

Appendix B: Vehicle and route acceptance agreement – Railtrack & CrossCountry Trains Ltd

Vehicle and route acceptance agreement between Railtrack PLC and CrossCountry Trains Limited in relation to new rolling stock to be designed, built and introduced for use on Railtrack's network, May 1998

Dated 1 May 1998

**VEHICLE AND ROUTE
ACCEPTANCE AGREEMENT**

between

(1) RAILTRACK PLC

and

(2) CROSSCOUNTRY TRAINS LIMITED

in relation to

new rolling stock to be designed, built and introduced
for use on Railtrack's network

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This AGREEMENT is made the 1st day of May 1998 between -

- (1) **RAILTRACK PLC**, a company registered in England and Wales whose registered office is at Railtrack House, Euston Square, London NW1 2EE ("Railtrack"); and
- (2) **CROSSCOUNTRY TRAINS LIMITED**, a company registered in England and Wales whose registered office is at 120 Campden Hill Road, London W8 7AR (the "Train Operator").

WHEREAS -

- (A) The Train Operator intends to enter into, or to procure that another person (which may be one of its affiliates) enters into, arrangements for the design, construction, testing, commissioning, delivery and operation of trains on, or for use on, Railtrack's network by the Train Operator; and
- (B) Railtrack is the body responsible for giving approvals, acceptances, certifications and the like in relation to new rolling stock and its use on its network, promulgating standards, accepting the relevant safety cases and connected procedures and matters.

IT IS AGREED as follows -

PART 1: GENERAL

1. DEFINITIONS, INTERPRETATION, EFFECTIVE DATE ETC.

1.1 Definitions

In this Agreement -

"Act of Insolvency" means, in relation to either party, any act of insolvency including -

- (a) any meeting of that party's creditors being held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being proposed or entered into by or in relation to that party;
- (b) a supervisor, receiver, administrator, administrative receiver or other encumbrancer taking possession of or being appointed over, or any distress, execution or other process being levied or enforced (and not being discharged within 14 days, unless it is being contested in good faith by the party in question with recourse to all appropriate measures and procedures) upon the whole or a substantial proportion of that party's assets;
- (c) a railway administration order is made in relation to the party in question;
- (d) the party in question ceasing to carry on business, or being or becoming unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) a petition being presented or circumstances existing for a petition being presented, or a meeting being convened for the purpose of considering a resolution, for the making of an administration order, the winding-up, bankruptcy or dissolution of the party in question; and

provided that -

- (i) for the purposes of this definition section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there was substituted "£50,000"; and
- (ii) the party in question shall not be deemed to be unable to pay its debts for the purposes of paragraph (c) of this definition if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by that party with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by any other party under Clause 13 (termination);

"affiliate", in relation to any person -

- (a) for the purposes of the definition of "Railtrack's network", means -
 - (i) a company or corporation which is either a holding company or a subsidiary of such person; or
 - (ii) a company or corporation which is a subsidiary of a holding company of which such person is also a subsidiary; and
- (b) for all other purposes, means Virgin Rail Group Limited, West Coast Trains Limited and CrossCountry Trains Limited,

and for the purposes of paragraph (a) of this definition, "holding company" and "subsidiary" shall have the meanings ascribed to them in section 736 of the Companies Act 1985;

"competent authority" means the Secretary of State, the Regulator, the Franchising Director, Railtrack (in its capacity as the person responsible for (a) the acceptance of safety cases under the Railways (Safety Case) Regulations 1994, (b) Railway Group Standards and (c) the giving of other Relevant Consents), the Health and Safety Executive and any other local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community;

"confidential information" means information relating to the affairs of the Train Operator or any of its affiliates, provided to Railtrack by or on behalf of any such person under or for the purposes of this Agreement or any matter or thing contemplated by this Agreement or to which this Agreement relates, the disclosure of which may be likely to compromise or otherwise prejudice the commercial interests of any such person;

"CrossCountry Access Agreement" means the track access agreement between Railtrack and the Train Operator dated 12 November 1995;

references to the **"facilitation of the achievement by the Train Operator of the relevant objective"**, the **"Facilitation of the relevant objective"** and **any matter or case"** in relation to the relevant objective", in the cases of the Train Operator and Railtrack, shall be construed as references to -

- (a) in the case of the Train Operator, the Train Operator in the capacity referred to in Clause 2.1.1, achieving the relevant objective; and
- (b) in the case of Railtrack, Railtrack, in the capacity referred to in Clause 2.1.2, facilitating to the best of its ability the achievement by the Train Operator of the relevant objective;

"Railtrack's network" means those parts of the network operated by Railtrack in respect of which the Train Operator or any of its affiliates has or may in the future have access rights, being those parts of the network –

- (a) in respect of which access rights are granted under or pursuant to the CrossCountry Access Agreement; or
- (b) in respect of which access rights are granted under or pursuant to any track access agreement between Railtrack and any franchisee or franchise operator in which (i) the Train Operator or (ii) Virgin Rail Group Limited has a controlling interest; or
- (c) in respect of which access rights are granted to the Train Operator or any of its affiliates, which access rights are in respect of services not provided under a franchise agreement and which the Train Operator or that affiliate bona fide intends to begin to use before the date provided for in Clause 15.3; or
- (d) specified in Schedule 2;

and for the purposes of this definition, **"access rights"**, in relation to any part of a network, means permission to use that part for the purpose of the operation of trains for the provision of services for the carriage of passengers by railway;

"Relevant Consent" means all consents, permissions, approvals, authorisations, acceptances, certifications, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise, which are required (or which would, in accordance with the standards of a reasonable and prudent person, normally be obtained) in connection with the design, construction, manufacture, testing, commissioning, delivery and operation of trains on, or for use on, Railtrack's network (including advice that there is no objection to a particular proposal or that a particular proposal is not inconsistent with policy or guidelines), of or from any competent authority or third party and, where a competent authority or third party is authorised to prohibit a proposal, the passing of the time limit for such prohibition without the proposal being prohibited;

"relevant end date" means -

- (a) 30 April 2000 in respect of the Rolling Stock which will not be capable of tilting; and
- (b) 30 April 2001 in respect of the Rolling Stock which will be capable of tilting;

"relevant losses" means all losses, costs, expenses, payments, damages, liabilities, rentals and rental abatements, claims, proceedings, actions, penalties, fines, fees, rates, levies, charges, demands, royalties, interest, insurance premia, calls, judgements, orders or other sanctions or amounts payable, and the amounts by which rights or entitlements to amounts have been reduced, as a result of the matters in question;

"relevant objective" means the objective that the Rolling Stock is designed, built, commissioned, tested and brought into reliable and lawful commercial service on Railtrack's network by the relevant end date and at costs which do not materially exceed the costs which the Train Operator has projected for that purpose;

"Relevant Rules and Procedures" means all applicable Railway Group Standards, the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994, the Railways (Safety Case) Regulations 1994, the Railway Safety (Miscellaneous Provisions) Regulations 1997, the Fire Precautions (Sub-surface Railway Stations) Regulations 1989, the Transport and Works Act 1992, the Railways Act 1993, Parts D, E, F and G of the

Railtrack Track Access Conditions, all instruments, regulations, requirements, rules, safety cases and other documents contemplated by, made or entered into under or pursuant to any of them, and all other rules (whether of law, contract or otherwise) and other procedures which concern the giving of any Relevant Consent in relation to, or the acceptance or approval of, the Rolling Stock or the operation of the Rolling Stock on, or for use on, Railtrack's network;

"Rolling Stock" means the rolling stock acquired or to be acquired for use on Railtrack's network by the Train Operator;

"track test" means tests of the Rolling Stock on Railtrack's network or a network owned or operated by any other person, and includes any re-tests and attempted or uncompleted tests or re-tests; and

"Train Service Provider" means the person engaged by the Train Operator or any of its affiliates to provide the Rolling Stock, and any person (whether or not the same person) engaged by the Train Operator or the person providing the Rolling Stock to maintain or provide other goods or services in relation to the Rolling Stock, any sub-contractor of any of them and any lessor of the Rolling Stock.

