person duly authorised by the Depot Facility Owner, in relation to the Notice made [a declaration]/[a statutory declaration] ("the Declaration") dated 200[] in a form complying with the requirements of Schedule 2 of the Order.

7.2 The Depot Facility Owner further confirms that, where the Declaration was made by a person other than the Depot Facility Owner, the declarant was duly authorised by the Depot Facility Owner to make the Declaration on the Depot Facility Owner's behalf.

7.3 [Network Rail and the Depot Facility Owner confirm that there is no Agreement for Lease to which this Lease gives effect.] *[Note: only need this clause where going straight to lease.]*

7.4 Network Rail and the Depot Facility Owner agree to exclude the provisions of ss.24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the tenancy created by this Lease.

[Note: If the Depot Facility Owner operates a Depot or Depots but its trains do not call there, then the words in square brackets at the end of the first paragraph above must be retained, and the first paragraph should be numbered 7.1, with the remaining paragraphs being renumbered accordingly. In that case the relevant Depot(s) should be referred to in the second paragraph and the procedure under s.38A(3) of the Landlord and Tenant Act 1954 must be followed. The second paragraph need not be used where the first applies to all Depots.]

8. **Contracts (Rights of Third Parties) Act 1999**

- 8.1 Save as provided in this clause 8 or as expressly provided elsewhere in this Lease, no person who is not a party to this Lease shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Lease.
- 8.2 ORR and the SRA shall have the right under the Contracts (Rights of Third Parties) Act 1999 to directly enforce any such rights as have been granted to them under this Lease.

9. **Costs**

Each party shall be responsible for their own costs and disbursements for preparing, settling, engrossing and completing this Lease Document together with VAT.

EXECUTED and **DELIVERED** by Network Rail and the Depot Facility Owner and (where applicable) the Guarantor as a deed on the first date shown in the Particulars.

THE SCHEDULE : RELEVANT SPECIAL CONDITIONS

[None]

THE COMMON SEAL OF)
NETWORK RAIL INFRASTRUCTURE)
LIMITED was affixed in the presence of:)

THE COMMON SEAL OF)
THE DEPOT FACILITY OWNER)
was affixed in the presence of:)

Director

Secretary

STANDARD - PLEASE SAVE AS A NEW DOCUMENT

NETWORK RAIL STANDARD DEPOT FRANCHISE LETTING CONDITIONS 2004

We confirm that these are the Network Rail Standard Depot Franchise Letting Conditions 2004.

.....

Signed by.....

On behalf of

SIMMONS & SIMMONS
CityPoint
One Ropemaker Street
London EC2Y 9SS

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
2.	INCLUDED EXISTING AGREEMENTS	2
3.	EXCLUDED EXISTING AGREEMENTS	2
4.	ALTERATIONS OR ADDITIONS TO THE DEPOT MADE PRIOR TO THE LEASE START DATE	2
5.	PRIOR LEASE	2
6.	DEPOT FACILITY OWNER'S OBLIGATIONS	3
7.	NETWORK RAIL'S OBLIGATIONS	9
8.	ADJUSTMENT OF PROPERTY RENT	10
9.	ADJUSTMENT OF EQUIPMENT RENT	12
10.	RE-ENTRY	13
11.	DISTRESS	15
12.	NON-ACCEPTANCE OF YEARLY RENT	15
13.	ARBITRATION	15
14.	DETERMINATION OF THIS LEASE FOLLOWING DESTRUCTION OR DAMAGE	15
15.	OTHER PROPERTY AND IMPLIED EASEMENTS	16
16.	DEPOT FACILITY OWNER'S EFFECTS	16
17.	PARTIAL DETERMINATION	16
18.	NOTICES TO BE GIVEN	17
19.	GOVERNING LAW AND JURISDICTION	17
20.	AGREEMENT FOR SURRENDER	17
21.	RELEASES	18
22.	REDEVELOPMENT ETC.	18
23.	COLLATERAL AGREEMENTS	19
24.	LAWFULNESS OF NETWORK RAIL'S GRANT	19
25.	LIMITATION ON RIGHTS OF RE-ENTRY ETC.	19
26.	NOTIFICATION OF CHANGES TO DEPOT ACCESS CONDITIONS	20
27.	ADJUSTMENT OF THE ALLOWABLE NETWORK RAIL MINUTES DELAY ETC.	20

28.	DEPOT FACILITY OWNER'S OPTION TO DETERMINE	20
29.	FURTHER OPTION FOR DEPOT FACILITY OWNER TO DETERMINE	20
30.	ADJUSTMENT OF PROPERTY RENT AND EQUIPMENT RENT FOLLOWING PARTIAL CLOSURE.....	21
31.	REDUNDANT EQUIPMENT	23
32.	GUARANTEE PROVISIONS.....	24
	SCHEDULE 1 : Authorised Guarantee Agreement(for inclusion in the Licence to Assign).....	25
	SCHEDULE 2 : Guarantee Provisions	26

NETWORK RAIL STANDARD DEPOT FRANCHISE LETTING CONDITIONS 2004

1. DEFINITIONS AND INTERPRETATION

In this Lease unless the context otherwise requires:-

- 1.1 **"Beneficiary"** means a person who is party to, and is granted rights under, a Depot Access Agreement;
- 1.2 **"Depot Licence"** means the light maintenance depot licence granted under the Act in respect of the Depot;
- 1.3 **"Group Company"** means any company which for the time being is a member of the same group of companies (within the meaning given to that expression in s.42 Landlord and Tenant Act 1954) as the relevant party, as the context demands;
- 1.4 **"this Lease"** means any lease which incorporates the Standard Depot Letting Conditions and the Depot Access Conditions and includes any document expressed to be supplemental to this Lease or made pursuant to this Lease;
- 1.5 **"Particulars"** means the part of this Lease so entitled;
- 1.6 **"Network Rail's Surveyor"** means The Director of Railway Estates, Network Rail, 40 Melton Street, London NW1 2EE;
- 1.7 **"Depot Facility Owner's Surveyor"** means the surveyor described in paragraph 18 of the Particulars;
- 1.8 **"Standard Depot Letting Conditions"** means these Network Rail Standard Depot Franchise Letting Conditions 2004;
- 1.9 **"Statutory Documents"** means the Depot Licence and the Franchise Agreement collectively and individually and all other documents forming part of or referred to in them or any of them;
- 1.10 **"Term"** means the term created by this Lease as stated in the Particulars;
- 1.11 the terms defined in the Particulars have the meanings specified there subject to any amplification set out in this paragraph;
- 1.12 if at any time either Network Rail or the Depot Facility Owner consists of more than one person then their respective obligations can be enforced against those constituent persons jointly and against each individually;
- 1.13 references in this Lease to costs of Network Rail or the Depot Facility Owner include reasonable and proper in-house or administrative costs reasonably and properly incurred;
- 1.14 references in the Standard Depot Letting Conditions to paragraphs are to paragraphs of the Standard Depot Letting Conditions;
- 1.15 words or expressions importing the singular number include the plural and vice versa; words importing the masculine gender include the feminine and neuter genders and vice versa; and the words "include" and "including" are to be construed without limitation;
- 1.16 signature of this Lease by an individual as a witness to its execution under seal by Network Rail shall also constitute signature by that individual for the purposes of s.2 Law of Property (Miscellaneous Provisions) Act 1989 and the same applies to the signature by

an individual as a witness to the execution under seal by the Depot Facility Owner and any Guarantor of the counterpart of this Lease; and

- 1.17 where the Depot Access Conditions contain provisions defining or governing the interpretation of words and expressions, those words and expressions shall have the same definitions or the same interpretations in the Standard Depot Letting Conditions; but any reference to a "Franchise Agreement" is to the Franchise Agreement which subsists from time to time relating to the provision by the Depot Facility Owner of services for the carriage of passengers by railway.

2. **INCLUDED EXISTING AGREEMENTS**

This Lease is granted subject to and with the benefit of the Included Existing Agreements (where appropriate and so far as they relate to the Depot and Network Rail can lawfully grant this).

3. **EXCLUDED EXISTING AGREEMENTS**

This Lease is granted subject to both the Excluded Existing Agreements and the Global Agreements insofar as they affect the Depot but without the benefit of them except as may be provided in the Depot Access Conditions or the Relevant Special Conditions.

4. **ALTERATIONS OR ADDITIONS TO THE DEPOT MADE PRIOR TO THE LEASE START DATE**

If prior to the Lease Start Date the Depot Facility Owner (or any franchise operator or franchisee under a previous lease (if any) of the Depot) made any alteration or addition to that Depot or any of the Depots:

- 4.1 with the written consent of Network Rail, where a condition of that consent was that the Depot Facility Owner (or the predecessor in title) would on or before the expiry of the term of the lease then current reinstate that Depot or those Depots, that condition shall operate as if it had required that reinstatement to be effected on or before the expiration of the Term, and shall be treated as an obligation of the Depot Facility Owner under this Lease;
- 4.2 notwithstanding the termination or surrender of the lease (the "former lease") current when the alteration or addition was carried out any entitlement to remove the alteration or addition which was available to the Depot Facility Owner under the former lease shall be treated as available to the Depot Facility Owner under this Lease on the same basis in all respects as it was available under the former lease.

