

DATED

7th

APRIL 1995

R.B. LEASING (MARCH) LIMITED
and
CONCORD LEASING MARCH (A) LIMITED
as Lessors

(1)

and

GEC ALSTHOM NL
SERVICE PROVISION LIMITED
as Lessee

(2)

LEASE
of
Up to 103 Trains

Norton Rose
London

CONTENTS

Clause	Heading	Page
1	Definitions and Interpretation	1
1.1	Definitions	1
1.2	Software Licence	18
1.3	Connected persons	18
1.4	Construction	18
1.5	References to Statutes	19
1.6	References to documents	19
1.7	References to clauses, etc.	19
1.8	Titles	19
1.9	Persons	19
2	Representations and Warranties	19
2.1	Representations and Warranties of Lessee	19
2.2	Enforceability	20
2.3	Consequences of execution and performance	20
2.4	Circumstances affecting Lessee's performance	20
2.5	Ownership	21
2.6	Repetition	21
2.7	Representations and Warranties of the Lessors	21
3	Conditions Precedent	22
3.1	Conditions Precedent to the Lessors' and Lessee's respective obligations under this Lease	22
3.2	Conditions Precedent to the leasing of Trainsets	23
4	Agreement to Lease and Delivery	23
4.1	Agreement to Lease	23
4.2	Commencement of leasing and delivery	24
4.3	Risk	24
5	Exclusion Clause	24
6	Lease Period	26
6.1	Lease of Trainsets	26
6.2	Primary Period	26
6.3	Secondary Period	26
7	Payment of Rental, etc.	26
7.1	Primary Period	27
7.2	Secondary Period	27
7.3	Payment obligations unconditional	27
7.4	Limited Recourse	28
7.5	Currency, mode of Payments and VAT invoices	30
7.6	Currency indemnity	31

7.7	Payment on Working Day	31
7.8	Payment of Interest	32
7.9	Calculations	32
7.10	Application of Monies	33
7.11	Fees	33
7.12	VAT on Limited Recourse Sums	33
8	Voluntary Termination	34
8.1	Voluntary Termination Notice	34
8.2	Payments on Voluntary Termination Date	35
8.3	Lessor Partial Termination	35
✓ 9	Outgoings and Indemnities	36
9.1	Outgoings and general indemnity	36
9.2	Payment of costs and expenses by Lessee	37
9.3	Payment of outgoings by Lessors	38
9.4	Action by Lessee to avoid Losses	39
9.5	Specific indemnity	39
9.6	Limitation	40
9.7	Double Counting	40
9.8	Benefit of indemnities	41
10	Taxation	41
10.1	General tax indemnity	41
10.2	Exclusions	42
10.3	Non-deductibility of payments by Lessors	43
10.4	Stamp taxes, etc.	45
10.5	Insufficiency of indemnity payments	45
10.6	Payments to Lessors	46
10.7	Taxation undertakings	47
10.8	Value Added Tax	48
10.9	Certification of Calculations	49
✓ 11	Protection of interests	49
11.1	Lessors' interest in Leased Trainsets	49
11.2	Lessee's quiet enjoyment	49
11.3	Lessee's undertakings	49
11.4	Enhanced, removed and replaced Leased Trainsets	51
11.5	Sub-leasing	51
✓ 12	General undertakings by the Lessee	51
12.1	Notification of Potential Events, Events of Default and Supervening Events	51
12.2	General undertakings	52
13	Operation and maintenance	54
13.1	Undertakings as to operation of Trainsets and/or Leased Trainsets	54

✓ 13.2	Alterations and modifications	55
13.3	Inspection	55
13.4	Repairs to Leased Trainsets	56
13.5	Limitation on Maintenance Obligations	56
14	Insurance	57
14.1	Insurance against general third party liability	57
14.2	Insurance against the loss of or damage to Leased Trainsets	59
14.3	Provisions applicable to all Insurances	60
14.4	Employer's liability insurance	61
14.5	Policies and certification of Insurances	61
14.6	Broker's undertaking	62
14.7	Assignment	62
14.8	Omission to comply with insurance obligations	62
14.9	Changes in circumstances	62
14.10	Application of insurance proceeds	63
15	Total Loss	63
15.1	Termination of leasing of Leased Trainsets following a Total Loss	63
15.2	Payments on Total Loss Payment Date	64
15.3	Payment of Rentals continuing	65
15.4	Application of Insurance Proceeds and Rebate of Rentals	65
16	Illegality and Costs Variation	65
16.1	Illegality	66
16.2	Costs variation	66
16.3	Discussions	67
17	Events of Default, Supervening Events and Acceleration	68
17.1	Events of Default	68
17.2	Supervening Events	73
17.3	Additional Security	78
17.4	Acceleration	79
18	Lessor's Termination Rights	80
18.1	Termination Notice	80
18.2	Retaking possession of Leased Trainsets	81
18.3	Payments on Forced Termination Date	81
18.4	Undelivered Trainsets Termination	82
18.5	Post-Termination Payments	82
19	Return and Disposal of Leased Trainsets	83
19.1	Re-delivery by Lessee	83
19.2	Sale of Leased Trainsets	84
19.3	Sales agency	84
19.4	Terms of Sale	85
19.5	Extended Handback	86

20	Application of Net Sale Proceeds	87
21	Assignment	89
	21.1 Assignment by Lessee	89
	21.2 Assignment by Lessors	89
22	General	89
	22.1 Delay in enforcement	89
	22.2 Partial invalidity	89
	22.3 Notices	90
	22.4 Lessors' right of set-off	91
	22.5 Preservation of indemnities	91
	22.6 Further assurances	91
	22.7 Previous agreement	92
	22.8 Variation	92
	22.9 Time of the essence	92
	22.10 Confidentiality	92
	22.11 Restrictive Trade Practices Act 1976	93
	22.12 Unidroit Convention on International Financial Leasing	94
	22.13 Amendment of Transaction Documents	94
	22.14 Rights and obligations of Lessors	94
23	Deposit Arrangements	95
	23.1 Operation of RV Deposit Account	95
	23.2 Deposits and Withdrawals from the RV Deposit Account	95
	23.3 Further Deposits	95
	23.4 Specific Performance	96
	23.5 Release of Deposit	96
24	Governing Law	97

Schedule

1	Royal Bank Financial Schedule
2	Concord Financial Schedule
3	Documents and Evidence
4	Letter of Undertaking
5	Deposit Arrangements

THIS LEASE is made the 7th day of April, 1995

BETWEEN:

- (1) **R.B. LEASING (MARCH) LIMITED** (registered number 02012130) whose registered office is at The Quadrangle, The Promenade, Cheltenham, Gloucestershire GL50 1PX and **CONCORD LEASING MARCH (A) LIMITED** (registered number 01337174) whose registered office is at Concord House, 2 Waterside Drive, Langley, Slough, Berkshire SL3 6EZ (each a "Lessor" and together the "Lessors" which expressions shall include their respective successors and permitted assignees and transferees)
- (2) **GEC ALSTHOM NL SERVICE PROVISION LIMITED** (registered number 02849400) whose registered office is at Westinghouse Road, Trafford Park, Manchester M17 1PR (the "Lessee" which expression shall include its successors and permitted assignees and transferees).

1 Definitions and Interpretation

1.1 Definitions

In this Lease the following expressions shall (unless the context otherwise requires or unless this Lease expressly provides to the contrary) have the following meanings:

"**Acceleration Date**" has the meaning given to it in clause 17.4(A) or, as the case may be, (B);

"**Acceleration Notice**" has the meaning given to it in clause 17.4(A) or, as the case may be, (B);

"**Acceleration Payment**" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"**Acceptance**" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"**Account**" has the meaning given to "Usage Contract Account" in the Security Assignment;

"**Accounting Period**" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"**Additional Assureds**" has the meaning given to it in clause 14.1(B) (1);

"Additional Strip Liability" means, as at the relevant date, an amount calculated in accordance with paragraph 12.1 of the Royal Bank Financial Schedule (in the case of Royal Bank) and the Concord Financial Schedule (in the case of Concord);

"Adjustment Date" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Affiliate" means, in relation to any person, any person directly or indirectly controlling, controlled by or under common control with that person (and, for such purpose **"control"** means the power to direct the management and the policies of a body corporate, whether through the ownership of voting capital, by statute, contract or otherwise);

"Aggregate Adjusted Amount" has the meaning given to it in paragraph 7.6 of the Royal Bank Financial Schedule (in the case of Royal Bank) and the Concord Financial Schedule (in the case of Concord);

"Aggregate Amount" means an amount equal to 115.29412 per cent of the aggregate of:

- (i) the amounts shown in the column of the Initial Cash Flow headed "Purchase Payments";
- (ii) the amounts shown in the column of the Equipment Initial Cash Flow headed "Purchase Payments";
- (iii) the amounts shown in the columns of the Depot Initial Cash Flow headed "Buildings Expenditure", "Plant Expenditure" and "Other Expenditure";
and
- (iv) £15,000,000.00.

"Annual Date" means each date specified in column 1 of Schedule 5;

"Applicable Cash Flow" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Appropriate Date" means, where applicable, in relation to payments to be made by the Lessors or either of them to the Lessee pursuant to this Lease the date upon which the Lessee is entitled to receive the payment in question in accordance with the provisions of this Lease;

"Approved Brokers" means Bain Hogg Limited or such other firm of insurance brokers nominated by the Lessee as the Lessors may from time to time approve in writing (such consent not to be unreasonably withheld or delayed);

"Associated Company" has the meaning given to it in Section 416 of the Income and Corporation Taxes Act 1988;

"Arrangement Fee" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Assumptions" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Base Case Termination Sum" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Base Rate" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Car" has the meaning given to it in the Usage Contract;

"CCTV Equipment" has the meaning given to it in the Purchase Agreement;

"Clawback Refund" means any repayment to the Lessee pursuant to clause 7.4(B);

"Clawback Rental" means any Rental which becomes the subject of a Clawback Refund;

"Compensating Sum" has the meaning given to it in clause 10.5(B);

"Concord" means Concord Leasing March (A) Limited;

"Concord Financial Schedule" means Schedule 2 to this Lease which sets out (inter alia) the basis of calculation of the Rental payable by the Lessee under this Lease and of the payments to be made by the Lessee on Termination, in each case to Concord;

"Concord Group" means HSBC Holdings PLC and any Subsidiary of HSBC Holdings PLC from time to time;

"Corporation Tax" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Costs of Management Time" shall mean the amount calculated at the rate of £150 per hour (indexed in line with the General Index of Retail Prices for all items (or any comparable index substituted therefor) from the date hereof) for

the relevant time spent of employees of the Lessors or either of them and/or the Royal Bank Group and/or the Concord Group;

"Credit Balance" means at any date the balance standing to the credit of the RV Deposit Account (including any accrued interest thereon);

"Date of Application" means the date on which Net Sale Proceeds are applied pursuant to clause 20;

"Default Rate" means two per cent (2%) over Base Rate calculated on a day-to-day basis;

"Delivery Period" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Depots" has the meaning given to it in the Usage Contract;

"Depot Direct Agreement" means the Agreement of even date herewith relating to the Depots and made between the Lessors (1), LUL (2), the Lessee (3) and RMS (4);

"Depot Head Lease" has the meaning given to "Head Lease" in the Depot Lease;

"Depot Head Lease Agreement" has the meaning given to "Head Lease Agreement" in the Depot Lease;

"Depot Initial Cash Flow" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Depot Lease" means the Lease to be granted by the Lessors to RMS pursuant to the Depot Lease Agreement;

"Depot Lease Agreement" means in relation to the Depots, the Agreement of even date herewith and made between the Lessors (1) and RMS (2);

"Depot Superior Lease" has the meaning given to "Superior Lease" in the Depot Lease;

"Depot Superior Lease Agreement" has the meaning given to "Superior Lease Agreement" in the Depot Lease;

"Direct Agreement" means the agreement entitled "Trains Direct Agreement" to be entered into of even date herewith between the Lessors, the Lessee and LUL in relation, inter alia, to the transaction in part the subject of the Usage Contract and this Lease;

"Direct Arrangements" has the meaning given to it in the Direct Agreement;

"Direct Train Lease" means the lease of the Trainsets, or any of them, between the Lessors and LUL of even date herewith which takes effect and becomes operative in accordance with clause 4 of the Direct Agreement;

"DTL Concord Financial Schedule" has the meaning given to "Concord Financial Schedule" in the Direct Train Lease;

"DTL Leased Trainsets" has the meaning given to "Leased Trainsets" in the Direct Train Lease;

"DTL Net Insurance Proceeds" has the meaning given to "Net Insurance Proceeds" in the Direct Train Lease;

"DTL Net Sale Proceeds" has the meaning given to "Net Sale Proceeds" in the Direct Train Lease;

"DTL Primary Period" has the meaning given to "Primary Period" in the Direct Train Lease;

"DTL Relevant Rental" has the meaning given to "Relevant Rental" in the Direct Train Lease;

"DTL Royal Bank Financial Schedule" has the meaning given to "Royal Bank Financial Schedule" in the Direct Train Lease;

"Encumbrance" means, whether legal, equitable or otherwise, any mortgage, pledge, charge, hypothecation, encumbrance, lien, title retention, assignment for the purpose of giving security, right in rem whether statutory or otherwise, enforcement or exercise of rights giving rise to an attachment, levy or security interest of whatever kind other than a Permitted Encumbrance;

"Equipment" means together the New Equipment, the Trackside Equipment and the Trainborne Equipment;

"Equipment Initial Cash Flow" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Equipment Lease" means the lease agreement entered into of even date herewith between the Lessors and the Lessee in relation to the leasing of the Equipment;

"Event of Default" means any of the events referred to in clause 17.1;

"Expenditure Assumptions" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord)

"Extended Handback" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Extended Handback Notice" has the meaning given to it in clause 19.5(1);

"Final Leasing Date" means 30th September 1999;

"Financial Indebtedness" means in relation to any person any obligation for the payment or repayment of money, whether present or future, actual or contingent, including without limitation:

- (A) monies borrowed or raised by that person;
- (B) any liability of such person under any debenture, bond, note or other security;
- (C) any liability of such person under any acceptance credit facility, finance lease, deferred purchase consideration arrangement or any other agreement or instrument having the commercial effect of a borrowing or raising of money by such person; and
- (D) any guarantee, indemnity or other assurance against financial loss given by such person in respect of any of the foregoing;

but excluding, in any such case, any such obligation (i) which constitutes trade credit (not exceeding six (6) months) afforded to such person by any of its trade creditors in the normal course of business or (ii) which is owing to the Lessors under or in respect of this Lease;

"Forced Termination Date" has the meaning given to it in clause 18.1;

"GAL" means GEC ALSTHOM Limited (registered number 00778482) whose registered office is at Mill Road, Rugby, Warwickshire CV21 1TB;

"GAL Guarantee" means the guarantee to be entered into on or after the date hereof by GAL in favour of the Lessors in respect of the obligations of the Lessee under, inter alia, this Lease;

"GANV" means GEC ALSTHOM N.V. whose registered office is at World Trade Center, Strawinskylaan 343, 1077 XX, Amsterdam;

"GANV Guarantee" means the guarantee to be entered into on or after the date hereof by GANV in favour of the Lessors in respect of the obligations of the Lessee under, inter alia, this Lease;

"Guaranteed Liabilities" has the meaning given to it in each of the Guarantees;

"Guarantees" means the GAL Guarantee and the GANV Guarantee;

"Guarantors" means GAL and GANV;

"Handback Date" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Handback Period" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Handback Schedule" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Holding Company" shall have the meaning ascribed thereto in section 736 of the Companies Act 1985 as if the same were in force at the date hereof without amendment;

"Increased Required Amount" means, on any date, the aggregate of (i) such amount as will, when placed in the RV Deposit Account (together with the Credit Balance) for the period commencing on the date of such placing and expiring on the twentieth (20th) anniversary of the Start Date at such fixed rate of interest as is (at the date such deposit is made) being offered by the RV Bank for such amount and such period, will produce a Credit Balance of £177,067,120 as at the expiry of such period and (ii) the Additional Strip Liability as at such date;

"Indemnified Parties" has the meaning given to it in clause 9.1;

"Indemnity Sum" has the meaning given to it in clause 10.5(B);

"Initial Cash Flow" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Insurances" means the insurance cover effected, from time to time, pursuant to clause 14;

"Irrecoverable VAT" means any Value Added Tax incurred on any supply to either Lessor under or as contemplated by this Lease or any of the other

Operative Documents save to the extent that such Lessor or the representative member of any VAT group registration in which such Lessor is included is entitled to receive and retain a credit or repayment of such Value Added Tax as input tax (as that expression is defined in Section 24 of the Value Added Tax Act 1994 and subordinate legislation supplemental thereto or under any similar or equivalent legislation (or purported legislation and whether delegated or otherwise)) for the prescribed accounting period (as that expression is used in Section 25(1) of the Value Added Tax Act 1994) to which such input tax relates under Section 25 thereof PROVIDED THAT in calculating the amount of Irrecoverable VAT (if any) it shall be assumed that:

- (a) such Lessor is registered for the purposes of Value Added Tax (whether separately or as a member of a group registration);
- (b) neither such Lessor, nor any member of any VAT group registration including such Lessor, has entered into any transactions other than as contemplated by this Lease or any of the other Transaction Documents; and
- (c) such Lessor (and where applicable the representative member of a group registration including such Lessor) has carried out its obligations under the Value Added Tax legislation to make proper Value Added Tax returns, on a timely basis including, without limitation, the due and timely claiming of credit for input tax available to it, or otherwise supply documents or information to any Value Added Tax authority;

"Last Train Acceptance Date" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Lease" means this Lease and the schedules hereto;

"Lease Documents" means this Lease, the Security Assignment and any other agreement or instrument expressly contemplated herein or therein that may be entered into pursuant hereto or thereto and which the Lessors and the Lessee agree in writing to be Lease Documents;

"Lease Period" means the aggregate of the Primary Period and the Secondary Period (if any);

"Leasing Date" means, in respect of each of the Trainsets, the date upon which the same becomes subject to this Lease pursuant to clause 4.2 being, in the case of the first of such Trainsets, the Start Date;

"Leased Trainsets" means the Trainsets which have become subject to the terms and conditions of this Lease pursuant to clauses 4.2 or 15.1(B) (or, as the context may require, remain subject at any relevant time to the terms and conditions of this Lease) and includes, save as provided in this Lease, each or

any part thereof, accessories thereon (other than the Trainborne Equipment and/or Third Party Financed Equipment) and fittings thereto and all additions, substitutions, replacements and renewals from time to time made in or to or installed in or on the same as required or permitted under this Lease (other than additions, substitutions, replacements and/or renewals in respect of the Trainborne Equipment and/or Third Party Financed Equipment);

"**Lessee Group**" means GANV and any Subsidiary of GANV from time to time;

"**Lessor Agreement**" means the agreement of that name entered into between Royal Bank and Concord of even date herewith in relation to certain matters pertaining to this Lease;

"**Lessor Partial Termination Date**" has the meaning given to it in clause 8.3(D);

"**Lessor Partial Termination Notice**" has the meaning given to it in clause 8.3(C);

"**Lessor Specified Trainsets**" has the meaning given to it in clause 8.3(C);

"**Losses**" means, in relation to a Lessor and in respect of the transactions contemplated by the Transaction Documents, all losses (other than loss of profit), costs, payments, damages, liabilities, claims, penalties, fines, fees, rates, levies, charges, demands, royalties, expenses, interest borne, insurance premiums, judgements, orders or other sanctions but excluding Costs of Management Time and Taxes;

"**LRT**" means London Regional Transport, a statutory corporation created pursuant to the London Regional Transport Act 1984;

"**LUL**" means London Underground Limited (registered number 01900907) whose registered office is at 55 Broadway, London SW1H 0BD;

"**LUL Insolvency Event**" means any of the events referred to in clauses 27.1(b), (c), (d) or (e) of the Usage Contract;

"**Manuals**" means all (if any) handbooks, manuals, technical records and other similar documents and any amendments or supplements thereto relating to the Trains;

"**Manufacturer**" means GEC ALSTHOM Metro-Cammell Limited (registered number 00293588) whose registered office is at P.O. Box 248, Leigh Road, Washwood Heath, Birmingham B8 2YJ;

"**Month End Date**" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Net Insurance Proceeds" means, in respect of each Lessor, 50% of the proceeds of the Insurances received and entitled to be retained by the Lessors (converted, if received other than in Sterling, into Sterling at the spot rate of exchange obtained by the Lessors on the date of receipt thereof by the Lessors) other than any proceeds received by the Lessors pursuant to clause 14.10(C), less, in respect of each Lessor, any Losses (other than those referred to in clause 9.6) and/or Taxes (other than those referred to in clause 10.2 or those taken into account for the purposes of calculating any payment by the Lessee pursuant to the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord) or would be so taken into account but for the effect of paragraph 11 thereof) incurred, or required to be accounted for, by such Lessor in connection with such proceeds or the collection thereof;

"Net Refund Amount" means, in respect of each Lessor, 50% of the payment (if any) received by the Lessors from the Manufacturer pursuant to clause 6.4 of the Purchase Agreement less, in respect of each Lessor, any Losses (other than those referred to in clause 9.6) and/or Taxes (other than those referred to in clause 10.2 or those taken into account for the purposes of calculating any payment by the Lessee pursuant to the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord) or would be so taken into account but for the effect of paragraph 11 thereof) incurred or required to be accounted for by such Lessor in connection with such payment or the receipt thereof;

"Net Sale Proceeds" means, in respect of each Lessor, 50% of the Sale Proceeds received and entitled to be retained by the Lessors, less, in respect of each Lessor, the aggregate of:

- (1) all Taxes (other than those referred to in clause 10.2 or those taken into account for the purposes of calculating any payment by the Lessee pursuant to the Royal Bank Financial Schedule or, as the case may be, the Concord Financial Schedule or which would be so taken into account but for the effect of paragraph 11 thereof) incurred or required to be accounted for by such Lessor and/or its agents, for the sale of the Leased Trainsets (but excluding those of the Lessee acting in its capacity as exclusive sales representative pursuant to clause 19.3) of whatsoever nature connected with the sale or incurred in recovering possession of the Leased Trainsets and in having or maintaining possession of the same until sale in every such case in accordance with the provisions of this Lease; and
- (2) all Losses of such Lessor (other than those referred to in clause 9.6) which are incurred as a result of the sale of the Leased Trainsets following the expiry or Termination of the leasing of the Leased Trainsets, including any sales commission paid by such Lessor in respect of such sale but excluding any amount payable to the Lessee in its capacity as exclusive sales representative pursuant to clause 19.3;

"New Equipment" means Substantial Completion New Equipment and Final Completion New Equipment each as defined in the Usage Contract;

"Operative Documents" means the Lease Documents, the Purchase Agreement, the Usage Contract, the GAL Guarantee, the GANV Guarantee, the Parent Letters and any other agreement or instrument expressly contemplated herein or therein that may be entered into pursuant hereto or thereto and which the Lessors and Lessee agree in writing to be Operative Documents;

"Option Agreement" means the Option Agreement of even date herewith in relation to the Depots and made between the Lessors (1) and LUL (2);

"Parent Letters" means the letters dated of even date herewith from each of The Royal Bank of Scotland plc and Midland Bank plc to the Lessee in respect of inter alia their ownership of Royal Bank and Concord respectively;

"Partial Termination Attributable Cost" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Partial Termination Cash Flow" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Partial Termination Fraction" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Partial Termination Payment" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Payment Date" means each date upon which the Lessors are obliged to make a payment to the Manufacturer pursuant to clause 3.3 of the Purchase Agreement;

"Percentage Return" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Permitted Encumbrance" means:

- (A) any possessory lien arising by operation of law in the ordinary course of the Lessee's business and not securing overdue liabilities or for amounts which are due and payable and are the subject of a bona fide dispute by the Lessee;

- (B) any Encumbrance requested or created by the Lessee or LUL and expressly consented to by the Lessors; and
- (C) any Encumbrance created by, or attributable to, the Lessors or either of them.

