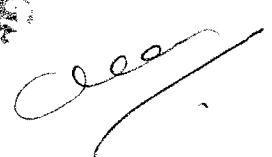


Dated

2004



SIEMENS PLC
and
THE STRATEGIC RAIL AUTHORITY
and
BRB (RESIDUARY) LIMITED

OPTION DEED

relating to

land at Gladstone Sidings, Northampton.

Linklaters

One Silk Street
London EC2Y 8HQ

Telephone (44-20) 7456 2000
Facsimile (44-20) 7456 2222

Ref PASL01

PARTICULARS

Date	:	2004
Siemens	:	Siemens plc (company registration number 727817) whose registered office is at Siemens House, Oldbury, Bracknell RG12 8FZ which expression shall include its successors in title
Authority	:	The Strategic Rail Authority appointed under s.201 of the Transport Act 2000
BRBR	:	BRB (Residuary) Limited (company registration number 4146505) whose registered office is at 55 Victoria Street, London, SW1 0EU which expression shall include its successors in title to the reversion immediately expectant upon the determination of the Lease
Property	:	The property at Gladstone Sidings, Northampton and being the whole of the premises to be demised by the Lease
Option Price	:	TEN POUNDS exclusive of VAT to each of Siemens and BRBR
Buy-Out Price	:	the amount determined in accordance with the formula set out in Schedule 1
Contract Rate	:	2% above the base rate for the time being of Barclays Bank plc
Title Guarantee	:	Full title guarantee
Siemens' Solicitor	:	Nabarro Nathanson, Lacon House, Theobalds Road, London WC1X 8RW (Ref: M Grabiner) as at the date of this Deed and such other solicitors as Siemens may appoint from time to time
SRA's Solicitor	:	Linklaters, One Silk Street, London EC2Y 8HQ (Ref: S Gwynne) as at the date of this Deed and such other solicitors as the Authority may appoint from time to time
BRBR's Solicitor	:	Rees & Freres, 1 The Sanctuary, Westminster, London SW1P 3JT (Ref: K Wallace) as at the date of this Deed and such other solicitors as BRBR may appoint from time to time

A DEED made on the date and between the parties specified in the Particulars, by which it is agreed as follows:

1 Interpretation

- 1.1 This Deed incorporates the Standard Commercial Property Conditions (First Edition). In case of conflict between this Deed and the Conditions, this Deed prevails. Terms used or defined in the Conditions have the same meanings when used in this Deed, and vice versa.
- 1.2 The Particulars on page 1 form part of this Deed, and terms specified in them bear the same meanings when used elsewhere in this Deed.
- 1.3 Unless otherwise indicated, references to Clauses or Schedules are to Clauses and Schedules of this Deed.
- 1.4 Clause headings in this Deed are for ease of reference only.
- 1.5 References to documents and statutory provisions are to the same as amended, supplemented, assigned, novated or transferred from time to time.
- 1.6 The following further definitions apply in this Deed save where it is expressly stated to the contrary:

“**Additional Item**” has the meaning currently given to it in the DACs;

“**Additional Item Completion Date**” means, in respect of any Additional Item, the date it became operational and available for use at the Depot;

“**Affiliate**” means any connected person within the meaning of s.839 of the Taxes Act 1988;

“**Agreement for Lease**” means the Agreement for Lease for the Property entered into between BRBR and Siemens on the date hereof

“**Asset Register**” has the meaning given to it in Clause 8.1.1;

“**Assignee**” means such person as is specified as such by the Authority in the Assignment Notice;

“**Assignment Date**” means (in the case of an assignment pursuant to Clause 3.1.2) the date specified by the Authority in the Assignment Notice (being no later than the date three calendar months after the date of the service of the Assignment Notice) or (in the case of an assignment pursuant to Clause 4.1.2) 23rd April 2025, and “**Actual Assignment Date**” means the date on which such assignment takes place;

“**Assignment Notice**” means a notice substantially in the form attached at Appendix 1 hereto served by the Authority upon Siemens requiring Siemens to assign the Lease to the Assignee in accordance with (as the case may be) Clause 3.1.2 or Clause 4.1.2 of this Deed;

“**Completion Date**” means (as the case may be) the Assignment Date, Termination Date or the Sub-Lease Date and “**Actual Completion Date**” means (as the case may be) the Actual Assignment Date, Actual Termination Date or Actual Sub-Lease Date;

“**DACs**” means the Depot Access Conditions to be incorporated into the Lease and currently annexed in the Agreement for Lease;

“**Deed of Undertaking**” means the Deed of Undertaking pursuant to s 54 of the Railways Act 1993 and entered into between the Authority and Siemens on or about the date hereof;

"Depot" has the meaning given to it in the DACs;

"Depot Facilities" means the facilities referred to in Schedule 1 of the Depot Facilities Agreement;

"Depot Facilities Agreement" means the Depot Facilities Agreement between Siemens and Silverlink entered into on the date hereof, or any Replacement Depot Facilities Agreement entered into pursuant to the DFA Direct Agreement;

"Depot Register" has the meaning given to it in the DACs;

"Depot Work Plan" has the meaning given to it in the DACs;

"Dilapidation Costs" means the reasonable and proper cost including legal and surveyors and other professional fees, of attending to the Dilapidation Works

"Dilapidation Works" means the works necessary and properly required to be executed to the Depot in order to put the Depot into the Required Condition;

"DFA Direct Agreement" means the Direct Agreement in relation to the Depot Facilities Agreement between Siemens and the Authority entered into on the date hereof;

"Elements of the Depot" has the meaning given to it in the DACs;

"Environmental Loss" has the meaning given to it in the DACs;

"Equipment" has the meaning given to it in the DACs;

"Fixed Retention" means the greater of

(a) 20% of the Buy-Out Price applicable at the time of calculation or

(b) £5 million (five million pounds) such sum to be increased (or as the case may be decreased) in accordance with the monthly RPIX Index taking the month from the date this Deed is signed as the base date and the Actual Completion Date as the reference date for the purposes of calculating the relevant sum (and for these purposes paragraphs 3 to 6 of Part 3 of Schedule 2 to the Service Agreement shall apply mutatis mutandis in relation to such indexation);

"Franchise Operator" means either a franchise operator as defined in s.23(3) of the Railways Act 1993 (which shall for the avoidance of doubt include for the purposes of this Deed an operator of passenger rail services pursuant to an agreement with the Authority under s.30 of the Railways Act 1993 or s.211 of the Transport Act 2000) or the Authority;

"IT Systems" means the computer systems, communication systems, software and hardware used at the Depot and/or in relation to services provided at the Depot;

"Knowhow Materials" shall mean (i) copies of all maintenance specifications, operating and maintenance manuals referred to in condition D9 of the DACs; (ii) a copy of the Depot Register and all the agreements referred to in it; (iii) a copy of the Depot Works Plan; and (iv) (to the extent Siemens is entitled to transfer the same) such other documentary materials and records (whether in hard copy or electronic format) as Siemens may have in its possession and which an operator might reasonably require for the safe and lawful operation of the Depot;

"Lease" means the Lease intended at the present time to be entered into between BRBR and Siemens pursuant to the Agreement for Lease;

"Nominated Undertenant" means such Franchise Operator (or person who will become a Franchise Operator prior to entry into any sub-lease of the Property) as is specified as such by the Authority in the Sub-Lease Notice and their successors in title;

"Planning Acts" means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas Act 1990, the Planning (Hazardous Substances Act 1990, the Planning (Consequential Provisions) Act 1990 and the Planning and Compensation Act 1991;

"Regulator" means the board of the Office of Rail Regulation;

