

RAIL PUBLIC REGISTER COPY

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Dated 23 August 2016

(1) The Secretary of State for Transport

(2) Abellio East Anglia Limited

EAST ANGLIA FRANCHISE AGREEMENT

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THIS AGREEMENT is dated 23 August 2016

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
- (2) **ABELLIO EAST ANGLIA LIMITED** (Company Number 07861414), whose registered office is at **2nd Floor, St Andrews House, 18-20 St Andrew Street, London, EC4A 3AG¹** (the "**Franchisee**").

WHEREAS:

- (A) On 19 February 2015 the Secretary of State advertised in the Official Journal of the European Union (reference 2015/S 038-065248) inviting prospective franchisees to submit proposals for the provision of railway services to the East Anglia rail passenger franchise. On the basis of the Franchisee's response to the advertisement and a subsequent Invitation to Tender, the Secretary of State selected the Franchisee as its preferred service provider.
- (B) The Secretary of State wishes to appoint a franchisee to provide railway passenger services within the Franchise and expects his franchisee, on the terms of the Franchise Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (C) The Franchisee wishes to be appointed as the Secretary of State's franchisee for the Franchise and intends, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (D) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (B) and (C) inclusive.

1. INTERPRETATION

- 1.1 In the Franchise Agreement, except to the extent the context otherwise requires:
 - (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, "**railway**" shall not have the wider meaning attributed to it by Section 81(2) of the Act;
 - (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in the Franchise Agreement;

¹ **07/09/2017** – Contract variation agreed by the Secretary of State and Franchisee.

- (c) references to "**Party**" or "**Parties**" shall mean the Secretary of State and the Franchisee;
- (d) the words "**include**", "**including**" and "**in particular**" are to be construed without limitation;
- (e) references to any "**person**" include its successors, transferees or assignees;
- (f) the words "**subsidiary**", "**subsidiary undertaking**" and "**parent undertaking**" each have the same meaning in the Franchise Agreement as in Section 1162 of the Companies Act 2006;
- (g) references in any of the agreements comprising the Franchise Agreement to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;
- (h) references in any Schedule in any of the agreements comprising the Franchise Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (i) headings and references to headings shall be disregarded in construing the Franchise Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which the Secretary of State reasonably considers have an equivalent effect or are intended to fulfil the same function;
- (m) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;
- (n) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (o) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by

any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words **"notify"**, **"endorse"**, **"consent"**, **"approve"**, **"waive"**, **"certify"** or **"determine"** and other cognate expressions shall be construed accordingly;

- (p) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (q) references to the Franchisee bidding for Train Slots or a Timetable shall mean the final action incumbent on the Franchisee under the Network Code to confirm to Network Rail its interests in the Train Slots to which that confirmation relates, and **"bid"** shall be construed accordingly;
- (r) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger's Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;
- (s) references to **"railway passenger services"** are to be construed subject to Section 40 of the Railways Act 2005;
- (t) references to the **"provision of railway passenger services"** include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner;
- (u) references in lower case letters to terms defined in clause 3 (Definitions) shall be construed, where relevant, as being references to the terms defined as such in a franchise agreement or relevant agreement made under Section 30 of the Act or Section 6 of the Railways Act 2005 with any other Train Operator;
- (v) references to sums of money being expended by the Franchisee shall be to such sums exclusive of Value Added Tax;
- (w) the words **"shall not be liable"** are to be construed as meaning that no contravention of the Franchise Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;
- (x) references to a **"contravention of the Franchise Agreement"** (and cognate expressions) are to be construed as meaning a breach of the Franchise Agreement;
- (y) wherever provision is made for the Franchisee to **"procure"** or **"ensure"** the delivery of an obligation under the Franchise Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the Franchisee to deliver that obligation;
- (z) references to **"profit"** shall be construed as meaning profit before corporation tax, determined in accordance with GAAP;

- (aa) references to **“process”, “processing” or “processed”** are to be construed in accordance with the Data Protection Act for the purposes of Schedule 1.5 (Information About Passengers) and paragraph 2.1 of Schedule 14.4 (Designation of Franchise Assets),
- (ab) ²**a reference to a sum being calculated in accordance with Schedule 8.1 or Schedule 8.2 (including references to RPI having the meaning given in Schedule 8.1 or Schedule 8.2, or references to amounts or costs being varied or indexed as amounts or costs are indexed in Schedule 8.1 or Schedule 8.2) shall be interpreted as a reference to Schedule 8.1 or Schedule 8.2 in the form which applied immediately prior to the EMA Start Date; and**
- (ac) ³**the Parties acknowledge and agree that any reference to the “last twelve (12) or thirteen (13) months of the Franchise Period” or the “last twelve (12) months of the Franchise Period” shall be deemed to be replaced with a reference to the duration of the ERMA Term or, where applicable, the Extended Term.**

1.2 In the Franchise Agreement, the Secretary of State is acting as part of the Crown.

2. AGREED DOCUMENTS

2.1 References to documents **“in the agreed terms”** are references to documents initialled by or on behalf of the Secretary of State and the Franchisee.

2.2 As at the date of this Agreement, the documents **“in the agreed terms”** are as follows:

| | |
|---------------------------|---|
| ABD | Actual Benchmark Data; |
| CESM | Customer Experience Survey Methodology |
| CFD | Commuter Fares Document; |
| CRT | Crossrail Timetable May 2019; |
| CSSES | Customer & Stakeholder Engagement Strategy; |
| DL | Depot Lease; |
| DOV | Deed of Variation; |
| DR15IP⁴ | DR15 Implementation Programme |
| ERTMSP | Network Rail ERTMS Implementation Plan; |
| FF | Financial Formats; |
| FM | Financial Model; |

² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

| | |
|------------------------------|--|
| GAL | Grey Assets List; |
| IS | Innovation Strategy; |
| LCL | Level Crossings List; |
| OM | Operational Model; |
| PC | Passenger's Charter; |
| PFD | Protected Fares Document; |
| POA | Power of Attorney; |
| PSP | Power Supply Plan; |
| PSAMP | Previous Franchisee's Station Asset Management Plan; |
| ROA | Record of Assumptions; |
| SAMPR | Station Asset Management Principles; |
| SCM | Station Condition Methodolgy; |
| SCDP | Station Social and Commercial Development Plan; |
| SL | Station Lease; |
| STNRCS ⁵ | STNR Costs Schedule |
| STNRMP ⁶ | STNR Milestone Programme v02 |
| STNROO ⁷ | STNR Optional Outputs |
| STNRP ⁸ | STNR Programme |
| STNRRR ⁹ | STNR Reporting Requirements |
| STNRSOW ¹⁰ | STNR Scope of Work |
| TD | Trust Deed; |
| TP | Train Plan; and |
| TSR 1-3 | Train Service Requirements. |

⁵ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁹ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁰ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

3. DEFINITIONS

3.1 In the Franchise Agreement, except to the extent the context otherwise requires, the following words and expressions have the following meanings:

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|---|---|
| "1 March RV Asset Transfer Value"¹¹ | means the transfer value of a Partially Complete RV Asset as at 1 March 2020, determined by the Secretary of State in accordance with paragraph 1.3A(d) of Schedule 14.6. |
| "16 to 25 Railcard" | means a Discount Card issued under the Discount Fare Scheme referred to in paragraph 3 of Schedule 2.5 (Transport, Travel and Other Schemes); |
| "2015 Nominal Ticket Sales" | has the meaning given to it in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values); |
| "2015 Ticket Revenue" | has the meaning given to it in paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values); |
| "Access Agreement" | has the meaning given to the term "access agreement" in Section 83(1) of the Act; |
| "Accessibility Panel"¹² | means the regular forum of disabled passengers, including users of assisted travel, which the Franchisee must operate and consult on accessibility issues by virtue of section B5 of the Accessible Travel Policy Guidance and which the Franchisee will establish by no later than 31 January 2021; |
| "Accessible Travel Policy"¹³ | means the Franchisee's policy for accessible travel which the Franchisee is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations; |
| "Accessible Travel Policy Guidance"¹⁴ | means the "Accessible Travel Policy: Guidance for Train and Station Operators", published by the ORR in July 2019 as amended and/or replaced from time to time; |
| "ACoRP" | means the Association of Community Rail Partnerships whose principle place of business is The Old Water Tower, Huddersfield Railway Station, St |

¹¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

Georges Square, Huddersfield, HD1 1JF or any successor body whose purpose is to support Community Rail Partnerships;

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| "Accrued Revenue Foregone"¹⁵ | has the meaning given in paragraph 9.10 of Schedule 8.1A (Franchise Payments); |
| "Act" | means the Railways Act 1993 (as modified, amended or replaced by the Transport Act 2000, the Railways Act 2005 and the Deregulation Act 2015) and any regulations or orders made thereunder; |
| "Action Plan"¹⁶ | has the meaning given to it in paragraph 9.1(e) of Schedule 7.1 (Operational Performance); |
| "Actual All Cancellations Performance Level"¹⁷ | means, in respect of a Reporting Period, the All Cancellations as most recently published by Network Rail for that Reporting Period in relation to the Franchisee; |
| "Actual Benchmark Data" or "ABD" | means the document in the agreed terms marked ABD ; |
| "Actual Capex"¹⁸ | means the actual Capital Expenditure of the Franchisee in the relevant period; |
| "Actual CaSL Performance Level" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Actual Consist Data" | means information as to the type of individual vehicles of rolling stock in the Train Fleet which are actually used to form a train on any particular Passenger Service and the manner in which they are configured, which may or may not be the same as the Scheduled Consist Data for the same service; |
| "Actual Costs"¹⁹ | means the actual Costs of the Franchisee in the relevant period; |
| "Actual Operating Costs" | means: <ul style="list-style-type: none"> (a) the Franchisee's total operating expenses for the period being reviewed as stated in its profit and loss account, including any of the |

¹⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

following operating expenses that are payable during that period:

- (i) amounts payable to the Secretary of State and Network Rail;
- (ii) taxation;
- (iii) shareholder distributions including dividends;
- (iv) interest;
- (v) capital expenditure (net of grants received);
- (vi) cash lease payments in relation to on-balance sheet leased assets; and

but excluding any of the following expenses that are payable in that period:

- (vii) finance/interest costs solely relating to on-balance sheet leased assets;
- (viii) Depreciation (including in relation to on balance sheet leased assets);
- (ix) amortisation; and
- (x) bad debt provisions; and

(b) either:

- (i) plus any reduction in the total amount owing by the Franchisee to creditors over that period; or
- (ii) less any increase in the total amount owing by the Franchisee to creditors over that period,

where creditors:

- (A) include any persons owed amounts by the Franchisee in respect of loans or funding agreements, operating expenses, including the types of expenses set out in paragraphs (a)(i) to (a)(v) inclusive, provisions and deferred income balances; but
- (B) exclude persons owed amounts by the Franchisee in respect of

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| | season ticket liabilities, lease liabilities in relation to on-balance sheet leased assets and liabilities in relation to grants received for the purchase of fixed assets; |
| | (C) exclude any creditors or other liabilities relating to on-balance sheet leases; |
| "Actual Passenger Demand" | has the meaning given to it in paragraph 1.1 of Schedule 1.5 (Information about Passengers); |
| "Actual PPM Performance Level" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Actual Revenue" ²⁰ | means the actual Revenue of the Franchisee in the relevant period; |
| "Actual Station Condition Expenditure" | means the expenditure actually and properly incurred by the Franchisee in any Reporting Period in respect of the maintenance, repair and renewal of the Stations in accordance with the Station Asset Management Plan; |
| "Actual T-3 Performance Level" ²¹ | means, in respect of a Reporting Period, Time to 3 Minutes as most recently published by Network Rail for that Reporting Period in relation to the Franchisee; |
| "Actual T-15 Performance Level" ²² | means, in respect of a Reporting Period, Time to 15 Minutes as most recently published by Network Rail for that Reporting Period in relation to the Franchisee; |
| "Actual Train Mileage" | means the actual train mileage operated during each Reporting Period by each train used in the provision of the Passenger Services (excluding, any actual train mileage operated as a result of positioning or other movements of rolling stock vehicles outside the Timetable) and "Actual Train Miles" shall be construed accordingly; |
| "Actuary" | has the meaning given to it in the Pension Trust; |
| "Additional Rolling Stock" | means Specified Additional Rolling Stock; |

²⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| "Administration Fee" | has the meaning given to it in clause 8.5 (Change of Control and Facilitation Fee); |
| "Advance Purchase Train-specific Fares" | has the meaning given to it under the Ticketing and Settlement Agreement; |
| "Affected Asset List" | shall have the meaning given to such term in the SA Agreement; |
| "Affected Party" | has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds); |
| "Affiliate" | means, in respect of any person, any person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person and for the purpose of this definition Network Rail or NR shall not be construed as being an affiliate of the Secretary of State; |
| "AFP" | has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments); |
| "Agreement" | means clauses 1 to 16 and Schedules 1 to 17 including any Appendices and Annexes as varied from time to time; |
| "Aggregated Qualifying Change" | <p>means two (2) or more Changes which:</p> <p>(a) are notified or agreed (in the case of a Change which is a Variation pursuant to paragraph 1.1 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes)); and/or</p> <p>(b) a Party has become aware of (in the case of any other kind of Change),</p> <p>in a Franchisee Year (the "Aggregation Year") which individually do not exceed the Threshold Amount for the Aggregation Year taken alone but do exceed it when taken together. For the avoidance of doubt, where the Changes arise in different Franchisee Years, for the purposes of determining whether in aggregate they exceed the Threshold Amount:</p> <p>(i) the net present value of the adjustment in Franchise Payments which would result from a Run of the Financial Model (where Schedule 9.1 (Financial and Other Consequences of Change) applies), in respect of each Change shall be calculated in accordance with the process described</p> |

in the definition of Qualifying Change;
and

- (ii) there will be an Aggregated Qualifying Change where the aggregate of the net present values of those Changes exceeds the Threshold Amount for the Aggregation Year;

"All Cancellations"²³

means the sum of Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations relating to the Franchise as produced and/or published by Network Rail;

"Alliance Agreement"

has the meaning given to such term in paragraph 6.2 of Schedule 13.1 (Rail Industry Initiatives);

"Alternative NRPS"

has the meaning given to such term in paragraph 2.6 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme);

"Alternative Scheme"

means a Committed Obligation proposed by the Franchisee in place of a Specimen Scheme in accordance with paragraph 7 of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations);

"Ancillary Service"

means any service specified in paragraph 7 of Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development);

"Annual Audited Accounts"

means the accounts of the Franchisee which:

- (a) comply with paragraph 9.5(b) of Schedule 11.2 (Management Information)
- (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 9.4(c) of Schedule 11.2 (Management Information) and certified by the Franchisee's auditors as true and fair;

"Annual Benchmark"

means any of the Annual Cancellations Benchmark, the Annual TOC Minute Delay Benchmark or the Annual Short Formation Benchmark;

²³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

| | |
|--|---|
| "Annual Benchmark Table" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual Business Plan" | means the plan to be provided by the Franchisee to the Secretary of State in accordance with paragraph 10.2 of Schedule 11.2 (Management Information); |
| "Annual Cancellations Benchmark" | means for each Franchisee Year, each of the benchmarks specified in the Annual Cancellations Benchmark Table for that Franchisee Year provided that where a Franchisee Year is shorter than thirteen (13) Reporting Periods then the Annual Cancellations Benchmark for that Franchisee Year shall be as determined pursuant to paragraph 20.1(a) of Schedule 7.1 (Performance Benchmarks); |
| "Annual Cancellations Benchmark Table" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual Cancellations Payment Table" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual Cap Performance Level" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual CaSL Target Performance Level" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual Floor Performance Level" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual Franchise Payment" | means, in relation to any Franchisee Year, the amount determined in accordance with Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments); |
| "Annual Franchise Payment Components" | means the values of "FXD" , "VCRPI" , "VCAWE" , "PRPI" , "RRPI" , "PRRPI_{GDP}" and "PRRPI_{CLE}" specified for each Franchisee Year in the table set out in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to Schedule 8.1 (Franchise Payments); |
| "Annual Intermediate Performance Level" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual Management Accounts" | means the management accounts of the Franchisee which: <ul style="list-style-type: none"> (a) comply with paragraph 9.5(a) of Schedule 11.2 (Management Information); and |

| | |
|---|--|
| | (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 9.4(a) of Schedule 11.2 (Management Information); |
| "Annual PPM Target Performance Level" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual Season Ticket" | means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day on which it first comes into effect until (but excluding) the day which falls twelve (12) months after such day; |
| "Annual Short Formation Benchmark" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual Short Formation Benchmark Table" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual Short Formation Payment Table" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual Station Condition Amount" | means the annual amount attributed to the maintenance, repair and renewal of Stations for the relevant Franchisee Year set out in Column 2 of the table in Appendix 4 (Figures for Calculation of Annual Station Condition Amount) in Schedule 1.7 (Stations); |
| "Annual Target Performance Level" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual TOC Minute Delay Benchmark" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual TOC Minute Delay Benchmark Table" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual TOC Minute Delay Payment Table" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Annual Traction Carbon Trajectory" or "ATCT"²⁴ | means the annual traction carbon trajectory referenced in the Sustainable Development Strategy; |
| "Approved CCIF Scheme" | means a CCIF Scheme approved by the Secretary of State in accordance with paragraph 11.4 of |

²⁴ 19 December 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme);

"Approved D&I Strategy"²⁵

means such D&I Strategy as agreed by the Parties in accordance with paragraph 9A3.1(b) of Schedule 13.1 (Rail Industry Initiatives) or as reasonably determined by the Secretary of State in accordance with paragraph 9A3.1(c) of Schedule 13.1 (Rail Industry Initiatives).

"Asset Remaining Life"

means the amount of the life of a Station Asset remaining (calculated as a percentage in accordance with NR/ARM/M17PR or such other standards as may be notified from time to time) before that asset can reasonably be expected to require replacement by a new asset (assessed on the assumption that the asset continues to receive appropriate repair and maintenance throughout its remaining life);

"ATOC"

means the Association of Train Operating Companies including any of its successors and assigns;

"Audited Accounts Reconciliation"²⁶

has the meaning given to that term in paragraph 9.4(b)(ii) (Annual Financial Information) of Schedule 11.2 (Management Information);

"Average Weekly Earnings"

means the United Kingdom average weekly earnings measure excluding bonuses as published from time to time by the Office for National Statistics or, if such measure shall cease to be published or if, in the reasonable opinion of the Secretary of State, there is a material change in the basis of such measure, such other alternative index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;

"AWE"

has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);

"Bank"

means a person which has a permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits thereunder and which is reasonably acceptable to the Secretary of State;

²⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| “Bank Holiday” | means any day other than a Saturday or Sunday on which banks in the City of London are not open for business; |
| “Benchmark” | means any of the Cancellations Benchmark, the TOC Minute Delay Benchmark or the Short Formation Benchmark (as the context may require); |
| “Benchmark Table” | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| “Bid Profit Stream” | means the estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to clause 8 (Change of Control and Facilitation Fee)) is to occur until the Expiry Date as shown in the profit and loss forecast in the Initial Business Plan (without taking into account any Annual Business Plan) calculated in real terms as at the date of the Change of Control and applying the prevailing discount rate per annum (in real terms) stated in HM Treasury's “Green Book Appraisal Guidelines” (such rate being three point five per cent (3.5%) per annum (in real terms) as at the date of the Franchise Agreement); |
| “Bond Provider” | means any person or persons who may provide or be an obligor under a Performance Bond or Season Ticket Bond from time to time and who shall, unless the Secretary of State otherwise agrees, be: <ul style="list-style-type: none"> (a) a Bank; or (b) an insurance company, (c) in each case with the Relevant Credit Rating; |
| “Bond Year” | means the period beginning on the Start Date and ending on 31 March 2017 and any subsequent period of thirteen (13) Reporting Periods beginning on the day after the end of the preceding Bond Year provided that: <ul style="list-style-type: none"> (a) the Franchisee and the Secretary of State may agree to vary the Reporting Period in which a Bond Year ends from time to time; and (b) the last Bond Year shall expire on the expiry of the Franchise Period and may be a period of less than thirteen (13) Reporting Periods; |
| “Brand Licence” | means a licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Franchisee in respect of any registered or unregistered trade marks; |

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| "Breach Performance Level"²⁷ | means, in relation to an Enforcement Benchmark for any Reporting Period, the number agreed or determined as such in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee); |
| "Breach Reporting Period" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "British Transport Police" | means the British Transport Police Authority and the British Transport Police Force created pursuant to Section 18 and Section 20 of the Railways and Transport Safety Act 2003 (or any successor or successors to its statutory policing functions); |
| "Budget"²⁸ | has the meaning given to it in paragraph 1A (Definitions) of Schedule 8.1A (Franchise Payments); |
| "Budgeted Capex"²⁹ | means the Capital Expenditure budgeted to be incurred by the Franchisee in a Reporting Period and specified in the Budget, as such Budget may be updated and/or extended from time to time in accordance with paragraph 8 (Revisions to the Budget) of Schedule 8.1A (Franchise Payments); |
| "Budgeted Costs"³⁰ | means the Costs budgeted to be incurred by the Franchisee in each Reporting Period and specified in the Budget, as such Budget may be updated and/or extended from time to time in accordance with paragraph 8 (Revisions to the Budget) of Schedule 8.1A (Franchise Payments); |
| "Buildings Research Establishment Environmental Assessment Method" or "BREEAM" | means the internationally recognised environmental assessment method and rating system for buildings developed by Building Research Establishment Limited or any other standard which is generally recognised as having replaced it; |
| "Business Action Plan" | means an action plan produced by the Franchisee in relation to the delivery of any aspect of the Franchise Services (including in respect of any outcome anticipated by its Business Plan, in accordance with |

²⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| | paragraph 10.2(c) of Schedule 11.2 (Management Information)); |
| "Business Continuity Plan" or "BCP" | means a business continuity and disaster recovery plan (including a Force Majeure Events recovery plan) required to be produced, maintained and implemented by the Franchisee in accordance with the requirements of paragraph 4 of Schedule 10.3 (Force Majeure and Business Continuity); |
| "Business Plan" | means the Initial Business Plan or any Annual Business Plan, as the context requires, to be delivered in accordance with paragraphs 10.1 and 10.2 of Schedule 11.2 (Management Information); |
| "Cancellation" | means a Passenger Service: <ul style="list-style-type: none"> (a) which is included in the Enforcement Plan of the Day and which is cancelled for reasons attributed to the Franchisee pursuant to its Track Access Agreement; or (b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day) for reasons attributed to the Franchisee pursuant to its Track Access Agreement; |
| "Cancellations Benchmark" | means any of the performance levels in respect of Cancellations and Partial Cancellations set out in the Cancellations Benchmark Table; |
| "Cancellations Benchmark Table" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Cancellations Figures" | means the number of: <ul style="list-style-type: none"> (a) Cancellations and Partial Cancellations; and (b) Network Rail Cancellations and Network Rail Partial Cancellations, <p>in each case, relating to the Passenger Services operated in each Reporting Period;</p> |
| "Cancellations Performance Sum" | means an amount determined in accordance with paragraph 19.3 of Schedule 7.1 (Performance Benchmarks); |

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| “Capacity Mitigation Plan” | has the meaning given to it in paragraph 15.1 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services and Service Development); |
| “Capital Expenditure”³¹ | <p>means:</p> <p>(a) the costs of creating non-current or fixed assets which are not Costs and which are properly accrued during the term of the ERMA and relating to the Franchisee's performance of the Franchise Agreement; or</p> <p>(b) for the purposes of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes) only, the meaning given to it in paragraph 3.4 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);</p> |
| “Cascaded Rolling Stock” | has the meaning given to it in paragraph 3.1 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases); |
| “Cash Balance”³² | means in respect to any Weekday during the Franchise Term, the Franchisee's actual cash balance excluding the value of Season Ticket Fare suspense liabilities as at the end of business hours on the previous Weekday; |
| “CaSL” or “Cancellation and Significant Lateness” | means the cancellation and significant lateness measure as produced and/or published by Network Rail; |
| “CaSL Figures” | means the moving annual average percentage published by Network Rail in respect of CaSL, rounded to one (1) decimal place; |
| “CCIF Amount” | means the sum of £1,934,000 (indexed by the Retail Prices Index in the same way as variable costs are indexed in Schedule 8.2 (Profit Share Mechanism) per Franchisee Year within a CCIF Period (reduced pro-rata in respect of any Franchisee Year within a CCIF Period of less than three hundred and sixty five (365) days) as adjusted in accordance with paragraph 5.8(a) of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme); |

³¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

³² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| “CCIF Period” | means each of the following periods: (a) 1 April 2020- 31 March 2022; (b) 1 April 2022- 31 March 2024; and (c) 1 April 2024- 31 March 2026; |
| “CCIF Scheme” | has the meaning given in paragraph 5.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme); |
| “CCIF Scheme Cost” | means in respect of any CCIF Scheme, the total cost to the Franchisee of developing and implementing that CCIF Scheme; |
| “CCIF Scheme Margin” | means five per cent (5%) of the applicable CCIF Scheme Costs; |
| “CCIF Scheme Revenue” | means in respect of any CCIF Scheme, the revenue earned by the Franchisee from that CCIF Scheme; |
| “CCIF Scheme Shortfall” | means, in relation to a CCIF Scheme, the amount (if any) by which the CCIF Scheme Revenue is less than the aggregate of the CCIF Scheme Costs and the CCIF Scheme Margin; |
| “CCIF Underspend” | has the meaning given in paragraph 11.6 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme); |
| “Central Government Body” | means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; (d) Executive Agency; or (e) ³³ any other body that is a limited company and is controlled directly or indirectly by a Government Department; |

³³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| “Certificate of Commencement” | means the certificate to be issued by the Secretary of State pursuant to the Conditions Precedent Agreement; |
| “Certificate of Partial Completion”³⁴ | means a certificate of partial completion issued by the Secretary of State in accordance with paragraph 1.3A(e) of Schedule 14.6; |
| “Change” | means if and whenever any of the following occurs: <ul style="list-style-type: none"> (a) an event set out in any Secretary of State Risk Assumptions specified in Schedule 9.4 (Secretary of State Risk Assumptions); (b) a Charge Variation; (c) a Change of Law (excluding any Change of Law to the extent that it results in an adjustment to the Franchise Payments pursuant to Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments)); (d) a change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with paragraph 16.5 of Schedule 1.1 (Franchise Services and Service Development); (e) the Franchisee is required to take any action pursuant to paragraphs 19.1(a) and/or 19.1(b) of Schedule 1.1 (Franchise Services and Service Development); (f) the Secretary of State effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of Section 28 of the Act; (g) the Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 4.5 of Schedule 2.5 (Transport, Travel and Other Schemes) to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment; |

³⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (h) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (Accessibility and Inclusivity), of any increased access charges in respect of EA Requirements at Franchisee Access Stations;
- (i) the Secretary of State exercises his power pursuant to paragraph 5 of Schedule 5.7 (Changes to Fares and Fares Regulation) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (Fares);
- (j) the Franchisee is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Passenger Services;
- (k) the exercise by the Secretary of State of his rights pursuant to paragraph 1.9 of Schedule 7.1 (Performance Benchmarks);
- (l) the exercise by the Secretary of State of his rights pursuant to paragraph 15.1(c) of Schedule 11.2 (Management Information);
- (m) where the Secretary of State makes an amendment to column 2 of the Minimum Asset Remaining Life Table in accordance with paragraph 2.3(c) of Schedule 1.7 (Stations);
- (n) a Variation to the terms of the Franchise Agreement pursuant to paragraph 1.1 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);
- (o) the Start Date is a date that is later than 02:00 on 16 October 2016 for reasons solely attributable to any act or omission by the Secretary of State including the exercise of his right to amend the Start Date pursuant to clause 5.3 except where:
 - (i) the Secretary of State exercises his rights pursuant to Clause 4.2 or 4.3 of the Conditions Precedent Agreement to alter such Start Date; or
 - (ii) the relevant acts or omissions of the Secretary of State arise as a result of or in connection with any failure by the Franchisee to satisfy any of the

conditions precedent set out in the Conditions Precedent Agreement;

- (p) the Expiry Date is a date that is later than 01:59 on 12 October 2025 in consequence of the Secretary of State exercising his right to amend the Start Date pursuant to clause 5.3;
- (q) the circumstances set out in paragraph 3.2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases) occur;
- (r) a change to the amount of the Long Term Charge payable by:
 - (i) Users at Stations; and/or
 - (ii) ³⁵**the Franchisee at a Franchisee Access Station to which the applicable Station Access Conditions are those entitled "National Station Access Conditions 2011 (FRI Leases) (England and Wales)" ("New Regime Station Access Agreements")**,

in each case, in consequence of any consultation undertaken by the ORR on the structure or the level of the Long Term Charges payable by such Users at Stations and/or the Franchisee under New Regime Station Access Agreements;

- (s) a change to the amount of the total Long Term Charge payable by the Franchisee under an Access Agreement in respect of a Franchisee Access Station in circumstances where all of the following conditions are applicable:
 - (i) the Franchisee has entered into a new Access Agreement in respect of a Franchisee Access Station on the termination of the previous Access Agreement in respect of such Franchisee Access Station to which it was a party as at the Start Date;

³⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (ii) such termination has arisen as a result of a termination of the franchise agreement of a Facility Owner at such Franchisee Access Station);
- (iii) the Station Access Conditions applicable in relation to such new Access Agreement are those entitled "**National Station Access Conditions 2011 (FRI Leases) (England and Wales)**" or any replacement or subsequent Station Access Conditions applicable in relation to that new Access Agreement and which in the reasonable opinion of the Secretary of State can be regarded as similar or equivalent to those entitled "**National Station Access Conditions 2011 (FRI Leases) (England and Wales)**";
- (iv) such change has not arisen by agreement between the Franchisee and the Facility Owner at such Franchisee Access Station whether pursuant to condition F12 of the Station Access Conditions (or otherwise) or a result of the operation of conditions F4 to F10 (inclusive) of the Station Access Conditions; and
- (v) such change has not already been accounted for as a result of the Change set out in paragraph (r) of the definition of Change; or
- (t) **Not used;**
- (u) a change to the amount of the Long Term Charge payable by the Franchisee at a Franchisee Access Station:
 - (i) to which the applicable Station Access Conditions are those entitled "**RfL Station Access Conditions 2015 2011 (FRI Leases)**"; and
 - (ii) provided that the Franchisee has complied with the provisions of paragraph 5 of Schedule 6.1 (East Anglia Franchise Specific Provisions);
- (v) where the circumstances in paragraph 2.5 of Schedule 6.1 (Franchise Specific Obligations) apply;

- (w) any two or more of the foregoing that the Secretary of State groups together in accordance with any procedures issued by him pursuant to paragraph 1.4 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes) occur;

“Change of Control”

has the meaning given to it in clause 8.1 (Change of Control and Facilitation Fee);

“Change of Law”

means the coming into effect after the date of the Franchise Agreement of:

- (a) Legislation; or
- (b) any applicable judgment of a court of Law which changes a binding precedent,

the terms of which apply only to the railway industry, a particular section of the railway industry or the provision of services to the railway industry and not to other transport modes or to industries other than the railway industry, and without limitation:

- (i) excluding any changes in Taxation;
- (ii) excluding any changes which were foreseeable at the date of the Franchise Agreement, and for this purpose, but without limitation, there shall be regarded as foreseeable any Legislation which on the date of the Franchise Agreement has been published:
- (A) in a draft parliamentary bill as part of a government departmental consultation paper;
- (B) in a parliamentary bill;
- (C) in a draft statutory instrument; or
- (D) as a proposal in the Official Journal of the European Union except to the extent that such proposal is intended to apply solely within member states other than the United Kingdom,

to the extent that the same is subsequently enacted in substantially the same form as the form in which it was previously so published.

In relation to the application of this sub paragraph (ii), each TSI shall be considered separately.

Change of Law (1) includes any Legislation, which only applies to the railway industry, which is made under the Health and Safety at Work etc. Act 1974 and which is not excluded under (i) and (ii) (a **"Specifically Included Change of Law"**), but (2) excludes any Legislation (other than a Specifically Included Change of Law) which is made with the intention or effect of specifically applying to (or disapplying in relation to) the railway industry any other Legislation which does not apply only to the railway industry;

"Charge Variation"

means a variation:

- (a) to a Relevant Agreement; and
- (b) which is effected as a result of a Charging Review (including any variation in connection with an Incremental Output Statement Charge);

"Charging Review"

means:

- (a) the exercise by the ORR of its powers under:
 - (i) Part 7 of Schedule 7 of the Track Access Agreement to which the Franchisee is a Party on the Start Date or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that term;
 - (ii) Condition F12.4 (Review of Long Term Charge) of the Station Access Conditions in relation to any station which is not an Independent Station; or
 - (iii) Condition 42.5 of the Independent Station Access Conditions in relation to any station which is an Independent Station or a Station;
- (b) the following by the ORR of the procedure in Schedule 4A of the Act;

- (c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in the Secretary of State's reasonable opinion:
 - (i) has an equivalent effect to; or
 - (ii) is intended to fulfil the same function as,

any of the powers referred to in paragraphs (a) or (b) in relation to any Relevant Agreement provided that, without limitation, the exercise by ORR of any of its approval rights under Condition F12 of the Station Access Conditions shall not be considered to have an equivalent effect to or fulfil the same function as any of the powers referred to in paragraphs (a) or (b). For this purpose, Relevant Agreement includes any Relevant Agreement which is not the subject of any previous Charging Review; or
- (d) any amendment to a Relevant Agreement, or entry into a new Relevant Agreement which is approved by the ORR to the extent that it relates to an Incremental Output Statement Charge or a scheme to which that charge relates;

"Charter Service"

means a railway passenger service, whether operated on the same routes as the Passenger Services or not:

- (a) which is not reflected in the Timetable;
- (b) which does not conform to the pattern of railway passenger services normally provided by the Franchisee;
- (c) for which the advance booking or booking arrangements for seats on the relevant service are, in the reasonable opinion of the Secretary of State, materially different from those generally applicable to the Passenger Services;
- (d) for which tickets are available on a restricted basis or on terms and conditions which, in the reasonable opinion of the Secretary of State, are materially different from those generally applicable to the Passenger Services; and/or
- (e) for which the departure time, journey time and calling pattern are, in the reasonable opinion of the Secretary of State, materially

different from those of the Passenger Services,

and which, in the opinion of the Secretary of State, is not a railway passenger service provided by the Franchisee as part of the Passenger Services;

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| "Child Price" | means, in relation to any Fare, the amount charged or chargeable to a person under the age of 16 in respect of such Fare; |
| "Claims Paid Statement" ³⁶ | means has the meaning given to it in paragraph 7.3(b) of Schedule 8.1 (Franchise Payments); |
| "Closed Scheme Employees" | has the meaning given to it in paragraph 3.2 of Schedule 16 (Pensions); |
| "CLE Negative Growth Quarters" | has the meaning given to in in paragraph 8.1 of Schedule 6.1 (Franchise Specific Provisions); |
| "CLE Trigger Date" | has the meaning given to in in paragraph 8.2(a) of Schedule 6.1 (Franchise Specific Provisions); |
| "Closure" | means a discontinuance or closure under Part 4 of the Railways Act 2005 of any of the Passenger Services or of any network on which the Passenger Services may be operated or of any of the Stations or of any part of such network or Station; |
| "Code of Practice" | means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time (with the approval of the Disabled Persons Transport Advisory Committee) and published by the Secretary of State pursuant to Section 71B of the Act and which is available at https://www.gov.uk/government/publications/accessible-railway-stations-design-standards (or such other applicable web address that is adopted by the Secretary of State from time to time); |
| "Collateral Agreement" | means an agreement which is required to be entered into by the Franchisee with Network Rail or any other franchisee as a condition to any Access Agreement of which the Franchisee is the beneficiary; |
| "Commercial Return" | means where the CCIF Scheme Revenue equals or exceeds the aggregate of the CCIF Scheme Costs and the CCIF Scheme Margin; |

³⁶ 11 March 2019 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

- “Committed Obligations”** means any of the Franchisee's obligations listed in Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligations);
- “Community Rail Partnership”** means any not for profit organisation of the same name that has an interest in the development of responsive and good quality railway passenger services;
- “Community Rail Report”** has the meaning given to it in paragraph 2.6 of Schedule 13.1 (Rail Industry Initiatives);
- “Community Rail Route”** means any Route in respect of which the Secretary of State determines that any relevant Community Rail Partnership has an interest;
- “Community Rail Strategy”** means the Community Rail Development Strategy (as may be updated from time to time) published in November 2004 and which provides a broad framework within which rural community routes can be put on an improved financial footing;
- “Commuter Fare”** means any:
- (a) Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket (and their equivalent ITSO products) between each London Station and any other such station or other Suburban Station; and
 - (b) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) between each London Station; and
 - (c) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) from each Suburban Station to each London Station (but not in the other direction); and
 - (d) PAYG Peak Fare or PAYG Off-Peak Fare (and their equivalent ITSO products) between each London Station and any other such station (and, if and when CPAY is introduced, the CPAY equivalent Peak and off-peak fares),
- for which the Franchisee is entitled to be allocated all or part of the revenue therefrom pursuant to the Ticketing and Settlement Agreement;
- means the grouping of Commuter Fares:

"Commuter Fares Basket"

- (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (b) for the purposes of regulating aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values);
- (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); and
- (d) set out in the Commuter Fares Document;

"Commuter Fares Document" or "CFD"

means the document in the agreed terms marked **CFD** as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);

"Completed RV Assets"³⁷

means RV Assets in respect of which a Certificate of Completion has been issued in accordance with the terms of paragraph 1.3 of Schedule 14.6 in respect of RV Assets in operational use prior to 1 March 2020 and "Completed RV Asset" means any one of them;

"Composite Cost Per Claim Amount"³⁸

means the price [REDACTED³⁹] as at the DR15 Effective Date) for the processing of each DR15 Compensation claim and which includes the costs to be incurred by the Franchisee in complying with its obligations under paragraphs 4.8, 4.9 and 4.11 to 4.14 of Schedule 1.4 (Passenger Facing Obligations) as such price may be:

- (a) **reduced and restated each January following the DR15 Effective Date (or at such other time period as may be reasonably determined by the Franchisee and notified to the Secretary of State) and notified by the Franchisee to the Secretary of State pursuant paragraph 7.2 of Schedule 8.1 (Franchise Payment); and/or**

³⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁸ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁹ 14 August 2019 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

(b) **reviewed and restated in accordance with the provisions of paragraph 7.3(f) of Schedule 8.1 (Franchise Payment);**

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| "Compulsory Inter-available Flow" | has the meaning given to it in the Ticketing and Settlement Agreement; |
| "Computer System" | means computer hardware and computer software, including licensed third party software and data protocols; |
| "Conditions Precedent Agreement" | means the agreement between the Secretary of State and the Franchisee of even date herewith specifying certain conditions to be satisfied or waived by the Secretary of State prior to the issue of a Certificate of Commencement; |
| "Confidential Information" | has the meaning given to it in paragraph 1 of Schedule 17 (Confidentiality and Freedom of Information); |
| "Connection" | means a connection (however described) between any of the Passenger Services provided by the Franchisee and any other railway passenger service provided by it or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly; |
| "Connection Agreement" | means any agreement entered into by the Franchisee and Network Rail on or before the Start Date relating to the connection of a Depot to the relevant part of the network; |
| "Contingency Plan" | has the meaning given to it in paragraph 1 (a)(iv) of Schedule 10.3 (Force Majeure and Business Continuity); |
| "Continuation Document" | means any franchise agreement, direct award, interim franchise agreement or other arrangement pursuant to which the Franchisee is required to provide services for the carriage of passengers by railway which is entered into by the Franchisee in respect of some or all of the same Passenger Services by way of direct or indirect continuation of the arrangement currently in place under the Franchise Agreement; |
| "Contract Manager" | means a person appointed from time to time by the Franchisee to fulfil certain duties including to manage the Franchise Agreement on behalf of the Franchisee and to facilitate the performance by the Franchisee of its obligations under the Franchise Agreement; |
| "Control" | means, in respect of a person, that another person (whether alone or with others and whether directly or indirectly and whether by the ownership of share |

capital, the possession of voting power, contract or otherwise):

- (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which Controls that person;
- (b) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person;
- (c) is the parent undertaking of that person or of any other person which Controls that person; or
- (d) possesses or is, or will be at a future date, entitled to acquire:
 - (i) thirty per cent (30%) or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;
 - (ii) such part of the issued share capital of that person or any other person which controls that person as would, if the whole of the income of such person were distributed, entitle him to receive thirty per cent (30%) or more of the amount so distributed; or
 - (iii) such rights as would, in the event of the winding-up of that person or any other person which controls that person or in any other circumstances, entitle him to receive thirty per cent (30%) or more of the assets of such person which would then be available for distribution,

and **"Controlled"** shall be construed accordingly;

"Control Centres"⁴⁰

means each integrated control centre, signalling centre, rail operating centre and other equivalent operational locations;

⁴⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

"Controlled Emission Toilet" or "CET"

means a toilet fitted on a Rolling Stock Unit and which retains effluent in retention tanks such that effluent is not discharged on the rail tracks;

"Costs"⁴¹

means costs and expenses properly incurred during the term of the ERMA and relating to the Franchisee's performance of the Franchise Agreement and stated in the Franchisee's profit and loss account (including accruals and prepayments recognised in the Reporting Period in which the related costs are incurred) but excluding:

(a) Franchise Payments (which shall include the value of any Fixed Fee and Performance Based Fee);

(b) corporation tax and any deferred tax charge in the Franchisee's profit and loss account;

(c) any accounting transaction which does not require the Franchisee to make a cash payment, including notional pensions accounting adjustments and the accounting impact of financial instrument revaluations, other than depreciation and amortisation; and

(d) Capital Expenditure;

provided that:

(i) if the Franchisee's relevant profit and loss account includes any cost(s) in respect of right of use assets treated in accordance with IFRS16 (the "IFRS16 Cost"), then, for the purpose of this definition, the amount for each IFRS16 Cost shall be deemed to be replaced (for the purposes of this definition and all related consequential purposes under this Agreement) with the amount which would have applied if the cost had been treated on a cash basis, as such cost is incurred in accordance with the relevant contractual arrangements, rather than in accordance with IFRS16; and

(ii) any liability of the Franchisee to the Secretary of State arising under or in

⁴¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

connection with the Franchise Agreement prior to 1 March 2020 shall not be treated as or give rise to a cost or expense for the purpose of the Franchisee's profit and loss account;

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| "Cost Savings" | has the meaning given to such term in paragraph 4.1 of Schedule 1.7(Stations); |
| "Count Equipment" | means any load-weigh, infrared, CCTV or other type of equipment as may from time to time be installed on any train in the Train Fleet for the purposes of (amongst other things) passenger counting, including that specified in paragraph 3 of Schedule 1.5 (Information about Passengers); |
| "COVID-19"⁴² | means the coronavirus disease 2019; |
| "COVID-19 Guidance and Regulation"⁴³ | means save as otherwise directed by the Secretary of State, the guidance and/or regulation relating to COVID-19 as from time to time issued by ORR, Public Health England or any other relevant government department, agencies or public bodies; |
| "COVID-19 Restriction Period"⁴⁴ | means unless otherwise directed by the Secretary of State, the period during which the relevant COVID-19 Guidance and Regulation impacts on the Franchisee's ability to comply with its obligations under the Franchise Agreement; |
| "CPAY" | means an arrangement operated by TfL pursuant to an agreement dated 30 July 2014 between Transport Trading Limited and train operators operating in London under which contactless payment cards can be used by passengers to obtain access to the public transport services in London without the requirement for purchase of a separate ticket or permission to travel; |
| "Creating" | has the meaning given to it in the Ticketing and Settlement Agreement and cognate expressions shall be construed accordingly; |
| "CRM Data" | means Personal Data (including any or all of name, address, e-mail address and ticket purchasing |

⁴² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

history, credit and debit card details) collected by or on behalf of the Franchisee relating to:

- (a) persons travelling on or purchasing tickets for travel on the Passenger Services or other services for the carriage of passengers by railway; or
- (b) use of the Mobile Communication Services by the persons referred to in limb (a) above;

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| "CRM Data Processor" | means any Data Processor who, from time to time, is processing or has processed CRM Data on behalf of the Franchisee; |
| "CRM Obligations" | has the meaning given to it in paragraph 4.4 of Schedule 1.5 (Information about Passengers); |
| "CRM System" | means any system (whether a Computer System or otherwise) for the collection of CRM Data and/or onto which CRM Data is input, processed and/or held as such system may be amended or altered from time to time; |
| "Crossrail May 2019 Timetable" or "CRT" | means the document in agreed form marked CRT ; |
| "Crossrail Central Core" | means an underground railway between, in the west, a tunnel portal at Royal Oak in the City of Westminster and, in the east, tunnel portals at Custom House and Pudding Mill Lane in the London Borough of Newham; |
| "Crossrail Fleet" | means the 44 Class 315 Units leased from Eversholt and used for the provision of railway passenger services between Liverpool Street and Shenfield; |
| "Crossrail Operator" | means any person who is appointed to provide railway passenger services on the railway transport system to be constructed and maintained as specified in the Crossrail Act 2008; |
| "Crossrail Programme" | means the programme of planning, preparatory, construction, tunnelling, station building, rebuilding and enhancement and engineering activities and works and the procurement of rolling stock and other assets and equipment being undertaken for the purposes of building the east west cross London railway system specified in the Crossrail Act 2008; |
| "Crossrail Services" | means the passenger services operated or to be operated by the Crossrail Operator; |
| "Crossrail Stations" | means the following stations which are operated by the Crossrail Operator: |

- (a) Maryland;
- (b) Forest Gate;
- (c) Manor Park;
- (d) Ilford;
- (e) Seven Kings;
- (f) Goodmayes;
- (g) Chadwell Heath;
- (h) Romford;
- (i) Gidea Park;
- (j) Harold Wood;
- (k) Brentwood; and
- (l) Stratford;

"Crossrail Track Access Option"

means the track access option dated 22 September 2008 and made between Network Rail and the Secretary of State for Transport (as amended by the supplement agreement dated 2 September 2014);

"CRP Amount"

means the sum of two hundred and forty thousand pounds (£240,000) (indexed by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments)) per Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than three hundred and sixty five (365) days);

"Current Franchisee Year"

has the meaning given to it in paragraph 1.5 of Schedule 8.2 (Profit Share Mechanism);

"Customer and Stakeholder Engagement Strategy" or "CSES"

means the Customer and Stakeholder Engagement Strategy in the agreed terms marked CSES and any replacement Customer and Stakeholder Engagement Strategy revised in accordance with paragraph 3.2 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme);

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| "Customer Experience Fee" or "CE" ⁴⁵ | <p>means the element of the Performance Based Fee, the purpose of which is to measure the Franchisee's effectiveness in delivering:</p> <p>(a) high levels of satisfaction and positive sentiment amongst users of the Passenger Services; and/or</p> <p>(b) high-quality provision of facilities, services, customer care and other outputs that affect passengers' satisfaction and sentiment;</p> |
| "Customer Experience Survey Methodology" | shall have the meaning given to such term in paragraph 1.1. of Schedule 7.3 (Customer Experience Performance); |
| "Customer Report" | means a report in the format and providing the information specified in the Customer and Stakeholder Engagement Strategy published in accordance with paragraph 10.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme); |
| "D&I Annual Report" ⁴⁶ | means a report produced by the Franchisee developed in accordance with paragraph 9A3.3(e) of Schedule 13.1 (Rail Industry Initiatives) in respect of the previous twelve (12) months or, if shorter, ERMA Start Date; |
| "D&I Annual Reporting Date" ⁴⁷ | means the date on which the Franchisee must provide the D&I Annual Report to the Secretary of State as stated in the D&I Strategy, provided that if this date, in any Franchisee Year, occurs after the expiry of the term of the ERMA then the D&I Annual Reporting Date shall be one (1) month before the expiry of the term of the ERMA; |
| "D&I Champion" ⁴⁸ | means the director or senior executive that is accountable and responsible for implementing the D&I Strategy and ensuring that the Franchisee complies with its obligations relating to diversity and inclusion (excluding the obligations in paragraph 9A3.4); |

⁴⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

"D&I Characteristics KPIs"⁴⁹

means the KPIs set out in the Franchisee's D&I Strategy used to assess the impact of the Franchisee's initiatives on diversity at different levels of the workforce and in connection with different characteristics (including gender, age, ethnicity and disability) compared to the region and/or nationally;

"D&I Improvement Plan"⁵⁰

has the meaning given to it in paragraph 9A3.7 (Improvement and Remedial Plans) of Schedule 13.1 (Rail Industry Initiatives);

"D&I Initiatives KPIs"⁵¹

means the KPIs set out in the Franchisee's D&I Strategy used to measure its performance against diversity initiatives and policies, which may include KPIs along the following lines:

(a) the number of positive action initiatives implemented and maintained by the Franchisee;

(b) the number of adverts in targeted publications;

(c) membership of diversity and inclusion networks and forums;

(d) the percentage of staff trained annually in diversity and inclusion;

(e) the number of line managers completing diversity and inclusion training;

(f) the number of members of the board of directors completing diversity and inclusion training; and

(g) the number of diversity and inclusion training sessions.

"D&I Strategy"⁵²

means the Franchisee's diversity and inclusion strategy developed in accordance with paragraph 9A3.1 of Schedule 13.1 (Rail Industry Initiatives) (substantially in the form set out in Appendix 2 (D&I Strategy) to Schedule 13.1 (Rail Industry Initiatives)) and

⁴⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

references to the D&I Strategy shall include the Approved D&I Strategy;

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| "Data Controller" | has the same meaning as in the Data Protection Act; |
| "Data Processor" | has the same meaning as in the Data Protection Act; |
| "Data Protection Act" | means the Data Protection Act 1998 and any guidance issued from time to time by the Information Commissioner's Office or a relevant Central Government Body in relation to the Data Protection Act 1998; |
| "Data Site Information" | has the meaning given to it in paragraph 3.5 of Schedule 15.1 (Reletting Provisions); |
| "Data Subject" | has the same meaning as in the Data Protection Act; |
| "Dataset" | means the data specified in Appendix 1 (Environmental Information) to Schedule 11.2 (Management Information) as the same may be amended from time to time by the Secretary of State (acting reasonably); |
| "Default Performance Level"⁵³ | means, in relation to an Enforcement Benchmark for any Reporting Period, the number agreed or determined pursuant to paragraph 4.5 of Schedule 8.1B (Performance Based Fee); |
| "Delay Attribution Principles and Rules"⁵⁴ | means the version of the document known as the Delay Attribution Principles and Rules referenced in the Network Code; |
| "Delay Repay Compensation"⁵⁵ | means compensation (including from the DR15 Effective Date, the DR15 Compensation) payable to a holder of a valid ticket when such ticket holder's journey is delayed as more particularly described in the Passenger's Charter; |
| "Delayed Cascade Mitigation Plan" | has the meaning given to it in paragraph 3.5(b) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases); |
| "Departure Station" | has the meaning given to it in paragraph 2.2 of Appendix 2 (Accessible Transport Arrangements) to Schedule 4 (Accessibility and Inclusivity); |

⁵³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁵ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| "Depot" | means a depot in respect of which the Franchisee has entered into a Depot Lease; |
| "Depot Access Conditions" | has the meaning given to it in the relevant Access Agreement to which it relates; |
| "Depot Lease" | means: <ul style="list-style-type: none"> (a) any lease of a depot to which the Franchisee is a party as at the Start Date; or (b) any other lease of a depot in relation to which the Franchisee becomes the Facility Owner at any time during the Franchise Period; |
| "Derivative Output" | means Intellectual Property Rights that are derived from or generated by the RPC Database or the Preliminary Database when querying such database (which includes, but is not limited to, the format of all reports and analysis); |
| "Designated CO Primary Franchise Assets" | has the meaning given to it in paragraph 10.1 of Part 2 (Special Terms) of Schedule 6.2 (Committed Obligations); |
| "Designated Employer" | has the meaning given to it in the Pension Trust; |
| "Destination Station" | has the meaning given to it in paragraph 2.2 of Appendix 2 (Accessible Transport Arrangements) to Schedule 4 (Accessibility and Inclusivity); |
| "Devolved Transport Body"⁵⁶ | means, any public sector body which has been given responsibility for public passenger transport in the United Kingdom including Transport for London, Transport for Wales, Transport Scotland, Rail North, any Passenger Transport Executive or Combined Authority and any other public body with relevant public passenger transport responsibilities; |
| "Direct Agreement" | means any agreement made, or to be made, from time to time between the Secretary of State and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Secretary of State under Schedule 14.3 (Key Contracts); |

⁵⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| “Disabled People's Protection Policy” | means the Franchisee's policy for the protection of persons with disabilities which the Franchisee is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations; |
| “Disabled Person” | is a reference to a person who has a disability as defined in the EA; |
| “Disabled Persons Transport Advisory Committee” or “DPTAC” | means the committee with that name established under Section 125 of the Transport Act 1985 and its statutory successors; |
| “Disallowable Costs”⁵⁷ | means any Costs or Capital Expenditure which are described within Appendix 1 (Disallowable Costs) to Schedule 8.1A (Franchise Payments) and may include amounts stated in the Budget, Financial Model and/or Record of Assumptions (as applicable) which have been Placed in Escrow; |
| “Discount Card” | has the meaning given to it in the Ticketing and Settlement Agreement; |
| “Discount Fare Scheme” | has the meaning given to it in paragraph 3 of the Appendix (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes) |
| “Dispute Resolution Rules” | means the procedures for the resolution of disputes known as “The Railway Industry Dispute Resolution Rules” , as amended from time to time in accordance with the terms thereof. The rules are available at http://accessdisputesrail.org/RIDR/RIDRRules.pdf (or such other applicable web address that is adopted by the Railway Industry Dispute Resolution Committee from time to time); |
| “Disputed Cancellation” | means a Passenger Service: <ul style="list-style-type: none"> (a) ⁵⁸which is included in the Enforcement SSCPlan of the Day and which is cancelled; or (b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of its |

⁵⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

scheduled mileage (as prescribed in the Enforcement Plan of the Day),

in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Franchisee pursuant to the Track Access Agreement;

"Disputed Partial Cancellation"

means a Passenger Service which is included in the Enforcement Plan of the Day and which:

- (a) misses a stop; or
- (b) completes fifty per cent (50%) or more, but less than one hundred per cent (100%) of its scheduled journey as prescribed in the Enforcement Plan of the Day,

in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Franchisee pursuant to the Track Access Agreement;

"DL"

means the depot lease in agreed terms marked **DL**;

"DOTAS"

has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);

"DOV"

means the deed of variation in the agreed terms marked **DOV**;

"DR15 Claims Reimbursement"⁵⁹

means, in relation to a Reporting Period, the forecast DR15 Compensation to be paid by the Franchisee to passengers in that Reporting Period as calculated pursuant to paragraph 7.3(a) of Schedule 8.1 (Franchise Payments);

"DR15 Claims Reimbursement Balancing Payment"⁶⁰

means the amounts payable by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee (as the case may be) as determined in accordance with paragraph 7.3 of Schedule 8.1 (Franchise Payments);

"DR15 Compensation Amount"⁶¹

means the actual amounts payable as DR15 Compensation as set out in paragraph 4.7(a) of Schedule 1.4 (Passenger Facing Obligations);

⁵⁹ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁰ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶¹ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| "DR15 Compensation" ⁶² | means compensation payable to passengers by the Franchisee (subject to the validation and authentication of any such delay repay compensation claim by the Franchisee using the measures applicable from time to time including pursuant to paragraph 4.8 of Schedule 1.4 (Passenger Facing Obligations)) in circumstances where the passenger's journey in respect of which such passenger holds a valid ticket is delayed by 15 minutes but less than 30 minutes; |
| "DR15 Deed" ⁶³ | means the deed of amendment to the Franchise Agreement dated March 2019 and entered into between the Secretary of State and the Franchisee; |
| "DR15 Effective Date" ⁶⁴ | means the date upon which passengers become entitled to claim DR15 Compensation being 1 April 2019; |
| "DR15 Quarter" ⁶⁵ | <p>means each of the following:</p> <ul style="list-style-type: none"> (a) the first to third Reporting Periods; (b) the fourth to sixth Reporting Periods; and (c) the seventh to ninth Reporting Periods; and (d) the tenth to thirteenth Reporting Periods, <p>in each case, in each Franchisee Year, provided that the first DR15 Quarter shall commence on the DR15 Effective Date and the last DR15 Quarter shall end on the last day of the Franchise Period;</p> |
| "DR15 Quarterly Statement" ⁶⁶ | has the meaning given to it in paragraph 7.2 of Schedule 8.1 (Franchise Payments); and |

⁶² 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶³ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁴ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁵ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁶ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| "DR15 Operating Costs Balancing Payment"⁶⁷ | means the amounts payable by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee (as the case may be) as determined in accordance with paragraph 7.2 of Schedule 8.1 (Franchise Payments); and |
| "DR15 Operational Costs"⁶⁸ | means, in relation to any Reporting Period, the operational costs to be incurred in respect of the processing of DR15 Compensation claims; |
| [REDACTED⁶⁹] | [REDACTED] |
| "EA" | means the Equality Act 2010; |
| "EA Claim" | has the meaning given to it in paragraph 3.1 of Schedule 4 (Accessibility and Inclusivity); |
| "EA Requirements" | means the duties of a provider of services under Sections 20(3), 20(5) and Sections 20(9)(a) and 20(9)(b) in relation to Section 20(4), of the EA; |
| "EEA state" | has the meaning given to it in clause 14.9 (Non-discrimination); |
| "Electronic Barcode Ticket"⁷⁰ | means a Fare in the form of an electronic barcode which is stored on a mobile communications device, which can be validated visually or scanned on-board trains or at ticket gates; |
| "EMA"⁷¹ | means the Emergency Measures Agreement entered into by the Parties on or around 1 April 2020 to deal with the impacts of COVID 19; |
| "EMA FWCA"⁷² | has the meaning given to "FWCA" in schedule 8.A (Franchise Payments) to the Franchise Agreement as effected by the EMA, (and, for the purposes of this definition and the definition of "FWCA" in schedule 8.A (Franchise Payments) to the Franchise Agreement as effected by the EMA. "Final Working Capital Adjustment" shall have the meaning given to that term in paragraph 10.3 of schedule 8.A |

⁶⁷ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁸ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁷⁰ 31 March 2017 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

(Franchise Payments) to the Franchise Agreement as effected by the EMA and all definitions related to "Final Working Capital Adjustment" shall have the meanings given to them in schedule 8.A (Franchise Payments) to the Franchise Agreement as effected by the EMA);

"EMA Period"⁷³

means the period commencing on 1 April 2020 and ending upon expiry of the "Term" or (as applicable) the expiry of any "Extended Term", as such terms are defined in clauses 3.1 and 3.3, respectively, of the EMA;

"EMA Review"⁷⁴

has the meaning given to it in paragraph 1 (Definitions) of schedule 8.B (Performance Payment) to the Franchise Agreement as effected by the EMA;

"EMA Review DoA"⁷⁵

means the EMA Review Agreement of Amendment entered into by the Parties on or around 20 September 2020;

"EMA Review Scorecard"⁷⁶

has the meaning given to it in paragraph 1 (Definitions) of schedule 8.B (Performance Payment) to the Franchise Agreement as effected by the EMA;

"EMA Scorecard Criterion"⁷⁷

has the meaning given to "EMA Criterion" in paragraph 1 (Definitions) of schedule 8.B (Performance Payments) to the Franchise Agreement as effected by the EMA;

"EMA SoS Claims"⁷⁸

has the meaning given to "SoS Claims" in paragraph 1 (Definitions) of schedule 8.A (Franchise Payments) to the Franchise Agreement as effected by the EMA;

"EMA Start Date"⁷⁹

means 1 April 2020;

⁷³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| "Emergency Events" | has the meaning given to it in paragraph 1(e) of Schedule 10.3 (Force Majeure and Business Continuity); |
| "EMV" | means contactless payment cards that conform to the international standards issued by EMVCo (owned by American Express, Discover, JCB, MasterCard, UnionPay and Visa) which manages, maintains and enhances the EMV1 integrated circuit card specifications; |
| "Enforcement Benchmark"⁸⁰ | <p>means the:</p> <p>(a) Enforcement Cancellations Benchmark for each Reporting Period during a PBF Assessment Period;</p> <p>(b) Enforcement Short Formation Benchmark for each Reporting Period during a PBF Assessment Period; and</p> <p>(c) Enforcement TOC Minutes Delay Benchmark for each Reporting Period during a PBF Assessment Period;</p> |
| "Enforcement Cancellations Benchmark"⁸¹ | means the benchmark that applies to Cancellations in relation to a Reporting Period during the PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee); |
| "Enforcement Plan of the Day" | <p>means the Plan of the Day except for any:</p> <p>(a) additions to such Plan of the Day of any railway passenger services which are not included in the Timetable;</p> <p>(b) omissions from such Plan of the Day of any Passenger Services included in the Timetable; and/or</p> <p>(c) rescheduling in such Plan of the Day of any Passenger Services from their scheduling in the Timetable,</p> <p>in each case:</p> <p>(i) as proposed by the Franchisee in breach of its obligations in</p> |

⁸⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

paragraph 4 of Schedule 1.2 (Operating Obligations); or

- (ii) as agreed by the Franchisee in breach of its obligations in paragraph 3 of Schedule 1.2 (Operating Obligations);

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| "Enforcement Short Formation Benchmark" ⁸² | means the benchmark that applies to Short Formations in relation to a Reporting Period during the PBF Assessment Period as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee); |
| "Enforcement TOC Minutes Delay Benchmark" ⁸³ | means the benchmark that applies to TOC Minutes Delay in relation to a Reporting Period during the PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee); |
| "Enhanced Disability Awareness Training" ⁸⁴ | means training compliant with the requirements set out in section 4, paragraph B6 of the Accessible Travel Policy Guidance; |
| "Environmental Damage" | has the meaning given in the Station Access Conditions; |
| "Environmental Data Collection Plan" | has the meaning given to it in paragraph 15.1(a)(iii) of Schedule 11.2 (Management Information); |
| "Environmental Impact Monitoring Audit" | has the meaning given to it in paragraph 15.2(b) of Schedule 11.2 (Management Information); |
| "Environmental Impact Monitoring Report" | has the meaning given to it in paragraph 15.2(a) of Schedule 11.2 (Management Information); |
| "Environmental Impact Targets" | has the meaning given to it in paragraph 16.1 of Schedule 11.2 (Management Information); |
| "Environmental Impact Targets Plan" | has the meaning given to it in paragraph 16.2(c) of Schedule 11.2 (Management Information); |
| "Environmental Information Regulations" | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations; |

⁸² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| "Environmental Law" | has the meaning given in the Station Access Conditions; |
| "Environmental Liability" | means any costs incurred by the Franchisee in complying with any claim, judgement, order direction or injunction of any court or Competent Authority under Environmental Law in relation to Environmental Damage that had occurred prior to the Start Date and that is not apparent from the documentation relating to the state and condition of the Stations provided on the data site provided by the Secretary of State in relation to the East Anglia franchise letting process or is not otherwise within the actual or constructive knowledge of the Franchisee and includes the costs reasonably and properly incurred in taking any action or carrying out any works to prevent, mitigate or remedy Environmental Damage where it is foreseeable that such Environmental Damage will result in the Franchisee being subject to a successful claim, judgement, order, direction or injunction of any court or Competent Authority under Environmental Law; |
| "Equipment" | means any Equipment (as such term is defined in the Station Access Conditions) that the Franchisee is required to maintain, repair and renew under the Station Access Conditions; |
| "Equivalent Fare" | has the meaning given to it in paragraph 6.1 of Schedule 5.7 (Changes to Fares and Fares Regulation); |
| "Equivalent Flow" | has the meaning given to it in paragraph 6.1(b) of Schedule 5.7 (Changes to Fares and Fares Regulation); |
| "ERMA"⁸⁵ | means the Emergency Recovery Measures Agreement entered into by the Parties on or around the ERMA Start Date to deal with the impacts of COVID-19; |
| "ERMA Start Date"⁸⁶ | means 20 September 2020; |
| "ERMA Stub Reporting Period"⁸⁷ | means the period comprising the Reporting Periods following the period covered by the most recently delivered Annual Audited Accounts to the end of the ERMA Term or Extended Term, as applicable; |

⁸⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| "ERMA Term"⁸⁸ | has the meaning given to that term in the ERMA; |
| "ERTMS" | means the European Rail Traffic Management System; |
| "ERTMS Programme" | means the Network Rail cross rail industry programme for delivering the national implementation of ERTMS; |
| "Escrow Documents" | means those documents and other items referred to in paragraph 1.1 of Schedule 9.2 (Identity of the Financial Model); |
| "Estimated Profit Stream" | <p>means estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to clause 8 (Change of Control and Facilitation Fee)) is to occur until the Expiry Date as reasonably determined by the Secretary of State. In reasonably determining the Estimated Profit Stream the Secretary of State shall:</p> <ul style="list-style-type: none"> (a) take into account all relevant circumstances and have due regard to the Financial Model, the profit and loss forecast in the Initial Business Plan and the most recent Annual Business Plan and the assumptions in the Record of Assumptions; (b) use the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model; (c) estimate profit: <ul style="list-style-type: none"> (i) before taking into account: <ul style="list-style-type: none"> (A) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits) and dividends and other distributions of profit; (B) any taxation on profits including corporation tax; (C) shares of the profit of any Affiliate of the Franchisee, |

⁸⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- except dividends received in cash;
 - (D) non cash entries in respect of the Franchise Section and any other pension schemes to the extent connected with the Franchise, excluding accruals or prepayments of any normal pension contributions due; and
- (ii) after taking into account:
- (A) Franchise Payments;
 - (B) all extraordinary and exceptional items, as defined under GAAP;
 - (C) the Franchisee's normal pension contributions in relation to the Franchise Section and any other pension schemes to the extent connected with the Franchise;
 - (D) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed the amount determined in accordance with the formula set out in paragraph 1.2(a)(v) of the definition of Relevant Profit in paragraph 1.2 of Schedule 8.2 (Profit Share Mechanism); and
 - (E) any sums capitalised in relation to maintenance expenditure on rolling stock or other capital equipment; and
- (d) calculate amounts in real terms as at the date of the Change of Control and apply the prevailing discount rate per annum (in real terms) stated in HM Treasury's "**Green Book Appraisal Guidelines**" (such rate being as at the date of the Franchise Agreement three point five per cent (3.5%) per annum (in real terms));

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| "Estimated Revenue" ⁸⁹ | means the Revenue reasonably estimated by the Secretary of State using available resources as is practicable at the time of the estimation; |
| "Estimated Revisions" | has the meaning given to it in paragraph 10.3 of Schedule 9.1 (Financial and Other Consequences of Change); |
| "Evening Peak" | means, in relation to any Passenger Service, the period between 1600 and 1859 (inclusive) during a Weekday or such other continuous three hour period between 1200 and 2359 (inclusive) as the Secretary of State may specify from time to time; |
| "Event of Default" | means any of the events set out in paragraph 1 of Schedule 10.2 (Events of Default and Termination Events); |
| "Excluded Data" | has the meaning given to it in paragraph 15.1(a)(i) of Schedule 11.2 (Management Information); |
| "Expiry Date" ⁹⁰ | <p>means:</p> <p>(a) 01:59 a.m. on 19 September 2021, unless the Secretary of State exercises the Secretary of State's right to terminate the ERMA pursuant to clause 3.2 of the ERMA, in which case the Expiry Date shall be 01:59 a.m. on 12 October 2025; or</p> <p>(b) Not used;</p> <p>(c) any such later date to which the Franchise Agreement is continued in accordance with clause 3.3 of the ERMA;</p> |
| "Extended Term" ⁹¹ | has the meaning given to that term in the ERMA; |
| "Facilitation Fee" | has the meaning given to it in clause 8.4 (Change of Control and Facilitation Fee)); |
| "Facility Owner" | has the meaning given to the term facility owner in Section 17(6) of the Act; |
| "Fare" | means: |

⁸⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁹⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁹¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (a) the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person; and
- (b) for the purposes only of Schedule 5.3 (Allocation of Fares to Fares Baskets) to Schedule 5.8 (Fares Regulation Information and Monitoring) (inclusive) and the definitions of Commuter Fare, Protected Fare, Return Fare, Single Fare, Protected Weekly Season Ticket, Protected Return Fare and paragraph (b) of the definition of Season Ticket Fare, a Fare as defined under paragraph (a) that is:
 - (i) valid for a journey or journeys on the Passenger Services included in the Timetable or other railway passenger services which are required to be included in another relevant Train Operator's passenger timetable by the Secretary of State;
 - (ii) sold under the Travelcard Agreement; or
 - (iii) a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement);
 - (iv) sold under the Pay As You Go Agreement utilising TTL smart media as defined in such agreement;

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| "Fare Year" | means the period from 1 January in any year to 31 December in the same year; |
| "Fares Basket" | means either the Commuter Fares Basket or the Protected Fares Basket; |
| "Fares Document" | means any of the Commuter Fares Document and the Protected Fares Document; |
| "Fares Setting Round" | has the meaning given to it in the Ticketing and Settlement Agreement; |

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| "Final Accounts" ⁹² | means the set of financial statements prepared in accordance with GAAP and delivered to the Secretary of State in accordance with the requirements set out in paragraph 9.4A(m) of Schedule 11.2 (Management Information) which comprise as a minimum, a profit and loss account, balance sheet and a cashflow statement containing only transactions properly accounted for which relate to the ERMA Stub Reporting Periods, to a level of disaggregation which the Secretary of State may reasonably require; |
| "Final Adjustment" ⁹³ | has the meaning given to it in paragraph 1A (Definitions) of Schedule 8.1A (Franchise Payments); |
| "Final PBF Assessment Period" ⁹⁴ | has the meaning given to it in paragraph 1 (Definitions) of Schedule 8.1B (Performance Based Fee); |
| "Final Working Capital Adjustment" or "FWCA" ⁹⁵ | means the adjustment determined in accordance with paragraph 14.3 of Schedule 8.1A (Franchise Payment); |
| "Financial Action Plan" | means any action plan produced by the Franchisee pursuant to paragraph 9.2(b)(vi) of Schedule 11.2 (Management Information), where the level of its financial performance specified in the Management Accounts is materially worse than forecast by the Franchisee in its current Business Plan; |
| "Financial Conduct Authority" | means the UK Financial Conduct Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS and with company registered number 01920623 or such other regulatory body which may succeed or replace it from time to time; |
| "Financial Formats" or "FF" | means the Franchisee's financial formats in the agreed terms marked FF ; |
| "Financial Model" or "FM" | means the Franchisee's financial model in the agreed terms marked FM deposited with the Secretary of State on the date of the Franchise Agreement in accordance with Schedule 9.2 (Identity of the Financial Model), as may be subsequently revised in |

⁹² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁹³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁹⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁹⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| | accordance with Schedule 9.2 (Identity of the Financial Model); |
| "Financial Ratios" | means the financial ratios specified in paragraph 2 of Schedule 12 (Financial Covenants and Bonds); |
| "First Profit Share Threshold" or "FPST" | has the meaning given to it in paragraph 1.1 of Schedule 8.2 (Profit Share Mechanism); |
| "Fleet Fitment and Mobilisation Costs" | means costs associated with the installation, maintenance and operation of ERTMS on the Franchisee's train fleets. This includes the capital and operational costs of the ERTMS equipment fitted to train fleets, installation and test activities, approvals, maintenance activities and maintenance equipment, staff training and training equipment excluding costs covered by Network Rail pursuant to sub-paragraph 11.3(b) of Schedule 13.1 (Rail Industry Initiatives); |
| "Floor Cash Position"⁹⁶ | means [REDACTED⁹⁷] (excluding the value of Season Ticket Fare suspense liabilities) or such other value as the Secretary of State may determine in accordance with paragraph 12.8 of Schedule 8.1A (Franchise Payments); |
| "Flow" | has the meaning given to it in the Ticketing and Settlement Agreement; |
| "Force Majeure Event" | means any of the events described as such in paragraph 1 of Schedule 10.3 (Force Majeure and Business Continuity) where the conditions specified in paragraph 2 of Schedule 10.3 (Force Majeure and Business Continuity) are satisfied; |
| "Forecast Closing Cash Position"⁹⁸ | means, with respect to a Reporting Period, the Franchisee's forecast working capital position, excluding: (a) the Franchise Payment to be made in the following Reporting Period and (b) the value of Season Ticket Fare suspense account liabilities, |

⁹⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁹⁷ 15 January 2021 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

as at the last day of that Reporting Period and taking into account the Franchisee's latest Management Accounts;

"Forecast Modified Revenue"

means, in relation to any Reporting Period, the items specified in the definition of Modified Revenue, as most recently forecast for that Reporting Period pursuant to paragraph 9.3(a) of Schedule 11.2 (Management Information);

"Forecast Operating Costs"

means, in relation to any Reporting Period, the items specified in the definition of Actual Operating Costs, as most recently forecast for that Reporting Period pursuant to paragraph 9.3 of Schedule 11.2 (Management Information) adjusted for any movement in creditors arising from deemed PCS Facility borrowing pursuant to Clause 18 of the Funding Deed;

"Forecast Passenger Demand"

means the forecast prepared by the Franchisee pursuant to paragraph 12.2 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services and Service Development) in respect of:

- (a) the number of passengers travelling in each class of accommodation:
 - (i) on each Passenger Service;
 - (ii) on each Route; and/or
 - (iii) at any station or between any stations; and
- (b) the times of day, week or year at which passengers travel,

for the period in respect of which the next Timetable is to apply;

"Franchise"

means the rights tendered by the Secretary of State on 17 September 2015 to operate railway passenger services over the Routes prescribed in paragraph 2.1 of Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development);

"Franchise Agreement"

means this Agreement and the Conditions Precedent Agreement which together constitute a single agreement and which is a **"franchise agreement"** for the purposes of the Act;

"Franchise Assets"

means the property, rights and liabilities designated as such pursuant to paragraph 1 of Schedule 14.4 (Designation of Franchise Assets) but excluding such property, rights or liabilities as shall, in accordance

with the terms of the Franchise Agreement, cease to be so designated;

“Franchise Documents”

means:

- (a) this Agreement;
- (b) the Conditions Precedent Agreement;
- (c) the Funding Deed;
- (d) the Train Service Requirement;
- (e) any other agreement signed by the Franchisee at the time of the award of the Franchise which is in the possession of the Secretary of State and which is notified by the Secretary of State to the Franchisee as being required for publication; and
- (f) the ERMA;

“Franchise Employee”

means:

- (a) any employee of the Franchisee from time to time; and
- (b) any other person who is an employee of any of its Affiliates or is an employee of any party to whom the Franchise Services or services which are in support of or ancillary to the Franchise Services have been subcontracted (at any tier) or delegated by the Franchisee; and
- (c) in the case of (a) or (b) whose contract of employment would (subject to the exercise of such person's right to object to the transfer) be transferred to a Successor Operator following the expiry of the Franchise Period by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred;

“Franchise Manager”

means a person appointed from time to time by the Secretary of State to fulfil certain duties including to manage the Franchise Agreement on behalf of the Secretary of State and to monitor the Franchisee's performance of its obligations under the Franchise Agreement;

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| "Franchise Payment" | means, in relation to any Reporting Period, the amount determined in accordance with Schedule 8.1A (Franchise Payments); |
| "Franchise Payment Component"⁹⁹ | <p>means:</p> <p>(a) each of the components of "FP" as described in paragraph 1.3 of Schedule 8.1A (Franchise Payment); and</p> <p>(b) any component or element, described in the relevant provisions of Schedule 8.1A (Franchise Payment) and Schedule 8.1B (Performance Based Fee), as the case may be, which is used in determining or calculating the value of those components described in paragraph (a) above;</p> |
| "Franchise Performance Meeting" | means a meeting between the Secretary of State and the Franchisee to be held in accordance with paragraph 1 of Schedule 11.1 (Franchise Performance Meetings); |
| "Franchise Period" | means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to Clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or Schedule 10 (Remedies, Events of Default and Termination Events); |
| "Franchise Sections" | has the meaning given to it in paragraph 2 of Schedule 16 (Pensions); |
| "Franchise Section Rules" | has the meaning given to it in paragraph 4.2(a) of Schedule 16 (Pensions); |
| "Franchise Services" | means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Franchisee may provide or operate from time to time, including any of such services as the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement; |
| "Franchise Term" | means the period commencing on the Start Date and expiring on the Expiry Date; |
| "Franchisee Access Station" | means any station at which the Passenger Services call (other than any Station); |

⁹⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| "Franchisee Excess Amount" | has the meaning given to such term in paragraph 4.1 of Schedule 1.7 (Stations); |
| "Franchisee Excess Amount Cap" | has the meaning given to such term in paragraph 4.1 of Schedule 1.7 (Stations); |
| "Franchisee ERTMS Plan" | means the Franchisee's plan to deliver all activities for the implementation of the ERTMS Programme for which the Franchisee is responsible as further described in paragraph 11.1(e) of Schedule 13.1 (Rail Industry Initiatives); |
| "Franchisee Owned RV Asset"¹⁰⁰ | <p>means each of the assets listed in Column 1 of the table set out in Appendix 1 (List of the RV Assets) to Schedule 14.6, or where applicable the partially completed elements of such assets, in each case which:</p> <ul style="list-style-type: none"> (a) are not annotated in Column 4 of such table as Network Rail Fixture Assets; and (b) are designated as Primary Franchise Assets in accordance with paragraph 2.1(h) of Schedule 14.4 (Designation of Franchise Assets) such that they can be transferred to a Successor Operator at the applicable value specified in Column 2 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) (as such value may be amended during the Franchise Term in accordance with the provisions of paragraphs 1.4, 1.5 or 2.2 of Schedule 14.6 (Residual Value Mechanism)); |
| "Franchisee Year" | means any period of twelve (12) months during the Franchise Period, beginning on 1 April and ending on 31 March, except that the first and last Franchisee Years may be for a period of less than twelve (12) months and the first Franchisee Year shall begin on the Start Date and the last Franchisee Year shall end on the last day of the Franchise Period; |
| "Freedom of Information Act" | means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to the Freedom of Information Act 2000; |

¹⁰⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

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| "Funding Deed" ¹⁰¹ | means the deed made between the Secretary of State, the Franchisee and the Guarantor dated on or about the date of the Franchise Agreement specifying arrangements relating to the funding for the Franchisee by the Parent and giving rights to the Secretary of State in relation to such funding, as amended pursuant to a deed of variation dated 13 October 2016 and as further amended pursuant to a deed of amendment and accession dated 21 March 2017; |
| "FXD" | has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments); |
| "GAAP" | means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, 'Financial Reporting Standards 100, 101 and 102', abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Conduct Authority, in each case, as amended from time to time; |
| "General Anti-Abuse Rule" | has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds); |
| "Good and Efficient Operator" ¹⁰² | means in the context of all other relevant provisions of this Franchise Agreement, a notional train operator, having the same commercial, regulatory and operational arrangements as the Franchisee and being subject to the same operational circumstances (which shall recognise the extraordinary impact of COVID-19, the existence of the EMA and the ERMA and the requirement for operators to act in the national interest in response to COVID-19), which is a party to a franchise agreement on equivalent terms to the Franchise Agreement, with performance targets and standards equivalent to those set out in Schedule 8.1B (Performance Based Fee) which complies with its obligations under such franchise agreement and the Licences in a timely, efficient and economical manner and with the degree of skill, diligence, prudence |

¹⁰¹ 25 August 2017 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁰² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

and foresight which can be expected from a skilled and experienced train operator so that in this context costs and revenues are optimised in combination to the greatest extent reasonably practicable, adopting a reasonable balance in respect of short, medium and longer term consequences for the relevant franchise;

"Grey Assets"

means:

- (a) the assets on the Grey Assets List; and
- (b) any other structures and locations on or close to the boundary of the "Station" and "Network" (both as such terms are defined under the relevant Station Lease) where the Franchisee or Network Rail consider (acting reasonably) that clarification is required as to whether or not the same forms part of the Station (for example, certain hybrid structures such as bridges, viaducts, embankments and any supporting structures);

"Grey Assets List" or "GAL"

means the document in agreed form marked "**GAL**";

"Gross Revenue"

means, in relation to any period and any Fare, the gross revenue to the Franchisee (or any relevant predecessor of the Franchisee) attributable to such Fare over the relevant period, excluding any applicable Value Added Tax, costs, commissions or other expenses which may be paid or incurred in connection with such Fare;

"Guarantor"

has the meaning given to such term under the Funding Deed;

"Halifax Abuse Principle"

has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);

"Handover Package"

means a package containing the information and objects specified in the Appendix (Form of Handover Package) to Schedule 15.3 (Handover Package) and such other information and objects as the Secretary of State may reasonably specify from time to time;

"Hot Standby"

means any rolling stock vehicle specified in the Train Plan which:

- (a) is operationally ready to provide the Passenger Services in the Timetable;
- (b) is not already assigned to the delivery of any Passenger Service in the Timetable; and

- (c) will only be used to deliver such Passenger Services if:
- (i) a rolling stock vehicle scheduled to deliver such Passenger Services is unable to so deliver; and
 - (ii) Actual Passenger Demand could only be met by the deployment in service of such rolling stock vehicle;

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| "HS2 Project" | means the project for the construction and development of a proposed high speed railway from London to Birmingham and the North known as "HS2" or "High Speed Two" and all related infrastructure works; |
| "Improvement Plan Level"¹⁰³ | means a NRPS Improvement Plan Level; |
| "Incremental Output Statement Charge" | means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001; |
| "Independent Station" | has the meaning given to it in paragraph 2.7 of Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments); |
| "Independent Station Access Conditions" | has the meaning given to it in the Access Agreement to which it relates; |
| "Individual Station Charge Adjustment" | has the meaning given to it in paragraph 2.2 of Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments); |
| "Industrial Action" | means any concerted action taken in connection with the employment of any employees of the Franchisee or of any of the employees of persons listed in paragraphs 1(f)(i) to 1(f)(iii) of Schedule 10.3 (Force Majeure and Business Continuity) (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial industrial action, to the Franchisee being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the Secretary of State; |

¹⁰³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| "Industry Schemes" | has the meaning given to it in paragraph 4 of Schedule 13.1 (Rail Industry Initiatives); |
| "Information Commissioner" | has the meaning given to it in Section 6 of the Data Protection Act; |
| "Initial Business Plan" | means the business plan to be provided by the Franchisee to the Secretary of State as described in paragraph 10.1 of Schedule 11.2 (Management Information); |
| "Initial Dataset" | has the meaning given in paragraph 15.1(b) of Schedule 11.2 (Management Information); |
| "Initial PBF Assessment Period"¹⁰⁴ | has the meaning given to it in paragraph 1 (Definitions) of Schedule 8.1B (Performance Based Fee); |
| "Initial Performance Bond" | means the performance bond issued or to be issued on or prior to the date of this Agreement by a Bond Provider to the Secretary of State which complies with the requirements of paragraph 4.2 of Schedule 12 (Financial Covenants and Bonds); |
| "Initial Period" | has the meaning given to it in paragraph 7.5 of Schedule 9.1 (Financial and Other Consequences of Change); |
| "Initial Permanent Fare" | has the meaning given to it in the Ticketing and Settlement Agreement; |
| "Initial Reporting Period" | means any Reporting Period in the first Franchisee Year to the first Reporting Period of the second Franchisee Year inclusive; |
| "Innovation Strategy" | means the Innovation Strategy in the agreed terms marked IS as updated from time to time in accordance with paragraph 1.1 of Schedule 13.2 (Innovation Obligations); |
| "Institute of Asset Management" | means The Institute of Asset Management, a company limited by guarantee, registered with company number 05056259 with registered office Woodlands Grange, Woodlands Lane, Bradley Stoke, Bristol, BS32 4JY or its successors; |
| "Integrated Control Centres Implementation Plan"¹⁰⁵ | means a detailed plan jointly produced between the Franchisee, Network Rail and any other Train Operators setting out how and |

¹⁰⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁰⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

when they will implement the Integrated Control Centres Initiative;

“Integrated Control Centres Initiative”¹⁰⁶

means measures and initiatives to improve performance outcomes between Network Rail and the Franchisee through collaboration, co-location and unified policies such that an integrated and cost-efficient approach to operations is adopted at specified Control Centres;

“Intellectual Property Rights”

means all intellectual and industrial property rights of any kind including (without limitation) patents, supplementary protection certificates, rights in Know-How, registered trade marks, registered designs, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;

“Interest Rate”

means a rate equivalent to two per cent (2%) per annum above the base lending rate published by Royal Bank of Scotland plc (or such other bank as the Secretary of State may, after consultation with the Franchisee, determine from time to time) during any period in which an amount payable under the Franchise Agreement remains unpaid;

“Inter-Operator Schemes”

means the list of schemes in paragraph 4 of the Appendix (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes);

“International Organisation for Standardisation”

means the international standard setting body known as **“ISO”** or any such successor body;

“Investment Asset”

means the Franchise Assets designated as such pursuant to paragraph 2.2 of Schedule 14.4 (Designation of Franchise Assets);

“Investment Asset Request Date”

means each anniversary of the Start Date provided that the final Investment Asset Request Date shall be the date thirteen (13) months prior to the end of

¹⁰⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

the Franchise Term and there shall not be an Investment Asset Request Date on the anniversary of the Start Date where this would occur within twelve (12) months of such final Investment Asset Request Date;

- "Invitation to Tender"** means the Invitation to Tender issued by the Secretary of State on 17 September 2015 as part of the procurement process pursuant to which the Franchise Agreement was entered into;
- "IOP"** means ITSO on Prestige;
- "IOP Agreement"** means an agreement between the Secretary of State and Transport for London for the acceptance of ITSO Certified Smartmedia dated 28 May 2009;
- "ISO14001:2004"** means the standard that is set by the International Organisation for Standardisation which specifies requirements for an environmental management system to enable an organization to develop and implement a policy and objectives which takes into account legal requirements and other requirements to which the organization subscribes, and information about significant environmental aspects or any equivalent standard which is generally recognised as having replaced it;
- "ISO50001:2011"** means the standard that is set by the International Organisation for Standardisation which specifies requirements for establishing, implementing, maintaining and improving an energy management system, whose purpose is to enable an organization to follow a systematic approach in achieving continual improvement of energy performance, including energy efficiency, energy use and consumption or any equivalent standard which is generally recognised as having replaced it;
- "ISO50001 Energy Review"** means the Energy Review as defined in paragraph 4.4.3 of ISO50001:2011, or any same or similar review from an equivalent standard which is generally recognised as having replaced it;
- "ISO55001:2014"** means the standard that is produced by the International Organisation for Standardisation which specifies requirements for an asset management system within the context of the organisation or any equivalent Standard which is generally recognised as having replaced it;
- "ISO 22301"** means the standard that is set by the International Organisation for Standardisation which specifies requirements for the development, implementation, operation, monitoring, review and maintenance of a

business continuity planning process, or any equivalent standard which is generally recognised as having replaced it.