1.2 Interpretation

In this Agreement, unless the context otherwise requires -

- (a) references to "this Agreement" include the schedules attached hereto;
- (b) the singular includes the plural and vice versa;
- (c) any one gender includes the others;
- (d) clause, sub-clause and paragraph headings are for convenience of reference only and do not form part of, and shall neither affect nor be used in the construction of, this Agreement;
- (e) reference to a statute, bye-law, regulation, rule, delegated legislation or order is to that statute, bye-law, regulation, rule, delegated legislation or order as amended, modified or replaced from time to time and to any bye-law, regulation, rule, delegated legislation or order made thereunder;
- (f) reference to a Relevant Consent is to that Relevant Consent as amended, modified, supplemented or replaced from time to time, and to any proper order, instruction, requirement or decision of any competent authority given, made or issued under it;
- (g) reference to an agreement or instrument is to that agreement or instrument as amended, novated, modified, supplemented or replaced from time to time;
- (h) reference to a party is to a party to this Agreement, its successors and permitted assigns;
- (i) accounting terms shall be construed so as to be consistent with generally accepted accounting principles;
- (j) indemnities provided for in this Agreement are full and complete indemnities which hold the indemnified party harmless against all relevant losses, howsoever described or characterised and whensoever arising, including loss of profit, loss of revenue, loss of

use, loss of contract, loss of goodwill, indirect and consequential losses (including economic losses) and losses resulting from the liability of any person to another person, and to the extent that the indemnity concerns legal or other professional expenses they shall be on a solicitor and own client basis with no deduction;

- (k) reference to a recital, clause or schedule is to a recital, clause or schedule of or to this Agreement, and references to a Part of a schedule is to a Part of the Schedule in which the reference appears;
- (l) reference to a date is to the day commencing on such date;
- (m) where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- (n) references to the word "person" or "persons" or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies, incorporated or unincorporated, whether having separate legal personality or not;
- (o) the words "other" and "otherwise" shall not be construed ejusdem generis with any foregoing words where a wider construction is possible;
- (p) the words "including" and "in particular" shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words;
- (q) where this Agreement confers a power or imposes an obligation, it is implied, unless the context otherwise requires, that the power may be exercised and the obligation is to be performed from time to time as occasion requires; and
- (r) terms and expressions defined in the Railways Act 1993, the Railways (Safety Case) Regulations 1994 or Railtrack's network licence shall have the same meanings in this Agreement.

1.3 **Effective Date**

Notwithstanding the date on which the parties signed this Agreement, it shall take effect from 25 November 1997.

2. **VEHICLE AND ROUTE ACCEPTANCE**

2.1 **General**

2.1.1 *Virgin's obligations*

In relation to this Agreement, the Train Operator, in its capacity as the operator or prospective operator of the Rolling Stock, shall take the steps contemplated by this Agreement, and such other steps as shall be reasonably necessary or expedient, in order to achieve the relevant objective.

2.1.2 *Railtrack's undertakings*

Subject always to the provisos, conditions and limitations in this Agreement (including in particular Clause 2.2 concerning safety and safety-related matters), Railtrack shall, in its capacity as -

- (a) the owner and operator of the network; and
- (b) the body responsible for the giving of the Relevant Consents which Railtrack has the power or authority to give,

take the steps contemplated by this Agreement, and such other steps as shall be reasonably necessary or expedient, in order to facilitate the achievement by the Train Operator of the relevant objective.

2.1.3 *Railtrack not obliged to achieve relevant objective*

Nothing in this Agreement requires Railtrack, on its part, to achieve the relevant objective.

2.1.4 *Railtrack consultancy*

In the period between the date of this Agreement and the date on which the Train Operator, any of its affiliates or the Train Service Provider either first applies to Railtrack for any Relevant Consent, or takes the first formal step towards obtaining any Relevant Consent, Railtrack shall perform its obligations under this Agreement to provide advice and assistance in the capacity of a professional consultant.

2.2 **No warranty by Railtrack re obtaining of any Relevant Consent**

2.2.1 *General*

Nothing in this Agreement shall constitute a warranty by Railtrack that the Train Operator will obtain any Relevant Consent in respect of the Rolling Stock.

2.2.2 *No prejudice to safety*

Nothing in this Agreement requires Railtrack to take any step, or give or procure the giving of any Relevant Consent, which would lead to rolling stock being operated on the network in a condition which is contrary to the safety duties of either party.

2.3 **Standard of conduct**

2.3.1 *General*

In carrying out its obligations under this Agreement, each party shall act with due efficiency and economy and in a timely manner, including in all respects with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced

- (a) infrastructure controller, infrastructure operator and vehicle and route acceptance and safety authority having the functions which Railtrack has (in the case of Railtrack);
- (b) operator of trains (in the case of the Train Operator).

2.3.2 *Consistency of approach*

In particular, each party shall, subject to the safety duties of either party, ensure that all parts of its organisation, and every person acting on its behalf or under its authority or control (including any subcontractors, suppliers or other consultants), shall establish and maintain consistency in their assessments of and dealings with subjects for their consideration and their application of, and compliance with, Relevant Rules or Procedures.

2.3.3 *Independent assessor*

The Train Operator shall procure the appointment of a person or group of persons of suitable professional qualifications and competence to advise it in relation to the performance of those of its obligations under this Agreement which concern technical and engineering matters.

3. TRANSITION TO PART F AND GROUP STANDARDS

3.1 Inclusion in future proposals for change

Railtrack shall procure that, when they make future proposals for the amendment of Part F of the Track Access Conditions and any relevant Group Standard, the rights which the Train Operator and its affiliates acquire under those proposals will be no less beneficial to them than the provisions of this Agreement if they were in force.

3.2 Phased cessation of VRAC provisions

3.2.1 Phased cessation as Part F or Group Standards take over

Without prejudice to the obligation of the Train Operator to make payments to Railtrack pursuant to Clause 11, to the extent that Part F of the Track Access Conditions or any relevant Group Standard has been amended so as to confer on the Train Operator and its affiliates rights which are no less beneficial to them than the provisions of this Agreement -

- (a) the parties shall enter into an amendment of this Agreement which will delete the corresponding provisions in question from this Agreement and make such consequential amendments of this Agreement as shall be necessary; and
- (b) after execution of such amendment of this Agreement, those provisions shall cease to have effect as parts of this Agreement upon the dates that the relevant provisions of Part F or the Group Standard in question (as the case may be) come into effect.

3.2.2 Saving for liability provisions

The provisions of Clause 12 (liability) shall apply to any failure of a party to comply with any provision of this Agreement the effect of which has been transferred to Part F or any relevant Group Standard as referred to in Clause 3.2.1, even though that provision has been deleted from and ceased to have effect as part of this Agreement as provided for in that Clause.

4. INFRASTRUCTURE ALTERATIONS

4.1 General

Subject to Clause 4.2, Railtrack shall not reduce the gauge of Railtrack's network.

4.2 Mandatory changes

Nothing in Clause 4.1 shall require Railtrack to refuse to carry out alterations to its network which it is obliged to carry out following a Network Change proposal made by another person or as required by Track Access Condition G5.1 as long as Railtrack has -

- (a) taken all reasonable steps to ensure that the Network Change proposal is such as to minimise the adverse effects on the Train Operator and its affiliates; and

- (b) given to the Train Operator and its affiliates as much notice and detail of the Network Change in question as is reasonably practicable.

PART 2: TIMETABLE, RULES AND PROCEDURES

5. TIMETABLE AND PROGRAMME

5.1 General

Subject to Clause 5.2, each party shall adhere to the timetable and programme for vehicle and route acceptance set out in Part 1 of Schedule 1.

5.2 *Change mechanism*

The timetable and programme for vehicle and route acceptance in Part 1 of Schedule may only be changed in accordance with the mechanism provided for in Part 2 of Schedule 1.