5. **PRIOR LEASE**

- 5.1 In this paragraph:

- (A) "Prior Lease" means any lease made between Network Rail (whether or not then known as Railtrack PLC) and the Depot Facility Owner or any predecessor in title to the Depot Facility Owner before the date of this Lease in respect of the relevant Depot;
- (B) "Future Rights and Liabilities" means the rights and liabilities of the parties arising pursuant to the Prior Lease which accrue with effect from and after the date of this Lease;
- (C) "Accrued Rights and Liabilities" means the rights and liabilities of the parties arising pursuant to the Prior Lease which accrued before the date of this Lease.

- 5.2 To the extent relevant, this Lease is granted subject to and with the benefit of the Prior Lease but in relation only to the Future Rights and Liabilities to the intent and with the effect that the Accrued Rights and Liabilities remain the property of and enforceable by and against the relevant party.
- 5.3 It is agreed and declared that the term of years created by the Prior Lease (but not the Accrued Rights and Liabilities) is merged and extinguished in the Term in respect of the relevant Depot, but to the intent and with the effect that the Accrued Rights and Liabilities and the enforcement of them by and against the relevant party are not prejudiced by this Lease or by that merger and extinguishment.
- 5.4 Network Rail and the Depot Facility Owner agree that, notwithstanding the merger and extinguishment referred to in paragraph 5.3, the Accrued Rights and Liabilities remain the property of and enforceable by and against the relevant party, in the same way in all respects as would have been the case if this Lease had not been granted.

6. **DEPOT FACILITY OWNER'S OBLIGATIONS**

The Depot Facility Owner covenants with Network Rail:-

6.1 **Yearly Rent**

to pay to Network Rail without deduction or set-off (save as required by statute or authorised by the Depot Access Conditions) both the Property Rent and the Equipment Rent by four-weekly instalments in arrears, each such payment to be made not later than 14 days after the end of the four week period in question (the first of which starts on the Lease Start Date) and by a last instalment (apportioned on a daily basis) for the period from and including the day after the end of the final four week period which occurs prior to the end of the Term up to the end of the Term to be paid not later than 14 days after the end of the Term;

6.2 **Notice of disputes**

to give notice to Network Rail of any material dispute relating to the Depot or any right granted to the Depot Facility Owner under this Lease immediately the Depot Facility Owner is aware of the dispute;

6.3 **Alterations**

not to make any alteration or addition to the Depot (other than internal non-structural alterations) without the written consent of Network Rail (such consent not to be unreasonably withheld or delayed) but so that:

- (A) any such works to which Network Rail has consented shall be carried out in accordance with plans and specifications approved by Network Rail (such approval also not to be unreasonably withheld or delayed) and (if reasonably so required by Network Rail) under the superintendence of Network Rail and to the reasonable satisfaction in all respects of Network Rail and to the satisfaction of any authority or body having jurisdiction;
- (B) the Depot Facility Owner shall on making any alteration or addition to the Depot which does not require Network Rail's consent furnish to Network Rail plans and specifications of such works to the extent that such exist and/or are relevant to the nature of the works;
- (C) Network Rail now confirms its consent under paragraph 6.3 to any alteration or addition (and dispenses with the requirements of paragraphs 6.3(A) and 6.3(B))

insofar as both the consent and the requirements concern any alteration or addition:

- (1) in relation to which (following an enquiry to that effect from the Depot Facility Owner) Network Rail has confirmed in writing to the Depot Facility Owner that consent under paragraph 6.3 is not required, and that confirmation may be for a particular class of works generally, or for specific works;
 - (2) which the Depot Facility Owner is required to carry out under the Depot Licence or the Depot Access Conditions;
 - (3) which Network Rail approves in writing from time to time under the Statutory Documents or the Depot Access Conditions;
 - (4) for which the Depot Licence or the Depot Access Conditions provide that the approval of Network Rail is not required; or
 - (5) in relation to which a Proposal for Change is at any time accepted;
- (D) The Depot Facility Owner shall give to Network Rail reasonable prior notice of the start of any works referred to in paragraph 6.3(C) (but not those referred to in paragraph 6.3(C)(5)) and such information about those works as Network Rail reasonably requires;

6.4 Alienation

not to assign, transfer, charge, underlet or part with possession of the whole or any part or parts of the Depot (whether in relation to this Lease or any inferior interest in the Depot) except as provided in paragraphs 6.5, 6.6 and 6.7 but so that, notwithstanding paragraphs 6.5, 6.6 and 6.7, no consent shall be required for:-

- (A) an act which the Depot Facility Owner is required to carry out under the Depot Licence or the Depot Access Conditions;
- (B) an act which Network Rail approves from time to time in writing under the Statutory Documents or the Depot Access Conditions;
- (C) an act for which the Depot Licence or the Depot Access Conditions provide that the approval of Network Rail is not required;
- (D) the assignment of the whole of an underlease of part of the Depot;
- (E) the entry by the Depot Facility Owner into access contracts (whether or not pursuant to the directions of the Regulator under the Act);
- (F) the entry by the Depot Facility Owner into concession agreements which:
 - (1) do not create the relationship of landlord and tenant, and
 - (2) do not contravene, and the effect of which would not contravene, paragraph 6.7(A);

6.5 Charging

not to mortgage, charge, or otherwise create any security in respect of the whole of this Lease:-

- (A) without the prior written consent of Network Rail (such consent not to be unreasonably withheld or delayed); or
- (B) in contravention of s.27(3) or (4) of the Act;

6.6 Assignment

- (A) Not to assign or charge any part or parts (as distinct from the whole) of the Depot
- (B) Not to part with possession or share the occupation of the whole or any part or parts of the Depot or permit any person to occupy the same save in accordance with the provisions of paragraphs 6.4, 6.5, 6.6 and 6.7 Provided that subject as provided below nothing contained in this paragraph 6.6 shall prevent the Depot Facility Owner (without obtaining any consent of Network Rail) from sharing occupation of the whole or any part or parts with a Group Company where
 - (1) such sharing or occupation shall subsist only while any such company remains a Group Company of the Depot Facility Owner
 - (2) no relationship of landlord and tenant between the Depot Facility Owner and such Group Company shall be created and
 - (3) prior to such occupation being granted to any such Group Company the Depot Facility Owner shall give written notice to Network Rail of the identity of such Group Company and its relationship to the Depot Facility Owner
- (C) Not to assign the whole of the Depot to a proposed assignee (in this Lease called an "Assignee") unless:
 - (1) before any assignment is completed the Depot Facility Owner produces evidence satisfactory to Network Rail (who shall act reasonably) that the assignee holds a licence for the operation of the Depot under s.8 of the Act, or an exemption from the requirement for a licence under s.7 of the Act;
 - (2) the circumstances and conditions specified for the purposes of s.19(1A) of the Landlord and Tenant Act 1927 set out in paragraph 6.6(D) below respectively exist and are satisfied except where the Depot Facility Owner provides written confirmation from the SRA that the proposed assignment has been directed or approved by the SRA in the furtherance of the strategies from time to time of the SRA; and
 - (3) the written consent of Network Rail has first been obtained which consent shall not be unreasonably withheld or delayed

with the intent that the provisions of paragraph 6.6(C)(2) (if applicable) shall operate without prejudice to the right of Network Rail to withhold consent on any other ground or grounds where such withholding of consent would be reasonable or to impose any further condition or conditions upon the grant of consent where such imposition would be reasonable.
- (D) The circumstances and conditions referred to in paragraph 6.6(C)(2) are that:
 - (1) prior to any assignment Network Rail receives written evidence satisfactory to Network Rail that the SRA has consented to the proposed assignee (the "Assignee"); and
 - (2) prior to any assignment the Depot Facility Owner shall enter into an agreement (in this Lease called an "authorised guarantee agreement") with

Network Rail (whose costs shall be paid by the Depot Facility Owner on a full indemnity basis) in the terms (mutatis mutandis) set out in Schedule 1; and

- (3) if so required by Network Rail the Depot Facility Owner shall procure that any person (including the Guarantor) who has covenanted with Network Rail to guarantee the observance and performance of the Depot Facility Owner's covenants and conditions contained and incorporated in this Lease (whether such guarantee is contained in this Lease or in any lease expressed to be supplemental to this Lease) enters into the authorised guarantee agreement and covenants with Network Rail as primary obligor (and not merely as guarantor) in the terms (mutatis mutandis) set out in schedule 2 for the purpose of guaranteeing the observance and performance by the Depot Facility Owner of its obligations under the authorised guarantee agreement. Provided that the provisions of this paragraph shall not apply to any person who has covenanted in an authorised guarantee agreement to guarantee the observance and performance of the Depot Facility Owner's covenants; and
- (4) the Depot Facility Owner shall procure that prior to any assignment the Assignee enters into direct covenants with Network Rail (whose costs shall be paid by the Depot Facility Owner on a full indemnity basis) to pay the Property Rent and the Equipment Rent, and to perform and observe the covenants by the Depot Facility Owner and conditions contained and incorporated in this Lease during the residue of the Term or (if a shorter period) until the Assignee shall be released from such covenants and conditions. Provided that where the Assignee is more than one person or company such covenants shall be entered into jointly and severally; and
- (5) if Network Rail shall reasonably so require the Depot Facility Owner shall procure that prior to any assignment a guarantor or guarantors resident in the United Kingdom and whose financial standing shall have been approved in writing by Network Rail (such approval not to be unreasonably withheld) as primary obligor (and not merely as guarantor) shall enter into direct covenants with Network Rail (whose costs shall be paid by the Depot Facility Owner on a full indemnity basis) in the form (mutatis mutandis) set out in schedule 2. Provided that in considering whether such a guarantor or guarantors will be required, Network Rail shall have regard to whether the Assignee (or, where the Assignee is a franchise operator or franchisee, the relevant franchisee) has guarantee arrangements with the SRA in relation to its franchise or with Network Rail under leases of franchised stations and depots; and
- (6) where the Assignee is a person (which for the avoidance of doubt includes a corporation) resident in a jurisdiction other than:-
 - (a) one within the United Kingdom; or
 - (b) one in respect of which there is an applicable treaty for the mutual enforcement of civil judgements

Network Rail is reasonably satisfied that a judgement obtained in England and Wales against the Assignee can be enforced in the relevant jurisdiction without difficulty; and

- (7) the Depot Facility Owner has paid all Property Rent and Equipment Rent due and payable under this Lease at the date of the assignment of this Lease to the Assignee.