"ITSO"

means (as the context may require) both:

- (a) the non profit distributing organisation run by its members for the benefit of members and users of smartcards, supported by the Department for Transport ("**DfT**"); and
- (b) the common specification such non profit distributing organisation has created to enable the use of interoperable smartcards in transport and other areas;

"ITSO Certified Smartmedia"

means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded which have been fully certified by ITSO;

"ITSO Equipment"

means all of the equipment and services required to be provided for the purposes of the South East Flexible Ticketing Scheme pursuant to the Previous SEFT Deed;

"Key Contacts List"

means the list which contains the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business in respect of:

- (a) all directors (statutory or otherwise);
- (b) all managers with responsibility for a department/function within the Franchisee's business;
- (c) all managers in the operations, commercial, personnel and public affairs departments or in each case their nearest equivalents;

"Key Contract"

means:

- (a) each agreement and contract listed in the Appendix (List of Key Contracts) to Schedule 14.3 (Key Contracts) as at the date of the Franchise Agreement; and
- (b) any other agreement, contract, licence or other arrangement to which the Franchisee is a party or under which the Franchisee is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3 (Key Contracts),

but excluding any such agreement, contract, licence or other arrangement which ceases, in accordance with the terms of the Franchise Agreement, to be designated as a Key Contract;

"Key Personnel"

means those persons identified by the Franchisee in accordance with paragraph 3.1 of Schedule 11.2 (Management Information) and **"Key Person"** shall be construed accordingly;

"Know-How"

means formulae, methods, plans, inventions, discoveries, improvements, processes, performance methodologies, techniques, specifications, technical information, tests, results, reports, component lists, manuals and instructions;

"Latent Defect Liability"

means a defect in the structure or fabric of a station building which exists before the Start Date but which is not apparent from any documentation relating to the state and condition of the Stations on the data site provided by the Secretary of State in relation to the franchise letting process, would not be apparent from a reasonable inspection of the relevant station and is not otherwise within the actual or constructive knowledge of the Franchisee and in respect of which there is no provision incorporated into the Franchisee's maintenance proposals contained in the tender it submitted in response to the Invitation to Tender;

"Law"

includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including those of the European Community, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act, the Transport Act, the Transport Safety Act 2003 and the Railways Act 2005);

"Lead Operator"

has the meaning given to it in the Ticketing and Settlement Agreement;

"Legislation"

means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Community, which has, in each case, the force of Law in the United Kingdom or any part of it, but excluding any order under Section 1 of the Transport and Works Act 1992;

"Level Crossing Upgrade Works"

mean any works identified by Network Rail (acting reasonably) which are required in order to upgrade such Level Crossings in order to meet the Minimum TSR2 Requirements;

“Level Crossings” or “LCL”

means the list of level crossings in the agreed form document marked **“LCL”**;

“Licences”

means such licences and/or statements of national regulatory provisions granted or to be granted under applicable law as the Franchisee may be required from time to time to hold under the Act or under the Railway (Licensing of Railway Undertakings) Regulations 2005 in order to provide or operate the Franchise Services;

“Light Maintenance Service”

means any service specified in paragraph 6 of Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development) which may be provided by the Franchisee at the Depots and Stations;

“Local Authority”

means:

- (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of Section 88 of the Transport Act 1985 or a local authority for the purposes of Section 93 of the Transport Act 1985;
- (b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;
- (c) in Scotland, the Strathclyde Passenger Transport Executive, or a district council or a unitary authority which is established under the Local Government (Scotland) Act 1973 or the Local Government, etc. (Scotland) Act 1994;
- (d) in London, the Mayor of London and Transport for London established under the Greater London Authority Act 1999;
- (e) a combined authority created pursuant to the Local Democracy, Economic Development and Construction Act 2009;
- (f) any local enterprise partnership;

- (g) any other body or council replacing any of the above from time to time; and
- (h) any other body or instrument of local or regional government specified by the Secretary of State from time to time;
- "Lock-up Period"** has the meaning given to it in paragraph 3.2 of Schedule 12 (Financial Covenants and Bonds);
- "London Peak Passenger Service"** means any Passenger Service that is specified in the Timetable to:
- (a) arrive at London Liverpool Street during the Morning Peak,
- (b) arrive at Stratford during the Morning Peak and which does not serve London Liverpool Street Station;
- (c) depart from London Liverpool Street during the Evening Peak; or
- (d) depart from Stratford during the Evening Peak and which does not serve London Liverpool Street;
- "London Station"** means any station served by the Railway Passenger Services in the Zones and any Zone to or from which a passenger may travel from or to such station;
- "Long Term Charge"** shall have the meaning given to it in the Station Access Conditions;
- "Maintenance Contract"** means any contract or arrangement to which the Franchisee is a party, which includes the carrying out for the Franchisee of any maintenance work (including light maintenance services) or service provision in respect of rolling stock vehicles used by the Franchisee in the provision of the Passenger Services or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles;
- "Major Flow Operator"** has the meaning given to it in the Ticketing and Settlement Agreement;
- "Managed Station"** means any station used in connection with the provision of the Franchise Services where Network Rail is the Facility Owner or becomes the Facility Owner during the Franchise Period;
- "Managed Station Area"** means the premises comprising part or parts of a Managed Station to be occupied by the Franchisee on or after the Start Date and to be used for or in

connection with the provision of the Franchise Services;

"Management Accounts" means, in relation to any Reporting Period, the Franchisee's management accounts which:

- (a) comply with paragraph 9.5(a) of Schedule 11.2 (Management Information); and
- (b) are required to be delivered to the Secretary of State by the Franchisee in accordance with paragraphs 9.2(a) and 9.2(b) of Schedule 11.2 (Management Information);

"Management Fee and Performance Payment" or "MFPP"¹⁰⁷ has the meaning given to that term in paragraph 1A (Definitions) of schedule 8.A (Franchise Payments) to the Franchise Agreement as effected by the EMA;

"Mandatory Modification" means a modification or addition to any rolling stock vehicle which is required to be made under any applicable Law or any directive of the Rail Safety and Standards Board or any government authority;

"Marks" means such trade marks as the Franchisee may apply to any Primary Franchise Asset or other asset used by it under a Key Contract, which are applied on the expiry of the Franchise Period and are not the subject of a Brand Licence;

"MCS Contract" means any contract relating to the provision of Mobile Communication Services;

"Minimum Asset Remaining Life" means the minimum average length of remaining life (calculated as a percentage in accordance with NR/ARM/M17PR or such other standards as may be notified from time to time) of a Station Asset Group (in the aggregate across such Station Asset Group) set out in the Minimum Asset Remaining Life Table;

"Minimum Asset Remaining Life Table" means the table in Appendix 3 (Minimum Asset Remaining Life Table) of Schedule 1.7 (Stations);

"Minimum TSR2 Requirements" means:

- (a) paragraph 5.3.1.1.ii. (where references to the TSR shall mean the TSR in Attachment A as appended to the ITT);

¹⁰⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (b) paragraph 5.3.1.5;
- (c) paragraph 5.3.1.6; and
- (d) paragraph 5.3.1.9,

of Part A of Delivery Sub-Plan 1.1 (Train Services) of the Invitation to Tender;

“Minimum Wi-Fi Service” has the meaning given in paragraph 12.4 of Schedule 13.1 (Rail Industry Initiatives);

“Minister of the Crown” has the meaning given to it in Section 8(1) of the Minister of the Crown Act 1975;

“Minor Works” has the meaning given to it in paragraph 2.7(a) of Schedule 4 (Accessibility and Inclusivity);

“Minor Works' Budget” means two hundred and fifty thousand pounds (£250,000) for each Franchisee Year allocated by the Franchisee for the purpose of facilitating Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, save that:

- (a) for any Franchisee Year which is shorter than twelve (12) months, the amount shall be reduced pro rata; and
- (b) for each Franchisee Year after the first Franchisee Year, the amount shall be subject to adjustment as follows:

Minor Works' Budget x RPI

where:

RPI has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);

“Minor Works' Programme” means the Franchisee's programme of Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, developed prior to the start of each Franchisee Year pursuant to paragraph 2.7(b) of Schedule 4 (Accessibility and Inclusivity);

“Minutes Delay” means the minutes of delay to the Passenger Services that are attributed to the Franchisee or Network Rail (as the case may be) pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;

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| “Mitigation Works” | shall have the meaning given to such term in the SA Agreement; |
| “Mobile Communication Services” | means the wireless internet service which shall as a minimum provide Minimum Wi-Fi Service; |
| “Model Changes” | has the meaning given in paragraph 4.3 of Schedule 9.1 (Financial and Other Consequences of Change); |
| “Modernising Retail”¹⁰⁸ | means the work in relation to modernising the retail of train tickets that is being developed pursuant to and in accordance with the ‘Memorandum of Understanding for Modernising Retail’ between the Secretary of State and the RDG dated 29 July 2020; |
| “Modified Revenue” | means: <ul style="list-style-type: none"> (a) the sum of: <ul style="list-style-type: none"> (i) the Franchisee's total revenue for the period being reviewed as stated in its profit and loss account: <ul style="list-style-type: none"> (A) including any amounts receivable from the Secretary of State, Network Rail and any interest; but (B) excluding the proportion of income recognised in the profit and loss account in relation to grants received in respect of capital expenditure; and (ii) the opening cash balance for the period being reviewed excluding: <ul style="list-style-type: none"> (A) any cash held for the exclusive purpose of the provision of the Performance Bond; and (B) the amount equivalent to: <ul style="list-style-type: none"> (1) any cash that is held pursuant to any restrictive terms under any agreement and that, consequently, cannot be used for |

¹⁰⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

general operating
purposes;

- (2) any cash capable of being drawn down but not actually received,

including, in both cases, under any loan or funding agreement or arrangements (including the Funding Deed) entered into with an Affiliate of the Franchisee; and

- (C) the amount of the opening season ticket liabilities which relate to Passenger Services yet to be delivered; and

(b) either:

- (i) plus any reduction in total debtors over that period; or

- (ii) less any increase in total debtors over that period,

where total debtors exclude any bad debts provision or write off and any capital-related debtors;

"Monthly Season Ticket" means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls one (1) month after such day;

"Morning Peak" means, in relation to any Passenger Service, the period between 0700 and 0959 (inclusive) during a Weekday or such other continuous three hour period between 0600 and 1159 as the Secretary of State may specify from time to time;

"Multiplicative Modelling Side Letter" means the letter entered into by the Parties on or about the date hereof setting out changes required to the Financial Model;

"N-1 Security of Supply" means that the power supply is capable of continuing to enable the operation of the Minimum TSR2 Requirements with any one key piece of electrification infrastructure out of service, in accordance with the requirements of Appendix 2A of Network Rail's Electrical Power Asset Policy, dated December 2012;

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| “National Community Rail Steering Group” | means the National Community Rail Steering Group administered by the Department of Transport or such successor organisation; |
| “National Joint ROSCO Project” | means the joint project between Porterbrook Leasing Company Limited, Angel Trains Limited and Eversholt Rail (UK) Limited, funded by Network Rail, for implementing ERTMS first in class designs to existing rolling stock which will operate over the routes where ERTMS will be rolled out; |
| “National Rail Enquiry Scheme” | means the telephone information scheme run by ATOC, providing information to customers regarding rail journeys throughout the country; |
| “National Rail Passenger Survey” | means a passenger satisfaction survey in respect of the Franchise Services to be carried out by the Passengers' Council as described in paragraph 2 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme) and shall include any Alternative NRPS as referred to in paragraph 2.6 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme); |
| “National Rail Timetable” | means the passenger timetable published by Network Rail (currently twice per annum) specifying the timings and stopping patterns of all passenger railway services in Great Britain; |
| “Negative Growth Quarters” | has the meaning given to it in paragraph 7.1 of Schedule 6.1 (Franchise Specific Provisions); |
| “Network Change” | has the meaning given to it in the Network Code; |
| “Network Change Compensation Claims” | has the meaning given to it in paragraph 11.2(a)(i) of Schedule 13.1 (Rail Industry Initiatives); |
| “Network Code” | means the document known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement applying to Network Rail or NR; |
| “Network Rail” | means in respect of: <ul style="list-style-type: none"> (a) the network or any relevant facility: <ul style="list-style-type: none"> (i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is 1 Eversholt Street, London NW1 2DN; and |

- (ii) any successor in title to the network or any relevant railway facility; or
- (b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);
- “Network Rail’s Traction Electricity Rules”** means the document entitled “Traction Electricity Rules” as published by the ORR;
- “Network Rail Cancellation”** means a Passenger Service:
- (a) which is included in the Enforcement Plan of the Day and which is cancelled; or
- (b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day),
- in either case in circumstances where responsibility for the same is attributed to Network Rail pursuant to the Track Access Agreement;
- “Network Rail Data”** means any information, data and materials that may be provided to the Secretary of State by NR that relates to the Franchisee and which the Secretary of State decides (in his absolute discretion) to add to the RPC Database;
- “Network Rail ERTMS Implementation Plan” or “ERTMSP”** means Network Rail’s plan for the implementation of the ERTMS Programme as more particularly described in the document in the agreed terms marked **ERTMSP**;
- “Network Rail Fixture Asset”¹⁰⁹** means a tangible asset annotated as such in **Column 4 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6, or where applicable the partially completed elements of such assets, in each case which is:**
- (a) **funded by the Franchisee and affixed to a Station or Depot (as the case may be) such that it is regarded as a fixture to and part of such Station or Depot (as the case may be); and**
- (b) **designated as a Primary Franchise Asset in accordance with paragraph 2.1(h) of**

¹⁰⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

Schedule 14.4 (Designation of Franchise Assets) such that it can be transferred as the unencumbered property of the Franchisee to a Successor Operator at the applicable value specified in Column 2 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) (as such value may be amended during the Franchise Term in accordance with the provisions of paragraphs 1.4, 1.5 or 2.2 of Schedule 14.6 (Residual Value Mechanism));

“Network Rail Partial Cancellation”

means a Passenger Service which is included in the Enforcement Plan of the Day and which:

- (a) misses a stop;
- (b) completes fifty per cent (50%) or more, but less than one hundred per cent (100%) of its scheduled mileage as prescribed in the Enforcement Plan of the Day,

in circumstances where responsibility for the same is attributed to Network Rail pursuant to the Track Access Agreement;

“Network Rail Strategic Business Plan”

means the strategic business plan for England & Wales published by Network Rail from time to time;

“New Insurance Arrangements”

has the meaning given to it in paragraph 2.4(b) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

“New Results”

means, in relation to any Change, the following as restated in accordance with Schedule 9.1 (Financial and Other Consequences of Change) following a Run of the Financial Model in relation to that Change:

- (a) the restated values of "FXD", "VCRPI", "VCAWE", "PRPI", "RRPI", "PRRPI_{GDP}" and PRRPI_{CLE}" to be specified for each Franchisee Year in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to Schedule 8.1 (Franchise Payments); and
- (b) the restated values of FPST, SPST and TPST to be specified for each Franchisee Year in paragraphs 1, 2 and 3 (respectively) of Appendix 1 (Profit Share Thresholds) to Schedule 8.2 (Profit Share Mechanism);

“New Station”

means:

- (a) a station not served by railway passenger services as at February 2003, but which has since that time been, or is subsequently, served by railway passenger services which have been, or are subsequently to be, included in the Timetable or in another relevant Train Operator's timetable; and/or
- (b) if the Secretary of State requires, a station, other than a Station, at which, with the consent of the Secretary of State (whether by amendment to the Franchise Agreement or otherwise) railway passenger services operated by the Franchisee call;

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| "NJRP ROSCOs" | means the rolling stock leasing companies, participating in the National Joint ROSCO Project, being Eversholt Rail (UK) Limited, Porterbrook Leasing Company Limited and Angel Trains Limited; |
| "Non-Fares Basket Fare" | means a Fare that is designated as such by the Secretary of State pursuant to paragraph 2.1 of Schedule 5.3 (Allocation of Fares to Fares Baskets) and which has not been de-designated as such pursuant to paragraph 1.1 of Schedule 5.7 (Changes to Fares and Fares Regulation); |
| "Non-Recoverable Costs"¹¹⁰ | means any costs and expenses incurred by the Franchisee during a Reporting Period (as stated in the Franchisee's profit and loss account for that Reporting Period) which are inconsistent with the definitions of Costs, EMA Costs, Capital Expenditure and EMA Capital Expenditure; |
| "Notified Fault" | shall have the meaning given to such term in paragraph 9.1 of Schedule 1.4 (Passenger Facing Obligations); |
| "NR" | means Network Rail Limited (company number 04402220), Network Rail Infrastructure Limited (company number 2904587) whose registered offices are both at 1, Eversholt Street, London NW1 2DN or any Affiliate thereof from time to time; |
| "NRPS Improvement Plan Level"¹¹¹ | means, in relation to a NRPS Measure applicable to a NRPS Service Group, the target (expressed as a specific value) which the Franchisee's performance is expected to equal |

¹¹⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹¹¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

or exceed during each PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee) (and "NRPS Improvement Plan Levels" shall be construed accordingly);

"NRPS Target"¹¹²

has the meaning given to it in paragraph 1 (Definitions) of Schedule 8.1B (Performance Based Fee);

"Occasion of Tax Non-Compliance"

has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);

"Off-Peak"

means, in relation to any Passenger Service, the period of time outside of the Peak;

"Off-Peak Passenger Service"

means any Passenger Service that is not a London Peak Passenger Service or a Regional Peak Passenger Service;

"Old Results"

means in relation to any Change, the following as produced in accordance with Schedule 9.1 (Financial and Other Consequences of Change) by or following the Run of the Financial Model in respect of the immediately preceding Change or, in relation to the first Change only, the following as at the date hereof:

- (a) the values of "FXD", "VCRPI", "VCAWE", "PRPI", "RRPI", "PRRPI_{GDP}" and PRRPI_{CLE}" specified for each Franchisee Year in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to Schedule 8.1 (Franchise Payments); and
- (b) the values of FPST, SPST and TPST specified for each Franchisee Year in paragraphs 1, 2 and 3 of Appendix 1 (Profit Share Threshold) to Schedule 8.2 (Project Share Mechanism);

"OP Target"¹¹³

means the target, expressed as a range within which the Franchisee's performance is expected to fall, which applies to an Operational Performance Component in relation to a Reporting Period during the relevant PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee);

¹¹² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹¹³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| "Operating Assets" | has the meaning given to it in paragraph 1.1 of Schedule 14.2 (Maintenance of Operating Assets); |
| "Operational Model" or "OM" | means the following models in the agreed terms marked OM : <ul style="list-style-type: none"> (a) revenue model; (b) the performance model; (c) all cost models; and (d) any other relevant models that have generated input to the Financial Model; |
| "Operational Performance Components"¹¹⁴ | means each of the matters in relation to which the Operational Performance Fee is assessed using the Quantified Target Methodology, being: <ul style="list-style-type: none"> (a) Cancellations; (b) TOC Minutes Delay; (c) Short Formations; (d) T-3; (e) T-15; and (f) All Cancellations; |
| "Operational Performance Fee" or "OP"¹¹⁵ | means the element of the Performance Based Fee, the purpose of which is to measure the Franchisee's effectiveness in delivering punctual and reliable journeys and in providing an appropriate amount of passenger-carrying capacity; |
| "Original Rolling Stock" | has the meaning given to it in paragraph 2.1(a) of Schedule 1.6 (The Rolling Stock); |
| "ORR" | means the Office of Rail and Road established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act; |
| "ORR Mandate AO/24" | means the mandate issued by the ORR entitled "AO/24"; |

¹¹⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹¹⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| "Outturn Cost" or "OTC"¹¹⁶ | means, in relation to the relevant PBF Assessment Period, the aggregate of all Costs (excluding Disallowable Costs, Unreimbursed Disallowable Costs and Capital Expenditure) expressed as a positive number, as set out in the Audited Accounts Reconciliation provided pursuant to paragraph 9.4 (Annual Financial Information) of Schedule 11.2 (Management Information); |
| "Outturn Profit" or "OTP"¹¹⁷ | means, in relation to the relevant PBF Assessment Period, the aggregate of all Revenue (expressed as a positive number) and all Costs (excluding Disallowable Costs and Capital Expenditure and expressed as a negative number), as set out in the Audited Accounts Reconciliation provided pursuant to paragraph 9.4 (Annual Financial Information) of Schedule 11.2 (Management Information); |
| "Overall Performance Score"¹¹⁸ | means, in respect of an NRPS Measure, the average of the scores achieved by the Franchisee (in each case as recorded in the relevant National Rail Passenger Survey(s)) in respect of that NRPS Measure across each of the NRPS Service Groups; |
| "Parent"¹¹⁹ | means each NS Groep N.V (Company No. 30124358), with its registered office at Laan van Puntenburg 100, 3511 ER, Utrecht, the Netherlands, Mitsui & Co.,Ltd, with its registered office at 1-3, Marunouchi 1 -chome, Chiyoda-ku, Tokyo 100-8631, Japan and Mitsui & Co. Europe PLC (Company No. 02204039) with its registered office at 8th & 9th Floors, 1 St Martin's Le Grand, London EC1A 4AS; and |
| "Partial Cancellation" | means a Passenger Service which is included in the Enforcement Plan of the Day and which: <ul style="list-style-type: none"> (a) misses a stop; or (b) completes fifty per cent (50%) or more, but less than one hundred per cent (100%) of its scheduled journey |

¹¹⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹¹⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹¹⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹¹⁹ 17 February 2017 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

as prescribed in the Enforcement Plan of the Day,

in each case, for reasons which are attributed to the Franchisee pursuant to its Track Access Agreement;

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| "Partially Complete RV Assets"¹²⁰ | means each Potential Partially Complete RV Asset in respect of which a Certificate of Partial Completion has been issued in accordance with paragraph 1.3A of Schedule 14.6 and which is not a Completed RV Asset and "Partially Complete RV Asset" means any one of them; |
| "Participating Employer" | has the meaning given to it in the Pension Trust; |
| "Passenger Assistance" | means the passenger assistance service provided by train operating companies and referred to by the ORR as "Passenger Assist" , as such service may be further described by the ORR from time to time at: http://orr.gov.uk/info-for-passengers/passengers-with-disabilities (or such other applicable web address that is adopted by the ORR for these purposes from time to time); |
| "Passenger Carrying Capacity" | means, in relation to a Passenger Service, the capacity of the vehicles (as stated in Schedule 1.6 (The Rolling Stock) or determined by the Secretary of State in accordance with paragraph 3.4 of Schedule 1.6 (The Rolling Stock)) from which the Passenger Service is formed; |
| "Passenger Change Date" | means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code; |
| "Passenger Services" | means the Franchisee's railway passenger services as specified in any Timetable and/or Plan of the Day including those railway passenger services which the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement; |
| "Passenger's Charter" or "PC" | means the Franchisee's service commitments to its passengers in the agreed terms marked PC , as amended or replaced from time to time with the prior written consent of the Secretary of State in accordance with paragraph 4 of Schedule 1.4 (Passenger Facing Obligations); |
| "Passengers' Council" | means the passengers' council established under Section 19 of the Railways Act 2005 (as amended by |

¹²⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

The Passengers' Council (Non-Railway Functions Order 2010). The Passengers' Council shall be generally known as "**Transport Focus**" from 30 March 2015;

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| "Passing" | shall have the meaning given to the term "Pass" in the SA Agreement construed accordingly; |
| "Pay As You Go Agreement" | means an agreement dated 16 October 2009 between Transport Trading Limited and train operators operating in London enabling joint ticketing and the acceptance of each other's tickets using smartmedia technology under the name " Pay as You Go "; |
| "PAYG Peak Fare" | means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time; |
| "PAYG Off-Peak Fare" | means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time on Saturdays and Sundays and at such times as the Franchisee may designate on Mondays to Fridays (where such Fare need not be valid between 6:30am and 9:30am or between 4.00pm and 7.00pm but must be valid at all other times) and which may take into account the different directions of travel; |
| "PAYG Zone" | means the Stations within the "PAYG Area" (as such is defined in the PAYG Agreement) or otherwise included in part 1 (PAYG Acceptance) of schedule 3 (Operation of PAYG) of the Pay As You Go Agreement (as such is amended from time to time); |
| "Payment Date" | means the date for the payment of Franchise Payments in accordance with paragraph 3.3 of Schedule 8.1A (Franchise Payments); |
| "PBF Assessment Period"¹²¹ | <p>means each of the following periods:</p> <p>(a) the Initial PBF Assessment Period;</p> <p>(b) the Final PBF Assessment Period; and</p> |

¹²¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

(c) each period in the intervening period comprising:

(i) the first to the sixth Reporting Period (inclusive) to fall in the relevant Reporting Year; and/or

(ii) the seventh to the thirteenth Reporting Period (inclusive) to fall in the relevant Reporting Year,

as the case may be;

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| "Peak" | means the Morning Peak and the Evening Peak; |
| "Pension Trust" | means the pension trust governing the Railways Pension Scheme; |
| "Pensions Committee" | has the meaning given to it in the Railways Pension Scheme; |
| "Percentage Allocation" | has the meaning given to it in the Ticketing and Settlement Agreement; |
| "Performance Based Fee"¹²² | means the performance-based element of the Franchise Payments as calculated pursuant to Schedule 8.1B (Performance Based Fee); |
| "Performance Bond" | means the Initial Performance Bond and any Replacement Performance Bond, which in each case, shall comply with the requirements of paragraph 4.2 of Schedule 12 (Financial Covenants and Bonds); |
| "Performance Strategy Plan" | has the meaning given to it in the Network Code; |
| "Performance Sum Adjustment Date" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Permanent Fare" | has the meaning given to it in the Ticketing and Settlement Agreement; |
| "Permitted Aggregate Increase" or "PAI" | has the meaning given to it in paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values); |
| "Permitted Individual Increase" or "PII" | has the meaning given to it in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares); |

¹²² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- “Personal Data”** has the same meaning as in the Data Protection Act and includes Sensitive Personal Data as defined therein;
- “Personal Data Legislation”** has the meaning given to it in paragraph 6.1 of Schedule 1.5 (Information about Passengers);
- “Placed in Escrow”** means:
- (a) in respect of the Financial Model, delivery of the Financial Model:
 - (i) dated the date of the Franchise Agreement; and
 - (ii) adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (iii) where Schedule 9.1 (Financial and Other Consequences of Change) and Schedule 9.2 (Identity of the Financial Model) apply, the inputs to the Financial Model derived therefrom following an audit of a Run of the Financial Model; and
 - (b) in respect of the Operational Model, delivery of:
 - (i) the Operational Model dated the date of the Franchise Agreement;
 - (ii) the Operational Model adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (iii) where Schedule 9.1 (Financial and Other Consequences of Change) and Schedule 9.2 (Identity of the Financial Model) apply, audited following a Run of the Financial Model and updated with any Revised Inputs; and
 - (c) in respect of the Record of Assumptions, delivery thereof,
- each in accordance with Schedule 9.2 (Identity of the Financial Model);
- “Plan of the Day”** means, in relation to each day during the Franchise Term, the Passenger Services scheduled to be

operated on that day through specification in the Timetable or as notified to the Franchisee by Network Rail from time to time prior to 2200 on the previous day;

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| "Planned Delivery Date" | shall have the meaning given to such term in paragraph 1.4 of Schedule 14.6 (Residual Value Mechanism); |
| "Planned Train Mileage" | means the aggregate train mileage planned during each Reporting Period by each train used in the provision of the Passenger Services (excluding, any train mileage planned as a result of positioning or other movements of rolling stock vehicles outside the Timetable); |
| "Platform Validator" | means the platform validators to be installed by the Franchisee pursuant to the terms of the SEFT Deed; |
| "Platform Validator Adjustment" or "PVA" | has the meaning given to it in paragraph 3.1 of Schedule 5.9 (Smart Ticketing); |
| "Platform Validator Savings Adjustment" or "PVSA" | has the meaning given to it in paragraph 3.2 of Schedule 5.9 (Smart Ticketing); |
| "Potential Partially Complete RV Asset"¹²³ | means an RV Asset (i) listed in Column 1 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 in respect of which a Certificate of Completion had not been issued as at 1 March 2020 but in respect of which delivery has commenced such that the asset was partially complete as at that date; and (ii) details of which have been notified to the Secretary of State in accordance with paragraph 1.3A(a) of Schedule 14.6. |
| "Power of Attorney" or "POA" | means the power of attorney granted by the Franchisee in favour of the Secretary of State in the agreed terms marked POA ; |
| "Power Supply Plan" or "PSP" | means the document in the agreed terms marked PSP ; |
| "Power Supply Upgrade Works" | mean any works identified by Network Rail (acting reasonably) which are required in order to upgrade the existing power supply: |

¹²³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (a) to achieve N-1 Security of Supply on the Routes (excluding at Stowmarket and Milton as shown on the Power Supply Plan); and
- (b) to achieve a security of supply comparable to that in place at the date of this Agreement at Stowmarket and Milton as shown on the Power Supply Plan,

in order to meet the Minimum TSR2 Requirements;

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| "PPM" or "Public Performance Measure" | means the public performance measure as produced and/or published by Network Rail; |
| "PPM Figures" | means the moving annual average percentage published by Network Rail in respect of PPM, rounded to one (1) decimal place; |
| "Preceding thirteen (13) Reporting Periods" | has the meaning given to it in paragraph 2.1 of Schedule 12 (Financial Covenants and Bonds); |
| "Preceding Year Ticket Price" | has the meaning given to it in paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares); |
| "Preliminary Database" | means such database as may reasonably be put in place by the Secretary of State prior to making any RPC Database available to the Franchisee, as part of the development of the RPC Database; |
| "Previous Franchise Agreement" | means any franchise agreement under which services equivalent to the Franchise Services (or a material proportion thereof) were provided by a Train Operator on or about the day prior to the Start Date; |
| "Previous Franchisee's Station Asset Management Plan" or "PSAMP" | means the document in the agreed terms marked PSAMP ; |
| "Previous SEFT Deed" | means the deed dated 15 April 2014 between (1) Secretary of State and (2) Abellio Greater Anglia Limited (as amended); |
| "Price" | means, in respect of any Fare, the price of such Fare before the deduction of any applicable discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5 (Fares) to the Ticketing and Settlement Agreement; |
| "Primary Franchise Assets" | means: <ul style="list-style-type: none"> (a) the property, rights and liabilities of the Franchisee listed in the Appendix (List of |

Primary Franchise Assets) to Schedule 14.4 (Designation of Franchise Assets); and

- (b) any other property, rights and liabilities of the Franchisee which is or are designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets),

but excluding such property, rights or liabilities as may, in accordance with the terms of the Franchise Agreement, cease to be so designated;

"Principles of Inclusive Design"

means planning, designing, building and managing places, while having due regard and a proportionate response to stakeholder views obtained through consultation or otherwise, so that they work better for everybody and reflect the diversity of the people who use them as embodied in the document published by the Commission for Architecture and the Built Environment in 2006 with the title "**The Principles of Inclusive Design**" (as revised from time to time");

"Prior Train Operator"

has the meaning given to it in paragraph 3.1 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

"PRM TSI"

means the EU's Regulation (EU) No 1300/2014 of 18 November 2014 (as amended from time to time) on the technical specifications for interoperability relating to accessibility of the European Union's rail system for persons with disabilities and persons with reduced mobility;

"Profit Share Components"

has the meaning ascribed to it in paragraph 1.1(a) of Schedule 9.1 (Financial and Other Consequences of Change);

"Projected Revenue"

means the revenue in any Fare Year which is projected to be attributable to any Fare, determined in accordance with paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values);

"Property Lease"

means any Depot Lease, any lease in respect of a Managed Station Area, any lease in respect of Shared Facilities or any Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which the Franchisee may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Franchise Services;

"Protected Fare"

means a Protected Return Fare or a Protected Weekly Season Ticket;

- “Protected Fares Basket”** means the grouping of Protected Fares:
- (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets);
 - (b) for the purposes of regulating their aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values);
 - (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulations); and
 - (d) set out in the Protected Fares Document;
- “Protected Fares Document” or “PFD”** means the document in the agreed terms marked **PFD**, as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulations);
- “Protected Proposal”** has the meaning given to it in paragraph 2 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);
- “Protected Return Fare”** means in respect of a Fare for a Flow:
- (a) for which there was a Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price or Child Price under the Ticketing and Settlement Agreement, subject to the following additional rights and restrictions:
 - (i) it shall be valid for no less than one (1) month;
 - (ii) it shall be valid all day on a Saturday or Sunday and from no later than 1030 on any other day;
 - (iii) it need not be valid for any journey:
 - (A) beginning between 1500 and 1900 on any day other than a Saturday or Sunday;
 - (B) where such journey begins from a London Station or any station between any London Station and Reading station, Watford station, Luton station,

or Stevenage station
(inclusively); and

(C) which is in a direction away
from London; or

(b) for which there was no Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price or Child Price under the Ticketing and Settlement Agreement,

except in each case to the extent that a Return Fare for any such Flow is a Commuter Fare;

“Protected Weekly Season Ticket”

means a Weekly Season Ticket for any Flow for which there was a weekly season ticket in the fares manuals and systems of the RSP in February 2003 and in respect of which the Franchisee is entitled or obliged, from time to time, to set the Price or Child Price of under the Ticketing and Settlement Agreement except to the extent that a Weekly Season Ticket for any such Flow is a Commuter Fare;

“PRPI”

shall have the meaning given to such term in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);

“PRRPI_{CLE}”

shall have the meaning given to such term in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);

“PRRPI_{GDP}”

shall have the meaning given to such term in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);

“Public Sector Operator”

means any person (other than a franchisee or franchise operator in relation to the services provided or operated under its franchise agreement) who provides railway passenger services or operates any station or light maintenance depot pursuant to or under Section 30 of the Act or Section 6 of the Railways Act 2005;

“Qualifying Change”

means a Change which:

(a) following a Run of the Financial Model (where Schedule 9.1 (Financial and Other Consequences of Change) applies) in accordance with Schedule 9 (Changes and Variations) results in adjustments in Franchise Payments over the remaining life of the Franchise Agreement that have a net

present value as at the date of the Change in excess of the Threshold Amount for the Franchisee Year during which the relevant Change arises. For the purposes of ascertaining a net present value of the amount of any adjustment in any Franchise Payment, the amount of the adjustment shall be discounted at the prevailing discount rate per annum (in real terms) stated in HM Treasury's "**Green Book Appraisal Guidelines**", counting back from the date of receipt of that adjusted Franchise Payment to the date of the Change. As at the date of the Franchise Agreement that rate is three point five per cent (3.5%); or

- (b) the Franchise Agreement expressly provides shall be a Qualifying Change;

"Quantified Target Methodology"¹²⁴

means, in relation to a QTM PBF Component, the methodology set out in Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee);

"Quarterly Forecast"¹²⁵

has the meaning given to it in paragraph 9.3(a) of Schedule 11.2 (Management Information);

"Quarterly Season Ticket"

means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls three (3) months after such day;

"Rail Industry Sustainable Development Principles"

means the principles which were published by the Rail Safety and Standards Board in February 2009 as amended from time to time;

"Rail Safety and Standards Board" or "RSSB"

means Rail Safety and Standards Board Limited, a company registered in England with registered number 04655675 whose registered office is at The Helicon, 4th Floor, One South Place, London, EC2M 2RB;

"Rail Safety and Standards Board Sustainable Development Self-Assessment Framework"

means the online self-assessment framework against the Rail Industry Sustainable Development Principles published by the Rail Safety and Standards Board;

"Railway Group"

means the committee responsible for cross industry co-ordination in respect of rail safety legislation and

¹²⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹²⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| | industry safety standards chaired by the Rail Safety and Standards Board; |
| "Railway Operational Code" | has the meaning given to it in Condition H of the Network Code; |
| "Railway Passenger Services" | means, for the purposes of Schedule 5 (Fares) only, services for the carriage of passengers by railway which are provided by a person who is bound by the Ticketing and Settlement Agreement, or any part of it, and including the Franchisee and any other Train Operator from time to time; |
| "Railways Pension Scheme" | means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433); |
| "Recognised Accreditation Scheme"¹²⁶ | <p>means any of the following diversity accreditation schemes:</p> <ul style="list-style-type: none"> (a) Investors in Diversity; (b) Clear Assured; (c) National Equality Standards; (d) Diversity Development Standard; (e) Inclusive Employers; and/or (f) such other scheme as the Secretary of State may designate as a Recognised Accreditation Scheme from time to time; |
| "Reconciliation Amount" | has the meaning given to it in paragraph 10.9 Schedule 9.1 (Financial and Other Consequences of Change); |
| "Record of Assumptions" or "ROA" | <p>means a document in the agreed terms marked ROA prepared by the Franchisee (and/or, where Schedule 9.1 (Financial and Other Consequences of Change) applies) as may be revised in accordance with Schedule 9 (Changes and Variations) and Placed in Escrow providing:</p> <ul style="list-style-type: none"> (a) detailed assumptions, explanations of assumptions and parameters underlying the Financial Model; |

¹²⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (b) details of how Franchise Payments have been calculated (including by reference to a defined annual profit margin);
- (c) a description of the functionality, operation and structure of the Financial Model; and
- (d) a description of each input cell, its requirements and its inter-relationship with the Financial Model;

"Redactions" has the meaning given to it in paragraph 10.1 of Schedule 17 (Confidentiality and Freedom of Information);

"Reference Fare" has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);

"Reference Flow" has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);

"Reference Revenue" means the aggregate Gross Revenue recorded by RSP as attributable to sales of all Commuter Fares or Protected Fares for the period of twelve (12) months which ended 31 March 2015 or such other reference period as the Secretary of State may require pursuant to paragraph 3.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);

"Regional Peak Passenger Service" means any Passenger Service that is not a London Peak Passenger Service and is specified in the Timetable to:

- (a) arrive (whether terminating or otherwise) in the Morning Peak at:
 - (i) Cambridge having called at or passed through Thetford, Bury St Edmunds or Stansted Airport; or
 - (ii) Ipswich having called at or passed through Bury St Edmunds, Harwich International, Saxmundham or Felixstowe; or
 - (iii) Norwich having called at or passed through Thetford, Cromer, Great Yarmouth or Lowestoft; or
- (b) depart (whether originating or otherwise) in the Evening Peak from:

- (i) Cambridge calling at or passing through Thetford, Bury St Edmunds or Stansted Airport; or
 - (ii) Ipswich calling at or passing through Bury St Edmunds, Harwich International, Saxmundham or Felixstowe; or
 - (iii) Norwich calling at or passing through Thetford, Cromer, Great Yarmouth or Lowestoft; or
- (c) depart from Sudbury Station and make a Connection at Marks Tey Station with a Passenger Service that arrives at London Liverpool Street Station during the Morning Peak; or
- (d) terminate at Sudbury Station having made a Connection at Marks Tey Station with a Passenger Service that departed from London Liverpool Street Station during the Evening Peak;

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| "Regulated Child Price" | means the Child Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares); |
| "Regulated Price" | means the Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares); |
| "Regulated Value" | means the Value of any Fares Basket that is permitted in any Fare Year, determined in accordance with paragraph 4.1 of Schedule 5.4 (Regulation of Fares Basket Values); |
| "Regulations" | has the meaning given to it in paragraph 1.2 of Schedule 2.5 (Transport, Travel and Other Schemes); |
| "Reinstatement Works" | shall have the meaning given to such term in paragraph 4.1 of Schedule 1.7 (Stations); |
| "Relevant Agreement" | means any Property Lease or Access Agreement in relation to any stations or network which may be used from time to time by the Franchisee in connection with the Franchise Services, as replaced or amended from time to time. If and to the extent that: |

- (a) following the effective date of any Charge Variation, the Franchisee enters into any Replacement Agreement;
- (b) the effect of that Charge Variation is reflected in the terms of the Replacement Agreement; and
- (c) the Secretary of State has consented to such Replacement Agreement being entered into and constituting a Replacement Agreement for the purposes of this definition,

then the Replacement Agreement shall be deemed to be a Relevant Agreement;

“Relevant Credit Rating” means a credit rating of:

- (a) A - (or better) by Standard and Poor's Corporation or Fitch Ratings Limited in respect of long term senior debt; or
- (b) A3 (or better) by Moody's Investors Service Inc. in respect of long term senior debt; or
- (c) if any credit rating specified in paragraph (a) or (b) ceases to be published or made available or there is a material change in the basis of any such credit rating, such other rating or standard as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;

“Relevant Delay” has the meaning given to it in paragraph 3.1 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

“Relevant Profit” has the meaning given to it in paragraph 1.2 of Schedule 8.2 (Profit Share Mechanism);

“Relevant Profit Report” has the meaning given to it in paragraph 2.1 of Schedule 8.2 (Profit Share Mechanism);

“Relevant Reporting Period” has, for the purposes of paragraph 5.3 of Schedule 12 (Financial Covenants and Bonds) only, the meaning given to it in that paragraph;

“Relevant Rolling Stock” has the meaning given to it in paragraph 3.1 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

“Relevant Tax Authority” has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);

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| “Relevant Term” | has the meaning given to it in paragraph 3.1(a) of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement) |
| “Remedial Agreement” | has the meaning given to it in paragraph 5.1 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement); |
| “Remedial Plan” | has the meaning given to it in paragraph 3.1(b) of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement); |
| “Remedial Plan Notice” | has the meaning given to it in paragraph 2 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement); |
| “Repair Works” | shall have the meaning given to such term in the SA Agreement; |
| “Replacement Agreement” | means an agreement entered into as a replacement for any Relevant Agreement; |
| “Replacement Copy” | has the meaning given to it in paragraph 2.2(b) of Schedule 9.2 (Identity of the Financial Model); |
| “Replacement Crossrail Fleet” | means the fleet of new Class 345 trains introduced to replace all or part of the Crossrail Fleet (as the case may be); |
| “Replacement Performance Bond” | means any performance bond issued or to be issued following the issue of the Initial Performance Bond by a Bond Provider to the Secretary of State which complies with the requirements of paragraph 4.2 of Schedule 12 (Financial Covenants and Bonds); |
| “Reporting Period” | means: <ul style="list-style-type: none"> (a) for the purposes of the Season Ticket Bond, any consecutive seven (7) day period or any other period, each within a Reporting Period (as defined in paragraph (b)) agreed in accordance with paragraph 5.10 of Schedule 12 (Financial Covenants and Bonds); or (b) for all other purposes, a period of twenty eight (28) days, provided that: <ul style="list-style-type: none"> (i) the first such period during the Franchise Period shall exclude any days up to but not including the Start Date; (ii) the first and last such period in any Reporting Year may be varied by up to |

seven (7) days by notice from the Secretary of State to the Franchisee;

(iii) each such period shall start on the day following the last day of the preceding such period; and

(iv) ¹²⁷**the last such period during the Franchise Period shall end at the end of the Franchise Period, except for the purpose of giving effect to any provision which survives the end of the Franchise Period including those provisions in Schedule 8.1A (Franchise Payments) which anticipate Franchise Payments being made after the end of the Franchise Period;**

“Reporting Year”

means a period normally commencing on 1 April in each calendar year, comprising thirteen (13) consecutive Reporting Periods;

“Request for Data”¹²⁸

has the meaning given to it in paragraph 12.4(a) of Schedule 11.2 (Management Information);

“Request for Information”

means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations;

“Required Performance Improvement”¹²⁹

means an improvement in the Franchisee’s performance against:

a) the OP Target for Cancellations so that such performance is within or better than the OP Target for Cancellations; and/or

b) the OP Target for TOC Minutes Delay so that such performance is within or better than the OP Target for TOC Minutes Delay; and/or

c) the OP Target for T-3 so that such performance is within or better than the OP Target for T-3; and/or

¹²⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹²⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹²⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

d) the OP Target for T-15 so that such performance is within or better than the OP Target for T-15; and/or

e) the OP Target for All Cancellations so that such performance is within or better than the OP Target for All Cancellations;

f) the OP Target for Short Formations so that such performance is within or better than the OP Target for Short Formations;

"Retail Prices Index"

means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics as "RPI" or, if such index shall cease to be published or there is, in the reasonable opinion of the Secretary of State, a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;

"RPI"

has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);

"Return Fare"

means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, a journey in each direction in Standard Class Accommodation between the stations and/or the zones for which such Fare is valid and which expires no earlier than 0200 hours on the day after the day of the outward journey or, if later, the time the relevant return journey may be completed if commenced before 0200 hours;

"Revenue Foregone"¹³⁰

means an amount equal to the amount of Revenue or other value which was not received or receivable by the Franchisee, including:

(a) the:

(i) debts or other receivables waived, not collected or written off; and/or

(ii) value of any other asset not realised in whole or in part,

¹³⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

but which would have been receivable and received or otherwise realised by the Franchisee if it had acted as a Good and Efficient Operator; and

(b) subject always to paragraph 6.1 (No Double Recovery) of Schedule 8.1A (Franchise Payments), the amount by which the Purchase Price (as defined in clause 2.1 of the Supplemental Agreement) receivable by the Franchisee is lower than it would have been but for the Franchisee:

(i) incurring Disallowable Costs; and/or

(ii) otherwise acting other than as Good and Efficient Operator;

save where, in respect of both paragraphs (a) and (b) above, such Revenue or other value is not received or receivable as a result of the Franchisee acting in accordance with the instructions of the Secretary of State;

“Review Date”

means:

(a) 19 September 2016; or

(b) such later date as may be notified to the Franchisee by the Secretary of State pursuant to Clause 4.2 or Clause 4.3 of the Conditions Precedent Agreement;

“Revised Inputs”

has the meaning given to it in paragraph 4.2 of Schedule 9.1 (Financial and Other Consequences of Change);

“Revised RV Asset Transfer Values”¹³¹

means each of the RV Asset Transfer Values as adjusted by the Secretary of State in accordance with the provisions of paragraph 1.4(a), paragraph 1.4(b) and paragraph 1.5 (as applicable) of Schedule 14.6;

“Right Time Figures”

means the moving annual average percentage published by Network Rail in respect of the Right Time Measure, rounded to one (1) decimal place;

“Right Time Measure”

means the Right Time Measure as produced and/or published by Network Rail and/or the ORR showing the number of Passenger Services (expressed as a

¹³¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

percentage of the number of Passenger Services which are scheduled to be provided under the Plan of the Day) which arrive at their final scheduled destination in the Plan of the Day either early or no more than 59 seconds late;

- "Rolling Stock Lease"** means any agreement for the leasing of rolling stock vehicles to which the Franchisee is a party as at the Start Date and any agreement of a similar or equivalent nature (including, any agreement or arrangement for the subleasing, hiring, licensing or other use of rolling stock vehicles) to which the Franchisee is a party from time to time during the Franchise Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement;
- "Rolling Stock Related Contract"** means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;
- "Rolling Stock Substitution Side Letter"** means the letter entered into by the Parties on or about the date hereof setting out changes to be made to the Franchise Agreement in respect of changes to the rolling stock units to be procured as part of the Committed Obligations;
- "Rolling Stock Unit"** means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Franchisee in the provision of the Passenger Services;
- "ROSCO"** means any company leasing rolling stock vehicles to the Franchisee under a Rolling Stock Lease;
- "Route"** means any route specified in the Timetable over which the Franchisee has permission to operate the Passenger Services pursuant to any Track Access Agreement;
- "Route Efficiency Benefit Share (REBS) Mechanism" or "REBS Mechanism"** means the route level efficiency benefit sharing mechanism introduced by the ORR in its determination for the control period commencing on 1 April 2014 or any similar arrangement under which the benefits of any outperformance (or downsides of failure to achieve efficiency targets) are to be shared between Network Rail and Train Operators at route level;
- "RPC Database"** means a database to be provided by the Secretary of State pursuant to and on the terms of paragraph 7.1 of Schedule 1.5 (Information about Passengers) containing rail passenger counts information and providing analytical reporting tools or such other functionality as the Secretary of State may decide from time to time;

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| "RRPI" | has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments); |
| "RSP" | means Rail Settlement Plan Limited; |
| "RSPS3002" | means the RSP document with reference RSPS3002, version 02.01 re-published on 6 May 2015 which specifies standards for issuing, checking and validating rail products on ITSO Certified Smartmedia and defines the rail specific rules required to ensure interoperability across the rail network; |
| "Run of the Financial Model" | means a run of the Financial Model with the Revised Inputs which complies with the requirements of Schedule 9.1 (Financial and Other Consequences of Change); |
| "RV Asset" | means: <ul style="list-style-type: none"> (a) a Franchisee Owned RV Asset; or (b) a Network Rail Fixture Asset; |
| "RV Asset Transfer Values"¹³² | means each of the transfer values relating to the RV Assets as specified in Column 2 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 (List of RV Assets); |
| "SA Agreement" | means the agreement entered into between the Franchisee and NR on or about the date hereof in relation to carrying out structural assessments and repair works in relation to certain structures at Stations; |
| "Safety Authorisation" | means the authorisation issued by the ORR under the Safety Regulations authorising the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Routes; |
| "Safety Certificate" | means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by |

¹³² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

the Franchisee to meet the requirements that are necessary to ensure safe operation on the Routes;

“Safety Regulations”

means the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended pursuant to the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2006);

“Saver Return Fare”

means a return fare which is shown as a saver fare in the fares manuals and systems of the RSP as at the date of such manuals;

“Scheduled Consist Data”

means information as to the type of individual vehicles of rolling stock that have been scheduled by the Franchisee to form a train in the Train Fleet for any particular Passenger Service and the manner in which they are scheduled to be configured;

“Season Ticket Bond”

means the season ticket bond to be provided to the Secretary of State in respect of the Franchisee's liabilities under certain Fares and Season Ticket Fares in the form set out in Appendix 2 (Form of Season Ticket Bond) to Schedule 12 (Financial Covenants and Bonds) and such other bond as may replace it from time to time under Schedule 12 (Financial Covenants and Bonds);

“Season Ticket Fare”

means:

- (a) for the purposes of Schedule 12 (Financial Covenants and Bonds) and the definition of Season Ticket Bond only, a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid; and
- (b) for all other purposes, a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

“Second Profit Share Threshold” or “SPST”

has the meaning given to it in paragraph 1.1(b) of Schedule 8.2 (Profit Share Mechanism);

“Secretary of State Risk Assumptions”

means those assumptions set out in Schedule 9.4 (Secretary of State Risk Assumptions);

“Secretary of the Access Disputes Committee”

means the person appointed as the secretary of the Access Disputes Committee from time to time;

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| "Secure Stations Accreditation" | has the meaning given to it in paragraph 10.4 of Schedule 1.7 (Stations); |
| "Secure Stations Scheme" | has the meaning given to it in paragraph 10.4 of Schedule 1.7 (Stations); |
| "Security Breach" | has the meaning given to it in paragraph 6.3(c)(i) of Schedule 1.5 (Information about Passengers); |
| "Security Interest" | means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect; |
| "SEFT Deed" | means the agreement between the Secretary of State and the Franchisee entered into pursuant to paragraph 1.3 of Schedule 5.9 (Smart Ticketing), specifying certain obligations in relation to equipment to be procured, installed, migrated, integrated and commissioned for the purposes of the South East Flexible Ticketing (SEFT) programme; |
| "SEFT Equipment Opex Adjustment" | has the meaning given to it in paragraph 2.2 of Schedule 5.9 (Smart Ticketing); |
| "SEFT Opex Saving" | has the meaning given to it in paragraph 2.1 of Schedule 5.9 (Smart Ticketing); |
| "SEFT Station" | means any station which is defined as a "Target Station" within the Deed of Amendment between the Secretary of State and Abellio Greater Anglia Limited dated 16 March 2015; |
| "Service Group" | has the meaning given to it in the Track Access Agreement or as specified by the Secretary of State from time to time; |
| "Service Recovery Plan" | <p>means, in the event of a prevention or restriction of access to the track or a section of the track (howsoever caused) which results in any Cancellation, Partial Cancellation, and/or any Passenger Service being operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for such Passenger Service in the Train Plan, a plan implemented by the Franchisee:</p> <p>(a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best possible level of service given such disruption, including by:</p> <p style="padding-left: 40px;">(i) keeping service intervals to reasonable durations;</p> |

- (ii) keeping extended journey times to reasonable durations; and
- (iii) managing any resulting overcrowding;
- (b) to:
 - (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
 - (ii) prior to the attainment of the level of service specified in paragraph (b)(i) operate any reduced level of service agreed with Network Rail for the purpose of minimising such disruption pursuant to paragraph (a);
- (c) in accordance with the principles of service recovery set out in the ATOC **“Approved Code of Practice: Contingency Planning for Train Service Recovery - Service Recovery 2013”** or any document of a similar or equivalent nature; and
- (d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:
 - (i) agreed at an initial and, where required, subsequent telephone conference between the Franchisee, Network Rail and any other affected Train Operator; and
 - (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of Network Rail,

and prevention or restriction of access to the track or a section of the track shall have the meaning given to that term in paragraph 1(a)(i) of Schedule 10.3 (Force Majeure and Business Continuity);

“Settlement Proposal”

has the meaning given to it in paragraph 3.2 of Schedule 4 (Accessibility and Inclusivity);

“Shared Facilities”

means those facilities in respect of which the Franchisee and Network Rail carry out their respective activities concurrently;

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| "Short Formations"¹³³ | means Passenger Services in any Reporting Period formed with less Passenger Carrying Capacity than specified in the Train Plan; |
| "Short Formation Benchmark" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Short Formation Benchmark Table" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Short Formation Peak Passenger Service" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Short Formation Performance Sum" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "Short Formation Figures" | means the number of Passenger Services in any Reporting Period formed with less Passenger Carrying Capacity than specified in the Train Plan; |
| "Significant Alterations" | shall, in relation to any proposed new or amended Timetable, include alterations from the then current Timetable which result in, or are likely to result in: <ul style="list-style-type: none"> (a) the addition or removal of railway passenger services; (b) changes to stopping patterns or destinations or origin; (c) changes of timings for first/last trains by more than 10 minutes; (d) Not used; (e) significant changes to journey times and/or key connections at the Stations or at other stations at which relevant railway passenger services call by more than 10 minutes; |
| "Single Fare" | means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, on any one (1) day, one (1) journey in Standard Class Accommodation between the stations and/or the zones for which the Fare is valid; |
| "SKA Rating Standard" | means the recognised environmental assessment tool known as "SKA Rating" for sustainable fit outs |

¹³³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

published by the Royal Institute of Chartered Surveyors;

"Small and Medium-sized Enterprises" or "SMEs"

means any individual micro, small or medium sized enterprise meeting the requirements set out in EU Recommendation 2003/36 and broadly falling into one of three categories, based on a combination of:

- (a) the number of employees; and
- (b) either its turnover or its balance sheet total.

The three categories are:

| Company category | Employees | Turnover | or | Balance sheet total |
|-------------------------|------------------|-----------------|-----------|----------------------------|
| Medium | <250 | ≤ €50m | | ≤ €43m |
| Small | <50 | ≤ €10m | | ≤ €10m |
| Micro | <10 | ≤ €2m | | ≤ €2m |

"Smart Media"¹³⁴

means any of the following which can be used as part of a Smart Ticketing Scheme:

- (a) digital barcodes;**
- (b) a barcode printed on paper either by customers (e.g. at home, office) or by Franchisee staff at Stations or on board trains;**
- (c) ITSO Certified Smart Media;**
- (d) contactless payment media (cEMVs);**
- (e) Oyster (TfL's smartcard); and**
- (f) any of the above formats stored and presented on a portable electronic device;**

"Smart Ticketing Scheme"¹³⁵

means a scheme that uses Smart Media that can be fulfilled electronically. It must:

- a) either provide passengers with an electronic way of buying (including at home, on the move or at stations), receiving or collecting and using their ticket; or identify that a**

¹³⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹³⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

passenger has entered and left the rail network at particular stations, and deducts the cost of the journey from their debit/credit card, pre pay account or other permissible funding mechanism:

b) evidence the purchase of a single or multiple Fare(s) for a passenger; and

c) provide management information that a journey is being/has been made to the relevant back office;

“SoS Claim”¹³⁶

means all losses, liabilities, costs, damages and expenses that the Secretary of State does or will incur or suffer (including any such losses, liabilities, costs, damages and expenses that are unliquidated or which are contingent):

(a) as a consequence of any breach, negligence or other default of the Franchisee under or in connection with the Franchise Agreement and/or any agreement ancillary to this Franchise Agreement, the ERMA and/or the EMA, including the Supplemental Agreement; and/or

(b) in respect of any matter for which the Franchisee is to indemnify the Secretary of State pursuant to this Franchise Agreement, the ERMA and/or the EMA or any agreement ancillary to this Franchise Agreement, the ERMA and/or the EMA, including the Supplemental Agreement;

“Spares”

means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles;

“Special Event”

has the meaning given to such term in paragraph 4.1 of Schedule 1.7 (Stations);

“Specifically Included Change of Law”

has the meaning given to it in the definition of Change of Law;

“Specified Additional Rolling Stock”

has the meaning given in paragraph 2.1(b) of Schedule 1.6 (The Rolling Stock);

“Specified Project”

means any of the following projects: (i) the construction of Tottenham Hale station; (ii) the

¹³⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

construction of Cambridge North (Chesterton) station; (iii) the construction of Lea Bridge station; (iv) the construction of Meridian Water (Angel) Road station; (v) the development of proposals for the re-opening of a line between March and Wisbech; and (vi) the construction of Beaulieu Park;

“Specimen Scheme”

means the Committed Obligations set out in paragraphs:

- (a) 94.1 (Early Career Programme); and
- (b) 94.3 (Bootcamp Award);

of Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligations);

“Specimen Scheme Output”

means, for each Specimen Scheme, the output intended to be achieved by that Specimen Scheme, as set out in the relevant paragraph of Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligations);

“Stakeholder”

means the Passengers' Council and any relevant Local Authority and organisations who can reasonably be considered to have a legitimate and proper interest in the Passenger Services including Community Rail Partnerships representing Community Rail Routes designated as such by the Secretary of State;

“Standard Class Accommodation”

means, in respect of any train or service, accommodation which is available to the purchaser of any Fare which, taking into account any rights or restrictions relating to that Fare (other than restrictions relating to accommodation on that train or service), entitles such purchaser to make a journey on that train or service (provided that any accommodation on such train which may have been reserved by such purchaser shall be deemed to have been made so available if, had it not been so reserved, it would have been available for use by such purchaser);

“Standard of Repair”

shall have the meaning given to such term in paragraph 2.1 of Schedule 1.7 (Stations);

“Start Date”

means the time and date stated in the Certificate of Commencement as being the time at and date on which the Franchisee is to commence operating the Franchise Services, which shall either be:

- (a) 02:00 on 16 October 2016; or

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| | (b) such later time and date as may be notified to the Franchisee by the Secretary of State pursuant to: |
| | (i) Clause 4.2 of the Conditions Precedent Agreement; or |
| | (ii) Clause 4.3 of the Conditions Precedent Agreement; |
| "Start Date Transfer Scheme" | has the meaning given to it in Clause 6.1 of the Conditions Precedent Agreement; |
| "Station" | means: |
| | (a) any station in respect of which the Franchisee has entered into a Station Lease; or |
| | (b) any New Station at which the Franchisee becomes the Facility Owner; |
| "Station Access Conditions" | has the meaning given to it in the relevant Access Agreement to which it relates; |
| "Station Asset" | means each platform, footbridge, canopy and building located at a Station; |
| "Station Asset Group" | means a group of station assets across all Stations that fall within the following categories (a) platforms, (b) footbridges, (c) canopies and (d) other buildings, each category being a " Station Asset Group " and together being the " Station Asset Groups "; |
| "Station Asset Management Plan" | means the plan created by the Franchisee pursuant to paragraph 1 of Schedule 1.7 (Stations) and as amended from time to time in accordance with the provisions of Schedule 1.7 (Stations); |
| "Station Asset Management Plan Accreditation" | means the certification of the Franchisee's station asset management organisation and systems for Stations as complying with the requirements of ISO55001:2014 (or such other reasonably equivalent standard as may be approved in writing by the Secretary of State from time to time in place of ISO55001:2014); |
| "Station Asset Management Plan Accreditation Certificate" | has the meaning given to it in paragraph 1.11(b) of Schedule 1.7 (Stations); |
| "Station Asset Management Principles" or "SAMPR" | means the Franchisee's principles for the development of the Station Asset Management Plan in the agreed terms marked SAMPR ; |

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| "Station Change" | has the meaning given to the term "Proposal for Change" under the Station Access Conditions; |
| "Station Charge Adjustment" | means any adjustment to payments under an Access Agreement determined in accordance with paragraph 2 of Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments); |
| "Station Condition Account" | has the meaning given to it in paragraph 3.1 of Schedule 1.7 (Stations); |
| "Station Condition Amount" | means in relation to any Reporting Period the amount determined in accordance with paragraph 3.5 of Schedule 1.7 (Stations); |
| "Station Condition Fund" | has the meaning given to it in paragraph 3.2 of Schedule 1.7 (Stations); |
| "Station Lease" | means: <ul style="list-style-type: none"> (a) any lease of a station that the Franchisee is a party to as at the Start Date; or (b) a lease of any other station to which the Franchisee becomes the Facility Owner at any time during the Franchise Period; |
| "Station Service" | means any service specified in paragraph 5 of Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development) which may be provided by the Franchisee at the Stations; |
| "Station Social and Commercial Development Plan" or "SCDP" | means the Franchisee's station social and commercial development plan in the agreed terms marked SCDP , as such plan may be updated in accordance with the provisions of paragraph 7 of Schedule 1.7 (Stations); |
| "Station Sublease" | means a lease or sub lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator; |
| "STNR Project"¹³⁷ | has the meaning given to it in Appendix 1 of Schedule 5.9; |
| "STNR System"¹³⁸ | has the meaning given to it in Appendix 1 of Schedule 5.9; |

¹³⁷ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹³⁸ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| “Stored Credit Balance” | means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium); |
| “Structural Assessment” | shall have the meaning given to such term in the SA Agreement; |
| “Structure” | shall have the meaning given to such term in the SA Agreement; |
| “Subcontractor” | has the meaning given to it in paragraph 7.3(b) of Schedule 1.5 (Information about Passengers); |
| “Subsequent Reporting Period” | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| “Suburban Station” | means any station which is not a London Station and which is listed below or is closer to London than (and on the same line as) the following stations: Shoeburyness, Southend Victoria, Southminster, Marks Tey (excluding Sudbury branch), Audley End (but not including Stansted Airport), Ashwell & Morden, Arlesey, Harlington, Bletchley (excluding Bedford branch), Aylesbury, Haddenham & Thame Parkway, Twyford (including Henley branch), Windsor & Eton Riverside, Earley, Fleet, Alton, Whitley, Christ's Hospital, Brighton (excluding Coastway), East Grinstead, Crowborough, Wadhurst, Paddock Wood (including the line between Strood and Paddock Wood), Maidstone East, Canterbury East and Margate; |
| “Successor Operator” | means a Train Operator succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Franchisee by the Secretary of State) the Franchisee in the provision or operation of all or any of the Franchise Services including, where the context so admits, the Franchisee where it is to continue to provide or operate the Franchise Services following termination of the Franchise Agreement; |
| “Successor Operator Timetable” | has the meaning given to it in paragraph 2.2(a) of Schedule 14.1 (Maintenance of Franchise); |
| “Supplemental Agreement” | means a supplemental agreement between the Franchisee and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of Appendix 2 (Form of Supplemental Agreement) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Secretary of State may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such supplemental agreement |

between the date of the Franchise Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4 (Provisions Applying on and after Termination);

"Supplemental Station Improvement Programme"¹³⁹

shall have the meaning given to such term in paragraph 53.1 of Schedule 6.2;

"Sustainable Development Strategy" or "SDS"

means the Franchisee's strategy for sustainable development for the Franchise as agreed or determined pursuant to paragraph 10.1(b) of Schedule 13.1 (Rail Industry Initiatives) including as a minimum: the matters listed in paragraph 10.1(a) of Schedule 13.1 (Rail Industry Initiatives), key aims, resources, risks and details of how sustainable development will be embedded in the governance of the Franchise and investment decisions (as revised from time to time);

"T-3"¹⁴⁰

means the percentage of recorded station stops called at within three (3) minutes of the planned time relating to the Franchise as produced and/or published by Network Rail;

"T-15"¹⁴¹

means the percentage of recorded station stops called at within fifteen (15) minutes of the planned time relating to the Franchise as produced and/or published by Network Rail;

"Target Cost" or "TC"¹⁴²

means, in relation to:

(a) any PBF Assessment Period beginning on 1 April in any year, the aggregate of all forecast Costs falling within the relevant PBF Assessment Period (excluding any Capital Expenditure, forecast Non-Recoverable Costs or forecast Disallowable Costs) set out in the profit and loss accounts included in the Annual Business Plan, expressed as a positive number; or

(b) any Subsequent PBF Assessment Period beginning on any date other than 1 April in any year, the aggregate of all forecast Costs falling within the relevant PBF Assessment Period

¹³⁹ 28 March 2019 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁴⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁴¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁴² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

(excluding any Capital Expenditure, forecast Non-Recoverable Costs or forecast Disallowable Costs) set out in the profit and loss accounts included in the most recent Quarterly Financial Information provided prior to the commencement of the relevant PBF Assessment Period, expressed as a positive number;

"Target Cost Record of Assumptions"¹⁴³

means a record of assumptions setting out:

(a) the non-trivial assumptions, methodologies and data sources used to prepare the Target Cost Template in sufficient detail to document a line-by-line understanding of the contents of the Target Cost Template;

(b) an explanation in relation to any deviations from preceding cost trends; and

(c) any updates to the Budget Supporting Materials;

"Target Cost Template"¹⁴⁴

has the meaning given to it in paragraph 5.1(a) of Schedule 8.1B (Performance Based Fee);

"Target Passenger Demand"

means the higher of Actual Passenger Demand and Forecast Passenger Demand or any other level of passenger demand specified by the Secretary of State not being greater than the higher of Actual Passenger Demand or Forecast Passenger Demand;

"Target Performance Level"

has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

"Target Profit" or "TP"¹⁴⁵

means, in relation to:

(a) any PBF Assessment Period beginning on 1 April of any year, the aggregate of:

(i) all forecast items of Revenue falling within the relevant PBF Assessment Period set out in the profit and loss accounts included in the Annual Business Plan, expressed as a positive number; and

¹⁴³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁴⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁴⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

(ii) all forecast items of Cost falling within the relevant PBF Assessment Period (excluding any Capital Expenditure, forecast Non-Recoverable Costs or forecast Disallowable Costs) included in the Annual Business Plan, expressed as a negative number; and

(b) any PBF Assessment Period beginning on any date other than 1 April of any year, the aggregate of:

(i) all forecast items of Revenue falling within the relevant PBF Assessment Period set out in the profit and loss accounts included in the Quarterly Financial Information, expressed as a positive number; and

(ii) all forecast items of Cost falling within the relevant PBF Assessment Period (excluding any Capital Expenditure, forecast Non-Recoverable Costs or forecast Disallowable Costs) included in the Quarterly Financial Information, expressed as a negative number;

"Target Profit Record of Assumptions"¹⁴⁶

means a record of assumptions setting out:

(a) the non-trivial assumptions, methodologies and data sources used to prepare the Target Profit Template in sufficient detail to document a line-by-line understanding of the contents of the Target Profit Template;

(b) an explanation in relation to any deviations from preceding cost and/or revenue trends; and

(c) any updates to the Budget Supporting Materials;

"Target Profit Template"¹⁴⁷

has the meaning given to it in paragraph 5.2(a) of Schedule 8.1B (Performance Based Fee);

"Taxation"

means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of the Franchise Agreement and whether imposed by a

¹⁴⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁴⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| | local, governmental or other competent authority in the United Kingdom or elsewhere; |
| "TDR Amendment" | has the meaning given to it in paragraph 12.7 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services and Service Development); |
| "Technical Support Contract" | means a contract for technical support to which the Franchisee is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services; |
| "Tendering/Reletting Process" | means either of the processes described in paragraph 1.1 and 1.2 of Schedule 15.1 (Reletting Provisions); |
| "Termination Event" | has the meaning given to it in paragraph 2 of Schedule 10.2 (Events of Default and Termination Events); |
| "Termination Notice" | means a notice from the Secretary of State to the Franchisee terminating the Franchise Agreement following an Event of Default or a Termination Event in accordance with Schedule 10.2 (Events of Default and Termination Events); |
| "Third Party Data" | means any information, data and materials that may be provided to the Secretary of State by any third party that relates to the Franchisee and which the Secretary of State decides (in his absolute discretion) to add to the RPC Database; |
| "Third Profit Share Threshold" or "TPST" | has the meaning given to it in paragraph 1.1(c) of 8.2 (Profit Share Mechanism); |
| "Threshold Amount" | has the meaning given to it in Appendix 1 (Definition of Threshold Amount) to Schedule 9.1 (Financial and Other Consequences of Change); |
| "Through Ticketing (Non-Travelcard) Agreement" | means the agreement of that name referred to in paragraph 4.1(e) of the Appendix (List of Transport Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes); |
| "Ticketing and Settlement Agreement" | means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the Franchisee and the other Train Operators named therein, as amended from time to time with the approval of the Secretary of State; |
| "Timetable" | means the timetable which reflects the working timetable issued by Network Rail at the conclusion of its timetable development process, containing the departure and arrival times of: |

- (a) all Passenger Services which call at Stations and/or Franchisee Access Stations; and
- (b) principal Connections at those stations and other stations;

“Timetable Development Rights”

means all or any of the rights of the Franchisee under any Track Access Agreement to:

- (a) operate Passenger Services and ancillary movements by virtue of that Track Access Agreement;
- (b) deliver any required notification and/or declaration to Network Rail in respect of its intention to exercise any rights;
- (c) make or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Network Code;
- (d) surrender any Train Slots allocated to the Franchisee by Network Rail in accordance with the Network Code;
- (e) object to, make representations, appeal or withhold consent in respect of any actual or proposed act or omission by Network Rail; and
- (f) seek from Network Rail additional benefits as a condition to granting any consent to any actual or proposed act or omission by Network Rail;

“Timetable Planning Rules”

has the meaning given to it in the Network Code;

“Timetabled Services”

means a particular Passenger Service characterised by the day of the week (including Saturday and Sunday), time of day, origin station and destination and calling pattern which is scheduled to operate (such as the 0930 service from London Euston to Birmingham New Street on a Monday; the 1254 service from London Euston to Birmingham New Street on a Sunday etc.);

“Timetabling and Train Planning Compliance Investigation”

has the meaning set out in paragraph 2.1 of Schedule 1.2 (Operating Obligations);

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| "TOC Minutes Delay"¹⁴⁸ | means the minutes of delay to the Passenger Services that are attributed to the Franchisee pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled; |
| "TOC Minute Delay Benchmark" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "TOC Minute Delay Benchmark Table" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| "TOC Minute Delay Performance Sum" | means an amount determined in accordance with paragraph 19.4 of Schedule 7.1 (Performance Benchmarks); |
| "Total Actual Operating Costs" | means the sum of the Actual Operating Costs for the relevant Reporting Period and each of the twelve (12) preceding Reporting Periods during the Franchise Term (or the sum of the Actual Operating Costs for the relevant Reporting Period and all of the Reporting Periods that have elapsed since the Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made); |
| "Total Forecast Modified Revenue" | means the sum of the Forecast Modified Revenue for each of the thirteen (13) Reporting Periods following the relevant Reporting Period (or, where there are less than thirteen (13) Reporting Periods remaining in the Franchise Term, the remaining Reporting Periods); |
| "Total Forecast Operating Cost" | means the sum of the Forecast Operating Cost for each of the thirteen (13) Reporting Periods following the relevant Reporting Period (or, where there are less than thirteen (13) Reporting Periods remaining in the Franchise Term, the remaining Reporting Periods); |
| "Total Modified Revenue" | means the sum of the Modified Revenue for the relevant Reporting Period and each of the twelve (12) preceding Reporting Periods during the Franchise Term (or the sum of the Modified Revenue for the relevant Reporting Period and all of the Reporting Periods that have elapsed since the Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made); |

¹⁴⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| “Track Access Adjustment” | means any adjustment to payments under a Track Access Agreement determined in accordance with paragraph 1 of Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments); |
| “Track Access Agreement” | means each Access Agreement between Network Rail and the Franchisee which permits the Franchisee to provide the Passenger Services on track operated by Network Rail; |
| “Train Fleet” | means: <ul style="list-style-type: none">(a) the rolling stock vehicles described in or required by Schedule 1.6 (The Rolling Stock); and(b) any other rolling stock vehicles the Secretary of State consents to in accordance with paragraph 3 of Schedule 1.6 (The Rolling Stock); |
| “Train Operator” | means a franchisee or franchise operator, either of which operate railway passenger services pursuant to a franchise agreement or a Public Sector Operator; |
| “Train Plan” or “TP” | shall have the meaning given to it in paragraph 10 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services and Service Development); |
| “Train Service Requirement” or “TSR” | means the train service requirement more particularly described in paragraph 9 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services and Service Development) as such train service requirement may subsequently be amended or replaced in accordance with Schedule 1.1 (Franchise Services and Service Development); |
| “Train Slots” | shall have the meaning given to it in the Network Code; |
| “Transfer Scheme” | means a transfer scheme made by the Secretary of State under Section 12 and Schedule 2 of the Railways Act 2005 (or equivalent statutory provision) pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination), being substantially in the form of Appendix 1 (Form of Transfer Scheme) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Secretary of State may make thereto as a result of any change of Law affecting such transfer scheme or other change of circumstances between the date of the Franchise Agreement and the date on which such scheme is made; |

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| "Transport Act" | means the Transport Act 2000; |
| "Transport for London" or "TfL" | means Transport for London as established under the Greater London Authority Act 1999; |
| "Travelcard Agreement" | means the agreement of that name referred to in paragraphs 4.1(d) of the Appendix (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes); |
| "Traveline" | means the website available at: http://www.traveline.info (or such other applicable address that is adopted from time to time) which is provided by the partnership of transport companies, local authorities and passenger groups which have come together to bring the information on routes and timers for door to door travel by bus, rail, tube, tram, coach and ferry around Great Britain; |
| "Trigger Date" | has the meaning given to in in paragraph 7.2(a) of Schedule 6.1 (Franchise Specific Provisions); |
| "Trust Deed" or "TD" | means the document in the agreed terms marked TD ; |
| "Trustee" | has the meaning given to it in paragraph 4.1 of Schedule 16 (Pensions); |
| "TSI" | means any Technical Standard for Interoperability with which the Franchisee is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation; |
| "Turnaround Time" | means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles; |
| "Turnover" | means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchisee from the sale of Fares, other revenue and the receipt of Franchise Payments during such period; |
| "Underspend" | has the meaning given to it in paragraph 2.4 of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations); |
| "Undisputed Cancellation" | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |

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| “Undisputed Network Rail Cancellation” | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| “Undisputed Network Rail Partial Cancellation” | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| “Undisputed Partial Cancellation” | has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks); |
| “Uninsured Event” | <p>means any event that does not fall within the insurance required to be taken out by the Franchisee pursuant to Condition E1 of the Station Access Conditions either because the:</p> <p>(a) insurance is not available to the Franchisee in respect of the risk in the rail industry market in the United Kingdom with an insurer who is a member of the Association of British Insurers (other than where the predominant cause of the insurance not being available is any act(s) or omission(s) of the Franchisee or an Affiliate of the Franchisee); or</p> <p>(b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured in the rail industry market in the United Kingdom by a reasonable and prudent Train Operator in the railway industry.</p> |
| “Unreimbursed Disallowable Costs” ¹⁴⁹ | has the meaning given to it in paragraph 9.16 of Schedule 8.1A (Franchise Payments); |
| “User” | shall have the meaning given to it in the Station Access Conditions; |
| “Value” | means at any time the aggregate of the Projected Revenue of each Fare in a Fares Basket at that time; |
| “Value Added Tax” | means value added tax as provided for in the Value Added Tax Act 1994; |
| “Variation” | means a variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes); |
| “VCAWE” | has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments); |

¹⁴⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| "VCRPI" | has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments); |
| "Wavelength Survey"¹⁵⁰ | means the weekly survey relating to the Passenger Services (in such form as may be agreed from time to time), which is undertaken as part of the Wavelength Programme to monitor, amongst other things, the Franchisee's performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities; |
| "Weekday" | means any day other than a Saturday, a Sunday or a Bank Holiday; |
| "Weekly Season Ticket" | means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls seven (7) days after such day; |
| "Workforce Diversity Data"¹⁵¹ | <p>means data on the diversity of the Franchisee's workforce including statistics showing:</p> <p>(a) the gender, race, disability, sexual orientation and working pattern breakdown for specified jobs, categories and levels;</p> <p>(b) religion and gender reassignment across the whole workforce;</p> <p>(c) the promotion of the Franchisee's workforce that fall into the following groups: marriage and civil partnership; pregnancy and maternity; social mobility; and parental leave and caring responsibilities; and</p> <p>such other data as the Secretary of State may notify the Franchisee in accordance with paragraph 9A3.6(b)(ii) of Schedule 13.1 (Rail Industry Initiatives);</p> |
| "Working Capital Payment"¹⁵² | means the Franchise Payment Component calculated in accordance with paragraph 12.3 of Schedule 8.1A (Franchise Payments); |

¹⁵⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁵¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁵² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| "Working Capital Repayment"¹⁵³ | means the Franchise Payment Component calculated in accordance with paragraph 13.2 of Schedule 8.1A (Franchise Payments); |
| "Yield Management Data" | <p>means data collected by or on behalf of the Franchisee for the purpose of or in connection with managing or setting the prices at which any tickets for travel on the Passenger Services are sold and/or any quotas and/or restrictions applying to such tickets including:</p> <ul style="list-style-type: none"> (a) the number of passengers travelling upon any particular Passenger Service; (b) the ticket types held by such passengers; (c) the prices paid by such passengers for such tickets; and (d) the dates and/or times between which such tickets were made available to purchase at such prices; |
| "Yield Management System" | means any system (whether a Computer System or otherwise) for the collection of Yield Management Data and/or onto which Yield Management Data is input, processed and/or held as such system may be amended or altered from time to time; and |
| "Zone" | means a zone set out in the map in Schedule 2 of the Travelcard Agreement on the date such agreement came into effect or as amended by agreement with the Secretary of State. |

4. COMMENCEMENT

4.1 All the clauses of this Agreement and the following Schedules of this Agreement shall take effect and be binding upon each of the Secretary of State and the Franchisee immediately upon signature of this Agreement:

- (a) paragraph 4 (Subcontracting any Passenger Services), paragraph 9 (Train Service Requirement- Purpose and Responsibility), paragraph 10 (Train Plan) and paragraph 14.4 (Finalising the Train Plan) of Schedule 1.1 (Franchise Services and Service Development);
- (b) Schedule 2.1 (Asset Vesting and Transfer);
- (c) paragraphs 2 (Rolling Stock Related Contracts and Insurance Arrangements) and 3 (Cascaded Rolling Stock and Delayed Cascade

¹⁵³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- Mitigation Plan) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
- (d) paragraph 1 (Other Franchisees) of Schedule 2.3 (Other Franchisees);
 - (e) paragraph 4.3 (Specific additional obligations relating to people with disabilities) of Schedule 4 (Accessibility and Inclusivity);
 - (f) Schedule 5.1 (Purpose, Structure and Construction);
 - (g) Schedule 5.3 (Allocation of Fares to Fares Baskets);
 - (h) Schedule 5.7 (Changes to Fares and Fares Regulation);
 - (i) paragraph 1.3 (Smart Ticketing) of Schedule 5.9 (Smart Ticketing);
 - (j) paragraphs 1.1 (New Fleet Project Steering Group), 2.1 (Delivery Team), 3.1 (Engineering Process Study), 11.1 (Renatus Refurbishment), 24.1 (Lease of Class 319 Units), 35.1 (Programme Plan), 64.4 (Stakeholder Equality Group), 71.1 (a) (Customer and Disruption Information), 72.2 (Customer Experience Fund), 75.1, 75.2, 75.5 & 75.7 (Digital Ticketing) and 83.1 (Marketing) of Part 1 of Schedule 6.2 (Committed Obligations);
 - (k) Schedule 9 (Changes and Variations);
 - (l) Schedule 10 (Remedies, Events of Default and Termination Events);
 - (m) paragraphs 1 (Corporate Information), 3 (Identification of Key Personnel and Provision of Organisation Chart), 5 (Maintenance of Records), 6 (Right to inspect) and 8 (Periodic Update Reports) of Schedule 11.2 (Management Information);
 - (n) paragraph 4 (Performance Bond) of Schedule 12 (Financial Covenants and Bonds);
 - (o) Schedule 14.3 (Key Contracts);
 - (p) Schedule 15.1 (Reletting Provisions);
 - (q) paragraph 1.1 (Handover Package Status) of Schedule 15.3 (Handover Package); and
 - (r) Schedule 17 (Confidentiality and Freedom of Information).
- 4.2 The other provisions of this Agreement shall take effect and become binding upon the Parties on the Start Date, as stated in the Certificate of Commencement issued pursuant to the Conditions Precedent Agreement.

5. DURATION OF THE FRANCHISE AGREEMENT

- 5.1 This Agreement shall expire on the Expiry Date or on the date of any earlier termination pursuant to Clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or pursuant to Schedule 10 (Remedies, Events of Default and Termination Events).

5.2 Additional Reporting Periods

- (a) If the Secretary of State gives notice to the Franchisee not less than three (3) months before the date on which the Franchise Agreement is due to expire in accordance with clause 5.1, the Franchise Agreement shall continue after such date on the terms set out in the Franchise Agreement for not less than one and (subject to sub-clause 5.2(b) below) not more than thirteen (13) Reporting Periods, as the Secretary of State may stipulate.
- (b) Where the Secretary of State exercises his rights in accordance with clause 5.3 to amend the Expiry Date by a specified number of Reporting Periods then the maximum number of Reporting Periods by which the Franchise Term can be amended pursuant to clause 5.2(a) shall be reduced by the same number of Reporting Periods.

5.3 Amendment of Start Date/Expiry Date

- (a) The Secretary of State shall have the right on or before 16 September 2016 to serve notice on the Franchisee that the Start Date shall be a date later than 0200 on 16 October 2016. Such amended Start Date shall be 0200 on the first day of a Reporting Period and the latest such date that the Start Date can be amended to is 0200 on 1 April 2017. The Secretary of State may in such notice also require that the Expiry Date is amended to a later date. Such amended Expiry Date shall be 0200 on the first day of a Reporting Period and the same number of Reporting Periods after the unamended Expiry Date as the number of Reporting Periods that the amended Start Date is after the unamended Start Date.
- (b) Where the Secretary of State exercises his rights pursuant to clause 5.3(a) to amend the Start Date and/or the Expiry Date he shall be entitled to make such other amendments to the terms of the Franchise Agreement as are reasonably consequential upon such amendments.

6. GENERAL OBLIGATIONS

- 6.1 The Franchisee shall perform its obligations under the Franchise Agreement in accordance with its terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the Franchise.
- 6.2 Any obligation on the part of the Franchisee to use **"all reasonable endeavours"** shall extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy.
- 6.3 The Franchisee shall co-operate with the Secretary of State and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to the Franchise Agreement.
- 6.4 The Secretary of State shall act reasonably and in good faith in and about the performance of his obligations and the exercise of his rights pursuant to the Franchise Agreement.

7. ASSIGNMENT

The Franchisee shall not without the prior written consent of the Secretary of State assign, hold in trust for any other person, or grant a Security Interest in or over, the Franchise Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of the Franchisee to receive monies under a Supplemental Agreement).

8. CHANGE OF CONTROL AND FACILITATION FEE

- 8.1 A "**Change of Control**" is a change occurring in the identity of any one person, or two or more persons acting by agreement, who may Control the Franchisee on and from the date of the Franchise Agreement and during the Franchise Term, which shall include a person, or two or more persons acting by agreement, ceasing to Control the Franchisee at any time during the Franchise Term, whether or not any other person Controls the Franchisee at the same time and for the purposes of this clause 8, two or more persons shall be deemed to be acting by agreement in relation to the Franchisee if, assuming the Franchisee was a target company as defined in the Companies Act 2006, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.
- 8.2 Otherwise than in accordance with the prior consent of the Secretary of State given pursuant to clause 8.3, a Change of Control shall be constitute an Event of Default pursuant to paragraph 1.3 of Schedule 10.2 (Events of Default and Termination Events)
- 8.3 The Franchisee may, at any time, apply in writing to the Secretary of State for his consent to a Change of Control (as such term is defined pursuant to clause 8.1).
- 8.4 The Secretary of State may require the Franchisee to pay a fee in consideration of the grant of such consent (the "**Facilitation Fee**").
- 8.5 The Secretary of State may require the Franchisee to pay an additional fee in respect of the staff, professional and other costs incurred by the Secretary of State in connection with the Franchisee's application (the "**Administration Fee**"). The Administration Fee shall be payable whether or not the Secretary of State consents to the proposed Change of Control.
- 8.6 On or after submitting such application to the Secretary of State, the Franchisee will provide, and will procure that the seller and the buyer provide, the Secretary of State with such documentation and information as the Secretary of State may require to assess such application and the amount of the Facilitation Fee. Without limiting clauses 8.11 or 8.12, it shall be deemed to be reasonable for the Secretary of State to delay or withhold consent to the Change of Control where any such documentation is not provided.
- 8.7 The Facilitation Fee shall be a sum equal to the greater of:
- (a) one million pounds (£1,000,000); or
 - (b) where the Estimated Profit Stream is greater than the Bid Profit Stream five per cent (5%) of the difference between the Bid Profit Stream and the Estimated Profit Stream.

- 8.8 The Administration Fee shall be determined by the Secretary of State on the basis of:
- (a) the aggregate time spent by officials within the Secretary of State's Department on matters relating to such application;
 - (b) the Secretary of State's hourly scale rates for such officials, as varied from time to time; and
 - (c) the aggregate costs and disbursements, including where applicable VAT and professional costs, incurred by the Secretary of State in connection with such application.
- 8.9 Any determination by the Secretary of State for the purposes of clauses 8.7 or 8.8 shall in the absence of manifest error be final and binding as between the Secretary of State and the Franchisee (but without prejudice to the requirement of the Secretary of State to reasonably determine the Estimated Profit Stream).
- 8.10 Any consent by the Secretary of State to a Change of Control may be given subject to such conditions as the Secretary of State sees fit and the Franchisee shall, as applicable, comply with, and/or procure that the seller and/or the buyer comply with, any such conditions.
- 8.11 The Secretary of State shall have absolute discretion as to the grant of consent to any Change of Control and may accordingly refuse such consent for any reason he sees fit.
- 8.12 The Secretary of State shall have no liability whatever to the Franchisee in respect of any refusal of consent to a Change of Control, any delay in providing such consent, or any condition of such consent.

9. COMPLIANCE WITH LAWS

The Franchisee shall at all times perform the Franchise Services and all its other obligations under the Franchise Agreement in accordance with all applicable Laws.

10. CUMULATIVE RIGHTS AND REMEDIES

The rights and remedies of the Secretary of State under the Franchise Agreement are cumulative, may be exercised as often as he considers appropriate and are in addition to his rights and remedies under the general Law. The exercise of such rights and remedies shall not limit the Secretary of State's right to make payment adjustments, claim damages in respect of contraventions of the Franchise Agreement or pursue any available remedies under general Law.

11. DISPUTE RESOLUTION PROCEDURE

11.1 Disputes under the Franchise Agreement

- (a) Wherever the Franchise Agreement provides that the Secretary of State may reasonably determine any matter, the Franchisee may, unless the Franchise Agreement expressly provides otherwise, dispute whether a determination made by the Secretary of State is reasonable, but the Secretary of State's determination shall prevail unless and until it is agreed or found to have been unreasonable.

- (b) Where either Party is entitled, pursuant to the terms of the Franchise Agreement, to refer a dispute arising out of or in connection with the Franchise Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the Parties otherwise agree and subject to any duty of the Secretary of State under Section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.
- (c) Where, in the absence of an express provision in the Franchise Agreement entitling it to do so, either Party wishes to refer a dispute arising out of or in connection with the Franchise Agreement to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:
- (i) the Party seeking to refer to arbitration shall serve a written notice upon the other Party stating (i) the nature and circumstances of the dispute, (ii) the relief sought including, to the extent possible, an indication of any amount(s) claimed, and (iii) why it is considered that the dispute should be resolved by way of arbitration rather than litigation;
 - (ii) the other Party shall respond within twenty (20) Weekdays of service of the notice confirming whether or not referral of the dispute to arbitration is agreed. In the absence of any response, the referral to arbitration shall be deemed not to have been agreed;
 - (iii) in the event that the Parties agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with the Dispute Resolution Rules;
 - (iv) in the event that the Parties do not agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with clause 16 (Governing Law and Jurisdiction); and
 - (v) nothing in this clause 11.1 shall preclude either Party from commencing, continuing or otherwise taking any step by way of litigation in pursuit of the resolution or determination of the dispute unless an agreement is reached to refer the dispute to arbitration.
- (d) The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the Parties or, in default of agreement, chosen by the Secretary of the Access Disputes Committee from a panel of persons agreed from time to time for such purposes between the Secretary of State and the Franchisee or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any Party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

11.2 Disputes under other agreements

- (a) The Franchisee shall notify the Secretary of State of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the Franchisee's ability to comply with its obligations under the Franchise Agreement or on the provision of the Franchise Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.
- (b) Such notification shall be made both:
- (i) at the time of such submission (and such notification shall include reasonable details of the nature of the dispute); and
 - (ii) at the time of the resolution of the dispute (whether or not subject to appeal) (and such notification shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).
- (c) The Franchisee shall provide such further details of any dispute referred to in clause 11.1(d) (Disputes under the Franchise Agreement) as the Secretary of State may reasonably request from time to time.

11.3 Disputes under Schedule 8 (Payments) of this Agreement

The Parties shall comply with the terms of paragraph 4 of Schedule 8.1A (Franchise Payments) of this Agreement.

12. NOTICES

12.1 Notices

- (a) Any notice, notification or other communication under or in connection with the matters specified in Schedule 10.2 (Events of Default and Termination Events) or any dispute under or in connection with the Franchise Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant party at the address for service set out below, or to such other address in the United Kingdom as each Party may specify by notice in writing to the other Party:

Name: The Department for Transport
Address: 33 Horseferry Road, London SW1P 4DR
Email: franchise.notices@dft.gov.uk
Attention: The Manager - East Anglia Franchise
Name: Abellio East Anglia Limited

Address: ¹⁵⁴ **2nd Floor, St Andrews House, 18-20 St Andrew Street, London, United Kingdom, EC4A 3AG**

Email: **[REDACTED¹⁵⁵]**

Attention: **[REDACTED]**

(b) Any other notice, notification or other communication under or in connection with the Franchise Agreement shall be in writing and shall be delivered:

- (i) in accordance with clause 12.1(a); or
- (ii) by electronic data transfer,

except that it shall be marked for the attention of the Contract Manager or the Franchise Manager.

12.2 Deemed Receipt

Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:

- (a) if sent by hand or recorded delivery, when delivered;
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three (3) Weekdays after posting unless otherwise proven; and
- (c) if sent by electronic data transfer, upon sending, subject to receipt by the sender of a **"delivered"** confirmation (provided that the sender shall not be required to produce a **"read"** confirmation).

13. SET-OFF

13.1 Save as otherwise expressly provided under the Franchise Agreement or required by law, all sums payable under the Franchise Agreement shall be paid in full and without any set-off or any deduction or withholding including on account of any counter-claim.

13.2 Notwithstanding clause 13.1 the Secretary of State shall be entitled to set-off against any amounts payable by him under the Franchise Agreement:

¹⁵⁴ 7 September 2017 (Date of Contract Change Letter) - Contract variation agreed by the Secretary of State and Franchisee.

¹⁵⁵ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (a) any amount or liability payable or due to him under or in relation to the Franchise Agreement (whether such amount or liability is present, contingent and/or future, liquidated or unliquidated); and
 - (b) any monetary penalty payable under the Act.
- 13.3 Notwithstanding clause 13.1, the Secretary of State shall be entitled to set off any liability for payment under Schedule 7.1 (Performance Benchmarks) against any sum owed to it by the Franchisee under Schedule 7.1 (Performance Benchmarks).

14. MISCELLANEOUS PROVISIONS

14.1 Waivers

- (a) Any Party may at any time waive any obligation of any other Party owed to it under the Franchise Agreement and the obligations of the Parties hereunder shall be construed accordingly.
- (b) No waiver by any Party of any default by any other Party in the performance of such Party's obligations under the Franchise Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under the Franchise Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under the Franchise Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.
- (c) A waiver of any right or remedy under the Franchise Agreement or by law is only effective if given in writing by the Secretary of State.

14.2 Time limits

Where in the Franchise Agreement any obligation of a Party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or reasonable endeavours to secure a particular result within such time limit) that obligation shall be deemed to continue after the expiry of such time limit if such Party fails to comply with that obligation (or secure such result, as appropriate) within such time limit.

14.3 Partial invalidity

If any provision in the Franchise Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of the Franchise Agreement but the legality, validity and enforceability of the remainder of the Franchise Agreement shall not be affected.

14.4 Further assurance

Each Party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of the Franchise Agreement.

14.5 Rights of Third Parties

- (a) A person who is not a Party to the Franchise Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Franchise Agreement except to the extent set out in this clause 14.5.
- (b) Any Successor Operator or potential Successor Operator nominated by the Secretary of State and notified to the Franchisee and the Franchisee for the purposes of this clause 14.5 may enforce and rely on the provisions of Schedule 15 (Obligations Associated with Termination) to the same extent as if it were a Party but subject to clauses 14.5(c) and 14.5(d).
- (c) The Franchise Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of the Franchise Agreement, without the consent of any person nominated under clause 14.5(b).
- (d) The person nominated under clause 14.5(b) shall only be entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination) to the extent determined by the Secretary of State (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination), any legal proceedings in relation thereto must be commenced within one (1) year of the expiry of the Franchise Period and any such person shall not be entitled to enforce or rely on Schedule 15 (Obligations Associated with Termination) to the extent that it has consented to any particular act or omission of the Franchisee which may constitute a contravention of Schedule 15 (Obligations Associated with Termination) or has been afforded a reasonable opportunity to indicate to the Franchisee that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Secretary of State unless otherwise agreed).

14.6 Secretary of State's consent or approval

Where any provision of the Franchise Agreement provides for any matter to be subject to the consent or approval of the Secretary of State, then (subject only to the express terms of that provision as to the basis on which that consent or approval may be given or withheld) the Secretary of State shall be entitled to give that consent or approval subject to any condition or conditions as he considers appropriate, which may include the adjustment of any of the terms of the Franchise Agreement.

14.7 Enforcement costs

The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State as a result of the Franchisee failing to perform its obligations under the Franchise Agreement in accordance with their terms in the exercise of the Secretary of State's rights under Schedule 10 (Remedies, Events of Default and Termination Events).

14.8 Arm's length dealings

The Franchisee shall ensure that every contract or other arrangement or transaction to which it may become a party in connection with the Franchise Agreement with any person is on bona fide arm's length terms.

14.9 Non-discrimination

The Franchisee will not discriminate in seeking offers in relation to, or in awarding, a contract for the purchase or hire of goods on the grounds:

- (a) of nationality, against a person who is a national of and established in an EEA state; or
- (b) that the goods to be supplied under the contract originate in another EEA state.

For the purpose of this clause, "**EEA state**" means any state which is a party to the EEA agreement entered into on 2 May 1992 (as updated from time to time).

15. ENTIRE AGREEMENT

- 15.1 ¹⁵⁶**This Agreement, the Conditions Precedent Agreement, the Rolling Stock Substitution Side Letter and the Multiplicative Modelling Side Letter contain the entire agreement between the Parties, except as amended, in relation to the subject matter of the Franchise Agreement and supersedes all prior agreements and arrangements between the Parties other than any confidentiality agreements or undertakings which the Franchisee may have entered into with the Secretary of State in connection with his proposal to secure the provision of the Passenger Services under the Franchise Agreement.**
- 15.2 The Franchisee hereby acknowledges that it is not entering into the Franchise Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such warranties, representations or undertakings are contained in the Franchise Agreement.
- 15.3 The Franchisee hereby acknowledges and agrees with the Secretary of State (for himself and as trustee for each of the other persons referred to therein) to the disclaimers of liability which are contained in Section 3.2 of the Invitation to Tender and the section entitled "**Important Notice**" contained in any document supplied by or on behalf of the Secretary of State in connection with the Franchise Agreement, the process leading to the entering into of the Franchise Agreement, or the Franchise Services (including any Invitation to Tender issued in connection therewith).
- 15.4 The Franchisee irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement and/or the Conditions Precedent Agreement on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement or the Conditions Precedent Agreement) or undertaking

¹⁵⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

16. GOVERNING LAW AND JURISDICTION

The Franchise Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales and the Parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Franchise Agreement, except as expressly set out in the Franchise Agreement.

IN WITNESS whereof the Parties hereto have executed this Agreement the day and year first before written:

THE CORPORATE SEAL OF
**THE SECRETARY OF STATE FOR
TRANSPORT**
is hereunto affixed:

) **[REDACTED¹⁵⁷]**
)
)

Authenticated by authority of the
Secretary of State for Transport

SIGNED FOR AND ON BEHALF OF
ABELLIO EAST ANGLIA LIMITED

) **[REDACTED]**
)

Director: **[REDACTED]**

Director/Secretary: **[REDACTED]**

¹⁵⁷ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

SCHEDULE 1¹⁵⁸**Passenger Service Obligations**

| | |
|----------------------|--|
| Schedule 1.1: | Franchise Services and Service Development |
| | Part 1 – Franchise Services |
| | Part 2 – Service Development |
| Schedule 1.2: | Operating Obligations |
| Schedule 1.3: | NOT USED |
| Schedule 1.4: | Passenger Facing Obligations |
| Schedule 1.5: | Information about Passengers |
| Schedule 1.6: | The Rolling Stock |
| | Appendix 1: The Composition of the Train Fleet |
| Schedule 1.7: | Stations |
| | Appendix 1: List of Stations and Car Parks with accreditation |
| | Appendix 2: Information about Station Improvement Measures |
| | Appendix 3 : NOT USED |
| | Appendix 4 : NOT USED |

¹⁵⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

Schedule 1.1**Franchise Services and Service Development****Part 1 - FRANCHISE SERVICES****1. Franchise Services**

- 1.1 ¹⁵⁹**The Franchisee may at all times during the Franchise Term provide and operate the Franchise Services specified in this Schedule 1.1. The Franchisee is required to provide the Passenger Services that comply with the Train Service Requirement and (without prejudice to the other provisions of the Franchise Agreement) is permitted to provide other Franchise Services subject to the provisions of Part 1 of this Schedule 1.1.**
- 1.2 The Franchisee shall not, directly or indirectly, without the prior written consent of the Secretary of State, carry on any business or activity other than the provision and operation of the Franchise Services.
- 1.3 Nothing in this Schedule 1.1 shall restrict any Affiliate of the Franchisee from having an interest in or participating in any business or activity.
- 1.4 ¹⁶⁰**The Franchisee shall not engage any Franchise Employee in any activity or business which it may not conduct or engage in under this Schedule 1.1.**

2. Station Services

- 2.1 The Station Services shall comprise:
- (a) the provision of any services to persons at Stations or to Train Operators whose trains call at such Stations, provided that such services:
- (i) are made available only or principally to passengers alighting from or joining trains calling at such Stations and to such Train Operators;
- (ii) are provided in connection with the calling of trains at such Stations and are not designed to encourage passengers or other persons to use such Station Services other than in connection with a journey on a train calling at such Stations;
- (iii) exclude the sale or issue (for a charge) of any goods other than passenger timetables and any items included in the price of a Fare; and
- (iv) may include the provision of car parking spaces; and

¹⁵⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁶⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) the provision of access to any person under an Access Agreement at any Station.
- 2.2 The Station Services shall include the provision of any service which the Franchisee may provide, or may be required to provide, under any Access Agreement in effect on the Start Date or as lawfully directed by the ORR from time to time.

3. Light Maintenance Services

3.1 Light Maintenance Services shall comprise:

- (a) the provision of access to any other person under an Access Agreement;
- (b) the carrying out of inspections of rolling stock vehicles;
- (c) the carrying out of maintenance work on rolling stock vehicles of a kind which is normally carried out at regular intervals of twelve (12) months or less;
- (d) the replacement of failed components and consumables on rolling stock vehicles;
- (e) the preparation of rolling stock vehicles for service;
- (f) the stabling or other temporary holding of rolling stock vehicles;
- (g) the refuelling of rolling stock vehicles;
- (h) ¹⁶¹**the emptying of retention tanks fitted to rolling stock vehicles equipped with Controlled Emission Toilets;**
- (i) the replenishment of water tanks; and
- (j) the cleaning of the exterior or the interior of rolling stock vehicles,

in each case for itself and/or other Train Operators, at any Station or Depot.

- 3.2 Light Maintenance Services shall include the provision of any service which the Franchisee may provide, or may be required to provide, under any Access Agreement in effect on the Start Date or as lawfully directed by the ORR from time to time.

4. Ancillary Services

4.1 The Franchisee may carry out the following Ancillary Services:

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train,

¹⁶¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials information or materials targeted at tourists and other leisure passengers (such as maps) or phone cards;

- (b) ¹⁶²**the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 4.1(a) or which, if provided at a Station, would fall within paragraph 2 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;**
- (c) ¹⁶³**NOT USED;**
- (d) ¹⁶⁴**NOT USED;**
- (e) ¹⁶⁵**NOT USED;**
- (f) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchisee on or before the date of the Franchise Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
- (g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (i) travel on any other train or light rail service;
 - (ii) travel on any aircraft;
 - (iii) travel on any shipping or ferry service;
 - (iv) travel on any bus; or
 - (v) attend any event or attraction or enter any location;
- (h) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on any such operator's trains;

¹⁶² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁶³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁶⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁶⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (i) the provision of information relating to railway passenger services within Great Britain to passengers through telephone, internet, mobile data services or other appropriate means;
 - (j) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Franchisee;
 - (k) ¹⁶⁶**NOT USED;**
 - (l) the licensing or permitting of any other person (including an Affiliate of the Franchisee) to carry out any activity or business, in connection with the provision of the Franchise Services, or otherwise, on any rolling stock vehicle operated by the Franchisee, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);
 - (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with the Franchise Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;
 - (n) ¹⁶⁷**NOT USED;**
 - (o) the provision or operation of Charter Services, subject to the Planned Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent (2%) of the Planned Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;
 - (p) the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services; and
 - (q) ¹⁶⁸**any services or activity not falling within paragraphs 2, 3 and 4.1(a) to 4.1.16, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding twenty five thousand pounds (£25,000) per annum in each Franchisee Year, per item and in aggregate, two hundred and fifty thousand pounds (£250,000) per annum in each Franchisee Year provided that in the second and each subsequent Franchisee Year, these amounts will be increased by RPI.**
- 4.2 ¹⁶⁹**Subject to obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld or delayed) save in respect of paragraph 4.2(d), for which no such consent shall be required, the Franchisee may, and (to the extent required in order to**

¹⁶⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁶⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁶⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁶⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

best serve the needs of passengers on railway passenger services within Great Britain from time to time) shall use all reasonable endeavours to, carry out the following Ancillary Services:

- (a) **in any Reporting Period, the subleasing, hiring or licensing of the rolling stock vehicles used in the provision of the Passenger Services;**
- (b) **the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of Franchise Employees;**
- (c) **any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the following Depot(s):**
Norwich Crown Point; and
- (d) **the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Franchisee or the lending, hiring or contracting out of any employees of the Franchisee or the provision of any other services to Network Rail or any other Train Operator on an emergency basis.**

5. ¹⁷⁰Royal Train

- 5.1 **The Franchisee shall, if and to the extent requested by any person (including DB Cargo UK Limited its successor and assigns) and subject to the payment by such person of any reasonable costs of the Franchisee, co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the royal family or representatives of either of them.**
- 5.2 **The provision of railway services for Her Majesty Queen Elizabeth II or any successor head of state or members of the royal family or representatives of either of them may include:**
 - (a) **running a "sweeper" train in front of the royal train;**
 - (b) **having spare locomotives or other rolling stock on standby as rescue traction; and/or**
 - (c) **carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.**

6. ¹⁷¹Restrictions relating to Franchise Services

¹⁷⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁷¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 6.1 **The Franchisee shall not without the prior written consent of the Secretary of State operate Passenger Services other than on the following routes (and, in the event of disruption, any reasonable diversionary route):**
- (a) **Great Eastern Main Line between London Liverpool Street and Norwich, and branches to Braintree, Colchester Town, Clacton-on-Sea, Walton-on-the-Naze; and Harwich Town;**
 - (b) **Marks Tey to Sudbury;**
 - (c) **London Liverpool Street to Southend Victoria;**
 - (d) **Wickford to Southminster;**
 - (e) **West Anglia routes between London Liverpool Street and Stratford to Hertford East; Stansted Airport, Cambridge, and Kings Lynn;**
 - (f) **Ipswich to Felixstowe, Lowestoft, Cambridge, Ely and Peterborough;**
 - (g) **Norwich to Cambridge, Great Yarmouth, Lowestoft, Cromer and Sheringham; and**
 - (h) **Cambridge to Stansted Airport.**
- 6.2 **It is acknowledged that a Passenger Service to be operated by the Franchisee on the routes specified in paragraph 6.1 may be operated throughout the route, on part of the route or any combination of the whole or part of any two or more of the routes specified above.**
- 6.3 **The Secretary of State may impose such conditions to the Secretary of State's consent as the Secretary of State considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the Franchise Term.**
- 6.4 **The Franchisee shall not during the Franchise Term, without the consent of the Secretary of State:**
- (a) **provide or operate any railway passenger services other than the Passenger Services or Charter Services;**
 - (b) **operate any stations or light maintenance depots other than the Stations and Depots; or**
 - (c) **hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:**
 - (i) **Network Rail; or**
 - (ii) **owned directly or indirectly by another participant in the railway industry and the holding is incidental to the Franchisee's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-**

operation between such participants or between any such participants and any other person.

7. ¹⁷²Restrictions on Closures of Railway Passenger Services or Railway Facilities

7.1 Except to the extent that the Secretary of State agrees otherwise, the Franchisee shall not:

- (a) cease to operate;**
- (b) cease to secure the operation of; or**
- (c) propose to terminate the use of,**

any Station (or part of a Station) or any railway passenger service over a Route where such cessation or proposal might result in a Closure.

7.2 If any procedures are commenced under Part 4 of the Railways Act 2005 in relation to a Closure, the Franchisee shall, at its own cost and to the extent so requested by the Secretary of State, take such action as the Secretary of State may require in order to enable the Secretary of State to comply with any duty imposed on the Secretary of State under Part 4 of the Railways Act 2005 in relation to such Closure.

8. ¹⁷³Subcontracting any Passenger Services

8.1 Subject to paragraph 8.2, the Franchisee may not subcontract or delegate the provision of the Passenger Services without the prior written consent of the Secretary of State.

8.2 The Franchisee may subcontract or delegate the provision of the Passenger Services, provided that:

- (a) the Secretary of State receives prior written notice of any such subcontracting or delegation;**
- (b) the Franchisee continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;**
- (c) the Franchisee continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;**
- (d) the Planned Train Mileage of the Passenger Services so delegated or subcontracted does not exceed five per cent (5%) of the Planned Train Mileage of the Franchisee in any Reporting Period**

¹⁷² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁷³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

(provided that, if as a result of the impact of COVID-19 it is not reasonably practicable to obtain the prior written consent of the Secretary of State to a higher percentage of the Planned Train Mileage being delegated or subcontracted in advance of subcontracting or delegating the provision of such Passenger Services, the Franchisee may subcontract or delegate the provision of such Passenger Services provided that the Secretary of State receives notification of, and has not objected to, any such subcontracting or delegation); and

- (e) the Franchisee continues to perform its obligations under this Schedule 1.1 in respect of any subcontracted or delegated services.**

8.3 Any such subcontracting or delegation shall not relieve the Franchisee from any of its obligations under the Franchise Agreement, including its obligations under this paragraph 8 and Schedule 14 (Preservation of Assets).

Part 2 - SERVICE DEVELOPMENT

9. Train Service Requirement – Purpose and Responsibility

- 9.1 ¹⁷⁴**This Part 2 of Schedule 1.1 sets out the obligations of the Franchisee in relation to the acquisition of timetable development rights required for the purposes of securing a Timetable that complies with the Train Service Requirement and preparing a Train Plan consistent with the obligations of the Franchisee and the provision of appropriate levels of passenger carrying capacity. It also provides for alteration of the Train Service Requirement by the Secretary of State. The Train Service Requirement does not in any way limit the Franchisee's obligations pursuant to paragraph 14 of this Schedule 1.1.**
- 9.2 ¹⁷⁵**The Train Service Requirement is the minimum specification of the Passenger Services to be provided by the Franchisee during the Franchise Term.**
- 9.3 The Train Service Requirement as at the date of the Franchise Agreement is comprised in the following, all in the agreed terms marked as follows:
- (a) TSR1 being the Train Service Requirement applicable from the Start Date until the Passenger Change Date in May 2019; and
 - (b) TSR2 being the Train Service Requirement applicable from the Passenger Change Date in May 2019 until the Passenger Change Date in May 2020;
 - (c) TSR3 being the Train Service Requirement applicable from the Passenger Change Date in May 2020 until the end of the Franchise Term.
- 9.4 ¹⁷⁶**The Secretary of State and the Franchisee agree that the replacement of:**
- (a) **TSR1 by TSR2; and**
 - (b) **TSR2 by TSR3**
- at the times and for the periods specified in paragraph 9.3 shall not constitute a Change for the purposes of paragraph (d) of the definition of Change.**
- 9.5 ¹⁷⁷**For the purposes of this Schedule 1.1, the Train Service Requirement shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1.**

¹⁷⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁷⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁷⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁷⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 9.6 ¹⁷⁸**The Train Service Requirement may be expressed, in whole or in part, at any level of generality or to any level of detail the Secretary of State considers appropriate.**

10. Train Plan

- 10.1 Subject to paragraph 10.2, for the purposes of this Agreement, the **"Train Plan"** shall be the plan (including sub-plans) prepared by the Franchisee for the operation of trains and train formations under the Timetable that best matches available capacity to Forecast Passenger Demand as amended from time to time during the Franchise Period in accordance with this Agreement.
- 10.2 ¹⁷⁹**For the purposes of Schedule 7.1 (Operational Performance), references to "Train Plan" shall be construed as the latest version of the Train Plan which includes any amendments thereto pursuant to paragraphs 3, 4 and/or 5 of Schedule 1.2 (Operating Obligations):**
- (a) **where such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement;**
 - (b) **where such amendments proposed by the Franchisee have prior approval from the Secretary of State; or**
 - (c) **where such amendments are requested by the Secretary of State.**
- 10.3 The Franchisee shall submit to the Secretary of State a Train Plan in respect of each Timetable in accordance with this Schedule 1.1.
- 10.4 In preparing any Train Plan, the Franchisee shall do so by reference to the Timetable that it envisages operating in order to comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1.
- 10.5 Each Train Plan shall set out for each railway passenger service in the Timetable to which it relates:
- (a) its start point and departure time;
 - (b) its terminating point and arrival time;
 - (c) the number and class of rolling stock vehicles allocated to each such railway passenger service;
 - (d) the Passenger Carrying Capacity that each such railway passenger service, as formed, is to have; and
 - (e) its Forecast Passenger Demand and, where this has been requested by the Secretary of State and is capable of calculation, Actual Passenger Demand.

¹⁷⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁷⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

10.6 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.

10.7 ¹⁸⁰ **At the Start Date, Network Rail will have issued the applicable working timetable on which the Timetable is to be based. Accordingly, the Franchisee shall confirm to the Secretary of State that it intends:**

(a) **to adopt, from the Start Date until the next Passenger Change Date, the Train Plan prepared by the Train Operator under the Previous Franchise Agreement; or**

(b) **to prepare its own Train Plan in accordance with this Schedule 1.1,**

such Train Plan shall become the document in the agreed terms marked TP as at the Start Date. It is acknowledged that the Train Plan in the agreed terms marked TP shall be replaced from time to time during the Franchise Period in accordance with the provisions of paragraph 14.4.

11. Consultation on Significant Alterations to the Timetable

11.1 Notwithstanding any consultation the Secretary of State might separately undertake in respect of any amended or new draft Train Service Requirement issued pursuant to paragraph 16, the Franchisee shall where:

(a) ¹⁸¹ **it intends that any future Timetable will contain Significant Alterations compared to the Timetable then in force; and**

(b) such Significant Alterations are likely to have, in the reasonable opinion of the Franchisee, a materially adverse effect on:

(i) the ability of passengers using any station served by the Passenger Services to make journeys relating to work or education at reasonably convenient times; and/or

(ii) the trading prospects of commercial enterprises located in any community in which a station served by the Passenger Services is located in consequence of it being more difficult for customers or employees to access such commercial enterprises through travel on the Passenger Services,

consult with Stakeholders who would reasonably be expected to be affected by any such Significant Alterations in relation to such proposed future Timetable.