6. RELEVANT RULES AND PROCEDURES AND ADVICE AND ASSISTANCE

6.1 General

Each party shall, to the extent reasonably required in relation to the relevant objective -

- (a) comply with, and (as the case may be) exercise its rights under, all Relevant Rules and Procedures; and
- (b) co-operate with and assist the other party in so doing in accordance with the provisions of this Clause 6.

6.2 Information, advice and assistance

Subject to Clause 6.5, Railtrack shall provide the Train Operator with information, advice and assistance

- (a) which is sufficient to enable the Train Operator to ascertain -
 - (i) the application of any Relevant Rule or Procedure, or proposed Relevant Rule or Procedure, to the Train Operator or the Train Service Provider, to the Rolling Stock or to the infrastructure on or in relation to which it is intended or expected to operate;
 - (ii) whether it is or may be necessary or expedient for any change to be made to -

- (aa) any aspect of the design, construction, testing, commissioning, delivery or operation of the Rolling Stock or the infrastructure on or in relation to which it is intended or expected to operate;
 - (bb) any aspect of any application which has been, is being, will be or should be made for a Relevant Consent in respect of the Rolling Stock or that infrastructure; or
 - (cc) any proposals in any respect of any of them;
- (iii) whether the Train Service Provider has failed, is or may be failing or likely to fail to carry out
 - (aa) the design, construction, testing, commissioning, delivery or operation of the Rolling Stock (but only to the extent that Railtrack can reasonably be expected to have knowledge or expertise); or
 - (bb) the obtaining of all applicable Relevant Consents,

in the most efficient and economical manner, including in relation to opportunities which any such person had, has or may have to improve the quality of the Rolling Stock or any aspect of that person's participation in the achievement of the relevant objective; and
- (b) in relation to any dealings which it or the Train Service Provider may have, have had, ought or propose to have with the Health and Safety Executive or any other competent authority in relation to -
 - (i) the design, construction, testing, commissioning, delivery and operation of trains on, or for use on, Railtrack's network;
 - (ii) the infrastructure on or in relation to which it is intended or expected to operate; and
 - (iii) the other matters contemplated by this Agreement.

6.3 Assistance with Train Service Provider bids

If and to the extent requested by the Train Operator, Railtrack shall assist the Train Operator in its consideration of any proposals from persons who have applied to the Train Operator to be appointed as the Train Service Provider in relation to -

- (i) the technical aspects of their proposals;
- (ii) the extent to which they appear to have a proper understanding of the requirements of the Relevant Rules or Procedures and the amounts of time involved in compliance with them; and
- (iii) such other matters as the Train Operator shall reasonably require.

6.4 Incomplete or inaccurate information

If Railtrack reasonably considers that the reliability of factual information which it wishes or is required to provide to the Train Operator in relation to its network is insufficiently complete or accurate in any respect, it shall

- (a) provide that information to the Train Operator to the highest standard of completeness or accuracy which is reasonably practicable within the available time with a clearly visible and unambiguous statement in writing (whether in a separate notice or endorsed on the front of the information provided) stating the respects in which it is or may be incomplete or inaccurate;
- (b) use its best endeavours to correct the shortcomings in the information as soon as reasonably practicable; and
- (c) give notice to the Train Operator of the amendments, deletions or additions which should be made to the information in order to make it complete and accurate (collectively 'confirmations') -
 - (i) as soon as reasonably practicable after the information was provided; and
 - (ii) in any event not later than a date notified to Railtrack by the Train Operator (acting reasonably) as the date on which the information needs to be confirmed in order to enable the Train Operator or the Train Service Provider to adhere to any programme of work undertaken or to be undertaken by that person.

6.5 **Change procedures and early warning**

If -

- (a) Railtrack has reasonable grounds for considering that any change or abolition of a Relevant Rule or Procedure, or a new Relevant Rule or Procedure is, or is reasonably likely to be, required; or
- (b) a proposal is made by the Train Operator or another person who has an appropriate interest in the matter for any change or abolition of a Relevant Rule or Procedure, or a new Relevant Rule or Procedure; and
- (c) Railtrack is entitled to initiate or in any way participate or make representations in or in relation to any procedure for any such change, abolition or establishment,

Railtrack shall, in all respects so as to facilitate the relevant objective, -

- (i) provide the Train Operator with notice and information about any such grounds and the change, abolition or establishment in question, and keep the Train Operator informed in relation to the matter on a regular and continuing basis, in each case to the best of its ability; and
- (ii) so initiate, participate or make representations (as the case may be).

6.6 **Written assessments**

6.6.1 *General*

The assistance referred to in Clauses 6.2, 6.3 and 6.5 shall include providing the Train Operator with a written assessment, in such detail as the Train Operator shall reasonably request, of the matters in question.

6.6.2 *Notice to be provided*

The Train Operator shall provide Railtrack with as much notice as is reasonably practicable of its requirements in relation to the assistance provided for in this Clause 6.6, including with respect to the dates by which the assistance in question is required.

6.7 **Missed submission deadline**

If the Train Operator fails to comply with a submission deadline established by any competent body, Railtrack shall use all reasonable endeavours to -

- (a) consider the submission at the next available meeting of the relevant body; or
- (b) arrange an extraordinary meeting of the relevant body to consider the submission.

6.8 Quality of submitted documentation

6.8.1 *Quality a relevant factor*

In determining whether Railtrack has performed its obligations in relation to documentation submitted to it, regard shall be had to the quality of the documentation submitted by the Train Operator.

6.8.2 *Reasons to be given*

If it is not possible for Railtrack to complete its consideration of a particular submission, Railtrack shall provide the Train Operator with a full explanation of the reasons for its failure to complete consideration.

6.9 **Written confirmation of decisions**

Railtrack shall provide written confirmation of its decision in relation to any submission made to it as soon as reasonably practicable and in any event within 5 working days of the meeting of the relevant body.

6.10 **Assistance to other party in cases of breach**

6.10.1 *Request for assistance to be granted*

If -

- (a) one party (the 'defaulting party') is in breach of its obligations under this Agreement; and
- (b) that party requests the other party (the 'innocent party') to provide to it reasonable assistance and co-operation in attempting to remedy the breach in question,

the innocent party shall comply with the request to the extent that it is reasonable for it to do so, having regard to all the circumstances of the

case including the nature of the breach and the difficulty or complexity of the steps required to be taken to remedy it.

6.10.2 *Costs of assistance etc.*

If assistance or co-operation is provided under Clause 6.10.1-

- (a) the defaulting party shall pay to the innocent party the amount of the innocent party's reasonable costs in doing so; and
- (b) the rights of the innocent party in relation to the breach in question (including in relation to the payment of any amount) shall not be affected.

PART 3: MEETINGS ETC., INFORMATION AND TESTING

7. DEALINGS BETWEEN THE PARTIES AND REPORTING

7.1 Appointment and replacement of nominated contacts

Forthwith upon the execution of this Agreement, each party shall appoint a single person and an alternate (together the 'nominated contacts') for the purposes specified in Clause 7.2 or 7.3 (as the case may be). A party shall be entitled to replace either or both of its nominated contacts at any time. Such appointment or replacement shall

- (a) include the name, address and telephone and fax numbers of the person in question; and
- (b) shall be made by notice to the other party.

7.2 Powers and authority of Railtrack's nominated contacts

Subject to Clause 7.4, Railtrack's nominated contacts shall

- (a) be the persons with whom the Train Operator may deal in relation to all matters provided for in, under or arising out of this Agreement;
- (b) be entitled by notice to nominate (or replace) persons or groups within Railtrack who shall deal with specified parts of particular submissions, or types of submission, which the Train Operator may be required to make to Railtrack;
- (c) have sole authority on Railtrack's behalf to agree additions or variations to, and receive notices given under, this Agreement.

