

SETTLEMENT AGREEMENT

between

JUSTIN GUTMANN

and

STAGECOACH SOUTH WESTERN TRAINS LIMITED

THIS SETTLEMENT AGREEMENT is made on 27 March 2024

Between:

- (A) **Justin Gutmann**, in his capacity as class representative pursuant to the Collective Proceedings Order made on 18 January 2022, c/o 22 Eastcheap, London EC3M 1EU (the “**Class Representative**” or “**CR**”);

and

- (B) **Stagecoach South Western Trains Limited**, a company incorporated in England and Wales under company number 05599788, with its registered office at 20 Railway Road, One Stockport Exchange, Stockport, Greater Manchester, England, SK1 3SW (“**SSWT**”).

Each of the parties are hereafter referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS

- (A) On 27 February 2019, the CR filed the SW Proceedings (as defined in Clause 1 below) against SSWT and the Non-Settling Defendant (as defined in Clause 1 below) alleging that the Defendants (as defined in Clause 1 below) had abused a dominant position by failing to make so-called Boundary Fares sufficiently available and/or to use their best endeavours to ensure general awareness among their customers of Boundary Fares in breach of section 18 of Competition Act 1998.
- (B) On 19 October 2021, the SW Proceedings were certified by the Tribunal (as defined in Clause 1 below), the CR was approved as class representative, and the claims were held to raise common issues and be suitable to be brought in opt-out collective proceedings.
- (C) On behalf of the Class (as defined in Clause 1 below), the CR has entered into settlement negotiations with SSWT relating to the resolution of the claim brought against SSWT in the SW Proceedings.
- (D) Each SSWT Released Party (as defined in Clause 1 below) denies the existence of a dominant position and also any conduct which could amount to an alleged abuse of a dominant position or that the CR, the Represented Persons (as defined in Clause 1 below), or any other member of the Class have suffered any loss or damages as a result of any of the conduct as set out in the SW Proceedings.
- (E) In order to dispose of the SW Proceedings as against SSWT and avoid unnecessary legal and other costs, the Parties have reached an agreement regarding the payment by SSWT to the CR of the Settlement Sum (as defined in Clause 1 below) in consideration of certain waivers, releases and covenants to be given by the CR.

NOW, THEREFORE, THE PARTIES TO THIS AGREEMENT AGREE AS FOLLOWS:

1. DEFINITIONS

- 1.1 In this Agreement, the following terms shall have the following meanings:

“**Agreement**” means this present agreement.

“Approval Application” means the Parties’ joint application for a CSAO (as defined below), pursuant to Rule 94 of the Tribunal Rules (as defined below) and for the purposes of giving full effect to the provisions of this Agreement.

“Class” means, in respect of the SW Proceedings, all persons who, at any point during the Relevant Period purchased or paid for a rail fare for themselves and/or another person, which was not a Boundary Fare or a fare for the portion of their journey from the last station covered by their Travelcard to their destination, where:

- the person for whom the fare was purchased held a Travelcard (or Travelcards) valid for travel within one or several of TfL’s fare zones (the **“Zones”**) at the time of their journey or, where the fare was a season ticket fare, for at least the period of validity of that season ticket fare; and
- the rail fare (including a fare for a return journey and a season ticket fare) was for travel in whole or in part on the services of SSWT from a station within (but not on the outer boundary of) those Zones to a destination beyond the outer boundary of those Zones; and
- whereby: (i) **“Relevant Period”** means the period between 1 October 2015 and 1:59am on 20 August 2017; (ii) **“Travelcard”** means a Transport for London (**“TfL”** zonal ticket; and (iii) **“Boundary Fare”** means a fare valid for travel to or from the outer boundaries of TfL’s fare zones, intended to be combined with a Travelcard whose validity stretches to the relevant zone boundary.
- for the avoidance of doubt, the categories of persons listed in paragraph 6 of the Collective Proceedings Order made on 18 January 2021 shall be excluded from the Class.