11.2 Accordingly, the Franchisee shall where the circumstances described in paragraph 11.1 apply:

(a) as soon as reasonably practicable provide to the Secretary of State and all Stakeholders a comprehensive summary of the proposed changes from the

¹⁸⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁸¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

Timetable then in force specifying the proposed Timetable changes, the reasons for them and the likely impact on passengers;

- (b) carry out the consultation in relation to such proposed changes using a reasonable range of communication channels (taking into account the scale of the proposed changes) and in a manner that can be reasonably expected to encourage responses from a broad range of affected Stakeholders;
- (c) give consultees such time as is reasonable under all the circumstances to respond (it being agreed that it shall normally be reasonable to give at least twelve (12) weeks to respond in relation to major proposed Timetable changes);
- (d) take due account of the responses of consultees;
- (e) within six (6) weeks of the close of the consultation (or such longer period as the Secretary of State may agree, such agreement not to be unreasonably withheld or delayed) publish a report containing a summary of the main issues raised by respondents (including quantitative analysis of the responses received), the reasoned response of the Franchisee to them and notification of how the Franchisee shall now seek to exercise relevant Timetable Development Rights in the context of its obligation to take due account of the results of the consultation;
- (f) ensure that the published report is promptly provided to the Secretary of State and all respondents who submitted written responses to the consultation and published in a widely accessible form; and
- (g) ensure that the relevant Timetable Development Rights to implement the proposed Timetable change are not exercised prior to the publication of the report and exercise such Timetable Development Rights in the manner indicated in the report.

11.3 ¹⁸²**NOT USED.**

12. ¹⁸³Development Rights

12.1 ¹⁸⁴**The Franchisee shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and otherwise comply with its obligations under the Franchise Agreement (including under paragraph 14 and paragraph 16 of this Schedule 1.1).**

12.2 Prior to exercising any Timetable Development Rights to secure a Timetable, the Franchisee shall make an informed estimate of Forecast Passenger

¹⁸² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁸³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

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Demand and in doing so shall make reasonable assumptions based on available evidence (making proper use of recognised railway industry systems and forecasting tools as these may develop over the Franchise Period) with the estimate being in such format and to such level of disaggregation as the Secretary of State may reasonably require.

12.3 ¹⁸⁵**Subject to the remaining provisions of this paragraph 12, the Franchisee shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1 in accordance with its obligations under paragraph 17 of this Schedule 1.1.**

12.4 ¹⁸⁶**Where the Franchisee proposes to exercise its Timetable Development Rights so that the Timetable in force after the relevant Passenger Change Date contains Significant Alterations to that in force prior to such Passenger Change Date, the Franchisee shall (without prejudice to its obligation to consult pursuant to paragraph 11) act reasonably with the intention of obtaining a Timetable which enables:**

- (a) **paragraph 14.1(b); and**
- (b) **paragraph 14.1(c),**

of this Schedule 1.1 to be achieved in relation to each Passenger Service in the Timetable to the greatest extent reasonably practicable.

It is agreed that in acting reasonably the Franchisee shall take full and proper account of its informed estimate of the Forecast Passenger Demand made pursuant to paragraph 12.2 above.

12.5 Unless the Secretary of State otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Train Service Requirement and paragraph 14 of this Schedule 1.1, exercise its rights under the Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights.

12.6 ¹⁸⁷**If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 12.5, the Secretary of State may require the Franchisee to exercise its rights in such manner as the Secretary of State reasonably considers appropriate in the circumstances, including:**

- (a) **disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights; and**

¹⁸⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁸⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁸⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (b) **submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR.**

12.7 Subject to the Franchisee complying with its obligations under paragraph 12.5 above, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1, to the extent that such failure is caused by:

- (a) ¹⁸⁸**the Franchisee's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Franchisee has exercised and, unless otherwise agreed by the Secretary of State, is continuing to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.1;**
- (b) Network Rail exercising its flexing rights from time to time under the Track Access Agreement or the Network Code in respect of such Train Slots;
- (c) Network Rail exercising its other rights from time to time under the Track Access Agreement or the Network Code; or
- (d) the exercise by the ORR of its powers pursuant to section 22C of the Act.

12.8 ¹⁸⁹TDR Amendments

- (a) **If and to the extent that the Franchisee is not able to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement as a result of it not being able to obtain the Timetable Development Rights that it requires for that purpose, the Secretary of State shall (subject to paragraphs 12.8(b) and 12.8(c)) issue to the Franchisee amendments to the Train Service Requirement ("TDR Amendment"). The amendments to the Train Service Requirement contained in the TDR Amendment shall be those that the Secretary of State considers necessary for the purposes of enabling the Franchisee to secure a Timetable that is compliant with the Train Service Requirement by exercise of the Timetable Development Rights that the Franchisee does have.**
- (b) **The Secretary of State shall have an unfettered discretion as to whether or not to issue a TDR Amendment in circumstances where the Franchisee:**
 - (i) **has failed to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.1; and**

¹⁸⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁸⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (ii) **is not relieved by paragraph 12.7 from liability for such failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement.**
 - (c) **The Franchisee shall not be relieved from its obligations to obtain a Timetable that enables the Franchisee to operate the Train Service Requirement by the issue of any TDR Amendment where the Secretary of State reasonably considers that such failure to secure a Timetable that enables the Franchisee to operate the Train Service Requirement is partly due to the default of the Franchisee in not properly complying with its obligations under the Franchise Agreement in relation to securing timetable development rights. Accordingly any TDR Amendment may be drafted so that it does not relieve the Franchisee of the obligation to comply with the Train Service Requirement to the extent that the Secretary of State determines that the failure is due to such default of the Franchisee and the Franchisee may therefore be in contravention of the Franchise Agreement.**
- 12.9 ¹⁹⁰**Following issue of any TDR Amendment pursuant to paragraph 12.8 the Franchisee shall, unless otherwise agreed by the Secretary of State, continue to use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without such TDR Amendment.**
- 12.10 ¹⁹¹**Any TDR Amendment issued pursuant to paragraph 12.8 shall:**
- (a) **unless otherwise required by the Secretary of State, cease to have effect on the date (if any) on which the first Timetable comes into effect after the Franchisee has obtained the Timetable Development Rights to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without any such TDR Amendment; and**
 - (b) ¹⁹²**amount to a Change but only to the extent that the Franchisee makes a saving as a consequence of such TDR Amendment and provided that if such TDR Amendment has been issued in consequence of Network Rail exercising the rights referred to in paragraph 12.7(b) or 12.7(c) there shall be no Change.**

¹⁹⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁹¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁹² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

12.11 ¹⁹³ **With effect from the date on which any TDR Amendment ceases to have effect in accordance with paragraph 12.10:**

- (a) **the Train Service Requirement without such TDR Amendment shall thereafter apply; and**
- (b) **where there has been a Change which is a Qualifying Change pursuant to paragraph 12.10(b) there shall be a further Change (which shall be deemed to be a Qualifying Change) to the extent necessary so as, with effect from such date, to disapply the effect of any such Qualifying Change pursuant to paragraph 12.10(b) to take into account the fact that the Franchisee will have ceased to make a saving.**

13. Certification and Notification by Franchisee of Exercising Timetable Development Rights

13.1 Before exercising any Timetable Development Right to bid for Train Slots, the Franchisee shall provide a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 12.3.

13.2 If requested by the Secretary of State, the Franchisee agrees to demonstrate to the reasonable satisfaction of the Secretary of State that the Franchisee's certificate referred to in paragraph 13.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 12.3.

13.3 The Franchisee shall:

- (a) keep the Secretary of State fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may, in the reasonable opinion of the Franchisee, have a material impact on the ability of the Franchisee to deliver the Train Service Requirement or meet the requirements of paragraph 14 of this Schedule 1.1 through the Timetable and shall, if required to do so by the Secretary of State, supply copies of any related correspondence to the Secretary of State; and
- (b) update any notification under this paragraph 13.3 and/or certification under paragraph 13.1 as soon as reasonably practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development Rights following Network Rail's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

¹⁹³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

14. Planning to meet Target Passenger Demand

14.1 Capacity and Timetable Planning

- (a) The Franchisee shall, in preparing its Timetable and Train Plan, unless the Secretary of State otherwise agrees, provide for at least the capacity specified in the Train Service Requirement.
- (b) The Franchisee shall use all reasonable endeavours to provide for Passenger Carrying Capacity on each Passenger Service that meets as a minimum the Target Passenger Demand for that Passenger Service.
- (c) The Franchisee shall use all reasonable endeavours to provide passengers with a reasonable expectation of a seat:
 - (i) on boarding any Off Peak Passenger Service; and
 - (ii) ¹⁹⁴**twenty (20) minutes after boarding (or such other time period as the Secretary of State may stipulate) on any Peak Passenger Service.**

14.2 Allocation of rolling stock where Franchisee unable to meet the capacity requirements

If at the time it prepares its Timetable and/or Train Plan, having exercised all reasonable endeavours, the Franchisee is unable to prepare a Timetable and/or Train Plan having the Passenger Carrying Capacity and/or meeting the reasonable expectations referred to in paragraphs 14.1(b) and 14.1(c), then the Timetable and/or the Train Plan shall specify the best allocation of Passenger Services and rolling stock vehicles to Passenger Services that is reasonably practicable with a view to:

- (a) minimising, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
- (b) ensuring, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
- (c) ¹⁹⁵**minimising, so far as is possible, the extent to which passengers are required to stand:**
 - (i) **on boarding any Off Peak Passenger Service; and**
 - (ii) **twenty (20) minutes after boarding (or such other time period as the Secretary of State may stipulate) on any Peak Passenger Service.**

¹⁹⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁹⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

14.3 Preparation of Timetable and Train Plan

- (a) Subject to paragraph 14.3(b), the Franchisee shall in preparing its Timetable and its Train Plan take full and proper account of its calculation of Forecast Passenger Demand and use all reasonable endeavours to ensure that the Train Fleet is deployed in an optimal manner for the purposes of complying with its obligations under paragraphs 14.1 and 14.2 above.
- (b) The Franchisee shall in preparing its Timetable and Train Plan deploy the entire Train Fleet (excluding reasonable planning requirements for the allocation of Hot Standbys or other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reason agreed with the Secretary of State (such agreement not to be unreasonably withheld or delayed)) in delivering the Passenger Services:
 - (i) during each Peak; and
 - (ii) ¹⁹⁶ **at such times outside the Peak where such deployment of the entire Train Fleet is reasonably required to meet the Franchisee's obligations pursuant to paragraphs 14.1 and 14.2 above.**

14.4 Finalising the Train Plan

- (a) The Franchisee shall submit its proposed Train Plan to the Secretary of State as soon as reasonably practicable after Network Rail has issued the Timetable on which the Train Plan is to be based.
- (b) The Franchisee shall submit its final Train Plan to the Secretary of State prior to the commencement of the Timetable to which it relates.
- (c) The Train Plan shall be certified by a statutory director of the Franchisee as being true and accurate and including the minimum capacity specified in the Train Service Requirement.
- (d) The Franchisee shall provide to the Secretary of State in a timely manner such rolling stock diagrams as the Secretary of State may reasonably request from time to time.

15. ¹⁹⁷Capacity Mitigation Proposal

- 15.1 **Without prejudice to the obligation of the Franchisee to include in the Train Plan the capacity specified in the Train Service Requirement, if at any time the Franchisee is unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1 (regardless of whether the Franchisee has used all reasonable endeavours to do so), the Secretary of State may serve a notice on the Franchisee requiring it to produce a proposal to a reasonable**

¹⁹⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁹⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

specification provided with the notice to remedy or mitigate such inability ("Capacity Mitigation Proposal").

15.2 The Capacity Mitigation Proposal may, without limitation, include measures to be implemented by the Franchisee to:

- (a) remedy the circumstances leading to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1; and/or**
- (b) minimise, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;**
- (c) ensure, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and**
- (d) minimise, so far as is possible, the extent to which passengers are required to stand:**
 - (i) on boarding any Off-Peak Passenger Service; and**
 - (ii) twenty (20) minutes after boarding (or such other time period as the Secretary of State may stipulate) on any Regional Peak Passenger Service or London Peak Passenger Service,**

in all such cases (unless the Secretary of State specifies to the contrary) taking into account both Actual Passenger Demand and Forecast Passenger Demand.

15.3 Where the Secretary of State reasonably believes that future circumstances may lead to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1 at any time within the next four (4) years (including after the end of the Franchise Term) the Secretary of State shall have the right to serve notice on the Franchisee specifying those future circumstances and the date that the Franchisee should assume that they will arise from and requiring it to produce a Capacity Mitigation Proposal to remedy or mitigate such future circumstances on the basis of assumptions provided by the Secretary of State.

15.4 The Capacity Mitigation Proposal shall (unless the Secretary of State specifies to the contrary) include the Franchisee's informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require. Without limitation such specification may require the Franchisee to present options to address relevant issues through:

- (a) alterations to the Train Service Requirement;**
- (b) modification of rolling stock or the acquisition of additional or replacement rolling stock;**
- (c) alterations to Fares; and/or**

- (d) **alterations or enhancements to any track, signalling, station, depot or other relevant railway infrastructure.**
- 15.5 **The Capacity Mitigation Proposal shall provide a comprehensive analysis backed by relevant data and assumptions of:**
- (a) **all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;**
 - (b) **the implications (if any) for the Benchmarks and/or the Annual Benchmarks; and**
 - (c) **the likely impact of options within it for existing and future passenger journeys and journey opportunities.**
- 15.6 **The Franchisee shall meet with the Secretary of State to discuss the Capacity Mitigation Proposal and provide such further information or analysis and further iterations of the Capacity Mitigation Proposal as the Secretary of State shall reasonably require. If the Secretary of State decides that the Secretary of State wishes to implement any Capacity Mitigation Proposal (or any part thereof) this shall be by way of a Variation.**
- 16. New or amended Train Service Requirement by the Secretary of State and Franchisee Informed Opinion**
- 16.1 ¹⁹⁸**As and when required, whether for the purposes of considering alterations to the Train Service Requirement or otherwise, the Franchisee shall provide to the Secretary of State:**
- (a) **its informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require in order to assist the Secretary of State's decision making on future train service requirements, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding;**
 - (b) **its informed opinion as to any changes to the current Train Service Requirement which:**
 - (i) **should be made in order to deliver an optimal range of railway passenger services relative to Target Passenger Demand; and**
 - (ii) **could be implemented and operated without additional resources or an adjustment to the Franchise Payments;**

¹⁹⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (c) **its informed opinion as to any changes to the current Train Service Requirement which:**
 - (i) **would deliver an optimal range of railway passenger services relative to Target Passenger Demand; and**
 - (ii) **could only be implemented and operated with additional resources and/or an adjustment to the Franchise Payments, together with an explanation as to:**
 - (A) **what additional resources and/or adjustments are necessary to make such changes; and**
 - (B) **why such additional resources and/or adjustments are necessary;**
 - (d) **a draft of the Train Plan that the Franchisee considers that each set of proposed changes would require.**
- 16.2 ¹⁹⁹ **Prior to issuing any amended or new Train Service Requirement the Secretary of State shall provide to the Franchisee the Secretary of State's draft of any proposed amended or new Train Service Requirement stating the date upon which the Secretary of State proposes that such amended or new Train Service Requirement should take effect along with the Secretary of State's views as to the changes (if any) that the Secretary of State proposes to make to the Benchmarks and/or the Annual Benchmarks.**
- 16.3 ²⁰⁰ **On receipt of any such draft of a proposed amended or new Train Service Requirement the Franchisee shall provide to the Secretary of State (if so requested) its informed opinion:**
- (a) **with supporting reasons as to the impact of the proposed amended or new Train Service Requirement on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 14.1 of this Schedule 1.1;**
 - (b) **with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amended or new Train Service Requirement;**
 - (c) **with supporting reasons as to changes (if any) to the Benchmarks and/or the Annual Benchmarks;**
 - (d) **of the process to be required to implement the proposed amendment to the Train Service Requirement together with a plan for the implementation of the amendment to the Train Service Requirement (including all steps required to ensure that the**

¹⁹⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁰⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

Franchisee can deliver a Timetable compliant with such amended or new Train Service Requirement) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 17 of this Schedule 1.1; and

- (e) **with supporting reasons of the likely impact of the proposed amended or new Train Service Requirement on existing and future passenger journeys and journey opportunities,**

together with a draft of the Train Plan that it considers that the proposed amended or new Train Service Requirement would require.

- 16.4 There may be iterations of drafts of the proposed amended or new Train Service Requirement and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 16 in respect of all such iterations.
- 16.5 ²⁰¹**Processes contained in this paragraph 16 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2 of this Schedule 1.1.**
- 16.6 ²⁰²**The Secretary of State may, in accordance with any stipulation made under paragraph 17.2, issue to the Franchisee any amended or new Train Service Requirement that the Secretary of State requires the Franchisee to operate and notice of the amendments (if any) to the Benchmarks and/or Annual Benchmarks. Such amended or new Train Service Requirement will be issued prior to the commencement of the timetable development process of Network Rail for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Train Service Requirement.**
- 16.7 In the absence of the Secretary of State issuing any amended or new Train Service Requirement the existing Train Service Requirement will remain in full force and effect. The degree of variation from any Train Service Requirement specified at the date of the Franchise Agreement was entered into in respect of any particular period and brought about by any amended or new Train Service Requirement issued pursuant to this paragraph 16 shall (where relevant) be of a magnitude no greater than that contemplated in the Invitation to Tender.
- 16.8 ²⁰³**At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Train Service Requirement pursuant to paragraph 16.1, the Secretary of State shall also provide to the Franchisee the Secretary of State's opinion of any amendments (if any) that are required to the Benchmarks and/or the Annual Benchmarks.**

²⁰¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁰² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁰³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- 16.9 ²⁰⁴ **The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purposes of considering the effects of the Secretary of State's proposed amended or new Train Service Requirement.**

17. Procedural Arrangements and Timescales

- 17.1 The Franchisee agrees that the effective operation of the provisions of this Schedule 1.1 (and of provisions addressing the same or similar matters in other franchise agreements) will require certain procedural arrangements and timescales to be followed to a common timescale by the Secretary of State, the Franchisee, Network Rail and others.
- 17.2 The Franchisee agrees that the Secretary of State may stipulate any reasonable procedural arrangements and timescales that are to be followed by the Secretary of State and the Franchisee for these purposes (which shall be consistent with any relevant standard railway industry processes for the development of the Timetable and the resultant Train Plan) and that the Secretary of State may amend any such stipulation from time to time.
- 17.3 The Secretary of State agrees to consult the Franchisee as far as reasonably practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 17.2.
- 17.4 Any stipulation by the Secretary of State pursuant to paragraph 17.2:
- (a) shall be at the reasonable discretion of the Secretary of State;
 - (b) may contain procedural arrangements and timescales to be followed by the Franchisee in relation to other changes to the Franchise Services (pursuant to paragraph 1 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes)) in conjunction with the Train Service Requirement; and
 - (c) ²⁰⁵ **may provide for iterations of drafts of any amended or new Train Service Requirement, Train Plan or Timetable and for indicative Runs of the Financial Model in relation thereto.**
- 17.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2 shall have contractual effect between the Franchisee and the Secretary of State in accordance with the terms of such stipulation.

18. Obligations in relation to other Train Operators

Subject to the terms of the Licences and any applicable Law, the Franchisee shall co-operate with other Train Operators in respect of their timetable development

²⁰⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁰⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

rights where such other Train Operators provide railway passenger services meeting common or displaced passenger demand, with a view to ensuring that:

- 18.1 the levels of overcrowding over the Routes or other relevant routes are minimised and not unduly concentrated on particular railway passenger services, Routes or other relevant routes;
- 18.2 the stopping patterns of such railway passenger services are placed at approximately evenly-spaced intervals throughout each relevant hour, taking into account the reasonable needs of passengers and the different types of railway passenger services provided by other Train Operators and the Franchisee; and
- 18.3 ²⁰⁶**a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated, first trains or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).**

19. Provisions relating to Access Agreements and Property Leases

- 19.1 ²⁰⁷**Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under the Franchise Agreement, or any other franchise agreement, or for the better achievement by the Secretary of State of any of the Secretary of State's duties, functions and powers in relation to railways, or the implementation of the Crossrail Programme and the operation of the Crossrail Services by the Crossrail Operator, the Secretary of State may require the Franchisee:**
 - (a) **to exercise or refrain from exercising any or all of its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Secretary of State may specify; and/or**
 - (b) **subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.**
- 19.2 Except to the extent that the Secretary of State otherwise indicates from time to time, the Franchisee shall notify the Secretary of State of its intention to enter into or amend any Access Agreement:
 - (a) where the approval of the ORR is required under the Act, not less than ten (10) Weekdays before the submission to the ORR; and
 - (b) where no such approval is required, not less than ten (10) Weekdays prior to entering into such amendment or Access Agreement.

²⁰⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁰⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

19.3 The Franchisee shall comply with its obligations under any Access Agreement or any Property Lease to which it is a party from time to time:

- (a) to notify or consult with the Secretary of State on any matter or proposal relating to that Access Agreement or Property Lease; and
- (b) which are contingent on a particular course of action being taken by the Secretary of State or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of the Secretary of State.

19.4 If and to the extent that:

- (a) ²⁰⁸**the Secretary of State exercises the Secretary of State's rights pursuant to paragraph 19.1;**
- (b) the Franchisee's compliance with the Secretary of State's requirements pursuant to paragraph 19.1 would lead to the unavoidable consequence of the Franchisee contravening any other terms of the Franchise Agreement or the occurrence of an Event of Default; and
- (c) the Franchisee duly complies with such requirements,

no such contravention of the Franchise Agreement or Event of Default shall have occurred.

20. The Timetable and Network Rail's Working Timetable

20.1 Any specification of Passenger Services in the Train Service Requirement shall (unless the Secretary of State states to the contrary) be regarded as relating to how those Passenger Services are to be provided for in the National Rail Timetable that Network Rail publishes for passengers.

20.2 The Franchisee shall ensure, for each period between two (2) consecutive Passenger Change Dates during the Franchise Term that the Timetable for such period is, in its reasonable opinion, not materially different from the relevant working timetable issued by Network Rail.

21. ²⁰⁹NOT USED.

²⁰⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁰⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 1.2**Operating Obligations****1. Daily Operating Obligations**

The Franchisee agrees to use all reasonable endeavours to operate on each day of the Franchise Term each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service. The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it has on any day of the Franchise Term failed to operate to a material extent each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service.

2. Timetabling and Train Planning Compliance Investigation

2.1 ²¹⁰**If the Secretary of State considers that the Franchisee may have breached any of its obligations under any of paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (*Franchise Services and Service Development*) and/or paragraph 1 of this Schedule 1.2, the Secretary of State shall (in addition to the Secretary of State's right to obtain further information pursuant to paragraph 1.1 of Schedule 1.5 (*Information about Passengers*) and without prejudice to any other rights of the Secretary of State under the Franchise Agreement or otherwise) have the right, by serving notice on the Franchisee, to instigate an investigation of the Franchisee's compliance with its obligations under paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (*Franchise Services and Service Development*) and paragraph 1 of this Schedule 1.2, including any differences between the Forecast Passenger Demand and the Actual Passenger Demand and any unreasonable assumptions about the timetables likely to be operated by other Train Operators made by the Franchisee ("Timetabling and Train Planning Compliance Investigation").**

2.2 Following the service of such a notice the Franchisee shall:

- (a) provide such information as the Secretary of State may reasonably require for the purposes of determining if the Franchisee has complied with its obligations under paragraphs paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (*Franchise Services and Service Development*) and/or paragraph 1 of this Schedule 1.2 including evidence of:
 - (i) the steps taken by the Franchisee to amend and/or enter into Access Agreements, exercise Timetable Development Rights and exercise its rights under the Track Access Agreement to object, to make representations and to withhold consent in respect of any

²¹⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights;
- (ii) the extent to which the Franchisee has operated on each day of the relevant Reporting Period each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service;
 - (iii) Forecast Passenger Demand and the way that it was calculated, including all evidence taken into account and assumptions used (including any divergences from then existing industry modelling standards and the reasons for such divergences); and
 - (iv) any assumptions about the timetables likely to be operated by other Train Operators made by the Franchisee; and
 - (v) the alternative solutions considered by the Franchisee before finalising the Timetable and Train Plan and the reasons why any such alternative solutions were not adopted; and
- (b) permit the Secretary of State to carry out an audit of the extent to which the Timetable and Train Plan enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of Schedule 1.1 (*Franchise Services and Service Development*) and fully co-operate with and provide all information needed to facilitate such audit.

2.3 ²¹¹ **Contravention of the Franchise Agreement**

- (a) **The Franchisee shall be in contravention of the Franchise Agreement if following the completion by the Secretary of State of the Timetabling and Train Planning Compliance Investigation the Secretary of State concludes that the Franchisee breached any of its obligations under any of paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (*Franchise Services and Service Development*) and/or paragraph 1 of this Schedule 1.2 including where the Franchisee:**
- (i) **failed to act reasonably in calculating Forecast Passenger Demand because it unreasonably assumed that there would be differences between Forecast Passenger Demand and Actual Passenger Demand at the time that the Forecast Passenger Demand calculation was made; or**
 - (ii) **made unreasonable assumptions about the timetables likely to be operated by other Train Operators serving some or all of the same stations as the Franchisee.**
- (b) **Where the Secretary of State does conclude pursuant to paragraph 2.3(a) that the Franchisee has breached any relevant**

²¹¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

obligation the Franchisee shall pay to the Secretary of State the costs incurred by the Secretary of State in undertaking any Timetabling and Train Planning Compliance Investigation (including any audit pursuant to paragraph 2.2(b)).

- (c) **The Secretary of State shall notify the Franchisee if the Secretary of State concludes pursuant to paragraph 2.3(a) that the Franchisee is in contravention of the Franchise Agreement and the Secretary of State may at the Secretary of State's discretion, and entirely without prejudice to the Secretary of State's other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 2 of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*).**

3. Timetable changes proposed by Network Rail

- 3.1 The Franchisee shall notify the Secretary of State promptly after being notified by Network Rail that Network Rail has decided or proposes to:
- (a) omit from the Plan of the Day Passenger Services that are included in the Timetable; or
 - (b) reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable.
- 3.2 To the extent that any such decision or proposal may, in the reasonable opinion of the Franchisee, materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan the Franchisee shall explain in such notification the way in which, in its reasonable opinion, such omission or rescheduling may materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan.
- 3.3 The Franchisee agrees to supply to the Secretary of State from time to time, in the format required by the Secretary of State, such details of any actual or proposed omission or rescheduling of Passenger Services by Network Rail as the Secretary of State may reasonably require, including details of the steps which the Franchisee proposes to take pursuant to paragraph 3.4.
- 3.4 ²¹²**Where the actual or proposed omission or rescheduling of Passenger Services is one which may, in the reasonable opinion of the Secretary of State or the Franchisee, materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan, the Franchisee shall promptly notify the Secretary of State and the Franchisee agrees to co-operate with Network Rail in relation to such proposal, unless and until: (i) the Franchisee reasonably believes that such proposal is likely to be materially detrimental to the interests of passengers on railway passenger services in Great Britain; or (ii) the Secretary of State specifically instructs the Franchisee otherwise, in which case**

²¹² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

the Franchisee shall exercise its rights under the Track Access Agreement (including the Network Code) to:

- (a) **object (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR);**
- (b) **make representations; and**
- (c) **withhold consent,**

in respect of such actual or proposed omission or rescheduling of Passenger Services by Network Rail.

3.5 ²¹³**NOT USED.**

3.6 ²¹⁴**NOT USED.**

3.7 ²¹⁵**The provisions of this paragraph 3 shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than Network Rail or the Secretary of State, as those provisions apply to Network Rail.**

4. Timetable changes proposed by the Franchisee

4.1 ²¹⁶**The Franchisee agrees, subject to paragraph 4.4, not to propose to Network Rail:**

- (a) **the addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;**
- (b) **the omission from the Plan of the Day of any Passenger Services included in the Timetable; or**
- (c) **the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable,**

without the Secretary of State's prior consent.

4.2 The Franchisee shall submit to the Secretary of State an amended Train Plan in respect of each Timetable change proposal.

4.3 ²¹⁷**Not used.**

²¹³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²¹⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²¹⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²¹⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²¹⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- 4.4 ²¹⁸Subject to paragraph 4.8, if, in the opinion of the Franchisee (acting reasonably), it would not be reasonably practicable to obtain the Secretary of State's consent prior to proposing any of the items referred to in paragraph 4.1(a), 4.1(b) or 4.1(c) to Network Rail, the Franchisee shall be entitled to propose such items to Network Rail without the Secretary of State's prior consent, provided that the Franchisee shall inform the Secretary of State of such proposals as soon as is reasonably practicable.
- 4.5 ²¹⁹Subject to paragraph 4.8, the Franchisee shall ensure that any proposals to Network Rail submitted pursuant to paragraphs 4.1 or 4.4:
- (a) take full and proper account of the likely passenger demand (including a reasonable assessment of key workers) considering any known or anticipated impacts of COVID-19 (including without limitation any guidance published by Public Health England, and any Legislation, direction or instruction issued by any relevant local, governmental or other competent authority in the United Kingdom from time to time);
 - (b) utilise an appropriate number of Franchise Employees to support the likely passenger demand (as determined having taking into consideration the matters referred to in paragraph 4.5(a)); and
 - (c) ensure that the Train Fleet is deployed in an optimal manner taking account of all relevant circumstances, including the latest available official guidance relating to social distancing.
- 4.6 ²²⁰The Franchisee shall use all reasonable endeavours to co-operate with other Train Operators in respect of the Franchisee's proposals to Network Rail pursuant to paragraphs 4.1 and 4.4 or any emergency timetables proposed by other Train Operators to ensure that a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated or first trains or last trains are involved, taking account of the likely fluctuations in passenger demand as a result of COVID-19 and the time needed to make any such Connection).
- 4.7 ²²¹The Franchisee shall use reasonable endeavours to take into account the requirements of operators of rail freight services in respect of the Franchisee's proposals to Network Rail pursuant to paragraphs 4.1 and 4.4.

²¹⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²¹⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²²⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²²¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 4.8 ²²²**The Franchisee acknowledges and agrees that the Secretary of State may, at any time, direct that all or any part of paragraphs 4.4 and/or 4.5 shall cease to apply. Any such direction by the Secretary of State shall have effect from such date as may be reasonably specified by the Secretary of State and, in such circumstances, the relevant parts of paragraph 4.4 and/or paragraph 4.5 and, where applicable, any references to the provisions of those provisions shall be deemed to be deleted.**

4A ²²³Special Events

- 4A.1 **The Franchisee shall use all reasonable endeavours to operate adequate railway passenger services to or from any special events which are not already provided for in the Plan of the Day to meet the passenger demand that is reasonably likely to arise from such special events and to ensure that the railway passenger services provided have an appropriate amount of passenger carrying capacity. The Franchisee shall in meeting its obligations pursuant to this paragraph 4A.1:**

- (a) **consider amending the Plan of the Day through the omission, addition or rescheduling of Passenger Services; and**
- (b) **seek to optimise the effective delivery of the Passenger Services as a whole with the provision of appropriate capacity in the context of the additional demand consequent upon a relevant special event.**

5. ²²⁴Timetable changes and Train Plan changes requested by the Secretary of State

- 5.1 The Franchisee agrees, as and when requested by the Secretary of State, to use all reasonable endeavours to seek and to obtain:
- (a) the addition to the Plan of the Day of any railway passenger services that are not included in the Timetable;
 - (b) the omission from the Plan of the Day of any Passenger Services that are included in the Timetable; and/or
 - (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable.
- 5.2 ²²⁵**The Secretary of State may reasonably request that the Franchisee shall submit to the Secretary of State an amendment to the Train Plan at any time.**

²²² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²²³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²²⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²²⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

6. Obligations of the Franchisee in the event of disruption to railway passenger services

- 6.1 In the event of any planned or unplanned disruption to railway passenger services operated on the Routes, or on other parts of the network which are reasonably local to the Routes, the Franchisee shall:
- (a) without prejudice to any other provision of this Schedule 1.2, notify the Secretary of State promptly where such disruption would materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable or deliver the Timetable in accordance with the Train Plan;
 - (b) co-operate with Network Rail and other Train Operators to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:
 - (i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
 - (ii) is reasonably necessary as a result of the cause or the location of the disruption; and
 - (c) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2.
- 6.2 The Franchisee shall use all reasonable endeavours to provide or secure the provision of alternative transport arrangements to enable passengers affected by any disruption referred to in paragraph 6.1 to complete their intended journeys in accordance with this paragraph 6.2. In particular, the Franchisee shall use all reasonable endeavours to:
- (a) ensure that such alternative transport arrangements are of reasonable quality, of a reasonably similar frequency to the Passenger Services included in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;
 - (b) transport passengers to, or as near as reasonably practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of any Disabled Persons and, where appropriate, making additional arrangements for such Disabled Persons to complete their intended journey;
 - (c) provide adequate and prominent publicity of such alternative transport arrangements in advance, subject, in the case of unplanned disruption, to the Franchisee having sufficient notice of such disruption to enable it to provide such publicity;
 - (d) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and

- (e) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

7. Obligation to use "all reasonable endeavours" under this Schedule 1.2

7.1 Any obligation in this Schedule 1.2 on the part of the Franchisee to use "**all reasonable endeavours**" shall (with the exception of paragraph 5 of this Schedule 1.2) include an obligation to:

- (a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in accordance with the Train Plan in ordinary operating conditions;
- (b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Franchise Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 7.2; and
- (c) actively manage the performance by Network Rail of its contractual relationship with the Franchisee (and provide appropriate management resources for this purpose) so as to secure the best performance reasonably obtainable from Network Rail by these means (including taking the steps referred to in paragraph 7.4), having regard to all the circumstances.

7.2 The matters to which the Franchisee is to have regard pursuant to paragraph 7.1(b) shall include:

- (a) variations in weather and operating conditions (including Network Rail's infrastructure not being available for any reason), which may in either case include seasonal variations;
- (b) default by, or restrictions imposed by, suppliers to the Franchisee;
- (c) shortages of appropriately skilled or qualified Franchise Employees;
- (d) disputes with Franchise Employees;
- (e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
- (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew and the servicing or cleaning of any rolling stock vehicles;
- (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction); and
- (h) ²²⁶**the impact, and emerging projections relating to the likely or potential impact, from time to time, of COVID-19 on the**

²²⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

Franchisee's ability to provide the Passenger Services and/or the level of passenger demand or reasonably expected passenger demand for the Passenger Services.

- 7.3 For the purpose of taking measures in respect of any disruption to the Franchise Services in accordance with paragraph 7.1(b) and assessing the extent of any risk referred to in paragraph 7.1(b) and any such risk's reasonable foreseeability, regard shall be had both:
- (a) to the historical levels of incidence of disruption in the operation of:
 - (i) the Franchise Services;
 - (ii) similar services both by the Franchisee and/or its predecessors; and
 - (iii) other services of a type similar to the Franchise Services; and
 - (b) to potential changes in circumstances which may affect those levels.
- 7.4 The steps to which paragraph 7.1(c) refers include:
- (a) co-operating with Network Rail in the development, agreement and implementation of:
 - (i) a five (5)-year (rolling) Performance Strategy Plan; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Performance Strategy Plan;
 - (b) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and the Franchisee from time to time;
 - (c) undertaking regular reviews of:
 - (i) the most common and most detrimental causes of delay to the Passenger Services; and
 - (ii) the causes of the ten (10) delays to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 7.4(c)(i)),

which have occurred during a defined review period (e.g. weekly/four (4) weekly/quarterly) and which have been caused by the Franchisee, any other Train Operator, any other train operator licensed under the Act or Network Rail;
 - (d) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 7.4(c)(i) and 7.4(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
 - (e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the Parties;

- (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail in the Performance Strategy Plan and derived delivery plans and using reasonable endeavours to specify and develop such delivery plans;
 - (g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains (and data collected from train systems), other facilities and/or information;
 - (h) co-operating with Network Rail in other delay management initiatives and ongoing quarterly reviews of the Performance Strategy Plan;
 - (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
 - (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
 - (k) ²²⁷ **where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing the Franchisee's rights under the Track Access Agreement.**
- 7.5 The Franchisee undertakes to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules.
- 7.6 To the extent not already provided for in the Franchise Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement, including, where appropriate or where requested by the Secretary of State, enforcing its rights against Network Rail under any such agreement.
- 7.7 ²²⁸ **When and to the extent reasonably requested by the Secretary of State, the Franchisee shall provide to the Secretary of State evidence of the steps taken by the Franchisee in order to comply with its obligations under this paragraph 7.**

²²⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²²⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 1.3

NOT USED

SCHEDULE 1.4**Passenger Facing Obligations****1. Publishing the Timetable****1.1 The First Timetable**

The Franchisee shall publish on the Start Date:

- (a) the Timetable:
 - (i) at each staffed Station, by making the relevant information available upon request and free of charge in one or more booklets or in other similar form;
 - (ii) at each Station, by displaying the relevant information on information displays;
 - (iii) ²²⁹at each Franchisee Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraphs 1.1(a)(i) and 1.1(a)(ii); and
 - (iv) on the Franchisee's website; and
- (b) the timetables of other Train Operators at Stations, in accordance with paragraph 1.4.

1.2 Timetable Revisions and Alterations

²³⁰Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall publish updates or replacements to the Timetable at the locations specified in paragraph 1.1 to the extent necessary to reflect any changes which come into effect on a Passenger Change Date:

- (a) in the case of booklets, at least four (4) weeks before the changes come into effect;
- (b) in the case of information displays, no later than the day before the changes come into effect;
- (c) in the case of information provided to the operators of Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limits provided for in this paragraph 1.2; and

²²⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²³⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (d) **in the case of the Franchisee's website, at least four (4) weeks before the changes come into effect.**
- 1.3 ²³¹**In addition, subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall:**
- (a) **subject to paragraph 1.4, display posters at each Station advising passengers of all Significant Alterations between any two (2) Passenger Change Dates to railway passenger services calling at that Station, no later than four (4) weeks in advance of the date on which the alterations come into effect; and**
- (b) **provide posters to the operators of Franchisee Access Stations, advising passengers of all Significant Alterations between any two (2) Passenger Change Dates to the Passenger Services which call at such Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limit provided for in paragraph (a).**
- 1.4 **Other Train Operators' Timetables**
- ²³²**Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall also comply with the requirements of paragraphs 1.1 to 1.3 inclusive by making available booklets and displaying information in information displays and otherwise displaying posters in respect of any other Train Operator's timetable at each Station where the railway passenger services of such other Train Operator are scheduled to call or in respect of which Connections to such other Train Operators railway passenger services can be made from that Station:**
- (a) **within the time limits specified in paragraphs 1.2 and 1.3 where and to the extent that such other Train Operator delivers to the Franchisee the relevant information and materials in sufficient time for the Franchisee to so publish; and**
- (b) **as soon as reasonably practicable thereafter where and to the extent that such other Train Operator delivers the relevant information and materials late to the Franchisee.**
- 1.5 **National Rail Timetable and National Rail Enquiry Scheme**
- ²³³**The Franchisee shall use all reasonable endeavours to procure (including by virtue of any arrangements made from time to time between Network Rail and RSP) that the National Rail Timetable (or any replacement timetable), which Network Rail is responsible for publishing from time to time in relation to the Passenger Services, incorporates or is consistent with its Timetable from time to time.**

²³¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²³² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²³³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

1.6 ²³⁴ **Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall use all reasonable endeavours to procure that information in relation to:**

- (a) **the Timetable; and**
- (b) **any Significant Alterations, to the Timetable to take effect between any two (2) Passenger Change Dates,**

is available to passengers through the National Rail Enquiry Scheme (or any replacement) not less than four (4) weeks prior to coming into effect.

2. Communicating Late Timetable Changes

2.1 ²³⁵ **Subject to paragraph 2A.2 of this Schedule 1.4, and save in respect of Significant Alterations, for which the provisions of paragraphs 1.3 and 1.6 shall apply, the Franchisee shall inform passengers, so far as possible on not less than seven (7) days' prior notice, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.**

2.2 Such information shall be provided by:

- (a) revising or adding to the information displays referred to in paragraph 1.1;
- (b) notifying the operators of the Franchisee Access Stations, as appropriate, including by providing such operators with revised posters; and
- (c) updating the Franchisee's website.

2.3 The Franchisee shall revise or add to the information displays at the Stations promptly on receipt of any equivalent information relating to the railway passenger services of other Train Operators whose services call at the Stations.

2.4 Where the Franchisee is unable to provide the information specified in paragraph 2.1 because the relevant revisions are made on an emergency basis, the Franchisee shall notify passengers and publish the relevant revisions by way of the means contemplated by paragraph 2.2 as soon as reasonably practicable.

2.5 The Franchisee shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), passengers making enquiries regarding the Passenger Services are informed of the revised Timetable and any revised travel arrangements of the Franchisee as far in advance as is reasonably practicable.

²³⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²³⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

2A ²³⁶**Communicating Emergency Timetables****2A.1 Subject to paragraph 2A.3, the Franchisee shall publish:**

- (a) **any amendments to the Timetable made pursuant to paragraphs 3, 4, 5 or 6 of Schedule 1.2 as soon as reasonably practicable:**
 - (i) **at each Station, by displaying the relevant information on information displays;**
 - (ii) **at each Franchisee Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraph (i);**
 - (iii) **on the Franchisee's website;**
 - (iv) **via the Franchisee's social media accounts (through which the Franchisee shall in any event publish any such amendments to the Timetable no later than two (2) hours following agreement of such amendments); and**
 - (v) **via any other direct means of communication with passengers available to the Franchisee, including but not limited to email and/or text messaging services; and**
- (b) **as far and as soon as is reasonably practicable, any emergency timetables of other Train Operator's where the railway passenger services of such other Train Operator are scheduled to call or in respect of which Connections to such other Train Operators railway passenger services can be made from that Station:**
 - (i) **at each Station, by displaying the relevant information on information displays; and**
 - (ii) **on the Franchisee's website.**

2A.2 To the extent that this paragraph 2A requires the Franchisee to undertake activities that it would otherwise be obliged to perform pursuant to paragraphs 1.2, 1.3, 1.4, 1.6 and 2, and there are any discrepancies between the timescales or other requirements relating to such activities between this paragraph 2A and paragraphs 1.2, 1.3, 1.4, 1.6 or 2, the relevant requirements of this paragraph 2A shall take precedence over those in paragraph 1.2, 1.3, 1.4, 1.6 or 2 (as applicable).

2A.3 The Secretary of State may, at any time, direct that this paragraph 2A shall cease to apply and/or shall no longer take precedence over the timescales and/or the other requirements set out in paragraphs 1.2, 1.3, 1.4, 1.6 or 2 above. Any such direction shall have effect from such date as may be

²³⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

reasonably specified by the Secretary of State and, in such circumstances, the entirety of this paragraph 2A and any references to the provisions of this paragraph 2A shall be deemed to be deleted.

3. Fares Selling Restrictions

3.1 Restrictions on Sales

²³⁷**The Franchisee shall ensure that the purchaser of any Protected Fare or Commuter Fare:**

- (a) **shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;**
- (b) **shall not be required to incur any cost or take any action beyond the payment of an amount equal to the Price of such Protected Fare or Commuter Fare (as the case may be) and, in relation to the issue of a Season Ticket Fare, the completion of an identity card as the Franchisee may reasonably require; and**
- (c) **shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Protected Fare or Commuter Fare (as the case may be) on a Passenger Service.**

3.2 The Franchisee shall procure that for any:

- (a) Protected Return Fare, Single Fare which is a Commuter Fare or Return Fare which is a Commuter Fare, each such Fare shall be offered for sale wherever and whenever any other Fare (not being a Season Ticket Fare) for a journey between the same origin and destination stations is offered for sale; and
- (b) Protected Weekly Season Ticket or Season Ticket Fare which is a Commuter Fare, each such Fare shall be offered for sale at all staffed ticket offices at which Fares for a journey between the same origin and destination stations are sold and otherwise wherever and whenever any Season Ticket Fare is offered for sale,

²³⁸**in each case, either by the Franchisee or its agents (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement).**

²³⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²³⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- 3.3 ²³⁹ **Where the Franchisee sets a limit on the number of Protected Fares or Commuter Fares that may be used on any particular train, such limit shall be the greater of:**
- (a) **the number of seats in Standard Class Accommodation on such train; and**
 - (b) **the capacity of Standard Class Accommodation of the rolling stock vehicles comprising such train according to the tables set out in Appendix 1 to Schedule 1.6 (The Rolling Stock).**
- 3.4 The Franchisee shall not sell or offer to sell:
- (a) ²⁴⁰ **any Fare in respect of which the:**
 - (i) **Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), at prices that are greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 and Schedule 5.5; and**
 - (ii) **Child Prices are regulated under paragraph 1.3 of Schedule 5.5 (Regulation of Individual Fares) at prices that are greater than fifty per cent (50%) of the Price of the relevant Fare;**
 - (b) any Fare or Discount Card which has a validity of thirteen (13) or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.

3.5 **Agents of the Franchisee**

The Franchisee shall procure that all persons selling or offering to sell Fares on its behalf (whether under the terms of the Ticketing and Settlement Agreement, as its agents or otherwise):

- (a) ²⁴¹ **for Fares in respect of which the:**
 - (i) **Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), sell or offer to sell at prices no greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 and Schedule 5.5; and**
 - (ii) **Child Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), at prices that are greater than the Child Prices set for such Fares from time to time in accordance**

²³⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁴⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁴¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

with Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares);

- (b) ²⁴²for Fares in respect of which the Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (Franchisee's Obligation to Create Fares), Child Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), at prices that are greater than the Child Prices set for such Fares from time to time in accordance with Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares); and
- (c) for all Fares:
- (i) do not sell or offer to sell any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld); and
 - (ii) comply with the provisions of paragraph 5 of Schedule 15.2 (Last Twelve (12) or Thirteen (13) Months of Franchise Period and Other Conduct of Business Provisions) to the extent they apply to the selling of Fares by the Franchisee.

3.6 Additional Ancillary Services

²⁴³**The Franchisee shall, subject to this paragraph 3, be entitled to charge a purchaser of any Protected Fare or Commuter Fare for any additional services:**

- (a) **which are ancillary to the railway passenger service for which such Protected Fare or Commuter Fare (as the case may be) was purchased (including charges in respect of car parking or catering services); and**
- (b) **which such purchaser is not obliged to purchase.**

3.7 Sale of Fares for travel on Bank Holidays

The Franchisee shall ensure that, for any Fare in respect of travel on a Bank Holiday, it only offers for sale (and shall procure that any person authorised to sell Fares on its behalf only offers for sale) such Fare that has the same rights and restrictions as a Fare which is valid for travel on a Saturday or a Sunday.

3.8 ²⁴⁴**NOT USED.**

²⁴² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁴³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁴⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

4. Passenger's Charter

4.1 Content

The Franchisee shall:

- (a) publish its Passenger's Charter:
 - (i) in substantially the same form as the document in the agreed terms marked PC; and
 - (ii) in accordance with the requirements specified in paragraph 4.3;
 - (b) review the need for changes to the Passenger's Charter at least every three (3) years, in consultation with the Passengers' Council, and shall submit a draft of any revisions to the Passenger's Charter that it wishes to propose, together with proof of such consultation, to the Secretary of State; and
 - (c) state the date of publication clearly on the front cover of the Passenger's Charter.
- 4.2 The Franchisee may not change the Passenger's Charter without the Secretary of State's prior written consent (which is not to be unreasonably withheld).

4.3 Publishing the Passenger's Charter

The Franchisee shall publicise its Passenger's Charter by:

- (a) providing copies to the Secretary of State and the Passengers' Council at least seven (7) days before it comes into effect;
 - (b) providing copies to passengers, free of charge, at each staffed Station and in the case of any revision thereto, providing such copies at least seven (7) days before such revision comes into effect;
 - (c) sending a copy, free of charge, to any person who requests it; and
 - (d) displaying it on its website at all times and, in the case of any revision thereto, at least seven (7) days before such revision comes into effect,
- save in respect of the Passenger's Charter which is effective on the Start Date, in which case the Franchisee shall publicise such Passenger's Charter in the manner contemplated by this paragraph 4.3 on and from the Start Date.
- 4.4 The Franchisee shall also provide at each staffed Station the then current passenger's charter of any other Train Operator whose trains call there, subject to the provision of such passenger's charter to the Franchisee by such other Train Operator.
- 4.5 The Franchisee shall provide copies of its Passenger's Charter to the operators of Franchisee Access Stations to enable such operators to publish it.
- 4.6 Passenger's Charter Payments and Other Obligations

The Franchisee shall:

- (a) make all payments which passengers may reasonably expect to be made or provided from time to time under the terms of the Passenger's Charter (whether or not the Franchisee is legally obliged to do so);
- (b) use all reasonable endeavours to make passengers aware of their right to claim compensation pursuant to the Passenger's Charter, including by:
 - (i) displaying the relevant information on trains and at Stations;
 - (ii) making appropriate announcements to passengers on trains and at Stations when the circumstances giving rise to that right occur;
 - (iii) making compensation claim forms readily available to passengers at Stations and on the Franchisee's website; and
 - (iv) any other reasonable means to reflect future advancements in technology proposed in writing either by the Franchisee or the Secretary of State and agreed by both Parties (acting reasonably); and
- (c) use all reasonable endeavours:
 - (i) to comply with any other obligations, statements and representations; and
 - (ii) to meet any other standards or targets of performance,
 as are comprised in its Passenger's Charter from time to time.

5. End to End Journeys and Cycles

The Franchisee shall have due regard to the desirability of acting in a manner which facilitates end to end journeys that involve travel by all transport modes (including cycles). The Franchisee shall permit the carriage of folding cycles on all Passenger Services and non-folding cycles wherever reasonably practicable.

6. Statutory Notices

²⁴⁵**If requested by the Secretary of State, the Franchisee shall publish and display at the Stations (and shall use all reasonable endeavours to procure the publication and display at Franchisee Access Stations of) such statutory notices as the Secretary of State may wish to publish from time to time in the exercise of the Secretary of State's functions (including in relation to Closures or any enforcement or penalty orders).**

7. Train and Station Cleaning

The Franchisee shall:

²⁴⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- 7.1 ²⁴⁶ **ensure that the nature and frequency of its planned and reactive programme for maintaining a reasonable standard of train presentation is such that all rolling stock used by the Franchisee in the provision of the Passenger Services is expected to be kept reasonably clean, appropriately stocked with consumables and free from minor defects;**
- 7.2 ²⁴⁷ **use all reasonable endeavours to ensure that a reasonable standard of train presentation is maintained at all times in respect of all rolling stock used by the Franchisee in the provision of the Passenger Services;**
- 7.3 ensure that the nature and frequency of its planned and reactive programme for maintaining a reasonable standard of Station condition and passenger environment is such that all of the Stations are expected to be clean, free of litter and graffiti, painted to a reasonable standard and free from minor defects; and
- 7.4 use all reasonable endeavours to ensure that all Stations are clean, free of litter and graffiti, painted to a reasonable standard and free from minor defects throughout the Franchise Term.

8. Publication of Performance Data

- 8.1 The Franchisee shall in accordance with paragraph 8.2 of this Schedule 1.4 (and in such format as the Secretary of State may reasonably require) publish on the Franchisee's website in relation to each Reporting Period during the Franchise Term the performance of the Franchisee by reference to:
- (a) Cancellations Figures;
 - (b) PPM Figures;
 - (c) CaSL Figures;
 - (d) Right Time Figures;
 - (e) ²⁴⁸ **Short Formation Figures;**
 - (f) ²⁴⁹ **Time to three (3) Minutes Figures;**
 - (g) ²⁵⁰ **Time to fifteen (15) Minutes Figures;**
 - (h) ²⁵¹ **All Cancellations Figures; and**

²⁴⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁴⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁴⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁴⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁵⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁵¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

(i) ²⁵²**On Time Figures.**

Such data shall be published by the Franchisee within ten (10) Weekdays of it becoming available to the Franchisee.

8.2 The Franchisee shall ensure that the data published by it pursuant to paragraph 8.1 shall in each case be shown:

- (a) in relation to all Passenger Services;
- (b) disaggregated by reference to Service Groups;
- (c) on a periodic and/or on an average basis (as applicable); and
- (d) ²⁵³**include details of:**
 - (i) **the number of Passenger Services operated by the Franchisee during each relevant Reporting Period which are late in arriving at their final scheduled destination in the Plan of the Day:**
 - (A) **by between thirty (30) minutes and fifty-nine (59) minutes;**
 - (B) **by between sixty (60) minutes and one hundred and nineteen (119) minutes; and**
 - (C) **by one hundred and twenty (120) minutes or more,**

and the percentage that each such category of delayed Passenger Services represents of the total number of Passenger Services scheduled to be provided in the Plan of the Day during such Reporting Period; and
 - (ii) **the number of Passenger Services formed with less than the required Passenger Carrying Capacity specified in the Train Plan during such Reporting Period and the percentage that this represents of all Passenger Services scheduled in the Train Plan to be operated in that Reporting Period.**

8.3 ²⁵⁴**As part of each Customer Report (excluding the first (1st) Customer Report) to be provided by the Franchisee pursuant to paragraph 10.1 of Schedule 7.2 (Customer Experience and Engagement), the Franchisee shall publish (in such format as the Secretary of State may reasonably require):**

- (a) **the mean average of each of the Cancellations Figures and the Short Formation Figures for the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous**

²⁵² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁵³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁵⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

Customer Report (or, in the case of the first (1st) Customer Report, since the Start Date);

- (b) **the latest Time to three (3) Minutes Figures, Time to fifteen (15) Minutes Figures, All Cancellation Figures and On Time Figures for the last Reporting Period before publication of the relevant Customer Report;**
- (c) **from the third (3rd) Customer Report onwards, a summary comparison of the statistics produced pursuant to paragraphs 8.3(a) and 8.3(b) as against the equivalent statistics provided for the same Reporting Period(s) in the previous Franchisee Year;**
- (d) **an update on the key activities undertaken by the Franchisee to improve its performance in relation to the measures referred to in paragraphs 8.3(a) and 8.3(b); and**
- (e) **a summary of the key activities planned to be undertaken by the Franchisee in the period in relation to which the next Customer Report will report to improve its performance in relation to the measures referred to in paragraphs 8.3(a) and 8.3(b).**

9. Publication of Complaints and Faults Handling Data

²⁵⁵ **As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 10.1 of Schedule 7.2 (Customer Experience and Engagement), the Franchisee shall publish (in such format as the Secretary of State may reasonably require) in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first (1st) Customer Report, since the Start Date):**

- (a) a summary of the data published by the ORR from time to time in relation to the handling of passenger complaints regarding the Franchisee's operation of the Passenger Services;
- (b) details of the number of faults notified to the Franchisee by passengers or station users through specified channels, including the website of the Franchisee (each a "Notified Fault") in each case identifying the total numbers of Notified Faults (by reference to whether such Notified Faults relate to rolling stock or stations), with such numbers further disaggregated by Service Group and broken down into relevant sub-categories of Notified Fault;
- (c) the mean average time taken by the Franchisee:
 - (i) to resolve Notified Faults; and
 - (ii) where Notified Faults are not resolved within twenty (20) Weekdays, to provide feedback to applicable passengers

²⁵⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

and/or station users on its progress in seeking resolution of such Notified Faults; and

- (d) ²⁵⁶**from the third (3rd) Customer Report onwards a summary comparison of:**
- (i) the mean average number of Notified Faults notified to the Franchisee;
 - (ii) the mean average time taken by the Franchisee to resolve Notified Faults; and
 - (iii) the mean average time taken by the Franchisee, where Notified Faults have not been resolved within twenty (20) Weekdays to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults,

in each case in comparison with the relevant equivalent mean average statistics provided for the same Reporting Periods in the previous Franchisee Year.

²⁵⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

Appendix 1 to Schedule 1.4

Not Used²⁵⁷

²⁵⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

Appendix 2 to Schedule 1.4

Not Used²⁵⁸

²⁵⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 1.5**Information about Passengers****1. Passenger Numbers Information**

1.1 The Franchisee shall, as and when reasonably requested by the Secretary of State (and, for these purposes, it shall not be unreasonable to make such a request at least twice yearly), provide information to the Secretary of State on the extent of the use by passengers of the Passenger Services. Without limitation to the generality of the foregoing, in particular and when so requested, the Franchisee shall provide information relating to:

- (a) the number of passengers travelling in each class of accommodation:
 - (i) on each Passenger Service;
 - (ii) on each Route; and/or
 - (iii) at any station or between any stations;
- (b) the times of the day, week or year at which passengers travel; and
- (c) the Actual Consist Data and the Scheduled Consist Data,

(the information referred to in the whole of this paragraph 1.1 being referred to together as "**Actual Passenger Demand**").

1.2 The Franchisee shall obtain and collate the information specified in paragraph 1.1 by using the technology specified in paragraph 3. The Franchisee shall ensure that any technology for determining the number of passengers travelling in each class of accommodation that is fitted on the Train Fleet remains operational and in good working order from the date that it is fitted throughout the Franchise Period. The Franchisee shall also ensure that, if such technology is not fitted to one hundred per cent (100%) of the Train Fleet, the individual rolling stock vehicles that have been fitted with such technology shall be rotated around the Routes as necessary to satisfy such request for data as is made by the Secretary of State pursuant to paragraph 1.1. The Secretary of State, acting reasonably, shall have the right to obtain such other information that the Franchisee has, ought properly to have or could reasonably obtain which may provide a more detailed or accurate view of the extent of use by passengers of the Passenger Services, including information about ingress and egress of passengers at ticket gates at Stations.

1.3 The Franchisee shall provide to the Secretary of State all of the information generated by the technology specified in paragraph 3 and/or by using manual counts pursuant to paragraph 2, including the information specified in paragraph 1.1:

- (a) promptly following its collation and in any case within the following timescales:

- (i) ²⁵⁹**in the case of data collected automatically by the Count Equipment and capable of being transmitted directly and automatically to the RPC Database or the Preliminary Database (as appropriate), within forty-eight (48) hours of its collation;**
 - (ii) in the case of data collected automatically by the Count Equipment but not capable of direct and automatic transmission to the RPC Database or the Preliminary Database (as appropriate), within one (1) calendar month of its collation; and
 - (iii) in the case of data collected by manual count, within one (1) calendar month of its collation;
- (b) using such systems, in such a format and to such level of disaggregation as the Secretary of State may reasonably require, and in a format which is capable of being read by the RPC Database or the Preliminary Database (as appropriate) (which shall include providing data which is not encrypted);
 - (c) either by transmitting such data directly to the RPC Database or the Preliminary Database (as appropriate) or by ensuring that the database provider can pull and transmit such data to the RPC Database or the Preliminary Database (as appropriate), as appropriate according to the nature of the Franchisee's Count Equipment from time to time or by providing such data to the Secretary of State by such other means as the Secretary of State notifies to the Franchisee from time to time; and
 - (d) to the extent required by the Secretary of State, by providing the Secretary of State with direct remote access to the system used by the Franchisee to collect such information such that the Secretary of State is able to download such information,
- ²⁶⁰**and such information may be used by the Secretary of State for such purposes as the Secretary of State may reasonably require, including for the purposes of assisting the Secretary of State's decision making on train service requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding.**
- 1.4 The Franchisee shall use any flagging system contained within the RPC Database to highlight such events and occurrences as the Secretary of State may reasonably specify in writing from time to time.
- 1.5 ²⁶¹**NOT USED.**

²⁵⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁶⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁶¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

2. ²⁶²Manual Passenger Counts

- 2.1 **The Secretary of State shall have the right to require the Franchisee to carry out manual counts in relation to some or all of the Passenger Services at such times as may be required and in such manner (including as to levels of accuracy and the number of days) as may be specified from time to time by the Secretary of State, including if, exceptionally, the Franchisee is unable to comply with its obligations to provide data generated by the technology specified in paragraph 3.**
- 2.2 **The Secretary of State shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by the Secretary of State or otherwise). In the event that such audit reveals, in the reasonable opinion of the Secretary of State, a material error, or a reasonable likelihood of material error, in such counts, the Secretary of State may require the counts to be repeated or the results adjusted as the Secretary of State considers appropriate, and in these circumstances the Franchisee shall pay to the Secretary of State the costs of any such audits.**

3. Technology for Obtaining the Information referred to in paragraph 1.2

- 3.1 The technology to be used for the purpose of paragraph 1.2 shall be infra-red sensors or camera based door sensors.
- 3.2 ²⁶³**The technology to be used for the purposes of paragraph 1.2 shall be fitted to:**
- (a) **in the case of any brand new rolling stock which is admitted to the Train Fleet, one hundred per cent (100%) of it from the date that such rolling stock is properly admitted; and**
 - (b) **in the case of all other rolling stock, by 1 January 2020, to every vehicle comprised within no less than thirty-five per cent (35%) of such rolling stock units included in the Train Fleet from time to time in aggregate.**
- 3.3 Without limiting the Secretary of State's rights under paragraph 1.1 of this schedule 1.5, the technology specified in paragraph 3.1 above shall be used to provide counts in respect of, in any period of not less than twelve (12) weeks, at least two (2) of each of the Timetabled Services, and each count shall be carried out on each rolling stock unit comprising a particular train. The Franchisee may only use a method of extrapolation and use extrapolated data to provide a reliable estimate of a full train's count with the Secretary of State's prior written approval of the use of extrapolated data and the method of extrapolation (such approval not to be unreasonably withheld or delayed).

²⁶² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁶³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- 3.4 The Franchisee shall comply with its obligation under this paragraph 3 from the date(s) such rolling stock is incorporated into the Train Fleet.
- 3.5 ²⁶⁴**The Parties acknowledge that the information supplied under paragraph 1.1, and any product of it created by the RPC Database or the Preliminary Database (as appropriate), may constitute Confidential Information to which Schedule 17 (Confidentiality, Freedom of Information and Data Protection) applies.**

4. Customer Relationship Management (CRM) Data

- 4.1 The Franchisee shall ensure that any CRM System is the property of the Franchisee or is licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and that any CRM Data obtained by or on behalf of the Franchisee shall be:
- (a) obtained on terms such that the Franchisee shall be the Data Controller of such data; and
 - (b) the property of the Franchisee.
- 4.2 In relation to any CRM Data obtained by or on behalf of the Franchisee, the Franchisee shall ensure or procure that at the same time as the Franchisee seeks consent to process such CRM Data, the consent of the Data Subject is also sought to such CRM Data being disclosed to any Successor Operator and/or the Secretary of State and processed by any Successor Operator for the same purposes as the Franchisee sought consent to process such CRM Data.
- 4.3 ²⁶⁵**Any consent referred to in paragraph 4.2 shall be sought in such manner as shall from time to time be approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and shall be on terms such as shall permit, in each case in compliance with Data Protection Legislation:**
- (a) the Franchisee to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and
 - (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 4.2.
- 4.4 The Franchisee shall not be required to:
- (a) disclose, publish, share or otherwise provide or make available any Personal Data (including CRM Data) to any person (including a Successor Operator or any participant involved with the re-letting of the Franchise); or

²⁶⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁶⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) provide access to any CRM System,

in each case pursuant to the terms of the Franchise Agreement (together, the “**CRM Obligations**”) if and to the extent that the Franchisee demonstrates to the satisfaction of the Secretary of State that compliance with such CRM Obligations would put the Franchisee, acting as a Data Controller, in contravention of its duties and/or obligations under any Personal Data Legislation.

5. Yield Management Data

- 5.1 The Franchisee shall ensure that any Yield Management Data and Yield Management System are the property of the Franchisee or are licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).
- 5.2 ²⁶⁶**NOT USED.**
- 5.3 ²⁶⁷**The Franchisee shall notify the Secretary of State in writing of the full names and registered office addresses of the entities which from time to time are hosting or storing any of the Yield Management Data, or which are otherwise holding within their possession or control any of the Yield Management Data, together with the location(s) in which the Yield Management Data is hosted, stored or otherwise held. In cases where the hosting, storage or holding of the Yield Management Data occurs in location(s) which are outside of the United Kingdom the notification shall include details of the relevant country(ies) or territory(ies).**
- 5.4 ²⁶⁸**The Franchisee hereby acknowledges that the Secretary of State legitimately wishes to have knowledge of the locations in which the Yield Management Data is hosted, stored or otherwise held from time to time (whether inside or outside of the United Kingdom) given that all such information would be relevant in the event of any transfer of the Franchise to a Successor Operator.**

6. ²⁶⁹**NOT USED.**

7. Rail Passenger Counts Database

- 7.1 ²⁷⁰**Subject to compliance by the Franchisee with its obligations set out in this Schedule 1.5, the Secretary of State shall as soon as reasonably practicable following the Start Date:**
- (a) **use reasonable endeavours to set up and thereafter maintain the RPC Database;**

²⁶⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁶⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁶⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁶⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁷⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) **use reasonable endeavours to populate the RPC Database with such Actual Passenger Demand information as the Franchisee shall provide pursuant to the Franchisee's obligations contained elsewhere in the Franchise Agreement and any other information that the Secretary of State shall desire; and**
 - (c) **use reasonable endeavours to provide the Franchisee with log-in details to the RPC Database in order to allow the Franchisee to access Actual Passenger Demand information that has been provided by the Franchisee, any Network Rail Data, any Third Party Data and to generate reports from the RPC Database.**
- 7.2 The RPC Database is not intended to be used as the sole basis for any business decision. The Secretary of State makes no representation as to the accuracy and/or completeness of:
- (a) any data or information contained in the RPC Database;
 - (b) the raw Actual Passenger Demand information provided by the Franchisee or any Network Rail Data or any Third Party Data (as inputted to the RPC Database by whatever means); or
 - (c) any product of that Actual Passenger Demand information, Network Rail Data and/or Third Party Data.

7.3

- (a) The Secretary of State is not liable for:
 - (i) any inaccuracy, incompleteness or other error in Actual Passenger Demand information, Network Rail Data, Third Party Data or product of the above provided to the Secretary of State by the Franchisee, NR or a third party;
 - (ii) any failure of the RPC Database to achieve any particular business result for the Franchisee. For the avoidance of doubt, it is the responsibility of the Franchisee to decide the appropriateness of using the RPC Database to achieve its own business results;
 - (iii) any loss, destruction, corruption, degradation, inaccuracy or damage of or to the Actual Passenger Demand information following its submission to the RPC Database;
 - (iv) ²⁷¹**any loss or damage to the property or assets of the Franchisee (tangible or intangible) as a result of a contravention of paragraph 7.1 of this Schedule 1.5; or**
 - (v) any indirect, special or consequential loss or damage.

²⁷¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) ²⁷²**The Secretary of State’s total liability for the duration of the Franchise Agreement in respect of a contravention of its obligations under paragraph 7.1 of this Schedule 1.5 for all other heads of loss or damage which can lawfully be limited shall be limited to the extent to which the Secretary of State is successful in recovering the equivalent loss from such entity to whom the Secretary of State subcontracts its obligations under paragraph 7.1 of this Schedule 1.5 (the “Subcontractor”), subject to the following provisions:**
- (i) if reasonably requested by the Franchisee within three (3) months of incurring such loss or damage, the Secretary of State shall use reasonable endeavours to recover the equivalent losses from the Subcontractor;
 - (ii) it shall not be reasonable for the Franchisee to make a request pursuant to paragraph 7.3(b)(i) if the value of the Franchisee’s losses does not exceed **[REDACTED²⁷³]** x RPI;
 - (iii) ²⁷⁴**prior to accounting to the Franchisee for any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b), the Secretary of State shall be entitled to deduct and retain any reasonable costs and expenses incurred in pursuing such a claim which the Secretary of State does not successfully recover from the Subcontractor; and**
 - (iv) ²⁷⁵**the Secretary of State shall be entitled to deduct from any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b) such sum as the Secretary of State reasonably deems appropriate to take account of the Secretary of State’s actual or potential liability to other train operating companies pursuant to equivalent arrangements with them, with a view to distributing any sums received from the Subcontractor fairly between the various operators.**
- (c) ²⁷⁶**The Franchisee shall use all reasonable endeavours to mitigate any losses incurred by the Franchisee as a result of a contravention by the Secretary of State of the Secretary of State’s obligations contained in paragraph 7.1 of this Schedule 1.5.**

²⁷² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁷³ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

²⁷⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁷⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁷⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- 7.4 ²⁷⁷**The Parties acknowledge that it is intended that the RPC Database will also contain actual passenger demand information relating to franchisees other than the Franchisee but a franchisee shall have access only to information relating to its own franchise (in the case of the Franchisee, via the log on details provided pursuant to paragraph 7.1(c)). For the avoidance of doubt, the licence granted at paragraph 8.6 shall only permit the usage of the RPC Database, Derivative Output and Intellectual Property Rights related to the Actual Passenger Demand information supplied by the Franchisee.**
- 7.5 Without prejudice to Schedule 14.4 (Designation of Franchise Assets), paragraphs 2.1 and 3 of Schedule 15.1 (Reletting Provisions), Schedule 15.4 (Provisions applying on and after Termination) or any other rights of the Secretary of State, the Franchisee agrees that, following the expiry or termination by whatever means of the Franchise Agreement and any Continuation Document, the Secretary of State shall be entitled to allow access to the Franchisee's Actual Passenger Demand information by way of granting access to that area of the RPC Database or otherwise to any future operator of the Passenger Services (whether or not in direct succession to the Franchisee) or to such part of the Actual Passenger Demand information as relates to the part of the franchise which is being taken over by such future operator.

8. Intellectual Property Rights and General Provisions

- 8.1 All Intellectual Property Rights in the RPC Database and Derivative Output shall at all times remain owned by the Secretary of State and to the extent that any rights in the RPC Database vest in the Franchisee by operation of law, the Franchisee hereby assigns such rights to the Secretary of State.
- 8.2 Subject to Schedule 14.4 (Designation of Franchise Assets) and Schedule 15.4 (Provisions applying on and after Termination), all Intellectual Property Rights in the Actual Passenger Demand information will at all times remain owned by the Franchisee and (subject as previously stated) to the extent that any rights in the Actual Passenger Demand information vest in the Secretary of State by operation of law, the Secretary of State hereby assigns such rights to the Franchisee.
- 8.3 All Intellectual Property Rights in the Network Rail Data will at all times remain owned by the relevant NR entity and to the extent that any rights in the Network Rail Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the Franchisee (as applicable) will enter into a separate agreement with the relevant Network Rail entity to assign such rights to it.
- 8.4 All Intellectual Property Rights in the Third Party Data will at all times remain owned by the third party from whom they have been obtained and to the extent that any rights in the Third Party Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the

²⁷⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

Franchisee (as applicable) will enter into a separate agreement with the relevant Third Party to assign such rights to it.

- 8.5 Subject to Schedule 14.4 (Designation of Franchise Assets) and Schedule 15.4 (Provisions applying on and after Termination), each Party:
- (a) acknowledges and agrees that it shall not acquire or claim any title to any of the other Party's Intellectual Property Rights (or those of the other Party's licensors) by virtue of the rights granted to it under this Agreement or through its use of such Intellectual Property Rights; and
 - (b) agrees that it will not, at any time, do, or omit to do, anything which is likely to prejudice the other Party's ownership (or the other Party's licensors' ownership) of such Intellectual Property Rights.
- 8.6 The Secretary of State hereby grants, for the duration of the Franchise Period, the Franchisee a non-exclusive, non-transferable licence to use:
- (a) the RPC Database;
 - (b) any Derivative Output; and
 - (c) all Intellectual Property Rights in the same,

in the United Kingdom for the purposes of accessing the Actual Passenger Demand information by using the functionality of the RPC Database.

- 8.7 Without limiting any other rights the Secretary of State may have, the Franchisee hereby grants the Secretary of State a perpetual, non-terminable, non-exclusive licence (which is transferable and/or capable of being sub-licensed in the circumstances set out in this paragraph 8.7) to use the Actual Passenger Demand information and all Intellectual Property Rights in the same:
- (a) by including them in the RPC Database; and/or
 - (b) by including them in the Preliminary Database; and/or
 - (c) ²⁷⁸ **whether included in the RPC Database, the Preliminary Database or in any other format for such purposes as the Secretary of State may reasonably require, including for the purposes of assisting the Secretary of State's decision making on train service requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding; and/or**
 - (d) to the extent permitted by the other provisions of the Franchise Agreement to share, disclose or publish the same and transfer and/or sub-licence and permit the use and sharing, disclosing or publishing for the purposes it is shared or disclosed; and/or

²⁷⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (e) to allow a future operator of the Passenger Services (whether or not in direct succession to the Franchisee) to view and access such Actual Passenger Demand information (whether via the RPC Database or otherwise) as directly relates to the services that it will be running,

and such rights to use the Actual Passenger Demand information and all Intellectual Property Rights pursuant to this paragraph 8.7 shall continue following expiry or termination of this Agreement.

- 8.8 Paragraphs 7.2, 7.3, 8.1, 8.2 and 8.7 of this Schedule 1.5 shall continue in force after expiry or termination of the Franchise Agreement or any Continuation Document, together with any other provisions which expressly or impliedly continue in force after the expiry or termination of the Franchise Agreement or any Continuation Document.
- 8.9 The Parties intend that the provisions of The Contract (Rights of Third Parties) Act 1999 will apply to allow the relevant NR entity to rely on and enforce against a third party the provisions of paragraph 8.3 of this Schedule 1.5.

SCHEDULE 1.6
THE ROLLING STOCK

1. Purpose

1.1 ²⁷⁹**This Schedule 1.6 records the rolling stock vehicles which shall be comprised in the Train Fleet from the Start Date (Original Rolling Stock shown in Table 1) and further additional rolling stock that will become part of the Train Fleet during the Franchise Term (Specified Additional Rolling Stock shown in Table 2) and key information in relation to it. It includes other requirements in relation to the Train Fleet, including in relation to rolling stock testing and commissioning and compliance with the requirements of the Secretary of State in relation to the specification of the Train Fleet, including in relation to baby changing facilities and Controlled Emission Toilets.**

2. ²⁸⁰The Composition/Deployment of the Train Fleet

2.1 The Train Fleet consists of:

- (a) **from the Start Date until the lease expiry dates referred to in Column 6 of Table 1 in Appendix 1 to this Schedule 1.6 the rolling stock vehicles set out in Table 1 in Appendix 1 to this Schedule 1.6 ("Original Rolling Stock") with the Passenger Carrying Capacity per unit referred to in Column 3 and Column 4 of Table 1 in Appendix 1 to this Schedule 1.6;**
- (b) **from the dates set out in Column 6 of Table 2 in Appendix 1 to this Schedule 1.6, until the lease expiry dates referred to in Column 7 of Table 2 in Appendix 1 to this Schedule 1.6 the rolling stock vehicles, including new build or cascaded rolling stock ("Specified Additional Rolling Stock") set out in Table 2, in Appendix 1 to this Schedule 1.6 with the Passenger Carrying Capacity per unit referred to in Column 3 and Column 4 of Table 2;**
- (c) **NOT USED.**
- (d) **NOT USED.**

2.2 NOT USED.

2.3 NOT USED.

2.4 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 in Appendix 1 to this Schedule 1.6 or as determined by the Secretary of State in accordance with paragraph 3.4 of this Schedule 1.6 (as applicable).

²⁷⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁸⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- 2.5 **The Franchisee shall procure that the rolling stock vehicles described in the Tables 1 or 2 or 3 in Appendix 1 to this Schedule 1.6, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services to the extent required by the Timetable and Train Plan during the periods referred to therein.**

3. Changes to the Train Fleet

- 3.1 The Franchisee shall maintain the composition of the Train Fleet during the Franchise Period, unless the Secretary of State otherwise agrees, such that there are no changes to the Train Fleet, including changes:

- (a) to the classes or types;
- (b) to the interior configurations; or
- (c) which may reduce the journey time capabilities,

of any rolling stock vehicles specified in the Train Fleet.

- 3.2 ²⁸¹**NOT USED.**

- 3.3 During the Franchise Period, the Franchisee shall advise the Secretary of State of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of three (3) consecutive Reporting Periods or more.

- 3.4 ²⁸²**If any change is made to the Train Fleet in accordance with this Schedule 1.6, the Secretary of State may, after consulting the Franchisee, determine the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change. The Secretary of State shall notify the Franchisee of the Secretary of State's determination of any such Passenger Carrying Capacity.**

- 3.5 ²⁸³**The Secretary of State may request the Franchisee to:**

- (a) **change the composition of the Train Fleet during the term of the ERMA;**
- (b) **sub-let some of its Train Fleet to another Train Operator or to sub-lease a Train Fleet from another Train Operator;**
- (c) **procure modifications to the Train Fleet and to manage any such modification programme, subject to payment of the Franchisee's reasonable costs by the Secretary of State or a relevant third party; and**

²⁸¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁸² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁸³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (d) **work in collaboration with the Secretary of State to identify and secure additional or replacement rolling stock vehicles during the term of the ERMA, in which case the Secretary of State may require the Franchisee to set the specification for such rolling stock vehicles, subject to the Secretary of State's prior written consent.**

4. Rolling Stock Testing and Commissioning

- 4.1 The Franchisee shall, to the extent reasonably requested by the Secretary of State and subject to payment of the Franchisee's reasonable costs by the relevant third party, co-operate with any third party which the Secretary of State may specify (including a Successor Operator, a rolling stock vehicle manufacturer or Network Rail or the Secretary of State) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise).
- 4.2 The co-operation referred to in paragraph 4.1 shall not unreasonably disrupt the provision and operation of the Franchise Services and may include:
 - (a) the movement of test trains within and around depots;
 - (b) making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;
 - (c) making Train Slots available for such purposes;
 - (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
 - (e) the delivery of rolling stock vehicles to specific locations.

5. ²⁸⁴ ²⁸⁵ Controlled Emission Toilets

- 5.1 **By no later than 31 March 2022, the Franchisee shall ensure that each Rolling Stock Unit comprised in the Train Fleet used for the provision of the Passenger Services which has on board toilet facilities, and any new rolling stock vehicles procured by the Franchisee which are to be used for the provision of the Passenger Services shall be fitted with Controlled Emission Toilets.**
- 5.2 **The Franchisee shall ensure that the contents of the toilet retention tanks relating to each Controlled Emission Toilet fitted on Rolling Stock Units in accordance with the requirements of paragraph 5.1 are disposed of in a safe and hygienic manner at suitable facilities at Depots and stabling points.**
- 5.3 **Pending installation of the Controlled Emission Toilets, the Franchisee shall use reasonable endeavours to stop toilets fitted to**

²⁸⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁸⁵ 02 March 2021 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

existing Rolling Stock Units emptying whilst the Rolling Stock Unit is stationary within a station.

- 5.4 **The provisions of paragraphs 1 and 5 of Part 2 of Schedule 6.2 (Committed Obligations) shall apply in respect of the obligations of the Franchisee specified in Paragraph 5.1.**

6. Baby Changing Facilities

For Rolling Stock Units that have on board toilet facilities, a baby changing facility shall be provided by the Franchisee which shall be compliant with the requirements of the PRM TSI.

7. ²⁸⁶Measurement of Traction Energy Usage

The Franchisee shall ensure that all rolling stock units that form part of the Train Fleet are able to measure and monitor fuel use as soon as reasonably practicable, and in the case of electric traction, enable the Franchisee to be a "Metered Train Operator" as defined by Network Rail's Traction Electricity Rules.

²⁸⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

APPENDIX 1 TO SCHEDULE 1.6

The Composition of the Train Fleet

1. Original Rolling Stock

| Column 1 | Column 2 | Column 3 | | | Column 4 | Column 5 | Column 6 | |
|--|---|--------------------------------------|----------|-------------------|-------------------------------|----------------|----------------------|------------|
| Class of vehicle / unit | Number of vehicles in fleet and unit configuration | Passenger Carrying Capacity per unit | | | Total Wheel-chair(s) per unit | Owner / Lessor | Lease expiry date(s) | |
| | | Standard Class (Std) | | First Class Seats | | | | |
| | | Seats | Standing | | Total | | | |
| 153 | 5 vehicles 5 x 1 cars | 72 | 23 | 95 | 0 | 0 | Porterbrook | 31/08/2019 |
| 156 | 18 vehicles 9 x 2 cars | 146 | 72 | 218 | 0 | 0 | Porterbrook | 30/12/2019 |
| 170 | 8 vehicles 4 x 2 cars | 119 | 56 | 175 | 9 | 2 | Porterbrook | 01/10/2019 |
| 170 | 24 vehicles 8 x 3 cars | 180 | 84 | 264 | 7 | 2 | Porterbrook | 01/10/2019 |
| Intercity CI90, Mk3 & DVT (CI90;FO;FOD;TSOB; 5x TSO;DVT) | 30 vehicles 3 x 8 car sets | 475 | 307 | 782 | 86 | 2 | Porterbrook | 01/01/2020 |
| Intercity CI90, Mk3 & DVT (CI90;FO;FOD;TSOB; 6 x TSO;DVT) | 88 vehicles 8 x 9 car sets | 528 | 341 | 869 | 86 | 2 | Porterbrook | 01/01/2020 |
| Spare MK3 vehicles to support above service sets | 30 vehicles 4 x CI90 4 x DVT 3 x FO 3 x FOD 2 x TSOB 14 x TSO | | | | | | Porterbrook | 31/12/2019 |
| 317 / 5 | 60 vehicles 15 x 4 cars | 270 | 129 | 399 | 22 | 0 | Angel | 31/05/2020 |
| 317 / 6 | 96 vehicles 24 x 4 cars | 234 | 116 | 350 | 24 | 0 | Angel | 31/12/2019 |

²⁸⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

| Table 1 (Original Rolling Stock) ²⁸⁷ | | | | | | | | |
|---|--|--------------------------------------|----------|-------|-------------------|-------------------------------|----------------|----------------------|
| Column 1 | Column 2 | Column 3 | | | | Column 4 | Column 5 | Column 6 |
| Class of vehicle / unit | Number of vehicles in fleet and unit configuration | Passenger Carrying Capacity per unit | | | | Total Wheel-chair(s) per unit | Owner / Lessor | Lease expiry date(s) |
| | | Standard Class (Std) | | | First Class Seats | | | |
| | | Seats | Standing | Total | | | | |
| 317/7 Demonstrator | 4 vehicles 1 x 4 car | 204 | 180 | 384 | 22 | 2 | Angel | 31/12/2019 |
| 317/ 8 | 24 vehicles 6 x 4 cars | 243 | 120 | 363 | 20 | 0 | Angel | 31/12/2019 |
| 321/3 | 224 vehicles 56 x 4 cars | 292 | 122 | 414 | 16 | 0 | Eversholt | 30/11/2019 |
| 321/4 | 112 vehicles 28 X 4 cars | 283 | 122 | 405 | 12 | 0 | Eversholt | 30/11/2019 |
| 321 Renatus | 40 vehicles 10 x 4 cars | 265 | 116 | 381 | 16 | 2 | Eversholt | 31/12/2019 |
| 360 | 84 vehicles 21 x 4 cars | 264 | 108 | 372 | 16 | 2 | Angel | 31/12/2020 |
| 379 | 120 vehicles 30 x 4 cars | 189 | 136 | 325 | 20 | 2 | Macquarie | 01/08/2020 |

The Franchisee shall provide the cycle carrying capacity as specified in paragraph 21 of Part 1 to Schedule 6.2 (Committed Obligations).

2. Specified Additional Rolling Stock

| Table 2 (Specified Additional Rolling Stock) ²⁸⁸ | | | | | | | | | |
|---|--|--------------------------------------|-----------|-------|-------------------|-------------------------------|----------------|---------------------|----------------------|
| Column 1 | Column 2 | Column 3 | | | | Column 4 | Column 5 | Column 6 | Column 7 |
| Class of vehicle / unit | Number of vehicles in fleet and unit configuration | Passenger Carrying Capacity per unit | | | | Total Wheel-chair(s) per unit | Owner / Lessor | Lease start date(s) | Lease expiry date(s) |
| | | Standard Class (Std) | | | First Class Seats | | | | |
| | | Seats | Stand-ing | Total | | | | | |
| 317 / 3 | 48 vehicles 12 x 4 cars | 270 | 129 | 399 | 22 | 0 | Angel | 01/01/2017 | 31/05/2020 |

²⁸⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

| Column 1 | Column 2 | Column 3 | | | | Column 4 | Column 5 | Column 6 | Column 7 |
|-------------------------|--|--------------------------------------|------------|-------|-------------------|-------------------------------|---------------|----------------------|----------------------|
| Class of vehicle / unit | Number of vehicles in fleet and unit configuration | Passenger Carrying Capacity per unit | | | | Total Wheel-chair(s) per unit | Owner/ Lessor | Lease start date(s) | Lease expiry date(s) |
| | | Standard Class (Std) | | | First Class Seats | | | | |
| | | Seats | Stand- ing | Total | | | | | |
| 321 / 4 | 24 vehicles 6 x 4 cars | 283 | 122 | 405 | 12 | 0 | Eversholt | 16 /10 /2016 | 30/11/2 019 |
| IC 12 | 120 vehicles 10 x 12 cars | 672 | 245 | 917 | 80 | 3 | ROCK | Mar 2019 to Aug 2019 | 17/10/2 026 |
| Air12 | 120 vehicles 10 x 12 cars | 748 | 381 | 112 9 | 0 | 3 | ROCK | Feb 2019 to Oct 2019 | 17/10/2 026 |
| OS 12 | 276 vehicles 23 x 12 cars | 1125 | 356 | 148 1 | 0 | 3 | Angel | Sep 2019 to Aug 2020 | 17/10/2 026 |
| OS 6 | 534 vehicles 89 x 6 cars | 527 | 184 | 711 | 0 | 2 | Angel | Feb 19 to Jan 2020 | 17/10/2 026 |
| Bi- Mode (HYB 4) | 96 vehicles 24 x 4 car | 224 | 111 | 335 | 0 | 2 | ROCK | Jan 2019 to May 2019 | 17/10/2 026 |
| Bi- Mode (HYB 3) | 42 vehicles 14 x 3cars | 166 | 61 | 227 | 0 | 2 | ROCK | Jun 2019 to Oct 2019 | 17/10/2 026 |

SCHEDULE 1.7**Stations****1. Station Asset Management**

- 1.1 The Franchisee shall implement and comply with:
- (a) the Previous Franchisee's Station Asset Management Plan until the date of approval of the Station Asset Management Plan in accordance with paragraph 1.2.
 - (b) From such date, the Station Asset Management Plan.
- 1.2 By no later than the end of the first Franchisee Year (or such later date as the Secretary of State may reasonably determine), the Franchisee shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Station Asset Management Plan.
- 1.3 Where the Secretary of State does not approve the draft Station Asset Management Plan submitted to it, the Franchisee shall make:
- (a) such amendments to it as the Secretary of State shall reasonably direct; and
 - (b) provide such additional information as the Secretary of State may reasonably require.
- 1.4 ²⁸⁹**The Station Asset Management Plan shall:**
- (a) **include the information set out in paragraph 1.5; and**
 - (b) **meet the requirements of paragraph 1.6,**
- and it shall be reasonable for the Secretary of State to not approve a plan which does not include such information or meet such requirements.**
- 1.5 ²⁹⁰**The Franchisee shall ensure that the Station Asset Management Plan in relation to each Station shall include the following:**
- (a) the details of all maintenance, repair and renewal activity undertaken by the Franchisee since the Start Date;
 - (b) the details of any maintenance, repair and renewal activity which the Franchisee has not completed or not completed within the specified time frame set out in any Station Asset Management Plan (or the Previous Franchisee's Station Asset Management Plan, as the case may be) together with reasons;

²⁸⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁹⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (c) the maintenance (including the Franchisee's approach to identifying and dealing with reactive maintenance), repair and renewal activity planned by the Franchisee including such activities the Franchisee plans to undertake in order to ensure that the condition and capability of Station Assets are maintained and comply with the Standard of Repair;
- (d) ²⁹¹**the details of the maintenance, repair and renewal activity undertaken since the Start Date or planned by Network Rail, any Local Authority, any Community Rail Partnership and any other relevant stakeholder, which the Franchisee is aware of;**
- (e) the assumptions that the Franchisee has made about the current state and future degradation of assets at the Station at the Start Date or, if an asset becomes an asset at the Station on a later date, the assumptions of the Franchisee about the current state and future degradation of each relevant asset on the date that it becomes such an asset at the Station;
- (f) ²⁹²**the details of under and over provision of assets at the Station at the Start Date given current and projected future customer volumes and reasonable customer demands and planned enhancements or removals to accommodate changing customer volumes and reasonable customer demands;**
- (g) the plans for improving the environmental performance of Stations, including where appropriate, plans for:
 - (i) energy metering and data management, including measurement and verification plans for measures adopted;
 - (ii) lighting and lighting controls;
 - (iii) heating and heating controls;
 - (iv) auxiliary power uses;
 - (v) other energy efficiency measures;
 - (vi) renewable energy generation;
 - (vii) water efficiency measures;
 - (viii) ²⁹³**waste reduction;**
 - (ix) ²⁹⁴**identification of opportunities for recycling or reuse of assets; and**

²⁹¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁹² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁹³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁹⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (x) ²⁹⁵**identification of opportunities for local sourcing of assets and asset materials;**
 - (h) the plans to ensure that delivery of Station Services is resilient to periods of extreme weather and minimises disruption to passengers;
 - (i) ²⁹⁶**the plans to ensure that maintenance, repair, renewal, enhancement and other building works to be carried out at such Stations is consistent with the Principles of Inclusive Design; and**
 - (j) ²⁹⁷**the plans to ensure that activity at such Stations is consistent with the Network Rail Asset Management Policy.**
- 1.6 In addition, the Franchisee shall ensure that the Station Asset Management Plan:
- (a) shall cover a period of no less than forty (40) years from the date that it is created or revised and updated in accordance with this Schedule 1.7, as if the Franchisee was to operate each of the Stations for such forty (40)-year period;
 - (b) fully reflects the principles and approach to asset management set out in the Station Asset Management Principles;
 - (c) includes an indicative volume and level of spend of funds to be deposited in the Station Condition Account for five (5) years following the date of the Station Asset Management Plan in relation to those planned activities described in accordance with paragraph 1.5; and
 - (d) is developed in accordance, and complies, with guidance and policies (including the guidance documents known as "Subject Specific Guidelines" published by the Institute of Asset Management (or such appropriate replacement guidance) which are commensurate with those that would be referred to by a competent, skilled and experienced train operator using an asset management planning approach, in particular in respect of the balance of maintenance and renewal of each asset type.
- 1.7 Any amendments to the Station Asset Management Plan must be agreed by the Secretary of State (such consent not to be unreasonably withheld or delayed).
- 1.8 ²⁹⁸**The Franchisee shall ensure that all renewal, enhancement and other building works at Stations are implemented in accordance with the Principles of Inclusive Design. Updating the Station Asset Management Plan**

²⁹⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁹⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁹⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁹⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (a) By the date three (3) months prior to the end of the second (2nd) Franchisee Year and on each subsequent anniversary of such date the Franchisee shall have reviewed the Station Asset Management Plan and shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) a draft updated version of the Station Asset Management Plan.
- (b) The updated draft Station Asset Management Plan shall include and reflect the following:
- (i) a schedule of any revisions to the current Station Asset Management Plan and a brief summary of the rationale supporting any change for review and approval by the Secretary of State;
 - (ii) any changed and developing circumstances and the requirements of the Station Asset Management Plan Accreditation;
 - (iii) where relevant, the outcomes of, and the Franchisee's responses to the stakeholder consultation process described in paragraph 8; and
 - (iv) ²⁹⁹**the information required in accordance with paragraphs 1.5 and 1.6 of this Schedule 1.7 save that the reference to the "Start Date" in paragraph 1.5(a) shall be read as the date on which the Station Asset Management Plan is reviewed and updated by the Franchisee in accordance with this paragraph 1.8 of this Schedule 1.7.**
- (c) ³⁰⁰**If:**
- (i) **the Secretary of State approves an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.8(a), such document shall become the then current Station Asset Management Plan; or**
 - (ii) **the Secretary of State does not approve an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.8(a), then the Franchisee shall make:**
 - (A) such amendments to it as the Secretary of State shall reasonably direct; and**
 - (B) provide such additional information as the Secretary of State may reasonably require.**
- (d) The Franchisee shall put in place such arrangements as are necessary (to the reasonable satisfaction of the Secretary of State) to ensure that the Station Asset Management Plan is (and continues to be maintained) in a format acceptable to the Secretary of State which is capable of being transferred to a Successor Operator as part of the Handover Package so

²⁹⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

³⁰⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

that the Successor Operator is able to access, use and amend the Station Asset Management Plan using the same format.

1.9 Station Asset Management Plan Accreditation Certificate

- (a) The Franchisee shall:
- (i) ensure that it applies for and obtains the Station Asset Management Plan Accreditation by no later than the end of the second (2nd) Franchisee Year;
 - (ii) promptly upon receipt by the Franchisee, provide to the Secretary of State a certificate of accreditation issued by an organisation accredited by the United Kingdom Accreditation System (UKAS) which has been signed by a director of the Franchisee and which confirms that the Station Asset Management Plan Accreditation has been obtained (the "Station Asset Management Plan Accreditation Certificate"); and
 - (iii) ³⁰¹**Station Asset Management Plan Accreditation from the date that it is required to be achieved in accordance with paragraph 1.9(a)(i) for the remainder of the Franchise Period.**
- (b) If the Station Asset Management Plan Accreditation is at any time lost or the Franchisee fails to secure such then the Franchisee shall report that fact to the Secretary of State as soon as reasonably practicable and in any event within ten (10) Weekdays of the Franchisee becoming aware of such fact.
- (c) ³⁰²**From the date upon which the Franchisee notified the Secretary of State pursuant to paragraph 1.9(b) (or should have notified the Secretary of State having complied with the provisions of this Agreement), the Franchisee shall:**
- (i) **re-secure such accreditation as soon as reasonably practicable and in any case within three (3) months; and**
 - (ii) **report to the Secretary of State every Reporting Period on the measures it is proposing to take, and is taking, to achieve such restoration of the Station Asset Management Plan Accreditation.**
- (d) ³⁰³**Where the Franchisee fails to secure the Station Asset Management Plan Accreditation pursuant to paragraph 1.9(c) within three (3) months of the date of such accreditation being lost or failed to be secured (as the case may be), such failure shall constitute a contravention of the Franchise Agreement and the Secretary of State may issue a Remedial Plan Notice pursuant to**

³⁰¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

³⁰² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

³⁰³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement) and the provisions of Schedule 10 (Remedies, Events of Default and Termination Events) shall apply.

- (e) The Franchisee shall calculate the Station Stewardship Measure defined by NR/ARM/M17PR for each Station, providing validated scores for each Station to Network Rail or ORR on an annual basis at such time specified by the ORR and Network Rail, and assisting Network Rail and/or the ORR in the any future development of such measure.

2. Station Maintenance Obligations

- 2.1 Subject to paragraph 2.4, the Franchisee shall ensure that the Asset Remaining Life in relation to each of the Station Asset Groups specified in Column 1 of the Minimum Asset Remaining Life Table (on a basis averaging such Asset Remaining Life across all relevant assets from each of the Station Asset Groups at all Stations) is not less than the corresponding Minimum Asset Remaining Life specified in column 2 of the Minimum Asset Remaining Life Table (the "Standard of Repair").
- 2.2 Within thirty (30) days of the start of each Franchisee Year (other than the first Franchisee Year) the Franchisee shall deliver a written report based on the requirements of ORR Mandate AO/24 (as such may be updated or replaced from time to time) to the Secretary of State that complies with the following requirements:
 - (a) it has been prepared by a reputable firm of surveyors who have carried out inspections of the Stations for the purposes of the preparation of the Station Stewardship Measure report no more than sixty (60) days prior to the end of the previous Franchisee Year;
 - (b) it is addressed to the Secretary of State (but may also be addressed to other parties at the discretion of the Franchisee);
 - (c) it contains a fair summary of the extent to which the Franchisee has complied with its obligations to achieve the Standard of Repair during the preceding twelve (12) months;
 - (d) it contains the calculation of the Franchisee (as a percentage) of the average Asset Remaining Life of each Station Asset Group (in accordance with standard "NR/ARM/M17PR" or such other standard as may be notified to the Franchisee by the Secretary of State from time to time);
 - (e) it identifies separately any Stations where a Station Asset has an asset life that is less than:
 - (i) 47.50% in relation to platforms;
 - (ii) 49.91% in relation to footbridges;
 - (iii) 45.99% in relation to canopies; and
 - (iv) 39.38% in relation to buildings at Stations;
 - (f) it contains a copy of the Station Stewardship Measure report issued by the Franchisee to ORR and/or Network Rail; and

- (g) it contains such other details as may be specified in writing by the Secretary of State from time to time.
- 2.3 It is agreed by the Secretary of State and the Franchisee that:
- (a) the methodology to be adopted by the Secretary of State for the purposes of monitoring the Franchisee's compliance with its obligations in paragraph 2.1 shall, subject to paragraph 2.3(b), be as described in the document entitled NR/ARM/M17PR Network Rail Asset Reporting Manual - Procedures for the Reporting of the Station Stewardship Measure" in the agreed terms marked "SCM" (the "Stations Conditions Methodology");
 - (b) the Stations Conditions Methodology can be amended by the Secretary of State; and
 - (c) if, at any time during the Franchise Period, the Stations Conditions Methodology is amended as envisaged under paragraph 2.3(b) and the Secretary of State reasonably determines that it is appropriate to amend the Minimum Asset Remaining Life of any Station Assets to take account of the alteration to the Stations Conditions Methodology then the Secretary of State shall make such amendment to column 2 of the Minimum Asset Remaining Life Table as he reasonably considers appropriate to take account of the alterations to the Stations Conditions Methodology and such amendment shall be a Change.
- 2.4 Where the Franchisee fails to achieve the Minimum Asset Remaining Life in respect of any Station Asset Group and:
- (a) the Franchisee is not acting as a reasonable ISO 55001 accredited asset manager in relation to its management of a Station Asset Group; or
 - (b) the Asset Remaining Life of such Station Asset Group is more than three (3) percentage points lower than the Minimum Asset Remaining Life,
 - (c) such failure to achieve the Minimum Asset Remaining Life in respect of such Station Asset Group shall be treated as a contravention of the Franchise Agreement.
- 2.5 The Franchisee shall maintain appropriate, accurate, readily accessible and transferable information about the asset at the Stations, including their condition and function.
- 2.6 The Franchisee shall provide to the Secretary of State such information as the Secretary of State may reasonably require for the purposes of monitoring the obligations of the Franchisee in relation to Stations.
- 2.7 At the Secretary of State's request, the Franchisee shall commission and pay for an independent audit of any information submitted to the Secretary of State under paragraph 2.6 and shall provide a copy of the audit report to the Secretary of State.

3. Station Condition Account

- 3.1 The Franchisee will set up a separate, dedicated interest bearing bank account by the Start Date ("**Station Condition Account**") with a reputable bank and

will notify the Secretary of State of the identity of such bank and the account number of the Station Condition Account.