"Relevant Termination Event" means in the cases of Clause 3.1.1 and Clause 3.1.2 a termination of a Service Agreement on the grounds of Service Provider Event of Default (other than illegality as referred to in clause 18.1.8 of the Service Agreement or its equivalent in any Replacement Service Agreement) and in the case of Clause 3.1.3 a termination of a Service Agreement on the grounds of Service Provider Event of Default or for force majeure under clause 16 of the Service Agreement or illegality under clause 32 of the Service Agreement or the equivalent clauses in any Replacement Service Agreement;

"Replacement Service Agreement" means any service agreement entered into between Siemens and the Authority or any nominee of the Authority pursuant to the Deed of Undertaking or the Service Direct Agreement;

"Required Condition" means the condition the Property and Depot should be in if Siemens has observed and performed the obligations to be contained in the Lease in so far as they relate to the repair and condition of the Property and Depot;

"RPIX" and **"RPIX Index"** shall refer to the RPIX Index as defined in the Service Agreement;

"Service Agreement" means the Service Agreement between Siemens and Silverlink and entered into on the date hereof, or any Replacement Service Agreement;

"Service Direct Agreement" means the Direct Agreement in relation to the Services Agreement entered into between Siemens and the Authority on or about the date hereof, or any Replacement Services Direct Agreement entered into pursuant to the Deed of Undertaking;

"Service Agreement Termination Date" means the date upon which the Service Agreement is terminated;

"Service Provider Event of Default" means the occurrence of any event referred to in clause 18 of the Service Agreement (or, as applicable, the equivalent clause in any Replacement Service Agreement);

"Services Technical Resource Materials" has the meaning given in the Service Agreement;

"Silverlink" means Silverlink Train Services Limited (company number 3007395) whose registered office is at 75 Davies Street, London W1K 5HT;

"Sub-Lease Date" means (in the case of an underletting pursuant to Clause 3.1.3) the date specified by the Authority in the Sub-Lease Notice (being no later than the date three calendar months after the date of the service of the Sub-Lease Notice), and **Actual Sub-Lease Date** means the date upon which the sub-lease is completed;

"Sub-Lease Notice" means a notice substantially in the form attached at Appendix 1 hereto served by the Authority upon BRBR and Siemens pursuant to Clause 3.1.3 requiring Siemens

to underlet (or sub-underlease as the case may be) the Leasehold Property to the Nominated Undertenant in accordance with the provisions of Schedule 4;

"Termination Date" means (in the case of termination pursuant to Clause 3.1.1) the date specified by the Authority in the Termination Notice (being no later than the date three months after the date of the service of the Termination Notice) or (in the case of a termination pursuant to Clause 4.1.1) 23rd April 2025, and **Actual Termination Date** means the date upon which such termination is effected;

"Termination Notice" means a notice substantially in the form attached at Appendix 1 hereto served by the Authority pursuant to Clause 3.1.1 or Clause 4.1.1 requiring Siemens and BRBR to determine the Lease in accordance with the provisions of this Deed;

"Third Party Claims" means any claim or proceedings brought by a third party in relation to death, personal injury or damage to property, or brought or notified by a public authority in relation to a breach of statute or brought by Network Rail (or its successors) in respect of the provisions of the Demarcation Agreement referred to in the fifth schedule of the Lease to the extent any such claim relates to the period of the Lease prior to the Actual Assignment Date or Actual Termination Date;

"Working Days" means a day not being a weekend when banks are open for business in London.

- 1.7 References in this Deed to the parties shall, where the context admits, include their successors in title and any assignee.

2 Grant of Options

In consideration of the payment of the Option Price by the Authority to each of Siemens and BRBR, receipt of which is acknowledged by Siemens and BRBR respectively, Siemens hereby grants the Authority the options set out in Clauses 3 and 4, with the consent and agreement of BRBR, on the terms set out in this Deed.

3 Option in Respect of Service Agreement Termination

- 3.1 No later than 30 days after a Relevant Termination Event (and subject to the right to serve an additional notice set out at Clause 3.3), the Authority may serve on Siemens and BRBR:

3.1.1 a Termination Notice (in which case the provisions of Schedule 2 shall apply in respect of such termination); or

3.1.2 an Assignment Notice (in which case the provisions of Schedule 3 shall apply in respect of such assignment); or

3.1.3 a Sub-Lease Notice (in which case the provisions of Schedule 4 shall apply in respect of the granting and acceptance of such sub-lease).

- 3.2 Subject to the provisions of Clause 3.4 and paragraph 5 of Schedule 3 and paragraph 4 of Schedule 4, the Authority may only serve one such notice pursuant to Clause 3.

- 3.3 Subject to the provisions of paragraph 3 of Schedule 4 upon the proper service of any notice referred to in Clause 3.1 this Deed and the relevant notice shall together constitute a contract for (as the case may be) the transfer of the Leasehold Property, the termination of the Lease or the grant of a sub-lease on the terms set out in the notice and this Deed.

- 3.4** Where the Authority has served a Sub-Lease Notice pursuant to Clause 3.1.3 in circumstances where a Service Agreement has terminated due to Service Provider Event of Default (other than under clause 18.1.8 of the Service Agreement or its equivalent in any Replacement Service Agreement), the Authority shall have a further right to serve a Termination Notice under Clause 3.1.1 or an Assignment Notice under Clause 3.1.2, provided such Termination Notice or Assignment Notice is served within 6 calendar months of the date of termination of the Service Agreement but any such termination or assignment will be subject to and with the benefit of any sub-lease granted pursuant to a Sublease Notice served under clause 3.1.3.
- 3.5** the options set out in this Clause 3.1 will terminate on 23rd April 2025.
- 3.6** For the avoidance of doubt the parties confirm that if the Relevant Termination Event is a Service Provider Event of Default under clause 18.1.8 of the Service Agreement (or its equivalent Replacement Service Agreement) or force majeure or illegality (pursuant to clauses 16 and 13 respectively of the Service Agreement or their equivalent in any Replacement Service Agreement) the Authority shall not be entitled to serve a Termination Notice or an Assignment Notice pursuant to clause 3.1 or 3.4.

4 Option in respect of 20 years

- 4.1** Provided that a notice has not been served under Clause 3.1.1 or 3.1.2, the Authority may on or at any time after 23th April 2024 but prior to 24 October 2024 serve on Siemens and BRBR:
- 4.1.1** a Termination Notice (in which case the provisions of Schedule 2 shall apply in respect of such termination); or
- 4.1.2** an Assignment Notice (in which case the provisions of Schedule 3 shall apply in respect of such assignment).
- 4.2** Subject to the provisions of paragraph 5 of Schedule 3 and paragraph 4 of Schedule 4, the Authority may only serve one such notice pursuant to Clause 4.1.
- 4.3** Upon the service of the notices referred to in Clause 4.1.above, this Deed and the relevant notice shall together constitute a contract for (as the case may be) the transfer of the Lease or the termination of the Lease on the terms set out in the notice and this Deed.
- 4.4** The option in clause 4.1 will terminate on 23rd April 2025.
- 4.5** For the avoidance of doubt, the service of any Termination Notice or Assignment Notice under this Clause 4 shall be without prejudice to the Authority's rights thereafter to serve any notice under Clause 3.1 following a Relevant Termination Event in respect of any Service Provider Event of Default or (in the case of Clause 3.1.3 only) a Relevant Termination Event for force majeure or illegality in circumstances which do not constitute a Service Provider Event of Default.

5 Condition of Depot

- 5.1** As soon as reasonably practicable after the service of a Termination Notice, Assignment Notice or Sub-Lease Notice (but only to the extent it is reasonably practicable in the case of any notice served under Clause 3), Siemens and the Authority shall in good faith enter into discussions to agree a schedule of the Dilapidation Works and the quantum of any Dilapidation Costs (if any) with the intention where reasonably possible to agree or otherwise have determined such matters prior to the Completion Date.