6.7 Underletting

Not to underlet any part or parts or the whole of the Depot (whether or not immediately derived out of this Lease) otherwise than subject to the following conditions:

- (A) the underletting shall not be such as materially to prejudice the operation of the Depot as a light maintenance depot nor (together with other underlettings) such as to comprise the whole or substantially the whole of the Depot;
- (B) the underletting shall only be with the prior written consent of Network Rail (such consent not to be unreasonably withheld or delayed);
- (C) the underletting shall be at not less than the then market rent of the Depot or the relevant part or parts as appropriate without taking a premium;
- (D) the underletting shall not include property not in Network Rail's ownership;
- (E) the underletting shall be on repairing terms consistent in all material respects with those contained or incorporated in this Lease;
- (F) the underletting shall be such that the underlessee may only deal with the whole or the relevant part or parts of the Depot by way of assignment or charge of the whole;
- (G) the underletting shall contain provisions the effect of which shall be that if this Lease is lawfully terminated pursuant to Part C of the Depot Access Conditions or paragraph 17 in relation to the whole or any part of the Depot, the underletting shall contractually be capable of termination by the Depot Facility Owner at the same time as such lawful termination of this Lease;
- (H) the underletting shall prohibit the undertenant from doing or omitting anything which if done or omitted by the Depot Facility Owner would contravene any of the obligations of the Depot Facility Owner under this Lease;
- (I) before the underlease is completed or, if earlier, before the undertenant becomes contractually bound to take the underlease, the underletting shall be validly excluded from the operation of ss.24 to 28 (inclusive) of the Landlord and Tenant Act 1954, in accordance with the provisions of s.38A of that Act and the relevant Schedules of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (or the effective implementation of any other procedure from time to time authorised by Statute to provide for such exclusion) and adequate evidence of such exclusion shall be produced by the Depot Facility Owner to Network Rail;

Provided that nothing in this paragraph 6.7 shall render the Depot Facility Owner liable to Network Rail to the extent that a court orders a renewal of an underletting pursuant to Part II of the Landlord and Tenant Act 1954 on terms inconsistent with that paragraph (subject to the Depot Facility Owner using all reasonable endeavours to avoid that outcome having regard to the other provisions of this paragraph 6.7);

Provided further that the consent of Network Rail to an underletting of the whole of the Depot which complies with paragraph 6.7(J) shall not be unreasonably withheld;

- (J) In relation to any underlease of the whole of the Depot the Depot Facility Owner shall:
 - (1) not underlet the whole of the Depot at a rent less than the then market rent of the whole of the Depot without taking a premium;

- (2) prior to the grant of the underlease, procure that the undertenant shall enter into direct covenants with Network Rail (whose reasonable costs shall be paid by the Depot Facility Owner) that the undertenant shall perform and observe:

- (a) all of the Depot Facility Owner's covenants (other than the covenants to pay Property Rent and Equipment Rent) and the conditions contained or incorporated in this Lease;
- (b) all the lessee's covenants and the conditions to be contained or incorporated in the underlease;

Provided that, where the undertenant is more than one person or company, such covenants shall be entered into jointly and severally:

- (3) procure that the underlease shall contain:

- (a) an absolute covenant by the undertenant that the undertenant shall not assign, transfer, mortgage or charge any part or parts (as opposed to the whole) of the premises comprised in the underlease or part with possession of any part or parts of the premises comprised in the underlease save by way of an assignment or underletting of the whole of the premises or an underletting of part;
- (b) a qualified covenant by the undertenant that the undertenant shall not assign, mortgage or charge or part with possession or occupation of the whole of the premises comprised in the underlease or sub-underlet the whole or any part or parts of premises comprised in the underlease without the prior written consent of Network Rail (such consent not to be unreasonably withheld); and
- (c) a condition for re-entry on breach of any covenant or condition by the undertenant contained in the underlease; and
- (d) provisions permitting the underlease to be varied as a consequence of any relevant variation of this Lease; and

- (4) procure that the underlease incorporates the Depot Access Conditions; and

- (5) not vary the terms or accept any surrender of the whole of the premises comprised in any underlease without the prior written consent of Network Rail (such consent not to be unreasonably withheld).

6.8 Variations of underlettings

not to vary or agree to the variation of the terms of any underletting of the whole or any part of the Depot (whether or not immediately derived out of this Lease) (including any commutation or reduction of rent) without the consent of Network Rail (such consent not to be unreasonably withheld or delayed) but the consent of Network Rail shall not be required in relation to any variation which does not contravene and which is not inconsistent with the requirements of paragraph 6.7;

6.9 Registration

in relation to any event referred to in paragraphs 6.4, 6.5, 6.6 and 6.7 any disposition or devolution of the title to this Lease or any interest inferior to it, to give to Network Rail on the 25th March, the 24th June, the 29th September and the 25th December in every year and (if this does not occur on any of those dates) on the date of the expiration or sooner

determination of the Term notice of each of them that has not previously been notified to Network Rail under this paragraph with short particulars of any assignment, transfer, underlease, or other instrument which shall effect or evidence such event, disposition or devolution of title and, if required by Network Rail, a certified copy of the assignment, transfer, underlease, mortgage, charge, other instrument creating fixed and/or floating security or other instrument (and in the case of an underlease in respect of which the provisions of ss.24 to 28 (inclusive) of the Landlord and Tenant Act 1954 have been excluded a certified copy of both the notice served by the landlord thereunder and of the tenant's declaration or statutory declaration in response pursuant to s.38A of that Act) for retention by Network Rail;

6.10 Yielding up

at the expiration or sooner determination of the Term:-

(A) to yield up to Network Rail the Depot with vacant possession (subject to subsisting Existing Agreements and any subsisting underleases authorised under the terms of this Lease) in a state of repair and condition which is in accordance with the Depot Facility Owner's obligations, having first (if so reasonably required by Network Rail) removed:-

- (1) any building, works or plant or machinery erected or fixed to any part of the Depot after the date of this Lease in respect of which any planning, bye-law or other permission may have been granted for a limited period only; and
- (2) any indication of the name or business of the Depot Facility Owner and of any other occupier who has vacated; and
- (3) all tenant's fixtures, fittings, furniture and effects, or plant or machinery, except for any works carried out at the Depot by or on behalf of the Depot Facility Owner during the Term (subject to any agreement to the contrary), unless Network Rail shall request the removal of such works or any of them, in which case the Depot Facility Owner shall at its own expense remove those works or such of them as Network Rail shall specify

except as may be agreed by Network Rail and in each case having made good all damage caused to the Depot by or in such removal; and

(B) to deliver to Network Rail the counterparts of any underlease of the Depot or any part of it and of any agreement or instrument supplemental to or entered into pursuant to that underlease and any other agreement or instrument under the control of the Depot Facility Owner which affects the Depot or any part of it.