7.3 Powers and authority of Train Operator's nominated contacts

Subject to Clause 7.4, the Train Operator's nominated contacts shall -

- (a) be the persons with whom Railtrack may deal in relation to all matters provided for in, under or arising out of this Agreement;
- (b) be entitled by notice to nominate (or replace) persons or groups within the Train Operator or the Train Service Provider who shall deal with specified parts of particular submissions, or types of submission, which the Train Operator or the Train Service Provider may be required to make to Railtrack;

- (c) have sole authority on behalf of the Train Operator or the Train Service Provider (as the case may be) to agree additions or variations to, and receive notices given under, this Agreement.

7.4 Information to Railtrack

As soon as reasonably practicable after the date of this Agreement, the Train Operator shall, for the purpose of assisting Railtrack to comply with its obligations under this Agreement, keep Railtrack informed as to the matters relating to its applications for Relevant Consents for which it, the Train Service Provider or any of the affiliates of either of them shall be responsible.

7.5 Reliance and sample signatures

7.5.1 Reliance

Each party shall be entitled to rely on every statement, act or failure to act on the part of the nominated contacts who shall in all respects have the power to bind the company which appointed them.

7.5.2 Sample signatures

Within 7 days of the date of this Agreement, each party shall provide the other with sample signatures of the nominated contacts and other persons appointed under Clauses 7.2(b) and 7.3(b), and replacement signatures shall be supplied at the time a nominated contact or such other person is replaced.

8. TRAIN SERVICE PROVIDER

8.1 Train Service Provider's locus

The Train Operator shall be entitled, by notice to Railtrack, to be accompanied at meetings with Railtrack by representatives of the Train Service Provider.

8.2 Railtrack not otherwise to contract with Train Service Provider

8.2.1 Restriction

Railtrack shall not enter into any arrangement with a relevant person in relation to the Rolling Stock if that arrangement would be likely to compromise or otherwise prejudice the commercial interests of the Train Operator or any of its affiliates except

- (a) in the ordinary course of Railtrack's business; and

- (b) as long as Railtrack has -
 - (i) provided the Train Operator with as much notice of the arrangement in question (including the identity of the persons with whom the arrangement has been or is to be made) as is reasonably practicable; and
 - (ii) complied with Clause 8.2.2.

8.2.2 *'Chinese Walls'*

Without prejudice to Clause 8.3, Railtrack shall -

- (a) take the steps necessary to ensure that relevant information shall, if disclosed to any relevant person, not be -
 - (i) used by that person for any purpose other than the purpose for which it was provided; or
 - (ii) disclosed to any other person other than in accordance with Clause 16.2(b), (c) or (d); and
- (b) upon request provide to the Train Operator evidence sufficient to establish that the steps in question have been and are being taken.

8.2.3 *Definitions*

In this Clause 8.2 -

"provided", in relation to relevant information, means disclosed to Railtrack by or on behalf of the Train Operator or any of its affiliates;

"relevant information" means information in relation to the Rolling Stock disclosed to a relevant person which, if used for any purpose other than the purpose for which it was provided, would be likely to compromise or otherwise prejudice the commercial interests of the Train Operator or any of its affiliates;

"relevant person" means the Train Service Provider or any person who may be considered by the Train Operator for appointment as the Train Service Provider; and

information shall be "disclosed" for the purposes of this Clause 8.3 whether the disclosure is or was made before or after the date of this Agreement.

8.3 Railtrack dealings with potential Train Service Providers

All communications and other dealings which Railtrack shall have or propose to have in relation to the Rolling Stock with any person who is nominated by the Train Operator as a person under consideration for appointment as the Train Service Provider shall take place in such manner and on such conditions as the Train Operator shall by notice to Railtrack specify.

8.4 Requirements to be given by notice

Notices given under Clause 8.1 or 8.3 may be given by the Train Operator to Railtrack at any time and from time to time, and may be withdrawn or modified in the same way.

8.5 Application of Clauses 16.3-16.6

Clauses 16.3-16.6 shall apply to information disclosed as permitted, and disclosures of the kind contemplated, by this Clause 8 as if that information were information to which those Clauses apply.

9. INFORMATION AS TO INFRASTRUCTURE AND ROLLING STOCK

9.1 Infrastructure and effects on third parties

Railtrack shall -

- (a) ensure that the Train Operator and the Train Service Provider shall be provided with information as to -
 - (i) the infrastructure on or in relation to which the Rolling Stock is intended or expected to operate;
 - (ii) the effects (if any) which the changes to that infrastructure and the introduction and use of the Rolling Stock on the network which are contemplated by the CrossCountry Access Agreement are likely to have on the maintenance or operation of the network or on the operation by any other person of trains on the network;
 - (iii) any other matters which are or are proposed to be concerned with that infrastructure or the Rolling Stock (in particular, the relationship of the one with the other); and

- (b) keep the Train Operator and the Train Service Provider informed in relation to the matters referred to in paragraph (a) above

on a regular and continuing basis to the best of its ability so as to facilitate the relevant objective.

9.2 **Consultation etc.**

9.2.1 *General*

Without prejudice to the generality of Clause 9.1, if Railtrack intends or is required to carry out, participate or engage in any consultation in relation to the matters contemplated by this Agreement, Railtrack shall

- (a) provide the Train Operator with full information as to the matters on which Railtrack is to consult and the policy positions which Railtrack intends to propose or take on them, including any written material to be used in the consultation;
- (b) afford the Train Operator the opportunity to comment on the matters and information referred to in paragraph (a), and give due weight to any representations or objections which the Train Operator may make; and
- (c) procure that the Train Operator shall be permitted to co-sponsor or otherwise participate with Railtrack in the consultation except in cases where it is reasonable for the Train Operator not to do so.

9.2.2 *Saving*

The Train Operator shall not become liable to Railtrack or any other person in any way in relation to the opinions or other matters expressed, contained or involved in or connected with the matters referred to in Clause 9.2.1, and Railtrack shall indemnify the Train Operator against all relevant losses in that respect.

9.3 **Rolling Stock**

The Train Operator shall

- (a) ensure that Railtrack shall be provided with information as to the Rolling Stock; and

(b) keep Railtrack informed in relation to the Rolling Stock

on a regular and continuing basis to the best of its ability so as to facilitate the achievement of the relevant objective.

9.4 **Saving for Railtrack's confidentiality obligations**

Nothing in Clause 9.1(a)(ii) shall require Railtrack to break an obligation of confidence other than an obligation entered into wholly or mainly with the intention of limiting the information to be provided under Clause 9.1(a)(ii).

10. TRACK TESTING

10.1 **Establishment of testing programme**

10.1.1 *General*

The parties shall establish a programme for the carrying out of the tests required to facilitate the relevant objective which

- (a) is consistent with the obligations of Railtrack to inform other train operators with rights to use the track in question of the carrying out of the tests; and
- (b) will contain a procedure for its own amendment which is -
 - (i) fair and reasonable; and
 - (ii) consistent with the achievement of the relevant objective and the need for the tests to be carried out with due efficiency and economy and in a timely manner.

10.1.2 *Arbitration if programme not agreed*

If the parties have failed to agree a testing programme which complies with the requirements of Clause 10.1.1 within 180 days of the date of this Agreement, either party shall be entitled to refer the matters in relation to the testing programme which have not been agreed to arbitration under Clause 13.2.

10.2 **Violation of testing programme**

10.2.1 *General*

If the Train Operator fails to comply with the testing programme provided for in Clause 10.1 -

- (a) the Train Operator shall be responsible for payment of the amounts referred to in Clause 10.5.1(b) to the extent that such amounts become payable directly by reason of such failure; and
- (b) Railtrack shall not be responsible to that extent.

10.2.2 *Saving for cases of Railtrack fault*

Clause 10.2.1 shall not apply to the extent that the failure on the part of the Train Operator is a consequence of a failure on the part of Railtrack to comply with an obligation.

10.3 **Co-operation**

Each party shall afford and provide to the other and the Train Service Provider co-operation, advice and assistance in relation to the carrying out of track tests so as to facilitate the relevant objective.