"Permitted Transferee" has the meaning given to it in clause 17.2(A)(2);

"Potential Event" means any event which with the giving of notice, lapse of time, determination of materiality, satisfaction of any other condition or any combination thereof, will or is reasonably likely to become an Event of Default;

"Primary Period" has the meaning given to it in clause 6.2;

"Primary Period Rentals" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Primary Usage Period" has the meaning given to it in the Usage Contract;

"Property Insurance" has the meaning given to it in clause 14.2(A);

"Purchase Agreement" means the agreement of even date herewith between the Manufacturer and the Lessors pursuant to which the Manufacturer has agreed to sell inter alia the Trainsets to the Lessors;

"Purchase Price Limit" has the meaning given to it in the Purchase Agreement;

"Quarter Date" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Relevant Interest" means, where specified in relation to payments to be made by either of the Lessors to the Lessee pursuant to this Lease, such interest as the relevant Lessor shall have earned on the payment in question in the period from and including the Appropriate Date to but excluding the date of actual payment;

"Relevant Rental" means, as at any date, the amount calculated in accordance with the following formula:

$$\frac{A}{B} \times (C - D)$$

where:

A = the relevant Partial Termination Attributable Cost;

- B = the Total Cost of all Leased Trainsets (including any Leased Trainsets which have been the subject of a previous Termination);
- C = the total Rentals paid by the Lessee under this Lease as at the relevant date; and
- D = the aggregate amount of rebates of Rental made or to be made pursuant to this Lease prior to the relevant date;

"Remaining Cost" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Rental Payment Date" means any date on which a payment of Primary Period Rental or Secondary Period Rental is payable in accordance with the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Rentals" and **"Rental"** have the meanings given to them in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Replacement Plant" has the meaning given to it in clause 15.1(B);

"Required Amount" means, in respect of each Annual Date, the amount appearing opposite such date in column 2 of Schedule 5;

"Return Condition" means such condition as is consistent with full compliance by the Lessee of its obligations under clause 13;

"RMS" means GEC ALSTHOM Railway Maintenance Services Limited (registered number 02849471) whose registered office is at P.O. Box 248, Leigh Road, Washwood Heath, Birmingham B8 2YJ;

"Royal Bank" means R.B. Leasing (March) Limited;

"Royal Bank Group" means The Royal Bank of Scotland Group plc and any Subsidiary of The Royal Bank of Scotland Group plc from time to time;

"Royal Bank Financial Schedule" means schedule 1 to this Lease which sets out (inter alia) the basis of the calculation of the Rental payable by the Lessee under this Lease and of the payments to be made by the Lessee on Termination, in each case to Royal Bank;

"RTPA Filing" means the delivery in a timely manner to the Director General of Fair Trading under the Restrictive Trade Practices Acts 1976 of particulars of all or any of this Lease and any other agreement or any arrangement of which this Lease and any of the other Operative Documents form a part;

"RV Bank" means Lloyds Bank plc, 72 Lombard Street, London EC3P 3BT (sort code 13-00-02);

"RV Deposit Account" means account no 0213743 (or any other account replacing the same pursuant to clause 23.4(A)) in the name of the Lessee at the RV Bank;

"Sale Proceeds" means the proceeds of sale of any Trainsets (which are sold pursuant to clause 19.2) received and entitled to be retained by the Lessors (converted, if received other than in Sterling, into Sterling at the spot rate of exchange obtained by the Lessors on the date of receipt thereof by the Lessors);

"Secondary Period" has the meaning given to it in clause 6.3:

"Secondary Period Rental" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Security Assignment" means the assignment and charge entered into of even date herewith by the Lessee in favour of the Lessors over, inter alia, its right, title and interest in certain payments to be made by LUL under the Usage Contract;

"Software" has, insofar as the same are connected with the Leased Trainsets and/or their use in the provision of the Service (as defined in the Usage Contract), the meaning given to "Intellectual Property Rights" in the Usage Contract;

"Specified Trainsets" has the meaning given to it in clause 8.1(A);

"Start Date" means the first day of the Primary Usage Period;

"Step-Up Rights" means the rights conferred on LUL pursuant to clause 3.1 of the Direct Agreement;

"Sterling", "Pounds", "£" means the lawful currency for the time being of the United Kingdom;

"Strip Termination Amount" has the meaning given to it in paragraph 12.2 of the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Subsidiary" shall have the meaning ascribed thereto in Section 736 of the Companies Act 1985 as if the same were in force at the date hereof without amendment;

"Supervening Event" means any of the events referred to in clause 17.2;

"Taxes" means all present and future taxes, levies, imposts, duties, fees, deductions, withholdings or charges of any nature whatsoever or any amount payable on account of or as security for any of the foregoing, payable at the instance of or imposed by any statutory, governmental, international, state, federal, provincial, local or municipal authority, public agency, body or department whatsoever or European Community institution (other than such institution having the function of a central bank), in each case whether in the United Kingdom or elsewhere together with any penalties, additions to tax, fines, surcharges or interest thereon and **"Tax"**, **"Taxation"** and cognate expressions shall be construed accordingly;

"Tax System" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Termination" means the termination of the obligation of the Lessors or either of them to lease all of the Trainsets to the Lessee on the terms of this Lease pursuant to clauses 8 or 18 and/or the termination of the leasing of any of the Leased Trainsets under this Lease pursuant to clauses 8, 15 or 18 (as the case may be);

"Termination Cash Flow" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Termination Notice" has the meaning given to it in clause 18.1;

"Termination Payment" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Termination Payment Date" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Third Party Financed Equipment" means any equipment attached to the Leased Trainsets and leased or hired to the Lessee by a third party or self-financed by the Lessee provided that the lessor/hirer of such equipment or (as the case may be) the Lessee has (i) confirmed and acknowledged in writing to the Lessors (in a form and substance reasonably satisfactory to them) that it will respect the interests of the Lessors in the Leased Trainsets and that it will not seek to exercise any rights whatsoever in relation to the Leased Trainsets and (ii) entered into arrangements with the Lessors (in a form and substance reasonably satisfactory to them) in relation to the sale of such equipment with the Leased Trainsets on the expiry or Termination of the Lease Period and the application of the sale proceeds thereof on a pro rata basis according to their respective interests therein;

"Third Party Insurance" has the meaning given to it in clause 14.1(A);

"Total Cost" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"Total Loss" means in relation to any Car which constitutes part of a Leased Trainset:

- (A) damage beyond repair (regardless of whether such damage shall give rise to a payment under the Insurances); or
- (B) damage (not being damage beyond repair) which is uneconomic to repair; or
- (C) requisition of title, sequestration, forfeiture or any compulsory acquisition of title whatsoever; or
- (D) theft resulting in loss of possession by the Lessee or LUL for a period of ninety (90) consecutive days; or
- (E) detention, confiscation, restraint or seizure resulting in loss of possession by the Lessee or LUL for a period of ninety (90) consecutive days,

and such Total Loss shall be deemed to occur on:

- (1) the date of such damage beyond repair; or
- (2) the date on which it is declared by the Lessee that such damage is uneconomic to repair; or
- (3) the date on which such requisition of title, confiscation, sequestration, forfeiture or other compulsory acquisition takes place; or
- (4) the expiration of such period of ninety (90) consecutive days' loss of possession following theft; or
- (5) the expiration of such period of ninety (90) consecutive days' loss of possession following detention, confiscation, restraint or seizure,

"Total Loss Payment Date" means, in relation to any Car which constitutes part of a Leased Trainset and which suffers a Total Loss, the date which is ten (10) days after the preparation of the relevant Partial Termination Cash Flow or, as the case may be, Termination Cash Flow;

"Trackside Equipment" has the meaning given to it in the Usage Contract;

"Trainborne Equipment" has the meaning given to it in the Usage Contract with the exception of the CCTV Equipment;

"Trains" has the meaning given to "New Trains" in the Usage Contract;

"Trainsets" means all or any of the Trains to be purchased by the Lessors under the Purchase Agreement and which are intended to be leased to the Lessee pursuant to this Lease together with the Manuals, the CCTV Equipment and the Software;

"Transaction Documents" means collectively (i) the Operative Documents as defined herein, and (ii) the Operative Documents as defined in the Equipment Lease, (iii) the Depot Lease Documentation as defined in the Depot Lease, (iv) the Direct Agreement, (v) the Lessor Agreement, (vi) the VAT Agreement, and any other agreement or instrument expressly contemplated herein or therein that may be entered into pursuant hereto or thereto and which the Lessors and Lessee agree in writing to be Transaction Documents;

"Undelivered Trainsets" has the meaning given to it in clause 18.4;

"Undelivered Trainsets Termination Date" has the meaning given to it in clause 18.4;

"Unextended Tertiary Usage Period" has the meaning given to it in the Usage Contract;

"Usage Contract" means the agreement of that name to be entered into of even date herewith between the Lessee and LUL pursuant to which the Lessee shall inter alia provide LUL with inter alia the Leased Trainsets;

"Usage Contract Account" has the meaning given to it in the Security Assignment;

"Usage Payments" has the meaning given to it in the Usage Contract;

"Value Added Tax" or **"VAT"** means value added tax as provided for in the Value Added Tax Act 1994 and legislation (delegated or otherwise) supplemental thereto and any similar tax replacing or introduced in addition to the same;

"Variable Assumptions" has the meaning given to it in the Royal Bank Financial Schedule (in respect of Royal Bank) and the Concord Financial Schedule (in respect of Concord);

"VAT Agreement" means the agreement of that name entered into between Royal Bank and Concord of even date in relation to matters pertaining to VAT and the transactions contemplated by the Transaction Documents;

"Voluntary Termination Date" has the meaning given to it in clause 8.1;

"Voluntary Termination Notice" has the meaning given to it in clause 8.1;

"Working Day" means any day, other than:

- (A) a Saturday or Sunday; or
- (B) a day which is a bank or public holiday in London or, where relevant any jurisdiction from which the funding is obtained, directly or indirectly, in relation to this Lease; or
- (C) a day on which banking institutions in England or, where relevant, any jurisdiction from which the funding is obtained, directly or indirectly, in relation to this Lease are otherwise authorised or required by law to close.

1.2 Software Licence

Where any reference in this Lease to "Trainsets" or "Leased Trainsets" are to be applied to that part of the Trainsets or Leased Trainsets comprising Software:

- (A) the expression "lease" and all cognate expressions shall be construed as "licence" or derivatives thereof (as the context admits); and
- (B) the expression "Rental" and all cognate expressions shall be construed as "licence fees" or derivatives thereof (as the context admits).

1.3 Connected persons

Any question whether a person is connected with another for the purposes of this Lease shall be determined in accordance with the provisions of Section 839 of the Income and Corporation Taxes Act 1988.

1.4 Construction

Where the context so admits, words importing the singular number only shall include the plural and vice versa, words importing a gender shall include any other gender and words importing persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, country, state or agency (and without prejudice to the generality of the foregoing, agency shall include any authority, central bank, department, legislature, ministry, official (acting in his capacity as such), or public or statutory person (whether autonomous or not) of, or of the government of, that country or state or any political sub-division in or of that country or state) of a country or state (in each case whether or not having separate legal personality). The words "other" or "otherwise" and "whatsoever" shall not be construed ejusdem generis or be construed as a limitation upon the generality of any preceding words or matters specifically referred to. The words "including" and "in particular" shall be construed as being by way of illustration or

emphasis and shall not limit the generality of any preceding words nor exclude any words not included in any preceding words.

1.5 References to Statutes

Save as expressly provided to the contrary herein, references in this Lease (but not in the Royal Bank Financial Schedule or the Concord Financial Schedule) to any statute or statutory provision shall include a reference to that statute or statutory provision as the same shall from time to time be amended, extended, consolidated or replaced and shall include any orders, regulations, instrument or other subordinate legislation made under the relevant statute or statutory provision.

1.6 References to documents

References to (or to any specified provision of) this Lease, any other Operative Document or other document shall be construed as references to (or to the specified provision of) this Lease or other document as in force for the time being and as novated, extended, renewed, supplemented or amended in accordance with the terms thereof, or as the case may be, with the agreement of the relevant parties or the consent of a specified party.

1.7 References to clauses, etc.

References in this Lease to clauses, paragraphs and schedules shall (save where otherwise expressly stated) be construed as references to clauses and paragraphs of and schedules to this Lease.

1.8 Titles

The titles to the clauses of this Lease shall not in any way affect the interpretation of such clauses.

1.9 Persons

References in this Lease to persons or parties shall include the successors and permitted transferees and assignees of such persons or parties.

2 Representations and Warranties

2.1 Representations and Warranties of Lessee

The Lessee represents and warrants to each of the Lessors in accordance with the following clauses 2.2 to 2.6.

2.2 Enforceability

- (A) The Lessee is duly incorporated under the laws of England and Wales and has the power to enter into, and to exercise its rights and perform its obligations under, this Lease and the other Transaction Documents to which it is a party.
- (B) The Lessee has taken all necessary corporate action to authorise the execution of, and the performance of its obligations under, this Lease and the other Transaction Documents to which it is a party.
- (C) The obligations expressed to be assumed by the Lessee under this Lease and the other Transaction Documents to which it is a party are legal, valid, binding and enforceable subject to principles of equity, laws relating to bankruptcy, insolvency or liquidation or any other laws or legal procedures generally affecting the enforcement of creditors' rights or the rights of contracting parties and further subject to the RTPA Filing.

2.3 Consequences of execution and performance

- (A) Neither execution nor performance by the Lessee of this Lease and the other Transaction Documents to which the Lessee is a party will contravene any provision of:
 - (1) its Memorandum or Articles of Association;
 - (2) any law, or regulation (in each case applicable to it) which is presently in force;
 - (3) any order or decree of any court or arbitrator applicable to it; or
 - (4) any obligation which is binding upon, or upon any assets or revenues of, the Lessee.
- (B) All consents, licences, approvals or authorisations of, exemptions by, or filings (save for the RTPA filing), registrations or declarations with, any governmental or other authority required by the Lessee with respect to this Lease and the other Transaction Documents to which it is a party have been obtained or made and are valid and subsisting.

2.4 Circumstances affecting Lessee's performance

- (A) No claim is presently being asserted, and no action, suit, proceeding, litigation, dispute, arbitration or administrative proceeding is presently in progress or pending or, to the knowledge of the Lessee, threatened nor is there subsisting any judgement or award given, in each case against the Lessee or any of its assets, which will or is reasonably likely

to have a material adverse effect on the ability of the Lessee to perform its obligations under this Lease and the other Transaction Documents to which it is a party.

- (B) The Lessee is not subject to any obligation compliance with which will or is reasonably likely to have a material adverse effect on its ability to perform its obligations under this Lease and the other Transaction Documents to which it is a party.
- (C) No Potential Event or Event of Default has occurred and is continuing in relation to the Lessee.
- (D) The Lessee is not in breach of any agreement or instrument by which it or any of its assets is bound, being a breach which will or is reasonably likely to have a material adverse effect on the ability of the Lessee to perform its obligations under this Lease and the other Transaction Documents to which it is a party.
- (E) No Encumbrance (other than Permitted Encumbrances) created by and/or attributable to the Lessee exists in relation to the Trainsets and/or the Leased Trainsets.

2.5 Ownership

The Lessee is a wholly-owned Subsidiary of GAL.

2.6 Repetition

The representations and warranties contained in clauses 2.2 to 2.4 inclusive shall be deemed to be repeated by the Lessee on each Payment Date and on each Leasing Date as if made with reference to the facts and circumstances existing on such date.

2.7 Representations and Warranties of the Lessors

Each Lessor represents (in respect of itself only) to the Lessee as at the date of this Lease as follows:

- (A) It is duly incorporated under the laws of England and Wales and has the power to enter into, and to exercise its rights and perform its obligations under, this Lease and the other Transaction Documents to which it is a party.
- (B) It has taken all necessary corporate action to authorise the execution of, and the performance of its obligations under, this Lease and the other Transaction Documents to which it is a party.

- (C) The obligations expressed to be assumed by it under this Lease and the other Transaction Documents to which it is a party are legal, valid, binding and enforceable subject to principles of equity, laws relating to bankruptcy, insolvency or liquidation or any other laws or legal procedures generally affecting the enforcement of creditors' rights or the rights of contracting parties and further subject to the RTPA Filing.
- (D) Neither execution nor performance by it of this Lease will contravene any provision of:
 - (1) its Memorandum or Articles of Association;
 - (2) any law, or regulation (in each case applicable to it) which is presently in force;
 - (3) any order or decree of any court or arbitrator applicable to it; or
 - (4) any obligation which is binding upon it or upon any of its assets or revenues.
- (E) All consents, licences, approvals or authorisations of, exemptions by, or filings (save for the RTPA filing), registrations or declarations with, any governmental or other authority required by it with respect to this Lease have been obtained or made and are valid and subsisting.
- (F) No Encumbrance created by and/or attributable to it exists in relation to the Trainsets and/or the Leased Trainsets.
- (G) Royal Bank is a wholly-owned Subsidiary of Royal Bank Leasing Limited and Concord is a wholly-owned Subsidiary of Forward Trust Group Limited

3 Conditions Precedent

3.1 Conditions Precedent to the Lessors' and Lessee's respective obligations under this Lease

- (A) The obligations of the Lessors under this Lease (including the Lessors obligation to lease any Trainsets to the Lessee) shall be subject to fulfilment of each of the following conditions:
 - (1) the Lessors shall have received an executed original (or, as appropriate, a certified copy) of each of the other Transaction Documents contemplated at the date hereof (but excluding those contemplated to come into being after this Lease has come into full force and effect including the Depot Head Lease, the Depot Superior Lease and the Depot Lease) each of which shall be in full force and effect; and

- (2) the Lessors shall have received the documents and evidence specified in schedule 3.

The Lessors shall notify the Lessee in writing when all of the above conditions have been satisfied or waived.

- (B) The obligations of the Lessee under this Lease shall be subject to the fulfilment of each of the following conditions:

- (1) the Lessee shall have received an executed original (or, as appropriate, a certified copy) of each of the other Transaction Documents contemplated at the date hereof (but excluding those contemplated to come into being after this Lease has come into full force and effect) each of which shall be in full force and effect; and

- (2) the Lessee shall have received the documents and evidence specified in clauses 2.1(d) and (f) of the Usage Contract.

The Lessee shall notify the Lessors in writing when all of the above conditions have been satisfied or waived.

3.2 Conditions Precedent to the leasing of Trainsets

Without prejudice to clause 3.1, the obligation of the Lessors to lease the Trainsets to the Lessee pursuant to the terms of this Lease shall be further subject to the fulfilment of the following conditions immediately prior to the leasing hereunder of each of the Trainsets:

- (A) the Lessors shall have received originals or certified copies of certificates evidencing the Insurances and a letter of undertaking in the form set out in schedule 4 addressed to the Lessors by the Approved Brokers; and
- (B) no Potential Event, Event of Default or Supervening Event (which has not been remedied pursuant to clauses 17.3 or 17.4) shall have occurred and be continuing.

4 Agreement to Lease and Delivery

4.1 Agreement to Lease

Each of the Lessors agrees to lease the Trainsets to the Lessee and the Lessee agrees to take the Trainsets on lease from the Lessors for the Lease Period on the terms and conditions of this Lease.

4.2 Commencement of leasing and delivery

Each of the Trainsets shall be leased to the Lessee on the terms of this Lease on and from the later of the time of Acceptance of such Trainset and the time at which title to such Trainset passes to the Lessors under the Purchase Agreement, and, thereupon, delivery of the relevant Trainset by the Lessors to and the acceptance thereof by the Lessee for the purposes of this Lease shall be deemed to be effected and the same shall become subject to this Lease.

4.3 Risk

Notwithstanding any transfer of title to, or the vesting of any rights in, the Lessors, the Lessee shall (as between the Lessee and the Lessors) at all times bear all risks of loss, theft, damage and destruction of or to the Trainsets and/or the Leased Trainsets and no such event nor (subject to clause 7.4) any other event, circumstance or change in law shall impair, discharge or frustrate any obligation of the Lessee under this Lease or the other Transaction Documents to which the Lessee is a party (including without limitation as to Rental or other payments) so that all such obligations shall continue in full force and effect.

5 Exclusion Clause

The Lessee acknowledges and agrees that:

- (A) the Trainsets have been, are being or are to be designed, manufactured, assembled and constructed without reference to or involvement of the Lessors (other than the entering into of the Purchase Agreement by the Lessors) and the Lessee alone has selected the Trainsets for purchase by the Lessors and leasing by the Lessors to the Lessee pursuant to this Lease;
- (B) the Lessors enter into this Lease and the other Transaction Documents to which they are a party at the request, but not on behalf, of the Lessee;
- (C) subject to clause 11.2, each of the Lessors lets the Leased Trainsets without any representation, warranty, covenant, condition or undertaking in favour of the Lessee whether expressed or to be implied by statute, at common law or otherwise:
 - (1) concerning its design, manufacture, state, title, value, ownership, merchantability, fitness for use, suitability, condition, durability, quality, appearance, safety, capacity, operation, performance or any other qualities;
 - (2) as to the absence of latent or other defects (whether or not discoverable);

(3) as to the absence of any infringement of any patent, trademark or copyright; or

(4) otherwise in relation thereto,

and all such representations, warranties, covenants, conditions and undertakings are hereby excluded and/or waived by the Lessee;

(D) the Lessee is leasing the Trainsets and/or the Leased Trainsets from the Lessors "as is, where is and with all faults" and acknowledges that, as against each of the Lessors, the Trainsets and/or the Leased Trainsets are complete, in good order and condition, of merchantable quality, fit for any purpose for which they may be intended or required and acceptable in respect of suitability, durability, quality, appearance, safety, capacity, operation and performance and all other qualities, and the Lessee hereby waives (and will at all times waive) as between itself and each of the Lessors all its rights (express or implied, whether statutory or otherwise) against each of the Lessors (but not against any other person) relating to any of the matters referred to in clause 5(C);

(E) the Lessors rely on the skill and expertise of the Lessee in carrying out the Lessee's duties under this Lease and the other Transaction Documents to which it is a party and in selecting the Trainsets for purchase and leasing;

(F) the description of the Trainsets and/or the Leased Trainsets in this Lease and the other Transaction Documents is for identification only and that such description is not of itself a term of this Lease; and

(G) neither of the Lessors shall be under any liability whatsoever and howsoever arising and whether in contract or in tort or both in respect of any loss (including loss of profits and consequential loss), liability, damage (including death, injury or disease (other than death or personal injury liability for which may not be excluded under Section 2(1) of the Unfair Contract Terms Act 1977)) or unavailability of, or to or in connection with the Trainsets and/or the Leased Trainsets or any person or property whatsoever, irrespective of whether such loss, liability, damage or unavailability shall arise from the condition of, defect (whether in relation to quality or otherwise) in, failure of or unsuitability for any purpose of, the Trainsets and/or the Leased Trainsets or from any action or omission of the Lessors, with the exception of:

(1) any misrepresentation by it under clause 2.7; or

(2) any material breach by it of any of the terms of this Lease or any other Transaction Document to which it is a party; or

- (3) any action or omission by it which constitutes gross negligence or wilful default;

other than to the extent caused in each case by reason of any action or omission of the Lessee.

6 Lease Period

6.1 Lease of Trainsets

The Lessors shall lease the Trainsets to the Lessee, and the Lessee shall take on lease each of the Trainsets from the Lessors, as and from the relevant Leasing Date for the remainder of the Lease Period subject to the terms and conditions contained in this Lease.