7. NETWORK RAIL'S OBLIGATIONS

Network Rail covenants with the Depot Facility Owner:-

7.1 Quiet enjoyment

(A) that subject to the Depot Facility Owner paying the Yearly Rent on the due dates and performing and observing its other obligations under this Lease the Depot Facility Owner shall quietly enjoy the Depot without any interruption by Network Rail or any person lawfully claiming through, under or in trust for Network Rail or by title paramount Provided that neither:-

- (1) the proper carrying on by Network Rail of its undertaking on the Adjacent Property in exercise of and subject to its statutory and common law powers and obligations; nor

- (2) any permission properly given by Network Rail for any other person to use railway facilities (other than the Depot); nor
- (3) the proper exercise by any person of any right given to Network Rail by this Lease; nor
- (4) the existence or lawful exercise by any person claiming by title paramount of any right, discretion or power which has been disclosed to the Depot Facility Owner before the date of this Lease

shall constitute a breach of this covenant nor be in derogation of Network Rail's grant;

- (B) the Depot Facility Owner agrees that for the purposes of paragraph 7.1(A)(4) there has been disclosed to it:-

- (1) anything within the actual knowledge of the Depot Facility Owner;
- (2) everything in this Lease (including in the matters incorporated by clause 2 of this Lease) or in anything referred to in this Lease (including in those incorporated matters), and
- (3) anything disclosed by Network Rail on the grant of the first lease (if any) of the Depot to a franchise operator;

7.2 Mines and minerals

- (A) not to work and not (so far as it may lawfully do so) to permit or cause to be worked any mines and minerals in and under the Depot to the extent that these are owned by Network Rail;
- (B) where mines and minerals in and under the Depot are not owned by Network Rail and are proposed to be worked by third parties to act in accordance with the provisions of Condition G.5 of the Depot Access Conditions as though such proposals arose under Existing Agreements;

7.3 Reversionary or concurrent leases

upon receipt of written request from the Depot Facility Owner forthwith to enter into any reversionary or concurrent lease (or any agreement for such lease) so as to grant or confirm the grant to the relevant lessee of a lease of any part of the Depot in a form and in accordance with terms approved by Network Rail (such approval not to be unreasonably withheld or delayed) Provided that the terms of such proposed letting are not otherwise in breach of the relevant terms of this Lease and in particular paragraphs 6.4 and 6.7 (those paragraphs being read for this purpose as if for all references to underlettings or underleases there were substituted references to reversionary or concurrent leases, or agreements for them (as appropriate)); and

7.4 Payments to Superior Estate Owner

to pay the rent and (to the extent that the Depot Facility Owner is not required to pay them under this Lease) any other monies payable by Network Rail to the Superior Estate Owner under any Superior Estate Grant.

8. ADJUSTMENT OF PROPERTY RENT

8.1 In this paragraph 8:-

- (A) "**Adjustment Figure**" means the RPI figure published for the month immediately preceding the relevant Rent Adjustment Date;
- (B) "**Base Figure**" means the RPI figure last published before the Lease Start Date;
- (C) "**Current Property Rent**" means the Property Rent for each Depot at the level applicable immediately before the relevant Rent Adjustment Date;
- (D) "**RPI**" means the All Items Retail Prices Index published by the Office for National Statistics or by any other publisher, as that index or publisher may be renamed from time to time; and
- (E) "**Substituted Property Rent**" means in respect of each Depot on each Rent Adjustment Date either:

- (1) the sum equal to the value of A in pounds sterling in the following formula:

$$A = B \times \frac{C}{D}$$

where

- B = the Property Rent for the relevant Depot at the level set out in the Depots Table
- C = the Adjustment Figure
- D = the Base Figure

or

- (2) the sum agreed or determined by arbitration under any alternative method of calculation or any alternative index agreed or determined by arbitration pursuant to paragraph 8.5.

- 8.2 For each Depot, with effect from each Rent Adjustment Date the Current Property Rent shall be substituted by the Substituted Property Rent.
- 8.3 Network Rail shall as soon as reasonably practicable after the relevant Rent Adjustment Date give notice to the Depot Facility Owner of the Substituted Property Rent together with supporting calculations which, save in case of error, shall not be open to question by the Depot Facility Owner.
- 8.4 If Network Rail fails to give notice together with supporting calculations to the Depot Facility Owner in accordance with paragraph 8.3 in relation to any Rent Adjustment Date the Depot Facility Owner shall be entitled to give notice to Network Rail of the Substituted Property Rent together with supporting calculations. Save in case of error the figures in the Depot Facility Owner's notice shall not be open to question by Network Rail but the Depot Facility Owner shall not be entitled to give notice under this paragraph 8.4 after Network Rail has given notice under paragraph 8.3.
- 8.5 The parties shall consult together with a view to agreeing an alternative index or method of calculation for the Substituted Property Rent which as closely as possible gives effect to the intention of the parties in this paragraph 8:-
 - (A) if after the date of this Lease the reference base used to compile the RPI changes or the RPI changes in any other way and it is agreed, or if the parties cannot agree it is determined by arbitration, that the change is material for the purposes of this paragraph; or

- (B) if the RPI ceases to be published or for any other reason it becomes impossible to calculate the sum referred to in paragraph 8.1(E) by reference to the relevant Base Figure and the relevant Adjustment Figure; or
- (C) if the RPI shall be published at materially less frequent intervals than at the date of this Lease

but in the event of failure to agree or if any other dispute or question arises between the parties with respect to the construction or effect of this paragraph 8.5 or the calculation of either of the sums referred to in paragraph 8.1(E) then the matter shall be determined by arbitration.

- 8.6 Changes to this paragraph 8 resulting from arbitration or agreement under paragraph 8.5 shall be evidenced in a deed of variation which Network Rail and the Depot Facility Owner and the Guarantor will complete as soon as practicable such deed in case of failure to agree by Network Rail and the Depot Facility Owner to be settled by Conveyancing Counsel to be appointed jointly by the parties or (in case of failure to agree) to be appointed on the application of either of the parties by the President for the time being or other appropriate officer of the Law Society.
- 8.7 Time is not of the essence in relation to the date by which any notice (with supporting calculations) under paragraphs 8.3 and 8.4 is to be given.
- 8.8 Until the sum to be substituted for the Current Property Rent for a Depot with effect from any Rent Adjustment Date pursuant to paragraph 8.2 has been agreed or determined the Depot Facility Owner shall continue to pay the Current Property Rent for that Depot to Network Rail on account of the Property Rent.
- 8.9 On the fifth working day after the agreement or determination of the sum referred to in paragraph 8.8 an appropriate payment shall be made by the relevant party to the other of any underpayment or overpayment so as to put the parties in the position they would have been in had that sum been agreed or determined before the rent payment date in respect of the Property Rent which immediately precedes the relevant Rent Adjustment Date together with, in respect of each part of that payment, interest calculated at the Default Interest Rate from the day when that part would have been payable until actual payment.
- 8.10 If by reason of any Statute in force at any time there is a restriction on the adjustment or rebasing of the Property Rent in accordance with this paragraph 8 or on Network Rail's right to recover the Property Rent in full then and in any such case Network Rail may at any time after such Statute shall cease to have such effect by not less than one month's notice in writing given to the Depot Facility Owner require that a date specified in such notice and occurring at any time before the next following Rent Adjustment Date shall be a Rent Adjustment Date. Thereupon this Lease shall in all respects be read and construed as if the date so specified had been an additional Rent Adjustment Date and the provisions of this paragraph 8 shall have effect accordingly.

9. ADJUSTMENT OF EQUIPMENT RENT

9.1 In this paragraph 9 :-

- (A) "Current Equipment Rent" means the Equipment Rent for each Depot at the level applicable immediately before the relevant Rent Adjustment Date;
- (B) "Substituted Equipment Rent" means in respect of each Depot on each Rent Adjustment Date either:
 - (1) the sum equal to the value of A in pounds sterling in the following formula:

$$A = B \times \frac{C}{D}$$

where

- B = the Equipment Rent for the relevant Depot at the level set out in the Depots Table
- C = the Adjustment Figure
- D = the Base Figure

or

- (2) the sum agreed or determined by arbitration under any alternative method of calculation or any alternative index agreed or determined by arbitration pursuant to paragraph 8.5.

- (C) The terms "**Adjustment Figure**", "**Base Figure**" and "**RPI**" shall have the same meanings given to them in paragraph 8.

9.2 For each Depot, with effect from each Rent Adjustment Date the Current Equipment Rent shall be substituted by the Substituted Equipment Rent

9.3 The provisions of paragraphs 8.3 to 8.10 inclusive shall apply equally to the calculation of the Substituted Equipment Rent as though they were set out in full in this paragraph 9, save the reference to the Property Rent, the Current Property Rent and the Substituted Property Rent shall be read and construed as being references to the Equipment Rent, the Current Equipment Rent and the Substituted Equipment Rent respectively.