10.4 **Access to track - general**

10.4.1 *Access to track*

Subject to Clause 10.5, for the purpose of the tests referred to in Clause 10.1.1, Railtrack shall provide the Train Operator with permission to use-

- (a) such parts of its network as shall be suitable for the carrying out of track tests of the Rolling Stock under operating conditions which are as close as reasonably practicable to the conditions in which the Rolling Stock are intended to operate; and
- (b) to such extent (including as to times and in order to achieve the best efficiency and economy in the carrying out of the tests) as shall be necessary or expedient in order fully to test the Rolling Stock and the infrastructure.

10.4.2 *General*

The rights of the Train Operator and the obligations of Railtrack under this Clause 10.4 are subject to the exercise by any other person of any

right which it has to use Railtrack's network under an access contract to which Railtrack and that person are parties at the relevant time.

10.4.3 *Saving*

Nothing in this Agreement shall -

- (a) require Railtrack to break its obligations to any such person under any such access contract; or
- (b) place Railtrack in a position which may lead to its failing to fulfill its obligations to any such person under any such access contract.

10.4.4 *Notice of exercise of third party rights*

Railtrack shall give the Train Operator not less than 30 days notice if Railtrack has reason to believe that -

- (a) any such person intends to exercise any such right; and
- (b) such exercise shall in any way be likely to prejudice the carrying out of any test.

10.5 **Access to track: - periods, amounts and possessions**

10.5.1 *Possessions etc.*

Subject to Clause 10.6, if the carrying out of any track test in accordance with a programme established under Clause 10.1.1 makes it necessary or expedient for Railtrack to extend or curtail, bring forward or postpone, acquire or cancel any right, or the exercise of any right, which it has or may have to use or possess the parts of the network in question (including for the purposes of the provision of network services on or in relation to it), Railtrack shall -

- (a) to the best of its ability do so; and
- (b) be responsible for the payment to any third party of any amount to which that third party is entitled as a result.

10.5.2 *Disruption etc.*

In relation to the carrying out of any track test which causes any delay, disruption, cancellation or other adverse circumstance or effect on or in relation to the interests of any other person (a 'relevant adverse effect')

- (a) the Train Operator shall indemnify Railtrack against all relevant losses in that respect to the extent that the relevant adverse effect has been caused by the failure of the Train Operator to carry out any of its obligations under this Agreement; and
- (b) Railtrack shall indemnify the Train Operator against all relevant losses in that respect to the extent that the relevant adverse effect has been caused by the failure of Railtrack to carry out any of its obligations under this Agreement.

10.6 Tests on private test facilities

Clause 10.1 shall apply even though the Train Operator or the Train Service Provider elects to have all or any of the track tests carried out on a network other than one owned or operated by Railtrack.

PART 4: FINANCIAL TERMS

11. PAYMENT

11.1 Calculation of amounts payable

In consideration for its performance of its obligations under this Agreement, Railtrack shall be entitled to payment of **(confidential)**

11.2 Payment in installments

The amount provided for in Clause 11.1 shall be payable by the Train Operator to Railtrack (or as Railtrack shall direct) in the installments specified in column 4 of the tables in Part 1 of Schedule 1. An installment shall be payable not later than 30 days after the successful completion of the stage corresponding to it and specified in column 1 of the relevant table.

11.3 Interest on late payments

Payments made late shall carry interest at 1 per cent above the annual base lending rate of Barclays Bank PLC from time to time, beginning on the day after the date of default and ending on and including the date of actual payment.

11.4 Train Operator's responsibility for its own costs

Payment of the fee provided for in this Clause 11 shall not affect the responsibility of the Train Operator or the Train Service Provider to pay the costs of the development and submission of its or their applications for any Relevant Consents in respect of the Rolling Stock for the purpose of securing technical approval of that rolling stock.

12. LIABILITY

12.1 Indemnity & limit of liability

12.1.1 General

Railtrack shall indemnify the Train Operator and each of its officers, employees and agents against all relevant losses arising out of or attributable to Railtrack's failure to discharge any of its obligations under this Agreement.

12.1.2 *Upper limit on liability*

Except in the case of wilful misconduct, the maximum amount which Railtrack may be required to pay under the indemnity in Clause 12.1.1 or arising out of its failure to comply with any provision of this Agreement shall be **(confidential)**

By way of illustration (and disregarding legal and associated recovery costs) -

- (a) if the Train Operator were to sustain losses to which the indemnity applies and the amount of those losses amounted to **(confidential)** Railtrack would be required to indemnify the Train Operator for the whole **(confidential)**; but
- (b) if the Train Operator were to sustain losses to which the indemnity applies and the amount of those losses amounted to **(confidential)**, Railtrack would be required to indemnify the Train Operator only up to the level of **(confidential)** and the balance of the losses would be borne by the Train Operator.

12.1.3 *Meaning of 'wilful misconduct'*

In this Clause 12.1, 'wilful misconduct' means an intentional, conscious or reckless disregard of any provision of this Agreement.

12.1.4 *Exclusion of legal and other costs incurred in recovery of amounts*

The upper limit on Railtrack's liability provided for in Clause 12.1.2 shall not apply to costs incurred in recovering any amount under the indemnity, including legal, arbitral and other professional fees and expenses.

12.2 **Train Operator liability**

12.2.1 *General*

Except as provided in Clauses 10.2.1(a) and 10.5.2(a), if the Train Operator shall fail to perform any of its obligations under this Agreement, Railtrack shall have

- (a) no claim against the Train Operator in that respect; and
- (b) no right to terminate this Agreement.

Railtrack shall instead rely on the Train Operator having an appropriate incentive to secure that the Rolling Stock is brought into reliable and lawful commercial service on time.

12.2.2 *Upper limit on liability*

Except in the case of wilful misconduct, the maximum amount which the Train Operator may be required to pay under Clauses 10.21(a) and 10.5.2(a) in respect of any day shall be **(confidential)**

12.2.3 *Meaning of 'wilful misconduct'*

In this Clause 12.2, 'wilful misconduct' means an intentional, conscious or reckless disregard of any provision of this Agreement.

12.2.4 *Exclusion of legal and other costs incurred in recovery of amounts*

The upper limit on the Train Operator's liability provided for in Clause 12.2.2 shall not apply to costs incurred in recovering any amount under the indemnity, including legal, arbitral and other professional fees and expenses.

12.3 **Death or personal injury**

12.3.1 *General*

Nothing in this Agreement shall exclude or limit the liability of any person for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

12.3.2 *Indemnity*

Each party shall indemnify the other party and its officers, employees and agents from and against all liabilities for death or personal injury and any relevant loss which that other party or its officers, employees and agents may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the indemnifying party or any of its officers, employees or agents.

12.4 **Sub-contractors**

Each party shall be liable for the acts, defaults and negligence of any sub-contractor, and the personnel or agents of such sub-contractor as fully as if they were acts, defaults or neglects of that party.

12.5 **Trust**

Each party acknowledges and agrees that each of the other party holds the benefit of Clauses 12.1 - 12.4 inclusive for itself and as trustee and agent for its officers, employees and agents.

12.6 **Claims Allocation and Handling Agreement**

Clause 17 of the Claims Allocation and Handling Agreement shall not apply as between the parties to this Agreement if and to the extent that the suing of any right or remedy as provided for under this Agreement would be prevented or otherwise restricted by Clause 17.

12.7 **Compensation under Track Access Conditions**

12.7.1 *General*

Railtrack shall indemnify the Train Operator against any amounts which the Train Operator or any of its affiliates or associates shall be required to pay to or for the benefit of another person pursuant to Parts D, F or G of the Track Access Conditions.

12.7.2 *Exclusion - new franchise & open access*

Clause 12.7.1 shall not apply in cases where the Train Operator or any of its affiliates is acquiring or exercising access rights

- (a) under or pursuant to any track access agreement between Railtrack and any franchisee or franchise operator in which (i) the Train Operator or (ii) Virgin Rail Group Limited has a controlling interest; or
- (b) in respect of services not provided under a franchise agreement and which the Train Operator or that affiliate *bona fide* intends to begin to use before the date provided for in Clause 15.3.