6.2 Primary Period

The Primary Period shall, subject to the terms and conditions of this Lease with respect to prior Termination, be the period commencing on the Start Date and ending on the thirtieth (30th) anniversary of such date or, if that day is not a Working Day, the immediately preceding Working Day. Subject to the terms and conditions of this Lease with respect to prior Termination and subject always to clauses 6.3 and 19.5, the Lessee shall on the last day of the Primary Period redeliver the Leased Trainsets to the Lessors in all respects in accordance with clause 19.1.

6.3 Secondary Period

Provided that LUL has exercised its right under clause 6.3 of the Usage Contract to continue the Usage Contract into the Unextended Tertiary Usage Period, the Lessee shall be entitled to give the Lessors notice in writing not less than one hundred and twenty (120) Working Days prior to the expiry of the Primary Period to the effect that it wishes the leasing of the Leased Trainsets to continue hereunder for a continuation period (the "**Secondary Period**") commencing immediately following the expiry of the Primary Period and ending (subject always to any applicable Handback Period) on such date as the Lessee may specify in such notice provided that such date (as the same may be extended by any applicable Handback Period) shall be in any event prior to the date at which the Leased Trainsets shall cease to have a useful economic life, and, subject always to the other terms and conditions of this Lease, such leasing shall upon the expiry of the Primary Period continue accordingly until the expiry of the Secondary Period.

7 Payment of Rental, etc.

7.1 Primary Period

From the date hereof until the expiry of the Primary Period the Lessee shall pay to Royal Bank the Rental for the Leased Trainsets and all other sums due in accordance with the provisions of the Royal Bank Financial Schedule and shall pay to Concord the Rental for the Leased Trainsets and all other sums due in accordance with the provisions of the Concord Financial Schedule.

7.2 Secondary Period

In respect of the Secondary Period the Lessee shall pay to Royal Bank the Secondary Period Rentals for the Leased Trainsets in accordance with the provisions of the Royal Bank Financial Schedule and shall pay to Concord the Secondary Period Rentals for the Leased Trainsets in accordance with the provisions of the Concord Financial Schedule.

7.3 Payment obligations unconditional

- (A) The Lessee acknowledges that, as between the Lessee and each of the Lessors but not as between the Lessee and any other person, the Lessee's obligations to pay Rental (in full) and make other payments (in full) in accordance with this Lease shall, subject always to clause 7.4, be absolute and unconditional (except as otherwise expressly provided herein) irrespective of any contingency whatsoever including, but not limited to:
- (1) any right of set-off, counterclaim, recoupment, defence or other right (unless and to the extent that the law requires such right to be exercised);
 - (2) any unavailability of the Trainsets and/or the Leased Trainsets for any reason, or any prohibition or interruption of or other restriction against the Lessee's use, operation or possession of the Trainsets and/or the Leased Trainsets, any interference with such use, operation or possession or any failure to deliver any part of the Trainsets and/or the Leased Trainsets, or any lack, or invalidity of, title or any other defect in the title, merchantability, fitness for any purpose, condition, design or operation of any kind or nature of the Trainsets and/or the Leased Trainsets, or the ineligibility of the Trainsets and/or the Leased Trainsets for any particular use or trade, or registration or documentation under the laws of any relevant jurisdiction, or (subject to the provisions of clause 15.3) the Total Loss of, or any damage (not constituting a Total Loss) to, the Trainsets and/or the Leased Trainsets;

- (3) any insolvency, bankruptcy, administration, receivership or administrative receivership, reorganisation, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings by or against the Lessee;
 - (4) any invalidity or unenforceability or lack of due authorisation of, or other defect in, this Lease or any of the other Transaction Documents or any particular provision hereof or thereof;
 - (5) any failure or delay on the part of any party hereto duly to perform or comply with its obligations under this Lease; and
 - (6) any other cause which (but for this provision) would or might have the effect of terminating, discharging or in any way affecting any obligation of the Lessee hereunder.
- (B) The provisions of this clause 7.3 shall exist independently of the other provisions of this Lease and/or the other Transaction Documents and shall survive any frustration or termination of this Lease and/or the other Transaction Documents. Save as expressly provided in this Lease or the other Transaction Documents no monies payable or paid hereunder by the Lessee to either of the Lessors (including, without limitation, any Rentals paid in advance) shall be repayable to the Lessee.

7.4 Limited Recourse

- (A) Notwithstanding any other provision in this Lease, in respect of any Partial Termination Payment or Termination Payment or Acceleration Payment, or other payment in connection with any of the foregoing (including, without limitation, any variation or adjustment thereto) which in each such case is expressed to be payable by the Lessee in respect of the circumstances contemplated under each provision of this Lease which is detailed in column 1 of the Table below, the Lessors agree that, if and to the extent that an amount (but only to the extent of that amount and not otherwise) is expressed to be payable by LUL in those circumstances at or about the relevant time under the provision of the Usage Contract which is detailed in column 2 of the Table below opposite such provision of this Lease the recourse which the Lessors shall have to the Lessee for, the making of such Partial Termination Payment or Termination Payment or Acceleration Payment or other payment by the Lessee hereunder shall (save in circumstances in which (a) the Lessee is in breach of its obligations under clause 5.1(e)(xx)(aa) of the Security Assignment in relation to the relevant amount paid by LUL into the Usage Contract Account, or (b) LUL has paid the relevant amount to the Lessee other than by credit of the same to the Usage Contract Account and the Lessee has not accounted for such amount to the Lessors) be limited to such amounts as may be recoverable by the Lessors from, by or in respect of the enforcement of their respective rights:

- (a) against LUL (as assignees from the Lessee pursuant to the Security Assignment) in respect of the amount expressed to be payable by LUL under and in respect of the relevant provision of the Usage Contract referred to in column 2 of the Table below;
- (b) in relation to any proceeds of the Property Insurances; and
- (c) in relation to any proceeds of sale of the Leased Trainsets, and
- (d) in relation to any Net Refund Amount,

provided that the provisions of this clause 7.4(A) only limit the liability of the Lessee for the discharge of its monetary obligations in respect of the amounts referred to above and shall not derogate from or otherwise limit the recovery by the Lessors of the full amount of such Partial Termination Payment or Termination Payment or Acceleration Payment or other payment and the Lessors shall be entitled to reimburse themselves in full from the proceeds of any enforcement of their rights, and/or from any of the amounts, referred to in (a), (b), (c) and (d) above.

Table

	<u>Column 1 - Lease</u>	<u>Column 2 - Usage Contract</u>
(i)	clause 8	clause 26.1
(ii)	clause 17.2(A)	clause 25
(iii)	clause 17.2(B) (save under clause 17.2(B)(1) where referable to clauses 27.1(f) or (g) of the Usage Contract)	clause 27
(iv)	clause 17.2(D)	clause 26.3
(v)	clause 7.6, but only in relation to payments under (i)-(iv) above	clause 18.3.2
(vi)	clause 7.8, but only in relation to payments under (i)-(iv) above	clause 18.7
(vii)	clause 10.6(B), but only in relation to payments under (i)-(iv) above	clause 31.A.8.2

- (B) Subject as provided below and to the Lessors' rights under clause 22.4, the Lessors shall repay to the Lessee upon demand any Rental which is paid by the Lessee to the Lessors under this Lease, together with

Relevant Interest from the date on which such sum falls due to be repaid (as determined by clause 7.8) until the date of actual repayment, if (but only if) it is subsequently established that, at the date of such payment by the Lessee, an LUL Insolvency Event shall have been subsisting and (but only to the extent that) there is a corresponding payment expressed to be payable by LUL to the Lessee under the Usage Contract at or about the relevant time which is not the subject of any right of set-off, counterclaim, withholding or other deduction available to and exercised by LUL or any receiver, liquidator, administrator, or other like person, of LUL (the Lessors liability to make any such repayment however always being limited to the amount expressed to be payable on account of such corresponding payment, and it being agreed in any event that such liability shall not arise in circumstances in which (a) the Lessee is in breach of its obligations under clause 5.1(e)(xx)(aa) of the Security Assignment in relation to the relevant amount paid by LUL into the Usage Contract Account, or (b) LUL has paid the relevant amount to the Lessee other than by credit of the same to the Usage Contract Account and the Lessee has not accounted for such amount to the Lessors).

- (C) Without prejudice to the other provisions of this clause 7.4, the Lessee shall, as soon as is reasonably practical following the occurrence of any circumstances which it considers will result in clauses 7.4(A) or (B) applying to any amount paid or payable by the Lessee to the Lessors under this Lease, provide the Lessors with written details of such circumstances and of the quantum of any claim for limited recourse which the Lessee considers it is or will be entitled to make.
- (D) Where any Clawback Refund is made by the Lessors, the liability of the Lessee to make payment of the Rental (or, as the case may be, the relevant part thereof) to which such Clawback Refund relates shall remain undischarged provided however that the provisions of clause 7.4(A) shall apply mutatis mutandis to the Lessee's obligations in respect of such payment as if the relevant Rental or part thereof were an amount specified in column 1 of the Table referred to in clause 7.4(A) and the rights of recourse of the Lessors to the Lessee for recovery of such payment shall be limited accordingly.
- (E) The provisions of this clause 7.4 shall exist independently of the other provisions of this Lease and/or the other Transaction Documents and shall survive any frustration or termination of this Lease and/or the other Transaction Documents.

7.5 Currency, mode of Payments and VAT invoices

- (A) All payments by the Lessee to either of the Lessors under this Lease and the other Lease Documents to which the Lessee is a party shall be paid in cleared Sterling funds to the relevant Lessor with value by not later

than 12:00 noon on the due date (as specified in the Financial Schedule in the case of Rental) by means of C.H.A.P.S. to:

- (1) in the case of Royal Bank, account no 12176290 with The Royal Bank of Scotland plc, 45 The Promenade, Cheltenham, Gloucester GL50 (sort code 16.16.13); and
- (2) in the case of Concord, account no 01420984 with Midland Bank plc, Poultry and Princes Street, London EC2 (sort code 40.05.30);

or in such other manner and to such other place in the United Kingdom as the relevant Lessor may from time to time designate by not less than ten (10) Working Days' prior notification to the Lessee.

- (B) Each Lessor shall provide the Lessee with a valid VAT invoice in respect of each payment due by the Lessee to such Lessor under this Lease but, for the avoidance of doubt, the failure by either Lessor to do so shall not relieve the Lessee of its obligation to make any such payment on its due date.

7.6 Currency indemnity

If, under any applicable law, and whether pursuant to a judgement being made or registered against the Lessee, or the liquidation of the Lessee or for any other reason, any payment under this Lease is made or falls to be satisfied in a currency (the "payment currency") other than the currency (the "contractual currency") in which such payment is due under this Lease then, to the extent that the amount of such payment actually received by the relevant Lessor, when converted into the contractual currency at the rate of exchange, falls short of the amount due under this Lease, the Lessee, as a separate and independent obligation, shall indemnify the relevant Lessor on demand against the amount of such shortfall. For the purposes of this clause 7.6 "rate of exchange" means the rate at which the relevant Lessor is able on or about the date of payment to purchase the contractual currency with the payment currency and shall take into account any premium and other proper costs of exchange with respect thereto. To the extent that the amount of any such payment, when converted into the contractual currency at the rate of exchange, exceeds the amount due under or in connection with this Lease, the relevant Lessor shall promptly reimburse the Lessee with the amount of such excess together with Relevant Interest thereon.

7.7 Payment on Working Day

When a payment under this Lease falls due on a day which is not a Working Day, payment shall be made on the immediately preceding Working Day.

7.8 Payment of Interest

- (A) If the Lessee fails to make any payment under this Lease on the due date for payment the Lessee shall pay interest on that amount (including any interest accrued up to and due and payable on the due date of payment) from and including the date of default up to but excluding the date of actual payment (as well after as before judgment) at the Default Rate.
- (B) In the case of any payment expressed to be payable by the Lessee on demand (including, without limitation, payments by way of indemnity) the due date for payment shall be the date which is three (3) Working Days after the date on which the relevant Lessor makes demand on the Lessee and interest at the Base Rate shall accrue on each amount so demanded from and including the date of demand (provided that such date is a Working Day and that such demand is made prior to 12 noon on such date, failing which such interest shall accrue from and including the immediately succeeding Working Day) to, but excluding the due date for, payment.
- (C) If either of the Lessors fails to pay any amount under this Lease on the due date for payment the relevant Lessor shall pay interest on that amount (including any interest accrued up to and due and payable on the due date of payment) from and including the date of default up to but excluding the date of actual payment (as well after as before judgment) at the Default Rate.
- (D) In the case of any payment expressed to be payable by either of the Lessors on demand (including, without limitation, payments by way of indemnity) the due date for payment shall be the date which is three (3) Working Days after the date on which the Lessee makes demand on the relevant Lessor and interest at the Base Rate shall accrue on each amount so demanded from and including the date of demand (provided that such date is a Working Day and that such demand is made prior to 12 noon on such date, failing which such interest shall accrue from and including the immediately succeeding Working Day) to, but excluding the due date for, payment.
- (E) Interest under this clause 7.8 shall accrue daily on the bank basis of a year of three hundred and sixty-five (365) days and actual number of days elapsed.

7.9 Calculations

Subject to paragraph 13 of the Concord Financial Schedule or (as the case may be) the Royal Bank Financial Schedule, any certificate, notice or determination of either of the Lessors as to any amount payable to or by it under this clause 7 or any other provision of this Lease shall be conclusive and binding on the Lessee (save for manifest error). Any certificate or determination shall include

reasonable details of the calculations upon which such certificate or determination is based to the extent that such details would not in the reasonable opinion of the relevant Lessor constitute confidential information in relation to the affairs of such Lessor and/or the Royal Bank Group or (as the case may be) the Concord Group.

7.10 Application of Monies

If any sum paid or recovered in respect of the liabilities of the Lessee under this Lease is less than the amount then due and payable, the relevant Lessor may apply such sum to any Rental, Termination Payment, interest, fees or any other amount due under this Lease in such proportions and order and generally in such manner as such Lessor shall determine.

7.11 Fees

The Lessee shall pay to the Lessors the fees referred to in paragraph 2.7 of the Royal Bank Financial Schedule (in the case of Royal Bank) and the Concord Financial Schedule (in the case of Concord) in accordance with the terms thereof.

7.12 VAT on Limited Recourse Sums

- (A) The provisions of clause 7.4 shall apply to any VAT payable pursuant to clause 10.8 in relation to any Partial Termination Payment or Termination Payment or Acceleration Payment or other payment to which clause 7.4 applies as they apply in relation to such payments.
- (B) Where any Partial Termination Payment or Termination Payment is due to a Lessor the Lessor may, to the extent permitted by law or HM Customs & Excise practice (but shall not be bound to), treat the payment as not subject to VAT;
- (C) Where any Partial Termination Payment or Termination Payment or Acceleration Payment or other payment is due to a Lessor where clause 7.12(B) does not apply, and the provisions of clause 7.4 apply to that payment, the Lessor may, to the extent permitted by law or HM Customs & Excise practice, (but shall not be bound to), treat the application of clause 7.4 as resulting in a decrease in the consideration for the supplies under this Lease, and shall issue a credit note to the Lessee accordingly, and the Lessee and the Lessor shall make all appropriate entries for the purposes of the Value Added Tax (Accounting and Record) Regulations 1989 (or any legislation supplementing re-enacting or replacing that regulation) but (save to the extent that any VAT has actually been received by the Lessor in respect of Rental paid to the Lessor and which is subject to a Clawback Refund and the Lessee certifies to the Lessor that it would not be able to recover credit in full in respect of such amount under applicable VAT legislation and

regulations) no payment shall be required to be made as a result thereof between Lessor and Lessee. If following the issue of a credit note in accordance with this clause 7.12(C) any payment is subsequently recovered by the Lessor from the Lessee in accordance with clause 7.4 the Lessor will issue a debit note to the Lessee, and the Lessor and the Lessee will make all appropriate entries in their accounts for VAT purposes.

- (D) Where any Partial Termination Payment or Termination Payment or Acceleration Payment or other payment is due to a Lessor and neither clause 7.12(B) or 7.12(C) applies and the provisions of clause 7.4 apply to the payment, the Lessee shall take all reasonable steps to obtain a repayment of any VAT charged in respect of the corresponding amount referred to in column 2 of the Table in clause 7.4 from HM Customs & Excise in accordance with Section 11 Finance Act 1990 and the Lessor shall have recourse to the Lessee in respect of any sum due under the Lease to which clause 7.4 had applied to the extent of the amount so recovered.

8 Voluntary Termination

8.1 Voluntary Termination Notice

- (A) The Lessee may, upon giving the Lessors notice in writing (a "**Voluntary Termination Notice**") in accordance with the provisions of this clause 8.1(A) and subject to clause 8.1(B), terminate the leasing of all or any of the Leased Trainsets without prejudice to any continuing obligations on the part of the Lessee under this Lease, including, without limitation, its indemnity obligations pursuant to this Lease. Subject always to the provisions of clause 19.5, a Voluntary Termination Notice shall be irrevocable, shall be given no later than the first Working Day after a Quarter Date, and shall specify the Trainsets and/or the Leased Trainsets (as the case may be) which are to be the subject of such Termination (the "**Specified Trainsets**"), which must in any event comprise a number of whole Trains, and the date or dates (which must fall on or prior to the next following Quarter Date) on which the Lessee is to re-deliver the Specified Trainsets to the Lessors. The date for Termination (the "**Voluntary Termination Date**") of the leasing of the Specified Trainsets shall (notwithstanding the date of actual re-delivery) be the next following Quarter Date.
- (B) The Lessee shall not be entitled to serve a Voluntary Termination Notice unless:
- (1) LUL shall have given a voluntary termination notice to the Lessee under clause 26.1.1 of the Usage Contract in respect of all of the Specified Trainsets; and

- (2) a voluntary termination notice is also simultaneously being given under the Equipment Lease in respect of all Trainborne Equipment which relates to the Specified Trainsets.

8.2 Payments on Voluntary Termination Date

Subject to clause 19.5, on the Voluntary Termination Date the Lessee shall pay to each Lessor in respect of the Specified Trainsets by way of further Rental the amount notified by such Lessor to the Lessee as being the amount by which the aggregate of:

- (1) the Termination Payment or Partial Termination Payment (as the case may be) calculated as at the Voluntary Termination Date; and
- (2) all arrears of Rental and any other sums (whether in respect of interest, costs, fees, expenses or otherwise) then accrued and due or due and payable to the relevant Lessor under this Lease,

exceeds the Net Sale Proceeds (if any) received by such Lessor on or prior to the Voluntary Termination Date.

8.3 Lessor Partial Termination

- (A) In the event that any change occurs at any time and from time to time prior to the date on which the Applicable Cash Flow to be prepared pursuant to paragraph 4.8 of the Royal Bank Financial Schedule or, as the case may be, the Concord Financial Schedule is so prepared in any of the Variable Assumptions or Expenditure Assumptions which change or changes would result in the Aggregate Adjusted Amount exceeding the Aggregate Amount, the Lessors shall, upon becoming aware of the same, notify the Lessee of the Aggregate Adjusted Amount.
- (B) The Lessors shall discuss with the Lessee the extent to which a Termination of the Lessors' obligation to take on lease the Trainsets which have not yet become leased and/or the leasing of some or all of the Leased Trainsets would be required to ensure that, upon receipt of the Partial Termination Payment in respect of such Termination, the Aggregate Adjusted Amount would be equal to or lower than the Aggregate Amount, and the Trainsets or Leased Trainsets which should be the subject of such Termination.
- (C) Following the expiry of a period of thirty (30) days after the date on which notification is given by the Lessors under sub-clause (A), the Lessors may, upon giving the Lessee notice in writing (a "**Lessor Partial Termination Notice**") terminate the obligation of each Lessor to lease such of the Trainsets which have not yet become subject to this Lease pursuant to clause 4.2 and the leasing of such of the Leased Trainsets as may be necessary to ensure that, upon receipt of the Partial Termination

Payment payable in respect of such Termination and taking into account any reduction in its obligation to make payments in respect of any such Trainsets under the Purchase Agreement, the Aggregate Adjusted Amount is equal to or lower than the Aggregate Amount. The Lessor Partial Termination Notice shall specify the Trainsets and Leased Trainsets (as the case may be) which, as agreed between the Lessors and the Lessee under sub-clause (B) or, failing such agreement, as determined by the Lessor, are to be the subject of such Termination (the "**Lessor Specified Trainsets**") which must in any event comprise one or more whole Trains, and the date on which, in the case of Leased Trainsets, the Lessee is to re-deliver the Lessor Specified Trainsets to the Lessors.

- (D) The date for such Termination (the "**Lessor Partial Termination Date**") of the obligation to lease or, as the case may be, of the leasing of the Lessor Specified Trainsets shall, notwithstanding the actual date of re-delivery, be the Month End Date next following the date on which the Lessor Partial Termination Notice is given.
- (E) The Lessee shall pay to each Lessor on the Lessor Partial Termination Date, the amount notified by such Lessor to the Lessee as being the amount by which the Partial Termination Payment calculated as at the Lessor Partial Termination Date exceeds the Net Refund Amount and/or the Net Sale Proceeds (if any) received by such Lessor on or prior to the Lessor Partial Termination Date.

9 Outgoings and Indemnities

9.1 Outgoings and general indemnity

- (A) Without prejudice to the generality of the terms of this Lease and the other Operative Documents the Lessee shall promptly pay and discharge, or cause to be paid or discharged, as soon as the same become payable (and shall, if requested by either of the Lessors, produce to such Lessor evidence of the payment and discharge thereof) and indemnify on demand and keep indemnified each Lessor and each member of the Royal Bank Group and the Concord Group and their respective agents, assignees and transferees, directors, employees, officers, secondees and servants (the "**Indemnified Parties**") against all Losses suffered by an Indemnified Party relating to, or arising directly or indirectly in any manner whatsoever out of:
 - (1) the condition, testing, delivery, design (whether or not such Losses arise from a defect in the Trainsets and/or the Leased Trainsets), sub-leasing, construction, manufacture, purchase, fitting out, importation to or exportation from any country, registration, ownership, possession, management, control, inspection, surveying, engineering, contracting, installation,

affixation to land or buildings, use, operation, maintenance, repair, service, modification, overhaul, replacement of the Trainsets and/or the Leased Trainsets or otherwise in connection with the Trainsets and/or the Leased Trainsets; or

- (2) any repossession, re-delivery, storage, maintenance (to the level required by this Lease), protection (to the level required by this Lease), attempted sale, sale or other disposition of the Trainsets and/or the Leased Trainsets directly following the termination of the leasing of the whole or any of the Trainsets and/or the Leased Trainsets under this Lease; or
- (3) the operation or use of the Trainsets and/or the Leased Trainsets or any design, article or material of the Trainsets and/or the Leased Trainsets or relating thereto giving rise to any infringement (or alleged infringement) of any patent or other intellectual property rights or any other rights whatsoever; or
- (4) the arrest, confiscation, requisition, theft, sequestration, compulsory acquisition, restraint of the Trainsets and/or the Leased Trainsets or the prevention thereof, seizure, taking in execution, impounding, forfeiture or detention of the Trainsets and/or the Leased Trainsets, or in securing the release of the Trainsets and/or the Leased Trainsets; or
- (5) any breach by the Lessee of its obligations under this Lease and the other Transaction Documents to which it is a party, regardless of when the same shall arise and whether or not the Trainsets and/or the Leased Trainsets are in the possession or control of the Lessee.

(B) The Lessee shall indemnify and keep indemnified the Indemnified Parties, without prejudice to the other rights of either of the Lessors under this Lease, against any Losses:

- (1) which the Lessee has agreed to pay under this Lease and which shall be claimed against or paid by the Indemnified Parties; and
- (2) incurred by any Indemnified Party by reason of any failure of the Lessee to comply with its obligations under this Lease or the other Transaction Documents to which it is a party.