10. RE-ENTRY

10.1 This Lease is on condition that on the occurrence of any of the events mentioned below it shall be lawful for Network Rail to re-enter upon the Depot (or any part of it in the name of the whole), upon which this Lease shall come to an end but without prejudice to any claim by Network Rail in respect of prior breach of the Depot Facility Owner's obligations. The events are:

- (A) if any of the Yearly Rent or related Value Added Tax shall be unpaid for 21 days after becoming payable (whether formally demanded or not); or
- (B) if there shall be a substantial or material failure in the performance or observance of any covenant on the Depot Facility Owner's part or conditions contained in this Lease which (if capable of being remedied) is not started to be remedied within one month of the giving of notice by Network Rail to the Depot Facility Owner requiring remedy and diligently proceeded with; or
- (C) if any step which has a reasonable prospect of success is taken by any person with a view to the administration of the Depot Facility Owner and/or the Guarantor under part II of the Insolvency Act 1986; or
- (D) if the Depot Facility Owner and/or the Guarantor 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 s.123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:-
 - (1) s.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

- (2) 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 s.123(1)(a) of the Insolvency Act 1986 is satisfied before the expiration of 21 days from such demand; or
- (E) the directors of the Depot Facility Owner and/or the Guarantor make any proposal under s.1 of the Insolvency Act 1986, or the Depot Facility Owner and/or the Guarantor makes any 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; or
- (F) any step is taken to enforce security over or a distress, execution or other similar process is levied or served against the whole or a substantial part of the assets of the Depot Facility Owner and/or the Guarantor or the undertaking of the relevant party, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security; or
- (G) any step is taken by any person with a view to the winding-up of the Depot Facility Owner or the Guarantor or any person presents a winding-up petition in respect of the Depot Facility Owner or the Guarantor which is not dismissed within 14 days, or the Depot Facility Owner and/or the Guarantor 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 Network Rail before that step is taken (which approval shall not be unreasonably withheld or delayed); or
- (H) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed or referred to in paragraphs 10.1(C) to 10.1(G) (inclusive); or
- (I) the coming to an end (by reason of default by the Depot Facility Owner and/or the Guarantor) of either of the Statutory Documents; or
- (J) the coming to an end for any reason of either of the Statutory Documents if when the relevant document ends it is not replaced at the same time by a document to similar effect; or
- (K) the receipt by Network Rail of actual notice that the Depot Facility Owner and/or the Guarantor (being a company) has been dissolved or has otherwise ceased to exist; or
- (L) the closure of the whole of the Depot following the determination by the SRA that the closure is a minor closure or in accordance with the final decision on the closure question, within the meaning of that expression in s.41(9) of the Act,

unless in any case where any of paragraphs 10.1(C) to 10.1(H) (inclusive) apply, 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 s.60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending or unless in the case of paragraphs 10.1(C), 10.1(F) and 10.1(G) or 10.1(H) in relation to matters analogous or equivalent to the matters in paragraphs 10.1(C), 10.1(F) and 10.1(G) 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.

- 10.2 If any of the events listed in paragraphs 10.1(C) to 10.1(H) (inclusive) shall occur in respect of any Guarantor, but no other event under this paragraph 10 shall have occurred and be subsisting, Network Rail shall allow the Depot Facility Owner a reasonable interval (being not more than three months) within which to procure that another party reasonably acceptable to Network Rail shall guarantee the obligations of the Depot Facility Owner under this Lease in a manner acceptable to Network Rail (acting reasonably) with the same effect as if that other party had joined in and executed this Lease on its grant in place of the relevant Guarantor (any dispute in respect of such matters being referred to arbitration) and Network Rail shall not enforce its rights under this paragraph 10 in respect of those events after an acceptable replacement guarantee having this effect shall have been provided to it.

11. **DISTRESS**

Network Rail's right to distrain for all unpaid rent against anything which is necessary for the provision of Depot Services does not arise until after the giving of notice of the arrears.

12. **NON-ACCEPTANCE OF YEARLY RENT**

If Network Rail shall because of its belief on reasonable grounds that there has been a material breach by the Depot Facility Owner of any of the Depot Facility Owner's obligations under this Lease refrain from demanding and/or accepting rent or any other moneys due under this Lease then the Depot Facility Owner shall pay to Network Rail interest at the Default Interest Rate (both before and after any judgement) on such rent or other moneys calculated from the due date for payment for the period during which Network Rail shall so refrain (credit being given for any sums paid by the Depot Facility Owner and accepted by Network Rail as mesne profits).

13. **ARBITRATION**

Except where otherwise provided, where provision is made in this Lease for determination of an issue by arbitration or third party determination the issue shall be resolved in the manner prescribed by Condition H5 of the Depot Access Conditions.

14. **DETERMINATION OF THIS LEASE FOLLOWING DESTRUCTION OR DAMAGE**

If the Depot is damaged or destroyed by any cause whatsoever (whether or not by an Insured Risk) so as to become wholly or substantially unfit for the use permitted by Depot Access Condition O4 then:-

- 14.1 if Network Rail is unable (having used all reasonable endeavours) to obtain all necessary planning consents and all other necessary licences, approvals and consents necessary in order lawfully to carry out the repair, reinstatement and making good of the Depot in accordance with Depot Access Condition E3 then Network Rail shall notify the Depot Facility Owner in writing when it becomes aware of such inability and either Network Rail or the Depot Facility Owner may determine this Lease by giving to the other at any time not less than 14 days' notice; and
- 14.2 if Network Rail shall have failed substantially to complete the repair, reinstatement and making good of the Depot in accordance with Depot Access Condition E3 by the date which is three years after the relevant damage or destruction occurred then the Depot Facility Owner may determine this Lease by giving to Network Rail at any time within the period of six months following that date not less than 14 days' notice

and determination under this paragraph 14 shall be without prejudice to any claim by any party to this Lease in respect of any prior breach of the obligations of any other party to this Lease.

15. **OTHER PROPERTY AND IMPLIED EASEMENTS**

Nothing in this Lease shall:-

- 15.1 confer on the Depot Facility Owner any right to the benefit of or to enforce any covenant or agreement contained in any other instrument relating to any other property (except as provided in Part J of the Depot Access Conditions) or limit or affect the right of Network Rail to deal with the Adjacent Property at any time in such manner as may be thought fit (without prejudice to the rights expressly granted to the Depot Facility Owner under this Lease);
- 15.2 impliedly confer upon or grant to the Depot Facility Owner any easement, right, liberty, privilege or advantage other than those expressly granted by this Lease and the provisions of s.62 Law of Property Act 1925 shall not apply in relation to this Lease; or
- 15.3 override paragraph 6 of Schedule 4 to the Act where Network Rail is an interested person for the purposes of that Schedule.

16. **DEPOT FACILITY OWNER'S EFFECTS**

The Depot Facility Owner irrevocably appoints Network Rail to be its agent to store or dispose of any tenant's or trade fixtures, fittings or chattels left by the Depot Facility Owner on the Depot for more than fourteen days after the expiration or sooner determination of the Term or such longer period, if any, as may previously have been agreed in writing between Network Rail and the Depot Facility Owner, such storage and disposal being on such terms as Network Rail thinks fit and without Network Rail being liable to the Depot Facility Owner save to account for the proceeds of sale less the cost of storage (if any) and any other expenses reasonably incurred by Network Rail.

17. **PARTIAL DETERMINATION**

- 17.1 This paragraph 17 applies to any works which are necessary for the proper operation of Network Rail's railway undertaking and are the subject of a Proposal for Change which has been accepted and the acceptance of which remains effective.
- 17.2 For the purpose of carrying out works to which this paragraph 17 applies and which cannot reasonably be carried out without obtaining vacant possession of premises comprised in the areas which are shown marked red (or otherwise identified) on the Plan, or which are below or immediately adjoining any Railway Superstructure and which are inconsistent with the continuation of this Lease in respect of such premises for any reason (including, without limitation, the time required to complete the works and/or the effect of the works on such premises), Network Rail may by notice to the Depot Facility Owner determine this Lease in respect of such premises.
- 17.3 The date specified for determination in any notice given under paragraph 17.2 shall be no less than six months after the date of receipt of such notice save that where possession of the relevant premises is urgently required for carrying out repairs then the date specified for determination in the relevant notice shall be no less than 28 days after the date of receipt of such notice.
- 17.4 Network Rail shall use reasonable endeavours to minimise the effect of determination and to provide alternative facilities reasonably comparable to the premises in respect of which this Lease shall have been determined but (to the extent that this does not result in the provision of alternative facilities or they are not reasonably comparable to the premises in respect of which this Lease shall have been determined) there will be a reduction of both the Property Rent and the Equipment Rent of an amount to be agreed or (in the event of failure to agree) determined by arbitration.

- 17.5 Any determination pursuant to this paragraph 17 shall be without prejudice to the rights of either party in respect of any previous breach of the terms of this Lease.

18. **NOTICES TO BE GIVEN**

Any notice in writing given under this Lease to Network Rail shall be treated as effectively served if and only if addressed to Network Rail and served by recorded delivery or registered post upon Network Rail's Surveyor at the address given for him in paragraph 1 or upon such other person at such address as Network Rail may from time to time appoint for that purpose and notify to the Depot Facility Owner in writing; and any notice in writing that under this Lease is to be given to the Depot Facility Owner shall be treated as effectively served if and only if addressed to the Depot Facility Owner's Surveyor served by recorded delivery upon the Depot Facility Owner's Surveyor at the address given for him in paragraph 1 or upon such other person at such address as the Depot Facility Owner may from time to time appoint for that purpose and notify to Network Rail in writing.

19. **GOVERNING LAW AND JURISDICTION**

This Lease shall be governed by and construed in accordance with English law and, save as expressly provided for in this Lease and 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 Lease.

20. **AGREEMENT FOR SURRENDER**

- 20.1 In this paragraph "Surrender Event" means any of:

- (A) the cessation of the use and/or the operation of the Depot in accordance with Depot Access Condition 04.1 or 04.2 other than:-
 - (1) cessation arising from Force Majeure operating on the Depot Facility Owner;
 - (2) cessation caused by a breach of any obligation owed by Network Rail to the Depot Facility Owner;
 - (3) (subject to paragraphs 20.1(A)(1) and 20.1(A)(2)) cessation for any period of less than 3 months unless the aggregate of that period with any other period of cessation in the same calendar year exceeds 6 months; or
- (B) the inability of the Depot Facility Owner to use and/or operate the Depot in accordance with Depot Access Condition 04.1 or 04.2 as a result of any breach of any obligation owed by Network Rail to the Depot Facility Owner other than:-
 - (1) inability arising from Force Majeure operating on Network Rail;
 - (2) inability caused by a breach of any obligation owed by the Depot Facility Owner to Network Rail;
 - (3) (subject to paragraphs 20.1(B)(1) and 20.1(B)(2)) inability for any period of less than 3 months unless the aggregate of that period with any other period of inability in the same calendar year exceeds 6 months.