“Claim(s)” means any claim, potential claim, counterclaim, right of set-off, indemnity, cause of action, right or interest (including for interest and costs), however and whenever arising, in whatever jurisdiction, whether in a court, tribunal and/or in arbitration, including (but not limited to) any claims for costs or interest, or for account of profits, or for damages (including punitive damages and penalties) and whether on the basis of contract, equity, tort, restitution or unjust enrichment, and under antitrust or competition laws, or otherwise.

“Claim Period” means the period of six (6) calendar months from the end of the Preparation Period during which Represented Persons will be entitled to submit their claim for payment in accordance with the provisions set out in the Notice and Administration Plan.

“CR’s Costs” means the costs, fees, and disbursements actually and properly incurred by the Class Representative and attributable to SSWT as at the date of the Stakeholder Hearing (*minus* any costs awards already made in the SW and SE Proceedings).

“CSAO” means an opt-out collective settlement approval order made by the Tribunal, pursuant to Rule 94 of the Tribunal Rules.

“Damages Sum” means the payment to be made by SSWT to the CR in respect of any alleged loss or damages suffered by the Class, being a sum of up to £25,000,000 (in words: twenty-five million pounds Sterling) which shall be inclusive of interest.

“Damages Sum Notification Date” has the meaning given to it at Clause 2.4(d) below.

“Distribution Costs” means the payment to be made by SSWT to the CR in respect of the costs of notifying and distributing the Notified Damages Sum to the Class, being [REDACTED] (including Value Added Tax).

“Defendants” means SSWT and First MTR South Western Trains Limited.

“Defendant Claims” means any Claim which the CR has brought or asserted against any SSWT Released Party, or which the CR could bring or assert against any SSWT Released Party, arising from or in connection with SSWT’s alleged abusive conduct in respect of Boundary Fares for travel in whole or in part on the services of SSWT during the Relevant Period.

“Funder” means Woodsford Group Limited, a company incorporated in England and Wales under company number 07327885, with its registered office at 8 Bloomsbury Street, London, England, WC1B 3SR.

“Funding Challenge” means the funding challenge commenced by the Defendants on 21 November 2023.

“Further Approval Application” has the meaning given to it at Clause 4.3(c) below.

“GTR Proceedings” means the opt-out collective proceedings filed by the CR against Govia Thameslink Railway Limited, Govia Limited, The Go-Ahead Group Limited and Keolis (UK) Limited before the Tribunal on 24 November 2021 under Case No.: 1425/17/21 *Justin Gutmann v Govia Thameslink Railway Limited, Govia Limited, The Go-Ahead Group Limited and Keolis (UK) Limited*.

“Non-Disparagement Agreement” means the agreement signed by the Parties and the Stakeholders on 27 March 2024.

“Non-Ringfenced Costs” means the additional payment to be made by SSWT to the CR in respect of his costs, fees and disbursements (within the meaning of Rule 93(4) of the Tribunal Rules and excluding any costs awards already made and settled between the CR and SSWT and/or the Non-Settling Defendant), being a sum up to [REDACTED] (including Value Added Tax) subject to the order of the Tribunal and on the terms set out in this Agreement.

“Non-Ringfenced Costs Limit” means [REDACTED]

“Non-Settling Defendant” means First MTR South Western Trains Limited.

“Notice and Administration Plan” means the revised notice and administration plan to be prepared by Epiq and Hilsoft Notifications in respect of the Class.”

“Notified Damages Sum” has the meaning given to it at Clause 2.4(c) below.

“Preparation Period” means two (2) calendar months after the date on which the notice is given in the form and manner approved by the Tribunal pursuant to Rule 94(13) of the Tribunal Rules, during which Epiq and Hilsoft Notifications will prepare for claims administration as set out in the Notice and Administration Plan.

“Represented Persons” means members of the Class who, in accordance with Rule 82 of the Tribunal Rules: (i) have not opted out of the SW Proceedings; or (ii) if not domiciled

in the United Kingdom at the domicile date in the SW Proceedings (i.e. 19 October 2021), have opted into the SW Proceedings.

“Ringfenced Costs” means the payment to be made by SSWT to the CR in respect of his costs, fees and disbursements (within the meaning of Rule 93(4) of the Tribunal Rules and excluding any costs awards already made and settled between the CR and SSWT and/or the Non-Settling Defendant), being [REDACTED] (including any applicable Value Added Tax).