12.8 **Survival**

Each of Clauses 12.1 - 12.7 shall -

- (a) be construed as a separate and severable contract term, and if one or more of such clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such clauses shall remain in full force and effect and shall continue to bind the parties; and
- (b) survive termination of this Agreement.

12.9 **Saving**

Nothing in this Clause 12 shall prevent or restrict either party enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.

12.10 **Full negotiation**

Each party acknowledges and agrees that the provisions of this Clause 12 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date of this Agreement.

PART 5: MISCELLANEOUS

13. GOVERNING LAW AND DISPUTE RESOLUTION

13.1 Governing law

This Agreement shall be governed by and construed in accordance with the laws of England.

13.2 Reference to arbitration

Save where expressly stated in this Agreement to the contrary and subject to any contrary provisions of any relevant legislation, any dispute or difference of whatever nature howsoever arising under out of or in connection with this Agreement between the parties shall be referred to and determined by the arbitration of a single legally qualified arbitrator sitting in London.

13.3 Rules of arbitration

Except to the extent provided for in Clause 13.2, the arbitration shall be conducted in accordance with the rules contained in Part C of the Access Dispute Resolution Rules.

14. ASSIGNMENT

14.1 Railtrack

Railtrack shall not be entitled to assign, transfer or otherwise part with the whole or any part of its rights or obligations under this Agreement. No such purported action by Railtrack shall be effective.

14.2 Train Operator

14.2.1 General

The Train Operator shall be entitled to assign (whether absolutely or in security), mortgage, charge, transfer or otherwise part with the whole or any part of its rights or obligations under this Agreement, or to require Railtrack to execute a novation of this Agreement, in favour of -

- (a) any affiliate of the Train Operator;
- (b) the Franchising Director or any person nominated by the Franchising Director ;

- (c) the Train Service Provider;
- (d) any person nominated by the Train Operator as a person who is to acquire or has acquired ownership of the Rolling Stock, whether as lessor or otherwise;
or
- (e) any person (including a bank or other financial institution) providing financial assistance to the Train Operator or any of its affiliates.

Railtrack shall comply with any requirement of the Train Operator under this Clause 14.2.

14.2.2 *Qualification*

Except in the case of the creation of security, the Train Operator's rights under Clause 14.2.1 shall only apply in the cases provided for in Clause 14.2.1 (d) and (e) if Railtrack has acquired the right to terminate this Agreement.

14.3 **Division of Railtrack - novation to successor bodies**

14.3.1 *Novation*

If the whole or any part of the relevant property, rights or liabilities of Railtrack shall be transferred to another person under or by virtue of an enactment (including in compliance with Railtrack's network licence), Railtrack shall novate this Agreement in favour of each such other person.

14.3.2 *Interpretation*

In Clause 14.3.1, the "relevant property, rights or liabilities of Railtrack" means the parts of Railtrack's property, rights or liabilities which are associated or concerned with

- (a) the network on which the Rolling Stock is to be operated; and
- (b) the functions of Railtrack in relation to the giving or withholding of any Relevant Consent or the compliance with or enforcement of any Relevant Rule or Procedure.

15. TERMINATION

15.1 By Railtrack

15.1.1 Notice of termination

Railtrack shall be entitled to terminate this Agreement upon not less than 7 days notice if the Train Operator commits an Act of Insolvency or an Act of Insolvency occurs in relation to the Train Operator.

15.1.2 Banks' step-in rights

Railtrack shall not be entitled to terminate this Agreement if any bank, financial institution or other person who has provided finance to or for the benefit of the Train Operator or any of its affiliates shall -undertake to Railtrack to assume the liabilities of the Train Operator under this Agreement.

15.2 By the Train Operator

The Train Operator shall be entitled to terminate this Agreement upon not less than 7 days notice if

- (a) Railtrack's network licence is revoked; or
- (b) Railtrack commits an Act of Insolvency or an Act of Insolvency occurs in relation to Railtrack.

15.3 Automatic termination

Without prejudice to the right of either party to recover any amount in relation to any accrued liability, this Agreement (other than this Clause 15.3 and Clause 16) shall terminate on the date which is 24 months after the giving of the last Relevant Consent required in order for the Train Operator to achieve the relevant objective.

16. CONFIDENTIALITY

16.1 General

Railtrack shall, and shall procure that its affiliates and its and their respective officers, employees and agents shall, keep confidential and not disclose to any person (save as provided in this Agreement) any confidential information.

16.2 **Permitted disclosures - general**

Notwithstanding Clause 16.1, Railtrack shall be entitled to disclose or permit the disclosure of confidential information to the following persons -

- (a) to its officers, employees, subcontractors, agents, legal or other professional advisers (and excluding the Train Service Provider and any of its affiliates or associates) to the extent necessary to enable it or them to perform (or to cause to be performed) or to enforce any of Railtrack's rights or obligations under this Agreement;
- (b) to the Regulator, the Franchising Director or any other competent authority;
- (c) when required to do so by law or by or pursuant to the rules or any order having the force of law of any court, tribunal or agency of competent jurisdiction (including an arbitrator appointed under Clause 13) or any competent authority; or
- (d) to the extent that the confidential information has, except as a result of breach of an obligation of confidence, become publicly available or generally known to the public at the time of such disclosure.

16.3 **Permitted disclosures - conditions**

In the cases of disclosures under Clause 16.2.1(a), Railtrack shall -

- (a) first notify the Train Operator of the information to be disclosed and the names and addresses of the persons to whom disclosure is to be made; and
- (b) to the extent permitted by law or the terms of the order of any court, tribunal or agency of competent jurisdiction (including an arbitrator appointed under Clause 13), obtain from such persons an undertaking of strict confidentiality in relation to the information in question.

16.4 **Confidentiality undertakings for Train Operator's benefit**

Railtrack shall procure that any undertaking given for the purposes of Clause 16.3(b) shall -

- (a) be addressed and delivered to the Train Operator;

- (b) not contain limitations on the liability of the person who gives it in the case of its breach of amounts which are lower than the amounts provided for in Clause 12.1.2; and
- (c) in every other respect, be unqualified.

16.5 Return of confidential information

If this Agreement is terminated by the Train Operator, Railtrack shall return to the Train Operator or as it directs all of the confidential information within Railtrack's possession or control.

16.6 Ownership of confidential information

All confidential information shall be and shall remain the property of the party which provided it to the other party.

17. PUBLIC ANNOUNCEMENTS

17.1 Restrictions

Railtrack shall not make any public announcement or statement regarding this Agreement or the design, construction, manufacture, testing, commissioning and delivery of trains for use on Railtrack's network except as provided in Clause 17.2.

17.2 Exceptions

Clause 17.1 shall not apply to the making of any public announcement or statement which is

- (a) consented to in advance and in writing by the Train Operator;
- (b) required by law or by or pursuant to the rules or any order having the force of law of any court, tribunal or agency of competent jurisdiction (including an arbitrator appointed under Clause 13) or any competent authority; or
- (c) required under the rules of any recognised stock exchange on which the securities of Railtrack or any of its affiliates are listed.

17.3 Requirements

If Railtrack intends to make a public announcement or statement as permitted by Clause 17.2, it shall -

- (a) provide the Train Operator with advance notice of its intention and a copy of the announcement or statement to be made; and
- (b) take into account any representations or objections which the Train Operator shall make in relation to it.

18. MISCELLANEOUS

18.1 Binding on successors and assigns

This Agreement shall be binding on and shall ensure to the benefit of the parties and their respective permitted successors and assigns.

18.2 Notices

18.2.1 To be in writing

Any notice to be given under this Agreement shall be in writing and shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by first class post or by facsimile transmission to the relevant address or facsimile number set out below.

18.2.2 Amendment of communication particulars

Either party shall be entitled to amend in any respect the communication particulars which relate to it and which are set out below. Any such amendment shall be made only by notice given to the other party.