- 20.2 Subject to the relevant party giving notice in writing in accordance with this paragraph 20, the Depot Facility Owner agrees to surrender free from any mortgage, charge or other security interest and Network Rail agrees to accept a surrender of this Lease with completion to take place by operation of law on the date specified in such notice.

- 20.3 Upon actual completion of such surrender, the Depot Facility Owner and Network Rail will be released from any future liability under their respective covenants in this Lease without prejudice to any subsisting breaches and, if called upon to do so by the covenantor, the covenantee will execute a release under seal to this effect.
- 20.4 In respect of a Surrender Event described in paragraph 20.1(A), Network Rail may give not less than twenty Business Days' notice requiring completion.
- 20.5 In respect of a Surrender Event described in paragraph 20.1(B), the Depot Facility Owner may give not less than twenty Business Days' notice requiring completion.
- 20.6 Receipt by a party of a notice under this paragraph 20 shall not prevent it from itself giving notice, completion to take place on the earlier of the dates specified in the notices.
- 20.7 After the events or circumstances which gave rise to or constituted a Surrender Event have ceased to apply and/or subsist, a notice in accordance with this paragraph 20 may not be given in respect of it or them.
- 20.8 Any dispute or difference arising in relation to this paragraph 20 shall be determined by arbitration.

21. RELEASES

Without prejudice to outstanding rights of action:-

- 21.1 the Depot Facility Owner's rights and obligations under this Lease shall terminate upon any lawful assignment of this Lease (other than to an Affiliate of the Depot Facility Owner) complying in all respects with the provisions of paragraph 6.6, and when all of the requirements specified in paragraph 6.6 have been fulfilled;
- 21.2 Network Rail's rights and obligations under this Lease shall terminate upon Network Rail completing a disposal of its interest in the Depot to a person who:-
- (A) is not an Affiliate of Network Rail at completion of such disposal;
 - (B) has been approved in writing by the Depot Facility Owner (acting reasonably and without delay, having regard to the financial standing of such person and its ability to perform and observe the obligations of Network Rail under this Lease); and
 - (C) prior to completion of such disposal has entered into a direct covenant with the Depot Facility Owner to observe and perform the obligations of Network Rail under this Lease.

22. REDEVELOPMENT ETC.

- 22.1 At any time whilst acceptance of a Network Rail Change Proposal remains effective, the Depot Facility Owner shall, if Network Rail so requires, give written notice (contractual and/or statutory) to any lawful undertenant, licensee or other occupant and take any other appropriate action to determine that person's right to occupy any relevant part of the Depot specified in the relevant Network Rail Change Proposal and, if the Depot Facility Owner fails to comply promptly with any such requirement, Network Rail may as the agent of the Depot Facility Owner (Network Rail's irrevocable actual authority to do which in that capacity is now confirmed by the Depot Facility Owner) give the requisite notice and/or take the requisite action.
- 22.2 The Depot Facility Owner and Network Rail shall from time to time promptly provide the other with such information and assistance as it may reasonably require to enable it to give notice and/or take any action contemplated by paragraph 22.1.

22.3 Network Rail shall pay on written demand on the due date:

- (A) all sums to which any person referred to in paragraph 22.1 is entitled from the Depot Facility Owner pursuant to the relevant tenancy or agreement in consequence of notice given and/or action taken by the Depot Facility Owner or by Network Rail pursuant to that paragraph; and
- (B) all reasonable and proper costs and expenses reasonably and properly incurred by the Depot Facility Owner in connection with the service of the notice and any resulting proceedings.

22.4 As from the date on which any lawful undertenant, licensee or other occupier shall quit the part of the Depot occupied by it following notice served under paragraph 22.1 the Property Rent and the Equipment Rent shall both be reduced by such amount as Network Rail and the Depot Facility Owner agree (or in default of agreement, as shall be determined by arbitration) as being fair and reasonable.

23. COLLATERAL AGREEMENTS

23.1 Network Rail offers irrevocably in favour of any User (and any person who upon entering into a Depot Access Agreement becomes a User ("Potential User")) to enter into a Collateral Agreement with any User forthwith on written request made by the Depot Facility Owner or any User (and any Potential User).

23.2 Network Rail undertakes to the Depot Facility Owner that Network Rail will not revoke the offer made by Network Rail in paragraph 23.1.

24. LAWFULNESS OF NETWORK RAIL'S GRANT

24.1 Subject to paragraph 24.2, if the estate, right or interest under which Network Rail holds the Depot or any obligation binding on Network Rail contained or referred to in a Superior Estate Grant is such that this Lease cannot lawfully be granted at all or cannot lawfully be granted on one or more of the terms expressed in it then, to the extent necessary to render this grant lawful, this Lease shall be substituted by and take effect as the grant by Network Rail to the Depot Facility Owner of such estate, right or interest (if any) upon such terms as nearly equivalent to the estate and terms intended to be granted by this Lease as Network Rail can lawfully grant to the Depot Facility Owner.

24.2 Paragraph 24.1 operates so as to render the grant effected by this Lease lawful but otherwise as between Network Rail and the Depot Facility Owner does not operate to reduce or extinguish the obligations of the Depot Facility Owner under this Lease or to place the Depot Facility Owner in a better position than it would have been in if the estate and terms intended to be granted by this Lease were lawful.

25. LIMITATION ON RIGHTS OF RE-ENTRY ETC.

25.1 Network Rail shall not peaceably re-enter the Depot, nor enforce any judgment which it may obtain for possession of the Depot, without having given the SRA three months' prior written notice of its intention to re-enter the Depot peaceably or (in the case of enforcement of a judgment for possession) to serve a writ or summons claiming possession of the Depot. In either case the period of three months may be reduced to such shorter period as the SRA may from time to time agree in writing.

25.2 Should Network Rail at any time serve any notice or take any other proceeding or step to exercise any right of forfeiture (other than referred to in paragraph 25.1) it shall immediately notify the SRA in writing of such notice, proceeding or step.

- 25.3 Any purported exercise of any right of re-entry in contravention of this paragraph 25 shall be void Provided that this paragraph 25 shall not have effect during any period in which either the SRA, or any company under its control (within the meaning attributed to that word by s.840 Income and Corporation Taxes Act 1988), is the Depot Facility Owner.

26. **NOTIFICATION OF CHANGES TO DEPOT ACCESS CONDITIONS**

Where any change is made to the Depot Access Conditions otherwise than in accordance with Parts B or C of those conditions the Depot Facility Owner shall provide Network Rail with written details of such change within seven days of such change taking effect.

27. **ADJUSTMENT OF THE ALLOWABLE NETWORK RAIL MINUTES DELAY ETC.**

The Depot Facility Owner shall not enter into or vary, or agree to enter into or vary, any agreement or make any application under s.18 of the Act, the effect of which (if the agreement or variation were made, or an order were made by the Regulator pursuant to the application under s.18 of the Act) would be to decrease the Allowable Network Rail Minutes Delay or to increase the rates of payment specified in Part D of Annex 6 of the Depot Access Conditions save with the prior written consent of Network Rail (which Network Rail may give or withhold in its absolute discretion) or pursuant to any directions by the Regulator under s.17 or s.22A of the Act.

28. **DEPOT FACILITY OWNER'S OPTION TO DETERMINE**

- 28.1 If the Depot Facility Owner (being a franchise operator) wishes to determine this Lease with effect from 02.00 hours:

- (A) on the day after the date upon which the Franchise Agreement shall expire through the passage of time; or
- (B) on any subsequent date

it may do so by giving to Network Rail not less than two months' prior notice in writing of such wish and on the date specified in the Depot Facility Owner's Notice the Term shall cease and determine.

- 28.2 Any determination of this Lease pursuant to this paragraph 28 shall be without prejudice to any claim by any party to this Lease in respect of any prior breach of the obligations of any other party to this Lease.

29. **FURTHER OPTION FOR DEPOT FACILITY OWNER TO DETERMINE**

29.1 **Additional Definition**

In this paragraph 29, the expression "the final decision on the closure question" has the meaning given to it by s.41 of the Act.

29.2 **Further option to determine**

If at any time during the Term:

- (A) the Depot Facility Owner proposes to terminate the use of the whole Depot, but not any part or parts of it, as a light maintenance depot, and either the SRA has determined that the closure of the whole Depot is a minor closure, in which case the Depot Facility Owner has provided Network Rail with a copy of the SRA's determination to that effect, or the Depot Facility Owner has provided Network Rail with a copy of the notice given by it to the SRA under s.41 of the Act and the final

decision on the closure question has been that the proposed closure will be allowed to take effect; and

- (B) the Depot Facility Owner shall desire to determine the Term in respect of the whole Depot and shall have given to Network Rail not less than one month's previous written notice (the "Statutory Notice to Determine") of that desire, and comply with the provisions of paragraph 29.3,

then the Term shall determine in respect of the whole Depot on the date of expiration of the Statutory Notice to Determine.