9.2 Payment of costs and expenses by Lessee

(A) The Lessee shall pay to each of the Lessors on demand (to the extent not otherwise provided for in the Royal Bank Financial Schedule or (as the case may be) the Concord Financial Schedule) all costs (including, without limitation, such Lessor's legal costs and the approved costs of

such Lessor's insurance advisers) and expenses properly incurred by and charged to such Lessor (together with any Irrecoverable VAT thereon) in connection with the negotiation, preparation and execution of this Lease and the other Transaction Documents.

- (B) The Lessee shall pay to each of the Lessors on demand all legal or other costs (other than those included in Costs of Management Time) and expenses properly incurred by and charged to such Lessor (together with any Irrecoverable VAT thereon) in connection with:
- (1) any amendment of or the granting of any waiver or consent (including in particular, any consent in relation to the transfer by the Lessee of all or part of its rights and obligations hereunder) under this Lease or any of the other Transaction Documents to which the Lessee is a party or which the Lessee requests with the exception of any amendment, waiver or consent requested or initiated by such Lessor (other than in response to a failure by the Lessee to perform its obligations under this Lease or any of the other Transaction Documents to which it is a party or in relation to the occurrence of a Potential Event, Event of Default or Supervening Event);
 - (2) following a Potential Event, Event of Default or Supervening Event, the exercise, enforcement or preservation of any rights under this Lease or any of the other Transaction Documents in connection with any such event; and
 - (3) any amendment to the Handback Period or the Handback Schedule as referred to in clauses 19.5(2) or (3),

together with the duly evidenced Costs of Management Time in respect thereof.

9.3 Payment of outgoings by Lessors

- (A) If any outgoings of a nature mentioned in this clause 9 shall not be paid by the Lessee when due, either of the Lessors shall be at liberty, but not obliged, to pay the same and the Lessee shall pay to such Lessor on demand any sums so expended (together with any Irrecoverable VAT thereon).
- (B) The relevant Lessor agrees to give notice to the Lessee of all amounts owed by the Lessee to it pursuant to this clause 9.3 as soon as reasonably practicable.

9.4 Action by Lessee to avoid Losses

- (A) Each of the Lessors agrees that the Lessee may, subject to giving the relevant Lessor written notice thereof and subject to the rights of any insurers, take (at its own cost and expense) such reasonable actions as it deems fit to defend or avoid any Losses or to recover the same from any third party.
- (B) Each of the Lessors agrees to give to the Lessee (at the Lessee's cost and expense) such assistance in the prosecution of any such action as the Lessee may reasonably require including, the right to take such action in the names of the relevant Lessor (provided such action will not, in the opinion of such Lessor using its absolute discretion, be likely to prejudice such Lessor's goodwill or interests in relation to any person and subject as provided in clause 9.5 below), but subject always, for the avoidance of doubt, to such Lessor being first indemnified on demand and secured to its reasonable satisfaction by the Lessee against all Losses thereby incurred or to be incurred.
- (C) Any increase in Losses payable by the relevant Lessor as a result of the operation of this clause 9.4 shall be for the account of the Lessee.

9.5 Specific indemnity

Subject as hereinafter provided and without prejudice to the other rights of the Lessee set out in this Lease and the other Transaction Documents to which it is a party, if:

- (A) the Lessee fails to indemnify and secure the relevant Lessor to its satisfaction in accordance with clause 9.4(B); or
- (B) the relevant Lessor becomes involved in an action or other proceeding relating to the Trainsets, the Leased Trainsets, this Lease and the other Operative Documents and the transactions contemplated hereby and thereby, otherwise than as contemplated by clause 9.4; or
- (C) the Lessee does not diligently proceed with any action taken in the name of the relevant Lessor contemplated by clause 9.4; or
- (D) any action contemplated by clause 9.4 becomes, in the reasonable opinion of the relevant Lessor (after having consulted with the Lessee), likely to prejudice the relevant Lessor's goodwill or interests in relation to any person or involve the disclosure of any information confidential to the relevant Lessor; or
- (E) a Potential Event or Event of Default shall have occurred and be continuing,

then in any such case the relevant Lessor shall notify the Lessee of the relevant matter and thereafter such Lessor may pay or settle any action contemplated by clause 9.4 on such terms as it thinks fit and any Losses it incurs shall be payable by the Lessee.

9.6 Limitation

The Lessee shall not be obliged to indemnify the Indemnified Parties pursuant to this clause 9 in the case of Losses if (but only to the extent that) such Losses result from:

- (1) any loss of profits;
- (2) any action or omission which constitutes gross negligence or wilful default of any Indemnified Party (provided that in no circumstances shall failure of the Lessors to inspect the Trainsets or the Leased Trainsets pursuant to their rights in clause 13.3 (or otherwise) be treated as wilful default);
- (3) any misrepresentation by the Lessors or either of them pursuant to clause 2.7;
- (4) any breach by the Lessors or either of them or by any other member of the Concord Group or the Royal Bank Group of any material obligations under this Lease or any other Transaction Document to which they are respectively a party;
- (5) a Loss in respect of which the Lessors are expressed to be indemnified by:
 - (a) LUL pursuant to the Direct Agreement or the Depot Direct Agreement or the Option Agreement; or
 - (b) GANV pursuant to clause 9 of the GANV Guarantee; or
 - (c) GAL pursuant to clause 8 of the GAL Guarantee,

except in each case to the extent that the Lessee or any Lessee Group company are responsible therefor.

9.7 Double Counting

Neither of the Lessors shall be entitled to make any recovery by way of indemnity or by way of adjustment of Rentals or otherwise if and to the extent that it would thereby recover more than once in respect of the same right or liability, and each of the Lessors agrees that, where any Loss is expressed to be recoverable by way of an adjustment to Rentals it shall first seek recovery thereunder rather than under the provisions of this clause 9.

9.8 Benefit of indemnities

- (A) Each Lessor shall be an agent and trustee of each of the other Indemnified Parties for the purpose of the indemnities given in their favour under this Lease.
- (B) All indemnities given by the Lessee under this Lease (including, but not limited to, those contained in clauses 9 and 10) which are expressed to be in favour of the "Lessors" shall be construed as being separate indemnities in favour of each Lessor and shall be enforceable as such by each Lessor independently and severally and with reference to the financial position of that Lessor only.

10 Taxation

10.1 General tax indemnity

- (A) Subject to clause 10.2, the Lessee shall indemnify, on demand, each of the Indemnified Parties and keep each of the Indemnified Parties fully indemnified at all times on a full indemnity basis independently and severally from and against all Taxes (other than Taxes, including Irrecoverable VAT, taken into account in the calculation of Net Sales Proceeds or Net Insurance Proceeds) in respect of:
 - (1) the Trainsets, the Leased Trainsets or any right, title or interest therein;
 - (2) this Lease, any of the other Transaction Documents or any document, payment or transaction effected under or pursuant to this Lease or any of the other Transaction Documents;
 - (3) and against Irrecoverable VAT.
- (B) In relation to the indemnities contained in clause 10.1(A) each Lessor agrees to refund to the Lessee such amount which it recovers from a third party (which in the case of an indemnity payment in respect of Value Added Tax includes the obtaining of a credit for the relevant input tax) in respect of a claim which has been the subject of a full indemnity payment by the Lessee to such Lessor to the extent that such Lessor would be in no worse after-tax position following such refund than it would have been in had it not made such a recovery.
- (C) In this clause 10, subject to no Event of Default or Supervening Event having occurred, and notwithstanding anything to the contrary contained in clause 7.8(B), where any payment is expressed to be payable by the Lessee on demand the due date for payment shall be whichever is the later of the date falling no later than three (3) Working Days prior to the date on which the relevant Lessor certifies the Taxes in question are due

and payable and the date which falls no later than three (3) Working Days after the date of demand.

10.2 Exclusions

The Lessee shall not be obliged to indemnify the Indemnified Parties pursuant to clause 10.1:

- (A) against Corporation Tax on the overall net income or profits of any Indemnified Party; or
- (B) if, but only to the extent that, the matter in respect of which the obligation to indemnify results from:
 - (1) any misrepresentation by the Lessors or either of them under clause 2.7;
 - (2) any breach by the Lessors or either of them or by any other member of the Concord Group or the Royal Bank Group of any material obligations under this Lease or any other Transaction Document to which they are respectively a party;
 - (3) any action or omission which constitutes gross negligence or wilful default of any Indemnified Party except, in the case of (1), (2) or (3), to the extent that the Lessee or any Lessee Group company are responsible therefor in which case the indemnity in clause 10.1 shall apply to that extent; or
 - (4) any reasonably avoidable delay or failure by the Lessors or either of them in filing Tax computations or returns, or paying Taxes, it being reasonable for the Lessors to have been aware of the requirements to pay or file, except where such delay or failure results from a view taken in good faith that no filing was required and no such Taxes were payable, or has been consented to or requested in writing by or on behalf of the Lessee or results from a failure by the Lessee promptly and fully to provide the Lessors or either of them with information (being information which is available to the Lessee) requested in writing by the Lessors or either of them for the purpose of enabling such Lessor to file a Tax computation or return or to pay the relevant Tax, or results from the provision by the Lessee of incorrect information;
 - (5) the Lessors or either of them having their effective place of management outside the United Kingdom or carrying on any business or other activity outside the United Kingdom; or
 - (6) the Lessors or either of them, otherwise than as contemplated by the Transaction Documents, effecting any disposal of all or any

part of the Trainsets or of any right or interest to or in all or any of the Trainsets or of any rights under the Lease or exercising any rights under clause 21.2;

- (C) to the extent that an upward adjustment to Rental is made or an additional rental is payable pursuant to the Royal Bank Financial Schedule or (as the case may be) the Concord Financial Schedule in respect of the same subject matter or would be so made but for the provisions of paragraph 11 of the Royal Bank Financial Schedule or (as the case may be) the Concord Financial Schedule; or
- (D) against any Taxes to which clause 10.6 applies; or
- (E) without prejudice to clause 10.3, against any Taxes which are suffered by either of the Lessors by reason of the non-deductibility by such Lessor for tax purposes of any payments made by such Lessor to the Lessee; or
- (F) without prejudice to clause 10.5, in relation to Taxes in respect of any such amount as is referred to in clause 10.5(A) or an Indemnity Sum; or
- (G) against any Taxes to which clause 10.4 applies; or
- (H) against any Taxes in respect of which the Lessors are expressed to be indemnified by LUL pursuant to the Direct Agreement or the Depot Direct Agreement or the Option Agreement.

10.3 Non-deductibility of payments by Lessors

- (A) Notwithstanding anything contained in the foregoing provisions of this Lease, if the Arrangement Fee or any sum payable by or on behalf of either of the Lessors under this Lease (save (i) for a sum, other than the Final Adjustment Rebate or Arrangement Fee, which is assumed to be deductible for the purpose of calculating payments pursuant to a Cash Flow or (ii) a Clawback Refund where the Clawback Rental was not required to be brought into account in computing the relevant Lessor's profits for the purpose of Corporation Tax) will not be fully deductible by such Lessor (as certified by it) for the purpose of computing the liability to Taxes for any Accounting Period of such Lessor, the relevant Lessor shall be entitled to withhold from any such payment such amount as it shall certify to be required to put it in the same after-tax position as it would have been in had the payment been fully deductible. Where the liability to make such payment arises as a result of any sum received or deemed to be received by such Lessor, the relevant Lessor shall in determining its after-tax position as so certified take into account any benefit received as a result of such sum not being fully taxable which it would not have received if such sum had been fully taxable.

- (B) In calculating the amount (if any) in respect of any payment which it can withhold, the relevant Lessor shall take into account any financial or cash flow advantage or disadvantage received or suffered as a result of receiving the benefit of the withholding at a different time than it would have received the benefit of the relevant deduction.
- (C) If any such payment by either of the Lessors is made without any such withholding by the relevant Lessor (including, without limitation, in circumstances where the relevant Lessor is required to make a payment without such withholding pursuant to the provisions of this Lease) (i) on the basis that such payment is deductible as aforesaid and it subsequently proves that such payment (or any part of such payment) is not deductible by such Lessor as aforesaid, or (ii) on the basis that the Clawback Rental is not required to be brought into account as aforesaid and it subsequently proves that such Clawback Rental (or any part thereof) is so required to be brought into account the Lessee shall upon demand by the relevant Lessor pay to such Lessor by way of indemnity such amount as such Lessor shall certify to be required to put it in the same after-tax position as it would have been in had the payment been fully deductible (after taking into account the matters referred to in clause 10.3(A) and any financial or cash flow advantage or disadvantage to such Lessor resulting from the making of such payment). Where the liability to make such payment arises as a result of any sum received or deemed to be received by the relevant Lessor, such Lessor shall in determining its after-tax position take into account any benefit received as a result of such sum not being fully taxable which it would not have received if such sum had been fully taxable.
- (D) Any sum payable by the Lessee to either of the Lessors under this clause 10.3 shall be paid subject to the provisions of clause 10.5.
- (E) If any payment is initially made by either of the Lessors subject to a withholding pursuant to this clause 10.3 either (i) on the basis that it is not an allowable deduction and it is subsequently determined that it is so deductible, or (ii) on the basis that the Clawback Rental was required to be brought into account as aforesaid and it is subsequently determined that such Clawback Rental (or any part thereof) is not so required to be brought into account such payment shall be made by the relevant Lessor to the Lessee as such Lessor shall certify to be required to put such Lessor in the same after-tax position as it would have been in had the payment been fully deductible and no withholding has been made (taking into account the time value of money).
- (F) Each of the Lessors undertakes to the Lessee that, in the absence of any change in the Tax System, it shall prepare and submit its Tax computations on a basis consistent with (i) rebates made by it to the Lessee under clause 15.4 and 20 of this Lease and the Arrangement Fee being fully deductible and (ii) any Clawback Rental in respect of which

a Clawback Refund is made or becomes payable in the same Accounting Period as that in which the Clawback Rental was received not being required to be brought into account for the purpose of computing the relevant Lessor's profits for the purpose of Corporation Tax.

- (G) Nothing in this clause 10.3 shall apply to any payment which is not fully deductible by the Lessor as mentioned in clause 10.3(A) to the extent that the same is not so deductible by reason of any of the circumstances mentioned in paragraph 11(a)(iii) of the Concord Financial Schedule or the Royal Bank Financial Schedule, as the case may be, (as qualified by the opening provisions of the said paragraph 11).

10.4 Stamp taxes, etc.

Without prejudice to the generality of clause 10.1 but subject always to clause 10.2(B), the Lessee shall, on demand, pay all stamp, registration and documentary Taxes to which this Lease or any of the other Transaction Documents is or at any time may be subject and shall indemnify each of the Lessors on demand against any Losses resulting from any failure to pay or any delay on the part of the Lessee in paying any such Taxes.

10.5 Insufficiency of indemnity payments

- (A) If any amount payable to either of the Lessors under this Lease by way of indemnity or reimbursement is subject to any Taxes in the hands of the relevant Lessor and thus proves to be insufficient either to discharge the corresponding liability to a third party or to reimburse such Lessor for the cost incurred by them in discharging such corresponding liability, the amount payable shall be increased (to the extent necessary having regard to any adjustment pursuant to the Royal Bank Financial Schedule or (as the case may be) the Concord Financial Schedule) to such an amount as (after taking into account the benefit of any deduction or relief from taxation obtained by such Lessor in respect of any corresponding amount paid or payable by it to a third party or the obligation giving rise to the same) it shall certify is required to put such Lessor in the same after-tax position as it would have been in had the circumstances giving rise to the indemnity or reimbursement not occurred. If payment of the amount by the Lessee is initially made on the basis that it is not subject to Taxes in the hands of the relevant Lessor and it is subsequently determined that it is, or vice versa, such adjustment shall be made between such Lessor and the Lessee as such Lessor shall certify to be required in order to restore the after-tax position of such Lessor to that which it would have been had the adjustment not been necessary.
- (B) Without prejudice to the generality of clause 10.1 if and to the extent that any sum (the "**Indemnity Sum**") constituting (directly or indirectly) an indemnity to either of the Lessors under this Lease but paid by the Lessee to any person other than the relevant Lessor, shall be treated as

taxable in the hands of the relevant Lessor, the Lessee shall promptly pay to such Lessor such sum (the "**Compensating Sum**") as (after taking into account any Taxes suffered by the Lessors on the Compensating Sum) shall reimburse such Lessor for any Taxes suffered by it in respect of the Indemnity Sum after taking into account any deduction for tax purposes obtained by such Lessor in respect of the payment of, or the subject matter giving rise to, the Indemnity Sum.

- (C) Nothing in this clause 10.5 shall apply to any payment by way of indemnity or reimbursement which proves insufficient as mentioned in clause 10.5(A) or gives rise to any Taxes as mentioned in clause 10.5(B) to the extent that such insufficiency or Taxes arise by reason of any of the circumstances mentioned in paragraph 11(a)(iii) of the Concord Financial Schedule or the Royal Bank Financial Schedule, as the case may be, (as qualified by the opening provisions of the said paragraph 11).

10.6 Payments to Lessors

- (A) All payments due to either of the Lessors under this Lease shall be calculated and made free and clear of and without deduction for, or on account of, any Taxes or other charges of whatsoever nature, unless such deduction or withholding is required by law.
- (B) If such deduction or withholding is required by any law, regulation or regulatory requirement the Lessee shall increase the payments to the relevant Lessor so that the net amount received by such Lessor after such deduction or withholding shall be equal to the full amount which such Lessor would have received if no such deduction or withholding had applied.
- (C) If the Lessee is required to pay an additional amount to either of the Lessors pursuant to this clause 10 and the relevant Lessor is able to apply for or otherwise take advantage of any Tax credit, Tax deduction or similar benefit by reason of the withholding or deduction which the Lessee is required to make, such Lessor shall (without prejudice to their rights to obtain any other relief or allowance which may be available to them) reimburse to the Lessee upon receipt by such Lessor of such credit, deduction or benefit such amount as it shall certify to be the proportion of such credit, deduction or benefit which is referable to such withholding or deduction as will leave such Lessor (after such reimbursement) in no worse position than it would have been if there had been no Tax imposed upon the payment by the Lessee as aforesaid. Any such reimbursement shall be subject to the Lessee having accounted for any such additional amount payable in accordance with clause 10.6(B). Nothing herein contained shall interfere with the right of the Lessors to arrange their respective Tax affairs in whatsoever manner they think fit and, in particular, the Lessors shall not be under any obligation to claim

any Tax credit, Tax deduction or similar benefit in respect of the amount of such withholding or deduction in priority to any other claim, reliefs, credits or deductions available to them, nor shall anything contained in this Lease or any other Transaction Document impose any obligation on the Lessors to disclose any confidential information concerning their Tax affairs, or those of the Royal Bank Group or the Concord Group, to the Lessee or to any other person.

- (D) To the extent that either of the Lessors has made a payment to the Lessee on account of a tax benefit pursuant to this clause 10.6 and it subsequently transpires that such Lessor did not obtain such tax benefit, the Lessee shall pay to such Lessor by way of indemnity such sums as such Lessor shall determine to be appropriate to restore its after-tax position to that which it would have been if such tax benefit had been obtained in full.
- (E) The Lessee's obligation to pay an additional amount pursuant to this clause 10.6 shall not arise in any case where (disregarding this clause 10.6(E)) it would not have arisen but for either (a) a failure by the relevant Lessor (other than a failure caused by (i) the Lessee or (ii) any event or circumstance outside the relevant Lessor's reasonable control) to file or provide the Lessee with any specifically identified claim form or other form used for the purpose of seeking a reduction or exemption from Tax which the Lessee has reasonably requested the relevant Lessor in writing to file or provide (any such request containing sufficient details to enable the relevant Lessor to comply with the terms thereof) unless in all such cases the relevant Lessor in its sole discretion has determined that so to file or provide would be detrimental to its overall interest, illegal or contrary to any directive or policy of general application of any governmental or Taxation authority compliance with which would be customary for a company carrying on similar business to the Lessor or (b) the relevant Lessor carrying on any business or other activity or having its effective place of management outside the United Kingdom.

10.7 Taxation undertakings

The Lessee hereby undertakes to each of the Lessors from the date hereof and thereafter until the sale (if any) of the Trainsets and/or the Leased Trainsets that it will:

(A) Pay Taxes

duly pay and discharge or cause to be paid and discharged all Taxes, levied upon it or its property or (subject to clause 10.2(B)) in respect of or on the Trainsets and/or the Leased Trainsets not later than the due date of payment;

(B) Capital allowances

not claim any Capital Allowance in respect of the Total Cost or any part thereof;

(C) Tax authorities

use all reasonable endeavours to furnish promptly to any tax authority or to the Lessors for the Lessors to furnish to such an authority such information as may be properly required by such authority to be furnished about the Trainsets and/or the Leased Trainsets, the use to which the same is being or has been put or any other matter or circumstance contemplated by this Lease and the other Transaction Documents and furnish to the Lessors promptly upon request such information, books, records or documents as may be necessary in order to enable the Lessors to respond to such a request of the Lessors from any tax authority (provided that nothing herein shall oblige the Lessee to furnish any information, books, accounts or documents which are in the possession or under the control of either Lessor);

(D) Use of Leased Trainsets

during the requisite period (as that expression is defined in section 40 of the Capital Allowances Act 1990) use the Leased Trainsets (or procure that the Leased Trainsets are used) in such a manner as to ensure that Section 42 of the Capital Allowances Act 1990 does not have effect with respect to the Total Cost or any part thereof.

10.8 Value Added Tax

(A) All payments made or to be made by the Lessee or by either of the Lessors under this Lease are deemed to be exclusive of Value Added Tax. If, pursuant to any provision of this Lease, either of the Lessors or the Lessee makes any taxable or deemed taxable supply to the Lessee or either of the Lessors, then the Lessee or the relevant Lessor shall pay (in addition to such payments) an amount equal to the Value Added Tax chargeable in respect of such taxable or deemed taxable supply. If, following any payment by the Lessee or either of the Lessors under this Lease, any adjustment is required under this Lease, then the relevant Lessor or the Lessee (as the case may be) shall also make such adjustment to any sum paid in respect of Value Added Tax as may be necessary to achieve consistency with such first-mentioned adjustment.

(B) Where as a result of any change in the Tax System, any supply made by the Lessor falls to be treated as an exempt supply for the purpose of Value Added Tax, subject to the right for the Lessor to waive such exemption it shall be a matter in the sole discretion of the Lessor whether or not such exemption is waived and without prejudice to the

Lessor's exercise of that discretion, the Lessor shall to the extent that it is able having regard to any time limits applying to the waiver of exemption, consult in good faith with the Lessee, as to whether, having regard to the business or tax affairs of the Lessor or of any member of the Royal Bank Group or (as the case may be) the Concord Group a right to waive exemption should be exercised.

10.9 Certification of Calculations

The provisions of paragraph 13 of the Royal Bank Financial Schedule and of paragraph 13 of the Concord Financial Schedule shall apply (*mutatis mutandis*) in relation to any amount to be certified by Royal Bank and Concord respectively.

11 Protection of interests

11.1 Lessors' interest in Leased Trainsets

The Leased Trainsets shall at all times during the Lease Period and thereafter until sale or disposal of the Leased Trainsets be the sole and exclusive property of the Lessors as tenants in common with equal several interests therein. During the Lease Period the Lessee shall have no right, title or interest in or to any of the Leased Trainsets except the right to use and sub-lease them upon the terms and conditions of this Lease.