“SE Proceedings” means the opt-out collective proceedings filed by the CR against London and South Eastern Railway Limited before the Tribunal on 27 February 2019 under Case No.: 1305/7/19 *Justin Gutmann v London and South Eastern Railway Limited*.

“Settlement Sum” means the Ringfenced Costs, the Distribution Costs, the Notified Damages Sum and the Non-Ringfenced Costs.

“Stagecoach Affiliates” means:

- the parent company of SSWT, i.e. Stagecoach Group Limited, a company incorporated in England and Wales under company number SC100764, with its registered office at 10 Dunkeld Road, Perth, Perthshire, PH1 5TW, Scotland;
- any company or other entity (including its successors and assigns) as at the date of this Agreement, which is the subsidiary (as defined in Section 1162 of the Companies Act 2006) of Stagecoach Group Limited or in which Stagecoach Group Limited has an interest;
- West Coast Trains Limited, a company incorporated in England and Wales under company number 03007940, with its registered office at 66 Porchester Road, London, W2 6ET, United Kingdom,; and
- Current and former shareholders of SSWT, Stagecoach Group Limited and Stagecoach Group Limited's subsidiaries.

“Stakeholders” means the CR's legal team including Hausfeld & Co. LLP, Charles Lyndon Limited and the Funder and any other third party who assisted the CR in the SW Proceedings.

“Stakeholder Hearing” means a hearing before the Tribunal following distribution of the Notified Damages Sum to Represented Persons, where the Class Representative will apply for payment of the remainder of the CR's Costs, to the extent that the Non-Ringfenced Costs Limit exceeds the Notified Damages Sum and in accordance with the provisions of this Agreement.

“SSWT Released Parties” means SSWT and the Stagecoach Affiliates.

“SW Proceedings” means the opt-out collective proceedings filed by the CR against the Defendants before the Tribunal on 27 February 2019 under Case No.: 1304/7/19 *Justin Gutmann v First MTR South Western Trains Limited and Stagecoach South Western Trains Limited*.

“Tribunal” means the Competition Appeal Tribunal.

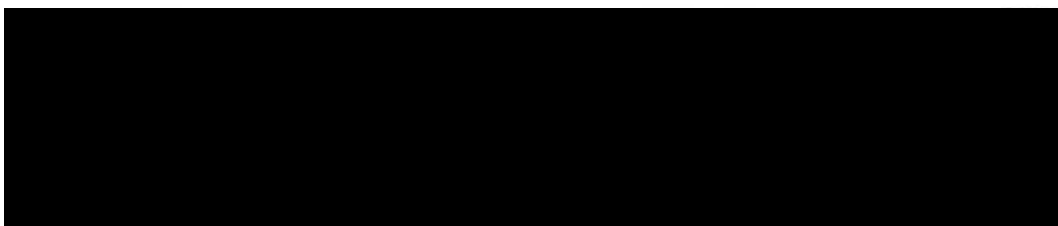
“Tribunal Guide” means the Competition Appeal Tribunal Guide to Proceedings 2015.

“**Tribunal Rules**” means the Competition Appeal Tribunal Rules 2015 (SI 2015 No.1648).

2. TERMS OF SETTLEMENT

2.1 Subject to the Tribunal making a CSAO, SSWT agrees to pay the CR (on behalf of the Class) the Settlement Sum in full and final settlement of the SW Proceedings as against SSWT.

2.2 The Ringfenced Costs shall be paid by 21 days from the date on which the notice is given under Rule 94(13) of the Tribunal Rules, by wire transfer, without deduction, to the following bank account. The wire transfer should be referred to as “Ringfenced Costs – SSWT Settlement”. SSWT will provide evidence of payment to the CR via the CR’s solicitors, Charles Lyndon Limited.



2.3 The Distribution Costs shall be paid by 21 days from the date on which the notice is given under Rule 94(13) of the Tribunal Rules, by wire transfer, without deduction, to the bank account indicated in Clause 2.2 above. The wire transfer should be referred to as “Distribution Costs – SSWT Settlement”. SSWT will provide evidence of payment to the CR via the CR’s solicitors, Charles Lyndon Limited.

