

RELEVANT CLAUSES OF THE CONTRACT

This Contract is made on 2 July 2009 between

Siemens Aktiengesellschaft

and

DSB SOV

regarding the supply of Desiro classic diesel train units

7. Documentation – ownership, intellectual property rights, etc.

- 7.1.1 Siemens shall retain full ownership of all intellectual property rights arising out of or in connection with the performance of this Contract. Subject to the terms of this Contract Siemens grants DSB a non-exclusive, non-transferable and royalty-free license (the "License") to use the Documentation to the extent necessary for purposes of the operation, maintenance and repair of the Desiro train units or any relevant components. The License shall not permit DSB or any third parties acting as its agents to use the Documentation for the manufacture or sale of trains, supplied parts or spare parts. DSB agrees to limit access to the Documentation to those employees or consultants, who requires such access for purposes of the operation, maintenance and repair of the Desiro train units or any relevant components.
- 7.1.2 The right to use the Documentation shall with the same exceptions as mentioned in clause 7.1.1 include the use by a third party, including, but not limited to, any hirer, lessee or operator of the Desiro train units, to the extent necessary and always provided that such third party has confidentiality obligations corresponding to those of DSB towards Siemens.

- 7.1.3 Furthermore, the right to use the Documentation shall include the necessary use in connection with tenders. Such use shall generally be limited to manuals and overall technical descriptions of the Desiro train units. However, as future trains to be purchased by DSB may be intended to operate in multiple service with the train units delivered under this Contract, DSB may also use the technical specifications, however strictly limited to the interface documentation comprising the mechanical and electrical parts of the coupler including logic and control information. The scope of such documentation shall be defined by Siemens. Siemens shall not be liable for any damages arising from such use by DSB.
- 7.2 Notwithstanding anything to the contrary in clause 7.1.1 – 7.1.3, DSB has the right to use the documentation prepared by Siemens which relates to a specific spare part (e.g. a drawing) to purchase such spare part as required for the proper maintenance of the train units delivered under this Contract. The right to use the documentation does not extend to the purpose of DSB's manufacturing and/or selling of spare parts to third parties.
- 7.3 Any issues related to documentation (such as, but not limited to, questions regarding ownership of documentation) describing systems or components specially and exclusively developed for the Desiro train units delivered under this Contract shall be handled and agreed upon in the change request which precedes any commencement of work related to any such system or component.
- 7.4 When contracting with sub-contractors, Siemens shall undertake its best efforts to secure DSB rights equivalent to those stipulated in clause 7.2 with respect to the sub-contractors' documentation and software. If Siemens does not inform DSB that Siemens has been unable to secure the above-mentioned rights, it shall be Siemens' responsibility that DSB does not infringe the rights of a third party by using the documentation. In such situations DSB shall be in the same positions as described in clause 24.
- 7.5 If Siemens discontinues its production of spare parts, components, systems and special equipment for maintenance and operation of the Desiros, all documentation with relevance to the Desiros and not already delivered to DSB (if any) shall be handed over to DSB free of charge.

12. Spare parts

- 12.1 Siemens shall supply a spare parts package, cf. paragraph 2 of **Schedule 12.1**
[This Clause is no longer relevant]
- 12.2 For a period of at least 25 years from Take Over of the last train unit in the delivery line, including options, Siemens shall within a reasonable time limit be able to supply spare parts, tool and other equipment necessary for the maintenance and operation of the train units.
- 12.3 [No longer relevant] Siemens shall deliver the initial stock of spare parts according to Schedule 12.1. DSB may postpone delivery of specific spare parts for a maximum of six months free of charge if DSB has informed Siemens thereof in writing at least 30 calendar days before the otherwise agreed delivery date.
- 12.4 DSB and Siemens Denmark have entered into the framework agreement set out in **Schedule 12.4** setting out the terms of delivery for the specific components listed therein after the end of the warranty period for the first delivered train. *[This Clause is no longer relevant]*
- 12.5 If within the period stated in clause 12.2 the production of a spare parts, a tool and other equipment is discontinued outside the control of Siemens, Siemens shall notify DSB as early as possible and (if possible) at least 6 months in advance and Siemens shall allow DSB the opportunity to make "last call" orders of additional spare parts. Siemens shall after such time use its best efforts to supply compatible spare parts etc. equal functionality and quality at competitive market prices.
- 12.6 After expiry of the minimum period of 25 years stated in clause 12.2, Siemens shall notify DSB if the production of spare parts is discontinued and shall advise DSB as regards spare parts to be discontinued. Siemens shall notify DSB as early as possible and (if possible) at least 6 months in advance and Siemens shall allow DSB the opportunity to make "last call" orders of additional spare parts.
- 12.7 DSB is entitled from time to time to buy spare parts or non-durable goods directly from a third party, including Siemens' sub-contractor, without informing Siemens and may for this purpose use the part of the documentation supplied or prepared by Siemens for the production of spare parts.

17. Siemens' liability for faults and defects – warranties

17.1.1 Siemens shall warrant on the date of transfer of risk the correct construction, performance and design of the supply and with Danish legislation and public authority requirements and shall warrant the correct function, reliability performance and operational and environmental safety of the supply of the train units in accordance with the specifications and requirements of this Contract. This warranty shall comprise both individual parts of the train unit and its entirety. It shall be a condition for the warranty that DSB carries out correct operation, service and maintenance. The warranty shall not cover faults or defects resulting from normal wear and tear, consumable parts and ageing.

17.1.2 The liability and the warranties shall apply, irrespective of whether the defective systems or single components have been supplied/mounted by Siemens or by a subcontractor. Siemens shall have and continue to have the final responsibility for punctual delivery of functional, reliable and operationally safe train units, which are contractual in all other respects and approved by the authorities and for which the associated correct documentation belongs to and shall continue to belong to Siemens.

17.2 Siemens shall warrant that the materials used and the work carried out are of first class quality and meet the specifications and requirements stipulated in this Contract.