29.3 Depot Facility Owner's obligations following service of Statutory Notice to Determine

Following service of a Statutory Notice to Determine the Depot Facility Owner shall, on the date of expiration of the Statutory Notice to Determine, deliver to Network Rail vacant possession of the whole Depot (save for any part comprised in any Relevant Agreement, Existing Agreement, or any underlease of the Depot or any part of it granted pursuant to paragraph 6.7, and any statutory renewals of any of these).

29.4 Effect of determination

Determination of this Lease under paragraph 29.2 shall be without prejudice to the rights of either Network Rail or the Depot Facility Owner in respect of any antecedent breach by the other of the terms of this Lease.

30. ADJUSTMENT OF PROPERTY RENT AND EQUIPMENT RENT FOLLOWING PARTIAL CLOSURE

30.1 Additional definitions

In this paragraph:

"Closure Date" means the date on which any Partial Closure takes effect;

"Equipment" means the Equipment as defined in the Depot Access Conditions;

"Equipment Rent Schedule" means the Schedule, agreed between, and signed on behalf of, both Network Rail and the Depot Facility Owner, listing the Equipment at the Depot and the amount of the Equipment Rent attributable to each item of the Equipment;

"Open Market Value" means the highest annual rent at which the Depot might reasonably be expected to be let in the open market without taking a fine or a premium by a willing landlord to a willing tenant on the terms of this Lease (except as to the amount of the Property Rent) for a term equal to the Term and on the further assumptions that:

- (A) the Depot has access by road to the public highway (but taking into account any physical or other restrictions which may affect any actual access road);
- (B) (subject to paragraphs 30.1(A) and 30.1(D)) due regard shall be had to the physical characteristics of the land and buildings comprising the Depot including, without prejudice to the generality of the foregoing, their layout, size, shape and physical condition;
- (C) no value shall be attributed to the Equipment (such value being accounted for by the Equipment Rent) and any effect on Open Market Value of the amount of the Equipment Rent shall be disregarded;

- (D) any part or parts of the Depot not built upon may be used for open storage and, in relation to that part of the Depot not comprised within the Partial Closure, that any works to remove any track or to erect any fences which would be necessary to enable such use to be commenced have been carried out at no cost to the willing tenant but this assumption shall not be made in relation to that part of the Depot which is comprised within the Partial Closure; and
- (E) where more than ten per cent. of any building (measured by net internal area) is used as offices, such part or parts of that building shall be valued for use as offices;

"Partial Closure" means the closure of some part or parts (but not the whole) of the Depot either where the SRA has determined that the closure of the relevant part or parts is a minor closure or following the final decision on the closure question in respect of the relevant part or parts under s.41 of the Act and in accordance with that determination or decision; and

"Redundant Equipment" means each item of the Equipment located on any part of the Depot subject to the Partial Closure which the Depot Facility Owner reasonably determines it no longer requires to use as a result of the Partial Closure.

30.2 Proposal for Partial Closure

- (A) If at any time during the Term the Depot Facility Owner proposes to effect a Partial Closure at the Depot it shall, at least one month before giving any notice to the SRA or the Regulator under s.41 of the Act, give notice in writing to Network Rail of the location and extent of the part or parts of the Depot it shall desire to close and shall have regard to any representations made by Network Rail.
- (B) Following the giving of such notice the Depot Facility Owner and Network Rail shall consult together on the Depot Facility Owner's proposal for a Partial Closure with a view to agreeing the appropriate adjustment to the Property Rent and the Equipment Rent and which items of the Equipment shall become Redundant Equipment in accordance with the following provisions of this paragraph 30.

30.3 Adjustment of Property Rent and Equipment Rent

With effect from the Closure Date:

- (A) subject to paragraph 30.4 the Property Rent shall be adjusted by applying the following formula:

$$A \times \frac{B}{C} = \text{the adjusted Property Rent}$$

Where:

- A is the Property Rent reserved immediately before the Closure Date;
- B is the Open Market Value of the Depot on the Closure Date; and
- C is the Open Market Value of the Depot on the Closure Date on the assumption that the Partial Closure had not taken place and would not do so; and

- (B) the Equipment Rent shall be adjusted by deducting from it the aggregate of the amounts, as shown in the Equipment Rent Schedule, of the Equipment Rent attributable to each item of Equipment which has become Redundant Equipment as a result of the Partial Closure.

30.4 Rent adjustment thresholds

There shall be no adjustment of the Rent unless the prospective adjustment to the Rent, as agreed or determined in accordance with paragraph 30.3(A) or (as the case may be) paragraph 30.5, is not less than the Rent Adjustment Threshold.

30.5 Arbitration

The adjustment to the Property Rent and the Equipment Rent and which items of Equipment shall become Redundant Equipment as a result of the Partial Closure may be agreed at any time between Network Rail and the Depot Facility Owner but, in the absence of agreement of any of such matters by the date two months after the Closure Date (or such later date as Network Rail and the Depot Facility Owner may agree), it will be determined by arbitration.

30.6 Property Rent and Equipment Rent payable pending agreement of adjustment

- (A) If the adjustment to the Property Rent and the Equipment Rent has not been agreed or determined by the rent payment date next following the Closure Date, the Depot Facility Owner shall continue to pay the Property Rent and the Equipment Rent at the rate prevailing prior to the Closure Date; and
- (B) When the adjustment to the Property Rent and the Equipment Rent has been so agreed or determined an appropriate payment shall be made by the relevant party to the other of any underpayment or overpayment so as to put the parties in the position they would have been in had the adjustment been agreed or determined by the Closure Date together with, in respect of each part of that payment, interest at the Default Interest Rate from the rent payment date when that part would have been payable until actual payment.

30.7 Memorandum

When the adjustment to the Property Rent and the Equipment Rent and which items of the Equipment shall become Redundant Equipment as a result of the Partial Closure have been agreed or determined in accordance with paragraph 30, memoranda recording such agreement or determination will be signed by or on behalf of Network Rail and the Depot Facility Owner and annexed to this Lease.

31. REDUNDANT EQUIPMENT

31.1 Application of paragraph

This paragraph 31 applies to all Equipment which is agreed or determined to become Redundant Equipment pursuant to paragraph 30.

31.2 Removal of Redundant Equipment

Network Rail shall be entitled (but not obliged) at its own expense to remove any items of Redundant Equipment from the Depot subject to the following provisions:

- (A) that such removal of each item of Redundant Equipment is possible without requiring substantial alterations to any such building or other structure or (where substantial alterations are required) Network Rail has compensated the Depot Facility Owner for such amount as may reasonably be required to make good any loss which the Depot Facility Owner may thereby have suffered (but excluding any loss of revenue (including fare revenue, subsidy, access charge revenue and incentive payments));

- (B) that Network Rail shall give reasonable notice to the Depot Facility Owner before commencing any removal works, and Network Rail shall have regard to any representations made by the Depot Facility Owner in relation to the carrying out of substantial alterations as referred to in paragraph 31.2(A);
- (C) that in carrying out any removal works Network Rail shall use all reasonable endeavours to minimise any disruption to the Depot Facility Owner's activities at or use of the Depot; and
- (D) that as part of any removal works Network Rail shall promptly make good any damage caused to any part of the Depot by such works to the reasonable satisfaction of the Depot Facility Owner.

31.3 Repair and Maintenance

- (A) Subject to paragraph 31.3(B), the respective obligations of Network Rail and the Depot Facility Owner for Repair and Maintenance of each item of Redundant Equipment pursuant to Part D of the Depot Access Conditions shall cease as from the relevant Closure Date referred to in paragraph 30.
- (B) Paragraph 31.3(A) is without prejudice to Network Rail's and the Depot Facility Owner's continuing obligations as to Repair and Maintenance of any building or other structure in which any item of Redundant Equipment is located or to which it is attached.

31.4 Arbitration

Any dispute or difference arising in relation to this paragraph 31 shall be determined by arbitration.

32. GUARANTEE PROVISIONS

In consideration of this demise and at the request of the Depot Facility Owner the Guarantor as primary obligor (and not merely as guarantor) covenants with Network Rail in the terms of schedule 2.

SCHEDULE 1 : AUTHORISED GUARANTEE AGREEMENT(FOR INCLUSION IN THE LICENCE TO ASSIGN)

- 1.1 [IN consideration of this Licence granted at the request of the Depot Facility Owner, of the Assignee and of the Surety] the Depot Facility Owner covenants with Network Rail (for the benefit of Network Rail and any person for the time being entitled in reversion immediately expectant upon the tenancy granted by the Lease) as primary obligor (and not merely as guarantor) that [as from the date of the assignment authorised by this Licence and] throughout the residue of the Term (save and to the extent that the Assignee is released by virtue of the Landlord and Tenant (Covenants) Act 1995) the Assignee will punctually pay the Yearly Rent and other sums payable under the Lease and will perform and observe the lessee's covenants and conditions contained in the Lease and that in the event of default by the Assignee the Depot Facility Owner will indemnify and keep indemnified Network Rail (and any other person as mentioned above) against all actions, claims, costs, demands, expenses, liabilities and losses arising or incurred by Network Rail (and any other person as mentioned above) in consequence of such default.