2.4 In relation to the Damages Sum, the Parties agree that:

(a) The Damages Sum shall be allocated to the following three “Pots” with distinct evidence thresholds in relation to each Pot as detailed in Annex 1 of this Agreement:

(i) Pot 1: £19,000,000 of the Damages Sum shall be allocated to Pot 1. The amount claimed under Pot 1 will be the actual difference in price between the fare paid for by a Represented Person and the appropriate Boundary Fare. There shall be no limit on the number of claims a Represented Person can make or the total sum payable to any Represented Person in relation to Pot 1. Where available, equivalent point-to-point fares will be used as a proxy to calculate the sum that is payable to Represented Persons claiming for Boundary Fares that were not available in the Relevant Period. Of this Pot, £15,390,000 shall be allocated to Represented Persons who purchased their tickets directly from SSWT for use on its services; the remaining £3,610,000 shall be allocated to Represented Persons who purchased from third party retailers for use on SSWT’s services.

(ii) Pot 2: £4,000,000 of the Damages Sum shall be allocated to Pot 2. SSWT agrees to pay £5 for each valid claim up to a maximum of 20 claims per Represented Person (for a maximum of £100 in total per Represented Person) in relation to Pot 2. Of this Pot, £3,240,000 shall be allocated to Represented Persons who purchased their tickets directly from SSWT for use on its services; the remaining £760,000 shall be allocated to

Represented Persons who purchased from third party retailers for use on SSWT's services; and

- (iii) Pot 3: £2,000,000 of the Damages Sum shall be allocated to Pot 3. SSWT agrees to pay £5 for each valid claim up to a maximum of six claims per Represented Person (for a maximum of £30 in total per Represented Person) in relation to Pot 1. Of this Pot, £1,620,000 shall be allocated to Represented Persons who purchased their tickets directly from SSWT for use on its services; the remaining £380,000 shall be allocated to Represented Persons who purchased from third party retailers for use on SSWT's services. Represented Persons who purchased fares for use, in part or in whole, on SSWT's services in the Relevant Period shall be entitled to make a claim on a Pot subject to satisfying the relevant evidence requirements.

For the avoidance of doubt, the CR shall reject claims on the Pots which are for tickets purchased for use on other train operating companies' services.

No sum is payable by SSWT in respect of interest on any claim made from each or any of the three pots.

- (b) If the total amount claimed by Represented Persons on the allocated sum within a Pot exceeds the allocated funds for that allocated part of the Pot as set out in Clause 2.4(a) above, the amounts claimed by each Represented Person shall be proportionally reduced on a *pari passu* basis. For example, if claims in relation to sales by third party retailers on Pot 2 are £950,000 each claim shall be reduced by 20% to £4 per claim.

The only exception to this will be if there are, after the Claim Period, remaining funds not subject to a valid claim in Pot 2 or Pot 3, then:

- (i) any amount unclaimed from Pot 3 will be transferred to Pot 2 and will be available to be recovered by Represented Persons on the basis applicable to Pot 2; and/or
- (ii) any amount left unclaimed in Pot 2 will be transferred to Pot 1 and will be available to be recovered by Represented Persons on the basis applicable to Pot 1.
- (c) Within 1 month from the end of the Claim Period, and subject to Clause 2.4(a) above, the CR shall notify SSWT by email (via their respective solicitors) of the total amount validly claimed by Represented Persons, up to a maximum of £25,000,000 (the "**Notified Damages Sum**"). This sum may be subject to adjustment should any amounts be determined as a result of the audit not to have been validly claimed.
- (d) Subject to SSWT being satisfied with results of the audit of claims as set out in **Annex 2**, the Notified Damages Sum shall be paid within 21 days of the date of receipt of such notification (the "**Damages Sum Notification Date**"), by wire transfer, without deduction, to the bank account indicated in Clause 2.2 above. The wire transfer should be referred to as "Notified Damages Sum – SSWT Settlement". SSWT will provide evidence of payment to the CR via the CR's solicitors, Charles Lyndon Limited.