17.3 For a period of two years from the taking-over of the train units, Siemens shall warrant that the materials used are free from faults or defects, that the work carried out is free from faults or defects and that the equipment supplied complies with the requirements and specifications stipulated in the Contract, irrespective of whether the work/supply is carried out by Siemens himself or by a sub-contractor. *[This Clause is no longer relevant]*

17.4 Siemens shall provide a similar but longer warranty than the one mentioned in clause 17.3 for the following parts:

Wheel axle	(expired)
Monoblock wheels	(expired)
Surface treatment including inside and outside paint-corrosioning	(expired)
Bogie frames	(expired)
Coaches	12 years (expires 17 December 2022)

- 17.5 If any faults or defects occur during the general warranty period, cf. clause 17.3 or, as the case may be, the extended warranty, cf. clause 17.4 DSB shall submit a fault report for repair/replacement to Siemens. Siemens shall subsequently take immediate measures and initiate work to remedy the fault or defect. This work shall be carried out at no cost to DSB within 24 hours after receipt of DSB's fault report, unless the parties agree in good faith that due to the special nature of the fault or defect, more time is required for the repair. Siemens shall at its option either repair or replace the faulty or defective part with equivalent new or remanufactured equipment. If the train unit is made available to Siemens with a view to repair at the same time as Siemens receives the notification, such repairs shall be finished within 18 hours. Furthermore, Siemens shall provide any relevant preliminary documentation of the remedying of the fault or defect within the above-mentioned deadlines. Final documentation shall be supplied within one week. If the remedying necessitates modification of the software, such modification shall be carried out in accordance with the normal procedures of Siemens as well as DSB for software changes. If the parties agree to postpone the remedying, it shall be finished not later than 18 hours after the agreed commencement, provided that the train unit is made available to Siemens at this time.
- 17.6 AT the depot of DSB, or elsewhere as agreed, DSB shall:
- 17.6.1 make a separate room with one workplace available to Siemens and its representatives. The workplace shall have a telephone, a PC with Internet access and all other usual office equipment as well as access to a fax machine and a photocopier; and
- 17.6.2 provide a storage room for spare parts stock belonging to Siemens at Siemens' own risk.
- 17.7 If Siemens has not taken remedial action or caused the warranty to be fulfilled without undue delay, DSB is, at 24 hours' written notice, entitled either to have the fault or defect located and remedied - according to best industry practice and railway standards for instance by a third party, at Siemens' account and risk or to impose liquidated damages of EUR 300 per calendar day on Siemens until the fault or defect has been remedied to DSB's reasonable satisfaction, provided however that the liquidated damages shall not exceed EUR 10,000 per incident.
- 17.8 Minor defects, which are repaired in the warranty period by DSB on agreement with Siemens, are paid by Siemens to DSB according to invoice. In such case liquidated damages pursuant to clause 17.7 shall not apply.
- 17.9 DSB shall on Siemens' request procure personnel that Siemens can engage during weekends in order to initiate remedial actions pursuant to this clause 17 within the above-mentioned 24-hour period at the terms and prices specified in Schedule 20.1.6.

- 17.10 Repair of defective parts shall take place at a place agreed between the parties which shall be located where maintenance is carried out. If work covered by a warranty is to be carried out outside DSB's premises, Siemens shall bear the full responsibility and risk for the equipment while in Siemens' possession.
- 17.11 DSB shall free of charge make facilities for carrying out remedial actions available to Siemens. The cost of salvage operations following errors covered by a warranty under this clause 17 shall be paid by DSB, unless Siemens decides to carry out the remedial actions at other facilities than the one used by DSB for carrying out maintenance on the train units, in which case Siemens shall pay for the chosen facility and the salvage operation.
- 17.12 The warranty period for a repaired or replaced part shall be the remainder of the original warranty period for such part or 24 months as of the date on which the repair or replacement has been performed, whichever is the longer, and in case of several repairs or replacements of the same part, the warranty period shall in no event exceed 48 months beyond the original warranty period applicable to the part or component subject to repair or replacement.
- 17.13 If work covered by warranty is carried out outside DSB's premises, Siemens shall bear the full responsibility and risk for the equipment while in its possession. Siemens shall insure its liability as specified in clause 28.
- 17.14 If, as a consequence of faults or defects, the train unit is out-of-operation for a total of more than five calendar days during which Siemens has access to the train unit, the warranty period shall be extended by a period corresponding to the period in which the train unit was out of operation, including the above-mentioned five calendar days.
- 17.15 If the nature of replacements or renewals under the above warranty provisions is such that they may affect the safety, function, reliability or serviceability of the train units, DSB may demand that inspections and tests be carried out in accordance with Siemens' procedures for such inspections and tests. If no such procedures are in place, Siemens shall draw up such procedures, including new documentation, all of which shall be approved by DSB. Siemens shall carry out the inspections and tests at its own expense, responsibility and risk.
- 17.16 During the warranty period Siemens shall keep records of the faults and defects found in the individual train units and of the adjustments and changes made to remedy faults and defects. DSB is entitled to check the records without prior notice. The records shall be handed over to DSB upon expiry of the warranty for the train unit in question.

17.17 In the event of any epidemic defects in the train units, DSB may, without any cost to DSB, demand that Siemens carry out design changes in order to eliminate any future defects of a similar nature. DSB may demand that such changes be implemented as soon as practicable also in all other train units supplied under this Contract, including train units in an option series, irrespective of whether these are still covered by the warranty, cf. clause 17.3.

17.18 If the parties cannot agree on whether any given damage / defect is to be regarded as an epidemic defect, the following shall apply:

17.18.1 Epidemic defect means a defect which occurs as a result of the same fault in any period of 12 month during a period of five years from Take Over of the last delivered train unit:

a) in 30% (thirty per cent) or more of the same components in a train, where fewer than 3 (three) such components are installed per train; or

b) in 20% (twenty per cent) or more of the same components in a train, where 3 (three) or more such components are installed per train.

provided, however, that (i) DSB shall notify Siemens of the possibility that the defect is an epidemic defect, (ii) Siemens shall carry out its own investigation limited to three months into the cause of the defect (having regard to whether or not such defect has occurred in vehicles of the same type, age, use and overhaul cycle as the trains) and within a maximum of one month following such investigation, (a) the parties agree whether or not the defect is an epidemic defect, or (b) the parties do not agree as to whether the defect is an epidemic defect in which case the parties shall refer the matter to an independent expert.

17.19 Any changes pursuant to clause 17.17 and/or clause 17.18 shall meet the requirements of this Contract. Furthermore, Siemens shall update the Documentation for the train units and shall, if the modification so requires, train DSB's staff and supply any necessary special equipment.

17.20 If Siemens fails to rectify an epidemic defect according to clause 17.17 or clause 17.18 within one year from the time when the systematic error was classified as being an epidemic defect, then DSB shall decide whether (i) Siemens shall continue rectifying the epidemic defect until the requirements are fulfilled, or (ii) DSB shall as final and binding settlement have the epidemic defect rectified by itself or a third party against compensation from Siemens of the verified cost.