Provided that any neglect, time or forbearance of Network Rail in enforcing any payment or covenant or condition or any disclaimer of the tenancy granted by the Lease by a trustee in bankruptcy or by a liquidator or the fact that the Assignee (being a company) shall be dissolved or shall otherwise cease to exist or the determination of such tenancy pursuant to the proviso for re-entry in the Lease or the release of any one or more persons for the time being constituting the Depot Facility Owner or any other act or thing (including, without limitation, Network Rail refraining from demanding or accepting any rent or other moneys due under the Lease, the surrender of any part of the premises demised and any variation of the terms of the Lease) whereby (but for this provision) the Depot Facility Owner might or would have been released or the liability of the Depot Facility Owner would have been affected shall not release, exonerate or in any way affect the liability of the Depot Facility Owner under this clause;

- 1.2 The Depot Facility Owner further covenants on the same basis that if so required by Network Rail by written notice to the Depot Facility Owner within three months after the receipt by Network Rail of notice of the disclaimer of the tenancy granted by the Lease by a trustee in bankruptcy or liquidator of the Assignee (an "Event") and provided that the SRA shall not have indicated that any new lease is to be granted to the SRA or its nominee, then the Depot Facility Owner will take from Network Rail the grant of another lease of the Depot for the residue of the term of years granted by the Lease unexpired at the date of such Event. Such lease is to be at the same rents as are reserved by the Lease (including any revised rent agreed or determined under the Lease) and subject to the like covenants, provisos and conditions in all respects (including the proviso for re-entry) as are contained in the Lease, but so that the times (if any) at which Network Rail shall be entitled to revise the Yearly Rent shall be the same times as are specified in the Lease. Such further lease shall not be completed until it has been validly excluded from the operation of ss.24 to 28 (inclusive) of the Landlord and Tenant Act 1954, in accordance with s.38A of that Act and the relevant Schedules of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (or by effectively implementing any other procedure from time to time authorised by Statute to provide for this) and the Depot Facility Owner covenants to do all things reasonably required by Network Rail to ensure that the further lease is validly excluded as aforesaid. The lease shall contain a reference to the agreement of Network Rail and the Depot Facility Owner pursuant to s.38A of that Act. The Depot Facility Owner will indemnify and keep indemnified Network Rail (and any other person as mentioned above) on a full indemnity basis against all solicitors' costs and disbursements and also surveyors' fees incurred by Network Rail in connection with the giving of such notice, the grant of such lease and the grant of any

such licence and will on the execution of such further lease execute and deliver to Network Rail a counterpart.

- 1.3 Where the Depot Facility Owner consists of more than one person any covenant by them shall take effect as a joint and several covenant.

SCHEDULE 2: GUARANTEE PROVISIONS

1.1 Guarantee and Indemnity

The Guarantor as primary obligor (and not merely as guarantor) in consideration of this demise and at the request of the Depot Facility Owner hereby covenants with Network Rail that:

- (A) throughout the Term (save and to the extent that the Depot Facility Owner is released by virtue of the Landlord and Tenant (Covenants) Act 1995) the Depot Facility Owner will punctually pay the Yearly Rent and other sums payable under this Lease and will perform and observe the Depot Facility Owner's covenants and conditions contained and incorporated in this Lease; and
- (B) (as far as permitted by law and notwithstanding paragraph 1.7 of this Schedule) throughout the Term (save and to the extent that the Depot Facility Owner is released by virtue of the Landlord and Tenant (Covenants) Act 1995) the Depot Facility Owner will observe and perform the obligations of the Depot Facility Owner (whether as primary obligor or guarantor) contained in any authorised guarantee agreement

and that in the event of default by Depot Facility Owner the Guarantor will indemnify and keep indemnified Network Rail against all actions, claims, costs, demands, expenses, liabilities and losses arising or incurred by Network Rail in consequence of such default. Provided that any neglect, time or forbearance of Network Rail in enforcing any payment or covenant or condition or any disclaimer of this demise by a liquidator or by a trustee in bankruptcy or the fact that the Depot Facility Owner (being a company) shall be dissolved or shall otherwise cease to exist or the determination of this demise or the release of any one or more persons for the time being constituting the Guarantor or any other act or thing (including, without limitation, Network Rail refraining from demanding or accepting any rent or other moneys due under this Lease, the surrender of any part of the Depot and any variation of the terms of this Lease) whereby (but for this provision) the Guarantor might or would have been released or the liability of the Guarantor would have been affected shall not release, exonerate or in any way affect the liability of the Guarantor under this Schedule.

1.2 Postponement of Rights of Guarantor

The Guarantor shall not claim in competition with Network Rail in any liquidation, bankruptcy, arrangement, scheme or composition with creditors of or concerning the Depot Facility Owner and shall pay to Network Rail all moneys it shall receive by way of proceeds of any judgment or any distribution from any liquidator, trustee in bankruptcy, receiver or administrator of the Depot Facility Owner and shall hold for the benefit of Network Rail all security and rights the Guarantor may from time to time have over assets of the Depot Facility Owner and the Guarantor shall not be subrogated to any rights of or security held by Network Rail in respect of any liabilities of the Depot Facility Owner or the Guarantor under this Lease for so long as such liabilities remain unperformed or undischarged.

1.3 Waiver

The Guarantor hereby waives any right to require Network Rail to proceed against the Depot Facility Owner or to exercise any other right or remedy whatsoever which might be available to Network Rail before proceeding or exercising any right arising pursuant to this Schedule.

1.4 Disclaimer, etc

If so required by Network Rail by written notice to the Guarantor within three months after an Insolvency Event, and provided that the SRA shall not have indicated that any new lease is to be granted to the SRA or its nominee, then the Guarantor will take from Network Rail a grant of another lease of the Depot for the residue of the Term unexpired at the date of such Insolvency Event. Such lease is to be at the same rents as are reserved by this Lease (including any revised rent agreed or determined under this Lease) and subject to the like covenants, provisos and conditions in all respects (including the proviso for re-entry) as are contained in this Lease, but so that the times (if any) at which Network Rail shall be entitled to revise the Yearly Rent shall be the same times as are specified in this Lease. Such further lease shall not be completed until it has been validly excluded from the operation of ss.24 to 28 (inclusive) of the Landlord and Tenant Act 1954, in accordance with s.38A of that Act and the relevant Schedules of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (or by effectively implementing any other procedure from time to time authorised by Statute to provide for this) and the Guarantor covenants to do all things reasonably required by Network Rail to ensure that the further lease is validly excluded as aforesaid. The lease shall contain a reference to the agreement of Network Rail and the Guarantor pursuant to s.38A of that Act. The Guarantor will indemnify and keep indemnified Network Rail (and any other person as mentioned above) on a full indemnity basis against all solicitors' costs and disbursements and also surveyors' fees incurred by Network Rail in connection with the giving of such notice, the grant of such lease and the grant of any such licence and will on the execution of such further lease execute and deliver to Network Rail a counterpart.

1.5 If no New Lease

If an Insolvency Event occurs as a result of which the Guarantor ceases to be liable under paragraph 1.1 of this Schedule and for any reason Network Rail does not require the Guarantor to accept a new lease of the Depot as is mentioned in paragraph 1.4 of this Schedule then the Guarantor shall pay to Network Rail on demand amounts equal to the Yearly Rent reserved by this Lease and which would have been payable by the Depot Facility Owner during the period mentioned below but for any Insolvency Event and indemnify Network Rail from and against the costs and expenses arising or incurred by Network Rail in performing and observing the Depot Facility Owner's covenants and conditions contained and incorporated in this Lease for the period commencing with the date of such Insolvency Event and ending on whichever is the earlier of the date six months after the date of such Insolvency Event and the date (if any) upon which the Depot is re-let.

1.6 Benefit of Guarantee and Indemnity

All the provisions of this clause shall enure for the benefit of the successors and assigns of Network Rail under this Lease or any other person for the time being entitled in reversion immediately expectant upon the tenancy granted by this Lease without the necessity for any assignment.

1.7 Authorised Guarantee Agreement

Without prejudice to paragraph 1.1(B) of this Schedule the Guarantor covenants with Network Rail and by way of a separate covenant with the Depot Facility Owner that it will at the request of Network Rail enter into the authorised guarantee agreement referred to in paragraph 6.6(D)(2) prior to any assignment of the Depot and will covenant with Network Rail as primary obligor (and not merely as guarantor) in the terms (mutatis mutandis) set out in this Schedule for the purpose of guaranteeing the observance and performance by the Depot Facility Owner of its obligations in the authorised guarantee agreement.

1.8 Joint and Several Liability

Where the Guarantor consists of more than one person any covenant by them shall take effect as a joint and several covenant.

1.9 Insolvency Event

In this Schedule "Insolvency Event" means any of the events in respect of the Depot Facility Owner listed or referred to in paragraphs 10.1(C) to 10.1(H) inclusive, unless the exception referred to in the paragraph following paragraph 10.1(L) shall apply.