2.5 In relation to the Non-Ringfenced Costs, the Parties agree that:

- (a) To the extent that the Notified Damages Sum is less than the Non-Ringfenced Costs Limit, the difference between the Non-Ringfenced Costs Limit and the Notified Damages Sum shall be paid by SSWT to the CR towards the Non-Ringfenced Costs up to a maximum of [REDACTED] provided that the total of the Ringfenced and Non-Ringfenced Costs to be paid by SSWT to the CR will not be more than the CR's Costs. Recovery of the CR's Non-Ringfenced Costs shall always be subject to the Non-Ringfenced Cost Limit of [REDACTED] (after deduction of the Notified Damages Sum). For example, if the Notified Damages Sum amounts to [REDACTED], then [REDACTED] will be paid towards the Non-Ringfenced Costs. For the avoidance of doubt, if the Notified Damages Sum exceeds [REDACTED], the Non-Ringfenced Costs payable shall be [REDACTED].
- (b) To the extent that the Notified Damages Sum is less than the Non-Ringfenced Cost Limit the CR will apply to the Tribunal for a Stakeholder Hearing for an order to allocate any undistributed sum (up to the Non-Ringfenced Costs Limit and in accordance with Clause 2.5(a)) towards costs, fees and disbursements following the distribution of the Notified Damages Sum to the eligible Represented Persons.
- (c) Subject to SSWT being satisfied with results of the audit of claims as set out in **Annex 2**, the Non-Ringfenced Costs due under this Agreement shall be paid within 21 days of the Tribunal's order, by wire transfer, without deduction, to the bank account indicated in Clause 2.2 above. The wire transfer should be referred to as "Non-Ringfenced Costs – SSWT Settlement". SSWT will provide evidence of payment to the CR via the CR's solicitors, Charles Lyndon Limited.

2.6 To the extent that the sum of the Notified Damages Sum and the Non-Ringfenced Costs is lower than the Damages Sum, the Parties agree that SSWT will retain the remainder of the Damages Sum.

3. NO ADMISSION

3.1 The Parties agree that this Agreement is entered into without any admission of the alleged conduct or breach of the Competition Act 1998 or of liability by any SSWT Released Party and that each SSWT Released Party denies that the CR, the Represented Persons or any other member of the Class have suffered any loss or damages as a result of any of the conduct as set out in the SW Proceedings.

3.2 The Parties further agree that:

- (a) nothing in this Agreement shall be admissible in any proceedings (including the SW Proceedings) as evidence of liability or wrongdoing by the SSWT Released Parties in respect of any Defendant Claims; and
- (b) neither this Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against any SSWT Released Party or evidence of the truth or validity of any of the CR's allegations against SSWT.

4. CSAO APPLICATION

4.1 Immediately following execution of this Agreement, the CR and SSWT shall execute such documents and do any such other acts and things as may be required for the purposes of giving full effect to the provisions of this Agreement. The Parties shall work together, in good faith, to prepare and file the Approval Application. For the avoidance of doubt, the

Approval Application will consist of the documents in the form agreed and appended to this Agreement (**Annex 3**). If one of the Parties prepare any other document other than those in **Annex 3** following the execution of this Agreement to be added to the Approval Application, this needs to be approved by the other Party.