24. Infringement of third party rights

- 24.2 Siemens' supplies and services, including supplies by sub-contractors, shall be supplied free of any royalties, licence fees or any other charges.
- 24.3 Siemens shall indemnify DSB for all costs and losses incurred by DSB as a consequence of a claimed, or by legal proceedings established, infringement of a third party's intellectual property rights or other rights in connection with the use of the supplied equipment. DSB will take all reasonable steps to cooperate with Siemens in Siemens' efforts to mitigate any potential damages, costs and expenses incurred by Siemens under this clause 24.
- 24.4 DSB shall immediately notify Siemens if an action is brought against DSB with a claim of infringement of a third party right in connection with the supplied equipment, and DSB may subsequently demand that Siemens take over the case and pay all costs connected with it. Furthermore, if the judicial decision made in the case prevents or impedes DSB's continued use of the supplied equipment, Siemens shall, at its own expense either provide DSB with the right to continue to use the supplied equipment or bring the infringement of the third party right to an end by changing or replacing the supplied equipment. The equipment shall, however, still meet the contractual terms and conditions. Irrespective of the solution chosen by Siemens, this shall be without any cost whatsoever to DSB.

27. Product liability

- 27.1 In case faults or defects in one or more train units or other events, acts or omissions, for which Siemens bears the full responsibility or the risk, result in damage to persons or property, the mandatory rules pertaining to product liability under Danish law and German law shall apply to the processing of such claims, including the rules on strict liability of Danish railway legislation.

RELEVANT CLAUSES OF THE PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT is made on 23rd October 2001

BETWEEN:

- (1) **ANGEL TRAINS INTERNATIONAL LIMITED**, a company incorporated in England and Wales (registered no. 2912655) whose registered office is at Portland House, Stag Place, Victoria, London SW1E 5BH (the **Company**); and
- (2) **SIEMENS AKTIENGESELLSCHAFT**, a company incorporated in Germany registered in Berlin and München, Registergericht (Registered authority, the "Amtsgericht", court of first instance: Berlin-Charlottenburg, HRB 12300; München, HRB 6684. (the **Contractor**).

WHEREAS:

- (A) The Company wishes to be provided with and to purchase the Trains in order to lease them to DSB.
- (B) The Contractor has agreed to provide and to sell to the Company the Trains pursuant to this Agreement.

THE PARTIES AGREE as follows:

1. Interpretation

Definitions

- 1.1 In this Agreement, words and expressions which are given a meaning in Appendix 1 shall have that meaning when used in this Agreement.
- 1.2 In this Agreement, a reference to:
 - (a) a **subsidiary** or **holding company** is to be construed in accordance with section 736 of the Companies Act 1985;
 - (b) a document in the **agreed form** is a reference to a document in a form approved and for the purposes of identification signed by or on behalf of each Party;
 - (c) a **person** includes a reference to a Party, a body corporate, individual, firm, association or partnership, government agency, committee, department, authority or other body, incorporated or unincorporated and whether or not having separate legal personality and includes a reference to that person's (including either Party's) legal personal representatives, successors and permitted assignees and transferees;
 - (d) a **Clause, Recital, Appendix** or **Schedule**, unless the context otherwise requires, is a reference to a Clause of or Recital, Appendix or Schedule to this Agreement;

- (e) unless otherwise indicated, this **Agreement** or any other **document** is a reference to this Agreement or that document as from time to time supplemented, novated, replaced, extended, reissued or varied whether before or after the date of this Agreement;
- (f) the **Project Manager** is to be construed as a reference to the Company acting through the Project Manager;
- (g) a word denoting the **singular** shall include the plural, and vice versa;
- (h) the **masculine** shall include a reference to the feminine and neuter, the **feminine** shall include a reference to the masculine and neuter and **neuter** shall include reference to the masculine and feminine, as appropriate;
- (j) **this Agreement** shall include a reference to the Recitals, the Schedules and the Appendices;
- (k) **month** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next succeeding calendar month save that, where any such period would otherwise end on a day which is not a Working Day, it shall end on the next succeeding Working Day, unless that Working Day falls in the calendar month succeeding that in which it would otherwise have ended, in which case it shall end on the immediately preceding Working Day provided that, if a period starts on the last Working Day in a calendar month or if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last Working Day in that later month (and all references to **months** shall be construed accordingly); and

Headings

- 1.3 The headings and sub-headings in this Agreement do not affect its interpretation.

Design, Construction and Inspection

Contractor's obligations

- 5.1 The Contractor shall supply, test, commission, sell, deliver and provide the Trains:
- (a) in accordance with the Specification (Schedule 1) and so as to achieve the design life specified in Clause 5.2;
 - (b) in accordance with the Programme (Schedule 6);
 - (c) in accordance with all due skill, care, diligence, prudence and foresight to be expected of appropriately qualified and experienced professional designers and

engineers with experience in carrying out work of a similar scope, type, nature and complexity to that required under this Agreement;

- (d) in a safe manner and free (to the extent possible using the best modern design and engineering principles and practices) from any material risk to the health and well being of persons using, operating or maintaining, or involved in the management of the Trains, free from any material risk of pollution, nuisance, interference or hazard, in relation to each Train, as at the Milestone Date for issue of the Take Over Certificate for such Train;
- (e) Fit for the Purpose;
- (f) using materials and goods which are new and of sound, good and satisfactory quality such that the Trains will be of new manufacture and of sound, good and satisfactory quality; and
- (g) in accordance with UIC standards (and where not specified in UIC standards, in accordance with the best modern principles and practices in the activity concerned and good industry practice) and in accordance with German Law.

Design life

- 5.2 The Contractor agrees to use reasonable skill and care with a view to producing a Design Life of not less than 25 years in respect of the Trains, it being recognised that (i) certain Parts including without limitation the diesel engines will require replacement during such period as a result of fair wear and tear; and (ii) such agreement on the part of the Contractor excludes any Excluded Matter.