- 3.2 ³⁰⁴**The sums standing to the credit of the Station Condition Account (including accrued interest) (the "Station Condition Fund") shall be held on trust by the Franchisee on behalf of the Secretary of State on the terms of the Trust Deed for the purpose of discharging the entitlements of the Secretary of State and/or the Franchisee to payments from the Station Condition Account as and when they fall due in accordance with this paragraph 3 and the Station Condition Account will accordingly be set up so as to ensure that in the event of the insolvency of the Franchisee, monies standing to credit of the Station Condition Account are not at risk of being applied for the benefit of creditors or otherwise applied for a different purpose to that intended to the reasonable satisfaction of the Secretary of State. For the avoidance of doubt the obligations of the Franchisee in relation to the maintenance, repair and renewal of Stations whether pursuant to its obligations under this Agreement or otherwise are in no way limited by reference to the availability of funds in the Station Condition Fund.**
- 3.3 Prior to the first date upon which any monies are required to be deposited in the Station Condition Account under this paragraph 3, the Franchisee will procure that the bank with whom the Station Condition Account is held undertakes to the Secretary of State (on terms satisfactory to the Secretary of State) that:
 - (a) it acknowledges that the credit balance from time to time on the Station Condition Account does not belong solely to the Franchisee but is held on trust for the Secretary of State on the terms of the Trust Deed; and
 - (b) such bank will not set-off sums standing to the credit of the Station Condition Account against any amount owing from the Franchisee or any other person to such bank.
- 3.4 The Franchisee will operate the Station Condition Account in accordance with the provisions of this paragraph 3.
- 3.5 On each Payment Date, the Franchisee shall pay the Station Condition Amount calculated as follows into the Station Condition Account:

| | |
|--------------------------|--|
| SCA = ((RPD/FYD) x ASCA) | |
| Where: | |
| SCA | means the Station Condition Amount for such Reporting Period; |
| FYD | is equal to 365, or if February 29 falls during the Franchisee Year in which that Reporting Period falls, 366; |
| RPD | means the number of days in that Reporting Period; and |

³⁰⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

| | |
|------|---|
| ASCA | <p>means the Annual Station Condition Amount for the Franchisee Year in which that Reporting Period falls determined as follows: $(CA \times RPI)$ where: CA is the amount shown in the respect of the relevant Franchisee Year in column 2 of the table set out in Appendix 4 (Figures for Calculation of Annual Station Condition Amount) of this Schedule 1.7; and RPI has the meaning given to such term in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).</p> |
|------|---|

3.6 During the Franchise Period the Franchisee may withdraw the funds properly required to meet Actual Station Condition Expenditure that has properly fallen due for payment by the Franchisee as set out in the Station Asset Management Plan (or the Previous Franchisee's Asset Management Plan, as the case may be) and in respect of which funds have not previously been withdrawn from the Station Condition Account without the consent of the Secretary of State provided that:

- (a) the Franchisee may not make any withdrawal from the Station Condition Account pursuant to this paragraph 3.6 that would reduce the Station Condition Fund to less than zero (0);
- (b) the Franchisee shall not make any withdrawal from the Station Condition Account pursuant to this paragraph 3.6 where the amount to be withdrawn is in relation to expenditure not provided or planned for under the Station Asset Management Plan (or the Previous Franchisee's Asset Management Plan, as the case may be) without the prior written consent of the Secretary of State;
- (c) where the Franchisee requires such consent pursuant to paragraph 3.6(b) it shall provide to the Secretary of State with its request for consent a written confirmation from a director of the Franchisee certifying that the information provided to the Secretary of State is, in all material respects, true, accurate, complete and not misleading and identifying the amount proposed to be withdrawn, the purpose of the proposed withdrawal from the Station Condition Account and that such proposed expenditure will be properly expended for satisfying the Standard of Repair in respect of the Stations; and
- (d) if requested by the Secretary of State the Franchisee agrees to demonstrate to the reasonable satisfaction of the Secretary of State that the written confirmation is true and accurate. It shall be a contravention of the Franchise Agreement if any such written confirmation is, in any material respect, found to be untrue, inaccurate and/or misleading.

3.7 The Franchisee shall maintain records of the following:

- (a) a breakdown in relation to each Reporting Period of all Actual Station Condition Expenditure actually incurred in the Reporting Period together with such further details of each relevant item of expenditure as the Secretary of State may reasonably require;

- (b) a breakdown of all funds withdrawn from the Station Condition Account in each Reporting Period and the reason for that withdrawal;
 - (c) and provide such records to the Secretary of State as may reasonably be requested from time to time together with:
 - (d) written confirmation from a director of the Franchisee certifying that:
 - (i) the information provided to the Secretary of State is, in all material respects, true, accurate, complete and not misleading;
 - (ii) all Actual Station Condition Expenditure has been properly expended for satisfying the Standard of Repair in respect of the Stations; and
 - (iii) all withdrawals from the Station Condition Account made by the Franchisee were properly due to the Franchisee under paragraph 3.6 and have been applied for the purposes for which they were withdrawn.
- 3.8 If requested by the Secretary of State the Franchisee agrees to demonstrate to the reasonable satisfaction of the Secretary of State that the written confirmation is a true and accurate confirmation of the Franchisee's compliance with its relevant obligations. It shall be a contravention of the Franchise Agreement if any such written confirmation is, in any material respect, found to be untrue, inaccurate and/or misleading.
- 3.9 In the event that the Secretary of State determines that any monies have been withdrawn from the Station Condition Account improperly he shall notify the Franchisee of the same specifying the relevant amount and requiring the Franchisee to repay the relevant amount into the Station Condition Account on or prior to such Weekday as the Secretary of State shall notify to the Franchisee.
- 3.10 On expiry or early termination of the Franchise Agreement, the Secretary of State shall be entitled to all sums then standing to the credit of the Station Condition Account. The Franchisee shall take all steps as may be necessary so as to authorise any sums then standing to the credit of the Station Condition Account to be paid to the Secretary of State to such account as the Secretary of State shall, at that time, notify to the Franchisee (which may be the account of a Successor Operator).
- 3.11 If:
- (a) any revised Station Asset Management Plan delivered by the Franchisee pursuant to paragraphs 1.6 or 1.7 provides for the bringing forward of any works intended to ensure that the Franchisee complies with its obligation in relation to the Standard of Repair;
 - (b) the additional cost incurred by the Franchisee in the Franchisee Year in which such costs are now to be incurred exceeds the amount that the Franchisee is required to pay into the Station Condition Account in such Franchisee Year by more than 10%; and
 - (c) the Franchisee can demonstrate to the reasonable satisfaction of the Secretary of State that the effect of bringing forward such works is to

achieve the Standard of Repair in a more efficient or cost effective manner or to otherwise achieve real and demonstrable whole rail industry or passenger benefits in either case in a way that has no adverse financial or other impacts on the Secretary of State,

then the Secretary of State shall reasonably determine the reprofiling of the amounts specified in Appendix 4 (Figures for Calculation of Annual Station Condition Amount) to this Schedule 1.7 to reasonably take account of the bringing forward of the relevant works provided that the total of the amounts specified in Appendix 4 (Figures for Calculation of Annual Station Condition Amount) to this Schedule 1.7 shall not reduce overall as a result of such reprofiling.

4. Uninsured Events and Latent Defects Liability

- 4.1 If any Station and/or Equipment comprised in a Station is (1) damaged or destroyed due to the occurrence of an Uninsured Event (2) any Station and/or Equipment comprised in a Station is discovered to contain a Latent Defects Liability or (3) an Environmental Liability arises at a Station (each such event to be known as a "Special Event") then the Secretary of State may (at his absolute discretion) elect to:
- (a) require the Franchisee to undertake the works necessary to repair, reinstate or make good to his satisfaction such Station or Equipment which is the subject of a Special Event (the "Reinstatement Works"). Any such requirement by the Secretary of State to carry out Reinstatement Works shall be a Qualifying Change and in these circumstances:
 - (i) notwithstanding the Qualifying Change, the Franchisee shall be liable for the first [REDACTED³⁰⁵] of any Reinstatement Costs (the "Franchisee Excess Amount") in respect of each Special Event that occurs at each Station provided that the Franchisee's maximum liability in relation to Reinstatement Costs shall not exceed [REDACTED³⁰⁶] in aggregate (the "Franchisee Excess Amount Cap") for the duration of the Franchise Period:
 - (ii) where Reinstatement Works or the effects of the Special Event pending completion of the Reinstatement Works result in the Franchisee not being able to operate the Station (or part thereof) or provide Passenger Services which call at such Station, any such Qualifying Change pursuant to this paragraph 4.1 shall take account of any costs savings made by the Franchisee as a result of it not being able to provide Passenger Services which call at such Station or operate such Station (or part thereof) (including as a result of it not being required to maintain and repair such Station

³⁰⁵ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³⁰⁶ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (or any part thereof) or any Equipment pending its repair, reinstatement or making good (the "Cost Savings"));
- (iii) the Franchisee shall: (1) consult on and agree with the Secretary of State the Reinstatement Works and the programme for the carrying out of the Reinstatement Works; and (2) carry out the Reinstatement Works in accordance with the programme as agreed (or on failing to agree, as reasonably determined by the Secretary of State) and the Franchise Agreement shall be amended to reflect the carrying out of such Reinstatement Works, if required; and
 - (iv) the Franchisee shall ensure that the Reinstatement Cost is as low as reasonably practicable and shall use all reasonable endeavours to minimise any Environmental Liability;
- (b) require the Franchisee not to undertake the Reinstatement Works (including because he would require a Successor Operator to undertake such works) and in these circumstances a Qualifying Change shall occur;
 - (c) require the Franchisee to use all reasonable endeavours to secure other sources of grant funding, such as Local Authority grants, for the purposes of carrying out the Reinstatement Works; and/or
 - (d) seek to utilise other alternative funding mechanisms for the purposes of the release of the funds required for carrying out the Reinstatement Works by:
 - (i) requiring the Franchisee, to source the funds for carrying out such works through an adjustment to the Franchisee's Integrated Station Asset Management Plan; and/or
 - (ii) requiring the Franchisee not to undertake certain Committed Obligations at Stations such that any capital expenditure allocated to such Committed Obligations can be utilised by the Franchisee for the purposes of undertaking the Reinstatement Works. In these circumstances, a Qualifying Change shall occur and there shall be an amendment to the Franchise Agreement to reflect the fact that the Franchisee would no longer be required to carry out the affected Committed Obligations but would instead be required to utilise any capital expenditure so released in undertaking the Reinstatement Works.
- 4.2 If the Secretary of State elects that the funding of the Reinstatement Works should be undertaken using any of the alternative funding mechanisms set out in paragraph 4.1(d) then any such funding shall be on the basis that the Franchisee shall be liable for the Franchisee Excess Amount after the deduction of any Cost Savings and subject to the Franchisee Excess Amount Cap.
- 4.3 In respect of the second and each subsequent Franchisee Year, the Franchisee Excess Amount and the Franchisee Excess Amount Cap shall be adjusted in accordance with the following formula:

| |
|----------------------------|
| <p>FA x RPI Where:</p> |
|----------------------------|

| | |
|-----|---|
| FA | is the Franchisee Excess Amount or the Franchisee Excess Amount Cap (as the case may be); |
| RPI | has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments). |

5. Registration of Title

The Franchisee shall as soon as reasonably practicable upon receipt of the relevant documentation from the Train Operator party to the Previous Franchise Agreement, lodge, procure the lodging of properly completed applications for the registration of Station Leases at HM Land Registry in accordance with the required time limits for making such applications. The Franchisee shall use all reasonable endeavours to ensure that registration of the title is obtained in relation to each Station as soon as reasonably practicable and to the highest standard reasonably obtainable.

6. ³⁰⁷Grey Assets

- 6.1 **The Franchisee shall use all reasonable endeavours to agree with Network Rail by no later than two (2) years following the Start Date the allocation of responsibility under the relevant Station Leases for all the Grey Assets with Network Rail during the first eighteen (18) months following the Start Date.**
- 6.2 **The Franchisee shall where it discovers any Grey Asset not covered by paragraph 6.1:**
- (a) **consult with Network Rail and, where reasonably necessary and agreed by Network Rail, carry out a joint inspection of each such Grey Asset; and**
 - (b) **use all reasonable endeavours to agree with Network Rail the allocation of responsibility under the relevant Station Lease as soon as reasonably practicable.**
- 6.3 **Where the Franchisee is unable to agree with Network Rail the proper allocation of responsibility under the relevant Station Lease in relation to any Grey Asset pursuant to paragraph 6.2(b) the Franchisee shall refer such matter to the dispute resolution process under the terms of the relevant Station Lease.**

7. Station Social and Commercial Development Plan

- 7.1 From the Start Date, the Franchisee shall implement and comply with the Station Social and Commercial Development Plan .
- 7.2 Any amendments to the Station Social and Commercial Development Plan must be agreed by the Secretary of State in accordance with this paragraph 7.

³⁰⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- 7.3 ³⁰⁸ **Subject to paragraph 7.3A, the Franchisee shall revise the Station Social and Commercial Development Plan by no later than the end of the first Franchisee Year (and on each subsequent anniversary of this date) and shall submit it to the Secretary of State for review and approval.**
- 7.3A ³⁰⁹ **For the duration of the COVID-19 Restriction Period, the Franchisee shall (taking into account the COVID-19 Guidance and Regulation) use all reasonable endeavours to comply with its obligations under paragraph 7.3.**
- 7.4 Subsequent updated versions of the Station Social and Commercial Development Plan shall
- (a) incorporate a schedule of any revisions to the Station Social and Commercial Development Plan and a brief summary of the rationale supporting any change for review and approval by the Secretary of State;
 - (b) reflect changed and developing circumstances where relevant; and
 - (c) reflect the outcomes of, and the Franchisee's responses to, the stakeholder consultation process described in paragraph 9 .The Franchisee shall ensure that the Station Social and Commercial Development Plan shall be updated so that following each update it continues to cover at least a period of ten (10) years from the date of the update.
- 7.5 If:
- (a) the Secretary of State approves an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 7.3, such document shall become the then current Station Social and Commercial Development Plan; or
 - (b) the Secretary of State does not approve an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 7.3, then the Franchisee shall:
 - (i) make such amendments to it as the Secretary of State shall reasonably direct; and
 - (ii) provide such additional information as the Secretary of State may reasonably require,
 it being agreed that it will be unreasonable for the Secretary of State to make amendments that increase cost and risk to the Franchisee beyond parameters specified in the Record of Assumptions.

³⁰⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

³⁰⁹ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

8. Consultations

³¹⁰On or before the annual submission of the Station Asset Management Plan or the Station Social and Commercial Development Plan pursuant to the provisions of this Schedule 1.7, the Franchisee shall conduct consultations with relevant Stakeholders (including ACoRP, passengers, users of Stations, members of relevant local communities, Network Rail and the British Transport Police) in relation to the potential risks, opportunities and priorities for investment and operational efficiencies in relation to Stations. The Franchisee shall act reasonably in determining the scope of the specification of such consultations including the Stations to be considered.

9. ³¹¹NOT USED.

10. Security at Stations

10.1 The Franchisee shall during the Franchise Period, monitor and record all reported and observed incidents of:

- (a) anti-social behaviour; and
- (b) criminality (including assaults on passengers and Franchise Employees, theft, criminal damage to railway property and graffiti vandalism),

which occur at Stations, and shall use all reasonable endeavours to address, minimise and avoid future instances of anti-social behaviour and criminality at Stations taking account of such data. The Franchisee may comply with its obligations to monitor and record incidents under this paragraph by providing copies of relevant information provided by the Franchisee to the British Transport Police where such information is relevant.

10.2 ³¹²**The Franchisee shall provide to the Secretary of State upon request such information as the Secretary of State may reasonably require from time to time in respect of the Franchisee's compliance with the requirements of paragraph 11.1.**

10.3 The Franchisee shall maintain for the duration of the Franchise Period the Secure Stations Accreditation for the Stations already achieved by the Train Operator under the Previous Franchise Agreement as set out in Appendix 1 to this Schedule 1.7.

10.4 ³¹³**In this paragraph 11:**

- (a) **"Secure Stations Accreditation" and means Stations which have achieved accreditation under the Secure Stations Scheme; and**

³¹⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

³¹¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

³¹² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

³¹³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) **“Secure Stations Scheme” means the certification scheme which is managed by the Department for Transport and British Transport Police and sets station design and management safety standards for crime reduction at railway stations.**

11. Information about Station Improvement Measures

- 11.1 The Franchisee shall at all times during the Franchise Period maintain records in relation to the measures taken by it to improve the Station environment at each of the Stations, covering the areas and the information set out in Appendix 2 to this Schedule 1.7.
- 11.2 The Franchisee shall, subject to paragraph 11.3, provide to the Secretary of State the information set out in Appendix 2 to this Schedule 1.7:
- (a) ³¹⁴**within one (1) Reporting Period of each anniversary of the Start Date during the Franchise Period.**
- 11.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
- (a) such level of disaggregation as is reasonably specified by the Secretary of State; and any particular Station as is reasonably specified by the Secretary of State.
- 11.4 The information to be provided by the Franchisee to the Secretary of State within the timescales stipulated are set out in Appendix 2 to this Schedule 1.7.

12. Termination

- 12.1 On the date that is the earlier of eighteen (18) months prior to the end of the Franchise Period or the date upon which a Termination Notice is served upon the Franchisee, the Secretary of State and the Franchisee shall agree (or the Secretary of State shall reasonably determine) the amendments to be made to the Statement of Condition (as such term is defined in the Station Lease) so as to ensure that the Statement of Condition accurately evidences the state of repair and condition of each Station as at that date.
- 12.2 ³¹⁵**At the end of the Franchise Period and, upon the assignment, transfer or novation of the Station Leases to a Successor Operator (whether pursuant to a Transfer Scheme or otherwise) the Franchisee shall ensure that the condition of each Station so transferred, assigned or novated is in a state of repair and condition which is no worse than that evidenced in the Statement of Condition as amended pursuant to paragraph 13.1.**

³¹⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

³¹⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

13. ³¹⁶**Station Investment**

- 13.1 **On or before the date that is the earlier of the end of the Franchise Period or the date upon which a Termination Notice is served upon the Franchisee, the Secretary of State and the Franchisee shall agree (or the Secretary of State shall reasonably determine) the amendments to be made to the Statement of Condition (as such term is defined in the Station Lease) so as to ensure that the Statement of Condition accurately evidences the state of repair and condition of each Station as at that date.**
- 13.2 **In co-operating with the Secretary of State and/or any nominated third party in developing any such financing opportunities, the Franchisee shall:**
- (a) **attend meetings with the Secretary of State and/or such third party to discuss such opportunities;**
 - (b) **provide the Franchisee's opinion on those opportunities;**
 - (c) **review and comment on implementation timetables and programmes for any such opportunities; and**
 - (d) **where requested by the Secretary of State to do so use all reasonable endeavours to engage with Network Rail for the purposes of ascertaining the feasibility and costs of making amendments to any Station Leases in order to facilitate the implementation of those opportunities.**

14. ³¹⁷**Station Toilet Access**

The Franchisee shall ensure that access to toilet facilities at all Stations is provided free of charge.

³¹⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

³¹⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

APPENDIX 1 TO SCHEDULESchedule 1.7**List of Stations with Secure Stations Accreditation****1. Secure Stations Accreditation**

| | |
|-----------------------|-----------------------|
| Audley End | Saxmundham |
| Billericay | Shenfield |
| Bishops Stortford | Silver Street |
| Brimsgate | Southend Victoria |
| Broxbourne | St Margarets |
| Bury St Edmunds | Stansted Airport |
| Cambridge | Stansted Mountfitchet |
| Chelmsford | Stowmarket |
| Cheshunt | Tottenham Hale |
| Clacton-on-Sea | Waltham Cross |
| Colchester | Ware |
| Colchester Town | Wickford |
| Diss | Woodbridge |
| Elsenham | Ipswich |
| Ely | |
| Enfield Lock | |
| Halesworth | |
| Harlow Town | |
| Harwich International | |
| Hatfield Peverel | |
| Hertford East | |
| Ingatestone | |
| Kelvedon | |
| Lowestoft | |
| Manningtree | |
| Marks Tey | |
| Newport | |
| Northumberland Park | |
| Norwich | |
| Ponders End | |
| Rayleigh | |
| Rye House | |
| Sawbridgeworth | |

APPENDIX 2 TO SCHEDULE 1.7

Information about Station Improvement Measures

Information to be provided as per paragraph 11.2 but subject to paragraph 11.3.

| Information to be provided | | | Information format | | | | | | | | | | | | | |
|----------------------------|-------------------|----------------------------|--------------------|---------------|----------------|------------|----------------------|------|------|------|------|------|------|------|------|------|
| Dashboard category | Delivery element | Performance indicator | Output measure | Station level | Category level | Committed? | Targets for Year (Y) | | | | | | | | | |
| | | | | | | | Y1 | Y2 | Y3 | Y4 | Y5 | Y6 | Y7 | Y8 | Y9 | Y10 |
| Customer Experience | | | | | | | | | | | | | | | | |
| Pass Satisfaction | CEPM | Cleanliness of the station | % score | y | y | ✓ | 88.6 | 89.2 | 89.8 | 90.4 | 91 | 91 | 91 | 91 | 91 | 91 |
| | | Upkeep & repair station | % score | y | y | ✓ | 79.8 | 80.8 | 81.4 | 82.2 | 83 | 83 | 83 | 83 | 83 | 83 |
| | | NRPS | % score | y | y | ✓ | 66.2 | 67.4 | 68.6 | 69.8 | 71 | 72.2 | 72.2 | 72.2 | 72.2 | 72.2 |
| | Customer Feedback | Complaints | # | y | y | ✓ | base line | -3% | -4% | -4% | -5% | -5% | -5% | -5% | -5% | -5% |
| Station Facilities | | | | | | | | | | | | | | | | |
| Facilities & services | Seating | Additional | # | y | y | ✓ | | 531 | 1062 | | 1167 | | | | | |
| | Waiting room | Upgrades/ new | # | y | y | ✓ | | 8 | 16 | | | | | | | |
| | Shelters | Additional | # | y | y | ✓ | | 7 | 13 | | 16 | | | | | |
| | Toilets | Additional | # | y | y | ✓ | | 3 | 5 | | 9 | | | | | |

| Information to be provided | | | Information format | | | | | | | | | | | | | |
|----------------------------|---|-----------------------|--------------------|---------------|----------------|------------|----------------------|------|------|------|------|--------|------|------|------|------|
| Dashboard category | Delivery element | Performance indicator | Output measure | Station level | Category level | Committed? | Targets for Year (Y) | | | | | | | | | |
| | | | | | | | Y1 | Y2 | Y3 | Y4 | Y5 | Y6 | Y7 | Y8 | Y9 | Y10 |
| | AEA standards | Compliance | % stations | y | y | ✓ | | | | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| | Major schemes | Progress against plan | 5 schemes | y | y | ✓ | 0 | 0 | 4 | 5 | 5 | review | tba | tba | tba | tba |
| Community | | | | | | | | | | | | | | | | |
| Community needs | Community uses | Number of occupations | Community tenants | n | y | | Baseline | tba | tba | tba | tba | tba | tba | tba | tba | tba |
| | Community needs | CCIF spend pa | £m | n | y | ✓ | | | | | tba | tba | tba | tba | tba | tba |
| Cost & Revenue | | | | | | | | | | | | | | | | |
| Retail Activity | Station advertising [REDACTED ³¹⁸] | Total revenue | £k | y | y | ✓ | 1409 | 4238 | 5750 | 5776 | 6225 | 7345 | 7666 | 8266 | 8580 | 4625 |

³¹⁸ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

| Information to be provided | | | Information format | | | | | | | | | | | | | |
|----------------------------|--|-----------------------|--------------------|---------------|----------------|------------|----------------------|------|------|------|---------|------|------|------|------|------|
| Dashboard category | Delivery element | Performance indicator | Output measure | Station level | Category level | Committed? | Targets for Year (Y) | | | | | | | | | |
| | | | | | | | Y1 | Y2 | Y3 | Y4 | Y5 | Y6 | Y7 | Y8 | Y9 | Y10 |
| Cost of services | Retail & Catering [REDACTE D ³¹⁹] | Total revenue | £m | y | y | ✓ | 1584 | 3990 | 5051 | 6004 | 6482 | 6992 | 7233 | 7463 | 7977 | 4369 |
| | Car parking | Additional spaces | # | y | y | ✓ | | | 1081 | 1782 | | | | | | |
| | Car parking [REDACTE D ³²⁰] | ANPR systems | Total revenue | n | y | ✓ | | 10 | 20 | | | | | | | |
| | Station presentation | Cleaning cost/pax | Total cost | y | y | ✓ | Bas e-line | 0% | -5% | -5% | Revi ew | tbc | tbc | tbc | tbc | tbc |
| | Maintenance | Reactive callouts | Number | y | y | ✓ | Bas e-line | 0% | -2% | -5% | Revi ew | tbc | | | | |

³¹⁹ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³²⁰ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

| Information to be provided | | | Information format | | | | | | | | | | | | | |
|--|---|-------------------------|---------------------|---------------|----------------|------------|----------------------|------|------|------|------|------|------|------|------|------|
| Dashboard category | Delivery element | Performance indicator | Output measure | Station level | Category level | Committed? | Targets for Year (Y) | | | | | | | | | |
| | | | | | | | Y1 | Y2 | Y3 | Y4 | Y5 | Y6 | Y7 | Y8 | Y9 | Y10 |
| | Renewals [REDACTE D ³²¹] | Renewals | Total cost £ k/m | n | y | ✓ | 4008 | 5640 | 6373 | 6803 | 5513 | 2136 | 1885 | 2072 | 2548 | 4385 |
| Inclusivity & Accessibility | | | | | | | | | | | | | | | | |
| Levels of accessibility | Accessibility | % step-free platforms | % accessible | y | y | | base line | tba | tba | tba | tba | tba | tba | tba | tba | tba |
| | | Secure cycle facilities | Capacity | y | y | ✓ | | 500 | 1000 | 1500 | 2000 | | | | | |
| | | Multimodal CIS | Number | y | y | ✓ | | 30 | | | | | | | | |
| | Security | Stations with HD CCTV | Number | y | y | ✓ | | 558 | 1253 | 1809 | | | | | | |
| | | Reported crimes | No. crimes | y | y | | base line | tba | tba | tba | tba | tba | tba | tba | tba | tba |
| | STPs | STPs full + lite | Number | y | y | ✓ | | 10 | 25 | 13 | 8 | | | | | |

³²¹ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

| Information to be provided | | | Information format | | | | | | | | | | | | | |
|----------------------------|---------------------|--------------------------|--------------------|---------------|----------------|------------|----------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Dashboard category | Delivery element | Performance indicator | Output measure | Station level | Category level | Committed? | Targets for Year (Y) | | | | | | | | | |
| | | | | | | | Y1 | Y2 | Y3 | Y4 | Y5 | Y6 | Y7 | Y8 | Y9 | Y10 |
| Environmental | | | | | | | | | | | | | | | | |
| Environmental | Non traction energy | Total energy consumption | kwh | n | y | ✓ | base line | -2% | -2% | -2% | -2% | -2% | -2% | -2% | -2% | -2% |
| | Waste | Waste recycled | % recycled | n | y | ✓ | | 90% | 90% | 90% | 90% | 90% | 90% | 90% | 90% | 90% |

APPENDIX 3 TO SCHEDULE 1.7**Minimum Asset Remaining Life Table**

| Column 1 | Column 2 |
|--|--|
| Category of Station Asset Group | Minimum Asset Remaining Life (calculated as a percentage in accordance with NR/ARM/M17PR or such other standards as may be notified from time to time) as an average of asset remaining life across each Station Asset Group at all Stations (%) |
| Platforms | 47.50 |
| Footbridges | 49.91 |
| Canopies | 45.99 |
| Buildings | 39.38 |

APPENDIX 4 TO SCHEDULE 1.7

Figures for Calculation of Annual Station Condition Amount

| Column 1 | Column 2 [REDACTED ³²²] |
|----------|-------------------------------------|
| Year 1 | |
| Year 2 | |
| Year 3 | |
| Year 4 | |
| Year 5 | |
| Year 6 | |
| Year 7 | |
| Year 8 | |
| Year 9 | |
| Year 10 | |

³²² Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

SCHEDULE 2**Assets, Leases, Other Franchisees' Schemes**

| | |
|---------------|---|
| Schedule 2.1: | Asset Vesting and Transfer |
| Schedule 2.2: | Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases |
| Schedule 2.3: | Other Franchisees |
| Schedule 2.4: | NOT USED |
| Schedule 2.5: | Transport, Travel and Other Schemes |
| | Appendix to Schedule 2.5: List of Transport, Travel and Other Schemes |

SCHEDULE 2.1**Asset Vesting and Transfer****1. Vesting of Property Leases**

1.1 The Franchisee shall not without the prior written consent of the Secretary of State (such consent not to be unreasonably withheld), whether generally or on a case-by-case basis:

- (a) enter into any new Property Lease; or
- (b) effect any amendment to any Property Lease, except to the extent that the Franchisee is required to do so by virtue of any station or depot access conditions to which it is a party.

1.2 In respect of the new Property Leases specified in paragraph 1.3 or any other new Property Lease with Network Rail, the Franchisee shall enter into such Property Leases:

- (a) with the intent that section 31 of the Act shall apply to such leases; and
- (b) in the agreed terms marked **SL** and **DL** (as appropriate).

1.3 The Franchisee shall enter into the following leases with Network Rail:

- (a) a lease of each Station, on or before the expiry of the Station Lease relating to each such Station (each such lease, once granted, shall be a Station Lease for the purposes of the Franchise Agreement);
- (b) a lease of each Depot, on or before the expiry of the Depot Lease relating to each such Depot (each such lease, once granted, shall be a Depot Lease for the purposes of the Franchise Agreement);
- (c) a supplemental lease relating to any Station or Depot, as soon as practicable following the successful completion of any procedure (including obtaining any requisite approval from the ORR) for including additional land within the demise of such Station or Depot (as the case may be) and each such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of the Franchise Agreement; and
- (d) a lease of any Network Rail owned station or depot, which:
 - (i) the Secretary of State consents to or requires the Franchisee to be a party to; and
 - (ii) the Franchisee was not a party to on the date hereof, but which has been contemplated by the Franchise Agreement,

and the Franchisee shall enter into such lease as soon as practicable after its terms and form have been agreed and all applicable preconditions to its granting have been satisfied or waived (including obtaining any requisite approval of the ORR). Any such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of

the Franchise Agreement and any such station or depot (as the case may be) shall be a Station or Depot for the purposes of the Franchise Agreement.

- 1.4 The Franchisee shall not be in contravention of paragraph 1.3 if and to the extent that Network Rail refuses to enter into any leases specified therein.
- 1.5 In respect of any assignment or amendment of any Property Lease to which section 31 of the Act applied on its grant, each of the Secretary of State and the Franchisee acknowledges that it is their intention that section 31 of the Act shall continue to apply to such assigned or amended lease.

SCHEDULE 2.2**Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases****1. Novation of Access Agreements during the Franchise Term**

- 1.1 The Franchisee shall, to the extent so requested by the Secretary of State (other than on termination of the Franchise Agreement, for which the provisions of paragraph 1 of Schedule 15.4 (Provisions Applying on and after Termination) apply):

following receipt of a notice purporting to terminate any Access Agreement to which it is a party, in relation to such Access Agreement; or

following receipt of a notice purporting to terminate a Station Lease or Depot Lease in whole or in part or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, in relation to any Access Agreement under which it is a Facility Owner by virtue of such Station Lease or Depot Lease,

novate its interest under any such relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as he may direct.

- 1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

- 1.3 Such novation shall be on such terms as the Secretary of State may reasonably require, including:

- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither the Secretary of State nor his nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.

- 1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as he may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

- 1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. Rolling Stock Related Contracts and Insurance Arrangements

- 2.1 The Franchisee shall not:

- (a) execute any Rolling Stock Related Contract;
- (b) exercise any option or other discretion in any Rolling Stock Related Contract that would result in any increased payment or delay in delivery being made by or to the Franchisee or the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of the Franchise Agreement; or
- (c) amend or waive the terms of any Rolling Stock Related Contract,

without, in each case, the prior written consent of the Secretary of State (not to be unreasonably withheld).

- 2.2 The Franchisee shall supply to the Secretary of State a copy of all draft Rolling Stock Related Contracts and, immediately following execution, all executed Rolling Stock Related Contracts (including any agreement amending any Rolling Stock Related Contract) together with:

- (a) such other information or documentation relating to such Rolling Stock Related Contract and/or the relevant rolling stock as the Secretary of State may request (which may include offer letters (original and final));
- (b) the terms proposed by any person providing finance in relation to the relevant rolling stock (including cash flows);
- (c) any agreement (in whatever form) to which the Franchisee (or an Affiliate of the Franchisee) is a party and which relates to the relevant rolling stock;
- (d) information relating to capital allowances, details of any changes in the terms (including rentals) on which the relevant rolling stock is proposed to be leased compared to the terms on which such rolling stock was previously leased; and
- (e) a detailed justification of the Franchisee's proposed maintenance strategy for the relevant rolling stock and/or the Franchisee's analysis of the whole life costs of the relevant rolling stock.

- 2.3 Where the information or documentation so requested by the Secretary of State is not held by the Franchisee, the Franchisee shall use reasonable endeavours to obtain the relevant information or documentation from a third party (including any person from whom the Franchisee leases rolling stock).

- 2.4 The Franchisee shall not, without the prior written consent of the Secretary of State:
- (a) amend the terms of any insurance arrangements which relate to rolling stock vehicles used by it in the provision of the Passenger Services to which it is a party on the Start Date; or
 - (b) enter into any new insurance arrangements after the Start Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services ("**New Insurance Arrangements**").
- 2.5 The Franchisee shall, in addition, if it enters into any New Insurance Arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Franchisee, whether on a reciprocal basis or otherwise.

3. Cascaded Rolling Stock and Delayed Cascade Mitigation Plan

- 3.1 ³²³Without limiting paragraph 2.1 (Rolling Stock Related Contracts and Insurance Arrangements):
- (a) **each Rolling Stock Lease entered into on or after the ERMA Start Date must allow the Secretary of State to make a direction under paragraph 3.2(b) below, including allowing Cascaded Rolling Stock to be sub-leased to the Prior Train Operator; and**
 - (b) **if a Relevant Delay occurs, the Secretary of State may in the Secretary of State's sole discretion direct the Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during such period as the Secretary of State may require, and the Franchisee shall comply with such direction. Any such direction may include the Secretary of State requiring the Franchisee to sublease the Cascaded Rolling Stock back to the Prior Train Operator and/or to delay the date on which the Cascaded Rolling Stock is required to be delivered to the Franchisee under such Rolling Stock Lease**

For the purpose of this paragraph 3:

"Cascaded Rolling Stock" means rolling stock proposed to be used by the Franchisee in the provision of the Passenger Services the availability of which is, in the opinion of the Secretary of State, directly or indirectly dependent upon the successful introduction into service of any Relevant Rolling Stock by any other Train Operator;

"Prior Train Operator" means the Train Operator which used or is using the Cascaded Rolling Stock immediately prior to its proposed use by the Franchisee;

³²³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

“Relevant Delay” means any delay to the successful introduction into service of any Relevant Rolling Stock; and

“Relevant Rolling Stock” means rolling stock to be acquired by another Train Operator which, when acquired, will initiate the **“cascade”** of rolling stock that directly or indirectly makes the Cascaded Rolling Stock available for use by the Franchisee.

3.2

- (a) Where the Secretary of State exercises his right pursuant to paragraph 3.1(b) to make Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period there shall be a Change and where this is a Qualifying Change it shall be assumed that the period that the Prior Train Operator retains any Cascaded Rolling Stock shall not exceed ninety (90) days and the only Revised Inputs shall be in relation to the difference between each of the rolling stock lease costs and variable track usage charge for the Cascaded Rolling Stock and the rolling stock lease costs and variable track usage charge applicable in relation to whatever rolling stock is to be used by the Franchisee in place of the Cascaded Rolling Stock.
- (b) Where there is a Change pursuant to paragraph 3.2(a) and the period that the Prior Train Operator retains any Cascaded Rolling Stock is more than ninety (90) days there shall be a further Change. Where such Change is a Qualifying Change the modifications to the methodology for calculating Revised Inputs provided for in paragraph 3.1(a) shall not apply.
- (c) Where there is a Change pursuant to paragraphs 3.2(a) or 3.2(b) and any such Change is a Qualifying Change there shall be a further Change (which shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change) on the date that the last Cascaded Rolling Stock ceases to be retained by the Prior Train Operator.

3.3 Without limiting paragraph 2.1, where the rolling stock to be leased by the Franchisee under any Rolling Stock Lease is Cascaded Rolling Stock, the Franchisee shall provide appropriate support to the subsequent operator of that rolling stock, including sharing technical know-how, maintenance manuals and records and such other documentation as the future lessee of that rolling stock may reasonably require for the efficient operation of the fleet.

3.4 Where the Secretary of State exercises his right pursuant to paragraph 3.1(b) to require the Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period, the Franchisee shall not be liable for any failure to comply with its obligations under the Franchise Agreement to the extent that:

- (a) such failure to comply arises directly as a result of the Franchisee being unable to use the Cascaded Rolling Stock; and
- (b) the Franchisee uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.

3.5

- (a) The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of any material risk that a Relevant Delay will occur. If a Relevant Delay does occur the Franchisee shall use all reasonable endeavours to mitigate the impact on the delivery of the Franchise Services of the unavailability of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.
- (b) If a Relevant Delay has occurred or the Secretary of State believes that there is a material risk that a Relevant Delay will occur he may serve a notice on the Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate the impact of the delayed availability of the Cascaded Rolling Stock ("**Delayed Cascade Mitigation Plan**"). Such specification may include measures to be implemented by the Franchisee to mitigate the direct or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
 - (i) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (ii) the implications (if any) for Benchmarks; and
 - (iii) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

The Franchisee shall meet with the Secretary of State to discuss the Delayed Cascade Mitigation Plan and provide such further information or analysis and further iterations of the Delayed Cascade Mitigation Plan as the Secretary of State shall reasonably require.

4. Assignment of Property Leases during the Franchise Term

- 4.1 The Franchisee shall (other than on termination of the Franchise Agreement, for which the provisions of paragraph 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- 4.2 Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
 - (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed

obligation, such liability or the consequences of such breach in connection with the relevant assignment); and

- (b) that neither the Secretary of State nor his nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.2(a), and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- 4.3 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.1 in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as he may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.2 shall apply to any such assignment.
- 4.4 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.
- 4A ³²⁴**Where the Department requires the Franchisee to sub-let some of its Train Fleet to another Train Operator under the terms of paragraph 3.5 of Schedule 1.6 (The Rolling Stock), then the Franchisee shall:**
- (a) provide the sub-lessee with access to any applicable maintenance and mileage records;**
 - (b) give the sub-lessee reasonable access to the relevant rolling stock vehicles prior to the handover of such rolling stock vehicles to assist with the relevant handover in relation to both operation and maintenance;**
 - (c) use reasonable endeavours to offer the sub-lessee "knowledge transfer" sessions (including technical and operation support) to enable recipient engineers and operational personnel to learn from informed peers;**
 - (d) provide the sub-lessee all relevant information in relation to property arrangements at any Depot relevant to the sub-leased rolling stock vehicles (a "Relevant Depot"), including any stabling arrangements; and**
 - (e) procure such access to each Relevant Depot as the sub-lessee may reasonably require.**

³²⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

5. Station and Depot Leases

5.1 The Franchisee shall at all times enforce its rights under each Station Lease and Depot Lease.

5.2 The Franchisee shall not:

- (a) terminate or agree to terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Station Lease or Depot Lease;
- (b) assign all or part of its interest under any Station Lease or Depot Lease; or
- (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease,

except to the extent that the Secretary of State may otherwise agree from time to time (such agreement not to be unreasonably withheld if the Franchisee has made arrangements, reasonably satisfactory to the Secretary of State, for the continued operation of such Station or Depot (as the case may be) for the remainder of the Franchise Term or if consent to the Closure of the relevant Station or Depot has been granted).

6. Station Subleases

6.1 Unless the Secretary of State agrees otherwise, the Franchisee shall not sublet to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:

- (a) (other than any subletting to an Affiliate which is a Train Operator) is terminable without compensation immediately upon the termination of the Franchise Agreement; and
- (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

6.2 If so requested by the Secretary of State, the Franchisee shall:

- (a) extend each Station Sublease on the same terms for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease); and
- (b) if such Station Sublease terminates (which for the purposes of this paragraph 6.2(b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sublease in respect of which the Franchisee was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease),

subject, where required, to the consent of Network Rail (and, if required, the relevant sub-lessee) and to the duration of the relevant Station Lease.

- 6.3 The Franchisee shall notify the Secretary of State immediately on it becoming aware of any event which might give the Franchisee a right to forfeit or terminate any Station Sublease. The Franchisee shall notify the Secretary of State if it wishes to forfeit or terminate any such Station Sublease but shall not (without the Secretary of State's prior written consent) effect such forfeiture or termination until the date which occurs three (3) months after the date of such notice.

SCHEDULE 2.3**Other Franchisees****1. Other Franchisees**

- 1.1 If the franchise agreement of another franchisee terminates or a railway administration order is made in respect of another franchisee, the Franchisee shall co-operate with any reasonable request of the Secretary of State to ensure:
- (a) that the services provided or operated by such other franchisee may continue to be provided or operated by any successor Train Operator or the railway administrator; and
 - (b) that the benefit of any arrangements between the Franchisee and such other franchisee which were designated as a key contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.
- 1.2 The benefit of any arrangements of the type referred to in paragraph 1.1(b) shall be provided on substantially the same terms as previously obtained by the relevant franchisee, subject to clause 14.8 (Arm's length dealings) and paragraph 1.3 of this Schedule 2.3, provided that the Secretary of State may exclude or modify any terms agreed or amended by such franchisee in the twelve (12) months preceding the date on which such franchisee's franchise agreement was terminated or the date on which the relevant railway administration order was made which were, in the Secretary of State's reasonable opinion, to the material detriment of such franchisee's business. The benefit of such arrangements shall be provided for such period as the Secretary of State may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.
- 1.3 The Franchisee shall notify the Secretary of State of its intention to terminate any contract with any other Train Operator which is designated as a "**Key Contract**" under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.
- 1.4 If the franchise agreement of another franchisee terminates in contemplation of the entry into or entry into effect of a new franchise agreement with the same franchisee in respect of all or a material part of the relevant railway passenger services, the Franchisee shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.
- 1.5 References in this paragraph 1 to "**a franchisee**" include references to any franchise operator of that franchisee.

SCHEDULE 2.4

NOT USED

SCHEDULE 2.5**Transport, Travel and Other Schemes****1. Local Authority Concessionary Travel Schemes**

1.1 The Franchisee shall:

- (a) subject to paragraph 1.2, participate in and comply with its obligations under:
 - (i) the concessionary travel schemes listed in the Appendix (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
 - (ii) any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 1.1(b); and
- (b) subject to paragraph 1.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:
 - (i) any concessionary travel scheme listed in the Franchise Agreement the terms of which have been amended since the date of the Franchise Agreement; and
 - (ii) such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in.

1.2 Subject to the terms of the relevant concessionary travel scheme, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 1.1(a) where, in the reasonable opinion of the Secretary of State:

- (a) the Franchisee's continuing participation in such scheme; and/or
- (b) the obligations assumed by the relevant Local Authority in connection therewith,

each pursuant to Part II of the Travel Concession Schemes Regulations 1986 (SI 1986/77) (the "**Regulations**"), would fail to leave the Franchisee financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) than it was immediately following the Start Date.

1.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 1.1(b) where the Secretary of State is reasonably satisfied that:

- (a) the reimbursement arrangements with respect to the Franchisee's participation in any such scheme; and/or
- (b) the obligations to be assumed by such Local Authority in connection therewith,

each pursuant to the Regulations would fail to leave the Franchisee financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a result of such participation.

- 1.4 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new concessionary travel scheme pursuant to paragraph 1.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to him with respect to any such participation.
- 1.5 The Franchisee shall supply to the Secretary of State, in respect of any concessionary travel schemes referred to in paragraph 1.1(b), such information within such period as the Secretary of State may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a consequence of its participation in any such scheme, and/or the obligations assumed by such Local Authority in connection therewith.
- 1.6 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations), the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

2. Multi-modal Fares Schemes

2.1 The Franchisee shall:

- (a) subject to paragraph 2.2, participate in and comply with its obligations under:
 - (i) the multi-modal fares schemes set out in paragraph 2 of the Appendix (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
 - (ii) any other multi-modal fares scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2.1(b);

including by co-operating in the implementation of any smart card technology pursuant to any such multi modal fares schemes; and

- (b) subject to paragraph 2.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:
 - (i) any multi-modal fares scheme set out in paragraph 2 of the Appendix (List of Transport, Travel and Other Schemes) to this Schedule 2.5, the terms of which have been amended since the date of signature of this Agreement; and
 - (ii) such other multi-modal fares schemes as any relevant Local Authority may require or request it to participate in.

- 2.2 Subject to the terms of the relevant multi-modal fares scheme, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 2.1(a) where, in the reasonable opinion of the Secretary of State:
- (a) the Franchisee's continuing participation in such scheme; and/or
 - (b) the obligations assumed by the relevant Local Authority in connection therewith,
- would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.
- 2.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 2.1(b) where the Secretary of State is reasonably satisfied that the Franchisee's participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith, would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.
- 2.4 In determining whether the Franchisee shall, pursuant to paragraph 2.2, continue to participate or, pursuant to paragraph 2.3, participate in any multi-modal fares scheme, the Secretary of State shall construe the term **"financially no worse off"** to mean:
- (a) in respect of any multi-modal fares scheme set out in paragraph 2 of the Appendix (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Start Date under that scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date;
 - (b) in respect of any multi-modal fares scheme which replaces and (in the Secretary of State's reasonable opinion) is reasonably similar to any such scheme as may be set out in paragraph 2 of the Appendix (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Start Date under the replaced scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date; and
 - (c) in respect of any multi-modal fares scheme which does not replace or which does replace but which is not (in the Secretary of State's reasonable opinion) reasonably similar to any such scheme or schemes as may be set out in paragraph 2 of the Appendix (List of Transport, Travel and Other Schemes) to this Schedule 2.5, such reimbursement arrangements as agreed by the relevant parties to such multi-modal fares schemes (or on failure to agree, as determined by the Secretary of State).
- 2.5 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new multi-modal fares scheme pursuant to paragraph 2.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such participation.
- 2.6 The Franchisee shall supply to the Secretary of State, in respect of any multi-modal fares schemes referred to in paragraph 2.1 such information within such period as

the Secretary of State may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off as a consequence of its participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith.

- 2.7 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off, the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

3. Discount Fare Schemes

- 3.1 If the Secretary of State:

- (a) effects, or proposes to effect, an amendment to a Discount Fare Scheme;
- (b) introduces any new Discount Fare Scheme; or
- (c) ceases to approve a Discount Fare Scheme,

for the purposes of Section 28 of the Act, such amendment, intended amendment, introduction or cessation of approval shall be a Change.

- 3.2 The Secretary of State shall provide a reasonable opportunity to the Franchisee to make representations to him before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 3.1.

- 3.3 The Franchisee shall supply to the Secretary of State, in respect of any Discount Fare Scheme referred to in paragraph 3.1, such information within such period as the Secretary of State may reasonably require for the purposes of determining the financial effect of any such amendment, intended amendment, introduction or cessation of approval.

4. Inter-Operator Schemes

- 4.1 The Franchisee shall participate in and comply with its obligations under the terms of each of the Inter-Operator Schemes.

- 4.2 Without limiting paragraphs 4.1 and 4.3, the Franchisee agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Secretary of State.

- 4.3 The Franchisee shall not amend, or agree or propose to amend, any Inter-Operator Scheme other than in accordance with its terms.

- 4.4 The Franchisee shall:

- (a) provide reasonable notice to the Secretary of State of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which, in its opinion, is reasonably likely to materially affect the provision of the Franchise Services; and
- (b) have regard to the Secretary of State's views in respect of any such proposal.

- 4.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Secretary of State in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

APPENDIX TO SCHEDULE 2.5**List of Transport, Travel and Other Schemes****1. Local Authority Concessionary Travel Schemes**

1.1 Each of the following concessionary travel schemes:

- (a) London Boroughs Concessionary fares schemes;
- (b) Suffolk County Council Scholar Season Ticket Agreement dated 1 September 1999 between Anglia Railway Train Services Limited and Suffolk County Council;
- (c) Suffolk County Council Scholar Season Ticket (covers student travel to Woodridge and Ipswich). Agreement dated 1 September 1999 between Anglia Railway Train Services Limited and Suffolk County Council;
- (d) Suffolk County Council Scholar Season Ticket (covers student travel to Lowestoft and Norwich). Agreement dated 1 September 1999 between Anglia Railway Train Services Limited and Suffolk County Council;
- (e) Norfolk County Council Scholar Season Ticket (covers student travel on various routes in Norfolk). Agreement dated 3 September 1991 between Anglia Railway Train Services Limited and Norfolk County Council; and
- (f) Norfolk County Council Scholar Season Ticket (covers student travel between Norfolk and Great Yarmouth). Agreement dated 1 April 2004 between Anglia Railway Train Services Limited and Norfolk County Council; and
- (g) any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2.1(b).

2. Multi-modal Fares Schemes

None.

3. Discount Fare Schemes

3.1 Each of the following discount fare schemes:

- (a) ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants therein;
- (b) ATOC Young Persons Railcard Scheme dated 23 July 1995 between the participants therein; and
- (c) ATOC Senior Railcard Scheme dated 23 July 1995 between the participants therein; or

- (d) any other discount fare scheme approved from time to time by the Secretary of State for the purposes of Section 28 of the Act,

in each case until such time as it may cease to be approved by the Secretary of State for the purposes of Section 28 of the Act.

4. **Inter-Operator Schemes**

4.1 Each of the following schemes which relate to arrangements between the Franchisee and other participants in the railway industry:

- (a) ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
- (b) Ticketing and Settlement Agreement;
- (c) ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
- (d) Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
- (e) Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 (as amended and restated) between London Regional Transport and the parties named therein;
- (f) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein;
- (g) the Pay As You Go Agreement;
- (h) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Franchise Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts;
- (i) any Discount Fare Scheme; and
- (j) the CPAY agreement dated 30 July 2014.

SCHEDULE 3

NOT USED

SCHEDULE 4

Accessibility and Inclusivity

| | |
|-------------|---|
| Schedule 4: | Accessibility and Inclusivity |
| | Appendix 1 to Schedule 4: Minor Works |
| | Appendix 2 to Schedule 4: Accessible Transport Arrangements |

SCHEDULE 4**Accessibility and Inclusivity****1. Relationship with other obligations relating to persons with disabilities**

1.1 The Franchisee acknowledges that its obligations in this Schedule 4 are in addition to and do not limit its obligations to comply with:

- (a) the EA and any regulations imposed by it;
- (b) any applicable condition(s) in any of its Licences (including in respect of persons with disabilities); and
- (c) any other requirements of the Franchise Agreement.

1.2 This Schedule 4 sets out:

- (a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and
- (b) specific obligations of the Franchisee directed at meeting the needs of persons with disabilities.

1.3³²⁵

- (a) **Subject to paragraph 1.3(c) below, it is acknowledged that the Franchisee is subject to obligations regarding accessibility under the terms of its Licences (including under the form of its Accessible Travel Policy as approved from time to time by the ORR in connection with the requirements of its Licences) (the "Licence Accessibility Obligations").**
- (b) **Where any matter included in this Schedule 4 is the subject of a Licence Accessibility Obligation, it is agreed that compliance with the Licence Accessibility Obligation shall take precedence over this Schedule 4 such that compliance with the Licence Accessibility Obligation shall be deemed to fulfil the obligation of the Franchisee in respect of that matter under this Schedule 4 and any failure by the Franchisee in respect of that matter shall be addressed under that Licence and not under this Franchise Agreement.**
- (c) **Paragraph 1.3(a) shall have no application to paragraph 3 (Dealing with Claims relating to Stations).**

³²⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

2. Physical Alterations and Accessibility of Stations

- 2.1 In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by the Franchisee that:
- (a) there is limited funding available to the Secretary of State to assist franchisees and/or franchise operators with the carrying out of those works;
 - (b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised with regard to where there is the greatest need and/or where physical alterations can have the greatest effect; and
 - (c) the Secretary of State's national programme of works of physical alterations at stations addresses these issues in a structured way.
- 2.2 The Franchisee shall:
- (a) co-operate reasonably with and assist the Secretary of State in the development and furtherance by the Secretary of State of the programme described in paragraph 2.1(c) by providing to the Secretary of State:
 - (i) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and
 - (ii) advice as to the most economical way in which accessibility for Disabled Persons could, in the Franchisee's reasonable opinion, be improved at Stations;
 - (b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and
 - (c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through the Secretary of State pursuant to paragraph 2.5), including from Local Authorities, local development agencies and the National Lottery Commission. The Franchisee shall notify the Secretary of State of:
 - (i) any such additional funding which it secures; and
 - (ii) the terms on which such additional funding has been granted.
- 2.3 In participating in any multi-modal fares scheme, the Franchisee shall use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant station, including within and in the immediate proximity of such station.

2.4 If, during the Franchise Term:

- (a) the Franchisee has complied with its obligations in Section 20(4) and Section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station accessible to a Disabled Person to avoid a Disabled Person being placed at a substantial disadvantage by a physical feature at a Station) and its obligations in paragraph 2.7 concerning Minor Works; and
- (b) notwithstanding such compliance, the Franchisee reasonably considers it is still required to carry out or procure physical works of alteration at a Station in order to comply with the EA Requirements in respect of that Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,

the Franchisee may seek funding from the Secretary of State in respect of that expenditure.

2.5 If the Franchisee seeks funding from the Secretary of State under paragraph 2.4, and demonstrates to the Secretary of State's satisfaction that the criteria in paragraph 2.4 have been satisfied, then the Secretary of State may agree to adjust the amount of Franchise Payments in respect of some or all of the works and/or expenditure. In considering his response to any such request, the Secretary of State will have regard to the availability of funding and the priorities set out in the national programme described in paragraph 2.1(c), together with any other available sources of funding described in paragraph 2.2(c). If and to the extent the Secretary of State agrees to adjust Franchise Payments in accordance with this paragraph 2.5 in any Franchisee Year:

- (a) the Secretary of State shall make such adjustment to the Franchise Payments; and
- (b) the Franchisee shall spend such additional funds:
 - (i) in order to comply with the EA Requirements referred to in paragraph 2.4(b); and
 - (ii) in accordance with any conditions the Secretary of State may notify the Franchisee of.

2.6 If and to the extent the Franchisee is required to pay any increased access charges as a result of additional expenditure required to be incurred by another station Facility Owner for the purpose of complying with the EA Requirements in respect of a Franchisee Access Station, provided that the Franchisee:

- (a) notifies the Secretary of State within seven (7) days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and
- (b) complies with the Secretary of State's reasonable directions regarding the exercise of any rights the Franchisee may have in respect thereof,

the imposition of the increased access charges shall be a Change.

2.7 The Franchisee shall:

- (a) establish and manage the Minor Works' Budget to fund the carrying out of Minor Works. For the purposes of this paragraph 2.7, Minor Works means small scale physical alterations or additions to improve accessibility of Stations to Disabled Persons, not involving substantial works of construction or reconstruction. The Minor Works:
 - (i) may, but shall not necessarily include, the Minor Works described in Appendix 1 (Minor Works) to this Schedule 4;
 - (ii) shall not include any works which Network Rail, the Franchisee or any other person has a separate obligation to carry out, except where:
 - (A) such obligation is an obligation of the Franchisee under the EA; or
 - (B) the inclusion of such works would lead to the acceleration of the timescale for their completion and the Secretary of State gives his consent pursuant to paragraph 2.7(a)(iii);
 - (iii) shall only include works other than those permitted by paragraphs 2.7(a)(i) and 2.7(a)(ii) with the prior consent of the Secretary of State; and
 - (iv) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of the Secretary of State;
- (b) as soon as reasonably practicable (and in any event within four (4) months) after the Start Date and thereafter before the start of each Franchisee Year:
 - (i) ³²⁶ **develop a Minor Works' Programme and consult with the Accessibility Panel and relevant Passengers' Council in relation thereto;**
 - (ii) in conjunction with its activities in paragraph 2.7(b)(i), and, consistent with its obligations under paragraph 2.2(b), liaise with Network Rail and other Train Operators as necessary with regard to the determination and implementation of each Minor Works' Programme; and
 - (iii) following the consultation and liaison described in paragraphs 2.7(b)(i) and 2.7(b)(ii), obtain the Secretary of State's prior approval (such approval not to be unreasonably withheld) of each Minor Works' Programme;
- (c) carry out or procure the carrying out of the Minor Works' Programme in each Franchisee Year and in doing so, spend at least the amount of the Minor

³²⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

Works' Budget for the relevant Franchisee Year in such Franchisee Year (unless otherwise agreed by the Secretary of State);

- (d) report progress to the Secretary of State in determining and carrying out the Minor Works' Programme no less than once every three (3) Reporting Periods; and
- (e) co-operate, as the Secretary of State may reasonably require, with Network Rail or any other person seeking to carry out or procure Minor Works at the Stations or any other stations.

3. Dealing with Claims relating to Stations

3.1 If the Franchisee receives notification of a claim under the EA in respect of any alleged non-compliance with the EA Requirements or otherwise in respect of any Station (an "**EA Claim**") then the Franchisee shall:

- (a) notify the Secretary of State within seven (7) days of receiving notification of the EA Claim. The Franchisee shall at the same time notify the Secretary of State of any reasonable alternative methods of making services at the Station accessible to Disabled Persons that it has considered and/or put in place pursuant to Section 20(4) and Section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA;
- (b) if required by the Secretary of State, defend the EA Claim or any aspect of the EA Claim (which may include appealing the judgment). The Secretary of State will, subject to paragraph 3.4, pay the Franchisee's reasonable costs of:
 - (i) any defence or appeal required by the Secretary of State; and/or
 - (ii) compliance with the Secretary of State's instructions in accordance with paragraph 3.1(c); and
- (c) act in accordance with the reasonable instructions of the Secretary of State to defend the EA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of the Secretary of State) settle or enter into any compromise in relation to the EA Claim (or the relevant aspect of it), including by entering into mediation.

3.2 If, in the reasonable opinion of the Franchisee, it will be more cost effective to settle the EA Claim rather than act in accordance with the Secretary of State's requirement under paragraph 3.1, it shall produce for the Secretary of State's approval a settlement proposal, setting out the terms of the Franchisee's proposals to make an offer to the Disabled Person making the EA Claim and its reasons for making such offer (the "**Settlement Proposal**").

3.3 If the Secretary of State does not accept the Settlement Proposal and still requires the Franchisee to defend the EA Claim (or any aspect of it) then the Franchisee shall defend the EA Claim in accordance with paragraph 3.1.

3.4 If the Franchisee is required to defend an EA Claim where it has submitted a Settlement Proposal to the Secretary of State and an award is made in respect of the EA Claim in favour of the person bringing it which is higher than the figure set

out in the Settlement Proposal, then, subject to paragraph 3.5, the Secretary of State shall pay to the Franchisee:

- (a) the difference between such an award and the figure set out in the Settlement Proposal; and
- (b) the further reasonable costs incurred or payable by the Franchisee in defending the EA Claim, to the extent that such costs have not already been paid by the Secretary of State under paragraph 3.1(b).

3.5 The Secretary of State shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, the Secretary of State, in his reasonable opinion, considers that the Franchisee has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.

4. Specific additional obligations relating to persons with disabilities

4.1 ³²⁷**To the extent the Franchisee did so prior to the ERMA Start Date, it shall continue to implement procedures necessary to:**

- (a) **record the making of reservations for seating accommodation and for spaces for wheelchairs for and/or the provision of assistance to, persons with disabilities which are made through the Passenger Assistance (or whatever service may replace it from time to time for the purposes of ORR's most recent guidance on the Accessible Travel Policies);**
- (b) **record whether such seating accommodation and/or assistance is actually provided, whether there has been a delay in providing such assistance at either departing, arrival or any interchange stations, and whether the journeys planned using Passenger Assistance have been completed successfully (e.g. by surveying a representative sample of users); and**
- (c) **provide the results of such records to the Secretary of State, and publish a summary of the data in its Customer Report(s) and on the relevant section of the Franchisee's website.**

4.2 ³²⁸**By no later than 30 November 2020, the Franchisee shall notify the Secretary of State of:**

- (a) **the extent to which it recorded the matters described in paragraphs 4.1(a) and 4.1(b) above (collectively referred to as the "Seating and Assistance Provisions"), as at the date of the notification; and**

³²⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

³²⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (b) **if and to the extent to which it did not previously record the Seating and Assistance Provisions, its assessment of the costs, practicalities and timescales involved in putting in place the necessary systems and processes to enable them to do so.**

4.3 ³²⁹**Following the notifications referred to in paragraph 4.2:**

- (a) **if the Franchisee already records the Seating and Assistance Provisions, it shall continue to do so and shall provide the results of such records to the Secretary of State, and publish a summary of the data in its Customer Report(s) and on the relevant section of the Franchisee's website; and**
- (b) **if the Franchisee does not record the Seating and Assistance Provisions, then the Secretary of State may require them to establish and implement the necessary systems and processes by such date as the Secretary of State may reasonably specify (having regard to any assessment provided by the Franchisee pursuant to paragraph 4.1 above), and with effect from such date, it shall record Seating and Assistance Provisions and shall provide the results of such records to the Secretary of State and publish a summary of the data in its Customer Report(s) and on the relevant section of the Franchisee's website.**

4.4 ³³⁰**The Franchisee shall promptly send to the Secretary of State a copy of:**

- (a) **each set of results of the surveys of Passenger Assistance users that the Franchisee undertakes pursuant to its Accessible Travel Policy; and**
- (b) **any reports that the Franchisee submits to ORR in connection with the effectiveness of, and satisfaction with, the Passenger Assistance service**

4.5 The Franchisee shall comply with the requirements set out in Appendix 2 (Accessible Transport Arrangements) to this Schedule 4 in respect of the provision of accessible transport arrangements for persons with disabilities.

5. ³³¹Annual Accessibility Update

5.1 **The Parties acknowledge that the Franchisee, pursuant to its Licence Accessibility Obligations, is required to submit reports from time to time to ORR in respect of accessibility matters, including, in relation to:**

- (a) **the activities undertaken by the Franchisee to improve accessibility to the Franchise Services; and**

³²⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

³³⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

³³¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (b) the approach that the Franchisee has taken to assessing the accessibility requirements of passengers pursuant to the requirements of the EA for example when making decisions about operations, design and service improvements; and
 - (c) the action(s) taken by the Franchisee to remedy any failure (whether identified by the Franchisee or ORR) to comply with the Franchisee's Accessible Travel Policy or any other accessibility related obligation arising by pursuant to its Licence Accessibility Obligations.
- 5.2 The Franchisee shall provide a copy of any report submitted to ORR pursuant to paragraph 5.1 to the Secretary of State within seven (7) days of it being submitted to ORR.
- 6. ³³²Accessibility Director and Accessibility Manager
 - 6.1 As soon as reasonably practicable and by no later than 31 January 2021, the Franchisee shall nominate (to the extent that the Franchisee has not already done so):
 - (a) a director to the board of directors of the Franchisee; and
 - (b) an operational manager,each with specific responsibility of ensuring the Franchisee complies with its obligations in connection with accessibility, including pursuant to its Accessible Travel Policy requirements.
 - 6.2 The Franchisee shall ensure that such roles referred to in paragraph 6.1 are filled as soon as reasonably practicable after such roles become vacant throughout the Franchise Term.
- 7. ³³³Accessibility Panel
 - 7.1 The Franchisee shall:
 - (a) consult the Accessibility Panel on operational and policy decisions that may have an impact on the needs of passengers with accessibility requirements;
 - (b) develop the design of the Enhanced Disability Awareness Training referred to in paragraph 9 below, and the co-design of physical assets, electronic services and applications, and other services and facilities relating to accessibility as appropriate, in each case, actively engaging with the Accessibility Panel as may be appropriate; and

³³² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

³³³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (c) **provide the Accessibility Panel the opportunity to report to the board of directors of the Franchisee on a quarterly basis.**

8. ³³⁴Enhanced Disability Awareness Training

8.1 **By no later than 31 July 2021 (or such later date as may be agreed by the Secretary of State and the Franchisee), the Franchisee shall deliver Enhanced Disability Awareness Training to all Franchise Employees. The Franchisee shall also ensure it delivers the Enhanced Disability Awareness Training to any Franchise Employees appointed following 31 July 2021 (excluding Franchise Employees appointed less than two months prior to the Expiry Date (as extended pursuant to clause 3.3 of the ERMA, if applicable) if it is not reasonably practicable to deliver Enhanced Disability Awareness Training to such Franchise Employees) as soon as reasonably practicable after their appointment.**

8.2 **In developing the Enhanced Disability Awareness Training, the Franchisee shall:**

- (a) **take into account of a wide range of disabilities (including non-visible disabilities); and**
- (b) **ensure the content complies with the requirements of the ORR's Accessible Travel Policy guidance.**

8.3 **The Franchisee shall involve people with disabilities and/or groups representing people with disabilities (which may include the Accessibility Panel) in the delivery of the Enhanced Disability Awareness Training.**

9. ³³⁵Social Media Engagement with Passengers with Disabilities

9.1 **By no later than 31 January 2021, (or such later date as may be agreed by the Secretary of State and the Franchisee) the Franchisee shall develop and share with the Secretary of State a twelve (12) month plan describing how it shall (or if the Franchise Term expires earlier than 20 January 2022, its Successor Operator may) increase its use of social media for the purpose of:**

- (a) **advising passengers with disabilities on matters, including:**
 - (i) **planned and/or unplanned disruptions to Passenger Services;**
 - (ii) **changes to Passenger Services in operation; and**
 - (iii) **rail replacement bus services;**
- (b) **responding to queries and questions from passengers with disabilities and in a timely manner;**
- (c) **receiving feedback and comments from passengers with disabilities; and**

³³⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

³³⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (d) **promoting the Franchisee's additional services for passengers with disabilities, including Passenger Assistance.**
- 9.2 **Subject to the Secretary of State's consent to the plan shared pursuant to paragraph 9.1 (such consent not unreasonably withheld or delayed), the Franchisee shall implement this plan (the "Social Media Plan").**
- 9.3 **By no later than one (1) month prior to the expiry of the Franchise Term, or if earlier by 31 January 2022, the Franchisee shall provide the Secretary of State with a report detailing the extent to which the Social Media Plan is achieving the purposes referred to in paragraph 9.1 and any proposed revisions to the Social Media Plan to help achieve those purposes.**
- 9.4 **Any revision to the Social Media Plan proposed by the Franchisee pursuant to paragraph 9.3 shall be subject to the consent of the Secretary of State before implementation (such consent not unreasonably withheld or delayed).**
- 10.** ³³⁶**Accessible Formats of Passenger Facing Information**
- 10.1 **By no later than 31 January 2021 the Franchisee shall ensure (and continue to ensure throughout the Franchise Term) that, if and to the extent reasonably practicable, passenger facing information (in whatever form or media) is presented in a range of accessible formats, taking into account the requirements of Disabled People in relation to communication (such as passengers who use British Sign Language or "easy read").**
- 10.2 **The Parties acknowledge that:**
- (a) **the ORR licensing regime requires the publication of certain documents (the "Relevant Documents") in accessible formats; and**
- (b) **insofar as the obligation in paragraph 10.1 above applies to the Relevant Documents, enforcement action is within the remit of the ORR and accordingly a failure to comply with paragraph 10.1 in respect of the Relevant Documents shall not be treated as a contravention of the Franchise Agreement (but the Franchisee nevertheless acknowledges that it will remedy any such failure, as soon as practicable and in accordance with any directions as may be given by the ORR).**
- 11.** ³³⁷**Diversity Impact Assessments**
- 11.1 **The Franchisee shall, from the ERMA Start Date and throughout the Franchise Term, ensure that it conducts a diversity impact assessment on all projects that will or may affect the interests of persons with protected characteristics (as defined under the Equalities Act) carried out by the**

³³⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

³³⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

Franchisee (except where in the reasonable opinion of the Franchisee, the project is sufficiently completed such that a diversity impact assessment is not reasonably expected to materially influence the outcome of the project, in which case the requirement to conduct a diversity impact assessment in respect of that particular project shall not apply). The Franchisee shall take such steps as it considers appropriate (acting reasonably) in light of the conclusions of the diversity impact assessment to ensure that issues affecting people with protected characteristics (as defined under the Equalities Act 2010) are properly addressed in compliance with applicable Laws.

12. ³³⁸The Franchisee shall comply with any reasonable request by the Secretary of State in connection with the development and implementation of a station accessibility data collection plan which may include (but shall not be limited to):

- (a) supporting the Secretary of State in developing and designing the methodology for data collection;**
- (b) completing questionnaires and/or using reasonable endeavours to procure that the relevant station Facility Owner completes the relevant questionnaire;**
- (c) providing information in relation to Station accessibility and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such information; and**
- (d) providing access to Stations to facilitate accessibility data collection and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such access,**

in each case, in a timely manner.

³³⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

APPENDIX 1 TO SCHEDULE 4**Minor Works**

1. Providing additional signage, where it does not currently exist, to allow better way finding around the Station by Disabled Persons.
2. Removing:
 - 2.1 thresholds (above 15 millimetres) which do not comply with the Code of Practice; or
 - 2.2 fewer than three steps,

from the entrances to booking halls or platforms to enable those facilities to have step-free access.
3. Providing contrasting manifestations on glazed areas where contrasting manifestations do not currently exist.
4. Providing additional handrails around the Station where handrails do not currently exist and where the Franchisee reasonably believes they may be required by a Disabled Person.
5. Providing new accessible stair nosings where stair nosings do not currently exist.
6. Providing new tactile surfaces, including at the top and bottom of flights of steps (but excluding at platform edges) where tactile surfaces do not currently exist.
7. Providing additional seating that is accessible to Disabled Persons, but not replacing existing seating.
8. Providing induction loops for ticket office windows where induction loops do not currently exist.
9. Replacing non-standard fittings with fittings that are compliant with the Code of Practice in existing disabled toilets, which would include replacing non-standard fittings in respect of toilet bowls and sinks, but would not include making major changes to plumbing or to the dimensions of the toilet area.
10. Providing dropped kerbs at drop off/set down points or Station car parks to enable access/egress thereto where dropped kerbs do not currently exist.
11. Marking out existing car-parking bays for use by persons with disabilities which comply with the Code of Practice, where such car parking bays do not currently comply.

APPENDIX 2 TO SCHEDULE 4**Accessible Transport Arrangements**

1. References in this Appendix 2 to Schedule 4 (Accessibility and Inclusivity) to passengers are references to passengers with disabilities who are wheelchair users or otherwise severely mobility impaired.
2. Subject to paragraph 4, where:
 - 2.1 a passenger wants to travel on a Passenger Service; and
 - 2.2 the design of the station at which the passenger's journey on such Passenger Service is to start (the "**Departure Station**") or finish (the "**Destination Station**") prevents the passenger from using that station to access or disembark from that Passenger Service,

the Franchisee shall provide accessible transport arrangements for that passenger in accordance with paragraph 3.
3. The Franchisee shall provide accessible transport arrangements for the passenger referred to in paragraph 2:
 - 3.1 from the Departure Station to the next station at which the Passenger Service is scheduled to call and at which it is possible for the passenger to access that Passenger Service;
 - 3.2 to the Destination Station, from the station closest to such station at which the Passenger Service is scheduled to call and which it is possible for the passenger to use to disembark from that Passenger Service; and/or
 - 3.3 to or from such other station as the Franchisee may, having regard to the journey and the needs of the passenger, agree,

and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.
4. The Franchisee's obligations under this Appendix 2 to Schedule 4 (Accessibility and Inclusivity) are subject to:
 - 4.1 reasonable prior notice of the passenger's requirement for accessible transport arrangements; and
 - 4.2 the availability of suitable accessible transport arrangements (provided that the Franchisee has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such accessible transport arrangements).

SCHEDULE 5**Fares and Smart Ticketing**

| | |
|---------------|---|
| Schedule 5.1: | Purpose, Structure and Construction |
| Schedule 5.2: | Franchisee's Obligation to Create Fares |
| Schedule 5.3: | Allocation of Fares to Fares Baskets |
| Schedule 5.4: | Regulation of Fares Basket Values |
| Schedule 5.5: | Regulation of Individual Fares |
| Schedule 5.6: | Exceeding the Regulated Value, Regulated Price or Regulated Child Price |
| Schedule 5.7: | Changes to Fares and Fares Regulation |
| Schedule 5.8: | Fares Regulation Information and Monitoring |
| Schedule 5.9: | Smart Ticketing |

SCHEDULE 5.1

Purpose, Structure and Construction

1. Purpose of Schedule 5

Purpose of provisions relating to Creating Fares

- 1.1 The purpose of Schedule 5.2 (Franchisee's Obligation to Create Fares) is to ensure that Commuter Fares and Protected Fares are Created in accordance with the Ticketing and Settlement Agreement and appropriate restrictions are placed on the Franchisee's ability to Create Fares.

Purpose of Fares Regulation

- 1.2 The purpose of Schedule 5.3 (Allocation of Fares to Fares Baskets) to Schedule 5.8 (Fares Regulation Information and Monitoring) (inclusive) is to provide for the regulation of Fares by the Secretary of State pursuant to Section 28 of the Act.
- 1.3 For the purpose of regulating Fares, each Fare that is to be regulated shall be allocated in accordance with this Schedule 5.1 to one of the following Fares Baskets:
- (a) the Commuter Fares Basket; or
 - (b) the Protected Fares Basket.
- 1.4 The Secretary of State's regulation of Fares places a limit on the Price or Child Price of each Fare that is allocated by the Secretary of State to a Fares Basket. The limit on the Price or Child Price of each Fare is set by reference to:
- (a) the overall increase of the Prices and the Child Prices of all Fares in a Fares Basket; and
 - (b) the individual increase in the Price or the Child Price of each Fare in a Fares Basket.
- 1.5 Subject to the more detailed provisions of Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares):
- (a) the overall increase of the Prices and the Child Prices of all Fares in a Fares Basket may not exceed the Retail Prices Index + k per cent. per annum in respect of each Fare Year; and
 - (b) the increase in the Price or the Child Price of any individual Fare in a Fares Basket may not exceed the Retail Prices Index + k per cent. + f per cent. per annum in respect of each Fare Year.

For the purposes of paragraph 1.5(a), "k" shall have the meaning given to it in paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values) and for the purposes of paragraph 1.5(b) "k" and "f" shall each have the meaning given to each such term in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares).

- 1.6 The Secretary of State may alter these limits, and other aspects of the regulation of Fares, in accordance with the more detailed provisions of Schedule 5.7 (Changes to Fares and Fares Regulation).

2. Structure of Schedule 5

- 2.1 Schedule 5.2 (Franchisee's Obligation to Create Fares) sets out or refers to the Franchisee's obligations to Create Fares.
- 2.2 Schedule 5.3 (Allocation of Fares to Fares Baskets) sets out the allocation of Fares to Fares Baskets.
- 2.3 Schedule 5.4 (Regulation of Fares Basket Values) sets out the limits applicable to the overall increase in Prices and Child Prices of all Fares in a Fares Basket.
- 2.4 Schedule 5.5 (Regulation of Individual Fares) sets out the limits applicable to the increase in the Price or Child Price of any individual Fare in a Fares Basket.
- 2.5 Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) sets out the consequences of the Franchisee exceeding:
- (a) the Regulated Value of any Fares Basket; or
 - (b) the Regulated Price or Regulated Child Price of any Fare.
- 2.6 Schedule 5.7 (Changes to Fares and Fares Regulation) sets out the Secretary of State's ability to vary the foregoing provisions.
- 2.7 Schedule 5.8 (Fares Regulation Information and Monitoring) sets out Fares regulation information and monitoring provisions.
- 2.8 Schedule 5.9 (Smart Ticketing) sets out provisions relating to the introduction of smart ticketing.

3. Construction

References to "Fare"

- 3.1 For the purposes of:
- (a) Schedule 5.2 (Franchisee's Obligation to Create Fares), Fare shall have the wide meaning given to it in paragraph (a) of that definition; and
 - (b) Schedule 5.3 (Allocation of Fares to Fares Baskets) to Schedule 5.8 (Fares Regulation Information and Monitoring) (inclusive), Fare shall have the narrow meaning given to it in paragraph (b) of that definition.
- 3.2 References in this Schedule 5 to a Fare shall, except to the extent the context otherwise requires, be construed as references to the Fare which is or can be Created by the Lead Operator for the Flow to which the Fare relates or, if such Flow is not a Compulsory Inter available Flow, any Fare which the Franchisee has Created or can Create in respect of that Flow as the Secretary of State may specify.

Fares Documents

- 3.3 In the event that, in the Secretary of State's reasonable opinion, there is an immaterial inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2015 or the 2015 Nominal Ticket Sales:
- (a) described in or determined in accordance with this Schedule 5; and
 - (b) described in the relevant Fares Document,
- the relevant Fares Document shall prevail.
- 3.4 In the event that, in the Secretary of State's reasonable opinion, there is a material inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2015 or the 2015 Nominal Ticket Sales:
- (a) described in or determined in accordance with this Schedule 5; and
 - (b) described in the relevant Fares Document,
- this Schedule 5 shall prevail.

Setting of Child Prices

- 3.5 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare shall be satisfied by the Franchisee Creating either:
- (a) a Fare which is only valid for use by persons under the age of 16; or
 - (b) a Fare which is valid for use:
 - (i) by any person at a price; and
 - (ii) by persons under the age of 16 at a discounted price relative to the price set pursuant to paragraph 3.5(b)(i).

New Stations

- 3.6 Subject to paragraph 3.2, the Secretary of State may include within the definitions of:
- (a) Fares Basket;
 - (b) Commuter Fare; and
 - (c) Protected Fare,
- Fares to or from any New Station, on such basis as he may, after consultation with the Franchisee, reasonably determine and references in this Schedule 5 to Fares Basket, Commuter Fare, Protected Fare and Fares and other relevant definitions shall be construed accordingly.

SCHEDULE 5.2**Franchisee's Obligation to Create Fares****1. Creation of Commuter Fares and Protected Fares**

The Franchisee shall ensure that each Commuter Fare and each Protected Fare has been Created, to the extent it is entitled or obliged to do so under the terms of the Ticketing and Settlement Agreement.

2. Restrictions on Creation of Fares

- 2.1 The Franchisee shall set the Child Price for any Fare that it Creates so that that Fare may be purchased by or for a person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a 16 to 25 Railcard with no minimum fare (as amended or replaced from time to time) and whose purchase was made without condition.
- 2.2 The Franchisee shall not Create or agree to Create any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld).

SCHEDULE 5.3**Allocation of Fares to Fares Baskets****1. Allocation of Fares to Fares Baskets**

- 1.1 On or prior to the Start Date the Secretary of State shall allocate each Commuter Fare and each Protected Fare to the relevant Fares Basket in accordance with this Schedule 5.3.
- 1.2 Subject to paragraph 2, every Commuter Fare shall be allocated by the Secretary of State to the Commuter Fares Basket and every Protected Fare shall be allocated by the Secretary of State to the Protected Fares Basket.

2. Designation of Non Fares Basket Fares

- 2.1 On or prior to the Start Date, the Secretary of State shall:
- (a) separately (or in aggregate with other Fares of the same type in the opposite direction or for similar journeys that have the same Price or Child Price as the case may be) rank, in descending order according to their Gross Revenue for the period of twelve (12) months which ended 31 March 2015:
 - (i) all Commuter Fares; and
 - (ii) all Protected Fares;
 - (b) aggregate, following such ranking:
 - (i) those Commuter Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent (5%) of the aggregate Reference Revenue of all Commuter Fares; and
 - (ii) those Protected Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent (5%) of the aggregate Reference Revenue of all Protected Fares; and
 - (c) designate, following such aggregation:
 - (i) those Commuter Fares referred to in paragraph 2.1(b)(i) as Non Fares Basket Fares; and
 - (ii) those Protected Fares referred to in paragraph 2.1(b)(ii) as Non Fares Basket Fares.
- 2.2 Without prejudice to the Secretary of State's right to require the content of a Fares Basket to change at any time prior to the Start Date, or, thereafter, prior to the commencement of any Fares Setting Round, pursuant to paragraph 1 of Schedule 5.7 (Changes to Fares and Fares Regulation), any Commuter Fare or Protected Fare that is also designated as a Non Fares Basket Fare shall not be allocated to the relevant Fares Basket.

- 2.3 The Secretary of State may de-designate any Non Fares Basket Fare pursuant to paragraph 1.1(d)(iii) of Schedule 5.7 (Changes to Fares and Fares Regulation).

SCHEDULE 5.4

Regulation of Fares Basket Values

1. Value of Fares Basket not to exceed Regulated Value

Subject to paragraph 1.3 of Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) the Franchisee shall procure that the Value of a Fares Basket at any time in any Fare Year does not exceed its Regulated Value for that Fare Year.

2. Value

The Value of a Fares Basket at any time shall be the aggregate of the Projected Revenue of each Fare in that Fares Basket at that time.

3. Projected Revenue

The Projected Revenue of any Fare at any time shall be an amount equal to:

$$P \times 2015 \text{ Nominal Ticket Sales}$$

where:

| | |
|------------------------------------|--|
| P | is the Price or Child Price (as the case may be) of that Fare at that time; and |
| 2015 Nominal Ticket Sales | is the number of nominal ticket sales of that Fare for 2015, ascertained as follows: |
| | $\frac{A}{B}$ |
| | where: |
| | A is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of twelve (12) months which ended 31 March 2015; and |
| | B is the Price or Child Price (as the case may be) for that Fare recorded by RSP in February 2015. |

4. Regulated Value

4.1 The Regulated Value of a Fares Basket for any Fare Year shall be an amount equal to:

$$2015 \text{ Ticket Revenue} \times \text{PPAI}$$

where:

| | |
|---------------------|---|
| 2015 Ticket Revenue | is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in that Fares Basket for the period of twelve (12) months which ended 31 March 2015; |
| PPAI | is: |
| | (a) in respect of the Fare Year commencing 1 January 2016, the Permitted Aggregate Increase for that Fare Year; and |
| | (b) in respect of each Fare Year commencing on or after 1 January 2017, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1 January 2016 (inclusively). |

4.2 The Permitted Aggregate Increase in any Fare Year shall be an amount equal to:

$$PAI = \frac{(100 \times RPI) + k}{100}$$

where:

| | |
|-----|---|
| PAI | is the Permitted Aggregate Increase in that Fare Year; |
| RPI | is an amount equal to: |
| | $\frac{RPI - 1}{RPI - 2}$ |
| | where: |
| | RPI-1 is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and |
| | RPI-2 is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1; and |
| k | is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter. |

SCHEDULE 5.5

Regulation of Individual Fares

1. Price or Child Price not to exceed Regulated Price or Regulated Child Price

1.1 The Franchisee shall procure that the Price or Child Price (as the case may be) of:

- (a) each Commuter Fare included in the Commuter Fares Basket; and
- (b) each Protected Fare included in the Protected Fares Basket,

in any Fare Year does not exceed the Regulated Price or Regulated Child Price (as the case may be) for such Fare in that Fare Year.

1.2 The Franchisee shall procure that the Price or Child Price (as the case may be) of any Season Ticket Fare shall be the same in both directions.

2. Regulated Price

2.1 ³³⁹**The Regulated Price or the Regulated Child Price (as the case may be) for any Fare in any Fare Year shall be an amount equal to the greater of:**

- (a) **Preceding Year Ticket Price + £0.10p; and**
- (b) **Preceding Year Ticket Price x PII**

where:

| | |
|------------------------------------|---|
| Preceding Year Ticket Price | for the Fare Year commencing 1 January 2017, is the maximum Price or Child Price (as the case may be) for that Fare recorded by RSP in 2016 and, for any subsequent Fare Year, is the maximum Price or Child Price (as the case may be) recorded by RSP in the Fare Year preceding that Fare Year, provided that such maximum Price or Child Price (as the case may be) complied with the requirements of this Schedule 5. If such maximum Price or Child Price (as the case may be) did not so comply, then such maximum Price or Child Price (as the case may be) shall be the last Price or Child Price (as the case may be) recorded by RSP which did so comply; and |
| PII | is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2. |

³³⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

2.2 The Permitted Individual Increase in any Fare Year shall be an amount equal to:

$$PII = \frac{(100 \times RPI) + k + f}{100}$$

where:

| | |
|-----|---|
| PII | is the Permitted Individual Increase in that Fare Year; |
| RPI | is an amount equal to: |
| | $\frac{RPI - 1}{RPI - 2}$ |
| | where: |
| | RPI-1 is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and |
| | RPI-2 is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1; |
| k | is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter; and |
| f | is equal to zero (0). |

2.3 Where:

- (a) the Franchisee sets the Price or Child Price (as the case may be) of any Commuter Fare or Protected Fare in any Fare Year; and
- (b) the Secretary of State reasonably determines that the Price or Child Price (as the case may be) of such Commuter Fare or Protected Fare was set solely for the purpose of increasing the value of the Preceding Year Ticket Price in the next Fare Year,

the Preceding Year Ticket Price for the purposes of determining the Regulated Price or Regulated Child Price (as the case may be) pursuant to paragraph 2.1 in the next Fare Year shall be the maximum Price or Child Price (as the case may be) prior to such setting that complied with the requirements of this Schedule 5, as recorded by RSP in the relevant preceding Fare Year.

3. Compulsory Inter available Flows

Where the Franchisee:

- 3.1 as Lead Operator for a Compulsory Inter available Flow, is responsible for setting the Price or Child Price (as the case may be) of a Commuter Fare for that Flow; and
- 3.2 has notified RSP of the Price or Child Price (as the case may be) of that Commuter Fare in any Fares Setting Round,
- 3.3 the Franchisee shall not increase the Price or Child Price (as the case may be) of that Commuter Fare in the same Fares Setting Round without the consent of either the Secretary of State or each other Train Operator which provides railway passenger services for such Flow.

SCHEDULE 5.6**Exceeding the Regulated Value, Regulated Price or Regulated Child Price****1. Exceeding the Regulated Value**

- 1.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in respect of either the Commuter Fares Basket or the Protected Fares Basket:
- (a) it shall reduce the Price or Child Price of Fares in the relevant Fares Basket at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) from such date; and
 - (b) the Secretary of State may adjust Franchise Payments by an amount equivalent in his opinion to the sum of:
 - (i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the Value of any Fares Basket exceeding its Regulated Value permitted under Schedule 5.4 (Regulation of Fares Basket Values); and
 - (ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.
- 1.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 1.1:
- (a) shall not be treated as a Change; and
 - (b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.
- 1.3 It shall not be a contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) if and to the extent that:
- (a) the Value of the Commuter Fares Basket exceeds its Regulated Value in any Fare Year;
 - (b) such excess is caused by the Price or Child Price of any relevant Commuter Fare being set pursuant to the terms of the Ticketing and Settlement Agreement by another person (other than an Affiliate); and
 - (c) the Franchisee does not have a reasonable opportunity, under any procedure for consulting or notifying Train Operators of alterations to the Prices and Child Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other Commuter Fares in the Commuter Fares Basket so as to avoid the Value of the Commuter Fares Basket exceeding its Regulated Value.
- 1.4 If and to the extent that the circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not subsequently increase during that Fare Year, or any subsequent Fare Year, the Price or Child Price of any

Commuter Fare in the Commuter Fares Basket which it is entitled to set pursuant to the terms of the Ticketing and Settlement Agreement, unless, following such increase, the Franchisee would, otherwise than under paragraph 1.3, comply with the provisions of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in relation to the Commuter Fares Basket.

- 1.5 Where circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not be required to reduce the Price or Child Price of any other Commuter Fare at any time during that Fare Year, or any subsequent Fare Year, where such Price or Child Price has previously been set in a Fares Setting Round.

2. Exceeding the Regulated Price or Regulated Child Price

- 2.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares):

- (a) it shall reduce the Price or Child Price of any relevant Fare at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares) from such date; and
- (b) the Secretary of State may adjust Franchise Payments by an amount equivalent in his opinion to the sum of:
 - (i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the sale of Fares at Prices and/or Child Prices in excess of the relevant amounts permitted under Schedule 5.5 (Regulation of Individual Fares); and
 - (ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.

- 2.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 2.1:

- (a) shall not be a Change; and
- (b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.

SCHEDULE 5.7**Changes to Fares and Fares Regulation****1. Changes to Fares Baskets**

1.1 The Secretary of State may require the content of the Commuter Fares Basket or the Protected Fares Basket (as the case may be) to change in accordance with the following:

(a) where the Secretary of State is not satisfied that the Price or Child Price of any Non Fares Basket Fare is reasonably constrained by the Price or Child Price of other Fares which:

(i) have been set in respect of the same, or part of the same, Flow as such Non Fares Basket Fare, or a Flow which is reasonably proximate to the Flow on which such Non Fares Basket Fare has been set; and

(ii) have been included in the relevant Fares Basket,

the Secretary of State may de designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the relevant Fares Basket;

(b) where any Commuter Fare for a Flow has been included in the Commuter Fares Basket, the Secretary of State may require the inclusion in the Commuter Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2015;

(c) where any Protected Fare for a Flow has been included in the Protected Fares Basket, the Secretary of State may require the inclusion in the Protected Fares Basket of any Protected Return Fare or Protected Weekly Season Ticket that existed on that Flow in February 2003; and/or

(d) where the Secretary of State changes the Reference Revenue and/or the Gross Revenue of any Fare pursuant to paragraphs 3.1(a) and/or 3.1(b) then, in relation to the Fares Basket in which such Fare is or would be included, and without limiting paragraphs 1.1(a) to (c) inclusive, the Secretary of State may also:

(i) make any of the changes to such Fares Basket contemplated by this paragraph 1.1;

(ii) designate any Fare as a Non Fares Basket Fare in accordance with the provisions (other than the requirement that such designation occurs on or prior to the Start Date) of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets); and/or

(iii) de designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the relevant Fares Basket.

1.2 The Secretary of State shall serve notice in writing on the Franchisee:

(a) at any time prior to the Start Date; and

- (b) thereafter, no later than the commencement of any Fares Setting Round, to require any Fare to be included in a Fares Basket or to designate any Fare as a Non Fares Basket Fare pursuant to paragraph 1.1.

2. Changes to the 2015 Nominal Ticket Sales

- 2.1 The Franchisee may, in the event of any significant change to the pattern of travel on the Passenger Services during the Franchise Term, apply to the Secretary of State for the value of factors A and/or B in the formula for determining 2015 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be adjusted to take account of such changes, such that:
 - (a) the value of factor A is re calculated by using the Gross Revenue in respect of the sales of the relevant Fares for the most recently completed period of twelve (12) months ending 31 March; and/or
 - (b) the value of factor B is recalculated by using the Price or Child Price (as the case may be) of the relevant Fares recorded by RSP in the month of February during such period.
- 2.2 The Secretary of State shall act reasonably in relation to any such application but shall not under any circumstances be obliged to accept any such application in whole or in part. The Secretary of State shall be entitled to impose conditions upon any such acceptance, including conditions requiring that the value of both factors A and B are adjusted and/or are adjusted in respect of any or all Fares in the relevant Fares Basket.

3. Changes to the Reference Revenue, Gross Revenue, 2015 Nominal Ticket Sales and/or 2015 Ticket Revenue

- 3.1 The Secretary of State may, by notice in writing served on the Franchisee no later than the date of commencement of any Fares Setting Round, require:
 - (a) the Reference Revenue of any Fares Basket to be calculated by reference to a different reference period for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) than the period of twelve (12) months ended 31 March 2015; and/or
 - (b) the Gross Revenue of all Commuter Fares and Protected Fares to be re calculated for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) by reference to a different reference period than the period of twelve (12) months ended 31 March 2015; and/or
 - (c) the value of factor A in the formula for determining the 2015 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be re calculated in respect of any Fare by reference to a different reference period than the period of twelve (12) months ended 31 March 2015; and/or
 - (d) the value of factor B in the formula for determining the 2015 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be re calculated in respect of any Fare by reference to a different reference date other than February 2015; and/or

- (e) the 2015 Ticket Revenue in respect of any Fares Basket to be re calculated for the purpose of paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) by reference to a different reference period than the period of twelve (12) months ended 31 March 2015.
- 3.2 Where, in accordance with paragraph 3.1(e), the 2015 Ticket Revenue in respect of any Fares Basket is re calculated by reference to a different reference period, the value of **"PPAI"** in paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) shall be determined solely by reference to the product of the Permitted Aggregate Increase for each Fare Year beginning after the end of such reference period.
- 3.3 Any revision pursuant to paragraph 3.1 or 3.2 shall take effect upon commencement of the next Fare Year to commence after the Fares Setting Round referred to in paragraph 3.1.

4. **Changes to Prices**

The Franchisee may request permission from the Secretary of State from time to time to increase any Prices or Child Prices beyond the levels permitted under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Secretary of State shall act reasonably in relation to any such request but shall not under any circumstances be obliged to accept any such request in whole or in part.

5. **Changes to Fares Regulation**

The Parties agree that the Secretary of State shall have the power at any time and on more than one occasion during the Franchise Term to alter the obligations of, and restrictions on, the Franchisee under Schedule 5.1 (Purpose, Structure and Construction) to Schedule 5.8 (Fares Regulation Information and Monitoring) inclusive for any Fare Year, or part thereof (including alteration of the value of **"k"** under paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values) and/or paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares) and/or alteration of the value of **"f"** under paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares)). The exercise by the Secretary of State of his powers under this paragraph 5 shall be a Change.

6. **Changes to Compulsory Inter available Flows**

- 6.1 Where:
 - (a) pursuant to Clauses 4 to 7 of the Ticketing and Settlement Agreement, the consent of the Secretary of State is requested for the abolition of a Compulsory Inter available Flow (the **"Reference Flow"**) in respect of which any Fare Created would be a Commuter Fare or a Protected Fare (the **"Reference Fare"**); and
 - (b) a Flow exists, which, in the Secretary of State's opinion, is substantially similar to the Reference Flow (the **"Equivalent Flow"**),

the Secretary of State may, as a condition of granting his consent to the abolition of the Reference Flow, by written notice to the Franchisee, require any Fare Created

in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in a Fares Basket ("**Equivalent Fare**").

- 6.2 The Secretary of State shall not issue any such notice in respect of an Equivalent Fare unless the provisions of such notice have first been approved by the Ticketing and Settlement Scheme Council (as defined in the Ticketing and Settlement Agreement) or a delegate of such council.
- 6.3 The Price and Child Price of any Equivalent Fare in the first Fare Year in which it is to be introduced shall be no greater than the maximum permitted Price or Child Price in that Fare Year of the relevant Reference Fare, as if such Reference Fare had not been abolished.

7. Change of Lead Operator/Major Flow Operator

- 7.1 The Franchisee shall not without the Secretary of State's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.
- 7.2 The Franchisee shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Franchisee becoming the Lead Operator in respect of any Flow, the Secretary of State may without limiting paragraph 3, exercise his rights pursuant to paragraph 3 in relation to the relevant Fares Basket.
- 7.3 The Franchisee shall inform the Secretary of State if it ceases to be a Major Flow Operator in respect of any Flow.

8. Changes to Fares Documents

- 8.1 Following:
 - (a) any allocation of Fares to any Fares Basket pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets); or
 - (b) any subsequent adjustment thereof pursuant to this Schedule 5.7,

the Secretary of State shall set out in the Commuter Fares Document and/or the Protected Fares Document (as the case may be) all Fares then included in the relevant Fares Basket and, as soon as reasonably practicable thereafter, the Secretary of State shall issue or reissue (as the case may be) such Fares Document(s) to the Franchisee.

SCHEDULE 5.8**Fares Regulation Information and Monitoring****1. Information**

- 1.1 The Franchisee shall provide to the Secretary of State by no later than week twelve (12) of each Fares Setting Round, a summary (to such level of detail or generality as the Secretary of State may reasonably require) of the Prices and Child Prices of the Commuter Fares or Protected Fares it is intending to set.
- 1.2 The Franchisee shall notify, or procure the notification to, the Secretary of State of any proposed increase to the Price or Child Price of any Commuter Fare or any Protected Fare and shall provide such details of any such proposal at such times (including before and during each Fares Setting Round) and in such form (including by electronic data transfer) as the Secretary of State may reasonably request from time to time.
- 1.3 The Franchisee shall make available, or procure that RSP makes available, to the Secretary of State, for any Fares Setting Round during the Franchise Term, such details (including the proposed Prices or Child Prices) of the Initial Permanent Fare of any Commuter Fare or Protected Fare for each such Fares Setting Round as the Secretary of State may reasonably request from time to time.

2. Monitoring

- 2.1 The Franchisee shall provide to the Secretary of State:
 - (a) such access as the Secretary of State may require to information pertaining to the Prices or Child Prices of Commuter Fares and Protected Fares from time to time; and
 - (b) such further information as the Secretary of State may require for the purpose of determining the Gross Revenue of the Franchisee in relation to any particular Fare or Fares or any particular period.
- 2.2 By no later than week seventeen (17) of each Fares Setting Round, the Franchisee will provide to the Secretary of State written confirmation from a statutory director of the Franchisee of whether the Franchisee has complied with its obligations under this Schedule 5 (Fares) during each such Fares Setting Round. It shall be a contravention of the Franchise Agreement if any such written confirmation from a statutory director of the Franchisee is, in the reasonable opinion of the Secretary of State, in any material respect, untrue, inaccurate and/or misleading.
- 2.3 The Franchisee shall take such action as the Secretary of State may require following receipt of any details from the Franchisee pursuant to paragraph 1 in order to ensure that the Franchisee will comply with the provisions of Schedule 5.2 (Franchisee's Obligation to Create Fares) to this Schedule 5.8 (inclusive).

SCHEDULE 5.9**Smart Ticketing****1. Smart Ticketing****1.1 The Franchisee shall:**

- (a) join and comply with any ATOC approved smart ticketing related schemes relevant to some or all of the Passenger Services;
- (b) develop an approach to the use of smart ticketing to facilitate the roll out of more flexible ticket types and demand management over time;
- (c) co-operate with Network Rail, the Crossrail Operator, TfL, other Train Operators and relevant local authorities in relation to the provision of smart ticketing equipment; and
- (d) co-operate with the Crossrail Operator, TfL, other Train Operators and relevant local authorities in relation to proposals to:
 - (i) introduce new multi-modal fare schemes; and
 - (ii) convert any multi-modal fare schemes to use smart ticketing.

1.2 In relation to any ITSO Certified Smartmedia ticketing scheme, the Franchisee shall ensure that (on introduction or inheritance of such a scheme):

- (a) The Franchisee continues to provide, make available and promote (and where applicable effectively maintain) such a scheme (including any associated infrastructure) for the duration of the Franchise; and
- (b) all scheme components (and any amendment, extension or replacement thereof) inherited, used or introduced by the Franchisee (whether on a permanent or a trial basis) are at all times compliant with:
 - (i) version 2.1.4 of the ITSO specification and the ITSO operating licence;
 - (ii) the RSPS3002; and
 - (iii) the South East Flexible Ticketing (SEFT) Programme WebTIS Requirements Specification v1.0.,

or such subsequent versions as the Franchisee and the Secretary of State may agree; and

- (c) further to paragraph 1.2(b) above, any ITSO Certified Smartmedia readers introduced by the Franchisee (whether on a permanent or temporary basis) shall conform to EMV level 1 certification (hardware) and be capable of being upgraded whilst in operation to EMV level 2 (application); and
- (d) the Franchisee is responsible for all costs of participating in the smart ticketing scheme including maintaining all required scheme components to the standards specified in this Schedule 5.9;

- (e) where the Train Operator under the Previous Franchise Agreement had joined and complied with any ATOC approved smart ticketing related schemes, the Franchisee takes such action as may be required in order to facilitate continuity and the orderly handover of such inherited scheme to the Franchisee and continues to make use of the central RSP managed service contracts for the remainder of the Franchise Period.
- 1.3 On or before the Start Date and at the direction of the Secretary of State, the Franchisee shall enter into the SEFT Deed with the Secretary of State which shall be supplemental to the Franchise Agreement and be construed together with the Franchise Agreement provided that the Franchisee agrees and acknowledges that no act, omission or waiver by the Secretary of State under the terms of the SEFT Deed shall relieve the Franchisee of its obligation to comply with the provisions of this Schedule 5.9.
- 1.4 The Franchisee shall ensure that by a date which is three (3) calendar years after the Start Date, at least ninety five per cent (95%) of all journeys made by passengers using any season ticket issued by the Franchisee, including but not limited to Annual Season Tickets, Quarterly Season Tickets, Monthly Season Tickets and Weekly Season Tickets, where such journeys are between any SEFT Station and any other SEFT Station, or between any SEFT Station and the PAYG Zone and Stations therein, are made using ITSO-Certified Smartmedia.
- 1.5 Where the Franchisee reasonably considers that it cannot achieve the requirements of paragraph 1.4 due to any delay by the Secretary of State under the terms of the SEFT Deed, the Franchisee shall notify the Secretary of State of such together with a detailed written explanation.
- 1.6 Without prejudice to its obligations elsewhere in this Schedule, the Franchisee shall also undertake such further actions as the Secretary of State may reasonably require in connection with the introduction of smart ticketing on the network.
- 1.7 The Secretary of State will reimburse the reasonable costs incurred by the Franchisee in complying with any such requirement issued pursuant to paragraph 1.6 above provided that:
- (a) prior to incurring such costs, the Franchisee has obtained the Secretary of State's approval of the same; and
 - (b) the Franchisee has not already recovered (or is able to recover) such costs through any Franchise Payment, pursuant to any SEFT Deed and/or pursuant to any other provision of this Agreement or otherwise.
- 1.8 The Franchisee will co-operate with TfL, the Secretary of State, the Crossrail Operator and relevant Train Operators in making such reasonable changes to joint ticketing products as are reasonably required to permit TfL to generate sufficient additional revenue to meet the IOP operating and maintenance costs as set out in the IOP Agreement subject to:
- (a) TfL meeting the Franchisee's reasonable and demonstrable costs as agreed in advance by the Secretary of State that are directly associated with the changes to such joint ticketing products;
 - (b) any necessary changes to, or derogations from, fares regulation being granted by the Secretary of State; and

- (c) the Franchisee not being obliged to make any payment or transfer of revenue to TfL to cover TfL's IOP operating and maintenance costs as defined in the scope of the IOP Agreement, except in the case of a change where the Franchisee has agreed to pay for all or part of TfL's operating and maintenance costs associated with that change.