- 4.2 The Approval Application shall provide for SSWT to have liberty to apply, should the Collective Proceedings Order made on 18 January 2021 in the SW Proceedings (the "**CPO Order**") be revoked as a result of the Funding Challenge. SSWT shall have liberty to apply in relation to any sum payable under the Settlement Agreement only insofar as the Funding Challenge is successful (in whole or part) before the relevant amount (be that in relation to Ringfenced Costs, Distribution Costs, Non-Ringfenced Costs, Notified Damages Sum or any other sum payable under the Settlement Agreement) falls due pursuant to Clauses 2.2, 2.3, 2.4(d) and 2.5(c).
- 4.3 In the event that any part of the Approval Application is unsuccessful then:
- (a) the Parties first agree to bear their own costs in relation to the Approval Application;
 - (b) the Parties further agree that they shall be severally liable in equal shares for any adverse costs awarded in relation to the Approval Application, whether in favour of the Non-Settling Defendant, one or more Represented Persons who make submissions in accordance with Rule 94(7) of the Tribunal Rules, or any other party;
 - (c) subject to Clause 4.3(d), the Parties shall negotiate in good faith to prepare a further joint approval application, if such an application can be agreed by both parties acting reasonably and subject to the Parties' respective commercial interests (the "**Further Approval Application**"). In seeking to agree the Further Approval Application, the Parties shall take account of any judgments or obiter comments from the Tribunal, such that a collective settlement approval order will be made which, as far as possible, reflects the terms and spirit of this Agreement but acknowledging that this Agreement may need to be varied; and
 - (d) if, at any time, despite negotiating in good faith pursuant to Clause 4.3(c) the Parties cannot agree a Further Approval Application on terms acceptable to both parties, either Party may serve notice on the other that this Agreement shall terminate and the terms of this Agreement shall not be binding on either Party, save in respect of Clauses 4.3(a) and (b), 13, 14 and 18, which shall continue in full force and effect.
- 4.4 In the event that any Further Approval Application is unsuccessful, the Parties agree that:
- (a) the Parties first agree to bear their own costs in relation to any Further Approval Application;
 - (b) they shall be severally liable in equal shares for any adverse costs awarded in relation to the Further Approval Application, whether in favour of the Non-Settling Defendant, one or more Represented Persons who make submissions in accordance with Rule 94(7) of the Tribunal Rules, or any other party; and
 - (c) unless otherwise agreed in writing, the terms of this Agreement shall not be binding on either Party, save in respect of Clauses 4.3(a) and (b), 13, 14 and 18, which shall continue in full force and effect.
- 4.5 For the avoidance of doubt, if the Parties submit a first Further Approval Application which is unsuccessful, the Parties' obligation to negotiate, prepare and file any additional

approval application as set out in Clauses 4.1, 4.3 and 4.4 will cease and this Agreement will terminate and the terms of this Agreement shall not be binding on either Party, save in respect of Clauses 4.3(a) and (b), 4.3(a) and (b), 13, 14 and 18, which shall continue in full force and effect unless the Parties explicitly agree to negotiate, prepare and file another Further Approval Application. If more than one Further Approval Application is agreed to be needed, the Parties agree that the same process and terms as above will apply to the preparation of additional Further Approval Applications, *mutatis mutandis*.

- 4.6 The Parties note Rule 94(15) of the Tribunal Rules and agree that, in the event that the Approval Application or any Further Approval Application is unsuccessful such that this Agreement is rendered non-binding, the Parties shall not rely on or refer to at trial the existence, terms, form or content of this Agreement, the Approval Application and/or any Further Approval Application(s), and all prior or future negotiations in relation thereto, unless otherwise agreed in writing, save in respect of claims for costs.

5. STAY OF PROCEEDINGS

The Parties shall file with the Approval Application, a consent order in the terms agreed and appended to this Agreement (Annex 4) requesting formally a stay of the SW Proceedings as against SSWT until the Tribunal makes the CSAO or otherwise disposes of the Approval Application.

6. RELEASE AND WAIVER

- 6.1 Subject to the payment of the Settlement Sum in accordance with Clauses 2.2 to 2.5 (inclusive) above, the CR agrees, as far as it is legally able to and subject to the Tribunal making the CSAO, that the CR, in its own capacity and/or on behalf of Represented Persons or other members of the Class, will (i) covenant not to bring, make, assist or pursue (or cause to be brought, made, assisted or pursued) any further claim, demand, action or proceedings and (ii) irrevocably waives any and all of his/their rights against:
- (a) the SSWT Released Parties, in connection with the Defendant Claims; and
 - (b) the Non-Settling Defendant, in connection with the Defendant Claims.
- 6.2 The CR hereby irrevocably covenants that he will not assign or purport to assign any Defendant Claims to any other person.
- 6.3 Subject to the payment of the Settlement Sum in accordance with Clauses 2.1 to 2.5 (inclusive) above, the CR covenants not to bring, make, assist or pursue (or cause to be brought, made, assisted or pursued) any further claim, demand, action or proceedings in relation to or in connection with Boundary Fares against the SSWT Released Parties.
- 6.4 Subject to this Agreement and the Tribunal making a CSAO, and if the Non-Settling Defendant and the defendants in the GTR Proceedings and the SE Proceedings are ordered to pay for ticket sales made by third-party retailers, the CR agrees to exclude the sales made by the SSWT Released Parties from the total damages he seeks from the Non-Settling Defendant and the defendants in the GTR Proceedings and the SE Proceedings. For the avoidance of doubt, full and final settlement with SSWT and the release of SSWT Released Parties is not intended to and does not release the Non-Settling Defendant from any Claims (other than the Defendant's Claim) which any Represented Person or any other member of the Class may have against the Non-Settling Defendant.