Warranty Regime and Maintenance

General

- 10.1(a) Subject to Clause 10.1(b), the provisions of this Clause 10 shall apply without prejudice to, or derogation from, and in addition to the other rights of the Company under this Agreement.
- (b) The warranties set out in Clauses 10.2 and 10.3 are exclusive in relation to warranties given by the Contractor to the Company in respect of Trains, Parts, components, items of spares and consumables supplied by the Contractor under this Agreement and the rights of the Company in relation to any non-compliance of any such item with the requirements of Clause 5.1.
 - (c) The warranties set out in Clause 10.2 and 10.3 below shall not apply to work carried out by the Company, the Operator or another third party pursuant to Clause 13 or Schedule 5, Part 5 paragraph 2.5 or paragraph 3.6, nor if the

Contractor has not directed or supervised the work implementing any Company Required Variation or, as the case may be, any Company Proposed Variation.

Defects

- 10.2(a) The provisions of this Clause 10.2 shall apply in relation to any Defect which arises, occurs or becomes apparent at any time during the period (the **Primary Warranty Period**) from and including the Contract Date up to and including the Warranty End Date.
- (b) The Contractor shall, if so required by the Project Manager in writing, investigate and search for the cause of any Defect.
- (c) As soon as practicable, the Contractor shall make good any Defect and shall, at its own cost, execute or procure the execution by another of all works of repair, modification, amendment and/or rectification in order to achieve such making good and in order to ensure that the relevant Defect no longer exists.
- (d) After any such making good, there shall commence in respect of the relevant Part, component, item of spare or consumable a further warranty period of a duration of twenty-four (24) months during which the provisions of this Clause 10.2 shall apply *mutatis mutandis*.
- (e) Further warranty periods, each of a duration of twenty-four (24) months, shall commence in respect of the relevant Part, component, item of spare or consumable in the event of the occurrence of any Defect during any further warranty period to commence on the making good of such Defect and to which the provisions of this Clause 10.2 shall also apply, *mutatis mutandis* provided that (i) such further warranty period shall end no later than 31 December 2012; and (ii) the Defects have been made good using materials, spares and Parts recommended or supplied by the Contractor, save that Contractor shall not be liable for the poor workmanship of third parties when such third parties have neither been agreed, selected nor recommended by the Contractor.

Endemic and Epidemic Defects

- 10.3(a) The provisions of this Clause 10.3 shall apply in relation to any Endemic Defect or Epidemic Defect which arises, occurs or becomes apparent at any time during the Endemic and Epidemic Defects Protection Period. The Contractor shall notify the Company if it becomes aware of any such Defect.
- (b) Prior to the classification of any such Defect as an Epidemic Defect, the Contractor shall be given the opportunity to take part in the analysis of such Defect (such analysis to have due regard to the operating conditions and maintenance regime under which such Defect has occurred and normal wear and tear). The Contractor shall, if required by the Project Manager in writing, investigate, search, and conduct a thorough fault finding exercise to ascertain the cause of any Endemic Defect or Epidemic Defect which arises, occurs or becomes apparent at any time during the Endemic and Epidemic Defects Protection Period.
- (c) The Parties shall forthwith develop and agree upon a rectification plan and shall adhere to its provisions, and the following provisions shall apply:

- (i) whether the relevant Defect is an Endemic Defect or Epidemic Defect, the Contractor shall, at its own cost, execute or procure the execution by another of all works of repair, modification, amendment and/or rectification in order to ensure that the relevant Endemic Defect or Epidemic Defect is corrected and the risk of its occurrence is nullified (including, in the case of spares, by modifying or repairing them or replacing them with new spares) and that such Endemic Defect or Epidemic Defect is not present in Trains and/or components delivered or to be delivered under this Agreement, all such works to be completed in accordance with the rectification plan;
- (ii) all works and actions to be taken by the Contractor under this Clause 10.3 shall be such so as to ensure that the relevant Defect no longer exists.
- (iii) if an Endemic Defect or Epidemic Defect arises, occurs or becomes apparent during the Endemic and Epidemic Defects Protection Period, the Contractor shall be liable to rectify the same in accordance with this Clause 10.3 as soon as practicable during the Endemic and Epidemic Defects Protection Period; and
- (iv) if any component is modified, repaired, amended, rectified or replaced under this Clause 10.3, a Defect warranty with a period of 24 months commencing on the completion of such modification, repair, amendment, rectification or replacement shall automatically arise in relation to such component and bind the Contractor to which all the provisions (including as to further warranty periods) of Clause 10.2 shall apply *mutatis mutandis*.

Contractor's Covenants

Information, Assistance, Relevant Consents and Personnel

11.1(a) Until the end of the Primary Warranty Period, the Contractor shall make available and provide to the Company (or to such third parties as the Company may direct) in a timely manner all assistance, advice, documents, evidence and information which it is necessary or desirable for a train manufacturer to provide, and which may from time to time be (i) required under any Applicable Law, Relevant Rule and Procedure or relevant consent in Denmark and/or (ii) reasonably requested by the Company, in order:

- (i) to enable the Trains to obtain all relevant consents to enter revenue earning Passenger service;
- (ii) that all such relevant consents continue to be complied with and maintained in full force and effect in connection with the Trains;
- (iii) to support the Trains and any modifications required to achieve the specified reliability;

or that is otherwise reasonably requested from time to time by the Company in connection with the leasing of the Trains.

- (b) After the end of the Primary Warranty Period, the Contractor shall provide to the Company such information advice and assistance as set out in Clause 11.1(a) subject to agreement and payment of reasonable costs incurred by the Contractor.
- 11.2 On the reasonable request of the Company, the Contractor shall make available to the Company, free of charge to the Company, personnel of appropriate competence, expertise and qualifications (employed either by the Contractor or any relevant Sub-Contractor) up to the date of issue of the Take Over Certificate or Qualified Take Over Certificate for the last Train for the purposes of dealing with matters referred to in this Agreement. In particular (without limitation) such personnel shall:
- (i) attend meetings with the Operator; and
 - (ii) provide (as reasonably requested by the Company) reports, information, advice and/or assistance in relation to matters referred to in this Agreement, including (but not limited to) prior to and/or following any such meeting.

Qualifications of personnel

- 11.3 The Contractor shall employ or cause to be employed in connection with this Agreement and in the superintendence of its performance only persons who are skilled and experienced in their professions and trades.

Documentation and technical assistance

Records

- 11.4 The Contractor shall provide a true and correct set of records of all activities relating to the performance of this Agreement as are required to be kept under EBA. All such information and records shall be available at all reasonable times for inspection by the Project Manager.

Contractor's responsibilities as to Documentation

- 11.5 The Contractor shall bear the cost of and be responsible for correcting any mistake, inaccuracy, discrepancy or omission in the Documentation, without any undue delay.