- 5.2** Siemens shall at its own risk and cost be entitled to carry out prior to the Completion Date any Dilapidations Works identified to be carried out under Clause 5.1 and will inform the Authority and BRBR of any intention so to do.
- 5.3** Siemens and the Authority shall further attempt in good faith to agree a schedule of the remaining outstanding Dilapidation Works and any Dilapidation Costs (but only to the extent reasonably practicable in the case of a notice under served Clause 3) on or as closely before the Completion Date as reasonably possible. In circumstances of Lease termination or assignment pursuant a notice served under Clause 4 (but not, for the avoidance of doubt, in the case of a termination, assignment or sub-lease pursuant to any notice under Clause 3) either party may refer such matter to be determined in accordance with Clause 6 with reference to a survey to be commenced no more than four weeks prior to the Completion Date.
- 5.4** On the Actual Completion Date the Authority shall be entitled to withhold an amount from the Buy-Out Price equal to:
- 5.4.1** where express agreement or (in the case of a notice under Clause 4 only) determination has been reached in relation to Dilapidation Costs pursuant to Clause 5.3, such sum as has been expressly agreed or determined; or
- 5.4.2** in any other case, the Fixed Retention.

For the avoidance of doubt, the right of the Authority to withhold the Fixed Retention under Clause 5.4.2 in the absence of express agreement or (in the case of a notice under Clause 4 only) determination pursuant to Clause 5.3 shall be absolute, and Siemens shall have no right to delay or refuse to complete any transaction on the basis that the Fixed Retention is applied.

- 5.5** Immediately after the Actual Completion Date the parties shall in good faith and acting reasonably attempt to agree a Schedule of the Dilapidation Costs. Either party shall have the right at any time no sooner than one month after the Actual Completion Date to refer such matter to be determined in accordance with Clause 6. Within 14 days of such agreement or determination **EITHER** (as the case may be) the Authority shall pay or procure the payment to Siemens of the excess amount by which any sum withheld under Clause 5.4 exceeds the Dilapidation Costs **OR** Siemens shall pay or procure the payment to the Authority of the excess amount by which the Dilapidation Costs exceeds the sum withheld under Clause 5.4.
- 5.6** In the event of the grant of a Sub-Lease pursuant to Clause 3.1, Siemens shall not be obliged to pay the Dilapidation Costs save in respect of completed items (such completion to be to a reasonable and proper standard) of the Dilapidation Works for which Siemens is invoiced by (as the case may be) the Authority, its Nominated Undertenant or their servants or agents. Siemens shall pay or procure the payment of any such invoice within 28 days of receipt unless it challenges such invoice within 14 days of receipt. In the event of such challenge Siemens shall have a further 28 days to inspect that the item (or items) of works have been undertaken (such inspection to be on reasonable notice and subject as to the reasonable requirements of the Authority and/or the Nominated Undertenant to minimise disruption to the commercial operation of the Depot). The parties acknowledge that Siemens shall only be obliged to pay such invoice to the extent that the works to which such invoice relates have been completed in a proper, reasonable and timely matter (save that, where the scope of any works and/or the price thereof have been previously agreed or adjudicated pursuant to this Clause 5, Siemens shall have no right to re-open such matter on inspection). Siemens shall pay any challenged invoice in full within 14 days of such inspection or state its reasons for not doing so (and the procedure set out in Clause 6 shall apply to disputes).

5.7 Interest shall accrue on sums payable by the Authority to Siemens pursuant to Clause 5.5 at a rate equal to the base rate of Barclays Bank plc ("**Base Rate**") for the period from the Actual Completion Date to the date of payment under Clause 5.5. If a sum is payable by Siemens to the Authority pursuant to Clause 5.5, interest shall accrue at Base Rate on such items of expenditure as have actually been incurred within the agreed or determined scope of Dilapidation Works from the date of invoice to the payment date under Clause 5.5. Where any payment is not made on the due date by any party it shall accrue interest thereafter at the Contract Rate.

5.8 In ascertaining any Dilapidations Works and Dilapidation Costs pursuant to this Clause 5 these shall be disregarded any dilapidations which any Nominated Undertenant was liable for under the terms of any sub-lease and for which Siemens has not received compensation from the sub-lessee.

6 Disputes

6.1 If the Authority and Siemens are unable to agree on any matter pursuant to clause 5 of this Deed, such matter shall be referred to, and determined by, an independent person who:

6.1.1 is professionally qualified and suitably experienced in respect of the matter in dispute;

6.1.2 has been agreed between the Authority and Siemens or, failing such agreement, has been nominated (as appropriate) by the President of the Royal Institution of Chartered Surveyors, the President of the Institute of Electrical Engineers or Institute of Mechanical Engineers on the application of either Siemens or the Authority. In the absence of agreement between the parties as to the appropriate body to receive the application, the application shall be made in the first instance to the President of the Royal Institute of Chartered Surveyors.

6.2 Any person appointed under Clause 6.1 shall act as an expert and the following provisions shall have effect:

6.2.1 his decision shall be final and binding save in the case of manifest error;

6.2.2 he shall consider (among other things) any written representations on behalf of the Authority, BRBR and Siemens if made promptly but shall not be bound thereby;

6.2.3 the Authority, BRBR and Siemens shall use all reasonable endeavours to procure that the person gives his decision as speedily as possible;

6.2.4 the costs of appointing the person and his costs and disbursements in connection with his duties under this Deed shall be shared between the Authority, BRBR and Siemens in such proportions as the person shall determine or, in the absence of such determination, equally between them; and

6.2.5 if the person becomes unable or unwilling to act, then the procedure for appointment of an expert set out above may be repeated as often as necessary.

7 Release of Liability

7.1 The Authority, BRBR and Siemens agree that (subject to Clause 7.2) in the event of any sub-lease ("**Sub-Lease**") being entered into pursuant to a Sub-Lease Notice:

- 7.1.1** Siemens shall not be liable to BRBR for the breach of any obligations of the Lease (and the Lease shall not be forfeited) which arise or are otherwise caused as a consequence of any breach by the Nominated Undertenant or its successors in title of the covenants and obligations contained in or otherwise imposed by the Sub-Lease;
- 7.1.2** for so long as the Sub-Lease subsists or (if longer) for so long as the Nominated Undertenant or its successors in title or other party authorised by the Nominated Undertenant or its successors in title remain in occupation of the Property or any part thereof (other than at the request of Siemens), Siemens shall not be liable to BRBR for the performance of any of the covenants and other obligations on the part of Siemens as contained in or otherwise imposed by the Lease save for the payment of the rents;
- 7.1.3** Siemens shall not be liable under the Lease (whether pursuant to the indemnities therein or otherwise) for any losses costs expenses claims or other liabilities suffered or incurred by BRBR or the Authority as a consequence of any act of omission of the Nominated Undertenant or its successors in title or for the use and occupation of the Property during the Sub-Lease term or such longer period as they may remain in occupation (other than at the request of Siemens).
- 7.2** Notwithstanding anything in Clause 7.1 where a Sub-Lease terminates in circumstances where the Lease is still subsisting, Siemens shall thereafter, subject to the provisions of this Clause 7 in relation to cure period, be liable to perform all the covenants of the Lease as tenant thereunder. BRBR and the Authority acknowledge and agree that where a breach of any covenant under the Lease (other than the covenant to pay rent) occurs by reason of some previous act or omission of the Nominated Undertenant or its successors in title or their servants or agents, Siemens shall have a cure period of three calendar months (or such longer period as may be reasonable having regard to the nature and extent of the breach) from the date at which the Property is yielded up to Siemens to rectify such breach or breaches and provided it does so within such time period Siemens shall not be liable under the Lease.
- 7.3** The Authority and BRBR further agree that notwithstanding anything to the contrary in the Lease or Agreement for Lease, Siemens shall with effect from the Actual Assignment Date or the Actual Termination Date (whichever is applicable) to be fully released from all liabilities (whether past, present or future) under the Lease and Agreement for Lease save for:
- 7.3.1** liabilities which have accrued at or prior to the Actual Termination Date or Actual Assignment Date (as applicable) (subject to Clause 7.4);
- 7.3.2** indemnities in relation to Environmental Loss or Third Party Claims in respect of which litigation, arbitration or formal mediation or (in the case of a public authority only) legal notice is served and (in the case of any of the foregoing) notified to Siemens within 5 years of the date of the Actual Assignment Date or Actual Termination Date.
- 7.4** It is further agreed between Siemens, BRBR and the Authority that, notwithstanding the provisions of Clause 7.3 (but subject to Clause 5) Siemens shall from the Actual Assignment Date or the Actual Termination Date (as appropriate) be released from all liabilities (whether accrued or otherwise) contained or otherwise imposed by the Lease insofar as they relate to the state of repair and condition (other than Environmental Condition as defined in the DACs for the purpose of giving effect to Clause 7.3.2) of the Property and/or the Equipment and/or the Elements of the Depot.