- 6.5 If the CR fails to adhere to the covenants in Clauses 6.1 to 6.4 (inclusive) above, he will be liable to indemnify, and keep indemnified on an after tax basis the relevant SSWT Released Party in relation to any liabilities or losses which it incurs or suffers as a result of the breach.

7. COSTS

- 7.1 Subject to the payment of the Ringfenced Costs and any Non-Ringfenced Costs due under this Agreement, the CR agrees that he shall have no right to claim recovery from the SSWT Released Parties of any of its costs incurred or to be incurred in relation to the SW Proceedings or any related proceedings (including, but not limited to, the costs of the Approval Application and any Further Approval Application).
- 7.2 In the event that SSWT does choose to make written submissions on the Approval Application or any Further Approval Application or oral submissions at the hearing of the Approval Application or any Further Approval Application before the Tribunal, it shall bear its potential costs of doing so.
- 7.3 Subject to the Tribunal making the CSAO, SSWT agrees that it shall have no right to claim recovery whether from the CR, Represented Persons or the Funder, of any of its costs incurred or to be incurred in relation to the SW Proceedings including, but not limited to, the costs of the Approval Application and any Further Approval Application, or repayment of costs already paid to the CR over the course of the SW Proceedings.

8. RIGHTS OF THE AFFILIATES

- 8.1 Each of the Stagecoach Affiliates shall have the right under the Contracts (Right of Third Parties) Act 1999, which shall apply to this Agreement, to enforce the releases, waivers, covenants and agreements in this Agreement (but no other clauses). Notwithstanding their right, the Parties may by agreement terminate or rescind or vary this Agreement in any way without the consent of any such Stagecoach Affiliate.
- 8.2 Except as provided in Clause 8.1, a person who is not a party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement.

9. WARRANTIES AND AUTHORITY

- 9.1 The CR warrants and represents that he has not sold, transferred, assigned or otherwise disposed of any interest which he has in the Defendant Claims.
- 9.2 Each Party warrants and represents to the other with respect to itself that it has the full right, power and authority to execute, deliver and perform this Agreement.

10. EFFECT OF THIS AGREEMENT

The Parties agree that this Agreement shall immediately be fully and effectively binding upon them. In the event that the Tribunal refuses the Approval Application or Further Approval Application Clauses 4.3 and 4.4 shall apply. Should the Tribunal refuse to make a CSAO on terms acceptable to the Parties and (i) they cannot resolve or address any concerns which the Tribunal expresses in order to file a Further Approval Application and notice is served pursuant to Clause 4.3(d) or (ii) where the Agreement terminates in accordance with Clauses 4.3 or 4.4, this Agreement shall cease to be binding, save in respect of Clauses 4.3(a) and (b) or 4.4(a) and (b) as appropriate, 13, 14 and 18, which

shall continue in full force and effect. For the avoidance of doubt, the SW Proceedings as against SSWT would continue as if this Agreement had never been entered into.

11. ENTIRE AGREEMENT

11.1 This Agreement sets out the entire agreement and understanding between the Parties in relation to its subject-matter and supersedes any previous agreement, arrangement or understanding whether oral or written between the Parties in relation to its subject matter.

11.2 Each Party acknowledges that, in entering into this Agreement, it has not relied on any oral or written representation, warranty, or other assurance other than as expressly set out in this Agreement and irrevocably and unconditionally waives all claims, rights and remedies which might otherwise be available to it in respect thereof, provided always that nothing in this clause limits or excludes any liability for fraud.