Spare Parts

- 11.6 The Contractor undertakes to obtain and to provide spare parts for the Trains to the Company or to the Operator or subsequent operators for the Design Life. The prices to be paid for such spare parts shall be agreed between the Parties.
- 11.7 If a Sub-Contractor of the Contractor advises the Contractor that it is no longer prepared or able to supply spares of the same specification as those supplied

under this Agreement up to that date, the Contractor shall notify the Company accordingly. The Contractor shall within a reasonable period of time of such notification (i) use its reasonable endeavours to search the market for an alternative source of supply and reasonable solution to the problem, and (ii) prepare contingency plans detailing the steps it proposes to take to ensure the supply of such replacement spares or redesign of such components to enable the Trains to be maintained in operational service for their Design Life. The contingency plans shall then be sent to the Company. If the Company agrees with such contingency plans the Contractor shall advise the Operator to amend the Manuals and recommended Spares Parts Catalogue accordingly, and the replacement supplier of such replacement spares shall be deemed to be a supplier approved by the Contractor. In the event that the Company does not agree with such contingency plans, the Parties shall discuss in good faith with a view to remedying the situation. If no agreement can be reached a Dispute will be deemed to have arisen to be settled in accordance with the provisions of Clause 36.

- 11.8 To the extent that the contingency plan requires design work and/or modifications to the Trains the Company shall if it so desires undertake the work under the variation procedure.

Rights of Company to authorise work by others

Failure to carry out work

- 13.1(a) If the Contractor fails to carry out any activity required under this Agreement within the specified period (or, if no period is specified, within a reasonable time), the Project Manager may (but without limiting the Company's other remedies under this Agreement) give the Contractor notice in writing requiring the Contractor to remedy that failure, carry out that activity or comply with such requirement of the Project Manager.

If the Contractor fails to comply with the requirements of the Project Manager specified in that notice, the Company may carry out any such activity or requirement using its own or third party personnel and resources.

- (b) The Company shall give notice to the Contractor of the identity of the person(s) who the Company has nominated to carry out any work identified in Clause 13.1(a). The Contractor shall not be entitled to any relief of the performance of its obligations under this Agreement as a result of the fact that this work has been carried out by the Company's nominated third party.
- (c) Without prejudice to any other right or remedy of the Company under this Agreement, all expenditure properly and reasonably incurred by the Company in having such activity or requirement carried out (including, without limitation, any Value Added Tax which is irrecoverable within Clause 24.2) shall be recoverable as a debt by the Company from the Contractor.
- (d) Clause 13.1(a) shall not apply to the design or physical construction and manufacture of the Trains.

Urgent remedial work

- 13.2 If, by reason of any accident or failure or other event affecting safety occurring to, on, in or in connection with the Trains, any remedial or other work shall be urgently necessary in the opinion of the Project Manager, and following consultation with the Contractor (where reasonably practicable) the Contractor is unable or unwilling promptly to do such remedial or other work (or where the occurrence of a Force Majeure Event prevents the Contractor from providing the Trains in accordance with, or complying with its obligations under, this Agreement) (a **Licence Event**), then the Project Manager may authorise the carrying out of that remedial or other work by a person other than the Contractor and/or by Company Employees. If the remedial or other work so authorised by the Project Manager is work which the Contractor was liable to do under this Agreement (and, where the occurrence of a Force Majeure Event prevents the Contractor from providing the Trains in accordance with, or complying with its obligations under this Agreement, the Contractor shall not be so liable), all expenditure properly and reasonably incurred in carrying out that work shall be recoverable as a debt by the Company from the Contractor. The Company shall ensure that any such remedial work is carried out by appropriately qualified and experienced engineers.

Intellectual Property

Deliverable Documentation

- 15.1 The Contractor grants to the Company a non-exclusive, royalty free licence to use the Deliverable Documentation from the date of this Agreement for the life of each Train for the following purposes:
- (a) to enable the Company or the Operator and any third party to whom the Trains are made available to use and operate the Trains (which shall include personnel training);
 - (b) to enable the Company or the Operator to repair, maintain and overhaul the Trains, or to have such actions performed by a third party;
 - (c) following the termination or expiry of this Agreement for any reason and provided that the Company shall have paid the Contractor all sums due under this Agreement and neither the Company nor the Operator shall have then entered into an agreement with the Contractor for the overhauling or maintenance of any of the Trains, to modify or to procure any third party to modify any of the Trains;
 - (a) to copy and, where the Company or the Operator has not then entered into an agreement with the Contractor for the maintenance of the Trains, to modify the Deliverable Documentation, in each case solely to the extent necessary to perform any of the above;

provided (i) that no such royalty free licence shall be granted to any of the Contractor's competitors without the Contractor's prior written consent (such

consent not to be unreasonably withheld) and (ii) that any sub-licensee shall be bound by the duties of confidentiality set out in clause 26.

Sub-licences

- 15.2 The Company shall be permitted to grant sub-licences on the terms set out in Clause 15.1 of the licences to use the Deliverable Documentation respectively but only to the extent that the granting of such sub-licences is reasonably necessary to enable the Company to procure the performance of one or more of the purposes for which the Company is granted a licence and then only to the extent that the Company's licence permits performance by a third party. Any such sub-licences shall automatically terminate upon the expiry or termination of the equivalent licence granted to the Company.

Transfer of Company licences

- 15.3 Each of the licences granted to the Company by the Contractor under Clause 15.1 shall be assignable in whole or in part to any purchaser or transferee or Financier or lessee of all or any of the Trains in accordance with the provisions of Clause 37.2 provided that any such assignment shall not place any more onerous obligations on the Contractor than existed prior to the assignment. The Company shall ensure that any person to whom the benefit of any licence is assigned takes such assignment subject to the burden of such licence.

Undertaking

- 15.4 The Contractor undertakes to obtain, by way of licence or otherwise, the right to use and, where appropriate to licence the Company to use, all Intellectual Property Rights required by the Contractor for the performance of this Agreement in the European Union or in any other country as agreed between the Parties.