11.2 Lessee's quiet enjoyment

Subject to the terms and conditions of this Lease and except as may be required by law or except to the extent that quiet enjoyment shall be interrupted or prevented by any act or omission of the Lessee or any third party (other than either Lessor or a third party claiming through or in trust for the Lessors or either of them or appointed under any Encumbrance created by, or attributable to, the Lessors or either of them), each of the Lessors undertakes to the Lessee that, as between such Lessor and the Lessee, the Lessee shall have the quiet enjoyment of each Leased Trainset from the date on which such Leased Trainset becomes subject to this Lease until the termination of the Lease Period or (as the case may be) the termination of the Lessee's use of such Leased Trainset hereunder. Each of the Lessors further undertakes that it will not create, or purport to create, any Encumbrance over the Trainsets and/or the Leased Trainsets or any of them.

11.3 Lessee's undertakings

The Lessee undertakes to the Lessors that from the date hereof and thereafter until the sale or disposal of the Leased Trainsets it will:

(A) Ownership of Leased Trainsets

not hold itself out as the owner of the Trainsets and/or the Leased Trainsets and, if relevant, make clear to third parties that the Leased Trainsets are the property of the Lessors to the extent of their respective interests;

(B) Sale, creation of encumbrances and dealings

save as expressly permitted in this Lease or in any other Operative Document, not, nor will it attempt to, nor hold itself out as having any power to, sell, charge, lease, assign, mortgage, pledge, hypothecate or otherwise encumber or dispose of or deal with the Trainsets and/or the Leased Trainsets or any interest therein or in this Lease or the proceeds of the Insurances relating to the Trainsets and/or the Leased Trainsets, nor create or permit to be created, incur or suffer to exist any Encumbrance (other than a Permitted Encumbrance) over the Trainsets and/or the Leased Trainsets or the proceeds of the Insurances;

(C) Jeopardising of Lessors rights and interests in Leased Trainsets

(i) take all necessary steps to safeguard the Lessors' respective rights in respect of the Leased Trainsets and (ii) not do or permit to be done (either knowingly or in circumstances in which the Lessee ought to have so known) or, if so done, not suffer to continue to be done, any act or thing (save in relation to any Permitted Encumbrance) which might jeopardise the respective rights and interests of the Lessors to and in the Leased Trainsets and (iii) not omit to do or permit to be omitted to be done (either knowingly or in circumstances in which the Lessee ought to have known) or, if so omitted to be done, not suffer to continue to be omitted to be done (either knowingly or in circumstances in which the Lessee ought to have known), any act which might prevent the respective rights and interests of the Lessors in the Leased Trainsets from being jeopardised and (iv) not do anything (either knowingly or in circumstances in which the Lessee ought to have so known) which will, or is reasonably likely to, result in any of the Leased Trainsets being confiscated, seized, requisitioned, taken in execution, impounded or otherwise taken from the possession of the Lessee and if any such confiscation, seizure, requisition, taking in execution or impounding shall occur, the Lessee undertakes until such time as a Total Loss arises to use all reasonable endeavours to procure an immediate release of the relevant Leased Trainsets therefrom;

(D) Pledging of the Lessors' credit

not pledge the credit of either of the Lessors for any maintenance, service, repairs, overhauls of, modifications to or changes or alterations in, the Trainsets and/or the Leased Trainsets or otherwise;

(E) Nameplates

if required by the Lessors, maintain in a prominent position (for example, the sole bar) on each Car of each Leased Trainset an engraved fireproof nameplate having dimensions of not less than 15 centimetres by 8 centimetres including words to the effect that the relevant item is owned by the Lessors. The Lessee will not remove or cover up such nameplates nor place or permit to be placed any name plates, serial number plates or other inscriptions in or on the Leased Trainsets prejudicial to the Lessors interest in the Leased Trainsets or otherwise inconsistent with the Lessors rights and interests in the Leased Trainsets.

11.4 Enhanced, removed and replaced Leased Trainsets

While each of the Leased Trainsets is subject to this Lease, title to all items and parts from time to time installed therein or thereon and to any enhancement, replacement or substitute item or part shall (other than in the case of Trainborne Equipment (which, for the avoidance of doubt, already vests in the Lessors) and Third Party Financed Equipment) vest in the Lessors for all purposes as though originally acquired by the Lessors and shall become subject to the terms of this Lease and the other relevant Transaction Documents. Such right, title, benefit and/or interest as the Lessors may have in any item or part which has been replaced or substituted (if it has been replaced or substituted by an item or part title to which at the time of replacement or substitution vests in the Lessors) shall vest in the Lessee (or as it may direct) free of any Encumbrance created by, or attributable to, the Lessors or either of them.

11.5 Sub-leasing

The Lessee shall not sub-lease the Leased Trainsets to any party, other than to LUL (which may sub-sub-lease the same as permitted by clause 15.4.1 of the Usage Contract) under and in accordance with the Usage Contract, without the prior written consent of the Lessors. The Lessee shall however remain fully and primarily liable for all of its obligations under this Lease notwithstanding such sub-leasing.

12 General undertakings by the Lessee

12.1 Notification of Potential Events, Events of Default and Supervening Events

The Lessee will, promptly upon becoming aware thereof, inform the Lessors of the occurrence of:

- (A) any Potential Event; or
- (B) any Event of Default or Supervening Event.

12.2 General undertakings

The Lessee hereby undertakes to each of the Lessors from the date hereof until, in the case of paragraphs (A), (B), (C) and (D) below, the expiry of the Lease Period, and otherwise until the sale or disposal of all of the Leased Trainsets, that it will:

(A) Provision of accounts

procure the delivery to each of the Lessors, as soon as available, and in any event not later than two hundred and seventy (270) days after the close of each financial year, of a copy of the audited accounts and annual report of the Lessee for that financial year including its balance sheet prepared as at the end of such financial year and its profit and loss account in respect of such financial year;

(B) Other financial information

promptly provide each of the Lessors with such other financial information concerning the accounts of the Lessee referred to in paragraph (A) above as either of the Lessors may from time to time reasonably require;

(C) Details of litigation etc.

as soon as the same is instituted or pending (or, to the knowledge of the Lessee, threatened), provide each of the Lessors with details of any claim presently being asserted or of any action, suit, proceeding, litigation, dispute, arbitration or administrative proceeding against or involving the Lessee which will or is likely materially and adversely to affect its ability to perform its obligations under this Lease or any of the other Transaction Documents to which it is a party;

(D) Details of judgments etc.

as soon as the same is given, provide each of the Lessors with details of any judgment or award against the Lessee which will or is likely materially and adversely to affect the Lessee's ability to perform its obligations under this Lease or any of the other Transaction Documents to which it is a party;

(E) Information regarding Trainsets or Leased Trainsets

promptly make available to each of the Lessors such information and documents regarding the Trainsets and/or the Leased Trainsets as either of the Lessors may from time to time reasonably require, including (but not limited to):

- (1) safety inspection reports and certifications; and
- (2) maintenance and performance reports;

but only in either such case to the extent that such information or documentation requires in any event to be recorded or prepared for the purposes of or in connection with the Usage Contract;

(F) No connection with Lessee's operation

not at any time represent or hold out either of the Lessors as being in any way connected or associated with operations which may be undertaken by the Lessee or as having any operational interest in the Trainsets and/or the Leased Trainsets nor, save as expressly provided herein, represent itself as the agent of the Lessors for such purposes;

(G) Insurances

comply with the terms and conditions of the Insurances and not consent to any act or omission which might invalidate or render unenforceable or cancellable the whole or any part of the Insurances;

(H) Corporate existence and authorisations

at all times (i) maintain, preserve and keep in full force and effect its corporate existence, and all permits, licences and other authorisations necessary for the operation and current employment of the Trainsets and/or the Leased Trainsets and the carrying out of its obligations under this Lease and the other Transaction Documents to which it is a party (provided however that if, after using all reasonable endeavours, the Lessee is unable to maintain any such permit, licence or authorisation the Lessors shall consult in good faith with the Lessee prior to exercising any rights or remedies available to them under this Lease) and (ii) comply with all applicable laws, together with any legislation, orders and regulations as may be laid down or enacted from time to time in respect of the Trainsets or the Leased Trainsets;

(I) Other agreements

not enter into any agreement which will or is reasonably likely to have a material adverse effect upon its ability to perform its obligations under this Lease and the other Transaction Documents to which it is a party; and

(J) Usage Contract Account

not withdraw any sums from the Usage Contract Account otherwise than in accordance with clause 5.1(e)(xx) of the Security Assignment.

13 Operation and maintenance

13.1 Undertakings as to operation of Trainsets and/or Leased Trainsets

Subject to the following provisions of this clause 13.1, the Lessee (and any sub-lessee approved under clause 11.5) shall have the full and exclusive use, control and command of each Leased Trainset during such part of the Lease Period as the same shall be leased to the Lessee under this Lease and may operate each Leased Trainset in any lawful service, trade or activity for which it is suitable. The Lessee hereby undertakes to each of the Lessors that from the date hereof and thereafter until the sale or disposal of the Leased Trainsets by the Lessors following a Termination with respect thereto or, as the case may be, the expiry of the Lease Period, it will:

(A) Maintenance and Records

subject to clause 13.5, carry out or procure that there be carried out all maintenance, overhaul, replacements and repairs necessary to the Leased Trainsets so as to ensure that the Leased Trainsets shall in all material respects be in good repair and efficient operating condition (in each case fair wear and tear excepted) and maintain the Leased Trainsets in such condition generally so as to comply with all applicable laws, regulations and requirements whatsoever and wheresoever to which the Leased Trainsets may be or may become, from time to time, subject and in addition keep or procure to be kept and make available or procure to be made available to each of the Lessors on request, accurate, substantially complete and current records of all maintenance, repairs, alterations, modifications and enhancements carried out to or in respect of each of the Leased Trainsets;

(B) Lessee's control of Leased Trainsets

keep the Leased Trainsets in its control and possession and not part with possession of the Leased Trainsets (or any part thereof), other than as permitted by this Lease, without the prior written consent of each of the Lessors save for the sole purpose of repair, maintenance, modification or overhaul. Upon completion of any such repairs, maintenance, modifications or overhaul to any part of the Leased Trainsets the Lessee shall forthwith reinstall or procure the reinstallation of such part in the Leased Trainsets;

(C) Use of Leased Trainsets

use the Leased Trainsets in a skilful and proper manner generally so as to comply with all applicable laws, regulations and requirements whatsoever and wheresoever to which the Leased Trainsets may be or may become, from time to time, subject and in accordance with good industry practice and the instructions or directions of any manufacturer

or supplier thereof and shall not permit the Leased Trainsets to be used for any purpose for which they were not designed or which is outside the tolerances and limitations for which the Leased Trainsets were designed or which would invalidate any manufacturer's warranties;

(D) Notification of damage etc.

notify each of the Lessors as soon as reasonably practicable of any damage, loss, confiscation, seizure, requisitioning, impounding, infringement of intellectual property rights or other event in relation to the Leased Trainsets the repair or remedying of which or failure to so repair or remedy is likely to cost in excess of one million pounds (£1,000,000);

(E) Notification of Total Loss

notify each of the Lessors upon becoming aware of any Total Loss or any event which with the passage of time or any relevant determination will or is reasonably likely to become a Total Loss;

(F) Notification of third party liabilities

notify each of the Lessors, upon becoming aware thereof, of any injury or damage to a third party caused by, or in connection with, the Trainsets and/or the Leased Trainsets or any other event in respect of the Trainsets and/or the Leased Trainsets which might be expected to involve either of the Lessors in any loss or liability or the Lessee in loss or liability in excess of one hundred thousand pounds (£100,000).

13.2 Alterations and modifications

The Lessee shall, at its own expense during the Lease Period, make or procure such alterations and modifications in, and additions to, the Leased Trainsets as may be required from time to time to meet the standards and requirements of all applicable laws, regulations and requirements whatsoever and wheresoever to which the Leased Trainsets may be, or may become, from time to time, subject. If any alterations, modifications in and additions to the Leased Trainsets to be made pursuant to this clause 13.2 shall involve the fitting to the Leased Trainsets of additional equipment, such additional equipment shall (save in the case of Trainborne Equipment (which, for the avoidance of doubt, already vests in the Lessors) and/or Third Party Financed Equipment), upon such installation, automatically become the property of the Lessors free and clear of Encumbrances other than Permitted Encumbrances.

13.3 Inspection

Each of the Lessors shall have the right (but not the obligation) at any time during the Lease Period, upon reasonable notice, to inspect and survey or to

instruct another person on its behalf to inspect and survey the Leased Trainsets while at the Depot and not otherwise to ascertain the condition of the Leased Trainsets and to satisfy itself that the Leased Trainsets are being operated, repaired and maintained in accordance with this Lease. The costs of any such inspection shall be borne by the relevant Lessor, unless such inspection is undertaken when an Event of Default has occurred and is continuing or such inspection reveals that any of the provisions of this Lease in relation to the use or maintenance of the Leased Trainsets are not being complied with in all material respects in which case all such costs shall be borne by the Lessee.

13.4 Repairs to Leased Trainsets

(A) Neither of the Lessors shall be liable for any loss of, or damage to, or unserviceability of, the Leased Trainsets during the Lease Period or thereafter during the period until sale or disposal thereof (from whatsoever cause such loss, damage or unserviceability may arise) or for any expense in repairing the Leased Trainsets or, save as may otherwise be agreed, be liable to supply any other equipment in lieu of the Leased Trainsets which are lost, damaged or unserviceable.

(B) Where the Leased Trainsets are not a Total Loss (in which case clause 15 does not apply), the Lessee shall, at its own expense and as soon as practicable generally so as to comply with all applicable laws, regulations and requirements whatsoever and wheresoever to which the Leased Trainsets may be or may become, from time to time, subject and in accordance with good industry practice effect such repairs as shall be necessary to make good any loss of or damage to, or unserviceability or economic obsolescence of, the Leased Trainsets and shall similarly replace, at its own expense, any item or part installed in the Leased Trainsets which has become worn out, lost, destroyed, unserviceable, economically obsolete, or otherwise unfit for use with an item of the same make and model or equivalent or an improved or advanced version thereof and the provisions of clause 11.4 shall apply to such item.

13.5 Limitation on Maintenance Obligations

(A) The Lessee shall be deemed to have complied with its obligations under clauses 13.1(A), 13.2 and 13.4(B) of this Lease to the extent that it procures performance of its comparable obligations under the Usage Contract and if and to the extent that such obligations of the Lessee under the Usage Contract are terminated pursuant to the terms thereof the Lessee shall be relieved of its obligations under clauses 13.1(A), 13.2 and 13.4(B) of this Lease without prejudice to the obligations of the Lessee, in circumstances where LUL shall not have exercised its Step-Up Rights following any such termination, to indemnify the Lessors in respect of any Losses they may incur as a consequence of any breach by the Lessee of its obligations under any of the said clauses prior to being relieved of the same.

- (B) At any time at which the Lessee is relieved from the performance of such comparable obligations under the Usage Contract by virtue of force majeure under clause 21 thereof, such relief shall also apply to the corresponding obligations of the Lessee under this Lease.
- (C) Any failure by the Lessee to perform such comparable obligations under the Usage Contract shall, to the extent that such failure arises due to a breach by LUL of the provisions of the Usage Contract, not constitute a breach by the Lessee of its corresponding obligations under this Lease.

14 Insurance

14.1 Insurance against general third party liability

- (A) The Lessee, at its own expense, shall effect and maintain (or procure that there is effected and maintained) in full force and effect from the Start Date and thereafter up to and including the third anniversary of completion of the sale or disposal of all of the Leased Trainsets or, if earlier, the date upon which the Direct Arrangements shall take effect, in accordance with the provisions of the Direct Agreement third party liability insurance cover (covering the legal liability of the Additional Assureds referred to in clause 14.1(B)(1) below, but, in the case of pollution and contamination cover, only to the extent that such is obtainable in the London insurance market from time to time at reasonable cost) ("**Third Party Insurance**") for death, bodily injury to or disease of any person and accidental loss or damage to property or to the environment caused by or arising directly or indirectly out of or in connection with the delivery, design, manufacture, construction, condition, testing, purchase, fitting out, requisition, possession, management, control, inspection, supply, use, operation, maintenance, repair, service modification, alteration, overhaul, replacement, leasing, sub-leasing, return, storage, sale or other disposition, existence, ownership or otherwise of the Trainsets and/or the Leased Trainsets (whether in whole or in part) and against such other third party liability risks as may be required by statute and such other third party liability risks as the Lessors may, from time to time, reasonably require following advice from their insurance advisers, provided that such other third party liability risks are insurable at reasonable cost.
- (B) The Third Party Insurance required by clause 14.1(A) shall:
 - (1) name as additional insured parties each of the Lessors (including the Lessors' respective successors and permitted assignees and transferees as notified to insurers) and, in addition to Royal Bank and each of its Subsidiaries from time to time, The Royal Bank of Scotland Group PLC, The Royal Bank of Scotland PLC and Royal Bank Leasing Limited and, in addition to Concord and each of its Subsidiaries from time to time, HSBC Holdings PLC,

Midland Bank Limited and Forward Trust Group Limited and each of their respective agents, assignees and transferees, directors, employees, officers, servants and secondees as assureds (together the "Additional Assureds") all to the extent of their respective rights and interests in connection with this Lease and the other Transaction Documents;

- (2) be without exclusion of liability for damage to property or injury to persons arising out of defects in the Trainsets and/or the Leased Trainsets;
- (3) indemnify the Additional Assureds in respect of claims made by any of them (or their agents, assignees and transferees, directors, employees, officers, servants and secondees) against the Lessee and any member of the Lessee Group being an assured under the relevant policy to the extent of the limits of liability, provided that nothing shall require insurers to indemnify one Additional Assured in respect of claims made by another Additional Assured;
- (4) be in an amount, in respect of the period up until the first to occur of the Final Leasing Date and the Last Train Acceptance Date, of not less than Fifty million pounds (£50,000,000), and thereafter One hundred million pounds (£100,000,000) (or the equivalent of the relevant amount from time to time in any other freely convertible currency) or such other amount as the Lessors may from time to time reasonably require following advice from their insurance advisers and having regard to relevant circumstances affecting or likely to affect the insurance and operation of rolling stock, in respect of each and every occurrence. The deductibles shall not exceed such amounts as the Lessors shall agree acting reasonably;
- (5) contain a provision that no claim of the Additional Assureds shall be defeated, prejudiced or otherwise affected by any act, omission, neglect, breach of or violation of any warranty, declaration or condition, misrepresentation, non-disclosure or want of due diligence on the part of the Lessee or any other person not being any of the Additional Assureds provided that any of the Additional Assureds has not caused, contributed to or knowingly condoned such act, omission, neglect, breach or violation, misrepresentation, non-disclosure or want of due diligence; provided always that where Third Party Insurance is to be effected in excess of Fifty million pounds (£50,000,000) the obligation of the Lessee to procure inclusion in such Third Party Insurance of a provision on the above terms with respect to the amount in excess of Fifty million pounds (£50,000,000) shall be on the basis of the use by the Lessee of all reasonable endeavours

to have such provision included, and provided further that if, notwithstanding the use of all reasonable endeavours, such a provision is not included in the Third Party Insurance with respect to such amount in excess of Fifty million pounds (£50,000,000), the Lessors and the Lessee, together with their respective insurance advisers, shall promptly consult together in good faith with a view to agreeing an alternative method of providing the Additional Assureds with insurance protection equivalent to that afforded by such provision and if the parties are unable, within ten (10) Working Days, to reach agreement, the Lessors shall be entitled, at the Lessee's expense, to effect specific liability insurance, with respect to their liabilities as owners and lessors of the Leased Trainsets, for such amount in excess of the said sum of Fifty million pounds (£50,000,000) as is equal to the amount in excess of Fifty million pounds (£50,000,000) for which the Lessee is required to effect Third Party Insurance in accordance with clause 14.1(4).

14.2 Insurance against the loss of or damage to Leased Trainsets

- (A) The Lessee shall at its own expense, effect and maintain (or procure that there is effected and maintained) in full force and effect property insurance cover ("**Property Insurance**") in respect of each of the Leased Trainsets for all insurable risks (including (subject as provided below) terrorism) of physical loss of or damage thereto howsoever caused during the period in respect of which the same shall be leased to the Lessee under this Lease and thereafter until the sale or disposal of each of such Leased Trainsets; provided always that the Property Insurance may exclude such risks as cannot be insured against in the normal property insurance markets at reasonable rates or otherwise on terms which a prudent purchaser of insurance would consider reasonable.
- (B) The Property Insurance shall name the Lessors as additional insured parties.
- (C) Each policy of insurance effected pursuant to this clause 14.2 shall contain an endorsement naming the Lessors as loss payee in respect of any claim on any Total Loss.
- (D) The deductible in relation to the Property Insurance required by clause 14.2(A) shall not exceed the sum of One hundred thousand pounds (£100,000) on any one occurrence or such other amount as may be approved in writing by the Lessors from time to time.
- (E) Each policy of insurance effected pursuant to this clause 14.2 shall provide that the basis of settlement of any claims with respect to any individual Leased Trainset shall be not less than such sum as the Lessors and the Lessee may agree from time to time, but in any event not less

than the Partial Termination Payment which would be applicable from time to time were such Leased Trainset to become a Total Loss and that all proceeds, where the Lessors are loss payees, shall be payable in Sterling unless otherwise agreed in each case by the Lessors; provided that nothing herein shall require the Lessee to insure all of the Leased Trainsets for a value which in aggregate is greater than the total replacement as new value of the Leased Trainsets.

14.3 Provisions applicable to all Insurances

The Lessee shall procure that each policy relating to the Insurances (with the exception of employer's liability insurance effected pursuant to clause 14.4) shall:

- (A) be placed and maintained with insurers or underwriters approved from time to time by the Lessors (such approval not to be unreasonably withheld);
- (B) be placed and maintained through the Approved Brokers;
- (C) save as otherwise specifically required in this Lease, be in such form and in such amounts as the Lessors may approve;
- (D) provide that the insurers shall waive all rights of subrogation that the insurers have or may acquire against the Lessors and the Additional Assureds;
- (E) provide that the Lessee alone shall be liable for any premiums and other sums payable in respect of such Insurances but shall permit (but not oblige) the Lessors to pay the same;
- (F) be the more specific insurance and be without right of contribution from any other insurance which is carried by any of the Additional Assureds (in the case of Third Party Insurance) or the Lessors (in the case of Property Insurance);
- (G) provide that all the provisions of the Insurances, save for limits of liability and/or amount, shall operate in the same manner as if there were a separate policy with and covering each Additional Assured (in the case of Third Party Insurance) or the Lessors (in the case of Property Insurance) provided that nothing shall require insurers to indemnify one Additional Assured in respect of claims made by another Additional Assured in the case of Third Party Insurance;
- (H) contain a provision requiring the lead insurers and/or the Approved Brokers promptly to provide the Lessors at the last address notified by them to the Approved Brokers with a written notice (sent by registered mail or recorded delivery mail) of any cancellation of any of the

Insurances or any modification thereto which has an adverse effect on the interests of the Additional Assureds (in the case of Third Party Insurance) or the Lessors (in the case of Property Insurance) and that such cancellation and modification shall not be effective as against the Additional Assureds (in the case of Third Party Insurance) or the Lessors (in the case of Property Insurance) for a period of thirty (30) days after the sending by the lead insurers and/or Approved Brokers to the Lessors (at such address) of written notice of such cancellation or modification; and

- (I) contain a provision requiring the lead insurers and/or the Approved Brokers to provide the Lessors at the last address notified by them to the Approved Brokers with written notice (sent by registered mail or recorded delivery mail) of any lapse of any of the Insurances due to any decision by any of the insurers to initiate such lapse, whether through non-renewal or non-payment of premium or otherwise and, in each such circumstance, requiring such insurer to agree that such lapse shall not be effective as against the Additional Assureds (in the case of Third Party Insurance) or the Lessors (in the case of Property Insurance) for thirty (30) days after the sending by the lead insurers and/or Approved Brokers to the Lessors (at such address) of written notice of such lapse.