8 Equipment and Audit

8.1 Equipment

- 8.1.1 Siemens and the Authority shall, following the Completion Date (as defined in the Depot Facilities Agreement) of the Depot, agree an asset register in respect of items of plant and equipment at the Depot owned or used by Siemens in connection with the Depot which shall (subject to the provisos set out at Clause 8.1.3) be deemed to attach to the Property and transfer with it ("the **Asset Register**"). The Asset Register shall include, and at all times be deemed to include, all Equipment and Elements of the Depot from time to time.
- 8.1.2 The Asset Register shall be updated on a yearly basis by Siemens and a copy of such update shall be provided to the Authority.
- 8.1.3 The right title and interest of Siemens in the items listed in the Asset Register shall transfer (with full title guarantee) to the Authority or such party as the Authority may nominate on the Actual Assignment Date or Actual Termination Date subject to the following provisos:
- (i) any special equipment which has only been brought onto the Depot temporarily for a specific task shall be excluded from transfer under this Clause 8.1.3;
 - (ii) any fixed plant equipment which is owned by a third party lessor which is not an Affiliate of Siemens and which is not Equipment or fixed plant (including replacements thereof) which is part of the Depot as set out in the Depot Facilities Agreement shall be excluded from transfer under this Clause 8.1.3, but Siemens shall ensure that such leasing arrangements shall be (if required by the Authority) assigned to the Authority such that the Authority shall be entitled to the equipment on comparable terms to those on which Siemens held the equipment prior to the Actual Assignment Date or Actual Termination Date;
 - (iii) the provisos in relation to telecommunications equipment set out at Clause 8.3.5 shall apply.
- 8.1.4 Siemens shall not enter into leasing arrangements as referred to in Clause 8.1.3 (ii) where the purpose of such arrangements is to cause Clause 8.1.3 (ii) to apply.
- 8.1.5 In the event that Siemens or its Affiliates have entered into any leasing arrangements in respect of any of the fixed plant and equipment (or any replacements thereto) which formed part of the initial specification of the Depot pursuant to the Depot Facilities Agreement, Siemens shall on or prior to the Actual Completion Date terminate such leasing arrangements and transfer ownership of the relevant fixed plant and equipment to the Authority on the Actual Completion Date.

8.2 Audit Rights

- 8.2.1 If Silverlink (or any successor as counterparty to a Service Agreement) gives notice to Siemens under Clause 18.3 of the Service Agreement (or its equivalent in any Replacement Service Agreement) that a Service Provider Event of Default has occurred and such Service Provider Event of Default has not been cured or waived within 28 days of the date of such notice OR at any time in the 12 months preceding 30 April 2025 where (as applicable) the Authority is considering or has served a notice under Clause 4, Siemens shall, and shall procure that its Affiliates shall, allow the Authority or the Authority's authorised representatives, access during normal business

hours to the Depot and all relevant records (including internal audits) but excluding legally privileged materials to obtain information reasonably required by the Authority in order to evaluate the Depot and the IT Systems and determine whether it wishes to exercise any option under this Deed.

- 8.2.2 To enable the Authority to exercise its rights and to fulfil its obligations under this Deed, Siemens and its Affiliates shall permit or procure permission for the Authority and any of the Authority's authorised representatives to have reasonable access to its premises, the Depot Facilities and the IT Systems during normal business hours and shall provide it with or procure such facilities and co-operation as they shall reasonably request in accordance with this Deed.
- 8.2.3 The Authority and its authorised representatives shall provide a confidentiality undertaking to Siemens on terms equivalent to those set out in the Service Agreement.
- 8.2.4 In carrying out any inspections or audits of the Property the Authority and its representatives shall:
- (i) fully comply with the safety and other regulations relating to the Property;
 - (ii) fully comply will all applicable laws;
 - (iii) comply with Siemens' reasonable instructions so at to avoid interference to the operations conducted at the Property; and
 - (iv) not carry out any works or tests (including but not limited to conducting an intrusive environmental survey on the Property) on the Property or any Equipment without the consent of Siemens (such consent not to be unreasonably withheld or delayed).
- 8.2.5 There shall be no access under this Clause 8.2 to Siemens' network or computer systems generally. Where relevant software or data is held thereon Siemens shall disclose its existence to the Authority and use all reasonable endeavours to provide readable stand alone copies thereof.

8.3 Software Licence

- 8.3.1 On the Completion Date Siemens shall procure for the benefit and use of the Authority copies of all software (the "**Software**") and such licence to use the same as Siemens is entitled to and uses in its operation of the Depot subject to following provisos:
- (i) Siemens offers no undertaking and no term shall be implied that the Software is fit for any particular purpose or that the Authority will be able to achieve any particular results from use of such Software;
 - (ii) where Software is owned by a third party which is not an Affiliate of Siemens, Siemens' obligations shall be limited to using all reasonable endeavours to procure the grant to the Authority of a licence on (where applicable) comparable terms to the terms on which the Software is licensed to Siemens;
 - (iii) where the Software is held other than at the Property on a shared server or other medium such that it would be impracticable for Siemens to provide access to the Software in that form Siemens' obligations shall be limited to using all reasonable endeavours to provide a stand alone copy of such Software for local use in the Property; and

(iv) the Authority shall not be entitled to have access to any of the Siemens network or computer systems generally.

8.3.2 For the avoidance of doubt all relevant data (as opposed to software), whether held on Siemens systems or otherwise, shall be transferred and licenced to the Authority or its nominee.

8.3.3 In relation to telecommunications equipment, handsets and cabling shall transfer in accordance with the terms of this Clause 8 but there shall be no connections to Siemens systems or other connections. Siemens shall use all reasonable endeavours, if required by the Authority, to arrange for alternative telecoms services to be provided.

8.4 Miscellaneous

8.4.1 Siemens shall on the Completion Date transfer the Knowhow Materials to the Authority or such third party as the Authority may direct.

8.4.2 Siemens shall act reasonably to obtain warranties for the benefit of the Authority in relation to the Depot from such contractors (including professionals) and on such terms as would normally be reasonably expected in relation to the services provided by such parties.

8.4.3 Where Siemens is required to use its reasonable endeavours to procure the transfer of any equipment or intangibles from a third party under this Clause 8, reasonable endeavours shall not for the avoidance of doubt include any obligation to make any payment to such third party.