1.9 ³⁴⁰**The Franchisee shall ensure that all Weekly Season Tickets, Monthly Season Tickets and Annual Season Tickets which are ordered through the Franchisee's online retail channels or at ticket offices are, as the default option offered to the customer on Smart Media.**

2. Delayed Equipment

2.1 Where:

- (a) any of the ITSO Equipment is not transferred to the Franchisee pursuant to the Start Date Transfer Scheme;
- (b) installation of any of the ITSO Equipment has not been completed by the Franchisee or by a Train Operator pursuant to the terms of the Previous Franchise Agreement or Previous SEFT Deed (as appropriate); and/or
- (c) any ITSO Equipment transferred to the Franchisee pursuant to the Start Date Transfer Scheme:
 - (i) is not capable of operation at a level required to meet the relevant service level requirements applicable to that such ITSO Equipment; and
 - (ii) the Secretary of State has not required the ITSO Equipment procured and installed pursuant to the Previous Franchise Agreement or Previous SEFT Deed (as appropriate) to be reprocured and upgraded in order to meet the relevant service level requirements applicable to such ITSO Equipment,

the Secretary of State may, having consulted with the Franchisee, notify the Franchisee that it shall make an adjustment to the Franchise Payment in accordance with paragraph 2.2 to reflect the savings in operating costs reasonably able to be made by the Franchisee as a result of any delay or failure to transfer, install or make capable of operation at the relevant service level requirements of such ITSO Equipment (the "**SEFT Opex Saving**").2.2 The Secretary of State shall determine the SEFT Opex Saving acting reasonably and taking into account the values set out in the following rows of the Financial Model:

- (a) Other Opex row, sheet 85;
- (b) any other row of the Financial Model which is reasonably relevant to determine the SEFT Opex Saving;

³⁴⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

and the Secretary of State shall be entitled to make an adjustment to the Franchise Payments to reflect the SEFT Opex Saving as:

- (c) a lump sum deduction to the Franchise Payment;
- (d) an adjustment to the Franchise Payment on a per Reporting Period basis,
- (e) a mixture of the above options,

the ("**SEFT Equipment Opex Adjustment**"), which shall be expressed as a negative number.

3. Platform Validators

- 3.1 Where in any given Reporting Period commencing on or after 1 April 2017 and before the end of the Franchise Period the installation of any Platform Validators has not been "Accepted" pursuant to the terms of the SEFT Deed, the "**Platform Validator Adjustment (PVA)**" to be made in respect of any Reporting Period (which shall be expressed as a negative number) shall be determined in accordance with the following formula:

$$\mathbf{PVA = NIP \times (MPA \times RPI)}$$

where:

NIP means the number of Platform Validators where installation of such Platform Validators has not yet been "Accepted" pursuant to the terms of the SEFT Deed by the first day of such Reporting Period;

MPA means [REDACTED³⁴¹] which represents the sum assumed by the Franchisee as being payable for the operation and maintenance of each such Platform Validators per Reporting Period; and

RPI has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

- 3.2 Where in any given Reporting Period commencing on or after 1 April 2017 and before the end of the Franchise Period, the installation of any Platform Validators has been "Accepted" pursuant to the terms of the SEFT Deed and the value of MPA x RPI is greater than the value of APA, the "**Platform Validator Savings Adjustment (PVSA)**" to be made in respect of any Reporting Period (which shall be expressed as a negative number) shall be determined in accordance with the following formula:

$$\mathbf{PVSA = IP \times ((MPA \times RPI) - APA)}$$

where:

³⁴¹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

APA means the mean actual amount payable by the Franchisee in the Reporting Period in respect of operation and maintenance of each Platform Validator which has been Accepted;

MPA means [REDACTED³⁴²] which represents the sum assumed by the Franchisee as being payable for the operation and maintenance of such Platform Validator per Reporting Period;

IP means the number of Platform Validators which have been "Accepted" pursuant to the terms of the SEFT Deed by the first day of such Reporting Period; and

RPI shall have the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

4. ³⁴³**The provisions contained in Appendix 1 to Schedule 5.9 shall apply in respect of the implementation of smart ticketing arrangements for the purposes of the Franchise. The Franchise and the Secretary of State shall each comply with their respective obligations comprised in that Appendix.**

³⁴² **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³⁴³ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

APPENDIX 1 TO SCHEDULE 5.9³⁴⁴**1. ³⁴⁵Definitions**

In this Appendix the words and expressions defined in this paragraph paragraph 1 shall (unless the context requires otherwise) have the meanings there given to them below:

“Actual STNR Costs” means:

- (a) the actual costs (excluding the Actual STNR Operational Costs) incurred by the Franchisee on the items described and detailed in the STNR Costs Schedule and relating to the delivery and performance by the Franchisee of the equipment, systems, works, services and outputs to be provided by the Franchisee in accordance with and by virtue of the STNR Scope of Work and this Appendix 1 provided that such costs shall not include those identified in Annex A to the STNR Scope of Work as “Already met (via TOC Programme or other commitments)”;** and
- (b) the Actual STNR Operational Costs;**

“Actual STNR Operational Costs” means the actual costs incurred by the Franchisee on the items described and detailed in the STNR Costs Schedule provided that such costs shall be limited to those incurred during the period ending on the earlier to occur of the date which is twenty-four (24) months from STNR Completion and the date of expiry or termination of the Franchise Agreement;

“Amendment Date” means 15/1/18;

“Dependency Item” means an aspect of the STNR Scope of Work which is subject to a dependency on another train operator and/or RDG as listed in the STNR Reporting Requirements and STNR Programme;

“Forecast STNR Costs” means:

- (a) each of the forecast costs (excluding the Forecast STNR Operational Costs) as described and detailed in the STNR Costs**

³⁴⁴ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁴⁵ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Schedule and relating to the delivery and performance by the Franchisee of the equipment, systems, works, services and outputs to be provided by the Franchisee in accordance with and by virtue of the STNR Scope of Work and this Appendix 1 provided that such costs shall not include those identified in Annex A to the STNR Scope of Work as "Already met (via TOC Programme or other commitments); and

(b) **the Forecast STNR Operational Costs;**

"Forecast STNR Operational Costs" means each of the forecast costs relating to the operation of the STNR System as described and detailed in the STNR Costs Schedule provided that such costs shall be limited to those incurred during the period ending on the earlier to occur of the date which is twenty-four (24) months from STNR Completion and the date of expiry or termination of this Franchise Agreement;

³⁴⁶ ³⁴⁷ **"Maximum Total Amount" means [REDACTED³⁴⁸];**

"Optional STNR Outputs" means the outputs specified in the STNR Optional Outputs;

"Overpayment" has the meaning given to it in paragraph 6.2(b)(i);

"RDG" means the Rail Delivery Group, the body responsible for discharging the functions of ATOC from 24 October 2016;

"Smart Ticket" has the meaning given to such term in the STNR Scope of Work;

"STNR Completion" means that:-

(a) **all aspects of the STNR System have been fully delivered, installed and commissioned in accordance with the requirements set out in the STNR Scope of Work;**

³⁴⁶ 27 March 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee

³⁴⁷ 5 July 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee

³⁴⁸ **5 February 2018 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (b) **the testing and certification requirements set out in paragraph 6.2 of the STNR Scope of Work have been achieved; and**
- (c) **all requirements set out in Appendix A of the STNR Scope of Work have been fulfilled;**

“STNR Costs” means the costs in respect of the delivery and performance by the Franchisee of the equipment, systems, works, services and outputs to be provided by the Franchisee in accordance with and by virtue of the STNR Scope of Work and this Appendix 1:-

- (a) **the forecast amount of which are set out in the STNR Costs Schedule;**
- (b) **which shall not include the cost of any activity which the Franchisee is already required to take and/or is undertaking prior to the Effective Date (such as but not limited to those identified in Annex A to the STNR Scope of Work as “Already met (via TOC Programme or other commitments”); and**
- (c) **including the STNR Operational Costs;**

“STNR Costs Report” has the meaning given to it in paragraph 6.2(a);

“STNR Costs Schedule” means the schedule, in the agreed terms, of forecast STNR Costs;

³⁴⁹**“STNR Milestone” means each milestone numbered in column 1 and described in column 2 of the STNR Milestone Programme v02;**

³⁵⁰**“STNR Milestone Programme v02” means the milestone programme in the agreed terms;**

“STNR Obligations” means the Franchisee’s obligations in respect of the STNR Project pursuant to this Appendix 1;

“STNR Operational Costs” means in the case of costs associated with continued operation post STNR Completion, such costs limited to those arising in the twenty-four (24) months immediately following the date of

³⁴⁹ 16 March 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

³⁵⁰ 16 March 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

such costs having first been incurred and as detailed in the STNR Costs Schedule;

“STNR Programme” means the programme for the delivery and the implementation of the STNR System and delivery of the STNR Obligations as set out in the agreed terms;

“STNR Project” means the project for implementing and operating an interoperable smart ticketing solution on the National Rail Network allowing passengers to make complete journeys on the National Rail Network using a smartcard as a ticket. For the purpose of this definition, “National Rail Network” has the meaning given to it in the National Conditions of Travel;

“STNR Project Steering Committee” means the committee established by the Secretary of State and composed of his representatives, to oversee the implementation of the STNR Project or any such other person or body authorised by the Secretary of State for such purpose;

“STNR Quarter” means a period of 3 successive Reporting Periods provided that the first shall commence on 7 January 2018 and the last shall end on the last day of the Franchise Period or on the last day of the period of two years following the date of STNR Completion (whichever is the earlier);

“STNR Reporting Period” means any of the Reporting Periods specified in the STNR Costs Schedule, being the Reporting Periods in respect of which Forecast STNR Costs specified for such Reporting Period will be due and payable as specified in paragraph 6;

“STNR Reporting Requirements” means the reporting requirements in respect of the STNR Project set out in the agreed terms;

“STNR Scope of Work” means the scope of works, services and activities in respect of the STNR Project set out in the agreed terms comprising:

- (a) **Annex A which lists those elements of the generic specification for the STNR Project as are to be delivered, performed and complied with by the Franchisee pursuant to this Appendix 1 and to the extent of any conflict or inconsistency between the generic specification and Annex A, Annex A shall take precedence;**

- (b) **Annex B which lists equipment to be procured, delivered, commissioned and put into use by the Franchisee pursuant to this Appendix 1; and**
- (c) **Annex C which lists software and/or other system upgrades to be procured, delivered, commissioned and put into use by the Franchisee pursuant to this Appendix 1;**

“STNR System” means collectively the IT systems (hardware and software) and associated services required for a smart ticketing solution as detailed in the STNR Scope of Work, including without limitation those items referenced in Annex B and Annex C of the STNR Scope of Work;

“Target Date” means the target date for STNR Completion as identified on the STNR Programme; and

“Underpayment” has the meaning given to it in paragraph 6.2 (b) ii).

2. ³⁵¹Implementation and operation of STNR System

2.1 Subject to paragraph 2.2, the Franchisee shall deliver and perform the equipment, systems, works, services and outputs set out in, and in all other respects comply with, the STNR Scope of Work.

2.2 In relation to each Dependency Item:-

- (a) **the Franchisee shall use all reasonable endeavours to deliver, perform and comply with that item notwithstanding the dependency on other train operators and/or RDG (as the case may be);**
- (b) **“all reasonable endeavours” shall include:-**
 - (i) **complying with the corresponding requirements of the Franchisee in respect of the relevant Dependency Item, as listed in the STNR Reporting Requirements; and**
 - (ii) **otherwise actively co-operating and engaging with the relevant other train operators and/or RDG as appropriate, including in establishing processes,**

³⁵¹ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

business rules and necessary system changes in order to achieve the effective delivery of the Franchisee's STNR Obligations and ensure the reciprocal operation of Smart Tickets

and it is acknowledged that the forecast amounts of the relevant STNR Costs contained in the STNR Costs Schedule include amounts to fund the Franchisee to carry out these activities;

(c) the Franchisee shall be relieved from its obligation in paragraph 2.1 to the extent that it is unable to comply with the requirements of any Dependency Item to the extent that:-

(i) such failure by the Franchisee is solely and directly due to the actions or omissions of the relevant train operator(s) and/or RDG in connection with the applicable Dependency Item; and

(ii) Franchisee has exercised all reasonable endeavours in accordance with this paragraph 2.2.

2.3 The Franchisee shall use all reasonable endeavours to ensure STNR Completion is achieved by no later than the Target Date.

2.4 Without prejudice to any other rights the Secretary of State may have in connection with any delay, the Franchisee shall:

(a) pursuant to its reporting obligations in paragraph 5, notify the Secretary of State of any actual or foreseen delay in performing its STNR Obligations and the reasons for such actual or foreseen delay, including where any such delay has been or is anticipated to be caused by another train operator and/or RDG; and

(b) continue to use all reasonable endeavours to achieve its STNR Obligations as soon as reasonably practicable and for that purpose shall:-

(i) develop and implement such remedial measures as may be reasonably possible in the circumstances to avoid or mitigate those actual or foreseen delays; and

(ii) notify the Secretary of State of such proposed remedial measures.

2.5 The Franchisee shall, following STNR Completion, at all times be responsible for the ongoing operation, maintenance, upkeep and repair of the STNR System and continue to make available the deliverables in accordance with, and comply in all respects with, the STNR Scope of Work throughout the Franchise Period.

2.6 The Franchisee shall use all reasonable endeavours to support other train operators and RDG in the delivery of their respective obligations and activities with respect to the implementation of the STNR Project in accordance with the interoperability requirements set out in the STNR Reporting Requirements.

3. ³⁵²Further obligations in relation to items to be supplied

3.1 Subject to paragraph 3.2, the Franchisee warrants and shall procure that it has and retains full title in:

(a) any constituent part to STNR System and any other assets which are required to operate the STNR System from the date on which that part of the STNR System (or other assets) is delivered to the Franchisee; and

(b) without limiting paragraph (a), any data processed or generated by the STNR System from the date of STNR Completion

which shall be "Operating Assets" for the purposes of and as defined in Schedule 14.2 to the Franchise Agreement. It is acknowledged that the Secretary of State is entitled to retain title to any assets and rights he has funded and the parties agree that these may be designated as either Primary Franchise Assets or Key Contracts for the purposes of Schedule 14.4 and Schedule 14.3 respectively for the purposes of the Transfer Scheme and the Supplemental Agreement, the STNR System and all assets funded by the Secretary of State shall have a nil value.

3.2 The Franchisee shall:-

(a) to the extent that it is agreed by the Secretary of State that the Franchisee is not required to have title to the same, obtain a non-exclusive, royalty free licence to use the Intellectual Property Rights in:-

³⁵² 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (i) all components of the STNR System; and
- (ii) the database containing the data processed by the STNR System

for the purposes of the performance of its obligations under this Appendix 1 and the carrying out of the Franchise Services;

in respect of:

- (i) software specifically developed by the Franchisee and funded by the Secretary of State as part of the STNR Project (subject to paragraph (ii) below);
- (ii) amendments or modifications to pre-existing third party non "commercially off the shelf software" provided for the STNR Project where there is an escrow agreement or arrangement already in place in respect of such pre-existing third party software,

unless the Secretary of State agrees to the contrary the Franchisee shall enter into an agreement providing for the source code applicable to such software licenced by it pursuant to the requirements of paragraph 3.2(a) to be placed in escrow and released as necessary to allow the Franchisee and any Successor Operator to continue to utilise the licensed items in each case so as to enable that licence and escrow agreement to be Franchise Assets and be capable of transfer (on notice) to a Successor Operator. With regard to pre-existing third party non "commercially off the shelf software" provided for the STNR Project where there is not an escrow agreement or arrangement already in place in respect of such pre-existing third party software the Franchisee shall use reasonable endeavours to enter into an escrow agreement in relation to it. The Secretary of State shall be entitled to designate all such escrow agreements or arrangements as Key Contracts in accordance with paragraph 3.1.

- 3.3** The Franchisee shall (unless it has the express prior written agreement of the Secretary of State to procure supplies of any component to the STNR System differently) procure supplies of any component to the STNR System from the suppliers referred to in the STNR Costs Schedule.

- 3.4 Subject to the requirements of paragraph 3.3, the Franchisee shall use all reasonable endeavours to enter into contracts for the supply of all components to the STNR System by no later than the relevant dates set out in the STNR Programme.**
- 3.5 The Franchisee shall:**
- (a) ensure where relevant that it provides to passengers (travelling on Smart Tickets issued by the Franchisee) seat reservations either integrated with that Smart Ticket or through separate media including e-mail or mobile app for the purposes of inspection by guards and ticket inspectors;**
 - (b) ensure that when Smart Tickets for relevant Fares and with respect to specific flows become available to passengers in accordance with the STNR Programme the availability of such Smart Ticket is fully and effectively promoted to passengers and potential passengers including through appropriate "launch events" in co-operation with the Secretary of State; and**
 - (c) in co-ordination with its suppliers undertake all testing required for the delivery and satisfaction of its STNR Obligations and where necessary provide such test equipment as may be required to support RDG testing requirements.**
- 3.6 The Franchisee shall use reasonable endeavours to ensure that Season Ticket Fares are renewed by passengers through the use of Smart Tickets from 1 June 2019 onwards (it being acknowledged that passengers will retain a choice to use paper tickets and that such use of Smart Tickets requires the availability of RDG Dependency Items).**
- 3.7 Without prejudice to the Secretary of State's rights under Schedule 14.3 (Key Contracts), the Franchisee shall, within one (1) month following the Amendment Date, provide the Secretary of State with details of those contracts or arrangements that fall within the scope of the following category of Key Contracts set out in the Appendix (List of Key Contracts) to Schedule 14.3 (Key Contracts), for approval by the Secretary of State:**
- "Any contract or arrangement relating to the procurement or operation of the STNR System or any component of it and any data processed or generated by the STNR System (including Intellectual Property Rights (or licence to use the same) associated with the STNR System and such data)."**

- 3.8 The Franchisee shall, within one (1) month following the Amendment Date, provide the Secretary of State with details of those components of the STNR System for which a licence to use the Intellectual Property Rights will be obtained by the Franchisee in accordance with paragraph 3.2 (a) (i).**
- 4. ³⁵³No Impact on the Franchisee’s other Franchise obligations**
- 4.1 The provisions of this Appendix 1 shall not in any way reduce or otherwise relieve the Franchisee from, the Franchisee’s other obligations in this Franchise Agreement and without limitation the Franchisee shall continue to comply with the Committed Obligations.**
- 5. ³⁵⁴Reporting and auditing**
- 5.1 The Franchisee shall (as applicable) submit to the Secretary of State for each Reporting Period the project progress report in the format set out in the STNR Reporting Requirements (the “Project Progress Report”).**
- 5.2 The Project Progress Report shall be submitted by the Franchisee within:**
- (a) five (5) Weekdays of the last day of the relevant Reporting Period, for the period prior to the date of STNR Completion; and**
 - (b) ten (10) Weekdays of the last day of the relevant Reporting Period, for the period on or after the date of STNR Completion.**
- 5.3 The Franchisee shall be required to complete and submit the “Go Live Take-Up Monitoring” element of the Project Progress Report:**
- (a) for each Reporting Period following the date of STNR Completion; and**
 - (b) otherwise when reasonably requested by the Secretary of State and for these purposes it shall not be unreasonable for the Secretary of State to make such requests at least twice in each twelve (12) month period,**
- and for these purposes the report shall provide information regarding take up over the period from the date of STNR Completion or since the**

³⁵³ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁵⁴ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

provision of the last report giving take-up information (whichever is the later), and the Secretary of State shall give not less than ten (10) Weekdays' notice of the request for the completion of the Go Live Take-Up Monitoring element under paragraph 5.3 (b).

5.4 The Franchisee shall provide any other information that the Secretary of State reasonably requests in relation to the STNR Project from time to time.

5.5 The Franchisee shall, as and when requested by the Secretary of State, provide such information as he may reasonably require in relation to:

(a) ticket sales and the medium upon which they are sold (including magnetic stripe, smart cards, bank cards), including, where reasonable, data that may not be available in LENNON;

(b) ticket usage by passengers of the Passenger Services (including data from databases of ticket usage, data collected from smart card readers, and gate-line data). This information may include any of the data fields collected, with the exception of information that can be used to identify individual passengers, railway employees or contractors working for the railway.

5.6 The rights of the Secretary of State pursuant to paragraph 6.1 of Schedule 11.2 (Management Information) shall extend to all records, data, books of account and other information relevant to the Franchisee's STNR Obligations. The remainder of paragraph 6 of Schedule 11.2 (Management Information) shall be interpreted accordingly.

6. ³⁵⁵Payments

6.1 In consideration of the performance by the Franchisee of the STNR Obligations and subject to the other terms of this paragraph 6, the Secretary of State shall, on the next Payment Date falling no less than seven (7) days before the beginning of each STNR Reporting Period, pay to the Franchisee by way of adjustment to Franchise Payments the Forecast STNR Costs specified in the STNR Costs Schedule to be payable in respect of such STNR Reporting Period.

³⁵⁵ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

6.2 At the end of each STNR Quarter, a reconciliation process shall apply as follows:

- (a) **within ten (10) Weekdays of the end of the relevant STNR Quarter the Franchisee shall provide a report (together with such supporting evidence as the Secretary of State may reasonably request, such supporting evidence to include a requirement to provide, on an open book basis, such detailed evidence as the Secretary of State may reasonably require) showing the Actual STNR Costs as incurred by the Franchisee in each of the STNR Reporting Periods falling within that STNR Quarter, such report to only include the Actual STNR Costs incurred in respect of the cost items specified in the STNR Costs Schedule (the "STNR Costs Report"). Each STNR Costs Report shall be accompanied by a certificate signed by a statutory director of the Franchisee confirming that the information contained in the STNR Costs Report is true, accurate and not misleading in all material respects and that all the requirements in paragraph 6.3 are met.**
- (b) **where the STNR Costs Report shows (or the Secretary of State reasonably determines) that the aggregate Actual STNR Costs incurred in respect of all the STNR Reporting Periods falling within such STNR Quarter are:**

 - (i) **less than the aggregate of the Forecast STNR Costs paid by the Secretary of State to the Franchisee in respect of the STNR Reporting Periods falling within such STNR Quarter ("Overpayment") then the Franchisee shall pay to the Secretary of State the amount that is the difference between such aggregate Forecast STNR Costs paid, and the aggregate Actual STNR Costs incurred, in respect of the STNR Reporting Periods falling within such STNR Quarter;**
 - (ii) **more than aggregate of the Forecast STNR Costs paid by the Secretary of State to the Franchisee in respect of the STNR Reporting Periods falling within such STNR Quarter ("Underpayment") then, subject to paragraph 6.3, the Secretary of State shall pay to the Franchisee the amount that is the difference between such aggregate Forecast STNR Costs paid,**

and the aggregate Actual STNR Costs incurred, in respect of the STNR Reporting Periods falling within such STNR Quarter; and

- (c) **any payments to be made pursuant to paragraph 6.2(b) shall be made by way of adjustment to Franchise Payments on the next Payment Date falling no less than seven (7) days after the date upon which any Overpayment or Underpayment (as the case may be) is notified to the Franchisee by the Secretary of State except that where the date upon which such Overpayment or Underpayment (as the case may be) is notified to the Franchisee by the Secretary of State falls on or after the Franchise Period then any such Overpayment or Underpayment (as the case may be) shall be paid (as a debt) on or before the date falling thirty (30) days after the Franchise Period.**

6.3 The obligation of the Secretary of State under paragraph 6.2 (b)(ii) is subject to the following:

- (a) **that the aggregate amount of the Actual STNR Costs to be paid by the Secretary of State to the Franchisee shall in no circumstances exceed the Maximum Total Amount;**
- (b) **subject to paragraphs 6.3(a) and 6.3 (c), where the aggregate of the Actual STNR Costs incurred by the Franchisee in respect of all the STNR Reporting Periods falling within an STNR Quarter is more than the aggregate Forecast STNR Costs paid for all such STNR Reporting Periods then the Secretary of State shall only be obliged to pay the resulting Underpayment for that STNR Quarter if:**
- (i) **and to the extent that the aggregate of such Actual STNR Costs incurred by the Franchisee in respect of all the STNR Reporting Periods falling within an STNR Quarter is less than or equal to 110 per cent of the aggregate Forecast STNR Costs for all of such STNR Reporting Periods; or**
- (ii) **the Franchisee complied with its obligations in paragraph 6.4 and obtained the approval of the Secretary of State as required in paragraph 6.5;**
- (c) **the Franchisee shall use its reasonable endeavours to minimise the Actual STNR Costs incurred in any STNR Reporting Period;**

- (d) the Franchisee shall not enter into arrangements with third parties in connection with its performance of the STNR Obligations which, in aggregate, commit the Franchisee to make payments in excess of the Maximum Total Amount (including in the event of any early termination of any such arrangements in the circumstances described in paragraph 9.1 or otherwise); and
- (e) notwithstanding any other provision in this Appendix 1, the Franchisee shall not be entitled to any payment or reimbursement in respect of any cost which it has already recovered (or is able to recover) under any other provision of this Franchise Agreement, any other agreement between the Franchisee and the Secretary of State or any other arrangement or agreement with a third party.

6.4 If the Franchisee at any time considers that it is reasonably likely that the total Actual STNR Costs to be incurred for all of the STNR Reporting Periods falling with an STNR Quarter are likely to exceed 110 per cent of the aggregate Forecast STNR Costs paid for all of such STNR Reporting Periods it shall provide to the Secretary of State:

- (a) confirmation of the amount by which such Actual STNR Costs are likely to exceed 110 per cent of such aggregate Forecast STNR Costs;
- (b) an explanation as to why that is the case (with supporting information); and
- (c) the reasonable measures that the Franchisee is taking to reduce any increase in the Actual STNR Costs to be incurred in respect of the STNR Reporting Periods falling within such STNR Quarter,

together with any other information that the Secretary of State may reasonably require in order to satisfy himself that the Actual STNR Costs will be and are reasonably and properly incurred.

6.5 The Franchisee shall not, in respect of any STNR Reporting Periods falling within an STNR Quarter, incur, in aggregate, Actual STNR Costs which exceed 110 per cent of the aggregate Forecast STNR Costs for such STNR Reporting Periods falling within such STNR Quarter unless the Franchisee has obtained the prior approval of the Secretary of State to incur the excess amount.

6.6 If and as soon as the Franchisee becomes aware of any potential increase in the Actual STNR Costs such that Actual STNR Costs is reasonably likely to exceed the Maximum Total Amount, the Franchisee shall, within five (5) Weekdays of first becoming aware that Actual STNR Costs is reasonably likely to exceed the Maximum Total Amount, notify the Secretary of State. The Franchisee shall provide all details as are reasonably available to it (or can be ascertained by it) as to:

- (a) the estimated additional costs that the Franchisee believes may need to be expended to deliver its STNR Obligations; and**
- (b) an explanation as to why such cost increases are likely to occur together with proposed solutions to minimise or mitigate the additional costs (and any measures already taken in that respect) consistent with the Franchisee's obligations pursuant to paragraph 6.3 (c),**

and upon receipt of such notification and details from the Franchisee, the Secretary of State shall, as soon as reasonably practicable either:

- (c) amend the Franchisee's STNR Obligations in accordance with paragraph 7.1; and/or**
- (d) increase the Maximum Total Amount in accordance with paragraph 7.1; or**
- (e) terminate or suspend the STNR Project in respect of the Franchise in accordance with paragraph 9.1 (b),**

and in any event the Franchisee shall continue to use its reasonable endeavours to minimise the Actual STNR Costs.

6.7 Without limiting paragraph 6.3 (e), the Franchisee shall not be entitled to reimbursement under paragraph 1.7 of Schedule 5.9 in respect of the performance of any STNR Obligations.

6.8 Subject to clause 13 of the Franchise Agreement, upon the termination or expiry of this Franchise Agreement, the Secretary of State shall:

- (a) reimburse the Franchisee for any remaining Actual STNR Costs incurred prior to the date of termination or expiry as have not yet been reimbursed on such date of termination or expiry provided that:**

- (i) **the Secretary of State shall not be obliged to make any payments which would result in a liability greater than the Maximum Total Amount;**
 - (ii) **such Actual STNR Costs meet the requirements of paragraph 6.3; and**
 - (iii) **such payments are made in respect of the STNR Scope of Work and these works have been performed to a reasonable standard; and**
- (b) **be reimbursed by the Franchisee for the Forecast STNR Costs that have been paid by the Secretary of State in accordance with this paragraph 6, but not been incurred by the Franchisee as Actual STNR Costs in complying with its obligations hereunder.**

7. ³⁵⁶Amendments in respect of STNR

7.1 The parties agree that the Franchisee's STNR Obligations may be amended by the Secretary of State (acting through the STNR Project Steering Committee) from time to time subject to:

- (a) **the Secretary of State acting reasonably in connection with the nature and terms of any such amendment(s); and**
- (b) **the Secretary of State extending the Target Date and/or increasing the Maximum Total Amount, to the extent agreed with the Franchisee (both parties acting reasonably) or in the absence of agreement, to the extent reasonably determined by the Secretary of State as being necessary, in order to take into account such amendment(s).**

7.2 If the Secretary of State is considering or wishes to propose amendment(s) to the STNR Obligations in accordance with paragraph 7.1, the following process shall apply (unless otherwise agreed by the parties):

- (a) **the Secretary of State shall notify the Franchisee of the amendment(s) to the STNR Obligations which he does or may wish to make;**

³⁵⁶ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (b) **the Secretary of State shall invite the Franchisee to comment within not less than five (5) Weekdays on the proposed amendment(s) and may request the Franchisee:-**
- (i) **to indicate the Franchisee’s view of the impact of the proposed amendment(s) on the STNR Costs and/or on the STNR Programme and the achievability of STNR Completion by the Target Date; and**
 - (ii) **to provide further information to assist the Secretary of State in considering amendment(s) to the STNR Obligations;**
- (c) **the Franchisee shall comply with any request for information made by the Secretary of State pursuant to paragraphs (b)(i) and/or (b)(ii);**
- (d) **the Secretary of State shall have regard to the response received from the Franchisee in response to his invitation under paragraph (b) in making any amendment(s) in accordance with paragraph 7.1.**

7.3 The Franchisee may propose amendment(s) to the STNR Obligations at any time (including (but not so as to relieve the Franchisee of its obligations under paragraph 7.2(c) variations to any amendment(s) proposed by the Secretary of State in accordance with paragraph 7.2 (a) but the Secretary of State shall not be obliged to agree to any such Franchisee proposed amendment(s).

8. ³⁵⁷ ³⁵⁸Optional STNR Outputs

The Secretary of State may call any Optional STNR Output by serving written notice on the Franchisee at any time on or prior to the last date for the call of such Optional STNR Output and on the terms of such Optional STNR Output, in which case the terms of such Optional STNR Output, including the agreed adjustment to the Maximum Total Amount, STNR Milestone Programme v02 and STNR Costs Schedule (as applicable)

³⁵⁷ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁵⁸ 16 March 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

shall apply and the Franchisee shall implement such Optional STNR Output in accordance with those terms.

9. ³⁵⁹Termination or suspension

9.1 Without prejudice to paragraph 6.6(e), if the Secretary of State reasonably believes that:

- (a) the Franchisee will be unable to achieve STNR Completion by the Target Date; and/or**
- (b) the STNR Obligations will not be able to be performed within the Maximum Total Amount and the Secretary of State does not agree (in its sole discretion) to increase the Maximum Total Amount**

then without prejudice to any other rights and remedies he may have, the Secretary of State shall be entitled to suspend or terminate the STNR Project in respect of the Franchise by written notice to the Franchisee.

9.2 If the Secretary of State exercises his rights of termination in accordance with paragraphs 6.6(e) or 9.1:

- (a) the Franchisee shall take such reasonable steps as the Secretary of State may request in relation to the orderly close down of the STNR Project so as to preserve and retain as much value as reasonably possible from the activity which has been undertaken and expenditure incurred;**
- (b) without limiting paragraph 9.2(a) at the request of the Secretary of State the Franchisee shall deliver up and transfer to the Secretary of State (or his nominee(s)) for no payment such of the following as he may request:-**
 - (i) any tangible assets comprised in the STNR System as have been funded by the Secretary of State pursuant to this Appendix 1 including without limitation the items referred to in Annex B to the STNR Scope of Works;**

³⁵⁹ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (ii) a licence of the type described in paragraph 3.2;
 - (iii) such other materials whatsoever developed or funded pursuant to this Appendix 1 or copies thereof (including software, plans and other project materials);
 - (c) subject to the Franchisee:-
 - (i) having complied with and continuing to comply its obligations pursuant to paragraphs 6.2(a), 6.3(c), 6.3(d) and 9.2(a) and (d); and
 - (ii) having provided such evidence in respect of the same in equivalent detail to that required in respect of any application for payment under paragraph 6
- the Franchisee shall be entitled to be reimbursed for any:
- (iii) remaining Actual STNR Costs reasonably incurred and/or committed prior to the date of termination as have not yet been reimbursed and that the Franchisee would have been entitled to apply for had termination not occurred provided that the Secretary of State shall not be obliged to make any payments which would result in a liability greater than the Maximum Total Amount and such Actual STNR Costs comply with the requirements of paragraph 6.3; and
 - (iv) early termination costs payable to third party suppliers where such costs have been reasonably and properly incurred pursuant to provisions approved by the Secretary of State in accordance with paragraph 6.3 (d); and
- (d) from the date of termination specified by the Secretary of State in his termination notice both parties shall be relieved of all further obligations under this Appendix 1:-
 - (i) except for their obligations pursuant to this paragraph 9.2 and to the continuation in force of such other provisions as shall expressly or impliedly continue in force notwithstanding such termination; and

- (ii) **provided that termination shall not relieve a party of liability for any prior breach of its obligations under this Appendix 1.**

9.3 If the Secretary of State exercises his rights of suspension in accordance with paragraph 9.1 the terms of paragraph 9.2 (b) shall apply (mutatis mutandis) except that:-

- (a) **the Secretary of State shall not be entitled to require the transfer of items described in paragraph 9.2 (b); and**
- (b) **the Secretary of State shall be entitled by notice to the Franchisee to reverse the suspension at any time provided that (whether in the context of amendments to the STNR Obligations under paragraph 7.1 or otherwise) the Secretary of State also extends the Target Date and/or increases the Maximum Total Amount:**
 - (i) **to the extent agreed with the Franchisee (both parties acting reasonably); or**
 - (ii) **in the absence of agreement, to the extent reasonably determined by the Secretary of State as being necessary, in order to take into account of all the circumstances.**

9.4 If the Secretary of State has served a notice of suspension, he shall be entitled subsequently to serve a notice to terminate under paragraph 9.1.

10. ³⁶⁰Escalation and disputes

Any disputes that arise with respect to the STNR Project shall first be considered between the Franchisee's Contract Manager and the Franchise Manager on behalf of the Secretary of State. If no such resolution can be agreed within fifteen (15) Weekdays the parties may, but shall not be obliged, to resolve the dispute in accordance with the Dispute Resolution Rules save for where any such dispute arises out of paragraph 6 of this Appendix, in which case, unless the parties otherwise agree, such dispute shall be resolved in accordance with the provisions of clause 16 (Governing Law and Jurisdiction) of this Franchise Agreement.

³⁶⁰ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁶¹ ³⁶² (This footnote number applies to Appendices 1, 2, 3 and 4 on pages 289 – 294).

³⁶¹ 27 March 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

³⁶² 5 July 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

STNRCS - STNR Costs Schedule v3 (July 2019)
Greater Anglia

| Supplier | Item | Capex | | | Opex | | |
|--------------------------|---------------------------------|----------|----------------|-----------------|----------|---------------|----------------|
| | | Quantity | Capex rate (£) | Capex total (£) | Quantity | Opex rate (£) | Opex total (£) |
| Cubic | Base data creation | 1 | 100,000 | 100,000 | | | |
| | Project Management | | | | | | |
| | Testing | | | | | | |
| Rail Delivery Group | CBO integration and support | 1 | 278,760 | 278,760 | | | |
| Trainline | Smart transactions in GA app | 1 | 400,000 | 400,000 | 1 | 100,000 | 100,000 |
| | Seasons Webtis Configuration | | | | | | |
| | Add Child Seasons | | | | | | |
| | External TOC card use | | | | | | |
| | Advance purchase tickets | | | | | | |
| | Retailing of other TOC products | | | | | | |
| Smart product collection | | | | | | | |
| Fujitsu | STAR Desktop | 7 | 2,000 | 14,000 | 7 | 1,830 | 12,810 |
| | GA training and testing | 1 | 5,000 | 5,000 | | | |
| | Printer and support | 5 | 650 | 3,250 | 5 | 300 | 1,500 |
| Altcom | GA app update | 1 | 100,000 | 100,000 | 2 | 10,000 | 20,000 |
| | GA testing | 1 | 5,000 | 5,000 | | | |

STNRCS - STNR Costs Schedule v3 (July 2019)
Greater Anglia

| Supplier | Item | Capex | | | Opex | | |
|-------------------------------------|--|----------|----------------|------------------|----------|---------------|----------------|
| | | Quantity | Capex rate (£) | Capex total (£) | Quantity | Opex rate (£) | Opex total (£) |
| Fujitsu | Development and deployment of Fujitsu Release 6.2 and 7 to ticket office machines. Costs shall cover development and deployment to the following 6 TOCs; Greater Anglia, Great Western Railway, London Southeastern Railway, East Midlands Trains, Arriva Northern and Transpennine Express GA Project Management costs included. GA shall proactively manage the development and deployment of R6.2 and R7, obtaining collective TOC agreement where appropriate, from contracting through to deployment across the GA estate. | 1 | 849,360 | 849,360 | 0 | 0 | 0 |
| TheTrainline | Development and deployment of the Trainline's "My Account+". | 1 | 2,200,000 | 2,200,000 | 0 | 0 | 0 |
| Sub-total | | | | 5,381,095 | | | 266,310 |
| Amended Maximum Total Amount | | | | 5,647,405 | | | |

Smart Ticketing on National Rail

STNRMP - STNR Milestone Programme v04 (July 2019)

Greater Anglia

| Sequential Milestone | Milestone Description | Value (£) | Rail Period |
|----------------------|--|--------------|----------------------|
| 1 | Major Payment Milestone Project initiation: initial order placements with suppliers Evidence: Purchase Orders. | £ 531,010.00 | 2017/18 Period 11 |
| 2 | Minor Payment Milestone Project Management - Detailed Project Programme, List of Key Contracts, List of Components subject to IPR, Detailed Payment Profile, Ongoing Project Resources. RDG, Cubic, Trainline and Fujitsu - Project initiation Evidence: Provision of detailed programme, payment profile, confirmation of resource employment + any necessary further evidence as requested by the SoS. | £ 195,000.00 | 2017/18 Period 12 |
| 3 | Minor Payment Milestone Project Management - Ongoing Project Resources Cubic - Basedata creation complete RDG - CMS integration complete Fujitsu - STAR Desktop upgrade and configuration complete Trainline - Ongoing WebTIS upgrades RCS Update #1 complete Evidence: Supplier completion certifications and any other necessary evidence as requested by the SoS. | £ 270,000.00 | 2017/18 Period 13 |
| 4 | Minor Payment Milestone Project Management - Ongoing Project Resources Cubic - Initiate testing RDG - Ongoing WebTIS upgrade Support Trainline - Ongoing WebTIS upgrades Altcom - Project Initiation (GA App upgrade) Fujitsu - STAR Desktop testing complete (workstream complete) Evidence: Supplier completion certifications and any other necessary evidence as requested by the SoS. | £ - | 2018/19 Period 01 |
| 5 | Minor Payment Milestone Project Management - Ongoing Project Resources Cubic - Continue testing RDG - Update RSP Product set (Super off-peak, weekday and weekend products) Trainline - Ongoing WebTIS upgrades (incl. initiate advance purchase tickets) Altcom - Ongoing GA App upgrades GA signage installed Evidence: Supplier completion certifications and any other necessary evidence as requested by the SoS. | £ 90,000.00 | 2018/19 Period 02 |
| 6 | Minor Payment Milestone Project Management - Ongoing Project Resources Cubic - Testing complete RDG - Ongoing WebTIS, product updates and initiate creation of National Rail posts Trainline - Seasons WebTIS upgrade complete. Advanced purchase ongoing. Altcom - Initiate GA App upgrade testing RCS Update #2 complete Evidence: Supplier completion certifications and any other necessary evidence as requested by the SoS. | £ - | 2018/19 Period 03 |
| 7 | Minor Payment Milestone Project Management - Ongoing Project Resources Cubic - Testing and implementation complete (workstream complete) RDG - Ongoing WebTIS support and ongoing creation of National Rail posts Trainline - Advanced purchase complete Altcom - GA App upgrade testing complete (workstream complete) Evidence: Supplier completion certifications and any other necessary evidence as requested by the SoS. | £ - | 2018/19 Period 04 |
| 8 | Minor Payment Milestone Project Management - Ongoing Project Resources RDG - Complete WebTIS and TMS upgrades. Ongoing National Rail posts Trainline - Initiate other TOC retailing Evidence: Supplier completion certifications and any other necessary evidence as requested by the SoS. | £ 20,000.00 | 2018/19 Period 05 |
| 9 | Minor Payment Milestone - No Payment Planned Project Management - Ongoing Project Resources RDG - Initiate Smart Product collection via GA App. National Rail post complete Trainline - Initiate Customer view of smart account. RCS Update #3 complete Evidence: Supplier completion certifications and any other necessary evidence as requested by the SoS. | £ - | 2018/19 Period 06 |
| 10 | Minor Payment Milestone - No Payment Planned Project Management - Ongoing Project Resources RDG - Ongoing Smart Product collection via GA App Trainline - Initiate external TOC retail upgrades and collection facilities from GA app. GA acceptance and RSP product set complete. Evidence: Supplier completion certifications and any other necessary evidence as requested by the SoS. | £ - | 2018/19 Period 07 |
| 11 | Minor Payment Milestone - No Payment Planned Project Management - Ongoing Project Resources RDG - Ongoing Smart Product collection via GA App Trainline - Ongoing seasons and leasures platform and collection facilities from GA app. Evidence: Supplier completion certifications and any other necessary evidence as requested by the SoS. | £ - | 2018/19 Period 08 |
| 12 | Minor Payment Milestone - No Payment Planned Project Management - Ongoing Project Resources RDG - Smart Product collection via GA App complete (workstream complete) Trainline - Ongoing seasons and leasures platform and collection facilities from GA app. (workstream complete) Evidence: Supplier completion certifications and any other necessary evidence as requested by the SoS. | £ - | 2018/19 Period 09 |
| 13 | Project Float - No Payment Planned | £ - | 2018/19 Period 10 |
| 14 | Minor Payment Ongoing OpEx | £ 27,958.85 | 2018/19 Period 11 |
| 15 | Minor Payment Ongoing OpEx | £ - | 2018/19 Period 12 |

| Sequential Milestone | Milestone Description | Value (£) | Rail Period |
|-----------------------|---|-----------------------|----------------------|
| 16 | OpEx Payment, Additional App Enhancements*, CMS->TMS Integration, RDG National Campaign**, TOC Enablement Funding*. *The expenditure for these activities shall be agreed with the STNR team (in advance of any commitments being made) and recorded in periodic meeting minutes prior to GA proceeding. **JULY 2019 VARIATION: Under the STNR/GA variation signed in April 19, this funding was assigned to the RDG National Smart Ticketing Campaign. This campaign is no longer proceeding. As such, the funding shall be used to fund the integration of the third party retailers HOPs into the RDG Central Back Office (CBO). Commitment of these funds shall be agreed between the GA and STNR team (in advance of any commitments being made) recorded in writing. | £ 1,464,076.15 | 2018/19 Period 13 |
| 17 | Minor Payment Ongoing OpEx | £ - | 2019/20 Period 01 |
| 18 | Minor Payment Ongoing OpEx | £ - | 2019/20 Period 02 |
| 19 | Minor Payment Ongoing OpEx | £ - | 2019/20 Period 03 |
| 20 | JULY 2019 VARIATION: CapEx Milestone payment Fujitsu R6.2 & R7 to Ticket Office Machines (including GA PM costs) Funding to cover 50% of TheTrainline - My Account+ | £ 1,949,360.00 | 2019/20 Period 04 |
| 21 | JULY 2019 VARIATION: CapEx Milestone payment Remaining 50% The Trainline - MyAccount+ funding. | £ 1,100,000.00 | 2019/20 Period 13 |
| CONTRACT PRICE | | £ 5,647,405.00 | |

STNRSOW - STNR Scope of Work - Annex C: Software Deliverables (v03 July 2019)

| Ref | Description | Software Change | Valuation at franchise end |
|--|---|--|---|
| Software relating to existing infrastructure (Upgrades) | | | |
| GA01 | WebTIS upgrade and configuration for wider product set | Introduction of WebTIS software update and configuration to enable the retailing of advance purchase products and singles/returns. JULY VARIATION: Development and implementation of Trainline's "My Account +" functionality. Development of functionality shall be collectively agreed with other TOC customers of Trainline. | Part of an existing Franchise Asset. Excluded from any valuation calculation. |
| GA02 | New seasons platform and inclusion of child seasons | Update to seasons platform to meet WebTIS spec and RFP18002 V2-01 | Part of an existing Franchise Asset. Excluded from any valuation calculation. |
| GA03 | Base data updates | Update base data to ensure collection and acceptance of all National Rail products within the STNR scope. | Part of an existing Franchise Asset. Excluded from any valuation calculation. |
| GA04 | Widening of product set | Creation of Super Off-Peak products for support within the RDG CBO | Part of an existing Franchise Asset. Excluded from any valuation calculation. |
| GA05 | GA app update | Include facility for customers to purchase and collect smart products utilising NFC and the Part 11 service available via the RDG CBO. | Part of an existing Franchise Asset. Excluded from any valuation calculation. |
| GA06 | TMS data | RDG update to the TMS enabling all CBO TOC smart cards to be viewed for support purposes | Part of an existing Franchise Asset. Excluded from any valuation calculation. |
| GA07 | Retail acceptance of other TOC smart cards | WebTIS configuration to allow acceptance of all STNR TOC shell OIDs enabling customers to purchase smart products. | Part of an existing Franchise Asset. Excluded from any valuation calculation. |
| GA08 | Retail RSP product set for non-GA journeys | WebTIS configuration to allow an updated smart flows feed from RCS allowing customers to purchase non-GA smart products (where the relevant TOC has made the flows available in RCS) | Part of an existing Franchise Asset. Excluded from any valuation calculation. |
| GA09 | Upgrade and configuration of STAR desktop systems | Introduction of smart product retailing at ticket offices outside the existing GA Smart Area. JULY VARIATION: Development and implementation of Fujitsu's Release 6.2 and 7 functionality across the full ticket office machine estate. Development of functionality shall be collectively agreed with other TOC customers of Fujitsu. Funding covers deployment to 6 different operators: Greater Anglia, Great Western Railway, London Southeastern Railway, East Midlands Trains, Arriva Northern and TransPennine Express. | Part of an existing Franchise Asset. Excluded from any valuation calculation. |
| February 2019 Variation to Scope | | | |
| GA10 | Option 2 - CMS to TMS integration Phases 2 & 3 | Communication/ integration link for data and messaging flow between CMS (Ramous) and TMS (KCOM). CMS Phase 1 (not STNR funded) currently deployed at standalone system in the CBO architecture. | Part of an existing Franchise Asset. Excluded from any valuation calculation. |
| GA09B | Option 3 - GoldSTAR Trigger emails | Email alert to season ticket holders with pending product expiry to influence Smart take-up at renewal or next purchase. | Part of an existing Franchise Asset. Excluded from any valuation calculation. |
| GA09C | Option 4 - Further enhancements to Smartphone app upgrade to sell smartcard tickets (including Part 11) | Data migration to enable single customer view for all Smart products. Further enhancements to the Part 11 product loading functionality. | Part of an existing Franchise Asset. Excluded from any valuation calculation. |
| July 2019 Variation to Scope (additional) | | | |
| GA11 | RDG Third Party Retailer HCPs | The on-boarding of Third Party Retailers into the RDG Central Back Office. | N/A |

SCHEDULE 5.10³⁶³**Fares, Ticketing and Retail Reform**

1. **Fares, Ticketing and Retail Reform**
 - 1.1 **The Franchisee shall:**
 - (a) **co-operate with the Secretary of State as may be required from time to time in respect of the planning and/or development (as applicable) of industry reform with respect to Fares, ticketing and the retailing of tickets, including:**
 - (i) **co-operating and collaborating with other Train Operators and rail industry parties and other organisations in respect of such reforms; and**
 - (ii) **developing pilot schemes in respect of such reforms,**

in each case, as directed by the Secretary of State; and
 - (b) **co-operate and collaborate with the RDG, other Train Operators and other organisations as directed by the Secretary of State to develop Modernising Retail proposals to accelerate and facilitate a transition to online and pay-as-you-go retailing of tickets and the changes to industry retail operations enabled by such changes, including the ultimate withdrawal of "magstripe" paper tickets; and**
 - (c) **[REDACTED³⁶⁴]**

each a "FTR Co-operation Requirement".
 - 14.2 **If requested by the Secretary of State, the Franchisee shall also bring forward specific and suitable proposals to implement any plans and/or proposals developed pursuant to a FTR Co-operation Requirement (a "Proposed Reform Activity") which may be contracted pursuant to and in accordance with Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes).**
 - 1.3 **When requested by the Secretary of State, the Franchisee shall provide the Secretary of State its assessment of:**
 - (a) **any capital investment required to implement a Proposed Reform Activity;**

³⁶³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁶⁴ 15 January 2021 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) the cost of implementing a Proposed Reform Activity;
- (c) any revenue impact associated with or caused by implementing a Proposed Reform Activity;
- (d) estimates of significant change to passenger demand and/or patterns of travel that could be caused by a Proposed Reform Activity; and
- (e) any material change to the Franchisee's assessment of any of the matters outlined in paragraphs (a) to (d) above,

in each case promptly and in any event within seven (7) Weekdays of having calculated the same (unless the Secretary of State directs otherwise) and accompanied by all supporting evidence to substantiate each such calculation or change.

1.4 The Franchisee shall:

- (a) continue undertaking any reform work related to a FTR Co-operation Requirement or other reform work requested or directed by the Secretary of State prior to the ERMA Start Date in accordance with any programme schedule agreed between the Franchisee and the Secretary of State (or in the absence of any such schedule, within such timescales as the Secretary of State may direct); and
- (b) commence undertaking and continue to undertake any FTR Co-operation Requirement requested or directed by the Secretary of State after the ERMA Start Date promptly and in any event in accordance with any schedule agreed between the Franchisee and the Secretary of State (or in the absence of any such schedule, within such timescales as the Secretary of State may direct).

1.5 The Franchisee shall use all reasonable endeavours to:

- (a) bring forward new proposals for implementing; and/or
- (b) introduce and implement,

such amendments to the Ticketing and Settlement Agreement, the Pay As You Go Agreement, the CPAY Agreement and any other applicable industry agreements (including any successor arrangements or any other agreement between the Franchisee and one or more other Train Operators, rail industry parties and other relevant organisations (including Transport for London) relating to ticketing, fares, fares settlement, the operation of discount schemes or any related matter) as may be directed by the Secretary of State from time to time.

1.6 During the term of the ERMA, the Franchisee shall not enter into any new arrangements or material amendments to existing arrangements for the delivery of Fares, ticketing or the retailing of tickets without the prior written consent of the Secretary of State.

- 1.7 The Franchisee shall promptly (and in any event within any timeframes specified by the Secretary of State) provide to the Secretary of State such information and data in relation to Fares, ticketing and the retail of tickets as the Secretary of State may require from time to time.**

SCHEDULE 6

Franchise Specific Obligations and Committed Obliga

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|---------------|--|
| Schedule 6.1: | Franchise Specific Obligations |
| Schedule 6.2: | Committed Obligations |
| | Part 1: Committed Obligations |
| | Part 2: Special Terms related to Committed Obligations and certain other obligations ³⁶⁵ |

³⁶⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 6.1**Franchise Specific Obligations****1. Crossrail**

1.1 The Franchisee shall fully and effectively co-operate with the Secretary of State in connection with the operation of the Crossrail Services by the Crossrail Operator (including, without limitation, the letting of a concession or franchise agreement). Accordingly if so requested by the Secretary of State the Franchisee shall:

- (a) provide the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) with such information, reports and analysis as the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) may require. This may include without limitation:
 - (i) upon reasonable notice, attending meetings with the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) in relation to the operation of the Crossrail Services by the Crossrail Operator;
 - (ii) reviewing and commenting on the implementation of timetables and programmes relating to the operation of the Crossrail Services by the Crossrail Operator; and/or
 - (iii) any other relevant information as the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) may specify from time to time.

1.2 The Franchisee shall comply with the reasonable requirements of the Secretary of State in relation to:

- (a) the operation of the Crossrail Services by the Crossrail Operator; and
- (b) the implementation of all aspects of the Crossrail Programme (including through co-operation with Network Rail, the Crossrail Operator, Crossrail Limited and TfL as directed by the Secretary of State) where such implementation involves an interface with any railway infrastructure used in relation to the Franchise Services or is otherwise related to the Franchise Services.

The Franchisee's obligations pursuant to this paragraph 1.2 shall include:

- (i) upon reasonable notice, attending meetings with the Secretary of State, TfL, Network Rail, the Crossrail Operator and other relevant bodies specified by the Secretary of State to discuss and provide an opinion on any relevant issues;
- (ii) providing such information, data, reports and analysis as reasonably required by the Secretary of State in relation to assessing the implications of the commencement of the operation of Crossrail Services by the Crossrail Operator or relevant aspects of the implementation of the Crossrail Programme including the transfer of the Crossrail Stations; and

- (iii) reviewing and commenting on implementation timetables and programmes for the commencement of the operation of the Crossrail Services by the Crossrail Operator, the transfer of the Crossrail Stations or relevant aspects of the implementation of the Crossrail Programme.
- 1.3 The Franchisee shall participate fully and actively in good faith as a skilled and experienced train operator in risk reviews initiated by the Secretary of State or (if directed by the Secretary of State) TfL relating to the implementation of the Crossrail Programme. The Franchisee shall develop risk mitigation plans as reasonably required by the Secretary of State pursuant to such risk reviews.
- 1.4 The Franchisee:
 - (a) shall comply with the depot access agreement for Ilford Depot to provide (i) stabling, external cleaning and maintenance of the Crossrail Fleet and (ii) to provide stabling and external cleaning for the Replacement Crossrail Fleet; and
 - (b) shall comply with the agreement in respect of the maintenance shed at Ilford Depot relating to maintenance of the Crossrail Fleet and external cleaning of Class 315 units operated by the Crossrail Operator.
- 1.5 The Franchisee shall:
 - (a) fully and effectively co-operate with the Secretary of State, TfL, Network Rail, the Crossrail Operator and other relevant bodies specified by the Secretary of State for the purposes of facilitating the efficient achievement of the enhancement and rebuilding programme at:
 - (i) all relevant stations served by the Passenger Services and affected by the Crossrail Programme;
 - (ii) the Crossrail Stations;
 - (iii) Liverpool Street; and
 - (iv) Shenfield,in accordance with the timescales for the Crossrail Programme as they might be varied from time to time and act reasonably in relation to station change and network change processes including through reasonable co-operation with TfL or Rail for London;
 - (b) fully and effectively co-operate with the Secretary of State, TfL, Network Rail, Rail for London, the Crossrail Operator and other relevant bodies specified by the Secretary of State for the purpose of developing and implementing plans for the enhancement and rebuilding of relevant stations served by the Passenger Services in connection with the Crossrail Programme;

- (c) **[REDACTED³⁶⁶]**;
- (d) retail and load both ITSO and Oyster products (following the conclusion of relevant negotiations in relation to "contactless technology" and in any case by the date such technology is introduced onto the Franchise) and support the agreement proposed to be entered into in relation to such contactless technology;
- (e) take no actions or steps which is or are designed, directly or indirectly to prevent, prejudice, or frustrate:
 - (i) the letting of a franchise agreement or concession agreement in relation to the operation of the Crossrail Services; or
 - (ii) the implementation of the Crossrail Programme,

except that, to the extent that paragraph 1.5(e)(i) or (ii) lead to the Franchisee having rights under railway industry practices including Network Change and Station Change, the Franchisee may make reasonable objections with a view to mitigating the impact of the Crossrail Programme and its implementation on passengers and the Franchise Services, whilst recognising the need for the Crossrail Programme to be able to be undertaken in a reasonable manner;
- (f) fully and effectively co-operate with the Crossrail Operator in relation to train planning, timetabling and platforming arrangements for the purpose of ensuring the efficient operation of passenger services by the Crossrail Operator;
- (g) to continue to provide, on the same or similar terms as the previous Franchisee:
 - (i) accommodation for carriage cleaners (turnaround and overnight stabling) at Shenfield;
 - (ii) shared use of train crew facilities at Ilford;
 - (iii) the provision of platform dispatch staff at Liverpool Street (Main Level); and

to the extent reasonably required by the Crossrail Operator;
- (h) fully and effectively co-operate with the Crossrail Operator to optimise the maintenance programme for the Crossrail Fleet and other rolling stock fleets which interwork with the Crossrail Fleet to minimise the impact of any heavy

³⁶⁶ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

maintenance programme or out of course stoppage of units on either the Passenger Services or the Crossrail Services; and

- (i) fully and effectively co-operate with the Crossrail Operator from the Start Date for the purpose of ensuring that the passengers using trains operated by the Crossrail Operator receive throughout the Franchise Term a consistently high level of customer service and experience at Shenfield and accordingly the Franchisee shall make Franchise Employees engaged in customer facing activities at Shenfield stations available for training and briefing in common customer service and experience standards specified by the Crossrail Operator, subject to the Franchisee being compensated by the Crossrail Operator for the reasonable costs associated with such training.

1.6 The Secretary of State shall have the right to notify the Franchisee that specified rights of the Secretary of State pursuant to this paragraph 1 shall be exercisable by TfL on his behalf and the Franchisee shall be required to act and perform its obligations accordingly. In the event such notification has been given and the Franchisee believes that:

- (a) there is any conflict between instructions received from TfL and instructions received from the Secretary of State; or
- (b) instructions received from TfL are inconsistent with the terms of this Agreement,

the Franchisee shall notify the Secretary of State forthwith identifying the conflict or inconsistency. The Franchisee shall act in accordance with instructions received from the Secretary of State in relation to any such matter. The Franchisee shall not be liable for any failure to act in accordance with the instructions of TfL where such a conflict or inconsistency is established to the extent that such failure was a consequence of such conflict or inconsistency.

2. New Stations

2.1 The Franchisee shall from the Start Date until the completion of any Specified Project co-operate in good faith with all relevant parties responsible for the delivery of such Specified Project with the intention of assisting its timely, efficient and cost effective completion.

2.2 To the extent that the development of a Specified Project leads to the Franchisee having rights under railway industry procedures including Network Change or Station Change the Franchisee shall not act in a way designed directly or indirectly to prevent, prejudice or frustrate the delivery of such new station and shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change.

2.3 The Franchisee shall provide such information in respect of any Specified Project as the Secretary of State may reasonably request from time to time.

2.4 If new stations at Cambridge North (Chesterton), Meridian Water (Angel Road) and Lea Bridge are completed before the Expiry Date, the Franchisee shall:

- (a) make provision for the Passenger Services to stop at such new stations; and
- (b) if so required by the Secretary of State:

- (i) surrender the Station Lease for Meridian Water (Angel Road) Station;
 - (ii) enter into a Station Lease in respect of each such new station,

both in such forms to be approved by the Secretary of State (and the Secretary of State shall require that such Station Leases contain full repairing and insuring obligations in respect of such stations and a duration specified by the Secretary of State).
- 2.5 It shall be a Change where the new station at Cambridge North (Chesterton) is not completed and included in the Timetable by the Passenger Change Date in May 2017.
- 2.6 Prior to the completion of Cambridge North (Chesterton), Lea Bridge and Meridian Water (Angel Road) station (as the case may be) and where such Long Term Charge has not already been determined prior to the Start Date, the Franchisee shall:
 - (a) at least three (3) months prior to the planned completion of such stations, consult with any Users of Cambridge North (Chesterton), Lea Bridge and Meridian Water (Angel Road) stations (as the case may be) on its proposals for the Long Term Charge;
 - (b) propose (acting reasonably) for the purpose of the Station Access Conditions the Long Term Charge for Cambridge North (Chesterton), Lea Bridge and Meridian Water (Angel Road) (as the case may be) taking into consideration:
 - (i) the reasonable representations of any Users of Cambridge North (Chesterton), Lea Bridge and Meridian Water (Angel Road);
 - (ii) the amount of the Long-Term Charge in respect of comparable Stations with comparable facilities to which the Passenger Services are provided and the Franchisee is the station Facility Owner;
 - (iii) the portion of the Annual Station Condition Amount estimated to be spent at the relevant Station for each Franchisee Year; and
 - (iv) the estimated average annual asset maintenance expenditure to be incurred in relation to the relevant Station for the Franchise Term,

to determine an appropriate and reasonable annualised average Long Term Charge for the relevant Station and notify the Secretary of State of such together with a written explanation of its justification for the Long-Term Charge based on the principles above.
- 2.7 The Secretary of State (acting reasonably) shall have the right to approve or reject the Long Term Charge proposed by the Franchisee (such approval not to be unreasonably withheld or delayed). If the Secretary of State does not approve the Long Term Charge proposed by the Franchisee for the relevant Station the Secretary of State shall propose what it considers (acting reasonably) to be an appropriate Long Term Charge based on the principles set out in paragraph 2.6 above. Where the Franchisee disagrees with the Long Term Charge proposed by the Secretary of State the Franchisee may refer such matter to dispute in accordance with the Dispute Resolution Rules.

3. HS2 Spoil Train

- 3.1 The Franchisee shall use reasonable endeavours to co-operate with Network Rail and relevant freight and passenger service operators to enable one (1) "spoil train" to be able to run in each direction on the Great Eastern Main Line in the Off Peak each day during Weekdays, when required, in relation to the HS2 Project.

4. Digital Railway Programme

- 4.1 The Franchisee shall co-operate in good faith with Network Rail, any relevant ROSCO and any other relevant third party in connection with the development by Network Rail of a plan for the implementation and operational introduction on the routes of:

- (a) the Connected Driver Advisory System ("**C-DAS**");
- (b) the Combined Performance and Safety System ("**COMPASS**");
- (c) such similar system(s) which may be developed to succeed C-DAS or COMPASS; or
- (d) any system which is intended to provide interconnectivity between the European Train Control System ("**ETCS**"), C-DAS and COMPASS for the purposes of improving capacity management, performance, and safety.

- 4.2 In respect of any plan developed by Network Rail pursuant to paragraph 4.1 above, the Franchisee shall:

- (a) use all reasonable endeavours to provide assistance to Network Rail, any relevant ROSCO and any other relevant third party in connection with the development of the elements of the plan relating to:
 - (i) C-DAS;
 - (ii) COMPASS; and/or
 - (iii) such similar system(s) which may be developed to succeed C-DAS or COMPASS; and
- (b) use reasonable endeavours to provide assistance to Network Rail, any relevant ROSCO and any other relevant third party in connection with the development of the elements of the plan relating to any system which is intended to provide interconnectivity between ETCS, C-DAS and COMPASS for the purposes of improving capacity management, performance, and safety.

5. RfL Station Access Conditions

Where the Franchisee (acting reasonably) considers that any change to the amount of the Long Term Charge payable by the Franchisee at a Franchisee Access Station to which the applicable Station Access Conditions are those entitled "RfL Station Access Conditions 2015 2011 (FRI Leases)" has not been properly and reasonably determined by RfL under the terms of such Station Access Conditions, the Franchisee shall use all reasonable endeavours to dispute the determination in

accordance with the terms of the Station Access Agreement for the relevant Franchisee Access Station

6. **Bishops Stortford Station**

6.1 Without prejudice to the rights of the Secretary of State pursuant to paragraph 7 of Schedule 14.3 (Key Contracts), the Franchisee shall use all reasonable endeavours to enter into a deed of variation to the Station Lease for the Station at Bishops Stortford in the agreed form marked **DOV**, or in the form otherwise agreed between the Franchisee and Network Rail ("**Bishops Stortford DOV**"), by no later than one month following the Start Date.

6.2 In the event that the Bishops Stortford DOV is not entered into within one (1) month following the Start Date pursuant to paragraph 6.1 of this Schedule 6.1, the Franchisee shall use all reasonable endeavours to enter into the Bishops Stortford DOV as soon as reasonably practicable thereafter.

7. **Negative Growth - GDP**

7.1 Subject to paragraph 7.4, in the event that the value of GDP (AMBI) Figures as published as part of:

- (a) the Office for National Statistics second estimate of such figures; or
- (b) the UK Quarterly National Accounts for the relevant quarter,

fall for (2) consecutive quarters (the "**Negative Growth Quarters**") during the period from the Start Date to the date six (6) years after the Start Date, then subject to 7.3:

- (c) the table in Appendix 2 to Schedule 8.4 shall be amended as set out in paragraph 7.2; and
- (d) the table in Appendix 4 to Schedule 8.4 shall be amended as set out in paragraph 8.2.

7.2 Where paragraph 7.1 applies, for:

- (a) the Franchisee Year in which the first date of the Negative Growth Quarters falls (the "**Trigger Date**") the GDP Adjustment (GDPA) shall be calculated as follows:

$$GDPA = GDPAX \times \frac{X}{Z} + GDPAY \times \frac{Z - X}{Z}$$

where:

- (i) X is the number of days in that Franchisee Year up to but not including the Trigger Date;
- (ii) Z is the number of days in that Franchisee Year;
- (iii) GDPAX is the value of GDPA calculated in accordance with paragraph 4 of Schedule 8.4 on the basis that the figures in Column

6 of the table in Appendix 2 to Schedule 8.4 shall remain as currently set out; and

(iv) GDPAY is the value of GDPA calculated in accordance with paragraph 4 of Schedule 8.4 on the basis that the figures in Column 6 of the table in Appendix 2 to Schedule 8.4 shall be deemed to be the same as the figure in Column 5 of that table,

and any calculations of the GDP Reconciliation Payments under Part 2 of Schedule 8.4 shall take into account and be amended to accommodate such apportionment; and

(b) each subsequent Franchisee Year, the figure in Column 6 of the table in Appendix 2 to Schedule 8.4 shall be deemed to be the same as that in Column 5 of that table for the corresponding Franchisee Year, and the GDP Adjustment and any GDP Reconciliation Payments in respect of that Franchisee Year shall be calculated accordingly.

7.3 In the event that at any point during the Franchise Period following the Negative Growth Quarters; the value of the Adjusted Actual GDP Index for a Franchisee Year is equal to or greater than the figure specified in Column 5 of the table in Appendix 2 to Schedule 8.4 for a period of two consecutive Franchisee Years then:

(a) the provisions of paragraph 7.2 shall not apply to the value specified in Column 6 of the table in Appendix 2 to Schedule 8.4, for the Franchisee Year following the end of such period, and each subsequent Franchisee Year, and the GDP Adjustment and GDP Reconciliation Payments shall be calculated accordingly; and

(b) the provisions of paragraph 8.2 shall not apply to the value specified in Column 6 of the table in Appendix 4 to Schedule 8.4, for the Franchisee Year following the end of such period, and each subsequent Franchisee Year and the CLE Adjustment Payment and CLE Reconciliation Mechanism under Part 3 of Schedule 8.4 shall be calculated accordingly.

7.4 Where following the publication of GDP (AMBI) Figures in the UK Quarterly National Accounts on either the GDPR1 Reconciliation Date or GDPR2 Reconciliation Date the Secretary of State determines that GDP (AMBI) has not fallen in the two consecutive Negative Growth Quarters then the provisions of paragraph 2.2 shall not apply to the value specified in Column 6 of the table in Appendix 2 to Schedule 8.4, for that Franchisee Year, and each subsequent Franchisee Year, and the Secretary of State shall re-calculate all GDP Adjustment Payments and GDP Reconciliation Payments calculated pursuant to paragraphs 4, 5 and 6 of Schedule 8.4 following the adjustment in accordance with paragraph 7.2 and the Franchisee shall pay to the Secretary of State any difference between such GDP Adjustment Payments and GDP Reconciliation Payments and the recalculated amounts.

8. Negative Growth - CLE

8.1 In the event that the aggregate output figures in respect of the London Boroughs of Camden, City of London, Hackney, Islington, Kensington & Chelsea, Lambeth, Newham, Tower Hamlets, Southwark and Westminster for two (2) consecutive quarters as published:

(a) in the APS Workplace Analysis Figures for the relevant quarters, or

- (b) as the APS Workplace Analysis Figures part of any Revised CLE (APS) Figures,

subsequently show negative growth (the "**CLE Negative Growth Quarters**") during the period from the Start Date to the date six (6) years after the Start Date then, subject to paragraph 8.3 the table in Appendix 4 to Schedule 8.4 shall be amended as set out in paragraph 8.2.

7.2 On the earlier of either paragraph 7.1(d) or paragraph 8.1 applying, for:

- (a) the Franchisee Year in which the earlier of:

- (i) the Trigger Date; or
(ii) the first date of the CLE Negative Growth Quarters,

falls (the "**CLE Trigger Date**") the CLE Adjustment (CLEA) shall be calculated as follows:

$$CLEA = CLEAP \times \frac{P}{Q} + CLEAO \times \frac{Q - P}{Q}$$

where:

(i) P is the number of days in that Franchisee Year up to and including the CLE Trigger Date;

(ii) Q is the number of days in that Franchisee Year;

(iii) CLEAP is the value of CLEA calculated in accordance with paragraph 9 of Schedule 8.4 on the basis that the figures in Column 6 of the table in Appendix 4 to Schedule 8.4 shall remain as currently set out in Appendix 4; and

(iv) CLEAO is the value of CLEA calculated in accordance with paragraph 9 of Schedule 8.4 on the basis that the figures in Column 6 of the table in Appendix 4 to Schedule 8.4 shall be deemed to be the same as the figure in Column 5 of that table,

and any calculations of the CLE Reconciliation Mechanism under Part 3 of Schedule 8.4 shall take into account and be amended to accommodate such apportionment; and

- (b) each subsequent Franchisee Year, the figure in Column 6 of the table in Appendix 4 to Schedule 8.4 shall be deemed to be the same as that in Column 5 of that table for the corresponding Franchisee Year, and the CLE Adjustment and any CLE Reconciliation Payments in respect of that Franchisee Year shall be calculated accordingly.

7.3 In the event that at any point during the Franchise Period following the CLE Negative Growth Quarters the value of the Adjusted Actual CLE Index for a Franchisee Year is equal to or greater than the figure specified in Column 5 of the table in Appendix 4 to Schedule 8.4 for a period of two consecutive Franchisee Years then the provisions of paragraph 8.2 shall not apply to the

value specified in Column 6 of the table in Appendix 4 to Schedule 8.4, for the Franchisee Year following the end of such period, and each subsequent Franchise Year, and the CLE Adjustment and CLE Reconciliation Payments shall be calculated accordingly.

- 7.4 Where following the publication of the Revised CLE (APS Figures) the Secretary of State determines that APS Workplace Analysis Figures have not fallen in the two consecutive CLE Negative Growth Quarters then the provisions of paragraph 8.2 shall not apply to the value specified in Column 6 of the table in Appendix 4 to Schedule 8.4, for that Franchisee Year, and each subsequent Franchise Year, and the Secretary of State shall re-calculate all CLE Adjustment Payments and CLE Reconciliation Payments calculated pursuant to paragraphs 9 and 10 of Schedule 8.4 following the adjustment in accordance with paragraph 8.2 and the Franchisee shall pay to the Secretary of State any difference between such CLE Adjustment Payments and CLE Reconciliation Payments and the recalculated amounts.

9. ³⁶⁷Infrastructure Projects

9.1 For the purposes of this paragraph 9:

“Infrastructure Project” shall mean any of:

- (i) Meridian Water;**
- (ii) Cambridge resignalling; and**

such other projects as the Secretary of State may designate as an Infrastructure Project from time to time.

- 9.2 The Franchisee shall from the Start Date until completion of each Infrastructure Project engage constructively with all relevant parties responsible for the delivery of such Infrastructure Project with the intention of assisting its timely, efficient and effective completion.**

- 9.3 To the extent that any Infrastructure Project leads to the Franchisee having rights under railway industry procedures (including Network Change and Station Change) the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of such Infrastructure Project and the Franchisee shall not unreasonably raise any objection under any railway industry procedure (including Network Change or Station Change) and any reasonable objections shall be raised by the Franchisee in accordance with the relevant railway industry procedures. It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of the Infrastructure Projects and their implementation on passengers and the Franchise Services, while recognising the need for the Infrastructure Projects to be able to be undertaken in a reasonable manner.**

³⁶⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 9.4 The Franchisee shall throughout the Franchise Term allocate such appropriate Franchise Employees and other relevant resource as is reasonably required for the purposes of complying with its obligations in relation to all of the Infrastructure Projects pursuant to both the Franchise Agreement and the Access Agreements to which it is a party.**
- 9.5 The Franchisee shall provide within ten (10) Weekdays of the end of each Reporting Period a detailed report complying with the reasonable requirements of the Secretary of State describing progress in relation to matters relating to each Infrastructure Project and identifying and quantifying so far as the Franchisee is reasonably able the emerging risk position in relation to each such Infrastructure Project as it affects passengers and the Franchise Services. The Franchisee shall provide such additional information as the Secretary of State shall reasonably request and if requested by the Secretary of State it shall develop such alternative and contingency plans as the Secretary of State may reasonably require for the purpose of mitigating relevant risk and ensuring that the adverse impacts on passengers and the Franchise Services of any relevant risk arising is mitigated to the greatest extent reasonably practicable.**

SCHEDULE 6.2**Committed Obligations****Part 1 - COMMITTED OBLIGATIONS****1. Definitions**

For the purposes of this part 1 to schedule 6.2, the following words and expressions shall have the following meanings:

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|--|--|
| "Abellio Scholarship" | means the scholarship programme developed by a national collaborative skills pilot which forms part of the ECP and which is aimed at 16 to 18 year old full-time education leavers, graduates, existing employees and adults looking to enter into new roles; |
| "Additional Units" | has the meaning given to it in paragraph 22.1; |
| "Adult Apprenticeship" | shall have the meaning given to it in paragraph 95.1; |
| "AIR12 Fleet" | has the meaning given to it in paragraph 26.1(d); |
| "Alliance Board" | shall have the meaning given to it in paragraph 106.1; |
| "Alternative Redevelopment Station" | has the meaning given to it in paragraph 51.2; |
| "Annual Traction Carbon Trajectory" or "ATCT"³⁶⁸ | means the annual traction carbon trajectory specified in the Sustainable Development Strategy; |
| "Anytime Flex Carnet" | means the anytime flex carnet Fare for departures at any time which: <ol style="list-style-type: none"> (a) allows passengers to purchase a minimum of 5 and a maximum of 240 return journeys in any one year for any Passenger Services where any time day return or Off-Peak day return Fares are available; and (b) costs less than the same number of individually purchased any time day return or Off-Peak day return Fares (as the case may |

³⁶⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

be) between the same stations for which the anytime flex carnet fare is valid; and

- (c) costs no more than the aggregate price of the total number of monthly anytime Season Ticket Fares which are valid in the Peak between the same stations for which the anytime flex carnet Fare is valid that may be purchased within the period of time that the return journeys purchased under the anytime flex carnet fare may be made;

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| “Approved Detailed Designs”³⁶⁹ | means a detailed design for the redevelopment of a station approved by the Secretary of State pursuant to paragraph 51.4; |
| “Audited Portfolio” | has the meaning given to such a term in paragraph 61.1; |
| “Automatic Selective Door Opening” | means a system compliant with all relevant standards and regulations applicable in the UK which operates such that when a train formed of vehicles fitted with the system calls at a platform the operational length of which is shorter than the length of the train passenger doors that cannot be safely opened are automatically prevented from doing so; |
| “Base Functionality”³⁷⁰ | means the base functionality set out in the Trainline ITSO Leisure Specification as agreed or determined pursuant to paragraphs 75.9.1 and 75.9.2; |
| “BCA Trainees” | shall have the meaning given to it in paragraph 94.3(a); |
| “Bike&Go” | means a scheme for providing passengers with an opportunity to hire cycles from a Station for a daily rental charge; |
| “Black Belt Training” | means training provided in accordance with Lean Six Sigma principles with the aim of providing the recipient of the Black Belt Training with a full understanding of the Lean Six Sigma principles and the Lean Six Sigma systems that support those principles; |
| “Bootcamp Award” | means the traineeship offered by the Franchisee across various business areas including customer service, engineering and HQ to young people who |

³⁶⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

³⁷⁰ 30 November 2017 (Date of contract change letter) – Agreed by the Secretary of State and Franchisee

are leaving school or who are considering leaving school;

“Broxbourne Proposal”

means the redevelopment of Broxbourne Station with an indicative budget [REDACTED³⁷¹] with work to include:

- (a) creating new retail space including space for a convenience store;
- (b) improving staff accommodation;
- (c) installation of a centralised gateline;
- (d) refurbishment of the bridge passenger waiting area;
- (e) installation of improved shelters on all platforms; and
- (f) installation of improved signage throughout the Station;

“BS11000”³⁷²

means the British Standard 11000 “Collaborative Business Relationships” as governed by the British Standards Institution 2016 or any equivalent standard which is generally recognised as having replaced it’;

“C6 overhaul”

means the planned heavy maintenance event that covers overhaul of the carriage body, typically including doors, toilets and interior repairs;

“Cab & Go”

means a mobile application and website created by the Franchisee that lets passengers pre-book a cab, from one hour in advance, to or from a Station;

“Cambridge Proposal”

means the redevelopment of Cambridge Station with an indicative budget of [REDACTED³⁷³] work to include construction of a pavilion to include a customer waiting area, train information displays

³⁷¹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³⁷² 18 September 2017 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

³⁷³ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

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| | | and ticketing offices and ticket vending machines at the entrance to the station; |
| "C-DAS" | | means a Connected Driver Advisory System; |
| "CEX Scheme" | | has the meaning given to such term in paragraph 72.4; |
| "Cheshunt Proposal" | | means the redevelopment of Cheshunt Station with an indicative budget of [REDACTED³⁷⁴] with work to include: <ul style="list-style-type: none"> (a) construction of a two storey extension to the Station for an improved staff facility; (b) enlarging the station concourse and passenger area; (c) installation of a retail unit; (d) installation of a retail kiosk; and (e) construction of a single deck extension to the car park; |
| "CIS Screen" | | means an operational information system screen in dot matrix, monochrome and using text only to provide customer information including station safety messages, planned engineering works and disruption information; |
| "Class 90 and Modifications" | DVTs | has the meaning given to it in paragraph 17.2; |
| "Class Modifications" | 153 | has the meaning given to it in paragraph 12.2; |
| "Class Modifications" | 156 | has the meaning given to it in paragraph 13.2; |
| "Class Modifications" | 170 | has the meaning given to it in paragraph 14.2; |
| "Class Modifications" | 317 | has the meaning given to it in paragraph 15.2; |

³⁷⁴ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

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| "Class Refurbishment Units" | 317 | has the meaning given to it in paragraph 8.1(b); |
| "Class Upgrade Units" | 317 | has the meaning given to it in paragraph 9.1; |
| "Class Modifications" | 321 | has the meaning given to it in paragraph 16.2; |
| "Class Refurbishment Units" | 321 | has the meaning given to it in paragraph 8.1(a); |
| "CS Heads" | | shall have the meaning given to such term in paragraph 109.1; |
| "Customer Experience Account" | | has the meaning given to such term in paragraph 72.1; |
| [REDACTED³⁷⁵] | | [REDACTED] |
| "CX Programme" | Diploma | has the meaning given to such term in paragraph 66.1; |
| "Cycle of Service Training Programme" | | means a one and a half (1.5) day training workshop focussed on improving customer service, basic customer service requirements and what constitutes excellent customer service; |
| "DCIS Screen" | | means a high resolution digital operational information system screen which can use any colour and format to provide enhanced customer information including station safety messages, planned engineering works and disruption information; |
| "Deep Clean" | | shall have the meaning given to such a term in paragraph 53.11; |
| "Delayed Units Franchise Payment Adjustment" | Additional | has the meaning given to it in paragraph 23.3; |
| "Delayed Franchise Payment Adjustment" | New Fleet | has the meaning given to it in paragraph 27.3; |
| "Delivery Team" | | has the meaning given to it in paragraph 2.1; |

³⁷⁵ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

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| "Development Costs" ³⁷⁶ | means the costs for the development of the Trainline ITSO Leisure functionality to enable the online retailing of singles and returns onto ITSO Certified Smartmedia reasonably and properly incurred including technical resources, testing cycles and time taken to write the necessary code and messaging changes to enable the Franchisee's website to offer the Trainline ITSO Leisure Technology to Passengers; |
| "DVTs" | has the meaning given to it in paragraph 17.1; |
| "East Anglia Graduate Work Experience Programme" | shall have the meaning given to it in paragraph 94.1(e); |
| "ECP" | shall have the meaning given to it in paragraph 94.1(a); |
| "Efficiency Champions" | means Franchise Employees from any grade group who are nominated by a director of the Franchisee to attend Green Belt Training; |
| "Engineering Planner" | means a full-time or full-time equivalent Franchise Employee based at the ROC who is employed to develop and execute plans to increase the productivity and overall efficiency of the maintenance of the Phase 1 Fleet with the aim of improving the reliability of the Phase 1 Fleet. Key tasks will include: planning the Phase 1 Fleet modification programmes; and prioritising resolving technical and customer facing deficiencies through clearly defined lists of work into production; |
| "First-Line Managers" | means all Franchise Employees who, as part of their appointed role as manager, directly manage Franchise Employees employed in a customer-facing role; |
| "Flagship Stations" | Retail means: <ul style="list-style-type: none"> (a) Cambridge; (b) Chelmsford; (c) Colchester; |

³⁷⁶ 30 November 2017 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee

- (d) Ipswich;
 - (e) London Liverpool Street;
 - (f) Norwich; and
 - (g) Stanstead Airport;
- "FOC"** means freight operator company;
- "Full Station Travel Plan"** means, in relation to a Station (other than Small Stations and Very Small Stations) a detailed strategy for managing travel to and from that Station and Stations on the same Route by passengers and other station users (including details of car and taxi pick up points, cycle access and storage, bus services, car parking, pedestrian routes, wayfinding and signage) with the aim of reducing the environmental impact of such travel;
- "Funded Innovation Scheme"** shall have the meaning given to it in paragraph 98.4;
- "Green Belt Training"** means training provided in accordance with Lean Six Sigma principles with the aim of teaching the recipient of the Green Belt Training how to analyse data evidencing inefficiency and suggest an approach to increase efficiency;
- "Great Eastern Mainline Route"** means the Passenger Services linking London Liverpool Street Station with Romford, Shenfield, Southend Airport and Southend Victoria, Southminster, Chelmsford, Witham, Braintree, Colchester, Sudbury, Harwich, Ipswich, Walton-on-the-Naze and Clacton-on-Sea Stations;
- "Groupsave"** means a discount of 1/3 of the Fare for between three (3) to nine (9) adults travelling on the same journey;
- "Harlow Proposal"** means the redevelopment of Harlow Town Station with an indicative budget of [REDACTED³⁷⁷] with work to include:
- (a) creating new open style ticket sales and information area;

³⁷⁷ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (b) improving the retail space including space for a new convenience store;
- (c) installation of a centralised gateline;
- (d) refurbishment of the bridge passenger waiting area; and
- (e) installation of additional shelters on all platforms; and
- (f) installation of improved signage throughout the Station;

“[REDACTED³⁷⁸]”

[REDACTED]

“HYB3 Fleet”

has the meaning given to it in paragraph 26.1(e);

“HYB4 Fleet”

has the meaning given to it in paragraph 26.1(f);

“iBeacon Connection”

means a connection which uses Bluetooth low energy proximity sensing to transmit a unique identifier that can be picked up by a compatible application or operating system to identify the iBeacon's physical location, to track customers and to trigger the iBeacon to carry out a location-based action, such as a check-in on social media or a push notification;

“IC12 Fleet”

has the meaning given to it in paragraph 26.1(c);

“ICM”

shall have the meaning given to it in paragraph 99.1;

“ICM Report”

shall have the meaning given to it in 99.2;

“IdeasUK”³⁷⁹

means an annual assessment provided by IdeasUK to assess the end to end process of innovation management;

“IMMM”

means the "Innovation Management Maturity Model" provided by Planview, Inc.;

“IMMM Categories”

means the categories noted in the IMMM and being strategy, process, people and tools;

“Infor EAM”

means an application which:

³⁷⁸ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³⁷⁹ 17 September 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

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| | (a) provides visibility over asset maintenance and performance; |
| | (b) identifies trends from key data; |
| | (c) forecasts performance concerns; and |
| | (d) offers business insight to help improve decision making; |
| “Innovation Academy” | shall have the meaning given to it in paragraph 102.1; |
| “Innovation Account” | shall have the meaning given to it in paragraph 98.1; |
| “Instant Messenger” | means a service which offers real-time text transmission over the internet; |
| “Integration and Accessibility Manager” | has the meaning given to such term in paragraph 64.4; |
| “Integration and Portalisation”³⁸⁰ | means the integration and portalisation of the Base Functionality into the Franchisee’s website set out in the Trainline ITSO Leisure Specification as agreed or determined pursuant to paragraphs 75.9.1 and 75.9.2; |
| “Integration and Portalisation Costs”³⁸¹ | means the costs relating to the Integration and Portalisation and with the RDG Central Back Office, as reasonably and properly incurred by the Franchisee; |
| “Intercity Routes” | means the Passenger Services between London Liverpool Street and Norwich including those with calls at Stratford, Shenfield, Chelmsford, Colchester, Manningtree, Ipswich, Stowmarket and Diss; |
| “Investors in People Accreditation” | means the accreditation awarded by Investors in People, the standard for people management; |
| “iPoint System” | means a pole-mounted system (that is fixed at the relevant location but which can be dismantled and relocated if required) which includes the following capabilities: <ul style="list-style-type: none"> (a) a DCIS Screen; |

³⁸⁰30 November 2017 (Date of contract change letter) – Agreed by the Secretary of State and Franchisee.

³⁸¹30 November 2017 (Date of contract change letter) – Agreed by the Secretary of State and Franchisee.

- (b) a help point, giving direct contact to the twenty-four (24) hour operational customer information team;
- (c) a PA speaker which enables announcement to be made from the ROC or by Franchise Employees;
- (d) a high-speed public wifi, enabled by a super-fast data network, to help keep customers and staff connected;
- (e) an iBeacon Connection; and
- (f) CCTV.

"ISG" shall have the meaning given to it in paragraph 100.1;

"ISG Approved Scheme" shall have the meaning given to it in paragraph 100.3;

"ITSO Leisure TOCs"³⁸² **means a Train Operator or Train Operators, other than Abellio East Anglia Limited, who are sharing equally the Development Costs;**

"Joint Principles" **Working** shall have the meaning given to such term in paragraph 110.1;

"Key Stations" means:

- (a) London Liverpool Street;
- (b) Cambridge;
- (c) Chelmsford;
- (d) Tottenham Hale;
- (e) Colchester;
- (f) Norwich;
- (g) Southend Victoria;
- (h) Stansted Airport;
- (i) Shenfield;

³⁸²30 November 2017 (Date of contract change letter) – Agreed by the Secretary of State and Franchisee

- (j) Ipswich;
 - (k) Bishops Stortford;
 - (l) Ely;
 - (m) Lowestoft;
 - (n) Great Yarmouth; and
 - (o) (subject to the agreement of TfL) Stratford;
- “Knowledge Transfer Partnerships”** means the UK-wide Knowledge Transfer Partnerships programme provided by Innovate UK;
- “Large Retail Station”** means:
- (a) as at the Start Date, the Stations listed at paragraph 1 of the Appendix to this Part 1 of Schedule 6.2; and
 - (b) any large staffed Station (excluding Flagship Retail Stations) which:
 - (i) provides local, regional and long distance services;
 - (ii) has a customer footfall of 1,000,000 or more people per annum but less than or equal to 4,000,000 people per annum; and
 - (iii) has received Secretary of State approval for re-classification as a Large Retail Station pursuant to paragraph 73.2;
- “Large Station”** means each Station which has an annual Passenger Footfall of between one million and one (1,000,001) and two million (2,000,000);
- “Lean Reviews”** means reviews undertaken with aim of identifying ways of increasing efficiencies and value for money;
- “Lean Six Sigma”** means the methodology that relies on collaborative team effort to improve performance by systematically removing waste and based on the concepts originally published in "Lean Six Sigma: Combining Six Sigma Quality with Lean Speed" by Michael L. George;
- “Level 1 Award in Delivering Customer Excellence in Logistics”** means the accreditation designed by the Franchisee and awarded to BCA Trainees who successfully

complete the relevant modules, structured around the principles of rail transport operations;

“Level 1 Award in Introduction to Transport Operations” means the accreditation designed by the Franchisee and awarded to BCA Trainees who successfully complete the Bootcamp Award;

“Level 2 Diploma in Management” means the diploma in management developed by the Franchisee in partnership with Talent Training and NSAR;

“Level 3 Diploma in Rail Passenger Transport” means the diploma in rail passenger transport developed by the Franchisee in partnership with Talent Training and NSAR;

“Level 5 IMMM Rating” has the meaning given to it in the IMMM;

“Lite Station Travel Plan” means, in relation to a Small Station or a Very Small Station, a strategy for managing travel to and from that Small Station or Very Small Station by passengers and other station users in the immediate local area (including details of car and taxi pick up points, cycle access and storage, bus services, car parking, pedestrian routes, wayfinding and signage) with the aim of reducing the environmental impact of such travel;

“Major Station” means each Station which has an annual Passenger Footfall of two million one (2,000,001) and above;

“Medium Inner Retail Station” means:

- (a) as at the Start Date, the Stations listed at paragraph 3 of the Appendix to this Part 1 of Schedule 6.2; and
- (b) any medium staffed Station which:
 - (i) provides mainly local and regional services inside the Oyster zone;
 - (ii) has a customer footfall of less than 1,000,000 people per annum; and
 - (iii) has received Secretary of State approval for re-classification as a Medium Inner Retail Station pursuant to paragraph 73.2;

“Medium Outer Retail Station” means:

- (a) as at the Start Date, the Stations listed at paragraph 2 of the Appendix to this Part 1 of Schedule 6.2; and
- (b) any medium staffed Station which:
 - (i) provides mainly local and regional services outside of the Oyster zone;
 - (ii) has a customer footfall of less than 1,000,000 people per annum; and
 - (iii) has received Secretary of State approval for re-classification as a Medium Outer Retail Station pursuant to paragraph 73.2;

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| "Medium Station" | means a Station which has an annual footfall of between five hundred thousand (500,000) up to one million (1,000,000); |
| "New Fleet" | has the meaning given to it in paragraph 26.1; |
| "New Fleet Project" | means the programme to replace the Phase 1 Fleet with the New Fleet together with associated infrastructure and Depot works; |
| "New Fleet Project Key Work Packages" | has the meaning given to it in paragraph 1.1(a); |
| "New Fleet Project Steering Group" | has the meaning given to it in paragraph 1.1; |
| "New Fleet TSA" | has the meaning given to it in paragraph 37.1; |
| "NSAR" | means the National Skills Academy for Rail; |
| "Number Plate Recognition Technology" | means the automatic reading of vehicle number plates which allows the registered keeper of the vehicle to be identified; |
| "Off Peak Flex Carnet" | <p>off-peak flex carnet Fare for departures during the Off-Peak which:</p> <ul style="list-style-type: none"> (a) allows passengers to purchase a minimum of 5 and a maximum of 240 return journeys in any one (1) year for any Passenger Services where any time day return or Off-Peak day return Fares are available; and (b) costs less than the same number of individually purchased ADR or OPDR (as the case may be) Return Fares between the same |

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| | | stations for which the off-peak flex carnet fare is valid; and |
| | (c) | costs no more than the aggregate price of the total number of monthly Off-Peak Season Ticket Fare(s) between the same stations for which the off-peak flex carnet fare is valid that may be purchased within the period of time that the return journeys purchased under the off-peak flex carnet fare may be made; |
| "OS5 Fleet" | | has the meaning given to it in paragraph 26.1(a); |
| "OS10 Fleet" | | has the meaning given to it in paragraph 26.1(b); |
| "Outer Suburban Routes" | | means the Great Eastern Mainline Routes and the West Anglia Routes; |
| "Passenger Assist App" | | means an application created for mobile technology which will inform Franchise Employees in customer facing roles of the locations, journey details and requirements of all passengers who have made a Passenger Assist Booking; |
| "Passenger Booking" | Assist | means a booking of a journey, made by a passenger with accessibility requirements, which notes the requirement for the provision of assistance; |
| "Passenger Training" | Assist | shall have the meaning given to it in 70.3(a); |
| "Passenger Footfall" | | means the total number of entries and exits at a Station as specified in the document published by the ORR and entitled "Estimates of Station Usage Data 2014/15" (and subsequent annually updated versions); |
| "Payzone" | | means Payzone (UK) Limited; |
| "Payzone Retail Points" | | means a retail outlet (other than a ticket office located at a station) located within the geographical area of the Franchise where services are provided by Payzone and whereby customers can purchase tickets for travel on the Passenger Services; |
| "Performance Manager" | | shall have the meaning given to such term in paragraph 109.2(a); |
| "Phase 1 Fleet" | | means: |
| | (a) | the Original Rolling Stock; |
| | (b) | the fleet of forty eight (48) class 317 rolling stock vehicles formed into twelve (12) four |

- car units, being the rolling stock set out in the first row of Table 2 (Specified Additional Rolling Stock) of the Appendix to Schedule 1.6 (The Rolling Stock); and
- (c) the fleet of twenty four (24) class 321 rolling stock vehicles formed into six (6) four car units, being the rolling stock set out in the second row of Table 2 (Specified Additional Rolling Stock) of the Appendix to Schedule 1.6 (The Rolling Stock);
- “PLUS BUS”** means a Fare which includes the right to travel on certain bus and/or tram services under the scheme known as PLUS BUS managed by the Journey Solutions Partnership;
- “PROCAT”** means Prospects College of Advanced Technology which works in partnership with businesses to deliver high quality technical skills training across two campus facilities in Basildon and Essex;
- “Programme Plan”** has the meaning given to it in paragraph 35.1;
- “Proposed Scheme”** shall have the meaning given to it in 99.2(d)(i);
- “Rail Engineering Apprenticeships Programme”** shall have the meaning given to it in 94.1(b);
- “Redevelopment Stations”** means:
- (a) Broxbourne Station;
 - (b) Cambridge Station;
 - (c) Cheshunt Station;
 - (d) Harlow Town Station;
 - (e) Southend Victoria Station; and
 - (f) any Alternative Redevelopment Station;
- “Refurbishment Works”** shall have the meaning given to it in paragraph 52.1;
- “Regional Services”** means the Passenger Services on the following Routes:
- (a) Ipswich – Cambridge - Stansted Airport;
 - (b) Ipswich – Bury St Edmunds - Ely - Peterborough;

- (c) Ipswich – Beccles - Lowestoft;
- (d) Ipswich – Felixstowe;
- (e) Norwich – Lowestoft;
- (f) Norwich – Great Yarmouth;
- (g) Norwich – Cromer – Sheringham; and
- (h) Norwich – Stansted Airport;

“Remaining Trainline ITSO Leisure Total Amount”³⁸³

means the Trainline ITSO Leisure Total Amount minus any Share of the Development Costs and Integration and Portalisation Costs which the Franchisee has reasonably and properly incurred in meeting its Trainline ITSO Leisure Obligation up to the date the Franchisee is asked not to proceed pursuant to 75.9.1B;

“Renatus Units”

has the meaning given to it in paragraph 11.1;

“Right Time Regional Managers”

shall have the meaning given to such term in paragraph 109.3;

“ROC”

means the regional control centre at Romford;

“ROC Team”

shall have the meaning given to such term in paragraph 108.1;

“RTS”

means the document entitled "The Future Railway: The Industry's Rail Technical Strategy 2012" produced by the Technical Strategy Leadership Group, a RSSB-facilitated cross-industry expert body made up of senior executive staff;

“RTS Objectives”

means the strategic objectives outlined in the RTS being increased capacity, increased customer satisfaction, reduced costs and reduced carbon;

“RTS Themes”

means the six main themes outlined in the RTS being control, command and communication, energy, infrastructure, rolling stock, information and customer experience;

“Safer Travel Group”

shall have the meaning given to such a term in paragraph 57.1;

³⁸³ 30 November 2017 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

| | |
|---|---|
| "Samaritans" | means the Samaritans a charity registered in England and Wales with number 219432; |
| "Seasons Database" | means the database used by the Franchisee to record passenger details for Season Ticket Fares; |
| "SEFT Programme Team" | shall have the meaning given to such term in the SEFT Deed; |
| "Senior Managers" | means directors of the Franchisee and Franchise Employees that report directly to such directors; |
| "Share of the Development Costs"³⁸⁴ | means the Franchisee's Share of the Development Costs, the amount of which may change according to the number of ITSO Leisure TOCs, and which will be calculated as follows: [REDACTED³⁸⁵]/(Number of ITSO Leisure TOCs) + 1; |
| "Small Retail Station" | means: <ul style="list-style-type: none"> (a) as at the Start Date, the Stations listed at paragraph 4 of the Appendix to this Part 1 of Schedule 6.2; and (b) any small unstaffed Station which: <ul style="list-style-type: none"> (i) has a customer footfall of less than 250,000 people per annum; and (ii) has received Secretary of State approval for re-classification as a Medium Inner Retail Station pursuant to paragraph 73.2. |
| "Small Station" | means a Station which has an annual footfall of between two hundred thousand and one (200,001) up to five hundred thousand (500,000); |

³⁸⁴ 30 November 2017 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

³⁸⁵ **30 January 2018 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

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|---|--|
| “Southend Victoria Proposal” | means the redevelopment of Southend Victoria Station with an indicative budget of [REDACTED ³⁸⁶] with work to include: <ul style="list-style-type: none"> (a) remodelling the ticket office; (b) creation of a combined café/customer waiting area; (c) reinstatement of a retail unit; (d) construction of pavilion to include a customer waiting area and ticketing area; and (e) converting the British Transport Police office into a commercial office unit; |
| “Spark” | means the online collaborative idea management system provided using Wazoku Ltd's Idea Spotlight software or other appropriate collaborative idea management system; |
| “Special Advance Purchase Train-Specific Fare” | means a fare which requires the purchaser to travel on a particular train for the outward journey or, where relevant, a particular train for the return journey and which can be purchased up to ten (10) minutes before the outward journey for which the fare is valid; |
| “Stakeholder Advisory Board” | has the meaning given to such term in paragraph 63.1; |
| “Stakeholder Equality Group” | has the meaning given to such term in paragraph 64.1; |
| “Stansted Express Routes” | means the Passenger Services linking London Liverpool Street with Stansted Airport with calls at Tottenham Hale, Brimsdown, Enfield Lock, Waltham Cross, Harlow Town, Sawbridgeworth, Bishops Stortford and Stansted Mountfitchet; |
| “Station Improvement Programme” | shall have the meaning given to such term in paragraph 53.1; |
| “Station Refresh Programme” | shall have the meaning given to such term in paragraph 53.4; |

³⁸⁶ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

| | |
|--|--|
| “Supported Internships” | shall have the meaning given to it in 94.1(f); |
| “SyncNorwich” | means the SyncNorwich tech and startup online community; |
| “Talent Training” | means Talent Training (UK) LLP a training and workforce development organisation; |
| “Tefen Management Consulting” | means Tefen Management Consulting, part of the Tefen Group; |
| “Trainline ITSO Leisure Technology”³⁸⁷ | means enabling the online retailing of single and return tickets via on ITSO smart media; |
| “Transport Integration Forum” | shall have the meaning given to such term in paragraph 62.1; |
| “UAT” | means universal accessible toilet; |
| “Very Small Stations” | means a Station which has an annual footfall two hundred thousand (200,000) or fewer; |
| “WAN” | means a wide area telecommunications network; |
| “WebTIS Supplier”³⁸⁸ | means Trainline.com Limited, or alternative as approved by the Secretary of State; |
| “West Anglia Routes” | means the Passenger Services linking London Liverpool Street with Hackney Downs, Tottenham Hale, Seven Sisters, Edmonton Green, Cheshunt, Broxbourne, Hertford East, Harlow, Bishops Stortford, Cambridge, Ely and Kings Lynn; and |
| “Yellow Belt Training” | means training provided in accordance with Lean Six Sigma Principles with the aim of providing the recipient of the Yellow Belt Training with an understanding of the Lean Six Sigma principles, the ability to explain the Lean Six Sigma approach to others and to utilise the Lean Six Sigma approach in order to rectify existing inefficiencies within the Franchise. |

FLEET

³⁸⁷ 30 November 2017 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

³⁸⁸ 30 November 2017 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

1. New Fleet Project Steering Group

- 1.1 By no later than the Start Date the Franchisee shall establish the New Fleet Project Steering Group which shall meet no less regularly than every three (3) months during the term of the New Fleet Project and which shall:
- (a) oversee the delivery of the following key work packages:
 - (i) procurement of the New Fleet;
 - (ii) introduction of the New Fleet;
 - (iii) Depot and stabling works; and
 - (iv) Network Infrastructure works,(the "**New Fleet Project Key Work Packages**");
 - (b) provide guidance to project delivery team members; and
 - (c) provide feedback to the Franchisee's board of directors on project progress and any likely impact on the ability of the Franchisee to deliver the Passenger Services and/or unit availability,
- the "**New Fleet Project Steering Group**".
- 1.2 The Franchisee shall record and take minutes of each meeting of the New Fleet Project Steering Group, and shall maintain true, up to date and complete records of all of the meetings of the New Fleet Project Steering Group for a period of six (6) years following the date on which such record was created.
- 1.3 The Franchisee shall provide to the Secretary of State such updates in respect of matters discussed at the meetings of the New Fleet Project Steering Group as the Secretary of State may reasonably request from time to time.