14.4 Employer's liability insurance

The Lessee shall effect, at its own cost and expense, and keep in effect from the date hereof and thereafter until the sale or disposal of all of the Leased Trainsets, employer's liability insurance for an amount of not less than ten million pounds (£10,000,000) in respect of the Lessee's liability to its employees, providing for such indemnity and in such form as to comply with the Employer's Liability (Compulsory Insurance) Act 1969 (the "Act") and any succeeding legislation imposing similar obligations upon employers and providing further that the insurers shall waive all rights of subrogation that the insurers may have or acquire against the Additional Assureds provided that such insurance shall not be required to the extent that the Lessee is exempted from the provisions of the Act pursuant to Section 3 thereof.

14.5 Policies and certification of Insurances

- (A) The Lessee shall, at its own expense, furnish to the Lessors, from the date from which such insurances are required by the terms hereof to be in effect and thereafter for the respective periods referred to in clauses 14.1(A) and/or 14.2(A), on the occasion of each renewal or replacement of the Insurances (but in any event at intervals not exceeding twelve (12) months) a certificate or cover note of and summary of cover from the Approved Brokers or the relevant insurers as to the existence and scope of the Insurances and confirmation of the payment of all premiums due in respect thereof, and dealing with such other matters as the Lessors may reasonably require.

- (B) The Lessee agrees to permit the Lessors (or the Lessors' duly authorised representative), upon request by the Lessors, to inspect all certificates, cover notes, correspondence, placing slips, renewal receipts or confirmations of renewal and other information with regard to the insurances relating to the Leased Trainsets (including such policy extracts as the Lessors may consider are relevant to any issue arising in relation to such insurances) but not as relates to any claim correspondence or material as directly relates to a claim being made under the insurance by an Additional Assureds against the Lessee.

14.6 Broker's undertaking

The Lessee shall procure that the Approved Brokers shall deliver to the Lessors on or prior to the inception date and each renewal date of each policy, a letter of undertaking in the form set out in schedule 4 or in such other form as the Lessors and the Lessee may agree.

14.7 Assignment

If the Lessors assign or transfer their rights or any part thereof as permitted by this Lease, the Lessee shall procure, at no cost to the Lessee, that the assignee or transferee (as notified to insurers) shall be added as an Assured (in the case of Third Party Insurance) or as an insured party (in the case of Property Insurance) in any policy effected under this clause 14, so as to enjoy, co-extensively with the Lessors, the same rights and insurances enjoyed by the Lessors under the insurance policy or policies and any amendments thereof.

14.8 Omission to comply with insurance obligations

If the Insurances are not kept in full force and effect the Lessors, without prejudice to any other rights they may have on the occurrence of an Event of Default pursuant to clause 17.1(B), shall be entitled (but not bound) to pay the premiums due or to take out and maintain new insurances satisfactory to them, and any sums so expended by the Lessors shall become immediately due and payable to the Lessors by the Lessee together with interest thereon at the Default Rate from the date of expenditure by the Lessors to but excluding the date of reimbursement thereof by the Lessee (both before and after any relevant judgment).

14.9 Changes in circumstances

If the Lessors reasonably consider that as a result of any material change in relevant circumstances affecting or likely to affect the insurance and operation of rolling stock any of:

- (A) the amount of; and/or
- (B) the deductibles in respect of; and/or

- (C) the terms (including any basis of settlement) of; and/or
- (D) the extent of,

any of the Insurances are inadequate or inappropriate, as the case may be, they may by written notice require that such Insurances be effected in the amounts and with the deductibles and terms and to the extent specified in such notice and to the extent necessary to cater for such material change.

14.10 Application of insurance proceeds

- (A) In respect of loss or damage to Leased Trainsets which constitutes a Total Loss the proceeds of the Insurances effected in compliance with clause 14.2 shall be applied in accordance with clause 15.4.
- (B) In respect of loss or damage to Leased Trainsets which does not constitute a Total Loss, and which Leased Trainsets continue on lease under this Lease, any proceeds of the Insurances received by the Lessee in respect of such Leased Trainsets shall be applied by the Lessee in replacing or repairing the Leased Trainsets pursuant to clause 13.4 or reimbursing itself in respect of the same.
- (C) Subject to the provisions of the Third Parties (Rights against Insurers) Act 1980 any proceeds of Insurances effected in compliance with clause 14.1 shall be paid to the person to whom the liability (or alleged liability) covered by such Insurances was incurred or, if an insured party shall have indemnified the claimant for his loss, to such insured party.

15 Total Loss

15.1 Termination of leasing of Leased Trainsets following a Total Loss

- (A) Subject to clause 15.1(B) the leasing under this Lease of any Car which forms part of a Leased Trainset and which is the subject of a Total Loss shall terminate on the Total Loss Payment Date and the provisions of clause 15.2 shall apply. A Termination for Total Loss shall occur only in respect of one or more whole Cars which form part of the Leased Trainsets.
- (B) In the event of a Total Loss of one or more Cars the Lessee shall be entitled to elect that clause 15.1(A) shall not apply and instead to require the Lessors to acquire (as tenants in common with equal several interests therein) a replacement item of comparable make and model ("**Replacement Plant**") and to lease such Replacement Plant to the Lessee hereunder, and the Lessors shall give effect to such election and the Replacement Plant shall become subject to this Lease subject always however to:

- (1) the Lessee procuring that such Replacement Plant is available to the Lessors for purchase;
- (2) LUL having requested the Lessee to procure the acquisition of such Replacement Plant pursuant to the Usage Contract;
- (3) the Lessors not being obliged to incur expenditure on the Replacement Plant in excess of the Net Insurance Proceeds received and entitled to be retained by each Lessor (after deduction of any amount referred to in clause 15.4(B)(i)) save that this limitation shall not apply where such expenditure is to be incurred prior to the Final Leasing Date (provided always however that in no circumstances whatsoever prior to the Final Leasing Date shall the Lessor be required to incur any expenditure which would result in the Purchase Price Limit being exceeded), and subject to the Lessors being obliged to incur such expenditure on a several basis and in equal proportions;
- (4) each Lessor being able to incur such expenditure not later than the Total Loss Payment Date;
- (5) such adjustments being made to the Rentals as may be required pursuant to each of the Royal Bank Financial Schedule and the Concord Financial Schedule; and
- (6) all matters relating to the acquisition and leasing by the Lessors of the Replacement Plant being documented in a manner satisfactory to each of the Lessors (including any amendments which in the reasonable opinion of the Lessors are required to be made to the terms of this Lease or any of the other Transaction Documents) and, for the avoidance of doubt, the provisions of clause 9.2(B) shall apply.

15.2 Payments on Total Loss Payment Date

Subject to clauses 15.1(B) and 15.4, following the occurrence of a Total Loss the Lessee shall pay to each Lessor on the Total Loss Payment Date by way of further Rental the amount notified by such Lessor to the Lessee as being the amount by which the aggregate of:

- (A) the Termination Payment or Partial Termination Payment, as the case may be, calculated as at the Total Loss Payment Date; and
- (B) all arrears of Rental and any other sums (whether in respect of interest, costs, fees, expenses, Rental, other than periodic Rental, or otherwise) then accrued and due or due and payable by the Lessee under this Lease,

exceeds the Net Insurance Proceeds (if any) received by such Lessor on or prior to the Total Loss Payment Date.

15.3 Payment of Rentals continuing

The Lessee shall continue to pay Rentals on the days and in the amounts required under this Lease notwithstanding any Total Loss provided always that (but without prejudice to the Lessee's obligations in relation to any Replacement Plant where clause 15.1(B) applies) no further instalments of Rental shall become due in respect of any of the Leased Trainsets or Cars the subject of a Total Loss after the relevant Total Loss Payment Date.

15.4 Application of Insurance Proceeds and Rebate of Rentals

- (A) Save where clause 15.1(B) applies, each of the Lessors shall apply any Net Insurance Proceeds (i) against and in payment of any amounts due and payable (but unpaid) by the Lessee to the relevant Lessor under this Lease, (ii) in satisfaction or partial satisfaction (as the case may be) of the Lessee's payment obligations under clause 15.2 and (iii) (subject to the provisions of the Security Assignment) to the Lessee by way of rebate of Rentals, up to the amount of the Relevant Rental as at the date such rebate is to be made, together with Relevant Interest.
- (B) Where clause 15.1(B) applies, each of the Lessors shall apply the Net Insurance Proceeds (i) against and in payment of any amounts due and payable (but unpaid) by the Lessee to the relevant Lessor under this Lease, (ii) against the expenditure incurred or to be incurred by the Lessors pursuant to clause 15.1(B), and (iii) (subject to the provisions of the Security Assignment) to the Lessee by way of a rebate of Rentals, up to the amount of the Relevant Rental as at the date such rebate is to be made, together with Relevant Interest.
- (C) In the event that DTL Net Insurance Proceeds fall to be applied in accordance with clause 15.4 of the Direct Train Lease, each Lessor shall, following application of the same by such Lessor in accordance with clauses 15.4(A)(i), (ii) and (iii) or, as the case may be, clauses 15.4(B)(i) and (ii) of the Direct Train Lease, pay, by way of rebate of Rentals, to the Lessee an amount (subject as provided in clause 10.3) equal to such part of the balance remaining as shall not exceed the aggregate of the DTL Relevant Rental and the Relevant Rental as at (in each case) the Date of Application (as defined in the Direct Train Lease).

16 Illegality and Costs Variation

16.1 Illegality

- (A) If at any time after the date hereof the introduction, imposition or variation of any law, order, regulation or official directive, or any change in the interpretation or application thereof, makes it unlawful or impractical without breaching such law, order, regulation or directive for either Lessor (an "Affected Lessor") to maintain, fund or give effect to its obligations under this Lease or any of the other Transaction Documents to which it is a party, then the Lessors shall, upon becoming aware of the same, notify the Lessee of the nature of the circumstances.
- (B) The Affected Lessor shall discuss with the Lessee in good faith any methods of avoiding the effects of such introduction, imposition, variation or change and in particular shall consider, subject to obtaining any necessary consents, transferring its rights and obligations under this Lease or any of the other Transaction Documents to which the Affected Lessor is a party to any Associated Company of the Affected Lessor, or to some other financial institution acceptable to the Lessee, not affected by such law, order, regulation or directive but so that nothing in this clause 16.1 shall impose any legal liability on the Affected Lessor to implement any such matters.
- (C) If the Affected Lessor, prior to the date upon which such introduction, imposition, variation or change takes effect, is unable to avoid the effects thereof, or the Lessee fails to agree to any proposal put forward by the Affected Lessor to avoid the effects of such introduction, imposition, variation or change, the provisions of clause 17.2(E) shall apply.

16.2 Costs variation

- (A) If by reason of the introduction, imposition or variation of any law, order, regulation or official directive (whether or not having the force of law but if not having the force of law compliance with which by banks and/or finance lessors is customary and is generally regarded to be of a mandatory nature), after the date hereof or any change in the interpretation or application thereof, or compliance after the date hereof with any request (whether or not having the force of law but if not having the force of law compliance with which by banks and/or finance lessors is customary and is generally regarded to be of a mandatory nature) after the date hereof from any central bank or other monetary or other authority, the Lessors determine that:
 - (1) either or both of the Lessors shall incur any cost referable to the Lease or any of the other Transaction Documents which is not otherwise contemplated or provided for under the terms and

conditions of this Lease or any of the other Transaction Documents; or

- (2) either or both of the Lessors will incur any increase in the cost of funding, maintaining or giving effect to their obligations under this Lease or any of the other Transaction Documents; or
- (3) there is imposed on either or both of the Lessors any other condition affecting the performance of their obligations under this Lease or any of the other Transaction Documents,

(each affected Lessor being a "Relevant Lessor" for the purposes of this clause 16.2) the Lessors shall forthwith upon becoming aware of the same notify the Lessee of the circumstances leading to such determination and the Lessee shall pay to the Relevant Lessor on demand such amounts as the Lessors shall certify to the Lessee as being necessary to compensate the Relevant Lessor for any such cost or condition incurred by or imposed on it as a result of any of such matters so as to maintain it in the same position as if such cost or increased cost or condition had not been incurred or imposed. The Lessors shall not make any demand under this clause 16.2 in respect of any increased cost or liability comprising Taxes or in respect of which an adjustment to Rental has already been or can be made pursuant to the Financial Schedule (or which could be so made but for the application of paragraph 11 thereof);

- (B) Without prejudice to the obligations of the Lessee under clause 16.2(A), the Lessors and the Lessee shall, following receipt by the Lessee of the Lessors notice in respect of an increased cost or liability, meet together to discuss in good faith any methods of avoiding the effects of such introduction, variation, imposition or change including without limitation, considering, subject to obtaining any necessary authorisations and consents, the transfer of the Relevant Lessor's rights and obligations under this Lease or any of the other Transaction Documents to any Associated Company of the Relevant Lessor or to some other financial institution not affected by such law, order, regulation or directive or request but so that nothing in this clause 16.2 shall impose any legal liability on the Relevant Lessor to implement any such matters.

16.3 Discussions

Each of the Lessors acknowledges the terms of clause 44.2 of the Usage Contract and, without prejudice to its rights under clauses 16.1 or 16.2, agrees to enter into the good faith discussions with the Lessee and LUL in the circumstances contemplated thereby but without incurring any legal liability to implement any of the matters so discussed or contemplated thereby unless so agreed by the Lessors and the other parties to such discussions.

17 Events of Default, Supervening Events and Acceleration

17.1 Events of Default

The Lessors and the Lessee agree that it is a fundamental term and condition of this Lease that the occurrence of an Event of Default shall, subject always to clause 17.4(A), entitle the Lessors to:

- (1) treat any such occurrence as a repudiation by the Lessee of this Lease; and
- (2) serve a Termination Notice on the Lessee pursuant to clause 18.1; and
- (3) recover a Termination Payment pursuant to clause clause 18.3.

The following events are Events of Default, namely if:

- (A) the Lessee shall default in making any payment (other than any payment where the limited recourse provisions of clause 7.4 apply) due from it to either of the Lessors under the terms of this Lease or the other Lease Documents (including, for the avoidance of doubt, the payment of any amount by way of cash collateral security) for a period of three (3) Working Days after the due date for such payment or, in the case of a demand payment demanded in accordance with this Lease, the Lessee shall default in making such payment on the due date for such payment in accordance with clause 7.8(B);
- (B) the Lessee shall fail to perform or comply with any of its obligations and undertakings under clause 14, provided that in the case of Insurances with respect to which avoidance or cancellation will not be effective against the Lessors for thirty (30) days after issue or notice to the Lessors of such avoidance or cancellation, no such failure to carry and maintain the Insurances shall constitute an Event of Default if no less than five (5) days prior to any such avoidance or cancellation taking effect the Lessee is able to demonstrate to the satisfaction of the Lessors that such Insurances will not be avoided or cancelled or to procure that alternative Insurances satisfactory to the Lessors are in place; or
- (C) any representation or warranty made by the Lessee in this Lease is or proves to have been incorrect when made or repeated in a respect which would in the reasonable opinion of the Lessors have a material adverse effect on the ability of the Lessee to perform its payment obligations owed to either of the Lessors under this Lease or any of the other Lease Documents and, if such misrepresentation or breach of warranty is capable of remedy, it shall not have been remedied within twenty-one (21) Working Days following notice by the Lessors of such misrepresentation or breach;

- (D) the Lessee does not perform or comply with any one or more of its obligations or undertakings owed to either of the Lessors under this Lease or any of the other Lease Documents (other than those obligations or undertakings referred to in clauses 17.1(A), (B) and (C)) and either:
- (a) such failure to perform or comply shall be incapable of remedy;
or
 - (b) if such non-performance or non-compliance is capable of remedy it shall not have been remedied within thirty (30) Working Days following notice by the Lessors to the Lessee of such non-performance or non-compliance,
- and:
- (i) the result of such failure to perform or comply would in the reasonable opinion of the Lessors, have a material adverse effect on the ability of the Lessee to comply with its obligations owed to either of the Lessors under this Lease or any other Lease Document and on the ability of either of the Guarantors to comply with its obligations under the Guarantees; and
 - (ii) if such failure to perform or comply also constitutes a default under or breach of the Usage Contract entitling LUL to terminate the Usage Contract, LUL shall have terminated the Usage Contract;
- (E) any Financial Indebtedness of the Lessee in excess of one million pounds (£1,000,000) in respect of a single transaction or the equivalent in any other currency is not paid or discharged on the relevant due date or within any period of grace applicable thereto and the relevant creditor calls a default (except where the Lessee satisfies the Lessors that the Lessee is disputing, in good faith, its liability to pay or discharge such Financial Indebtedness);
- (F) any consent, authorisation, licence or approval of, or registration with or declaration to, governmental or public bodies or authorities or courts required by the Lessee in connection with the performance by the Lessee of its obligations owed to either of the Lessors under any of the Lease Documents is modified in a manner unacceptable to the Lessors or is not granted or is revoked or terminated or expires and is not renewed or otherwise ceases to be in full force and effect and such modification, revocation, termination or expiry would in the reasonable opinion of the Lessors have a material adverse effect on the ability of the Lessee to comply with its obligations to either of the Lessors under this Lease or any other Lease Document and on the ability of either of the Guarantors to comply with its obligations under the Guarantees; or

- (G) any judgment or order made against the Lessee in respect of an amount owing by the Lessee in excess of one million pounds (£1,000,000) is not stayed or complied with within twenty-one (21) Working Days, or a creditor attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced upon or sued out against any of the undertaking, assets, rights or revenues of the Lessee in respect of an amount owing by the Lessee in excess of one million pounds (£1,000,000) and is not discharged within sixty (60) days; or
- (H) the Lessee stops or suspends payment of, or admits inability to pay, its debts as they fall due or becomes insolvent or unable to pay its debts generally as they fall due or commences negotiations with one or more of its creditors with a view to the general re-adjustment or re-scheduling of all or any material part of its Financial Indebtedness or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or any class of creditors or proceedings are commenced in relation to the Lessee under any law, regulation or procedure relating to reconstruction or readjustment of debts generally; or
- (I) the Lessee takes any action or any legal proceedings are started or other steps taken for (i) the Lessee to be adjudicated bankrupt or insolvent, (ii) the winding-up or dissolution (other than for the purposes of a reconstruction or amalgamation the terms of which have received the previous consent in writing of the Lessors) of the Lessee or (iii) the appointment of a liquidator, trustee, receiver, administrator or similar officer of the Lessee or over the whole or any material part of its undertaking, assets, rights or revenues; or
- (J) (1) there occurs, in relation to the Lessee in any country or territory in which it carries on business, or to the jurisdiction of whose courts any part of its assets is subject, any event which, in the reasonable opinion of the Lessors, appears in that country or territory to correspond with, or have an effect equivalent to, any of the events mentioned in clauses 17.1(H) or (I); or
- (2) the Lessee otherwise becomes subject in any such country or territory to the operation of any law relating to insolvency, bankruptcy or liquidation which would in the reasonable opinion of the Lessors have a material adverse effect on the ability of the Lessee to comply with its obligations to either of the Lessors under this Lease or any other Lease Document and on the ability of either of the Guarantors to comply with its obligations under the Guarantees;
- (K) the Lessee ceases or is reasonably likely to cease to carry on its business (taken as a whole); or

- (L) all or a material part of the undertaking, assets, rights or revenues of, or shares or other ownership interests in, the Lessee are seized, nationalised, expropriated or compulsorily acquired by or under the authority of any government entity and such event would in the reasonable opinion of the Lessors have a material adverse effect on the ability of the Lessee to comply with its obligations to either of the Lessors under this Lease or any other Lease Document and on the ability of either of the Guarantors to comply with its obligations under the Guarantees; or
- (M) the Lessee disposes or is reasonably likely to dispose of all or a material part of its assets, whether by one or a series of transactions, related or not, other than for the purpose of a reconstruction or amalgamation the terms of which have received the previous consent in writing of the Lessors and such event would in the reasonable opinion of the Lessors have a material adverse effect on the ability of the Lessee to comply with its obligations to either of the Lessors under this Lease or any other Lease Document and on the ability of either of the Guarantors to comply with its obligations under the Guarantees;
- (N) the validity or enforceability of any of the Lease Documents shall at any time and for any reason be contested by the Lessee, or if the Lessee shall deny that it has any, or any further, liability thereunder or shall otherwise repudiate any of such Lease Documents or do or cause or permit to be done any act or thing evidencing an intention to repudiate any of such Lease Documents;
- (O) any of the circumstances referred to in clauses 17.1(E), (G), (H), (I), (J), (K), (L) or (M) shall occur in relation to either of the Guarantors save that:
 - (a) in the case of clauses 17.1(E) and (G), the relevant amounts shall be ten million pounds (£10,000,000) in the case of GAL and twenty million pounds (£20,000,000) in the case of GANV; and
 - (b) in the case of clauses 17.1(L) or (M), such circumstances (including, for the avoidance of doubt, any disposal of shares in GAL or (as the case may be) in the Lessee which would not otherwise constitute an Event of Default under clause 17.1(Q)) shall not constitute an Event of Default if it is established, by reference to the next available quarterly accounts of GANV, that the disposal of assets in question has not caused GANV to be in breach of any of the covenants contained in clause 5 of the GANV Guarantee;
- (P) either of the Guarantors (or, as the context admits, GANV only) shall be:

(a) in material breach of any warranty or representation when made or repeated by it, any covenant given by it, or any obligation (other than an obligation for the payment of monies) imposed on it under the GAL Guarantee or, as the case may be, the GANV Guarantee and either:

(i) such breach shall be incapable of remedy; or

(ii) if such breach is capable of remedy, it shall not have been remedied within, in the case of a warranty or representation, twenty-one (21) Working Days or, in the case of a covenant or obligation, thirty (30) Working Days, in each case following notice by the Lessors to the relevant Guarantor of such breach,

and the result of such breach would in the reasonable opinion of the Lessors, have a material adverse effect on the ability of the relevant Guarantor to comply with its obligations owed to either of the Lessors under the GAL Guarantee or, as the case may be, the GANV Guarantee Provided always that, in the case of a breach of any of the covenants contained in clause 5 of the GANV Guarantee, such breach shall be deemed to be material and to have such material adverse effect for the purposes of this clause 17.1(P) and the aforesaid remedy periods shall not apply, but, if such breach occurs during the Primary Usage Period, the due and proper performance by the Lessee of its obligations to provide security or make a cash deposit under clause 23.3 of this Lease shall be deemed to remedy such breach; or

(b) in breach of an obligation to make payment under the GANV Guarantee of any Acceleration Payment in respect of (and as defined in) any of the Transaction Documents; or

(c) in breach of an obligation to make any other payment under the GANV Guarantee;

(Q) either:

(a) the Lessee shall cease to be, directly or indirectly, a wholly-owned Subsidiary of GANV; or

(b) GAL shall cease to be a directly owned Subsidiary of GANV; or

(c) the Lessee shall cease to be a directly owned Subsidiary of GAL;

(R) an Acceleration Notice (as defined in the Equipment Lease) shall be issued by the Lessors under the Equipment Lease.

17.2 Supervening Events

The Lessee acknowledges and agrees that, subject always to the provisions of clauses 17.3 and 17.4(B), the occurrence of any Supervening Event which has not been waived by the Lessors (or, in the case of clause 17.2 (E), by the Affected Lessor only if the limitation contained therein is applicable) shall entitle the Lessors (or, in the case of clause 17.2(E), the Affected Lessor only if the limitation contained therein is applicable) to:

- (i) serve a Termination Notice on the Lessee pursuant to clause 18.1; and
- (ii) recover a Termination Payment pursuant to clause 18.3.