Company's remedies

- 18.2 On its becoming aware of the occurrence of any Contractor Event of Default under Clause 18.1, the Company shall notify the Contractor of such an event and the Company may (at its election) at any time thereafter if such event is continuing:

- (a) terminate this Agreement in relation to the Trains by notice in writing, and this Agreement in relation to the Trains shall terminate on the date set out in the notice;
- (b) serve notice in writing of default on the Contractor requiring the Contractor, at the Company's option, either:
 - (i) to remedy or to take substantial steps towards remedying such breach(es) or circumstances referred to in that notice of default continuing at the date of service of the notice within 30 days of that notice (or such longer period agreed in writing by the Company in its absolute discretion); or
 - (ii) within 14 days after that notice, to put forward a reasonable programme to remedy the breach(es) or circumstances continuing at the date of service of the notice, such programme to be in writing and to specify the proposed remedy in reasonable detail and the latest date by which it is proposed that that remedy shall be completed,

and if Clause 18.2(b)(i) or (ii) above are not observed within such time limits the Company shall have the termination rights set out in Clause 18.2(a).

Compensation from Contractor

20.5 On any termination of this Agreement (either in whole or in part) by the Company under Clause 18.2 or 18.3:

- (c) the Contractor shall indemnify the Company from time to time against all or any Supply Losses which the Company may suffer or incur as a result of or in connection with the relevant Contractor Event of Default or the total or partial termination of this Agreement;

Meaning of Supply Losses

20.6(a) **Supply Losses** comprise such costs, losses, expenses and damages which the Company shall certify (accompanied by reasonably detailed supporting written evidence) that it has incurred as a direct result of a Contractor Event of Default or the total or partial termination of this Agreement, provided always that the amount of Supply Losses which may be recoverable by the Company under Clause 20.5(c) may not exceed an amount (**Q**) determined from the following formula:

$$Q = 10\% \times W \times \frac{\text{Contract Value}}{12}$$

where **W** is the number of Trains in respect of which the termination is exercised under Clause 18.

- (b) Supply Losses may comprise the costs incurred by the Company (including claims on the Company by the Operator) in relation to costs of substituting other Trains, the increased marginal costs associated with the existence of a smaller fleet, the diminution in the value of the Trains resulting from a smaller fleet size, costs associated with redundancy and laying off labour, reprogramming costs, retraining costs, re-tendering costs, additional running, stabling and Depot costs, interim emergency measures, administrative costs, penalties to any Competent Authority, re-diagramming costs and any legal and other professional fees in respect of any of the aforementioned Supply Losses.

Contractor Indemnities

- 21.1 If, and to the extent that, the performance or non-performance by the Contractor (or any other person on its behalf) of this Agreement, or any act, omission, breach or neglect on the part of the Contractor or any of its employees, agents or representatives acting in such capacity:
- (a) causes loss or damage to any third party or any person other than the Company (including without limitation the Operator) or any property or rights of any such third party or person, the Contractor shall be fully liable for and shall fully discharge all such loss, damage, liability, penalty and/or breach to the extent the Contractor is liable to such third party under Applicable Law; or
 - (b) causes loss or damage to the Company or any property or rights of the Company, the Contractor shall indemnify the Company against any loss or damage suffered by the Company as a direct result thereof (including without limitation any fine or penalty which is not excluded by the terms of the definition of Indirect Losses).

The indemnity in Clause 21.1(b) shall:

- (i) include any losses or damages suffered by the Company, or any loss or damage to the property of the Company, the Operator or any other third party, or personal injury to or death of any person, as a result of the carrying out by the Contractor of the Acceptance of Delivery Tests and any other testing procedures under this Agreement; but
- (ii) exclude losses or damages to the extent that such losses or damages are due to the negligence of the Company or breach of this Agreement by the Company and, in the case of losses or damages suffered by the Company and described in Clause 21.1(b), the negligence of the Operator.

Limitations on liability

No double counting

- 22.2 Neither the Company nor the Contractor shall:

- (a) be entitled to recover any amount from the other under this Agreement to the extent that it has previously recovered for the same loss or damage under the terms of this Agreement or otherwise; or
- (b) claim or purport to claim for the same loss or damage under more than one provision of this Agreement.

Personal injury or death

22.4 Nothing in this Clause 22 shall limit any liability for personal injury or death and damage to property belonging to third parties.

Occupation of Location by Company

22.5 The Contractor shall have no liability for any infringement of any Environmental Law attributable to the legal occupation or use of the Location by the Company.

Appendix 1

Definitions

1. In this Agreement, where technical expressions are used and not otherwise defined in this Agreement, such expressions shall have the meaning generally attributed to them in the railway industry as at the Contract Date.
2. The capitalised terms set out below shall have the following meanings when used in this Agreement:

Acceptance of Delivery Tests means the tests described in Part 6 of Schedule 5 to be carried out by the Contractor to determine whether that Train is Fit for the Purpose for the purposes of paragraph (a) of that defined term.

Accepted Train means a Train in respect of which a Take Over Certificate or Qualified Take Over Certificate has been issued.

Applicable Laws means, as the context may require, without limitation, all or any laws, statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court whatsoever, Environmental Laws and any European Union legislation at any time or from time to time in force in Denmark and which are or may become applicable or relate to this Agreement.

As-built Drawings means those drawings and schematics (including wiring diagrams) relating to the build of the Trains.

Company Employee means any director, officer, authorised agent, servant or person in the employment of the Company or any other person acting with the authority of the Company (other than any of the Contractor's employees or the Sub-Contractors) and references in this Agreement to any personnel and/or staff and/or employee of the Company shall be deemed to include references to any such person.

Company Proposed Variation has the meaning given to it in Part 5 of Schedule 5.

Competent Authority means a person with the power to give or amend any relevant consents and any agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of the government of Denmark, Germany or the European Community as the case may be.

Contract Date means the date of this Agreement.

Contractor Event of Default has the meaning given to it in Clause 18.1.

Contractor Proposed Variation has the meaning given in Part 5 of Schedule 5.

Corrective Action Reports has the meaning given in Part 7 of Schedule 5.

Defect means, in respect of any Train, Part, item of spare or consumable supplied by the Contractor under this Agreement, where such Train, Part, item of spare or consumable, as the case may be:

- (a) does not comply with the Specification; or

- (b) does not comply with the requirements of this Agreement in any material respect; or
- (c) is not Fit for the Purpose,

whether as a consequence of faulty design, faulty materials, poor workmanship or any other reason attributable to the Contractor or its Sub-Contractors or any other breach of its obligations but not as a consequence of fair and ordinary wear and tear in the course of proper use and operation, and **Defects** and **Defective** shall be construed accordingly.

Deliverable Documentation means the Manuals, Training Materials, Testing Documentation, Quality Assurance Documentation, and all Relevant Consents obtained by the Contractor in respect of Trains all as updated and amended under this Agreement from time to time and which shall be produced in German.