9 TUPE

9.1 Definitions

For the purposes of this Clause 9, the following definitions shall apply:

"ARD" means the European Council Directive 2001/23/EC, commonly known as the Acquired Rights Directive, as amended;

"Employment Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 1981, as amended;

"Exempt Relevant Employees" shall mean such of the Relevant Employees, as agreed with the SRA, who have been offered and have accepted ongoing employment with Siemens to take effect from the termination of the Service Agreement;

"Relevant Employee" means an employee of Siemens or a Sub-Contractor who is wholly or mainly employed in or assigned to the provision of the Services or the relevant part thereof pursuant to the Service Agreement or who is wholly or mainly employed in or assigned to the provision of services or the relevant part thereof pursuant to the Depot Facilities Agreement on the Relevant Transfer Date or, if earlier, the date specified in Clause 9.4.1;

"Reporting Period" has the same meaning as in the Service Agreement;

"Services" has the same meaning as in the Service Agreement;

"Service Provider Event of Default" has the same meaning as in the Service Agreement;

"SRA" means the Authority;

"SRA Provider" means the SRA who takes over in whole or in part, the performance of the obligations of Siemens under the Service Agreement (including the provision of the Services) and/or the Depot Facilities Agreement on or from the Relevant Transfer Date;

"Sub Contractor" has the same meaning as in the Service Agreement and includes any sub-contractor of Siemens under the Depot Facilities Agreement or any person who operates the Depot (or any part of it) on behalf of Siemens;

"Successor" means any third party who take over, in whole or in part, the performance of the obligations of Siemens under the Service Agreement (including the provision of the Services) and/or the Depot Facilities Agreement on or from the Relevant Transfer Date; and

"Transfer Date" means any of: (a) the date on which the Service Agreement terminates for any reason; or (b) a date on which all or any part of the obligations of Siemens (including the provision of the Services) are no longer provided by Siemens or any of its Sub-Contractors (or is transferred to the SRA or a Successor on termination, variation, amendment or other alteration of the Service Agreement or any Sub-Contract) or (c) a date on which all or any part of the obligations of Siemens are no longer provided by Siemens or any person who operates the Depot (or any part of it) on behalf of Siemens (d) the date on which the Depot Facilities Agreement terminates for any reason or (e) the Actual Completion Date, and **"Relevant Transfer Date"** shall be construed accordingly.

Where, in this Clause 9, any obligation is expressed to be imposed on a Successor, such obligation shall be construed as being an obligation on the SRA to use its reasonable endeavours to procure that the Successor concerned performs such obligation.

In this Clause 9, references to Siemens in relation to the Service Agreement and/or the Depot Facilities Agreement shall include any entity to which Siemens assigns the Service Agreement and/or the Depot Facilities Agreement.

9.2 Cessation of Service and Employee Transfers

9.2.1 Subject to clause 9.2.2, if on the Relevant Transfer Date the Employment Regulations and/or the ARD apply to transfer the Relevant Employees save for any Exempt Relevant Employee to the SRA Provider or any Successor, the following provisions shall apply:

- (i) the contract of employment of each Relevant Employee save for any Exempt Relevant Employee shall have effect as if originally made between the Relevant Employee and the SRA Provider or Successor (as applicable), on or from the Relevant Transfer Date and, in relation to any occupational pension scheme, to the extent so provided by the Employment Regulations;
- (ii) the SRA Provider or Successor (as applicable) shall to the extent so provided by the Employment Regulations continue to employ such Relevant Employees on terms and conditions of employment which are (subject to Clause 9.4.2) no less favourable in any respect than those which they enjoyed with Siemens or any Sub-Contractor prior to the Relevant Transfer Date;
- (iii) Siemens undertakes to the SRA Provider and/or any Successor that it or its Sub-Contractor shall comply with its obligations under the Employment Regulations and/or the ARD to inform and consult with the appropriate representatives of all Relevant Employees in connection with the application of

the Employment Regulations and/or the ARD and the transfer of the Relevant Employees' employment to the SRA or any relevant Successor;

- (iv) the SRA Provider and/or any Successor shall provide Siemens and/or any Sub-Contractor as appropriate with such information as is required pursuant to Regulation 10(3) of the Employment Regulations;
- (v) Siemens will indemnify the SRA Provider and/or any relevant Successor against any losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses and interest) which transfer from Siemens or any Sub-Contractor by reason of the Employment Regulations and/or the ARD arising:
 - (a) subject to Clause 9.2.1 (vi)(c) below, directly or indirectly out of any act or omission of Siemens (or any relevant Sub-Contractor) prior to the Relevant Transfer Date by Siemens or any relevant Sub-Contractor in relation to the employment or termination of employment of any Relevant Employee;
 - (b) out of any claim by any trade union, works council, staff association, employee representative (whether or not recognised by Siemens or relevant Sub-Contractor) or Relevant Employee arising directly out of a failure or alleged failure by Siemens or any relevant Sub-Contractor to comply with its legal obligations to consult with the appropriate representatives of the Relevant Employees under Regulation 10 of the Employment Regulations, but only to the extent that such failure is not attributable to any failure on the part of the SRA Provider or any Successor to comply with its obligations under Regulation 10(3) of the Employment Regulations;
- (vi) The SRA Provider will indemnify, or will procure that any Successor will indemnify, Siemens and any Sub-Contractor against any losses, costs, claims, demands, action, fines, penalties, awards, liabilities and expenses (including legal expenses and interest) arising:
 - (a) directly out of any act or omission of the SRA Provider or any Successor on or after the Relevant Transfer Date in relation to the employment or termination of employment of any Relevant Employee on or after such date, including any claims brought by any Relevant Employees as a result of any changes to their terms and conditions of employment by the SRA Provider or any Successor on or after the Relevant Transfer Date;
 - (b) out of any claim by any trade union, works council, staff association, employee representative (whether or not recognised) or Relevant Employee arising directly out of a failure or alleged failure by the SRA Provider and/or any Successor to comply with its legal obligations to provide information to the Service Provider and/or its Sub-Contractor in accordance with Regulation 10(3) of the Employment Regulations in respect of any Relevant Employees;
 - (c) out of any claim brought by any Relevant Employee on the grounds that the transfer or proposed transfer of their employment to the SRA

Provider or any Successor amounted to or would have involved detrimental changes to their terms and conditions of employment.

9.2.2 In the event that the Employment Regulations apply following a Service Provider Event of Default in accordance with the Service Agreement and the subsequent termination of the Service Agreement pursuant to Clause 18.3.2 of the Service Agreement, Siemens shall indemnify the SRA for any costs arising out of making any Relevant Employee redundant within two months of such termination of the Service Agreement but excluding any costs or liabilities associated with the SRA's failure to follow a fair redundancy procedure and/or its failure to comply with all relevant statutory or contractual obligations, including for the avoidance of doubt the laws relating to unfair dismissal.

9.2.3 For the avoidance of doubt, this Clause 9.2, shall survive any termination of this Deed, however it arises.

9.2.4 Notwithstanding anything in Clause 9.2, if the Successor is BRBR, then any obligation of SRA in this Clause 9 will be construed as an obligation of BRBR.

9.3 Conduct of claims

If one party (the "**Claiming Party**") becomes aware of any matter that may give rise to a claim against the other under the provisions of Clause 9, the following provisions shall apply:

9.3.1 the Claiming Party shall give notice of such matter or claim as soon as reasonably practicable and in any event within 14 days of the Claiming Party becoming aware of such matter or claim;

9.3.2 the Claiming Party agrees that it will not prior to the notice or during the period of 14 days following the notification referred to in clause 9.3.1 above settle or compromise such claim without prior written agreement of other party;

9.3.3 the Claiming Party shall at its own expense give to the other after any request all cooperation and assistance and information as may be reasonably required.

9.4 Prohibited Acts

9.4.1 Neither Siemens nor any Sub-Contractor will in the event of notice being served pursuant to Clause 3 or 4 of this Deed for any reason with effect from the date on which such notice is given carry out a "Prohibited Act" (as defined below).