The following are Supervening Events, namely if:

- (A) (1) At any time prior to the occurrence of any permitted vesting or transfer under clause 17.2(A)(2), LUL shall cease to be owned by the Crown. For the purposes of this clause (A):
 - (i) LUL shall be regarded as "**owned by the Crown**" at any time when it is owned and controlled by or on behalf of (i) a Minister of the Crown or (ii) LRT as constituted under the London Regional Transport Act 1984 as at the date hereof or (iii) a public or statutory corporation or limited company which is wholly owned or controlled by a Minister of the Crown or (iv) a limited company wholly owned by any of the foregoing; and
 - (ii) the expression "**owned and controlled**" shall mean possessing:
 - (A) (in relation to a company having a share capital) ninety per cent (90%) or more of the issued equity share capital of the company or of the voting power exercisable at general meetings of the company; and
 - (B) the power to appoint or remove directors (by whatever name called) of the company holding between them ninety per cent (90%) or more of the voting power at meetings of the board of directors (by whatever name called) of the company; and
 - (iii) the expression "**wholly owned**" shall have the same meaning as is given to "**owned and controlled**" in paragraph (ii) above for so long as all of LUL's issued equity share capital is possessed by a person within the

terms of clause 17.2(A)(1)(i) but, where that is not the case, references to "ninety per cent (90%) or more" shall be deemed to be references to "all".

- (2) any of the payment obligations of LUL under or in respect of the Usage Contract are to be vested in or transferred to any party other than a party which is owned by the Crown (as defined, mutatis mutandis, in clause 17.2(A)(1)) and which has, or will have following such vesting or transfer, Net Tangible Assets of not less than the Agreed Amount (a "Permitted Transferee"). For the avoidance of doubt, following any such permitted vesting or transfer pursuant to this clause 17.2(A)(2), the provisions of clause 17.2(A) shall continue to apply to each Permitted Transferee in substitution for LUL mutatis mutandis;
- (3) at any time prior to the occurrence of any permitted vesting or transfer under clause 17.2(A)(2), the whole or a substantial part of the assets of LUL are to be vested in or transferred to any party (other than a party to whom a permitted vesting or transfer is to contemporaneously occur under clause 17.2(A)(2)) such that the Net Tangible Assets of LUL would as a consequence fall below the Agreed Amount.

In clause 17.2(A)(2) and this clause 17.2(A)(3):

- (a) *Net Tangible Assets* means the unencumbered tangible fixed assets of LUL net of depreciation, valued at any time that may be required for the purposes of such clauses by application of the accounting policies used in the preparation of the statutory accounts of LUL for the year ending 31 March 1994;
 - (b) *Agreed Amount* means £4,978,960,000, being 85 per cent. of value of the Net Tangible Assets as disclosed by and valued in accordance with the accounting policies used in the preparation of the statutory accounts of LUL for the year ending 31 March 1994;
 - (c) *unencumbered* means not encumbered by any mortgage, charge, pledge, hypothecation or other security interest;
- (4) proposed primary or secondary legislation is placed before Parliament for the amendment or repeal of the London Regional Transport Act 1984, or for the enactment of new or additional statutory or regulatory provisions relating to LUL's public duties or its funding, and in either such case the occurrence of such event will or is likely to materially adversely affect the ability of

LUL to perform or comply with its payment obligations under the Usage Contract;

- (5) any consent, authorisation, licence or approval required by LUL for the performance by it of the statutory functions delegated to it by LRT is modified or is not granted or is revoked or terminated or expires and is not renewed or otherwise ceases to be in full force and effect, and in any such case such event will or is likely to materially adversely affect the ability of LUL to perform or comply with its payment obligations under the Usage Contract;
- (6) a Minister of the Crown issues any direction of mandatory effect to LUL under any applicable law or LUL is in breach of any such direction, and in either case the occurrence of such event will or is likely to materially adversely affect the ability of LUL to perform or comply with its payment obligations under the Usage Contract;
- (7) any LUL Financial Indebtedness in excess of ten million pounds in respect of a single transaction or the equivalent in any other currency is not paid or discharged on the relevant date or within any period of grace applicable thereto and the person entitled to payment calls a default (except where LUL is disputing in good faith its liability to pay or discharge such LUL Financial Indebtedness).

For the purposes of this clause 17.2(A)(7) the expression "LUL Financial Indebtedness" means any obligation for the payment or repayment of money, whether present or future, actual or contingent incurred as a result of:

- (a) monies borrowed or raised by LUL;
- (b) any liability of LUL under any debenture, bond note or other security;
- (c) any liability of LUL under any acceptance credit facility, finance lease, deferred purchase consideration arrangement or any other agreement or instrument having the commercial effect of a borrowing or raising of money by LUL; and
- (d) any guarantee, indemnity or other assurance against financial loss given by LUL in respect of any of the foregoing;

provided that LUL Financial Indebtedness shall not include:

- (i) any trade indebtedness incurred by LUL in the normal course of business; or
- (ii) only until during such period as LUL is owned by the Crown (as defined in clause 17.2(A)(1)(i)), any amount owing to any party which is owned by the Crown;

Notwithstanding the foregoing terms of clause 17.2(A), the other provisions of this clause 17 shall not have effect:

- (a) on or prior to the earlier of (i) the Final Leasing Date and (ii) the Last Train Acceptance Date in relation to any event within the terms of clause 17.2(A)(3);
- (b) in relation to any event within the terms of clauses 17.2(A)(4), (5) or (6) unless and until:
 - (i) the Lessors serve written notice on the Lessee and LUL to the effect that they consider such event will or is likely to have a material adverse effect on LUL's ability to perform its payment obligations under the Usage Contract (provided that the Lessors shall have served such notice not later than thirty (30) Working Days following the service of any notice by LUL on the Lessors pursuant to clause 5.1 of the Direct Agreement informing the Lessors of the occurrence of such event); and
 - (ii) 7 days elapse following receipt of a notice pursuant to paragraph (i) above without LUL serving a notice on the Lessors to the effect that it considers it will be able to perform its payment obligations under the Usage Contract notwithstanding the occurrence of such event;
- (c) following service of any notice pursuant to clause 17.2(A)(b)(ii) unless and until, in proceedings to which the Lessee and LUL are party, a judgment is given which is not being or is not capable of being appealed against by LUL to the effect that the circumstances of 17.2(A)(4), (5) or (6), as the case may be, obtain;
- (d) in relation to any event within the terms of clause 17.2(A)(7) unless and until:
 - (i) after the date hereof LUL enters into a commitment to the same or substantially the same effect as clause 17.2(A)(7) with any other party; and thereafter
 - (ii) the circumstances in clause 17.2(A)(7) occur.

- (B) the Lessee shall:
- (1) give notice to terminate the Usage Contract pursuant to clauses 27.1(a), (f) or (g) thereof, or be entitled to give notice to terminate the Usage Contract pursuant to clauses 27.1(f) or (g) thereof to the extent that the relevant payment obligation of LUL referred to therein is that contained in clause 15.11 of the Usage Contract; or
 - (2) be entitled to give, or give, notice to terminate the Usage Contract pursuant to clauses 27.1(b), (c), (d) or (e) thereof;
- (C) LUL shall give notice to terminate the Usage Contract or any part thereof pursuant to:
- (1) clause 26.1.1 thereof; or
 - (2) clause 26.2.1 thereof and the Lessors, having considered in good faith any proposals which the Lessee may make to them prior to the date on which such termination is to take effect in relation to the continuance of the leasing of the Leased Trainsets, decline any such proposals in their absolute discretion (in which event the Supervening Event shall be deemed to have occurred five (5) Working Days prior to the date on which such termination is to take effect); or
 - (3) clause 28.1.1 thereof;
- save where, in the circumstances referred to in (1) above, the Lessee shall have served on the Lessors in accordance with clause 8.1 of this Lease a Voluntary Termination Notice in respect of the same items of Leased Trainsets which are the subject of such notice of termination given by LUL under the Usage Contract; or
- (D) LUL shall not have given notice to the Lessee to renew the Usage Contract (by the latest permissible time under clause 6.2 thereof) on the expiry of the Primary Usage Period and the Lessors, having considered in good faith any proposals which the Lessee may make to them prior to the expiry of the Primary Usage Period in relation to the continuance of the leasing of the Leased Trainsets, decline any such proposals in their absolute discretion (in which event the Supervening Event shall be deemed to have occurred five (5) Working Days prior to the date of expiry of the Primary Usage Period); or
- (E) the circumstances referred to in clause 16.1 shall have occurred and the effects of the relevant introduction, imposition, variation or change shall not have been avoided in accordance with clauses 16.1(C) or 16.3 save that, where only one of the Lessors is an Affected Lessor, and subject

to the Lessee having complied with its obligations to the Affected Lessor under clause 18.3 in full, the other Lessor shall not be entitled to treat such circumstances as a Supervening Event if (but only if) the Lessee shall have established to the satisfaction of the other Lessor that the continuing interests of such other Lessor in relation to this Lease shall not be materially prejudiced by any Termination of the leasing hereunder by the Affected Lessor.

17.3 Additional Security

- (A) The Lessee undertakes, in relation to an event within the terms of clauses 17.2(A)(1), (2), (3) or (4), to give sufficient notice to the Lessors prior to the occurrence of any Supervening Event and, in relation to any event within the terms of clauses 17.2(A)(5), (6) or (7) (but, in relation to clause 17.2(A)(7), only if such clause shall have taken effect pursuant to clause 17.2(A)(d)), to give notice to the Lessors as soon as it becomes aware of the occurrence of such Supervening Event so as, in each case, to enable the procedures set out below to be followed.
- (B) In the event that the Lessee gives notice to the Lessors pursuant to clause 17.2(A), or the Lessors, having become aware of the occurrence of a Supervening Event (but, in relation to clause 17.2(A)(7), only if such clause shall have taken effect pursuant to clause 17.2(A)(d)), give notice to the Lessee and LUL to that effect, then and in either case the Lessors shall have the right to review the likely effect of the Supervening Event and the Lessors may require the provision of additional security by the Lessee, such security to take effect as follows:
- (a) in relation to an event within the terms of clauses 17.2(A)(1), (2) or (3) reasonably prior to but in any event not later than the date falling five Working Days before such event actually occurs;
 - (b) subject always to clause 17.3(B)(c), in relation to an event within the terms of clauses 17.2(A)(4), (5), (6) or (7) not later than ten Working Days after the occurrence of such Supervening Event;
or
 - (c) in relation to an event within the terms of clauses 17.2(A)(4), (5) or (6), not later than ten Working Days after the later of the last date referred to in clauses 17.2(A)(b) or (c).

In the event that the likely effects of the relevant Supervening Event are satisfactory to the Lessors, this Lease shall continue on its then existing terms.

- (C) For the purposes of clause 17.3(B) should the Lessors require the provision of additional security, if the Lessee provides (on or before the

relevant date determined in accordance with the provisions of clauses 17.3(B)(a), (b) or (c) as the case may be):

- (a) an assignment (by way of security) by the Lessee to the Lessors of the benefit of an unconditional guarantee in respect of the obligations of LUL under the Usage Contract from a first class OECD Zone A Bank having a Standard and Poor's long-term credit rating of not less than AA (or, if Standard and Poor no longer offer such rating an equivalent rating, with such other agency as is, in the reasonable opinion of the Lessors, of equal standing); or
- (b) a charge over cash collateral for such obligations;

such security shall be deemed to be satisfactory to the Lessors (but only for so long as such guarantee or cash collateral remains in full force and effect and such credit rating remains not less than AA or such other equivalent rating) provided that the Lessors, acting reasonably and using their normal credit criteria and taking into account the nature of the period of the risks involved, determine that the effect of the relevant Supervening Event will not, provided such guarantee is issued, or cash collateral placed, and remains in effect, materially adversely prejudice the interests of the Lessors.

17.4 Acceleration

- (A) If at any time an Event of Default under clause 17.1 (other than pursuant to clause 17.1(O) which is referable to clauses 17.1(H), (I) or (J), or pursuant to clause 17.1(P)(b)) shall have occurred which has not been waived by the Lessors, the Lessors may give notice to the Lessee (an "Acceleration Notice") accelerating the payment of all future Primary Period Rentals to the extent of the amount specified in clause 17.4(C) to a date not less than five (5) Working Days after the date of such notice (the "Acceleration Date") provided that any such acceleration shall be without prejudice to the Lessors other rights (including, but not limited to, their rights in respect of the existence or occurrence of any further Events of Default or Supervening Events) under this Lease and the other Operative Documents and further provided that any failure by the Lessee to make such payment in full on the Acceleration Date shall (subject to the provisions of clause 18.1) entitle the Lessors to serve a Termination Notice under clause 18.1.
- (B) If any of the circumstances described in clause 17.2(A) arise, and if the Lessee shall fail to have provided, whether in accordance with clause 17.3(C) or otherwise, any additional security required by the Lessors in accordance with clause 17.3(B), the Lessors will consent to the continuation of the leasing of the Leased Trainsets pursuant to this Lease if the Lessee serves a notice on the Lessors (an "Acceleration Notice")

accelerating the payment of all future Primary Period Rentals to the extent of the amount specified in clause 17.4(C) to a date not later than the date on which the additional security required to be provided by the Lessee should have taken effect in accordance with clause 17.3(B) (the "Acceleration Date") provided that any such acceleration shall be without prejudice to the Lessors' other rights (including, but not limited to, their rights in respect of the existence or occurrence of any further Events of Default or Supervening Events) under this Lease and the other Operative Documents and further provided that any failure by the Lessee (disregarding for the purpose of determining the right of the Lessors to serve a Termination Notice as hereinafter provided (but without prejudice to the Lessee's entitlement (if any) to limited recourse thereunder) the provisions of clause 7.4) to make such payment in full on the Acceleration Date shall (subject to the provisions of clause 18.1) entitle the Lessor to serve a Termination Notice under clause 18.1.

- (C) On the Acceleration Date the Lessee shall pay to each Lessor in respect of the Leased Trainsets by way of further Rental, the amount notified by such Lessor to the Lessee as being equal to the aggregate of:
- (1) the Acceleration Payment (calculated as at such Acceleration Date); and
 - (2) any Rental due on such Acceleration Date, all arrears of Rental and any other sums (whether in respect of interest, costs, fees, expenses or otherwise) then accrued due or due and payable under this Lease.

18 Lessor's Termination Rights

18.1 Termination Notice

If at any time:

- (A) an Event of Default shall have occurred which has not been waived by the Lessors (and, in the case of an Event of Default other than one pursuant to clause 17.1(O) which is referable to clauses 17.1(H), (I) or (J) or pursuant to clause 17.1(P)(b), an Acceleration Payment shall have been demanded which has not been made pursuant to clause 17.4(A)); or
- (B) a Supervening Event shall have occurred which has not been waived by the Lessors or, in the case of clause 17.2(E), by the Affected Lessor only if the limitation contained therein is applicable (and, in the case of clause 17.2(A), has not been remedied pursuant to clause 17.3 or an Acceleration Payment shall have been demanded which has not been made pursuant to clause 17.4(B)),

in each case at any time thereafter for so long as the same is continuing the Lessors (or, in the case of clause 17.2(E), the Affected Lessor only if the limitation contained therein is applicable) may (without prejudice to any other rights or remedies they may have), but provided always that the Lessors shall first have made demand for any such Acceleration Payment under each of the Guarantees and the Guarantors shall have failed to make such payment within the time permitted for payment thereunder, give notice (and, in the case of the circumstances referred to in clauses 17.2(B), (C) or (D) occurring, the Lessors shall, if requested by the Lessee, give notice) (a "Termination Notice") to the Lessee terminating:

- (1) the Lessors obligation to lease the Trainsets to the Lessee pursuant to the terms of this Lease; and/or
- (2) the leasing of the Leased Trainsets under this Lease,

as at the date specified in the Termination Notice (being a date not earlier than five (5) Working Days after the date of the Termination Notice) (the "**Forced Termination Date**") without prejudice to the other provisions of this Lease, which shall continue in full force and effect. On the Forced Termination Date (without prejudice to the Lessee's continuing obligations), and subject to clause 19.5, the Lessee's right to the use and enjoyment of the Leased Trainsets shall cease.

18.2 Retaking possession of Leased Trainsets

Following the Forced Termination Date the Lessors may, subject always to clause 19.5, give the Lessee a further notice that they intend to repossess the Leased Trainsets and at any time thereafter the Lessors or their duly appointed agent may (and the Lessee shall procure that they may), subject to clause 19.1, enter upon any premises belonging to, or in the occupation of, or under the control of the Lessee or RMS for the purpose of taking possession of the Leased Trainsets.

18.3 Payments on Forced Termination Date

On the Forced Termination Date (or such later date as the Lessors may in their absolute discretion agree) the Lessee shall pay to each Lessor (or, in the case of clause 17.2(E), to the Affected Lessor only if the limitation contained therein is applicable) the amount notified by such Lessor (or, in the case of clause 17.2(E), by the Affected Lessor only if the limitation contained therein is applicable) to the Lessee as being the amount by which the aggregate of:

- (1) where LUL shall not have exercised its Step-Up Rights, the Termination Payment calculated as at the Forced Termination Date (for the avoidance of doubt, where LUL shall have exercised its Step-Up Rights, the provisions of clauses 18.5 and 23.3 shall instead apply); and

- (2) all arrears of Rental and any other sums (whether in respect of interest, costs, fees, expenses or otherwise) then accrued due or due and payable under this Lease,

exceeds the Net Sale Proceeds (if any) received by such Lessor on or prior to the Forced Termination Date.

18.4 Undelivered Trainsets Termination

If for any reason any Trainsets (the "**Undelivered Trainsets**") shall not have become subject to this Lease pursuant to clause 4.2 on or before (i) the Final Leasing Date or such earlier date as the Lessee shall notify to the Lessors or (ii) the date of issue of an Acceleration Notice or a Termination Notice (in either case the "**Undelivered Trainsets Termination Date**") then the obligation of the Lessors to lease the Undelivered Trainsets to the Lessee pursuant to the terms of this Lease shall forthwith terminate and the Lessee shall pay or procure that there is paid to each Lessor not later than thirty (30) days following the Final Leasing Date (or not later than thirty (30) days following the Undelivered Trainsets Termination Date if the Lessee gives the notice referred to above) the amount by which the aggregate of:

- (1) the Partial Termination Payment or, as the case may be, the Termination Payment in respect of the Undelivered Trainsets (calculated as at the Undelivered Trainsets Termination Date (or if such day is not a Working Day the immediately succeeding Working Day unless this would be in the next following calendar month in which case the calculation shall be made as at the immediately preceding Working Day)); and
- (2) all other sums (whether in respect of interest, costs, fees, expenses or otherwise) then accrued due or due and payable (but unpaid) by the Lessee, in connection with the Undelivered Trainsets, under this Lease

exceeds the Net Refund Amount (if any) received by such Lessor on or prior to such date for payment.

18.5 Post-Termination Payments

- (A) Where there shall have been a Termination prior to the twentieth (20th) anniversary of the Start Date pursuant to clause 18.1 and LUL shall as a consequence thereof have exercised (to the extent that it is entitled to do so) its Step-Up Rights, and if the leasing of the DTL Leased Trainsets under the Direct Train Lease shall terminate by effluxion of time on expiry of the DTL Primary Period the Lessee shall pay (subject to clause 18.5(C)) to each Lessor thereupon the Base Case Termination Sum as at that date as reduced in accordance with the DTL Royal Bank Financial Schedule or (as the case may be) the DTL Concord Financial Schedule.

- (B) Where there shall have been a Termination prior to the twentieth (20th) anniversary of the Start Date pursuant to clause 18.1 and LUL shall as a consequence thereof have exercised (to the extent that it is entitled to do so) its Step-Up Rights, and if the Lessors shall thereafter give notice to LUL under clause 18.1 of the Direct Train Lease exercising their right to terminate the leasing of the Leased Trainsets thereunder, the Lessee shall on the Forced Termination Date (as defined in the Direct Train Lease) pay (subject to clause 18.5(C)) to each Lessor an amount equal to the Strip Termination Amount.
- (C) The Lessee agrees that the Lessors shall be entitled to authorise the release of and thereafter apply the sum then standing to the credit of the RV Deposit Account (together with any accrued interest thereon) in satisfaction or (as the case may be) partial satisfaction of the payment obligations of the Lessee under clause 18.5(A) or, as the case may be, clause 18.5(B).
- (D) Other than in relation to the obligations of the Lessee under clauses 18.5(A) and (B) and clauses 23.2, 23.3 and 23.4 hereof, the Lessee shall have no liability to the Lessors in respect of any payment or other obligation arising under this Lease on or after the date on which the Direct Arrangements take effect following the exercise (if any) by LUL of its Step-Up Rights or on or after the date on which LUL issues any Handback Notice pursuant to its rights under clause 6.1 of the Direct Agreement.

19 Return and Disposal of Leased Trainsets

19.1 Re-delivery by Lessee

The Lessee agrees that, forthwith (subject to clause 19.5) upon the Termination or expiry of the leasing of any Leased Trainset under this Lease at its own cost and expense it will:

- (A) (save in the case of a Total Loss resulting from the destruction, damage beyond repair, damage which is uneconomic to repair or loss of possession of such Leased Trainset) forthwith re-deliver (subject to any rights of LUL) such Leased Trainset to the Lessors at either Depot or such other location as the parties may agree. If such Leased Trainset is a Total Loss as a result of loss of possession and the Lessee subsequently regains possession of such Leased Trainset the Lessee will comply with the obligation to redeliver such Leased Trainset forthwith upon regaining such possession.
- (B) if such Leased Trainset does not comply with the Return Condition, promptly remedy, or procure the remedy of, any defects or deficiencies in such Leased Trainset so that it complies with the Return Condition in all material respects. If the Lessee fails to comply with any such

requirement the Lessors shall be entitled to remedy the defects or deficiency so that it complies with the Return Condition and to recover from the Lessee all Losses (other than those referred to in clause 9.6) properly incurred in so doing;

- (C) if, and for so long as, the Lessee is, and LUL is not, acting as the sales agent of the Lessor pursuant to clause 19.3, store, and maintain and generally protect such Leased Trainset in compliance with the Return Condition, until the sale of such Leased Trainset by or on behalf of the Lessors shall have been completed; and
- (D) assign to the Lessors (or as the Lessors may direct) the benefit of all warranties, indemnities and guarantees which the Lessee may have in respect of such Leased Trainset or to the extent that any of such warranties, indemnities or guarantees are non-assignable it will hold the benefit of such warranties indemnities or guarantees on trust for the Lessors (or as the Lessors may direct)

save that on the expiry of the Lease Period by (i) effluxion of time or (ii) an earlier Termination of the leasing hereunder where all amounts due by the Lessee to the Lessors under this Lease have been paid in full, the Lessors hereby waive the requirements of paragraphs (B) (save in relation to storage if, and for so long as, the Lessee is, and LUL is not, acting as the sales agent of the Lessors pursuant to clause 19.3), (C) and (D) above.

19.2 Sale of Leased Trainsets

Following the expiry of the Lease Period by effluxion of time or any Termination of the leasing of any Leased Trainset under this Lease (but in the case of a Total Loss, only to the extent that the Lessors are free to dispose of such Leased Trainset and subject always to the rights of insurers), and subject always to clause 19.5 and the Step-Up Rights, such Leased Trainset (and, for the purposes of this clause 19.2 and clauses 19.3, 19.4 and 20, such expression shall be deemed in the case of any Termination under clause 18.1 (other than one pursuant to clauses 17.2(A), (B), (D), or (E)) to include all Third Party Financed Equipment relating to such Leased Trainset which has been self-financed by the Lessee) shall be sold in accordance with clause 19.3 and (if applicable) clause 19.4 and the Net Sale Proceeds realised by such sale shall be applied in accordance with clause 20.