2. Delivery Team

- 2.1 By the Start Date, the Franchisee shall establish a delivery team (the "**Delivery Team**") and shall arrange regular delivery team meetings at intervals no greater than three (3) months to oversee the delivery of the New Fleet Project Key Work Packages during the term of the New Fleet Project.
- 2.2 The Franchisee shall record and take minutes of each meeting of the Delivery Team, and shall maintain true, up to date and complete records of all of the meetings of the Delivery Team for a period of six (6) years following the date on which such record was created.
- 2.3 The Franchisee shall provide to the Secretary of State such updates in respect of matters discussed at the meetings of the Delivery Team as the Secretary of State may reasonably request from time to time.

3. Engineering Process Study

- 3.1 The Franchisee shall procure that an engineering process study is undertaken from 1 October 2016 to 30 April 2017 for the purposes of developing

engineering solutions to improve the reliability of the Train Fleet, and shall incur a minimum expenditure of [REDACTED³⁸⁹] in undertaking this obligation.

- 3.2 No later than three (3) months following conclusion of the engineering process study referred to in paragraph 3.1, the Franchisee shall provide to the Secretary of State for discussion by the parties, a report detailing the Franchisee's findings and recommendations in respect of the engineering process study.
- 3.3 ³⁹⁰**The Franchisee shall incur a minimum expenditure of [REDACTED³⁹¹] to address the findings of the engineering process study detailed in the report referred to in paragraph 3.2 to:**
- (a) **optimise and automatically process the remote condition monitoring data received from the rolling stock and feed the outputs into the Infor EAM v11 platform by connecting the infor EAM v11 to R2M via SOROS (as updated from time to time throughout the Franchise Period) by making software and hardware amendments between 1 March 2017 and 31 December 2019, and shall share the outputs with the Secretary of State.**
 - (b) **provide additional formal training and continuous improvement workshops for the use of RTM and will also modify the defect management process including implementation of the training element of EPSR RTM analysis and the embedding of the organisational processes for integrated planning and defect management by 31 December 2019.**
- 3.4 ³⁹²**The Franchisee shall incur a minimum expenditure of [REDACTED³⁹³] between 1 April 2017 and 31 December 2019 to implement the recommendations of the engineering process study detailed in the report referred to in paragraph 3.2.**

³⁸⁹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³⁹⁰ 11 December 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

³⁹¹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³⁹² 11 December 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

³⁹³ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

4. Wi-Fi

4.1 In addition to and without prejudice to the Franchisee's obligations under paragraph 12 of Schedule 13.1 (Rail Industry Initiatives), the Franchisee shall:

- (a) ³⁹⁴ **notwithstanding paragraph 12.2 of Schedule 13.1 (Rail Industry Initiatives), by no later than 31 December 2018 and throughout the remainder of the Franchise Period, provide the Mobile Communication Services in accordance with Schedule 13.1 (Rail Industry Initiatives) in both first class and Standard Class Accommodation on all of the Train Fleet used for the provision of Passenger Services, with the exception of the following Original Rolling Stock referred to in Table 1 of the Appendix to Schedule 1.6: Class 153, Class 156 and Class 170. Such Mobile Communication Services to provide the following levels as a minimum:**
- (i) up to 100 megabits per second train to shore connectivity across 99.8% of the network over which the Passenger Services operate by 1 January 2019;
 - (ii) up to 500 megabits per second train to shore connectivity on Regional Services and the Sudbury – Marks Tey – Colchester – Colchester Town route by 31 December 2021;
 - (iii) an increase in train to shore connectivity to one gigabit per second by 31 December 2021 on Intercity Routes, being routes between Norwich, Ipswich and London Liverpool Street.
- (b) by 31 December 2018, notwithstanding paragraphs 12.10 and 12.11 of Schedule 13.1 (Rail Industry Initiatives), procure that the MCS Equipment fitted to the rolling stock vehicles comprised in the Phase 1 Fleet shall form a through rolling stock unit Ethernet backbone utilising CAT7 cable and include inter-carriage connectivity capable of gigabit transmission speeds of a minimum of ten (10) gigabits per second;
- (c) by 31 December 2018, procure that provision is made for the Mobile Communication Services to be segregated into:
- (i) public channels for the use of the Mobile Communication Services by all passengers who use the Passenger Services; and
 - (i) private channels for the use of the Mobile Communication Services by Franchise Employees for the provision of on-train operational and retail services.

4.2 The Franchisee shall incur the following expenditure to fit the rolling stock vehicles listed below and used for the provision of the Passenger Services with

³⁹⁴ 18 July 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

the MCS Equipment in order to comply with its obligations under paragraph 4.1:

- (a) a minimum expenditure of [REDACTED³⁹⁵] in respect of the fleet of Class 317 units;
- (b) a minimum expenditure of [REDACTED³⁹⁶] in respect of the fleet of Class 321 units;
- (c) a minimum expenditure of [REDACTED³⁹⁷] in respect of the fleet of Class 360 units; and
- (d) a minimum expenditure of [REDACTED³⁹⁸] in respect of the fleet of Class 379 units.

- 4.3 ³⁹⁹ ⁴⁰⁰ **By no later than 31 October 2019, the Franchisee shall, in respect of the Mobile Communication Services in relation to the Train Fleet (with the exception of the non PRM Class 317s and non Renatus Class 321s) and the WAN to be installed at all Stations in accordance with paragraph 59 in relation to the Stations, procure that single sign-on technology is utilised to ensure that passengers are only required to register each device used to access the Mobile Communication Services and/or the WAN in Stations once, the first time such device is used to access the Mobile Communication Services or the WAN (as applicable).**

³⁹⁵ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁹⁶ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁹⁷ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁹⁸ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁹⁹ 18 October 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁰⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

5. Voice and Data Coverage

- 5.1 ⁴⁰¹The Franchisee shall, working with one or more appropriate telecommunication service providers or mobile network operators, use all reasonable endeavours to procure that [REDACTED⁴⁰²] coverage of the network over which the Passenger Services operate for both voice and data communications is achieved by no later than 31 December 2018, and that [REDACTED⁴⁰³] coverage is achieved by no later 30 June 2019, in order to support the provision of the Mobile Communication Services.
- 5.2 Once the capability referred to in paragraph 5.1 has been achieved, the Franchisee shall procure that a dedicated "Mobile Voice over IP" app is installed on all smartphones or tablets provided to Franchise Employees who are maintenance staff or depot staff, for the purposes of improving communications with and between such Franchise Employees.

6. Smartphones and Tablet Devices

- 6.1 The Franchisee shall incur expenditure of a minimum of [REDACTED⁴⁰⁴] to implement the provision of a smartphone or a tablet and headset (as appropriate) to:
- (a) all Franchise Employees who are maintenance staff or depot staff by the Start Date, such smartphone or tablet to provide full access to the Infor EAM system; and
 - (b) all other Franchise Employees by 31 October 2019, other than Franchise Employees with customer facing roles (including cleaners),
- for the purposes of improving communications with and between such Franchise Employees and to improve workload management.

⁴⁰¹ 20 December 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁰² **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁰³ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁰⁴ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- 6.2 The Franchisee shall ensure that any Franchise Employee to whom a smartphone or tablet and headset is deployed is appropriately trained to use that smartphone or tablet and headset by:
- (a) the Start Date in respect of all Franchise Employees who are maintenance staff or depot staff; and
 - (b) 31 October 2019 in respect of all other Franchise Employees,
- and the Franchisee shall ensure that such smartphone or tablet and headset is used for the purposes of improving communications with and between Franchise Employees and to improve workload management.
- 6.3 ⁴⁰⁵ ⁴⁰⁶ **Following the provision of smartphones, tablets and headsets in accordance with paragraph 6.1, the Franchisee shall throughout the remainder of the Franchise Period, renew such smartphones, tablets and headsets by no later than 31 October 2022 and subject to paragraph 6.3A, shall incur a minimum expenditure [REDACTED⁴⁰⁷] (plus RPI applied from 31 October 2019 to 31 October 2022) in undertaking this obligation.**
- 6.3A ⁴⁰⁸ **Unless otherwise instructed by the Secretary of State the Franchisee shall not incur any costs or expenditure in respect of its obligations under this paragraph 6.3A during the EMA Period.**
- 6.4 Where the smartphones, tablets and headsets provided pursuant to paragraph 6.1 (or where any such smartphones, tablets and headsets are renewed during the Franchise Period in accordance with paragraph 6.3, such smartphones, tablets and headsets in use at the time of transfer) are designated as Primary Franchise Assets, such smartphones, tablets and headsets shall for the purpose of any Transfer Scheme and Supplemental Agreement have a nil value.

7. Working with Network Rail

- 7.1 The Franchisee shall co-operate with Network Rail to support the management of any issues arising which are associated with the train infrastructure interface using the on-train pantograph camera, overhead line equipment camera, GPS and the forward facing CCTV.
- 7.2 The Franchisee shall ensure that the systems referred to in paragraph 7.1 are used to:
- (a) proactively monitor the infrastructure;

⁴⁰⁵ 11 March 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁰⁶ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁰⁷ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁰⁸ 3 December 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (b) manage any incidents in real time to reduce the service impact of failures; and
- (c) identify the onset of any issues before they impact on the operational performance of the railway.

8. ⁴⁰⁹Class 321 and Class 317 Fleet Refurbishment

8.1 **The Franchisee shall incur a minimum expenditure of [REDACTED⁴¹⁰] in carrying out the Refurbishment Works (as defined in paragraph 8.2) to:**

- (a) **fifty four (54) Class 321 units (the "Class 321 Refurbishment Units") by 31 December 2017; and**
- (b) **eighteen (18) Class 317 units (the "Class 317 Refurbishment Units") by 31 May 2018.**

8.2 **The Refurbishment Works are as follows:**

- (a) **replacing all seat covers on eight (8) of the Class 321 Refurbishment Units and all of the Class 317 Refurbishment Units;**
- (b) **renewing floor coverings on all of the Class 321 Refurbishment Units and all of the Class 317 Refurbishment Units;**
- (c) **re-covering or replacing dado panels on all of the Class 321 Refurbishment Units and all of the Class 317 Refurbishment Units;**
- (d) ***carrying out a heavy interior clean on all of the Class 321 Refurbishment Units and all of the Class 317 Refurbishment Units.***
- (e) ***re-coating all handles, poles and grab handles on all of the Class 321 Refurbishment Units and all of the Class 317 Refurbishment Units;***
- (f) ***removing doors and partitions in extended First Class sections in the mid-section of the ETC coach and convert seat frames in to Standard Class seating on eight (8) of the Class 321 Refurbishment Units;***
- (g) ***refreshing the First Class wall covering above dado level with vinyl on the Class 321 Refurbishment Units not refreshed within the last 5 years;***
- (h) ***On all of the Class 317 Refurbishment Units***

⁴⁰⁹ 30 June 2017 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴¹⁰ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (i) **respraying ceilings, draught screens and walls;**
 - (ii) **respraying seat frames;**
 - (iii) **re-coating the inside of bodyside doors;**
- (i) **Renewing maps and labels on eight (8) of the Class 321 Refurbishment Units.**

9. Automatic Selective Door Operation Installation

- 9.1 ⁴¹¹By no later than 14 December 2018, the Franchisee shall incur expenditure of not less than [REDACTED⁴¹²] to ensure that Automatic Selective Door Opening technology is operational on twenty seven (27) Class 317 units (the "Class 317 Upgrade Units"), the provision of such Automatic Selective Door Opening technology to encompass correct side door enable and the installation of trackside beacons to ninety six (96) platforms.

10. PRM TSI Compliance Upgrade

- 10.1 The Franchisee shall procure the carrying out of modifications to the Class 317 Upgrade Units that are comprised within the Train Fleet which are necessary for compliance with the requirements of the PRM TSI, and the Franchisee shall incur expenditure of not less than [REDACTED⁴¹³] in respect of such modifications.

11. Renatus Refurbishment

- 11.1 The Franchisee shall procure that a "Renatus" upgrade programme is undertaken in respect of thirty (30) Class 321 units by no later than 31 May 2018 (the "Renatus Units") and the Franchisee shall use reasonable endeavours to procure that:
- (a) ten (10) Renatus Units are in use by the Franchisee in the provision of the Passenger Services by 31 January 2018;

⁴¹¹ 31 October 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴¹² Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴¹³ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) twenty (20) Renatus Units are in use by the Franchisee in the provision of the Passenger Services by 30 April 2018;
 - (c) ⁴¹⁴**thirty (30) Renatus Units are in use by the Franchisee in the provision of the Passenger Services by 31 May 2018, provided that the Franchisee shall ensure that all thirty (30) Renatus Units in use by the Franchisee in the provision of the Passenger Services by no later than 31 March 2019.**
- 11.2 The Franchisee shall lease the Renatus Units until 31 December 2019, provided that the Franchisee may hand back the Renatus Units to the relevant rolling stock owner before 31 December 2019 in the event that the New Fleet is ready to be introduced into passenger service before such date.
- 11.3 The Franchisee shall procure that ten (10) Renatus Units shall each be fitted with an enhanced traction system by 31 January 2018 which shall include:
- (a) new AC traction motors;
 - (b) a new transformer;
 - (c) a new traction converter;
 - (d) a new auxiliary power supply with battery charger;
 - (e) a new Knorr Bremse EP98 wheel slip protection and brake control unit; and
 - (f) a new high tension cable.

12. Class 153 Fleet Modifications

- 12.1 The Franchisee shall incur expenditure of not less than **[REDACTED⁴¹⁵]** in carrying out the Class 153 Modifications (as defined in paragraph 12.2) to all of the fleet of Class 153 units between 1 January 2018 and 31 December 2018.
- 12.2 The Class 153 Modifications are as follows:
- (a) engine cooling system: replacing all engine cooling system hoses and clips with a new stainless steel braided hose and modifying the rigid engine top pipes;
 - (b) heating system coolant hoses: undertaking a baseline campaign replacement of underframe coolant hoses between the auxiliary coolant

⁴¹⁴ 8 November 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴¹⁵ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- pumps and the auxiliary heaters and fitting a new high specification alternative with a common installation process;
- (c) electrical relays: replacing all relays that are more than ten (10) years old with a new hermetically sealed relay, and replacing the relevant relay bases;
- (d) alternators: fitting new and uprated 300 Amp alternators, which will provide additional capacity for greater electrical loads introduced through modifications and replacing all automatic voltage regulators; and
- (e) door locks: including check of the clearance between the lock pin and the lock catch of door locks in the vehicle maintenance instructions and carrying out set up checks on all doorways.

13. Class 156 Fleet Modifications

13.1 ⁴¹⁶**The Franchisee shall incur expenditure of not less than [REDACTED⁴¹⁷] in carrying out the Class 156 Modifications (as defined in paragraph 13.2) to all of the fleet of Class 156 units between 1 January 2018 and 31 December 2018.**

13.2 The Class 156 Modifications are as follows:

- (a) relays: replacing all old pin entry device relays with a modern alternative;
- (b) auxiliary drive: replacing all "Holset" compressors with a "Wabco" off engine type and fitting wet tanks and the TruckMaster air filtration system;
- (c) cooling system: replacing all engine coolant hoses and unions with a new stainless steel braided type and modifying the rigid engine top pipes;
- (d) automatic warning system: fitting solid state receivers and reset buttons; and
- (e) wiring: reviewing and undertaking routine inspection maintenance and repair on all electrical cupboards to ensure correct termination of wiring and removing any built-up dirt and debris.

⁴¹⁶ 30 June 2017 (Date of contract change letter) – Contract variation agreed by the Secretary of State and Franchisee

⁴¹⁷ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

14. Class 170 Fleet Modifications

14.1 The Franchisee shall incur expenditure of not less **[REDACTED⁴¹⁸]** in carrying out the Class 170 Modifications (as defined in paragraph 14.2) to all of the fleet of Class 170 units between 1 January 2017 and 30 January 2018.

14.2 The Class 170 Modifications are as follows:

- (a) engines and transmission: procuring the provision of on-site support through an appropriately skilled third party service engineer to carry out the following tasks:
 - (i) health checks on available vehicles;
 - (ii) general fault finding on available vehicles;
 - (iii) general repairs;
 - (iv) supporting depot staff in fault finding and general repairs; and
 - (v) running maintenance as dictated by the original equipment manufacturer;
- (b) alternator: reinstating the Ni-Cad battery deep charge/discharge cycle, replacing any defective cells and ensuring the charging system functions correctly;
- (c) transmission: implementing a campaign to change all proximity sensors;
- (d) door system: replacing all door leaves, pillars and header gear with new or overhauled replacements, in line with the manufacturer's specification; and
- (e) autocouplers: baselining all autocouplers by fitting new electrical pins, new insulated blocks and new electrical harnesses, followed by a full re-set up of the autocouplers.

15. Class 317 Fleet Modifications

15.1 The Franchisee shall incur expenditure of not less than **[REDACTED⁴¹⁹]** in carrying out the Class 317 Modifications (as defined in paragraph 15.2) to all of the fleet of Class 317 units between 1 January 2017 and 31 December 2018 in line with the heavy maintenance plan.

⁴¹⁸ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴¹⁹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

15.2 The Class 317 Modifications are as follows:

- (a) traction motors: working with the relevant rolling stock owner's technical team and engaging with the manufacturer to optimise the management of failures and maintenance of traction motors including, but not be limited to, commutator grinding, arc horn replacement, correct cleaning of commutators, replacing brushes correctly and changing motors based on the correct megger readings;
- (b) wheel slide equipment: wheel slide equipment to be separated from the next planned C6 overhaul following the Start Date and an early campaign change including overhaul or replacement of electro-pneumatic brake units, relief valves and averaging relays to be undertaken;
- (c) door systems: door systems to be separated from the next planned C6 overhaul following the Start Date and an early campaign change including renewing the electro-pneumatic valves, actuators, door key and door interlock switches, together with a complete set up of the door system to be undertaken;
- (d) compressors: main and auxiliary compressors to be separated from the next planned C6 overhaul following the Start Date and overhauled as part of an early campaign change;
- (e) autocouplers: baselining all autocouplers by fitting new electrical contact pins, new insulated blocks and new electrical harnesses, followed by a full re-set up of the autocouplers.

16. Class 321 Fleet Modifications

16.1 The Franchisee shall incur expenditure of not less than **[REDACTED⁴²⁰]** in carrying out the Class 321 Modifications (as defined in paragraph 16.2) to all of the fleet of Class 321 units between 1 January 2017 and 31 December 2018 in line with the heavy maintenance plan.

16.2 The Class 321 Modifications are as follows:

- (a) traction motors: working with the relevant rolling stock owner's technical team to optimise the management of failures and maintenance of traction motors including, but not be limited to, commutator grinding, arc horn replacement, correct cleaning of commutators, replacing brushes correctly and changing motors based on the correct megger readings;
- (b) autocouplers: baselining all autocouplers by fitting new electrical contact pins, new insulated blocks, new electrical harnesses, followed by a full re-set up of the autocouplers;

⁴²⁰ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (c) door relays: changing the door control relays which are not covered within the current C6 overhaul specification;
- (d) door system: working with the relevant rolling stock owner's technical team ahead of the next C6 overhaul to develop an enhanced overhaul specification which will include, as a minimum, changing the electro-pneumatic valves, door actuators, switches and seals, and a complete set up to a revised baseline door system standard for the purposes of ensuring reliable operation;
- (e) wheel slide equipment: overhauling or replacing the electro-pneumatic brake units, relief valves and averaging relays in a campaign change.

17. Class 90 and DVTS Fleet Modifications

17.1 The Franchisee shall incur expenditure of not less [REDACTED⁴²¹] in carrying out the Class 90 and DVTS Modifications (as defined in paragraph 17.2) to the fleet of Class 90 units and the fleet of driving van trailers ("DVTS") (as applicable) between 1 January 2017 and 31 December 2018 in line with the heavy maintenance plan.

17.2 The Class 90 and DVTS Modifications are as follows:

- (a) to the Class 90 units:
 - (i) electronic modules Time Division Multiplex equipment: procuring the refurbishment of the Optical Interface (OIF) cards;
 - (ii) control relays: bringing forward the renewal of no less than 60 control relays which are currently renewed at the G Exam, so that such renewal takes place at the E Exams;
 - (iii) traction motors: fully baselining the traction motors and the power feed circuits, followed by the carrying out of an enhanced overhaul;
 - (iv) power contactors: early replacement of the field power contactors during E Exams;
 - (v) adhesion: installation of a software enhancement to the wheel slip protection system in partnership with the relevant rolling stock owner and manufacturer, for the purposes of improving the performance of the overall braking system;
- (b) to the DVTS:

⁴²¹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (i) electronic modules Time Division Multiplex equipment: procuring the refurbishment of the Optical Interface (OIF) cards.

18. Class 360 Fleet Modifications

- 18.1 The Franchisee shall incur expenditure of not less than **[REDACTED⁴²²]** in addressing emerging reliability issues in respect of all of the fleet of Class 360 units during the first three (3) years of the Franchise Period.
- 18.2 During the first Franchisee Year, the Franchisee shall work with Siemens Rail Systems Project Limited to identify the root causes of the top five (5) causes of delay minutes for the Class 360 units as set out in paragraph 18.3.
- 18.3 Following the identification of the root causes referred to in paragraph 18.2, the Franchisee shall procure that Siemens Rail Systems Project Limited develops and installs modifications and upgrades to rectify the issues in respect of the top five (5) causes of delay minutes for the Class 360 units, being:
 - (a) couplers;
 - (b) door electrical system;
 - (c) electric traction;
 - (d) relays; and
 - (e) automatic dropping device pantograph.
- 18.4 The Franchisee shall maintain a train service agreement with Siemens Rail Systems Project Limited for the duration of the term of the Rolling Stock Lease in respect of the fleet of Class 360 units.

19. Class 379 Fleet Modifications

- 19.1 The Franchisee shall incur expenditure of not less than **[REDACTED⁴²³]** in addressing emerging reliability issues in respect of all of the fleet of Class 379 units during the first three (3) years of the Franchise Period.
- 19.2 The Franchisee shall maintain a train service agreement with Bombardier Transportation UK Limited for the duration of the term of the Rolling Stock Lease in respect of the fleet of Class 379 units.

⁴²² **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴²³ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

20. C-DAS Installation

20.1 By no later than 30 September 2018, the Franchisee shall co-operate with Network Rail to ensure that C-DAS is installed on the following units:

- (a) ⁴²⁴**the entire fleet of Class 317 units, and the Franchisee shall incur a minimum expenditure of [REDACTED⁴²⁵] in respect of such installation;**
- (b) the entire fleet of Class 321 units, and the Franchisee shall incur a minimum expenditure of [REDACTED⁴²⁶] in respect of such installation;
- (c) ⁱⁱthe entire fleet of Class 360 units, and the Franchisee shall incur a minimum expenditure of [REDACTED⁴²⁷] in respect of such installation;
- (d) ⁱⁱⁱthe entire fleet of Class 379 units, and the Franchisee shall incur a minimum expenditure of [REDACTED⁴²⁸] in respect of such installation;
- (e) the entire fleet of Class 90 units, and the Franchisee shall incur a minimum expenditure of [REDACTED⁴²⁹] in respect of such installation,

⁴²⁴ 21 May 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴²⁵ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴²⁶ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴²⁷ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴²⁸ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴²⁹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴³⁰so that the Franchisee incurs a total minimum expenditure of [REDACTED⁴³¹] in undertaking the obligation set out in this paragraph 20.1.

- 20.2 ⁴³²By 30 June 2019, the Franchisee shall Procure the extension of the C-DAS to be installed on the Class 360 and 30 Class 321 Renatus units to include an energy metering function for the purposes of enabling the metering and management of energy consumption, and shall incur an expenditure of [REDACTED⁴³³] out of the minimum expenditure of [REDACTED⁴³⁴] in undertaking this obligation. The underspend of [REDACTED⁴³⁵] of the minimum expenditure is to be spent on schemes approved by the Secretary of State.
- 20.3 ⁴³⁶The Franchisee shall establish a protocol for reporting in respect of C-DAS by 31 December 2018, for the purposes of identifying calculated energy usage on routes where C-DAS has been installed and the drivers' adherence to the energy advice. The Franchisee shall procure that the fleet of Class 360 units and the fleet of Class 379 units are used as trial units in respect of such protocol for reporting.
- 20.4 ⁴³⁷Following the installation of the C-DAS extension referred to in paragraph 20.2, the Franchisee shall provide the Secretary of State with updates specifying the levels of energy reduction achieved and how such reduction has been achieved, no less than every three (3) months throughout the Franchise Period.

⁴³⁰ 21 May 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴³¹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴³² 21 December 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴³³ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴³⁴ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴³⁵ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴³⁶ 21 December 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴³⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

21. Cycle Carrying Capacity

21.1 The Franchisee shall procure that each unit comprised in the New Fleet which is operated on a route listed in the table below (as applicable), has the cycle carrying capacity set out in the column headed "New Fleet cycle areas" in respect of that route:

| Route | New Fleet cycle areas |
|-------------------------------|-----------------------|
| Intercity Routes | 5 |
| Great Eastern Mainline Routes | 4 |
| Regional Services | 6 |
| West Anglia Routes | 4 |
| Stansted Express Routes | 12 |

22. Additional Units

22.1 The Franchisee shall lease from a rolling stock lessor and make available for operation an additional:

- (a) four (4) Class 317 units from 26 February 2017;
- (b) eight (8) Class 317 units from 30 April 2017;

and such Class 317 units shall be available until they are redelivered on the following dates (i) one (1) on 31 May 2019; (ii) one (1) on 31 October 2019; two (2) on 31 December 2019; six (6) on 29 February 2020 and two (2) on 30 April 2020, and

- (c) six (6) Class 321 units from 1 February 2017 until 31 October 2019,

the **"Additional Units"**, provided that the Franchisee may hand back the Additional Units to the relevant rolling stock owner before the dates stated above in the event that the New Fleet is ready to be introduced into passenger service before such date.

22.2 The Franchisee shall use all reasonable endeavours to reduce overcrowding on Passenger Services on the line serving Hertford East Station, including by operating the Additional Units on such line.

23. Delayed Additional Units Franchise Payment Adjustment

23.1 Where any of the Additional Units to be introduced pursuant to the obligations of the Franchisee under paragraph 22.1 is not made available for operation by the 1 January 2017 (notwithstanding any other date specified for such in this Agreement), in any such case (without prejudice to any other remedies that might be available to the Secretary of State), the net financial effect of the

delay to the Franchisee shall be agreed by the Secretary of State and the Franchisee or, in default of agreement within a timescale regarded as reasonable by the Secretary of State, the Secretary of State shall reasonably determine such net financial effect. The Franchisee shall provide all information that the Secretary of State shall reasonably require for the purposes of identifying such net financial effect. The assessment of such net financial effect shall take into account:

- (a) any liquidated damages payable to the Franchisee in relation to any such delay;
 - (b) the lease, maintenance and other operating costs avoided or deferred by the Franchisee in consequence of the delay (including costs relating to the provision of depot facilities in relation to any of the Additional Units);
 - (c) any additional lease, maintenance and other operating costs reasonably incurred by the Franchisee as a result of extending the leases on other rolling stock within the Train Fleet beyond the lease expiry dates specified in Schedule 1.6 (The Rolling Stock) of the Franchise Agreement or the leasing or hiring of other rolling stock vehicles to substitute for any of the Additional Units which are delayed;
 - (d) any reasonably anticipated loss of revenue suffered by the Franchisee as a consequence of delay (such loss being calculated consistently with the most appropriate industry standard revenue forecasting guidance and practices); and
 - (e) any other cost savings made by the Franchisee as a consequence of the delay.
- 23.2 No account shall be taken of any impacts of the delay to the delivery of any of the Additional Units on amounts to be incurred by the Franchisee under Schedule 7.1 (Performance Benchmarks) and Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme) or amounts payable by the Franchisee under Schedule 7.3 (Customer Experience Performance). The Franchisee shall use all reasonable endeavours to minimise increased costs incurred and revenue foregone as a result of the delay to any of the Additional Units and, if the Secretary of State reasonably determines it has not done so, the Secretary of State shall be entitled to substitute a lower cost and/or a higher revenue based on his reasonable determination of what the cost incurred and/or revenue foregone by the Franchisee should have been if it had exercised all reasonable endeavours.
- 23.3 If it is agreed or reasonably determined that the net financial effect of the delay to any of the Additional Units is a positive one for the Franchisee, so that it is financially better off than it would have been had such delay not occurred, then an amount shall be payable by the Franchisee to the Secretary of State of the amount required to pass such financial benefit of the delay to the Secretary of State (a "**Delayed Additional Units Franchise Payment Adjustment**"). The Delayed Additional Units Franchise Payment Adjustment shall be calculated and paid on a Reporting Period by Reporting Period basis as reasonably determined by the Secretary of State and paid by way of adjustment to Franchise Payments. The first such amount shall be payable on the first Payment Date falling no less than seven (7) days after such determination. If

the net financial effect of the delay to any of the Additional Units is a negative one for the Franchisee, so that it is financially worse off than it would have been had such delay not occurred, no adjustment shall be made to Franchise Payments.

24. Lease of Class 319 Units

- 24.1 By the Start Date, the Franchisee shall propose to the Secretary of State for the Secretary of State's approval (such approval not to be unreasonably withheld or delayed), the number of Class 319 units that the Franchisee intends to lease from a rolling stock lessor and make available for the provision of Passenger Services. The number of Class 319 units proposed by the Franchisee shall be sufficient to mitigate the impact on the Passenger Services and the Franchisee's ability to comply with its obligations under paragraph 22.2 where the Additional Units are not available to be leased by the Franchisee by 31 January 2017.
- 24.2 By no later than 1 January 2017, the Franchisee shall lease from a rolling stock lessor and make available for operation no fewer than the number of Class 319 units approved by the Secretary of State in accordance with paragraph 24.1, for the purposes of mitigating the impact on the Passenger Services and the Franchisee's ability to comply with its obligations under paragraph 22.2 where the Additional Units are not available to be leased by the Franchisee by 31 January 2017.

25. Integration of Delivery of the New Fleet with Handback of the Phase 1 Fleet and Fleet Handover Plan

- 25.1 By no later than 30 June 2020, the Franchisee shall notify the Secretary of State of how the Franchisee shall coordinate and integrate the delivery of the New Fleet with the handback programme in respect of the Phase 1 Fleet.
- 25.2 The Franchisee shall provide the Secretary of State with information regarding any change to its fleet handover plan in relation to the replacement of the Phase 1 Fleet with the New Fleet as soon as reasonably practicable after the Franchisee becomes aware of the need for such change.

26. New Fleet

- 26.1 The Franchisee shall enter into contracts to procure and fund the provision of the following rolling stock vehicles:
- (a) a fleet of four hundred and forty five (445) new OS5 electric multiple unit rolling stock vehicles formed into eighty nine (89) 5 car units, being the rolling stock set out in the eighth row of Table 2 (Specified Additional Rolling Stock) of the Appendix to Schedule 1.6 (The Rolling Stock) (the "**OS5 Fleet**");
 - (b) a fleet of two hundred and twenty (220) new OS10 electric multiple unit rolling stock vehicles formed into twenty two (22) 10 car units, being the rolling stock set out in the seventh row of Table 2 (Specified Additional Rolling Stock) of the Appendix to Schedule 1.6 (The Rolling Stock) (the "**OS10 Fleet**");

- (c) a fleet of one hundred and twenty (120) new IC12 electric multiple unit rolling stock vehicles formed into ten (10) 12 car units, being the rolling stock set out in the fifth row of Table 2 (Specified Additional Rolling Stock) of the Appendix to Schedule 1.6 (The Rolling Stock) (the "**IC12 Fleet**");
- (d) a fleet of one hundred and twenty (120) new AIR12 electric multiple unit rolling stock vehicles formed into ten (10) 12 car units, being the rolling stock set out in the sixth row of Table 2 (Specified Additional Rolling Stock) of the Appendix to Schedule 1.6 (The Rolling Stock) (the "**AIR12 Fleet**");
- (e) a fleet of forty two (42) new HYB3 bi-mode rolling stock vehicles formed into fourteen (14) 3 car units, being the rolling stock set out in the tenth row of Table 2 (Specified Additional Rolling Stock) of the Appendix to Schedule 1.6 (The Rolling Stock) (the "**HYB3 Fleet**"); and
- (f) a fleet of ninety six (96) new HYB4 bi-mode rolling stock vehicles formed into twenty four (24) 4 car units, being the rolling stock set out in the ninth row of Table 2 (Specified Additional Rolling Stock) of the Appendix to Schedule 1.6 (The Rolling Stock) (the "**HYB4 Fleet**"),

together, the "**New Fleet**".

26.2 ⁴³⁸**The Franchisee shall:**

- (a) **use all reasonable endeavours to ensure that, by no later than 30 September 2020, (or as soon as reasonably practicable thereafter); and**
- (b) **ensure that, in any event no later than 6 February 2022,**

the New Fleet shall be used by the Franchisee in the provision of Passenger Services.

27. Delayed New Fleet Franchise Payment Adjustment

27.1 Where any of the New Fleet to be introduced pursuant to the obligations of the Franchisee under paragraph 26 is not introduced into unrestricted passenger carrying service by 30 September 2020, in any such case (without prejudice to any other remedies that might be available to the Secretary of State), the net financial effect of the delay to the Franchisee shall be agreed by the Secretary of State and the Franchisee or, in default of agreement within a timescale regarded as reasonable by the Secretary of State, the Secretary of State shall reasonably determine such net financial effect. The Franchisee shall provide all information that the Secretary of State shall reasonably require for the purposes of identifying such net financial effect. The assessment of such net financial effect shall take into account:

- (a) any liquidated damages payable to the Franchisee in relation to any such delay;

⁴³⁸ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) the lease, maintenance and other operating costs avoided or deferred by the Franchisee in consequence of the delay (including costs relating to the provision of depot facilities in relation to any of the New Fleet);
 - (c) any additional lease, maintenance and other operating costs reasonably incurred by the Franchisee as a result of extending the leases on other rolling stock within the Train Fleet beyond the lease expiry dates specified in Schedule 1.6 (The Rolling Stock) of the Franchise Agreement or the leasing or hiring of other rolling stock vehicles to substitute for any of the New Fleet which is delayed;
 - (d) any reasonably anticipated loss of revenue suffered by the Franchisee as a consequence of delay (such loss being calculated consistently with the most appropriate industry standard revenue forecasting guidance and practices); and
 - (e) any other cost savings made by the Franchisee as a consequence of the delay.
- 27.2 No account shall be taken of any impacts of the delay to the delivery of any of the New Fleet on amounts to be incurred by the Franchisee under Schedule 7.1 (Performance Benchmarks) and Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme) or amounts payable by the Franchisee under Schedule 7.3 (Customer Experience Performance). The Franchisee shall use all reasonable endeavours to minimise increased costs incurred and revenue foregone as a result of the delay to any of the New Fleet and, if the Secretary of State reasonably determines it has not done so, the Secretary of State shall be entitled to substitute a lower cost and/or a higher revenue based on his reasonable determination of what the cost incurred and/or revenue foregone by the Franchisee should have been if it had exercised all reasonable endeavours.
- 27.3 If it is agreed or reasonably determined that the net financial effect of the delay to any of the New Fleet is a positive one for the Franchisee, so that it is financially better off than it would have been had such delay not occurred, then an amount shall be payable by the Franchisee to the Secretary of State of the amount required to pass such financial benefit of the delay to the Secretary of State (a "**Delayed New Fleet Franchise Payment Adjustment**"). The Delayed New Fleet Franchise Payment Adjustment shall be calculated and paid on a Reporting Period by Reporting Period basis as reasonably determined by the Secretary of State and paid by way of adjustment to Franchise Payments. The first such amount shall be payable on the first Payment Date falling no less than seven (7) days after such determination. If the net financial effect of the delay to any of the New Fleet is a negative one for the Franchisee, so that it is financially worse off than it would have been had such delay not occurred, no adjustment shall be made to Franchise Payments.

28. New Fleet Specification

- 28.1 By no later than 31 May 2018, the Franchisee shall submit the specification in respect of the New Fleet to the Secretary of State for the Secretary of State's approval, and the Franchisee shall procure that such specification provides for the following features in respect of the New Fleet:

- (a) air conditioning: all units in the New Fleet shall have a modern air conditioning system for passengers and drivers;
- (b) wifi and at-seat power: the wifi shall be easy to upgrade in the future and at-seat power will be available through both a USB and three pin plug;
- (c) modern and attractive interior: the design of the New Fleet will be contemporary, bright and easy to maintain with appropriate luggage space for the market segments the trains will be deployed on;
- (d) reduced noise in saloons: the New Fleet will have air conditioning removing the need for hopper windows that cause excessive noise in the saloon when opened;
- (e) improved passenger information systems: the New Fleet shall provide customer information such as TfL service update boards and direct communication with control for managing information during disruption;
- (f) improved ride quality: the New Fleet shall have modern bogies designed to deliver excellent ride quality. The HYB3 Fleet and HYB4 Fleet shall be designed so that the engines are not fitted on customer vehicles;
- (g) toilet provision: the UATs required for PRM TSI compliance and balanced toilet provision for the New Fleet shall be specified with the need to maximise seats. Toilets provision shall be as follows:
 - (i) the OS5 Fleet will have one (1) UAT and one (1) standard toilet;
 - (ii) the OS10 Fleet will have one (1) UAT and two (2) standard toilets;
 - (iii) the IC12 Fleet will have one (1) UAT and four (4) standard toilets;
 - (iv) the AIR12 Fleet will have one (1) UAT and (4) four standard toilets;
 - (v) the HYB3 Fleet will have one (1) UAT and one (1) standard toilet;
and
 - (vi) the HYB4 Fleet will have one (1) UAT and one (1) standard toilet;
- (h) catering provision: the IC12 Fleet will include a café bar and provision for stowing mobile catering trolleys;
- (i) seat configuration: seat layout for the interior of the New Fleet shall be maximised and the New Fleet shall have the following layout:
 - (i) the OS5 Fleet and the OS10 Fleet shall have a 3+2 layout with no first class;
 - (ii) the AIR12 Fleet, the HYB3 Fleet and the HYB4 Fleet shall be all standard class in a 2+2 layout;
 - (iii) the IC12 Fleet shall have a 2+2 layout in standard class and a 2+1 layout in first class;
- (j) deployment: the Franchisee shall procure that:

- (i) the OS5 Fleet and the OS10 Fleet shall be deployed on Great Eastern Mainline Routes and West Anglia Routes;
 - (ii) the HYB3 Fleet and the HYB4 Fleet shall be deployed on Lowestoft routes, Peterborough routes and those DMU routes which are existing as at the Start Date;
 - (iii) the IC12 Fleet shall be deployed on Intercity routes; and
 - (iv) the AIR12 Fleet shall be deployed on Stansted Express routes.
- (k) unit length: the Franchisee shall maximise unit length to create more space for seats while maintaining the ability to reduce off-peak train length where there is a benefit.

29. New Fleet Customer Enhancements

29.1 By the date of introduction into service of the New Fleet, the Franchisee shall procure that the New Fleet has the customer benefits and enhancements set out in the table below, as applicable:

| Customer benefit / enhancements | IC12 Fleet | AIR12 Fleet | HYB3 Fleet / HYB4 Fleet | OS5 Fleet / OS10 Fleet |
|---|------------|-------------|-------------------------|------------------------|
| Meets the latest standards for interior and external noise and ride comfort | ✓ | ✓ | ✓ | ✓ |
| Fixed formations that deliver more seats per train compared to existing fleets | ✓ | ✓ | | ✓ |
| Increased power and acceleration that delivers reductions in journey times | ✓ | ✓ | ✓ | ✓ |
| New cantilevered seating design allows easier cleaning and increases comfort | ✓ | ✓ | ✓ | |
| Larger than average windows give a much lighter and open feel to the interior | ✓ | ✓ | ✓ | ✓ |
| First class areas with reading lights and sun blinds integrated into the luggage rack | ✓ | | | |
| Low entrance floors and automatic sliding footsteps facilitate access for all customers. At many stations access will be step free, eliminating the need for portable ramps | ✓ | ✓ | ✓ | |

| Customer benefit / enhancements | IC12 Fleet | AIR12 Fleet | HYB3 Fleet / HYB4 Fleet | OS5 Fleet / OS10 Fleet |
|---|-------------------|--------------------|--------------------------------|-------------------------------|
| Efficient air conditioning which maintains comfortable temperatures in ambient extremes | ✓ | ✓ | ✓ | ✓ |
| Anti-graffiti film and powder coating on all internal glazing and fixtures | ✓ | ✓ | ✓ | ✓ |
| Vandal proof, fold away table design in bay areas to facilitate access when sitting down | ✓ | ✓ | ✓ | |
| Wide, open gangways to give an uncluttered, airy feeling and the impression of one long extended coach | ✓ | ✓ | ✓ | ✓ |
| Modern thin film transistor ethernet based passenger information system, capable of displaying routine travel information, mini-videos, advertising and real time updates | ✓ | ✓ | ✓ | ✓ |
| All toilets CET, with a vacuum flush, electric hand-drier, infra-red operated warm water, and air freshener | ✓ | ✓ | ✓ | ✓ |
| Dedicated area for toilets giving better separation from the passenger area and minimising external interfaces for servicing | ✓ | ✓ | ✓ | |
| Accurate passenger counting facility on all vehicles to allow remote real time monitoring of loadings to ensure resources and capacity are put to best use | ✓ | ✓ | ✓ | ✓ |
| New welding techniques to give high quality flat finish to body exteriors | ✓ | ✓ | ✓ | ✓ |

30. Stakeholder Consultation

30.1 The Franchisee shall undertake consultations in respect of the cab design and the design for the interior of the New Fleet with:

- (a) internal stakeholders, including Franchise Employees who are drivers or on-board and customer facing staff;
- (b) external stakeholders including:
 - (i) local customers and users groups;

- (ii) representatives from groups for persons with disabilities;
- (iii) Transport Focus;
- (iv) local fire and police services; and
- (v) trade unions,

and the Franchisee shall ensure that the input into the final design of the New Fleet received during such consultations is captured.

31. [REDACTED⁴³⁹]

32. ETCS Arrangements

32.1 The Franchisee shall procure that the New Fleet is fitted to be "ETCS-ready", for the purposes of ensuring that ETCS technology can be fitted for operation on the New Fleet as Network Rail enables the network in line with the ERTMS Programme.

33. Remote Monitoring

33.1 By the date of introduction into service of the New Fleet,, the Franchisee shall, working with Network Rail, procure that:

- (a) the New Fleet is fitted with:
 - (i) pantograph accelerometers with live remote download capability to monitor high accelerations in lateral and vertical movement;
 - (ii) track debris and pantograph cameras with live remote download and intervention capability;
- (b) two (2) units of each type of new rolling stock comprising part of the New Fleet shall be fitted with "Unattended Geometry Measuring System" and "Unattended Overhead Monitoring System" equipment, and the Franchisee shall incur a total minimum [REDACTED⁴⁴⁰] in respect of such installation.

34. New Fleet Energy Reduction

34.1 The Franchise shall ensure that the New Fleet shall, by the end of the Franchise Period:

⁴³⁹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁴⁰ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (a) achieve or exceed the Environmental Impact Targets set out in paragraph 2 of Appendix 1 (Environmental Information) of Schedule 11.2 (Management Information) of the Franchise Agreement in respect of traction carbon emissions, non-traction energy use and mains water reductions to deliver no less than a:
- (i) **[REDACTED⁴⁴¹]** reduction in kgCO₂e/vehicle km (vkm);
 - (ii) **[REDACTED⁴⁴²]** reduction in existing depot non-traction energy use; and
 - (iii) **⁴⁴³[REDACTED⁴⁴⁴] reduction in mains water use against the baseline determined in accordance with paragraph 2 of Appendix 1 (Environmental Information) of Schedule 11.2 (Management Information), and that its Sustainable Development Strategy will reflect the targets at (i) – (iii) above.**

34.2 From the date of introduction of the New Fleet, the Franchisee shall provide updates to the Secretary of State in relation to its progress towards achievement of the reductions referred to in paragraph 34.1(a) as a subset of the information to be provided in each Environmental Impact Monitoring Report submitted in accordance with paragraph 15.2 of Schedule 11.2 (Management Information) of the Franchise Agreement.

34.3 Following achievement of the reductions referred to in paragraph 34.1(a), the Franchisee shall provide evidence satisfactory to the Secretary of State of such achievement, which shall include a breakdown demonstrating how such reductions have been achieved.

35. Programme Plan, New Fleet Information and Progress Updates

35.1 The Franchisee shall use all reasonable endeavours to, by no later than the Start Date, and in any event shall by no later than three (3) months after the Start Date, produce a programme plan in respect of the introduction into

⁴⁴¹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁴² **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁴³ 19 December 2018 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁴⁴ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

service of the New Fleet (the "**Programme Plan**") which shall, amongst other things:

- (a) specify that the Franchisee shall ensure, by no later than 19 September 2017:
 - (i) that, subject only to alterations made by the manufacturers of the New Fleet, final designs have been completed in respect of the New Fleet; and
 - (ii) that such final designs shall be submitted to the Secretary of State for approval (such approval not to be unreasonably withheld);
- (b) include provisions in relation to the manufacturing programme in respect of the New Fleet, including milestones in respect of such manufacturing programme, such milestones to include that the Franchisee shall procure that the bodyshells in respect of the rolling stock vehicles forming the first unit of:
 - (i) the IC12 Fleet and the HYB4 Fleet shall be built and complete by no later than 29 September 2017; and
 - (ii) the OS5 Fleet shall be built and complete by no later than 06 February 2018;
- (c) specify that the Franchisee shall obtain a Safety Certificate in respect of its safety management system (as defined in the Safety Regulations) for the New Fleet by no later than 31 January 2019;
- (d) specify that the Franchisee shall deliver a programme of training to Franchise Employees in respect of the New Fleet;
- (e) specify that the Franchisee shall employ additional drivers as required in order to ensure that it has a sufficient pool of fully qualified drivers between 1 January 2019 and 31 August 2020, for the purposes of supporting its acceptance programme in respect of the New Fleet;
- (f) provide for fault free running to be undertaken in respect of each unit comprised in the New Fleet before such units gain provisional acceptance;
- (g) specify that the Franchisee shall ensure that the requirements for provisional acceptance in respect of the New Fleet are met and that provisional acceptance is achieved:
 - (i) in respect of:
 - (A) the IC12 Fleet; and
 - (B) the AIR12 Fleet,between 03 May 2019 and 15 November 2019, subject to the IC12 Fleet and the AIR12 Fleet meeting the quality check criteria which is to be agreed during the design review process in respect of the IC12 Fleet and the AIR12 Fleet; and

- (ii) in respect of the HYB4 Fleet, between 26 April 2019 and 05 July 2019;
- (iii) in respect of the HYB3 Fleet, by no later than 06 December 2019;
- (iv) in respect of:
 - (A) the OS5 Fleet; and
 - (B) the OS10 Fleet,between 30 January 2019 and 04 March 2020,

and the Franchisee shall comply with the Programme Plan for the purposes of ensuring that the Franchisee complies with its obligations under paragraph 26.2.

35.2 The Franchisee shall provide updates to the Secretary of State in relation to:

- (a) the Programme Plan; and
 - (b) the build and commission status of the New Fleet,
- at each Franchise Performance Meeting.

35.3 Without prejudice to its obligations under paragraph 35.1, the Franchisee shall provide the Secretary of State with such information and progress updates in respect of the introduction of the New Fleet as the Secretary of State may reasonably request, from time to time.

35.4 The information to be provided in accordance with paragraph 35.3 shall be provided by the Franchisee in such format as the Secretary of State may reasonably request, from time to time.

36. Project Management

36.1 The Franchisee shall provide the Secretary of State with a summary of the outcome of each:

- (a) four weekly New Fleet programme delivery group meeting; and
- (b) quarterly New Fleet project board meeting,

within one (1) month of the date on which such meeting is held.

37. New Fleet Train Service Agreements

- 37.1 By no later than [REDACTED⁴⁴⁵], the Franchisee shall have entered into train service agreements in respect of the New Fleet (each a **"New Fleet TSA"** and together the **"New Fleet TSAs"**).
- 37.2 The Franchisee shall, at each Franchise Performance Meeting, provide the Secretary of State with information in respect of whether key performance indicators under each of the New Fleet TSAs are being met by the relevant counterparty to such New Fleet TSAs.

38. Lessons Learned from New Fleet

- 38.1 The Franchisee shall share lessons learned from the implementation of the New Fleet with the Secretary of State in such format as the Secretary of State may reasonably request, from time to time.

39. Train Fleet Nano-Coating

- 39.1 By 30 September 2020, the Franchisee shall incur expenditure of not less than:
- (a) a total of [REDACTED⁴⁴⁶] in respect of the Phase 1 Fleet; and
 - (b) a total of [REDACTED⁴⁴⁷] in respect of the New Fleet,

to procure that a nano-coating is applied to the exterior of all rolling stock within the Train Fleet and to the interior panels within the toilet cubicles of all rolling stock within the Train Fleet, for the purposes of enabling easier cleaning of the Train Fleet.

40. Depot and Stabling Investments

- 40.1 The Franchisee shall incur a total minimum expenditure of [REDACTED⁴⁴⁸] in undertaking the obligations pursuant to paragraphs 42 to 46 (inclusive).

⁴⁴⁵ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁴⁶ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁴⁷ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁴⁸ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

41. Establishment of Project Teams

- 41.1 By no later than 31 December 2016, the Franchisee shall establish project teams for the purposes of introducing the New Fleet into service and effecting depot changes required.
- 41.2 The Franchisee shall incur a minimum expenditure of:
- (a) **[REDACTED⁴⁴⁹]** in respect of project management and legal support during mobilisation; and
 - (b) **[REDACTED⁴⁵⁰]** in respect of the delivery of the following enabling works by no later than 31 December 2018:
 - (i) planning permission;
 - (ii) construction procurement;
 - (iii) construction design management;
 - (iv) tenancy agreements and depot access agreements; and
 - (v) obtaining landlord consent and beneficiary consent.

42. ⁴⁵¹Enhancements to Norwich Crown Point and Ilford Depots

- 42.1 **The Franchisee shall procure and fund the construction of infrastructure required to enhance the depot facilities at Norwich Crown Point and Ilford ("Enhanced Norwich and Ilford Depots") to provide:**
- (a) **maintenance facilities which may be used to service and maintain the trains comprised within the New Fleet; and**
 - (b) **the light maintenance facility for the OS5 Fleet and the OS10 Fleet, following the introduction into service of such fleets and throughout the Franchise Period.**
- 42.2 ⁴⁵²**The Franchisee shall:**

⁴⁴⁹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁵⁰ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁵¹ 12 February 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁵² 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

(a) use all reasonable endeavours to procure that by no later than 30 September 2020 (or as soon as reasonably practicable thereafter); and

(b) in any event procure that by no later than 30 June 2021,

the Enhanced Norwich and Ilford Depots are available for use. Prior to this, the Franchisee shall ensure that suitable alternative facilities for light maintenance are provided to allow the OS5 and OS10 Fleets to be commissioned and introduced into service whilst the construction works are underway.

42.3 The Franchisee shall ensure, where reasonably practicable, that the Enhanced Norwich and Ilford Depots are designed to achieve an "excellent" rating from an accredited assessor using BREEAM and shall procure that:

(a) the new and refurbished carriage wash machines on the network shall be environmentally optimised

(b) use reasonable endeavours to make the Enhanced Norwich and Ilford Depots as energy efficient as practicable.

42.4 The Franchisee shall aim to generate 2MWp through the installation of 12,000 m2 of photovoltaic (PV) solar panels at Stations, Depots and other suitable sites to offset against current energy and carbon footprints and for the purposes of achieving average annual reductions in fossil fuel and carbon emissions of [REDACTED⁴⁵³].

42.5 The Franchisee shall incur a minimum expenditure of [REDACTED⁴⁵⁴] in undertaking the obligation set out in paragraph 42.4.

42.6 Not used.

43. ⁴⁵⁵Norwich and Ilford Depot Regeneration

43.1 In relation to the enhancements at Ilford and Norwich Depots, the Franchisee shall co-operate with:

(a) Norwich County Council;

⁴⁵³ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁵⁴ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁵⁵ 12 February 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) Norfolk County Council;**
- (c) Essex County Council;**
- (d) Local Ward Councillors; and**
- (e) Neighbourhoods and Community stakeholders**

for the purposes of securing additional third party funding for delivering the Enhanced Norwich and Ilford Depots.

44. ⁴⁵⁶Maintenance Facilities

44.1 The Franchisee shall install, at such Depot locations as the Franchisee considers reasonably necessary and reasonably practicable:

- (a) one (1) bogie drop and a facility with a technically sufficient number of jacks, for the purposes of enabling lifting of the units comprised in the New Fleet, and which shall also be suitable for all wheel, bogie and underframe equipment removals in respect of the New Fleet, and shall complete such installation by no later than 30 November 2021;**
- (b) two (2) roads extended to at least 240 metres and such a sufficient length to accommodate one OS10 Rolling Stock Unit or two OS5 Rolling Stock Units (coupled as a multiple);**
- (c) seven (7) fuel points;**
- (d) overhead line equipment for four (4) roads;**
- (e) one (1) wheel lathe;**
- (f) ten (10) aprons of seven (7) units each for CET emptying facilities;**
- (g) four (4) other CET emptying facilities;**
- (h) two (2) items of automatic vehicle inspection equipment; and**
- (i) six (6) carriage wash plants.**

44.2 By no later than 30 July 2020, the Franchisee shall incur a minimum expenditure of [REDACTED⁴⁵⁷] to install at all carriage wash plants:

⁴⁵⁶ 12 February 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁵⁷ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (a) **remote condition monitoring equipment for the purposes of ensuring full operation of such carriage wash plants in order to maintain clean train exteriors; and**
- (b) **real time speed sensors for the purposes of ensuring that drivers maintain the correct speed throughout such carriage wash plants.**

45. **Stabling and Sidings**

45.1 The Franchisee shall co-operate with Network Rail to ensure that there is sufficient stabling capacity throughout the Franchise Period to accommodate the whole of the Train Fleet, including the Additional Units and the New Fleet at such time as such Additional Units and the New Fleet are introduced into service.

45.2 By no later than 31 December 2019, the Franchisee shall as a minimum install:

- (a) 15 x at least 240 metre stabling facilities and such a sufficient length to accommodate one OS10 Rolling Stock Unit or two OS5 Rolling Stock Units (coupled as a multiple);
- (b) 26 x at least 120 metre stabling facilities; and
- (c) 2 x at least 240 metre CET sidings and such a sufficient length to accommodate one OS10 Rolling Stock Unit or two OS5 Rolling Stock Units (coupled as a multiple),

for the purposes of satisfying the obligation under paragraph 45.1.

46. **Infrastructure Connections**

46.1 The Franchisee shall incur a minimum expenditure of **[REDACTED⁴⁵⁸]** in installing infrastructure connections for such depot and stabling facilities as the Franchisee considers reasonably necessary and reasonably practicable.

47. **Staff Accommodation at Depots at Clacton, Ilford and Norwich Crown Point**

47.1 By no later than 31 December 2017, the Franchisee shall improve the accommodation for Franchise Employees at:

- (a) the Depot at Clacton, including by:
 - (i) improving the existing office facilities; and
 - (ii) carrying out minor upgrades, to include:

⁴⁵⁸ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (A) a depot mess room;
- (B) shower facilities; and
- (C) locker facilities,

and the Franchisee shall incur a minimum expenditure of [REDACTED⁴⁵⁹] in undertaking this obligation;

- (b) the Depot at Ilford, including by:
 - (i) removing the portacabins;
 - (ii) using vacated office space to provide better quality:
 - (A) depot mess rooms;
 - (B) showers and washing facilities; and
 - (C) locker facilities,
- within the main depot building,

and the Franchisee shall incur a minimum expenditure of [REDACTED⁴⁶⁰] in undertaking this obligation;

- (c) the Depot at Norwich Crown Point, including by:
 - (i) improving facilities for the Depot staff to provide:
 - (A) a better quality depot mess room;
 - (B) better quality showers and washing facilities; and
 - (C) better quality locker facilities,

and the Franchisee shall incur a minimum expenditure of [REDACTED⁴⁶¹] in undertaking this obligation.

⁴⁵⁹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁶⁰ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁶¹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

48. ^{iv} Environmental Improvements at Existing Depots

- 48.1 During the first eighteen (18) months of the Franchise Period, the Franchisee shall carry out the environmental improvements described in paragraph 48.2 at:
- (a) the Depot at Clacton;
 - (b) the Depot at Ilford; and
 - (c) the Depot at Norwich Crown Point:
- 48.2 The environmental improvements referred to in paragraph 48.1 are:
- (a) an initial baseline energy audit and review with a suitably qualified independent body to validate initial assumptions and the measurement, metering and setting of individual depot targets;
 - (b) replacement of the lighting with LED lighting and the installation of intelligent metering and wireless energy management systems as part of the planned depot upgrade and redevelopment projects; and
 - (c) heating and ventilation improvements identified during the initial baseline energy audit and review referred to at paragraph 48.2(a).
- 48.3 The Franchisee shall incur a minimum expenditure of **[REDACTED⁴⁶²]** in undertaking the obligation set out in paragraph 48.1.

49. IT Maintenance Management System

- 49.1 During the first five (5) years of the Franchise Period, the Franchisee shall incur a minimum expenditure of **[REDACTED⁴⁶³]** to invest in the Infor EAM v11 platform or a similar IT maintenance management system for the purposes of making its workforce more mobile in order to improve depot efficacy and cost control.
- 49.2 The Franchisee shall keep the Infor EAM v11 platform or any replacement IT maintenance management system referred to in paragraph 49.1 updated throughout the Franchise Period.

50. Incorporation Of Depot Plan In Sustainable Development Strategy

- 50.1 The Franchisee shall agree the scope of, and implement the depot plan, which shall include the activities referred to in paragraph 48.1 in relation to all the

⁴⁶² **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁶³ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Depots, as part of the sustainable development strategy to be developed by the Franchisee in accordance with paragraph 10 of Schedule 13.1 (Rail Industry Initiatives).

STATIONS

51. ⁴⁶⁴ ⁴⁶⁵ ⁴⁶⁶ Station Enhancement Schemes

51.1 Subject to obtaining any necessary consents required, the Franchisee shall carry out redevelopment works in accordance with Approved Detailed Designs (the "Station Redevelopment Works") at the following stations stated in Table 1 below:

Table 1

| Station | Completion date |
|------------------------------|--------------------------|
| Harlow Town | 31 December 2020 |
| Broxbourne | 30 June 2021 |
| Ipswich | 31 July 2021 |
| Norwich (first floor) | 31 December 2021 |
| Witham | 30 September 2022 |

51.1A By no later than 30 June 2021, the Franchisee shall propose and agree with the Secretary of State alternative schemes to replace redevelopment works at Billericay and Norwich (ground floor) stations in accordance with Approved Detailed Designs.

51.1B The Franchisee shall spend no less than [REDACTED⁴⁶⁷] in carrying out its obligations under paragraphs 51.1 and 51.1A.

52. Staff facilities

52.1 Within one month from the Start Date the Franchisee shall tender the contract for the refurbishment of the Franchisee's offices at Norwich, Shenfield and Cambridge ("**Refurbishment Works**").

52.2 The Franchisee shall notify the Secretary of State of the scope of the Refurbishment Works as soon as reasonably practicable following the initial audit of staff accommodation that is to occur prior to the Start Date.

⁴⁶⁴ 20 November 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁶⁵ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁶⁶ 23 December 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁶⁷ **Date of redaction 20/11/2018 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- 52.3 The Franchisee shall use all reasonable endeavours to procure that the Refurbishment Works are completed by no later than 30 April 2017 and shall incur a minimum expenditure of [REDACTED⁴⁶⁸] in doing so.
- 52.4 ^{v vi} By no later than 31 March 2018 the Franchisee shall install lounges for use by Franchise Employees at such locations as are confirmed to the Secretary of State by the Franchisee as soon as reasonably practicable following the initial audit of staff accommodation that is to occur prior to the Start Date.

53. Station Improvement Programme

Station Improvement Works

- 53.1 ⁴⁶⁹ **By no later than one (1) year following the Start Date the Franchisee shall provide to the Secretary of State for its approval its refurbishment programme for Stations ("Station Improvement Programme") and shall thereafter, if requested by the Secretary of State, provide for its approval one or more supplemental refurbishment programmes ("Supplemental Station Improvement Plan") within one month of any request for such a programme or such other reasonable time as is specified by the Secretary of State.**
- 53.2 Not used.
- 53.3 ^{470 471} **The Franchisee shall:**
- (a) **use all reasonable endeavours to ensure that ⁴⁷²by no later than 31 December 2020, (or as soon as reasonably practicable thereafter); and**
 - (b) **ensure that, in any event no later than 31 March 2021,**
- the Franchisee shall complete the implementation of the Station Improvement Programme and any Supplemental Station Improvement**

⁴⁶⁸ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁶⁹ 28 March 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁷⁰ 28 March 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁷¹ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁷² 28 March 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

Programme approved by the Secretary of State pursuant to paragraph 53.1 and shall incur a minimum expenditure of [REDACTED⁴⁷³] in doing so.

- 53.4 By no later than 31 December 2017 the Franchisee shall provide to the Secretary of State for its approval (such approval not to be unreasonably withheld or delayed), the Franchisee's programme for the enhancement of presentation at the Stations (the "**Station Refresh Programme**").
- 53.5 The Station Refresh Programme shall as a minimum set out the details of how the following activities are to be undertaken:
- (a) the Deep Clean at all Stations as described in paragraphs 53.10 and 53.11 below;
 - (b) the redecoration of all customer-facing elements of each Station, as required;
 - (c) the clearing of vegetation;
 - (d) the repairing of any faults that could reasonably lead to slips and trips;
 - (e) the refurbishment of toilets; and
 - (f) the cleaning and (where in poor condition) replacement of signage.
- 53.6 The Franchisee shall incur a minimum expenditure of:
- (a) ^{474 vii} [REDACTED⁴⁷⁵] **in undertaking the Station Refresh Programme at all Stations by no later than 31 December 2018; with the exception of 53.5(b) which is to be delivered by no later than 30 June 2019.**
 - (b) [REDACTED⁴⁷⁶] over the Franchise Period in maintaining the cleanliness and condition of all the Stations such expenditure to be incurred with regard to the profile of expenditure set out in table 231 of the Record of Assumptions.
- 53.7 The Franchisee shall undertake the Deep Clean and the other activities stated in the Station Refresh Programme in accordance with the Station Refresh Programme, subject to not causing unreasonable disruption at the Stations.

⁴⁷³ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁷⁴ 20 December 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁷⁵ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁷⁶ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

53.8 ⁴⁷⁷ **Subject to paragraphs 53.8A and 53.8B, by no later than 31 December 2020, the Franchisee shall ensure that each Station meets the following minimum standards, subject to obtaining any relevant consents that are required to undertake such works:**

- (a) **all Major Stations, Large Stations and Medium Stations shall include a waiting room;**
- (b) **all waiting rooms at Major Stations and Large Stations shall:**
 - (i) **operational heating equipment;**
 - (ii) **include operational CCTV;**
 - (iii) **include operational DCIS Screens;**
 - (iv) **include operational public announcement systems;**
 - (v) **include facilities for customer work and relaxation areas; and**
 - (vi) **be equipped with operational phone charging points;**
- (c) **subject to paragraph 53.8(d), all Stations shall include a minimum of one (1) shelter per platform;**
- (d) **all Major Stations and Large Stations shall include a minimum of two (2) shelters per Platform, other than those Major Stations and Large Stations where shelter is provided by roof canopies (and therefore no additional shelters are required); and**
- (e) **all Major Stations, Large Stations and Medium Stations shall include male and female toilets and disabled toilets which are easily accessible by Disabled Persons.**

53.8A ⁴⁷⁸ **The Franchisee shall by no later than 31 December 2020 complete the following Station improvement works:**

- (a) **Audley End – waiting room upgrade;**
- (b) **Cheshunt – waiting room upgrade plus 2 waiting shelters;**
- (c) **Ponders End – retail unit;**
- (d) **Rye House – waiting room plus shelter;**
- (e) **Tottenham Hale – waiting room refurbishment;**
- (f) **Derby Road – 2 shelters;**

⁴⁷⁷ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁷⁸ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (g) **Dullingham – shelter**
- (h) **Enfield Lock – shelter;**
- (i) **Harlow Mill – shelter;**
- (j) **Sawbridgeworth – shelter; and**
- (k) **Waltham Cross – shelter.**

53.8B ⁴⁷⁹**During the EMA Period the Franchisee shall not (unless otherwise instructed by the Secretary of State) incur any costs or expenditure in carrying out Station improvement works other than those referred to in paragraph 53.8A.**

53.9 ⁴⁸⁰**From the Start Date until the end of the Franchise Period, the Franchisee shall ensure that where a Station changes category due to an increase in Passenger Footfall, then subject to paragraph 115, that Station shall be upgraded so that it meets the relevant requirements of paragraphs 53.2 and 53.8 by the end of the Franchise Period.**

Deep Clean

53.10 By the end of the third Franchisee Year, the Franchisee shall ensure that a Deep Clean has been undertaken at each Station.

53.11 For the purpose of paragraph 53.10 a **“Deep Clean”** shall mean a clean to remove all engrained dirt to building walls, window frames and paintwork, remove chewing gum on platforms and public areas of the Station, steam-cleaning all toilets, and the cleaning of all high-level canopies and shelters.

54. Car Park Investment

(a) ⁴⁸¹ ⁴⁸²**Subject to obtaining any necessary consents required, the Franchisee shall provide:**

(i) **use all reasonable endeavours to provide, by no later than 17 October 2020 (or as soon as reasonably practicable thereafter); and**

(ii) **in any event by no later than 30 April 2021, provide:**

(a) five hundred and forty- one (541) new car parking spaces at the Stations set out in Table 1; and

⁴⁷⁹ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁸⁰ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁸¹ 11 June 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁸² 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

(b) a further one thousand two hundred and forty-one (1,241) new car parking spaces at the Stations set out in a specification to be agreed with the Secretary of State.

and, for the avoidance of doubt, spaces provided under paragraph 54.2A shall count towards the additional parking spaces as required under this paragraph 54.1.

The Franchisee shall, by 31 December 2018 produce and provide to the Secretary of State for approval a list of Stations at which the one thousand two hundred and forty-one (1,241) new car parking spaces referred to in paragraph 54.1(b) shall be provided, together with details of the specification of such car parking spaces. Table 1 shall be updated to reflect the list of Stations and specification approved by the Secretary of State pursuant to this paragraph.

54.2 If the approval of the Secretary of State is not given to any of the new car parking space locations pursuant to paragraph 54.1 (b) the Secretary of State may require the Franchisee to develop alternative location proposals. If the Secretary of State requires the Franchisee to develop alternative location proposals then the Franchisee shall do so within five (5) months of such a request.

Table 1 Additional Car Parking Spaces

| Station | Number of additional car parking spaces | Details |
|--------------------------------|--|------------------------------|
| Attleborough | 79 | Expansion at grade |
| Bury St Edmunds | 80 | Expansion at grade |
| Hockley | 122 | Expansion at grade |
| Marks Tey | 180 | Expansion at grade |
| Shenfield Main Car Park | 80 | Single-storey decking |
| Total new spaces | 541 | |

54.2A ⁴⁸³ Subject to obtaining any necessary consents, the Franchisee shall, by no later than the relevant date specified in column three of Table 1A, provide 921 new car parking spaces at the Stations set out in Table 1A (which for the avoidance of doubt shall count towards the additional parking spaces as required under paragraph 54.1):

⁴⁸³ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Table 1A: Additional Car Parking Spaces

| <u>Station</u> | <u>Number of additional car parking spaces</u> | <u>Completion date</u> |
|----------------------------|---|--------------------------------|
| <u>Attleborough</u> | <u>56</u> | <u>17 October 2020</u> |
| <u>Brandon</u> | <u>105</u> | <u>17 October 2020</u> |
| <u>Broxbourne</u> | <u>276</u> | <u>17 October 2020</u> |
| <u>Saxmundham</u> | <u>51</u> | <u>17 October 2020</u> |
| <u>Witham</u> | <u>433</u> | <u>31 December 2021</u> |
| <u>Total</u> | <u>921</u> | |

54.3 The car parking spaces to be created pursuant to paragraph 54.1 and 54.2 shall be:

- (a) additional to the car parking spaces in existence at such Stations immediately prior to the Start Date; and
- (b) consistent with current standards (including in relation to accessibility standards) at the time.

54.4 The Franchisee shall:

- (a) introduce and maintain operational Number Plate Recognition Technology at twenty (20) key commuter Stations (the location of such Stations to be subject to the approval of the Secretary of State) covering eight thousand one hundred and fifty (8,150) car parking spaces, in order to make payment easier for passengers and to provide live car park occupancy data to passengers via social media, website updates and SMS text alerts;
- (b) re-design the car parking pages of the Franchisee's website by offering the following:
 - (i) options for customers to enrol for mobile and web-based accounts;
 - (ii) journey planning; and
 - (iii) monitoring real-time occupancy within selected car parks;
- (c) introduce new car park signage at each Station with a car park (complying with accessibility standards), including the relevant information for the use of all payment equipment and systems as well as improved wayfinding signage.

54.5 The Franchisee shall incur a minimum expenditure of [REDACTED⁴⁸⁴] in undertaking its obligations pursuant to this paragraph 54.

55. Cycle Improvement Scheme

55.1 ⁴⁸⁵ ⁴⁸⁶ Subject to obtaining any necessary consents, the Franchisee shall:

- (a) use all reasonable endeavours to provide, by no later than 31 December 2020 (or as soon as reasonably practicable thereafter); and
- (b) in any event and by no later than 30 June 2021,

provide 1370 new cycle parking spaces at the Stations set out in Table 1 (and for the avoidance of doubt, spaces provided under paragraph 55.1A shall count towards the additional cycle parking spaces at the respective Stations as required under this paragraph 55.1).

Table 1: Additional Cycle Rack

| Station | No spaces |
|-------------------|-----------|
| Witham | 100 |
| Billericay | 100 |
| Bishop Stortford | 100 |
| Manningtree | 100 |
| Newmarket | 50 |
| Norwich | 100 |
| Southend Victoria | 50 |
| Diss | 100 |
| Colchester | 100 |
| March | 50 |

⁴⁸⁴ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁸⁵ 1 August 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁸⁶ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

| | |
|-----------------------------|-------------|
| Marks Tey | 100 |
| Rochford | 50 |
| Audley End | 100 |
| Braintree | 50 |
| Dullingham | 20 |
| Whittlesford Parkway | 200 |
| TOTAL | 1370 |

55.1A ⁴⁸⁷ Subject to obtaining any necessary consents, the Franchisee shall, by no later than 31 December 2020 provide 996 new cycle parking spaces at the Stations set out in Table 1A:

Table 1A: Additional Cycle Racks by 31 December 2020

| Station | No spaces |
|--------------------------|------------------|
| Audley End | 60 |
| Braintree | 32 |
| Manningtree | 200 |
| March | 50 |
| Newmarket | 50 |
| Witham | 200 |
| Elsenham | 4 |
| Southend Victoria | 50 |
| Diss | 100 |
| Rochford | 50 |
| Marks Tey | 200 |
| Total | 996 |

55.2 (a) ⁴⁸⁸ By no later than 31 December 2018, the Franchisee shall provide to the Secretary of State for its approval its proposal for a project or scheme which will provide a benefit for passengers (the "Cycle Improvement Scheme Passenger Benefit") which is not already included in the Franchisee's obligations under this Franchise Agreement.

⁴⁸⁷ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁸⁸ 1 August 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee

- (b) If the Secretary of State and the Franchisee cannot agree a proposal, pursuant to paragraph 55.2(a), the amount of [REDACTED⁴⁸⁹] shall be repayable to the Secretary of State as though it were an Underspend.**

55.2A. ⁴⁹⁰**The Franchisee shall:**

- (a) by no later than 30 November 2020, complete the new waiting room on platform 7/8 of Cambridge Station and shall not (unless otherwise instructed by the Secretary of State) incur more than [REDACTED⁴⁹¹] of costs or expenditure in respect of its obligations under this paragraph 55.2A(a) during the EMA period; and**
- (b) by no later than 31 January 2021 complete the waiting room schemes on platforms 1 and 4 and shall not (unless otherwise instructed by the Secretary of State) incur any costs or expenditure in respect of its obligations under this paragraph 55.2A(b) during the EMA Period.**

55.3 From the Start Date until the end of the Franchise Period, the Franchisee shall ensure that passengers have access to taxi services at all Stations.

55.4 ⁴⁹²**The Franchisee shall:**

- (a) By the end of the first Franchisee Year until the end of the Franchise Period provide up-to-date taxi information at all Stations and via the Franchisee's website and mobile application;**
- (b) By the end of the first Franchisee Year until 31 March 2018 provide at least 41 Stations, an online pre-bookable taxi service "Cab&Go", with the Franchisee spending a minimum of [REDACTED⁴⁹³] per annum on marketing to ensure that passengers are aware of this service; and**
- (c) Subject to paragraph 55.4(d) and paragraph 55.4A, from 1 April 2018 until the end of the Franchise Period spend a minimum of**

⁴⁸⁹ **Date of redaction 24/04/2019 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁹⁰ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁹¹ **2 March 2021 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁹² 29 March 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee

⁴⁹³ **Date of redaction 29/03/2019 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

[REDACTED⁴⁹⁴] per annum on promoting rail access to Southend Airport.

- (d) **For the Franchisee Year ending 31 March 2019 only, the Franchisee shall have until 30 June 2019 to spend the minimum of [REDACTED⁴⁹⁵] that relates to that Franchisee Year and shall by 30 June 2019 complete the necessary setting up process required (in order to promote rail access to Southend airport and shall promote rail access to Southend Airport.**

55.4A ⁴⁹⁶Unless otherwise instructed by the Secretary of State, the Franchisee shall not incur any costs or expenditure in respect of its obligations under paragraph 55.4(c) during the EMA Period.

55.4B ⁴⁹⁷The Parties acknowledge and agree that if the EMA Period does not end on a 31 December then, in relation to the period from the end of the EMA Period until the next 31 December, Secretary of State may reasonably determine minimum spend requirement under paragraph 55.4(c).

56. Station Travel Plans

56.1 From the Start Date and to be completed by no later than 31 December 2020, the Franchisee shall, in accordance with the specification set out in Table 3:

- (a) extend the existing Full Station Travel Plan at those ten (10) Stations listed in the first row of Table 3;
- (b) create a new Full Station Travel Plan at those twelve (12) Stations listed in the second row of Table 3;
- (c) if the Full Station Travel Plan cannot be completed, for whatever reason, at any of those Stations listed in the second row of Table 3, replace that Station with one listed in the third row of Table 3, until all twelve new Full Station Travel Plans are created;
- (d) create corridor Lite Stations Travel Plans for those Stations listed in the fourth and fifth row of Table 3;
- (e) create Full Station Plans at those Stations listed in the sixth row of Table 3; and

⁴⁹⁴ **Date of redaction 29/03/2019 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁹⁵ **Date of redaction 29/03/2019 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁹⁶ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁹⁷ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (f) work in partnership with other Train Operators at those Stations listed in the seventh row of Table 3.

Table 3: Station Travel Plan Programme Summary

| Category | No. of Stations | Priority Locations |
|-----------------------------|-------------------------------|--|
| Extend existing STPS (full) | 10 stations | Southend Victoria, Colchester, Ipswich, Wickford, Ely, Lowestoft, North Walsham, Cambridge*, Norwich*, Diss* (*in development) |
| New STPs (full) | 12 stations | Stansted Airport, Chelmsford, Bishops Stortford, Harlow Town/Mill, Witham, Colchester Town, Hythe, Broxbourne, Audley End, Shenfield, Manningtree |
| Reserve locations (full) | 6 stations | Of 18 reserve stations, priority will be Billericay, Felixstowe, Harwich International, Kelvedon, Hatfield Peverel and Ingatestone |
| CRP corridor STPs (Lite) | 23 stations on 9 CRP lines | Line-based STPs, but with focus on key stations: Sheringham, Cromer, Hoveton & Wroxham, Salhouse, Burnham-on-Crouch, Althorne, Oulton Broad South/North, Wickham Market, Braintree, Cressing, Sudbury, Bures, Chappel & Wakes Colne, Marks Tey, March, Manea, Harwich Town, Clacton, Thorpe-le-Soken, Wivenhoe, Acle, Great Yarmouth |
| New CRPs (Lite) | 7 stations on 2 new CRP lines | Line-based STPs with focus on: Newmarket, Bury St Edmunds, Stowmarket, Brandon, Wymondham, Attleborough, Thetford |
| New stations (Full) | 2 new build | Cambridge North (under development) , Lea Bridge (under development) |
| Partnership (support) | 6 stations | Peterborough, Kings Lynn, Southend Airport, Prittlewell, Tottenham Hale, Stratford |

57. Safer Travel Group

- 57.1 By no later than 17 October 2017, the Franchisee shall create a 'safer travel group' ("**Safer Travel Group**") for the Franchise, which shall meet quarterly, with the aim of developing clear objectives relating to creating a safer station and on-board travelling environment working in conjunction with the British Transport Police.

- 57.2 The Franchisee shall procure that the Safer Travel Group makes security recommendations and the passenger security manager takes forward the implementation of such recommendations.
- 57.3 The Franchisee shall report bi-annually on the achievements and plans of the Safer Travel Group to the Franchise Manager.

58. Innovation and Environment

- 58.1 By no later than 31 March 2017, the Franchisee shall install a wireless condition monitoring system at one Station and one Depot to monitor the performance of mechanical and electrical assets at such Station and such Depot respectively in order to monitor electrical consumption and provide an indication of any change in performance and the need for servicing or fault rectification in respect of such mechanical and electrical assets, and shall incur a minimum expenditure of [REDACTED⁴⁹⁸] in doing so.
- 58.2 The Franchisee shall:
- (a) By no later than 31 December 2018, install LED lighting fittings, to replace all the existing lighting fittings at each Station with a product that provides consistency of lux levels with the option to dim output when no movement is detected and shall spend not less than [REDACTED⁴⁹⁹] in undertaking this obligation;
 - (b) by no later than 31 March 2024, undertake a refresh of such LED lighting installed pursuant to paragraph 58.2(a) and shall incur a minimum expenditure of eight hundred and sixty eight thousand pounds (£868,000) in undertaking this obligation.
- 58.3 ⁵⁰⁰**By no later than 31 March 2019 the Franchisee shall install a wireless energy management system at thirty-nine (39) Stations and three (3) Depots. The Franchisee shall incur a minimum expenditure of [REDACTED⁵⁰¹] in undertaking this obligation.**
- 58.4 ⁵⁰²**By no later than 31 December 2018, subject to the success of a pilot programme, the Franchisee shall install automatic voltage regulators**

⁴⁹⁸ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁹⁹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵⁰⁰ 31 October 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁰¹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵⁰² 31 October 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

at selected Stations, as agreed with the Secretary of State (acting reasonably) the Franchisee shall incur a minimum expenditure [REDACTED⁵⁰³] in undertaking this obligation (and which will be treated as Underspend for the purpose of Part 2 of Schedule 6.2 if this obligation is not implemented due to the pilot scheme being unsuccessful).

59. WAN at Stations

59.1 ^{viii}By no later than 1 January 2018, the Franchisee shall use all reasonable endeavours to procure that a WAN is installed at all Stations sufficient to:

- (a) enable the public to access Wi-Fi throughout such Station free of charge with a 100 megabit network that enables HD streaming; and
- (b) dedicate at least 20 per cent of such 100 megabit network bandwidth to enable Franchise Employees based at such Station to have a sufficiently robust IT network to support their communication systems.

59.2 The Franchisee shall use all reasonable endeavours to cooperate with Network Rail to ensure that the WAN that is installed by the Franchisee pursuant to paragraph 59.1 is compatible with the WAN being used to provide wireless connectivity at Liverpool Street Station.

60. Customer Information at Stations

60.1 By no later than 31 December 2019, the Franchisee shall supply a new integrated customer information management system to provide a single source for all pre-planned and live messages.

60.2 ^{504 505}Subject to paragraph 60.2A, the Franchisee shall:

- (i) use all reasonable endeavours to, ⁵⁰⁶by no later than 30 April 2020, (or as soon as reasonably practicable thereafter); and**
- (ii) in any event and by no later than 31 December 2020,**

for the purpose of providing information to passengers, install (and following installation shall keep operational until the end of the Franchise Period):

- (a) DCIS Screens to replace existing CIS Screens at all Stations where CIS Screens are located, with a minimum of 1000 new DCIS screens**

⁵⁰³ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵⁰⁴ 12 December 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁰⁵ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁰⁶ 12 December 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

to be installed across all such Stations and the replaced CIS screens shall be removed from any public areas; and

- (b) **DCIS Screens at all Stations which do not have a CIS Screen installed (or a DCIS Screen installed pursuant to paragraph 60.2(a) above),**

and shall provide evidence to the reasonable satisfaction of the Secretary of State of doing so.

60.2A ⁵⁰⁷**For the duration of the COVID-19 Restriction Period, the Franchisee shall (taking into account the COVID-19 Guidance and Regulation) use all reasonable endeavours to comply with its obligations under paragraph 60.2.**

60.3 ⁵⁰⁸**The DCIS Screens installed pursuant to paragraph 60.2 shall be designated as Primary Franchise Assets during the Franchise Period and shall be valued in accordance with the terms of the Supplemental Agreement for the purpose of any Transfer Scheme.**

60.4 ⁵⁰⁹**By no later than 30 April 2020, the Franchisee shall:**

(a)

(i) **supply all Stations with iBeacons which enable the Franchisee to recognise and connect with its passengers and deliver personalised messages through mobile applications; or**

(ii) ⁵¹⁰**in the event the Franchisee fails to fulfil its obligation under paragraph 60.4(a)(i) by 30 April 2020, the Franchisee shall agree a plan for the provision of an alternative scheme at an equivalent cost with the Secretary of State by 30 November 2020; and**

(b) **use its upgraded WAN to equip all Stations with:**

(i) **new enhanced CIS help points; and**

(ii) **public announcement systems and CCTV comprising five hundred and twenty-two (522) new and operational high definition CCTV cameras across all Stations which shall link back to the ROC.**

⁵⁰⁷ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁰⁸ 12 December 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁰⁹ 12 December 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁵¹⁰ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

61. Customer Experience

- 61.1 By no later than 30 June 2017, the Franchisee shall prepare and submit to the Secretary of State an audited portfolio of all Stations, outlining details of how each Station is occupied ("**Audited Portfolio**") and shall incur a minimum expenditure of [REDACTED⁵¹¹] in doing so.
- 61.2 ^{ix}By no later than 30 September 2017, the Franchisee shall:
- (a) update the Audited Portfolio to include a plan for each Station which highlights how the floor space for such Station is used; and
 - (b) introduce a new intelligent space management system and trial its effectiveness at 30 Stations and shall incur a minimum expenditure of [REDACTED⁵¹²] in doing so.
- 61.3 By no later than 1 December 2017, the Franchisee shall develop and submit to the Secretary of State a marketing package for the community use of Stations ("**Community Use Programme**") and implement the Community Use Programme from 1 January 2018. The Franchisee shall incur a minimum expenditure of [REDACTED⁵¹³] in undertaking this obligation.
- 61.4 In each of the first four (4) Franchisee Years, the Franchisee shall make available on an annual basis a minimum of [REDACTED⁵¹⁴] to allow community groups to refurbish disused and available spaces in the Stations subject to such funding being matched at an equal level by another source.
- 61.5 By no later than 31 December 2017, the Franchisee shall demonstrate to the Secretary of State how it has made available space at a minimum of twenty (20) Large Stations and Major Stations for ad hoc events and exhibitions.
- 61.6 By no later than the end of the first Franchisee Year, the Franchisee shall demonstrate to the Secretary of State that it has implemented and supported:

⁵¹¹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵¹² **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵¹³ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵¹⁴ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (a) its 'journeys-to-jobs' flexible grant support scheme incorporating a contribution from the Franchisee of a minimum of [REDACTED⁵¹⁵];
- (b) the provision of advice on the optimal use of the rail network by jobseekers;
- (c) its 'train the advisor' programme to support young adults, people on benefits and jobseekers and provide information on how best to use the railway network;
- (d) its personalised travel planning programme for jobseekers reached through employment advisors and the "Abellios Angels" (advice and go service) and has incurred a minimum expenditure of [REDACTED⁵¹⁶] in doing so.

62. Transport Integration Forum

- 62.1 By no later than 30 September 2017, the Franchisee shall establish a new transport integration forum to consider and promote integrated timetable ("**Transport Integration Forum**") and hold its first meeting, with the purpose of promoting integrated timetabling.
- 62.2 ⁵¹⁷**Subject to paragraph 62.2A, from the 30 September 2017 until the end of the Franchise Period, the Franchisee shall hold Transport Integration Forum meetings on a quarterly basis.**
- 62.2A ⁵¹⁸**The Franchisee shall (taking into account the COVID-19 Guidance and Regulation) use all reasonable endeavours to hold the Transport Integration Forum meetings (either in person or virtually) during the COVID-19 Restriction Period.**
- 62.3 The Franchisee shall ensure that representatives from bus, tram, airports and ferry operators and other Train Operators relevant to the Franchise are invited to attend each Transport Integration Forum meeting.
- 62.4 By no later than 31 December 2020, the Franchisee shall provide the Secretary of State with the proposed terms of reference of the Transport Integration Forum, which shall include as a minimum:
- (a) integrated timetabling, to include protocols for key connections between rail and other public transport operators;
 - (b) customer facilities interchange, to include details in respect of standardising the level and quality of facilities provided for customers at modal

⁵¹⁵ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵¹⁶ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵¹⁷ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵¹⁸ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

interchanges, based on the level of passenger footfall and the specific needs of users;

- (c) marketing and promotion, to include details in respect of optimising the marketing of integrated services through joint promotions with all key modes;
- (d) the provisions of customer information, particularly during major disruptions, to include details on a central point to coordinate transport during periods of major service disruptions and agreeing overall transport connection policy to identify and protect key linkages within the East Anglia region; and
- (e) commercial agreements, to include agreeing commercial issues regarding integrated transport services.

62.5 From the Start Date until the end of the Franchise Period, the Franchisee shall invest a minimum expenditure of [REDACTED⁵¹⁹] to support work within the Transport Integration Forum.

62.6 From the Start Date until the end of the Franchise Period, the Franchisee shall:

- (a) develop closer partnerships with local community and rural bus operators (including its Affiliates and Affiliates of Stagecoach UK Limited) to help supplement less frequent Passenger Services and/or to arrange links to smaller communities which are poorly serviced by rail-bus services; and
- (b) invest a minimum expenditure of [REDACTED⁵²⁰] per annum to support future bus-rail evaluations.

CUSTOMER EXPERIENCE

63. Stakeholder Advisory Board

63.1 By no later than 31 December 2016, the Franchisee shall establish an advisory board, chaired by the managing director of the Franchisee, to act as a consultative body for the Franchise, share intelligence and best practice, discuss potential ideas for improvements and oversee initiatives to promote the

⁵¹⁹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵²⁰ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

role of rail in the local economy and community relevant to the Franchise (the **"Stakeholder Advisory Board"**).

- 63.2 From 31 March 2017, the Franchisee shall ensure that the Stakeholder Advisory Board meets at least three (3) times each Franchisee Year and that the following are invited:
- (a) to attend each Stakeholder Advisory Board meeting: chief executives from each local authority and chamber of commerce relevant to the Franchise; representatives from the New Anglia local enterprise partnership and Hertfordshire local enterprise partnership; appropriate representatives from Network Rail; British Transport Police; Transport Focus; Stansted Airport and TfL representatives from each of Community Rail Norfolk; East Suffolk Lines CRP; Essex & South Suffolk CRP; Hereward Community Rail Partnership, West Anglia and Great Eastern Main Line task forces and rail user groups (including Essex Rail Users Federation);
 - (b) to attend Stakeholder Advisory Board meetings as appropriate dependent on the relevant agenda: universities relevant to the Franchise (including East Anglia University, Essex University and University Campus Suffolk); tourism bodies relevant to the Franchise (including Visit Anglia) and any other appropriate organisations.

64. Stakeholder Equality Group

- 64.1 By no later than 31 March 2017, the Franchisee shall establish a stakeholder equality group to review the Franchisee's progress on accessibility matters, including meeting the needs of Disabled Persons and other passengers with accessibility requirements, and to consult with stakeholders on how to improve accessibility (the **"Stakeholder Equality Group"**).
- 64.2 The Franchisee shall ensure that:
- (a) the Stakeholder Equality Group shall meet quarterly following an initial meeting in the first quarter of the 2017 calendar year; and
 - (b) the following are invited to each meeting of the Stakeholder Equality Group: appropriate representatives from each local authority relevant to the Franchise; representatives from disability and accessibility organisation (including Disability Essex, the Essex, Suffolk and Norfolk Coalition of Disabled People; Options for Independent Living; Disability Rights UK and Mencap).
- 64.3 ⁵²¹**From 1 January 2017, the Franchisee shall incur a minimum expenditure of [REDACTED⁵²²] per annum to fund research, mystery**

⁵²¹ 28 November 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee,

⁵²² **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

shoppers, accessibility audits and other activities to improve accessibility awareness and to fund the provision of special versions of the Disabled People's Protection Policies (to include, as a minimum, large print) being made available to passengers at Key Stations and to fund initiatives (approved by the SoS) which improve accessibility at stations.

- 64.4 By no later than the Start Date, the Franchisee shall appoint a suitably qualified and experienced Franchise Employee as an integration and accessibility manager responsible for delivering the accessibility initiatives and the key contact for customers and stakeholders in respect of accessibility issues (the **"Integration and Accessibility Manager"**).
- 64.5 The Franchisee shall retain a Franchise Employee as the Integration and Accessibility Manager for the duration of the Franchise Period and ensure that the Integration and Accessibility Manager attends and leads the meetings of the Stakeholder Equality Group.

65. Service Culture Programme

65.1 The Franchisee shall:

- (a) by no later than 1 April 2017, develop with an appropriately qualified and experienced third party supplier a Cycle of Service Training Programme; and
- (b) ⁵²³by the end of the Franchise Term, ensure that all Franchise Employees undertake the Cycle of Service Training Programme; and

the Franchisee shall incur a minimum expenditure of **[REDACTED⁵²⁴]** in undertaking this obligation.

66. ⁵²⁵ ⁵²⁶Customer Experience Diploma

66.1 **The Franchisee shall procure an appropriately qualified and experienced third party supplier to develop a twelve (12) month**

⁵²³ 18 July 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁵²⁴ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵²⁵ 18 July 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁵²⁶ 16 November 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

customer experience "Level 2" and "level 3" diploma programme and qualification (the "CX Diploma Programme").

66.2 The Franchisee shall ensure that:

- (a) each Franchisee Year, all Franchise Employees in roles as First-Line Managers shall be offered the opportunity to undertake the CX Diploma Programme during the Franchise Period;
- (b) each Franchisee Year, all Franchise Employees in customer facing roles will be offered the opportunity to undertake the CX Diploma Programme and the Franchisee shall ensure that no less than ten (10) of such Franchise Employees undertake the CX Diploma Programme each Franchisee Year.
- (c) Each franchisee year, they promote up to ten (10) development initiatives to improve CX to all Franchisee Employees in customer facing roles. The Franchisee shall monitor uptake and ensure that up to 5% of Franchise Employees undertake at least one of the 10 development initiatives most suitable to their individual learning needs.

66.3 The Franchisee shall incur a minimum expenditure of [REDACTED⁵²⁷] in undertaking the obligations in this paragraph 66 and the Franchisee will propose passenger benefitting schemes to be funded by the remaining [REDACTED⁵²⁸], to be agreed by the Secretary of State, in accordance with Paragraphs 2.4 and 2.5 of Part 2 to Schedule 6.2.

67. New Drivers Customer Experience Training

67.1 ⁵²⁹Subject to paragraph 67.3, the Franchisee shall use reasonable endeavours to ensure that all new train drivers undertake a two (2) day programme training workshop on customer service and provision of in-journey information within their first three (3) months of commencing work and in any event shall ensure that such training is

⁵²⁷ 7 March 2019 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵²⁸ 7 March 2019 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵²⁹ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

undertaken within six (6) months of such new driver commencing work.

67.2 The Franchise shall incur a minimum expenditure of **[REDACTED⁵³⁰] in undertaking the obligations in this paragraph 67.**

67.3 ⁵³¹**During the COVID-19 Restriction Period, the Franchisee shall (taking into account the COVID-19 Guidance and Regulation) use all reasonable endeavours to comply with its obligations under paragraph 67.1 (and if so delayed, shall comply as soon as reasonably practicable after each such new driver commences work).**

68. Customer Information

68.1 The Franchisee shall by no later than 1 January 2017, ensure that all Franchise Employees with customer facing roles (including cleaners in customer facing roles) have available to them the necessary tools and training to obtain the latest updates and live travel information, wherever they are, with information relevant to the Passenger Services and travel generally that is consistent with, and at least as good as that available via consumer apps or websites in order to inform customers and respond to customer queries.

68.2 The Franchisee shall ensure that any tools acquired in order to comply with paragraph 68.1 are updated from time to time to remain consistent with the current technology available and, as a minimum, any software used is updated every three (3) years.

68.3 If tools acquired to comply with paragraph 68.1 are designated as Primary Franchise Assets during the Franchise Period, for the purpose of any Transfer Scheme and Supplemental Agreement such tools shall have a nil value.

69. [REDACTED⁵³²]

70. PRM Strategy

70.1 By no later than 1 October 2017, the Franchisee shall develop the Passenger Assist App in order that it is accessible to all Franchise Employees in customer facing roles.

70.2 The Franchisee shall ensure that:

⁵³⁰ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵³¹ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵³² **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (a) by no later than 1 April 2017, Passenger Assist Bookings can be made online;
- (b) by no later than 1 April 2018, Passenger Assist Bookings are capable of being made with a minimum of twelve (12) hours' notice to the Franchisee for journeys made solely using the Passenger Services; and
- (c) as soon as reasonably practicable prior to the expiry of the Franchise Period, Passenger Assist Bookings are capable of being made with a minimum of one (1) hours' notice to the Franchisee for journeys made solely using the Passenger Services.

70.3 From 1 October 2017, the Franchisee shall ensure that:

- (a) all Franchise Employees in customer facing roles attend a training workshop (half a day in duration) developed in consultation with the Stakeholder Equality Group to improve staff competence in dealing with passengers who are Disabled Persons including communication skills, boarding and on-train procedures ("**Passenger Assist Training**"); and
- (b) all Franchise Employees in customer facing roles attend the Passenger Assist Training a minimum of once every three (3) years.

70.4 The Franchisee shall ensure that the Passenger Assist App is capable of being transferred to a Successor Operator.

71. 24/7 Customer and Disruption Information

71.1 The Franchisee shall develop and launch the following new channels for the purpose of providing information to customers:

- (a) by no later than the Start Date:
 - (i) a webpage accessible to the public to provide information in relation to disruption to the Passenger Services and means by which the public can contact the Franchisee; and
 - (ii) Twitter and Instant Messenger channels;
- (b) by no later than 1 July 2017, telephone, SMS and 'chat' channels; and
- (c) by no later than 31 March 2018, the channels noted at paragraphs 71.1(a) and 71.1(b) shall be added to the functionality of the Passenger Assist App.

71.2 By no later than 1 July 2019, the Franchisee shall undertake a customer awareness campaign promoting the use of all channels and platforms highlighted in paragraph 71.1.

71.3 By no later than 16 October 2017, the Franchisee shall, for the duration of the Franchise Period, provide and maintain a twenty-four (24) hour operational customer information team responsible for disseminating information by appropriate methods to the public (in particular information in relation to

disruption on the Passenger Services) and responding to queries from the public.

72. Customer Experience Fund

- 72.1 On the Start Date and the anniversary of such date thereafter until the end of the Franchise Period, the Franchisee shall deposit £750,000 x RPI per annum (such amount to be pro-rated for the final year) into a dedicated customer experience account ("**Customer Experience Account**").
- 72.2 By no later than the Start Date, the Franchisee shall enter into a charge with the Secretary of State in respect of the Customer Experience Account on such terms as are reasonably agreed by the Secretary of State.
- 72.3 The Franchisee shall procure that the Customer Experience Account is an interest bearing account.
- 72.4 The Franchisee shall provide to the Secretary of State for approval details of customer experience focussed initiatives, works or proposals that the Franchisee intends to undertake using funds standing to the Customer Experience Account (each a "**CEX Scheme**").
- 72.5 Without limitation, the Secretary of State may withhold his approval to any proposed CEX Scheme which:
- (a) has not been identified and/or developed in accordance with the CSES;
 - (b) in relation to which the Secretary of State considers the CEX Scheme Costs (or any part of them) to be too high or disproportionate to the benefits accruing from the CEX Scheme;
 - (c) the Franchisee is otherwise funded to undertake; or
 - (d) in the opinion of the Secretary of State, amounts to actions or steps which the Franchisee is otherwise obliged to take or which any competent train operator should be taking in relation to the operation of the Franchise.
- 72.6 Any approved CEX Schemes shall be deemed to be, and treated for the purposes of this Agreement as, Committed Obligations.
- 72.7 The Franchisee shall only be entitled to use funds standing in the Customer Experience Account to fund CEX Schemes approved pursuant to paragraph 72.4 and the Franchisee shall commence implementing CEX Schemes by no later than 17 October 2017.
- 72.8 On the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to Clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or Schedule 10 (Remedies, Events of Default and Termination Events) the Franchisee shall pay to the Secretary of State any and all amounts remaining in the Customer Experience Account.
- 72.9 Any assets arising as a result of a CEX Scheme shall be valued at nil.