12. TAX

Each Party shall be responsible for the payment of its own taxes arising in relation to this Agreement and/or the Settlement Sum.

13. CONFIDENTIALITY AND LEGAL PRIVILEGE

13.1 Before filing the Approval Application or any Further Approval Application(s), the Parties shall:

- (a) use their best endeavours, acting in good faith, to keep such Application (including any evidence supporting it) confidential so far as possible, subject to the Tribunal's directions; and
- (b) agree on the information that they would like to remain confidential and jointly seek directions from the Tribunal for the confidential treatment of the information at the same time as making the Approval Application or any Further Approval Application(s).

13.2 If the application for confidential treatment under Clause 13.1(b) is rejected by the Tribunal but the Tribunal otherwise accepts the Approval Application or any Further Approval Application(s), this will not constitute an unsuccessful Approval Application or Further Approval Application; and therefore, the Parties will proceed with the settlement.

13.3 Clause 13.1 will not be applicable if the Approval Application or any Further Approval Application(s) (including any evidence supporting it) is disclosed:

- (a) for the purpose of taking legal advice;
- (b) for use as evidence in any subsequent proceedings arising from a breach of this Agreement;
- (c) the extent required by law or regulation for the purpose of preparation of any public accounts, records or returns or to the extent otherwise reasonably required by the auditors of any Party;
- (d) as may be required by any court or regulatory authority of competent jurisdiction;
- (e) as agreed to in advance in writing by the other Party.

- 13.4 Information agreed between the Parties to be confidential and not made public as part of the Approval Application or Further Approval Application will continue to be confidential after completing any acts that are required for the purpose of giving full effect to the provisions of this Agreement (including distribution of the Notified Damages Sum to the eligible Represented Persons) and whether or not the CSAO is granted.
- 13.5 In the event that disclosure is required or permitted pursuant to Clause 13.3, the Party intending to make the disclosure shall, in advance of making the disclosure, inform the third party to whom such disclosure is to be made of the confidential nature of the information and in good faith shall use reasonable endeavours to secure and assure, so far as possible, the confidentiality and non-disclosure of the information by the third party.
- 13.6 The Parties agree that any privileged information exchanged between them is disclosed on the basis that they have a common interest in it, and that any such exchange is made for the dominant purpose of preparing the Approval Application and/or any Further Approval Application(s). The Parties shall use their best endeavours, acting in good faith, to maintain confidentiality and legal privilege over such common interest privilege information.

14. NON-DISPARAGEMENT AND COMMUNICATIONS

- 14.1 The Parties' obligations as to not making any adverse, derogatory or disparaging statements shall be stipulated in the Non-Disparagement Agreement.

15. COUNTERPARTS

The Parties may enter into this Agreement by executing counterparts which, when taken together, evidence the same Agreement. If the Agreement is executed in counterparts, it is not effective until each Party has executed at least one counterpart.

16. FURTHER ACTIONS

At any time after the date of this Agreement the Parties shall (subject to the terms of this Agreement) execute such documents and do any such other acts and things as may be required for the purposes of giving full effect to the provisions of this Agreement.

17. SUCCESSION AND ASSIGNMENT

This Agreement shall be binding upon and shall be for the benefit of the Parties and their successors and assigns.

18. APPLICABLE LAW AND JURISDICTION

- 18.1 This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and interpreted in accordance with the laws of England and Wales.
- 18.2 The courts of England and Wales shall have exclusive jurisdiction over any claim, dispute or matter arising under or in connection with this Agreement or its enforceability or the legal relationships established by this Agreement (including non-contractual disputes or claims). The Parties waive any right to object to proceedings relating to this Agreement taking place in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inconvenient forum.

19. ALTERATIONS AND AMENDMENTS

Any alteration of or amendment to this Agreement shall be in writing and signed by or on behalf of each Party. This requirement of written form shall also apply to any amendment to or waiver of the requirement of written form as stipulated in the present provision. For the avoidance of doubt, no alteration or amendment of this Agreement shall be valid if made by email.

This Agreement has been entered into on the date stated at the beginning of it.