19.3 Sales agency

- (A) In circumstances where the Lessee is not entitled to act as sales agent under clause 19.3(B), the Lessors shall have the sole right of deciding the manner, timing, means and terms of disposal of any Leased Trainset to which this clause 19 applies and, in particular, whether to sell by public auction or tender, with or without reserve, or by private treaty,

such sale to take place as soon as is reasonably practicable after re-delivery of such Leased Trainset under clause 19.1.

- (B) The Lessee shall act (other than following a Termination pursuant to clause 17.1 or clause 17.2(C)(3)) as the exclusive sales representative of the Lessors in respect of any Leased Trainset to which this clause 19 applies until six (6) months after the date of expiry or Termination (as the case may be) of the Lease Period or such longer period as the Lessors may agree (acting reasonably), and shall use all reasonable endeavours to arrange and negotiate (excluding the power to undertake a contractual commitment to pass title on behalf of the Lessors) a sale of the same. The Lessee shall notify the Lessors of the amount and full terms of each offer received by it or notified to it and the names and addresses of each offeror.
- (C) The Lessee shall be entitled to appoint LUL to act as the Lessors' sub-agent for the purposes of this clause 19.3 on the same terms mutatis mutandis as herein contained, but the Lessee shall however remain fully and primarily liable for all of its obligations hereunder notwithstanding the appointment of such sub-agent.
- (D) The appointment hereunder of the Lessee as exclusive sales representative with respect to any Leased Trainset to which this clause 19 applies shall, at the option of the Lessors, terminate forthwith upon:
 - (1) the occurrence of the circumstances referred to in either of clauses 17.1 or 17.2(C)(3); or
 - (2) a Total Loss of such Leased Trainset.

19.4 Terms of Sale

Each sale to be arranged and negotiated by the Lessee (acting as the exclusive sales representative of the Lessors) pursuant to this Lease shall comply with the following conditions:

- (A) each sale shall be at a cash price payable to the Lessors in full on completion and shall take place on or following the expiry of the Lease Period or (as the case may be) the date of Termination of the leasing of the relevant Leased Trainset in such jurisdiction as the Lessors may, in their absolute discretion, approve;
- (B) the cash price payable for the relevant Leased Trainset shall be the then current open market value of the relevant Leased Trainset (exclusive of VAT or any other similar Taxes);

- (C) the relevant Leased Trainset shall not be sold to the Lessee or to any person acting as agent of the Lessee or to any person for whom the Lessee has acted as agent in relation to this Lease;
- (D) each sale shall be made without any representation, recourse, warranty or covenant, express or implied, on the part of the Lessors save that:
 - (1) at the time of each such sale the Lessors will represent that they have such title to the Leased Trainset the subject of such sale as they obtained pursuant to the Purchase Agreement; and
 - (2) such Leased Trainset will be transferred free from all Encumbrances created by or attributable to the Lessors (other than any rights conferred on LUL under the Direct Agreement);
- (E) each sale of any Leased Trainset shall be governed by the laws of England;
- (F) each sale shall exclude, so far as permitted by the laws of England and the law of any jurisdiction in which such sale takes place, all liability of the Lessors (whether in contract, tort or otherwise) in relation to the relevant Leased Trainset.
- (G) All amounts payable in respect of the sale of any Leased Trainset will be calculated exclusive of VAT. Accordingly to the extent VAT is payable in relation to any such amount then the relevant purchaser shall in addition to making the payment of such amount also pay an amount equal to the applicable VAT.

19.5 Extended Handback

Where:

- (A) the Lessors shall have served a Termination Notice on the Lessee (other than as a consequence of (i) any event referred to in clause 17.1(O) which is referable to clauses 17.1(H), (I) or (J), or (ii) the circumstances referred to in clauses 17.2(B) or (E), having occurred); or
- (B) the Lessee shall have served a Voluntary Termination Notice on the Lessors in respect of all of the Leased Trainsets; or
- (C) upon the expiry of the Primary Period or any Secondary Period;

and in any such case LUL shall have given the Lessee notice in accordance with the provisions of clause 6.5 of the Usage Contract electing (but only to the extent that it is entitled to do so) to extend the Usage Contract for a Handback Extension Period (as defined in the Usage Contract), the following provisions shall apply:

- (1) the Lessee shall be entitled to serve notice on the Lessors (an "**Extended Handback Notice**"), such notice to be served no later than three (3) Working Days after the giving of such notice by LUL under the second sentence of clause 6.6.1.1(b) of the Usage Contract, electing for an extended period for re-delivery of the Leased Trainsets;
- (2) the duration of the Handback Period shall be specified in such Extended Handback Notice and shall in any event correspond with the provisions of such notice (or any amendment to such notice which is expressly permitted by clause 6.6.1.1(b) of the Usage Contract) given by LUL to the Lessee under the Usage Contract;
- (3) such Extended Handback Notice shall be accompanied by a Handback Schedule specifying the dates on which each of the Leased Trainsets will be re-delivered by the Lessee to the Lessors in accordance with the provisions of clause 19.1 and shall in any event correspond with the provisions of such notice (or any amendment to such notice which is expressly permitted by clause 6.6.1.1(b) of the Usage Contract) given by LUL to the Lessee under the Usage Contract;

and, if such election is made by the Lessee in accordance with the foregoing provisions, then, notwithstanding the service of such Termination Notice by the Lessors, the Lease Period in respect of each of the Leased Trainsets shall continue until such Leased Trainset is re-delivered to the Lessors in accordance with such Handback Schedule. Rental in respect of each of the Leased Trainsets shall be payable to each Lessor by the Lessee during the Handback Period in accordance with the provisions of paragraph 2.3 of the Royal Bank Financial Schedule (in the case of Royal Bank) and the Concord Financial Schedule (in the case of Concord). In the case of a Handback Period following the giving of a Voluntary Termination Notice, on each Handback Date a Partial Termination Payment shall be payable by the Lessee to each Lessor in relation to each of the Leased Trainsets which have been redelivered to the Lessors during the period since the immediately preceding Handback Date calculated in accordance with paragraph 9 of the Royal Bank Financial Schedule (in the case of Royal Bank) and the Concord Financial Schedule (in the case of Concord).

20 Application of Net Sale Proceeds

20.1 No LUL Step-Up

If the completion of a sale or other disposition of the Leased Trainsets takes place on or following a Termination and LUL shall then not have exercised its Step-Up rights (if any) or following the expiration of the leasing of the Leased Trainsets, the Net Sale Proceeds shall be applied as follows:

- (A) firstly, to the Lessee in reimbursement of all costs and expenses properly incurred by it in the performance of its obligations under clause 19.1(C);

- (B) secondly, in or towards the discharge of all amounts due and payable but not paid by the Lessee to the relevant Lessor pursuant to this Lease other than those described in paragraph (C) below; and
- (C) thirdly,
- (1) if such Net Sale Proceeds are received and retained by the relevant Lessor on or prior to the due date for payment of the Partial Termination Payment or (as the case may be) the Termination Payment, an amount not exceeding the Partial Termination Payment or (as the case may be) the Termination Payment shall be retained by such Lessor; and
- (2) if (1) above does not apply, such Lessor shall apply the Net Sale Proceeds, in and towards the discharge of such Partial Termination Payment or (as the case may be) the Termination Payment to the extent the same has not then been paid; and
- (D) fourthly, in or towards the discharge of all amounts expressed to be payable, and due but not paid, by the Lessee, RMS, the Manufacturer, or LUL to the relevant Lessor pursuant to any of the other Transaction Documents; and
- (E) lastly, the relevant Lessor shall (subject to the provisions of the Security Assignment) pay an amount equal to 99½% of the balance (if any) of such Net Sale Proceeds after application in accordance with (A), (B), (C) and (D) above to the Lessee by way of rebate of Rentals (to the extent that such amount does not exceed the Relevant Rental as at the Date of Application) together with Relevant Interest provided that such Lessor is satisfied that no further amounts are due and payable by the Lessee to it under this Lease.

Any Net Refund Amount arising on any Termination shall be applied by each Lessor in accordance with the foregoing provisions of this clause 20.1 as if the same were Net Sale Proceeds.

20.2 LUL Step-Up

In the event that DTL Net Sale Proceeds fall to be applied in accordance with clause 20 of the Direct Train Lease, each Lessor shall, following application of the same by such Lessor in accordance with clauses 20(A), (B), (C), (D) and (E) of the Direct Train Lease, pay, by way of rebate of Rentals, to the Lessee an amount (subject as provided in clause 10.3) equal to the lesser of (a) 99½% of the balance remaining of the DTL Net Sale Proceeds to be applied by it in accordance with the said clause 20 and (b) such part of such balance remaining as shall not exceed the aggregate of the DTL Relevant Rental and the Relevant Rental as at (in each case) the Date of Application (as defined in the Direct Train Lease).

21 Assignment

21.1 Assignment by Lessee

The Lessee may not assign or transfer any or all of its rights and/or obligations under any of the Transaction Documents to any party other than a member of the Lessee Group without the prior written consent of the Lessors, provided however that no such assignment or transfer shall occur in any event if the effect of such assignment or transfer would be to increase any of the obligations of the Lessee to make payments under this Lease.

21.2 Assignment by Lessors

Neither of the Lessors may assign or transfer any or all of their respective rights and/or obligations under any of the Transaction Documents to any party other than any member of (in the case of Royal Bank) the Royal Bank Group and (in the case of Concord) the Concord Group without the prior written consent of the Lessee.

If the effect of any such assignment or transfer would be to increase any of the obligations of the Lessee to make payments under this Lease, then such obligations shall be limited to the extent which would have applied had no such transfer taken place.

22 General

22.1 Delay in enforcement

All waivers of any right, power or privilege by any party hereto shall be in writing signed by such party. No failure or delay on the part of any party in exercising any power or right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any such right or power preclude any other or further exercise of any such right or power. The rights and remedies herein provided are cumulative and not exclusive of any rights and remedies provided by law and may at any time be enforced separately or concurrently with any other rights and remedies under this Lease or any of the other Transaction Documents or arising by operation of law.

22.2 Partial invalidity

If any term or provision of this Lease or any of the other Transaction Documents or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable the remainder of this Lease or the other Transaction Documents or application of such term or provision to persons or circumstances other than those as to which it is already invalid or unenforceable shall not be affected thereby and each term and provision of this Lease or any of the other Transaction Documents shall be valid and shall be enforceable to the fullest extent permitted by law.

22.3 Notices

Any notice, request, demand, consent, approval, record, election, certificate, notification, instruction or other communication required or permitted to be given under this Lease shall:

- (A) be in writing and shall be delivered personally or sent by first class prepaid letter or by fax (and in the case of fax, confirmed by a telephone call from the sender to the addressee);
- (B) in the case of any such communication being given to the Lessors, be given to both of the Lessors and in the case of any such communication being given by the Lessors either be a single notice signed by both Lessors or contemporaneous separate notices signed by each Lessor;
- (C) be deemed to have been received:
 - (1) in the case of a letter when delivered personally or four (4) days after being put in the post; and
 - (2) in the case of a fax on the day following the telephone confirmation referred to in clause 22.3(A);
- (D) be sent:
 - (1) if to the Lessors to:

R.B. Leasing (March) Limited
The Quadrangle
The Promenade
Cheltenham GL50 1PX

Attention: Finance Director
Fax No: 01242 224867
Tel No: 01242 226200

and to

Concord Leasing March (A) Limited
Concord House,
2 Waterside Drive,
Langley,
Slough SL3 6EZ

Attention: Company Secretary
Fax No: 01753 580789
Tel No: 01753 580022

(2) if to the Lessee to:

GEC ALSTHOM NL Service Provision Limited
PO Box 17
Mill Road
Rugby
Warwickshire CV21 1TB

Attention: Finance Director
Fax No: 01788 213194
Tel No: 01788 545611

or to such other address as is notified by one party to the others on not less than ten (10) days' prior written notice.

22.4 Lessors' right of set-off

The Lessors shall be entitled to set-off or withhold from any sum or sums expressed in this Lease to be payable to the Lessee any amount due and payable by the Lessee to the Lessors under this Lease or any of the other Transaction Documents to which the Lessee is a party.

22.5 Preservation of indemnities

Without prejudice to any right to damages or other right at law or in equity or other claim which either party may, at any time, have against the other hereunder it is hereby agreed and declared that each of the indemnities in favour of each of the Lessors by the Lessee contained in this Lease is in addition to, and not in substitution for, and shall not be affected or prejudiced by any other security, guarantee or indemnity now or hereafter held by either of the Lessors and together with all rights and remedies of either of the Lessors in respect of any breach by the Lessee of its obligations (past, present or future) under this Lease shall continue in full force and effect notwithstanding any sale or other disposition of the Leased Trainsets, or any breach of the terms hereof or thereof by either of the Lessors or the Lessee or the termination or expiration of the Lease Period or the Termination of the leasing of the Leased Trainsets.

22.6 Further assurances

The Lessee agrees from time to time, at its own expense, to do and perform such other and further acts and execute and deliver any and all such other instruments as may be required by law or reasonably requested by either of the Lessors to establish, maintain and protect the rights and remedies of such Lessor and to carry out and effect the intent and purpose of this Lease and the other Transaction Documents.

22.7 Previous agreement

This Lease and the other Transaction Documents supersede all proposals, agreements and other written and oral communications entered into prior to the date of this Lease in relation to the leasing of the Trainsets.

22.8 Variation

No variation of the terms and conditions of this Lease shall have any effect whatsoever unless such variation shall have been embodied in a written memorandum signed by persons duly authorised on behalf of the Lessee and each Lessor.

22.9 Time of the essence

Time shall be of the essence (subject to applicable periods of grace) as regards the performance by the Lessee and each of the Lessors of their respective obligations under this Lease.

22.10 Confidentiality

(A) The Lessors and the Lessee shall not disclose and shall ensure that their respective officers, employees, agents and advisers shall not disclose (without the consent of the other party) to any third party (except, where reasonably required in connection with this transaction, to agents of the Government) the contents of this Lease and the other Transaction Documents or any business or financial transaction relating to the other party or to the transactions effected by this Lease and the other Transaction Documents disclosed or made available to or ascertained by the other party or by any of its officers, employees, agents or which:

- (1) was not already in the possession of the Royal Bank Group or the Concord Group or the Lessee Group (as the case may be) or did not, at that time, form part of the public knowledge or literature; or
- (2) has not become part of the public knowledge or literature, otherwise than by reason of a breach of any of the undertakings contained in this clause 22.10,

Provided that the restriction contained in this clause 22.10 shall not apply to any disclosure:

- (a) to another member of the Royal Bank Group or the Concord Group or the Lessee Group (as the case may be) or to any agent or adviser of the Lessors or the Lessee (as the case may be) or of such other member of the Royal Bank Group or the Concord Group or the Lessee Group (as the case may be) in which case

the Lessors or the Lessee (as the case may be) shall be liable for any such persons's breach of this clause 22.10 unless such person agrees in writing delivered to the Lessee to be bound by the provisions of this clause 22.10; or

- (b) to the extent required by law or in connection with any proceedings, enforcement of rights or benefits, or protection of rights or benefits, whether under this Lease or any of the other Transaction Documents or otherwise; or
 - (c) pursuant to a direction or request (the compliance with which is customary) of the Bank of England or if required by any regulatory, governmental, taxing, fiscal, monetary or other competent authority or any institutions of the European Community or any other supranational institution; or
 - (d) to any potential assignee or transferee of all or any of the Lessors' rights and obligations under this Lease or any of the other Transaction Documents provided that such potential assignee or transferee agrees to be bound by the provisions of this clause 22.10; or
 - (e) to LUL and/or LRT.
- (B) The provisions of this clause 22.10 shall survive the expiry of the Lease Period or earlier Termination and the sale or other disposal of the Leased Trainsets by the Lessors.

22.11 Restrictive Trade Practices Act 1976

- (A) No restriction contained in this Lease and any arrangement of which this Lease forms part by virtue of which this Lease or such arrangement is subject to registration under the Restrictive Trade Practices Act 1976, shall come into effect until the day following the day on which particulars of this Lease and of any such arrangement are furnished to the Office of Fair Trading (or such later date as may be provided for in relation to any such restriction).
- (B) The parties hereto shall each cooperate fully in:
 - (i) furnishing particulars of this Lease or any other agreement which together with this Lease may form part of an arrangement for the purposes of the Restrictive Trade Practices Act 1976 to the Director General of Fair Trading; and
 - (ii) making an application pursuant to Regulation 9 of SI 1984/392 for filing in the special section of the register of restrictive

trading agreements of such of those particulars as any party reasonably considers would, if published:

- (a) substantially damage its legitimate business interests; or
- (b) be contrary to the public interest.

22.12 Unidroit Convention on International Financial Leasing

The Lessors and the Lessee hereby agree that to the extent ratified by the United Kingdom government the provisions of the Unidroit Convention on International Financial Leasing shall not apply to this Lease or the other Transaction Documents or to the transactions contemplated hereby or thereby.

22.13 Amendment of Transaction Documents

- (A) The Lessors hereby undertake not to vary or amend any of the terms of the Transaction Documents to which they are a party save with the prior written consent of the Lessee.
- (B) The Lessee hereby undertakes not to vary or amend any of the terms of the Transaction Documents to which it is a party save with the prior written consent of each of the Lessors (save in the case of the Usage Contract where the Lessee shall be entitled to vary or amend its terms if, but only to the extent that, such variation or amendment would not or would not be likely to materially adversely affect the interests of the Lessors under this Lease or any of the other Transaction Documents or in relation to the Leased Trainsets).

22.14 Rights and obligations of Lessors

- (A) Notwithstanding any other term of this Lease the obligations of each Lessor under this Lease are several, and the failure of either Lessor to perform any such obligation shall not relieve the Lessee of any of its obligations under this Lease owed to the other Lessor nor shall either Lessor be responsible to the Lessee for the obligations of the other Lessor under this Lease.
- (B) Notwithstanding any other term of this Lease the interests of each of the Lessors are several and each amount due to each Lessor by the Lessee is a separate and independent debt.
- (C) Nothing in this Lease or any of the other Transaction Documents shall be construed as constituting any partnership or other similar arrangement between the Lessors.

23 Deposit Arrangements

23.1 Operation of RV Deposit Account

- (a) The Lessee warrants to each of the Lessors that it has on or prior to the date hereof opened the RV Deposit Account on such terms including, inter alia, regarding interest thereon as the Lessee sees fit (subject always however to the terms of the Security Assignment) and deposited in the RV Deposit Account the sum of £5,000,000.
- (b) The Lessee warrants to each of the Lessors that it will deposit amounts to the credit of the RV Deposit Account in accordance with the provisions of this clause 23.

23.2 Deposits and Withdrawals from the RV Deposit Account

- (A) The Lessors shall, subject to clause 23.3, be entitled to require the Lessee to make a deposit into the RV Deposit Account on each Annual Date in an amount determined in accordance with clause 23.2(B) (but not otherwise). Such entitlement shall be exercised by the Lessors giving to the Lessee a notice specifying the amount of the deposit required, which shall be in sterling and shall be calculated pursuant to clause 23.2(B).
- (B) The amount of the deposit which may be required to be made on each Annual Date pursuant to clause 23.2(A) above shall be the amount which, when added to the Credit Balance, is equal to the Required Amount at such Annual Date.
- (C) If the Credit Balance on any Annual Date is greater than the Required Amount at such Annual Date then, provided that no Event of Default shall have occurred and be continuing, the Lessee shall be entitled on such Annual Date to withdraw from the RV Deposit Account an amount no greater than that which (after taking into account any charges then applicable to the RV Deposit Account in respect of such withdrawal) would thereupon reduce the Credit Balance to an amount equal to the Required Amount at such date.

23.3 Further Deposits

In the event of:-

- (1) GANV being in breach of any of the covenants in clause 5 of the GANV Guarantee; or
- (2) 30th April 2017 being earlier than the date of expiry of the Primary Usage Period;

the Lessors shall be entitled (including, for the avoidance of doubt, during any period following a Termination where LUL shall have exercised its Step-Up Rights) to require the Lessee, in accordance with the following provisions, to provide security acceptable to the Lessors in relation to the payment obligations of the Lessee under this Lease arising on or prior to the expiry of the Primary Usage Period. The Lessors shall consider in good faith any such proposals which the Lessee may make during the period of five (5) Working Days following (in the case of (1) above) such breach and following (in the case of (2) above) 30th April 2017, in relation to the provision of such security. In the event that the Lessors decline any such proposals, which they may do in their absolute discretion, the Lessee shall within five (5) Working Days of receipt of written notice from the Lessors requiring the same, (i) procure that the RV Bank converts the RV Deposit Account into a fixed interest account (if not already a fixed interest account) and (ii) deposit in the RV Deposit Account the Increased Required Amount. Thereafter, the provisions of clauses 23.2(A) and (B) shall no longer apply and clause 23.2(C) shall apply as if references therein to the "Required Amount" were references to the Increased Required Amount (but, in the case of (1) above, only until such time (if any) as such breach shall have been cured in which case clause 23.2 shall then again apply on its original basis).

23.4 Specific Performance

- (A) In relation to any proceedings brought by the Lessors against the Lessee in respect of any breach by the Lessee of its obligations under clause 23.3, the parties agree that damages will not be an adequate remedy and that the Lessors shall be entitled to seek an order for specific performance in relation to such obligations.

23.5 Release of Deposit

- (A) If:
- (1) LUL shall have given notice to the Lessee to renew the Usage Contract in accordance with clause 6.2 thereof on the expiry of the Primary Usage Period (as defined therein); or
 - (2) the Lessors shall have served a Termination Notice on the Lessee prior to the twentieth (20th) anniversary of the Start Date and consequent thereupon LUL (to the extent that it is entitled to do so) exercises its Step-Up Rights and thereafter shall have elected pursuant to clause 6.3(b) of the Direct Train Lease to extend the term of the leasing of the Leased Trainsets thereunder beyond the twentieth (20th) anniversary of the Start Date;

then in either such case the Lessors shall on the date falling ten (10) Working Days after the twentieth (20th) anniversary of the Start Date, and provided that no sums due by the Lessee to the Lessors under this

Lease remain unpaid and outstanding, consent to the release from the RV Deposit Account of all sums standing to the credit thereof (including interest accrued thereon) to the Lessee (save where the release of such monies would give rise to an immediate Event of Default, in which case the Lessors and the Lessee shall first discuss in good faith the provision of security by the Lessee in relation to all or part of its ongoing obligations under this Lease and the other Transaction Documents).

- (B) If at any time prior to or on the twentieth (20th) anniversary of the Start Date a Termination Payment or a Partial Termination Payment or an Acceleration Payment has become due and payable by the Lessee and the Lessee shall have discharged its obligations in respect of such payment in full, the Lessors shall forthwith thereupon consent to the release from the RV Deposit Account to the Lessee of (in the case of a Termination Payment or an Acceleration Payment) the sum then standing to the credit thereof (including interest accrued thereon) or (in the case of a Partial Termination Payment) the amount (after taking into account any charges then applicable to the RV Deposit Account in respect of such withdrawal) which would reduce the sum then standing to the credit thereof to an amount equal to the Required Amount or (as the case may be) Increased Required Amount adjusted, as appropriate, with reference to the relevant Partial Termination Fraction.
- (C) The Lessee agrees that the Lessors shall be entitled to authorise the release of, and thereafter apply the sum then standing to, the credit of the RV Deposit Account (together with any accrued interest thereon) in satisfaction or (as the case may be) partial satisfaction of any Partial Termination Payment or Termination Payment or Acceleration Payment which becomes payable by the Lessee to the Lessors under this Lease or any of the other Lease Documents on or prior to the twentieth (20th) anniversary of the Start Date (but without prejudice to the rights of the Lessors under clause 18.5(C)).

24 Governing Law

This Lease shall be governed by, and construed and performance thereof shall be determined in accordance with, the laws of England.

IN WITNESS WHEREOF each of the parties has caused this Lease to be executed and delivered on the day and year first above written.