DEVELOPING THE MARKET**73. Consistent Station Retailing**

- 73.1 Throughout the Franchise Period the Franchisee shall use all reasonable endeavours to provide a consistent retailing proposition at Flagship Stations, Large Retail Stations, Medium Inner Retail Stations, Medium Outer Retail Stations and Small Retail Stations, with the objective of encouraging customers to self-serve, widening access, improving quality and delivering better face-to-face customer service.
- 73.2 Throughout the Franchise Period, the Franchisee shall only re-categorise a Station as a Large Retail Station, Medium Inner Retail Station, Medium Outer Retail Station or Small Retail Station (as the case may be) if such Station no longer falls within the category to which it is allocated at the Start Date and:
- (a) if such Station satisfies the definition of whichever of a Large Retail Station, Medium Inner Retail Station, Medium Outer Retail Station or Small Retail Station the re-categorisation is intending to allocate such Station to; and
 - (b) with the prior approval of the Secretary of State.
- 73.3 The Franchisee shall prepare and submit a report to the Secretary of State by no later than 31 December 2016, and thereafter by no later than 31 December in each subsequent year (in such form as the Secretary of State may reasonably require) setting out:
- (a) a description of the retailing proposition (including ticketing, ticket vending machines, retail outlets) for Flagship Stations, Large Stations, Medium Inner Stations, Medium Outer Stations and Small Stations, including details of where this have changed since the last report submitted to the Secretary of State;
 - (b) the retail outlets available to passengers at Flagship Stations, Large Stations, Medium Inner Stations, Medium Outer Stations and Small Stations as at the last day of the previous Reporting Period;
 - (c) the Franchisee's plans to make any changes to retail outlets described in (b) above to provide a consistent retailing proposition at Flagship Stations, Large Stations, Medium Inner Stations, Medium Outer Stations and Small Stations; and
 - (d) the steps the franchisee has already taken to provide a consistent retailing proposition at Flagship Stations, Large Stations, Medium Inner Stations, Medium Outer Stations and Small Stations.
- 73.4 ⁵³³**By no later than 30 April 2017, the Franchisee shall install a new retail hub which will incorporate ticket vending machines, multi-modal**

⁵³³ **Date of contract change 31/03/2017 – Agreed by the Secretary of State and Franchisee**

departure boards and an information desk, at Stansted Airport Station and London Liverpool Street Station.

73.5 By no later than 30 April 2017 at all Flagship Stations, the Franchisee shall:

- (a) create separate lanes for ticket purchase and collection by passengers; and
- (b) incorporate separated 'collection', 'buy', 'help' and 'information' staffed customer service areas for passengers.

74. Ticket Vending Machines

74.1 The Franchisee shall:

- (a) ^xby no later than 31 March 2017, replace the internal computers and pin entry devices on (i) one hundred and one (101) cash and card ticket vending machines manufactured by Scheidt and Bachman; and (ii)^{xi} replace the thirty-four (34) card only ticket vending machines manufactured by ATOS with new ticket vending machines manufactured by Scheidt and Bachman, at the Stations in order to provide a fully point to point encryption compliant solution and improved graphic user interface;
- (b) by no later than 30 April 2017, install five (5) collection only ticket vending machines in aggregate across the Flagship Stations;
- (c) ^{xii xiii}by no later than 30 April 2018, ensure that every Station and Franchisee Access Station has at least one ticket vending machine that supports contactless bankcard payment and ITSO Certified Smartmedia, and, if opened later than 30 April 2018 ensure at least one ticket vending machine is installed at Cambridge North (Chesterton) Stations from the date that Cambridge North (Chesterton) Station opens;
- (d) by no later than 30 April 2018, upgrade all existing ticket vending machines located at SEFT Stations to support all RSP owned products that can be purchased using ITSO Certified Smartmedia; and
- (e) by no later than 30 April 2019 install a minimum of seventy-five (75) new ticket vending machines at Stations and Franchisee Access Stations and other appropriate locations, including a minimum of ten (10) 'collection only' and card only ticket vending machines at the Babraham Road and Milton "park and ride" sites and such other "park and ride" sites as the Franchisee considers reasonably appropriate.
- (f) ⁵³⁴**without prejudice to the provisions in Schedule 1.4 paragraph 4.6 (Passenger Facing Obligations), by no later than 31 July 2017, deliver a 'price promise' guarantee to customers using the Franchisee's Ticket Vending Machines by the inclusion of a 'cheapest ticket button' on the display screen at the point of ticket**

⁵³⁴ 30 April 2017 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

purchase. The Franchisee shall include text referring to this guarantee in the Passenger Charter

74.2 ^{xiv xv} By no later than 30 April 2017, the Franchisee shall upgrade all existing ticket vending machines so that each ticket vending machine (and all new ticket vending machines which may be installed by the Franchisee during the Franchise Period) can enable customers to:

- (a) make contactless "Europay", "Mastercard" and "Visa" payments and "Apple Pay" or "Android Pay" via smartphones;
- (b) purchase tickets up to 28 days in advance of their journey;
- (c) purchase tickets for the Passengers Service from a Station or Franchisee Access Station which is different from the Station or Franchisee Access Station which is the origin of journey for which such tickets are purchased;
- (d) purchase "boundary extensions" to their travelcards or Oyster tickets to permit travel to destinations beyond the Zones or PAYG Zones (as the case may be); and
- (e) purchase Weekly Season Tickets and Monthly Season Tickets at TVMs;
- (f) purchase PLUS BUS day and weekly season tickets;
- (g) purchase "Groupsave";

74.3 ^{xvi 535} **The Franchisee shall ensure that:**

- (a) **by no later than 30 April 2017, all existing ticket vending machines; and**
- (b) **from the point of installation, all new TVMs installed during the Franchise Period,**

subject to paragraph 74.3A, shall display real time train running information to aid customers in their purchase process and shall provide a continuous 24 hour, seven days a week working audio link between each ticket vending machine and the remote ticket vending machine support facility which will enable customers to speak to a Franchisee Employee through the ticket vending machines and enable the Franchisee Employee to take control of the ticket vending machine to assist customers with their purchase.

74.3A ⁵³⁶ **During the COVID-19 Restriction Period, the Franchisee shall (taking into account the COVID-19 Guidance and Regulation) use all reasonable endeavours to comply with its obligations under paragraph 74.3.**

⁵³⁵ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵³⁶ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 74.4 By no later than 30 January 2017 the Franchisee shall upgrade 118 existing Fujitsu STAR terminals installed at those Stations and Franchisee Access Stations which are not London Stations to enable contactless bankcard payment and door to door journey planning.

75. Digital Ticketing

- 75.1 By no later than the Start Date, the Franchisee shall replace the WebTIS used by the Train Operator under the Previous Franchise Agreement with a new smart enabled website, which will be supported by a customer service centre team, and will include the following functionality:
- (a) tickets purchased via the new smart enabled website will be capable of fulfilment on ITSO Certified Smartmedia;
 - (b) by no later than 30 April 2017, tickets may be purchased using Paypal (or any similar electronic payment system);
 - (c) by no later than 30 April 2017, incorporate a best fare finder function; and
 - (d) by no later than 30 April 2019 include web to mobile functionality to allow tickets purchased via the new smart enabled website to be delivered to mobile devices which can be validated visually or scanned on-board trains or at ticket gates.
- 75.2 By no later than the Start Date the Franchisee shall make accessible to customers a mobile application function to purchase tickets for the Passenger Services on the Franchisee's mobile application ("**Ticket Application Function**") and shall provide to customers a fully integrated door-to-door journey planning capability via multiple transport modes and crowding information for each Passenger Service.
- 75.3 The Franchisee shall ensure that the Ticket Application Function shall:
- (a) by no later than 30 April 2017, allow the purchase of PLUS BUS;
 - (b) by no later than 31 January 2017, allow a single sign on by users to access all tickets available from the Franchisee;
 - (c) ^{xvii}by no later than 30 April 2017, allow tickets to be purchased using Paypal (or any similar electronic payment system) and incorporate a best fare finder function;
 - (d) by no later than 31 May 2017, allow the purchase of Special Advance Purchase Train-Specific Fares up to ten (10) minutes before the departure of the timetabled railway passenger service to which the Special Advance Purchase Train-Specific Fare relates.
 - (e) by no later than 30 April 2018^{xviii}, allow Flex Carnet Fares to be purchased;
 - (f) by no later than 31 January 2019, allow Season Ticket Fares to be purchased; and

- (g) by no later than 30 April 2019, allow all tickets purchased via the Ticket Application Function to be delivered to mobile devices as a barcode which can be validated visually or scanned on-board trains or at ticket gates.
- 75.4 By no later than 30 April 2017, the Franchisee shall implement a new Season Ticket Fares web-portal, which shall form part of the smart enabled website provided in accordance with paragraph 75.1, and which shall enable:
- (a) customers to buy Season Tickets Fares on any internet enabled device including a desktop computer, laptop, tablet and mobile phone;
 - (b) the purchase of ITSO based Season Ticket Fares;
 - (c) the purchase of Season Ticket Fares which can be fulfilled through the Ticket Application Function;
 - (d) the auto-renewal of Season Tickets Fares; and
 - (e) the use of new payment methods, including payment by monthly direct debit.
- 75.5 By no later than the Start Date, the Franchisee shall launch a dedicated Stansted Express ("**STEX**") website and shall include the following functionality by no later than 31 January 2018:
- (a) tickets purchased via the new smart enabled website will be capable of fulfilment on ITSO Certified Smartmedia;
 - (b) tickets may be purchased using Paypal (or any similar electronic payment system);
 - (c) incorporate a best fare finder function; and
 - (d) include web to mobile functionality to allow tickets purchased via STEX website to be delivered to mobile devices which can be validated visually or scanned on-board trains or at ticket gates.
- 75.6 **Subject to paragraph 75.6A:**
- (a) ⁵³⁷ ⁵³⁸ **By no later than 30 April 2017, the Franchisee shall launch its Payzone 'click and collect' rail ticket service, allowing passengers to collect their tickets in Payzone Retail Outlets, with full roll out to all Payzone Retail Outlets from 31 January 2018 to 30 June 2021.**

⁵³⁷ 11 October 2018 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵³⁸ 24 June 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) ^{539 540 541} **By no later than 31 January 2019, the Franchisee shall provide to the Secretary of State for its approval a proposal for a passenger benefitting scheme to the equal value as the requirement for ticket purchase at Payzone Retail Outlets using barcode thermal technology and shall implement the scheme by 14 December 2020.**
- (c) ⁵⁴² **By no later than 31 August 2020, the Franchisee shall provide to the Secretary of State for its approval a proposal for a passenger benefitting scheme to the equal value as the requirement to provide Payzone 'click and collect' rail ticket service for the remainder of the Franchise period and shall implement the passenger benefitting scheme by 31 August 2021.**

75.6A ⁵⁴³ **Unless otherwise instructed by the Secretary of State, the Franchisee shall not incur any costs or expenditure in respect of its obligations under paragraph 75.6 during the EMA Period.**

75.7 By no later than the Start Date, the Franchisee shall enable passengers to make claims online via the Franchisee's website and mobile application for any delay compensation offered by the Franchisee in relation to Season Ticket Fares and Advance Purchase Train-specific Fares ("**Delay Repay Compensation**") and shall incur a minimum expenditure of [REDACTED⁵⁴⁴] per annum to promote such Delay Repay Compensation schemes.

75.8 The Franchisee shall allow passengers to select that any Delay Repay Compensation is repaid by cash, e-voucher or bank transfer to any registered bank account or credit card.

75.9 ⁵⁴⁵ Trainline ITSO Leisure Technology

75.9.1 The Franchisee will use all reasonable endeavours to by no later than 30 April 2018 (unless otherwise agreed between the parties), work with the ITSO Leisure TOCs in order to submit a specification for the Trainline ITSO Leisure Technology to the Secretary of State for the Secretary of State's approval. The specification shall include as a minimum:

- a) the base functionality for the Trainline ITSO Leisure Technology; and**

⁵³⁹ 11 October 2018 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁴⁰ 20 January 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁴¹ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁴² 24 June 2020 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁴³ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁴⁴ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵⁴⁵ 30 November 2017 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

- b) the integration and portalisation of the base functionality in (a) above into the Franchisee's website.**

The Franchisee may submit draft specifications to the Secretary of State, on which the Secretary of State may provide comments and input.

75.9.1A Where, in development of the specification at paragraph 75.9.1 above, the Franchisee, acting reasonably, determines that the combined Share of the Development Costs and the Integration and Portalisation Costs for the Trainline ITSO Leisure Technology are likely to exceed the Trainline ITSO Leisure Total Amount, the Franchisee shall immediately notify the Secretary of State.

75.9.1B Following receipt of the notification in 75.9.1A the Secretary of State may request that the Franchisee does not proceed with implementing the Trainline ITSO Leisure Technology.

75.9.1C Where, pursuant to 75.9.1B, the Franchisee is requested not to proceed:

a) the obligations set out at paragraphs 75.9.2 – 75.9.7 below shall not apply; and

b) where the Trainline ITSO Leisure Total Amount has been paid to the Franchisee already, the Remaining Trainline ITSO Leisure Total Amount, including interest payable at the Interest Rate, shall be repaid to the Secretary of State within 30 days of the date of the request.

75.9.2 Subject to paragraph 75.9.1A above, where:

a) the Secretary of State does not approve the specification submitted pursuant to paragraph 75.9.1 above; and/or

b) agreement on suitable revisions to the specification cannot be reached between parties within a reasonable amount of time (being no longer than 40 days),

the Secretary of State shall (acting reasonably) determine the form of the specification. The approved or determined specification shall be known as the "Trainline ITSO Leisure Specification".

75.9.3 By no later than 31 December 2018, the Franchisee shall work with the ITSO Leisure TOCs and the WebTIS supplier to:

a) deliver the outputs set out in the Trainline ITSO Leisure Specification; and

b) go live with the Trainline ITSO Leisure Technology on the Franchisee's website such that it is able to be accessed and used by Franchise passengers.

75.9.4 Subject to paragraphs 75.9.5 and 75.9.6 below, and in consideration of the performance by the Franchisee of its obligations in paragraphs 75.9.1, 75.9.2 and 75.9.3 above (together the "Trainline ITSO Leisure Obligation"), the Secretary of State shall pay the Franchisee the Share of

the Development Costs, plus £200,000 (nominal)(the "Trainline ITSO Leisure Total Amount") on the P1809 Payment Date.

75.9.5 If at any time following the P1809 Payment Date the number of ITSO Leisure TOCs increases, then the Franchisee shall repay the difference between the Share of the Development Costs at the time of the P1809 Payment Date and the revised Share of the Development Costs to the Secretary of State within thirty (30) days of receiving notice from the Secretary of State.

75.9.6 The Trainline ITSO Leisure Total Amount comprises monies to be used for the purpose of the Development Costs and monies to be used for the Integration and Portalisation Costs. Notwithstanding that the Franchisee shall use all reasonable endeavours to minimise the cost of delivering the Trainline ITSO Leisure Obligation, the Franchisee may spend:

a) up to the Share of the Development Costs ; and

b) up to [REDACTED⁵⁴⁶] in respect of the Integration and Portalisation Costs, only.

75.9.7 Within one Reporting Period of the Secretary of State being satisfied that the completion of the Trainline ITSO Leisure Obligation has been delivered by the Franchisee:

a) the Franchisee shall provide to the Secretary of State evidence and a breakdown of its total expenditure in delivering the Trainline ITSO Leisure Obligation;

b) the Secretary of State shall consider the evidence submitted by the Franchisee pursuant to paragraph 75.9.7 (a) above to consider whether the Share of the Development Costs and Integration and Portalisation Costs incurred by the Franchisee have been reasonably and properly incurred and in keeping with the ratios of expenditure at paragraph 75.9.4;

c) the Secretary of State shall notify the Franchisee of his conclusions within 3 months of receipt of the evidence from the Franchisee in paragraph 75.9.7 (a) above;

where, in the opinion of the Secretary of State, the Share of the Development Costs and the Integration and Portalisation Costs, which have been reasonably and properly incurred by the Franchisee, are less than the Trainline ITSO Leisure Total Amount then the Franchisee shall repay the difference to the Secretary of State within thirty (30) days of receiving notice from the Secretary of State.

⁵⁴⁶ **30 January 2018 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

76. Fares**Advance Purchase**

76.1 **[DELETED⁵⁴⁷]**.

76.2 By no later than 31 January 2017, the Franchisee shall:

- (a) reduce the price of anytime Return Fares and anytime Single Fares for Passenger Services between Tottenham Hale Station or London Liverpool Street Station and Stansted Airport Station by a minimum of **[REDACTED⁵⁴⁸]** from the price of such Fares at the Start Date ("**Reduced Stansted Fare**"); and
- (b) introduce a new "group" product for passengers travelling in groups of two (2), three (3) or four (4) persons that will cost less in aggregate than purchasing the same number of the same individual Reduced Stansted Fares.

76.3 By no later than 31 January 2017, the Franchisee shall permit passengers who have purchased an Advance Purchase Train-specific Fare departing from either Norwich Station or Southend Airport Station (as applicable) which they are unable to use as a consequence of travelling on a delayed flight arriving at Norwich airport or Southend airport (as applicable) to travel (upon providing reasonable evidence of such delay) on a later Passenger Service between the same destinations specified in their Advance Purchase Train-specific Fare.

Off-Peak Restriction

76.4 By no later than 31 January 2017 the Franchisee shall ensure that the times that Off-Peak Fares can be used for travel on Passenger Services are consistent across the Passenger Services and shall ensure that Off-Peak Fares may be used for a journey departing at any time between 09:30 and 09:59 (inclusive) on a Weekday and at any time on a Saturday or a Sunday.

Club 50

76.5 ⁵⁴⁹**By no later than 31 October 2017, the Franchisee shall make available to passengers at Stations and via the website delivered in accordance with paragraph 75.1 and the Ticket Application Function delivered in accordance with paragraph 75.2 the "Club 50" railcard for passengers aged 50 and above, and shall include the following characteristics:**

- (a) **capable of fulfilment on ITSO Certified Smartmedia;**

⁵⁴⁷ Date of deletion 30/05/2017 – Agreed by the Secretary of State and Franchisee

⁵⁴⁸ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵⁴⁹ 31 October 2017 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) **capable of fulfilment on Electronic Barcode Tickets;**
- (c) **offer holders a minimum discount of 10% on the price of Off-Peak Fares and Advance Purchase Train specific Fares purchased online in January and February and a minimum discount of 10% on the price of Off-Peak Fares and Advance Purchase Train specific Fares purchased online at all other times of the year.**

Flex Carnet

- 76.6 By no later than the next Fares Setting Round occurring after 1 May 2018^{xix}, the Franchisee shall make available to passengers for the remainder of the Franchise Period Anytime Flex Carnet and the -Off Peak Flex Carnet.
- 76.7 ^{xx}The Franchisee shall ensure that the Anytime Flex Carnet and the Off Peak Flex Carnet is capable of fulfilment on ITSO Certified Smartmedia at Stations by no later than 1 May 2018 and on the Franchisee's Ticket Application Function by no later than 30 June 2019.
- 76.8 The Franchisee shall:
- (a) ⁵⁵⁰**ensure that the Off Peak Flex Carnet may be used for journeys departing at any time between 09:00 and 09:59 (inclusive) in the Morning Peak and also valid on any train booked to arrive in Liverpool Street at or after 10:00 and for journeys originating at any time on a Friday for a period of 12 months following the introduction of the Off-Peak Flex Carnet fare; and**
 - (b) following completion of the 12 month period referred to in paragraph 76.8(a) implement the obligation set out in paragraph 76.8(a) for the remainder of the Franchise Period unless the Franchisee determines in its reasonable opinion, that, in considering the outcome of the trial undertaken pursuant to in paragraph 76.8(a), it is not economically feasible to do so.
- 76.9 The Franchisee shall prepare and submit a report to the Secretary of State in advance of each Franchise Performance Meeting (in such format the Secretary of State may reasonably require) setting out the level of take-up and usage of the Anytime Flex Carnet and the Off Peak Flex Carnet by users of the Passenger Services, for each completed Reporting Period during the Franchise Period and the Franchisee shall present the report at the Franchise Performance Meeting.

77. Revenue Protection

- 77.1 From the Start Date, the Franchisee shall operate a penalty fares scheme (such scheme to be subject to the approval of by the Secretary of State) which covers the same Passenger Services, Stations and Franchisee Access Stations as the penalty fares scheme operated by the Train Operator under the Previous Franchise Agreement.

⁵⁵⁰ 19 July 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

- 77.2 By no later than 31 January 2017, the Franchisee shall configure on-train communications to enable audio visual systems to provide improved revenue protection messaging on Passenger Services.
- 77.3 By no later than 30 April 2017, the Franchisee shall fit posters on all trains operating Passenger Services, setting out its revenue protection policy.
- 77.4 By no later than 30 April 2017, the Franchisee shall make appropriate ticket retailing facilities available at every Station and Franchisee Access Station on the Great Eastern Main Line Routes and apply to the Secretary of State to extend its existing penalty fares scheme to cover such stations and such Routes.
- 77.5 By no later than:
- (a) 30 April 2017 at Stations and Franchisee Access Station on the Great Eastern Main Line Routes; and
 - (b) 30 April 2018 at all other Stations and Franchisee Access Stations not covered by paragraph 77.5(a) above,

the Franchise shall ensure that new signage promoting the 'buy before you board' slogan are installed at those Stations and Franchisee Access Stations where there are retailing facilities, supported by an extensive, high impact, customer communication campaign to inform customers of their responsibility to buy a valid ticket for their journey on the Passenger Services.

- 77.6 ⁵⁵¹**Subject to the Franchisee obtaining any required consents, by no later than 31 December 2021, the Franchisee shall install and operate new ITSO Certified Smartmedia compliant automatic and staffed ticket gatelines at the following Stations:**

- (a) **Bury St Edmunds; and**
- (b) **Witham,**

and the Franchisee shall ensure that these ticket gatelines are staffed and operational for the remainder of the Franchise Period.

- 77.6A ⁵⁵²**Subject to paragraph 77.6B, and subject to the Franchisee obtaining any required consents, the Franchisee shall use all reasonable endeavours to trial Remote Ticket Gateline monitoring at an entrance at the following two (2) Stations within three (3) months of the expiry of the EMA Period:**

- (a) **Chelmsford; and**
- (b) **Cambridge North.**

⁵⁵¹ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁵² 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

77.6B ⁵⁵³ **Unless otherwise instructed by the Secretary of State, the Franchisee shall not incur any costs or expenditure in respect of its obligations under paragraph 77.6A during the EMA Period.**

77.7 By no later than 31 January 2018, the Franchisee shall ensure that all existing gatelines at Stations are ITSO Certified Smartmedia compliant.

Revenue Management System

77.8 From the Start Date, the Franchisee shall replace the JDA Software revenue management system used by the Train Operator under the Previous Franchisee Agreement with a revenue management system supplied by Rail Solutions.

78. Passenger Charter

Notwithstanding the provisions of paragraph 4.6 of Schedule 1.4 (Passenger Facing Obligations), by no later than the Start Date, the Franchisee shall deliver a 'price promise' guarantee to WebTIS customers, (or any customer using a product that replaces WebTIS) and shall ensure that customers will always find the cheapest Fares for the Passenger Services purchased via any online or mobile platform provided by the Franchisee including the Ticket Application Function, such guarantee is also be set out in the Passenger Charter.

79. SMART

79.1 By no later than 30 April 2018 the Franchisee shall ensure that all SEFT Station ticket offices are ITSO Certified Smartmedia enabled in order to support initial smart Seasons migration and provide smartcard issuing capability.

79.2 By no later than 30 April 2019, the Franchisee shall:

- (a) implement a process to ensure that all customers on the Franchisee's Seasons Database are sent an ITSO Certified Smartmedia smartcard before the expiry of their existing monthly or longer Season Ticket Fare;
- (b) load all Season Ticket Fares purchased after 30 April 2019 on to ITSO Certified Smartmedia smartcards for those Routes that are ITSO Certified Smartmedia enabled;
- (c) permit customers to load their Season Ticket Fare on to ITSO Certified Smartmedia smartcards at Station ticket offices;
- (d) undertake activities promoting the use of ITSO Certified Smartmedia smartcard at all Stations and Franchisee Access Stations located on the Great Eastern Mainline Route;
- (e) co-operate with the relevant local authorities and use all reasonable endeavours to migrate the Local Concessionary Fare Schemes set out in

⁵⁵³ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

paragraphs 1.1 (b) to (f) of the Appendix to Schedule 2.5 (Transport, Travel and Other Schemes) onto ITSO Certified Smartmedia smartcards.

- 79.3A ⁵⁵⁴**The Franchisee shall make available to customers from 1 April 2017 Electronic Barcode Ticket Advance Purchase Train-Specific Fare products at a lower price than non-Electronic Barcode Ticket Advance Purchase Train-Specific Fare Products.**
- 79.3B ⁵⁵⁵**By no later than 31 December 2017 the Franchisee shall complete and provide to the Secretary of State a feasibility study to identify how it will provide passenger with ITSO Certified Smartmedia Advance Purchase Train-Specific Fare products at a lower price than non-ITSO Certified Smart Media Advance Purchase Train-Specific Fare products.**
- 79.4 The Franchisee shall use all reasonable endeavours to work with retail partners to enable customers to purchase pre-loaded disposable ITSO Certified Smartmedia smartcards from the Franchisee's retail partners by no later than 31 January 2018.
- 79.5 ⁵⁵⁶**By no later than 31 December 2019, the Franchisee shall develop remote ticket downloading which allows the download of ITSO Certified Smartmedia tickets to a mobile device to enable tickets to be obtained by customers at home and at work**
- 79.6 The Franchisee shall prepare and submit a report to the Secretary of State in advance of each Franchise Performance Meeting (in such format as the Secretary of State may reasonably require) setting out:
- (a) the level of take-up and usage of smart ticketing schemes and ABT by users of the Passenger Services, for each completed Reporting Period during the Franchise Period;
 - (b) the steps that the Franchisee is taking to increase take-up of smart ticketing schemes and ABT schemes operated by the Franchisee and increase usage of smart ticketing schemes by users of the Passenger Services,
- and the Franchisee shall present the report at the Franchise Performance Meeting.
- 79.7 By 30 April 2017 the Franchisee shall complete and provide to the Secretary of State a feasibility study to identify how it can provide passengers with a flexible and convenient solution when travelling into and around London from Stations and Franchisee Access Stations with significant Flows into London which are outside the Zones. Such solution should utilise smart ticketing technologies to deliver a smart ticketing solution that supports National Rail Fares.
- 79.8 The provisions of this paragraph 79 are without prejudice to the requirements of Schedule 5.9 (Smart Ticketing).

⁵⁵⁴ Date of contract change 31/03/2017 – Agreed by the Secretary of State and Franchisee.

⁵⁵⁵ Date of contract change 31/03/2017 – Agreed by the Secretary of State and Franchisee.

⁵⁵⁶ 11 October 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

80. Near Field Communication

- 80.1 By no later than 30 April 2019, the Franchisee shall launch a six (6) month pilot utilising near field communication which is a short range wireless connectivity standard (Ecma 340, ISO/IEC 18092) ("**NFC**") to enable customers to travel on specified Passenger Services by using their smart phone to fulfil the role of an ITSO Certified Smartmedia smartcard ("**NFC Pilot**").
- 80.2 Following completion of the NFC Pilot the Franchisee shall roll out a NFC ticketing option on those Routes on which the NFC Pilot was trialled for the remainder of the Franchise Period unless the Franchisee determines in its reasonable opinion, that, in considering the outcome of the NFC Pilot, it is not economically feasible to do so.

81. Account Based Ticketing

- 81.1 By no later than 30 January 2019, the Franchisee shall use its best endeavours to implement cloud based post-pay ticketing on Passenger Services between London Stations and Southend, Norwich or Cambridge which can be used by customers who register to use such scheme to purchase tickets on account using the cloud based ticketing scheme and such tickets are then paid for on a monthly basis with the account holder receiving an itemised bill and being charged the best value price available ("**ABT Pilot**").
- 81.2 By no later than 30 April 2019, the Franchisee shall ensure that ABT shall permit account holders to purchase tickets which can be fulfilled on any contactless device which is linked to a payment account, including ITSO Certified Smartmedia, and it shall also support direct debit and credit and debit card payments.
- 81.3 Following completion of the ABT Pilot the Franchisee shall within three (3) months of the date of completion of the ABT Pilot implement account based ticketing on those Routes on which the ABT Pilot was trialled for the remainder of the Franchise Period unless the Franchisee determines in its reasonable opinion, that, in considering the outcome of the ABT Pilot, it is not economically feasible to do so.
- 81.4 By no later than 1 January 2021, the Franchisee shall use all reasonable endeavours to develop an ITSO Certified Smartmedia account-based ticketing product, similar to an ABT, for journeys on Passenger Services which involve other Train Operators and Transport for London.

82. Branding

- 82.1 The Franchisee will:
- (a) within five (5) months of the Start Date, re-brand all train liveries to a standard approved by the Secretary of State (such approval not to be unreasonably withheld or delayed);
 - (b) by no later than 31 December 2018, remove all "Abellio Greater Anglia" branded signage used by the Train Operator under the Previous Franchise Agreement; and

- (c) by no later than 31 March 2019, deploy the new 'Greater Anglia' branding and signage across the Franchise, as approved by the Secretary of State (such approval not to be unreasonably withheld).
- 82.2 The Franchisee shall ensure that the new 'Greater Anglia' branding referred to in paragraph 82.1(a) and 82.1(c) is capable of being transferred to a Successor Operator and the Franchisee shall grant an irrevocable licence of the new branding free of charge to any Successor Operator.
- 82.3 The Franchisee shall incur a minimum expenditures of **[REDACTED⁵⁵⁷]** in undertaking the obligations set out in this paragraph 82.

83. Marketing

- 83.1 By no later than the Start Date, the Franchisee shall:
- (a) develop a new website and mobile application with the specific objective of attracting new users through personalised content, selling tickets and retaining existing customers by offering relevant customer information, including but not limited to service updates and offers; and
 - (b) enhance the existing 'single customer view' CRM System using **"Adobe Campaign"** marketing tool.
- 83.2 By no later than 30 June 2018, the Franchisee shall build a new CRM System to enhance its customer relationship management capability and to pull together all of the CRM Data it possesses and to automate its marketing communications and further improve the customer experience.
- 83.3 Each Franchisee Year, the Franchisee shall submit an updated marketing plan to the Secretary of State, as part of the Annual Business Plan that it submits each Franchisee Year pursuant to paragraph 10.2 of Schedule 11.2 (Management Information), with the marketing plan to include measuring strategic, tactical and digital marketing performance.
- 83.4 Twice in each Franchise Year (at six (6) monthly intervals), the Franchisee shall submit to the Secretary of State written details of the partnership research projects it is undertaking with key stakeholders and partners to help inform business decisions.
- 83.5 With effect from the Start Date the Franchisee shall implement the 'Braintrain' campaign modelling tool developed by NS Groep N.V. in the Netherlands (or such other equivalent modelling tool and supplier of the same) to undertake an analysis of its marketing campaigns and to identify the return on investment obtained and the Franchisee shall also carry out specific econometric modelling analysis on its "Greater Anglia" and "Stansted Express" brands. The Franchisee shall carry out a review each Franchisee Year of its marketing campaigns using Braintrain. By no later than the end of the first Franchise Year and then on each anniversary of that date the Franchisee shall undertake an annual independent

⁵⁵⁷ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

media buying audit to benchmark its buying against best practice methods, in order to identify any improvements. The Franchisee shall repeat this exercise each Franchisee Year thereafter during the Franchise Period. By no later than the end of the first Franchise Year, the Franchisee shall develop and implement a joint strategy with "Visit East Anglia" and local authorities to enable the more active promotion of rail access to key visitor attractions in the region.

- 83.6 By no later than 30 April 2017, the Franchisee shall launch a dedicated web portal for marketing Southend Airport Station.
- 83.7 ^{558 559} **From the 30 November 2016 until the end of the Franchise Period, the Franchisee will introduce an online customer magazine to be available on the Franchisee's website for Passengers, which will feature 'latest news', interviews, destinations and offers. New content for such magazine shall be uploaded as frequently as appropriate from time to time and in any event in order to provide passengers with current information and guidance for travelling which reflects relevant COVID-19 Guidance and Regulations from time to time.**
- 83.8 From the Start Date until the end of the Franchise Period, the Franchisee shall undertake social media monitoring through the 'Conversocial' tool (or such other software used by the Franchisee for this purpose).
- 83.9 By no later than 31 December 2018, the Franchisee shall implement new wayfinding and signage promoting services at Stations with direct access to Stansted Airport Station.

84. Community Rail Partnerships

- 84.1 ⁵⁶⁰ **During Franchise Period, the Franchisee shall promote Community Rail Partnerships by:**
- (a) **subject to paragraph 84.1A, providing personalised travel planning; developing station travel plans and incurring a minimum expenditure [REDACTED⁵⁶¹] during the Franchise Period in making funding available to the Community Rail Partnerships for them to develop their own station travel plans evidence base;**
 - (b) **investing [REDACTED⁵⁶²] every Franchisee Year to create or update a standardised marketing toolkit for the Community Rail Partnerships or on marketing or PR initiatives on Community Rail**

⁵⁵⁸ 11 January 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁵⁹ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁶⁰ 27 February 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁶¹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵⁶² **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Partnerships routes to support Community Rail Partnerships activity and route development;

- (c) **providing the Community Rail Partnerships with access to printing, easy to use website templates and website booking widgets; arranging and leading an annual conference for Community Rail Partnerships on best marketing practice;**
- (d) ⁵⁶³**promoting rail use to local communities and for tourism through themed rail days and train services and the recycled bicycle scheme 'Journeys to Jobs' initiative (for which [REDACTED⁵⁶⁴] is allocated to fund the recycled bicycle scheme); and**
- (e) **using the Franchisee's business growth programme to help all Community Rail Partnerships develop marketing and business plans.**

84.1A ⁵⁶⁵**During the EMA Period, unless otherwise instructed by the Secretary of State, the Franchisee shall not incur any costs or expenditure in respect of its obligations under paragraph 84.1(a).**

85. Collaborative relationship with the DfT

85.1 ^{xxi xxii 566}**By no later than 31 December 2017 the Franchisee shall achieve BS11000 certification and maintain such certification until 1 November 2021.**

85.2 ⁵⁶⁷**By no later than 31 December 2022, the Franchisee shall achieve ISO56002 – ISO Innovation Management Systems certification and shall subsequently maintain such certification until the end of the Franchise Period.**

86. Lean Six Sigma

86.1 By no later than 31 January 2017, the Franchisee shall form a partnership with Tefen Management Consulting (or other such equivalent third party supplier

⁵⁶³ 27 November 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁶⁴ **19 December 2019 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵⁶⁵ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁶⁶ 17 September 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee

⁵⁶⁷ 17 September 2020 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

provider as appropriate) in order to implement Lean Six Sigma (or other such equivalent or improved model) and increase efficiency within the Franchise.

86.2 By no later than 16 October 2018, the Franchisee shall have incurred a minimum expenditure of [REDACTED⁵⁶⁸] in undertaking a rolling programme of Lean Reviews (with a minimum of two (2) Lean Reviews to be undertaken by no later than 16 October 2017 and a minimum of two (2) further Lean Reviews to be undertaken after 16 October 2017 but by no later than 16 October 2018) with a focus on the following areas as a minimum:

- (a) operational performance in cross-functional and cross-organisational teams;
- (b) provision of customer information during disruption;
- (c) customer satisfaction opportunities to be explored through the introduction of multi-skilled staff;
- (d) rolling stock cleaning regimes; and
- (e) processes employed to achieve Station Stewardship Measure scores.

86.3 By no later than 31 April 2017 the Franchisee shall implement:

- (a) Green Belt Training and accreditation for Efficiency Champions;
- (b) Yellow Belt Training and accreditation for all managers; and
- (c) Black Belt Training and accreditation for the Franchise Employee appointed to the role of "Commercial Director",

(or such other equivalent or improved training and accreditation).

87. Mini bid

87.1 At any time between 1 January 2019 and the 31 December 2020 the Franchisee shall arrange, resource and execute a "mini-bid" in order to review the performance of the Franchisee to date with the aim of identifying new efficiencies, growth opportunities and new markets to generate income and add value to the Franchise as well as to ensure that the Franchisee continues to obtain maximum value for money from its suppliers ("**Mini-Bid**") and in doing so the Franchisee shall incur a minimum expenditure of [REDACTED⁵⁶⁹].

87.2 By no later than three (3) months prior to undertaking the Mini-Bid the Franchisee shall produce and provide to the Secretary of State for approval

⁵⁶⁸ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵⁶⁹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

(not to be unreasonably withheld or delayed) the terms of reference on which the Franchisee intends to undertake the Mini-Bid.

87.3 By no later than six (6) months following the completion of the Mini-Bid the Franchisee shall provide to the Secretary of State a report stating the results of the Mini-Bid including as a minimum the details of any cost saving measures identified and any means of increasing efficiency ("**Mini-Bid Report**").

87.4 As soon as reasonably practicable following completion of the Mini-Bid the Franchisee shall implement such cost saving measures and means of increasing efficiency as are identified in the Mini-Bid Report.

88. Leadership and Management Programme

88.1 By no later than 31 April 2017 the Franchisee shall develop a leadership and management training course for all Senior Managers of the Franchisee ("**LAMP**").

88.2 From 30 April 2017 until the end of the Franchise Period the Franchisee shall implement and deliver LAMP to all Senior Managers.

88.3 By no later than the date that falls one (1) year after the Start Date the Franchisee shall incur a minimum expenditure of [REDACTED⁵⁷⁰] in respect of developing and implementing LAMP and shall incur an additional minimum expenditure of [REDACTED⁵⁷¹] by the end of the Franchise Period in respect of running LAMP.

89. Learning and Development

89.1 By the end of the Franchise Period the Franchisee shall provide evidence to the reasonable satisfaction of the Secretary of State that the Franchisee has incurred a minimum expenditure of [REDACTED⁵⁷²] in respect of learning and development activities carried out throughout the Franchise Period (such sum to include expenditure incurred by the Franchisee in delivering any learning

⁵⁷⁰ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵⁷¹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵⁷² **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

and development obligations pursuant to this Schedule 6.2, unless otherwise specified).

89.2 Within one (1) month of the end of each Franchisee Year the Franchisee shall produce and provide to the Secretary of State a report detailing:

- (a) the expenditure incurred in respect of learning and development activities within such Franchisee Year; and
- (b) the details of the learning and development activities in respect of which such expenditure was incurred.

90. Trauma support training

90.1 The Franchisee shall partner with the Samaritans (or such other third party supplier as appropriate) to arrange the delivery of trauma support training to be made available to Franchise Employees in each Franchisee Year (except the first Franchisee Year) until the end of the Franchise Period and the Franchisee shall incur a minimum expenditure of **[REDACTED⁵⁷³]** in each Franchisee Year in doing so.

91. Supply Chain Management

91.1 Expansion of training to other parties

The Franchisee shall liaise with suppliers and procurement managers to procure the attendance of the employees of such suppliers and procurement managers at all relevant learning and development activities facilitated by the Franchisee and shall incur a minimum expenditure of **[REDACTED⁵⁷⁴]** from the Start Date until the end of the Franchise Period in doing so.

92. Investors in People Accreditation

92.1 The Franchisee shall:

- (a) maintain from the Start Date until the end of the Franchise Period all Investors in People Accreditations where such accreditations have already been awarded at the Start Date; and
- (b) use all reasonable endeavours to achieve Investors in People Accreditation across all possible remaining functions by the end of the Franchise Period.

⁵⁷³ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵⁷⁴ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

93. Healthcare

- 93.1 By no later than 30 April 2017 the Franchisee shall establish, and ensure the operation of three on-site health centres, one health centre to be established in each of the Northern Region, the Eastern Region and the Western Region respectively for the use of Franchise Employees.
- 93.2 By no later than 31 July 2017 the Franchisee shall launch, and ensure the operation of, an online questionnaire and health portal that is accessible by all Franchise Employees.
- 93.3 Subject to paragraph 93.3A, by no later than the end of the first Franchisee Year the Franchisee shall ensure that all Franchise Employees are offered a biennial health assessment and the Franchisee shall provide evidence of the same to the reasonable satisfaction of the Secretary of the State.
- 93.3A During the COVID-19 Restriction Period, the Franchisee shall (taking into account the COVID-19 Guidance and Regulation) use all reasonable endeavours to comply with its obligations under paragraph 93.3.
- 93.4 The Franchisee shall provide evidence to the reasonable satisfaction of the Secretary of State that each Franchise Employee is offered an annual flu jab.
- 93.5 By no later than 17 April 2017 the Franchisee shall sign up to the Department of Health's Public Health Responsibility Deal and become a national Responsibility Deal partner.

94. Graduate Engagement**94.1 ⁵⁷⁵Early Career Programme**

- (a) **By no later than 30 November 2017 the Franchisee shall implement the early career programme, which shall as a minimum incorporate the Abellio Scholarship, the Train Driver Apprenticeship Programme, Supported Internships and the East Anglia Graduate Work Experience Programme ("ECP").**
- (b) **By no later than 30 November 2017 the Franchisee shall provide evidence to the reasonable satisfaction of the Secretary of State of the creation and implementation of a train driver apprenticeship programme with Education & Skills Partnership or an equivalent third party provider ("Train Driver Apprenticeship Programme").**
- (c) **By no later than 30 November 2018 and by no later than 30 November in each year thereafter until the end of the Franchise Period the Franchisee shall notify the Secretary of State of the number of graduates enrolling in the Train Driver Apprenticeship Programme.**

⁵⁷⁵ 30 November 2017 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

- (d) **The Franchisee shall use reasonable endeavours to seek accreditation from the National Skills Academy (or equivalent third party provider) in respect of the Train Driver Apprenticeship Programme.**
- (e) ⁵⁷⁶**Subject to paragraphs 94.1(e)A and 94.1(e)B, within one month of the end of each Franchisee Year the Franchisee shall provide evidence to the reasonable satisfaction of the Secretary of State of at least five (5) work experience placements being offered to graduates of any universities that fall within the geographical area of the Routes ("East Anglia Graduate Work Experience Programme"), in addition to the placements offered to graduates in each Franchisee Year via any other graduate schemes offered by the Franchisee.**
- A. During the COVID-19 Restriction Period, the Franchisee shall (taking into account the COVID-19 Guidance and Regulation) use all reasonable endeavours to comply with its obligations under paragraph 94.1(e).**
- B. The Parties acknowledge and agree that:**
- (i) **if the EMA Period does not end on a 31 March then, in relation to the period from the end of the EMA Period until the next 31 March, the Secretary of State may reasonably determine the minimum number of such work experience placements; and**
- (ii) **for the Franchisee Year following the EMA Period (or, if applicable following the period to 31 March referred to in paragraph (i)) the Secretary of State may reasonably determine the minimum number of such work experience placements.**
- (f) ⁵⁷⁷**Subject to paragraph 94.1(f)A and 94.1(f)B, within one month of the end of each Franchisee Year the Franchisee shall provide evidence to the reasonable satisfaction of the Secretary of State of at least five (5) internships being offered to Disabled Persons in such Franchisee Year which provide extra support to such Disabled Persons ("Supported Internships").**
- A. ⁵⁷⁸During the COVID-19 Restriction Period, the Franchisee shall (taking into account the COVID-19 Guidance and Regulation) use all reasonable endeavours to comply with its obligations under paragraph 94.1(f).**

⁵⁷⁶ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁷⁷ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁷⁸ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

B. ⁵⁷⁹The Parties acknowledge and agree that:

- (i) **if the EMA Period does not end on a 31 March then, in relation to the period from the end of the EMA Period until the next 31 March, the Secretary of State may reasonably determine the minimum number of such supported internships; and**
 - (ii) **for the Franchisee Year following the EMA Period (or, if applicable following the period to 31 March referred to in paragraph (i)) the Secretary of State may reasonably determine the minimum number of such supported internships.**
- (g) **For the purpose of paragraph 7 of Part 2 of this Schedule 6.2, the Specimen Scheme Output for this paragraph 94.1 is to offer work experience opportunities in the rail industry to graduates and young people located or working in the geographical area of the Routes.**

94.2 Abellio Scholarship

- (a) By the end of the third Franchisee Year the Franchisee shall provide evidence to the reasonable satisfaction of the Secretary of State of the allocation of a minimum of thirty apprenticeship positions arising through the Abellio Scholarship.

94.3 ⁵⁸⁰**Bootcamp Award**

- (a) ⁵⁸¹**Subject to paragraphs 94.3A and 94.3B, from the Start Date until the end of the Franchise Period the Franchisee shall recruit at least 20 new Franchise Employees to the role of trainee via the Bootcamp Award in each Franchisee Year ("BCA Trainees") and shall provide evidence to the reasonable satisfaction of the Secretary of State of doing so.**
- (b) **The Franchisee shall offer all BCA Trainees the opportunity to undertake various modules leading to a level 2 Diploma in Customer Services accreditation and shall provide evidence to the reasonable satisfaction of the Secretary of State of the number of BCA Trainees that achieve such award in each Franchisee Year.**
- (c) **The Franchisee shall offer all BCA Trainees the opportunity to undertake various modules leading to a Level 3 Diploma in Rail Supervisory Services on the successful completion of the Level 2 Diploma in Award in Customer Services and attainment of a permanent job position with the Franchisee. The Franchisee shall provide evidence to the reasonable satisfaction of the Secretary of**

⁵⁷⁹ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁸⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁸¹ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

State of the number of BCA Trainees that achieve such award in each Franchisee Year.

- (d) **For the purpose of paragraph 7 of Part 2 of this Schedule 6.2, the Specimen Output for this paragraph 94.3 is to offer work trainee positions and accredited training in the rail industry to persons located or working in the geographical area of the Routes.**

94.3A ⁵⁸²**For the duration of the COVID-19 Restriction Period, the Franchisee shall (taking into account the COVID-19 Guidance and Regulation) use all reasonable endeavours to comply with its obligations under paragraph 94.3.**

94.3B ⁵⁸³**The Parties acknowledge and agree that:**

- (a) **the Franchisee shall recruit seven (7) new Franchisee Employees to the role of trainee via the Bootcamp Award during the Franchisee Year commencing on 1 April 2020;**
- (b) **if the EMA Period does not end on a 31 March then, in relation to the period from the end of the EMA Period until the next 31 March, the Secretary of State may reasonably determine the minimum number of such BCA Trainees; and**
- (c) **for the Franchisee Year following the EMA Period (or, if applicable following the period to 31 March referred to in paragraph (b)) the Secretary of State may reasonably determine the minimum number of such BCA Trainees.**

95. Adult Apprenticeships

95.1 ⁵⁸⁴ ⁵⁸⁵**From 1 January 2017 until until 31 December 2019 the Franchisee shall allocate ten (10) places per calendar year to Franchise Employees on each of the:**

- (a) **Level 2 Diploma in Team Leading or Level 3 diploma in Team Leading; and**
- (b) **Level 3 Diploma in Rail Supervisory**

each an ("**Adult Apprenticeship**").

95.2 ⁵⁸⁶**Subject to paragraph 95.3, from 1 January 2020 until the end of the Franchise Period the Franchisee shall offer the opportunity for fifteen**

⁵⁸² 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁸³ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁸⁴ 21 December 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁸⁵ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁸⁶ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

(15) Franchise Employees to enrol on one of the apprenticeships listed below in each calendar year:

- (a) Team Leader/ Supervisor Standard Level 3;**
- (b) Passenger Transport Onboard and Station Team Member Level 2;**
- (c) Network Operations Level 2;**
- (d) Passenger Transport Operations Manager Level 4;**
- (e) Operations/ Departmental Manager Level 5; or**
- (f) Associate Project Management Level 4.**

95.3 ⁵⁸⁷The parties acknowledge and agree that:

- (a) if the EMA Period does not end on a 31 December then, in relation to the period from the end of the EMA Period until the next 31 December, the Secretary of State may reasonably determine the minimum number of apprenticeships to be offered by the Franchisee in respect of its obligations under paragraph 95.2; and**
- (b) for the calendar year following the EMA Period (or, if applicable following the period to 31 December referred to in paragraph (a)) the Secretary of State may reasonably determine the minimum number of apprenticeships to be offered by the Franchisee in respect of its obligations under paragraph 95.2.**

INNOVATION

96. Monitoring Innovation

- 96.1 From the Start Date until the end of the Franchise Period, the Franchisee shall monitor and measure activities and outcomes contributing to or arising from innovation directly relating to the Franchise.
- 96.2 By no later than 1 June 2017 the Franchisee shall develop key performance indicators against which activities and outcomes contributing to or arising from innovation in connection with the Franchise will be measured.
- 96.3 ^{588 589}**From 16 October 2017 to 16 October 2019, the Franchisee shall, subject to paragraph 115, use the IMMM (or other such equivalent or improved method) as one of the methods by which it shall measure activities and outcomes contributing to or arising from innovation pursuant to paragraph 96.1. From 16 October 2020 until the end of the Franchise Period, the Franchisee shall use an assessment by IdeasUK**

⁵⁸⁷ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁸⁸ 17 September 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁸⁹ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

to monitor and measure activities and outcomes contributing to or arising from innovation pursuant to paragraph 96.1.

96.4 ⁵⁹⁰**From 16 October 2017 and on an annual basis thereafter, the Franchisee shall, subject to paragraph 115, produce and provide to the Secretary of State a report sharing the results of such monitoring activities carried out pursuant to paragraphs 96.1 and 96.2.**

96.5 ⁵⁹¹**The Franchisee shall use all reasonable endeavours to achieve an overall Platinum grade in accordance with IdeasUK guidance by 1 January 2024.**

97. The Spark

97.1 By no later than 30 June 2017, the Franchisee shall launch the Spark and ensure it is accessible online via a web address to, as a minimum, Franchise Employees, Stakeholders and members of the public and in doing so shall incur a minimum expenditure of **[REDACTED⁵⁹²]**.

97.2 The Franchisee shall ensure that as a minimum the Spark has the following capabilities:

- (a) designated six (6) online communities to cover people, customers, community, industry partners and supply chain, each community to contain a separate forum for each of the RTS Themes ("**Spark Communities**");
- (b) private online discussion boards in respect of each Spark Community; and
- (c) notification updates in respect of proposals or topics in respect of each Spark Community.

97.3 ⁵⁹³**Subject to paragraph 97.3A, from the Start Date until the end of the Franchise Period, the Franchisee shall promote the Spark, set challenges for discussion on the Spark and promote activities and outcomes contributing to or arising from innovation in connection with the Franchise generally and in doing so shall incur a minimum expenditure of **[REDACTED⁵⁹⁴]** per annum.**

⁵⁹⁰ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁹¹ 17 September 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁹² **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵⁹³ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁹⁴ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- 97.3A ⁵⁹⁵ **During the EMA Period, unless otherwise instructed by the Secretary of State, the Franchisee shall not incur any costs or expenditure in respect of its obligations under paragraph 97.3.**

98. Innovation Account

- 98.1 ⁵⁹⁶ **By no later than 16 October 2017 and then by no later than 16 October in each year thereafter until the end of the Franchise Period the Franchisee shall provide evidence to the reasonable satisfaction of the Secretary of State that the Franchisee has deposited [REDACTED⁵⁹⁷] x RPI into a dedicated innovation account ("Innovation Account") over the course of the preceding 12 months (such amount to be pro-rated for the final Franchisee Year), provided that, unless otherwise instructed by the Secretary of State, no monies shall be deposited into the Innovation Account during the EMA Period.**
- 98.2 By no later than 16 November 2016, the Franchisee shall enter into a charge with the Secretary of State in respect of the Innovation Account on such terms as are reasonably agreed by the Secretary of State.
- 98.3 The Franchisee shall procure that the Innovation Account is an interest bearing account.
- 98.4 ⁵⁹⁸ **The Franchisee shall only be entitled to use funds standing in the Innovation Account to fund an ISG Approved Scheme ("Funded Innovation Scheme") with the prior written approval of the Secretary of State.**
- 98.5 Any assets arising as a result of Funded Innovation Scheme shall be valued at nil.
- 98.6 On the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to Clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or Schedule 10 (Remedies, Events of Default and Termination Events) the Franchisee shall pay to the Secretary of State any and all amounts remaining in the Innovation Account.

99. Innovation and Continuous Improvement Manager

- 99.1 Within one month from the Start Date, the Franchisee shall appoint an innovation and continuous improvement manager ("**ICM**").
- 99.2 The Franchisee shall ensure that the ICM shall as a minimum:

⁵⁹⁵ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁹⁶ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁹⁷ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵⁹⁸ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (a) assist in the delivery of the Innovation Strategy;
- (b) assist in the delivery of the RTS;
- (c) assist in the management of the Spark;
- (d) on a quarterly basis beginning 1 July 2017 produce a report to be submitted to the ISG and the Secretary of State:
 - (i) recommending to the ISG such ideas or proposed schemes (developed from the Spark or otherwise) ("**Proposed Schemes**") as are considered by the ICM to be of significant innovative value;
 - (ii) including a breakdown of expenditure from the Innovation Account in the preceding quarter;
 - (iii) and providing feedback on the progress and financial status of existing ISG Approved Schemes, ("**ICM Report**");
- (e) in respect of ISG Approved Schemes:
 - (i) create an implementation plan and develop a business case in respect of such ISG Approved Scheme; and
 - (ii) manage and support in the delivery of the pilot for such ISG Approved Scheme; and
- (f) take an active role in engaging with Stakeholders and other third parties with the aim of attracting third party funding for ISG Approved Schemes.

100. Innovation Steering Group

100.1 ⁵⁹⁹**The Franchisee shall establish an innovation steering group chaired by the managing director of the Franchisee ("ISG") to meet quarterly (whether in person or virtually) beginning 1 April 2017 and thereafter until the end of the Franchise Period.**

100.2 The Franchisee shall procure that the ISG shall as a minimum:

- (a) in conjunction with the ICM, use reasonable endeavours to set six (6) challenges for discussion on the Spark per quarter from 1 April 2017 and thereafter until the end of the Franchise Period;
- (b) assist in the governance and development of the Innovation Strategy;
- (c) ⁶⁰⁰**in accordance with paragraph 98.4 above, only allocate funding from the Innovation Account to a Proposed Scheme if it is an ISG**

⁵⁹⁹ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁰⁰ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Approved Scheme, which has received prior approval from the Secretary of State.

100.3 The Franchisee shall procure that the ISG shall only approve a Proposed Scheme if such Proposed Scheme is:

- (a) recommended by the ICM in the ICM Report; and
- (b) designed to achieve one or more of the RTS Objectives, ("**ISG Approved Scheme**").

101. Engagement with Stakeholders in respect of innovation

101.1 From the Start Date until the end of the Franchise Period, the Franchisee shall organise and host an "**Annual Innovation Workshop**" to which Stakeholders, Network Rail, RSSB, passengers and such other relevant parties as the Franchisee considers appropriate will be invited, the first workshop to be held by no later than 30 November 2017.

101.2 ⁶⁰¹**Subject to paragraph 101.2A, the Franchisee shall incur a minimum expenditure of [REDACTED⁶⁰²] per annum in delivering the "Annual Innovation Workshop".**

101.2A ⁶⁰³**Unless otherwise instructed by the Secretary of State, the Franchisee shall not incur any costs or expenditure in respect of its obligations under paragraph 101.2 during the EMA Period.**

101.2B ⁶⁰⁴**The parties acknowledge and agree that if the EMA Period does not end on a 31 December then, in relation to the period from the end of the EMA Period until the next 31 December, Secretary of State may reasonably determine minimum spend requirement under paragraph 101.2.**

101.3 ⁶⁰⁵**From the 31 January 2017 the Franchisee shall host quarterly workshops with representatives from the Spark Communities.**

⁶⁰¹ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁰² **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁶⁰³ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁰⁴ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁰⁵ 27 November 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

- 101.4 ⁶⁰⁶**From 1 April 2018 until the end of Franchise Period the Franchisee shall invest [REDACTED⁶⁰⁷] per annum in partnerships with academic or research institutions and in engaging with SyncNorwich.**
- 101.5 By no later than 31 December 2017 and then by no later than 31 December in each year thereafter until the end of the Franchise Period, the Franchisee shall publish an "**Innovation White Paper**" on the Franchisee's website which shall as a minimum report on the success or failure of ISG Approved Schemes which have been piloted and lessons learnt from the same.
- 101.6 ⁶⁰⁸**Subject to paragraph 101.6A, from the Start Date until the end of the Franchise Period, the Franchisee shall organise and host the "Annual Innovation Awards" to recognise and reward individuals who developed the idea behind certain ISG Approved Schemes and shall incur a minimum expenditure of [REDACTED⁶⁰⁹] per annum in doing so.**
- 101.6A ⁶¹⁰**Unless otherwise instructed by the Secretary of State, the Franchisee shall not incur any costs or expenditure in respect of its obligations under paragraph 101.6 during the EMA Period.**
- 101.6B ⁶¹¹**The parties acknowledge and agree that if the EMA Period does not end on a 31 December then, in relation to the period from the end of the EMA Period until the next 31 December, Secretary of State may reasonably determine minimum spend requirement under paragraph 101.6.**

102. Innovation Academy

- 102.1 By no later than 30 April 2017, the Franchisee shall establish an "Innovation Academy" for the purpose of training two (2) Franchisee Employees from each functional area of the business (being Engineering, Operations, Commercial, Customer Service, HR and Change) over a three (3) day period ("**Innovation Academy**") and by 31 March 2018 shall have invested [REDACTED⁶¹²] in establishing and running the Innovation Academy.

⁶⁰⁶ 07 October 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁰⁷ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁶⁰⁸ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁰⁹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁶¹⁰ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶¹¹ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶¹² **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- 102.2 ⁶¹³Subject to paragraph 102.2A, from 1 April 2018, the Franchisee shall organise and run the Innovation Academy each Franchisee Year and shall incur a minimum expenditure of [REDACTED⁶¹⁴] in each Franchisee Year in doing so.
- 102.2A ⁶¹⁵Unless otherwise instructed by the Secretary of State, the Franchisee shall not incur any costs or expenditure in respect of its obligations under paragraph 102.2 during the EMA Period.
- 102.2B ⁶¹⁶The parties acknowledge and agree that if the EMA Period does not end on a 31 March then, in relation to the period from the end of the EMA Period until the next 31 March, Secretary of State may reasonably determine minimum spend requirement under paragraph 102.2.
- 102.3 The Franchisee shall ensure that all directors and managers of the Franchisee from time to time participate in running the Innovation Academy.

TRAIN SERVICES, PERFORMANCE AND RELATED OBLIGATIONS

103. Additional TSR Commitment

- 103.1 Subject to the provisions of paragraph 12 of Part 2 of Schedule 1 (Franchise Services and Service Development), from the Passenger Change Date that occurs in May 2019 until the end of the Franchise Period, the Franchisee shall include in the Timetable that on each Weekday two Passenger Services are provided which:
- (a) depart from London Liverpool Street and arrive at Norwich with a scheduled journey time of no more than 90 minutes;
 - (b) depart from Norwich and arrive at London Liverpool Street with a scheduled journey time of no more than 90 minutes;
 - (c) depart from London Liverpool Street and arrive at Ipswich with a scheduled journey time of no more than 60 minutes; and
 - (d) depart from Ipswich and arrive at London Liverpool Street with a scheduled journey time of no more than 60 minutes.

⁶¹³ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶¹⁴ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁶¹⁵ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶¹⁶ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

104. [REDACTED⁶¹⁷]**105. Infrastructure upgrades**

105.1 ⁶¹⁸By no later than 1 November 2020, the Franchisee shall make all necessary changes to the infrastructure of the Stations (including relevant associated infrastructure surrounding such Stations) in order to accommodate the Passenger Services as set out in TSR2 and the Franchisee shall incur a minimum expenditure of [REDACTED⁶¹⁹] plus indexation from 1 May 2019 in doing so.

105.2 Pursuant to paragraph 105.1 such changes to the infrastructure shall include such infrastructure works at each of Hertford East, Wickford, Manningtree, Kings Lynn, Elsenham, Ware, St Margarets and Enfield Lock Stations as are necessary to enable any Passenger Services comprised of 10 rolling stock vehicles to call at such Stations by no later than 1 September 2018.

106. Alliance Board

106.1 The Franchisee shall use all reasonable endeavours to establish an "Alliance Board" in conjunction with Network Rail to oversee activities carried out pursuant to the Alliance Agreement ("**Alliance Board**").

106.2 Paragraph 106.1 is subject always to a proposed Alliance Agreement receiving the approval of the Secretary of State pursuant to paragraph 6 of Schedule 13.1 (Rail Industry Initiatives).

107. Cooperation with Transport for London

107.1 The Franchisee shall use all reasonable endeavours to enter into an agreement with TfL, within six (6) months of the Start Date, and on such terms as are approved by the Secretary of State (such approval not to be unreasonably withheld or delayed), for the collaboration and cooperation between the Franchisee and TfL with the aim of as a minimum improving:

- (a) development and delivery of projects;
- (b) development of train services;
- (c) contingency planning and service recovery processes;

⁶¹⁷ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁶¹⁸ 28 April 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee,

⁶¹⁹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (d) performance of delivery teams;
- (e) communication with customers;
- (f) rolling stock and stabling strategies;
- (g) resource planning across the Routes;
- (h) station development;
- (i) control room strategies; and
- (j) management of Ilford Depot,

to the extent any of the same fall within the geographical area of the Routes or within the remit of the Franchise.

108. A Customer Focussed Approach

108.1 By no later than 30 April 2017 the Franchisee shall combine its operations and customer services Franchise Employees based at the ROC into one team (the "**ROC Team**").

108.2 ⁶²⁰**The Franchisee shall procure that live CCTV footage is available to the ROC Team:**

- (a) from all Stations on a continuous 24/7 basis by no later than 31 December 2018;**
- (b) from all operating Stadler Rolling Stock Units within the New Fleet by no later than 31 October 2021; and**
- (c) from all operating Bombardier Rolling Stock Units within the New Fleet (using all reasonable endeavours) by 31 October 2021 and in any event by no later than 30 June 2022.**

108.3 By no later than 1 November 2016 until such time the new processes and training referred to in paragraph 108.4 have been implemented, the Franchisee shall appoint a business change manager and a team of staff to develop and implement new processes and training in relation to the use of technology to assist communication between the customer and the ROC Team.

108.4 The Franchisee shall co-operate with TfL and Network Rail in order to implement training and new processes developed to assist communication between the ROC Team, Network Rail, TfL and the customer referred to in paragraph 1.3 above.

⁶²⁰ 18 December 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

109. Performance Team

- 109.1 By no later than 1 January 2021 until the end of the Franchise Period, the Franchisee shall appoint three suitably qualified and experienced individuals to be heads of customer services to each have responsibility for one of the East, West and North areas of the Franchise and whose role will be to focus on cross-functional and cross-organisation performance improvement ("**CS Heads**").
- 109.2 By no later than 31 January 2017 the Franchisee shall appoint:
- (a) a suitably qualified and experienced individual whose role will be to manage contractual relationships (including with Network Rail and TfL), delay attribution resolution and performance analysis ("**Performance Manager**"); and
 - (b) three suitably qualified and experienced individuals as analysts to act in support of the Performance Manager.
- 109.3 By no later than 31 January 2017, the Franchisee shall appoint three suitably qualified and experienced individuals whose role is to develop a corporate culture which focuses on the effective planning of the delivery of the Franchise Services, including the punctuality and reliability of the Passenger Services ("**Right Time Regional Managers**") split across the East, West and North of the Franchise. The Right Time Regional Managers shall report to the Franchisee Employees with the roles of the "**Area Heads of Train Service Delivery**" initially and from the date of their appointment, the CS Heads.
- 109.4 The Franchisee shall procure that, by no later than 31 March 2017, the Right Time Regional Managers set up and lead virtual performance teams ("**VPTs**") to comprise representatives from the Franchisee, Network Rail, TfL and FOCs. The VPTs will review and consider performance improvement opportunities on the network. The Franchisee shall provide an amount of [REDACTED⁶²¹] per annum (to be managed by the Performance Manager) to be invested to resolve performance issues at "key hot spots" identified by the work of the Right Time Regional Managers and the VPTs.

110. Cooperation with Network Rail

- 110.1 The Franchisee shall co-operate in good faith with Network Rail and TfL to agree joint working principles, including in relation to:
- (a) joint weather resilience;
 - (b) working with the VPTs;
 - (c) fleet issues, bridge strikes and similar incidents;

⁶²¹ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (d) root cause analysis, utilising shared tools and techniques;
- (e) delay attribution, reducing delay attribution burdens with better use of technology and improving data quality to understand delay causes;
- (f) approach to reporting;
- (g) understanding complex causes of delay;
- (h) training and documentation (analysis, reporting, on-time, performance improvement);
- (i) performance incident reviews;
- (j) performance information for customers (mutually agreed communications);
- (k) review of programme, performance and governance,

(the "**Joint Working Principles**") and the Franchisee shall use all reasonable endeavours to implement the Joint Working Principles by no later than 31 March 2017.

111. Customer Focused Contingency Planning

111.1 Without prejudice to the requirements of paragraph 4 of Schedule 10.3 (Force Majeure and Business Continuity) by no later than 31 July 2018, the Franchisee shall:

- (a) produce and finalise contingency plans to be implemented in the event of (i) severe weather or (ii) an overrunning maintenance possession, (iii) other incidents of disruption. Such contingency plans shall be subject to the approval of the Secretary of Station and will provide (to the fullest extent possible) for an alternative timetable to operate and for alternative road transport to be provided for affected passengers.
- (b) use all reasonable endeavours to produce in conjunction with Network Rail, TfL and the relevant FOCs jointly agreed contingency plans to be implemented in the event of (i) severe weather; (ii) overrunning maintenance possessions; (iii) other incidents of disruption, which are consistent with the contingency plans produced pursuant to paragraph 4.2 (b).

112. Infrastructure Fund

- 112.1 Subject to provisions of this paragraph 112, by no later than [REDACTED⁶²²] the Franchisee shall incur a minimum expenditure of [REDACTED⁶²³] in funding infrastructure upgrade works in respect of the Franchise which the Franchisee is not otherwise required to fund or procure pursuant to the terms of this Franchise Agreement ("**Infrastructure Fund**").
- 112.2 The Franchisee shall provide to the Secretary of State for approval details of infrastructure upgrade works it intends to fund using the Infrastructure Fund (which may include funding Network Rail to undertake works) together with:
- (a) reasonably detailed cost estimates for the upgrade works; and
 - (b) an estimate of any project management costs which the Franchisee anticipates it will incur in relation to such upgrade works,
- and the Franchisee shall prioritise proposing infrastructure upgrade work schemes in relation to facilitating the completion of the Power Supply Upgrade Works above any other type of scheme.
- 112.3 Without limitation, the Secretary of State may withhold its approval to any proposed scheme submitted to it pursuant to paragraph 112.2 in its sole discretion or propose amendments to such scheme.
- 112.4 The Franchisee shall only be entitled to use the Infrastructure Fund to:
- (a) fund Infrastructure Schemes approved by the Secretary of State pursuant to paragraph 112.3; and
 - (b) following provision to the Secretary of State of reasonable evidence of the costs incurred and copies of any invoices from Network Rail.
- 112.5 The Franchisee shall use all reasonable endeavours to co-ordinate any project management activities and activities required for an Infrastructure Scheme with the activities of Network Rail.
- 112.6 The Franchisee may deduct its reasonable and proper costs of project management in respect of any Infrastructure Schemes undertaken subject to:
- (a) the Franchisee providing the Secretary of State with reasonable evidence of the costs incurred;

⁶²² **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁶²³ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (b) such costs being capped at [REDACTED⁶²⁴] in aggregate in respect of all such Infrastructure Schemes undertaken during the Franchise Period.

112.7 Where any amounts remain unspent from the Infrastructure Fund following [REDACTED⁶²⁵], the Secretary of State shall be entitled to either:

- (a) treat such amounts as Underspend for the purpose of of Part 2 of Schedule 6.2 (Committed Obligations) of the FA; or
- (b) notify the Franchisee that it requires it to pay to the Secretary of State all such amounts and the Franchisee shall pay the Secretary of State such amounts within twenty (20) Business Days of such notice.

112.8 On the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to Clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or Schedule 10 (Remedies, Events of Default and Termination Events) the Franchisee shall pay to the Secretary of State any and all amounts remaining unspent from the Infrastructure Fund.

113. Engineering Planners

113.1 From the Start Date until the date on which the New Fleet begins to be maintained under terms of the New Fleet TSAs, the Franchisee shall appoint and keep employed 10 Engineering Planners.

114. Transport Focus Liaison

114.1 By no later than 16 November 2016, the Franchisee shall appoint a Franchise Employee to act as a liaison officer between Transport Focus and the Franchisee ("**TF Liaison Officer**") for the Franchise Term. The TF Liaison Officer shall be a member of the Stakeholder Advisory Board and attend the meetings of such board.

115. ⁶²⁶Unless otherwise instructed by the Secretary of State, the Committed Obligations referred to in the table below are waived for the EMA Period:

| Committed Obligation |
|--|
| <i>para 53.9 – Station Improvement Works – where category of Station changes</i> |
| <i>para 96.3 – ICMM survey</i> |

⁶²⁴ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁶²⁵ Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁶²⁶ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

| |
|---------------------------------------|
| <i>para 96.4 – ICMM report</i> |
|---------------------------------------|

For the avoidance of doubt the amendments effected by this paragraph 115:

- (a) shall not (at any time) constitute a Change for the purposes of paragraph '(n)' of the definition of Change under the Franchise Agreement; and**
- (b) the provisions of paragraph 12 of Part 2 of Schedule 6.2 (Special Terms related to Committed Obligations and certain other obligations) shall apply and any costs or expenditure incurred by the Franchisee (during or which relate to the EMA Period) in relation to such obligations, shall not be Costs or Capital Expenditure (as such terms are defined in Schedule 8.A (Franchise Payments)) for the purposes of Schedule 8.A (Franchise Payments).**

SCHEDULE 6.2**Part 2 - SPECIAL TERMS RELATED TO COMMITTED OBLIGATIONS AND CERTAIN OTHER OBLIGATIONS^{627 628}****1. Continuation of Availability**

- 1.1 The Franchisee shall maintain facilities or activities or other matters established in accordance with its Committed Obligations throughout the remainder of the Franchise Term, regardless of whether or not such Committed Obligation specifically provides for the Franchisee to maintain throughout the Franchise Term the facilities, activities or other matters established in accordance with such Committed Obligation, unless such Committed Obligation expressly provides for the cessation of such maintenance at an earlier date.
- 1.2 The Franchisee shall be treated as maintaining the relevant facilities, activities or other matters which are the subject of the Committed Obligations notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement activities, or temporary staff absence, subject in each case to the Franchisee taking all reasonable steps to keep any such period of temporary non-availability to a minimum.
- 1.3 Where Part 1 to Schedule 6.2 (Committed Obligations) includes a commitment regarding staffing or particular appointments the Franchisee plans to make:
- (a) the obligation of the Franchisee shall not be regarded as being contravened by:
 - (i) temporary absences (for example for sickness or holiday); or
 - (ii) temporary non-fulfilment of a relevant post whilst the Franchisee is recruiting for that post, subject to the Franchisee using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable; and
 - (b) the Franchisee's rights and obligations in relation to the numbers or deployment of its other staff remain unaffected.

2. Expenditure Commitments**Annual Expenditure**

- 2.1 Where Part 1 to Schedule 6.2 (Committed Obligations) provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee, that amount:

⁶²⁷ 03 February 2021 (Date of Contract Change Letter) – Footnote agreed by the Secretary of State and Franchisee - *For the duration of the ERMA, the Underspent Amounts wording at paragraph 3 of Part 2 of Schedule 6.2 shall apply. Otherwise, the Pre-EMA Period Underspend wording at paragraphs 2.6 to 2.8 shall apply and shall be read in conjunction with the Underspend wording at paragraphs 2.4 and 2.5 of Part 2 of Schedule 6.2 in the Franchise Agreement.*

⁶²⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (a) is assessed net of Value Added Tax; and
- (b) is the amount required to be expended by the Franchisee itself or procured by the Franchisee to be expended.

Expenditure Commitments in real amounts

- 2.2 All expenditure commitments set out in Part 1 to Schedule 6.2 (Committed Obligations), to the extent they have not already been incurred by the Franchisee, shall be indexed by the Retail Prices Index (in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments)).

Expenditure by Network Rail

- 2.3 All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 1 to Schedule 6.2 (Committed Obligations) to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

Underspent Amounts

2.4⁶²⁹

- (a) **The Franchisee shall notify the Secretary of State in accordance with paragraph 7A of Schedule 11.2 (Management Information) where, in relation to any Committed Obligation or Franchise Specific Obligation (as applicable) that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, the Franchisee is able to achieve that stated objective without incurring the full amount referred to in that Committed Obligation, whether because of cost savings or otherwise (an "Underspend").**
- (b) ⁶³⁰**Having due regard to the statement provided by the Franchisee pursuant to paragraph 7A of Schedule 11.2 (Management information), and where applicable, the findings of any audit conducted pursuant to paragraph 9.9 of Schedule 11.2 (Management information) together with any other relevant information available to the Secretary of State, the Secretary of State shall determine, for the period up to 1 March 2020, in relation to each Committed Obligation or Franchise Specific Obligation (as applicable) any Underspend and/or any other expenditure the Franchisee was obliged or otherwise projected to incur but which was not so incurred by the Franchisee, provided that the following amounts shall be excluded:**

⁶²⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶³⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (i) **any expenditure incurred by the Franchisee which was inconsistent with acting in accordance with its obligations under the terms of the Franchise Agreement (as in effect at the time the relevant expenditure was incurred); and**
 - (ii) **where a Termination Sum is payable by the Franchisee pursuant to paragraph 3 of schedule 2 (Termination of the Franchise Agreement) to the ERMA, any Underspend which has been assumed to be incurred as a cost for the purposes of the Non-COVID Trajectory Model,**

(the "Underspent Amount").
- (c) ⁶³¹**For the purposes of this paragraph 3, references to amounts the Franchisee was projected to incur in delivery of any Committed Obligations or Franchise Specific Obligations shall be determined by assuming that the amount the Franchisee was budgeted to spend in each Reporting Year in accordance with the Record of Assumptions and, where applicable, the Financial Model is incurred in equal amounts across each of the thirteen (13) Reporting Periods, unless otherwise determined by the Secretary of State, in the Secretary of State's sole discretion, based on information available to it, including pursuant to any audit conducted pursuant to paragraph 9.9 of Schedule 11.2 (Management information).**
- (d) ⁶³²**In respect of any Underspent Amount, which has not been directed to be repaid by the Franchisee to the Secretary of State or otherwise agreed to be applied towards an alternative scheme as at the date of this ERMA), the Secretary of State may, in the Secretary of State's sole discretion:**
- (i) **seek to agree with the Franchisee, an alternative scheme or schemes which shall be funded (in whole or in part) using the Underspent Amount and, once agreed, the Franchisee shall apply such relevant Underspent Amount in the delivery of the agreed scheme(s);**
 - (ii) **require the Franchisee to undertake an alternative scheme or schemes (chosen in the Secretary of State's sole discretion), which shall be funded (in whole or in part) using any Underspent Amount(s) and the Franchisee shall apply such relevant Underspent Amount(s) in the delivery of the required scheme(s); and/or**
 - (iii) **require the Franchisee to repay the aggregate amount of any Underspent Amount which has not been applied to an alternative scheme in accordance with paragraph (e)(i) or (ii) to the Secretary of State, as soon as reasonably practicable. The Secretary of State shall have the right to implement such**

⁶³¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶³² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

payment, without any double counting, by way of an adjustment to Franchise Payments and any such repayment shall not constitute Costs or Capital Expenditure.

2.5 ⁶³³The parties acknowledge and agree that paragraph 2.7 (or, as the case may be, paragraph 2.8) shall apply in respect of any:

- (a) Underspend which arises in respect of the period prior to commencement of the EMA Period; and
- (b) amounts which the Franchisee was obliged to spend prior to commencement of the EMA Period under the provisions of the Franchise Agreement but which it had not, for whatever reason, spent,

together being "Pre-EMA Period Underspend".

2.6 ⁶³⁴Unless the Secretary of State (in Secretary of State's unfettered discretion) directs that paragraph 2.8 shall apply, the Franchisee shall pay the Pre-EMA Period Underspend to the Secretary of State by such date as the Secretary of State may reasonably specify and the Secretary of State shall have the right to implement such payment by way of an adjustment to Franchise Payments. If the date for repayment specified by the Secretary of State falls within the EMA Period, the repayment of the Pre-EMA Period Underspend shall not in any circumstances constitute Costs or Capital Expenditure for the purposes of Schedule 8.A (Franchise Payments).

2.7 ⁶³⁵If this paragraph 2.8 applies:

- (a) the parties shall, acting reasonably, seek to agree an alternative scheme or schemes which would give rise to benefits to passengers using the Passenger Services to be funded using the Pre-EMA Period Underspend and, once agreed, the Franchisee shall apply such Pre-EMA Period Underspend in the delivery of the agreed scheme(s), provided that:
 - (i) if it is agreed that any part of the Pre-EMA Period Underspend is to be used to fund alternative schemes during the EMA Period then the costs and expenditure of delivering such alternative schemes shall be funded entirely by the application of the Pre-EMA Period Underspend and accordingly no such costs or expenditure of delivery shall in any circumstances constitute Costs or Capital Expenditure (as such terms are defined in Schedule 8.A (Franchise Payments)) for the purposes of Schedule 8.A (Franchise Payments); and

⁶³³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶³⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶³⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (ii) **if the Franchise Period ends at or before the end of the EMA Period an amount equal to the then-current unexpended balance of Pre-EMA Period Underspend shall be payable by the Franchisee to the Secretary of State and such amount shall not in any circumstances constitute Costs or Capital Expenditure (as such term is defined in Schedule 8.A (Franchise Payments)) for the purposes of Schedule 8.A (Franchise Payments);**
- (b) **in circumstances only where by the date falling three (3) months after the end of the EMA Period (or such earlier date after the end of the EMA Period as the Secretary of State may (at the Secretary of State's discretion) specify), despite having used reasonable endeavours the parties fail to agree an alternative scheme in relation to which the Pre-EMA Period Underspend will be applied, such Pre-EMA Period Underspend shall be repaid to the Secretary of State as soon as reasonably practicable thereafter (and the Secretary of State shall have the right to implement such payment by way of an adjustment to Franchise Payments), provided that if the Franchise Period ends at or before the end of the EMA Period the Pre-EMA Period Underspend shall be payable by the Franchisee to the Secretary of State and such amount shall not in any circumstances constitute Costs or Capital Expenditure (as such term is defined in Schedule 8.A (Franchise Payments)) for the purposes of Schedule 8.A (Franchise Payments);**
- (c) **if the Franchisee fails to deliver an alternative scheme agreed by the parties pursuant to paragraph 2.8(a) or delivers the alternative scheme at a cost which is lower than the amount of the Pre-EMA Period Underspend allocated to that alternative scheme, then (as the case may be):**
 - (i) **the amount of the Pre-EMA Period Underspend allocated to such alternative scheme; or**
 - (ii) **the difference between the amount of the Pre-EMA Period Underspend allocated to that alternative scheme and the amount of expenditure actually incurred by the Franchisee in delivering the alternative scheme,**

shall be paid to the Secretary of State by such date as the Secretary of State may reasonably specify and the Secretary of State shall have the right to implement such payment by way of an adjustment to Franchise Payments, provided that if the date for repayment specified by the Secretary of State falls within the EMA Period then the amount to be repaid shall not in any circumstances constitute Costs or Capital Expenditure (as such term is defined in Schedule 8.A (Franchise Payments)) for the purposes of Schedule 8.A (Franchise Payments).

3. Liaison and Co-Operation

Where the Franchisee is committed to liaison and co-operation under Part 1 to Schedule 6.2 (Committed Obligations), it shall participate actively in the relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Franchisee reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

4. Nature of Commitment

- 4.1 Any commitment in terms of Part 1 to Schedule 6.2 (Committed Obligations) shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Schedule 6.2 (Committed Obligations) shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.
- 4.2 Save as expressly provided in Part 1 to Schedule 6.2 (Committed Obligations), each Committed Obligation is a separate obligation from any other Committed Obligation and satisfaction of or steps taken towards the satisfaction of one Committed Obligation will not amount to or contribute towards satisfaction of any other Committed Obligation.
- 4.3 Where in Part 1 to Schedule 6.2 (Committed Obligations), references are made to particular manufacturers or suppliers of equipment or services, the Franchisee may fulfil its relevant commitment by using reasonable equivalents.
- 4.4 Each commitment under this Schedule 6.2 (Committed Obligations) shall come to an end on expiry of the Franchise Term for whatever reason.

5. Review of Compliance

- 5.1 Progress with Committed Obligations shall be considered and discussed at Franchise Performance Meetings and the Franchisee shall ensure that progress with regard to Committed Obligations is included in Periodic Update Reports provided in accordance with paragraph 8 of Schedule 11.2 (Management Information).
- 5.2 In addition to its obligation under paragraph 5.1, the Franchisee shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as the Secretary of State may reasonably request.

6. Remedy for Late Completion or Non-Delivery of Committed Obligations

Subject to paragraph 11 of this Part 2 of Schedule 6.2, if the Franchisee fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in Schedule 6.2 (Committed Obligations), such late, partial or non-delivery shall constitute a contravention of the Franchise Agreement.

7. Specimen Schemes

- 7.1 The Franchisee may propose to undertake an Alternative Scheme in place of a Specimen Scheme. Any such Alternative Scheme must:
 - (a) be intended to deliver as a minimum the relevant Specimen Scheme Output;

- (b) require the Franchisee to incur expenditure of no less than the expenditure which the Franchisee is committed to incur in relation to the relevant Specimen Scheme; and
 - (c) deliver at least an equivalent level of benefits (whether to passengers, the Secretary of State, the wider rail industry or otherwise) as the Specimen Scheme.
- 7.2 If the Franchisee wishes to propose an Alternative Scheme, the Franchisee will provide the Secretary of State with such details of the Alternative Scheme as the Secretary of State may reasonably require.
- 7.3 If the Secretary of State approves (such approval not to be unreasonably withheld or delayed) such Alternative Scheme then it shall replace the relevant Specimen Scheme and Part 1 to Schedule 6.2 (Committed Obligations) shall be amended accordingly.
- 7.4 For the avoidance of doubt, if the Franchisee does not propose or the Secretary of State does not approve an Alternative Scheme then the Franchisee shall remain obliged to deliver the relevant Specimen Scheme in accordance with Part 1 to Schedule 6.2 (Committed Obligations).

8. Third Party Consents, Agreement and Conditions

- 8.1 Where, in delivering a Committed Obligation, the Franchisee is required to obtain one or more consents or satisfy one or more conditions, the Franchisee shall use all reasonable endeavours to obtain such consents and/or satisfy such conditions within such timescales as would enable the Franchisee to deliver such Committed Obligation by the delivery date specified in respect of such Committed Obligation. If the Franchisee is unable to satisfy the relevant condition and/or obtain the relevant consent or the proposed terms upon which the relevant consent would be granted would, in the reasonable opinion of the Franchisee, be likely to prejudice the financial and/or commercial viability of delivering the Committed Obligation, the Franchisee may apply to the Secretary of State for the approval referred to in paragraph 8.3.
- 8.2 For the purposes of this paragraph 8, the expression "**consent**" shall mean those approvals, authorisations, consents, derogations, exemptions, licences, permissions, and registrations which are required by Law or any contract to which the Franchisee is a party, to be obtained by the Franchisee in connection with the delivery of a Committed Obligation.
- 8.3 The Secretary of State's approval for the purposes of this paragraph 8 is his approval for the Franchisee to modify the relevant Committed Obligation so as to deliver a scheme which would give rise to benefits to passengers using the Passenger Services similar to (but not necessarily the same as) those benefits which would have arisen if the Franchisee delivered the relevant Committed Obligation. The modifications to the relevant Committed Obligation shall be agreed between the Franchisee and the Secretary of State or failing such agreement shall be reasonably determined by the Secretary of State. The approval of the Secretary of State may not be unreasonably withheld.
- 8.4 If the Secretary of State gives his approval pursuant to this paragraph 8 in respect of a Committed Obligation, then to the extent that the Franchisee delivers the modified Committed Obligation by the date agreed between the

Franchisee and the Secretary of State, or failing such agreement by the date reasonably determined by the Secretary of State, the Franchisee shall not be in breach of the Franchise Agreement.

9. Definition of "all reasonable endeavours" or "reasonable endeavours"

Where in respect of any Committed Obligation the Franchisee is obliged to use **"all reasonable endeavours"** or **"reasonable endeavours"** to do or procure that something is done by a specified date then, without prejudice to any other rights the Secretary of State may have (whether under the Franchise Agreement or otherwise) in respect of any contravention of the Franchise Agreement if the same is not achieved by such specified date the Franchisee shall consult with the Secretary of State and if required by the Secretary of State shall continue to use all reasonable endeavours or reasonable endeavours (as applicable) to do or procure that the relevant thing is done as soon as reasonably practicable thereafter.

10. Designation of Assets comprised in COs as Primary Franchise Assets

10.1 ⁶³⁶ **Save in respect of the property and rights comprised in committed obligations which are designed as RV Assets pursuant to Schedule 14.6, the Secretary of State may at any time and from time to time during the Franchise Period by serving notice on the Franchisee, designate as a Primary Franchise Asset some or all of the property and rights of the Franchisee comprised in any asset introduced by a Committed Obligation or a Franchise Specific Obligation (the "Designated CO Primary Franchise Assets"). Such designation shall take effect from the date of delivery of such notice.**

10.2 ⁶³⁷ **The transfer value in relation to any Designated CO Primary Franchise Asset, which at the end of the Franchise Period is:**

- (a) **not de-designated as a Primary Franchise Asset pursuant to paragraph 10 of Schedule 14.4 (Designation of Primary Franchise Assets); and**
- (b) **transferred to a Successor Operator (whether pursuant to the Transfer Scheme or otherwise),**

shall (unless otherwise agreed by the Secretary of State) be equivalent to the capital cost of the asset included in the Financial Model and Record of Assumptions after deducting the aggregate funding of such asset by way of Franchise Payments included in the Financial Model and Record of Assumptions during the Franchise Period immediately prior to the date of termination of the Franchise Agreement, except where, the Franchise Agreement terminates following service of a Termination Notice by the Secretary of State pursuant to Schedule 10.2 (Events of Default and Termination Events), in which case the transfer value shall (unless otherwise agreed by the Secretary of State) be nil.

⁶³⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶³⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

11. [REDACTED]⁶³⁸**12. ⁶³⁹Expenditure relating to obligations suspended during the EMA Period**

12.1 **The parties acknowledge and agree that where, under the provisions of the EMA Review DoA, an obligation of the Franchisee under the Franchise Agreement is suspended, disapplied or waived by the Secretary of State (a "Suspended Obligation") for the EMA Period (or some other specified period of time) ("Suspension Period") then, save as otherwise instructed by the Secretary of State, the Franchisee shall not incur any costs or expenditure in respect of that Suspended Obligation during the relevant Suspension Period.**

12.2 **The parties further acknowledge and agree that if a Suspended Obligation:**

(a) **contains or comprises an obligation on the Franchisee to incur a specified amount of costs and/or expenditure:**

(i) **over a period of time within which the EMA Period falls; and**

(ii) **otherwise than on a recurring per annum or per Franchisee Year basis; and**

(b) **such obligation has not been fully complied with by the Franchisee as at the start of the EMA Period,**

then the Franchisee shall following expiry of the EMA Period incur such further expenditure as is necessary to ensure that the amount of expenditure specified in the applicable Suspended Obligation is incurred by the Franchisee in accordance with the terms of such Suspended Obligation. If the Franchise Period ends at or before the end of the EMA Period an amount equivalent to that which the Franchisee would have been required to incur under this paragraph 12.2 shall be payable by the Franchisee to the Secretary of State and such amount shall not in any circumstances constitute Costs or Capital Expenditure (as such term is defined in Schedule 8.A (Franchise Payments)) for the purposes of Schedule 8.A (Franchise Payments).

13. ⁶⁴⁰EMA Stub Year

13.1 **The parties acknowledge and agree that where any of the Franchisee's obligations under the Franchise Agreement include:**

⁶³⁸ **Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁶³⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁴⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (a) a specified number of items or actions that are to be effected in a Franchisee Year or calendar year; and/or**
- (b) a specified amount of committed expenditure to be spent in any Franchisee Year or calendar year,**

and if the EMA Period does not end on a 31 March (or a 31 December, as applicable) then, in relation to the period from the end of the EMA Period until the next 31 March (or 31 December, as applicable), the Secretary of State may reasonably determine the treatment of the obligation and or associated financial requirement.

14. ⁶⁴¹Application

The provisions of paragraphs 2.6 to 2.8, 12 and 13 of Part 2 of Schedule 6.2 (Committed Obligations) shall apply in respect of the relevant obligations of the Franchisee under the Franchise Agreement.

⁶⁴¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

APPENDIX**Classification of Stations**

1. Large Retail Stations
 - (a) Billericay;
 - (b) Bishops Stortford;
 - (c) Broxbourne;
 - (d) Cheshunt;
 - (e) Ely;
 - (f) Harlow Town;
 - (g) Manningtree;
 - (h) Rayleigh;
 - (i) Shenfield;
 - (j) Southend Victoria;
 - (k) Tottenham Hale;
 - (l) Wickford; and
 - (m) Witham.

2. Medium Outer Retail Stations
 - (a) Audley End;
 - (b) Braintree;
 - (c) Burnham-on-Crouch;
 - (d) Bury St Edmunds;
 - (e) Clacton-on-Sea;
 - (f) Colchester Town;
 - (g) Diss;
 - (h) Elsenham;
 - (i) Frinton-On-Sea;
 - (j) Great Yarmouth;
 - (k) Harlow Mill;

- (l) Hatfield Peverel;
- (m) Hockley;
- (n) Ingatestone;
- (o) Kelvedon;
- (p) Lowestoft;
- (q) March;
- (r) Marks Tey;
- (s) Prittlewell;
- (t) Rochford;
- (u) Roydon;
- (v) Sawbridgeworth;
- (w) Shelford;
- (x) Stansted Mountfitchet;
- (y) Stowmarket;
- (z) Thetford;
- (aa) Ware;
- (bb) Whittlesford Parkway;
- (cc) Wivenhoe; and
- (dd) Woodham Ferrers.

3. Medium Inner Retail Station

- (a) Brimsdown;
- (b) Enfield Loch;
- (c) Hertford East;
- (d) Rye House;
- (e) St Margarets; and
- (f) Waltham Cross.

4. Small Retail Station

- (a) Acle

- (b) Alresford
- (c) Althorne
- (d) Angel Road
- (e) Attleborough
- (f) Battlesbridge
- (g) Beccles
- (h) Berney Arms
- (i) Braintree Freeport
- (j) Brampton
- (k) Brandon
- (l) Brundall
- (m) Brundall Gardens
- (n) Buckenham
- (o) Bures
- (p) Cantley
- (q) Chappel & Wakes Colne
- (r) Cressing
- (s) Cromer
- (t) Darsham
- (u) Derby Road
- (v) Dovercourt
- (w) Dullingham
- (x) Eccles Road
- (y) Elmswell
- (z) Felixstowe
- (aa) Great Bentley
- (bb) Great Chesterford
- (cc) Gunton

(dd) Haddiscoe
(ee) Halesworth
(ff) Harling Road
(gg) Harwich International
(hh) Harwich Town
(ii) Hoveton & Wroxham
(jj) Hythe
(kk) Kennett
(ll) Kirby Cross
(mm) Lakenheath
(nn) Lingwood
(oo) Manea
(pp) Melton
(qq) Mistley
(rr) Needham Market
(ss) Newmarket
(tt) Newport
(uu) North Fambridge
(vv) North Walsham
(ww) Northumberland Park
(xx) Oulton Broad North
(yy) Oulton Broad South
(zz) Ponders End
(aaa) Reedham
(bbb) Roughton Road
(ccc) Salhouse
(ddd) Saxmundham
(eee) Sheringham

(fff) Shippea Hill
(ggg) Somerleyton
(hhh) Southminster
(iii) Spooner Row
(jjj) Sudbury Suffolk
(kkk) Thorpe-Le-Soken
(lll) Thurston
(mmm) Trimley
(nnn) Walton-On-The-Naze
(ooo) Weeley
(ppp) West Runton
(qqq) Westerfield
(rrr) White Notley
(sss) Whittlesea
(ttt) Wickham Market
(uuu) Woodbridge
(vvv) Worstead
(www) Wrabness
(xxx) Wymondham

APPENDIX 2⁶⁴²**Station Redevelopment Works**

Any proposal developed by the Franchisee, further to undertaking an appropriate feasibility study, shall include the features listed in this Appendix.

- 1. Existing station**
- 2. Proposed station**
- 3. Capacity and demand**
- 4. Retail enhancements**
- 5. Asset life**
- 6. Changes to car parking**
- 7. Cost of scheme**
- 8. Income from scheme**
- 9. Stakeholder views**
- 10. Next steps**

⁶⁴² 20 November 2018 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 6.3⁶⁴³**ERMA Specific Obligations**

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| Part 1 (Cooperation) | Paragraph 1: Development, Design and Implementation of Future Initiatives |
| | Paragraph 2: Incentive Regimes |
| | Paragraph 3: Improvement Initiatives |
| | Paragraph 4: One Team Stations Initiative |
| | Paragraph 5: Integrated Control Centres Initiative |
| | Paragraph 6: Co-operation |
| | Paragraph 7: Operational Planning |
| | Paragraph 8: Infrastructure Projects |
| | Paragraph 9: Sharing Data with Network Rail |
| | Paragraph 10: Sharing on-train data with Network Rail |
| | Paragraph 11: Station Accessibility Data Collection |
| | Paragraph 12: Compensation |
| | Paragraph 13: TD Academy |
| Part 2 (Pay and Industrial Relations and Dispute Handling) | Paragraph 1: Notification of the Secretary of State |
| | Paragraph 2: Reward and People Principles |
| | Paragraph 3: Terms of Employment |
| | Paragraph 4: In-Scope Matters |
| | Paragraph 5: Industrial Action |
| | Paragraph 6: Reform |
| | Paragraph 7: Duties of the Franchisee |
| | Paragraph 8: Cooperation |
| | Paragraph 9: Disallowable Costs |
| | Paragraph 10: Workers |

⁶⁴³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

PART 1 – CO-OPERATION⁶⁴⁴**1. Development, Design and Implementation of Future Initiatives**

1.1 The Franchisee shall, at the request of the Secretary of State, fully and effectively co-operate with the Secretary of State in connection with the development, design, and implementation of future initiatives which, in the opinion of the Secretary of State (acting reasonably) are likely to:

- (a) improve outcomes for passengers on any or all parts of the railway network;**
- (b) improve cost-efficiency and/or reduce costs in relation to any or all parts of the railway network;**
- (c) generate additional revenue for all or part of the railway network; or**
- (d) deliver any other benefits or support any government policy objective,**

(each a "Future Initiative").

1.2 The Secretary of State may from time to time (and at all times acting reasonably) issue a notice to the Franchisee specifying any assistance that the Secretary of State requires from the Franchisee in relation to the development, design and/or implementation of a Future Initiative and the date by when any deliverable required pursuant to this paragraph 1.2 must be undertaken or delivered (a "Future Initiative Notice" or "FIN"). Without limiting the foregoing, a Future Initiative Notice may, but shall not be required to, request the Franchisee to, among other things:

- (a) prepare and submit to the Secretary of State a proposal or proposals in relation to achieving any of the outcomes described in paragraphs 1.1(a) to 1.1(d) of this part 1 of this Schedule 6.3;**
- (b) prepare and submit to the Secretary of State an implementation plan and cost and revenue forecasts in relation to the relevant Future Initiative;**
- (c) prepare and submit to the Secretary of State any relevant data, reports, feasibility studies, business cases or other information that is held by the Franchisee or which the Franchisee can reasonably be expected to obtain (including any such documents or information prepared or procured pursuant to paragraph 1.2(d) of this part 1 of this Schedule 6.3);**

⁶⁴⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (d) **identify, develop, design, assess and/or advise on options or proposals for delivering specified outputs or outcomes in connection with a Future Initiative, including undertaking or commissioning feasibility studies; developing implementation plans; analysing financial, operational, practical and other impacts and risks; developing business cases; reviewing and commenting on documents; and participating in meetings or other discussions; and**
 - (e) **collaborate and co-operate with the Secretary of State, Network Rail, other Train Operators, industry bodies and other relevant third parties to undertake any of the above activities jointly.**
- 1.3 **The Secretary of State may (acting reasonably) issue to the Franchisee:**
- (a) **any number of FINs in relation to a Future Initiative; and**
 - (b) **FINs in relation of any number of Future Initiatives at any given time.**
- 1.4 **The Secretary of State may at any time, by proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*), require the Franchisee to develop, design and/or implement any changes to the Franchise Services or any provision of the Franchise Agreement in connection with a Future Initiative.**
- 1.5 **In consultation with the Secretary of State, the Franchisee shall assign a Franchise Employee with appropriate seniority to oversee and facilitate the Franchisee's compliance with its obligations pursuant to this paragraph 1 (a "Franchisee FI Contact"). The Franchisee shall confirm the identity of such Franchisee FI Contact to the Secretary of State by no later than as soon as reasonably practicable after the ERMA Start Date, and in any event by 16 October 2020.**
- 1.6 **The Franchisee FI Contact shall act as the Franchisee's primary point of contact with the Secretary of State in relation to all matters contemplated by this paragraph 1.**
- 1.7 **The Franchisee shall procure that the Franchisee FI Contact shall be supported from time to time by such other Franchisee Employees as shall be reasonably required to ensure the Franchisee's compliance with this paragraph 1.**
- 1.8 **This paragraph 1 is subject to the Secretary of State's rights pursuant to clause 7 (*Additional Services*) of the ERMA.**

2. Incentive Regimes

- 2.1 **The Franchisee shall, as required by the Secretary of State, fully and effectively co-operate with the Secretary of State to design, develop and (as applicable) implement and provide to the Secretary of State such data as the Secretary of State may require in relation to**

potential new incentive regimes (which may be used in future contracts with Train Operators and/or may be introduced into the Franchise Agreement by means of a Variation, provided that no such new incentive regime may be introduced into the calculation of the Performance Based Fee pursuant to Schedule 8.1B (*Performance Based Fee*) without the prior written agreement of the Parties), including designing:

- (a) **new models for assessing customer satisfaction and sentiment;**
- (b) **new measures of Operational Performance;**
- (c) **alternative cost or other financial incentive mechanisms;**
- (d) **a new regime for assessing service quality standards delivered by the Franchisee; and/or**
- (e) **a new regime for assessing the Franchisee's performance in relation to deterring and preventing ticketless travel.**

2.2 The Franchisee's obligations pursuant to paragraph above may include:

- (a) **developing, reviewing and/or commenting on proposals in relation to such new incentive regimes;**
- (b) **providing advice on the feasibility, costs and other implications of any such proposals made by the Secretary of State;**
- (c) **attending meetings to discuss such proposals and any related matters; and**
- (d) **supporting the Secretary of State in preparing to implement such new incentive mechanisms, including by collecting and providing relevant data to the Secretary of State in accordance with any requirements specified by the Secretary of State from time to time.**

3. Improvement Initiatives

3.1 In this paragraph 3:

"Franchisee Initiatives" means any Improvement Initiatives which are identified by the Franchisee and which relate specifically to the Franchise Services.

"Further Industry Initiatives" means any Improvement Initiatives (other than Specified Industry Initiatives) which are intended to secure improvements on a railway industry wide basis.

"Improvement Initiatives" means any measures or initiatives which may apply to any aspect of the railway industry which are intended to secure improvements in relation to passenger outcomes, cost-efficiency and/or environmental outcomes or otherwise support the achievement of government policy objectives, including any Franchisee Initiatives, Specified Industry Initiatives and Further Industry Initiatives.