Delivery Point means DSB Fredericia or such other place in as may be agreed by the Parties from time to time as the relevant delivery point in relation to a specific Train .

Design Life has the meaning given in Clause 5.2.

Dispute means any difference, controversy, claim or dispute of whatever nature between the Parties arising under, out of or in connection with this Agreement or any related agreement (including, without limitation, any question of breach, interpretation, validity, effect, performance or termination of this Agreement or any related agreement and any dispute concerning the Project Manager's exercise of his rights, powers, determinations, discretions or options under this Agreement).

Documentation means the specifications, drawings, network diagrams, programmes of work, computer standards, listings, programs, software, test scripts, test procedures, Test Plans, test certificates, quality plans, quality programmes, quality certification, Operating Manual, Maintenance Manuals and all information whether on paper or in electronic format or in any other form which is prepared by or on behalf of the Contractor in accordance with or in relation to this Agreement and including, but not in any way limited to, documents, plans, manuals, diagrams, statements, handbooks, procedures and other items which the Contractor is required to prepare and provide in accordance with the provisions of Part 9 of Schedule 5 including, without limitation, the Deliverable Documentation.

Endemic Defect means a Defect in a component which (a) is reasonably likely to occur or has occurred in other components and (b) the Company reasonably believes (having consulted with the Contractor) will thereafter become an Epidemic Defect.

Endemic and Epidemic Defect Protection Period means the period commencing on the Contract Date and ending on 31 December 2012.

Enhancements means the enhancements listed in Attachment A to Schedule 1.

Environment means air, water or land (including, without limitation, air, water and land within natural or man-made structures above or below ground).

Environmental Laws means all or any law (whether civil, criminal or administrative), statute, statutory instrument, treaty, regulation, directive, decision, by-law, which is in force in Germany at the Contract Date which relates to the Environment.

Epidemic Defect means a Defect which occurs as a result of the same fault in any period of 12 months during the Endemic and Epidemic Defect Protection Period:

- (a) in 30% (thirty per cent) or more of the same components in a Trains, where fewer than 3 (three) such components are installed per Train; or
- (b) in 20% (twenty per cent) or more of the same components in a Trains, where 3 (three) or more such components are installed per Train.

provided that (i) the first fault shall be excluded and (ii) the Company shall notify the Contractor of the possibility that the Defect is an Epidemic Defect, (iii) the Contractor shall carry out its own investigation into the cause of the Defect (having regard to whether or not such Defect has occurred in vehicles of the same type, age, use and overhaul cycle as the Trains) and, following such investigation, (aa) the Parties agree whether or not the Defect is an Epidemic Defect, or (bb) the Parties do not agree as to whether the Defect is an Epidemic Defect in which case the Parties shall refer the matter to an independent expert.

Excluded Matter means any of (a) Improper Use; (b) vandalism on the part of any person (other than the Contractor, Sub-Contractors, employees, agents or representatives acting in such capacity); (c) suicide or attempted suicide; (d) any crash or collision involving any Train which is attributable to any person (other than the Contractor, Sub-Contractors, employees, agents or representatives acting in such capacity); (e) fair wear and tear; and (f) any failure to maintain the Trains (but without prejudice to, or derogation from, the Contractor's obligations (if any) to perform any maintenance in accordance with the provisions of any Maintenance Arrangements.

Expiry Date means the last day of the Endemic and Epidemic Defect Protection Period or such later date as may be agreed between the Parties in the context of Maintenance Arrangements.

Financier means:

- (a) any financial institution which from time to time agrees to provide financing facilities to, or for the benefit of, the Company or any person referred to in (c) below and/or for whose benefit Security over, or rights in the nature of Security relating to Trains and/or this Agreement and/or any agreement or supplement entered into pursuant to the terms of this Agreement is granted; or
- (b) any financial institution which from time to time serves as security agent and/or trustee for one or more financial institutions falling within (a) above; or
- (c) with respect to Trains, the owner of such Trains (if not the Company) and any other person (other than a person falling within (a) or (b) above and excluding the Operator) who has a leasehold or proprietary interest in such Trains.

First Train means the first Train for which a Take Over Certificate or Qualified Take Over Certificate is issued pursuant to Clause 7.5.

Fit for the Purpose means, in relation to any Train or Part, that it meets, in all material respects, the requirements and provisions of the Specification and is capable of being used in revenue earning service in Denmark.

Force Majeure Event has the meaning given to it in Clause 16.1.

German Law means, as the context may require, without limitation, all or any laws, statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court whatsoever, Environmental Laws and any European Union legislation in force in Germany at the Contract Date and which relate to this Agreement.

Group means, in relation to any company, that company and any company which is a holding company or subsidiary of that company and any subsidiary of any such holding company.

Hazardous Substances means any or all materials or substances of any form whether natural or artificial, solid, liquid, gas or vapour or any mixture thereof which are present in such quantities and concentration as (a) may be harmful or prejudicial to the Environment or human health or any living organism, (b) are regulated under Environmental Law, or (c) would require investigation or remedial action under any Environmental Law.

Improper Use means, in respect of any Train, any misuse, abuse or other use of such Train by any person (other than the Contractor, the Contractor Guarantor or any of their respective, or any member of their respective Groups', Sub-Contractors, employees, agents or representatives acting in such capacity) other than in accordance with all Applicable Laws, relevant consents and relevant rules and procedures and/or any relevant Manuals provided with the Train by the Contractor to the Company, provided that:

- (a) in the case of Manuals, the same shall have been provided by the Contractor to the Company in accordance with this Agreement; and
- (b) there shall be deemed to have been Improper Use in any case where such Train has not been used in compliance with any current relevant Manuals which have been provided by the Contractor to the Company, unless such non-compliance is as a result of compliance with any conflicting Applicable Laws, relevant consent or relevant rules and procedures.

Indirect Losses means loss of profits, loss of margin, loss of revenue (including, without limitation, lease revenue), financial liability to any Financier, fines imposed by a Competent Authority, loss of contract, loss of use of money, loss of subsidy, loss of interest, loss of use of any Train and/or any Part or any form of indirect, incidental or other consequential loss whatsoever.

Intellectual Property Rights means all intellectual property rights including, without limitation, patents, designs, trade marks, trade names, copyrights, rights in technical information including know-how, in each case, whether or not registered and including applications for the registration or grant of any of the foregoing and further including any such rights in specifications, drawings and technical descriptions, Software, research and development data, manufacturing methods and data, formulae algorithms, prototypes and research materials.