15.2.3 Deemed notices

A notice shall be deemed to have been given or received, if sent by hand, at the time of delivery. For the purposes of this Clause 18, delivery by hand shall include delivery by a reputable firm of couriers.

Railtrack -

Railtrack PLC
Railtrack House
Euston Square
London NW1 2EE

Fax: 0171 557 8000
Attention: The Solicitor and Company Secretary
Copy to: Richard Middleton

Train Operator -

CrossCountry Trains Limited
120 Campden Hill Road
London W8 7AR

Fax: 0171-727 8200
Attention: Patrick McCall
Copy to: David Astill

18.3 No partnership

Nothing in this Agreement shall create a partnership, association or joint venture or establish a relationship of principal and agent.

18.4 Waivers

18.4.1 Saving for future waivers

No waiver by either party of any default or defaults by the other in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of alike or different character.

18.4.2 Failure to act etc. not a waiver

No failure or delay by either party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single partial exercise by that party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

18.5 Warranties

Each party represents and warrants to the other party that

- (a) it has the power to enter into, perform and comply with all of its obligations under this Agreement;
- (b) this Agreement is within its powers;
- (c) this Agreement has been duly authorised by it;
- (d) the execution and performance of this Agreement does not breach its constitutional documents or any agreement by which it is bound; and

- (e) all other actions, conditions and things required to be taken, fulfilled and done in order to enable it lawfully to enter into and exercise its rights and perform and comply with its obligations under this Agreement, have been taken, fulfilled and done.

18.6 **Severability**

Each provision of this Agreement shall be construed as a separate and severable contract term, and if one or more of such provisions is held to be invalid, unlawful or otherwise unenforceable the other or others of such provisions shall remain in full force and effect and shall continue to bind the parties.

18.7 **Value Added Tax**

18.7.1 *General*

Where any taxable supply for VAT purposes is made under or in connection with this Agreement by one party to the other the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.

18.7.2 *Reimbursements etc.*

Where under this Agreement one party has agreed to reimburse or indemnify the other in respect of any payment made or cost incurred by the other then the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other, or for any person with which the indemnified party is treated as a member of a group for VAT purposes, under sections 25 and 26 of the Value Added Tax Act 1994.

18.7.3 *VAT credit notes*

Where under this Agreement any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of Customs & Excise practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made and the first party shall issue an appropriate VAT credit note to the other party.

18.8 **Restrictive Trade Practices Act 1976**

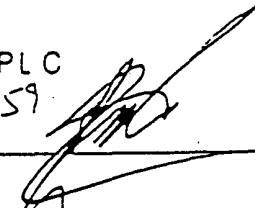
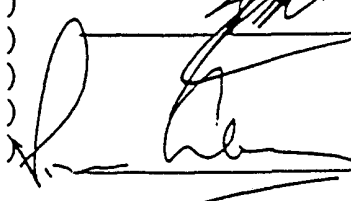
No provision contained in this Agreement or in any arrangement of which this Agreement forms part by virtue of which this Agreement or such arrangement is subject to registration under the Restrictive Trade

Practices Act 1976 shall come into effect until the day following the date on which particulars of this Agreement and of any such arrangement have been furnished to the Office of Fair Trading (or on such later date as may be provided for in relation to any such provision). To the extent that this Agreement is subject to registration under the Restrictive Trade Practices Act 1976, the parties shall furnish such particulars within 3 months of the date of this Agreement.

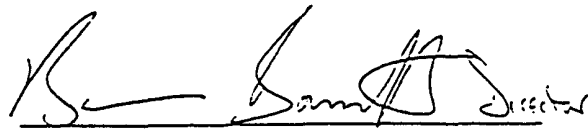
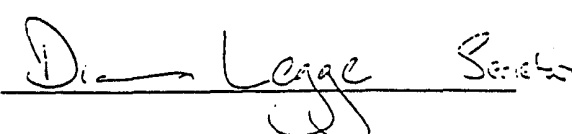
THIS AGREEMENT has been executed as a deed by each of the parties as of the day and year first above written as follows -

The common seal of Railtrack PLC
was hereunto affixed in the presence
of -

RAILTRACK PLC
SEAL N° 11659

)  Director
) _____
)  Secretary

Executed as a deed by
CROSSCOUNTRY TRAINS
LIMITED by

)  Director
) _____
)  Secretary

SCHEDULE 1

PART I

Timetable and programme for vehicle and route acceptance

The parties shall perform their obligations so as to achieve the objectives specified in column 2 of the following tables by the dates which appear opposite them in column 3.

It is acknowledged that Railtrack's internal processes in relation to vehicle and route acceptance (which processes constitute Railtrack line standards) contemplate 3 phases and 6 milestones which correspond to the 8 stages set out in columns 1 and 2 of the following table. For the purposes of clarification, the Railtrack internal phases and milestones appear in columns 5 and 6 of the table opposite the contractual phases in columns 1 and 2 to which they correspond.

In the headings for the relevant stages, the words in brackets state the corresponding Railtrack milestones.

| Col 1 | Col 2 | Col 3 | Col 4 | Col 5 | Col 6 |
|-------|-----------------------|---------------------|-----------------------|-----------------|---------------------|
| Stage | Description | Date for completion | Instalment of fee (£) | Railtrack Phase | Railtrack milestone |
| 1 | Concept approval | 30 September 1997 | C O | Preliminary | B |
| 2 | Initial approval | 28 November 1997 | N | Preliminary | P |
| 3 | Preliminary approval | | F I | Development | - |
| 4 | Design approval | 30 March 1999 | D E | Development | D |
| 5 | Manufacturer approval | | N T | Development | - |
| 6 | Test approval | 30 September 1999 | I | Development | T |
| 7 | Interim approval | 1 January 2000 | A | Operational | I |
| 8 | Full approval | 30 April 2000 | L | Operational | F |

| Table 2 – Rolling Stock which will be capable of tilting | | | | | |
|---|------------------------------|----------------------------|------------------------------|------------------------|----------------------------|
| Col 1 | Col 2 | Col 3 | Col 4 | Col 5 | Col 6 |
| Stage | Description | Date for completion | Instalment of fee (£) | Railtrack phase | Railtrack milestone |
| 1 | Concept approval | | C O | Preliminary | B |
| 2 | Initial approval | 15 April 1998 | N | Preliminary | P |
| 3 | Preliminary approval | | F I | Development | - |
| 4 | Design approval | 31 December 1999 | D | Development | D |
| 5 | Manufacturer approval | | E N | Development | - |
| 6 | Test approval | 30 June 2000 | T I | Development | T |
| 7 | Interim approval | 31 January 2001 | A | Operational | I |
| 8 | Full approval | 30 April 2001 | L | Operational | F |

In this Schedule, the stakes specified in the Tables comprise the following -

Stage 1 - Concept approval (Business Review milestone)

Confirmation in writing by Railtrack to the Train Operator that -

- (a) the proposals put to Railtrack by or on behalf of the Train Operator and the Train Service Provider in relation to its or their plans to achieve the granting of all Relevant Consents on or before the relevant end date are -
 - (i) consistent with the timetable in the remaining part of the table in this Schedule; and
 - (ii) of such a nature and definition that, on the basis of the information provided, Railtrack has no reason to expect that the appropriate Relevant Consents will not be granted on or before that date; and
- (b) on the basis of the information provided, Railtrack has no reason to expect that the appropriate Relevant Consents will not, on or before the relevant end date, be granted in relation to -
 - (i) the rolling stock design put to Railtrack by or on behalf of the Train Service Provider; and
 - (ii) the compatibility of that design with the infrastructure on or in relation to which it is intended or expected to operate.