9.4.2 Subject to Clause 9.4.3, the Prohibited Acts are:

(i) the termination of the employment of any Relevant Employee for any reason whatsoever, except for gross misconduct, gross negligence or repeated (after adequate warning) poor performance;

(ii) the alteration or change in any way of any terms and conditions of employment of any Relevant Employee (whether with or without the consent of such Relevant Employee) except to implement any salary reviews or salary increases reasonably expected to be awarded in the ordinary course of business or any contractual changes agreed prior to the date specified in Clause 9.4.1 of this Deed;

(iii) the recruitment (except as a replacement for an employee whose employment is terminated and where the replacement is being recruited on terms which are

not materially better than the terms of the employee being replaced) of, or reassignment of duties applicable to, any employee to provide the Services except where the SRA's prior consent has been given, in which case such employees will be deemed to be Relevant Employees; and

- (iv) the relocation or assignment to new duties of any Relevant Employee, save where necessary to comply with any obligations of Siemens or Sub-Contractor under any applicable law (including without limitation the Disability Discrimination Act 1995, as amended) or as ordered by any court or tribunal of competent jurisdiction.

9.4.3 An act shall not be a Prohibited Act if it is done in the ordinary course of business and is neither intended nor likely to frustrate, or affect adversely and materially, any business which may pass to the SRA or a Successor.

9.5 Relevant Employees

Siemens shall, after a notice pursuant to Clause 3 or 4 of this Deed has been given, for whatever reason, (and to the extent it is able to do so without breaching any other legal obligation, in which case the SRA shall use all reasonable endeavours to procure such disclosure without breach of legal obligation) deliver to the SRA promptly on request details of terms and conditions of employment of the Relevant Employees and their benefits (including bonuses), whether contractual or discretionary, working arrangements relating to shift patterns and hours worked and a skills database for each employee detailing the task or skill for which such employee has been trained during this Deed. The SRA agrees that it will treat any and all information received by it in respect of the terms and conditions of employment of Relevant Employees as confidential, save that it is acknowledged that the SRA shall be entitled to pass such information on to prospective Successor(s).

9.6 Personnel records, etc.

On the Relevant Transfer Date, Siemens shall (and to the extent it is able to do so without breaching any other legal obligation in which case Siemens shall use all reasonable endeavours to procure such disclosure without breach of legal obligation) deliver or procure the delivery to the SRA of copies of all personnel and employment records (including without limitation national insurance and PAYE records), employment contracts and statements of terms and conditions of employment and disciplinary records relating to the Relevant Employees, including full particulars of:

- 9.6.1** each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- 9.6.2** terms and conditions of employment of each Relevant Employee;
- 9.6.3** all payments, benefits or changes to terms and conditions of employment promised to any Relevant Employee;
- 9.6.4** dismissals of Relevant Employees, or terminations of employment effected within twelve (12) Reporting Periods of the date of termination, and disciplinary records relating to Relevant Employees;
- 9.6.5** all agreements or arrangements entered into in relation to the Relevant Employees between Siemens or any relevant Sub-Contractor or relevant employer and any trade union or association of trade unions or organisation or body of employees including elected representatives; and

9.6.6 all strikes or other industrial action taken by any Relevant Employee within twelve (12) Reporting Periods of the Relevant Transfer Date.

The SRA agrees that it will treat any and all such information received by it as confidential save that it is acknowledged that the SRA shall be entitled to pass such information on to prospective Successors(s).

9.7 Third Party Rights

Despite anything else to the contrary in this Deed, where Siemens has given an undertaking or indemnity under this Clause 9 for the benefit of a Successor, any such undertaking or indemnity can be enforced by the SRA and/or the Successor against Siemens. Notwithstanding the provision of this clause, the parties shall be freely able (subject to their mutual written agreement) to amend, vary or rescind this Deed without reference to, or the need to obtain consent from, any person who is not a party to this Deed.

9.8 Transfer to Siemens

In the event that after the Transfer Date the contract of employment of any employee (including Relevant Employee) transfers from the SRA, Successor or any third party granted a lease, underlease, sub-lease or licence relating to the Leasehold Property (together referred to as the "**Relevant Entity**") to Siemens on termination of such lease, underlease, sub-lease or licence, the SRA shall indemnify Siemens against any losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses and interest) arising:

9.8.1 directly or indirectly out of any act or omission of the Relevant Entity prior to the transfer to Siemens in relation to the employment or termination of employment of any employee (including Relevant Employee) but this indemnity shall exclude any claim brought by any employee (including Relevant Employee) on the grounds that the transfer or proposed transfer of their employment to Siemens amounted to or would have involved detrimental changes to their terms and conditions of employment;

9.8.2 out of any claim by any trade union, works council, staff association, employee representative (whether or not recognised) or employee (including Relevant Employee) arising directly out of a failure or alleged failure by the Relevant Entity to comply with its legal obligations to provide information to Siemens prior to the transfer in accordance with Regulation 9(3) of the Employment Regulations.

9.9 The provisions of clause 9.2.1(vi) shall apply with the necessary changes including the substitution of Siemens for the SRA Provider and the Relevant Entity for Siemens and any Sub-contractor and references to Relevant Transfer Date mean the date on which the transfer referred to in clause 9.8 above occurs.

9.10 Neither the SRA nor any other Relevant Entity will during the period of three months prior to the transfer of the employees (including the Relevant Employees) to Siemens carry out a "**Prohibited Act**" (as defined below).

9.10.1 Subject to Clause 9.10.2, the **Prohibited Acts** are:

- (ii) the termination of the employment of any employee (including Relevant Employee) for any reason whatsoever, except for gross misconduct, gross negligence or repeated (after adequate warning) poor performance;
- (iii) the alteration or change in any way of any terms and conditions of employment of any employee (including Relevant Employee) whether with or without the

consent of such employee except to implement any salary reviews or salary increases reasonably expected to be awarded in the ordinary course of business;

- (iv) the recruitment (except as a replacement for an employee whose employment is terminated and where the replacement is being recruited on terms which are not materially better than the terms of the employee being replaced) of or reassignment of duties applicable to any employee to provide the Services except where Siemens' prior consent has been given; and
- (v) the relocation or assignment to new duties of any employee (including Relevant Employee), save where necessary to comply with any obligations of the SRA or any other Relevant Entity under any applicable law (including without limitation the Disability Discrimination Act 1995, as amended) or as ordered by any court or tribunal of competent jurisdiction.

9.10.2 An act shall not be a Prohibited Act if it is done in the ordinary course of business and is neither intended nor likely to frustrate, or affect adversely and materially, any business which may pass to Siemens.

9.10.3 Where the SRA and Siemens anticipate that a transfer referred to in clause 9.8 is likely to occur, the SRA shall at least three months prior to the transfer of the employees to Siemens (and to the extent it is able to do so without breaching any other legal obligation, in which case the SRA shall use all reasonable endeavours to procure such disclosure without breach of legal obligation) deliver to Siemens on request details of terms and conditions of employment of the employees (including Relevant Employees) and their benefits (including bonuses), whether contractual or discretionary, working arrangements relating to shift patterns and hours worked and a skills database for each employee detailing the task or skill for which such employee has been trained. Siemens agrees that it will treat any and all information received by it in respect of the terms and conditions of employment of the employees as confidential.

10 Dealings and Obligations in relation to the Lease

The parties acknowledge that nothing in this Deed:

- 10.1** obliges Siemens to accept the grant of the Lease;
- 10.2** prevents Siemens from terminating the Agreement for Lease in accordance with its terms;
- 10.3** prevents Siemens from determining the Lease in accordance with its terms (and in the event of such termination this Deed shall also terminate);
- 10.4** obliges Siemens to construct the Depot;
- 10.5** prevents Siemens from effecting any disposal of the Lease in accordance with the provisions of the Lease (save that, for the avoidance of doubt it is intended that Siemens' successors be bound by the terms of this Deed);
- 10.6** prevents Siemens from encumbering the Property to the extent it is permitted to do so under the Lease;
- 10.7** creates any requirement for Siemens to obtain consent in respect of any of the foregoing.