Invalid Provision has the meaning given to it in Clause 33.2(a)(i).

Location means the Relevant Network, Depots, stations or any one or more of them or any part of them, as the context may require.

Maintenance Manual means those maintenance manuals referred to in Schedule 5, Part 9.

Manuals means the Operating Manuals, Train Driver's Fault Finding Guide and Breakdown Manuals developed by the Contractor in relation to the Trains and referred to in paragraphs 4.2, 4.3 and 4.4 of Schedule 5, Part 9.

Manufacturing Documents means the manufacturing and process control instructions (provided in electronic and/or hard copy format) used in the manufacture of equipment designed for the Trains, and the detailed tolerance manufacturing drawings of equipment fitted to the Trains.

Milestones means the milestones set out in the second column of the table in of Schedule 6 and "**Milestone**" means any of such Milestones.

Milestone Dates means the dates set out in the third column of the table of Schedule 6 and "**Milestone Date**" means any of such Milestone Dates.

month has the meaning given to it in Clause 1.2(j).

Trains means the trains to be manufactured and provided by the Contractor in accordance with this Agreement.

Notice of Company Proposed Variation means a notice of a proposed variation to be substantially in the form set out in Schedule 5 delivered by the Project Manager to the Contractor pursuant to paragraph 2.1 of Part 5 of Schedule 5.

Notice of Contractor Proposed Variation means a notice of a proposed variation to be substantially in the form set out in Schedule 5 delivered by the Contractor to the Project Manager pursuant to paragraph 4.1 of Part 5 of Schedule 5.

Notice of Required Variation means a notice of a required variation to be substantially in the form set out in Schedule 5 delivered by the Project Manager to the Contractor pursuant to paragraph 3.1 of Part 5 of Schedule 5.

Notice of Variation means a Notice of Required Variation, Notice of Company Proposed Variation or Notice of Contractor Proposed Variation.

Operating Manuals means the manuals prepared by the Contractor or relevant Sub-Contractor relating to the operation of the Trains and/or any equipment on or in the Trains, the requirements of which are set out in Part 9 of Schedule 5.

Operator means DSB.

Part means, whether or not from time to time installed on any Train and whether or not title thereto is vested in the Company, any component, furnishing, equipment, part or item (including a consumable) comprising part of a Train or delivered pursuant to this Agreement in connection with a Train.

Party means a party to this Agreement.

Passenger means a member of the travelling public, a person, an item of baggage, goods or mail or any other thing carried or capable of being carried on trains.

Payment means any sum expressed to be payable by the Company to the Contractor in respect of the Trains in accordance with Schedule 2 and Clause 14 of this Agreement.

Potential Delay Event has the meaning given to it in Clause 9.3(b).

Primary Warranty Period has the meaning given to it in Clause 10.2(a).

Programme means the programme for (amongst other things) the supply of the Trains as set out in Schedule 6

Project Manager means the Company Employee appointed by the Company as its project manager or such Company Employee for the time being discharging the duties of that office.

Qualified Take Over Certificate means a certificate issued by the Project Manager in relation to a Train pursuant to Clause 7.5.

Quality Assurance Documentation means documentation produced as a consequence of the Agreement Specific Quality Assurance Plan, including testing and inspection records and approvals, certificates of conformity, Corrective Action Reports and auditing records.

Rejection Notice means a notice issued by the Project Manager in relation to a Train.

Relevant Claim has the meaning given to it in Clause 25.1(c).

Relevant Rules and Procedures means all instruments and regulations, requirements, rules or 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 Trains or the operation of the Trains on, or for use on, the German network in existence on the Contract Date.

Relevant Consents means the consent granted by a Competent Authority that permits the operation of the Trains in revenue earning service.

Required Variation has the meaning given to in Schedule 5, Part 5, paragraph 1.1(a).

Security means (a) any right of ownership, lien, mortgage, charge, pledge, hypothecation, attachment, security interest, assignment by way of security, right of possession, right of detention, right of set-off or other encumbrance, or (b) any other preferential arrangement resulting in a secured transaction or having the same economic or legal effect as any of the foregoing, or (c) any agreement to give any of the foregoing, or (d) any arrangement to prefer one creditor over another creditor or (e) the interest of a vendor or lessor under any conditional sale agreement, lease, hire purchase agreement or other title retention arrangement or (f) any interest described in (a) to (e) above over any interest described in (a) to (e) above.

Spare Parts Catalogue means the spare parts catalogue referred to in Schedule 5, Part 9.

Specification means the specification of the Trains as set out in Schedule 1.

Sub-Contract means any contract entered into by the Contractor with a Sub-Contractor in connection with this Agreement.

Sub-Contractor means any party to a sub-contract other than the Contractor.

Supply Losses has the meaning given to it in Clause 20.6.

Take Over Certificate means a certificate issued by the Project Manager in relation to a Train pursuant to Clause 7.5.

Termination Date means a date on which this Agreement, or rights or obligations under this Agreement is, or are, terminated in accordance with the terms hereof, in whole or in part.

Test Equipment means the equipment developed to test the dimensions, functionality and input and output parameters of the Trains and the equipment fitted thereto.

Training Materials means those materials required to be compiled by the Contractor under the terms of Schedule 5 Part 10.

Value Added Tax and **VAT** mean value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto or in replacement thereof or in any primary or subordinate legislation promulgated by the European Union or any body or agency thereof and any Tax replacing the same and any Tax similar or equivalent to value add tax imposed by any country other than the United Kingdom.

Variation means any Required Variation, Company Proposed Variation or Contractor Proposed Variation.

Variation Order means an order issued by the Project Manager pursuant to Part 5 of Schedule 5.

Variation Procedure means the procedure for making Variations set out in Part 5 of Schedule 5.

Warranty End Date means:

- (i) in relation to any Train, the date occurring 24 months after the signature of a Take Over Certificate or Qualified Take Over Certificate in relation to such Train; and
- (ii) in relation to any Part, component, item of spare or consumable (in each case not originally comprised in a Train) the date occurring 24 months after the date of delivery of such Part, component, item of spare or consumable to the Company by or on behalf of the Contractor,

provided always that no Warranty End Date shall fall later than 31 December 2012.

Working Day means any day excluding Saturdays, Sundays, English, German and Danish bank holidays and public holidays and each Working Day shall be deemed to commence at 2.00 a.m. and end at 1.59 a.m. (Danish time) on the following calendar day.

Year means a calendar year.