Stage 2 - Initial approval (Programme Review milestone)

Confirmation in writing by Railtrack to the Train Operator that -

- (a) the proposals put to Railtrack by or on behalf of the Train Operator and the Train Service Provider in relation to its or their plans to achieve the granting of all Relevant Consents on or before the relevant end date are -
 - (i) consistent with the timetable in the remaining part of the table in this Schedule; and
 - (ii) of such a nature and definition that Railtrack has no reason to expect that the appropriate Relevant Consents will not be granted on or before that date; and
- (b) Railtrack has no reason to expect that the appropriate Relevant Consents will not, on or before the relevant end date, be granted in relation to -
 - (i) the rolling stock design and such other aspects of their proposals in relation to the Rolling Stock as have been put to Railtrack by or on behalf of the Train Service Provider; and
 - (ii) the compatibility of that design and those other aspects of the Rolling Stock with the infrastructure on or in relation to which it is intended or expected to operate,

Railtrack having first -

- (a) carried out a complete assessment of the information provided to Railtrack by the Train Operator in relation to its applications for Relevant Consents and raised and, as far as practicable, obtained answers to all appropriate questions;
- (b) taken into account -
 - (i) any further information which the Train Operator or the Train Service Provider has provided to Railtrack; and
 - (ii) advice and assistance provided by Railtrack to the Train Operator under Clause 6.3 including every written assessment provided under Clause 6.6; and
- (c) consulted all appropriate competent authorities and other persons (whether within its organisation or outside it), including those concerned with-

- (i) electrical and electronic matters in relation to the infrastructure or the Rolling Stock and the relationship of the one with the other;
- (ii) track (including bridges, tunnels, overhead lines, level crossings, viaducts, culverts, retaining walls, or other structures used or to be used for the support of, or otherwise in connection with, track) including its or their physical characteristics;
- (iii) stations and other structures bounding the railway or bounding any adjacent or adjoining property;
- (iv) signalling or control systems and any other railway communication or control equipment;
- (v) electrical conductor rails and overhead lines, any supports for such rails or lines, and any electrical substations or power connections used or to be used in connection with any of them, and the provision of electrical power by means of any of them;
- (vi) plant, equipment or machinery used in relation to any of the things specified in sub-paragraphs (i) to (v) above; and
- (viii) the exercise of day to day control over train movements over or along the infrastructure,

in all respects to the extent that it is necessary or expedient to do so in order to provide the Train Operator with such confirmation as may permit the Train Operator to proceed with the selection of the Train Service Provider with a reasonable degree of assurance that there are no appreciable flaws or doubts in or in respect of -

- (aa) the proposals or information provided; or
- (bb) the willingness or ability of any person in respect of those proposals or that information,

which may to an appreciable extent prejudice the chances of the Train Operator or the Train Service Provider obtaining all necessary Relevant Consents on or before the relevant end date.

Stage 3 - Preliminary approval

Preliminary design will take conceptual design developed as part of Stages 1 and 2 and will develop it in terms of detailed functional specification and outline designs. Areas requiring research and development or testing will be identified and the necessary programme developed and established.

The output of Stage 3 will be the submission to Railtrack of a preliminary application for route acceptance.

Stage 4 - Design approval (Design Review milestone)

The detailed design phase will culminate in detailed system and equipment specification and engineering drawings for the manufacture and assembly of the Rolling Stock. Detailed engineering assessments will have been undertaken to support all engineering decisions and the Train Service Provider will have obtained all appropriate Relevant Consents from the Vehicle Acceptance Body. Results from research and development programmes will have produced evidence to enable design to be developed and finalised with confidence.

A series of HAZOPs (hazard and operability study) and assessments will have been completed to assess the hazards that could arise at the interface between the infrastructure and the Rolling Stock. The Train Service Provider will add the results from these exercises to the hazard log and they will be used together with data of equipment performance and models of the infrastructure equipment to demonstrate the Rolling Stock and its associated equipment will be suitable, for safe operation.

At this stage, the paperwork supporting the applications for Relevant Consents will be amended to reflect the completed design and will deal with the whole train/infrastructure system.

Stage 5 - Manufacturer's approval

The manufacture and assembly of the Rolling Stock will take place in accordance with the detailed design configuration. The quality and competence of the manufacturing process will be audited by the relevant Vehicle Acceptance Body.

Stage 6 - Testing approval (Review for Track Test milestone)

The test programme which will be submitted by the Train Service Provider will encompass the following objectives-

- (a) confirmation of equipment and system characteristics and performance;
- (b) design optimisation; and
- (c) generation of data to support safety assessment.

Formal testing will take place when assembly is complete. Testing is likely initially to involve static testing in workshops and will progress to mobile testing on Railtrack infrastructure.

Stage 6 will also detail how the Train Service Provider will obtain from Railtrack the necessary Relevant Consents in relation to authority to operate for track testing purposes.

Stage 7 - Interim approval (Review for Interim Operation milestone)

Issue by Railtrack of a Relevant Consent authorising interim operation of the Rolling Stock on its infrastructure. This will include limited operation in defined conditions, facilitate driver training and enable operational data to be obtained through experience in service.

The Relevant Consent in question will be valid for a limited period and will be accompanied by a specification and plan for the resolution of all outstanding issues.

Stage 8 - Full approval (Review for Fleet Operation milestone)

Giving of all Relevant Consents required for the Rolling Stock to operate or be used on Railtrack's network by or on behalf of the Train Operator or any affiliate of the Train Operator or any other person possessing an accepted railway safety case and nominated by the Train Operator for the purpose.

Major incidents

If a railway accident or disaster of abnormally large proportions occurs and requires Railtrack to divert resources which are required for the purposes of this Agreement to deal with it or its effects, Railtrack shall be entitled to do so. If any such diversion of resources causes either party to fail to complete the steps necessary to complete any of the stages provided for in the timetable and programme for vehicle and route acceptance set out in this Part 1 of Schedule 1,

both parties shall use all reasonable endeavours to ensure that the lost time is made up to the greatest extent reasonably practicable.

Reasons

If Railtrack refuses, or is considering refusing, any Relevant Consent, or imposes or is contemplating imposing conditions in any Relevant Consent which are more onerous than were or might reasonably have been expected by the Train Operator or the Train Service Provider, it shall provide the Train Operator and the Train Service Provider with its reasons in writing.

SCHEDULE 1

PART 2

Programme establishment and change mechanism

1. Establishment of programme for Stages 3 - 7

Not later than 3 days after the date of this Agreement, the parties shall begin and thereafter continue to work in good faith to establish whether and if so how the dates in Column 3 of either or both of the tables in Part 1 for completion of Stages 3 to 7 inclusive in the table in question should be changed.

2. Change mechanism re Stages 3 - 7

2.1 *Entitlement to propose change to programme for Stages 3 - 7*

Either party shall be entitled, by notice to the other party, to propose that any of the dates in Column 3 of either or both of the tables in Part 1 for completion of Stages 3 to 7 inclusive in the table in question should be changed.

2.2 *Information to accompany notice of proposal for change*

A notice given under paragraph 2.1 shall be accompanied by a statement of -

- (a) the proposed changes to the dates in question; and
- (b) the reasons for the proposal for change.

2.3 *Discussion in good faith*

Upon receipt of a proposal for change under paragraph 2.1

- (a) the party receiving it shall in good faith discuss the proposal with the other party; and
- (b) the proposing party shall provide to the other party any information in relation to the proposal reasonably requested of it.

2.4 *Arbitration if proposal for change not agreed*

If the parties have not reached agreement on changes to the dates in question within 180 days of the notice given under paragraph 2.1, either party shall be entitled to refer the matter to arbitration under Clause 13.2.

2.5 *Question for arbitration*

If a reference to arbitration is made under paragraph 2.4, the arbitrator shall be required to determine whether and if so what changes should be made to the dates in question.

2.6 *Criteria for arbitration*

An arbitrator acting on a reference made under paragraph 2.4 shall be required to reach a decision which

- (a) is fair and reasonable in all the circumstances of the case; and
- (b) is most likely to ensure that the relevant objective is achieved; but
- (c) in no circumstances causes the date specified for completion of Stage 8 to be changed.

SCHEDULE 2

Relevant routes

1. The routes specified in Schedule 2 to the CrossCountry Access Agreement
2. Reading to Portsmouth via Guildford