11 Notices

Condition 1.3 applies to any notice under this Deed but:

- 11.1 such notice may be transmitted by fax;
- 11.2 Condition 1.3.7 shall be amended by the addition of the following:

“(d) by fax: on the day of transmission.”

12 Time of the Essence

Without limitation to any other part of this Deed, time shall be of the essence in relation to any notices served under Clauses 3 and 4..

13 Costs

Each party shall bear its own legal, surveyor's and other costs and expenses incurred in connection with, or incidental to, this Deed and anything contemplated thereby.

14 Registration and Assignment of Rights under this Deed

- 14.1 Siemens shall submit with an application to register the Lease at HM Land Registry to a request for a note of this deed to be made on the registered title of the Lease and (at the expense of the Authority) any application in form EX1 and EX1A which the Authority may require in order to designate as exempt information and shall not send this Deed, the Services Agreement, or any other documents which are confidential to HM Land Registry unless HM Land Registry validly requests a copy thereof in which case BRBR and Siemens shall notify the Authority and may send to HM Land Registry any such items as are validly requested.
- 14.2 The Authority shall not assign its rights or obligations under this deed.

15 Contracts (Rights of Third Parties) Act 1999

Subject to Clause 8.2, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

16 Applicable Law and Jurisdiction

- 16.1 This Deed and any document completed in accordance with its provisions shall be governed by and construed in accordance with the law of England.
- 16.2 The parties agree to submit to the exclusive jurisdiction of the courts of England in relation to this Deed and any document completed or to be completed in accordance with its provisions.

17 Deed of Covenant

Siemens and BRBR hereby mutually covenant as follows:

- 17.1 Each party (the “**Seller**”) shall prior to the disposition of its interest in the Property procure a deed of covenant is delivered to the counterparty (in a form to be agreed by the parties acting

reasonably) from the disponent of the Seller's interest in the Property in favour of the other party that the disponent shall observe and perform the Seller's obligations contained in this Agreement for so long as the Seller's interest in the Property is vested in it and it shall not dispose of its interest in the Property without first procuring a deed of covenant in the form required by this Clause from any disponent from it and deliver the same to the other party.

- 17.2** To apply to the Land Registry to enter into the Proprietorship Register of their respective interests in the Property a restriction which shall provide that no disposition of the Property shall be registered without the solicitor for the Seller having supplied a certificate to the Land Registry confirming that the disponent has provided a deed of covenant in the form required by this Clause.
- 17.3** The obligations contained in this Agreement shall constitute landlord and tenant covenants of the Lease for the purposes of the Landlord and Tenant (Covenants) Act 1995 and are intended to be binding upon their respective successors in title.
- 17.4** For the avoidance of doubt no deed of covenant required by this Clause shall be required from the Nominated Undertenant or the Authority by virtue of the grant of a sub-lease in accordance with the provisions of this Agreement.

Schedule 1 Option Exercise Price

The "Buy-Out Price" is the amount calculated pursuant to the following formula:

Buy-Out Price = (Balance of Investment) + (Additional Item Expenditure)

where

Balance of Investment equals (Depreciated Capital Cost) + (Developers Profit)

Depreciated Capital Cost equals on any date:

- (i) where such date falls on or prior to 30 April 2015, £31,000,000 – A; and
- (ii) where such date falls after 30 April 2015 and where no notice has been served under Clause 3 prior to 30 April 2015, £32,500,000 – A

where

A on any date equals B + C + X

B on any date equals the lesser of £28,000,000 and:

$$\left\{ D \times \frac{28,000,000}{30} \right\} + \left\{ \frac{E}{365} \times \frac{28,000,000}{30} \right\}$$

C on any date shall be the lesser of £3,000,000 and:

$$\left\{ D \times \frac{3,000,000}{10} \right\} + \left\{ \frac{E}{365} \times \frac{3,000,000}{10} \right\}$$

X on any date shall be the lesser of £1,500,000 and:

$$\left\{ (D-10) \times \frac{1,500,000}{10} \right\} + \left\{ \frac{E}{365} \times \frac{1,500,000}{10} \right\}$$

but if less than zero shall be taken to be zero

D is on any date, the number of yearly anniversaries of 30 April 2005 that have occurred on or prior to such date

E is on any date, the number of days since the most recent yearly anniversary of 30 April 2005 or, if none, 30 April 2005

Developers Profit means:

£31,000,000 x F x G

where

F is on any date the percentage increase in RPIX from the 30 April 2005 to the Completion Date.

G is:

- (i) in circumstances where the Completion Date falls on or prior to 30 April 2010, 0.25
- (ii) in circumstances where the Completion Date falls after 30 April 2010 but prior to 30 April 2015, 0.2;
- (iii) in circumstances where the Completion Date falls on or after 30 April 2015 but prior to 30 April 2020, 0.15; or
- (iv) in circumstances where the Completion Date falls on or after 30 April 2020 but prior to 23 April 2025, 0.1;
- (v) in circumstances where the Completion Date falls on 23 April 2025, 0.0476.

Additional Item Expenditure equals H – I where

H is on any date, the aggregate of costs reasonably and properly incurred by Siemens in respect of each Additional Item whose Additional Item Completion Date falls on or prior to such date, but excluding any such Additional Item to the extent its cost has not been either imposed on Siemens by the Regulator or consented to in writing by SRA

I on any date, is the aggregate of the result of the calculation of J performed in respect of each Additional Item that falls with H above

J in respect of any Additional Item falling within H, on any date equals:

$$\left\{ \frac{K \times L}{M} \right\} + \left\{ \frac{K}{M} \times \frac{N}{365} \right\}$$

K in respect of any Additional Item falling within H, means the reasonable and proper cost incurred by Siemens in respect of such Additional Item

L in respect of any Additional Item falling within H, is on any date the number of yearly anniversaries of the Additional Item Completion Date relating thereto

M in respect of any Additional Item falling within H, is the useful life (expressed in years) of such Additional Item (as determined by the Regulator) as at the Additional Item Depot Completion Date relating thereto

N in respect of any Additional Item falling within H, at any time means the number of days since the most recent yearly anniversary of the Additional Item Completion Date relating thereto or, if none, the Additional Item Completion Date relating thereto

Siemens undertakes to provide such information and supporting evidence as the Authority may reasonably request relating to any Additional Item which falls or may fall with H above.

Schedule 2

Procedure for Termination

In the event that the Authority serves a Termination Notice upon Siemens and BRBR, the following provisions shall apply:

- 1** If requested by the Authority, Siemens shall terminate all underleases, sub-underleases and licences granted through or by them relating to the Leasehold Property with effect from no later than the Completion Date but otherwise the Property will be yielded up subject to and with the benefit of those matters.
- 2** The Lease shall automatically determine on the Termination Date.
- 3** Within a reasonable period following termination, Siemens shall apply to HM Land Registry to cancel the title of the Lease and apply to remove reference to the Lease from the register of the freehold.
- 4** The Authority shall pay or procure the payment of the Buy Out Price (less any amount retained pursuant to Clause 5) and, pursuant to the terms of this Deed, any applicable VAT thereon to Siemens on the Termination Date.
- 5** If the Authority fails to pay to Siemens the Buy-Out Price (subject to any applicable retention pursuant to Clause 5) on the Termination Date there shall be due to Siemens in addition interest on the Buy-Out Price for the period from the Termination Date to the date of payment (compounding annually) and calculated at the Contract Rate.
- 6** Siemens shall deliver up the Property to BRBR free of any third party rights which have been created by Siemens in breach of any obligation in the Lease. The provisions of this paragraph 6 shall not be affected by Clause 7 of this Deed.

Schedule 3 Procedure for Assignment

In the event that the Authority serves an Assignment Notice upon Siemens and BRBR, the following provisions shall apply:

- 1 If requested by the Authority and Siemens shall terminate all underleases, sub-underleases and licences granted through or by them relating to the Leasehold Property with effect from no later than the Completion Date but otherwise the Property will be assigned subject to and with the benefit of such matters.
- 2 Siemens shall assign the Lease to the Assignee on the Assignment Date. Such assignment which shall be in the form TR1 (or such replacement thereof as may be applicable at the relevant time) executed by Siemens the Authority and the Assignee and will contain a declaration that any covenants implied by statute or otherwise on the part of Siemens as a consequence of Siemens assigning the Lease with full title guarantee shall be limited so as not to affect Siemens with any liability for the breach of any covenant or condition of the Lease
- 3 The Authority shall pay or procure the payment of the Option Buy-Out Price (less any amount retained pursuant to Clause 5) and, pursuant to the terms of this Deed, any applicable VAT thereon to Siemens on the Assignment Date.
- 4 If the Authority fails to pay to Siemens the Buy-Out Price (subject to any applicable retention pursuant to Clause 5) on the Assignment Date there shall be due to Siemens in addition interest on the Buy-Out Price for the period from the Assignment Date to the date of payment (compounding annually) and calculated at the Contract Rate.
- 5 If the Assignment is not completed on the Assignment Date due to some reason other than the default of Siemens the Lease may be terminated at any time by Siemens by notice to that effect served at any time on or after the Assignment Date SUCH termination will be on the same terms and conditions as would apply to a termination pursuant to a Termination Notice save that the Buy-Out price (if not already paid on the Assignment Date) be deemed due on the Assignment Date.
- 6 If Siemens fails to assign the Lease under paragraph 2 above within 10 Working Days of the date specified in the Assignment Notice, the Authority shall be entitled to serve a Termination Notice pursuant to Clause 3.2.1 (and the time limit referred to in Clause 3.4 shall be extended to the extent necessary to accommodate this).
- 7 The Property shall be assigned subject to
 - 7.1 all local land charges whether registered or not before the date of this Agreement and all matters capable of registration of local land charges whether or not so registered;
 - 7.2 all notices served and orders demands proposals or requirements made by the local public or competent authority whether before or after the date of this Agreement save as to matters arising from the breach by the Tenant of it's obligations in relation to the Property;
 - 7.3 all action or proposed orders directions notices or charges restrictions conditions Agreements or other matters arising under the Planning Acts;
 - 7.4 all rights of way drainage water courses light or other easements or quasi or reputed easements public rights and rights of adjoining owners affecting the Premises whether or not apparent on inspection or disclosed to the Authority by Siemens or in any of the documents

referred to in this Agreement which (if created by Siemens) were not created in breach of any obligations of the Lease; and

- 7.5** all other encumbrances affecting the Property at that time which (if created by Siemens) were not created in breach of any obligations of the Lease

and no representation is made or warranty given by Siemens as to whether or not any of the matters referred to in this paragraph 7 exist or as to the permitted use of the Premises under the Planning Acts or as to whether in any other respect the Premises comply with any of those matters

- 8** Siemens shall assign the Property free of any third party rights which have been created by Siemens in breach of any obligation in the Lease. The provisions of this paragraph 8 shall not be affected by Clause 7 of this Deed.

Schedule 4 Sub-Leases

In the event that the Authority serves a Sub-Lease Notice upon Siemens and BRBR in accordance with Clause 3.1.3 the following provisions shall apply:

- 1** If requested by the Authority and Siemens shall terminate all underleases, sub-underleases and licences granted by or through them relating to the Leasehold Property with effect from no later than the Completion Date but otherwise the Property will be demised subject to and with the benefit of those matters.
- 2** Siemens shall grant the sub-lease to the Nominated Undertenant on the Sub-Lease Date.
- 3** The Authority and BRBR acknowledge that the sub-lease shall be made by way of an Unsecured Underletting (as defined in the Lease) and for this purpose and notwithstanding the provisions of clause 3.2 the contract for the grant of the sub-lease shall not be deemed constituted unless and until the appropriate notices have been served and acknowledged and other procedures completed as required pursuant to the Landlord and Tenant Act 1954 (or any amending legislation) and necessary to enable the sub-lease to be properly granted as an Unsecured Underletting.
- 4** If Siemens fails by its own default to grant the sub-lease under paragraph 2 above by the Sub-Lease Date (or if later) the date within 10 Working Days after the contract for the grant thereof is constituted as provided for in paragraph 3 of this Schedule, the Authority shall (save where the Sub-lease Notice was served as a consequence of a Relevant Termination Event pursuant to clause 18.1.8, clause 16.6 (force majeure) and clause 32 (illegality) of a Service Agreement (or, as applicable, the equivalent clause in any Replacement Service Agreement) be entitled (but not obliged and without prejudice to its other remedies) to serve a Termination Notice pursuant to Clause 3.2.1 (and the time limit referred to in Clause 3.4 shall be extended to the extent necessary to accommodate this).
- 5** The engrossments of the sub-lease and the counterpart thereof will be prepared by the Authority's solicitor and the engrossment of the sub-lease will be delivered to Siemens solicitor not later than the date five working days prior to the Sub-Lease Date.
- 6** The rent commencement date pursuant to the Sub-Lease will be the Sub-Lease Date unless:
 - 6.1** the Nominated Undertenant takes occupation of the Property prior to the Sub-Lease Date in which event the rent commencement date will be the date of the Nominated Undertenant first takes occupation of the Property; or
 - 6.2** completion of the Sub-Lease is delayed by the default of Siemens in which event the rent commencement date the date of completion of the sub-lease or if earlier the date on which the Nominated Undertenant takes occupation.
- 7** The Property shall be assigned subject to:
 - 7.1** all local land charges whether registered or not before the date of this Agreement and all matters capable of registration as local land charges whether or not so registered;
 - 7.2** all notices served and orders demands proposals or requirements made by the local public or competent authority whether before or after the date of this Agreement save as to matters arising from the breach by the Landlord of its obligations in relation to the Property;

- 7.3 all action or proposed orders directions notices or charges restrictions conditions Agreements or other matters arising under the Planning Acts which (if created by Siemens) were not created in breach of any obligation of the Lease;
- 7.4 all rights of way drainage water courses light or other easements or quasi or reputed easements public rights and rights of adjoining owners affecting the Property whether or not apparent on inspection or disclosed to the Authority by Siemens or in any of the documents referred to in this Agreement; and
- 7.5 the matters referred to in the Sub-Lease and all other encumbrances affecting the Property at that time which (if created by Siemens) were not created in breach of any obligation of the Lease

and no representation is made or warranty given by Siemens as to whether or not any of the matters referred to in this paragraph 7 exist or as to the permitted use of the Property under the Planning Acts or as to whether in any other respect the Property comply with any of those matters.

- 8 Siemens shall grant the sub-lease free of any third party rights which have been created by Siemens in breach of any obligation in the Lease. The provisions of the paragraph 6 shall not be affected by Clause 7 of this Deed.

In witness whereof, this deed has been executed as a deed on the day and year above first written

THE CORPORATE SEAL of the
Strategic Rail Authority
affixed hereunto is
authenticated by:

Authorised by the
Strategic Rail Authority

EXECUTED as a Deed
Siemens plc
acting by:

Director

Director/Secretary

EXECUTED as a Deed
BRB (Residuary) Limited
acting by:

Director

Director/Secretary