“Specified Industry Initiatives” means such Improvement Initiatives which are intended to secure improvements on a railway industry wide basis as the Secretary of State and/ or Network Rail may, from time to time, notify the Franchisee, which may include (but shall not be limited to) measures or initiatives in relation to:

- (a) **improving level crossing safety and risk mitigation;**
- (b) **prevention of suicide, trespass and vandalism on the railway;**
- (c) **improving track worker safety;**
- (d) **promoting decarbonisation and other environmental improvements;**
- (e) **improving passenger information including during perturbation;**
- (f) **the reopening of disused or freight-only railway routes to passenger services;**
- (g) **Network Rail’s long-term strategy and planning activities; and**
- (h) **reforming the manner in which train service requirements are specified by funders and procurers;**

3.2 Subject to paragraph 3.4, the Franchisee shall:

- (a) **proactively identify, develop, assess the business case for and implement Franchisee Initiatives;**
- (b) **co-operate and collaborate with, any or all of, the Secretary of State, Network Rail, Train Operators, freight operators, railway industry bodies and any other relevant third parties (as may be applicable), to jointly plan, develop and fully participate in the implementation of Specified Industry Initiatives; and**
- (c) **proactively co-operate and collaborate with, any or all of, the Secretary of State, Network Rail, Train Operators, freight operators, railway industry bodies and any other relevant third parties (as may be applicable), to jointly identify, plan, develop and fully participate in the implementation of Further Industry Initiatives.**

3.3 For the purposes of paragraphs 3.2(b) and 3.2(c), the Franchisee’s obligation to co-operate and collaborate may require the Franchisee to use all reasonable endeavours to support the planning, development and implementation of the relevant Improvement Initiative in a manner satisfactory to the Secretary of State. In particular, this may require the Franchisee to:

- (a) **provide advice to, or otherwise share its expertise with, the Secretary of State or Network Rail, including inputting into the business case for the relevant Improvement Initiative;**

- (b) **collect, analyse, share and/or report on certain information and data as may be necessary to inform the relevant Improvement Initiative;**
 - (c) **attend and participate in relevant meetings or workshops in relation to the relevant Improvement Initiative;**
 - (d) **implement such actions as may be agreed with relevant stakeholders in respect of the relevant Improvement Initiative, unless such actions cannot reasonably be expected to be implemented by the Franchisee taking account of the resources available to it and what could reasonably be expected of a competent and efficient operator; and**
 - (e) **collaborate with, and respond to requests from, relevant stakeholders in respect of the relevant Improvement Initiative, unless such collaboration or responses (as the case may be) cannot reasonably be expected of the Franchisee taking account of the resources available to it and what could reasonably be expected of a competent and efficient operator.**
- 3.4 **Notwithstanding any other provision of this paragraph 3, if the Franchisee reasonably considers that pursuing the implementation of any Improvement Initiative or otherwise actioning any requests in connection with the planning, development or implementation of any Improvement Initiative would, or is reasonably likely to, result in:**
- (a) **it incurring additional costs, over and above those a Good and Efficient Operator would incur; or**
 - (b) **in the case of Specified Industry Initiatives or Further Industry Initiatives, it being required to increase its staffing resources,**

it shall notify the Secretary of State of the same and shall not proceed unless (i) the Secretary of State so directs or gives consent for it to do so or (ii) such additional staffing resources or costs were contemplated when the Secretary of State agreed or reasonably determined the Franchisee's most recent business plan and cost budget in accordance with the terms of Schedule 8.1A, and Schedule 11.2. If the Secretary of State directs or gives consent in relation to an Improvement Initiative pursuant to this paragraph 3.4, the Franchisee shall plan, develop or implement (as applicable) such Improvement Initiative in accordance with the Secretary of State's instructions.

- 3.5 **Any notice issued pursuant to paragraph 3.4 shall include:**
- (a) **details of the proposed Improvement Initiative;**
 - (b) **the Franchisee's assessment of the wider benefits for passengers, the wider economy, the environment and others;**
 - (c) **the Franchisee's assessment of any financial or other benefits to Network Rail or other industry parties; and**

- (d) **the Franchisee's reasonable estimate of the associated cost or staffing requirements (as applicable).**

4. One Team Stations Initiative

4.1 In this paragraph 4:

"NR Managed Stations" means each station which is served by Passenger Services and where Network Rail is the Station Facility Owner.

"One Team Stations Implementation Plan" means a detailed plan jointly produced between Network Rail and the Franchisee setting out how and when they will implement the One Team Stations Initiative.

"One Team Stations Initiative" means measures and initiatives to promote a 'one team' culture and approach between Network Rail and the Franchisee through collaborative working, unified policies and organisational delivery models such that customers are not able to distinguish between Network Rail and Franchisee employees at NR Managed Stations, resulting in improved passenger and cost efficiency outcomes.

- 4.2 During the Franchise Term, the Franchisee shall, including as may be requested by the Secretary of State or Network Rail, consult, co-ordinate and co-operate with Network Rail and other Train Operators (as applicable) in respect of the planning, development and implementation of the One Team Stations Initiative.**

- 4.3 Subject always to paragraph 4.7, the Franchisee shall use all reasonable endeavours to agree a One Team Stations Implementation Plan with Network Rail by 28 February 2021 and shall update this as necessary for consistency with the One Team Stations Initiative from time to time.**

- 4.4 If the Franchisee and Network Rail fail to agree a One Team Stations Implementation Plan in accordance with paragraph 4.3, the Franchisee shall promptly notify the Secretary of State and the Franchisee agrees that it shall accept such One Team Stations Implementation Plan as the Secretary of State may specify (acting reasonably and having due regard to the information provided by the Franchisee in its notice). In any notice issued to the Secretary of State pursuant to this paragraph 4.4, the Franchisee shall include reasonable details of the points of difference between the Franchisee and Network Rail, together with its reasons for not accepting any proposal made by Network Rail.**

- 4.5 In developing the One Team Stations Initiative pursuant to paragraph 4.2, the Franchisee shall collaborate and cooperate with Network Rail and, where applicable, any other Train Operators to identify and assess the business case for any alternative operational delivery models, including joint management structures designed to improve customer service, operations and cost efficiency.**

- 4.6 **As soon as practicable following agreement of any One Team Stations Implementation Plan under paragraph 4.3 or otherwise following any instructions from the Secretary of State in accordance with paragraph 4.4, the Franchisee shall take such action as may be necessary to discharge its obligations under this plan and shall promptly notify the Secretary of State of any material failure to discharge such obligations.**
- 4.7 **If the Franchisee reasonably considers that any provision of this paragraph 4 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).**

5. Integrated Control Centres Initiative

- 5.1 **During the Franchise Term, the Franchisee shall, where required to do so in accordance with this Franchise Agreement or where requested to do so by the Secretary of State or Network Rail, consult, co-ordinate and co-operate with Network Rail and other Train Operators (as applicable) in respect of the planning, development and/or implementation (as applicable) of the Integrated Control Centres Initiative at such Control Centres as the Secretary of State or Network Rail may specify.**
- 5.2 **If required to do so in accordance with paragraph 5.1, and subject always to paragraph 5.6, the Franchisee shall use all reasonable endeavours to agree an Integrated Control Centres Implementation Plan with Network Rail within such timescale as the Secretary of State or Network Rail may reasonably specify and shall update this as necessary for consistency with the Integrated Control Centres Initiative from time to time.**
- 5.3 **If the Franchisee and Network Rail fail to agree an Integrated Control Centres Implementation Plan in accordance with paragraph 5.2, the Franchisee shall promptly notify the Secretary of State and the Franchisee agrees that it shall accept such Integrated Control Centres Implementation Plan as the Secretary of State may specify (acting reasonably and having due regard to the information provided by the Franchisee in its notice). In any notice issued to the Secretary of State pursuant to this paragraph 5.3, the Franchisee shall include reasonable details of the points of difference between the Franchisee and Network Rail, together with its reasons for not accepting any proposal made by Network Rail.**
- 5.4 **If required to do so in accordance with paragraph 5.1, the Franchisee shall collaborate and cooperate with Network Rail and, where applicable, any other Train Operators to:**

- (a) **identify any alternative operational delivery models which could be developed and implemented to promote an integrated approach to joint control at any Control Centres; and**
 - (b) **assess the business case for the industry (as a whole) for implementing any such proposals.**
- 5.5 **As soon as practicable following agreement of any Integrated Control Centres Implementation Plan under paragraph 5.2 or otherwise following any instructions from the Secretary of State in accordance with paragraph 5.3, the Franchisee shall take such action as may be necessary to discharge its obligations under this plan and shall promptly notify the Secretary of State of any material failure to discharge such obligations.**
- 5.6 **If the Franchisee reasonably considers that any provision of this paragraph 5 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).**
- 6. Co-operation**
- 6.1 **In this paragraph 6:**
- “Delay Attribution Principles and Rules” means the version of the document known as the Delay Attribution Principles and Rules referenced in the Network Code;**
- “Performance Improvement Management System” means the rail industry framework for the management of performance risks;**
- “Reactionary Minutes Delay” means the minutes of delay to the Passenger Services that are attributed as ‘Reactionary Delay’ in accordance with the Delay Attribution Principles and Rules, disregarding any minutes of delay that are imputed to Passenger Services that were cancelled; and**
- “RM3P” means the ‘Risk Management Maturity Model for Performance’ system to monitor and manage operational performance within the rail industry.**
- 6.2 **The Franchisee shall work fully and effectively with Network Rail as required to:**
- (a) **analyse Reactionary Minutes Delay and develop and deliver performance improvement plans to address areas of underperformance, focusing on improving Timetable robustness and contingency planning;**
 - (b) **record, monitor and reduce sub-threshold delay;**

- (c) **implement industry best practice approaches to improving performance, including, if requested by the Secretary of State, the deployment of the RM3P and the Performance Improvement Management System; and**
- (d) **review 'TRUST Delay Codes' (as set out in the Delay Attribution Principles and Rules) and identify opportunities to improve the delay attribution process set out in the Delay Attribution Principles and Rules.**

7. Operational Planning

7.1 In this paragraph 7:

"Event Steering Groups" has the meaning given to it in the Network Code.

"Required Establishment" means the number of train crew required in order to operate the Passenger Services, which in the case of drivers shall be calculated in accordance with the Rail Delivery Group's "Guidance Note on Driver Establishment Calculation (December 2013)" and otherwise in accordance with an equivalent methodology.

"Train Crew Numbers Data" has the meaning given to it in paragraph 7.3.

7.2 The Franchisee shall consult, co-ordinate and co-operate with Network Rail and any relevant Train Operators in respect of the planning, development and implementation of proposals to support the continuous improvement of train timetabling and train planning functions. Amongst other things, this shall include developing improvements to:

- (a) **the quality of the Franchisee's and Network Rail's timetable planning activities, through, amongst other things:**
 - (i) **adequate resourcing of train planning and diagramming activities for both rolling stock and traincrew;**
 - (ii) **collaborative working between the Franchisee's and Network Rail or other Train Operators' planning teams;**
 - (iii) **the timely sharing of plans for rolling stock and traincrew, including ancillary moves;**
 - (iv) **timely sharing of rolling stock characteristics required to support timetable simulation and performance modelling; and**
 - (v) **an increased focus on the advance development of major timetable changes, including through Event Steering Groups;**

- (b) **the robustness and resilience of the Franchisee's and Network Rail's train plans through collaborative working, to ensure jointly developed train regulation policies, contingency and service recovery plans including but not limited to data in relation to, and plans for:**
 - (i) **diversionary route availability (including traincrew knowledge and rolling stock clearance); and**
 - (ii) **traincrew flexibility (including route and traction knowledge, and spare cover).**
- 7.3 **The Franchisee shall, as soon as reasonably practicable following any request, provide Network Rail with such information as it may reasonably request, including:**
- (a) **information in relation to current and projected future numbers of train crew employed, in aggregate and in respect of each individual train crew depot or link, and distinguishing in each case between different types of train crew and between fully qualified individuals and trainee (the "Train Crew Numbers Data"); and**
 - (b) **a comparison of the Train Crew Numbers Data against the Franchisee's most recent assessment of the current and expected future Required Establishment in each case.**

8. Infrastructure Projects

The Franchisee shall, throughout the Franchise Term, consult, co-ordinate and co-operate with Network Rail and any relevant Train Operators in respect of the planning, development and/or implementation (as applicable) of such renewals, enhancements and associated possessions as Network Rail may notify to the Franchisee. In particular, the parties shall work collaboratively to:

- (a) **identify opportunities to coordinate and combine the delivery of infrastructure enhancements and planned renewals; and**
- (b) **plan possessions,**

in each case, in such manner as achieves the optimum compromise between outcomes for passengers and cost-efficiency for the railway industry as a whole.

9. Sharing Data with Network Rail

9.1 In this paragraph 9:

"Financial and Commercial Data" means financial and commercial data and information in respect of:

- (a) **the number of passengers using the Passenger Services, including as may be sourced from MOIRA, Lennon, passenger counts, yield management data and gate line data; and**

(b) **operating costs.**

“NR Data Sharing Objectives” means the aims and objectives of data sharing as may be agreed between the Franchisee and Network Rail and documented in the NR Data Sharing Strategy, including for the purposes of improving the planning and delivery of the day to day operational activities, supporting business planning, supporting train planning, informing service change and timetabling proposals, planning access and possessions, assessing the railway industry business case for specified proposals and to support strategic planning.

“NR Data Sharing Strategy” means the data sharing strategy to be developed in accordance with paragraph 9.2, as may be updated from time to time.

“Operational Data” means data and information in relation to the day to day operation of the passenger services including in relation to traincrew diversionary route and traction knowledge, Train Plan, rolling stock configuration, stock and crew diagrams and fleet reliability data.

9.2 **By no later than 31 January 2021, the Franchisee shall, jointly with Network Rail, develop and use all reasonable endeavours to agree a strategy, which sets out the basis on which the Franchisee will, subject to any guidance or instructions that the Secretary of State may provide or issue from time to time, share specified operational, financial and commercial data and information with Network Rail. As a minimum, the strategy will include:**

- (a) **the agreed NR Data Sharing Objectives;**
- (b) **the types of data to be shared by the Franchisee and Network Rail (including Operational Data and Financial and Commercial Data);**
- (c) **the format and frequency of the data sharing;**
- (d) **how the Franchisee and Network Rail intend to receive, use and safely store the data;**
- (e) **approach to cost-sharing and apportionment in respect of the data sharing; and**
- (f) **approach to overcoming any confidentiality or other restrictions in respect of data sharing or storage which may arise (including as matter of law).**

9.3 **If the Franchisee:**

- (a) **is unable to agree the NR Data Sharing Strategy with Network Rail by 31 January 2021; or**
- (b) **reasonably considers that any proposal pursuant to this paragraph 9 requires, or is likely to require, it to do anything inconsistent with acting as a Good and Efficient Operator,**

it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with such guidance or directions as the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).

- 9.4 **The Franchisee shall use all reasonable endeavours to implement the NR Data Sharing Strategy in accordance with its terms, and shall continue to consult, collaborate and co-operate with Network Rail to agree any reasonable amendments or updates to the NR Data Sharing Strategy from time to time.**
- 9.5 **The Franchisee shall propose and use all reasonable endeavours to agree with Network Rail suitable amendments to the NR Data Sharing Strategy to ensure compliance with any guidance or instructions issued or provided by the Secretary of State from time to time.**
- 9.6 **The Franchisee shall not unreasonably withhold or delay its consent to any amendments which Network Rail may reasonably propose to the NR Data Sharing Strategy, provided that the Franchisee shall not agree to any amendments which would not be in compliance with any guidance the Secretary of State may provide or issue from time to time.**
- 9.7 **Notwithstanding any other term of this paragraph 9, the Franchisee shall not be required to do anything which would put it in breach of any obligation on the Franchisee arising under applicable Law or the terms of its Licences.**

10. Sharing on-train data with Network Rail

- 10.1 **The Franchisee shall, to the extent reasonably requested by Network Rail, share with Network Rail all relevant data including GPS data and data derived from geometry measurement systems, forward facing CCTV, driver advisory systems and train condition monitoring systems fitted to any rolling stock within the Train Fleet. Any such data provided to Network Rail shall be provided in such format as Network Rail may reasonably request without charge.**
- 10.2 **The Franchisee shall, if so requested by Network Rail, provide advice to Network Rail on the feasibility, costs and associated practicalities of providing Network Rail with access to real-time (or near-real-time) footage from on-train forward-facing CCTV systems.**

11. Station Accessibility Data Collection

The Franchisee shall comply with any reasonable request by the Secretary of State in connection with the development and implementation of a station accessibility data collection which may include (but shall not be limited to):

- (a) **supporting the Secretary of State in developing and designing the methodology for data collection;**

- (b) **completing questionnaires and/or using reasonable endeavours to procure that the relevant station Facility Owner completes the relevant questionnaire;**
- (c) **providing information in relation to Station accessibility and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such information; and**
- (d) **providing access to Stations to facilitate accessibility data collection and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such access,**

in each case, in a timely manner.

12. Compensation

Save with the prior written consent (such consent not to be unreasonably withheld or delayed) of the Secretary of State, the Franchisee shall not:

- (a) **enter into any new agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers' compensation claims;**
- (b) **materially amend, vary or waive the terms of any existing agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers' compensation claims;**
- (c) **extend the term of any agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers' compensation claims; or**
- (d) **make any material change to the Franchisee's system(s) relating to the receipt or processing of passengers' compensation claims.**

13. TD Academy

13.1 In this paragraph 13 of part 1 of Schedule 6.3:

"TD Academy Board" means the board of the TD Academy.

"TD Academy Objectives" means:

- (i) **improving the consistency and quality of driver training;**
- (ii) **improving and increasing driver training throughout with the objective of eliminating the shortage of drivers;**
- (iii) **improving driver skills and qualifications, including through increased uptake of the Train Driver Apprenticeship (Level 3) (as supported by the Institute for Apprenticeships and Technical Education);**
- (iv) **improving, increasing and promoting diversity of drivers in the industry in accordance with the Approved D&I Strategy;**

- (v) **providing information to the TD Academy Board for assurance on training quality to stakeholders; and**
- (vi) **promoting synergies, efficiencies and consistency through collaboration between TD Academy Stakeholders on driver training programmes and initiatives,**

(each, a "TD Academy Objective").

"TD Academy Plan" has the meaning given to it in paragraph 13.3(b), including as updated from time to time.

"TD Academy Stakeholders" means the Franchisee, the Secretary of State, Train Operators, the RDG, any other relevant rail industry bodies and any other stakeholders which the Secretary of State may notify the Franchisee of from time to time.

"Train Driver Academy" or "TD Academy" means the scheme to promote driver training programmes (including through online learning platforms) which was originally established by the RDG in 2019, including as it may be amended, supplemented or replaced from time to time."

- 13.2 **During the term of the ERMA, the Franchisee shall consult, co-ordinate and co-operate with the TD Academy Stakeholders as appropriate (or as may be required by the Secretary of State) from time to time in respect of the planning, development and/or implementation (as applicable) of the Train Driver Academy and/or in connection with promoting the TD Academy Objectives.**
- 13.3 **By no later than 30 November 2020, the Franchisee shall provide the Secretary of State with a report:**
- (a) **setting out how it is currently engaging with the TD Academy and/or promoting the TD Academy Objectives; and**
 - (b) **how it intends to engage with the TD Academy and/or promote the TD Academy Objectives during the term of the ERMA, including its proposed timing for achieving any key milestones (the "TD Academy Plan"), together with an assessment of the costs and practicalities involved in implementing the TD Academy Plan.**
- 13.4 **Following the report referred to in paragraph 13.2, the Franchisee shall implement its TD Academy Plan and shall promptly notify the Secretary of State of any material departures or failure to do so.**
- 13.5 **The Secretary of State may, from time to time:**
- (a) **recommend specified changes to the Franchisee's TD Academy Plan as it considers reasonable to promote the achievement of the TD Academy Objectives; and**
 - (b) **direct the Franchisee to comply with and or implement instructions which the Secretary of State considers necessary to promote the achievement of the TD Academy Objectives.**

13.6 The Franchisee shall:

- (a) **take account of, and update its TD Academy Plan in respect of, any Secretary of State recommendations pursuant to paragraph 13.5(a) and implement its TD Academy Plan (as amended); and**
- (b) **implement and or comply with any Secretary of State instructions pursuant to paragraph 13.5(b) and update its TD Academy Plan accordingly.**

13.7 During the term of the ERMA, the Franchisee shall not enter into any new contracts or other arrangements which may materially adversely affect the Franchisee's ability to comply with this paragraph 13, without the prior written consent of the Secretary of State.

PART 2 – PAY AND INDUSTRIAL RELATIONS AND DISPUTE HANDLING⁶⁴⁵**1. Notification of the Secretary of State****1.1 In this part 2 of Schedule 6.3:**

“Collective Agreement” has the meaning given to it in the Trade Union and Labour Relations (Consolidation) Act 1992.

“Dispute Handling Policy” means the policy issued by the Secretary of State with the same name on, on or about the ERMA Start Date, as may be amended, supplemented or replaced from time to time.

“Employment Agreement” means the terms and conditions of employment of any Franchise Employee whether contained in or otherwise incorporated or implied, including by way of custom or practice, into any Collective Agreement, individual contract of employment, employee handbook or otherwise, in each case whether or not in writing.

“Employment Policy Framework” has the meaning given to it in paragraph 2.1 of this part 2 of Schedule 6.3.

“In-Scope Matters” means any of the following matters in relation to any Franchise Employees:

- (i) **pay negotiation strategies;**
- (ii) **changes to any remuneration strategy, pension arrangements or staff benefits;**
- (iii) **any proposed restructuring or redundancy plans;**
- (iv) **any proposed changes affecting Franchise Employees (including to proposed changes to the terms of any Employment Agreement, any proposed changes to working practices or procedures, howsoever these are recorded or have become established, and whether these apply nationally or locally) which either party reasonable believes (a) is likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or (b) could have a material negative impact on productivity; and/or (c) would not be in train passengers’ interests;**
- (v) **any other matter notified to the Franchisee by the Secretary of State from time to time; and/or**
- (vi) **any negotiation or consultation strategies regarding any of the matters at (i) to (v) above,**

⁶⁴⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

(each, an "In-Scope Matter").

"Mandate" means in relation to any In-Scope Matter any mandate formally agreed from time to time in writing (other than through email or other informal correspondence unless the email in question includes express confirmation from the Secretary of State that its content (or stipulated part of it) is to form a Mandate) between the Franchisee and the Secretary of State regarding: (i) the objective or objectives of negotiations or consultation; (ii) any parameters or constraints on such objective(s), or the substance of such negotiations or consultation; and/or (iii) how such negotiations or consultation are to be approached, structured or handled.

"Relevant Employer" means any of the Franchisee's Affiliates to whom the Franchise Services or services which are in support of or ancillary to the Franchise Services have been subcontracted (at any tier) or delegated by the Franchisee, which employs Franchise Employees performing or in support of or ancillary to the Franchise Services.

"Reward and People Principles" means any policy or policies, high level objectives, principles, instructions or guidance issued to the Franchisee or any Relevant Employer by the Secretary of State (a) with the title "Reward and People Policy", "Reward Policy" and/or "People Policy"; and/or (b) which relates to remuneration, pensions, benefits, working arrangements, working practices or terms and conditions of employment in respect of any Franchise Employee, in each case (a) and (b) as may be amended, supplemented or replaced by the Secretary of State from time to time.

"Trade Union" means any trade union(s) recognised by the Franchisee or any Relevant Employer in respect of Franchise Employees.

"Unrepresented Employees" has the meaning given to it in paragraph 1.7(a) of this part 2 of Schedule 6.3.

"Workers" has the meaning given to it in paragraph 10 of this part 2 of Schedule 6.3.

- 1.2 **The Franchisee shall, and shall procure that each other Relevant Employer, shall:**
- (a) **as soon as reasonably practicable prior to engaging with any Trade Union or other employee representative body in relation to any In-Scope Matter; or**
 - (b) **promptly and in any event three (3) Weekdays following any communication from any Trade Union or other employee representative body to the Franchisee (or the Relevant Employer, as applicable) in relation to any potential In-Scope Matter which is not covered by an existing Mandate,**

and where reasonably practicable in each case in good time to allow for proper engagement with the Secretary of State, inform the Secretary of State of all relevant information relating to any such matters and any other information the Secretary of State may request from time to time in relation to such matters. Where there is any doubt as to whether a matter requires notification in accordance with this paragraph 1.2, the Franchisee shall, and shall procure that each other Relevant Employer shall, make a notification in any event. In determining whether to make a notification and/or what information must be provided to the Secretary of State by the Franchisee, the Franchisee shall have regard to its obligations under paragraph 7.1 of this part 2 of Schedule 6.3.

1.3 Following notification to the Secretary of State pursuant to paragraph 1.2 above, the Franchisee shall, and shall procure that each Relevant Employer shall, prior to any further communication with any Trade Union or other employee representative body in relation to the applicable In-Scope Matter, consult with the Secretary of State with a view to reaching agreement with the Secretary of State on a Mandate.

1.4 If:

- (a) a Mandate cannot be agreed and the Franchisee or a Relevant Employer acts or omits to act in respect of a relevant In-Scope Matter without a Mandate;
- (b) the Secretary of State determines that the Franchisee or a Relevant Employer has incorrectly treated a matter as not being an In-Scope Matter and the Franchisee or a Relevant Employer acts or omits to act in respect of that matter without a Mandate; or
- (c) the Franchisee or a Relevant Employer breaches a Mandate or acts outside the scope of a Mandate in relation to the relevant In-Scope Matter,

and, in any such case, in doing so incurs costs, or loses revenue, then the Secretary of State may in the Secretary of State's sole discretion direct that:

- (i) any loss of revenue shall be treated as Revenue Foregone; and
- (ii) any increase in costs shall be treated as a Disallowable Cost,

in each case where the Secretary of State in the Secretary of State's sole discretion determines that such loss of revenue or increased costs (as the case may be) arises in connection with actions taken (or omitted to be taken) by the Franchisee or a Relevant Employer in relation to the relevant In-Scope Matter.

1.5 Once a Mandate has been agreed, the Franchisee shall and shall procure that each Relevant Employer shall:

- (a) act in accordance with the Mandate; and

- (b) act in accordance with paragraph 2 below,

in relation to the In-Scope Matter to which that Mandate relates.

- 1.6 **For the purposes of this paragraph 1, communications shall include any verbal discussions or written communications, in each case of a formal or informal nature.**
- 1.7 **Where any Franchise Employees are not subject to collective representation (whether by a Trade Union or any other employee representative body):**
- (a) **any issue which would require notification in paragraphs 1.2(a) and 1.2(b) in relation to an In-Scope Matter shall require notification if the issue arises in respect of any group of more than one such unrepresented Franchise Employees (“Unrepresented Employees”); and**
- (b) **when paragraph 1.7(a) applies, once a Mandate is required, the provisions of this part 2 of Schedule 6.3 shall apply in full in respect of the relevant Unrepresented Employees.**

2. Reward and People Principles

- 2.1 **In relation to any In-Scope Matter (and whether or not a Mandate has been agreed in respect of that matter)_the applicable principles for reward and working arrangements will be set out in Reward and People Principles and the Parties intend that these shall take precedence over other arrangements between the Secretary of State and the Franchisee which are in place immediately prior to the ERMA Start Date, subject to the remainder of this paragraph 2.1. Specifically:**
- (a) **the Franchisee agrees that the Reward and People Principles and any other policies, high level instructions or guidance that the Secretary of State may reasonably introduce or direct from time to time (including in accordance with the provisions of paragraph 6 below) (together, the “Employment Policy Framework”), shall, in the case of any conflict or inconsistency, take precedence over any arrangements which form the substance of an In-Scope Matter between the Secretary of State and the Franchisee which are in place immediately prior to the ERMA Start Date, including:**
- (i) **any multi-year pay awards;**
- (ii) **staffing budgets (whether pre-approved or otherwise, and including where any assumptions relating to pay growth may have been made); and**
- (iii) **any other agreement or arrangement relating to any In-Scope Matters,**

in each case which may take effect following the ERMA Start Date; however

- (b) **without prejudice to paragraph 2.2, the Employment Policy Framework shall not take precedence over any such In-Scope Matters which, prior to the ERMA Start Date, have become legally binding on the Franchisee or Relevant Employer (whether by reason of individual contract of employment, collective agreement or by custom and practice) and, for the avoidance of doubt, including agreements made which have not yet taken effect at the ERMA Start Date or any changes which the Franchisee or Relevant Employer is required to make by law.**
- 2.2 **Nothing in this part 2 of Schedule 6.3 shall prevent the Franchisee or Relevant Employer from seeking to reach agreement with any Trade Union, other employee representative body or Relevant Employees or taking such other steps as are appropriate or necessary regarding new or revised terms and conditions of employment in order to seek to implement the Employment Policy Framework or any Mandate.**
- 2.3 **The Franchisee shall, and shall procure that each Relevant Employer shall, unless otherwise directed by the Secretary of State, conduct any negotiations or consultation with any Trade Union, other employee representative body or group of employees (within paragraph 1.7(a)) regarding the subject of a Mandate in accordance with the Employment Policy Framework.**
- 2.4 **Subject to paragraph 2.3, the Franchisee shall, or shall procure that the Relevant Employer shall, lead and have full day to day conduct of the relevant negotiations or consultation and implementation of any Mandate.**

3. Terms of Employment

- 3.1 **In addition to the obligations set out in paragraph 1 above but subject to the provisions of paragraph 3.2 below, the Franchisee shall not, and shall procure that each other Relevant Employer shall not, without the Secretary of State's consent (which shall not be unreasonably withheld) effect, or purport or promise to effect, or otherwise implement any In-Scope Matter other than in accordance with the relevant Mandate.**
- 3.2 **Without limiting paragraph 3.1, subject to paragraph 3.4, the Franchisee shall not, and shall procure that each Relevant Employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld or delayed), vary, or purport or promise to vary the terms or conditions of employment with any Franchise Employee (in particular, the Franchisee shall not, and shall procure that each Relevant Employer shall not, promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where the revised terms of employment of any existing Franchise Employee may take effect on or after the ERMA Start Date if and to the extent that such terms or conditions are more favourable than the standard terms or conditions of employment of the equivalent or nearest equivalent Franchise Employee role at the date on which such revised terms and conditions are scheduled to take effect.**

- 3.3 **Without limiting paragraph 3.1, subject to paragraph 3.4, the Franchisee shall not, and shall procure that each other Relevant Employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld or delayed), create or grant, or promise to create or grant, terms or conditions of employment for any prospective Franchise Employee where the employment of such prospective Franchise Employee by the Franchisee or such other Relevant Employer may commence on or after the ERMA Start Date if and to the extent that:**
- (a) **such terms or conditions are more favourable than the standard terms or conditions of employment of the equivalent or nearest equivalent Franchise Employee role at the date on which such employment is scheduled to commence; and**
 - (b) **if such terms or conditions were granted to such equivalent Franchise Employee already employed by the Franchisee by way of variation to their terms or conditions of employment, the Franchisee would be in contravention of paragraph 3.2.**
- 3.4 **For the purposes of matters falling within paragraphs 3.2 and , no consent will be required from the Secretary of State in respect of any changes or proposed changes made or proposed in the ordinary course of business in accordance with human resources policies (in relation to the day to day management of the Franchisee's or Relevant Employer's business) which exist prior to the ERMA Start Date which: (a) are not likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or (b) will not have a material negative impact on productivity; and/or (c) are not contrary to train passengers' interests.**

4. In-Scope Matters

- 4.1 **The Secretary of State may at any time, in the Secretary of State's sole discretion, determine that a matter is, or is not, an In-Scope Matter. Save where either paragraph 4.4 or 4.5 applies, a determination that a matter is an In-Scope Matter will be final and conclusive but will not prevent the Parties agreeing that a matter is no longer an In-Scope Matter.**
- 4.2 **Without prejudice to paragraphs 3.2 and 3.3, if a matter is not an In-Scope Matter, no Mandate is required. For these purposes, matters in respect of which a Mandate is not required will include changes to working practices made in the ordinary course of business in accordance with human resources policies (in relation to the day to day management of the Franchisee's or Relevant Employer's business) prior to the ERMA Start Date which: (a) are not likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or (b) will not negatively impact on productivity; and/or (c) are not be contrary to train passengers' interests.**
- 4.3 **Where a Franchisee (or a Relevant Employer) is in any doubt as to whether any matter is an In-Scope Matter requiring a Mandate, it**

must, or must procure that the Relevant Employer shall, inform the Secretary of State in good time prior to steps being taken to implement such matter or change and the Franchisee must, or must procure that the Relevant Employer shall, if requested by the Secretary of State, provide an explanation of why it believes the proposed matter or change is not an In-Scope Matter requiring a Mandate. Thereafter, the Secretary of State may make a determination in accordance with paragraph 4.1. Provided the Secretary of State, acting reasonably, is satisfied that the Franchisee complied with its obligations under this paragraph 4.3 and paragraph 7.1, the Secretary of State's determination shall, subject to paragraph 4.5, be final and conclusive. Where the Secretary of State has determined that a matter is an In-Scope Matter, nothing will prevent the Parties subsequently agreeing that the matter is no longer an In-Scope Matter.

- 4.4 **Where a matter is not an In-Scope Matter, the Parties acknowledge and agree that further developments in relation to, and/or escalation of, that matter may be such that it could result in (a) material industrial relations risks (including a risk of Industrial Action); and/or (b) a material negative impact on productivity; and/or (c) be contrary to train passengers' interests. In any such event, the Franchisee will make a notification to the Secretary of State in accordance with paragraph 4.3 with a view to seeking a determination from the Secretary of State as to whether the matter has become an In-Scope Matter.**
- 4.5 **Any determination by the Secretary of State that any matter is an In-Scope Matter is conditional on the Secretary of State, acting reasonably, being and remaining satisfied that the Franchisee and, where relevant, the Relevant Employer have disclosed all relevant information relating to such matter and complying and continuing to comply with the duty in paragraph 7.1. If, in the Secretary of State's opinion, acting reasonably, there is or has been any material non-disclosure of relevant information or a material breach of paragraph 7.1 by the Franchisee or Relevant Employer, the Secretary of State may determine that the Mandate is void in which case for the purposes of this part 2 of Schedule 6.3, costs, losses and revenues shall be treated as if that Mandate had never been agreed and paragraph 1.4(a) of this part 2 of Schedule 6.3 shall apply in respect of any acts or omissions of the Franchisee or the Relevant Employer in relation to that matter. The Parties acknowledge and agree that where this paragraph 4.5 applies, the Secretary of State may take such action and/or instruct such changes as it considers reasonably necessary to correct the apportionment of costs, losses and revenues between the Parties.**

5. Industrial Action

- 5.1 **The Franchisee shall, and shall procure that each Relevant Employer shall, comply with the Dispute Handling Policy. Without prejudice to any obligations under the Dispute Handling Policy, to the extent the Franchisee, acting reasonably, believes that Industrial Action is likely to occur as a result of its (or any Relevant Employer's) compliance**

with any aspect of this part 2 of Schedule 6.3 (including any Mandate agreed pursuant to it), or for any other reason, it shall promptly notify the Secretary of State of its reason for that belief and the effect, or the anticipated effect, of such event on the performance of the Franchise Services and provide the Secretary of State with such further information as the Secretary of State may request.

5.2 As soon as reasonably practicable following a notification set out in paragraph 5.1 above, and in any event within three (3) Weekdays following such notification, the Franchisee shall propose a process it intends to adopt to deal with the relevant Industrial Action in accordance with and subject to the Dispute Handling Policy. The Franchisee and the Secretary of State shall use reasonable endeavours to agree how the relevant Industrial Action shall be handled, bearing in mind the Dispute Handling Policy, provided however that the Franchisee's handling of such Industrial Action will be subject always to the Secretary of State's direction, such agreement and/or direction being the "Dispute Handling Plan". The Franchisee shall, and shall procure that each Relevant Employer shall, act in accordance with the Dispute Handling Plan.

5.3 **If:**

- (a) agreement is not reached regarding how relevant Industrial Action is to be handled; or
- (b) in the event that Industrial Action occurs which, the Secretary of State determines (at the Secretary of State's sole discretion, acting reasonably), has arisen as a result of the Franchisee or any Relevant Employer not complying with its or their obligations under this part 2 of Schedule 6.3 including any Mandate agreed pursuant to it, to any failure to act in accordance with the Dispute Handling Plan, to make a notification required by paragraph 1.2 or to provide all relevant information in relation to such notification and or to comply with paragraphs 7.1 and 7.3,

either of which has resulted in a loss of revenue, an increase or decrease in costs, or a combination of the foregoing, as a consequence (direct or otherwise) of the disruption to Passenger Services (however so related), the Secretary of State may in the Secretary of State's sole discretion:

- (c) if the Cost Target Methodology or the Profit Target Methodology applies to the Financial Performance Fee during the PBF Assessment Period in which such event occurs, designate such event as a Category A Target Amendment Trigger Event;
- (d) direct that any such increase in costs shall be treated as Disallowable Costs and the Franchisee shall not, in any circumstances, be entitled to claim back such costs from the Secretary of State whether pursuant to Schedule 8.1A (*Franchise Payments*) or otherwise; and/or
- (e) direct that any such lost revenue shall be treated as Revenue Foregone.

5.4 To the extent that the Franchisee:

- (a) **has complied with this part 2 of Schedule 6.3 (including any applicable Mandate); and**
- (b) **has complied with the Dispute Handling Plan,**

then

- (c) **the Secretary of State, will not treat any increase in costs or loss of revenue of the Franchisee arising from the relevant Industrial Action (however caused and of whatever nature) as a Disallowable Cost or Revenue Foregone (respectively); and**
- (d) **if the Cost Target Methodology or the Profit Target Methodology applies to the Financial Performance Fee during the PBF Assessment Period in which the relevant Industrial Action occurs, the occurrence of such Industrial Action shall constitute a Category A Target Amendment Trigger Event,**

in circumstances where the Secretary of State is satisfied that the Franchisee has acted reasonably in taking all reasonable steps (and procuring that any Relevant Employer has taken all reasonable steps) to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, the Franchisee has taken all reasonable steps (and has procured that any Relevant Employer has taken all reasonable steps) to mitigate its effects.

6. Reform

6.1 The Franchisee shall, and shall procure that each Relevant Employer shall:

- (a) **co-operate with the Secretary of State as may be required by the Secretary of State from time to time in respect of the planning, development and/or implementation (as applicable) of industry reform with respect to the Employment Policy Framework and the Dispute Handling Policy, including co-operating and collaborating with other Train Operators and other organisations in respect of planning, developing and implementing such reforms to the extent permitted by applicable laws; and**
- (b) **provide to the Secretary of State, such information and data in relation to the Employment Policy Framework and/or the Dispute Handling Policy (or any aspect of it/them) as the Secretary of State may require from time to time.**

6.2 The Franchisee shall, and shall procure that each Relevant Employer shall, use all reasonable endeavours to introduce, implement and comply with such amendments to the Dispute Handling Policy, the Employment Policy Framework generally and any other applicable industry agreements (including any successor arrangements or any other agreement between the Franchisee and one or more third parties relating to the sustainability of the Franchisee's staffing model, people practices, engagement with related industry

stakeholders or any related matter) as may be directed by the Secretary of State from time to time.

- 6.3 During the term of this ERMA, the Franchisee shall not, and shall procure that each Relevant Employer shall not, enter into any new Employment Agreements otherwise than in accordance with the terms of this part 2 of Schedule 6.3 (including any applicable Mandate) and the Employment Policy Framework without the prior written consent of the Secretary of State.

7. Duties of the Franchisee

- 7.1 In relation to any matters dealt with in this part 2 of Schedule 6.3, the Franchisee shall, and shall procure that each Relevant Employer shall, deal with the Secretary of State in an open and cooperative way, and must disclose to the Secretary of State on an ongoing basis anything relating to the Franchise Employees (and any Trade Union or other employee representative body representing any such employees) of which the Secretary of State would reasonably expect notice in respect of anything which might reasonably be expected to be relevant to an In-Scope Matter.
- 7.2 The Franchisee shall (and shall procure that each Relevant Employer shall) act within the spirit of this part 2 of Schedule 6.3 in its communications and dealings with any Trade Union, employee representative body or any Franchise Employee, both locally and nationally.
- 7.3 The Franchisee's duty to act as a Good and Efficient Operator shall apply to the discharge of its obligations under this part 2 of Schedule 6.3.

8. Cooperation

Where the Franchisee or Relevant Employer reasonably considers that complying with any aspect of this Schedule 6.3, including any aspect of the Employment Policy Framework or any Mandate, will cause it to breach any legal obligation of the Franchisee or Relevant Employer in their capacity as employer (whether arising under legislation or at common law) including to breaches of legislation relating to unlawful discrimination or equal pay, the Secretary of State and Franchisee shall work in cooperation (and/or, as appropriate, the Secretary of State shall, and the Franchisee shall use reasonable endeavours to procure that the Relevant Employer shall, work in cooperation) with a view to agreeing an approach to, as the case may be, compliance with such obligations under this part 2 of Schedule 6.3 or avoidance or mitigation of the risk of such breach by the Franchisee or Relevant Employer. Once such an approach is agreed, the Franchisee shall, and will procure that the Relevant Employer shall, implement it on its terms.

9. Disallowable Costs

Save as provided in this part 2 of Schedule 6.3 or as expressly agreed with the Secretary of State, any losses and liabilities (including costs, charges, penalties, compensation or similar payments) incurred as result of

termination of a contract of employment of, or reaching any settlement or compromise with, a Franchisee Employee shall be Disallowable Costs.

10. Workers

To the extent that the Franchisee or any Relevant Employer engages individuals to work on the Franchise Services as workers (howsoever "workers" is defined in relevant English employment legislation from time to time, but excluding "agency workers" as defined in the Agency Worker Regulations 2010, as amended from time to time) ("Workers") rather than employees, the provisions in this part 2 of Schedule 6.3 shall be deemed to cover such Workers. In such circumstances, the engaging party shall be the Franchisee or the Relevant Employer, as applicable, and references to terms and conditions of employment shall be construed as references to terms and conditions of engagement and reference to Franchise Employees shall include such workers.

SCHEDULE 7

Performance Benchmarks

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| Schedule 7.1: | Operational Performance⁶⁴⁶ |
| | Appendix 1: Cancellations Benchmarks and Annual Cancellations Benchmarks |
| | Appendix 2: TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks |
| | Appendix 3: Short Formation Benchmark and Annual Short Formation Benchmark Table |
| Schedule 7.2: | Customer Experience and Engagement⁶⁴⁷ |
| Schedule 7.3 | Customer Experience Performance |

⁶⁴⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁴⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 7.1
OPERATIONAL PERFORMANCE⁶⁴⁸

1. Defintions and Track Access Agreement

1.1 **For the purposes of this Schedule 7.1 only, the following words and expressions shall have the following meanings unless otherwise set out in Clause 3 (*Definitions*):**

| | |
|--|--|
| "Cancellations Re-Calculation" ⁶⁴⁹ | has the meaning given to it in paragraph 3.13.1(b) of this Schedule 7.1; |
| "Draft Action Plan" | has the meaning given to it in paragraph 9.1(b)9.1(b)(i) of this Schedule 7.1; |
| "Initial Cancellations Calculation" ⁶⁵⁰ | has the meaning given to it in paragraph 3.1(a) of this Schedule 7.1; |
| "Initial TOC Minutes Delay Calculation" ⁶⁵¹ | has the meaning given to it in paragraph 4.14.1(a) of this Schedule 7.1; |
| "Route-Specific Required Performance Improvement" ⁶⁵² | has the meaning given to it in paragraph 9.1(a)(ix) of this Schedule 7.1; |
| "TOC Minutes Delay Re-Calculation" ⁶⁵³ | has the meaning given to it in paragraph 4.1(b) of this Schedule 7.1; |
| "Undisputed Cancellation" | means a Cancellation that is not a Disputed Cancellation; |
| "Undisputed Network Rail Cancellation" | means a Network Rail Cancellation that is not a Disputed Cancellation; |
| "Undisputed Network Rail Partial Cancellation" | means a Network Rail Partial Cancellation that is not a Disputed Partial Cancellation; and |
| "Undisputed Partial Cancellation" | means a Partial Cancellation that is not a Disputed Partial Cancellation. |

1.2 **Not used.**⁶⁵⁴

1.3 **Not used.**

1.4 **Not used.**

⁶⁴⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁴⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁵⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁵¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁵² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁵³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁵⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee. (Paragraphs 1.2 – 1.11 inclusive).

1.5 **Not used.**

1.6 **Not used.**

1.7 **Not used.**

1.8 **Not used.**

1.9 **Not used.**

1.10 **Not used.**

1.11 **Not used.**

1.12 **Track Access Agreement**

The Franchisee agrees with the Secretary of State to comply with the requirements of the Track Access Agreement in respect of cancellations attribution (Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations) and Minutes Delay attribution.

1.13 ⁶⁵⁵**Not used.**

1.14 ⁶⁵⁶**Notice of Performance Results**

As soon as reasonably practicable after the end of each Reporting Period and each PBF Assessment Period, the Secretary of State shall notify the Franchisee of the results of the calculations performed pursuant to this Schedule 7.1.

2. ⁶⁵⁷**Reporting Requirements**

2.1 **The Franchisee shall at the end of each Reporting Period and in accordance with the relevant requirements of Appendix 2 (*Operational Performance Information*) of Schedule 11.2 (*Management Information*) report to the Secretary of State the operational information as specified in Appendix 2 (*Operational Performance Information*) of Schedule 11.2 (*Management Information*) and such further information as may be required for the purposes of the Secretary of State undertaking any of the calculations required to be performed by the Secretary of State pursuant to this Schedule 7.1.**

⁶⁵⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁵⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁵⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

3. ⁶⁵⁸Cancellation Calculation

- 3.1 **For each Reporting Period during the term of the ERMA the Secretary of State shall:**
 - (a) **calculate the Franchisee's performance in respect of Cancellations (and, if applicable, calculate the Franchisee's performance in respect of Cancellations against the OP Target for Cancellations) in accordance with the formula set out in Table 1 below (each an "Initial Cancellations Calculation"); and**
 - (b) **other than for the first and second Reporting Periods following the ERMA Start Date, re-calculate the Franchisee's performance in respect of Cancellations (and, if applicable, re-calculate the Franchisee's performance in respect of Cancellations against the OP Target for Cancellations) for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 1 below (each a "Cancellations Re-Calculation").**
- 3.2 **In the event that a Cancellations Re-Calculation demonstrates that the Initial Cancellations Calculation or an earlier Cancellations Re-Calculation was incorrect, the Initial Cancellations Calculation and/or the relevant earlier Cancellations Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest Cancellations Re-Calculation.**
- 3.3 **If the Performance Based Fee attributable to the Cancellations Operational Performance Component for the relevant PBF Assessment Period is calculated using the Quantified Target Methodology, the Franchisee shall not be entitled to receive payment of such element of the Performance Based Fee for the relevant PBF Assessment Period until the Secretary of State has undertaken all Cancellations Re-Calculations in relation to that PBF Assessment Period.**

| | | |
|-------------------------------|--|--------------------------|
| Table 1 ⁶⁵⁹ | | |
| A | = | $\frac{B}{C} \times 100$ |
| where: | | |
| B | is the total number of Cancellations or Partial Cancellations of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, on the basis that: <ul style="list-style-type: none"> a) a Cancellation shall count as one (1); b) a Partial Cancellation shall count as zero point five (0.5); and | |

⁶⁵⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁵⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

| | |
|---|--|
| | <p>c) any Cancellations or Partial Cancellations during that Reporting Period which were caused by:</p> <ul style="list-style-type: none"> (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (ii) the occurrence or continuing effect of a Force Majeure Event, <p>shall, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, be disregarded in determining such total number of Cancellations and Partial Cancellations;</p> |
| C | <p>is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, disregarding, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, any Cancellations or Partial Cancellations during that Reporting Period which were caused by:</p> <ul style="list-style-type: none"> a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or b) the occurrence or continuing effect of a Force Majeure Event. |

4. ⁶⁶⁰TOC Minutes Delay Calculations

4.1 For each Reporting Period during the term of the ERMA the Secretary of State shall:

- (a) calculate the Franchisee's performance in respect of TOC Minutes Delay (and, if applicable, calculate the Franchisee's performance in respect of TOC Minutes Delay against the OP Target for TOC Minutes Delay) in accordance with the formula set out in Table 2 below (each an "Initial TOC Minutes Delay Calculation"); and
- (b) other than for the first and second Reporting Periods following the ERMA Start Date, re-calculate the Franchisee's performance in respect of TOC Minutes Delay (and, if applicable, re-calculate the Franchisee's performance in respect of TOC Minutes Delay against the OP Target for TOC Minutes Delay) for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 2 below (each a "TOC Minutes Delay Re-Calculation").

4.2 ⁶⁶¹In the event that a TOC Minutes Delay Re-Calculation demonstrates that the Initial TOC Minutes Delay Calculation or an earlier TOC Minutes Delay Re-Calculation was incorrect, the Initial TOC Minutes Delay Calculation and/or the relevant earlier TOC Minutes Delay Re-

⁶⁶⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁶¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

Calculation shall, for the relevant Reporting Period, be replaced with the latest TOC Minutes Delay Re-Calculation.

- 4.3 ⁶⁶²If the Performance Based Fee attributable to the TOC Minutes Delay Operational Performance Component for the relevant PBF Assessment Period is calculated using the Quantified Target Methodology, the Franchisee shall not be entitled to receive payment of such element of the Performance Based Fee for the relevant PBF Assessment Period until the Secretary of State has undertaken all TOC Minutes Delay Re-Calculations in relation to that PBF Assessment Period.

| | |
|-------------------------------|---|
| Table 2 ⁶⁶³ | |
| $\frac{MD_{SRP}}{H_{SRP}}$ | |
| where: | |
| MD_{SRP} | is the sum of Minutes Delay that are attributable to the Franchisee in that Reporting Period. |
| H_{SRP} | is ascertained as follows: $\frac{V}{1000}$ |
| | where: |
| V | is the sum of Actual Train Mileage in that Reporting Period. |

5. ⁶⁶⁴Short Formations

5.1 Short Formation Calculation

For each Reporting Period during the Franchise Term the Secretary of State shall calculate the Franchisee's performance in respect of Short Formations (and, if applicable, calculate the Franchisee's performance in respect of Short Formations against the OP Target for Short Formations) in accordance with the following formula:

| | | |
|-----------------------|---|------------------------------------|
| Table 3 | | |
| A^{SF} | = | $\frac{B_{SF}}{C_{SF}} \times 100$ |
| where: | | |

⁶⁶² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁶³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁶⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

| | |
|-----------------------|--|
| B_{SF} | <p>is the total number of Short Formation Peak Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than that specified for each such Short Formation Peak Passenger Service in the Train Plan disregarding, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, any such Short Formation Peak Passenger Services which were operated in that way as a result of:</p> <ul style="list-style-type: none"> c) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or d) the occurrence or continuing effect of a Force Majeure Event; and |
| C_{SF} | <p>is the total number of Short Formation Peak Passenger Services scheduled to be operated in that Reporting Period disregarding, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, any such Short Formation Peak Passenger Service operated with less Passenger Carrying Capacity than that specified for each such Short Formation Peak Passenger Service in the Train Plan as a result of:</p> <ul style="list-style-type: none"> e) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or f) the occurrence or continuing effect of a Force Majeure Event. |

5.2 For the purposes of the calculation to be undertaken by the Secretary of State pursuant to paragraph 5.1 above:

- (a) if and to the extent that any Short Formation Peak Passenger Service is operated in excess of the Passenger Carrying Capacity specified for that Short Formation Peak Passenger Service in the Train Plan, the excess capacity shall be disregarded; and
- (b) any Short Formation Peak Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.

6. Calculations

⁶⁶⁵The Secretary of State shall perform the calculations referred to in paragraphs 3.1, 4.1 and 5.1 of this Schedule 7.1 rounded to two (2) decimal places with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

7. ⁶⁶⁶Service Recovery Plans and Force Majeure

7.1 The Franchisee shall, within eight (8) weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such

⁶⁶⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁶⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

other period as may be agreed by the Secretary of State), submit to the Secretary of State all the comprehensive records (as more particularly described in the "relevant paragraph of the Service Recovery Plan) which relate to the implementation of such Service Recovery Plan during that Reporting Period.

- 7.2 In performing the calculations pursuant to paragraph 4.1 of this Schedule 7.1 the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

8. ⁶⁶⁷Consequences for Poor Performance – Benchmarks

- 8.1 The Franchisee shall ensure that its performance in each Reporting Period as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, is not equal to or worse than each Breach Performance Level in respect of the relevant PBF Assessment Period.
- 8.2 Without limiting the provisions of paragraph 8.4 below, if in any Reporting Period the Franchisee's performance, as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, is equal to or worse than any Breach Performance Level relating to an Enforcement Benchmark in respect of the relevant Reporting Period, then a contravention of the Franchise Agreement shall occur and the Secretary of State may serve a Remedial Plan Notice in accordance with the provisions of paragraph 3 (Remedies for Contraventions of the Franchise Agreement) of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement).
- 8.3 For the purposes of paragraph 4.2(c) (Remedial Plans) of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement) the steps to be proposed by the Franchisee pursuant to that paragraph are those which ensure that the Franchisee's performance against the relevant Enforcement Benchmark will be better than the Breach Performance Level relating to such Enforcement Benchmark.
- 8.4 Certain consequences of the Franchisee's performance being equal to or worse than the Breach Performance Levels and Default Performance Levels relating to each Enforcement Benchmark are set out in Schedule 10 (Remedies, Events of Default and Termination Events).
- 8.5 This paragraph 8 shall only apply if the Parties have agreed (or the Secretary of State has determined, if applicable) that the Quantified Target Methodology shall apply to the Operational Performance Fee pursuant to paragraph 4 (Calculation of the Performance Based Fee for

⁶⁶⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

each Subsequent PBF Assessment Period) of Schedule 8.1B (Performance Based Fee).

9. ⁶⁶⁸Consequences for Poor Performance

9.1 Action Plans

(a) **If in any three (3) consecutive Reporting Periods the:**

- (i) **Franchisee's performance against the OP Target for Cancellations is worse than the OP Target for Cancellations; and/or**
- (ii) **Franchisee's performance against the OP Target for TOC Minutes Delay is worse than the OP Target for TOC Minutes Delay; and/or**
- (iii) **Franchisee's performance against the OP Target for Short Formations is worse than the OP Target for that Short Formations; and/or**
- (iv) **Actual T-3 Performance Level is worse than the OP Target for T-3; and/or**
- (v) **Actual T-15 Performance Level is worse than the OP Target for T-15; and/or**
- (vi) **Actual All Cancellations Performance Level is worse than the OP Target for All Cancellations; and/or**
- (vii) **Secretary of State considers the Franchisee's performance on a Route or group of Routes (as applicable) to be unacceptably poor notwithstanding the fact that the Franchisee's overall performance in respect of any applicable target or level measured pursuant to this Schedule 7.1 meets the relevant target or threshold,**

then the Secretary of State shall be entitled to request from the Franchisee a plan in order to secure:

- (viii) **in respect of paragraphs 9.1(a) to 9.1(a)(vi) above, a Required Performance Improvement; and**
- (ix) **in respect of paragraph 9.19.1(a)9.1(a)(vii) above, an improvement of the Franchisee's performance level on a Route or group of Routes (as applicable) to the satisfaction of the**

⁶⁶⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- Secretary of State (acting reasonably) (a "Route-Specific Required Performance Improvement").**
- (b) **Within one (1) month of the Secretary of State's request pursuant to paragraph 9.1(a) above, the Franchisee shall:**
- (i) **produce, at its own cost (which cost shall be a Disallowable Cost pursuant to Appendix 1 (Disallowable Costs) to Schedule 8.1A (Franchise Payments)), and deliver to the Secretary of State its draft plan for securing a Required Performance Improvement and/or Route-Specific Required Performance Improvement (as applicable) (the "Draft Action Plan"); and**
 - (ii) **subject to paragraph 9.1(d)(iv) below:**
 - (A) **obtain the Secretary of State's approval of the Draft Action Plan in accordance with paragraph 9.1(d) below; and**
 - (B) **commence the implementation of a resulting Action Plan.**
- (c) **The Draft Action Plan shall contain specific tangible action points and indicate in the case of each action point:**
- (i) **how that action will contribute to achieving the Required Performance Improvement and/or Route-Specific Required Performance Improvement (as applicable);**
 - (ii) **where the action is to be implemented;**
 - (iii) **when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the Draft Action Plan shall include specific review dates;**
 - (iv) **how performance of the action is to be measured; and**
 - (v) **set out the additional expenditure associated with each action.**
- (d) **The Secretary of State shall be entitled to:**
- (i) **request further information from the Franchisee with respect to its Draft Action Plan and the Franchisee shall submit such further information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or**
 - (ii) **propose amendments to the Draft Action Plan and the Parties shall agree and, in the absence of agreement, the Secretary of State shall reasonably determine the amendments to the Draft Action Plan, in which case paragraph 9.1(e) below shall apply; or**

- (iii) **accept the Draft Action Plan, in which case paragraph 9.1(e) below shall apply; or**
 - (iv) **not accept the Draft Action Plan, in which case the Franchisee shall not be obliged to undertake any further action with respect to its Draft Action Plan.**
 - (e) **The Draft Action Plan as agreed, determined or accepted by the Secretary of State (as the case may be) in accordance with paragraph 9.1(d) above, shall be referred to as the "Action Plan". The Franchisee shall implement the Action Plan in accordance with its terms.**
 - (f) **The Franchisee acknowledges and agrees that the approval or lack of approval by the Secretary of State of each Draft Action Plan as contemplated in this paragraph 9.1 shall not relieve the Franchisee of its obligations under this Schedule 7.1 or any other provisions of the Franchise Agreement.**
- 9.2 ⁶⁶⁹**Except where an Action Plan is required and implemented pursuant to paragraph 9.19.1(a)9.1(a)(vii), this paragraph 9 shall only apply if the Parties have agreed (or the Secretary of State has determined, if applicable) that the Quantified Target Methodology shall apply to the Operational Performance Fee pursuant to paragraph 4 (Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period) of Schedule 8.1B (Performance Based Fee).**

10. Allocation of Disputed Cancellations/Disputed Partial Cancellations

- 10.1 ⁶⁷⁰**For the purpose of performing the calculations referred to in paragraph 3.1 of this Schedule 7.1 and/or paragraph 2 (Operational Performance) of Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee) the Secretary of State shall allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the Franchisee and Network Rail at the end of a Reporting Period in the following ratio of:**

| Table 4 | |
|----------------|--|
| F: G | |
| where: | |
| F | is the total number of Undisputed Cancellations and/or Undisputed Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Franchisee) during such twelve (12) preceding Reporting Periods; and |

⁶⁶⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁷⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

| | |
|----------|--|
| G | is the total number of Undisputed Network Rail Cancellations and/or Undisputed Network Rail Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods. |
|----------|--|

11. ⁶⁷¹Allocation of Disputed Minutes Delay

11.1 **Where the attribution of any Minutes Delay is in dispute between Network Rail and the Franchisee at the end of a Reporting Period the Secretary of State shall for the purpose of performing the calculations referred to in paragraph 4.1 of this Schedule 7.1 and/or paragraph 2 (Operational Performance) of Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee), allocate any disputed Minutes Delay between the Franchisee and Network Rail in the ratio of:**

| Table 5 | |
|----------------|--|
| FF: GG | |
| where: | |
| FF | is the total number of undisputed Minutes Delay, in each case, from the twelve (12) preceding Reporting Periods that are attributable to the Franchisee including any disputed attributions which were resolved or determined (and attributed to the Franchisee) during such twelve (12) preceding Reporting Periods; and |
| GG | is the total number of undisputed Minutes Delay, in each case from the twelve (12) preceding Reporting Periods that are attributable to Network Rail including any disputed attributions which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods. |

⁶⁷¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 7.2**Customer Experience and Engagement****1. Definition**

- 1.1 For the purposes of this Schedule 7.2 (Customer Experience and Engagement) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

"Alternative NRPS" has the meaning given to it in paragraph 2.6 of this Schedule 7.2 (Customer Experience and Engagement);

"NRPS Improvement Plan" has the meaning given to it in paragraph 5.3 of this Schedule 7.2 (Customer Experience and Engagement);

"NRPS Improvement Proposal" has the meaning given to it in paragraph 5.1 of this Schedule 7.2 (Customer Experience and Engagement);

"NRPS Measure" means each of the factors more particularly described in the Passenger Survey Methodology and grouped as "Stations (S)", "Trains (T)", "Customer Service (C)" and "Dealing With Delays (D)";

"NRPS Service Group" means each of the service groups to be set out in the Passenger Survey Methodology and more particularly described as:

- (a) Mainline;
- (b) Rural
- (c) Stansted Express; and
- (d) West Anglia,

or such other service groups as may be agreed or determined pursuant to Schedule 8.1B;

2. Conduct of National Rail Passenger Surveys

- 2.1 The Franchisee agrees with the Secretary of State that:

- (a) the Passengers' Council may measure the level of passenger satisfaction with the Franchise Services through National Rail Passenger Surveys;
- (b) the Passengers' Council shall determine how, when (normally twice per annum) and where National Rail Passenger Surveys are to be carried out;
- (c) the Franchisee shall grant access on trains or at stations to the Passengers' Council (or its representatives and agents) to carry out National Rail Passenger Surveys;

- (d) the Franchisee shall co-operate with the Passengers' Council (in such manner as the Passengers' Council may reasonably request or as the Secretary of State may reasonably direct) in order to enable the Passengers' Council to carry out National Rail Passenger Surveys; and
- (e) the Passengers' Council and/or the Secretary of State may, from time to time, publish the results of each National Rail Passenger Survey.

2.2 The Secretary of State shall ensure or shall procure that:

- (a) the findings of any National Rail Passenger Survey are made available by the Passengers' Council to the Franchisee within a reasonable period of time after the completion of each such survey and shall use all reasonable endeavours to procure that those findings are made available in a timely manner to enable the Franchisee to comply with its obligations under paragraph 2.3; and
- (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

2.3 ~~[NOT USED] The Franchisee shall, as soon as reasonably practicable after such information is made available to the Franchisee in accordance with paragraph 2.2, publicise its performance against the NRPS Improvement Plan Levels by including such information in its Customer Report and displaying such information at all of the Stations and on its website.⁶⁷²~~

2.4 It is agreed by the Franchisee that, subject to paragraph 2.5, the methodology to be adopted by the Passengers' Council in conducting any such National Rail Passenger Survey shall be as described in the Passenger Survey Methodology agreed pursuant to paragraph 4.5 of Schedule 8.1B (Performance Based Fee).

2.5 ~~[NOT USED] If:~~

- ~~(a) at any time the methodology adopted in conducting any National Rail Passenger Survey is, in the opinion of the Secretary of State (acting reasonably), materially inconsistent with the Passenger Survey Methodology; and~~
- ~~(b) the Secretary of State reasonably determines that in consequence a revision to any of the NRPS Targets and/or any of the NRPS Improvement Plan Levels is required in order to hold constant the risk of the Franchisee failing to satisfy the applicable NRPS Target(s) and/or NRPS Improvement Plan Levels (as applicable);~~

⁶⁷² In accordance with the ERMA, paragraph 2.3 (Conduct of National Rail Passenger Surveys) shall not apply for the duration of the ERMA unless otherwise instructed by Secretary of State.

~~then the Secretary of State shall make such revisions to such NRPS Target(s) and/or NRPS Improvement Plan Levels (as applicable) as the Secretary of State reasonably considers appropriate to hold constant such risk.⁶⁷³~~

- 2.6 If the Passengers' Council ceases to undertake National Rail Passenger Surveys then the relevant National Rail Passenger Survey for the purposes of this Schedule 7.2 and Schedule 8.1B (Performance Based Fee) shall be such other passenger survey as the Secretary of State may, after consultation with the Franchisee, reasonably determine to be appropriate in the circumstances (the "Alternative NRPS"). The provisions of this Schedule 7.2 and Schedule 8.1B (Performance Based Fee) shall apply in respect of any Alternative NRPS and for these purposes the Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NRPS.

3. [NOT USED] NRPS Targets and NRPS Improvement Plan Levels

~~3.1 It is agreed by the Secretary of State and the Franchisee that, subject to paragraph 2.6, the results of the National Rail Passenger Survey(s) published by the Passengers' Council in any PBF Assessment Period should be used to determine the Franchisee's performance against the NRPS Targets and the NRPS Improvement Plan Levels for that PBF Assessment Period. If in any PBF Assessment Period the Passengers' Council has published:~~

- ~~(a) only one (1) National Rail Passenger Survey in that PBF Assessment Period then the performance of the Franchisee against the NRPS Targets and the NRPS Improvement Plan Levels shall be measured against the results of such National Rail Passenger Survey; or~~
- ~~(b) more than one (1) National Rail Passenger Survey in that PBF Assessment Period then the performance of the Franchisee against the NRPS Targets and the NRPS Improvement Plan Levels shall be measured against the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that PBF Assessment Period.⁶⁷⁴~~

4. [NOT USED] Performance Review

~~4.1 For each PBF Assessment Period the Secretary of State shall calculate the Franchisee's Overall Performance Score for each NRPS Measure and shall~~

⁶⁷³ In accordance with the ERMA, paragraph 2.5 (Conduct of National Rail Passenger Surveys) shall not apply for the duration of the ERMA unless otherwise instructed by Secretary of State.

⁶⁷⁴ In accordance with the ERMA, paragraph 3 (NRPS Targets and NRPS Improvement Plan Levels) shall not apply for the duration of the ERMA unless otherwise instructed by Secretary of State.

~~determine the Franchisee's performance against each NRPS Target and NRPS Improvement Plan Level by comparing:~~

- ~~(a) if only one (1) National Rail Passenger Survey has been published by Passengers' Council in that PBF Assessment Period:

 - ~~(i) the results of such National Rail Passenger Survey against the applicable NRPS Improvement Plan Levels; and~~
 - ~~(ii) the Overall Performance Score for each NRPS Measure against the applicable NRPS Target in respect of that PBF Assessment Period; or~~~~
 - ~~(b) if more than one (1) National Rail Passenger Survey has been published by Passengers' Council in that PBF Assessment Period:

 - ~~(i) , the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that PBF Assessment Period against the applicable NRPS Improvement Plan Levels; and~~
 - ~~(ii) the average of the Overall Performance Scores for each NRPS Measure achieved by the Franchisee in all of the National Rail Passenger Surveys published by the Passengers' Council in that PBF Assessment Period against the applicable NRPS Targets in respect of that PBF Assessment Period.~~~~
- ~~4.2 For the purposes of undertaking the comparison pursuant to paragraph 4.1, the results referred to in paragraph 4.1(a) or paragraph 4.1(b) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).~~
- ~~4.3 If, following the Secretary of State's determination pursuant to either of paragraphs 4.1(a) or 4.1(b) (as the case may be), the results show that the level of customer satisfaction in respect of any NRPS Measure for any NRPS Service Group is below the NRPS Improvement Plan Level for such measure then the Secretary of State shall be entitled to request from the Franchisee a plan in order to secure an improvement in the level of customer satisfaction for the relevant NRPS Measure for the applicable NRPS Service Group as measured by a National Rail Passenger Survey so that such level is equal to or better than the related NRPS Improvement Plan Level.~~
- ~~4.4 Following the Secretary of State's determination pursuant to either of paragraphs 4.1(a) or 4.1(b) (as the case may be), the provisions set out in paragraph 3.5 (Calculation of CE(NRPS)) of Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee) shall apply.⁶⁷⁵~~

⁶⁷⁵ In accordance with the ERMA, paragraph 4 (Performance Review) shall not apply for the duration of the ERMA unless otherwise instructed by Secretary of State.

5. ~~[NOT USED] NRPS Improvement Proposals~~

5.1 ~~Within thirty (30) Weekdays of the Secretary of State's request (or such longer period as may be agreed by the Secretary of State) pursuant to paragraph 4.3, the Franchisee shall, at its own cost, prepare and deliver to the Secretary of State its proposal (the "**NRPS Improvement Proposal**") for achieving an improvement in the level of customer satisfaction for the relevant NRPS Measure for the applicable NRPS Service Group as measured by a National Rail Passenger Survey so that such level is not lower than the NRPS Improvement Plan Level, which shall:~~

- ~~(a) contain specific tangible action points and indicate in the case of each action point:
 - ~~(i) how that action will contribute to meeting the relevant NRPS Measure for the applicable NRPS Service Group;~~
 - ~~(ii) where the action is to be implemented;~~
 - ~~(iii) the proposed timescales for implementing such action and, where any action is expressed to be ongoing, proposed review dates; and~~
 - ~~(iv) how the Franchisee proposes to measure the performance of the action; and~~~~
- ~~(b) the additional expenditure associated with each action.~~

5.2 ~~The Secretary of State shall be entitled to:~~

- ~~(a) request further information from the Franchisee with respect to its NRPS Improvement Proposal, and the Franchisee shall submit such further information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or~~
- ~~(b) propose amendments to the NRPS Improvement Proposal and the Parties shall agree or, in absence of agreement, the Secretary of State shall reasonably determine the amendments to the NRPS Improvement Proposal, in which case paragraph 5.3 shall apply; or~~
- ~~(c) accept the NRPS Improvement Proposal, in which case paragraph 5.3 shall apply; or~~
- ~~(d) not accept the NRPS Improvement Proposal, in which case the Franchisee shall not be obliged to undertake any further action with respect to its NRPS Improvement Proposal.~~

5.3 ~~The NRPS Improvement Proposal as agreed, determined or accepted by the Secretary of State, (as the case may be) in accordance with paragraph 5.2 shall~~

~~be referred to as the "NRPS Improvement Plan". The Franchisee shall implement the NRPS Improvement Plan in accordance with its terms.~~⁶⁷⁶

6. [NOT USED]

7. [NOT USED]⁶⁷⁷ ~~Payments on Termination or Expiry~~

~~Upon the termination or expiry of this Agreement the Franchisee shall pay to the Secretary of State, an amount equivalent to the amount of any Additional Expenditure that the Franchisee is committed to incur such payment to be made by way of adjustment to Franchise Payments (or, where no Franchise Payment(s) remain due and payable as at the date of expiry or termination of this Agreement, such payment~~

⁶⁷⁶ In accordance with the ERMA, paragraph 5 (NRPS Improvement Proposals) shall not apply for the duration of the ERMA unless otherwise instructed by Secretary of State.

⁶⁷⁷ In accordance with the ERMA, paragraph 7 (Payments on Termination or Expiry) shall not apply for the duration of the ERMA unless otherwise instructed by Secretary of State.

~~to be made to the Secretary of State within thirty (30) days of the end of the Franchise Period)~~

8. Consultations

The Franchisee shall undertake consultations from time to time as required with:

- (a) passengers, potential passengers, Stakeholders and other users of the rail network; and
- (b) persons who are covered by an Accessible Travel Policy; and
- (c) persons with other protected characteristics within the meaning of the EA,

for the purposes of the Customer and Stakeholder Engagement Strategy, the Customer Report and the CCI Scheme.

9. Customer and Stakeholder Engagement Strategy

9.1 The Franchisee shall comply with the Customer and Stakeholder Engagement Strategy from the Start Date.

9.2 The Franchisee shall:

- (a) undertake and complete a review of the Customer and Stakeholder Engagement Strategy during each of the fourth (4th) and seventh (7th) Franchisee Years; and
- (b) provide the Secretary of State with any proposed revisions to the Customer and Stakeholder Engagement Strategy arising out of such review by no later than the end of each such Franchisee Year.

9.3 The aim of the review referred to in paragraph 9.2 shall be to update the Customer and Stakeholder Engagement Strategy to reflect lessons learned in the period since the Start Date or the previous review of the Customer and Stakeholder Engagement Strategy (as applicable) and to ensure that the Customer and Stakeholder Engagement Strategy achieves effective passenger engagement.

9.4 Any revisions to the Customer and Stakeholder Engagement Strategy shall require the consent of the Secretary of State (such consent not to be unreasonably withheld or delayed).

10. Customer Report

10.1 The Franchisee shall, in accordance with the requirements of paragraph 10.2 and paragraph 10.3 below, publish a Customer Report in such readily accessible formats as the Secretary of State may reasonably require (including in booklet or other similar hard copy formats (if and to the extent that the Secretary of State instructs the Franchisee to re-commence the publication of hard copy formats during the term of the ERMA), in electronic formats (such as on the Franchisee's website, through social media channels and by email)), in each case in accordance with the Customer and Stakeholder Engagement Strategy and the provisions of

paragraph 8 (Publication of Performance Data) and paragraph 9 (Publication of Complaints and Faults Handling Data) of Schedule 1.4 (Passenger Facing Obligations) and paragraph 16 of Schedule 11.2 (Management Information).

10.2 The Franchisee shall publish a Customer Report as follows:

- (a) in respect of the first (1st) Franchisee Year:
 - (i) where such Franchisee Year is less than seven (7) Reporting Periods, the Franchisee shall only be required to publish a Customer Report for that Franchisee Year by no later than the Start Date; or
 - (ii) where such Franchisee Year is less than thirteen (13) Reporting Periods but equal to or more than seven (7) Reporting Periods, the Franchisee shall be required to publish two (2) Customer Reports in that Franchisee Year, the first Customer Report to be published by no later than the Start Date and the second Customer Report to be published before the end of that first Franchisee Year; and
- (b) in respect of each subsequent Franchisee Year, the Franchisee shall be required to publish a Customer Report at least twice in that Franchisee Year provided that where any such subsequent Franchisee Year is less than thirteen (13) Reporting Periods the Franchisee shall be required to publish a Customer Report only once in respect of that Franchisee Year.

10.3 Without prejudice to the obligations of the Franchisee as specified in each of paragraphs 12.1 and 12.3 of this Schedule 7.2, paragraphs 8.3 and 9 of Schedule 1.4 (Passenger Facing Obligations) and paragraph 16 of Schedule 11.2 (Management Information), the Secretary of State and the Franchisee acknowledge and agree that in respect of each Franchisee Year to which the provisions of paragraph 10.2(b) apply, the first Customer Report to be published for that Franchisee Year shall be prepared in respect of the first six (6) Reporting Periods of that Franchisee Year and the second Customer Report to be published for that Franchisee Year shall be prepared in respect of the last seven (7) Reporting Periods of that Franchisee Year.

11. Customer and Communities Investment (CCI) Scheme

11.1 No later than three (3) months prior to the start of each CCIF Period the Franchisee shall provide to the Secretary of State details of those initiatives, works or proposals (each a "**CCIF Scheme**") which the Franchisee proposes to undertake in that CCIF Period in order to resolve or mitigate issues raised with the Franchisee through the consultations as carried out pursuant to paragraph 8 (Consultations). The Franchisee shall use all reasonable endeavours to propose, in respect of each CCIF Period, CCIF Schemes with an aggregate projected CCIF Scheme Shortfall of

not less than the aggregate of the CCIF Amount for each Franchisee Year in the relevant CCIF Period.

- 11.2 In relation to each CCIF Scheme proposed by the Franchisee pursuant to paragraph 11.1 the Franchisee shall provide:
- (a) details of the specific issues which that CCIF Scheme is intended to resolve or mitigate (including how those issues have been identified) and how that CCIF Scheme will resolve or mitigate those issues; and
 - (b) fully worked up details of the CCIF Scheme sufficient to enable the Secretary of State to evaluate the same, including:
 - (i) a timetable for the implementation of that CCIF Scheme, setting out the proposed commencement and completion date of such CCIF Scheme and any other key dates and milestones;
 - (ii) details of the projected CCIF Scheme Cost; and
 - (iii) details of the projected CCIF Scheme Revenue.
- 11.3 The Franchisee shall provide the Secretary of State with such further information in relation to any CCIF Scheme proposed by the Franchisee pursuant to paragraph 11.1 as the Secretary of State may reasonably require.
- 11.4 A CCIF Scheme proposed by the Franchisee pursuant to paragraph 11.1 shall not be an Approved CCIF Scheme unless and until approved by the Secretary of State

pursuant to this paragraph 11.4. Without limitation, the Secretary of State may withhold the Secretary of State's approval to any proposed CCIF Scheme which:

- (a) has not been identified and/or developed in accordance with the Customer and Stakeholder Engagement Strategy;
- (b) is not designed to resolve or mitigate issues raised with the Franchisee through the consultations referred to in paragraph 8;
- (c) has a completion date falling later than the end of the relevant CCIF Period;
- (d) is projected to generate a Commercial Return or in relation to which the Secretary of State considers the CCIF Scheme Costs (or any part of them) to be too high or disproportionate to the benefits accruing from the CCIF Scheme;
- (e) the Franchisee is otherwise funded to undertake; or
- (f) in the opinion of the Secretary of State, amounts to actions or steps which the Franchisee is otherwise obliged to take or which any competent train operator should be taking in relation to the operation of the Franchise.

11.5. Approved CCIF Schemes shall be deemed to be, and treated for the purposes of this Agreement as, Committed Obligations.

11.5A. [Not used].

11.5B. [Not used].

11.6 Paragraph 11.8 will apply if:

- (a) the aggregate projected CCIF Scheme Shortfall in respect of all Approved CCIF Schemes for any CCIF Period is less than the aggregate of the CCIF Amount for each Franchisee Year in that CCIF Period; or
- (b) subject to paragraph 11.7 in any CCIF Period, in the Secretary of State's reasonable opinion, the aggregate of the actual CCIF Scheme Shortfall incurred by the Franchisee during that CCIF Period upon Approved CCIF Schemes is less than the aggregate of the CCIF Amount for each Franchisee Year in that CCIF Period,

in each case the underspend against the aggregate CCIF Amount being the "**CCIF Scheme Underspend**".

11.7 If:

- (a) the amount of the CCIF Scheme Costs actually incurred by the Franchisee in relation to any Approved CCIF Scheme exceed the projected CCIF Scheme Costs notified to the Secretary of State pursuant to paragraph 11.2 for such

Approved CCIF Scheme, then the amount of the excess shall not amount to CCIF Scheme Cost; or

- (b) in the Secretary of State's reasonable opinion, the amount of the CCIF Scheme Revenue actually earned by the Franchisee in relation to any Approved CCIF Scheme is less than the projected CCIF Scheme Revenue notified to the Secretary of State pursuant to paragraph 11.2 for such Approved CCIF Scheme then, for the purposes of paragraph 11.6(b) the actual CCIF Scheme Revenue shall be deemed to be the projected CCIF Scheme Revenue.

11.8 Where this paragraph 11.8 applies the Secretary of State may require:

- (a) all or part of the CCIF Scheme Underspend to be added to the CCIF Amount for the first Franchisee Year in the subsequent CCIF Period;
- (b) the Franchisee to propose further CCIF Schemes using all or part of the CCIF Scheme Underspend by such new deadline as the Secretary of State may specify;
- (c) the Franchisee to spend all or part of the CCIF Scheme Underspend in such manner as the Secretary of State may direct; and/or
- (d) the Franchisee to pay all or part of the CCIF Scheme Underspend to the Secretary of State,

provided that paragraph 11.8(d) shall automatically apply in respect of the last CCIF Period unless the Secretary of State specifies otherwise.

11.9 Any Franchise Asset arising as a result of an Approved CCIF Scheme shall be designated as a Primary Franchise Asset and shall not be de-designated as such. Any such Primary Franchise Asset which falls to be valued in accordance with the Supplemental Agreement shall be valued at nil.

11.10 The Franchisee shall deliver each Approved CCIF Scheme by the completion date approved by the Secretary of State pursuant to paragraph 11.4 of this Schedule 7.2, or by such later date as may otherwise be agreed by the Secretary of State.

12. Customer Service and Satisfaction Data

12.1 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 10.1 of this Schedule 7.2, the Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of the Franchisee's:

- (a) level of adherence to scheduled ticket office opening hours at Stations (so that the Customer Report shows, as a percentage, the proportion of scheduled ticket

office opening hours not delivered aggregated across all ticket offices at all Stations); and

- (b) performance by reference to such benchmarks as may be agreed between the Franchisee and the ORR as part of an Accessible Travel Policy in respect of the Passenger Assistance service operated by the Franchisee,

in each case in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report with (from the third Customer Report onwards) a comparison with the relevant statistics or results (as applicable) provided for the same Reporting Periods in the previous Franchisee Year.

12.2 The Franchisee shall publish on its website (in such format as the Secretary of State may reasonably require):

- (a) within twenty (20) Weekdays of the publication of each National Rail Passenger Survey carried out by the Passengers' Council during the Franchise, details of the scores achieved by the Franchisee in such National Rail Passenger Survey, including the scores achieved in respect of passengers' 'overall satisfaction'; and
- (b) within twenty (20) Weekdays of the publication of the last National Rail Passenger Survey to be carried out by the Passengers' Council during any PBF Assessment Period, details of the scores achieved by the Franchisee in respect of each NRPS Measure applicable to each NRPS Service Group, as calculated in accordance with paragraph 3.5 of Appendix 5 to Schedule 8.1B (Performance Based Fee) for such NRPS Service Group.

12.3 The Franchisee shall ensure that the scores achieved in relation to the NRPS Measures applicable to each NRPS Service Group, published by it pursuant to paragraph 12.2, are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable scores were achieved, along with:

- (a) [Not used]
- (b) details of any remedial work either:
 - (i) planned by the Franchisee to occur in the period in relation to which the next Customer Report will report to improve the Franchisee's performance in relation to achieving and exceeding the NRPS Improvement Plan Levels; or
 - (ii) undertaken by the Franchisee during the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first (1st) Customer Report, since the Start Date, for the purposes of improving the Franchisee's performance in relation to achieving and exceeding the NRPS Improvement Plan Levels; and

- (c) details of any other initiatives planned to be implemented by the Franchisee to improve passenger experience.

12.4 If the Secretary of State instructs the Franchisee to re-commence the publication of Customer Reports in hard copy formats during the term of the ERMA, the Franchisee shall ensure that a summary of the then current Customer Report is made available at all staffed Stations (in such format as the Secretary of State may reasonably require) and that such summary includes instructions to enable passengers to locate and obtain a full copy of the applicable Customer Report.

13 Wavelength

13.1 Unless otherwise directed by the Secretary of State, the Franchisee shall:

- (a) fully and effectively engage with the Wavelength Programme;
- (b) subject to the relevant information being made available to the Franchisee via the Wavelength portal, provide to the Secretary of State by no later than seven (7) Weekdays following the end of each Reporting Period, a report setting out the results of the Wavelength Survey undertaken during that Reporting Period, such results to be presented in such aggregated or disaggregated format as the Secretary of State may specify from time to time; and
- (c) subject to the relevant information being made available to the Franchisee via the Wavelength portal, provide to the Secretary of State by no later than 14 Weekdays following the end of each quarter, a report detailing:
 - (i) how the Franchisee has used the full range of Wavelength Programme insights (including the analysis of data received through the Wavelength Survey) to implement and/or invest in:
 - (A) customer-focused initiatives; and/or
 - (B) tangible benefits or improvements for customers; and
 - (ii) whether such initiatives, benefits or improvements referred to in paragraph 13.1(c)(i) have:
 - (A) resulted in any improvement in the Wavelength Survey scores collected to date; and/or
 - (B) any other improvements or benefits to the Franchisee.

13.2 For the purpose of this paragraph 13:

- (a) **“Wavelength Programme”** means the programme of work being developed by the rail industry which involves collecting a wide range of information about the customer experience by tracking, amongst other things, the Franchisee’s performance against certain journey touchpoints (as specified in the

Wavelength Survey) and certain key commitments based on core passenger priorities; and

- (b) **“Wavelength Survey”** means the weekly survey relating to the Passenger Services (in such form as may be agreed from time to time), which is undertaken as part of the Wavelength Programme to monitor, amongst other things, the Franchisee’s performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities.

14. Incentive Regimes

14.1 The Franchisee shall, as required by the Secretary of State, fully and effectively co-operate with the Secretary of State to design, develop and (as applicable) implement and provide to the Secretary of State such data as the Secretary of State may require in relation to potential new incentive regimes (which may be replace existing provisions of the Franchise Agreement and/or be used in future contracts with Train Operators), including designing:

- (a) new models for assessing service quality;
- (b) new measures of Operational Performance;
- (c) alternative cost incentive mechanisms;
- (d) a regime for assessing service quality provided by the Franchisee; and/or
- (e) a regime for assessing the Franchisee’s performance in relation to deterring and preventing ticketless travel.

14.2 The Franchisee’s obligations pursuant to paragraph 14.1 above may include:

- (a) developing, reviewing and/or commenting on proposals in relation to such new incentive regimes;
- (b) providing advice on the feasibility, costs and other implications of any such proposals made by the Secretary of State;
- (c) new models for attending meetings to discuss such proposals and any related matters; and
- (d) supporting the Secretary of State in preparing to implement such new incentive mechanisms, including by collecting and providing relevant data to the Secretary of State in accordance with any requirements specified by the Secretary of State from time to time.

SCHEDULE 7.3

NOT USED⁶⁷⁸

⁶⁷⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 8⁶⁷⁹**Payments**

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| Schedule 8.1A: | Franchise Payments |
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⁶⁷⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

Schedule 8.1A⁶⁸⁰
Franchise Payments

1A Definitions

For the purposes of this Schedule 8.1A only, the following words and expressions shall have the following meanings unless otherwise set out in Clause 3 (*Definitions*):

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| "Accrued Claims" | has the meaning given in paragraph 9.10 of this Schedule 8.1A; |
| "Accrued Disallowable Costs" | has the meaning given in paragraph 9.10 of this Schedule 8.1A; |
| "Accrued Revenue Foregone" | has the meaning given in paragraph 9.10 of this Schedule 8.1A; |
| "Actual EMA Capex" | has the meaning given to "Actual Capex" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Actual Capex" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Capital Expenditure" shall have the meaning given to that term in schedule 8.A (<i>Franchise Payments</i>) of the EMA); |
| "Actual EMA Costs" | has the meaning given to "Actual Costs" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Actual Costs" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Costs" shall have the meaning given to that term in schedule 8.A (<i>Franchise Payments</i>) of the EMA); |
| "Actual EMA Revenue" | has the meaning given to "Actual Revenue" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Actual Revenue" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Revenue" shall have the meaning given to that term in schedule 8.A (<i>Franchise Payments</i>) of the EMA); |
| "Aggregated Costs and Revenues Liabilities" | has the meaning given in paragraph 9.11 of this Schedule 8.1A; |
| "Annual Adjustment" or "AADJ" | means an adjustment determined in accordance with paragraph 11 (<i>Annual Adjustments</i>) of this Schedule 8.1A; |

⁶⁸⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| "Base Cash Position" | means [REDACTED ⁶⁸¹] (excluding the value of Season Ticket Fare suspense liabilities) or such other value as the Secretary of State may determine in accordance with paragraph 12.8 of this Schedule 8.1A; |
| "Budget" | means together: the periodic cost and revenues budget; and the periodic capex budget, in relation to the period from the beginning of the seventh Reporting Period during Franchisee Year 2020/21 to the end of the thirteenth Reporting Period during Franchisee Year 2021/22 or the end of the Extended Term (if applicable), as agreed between the Secretary of State and the Franchisee on or around the ERMA Start Date or (if the Parties have not been able to agree the Budget by the ERMA Start Date) as reasonably determined by the Secretary of State, as such Budget may be updated and/or extended from time to time in accordance with paragraph 8 (<i>Revisions to the Budget</i>) of this Schedule 8.1A; |
| "Budgeted EMA Capex" | has the meaning given to "Budgeted Capex" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Budgeted Capex" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Capital Expenditure" and "Budget" shall have the meaning given to those terms in schedule 8.A (<i>Franchise Payments</i>) of the EMA); |
| "Budgeted EMA Costs" | has the meaning given to "Budgeted Costs" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Budgeted Costs" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Costs" and "Budget" shall have the meaning given to those terms in schedule 8.A (<i>Franchise Payments</i>) of the EMA); |

⁶⁸¹ 15 January 2021 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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| "Ceiling Cash Position" | means [REDACTED ⁶⁸²] (excluding the value of Season Ticket Fare suspense liabilities) or such other value as the Secretary of State may determine in accordance with paragraph 12.8 of this Schedule 8.1A; |
| "EMA Budget" | has the meaning given to the term "Budget" in schedule 8.A (<i>Franchise Payments</i>) of the EMA; |
| "EMA Disallowable Costs" | has the meaning given to the term "Disallowable Costs" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, and for the purposes of this definition and the definition of term "Disallowable Costs" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Costs" and "Capital Expenditure" shall have the meanings given to those terms in schedule 8.A (<i>Franchise Payments</i>) of the EMA); |
| "EMA Emergency Working Capital Payments" | has the meaning given to the term "Emergency Working Capital Payments" in schedule 8.A (<i>Franchise Payments</i>) of the EMA; |
| "EMA Estimated Revenue" or "EER" | has the meaning given to the term "Estimated Revenue" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Estimated Revenue" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Revenue" shall have the meaning given to that term in schedule 8.A (<i>Franchise Payments</i>) of the EMA); |
| "EMA Final Adjustment" | has the meaning given to the term "Final Adjustment" in schedule 8.A (<i>Franchise Payments</i>) of the EMA; |
| "EMA Final Reviewed Accounts" | has the meaning given to the term "Final Reviewed Accounts" in schedule 8.A (<i>Franchise Payments</i>) of the EMA; |
| "EMA Periodic Adjustment Payment" | means, in relation to the Franchise Payment payable in respect of the second and third Reporting Periods during the term of the ERMA, a sum calculated in accordance with Appendix 2 (<i>EMA Periodic Adjustment Payment</i>) payable to either the Secretary of State or the Franchisee, as applicable; |
| "EMA Revenue Foregone" | has the meaning given to "Revenue Foregone" in schedule 8.A (<i>Franchise</i> |

⁶⁸² 15 January 2021 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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| | Payments) of the EMA (and, for the purposes of this definition and the definition of "Revenue Foregone" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Revenue" and "Good and Efficient Operator" shall have the meanings given to those terms in schedule 8.A (<i>Franchise Payments</i>) of the EMA); |
| "EMA Working Capital Payments" | has the meaning given to the term "Working Capital Payments" in schedule 8.A (<i>Franchise Payments</i>) of the EMA and, for the purposes of this definition and the definition of "Working Capital Repayment" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Franchise Payment Component" and any related definitions shall each have the meanings given to those terms in in schedule 8.A (<i>Franchise Payments</i>) of the EMA; |
| "EMA Working Capital Repayments" | has the meaning given to the term "Working Capital Repayment" in schedule 8.A (<i>Franchise Payments</i>) of the EMA and, for the purposes of this definition and the definition of "Working Capital Repayment" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Franchise Payment Component" and any related definitions shall each have the meanings given to those terms in in schedule 8.A (<i>Franchise Payments</i>) of the EMA; |
| "Emergency Working Capital Payment" | has the meaning given to it in paragraph 12.5 of this Schedule 8.1A; |
| "Estimated Capital Expenditure" | means the Capital Expenditure estimated by the Secretary of State using available resources as is practicable at the time of the estimation; |
| "Estimated Costs" | means the Costs reasonably estimated by the Secretary of State using available resources as is practicable at the time of the estimation; |
| "EWCR" | has the meaning given to "WCR" in schedule 8.A (<i>Franchise Payments</i>) of the EMA; |
| "Final Working Capital Adjustment" or "FWCA" | means the adjustment determined in accordance with paragraph 14.1 of this Schedule 8.1A; |
| "First Franchise Payment" or "FFP" | has the meaning given to that term in paragraph 1.2 of this Schedule 8.1A; |
| "First Reporting Period" | means the first Reporting Period during the term of the ERMA; |

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| "Fixed Fee" | means [REDACTED⁶⁸³] exclusive of VAT in respect of each Reporting Period in the relevant period; |
| "Fixed Fee and Performance Based Fee" or "FFPBF" | means the Franchise Payment Component calculated in accordance with paragraph 15 (<i>Fixed Fee and Performance Based Fee</i>) of this Schedule 8.1A; |
| "Franchise Payment Component" | means: each of the components of "£FFP" as described in paragraph 1.2 of this Schedule 8.1A; each of the components of "£FP" as described in paragraph 1.3 of this Schedule 8.1A; and any component or element, described in the relevant provisions of this Schedule 8.1A and Schedule 8.1B (<i>Performance Based Fee</i>), as the case may be, which is used in determining or calculating the value of those components described in paragraph 0 above; |
| "Periodic Adjustment" | has the meaning given in paragraph 10.2 of this Schedule 8.1A; |
| "Periodic Budgeted Capex Payment" or "PBCP" | means the Franchise Payment Component calculated in accordance with paragraph 1.3 of this Schedule 8.1A; |
| "Periodic Franchise Payment" or "PFP" | means the Franchise Payment Component calculated in accordance with paragraph 1.3 of this Schedule 8.1A; |
| "Periodic Finance Review Meeting" | has the meaning given in paragraph 9.1 of this Schedule 8.1A; |
| "Quarter" | means: a period of three consecutive Reporting Periods, in each case ending at the end of the third, sixth and ninth Reporting Periods in a Franchisee Year; or a period of four consecutive Reporting Periods ending at the end of the 13th Reporting Period of a Franchisee Year, (and "Quarterly" shall be construed accordingly); |
| "Quarterly Budget Forecast Review Meeting" | has the meaning given in paragraph 8.1 of this Schedule 8.1A; |
| "Reporting Period 13" | means 1 March 2020 to 31 March 2020 (inclusive); |

⁶⁸³ 15 January 2021 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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| "Residual Components" | means the net value of the components of the Franchise Payments under Schedule 8.1 (<i>Franchise Payments</i>) which: relate to any periods prior to Reporting Period 13; and become payable during the relevant Reporting Period. |
| "Revenue" | For the purposes of this Schedule 8.1A (<i>Franchise Payments</i>), such net value shall be: if payable by the Secretary of the State to the Franchisee, a positive number; or if payable by the Franchisee to the Secretary of State, a negative number; means the gross total revenue of the Franchisee received or receivable and properly accrued during the term of the ERMA and relating to the Franchisee's performance of the Franchise Agreement as stated in the Franchisee's profit and loss account but excluding: Franchise Payments (which shall include the value of any Performance Based Fee and/or Fixed Fee (if applicable)); and any accounting transaction included in the Management Accounts, Annual Management Accounts or Annual Audited Accounts but which does not result in the Franchisee receiving a cash payment, including notional pensions accounting adjustments and the accounting impact of financial instruments revaluations; |
| "Revenue Foregone" | means an amount equal to the amount of revenue or other value which was not received or receivable by the Franchisee, including: the: debts or other receivables waived, not collected or written off; and/or value of any other asset not realised in whole or in part, but which would have been receivable and received or otherwise realised by the Franchisee if it had acted as a Good and Efficient Operator; and subject always to paragraph 6.1 (<i>No Double Recovery</i>) of this Schedule 8.1A, the amount by which the Purchase Price (as defined in clause 2.1 of the Supplemental Agreement) receivable by the Franchisee is lower than it would have been but for the Franchisee: incurring Disallowable Costs; and/or |

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| "SoS Claim" | <p>otherwise acting other than as Good and Efficient Operator; save where, in respect of both paragraphs 0 and 0 above, such Revenue or other value is not received or receivable as a result of the Franchisee acting in accordance with the instructions of the Secretary of State;</p> <p>means all losses, liabilities, costs, damages and expenses that the Secretary of State does or will incur or suffer (including any such losses, liabilities, costs, damages and expenses that are unliquidated or which are contingent):</p> <p>as a consequence of any breach, negligence or other default of the Franchisee under or in connection with the Franchise Agreement and/or any agreement ancillary to this Franchise Agreement, the ERMA and/or the EMA, including the Supplemental Agreement; and/or</p> <p>in respect of any matter for which the Franchisee is to indemnify the Secretary of State pursuant to this Franchise Agreement, the ERMA and/or the EMA or any agreement ancillary to this Franchise Agreement, the ERMA and/or the EMA, including the Supplemental Agreement;</p> |
| "Supporting Materials" | <p>means any materials explaining or supporting the Budget which have been produced by the Franchisee;</p> |
| "Working Capital Payment" | <p>means the Franchise Payment Component calculated in accordance with paragraph 12.3 of this Schedule 8.1A; and</p> |
| "Working Capital Repayment" | <p>means the Franchise Payment Component calculated in accordance with paragraph 13.2 of this Schedule 8.1A.</p> |

1. ⁶⁸⁴Franchise Payments

1.1 The Parties acknowledge and agree that:

- (a) the provisions of schedule 8.1 (Franchise Payments) of the Franchise Agreement were suspended during the term of the**

⁶⁸⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

EMA and shall continue to be suspended during the term of the ERMA;

- (b) the EMA FWCA shall not be payable at any time;**
- (c) any Residual Components shall be addressed in accordance with paragraphs 1.2 and 1.3 of this Schedule 8.1A;**
- (d) for the purposes of paragraph 1.3 of this Schedule 8.1A and paragraph 11 of Schedule 8.A of the EMA, limb (a) of the PPADC element of the EMA MFPP in paragraph 11.1 of Schedule 8.A of the EMA shall be calculated on the basis of the relevant Audited Accounts Reconciliation and other relevant financial information provided to the Secretary of State, including in accordance with paragraph 9.4 of Schedule 11.2 in relation to the period from 1 March 2020 to the end of the EMA Term or otherwise, rather than the EMA Final Reviewed Accounts; and**
- (e) the EMA MFPP shall be payable following:**
 - (i) the receipt by the Secretary of State of the Audited Accounts Reconciliation and other relevant financial information provided to the Secretary of State in accordance with paragraph 9.4 of Schedule 11.2 in relation to the period from 1 March 2020 to the end of the EMA Term; and**
 - (ii) the determination of the Management Fee and Performance Payment in accordance with Paragraph 11 of Schedule 8.A (Franchise Payments) of the EMA.**

1.2 ⁶⁸⁵The Franchise Payment for the First Reporting Period (the "First Franchise Payment") shall be an amount equal to:

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| £FFP = | FPFP + FPBCP + FWCP + RCP |
|---------------|----------------------------------|

where:

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| FPFP (First Periodic Franchise Payment) | means an amount equal to: | |
| | FPFP = BC – EER | |
| | where: | |
| | BC | means the Budgeted Costs for the First Reporting Period. BC may only be a positive number; and |
| | EER | means an amount equal to the EMA Estimated Revenue for the Reporting Period |

⁶⁸⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

| | | |
|--------------|--|--|
| | | that ends on the day immediately before the ERMA Start Date. EER may only be a positive number. |
| FPBCP | means an amount equal to the Budgeted Capex for the First Reporting Period. FPBCP may only be a positive number. | |
| FWCP | means an amount equal to: FWCP = BCP – FCCP (and FWCP may be a positive or negative number) where: | |
| | BCP | means an amount equal to the Base Cash Position; and |
| | FCCP | means an amount equal to the Forecast Closing Cash Position for the final Reporting Period of the term of the EMA. |
| RCP | means an amount equal to the Residual Components for the Reporting Period that ends on the day immediately before the ERMA Start Date. RCP may be a positive or negative number. | |

1.3 ⁶⁸⁶The Franchise Payment for any Reporting Period in relation to the term of the ERMA other than the First Reporting Period shall be an amount equal to:

| | |
|--------------|---|
| £FP = | PFP + PBCP + PADJ + WCP – WCR + AADJ + FFPBF – FWCA + RCP + EMA MFPP |
|--------------|---|

where:

| | | |
|------------|---|--|
| PFP | means an amount equal to: PFP_n = BC_n – ER_{n-1} Where: | |
| | PFP_n | means the Periodic Franchise Payment for the current Reporting Period. |
| | BC_n | means the Budgeted Costs for the current Reporting Period (if any). BC _n may only be a positive number. |

⁶⁸⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

| | | |
|--------------|-------------------------|---|
| | ER_{n-1} | means the Estimated Revenue for the preceding Reporting Period("n-1") (if any), provided such Reporting Period occurs after the ERMA Start Date. ER _{n-1} may only be a positive number. |
| | | PFP may be a positive or negative number. |
| PBCP | | means an amount equal to the Budgeted Capex for the current Reporting Period (if any). PBCP may only be a positive number. |
| PADJ | | means: in relation to the second and third Reporting Periods during the term of the ERMA, an EMA Periodic Adjustment Payment; or in relation to all other Reporting Periods during the term of the ERMA, any Periodic Adjustment, to be made on that Reporting Period's Payment Date. PADJ may be a positive or negative number. |
| WCP | | means any Working Capital Payment to be made on that Reporting Period's Payment Date. WCP may only be a positive number. |
| WCR | | means any Working Capital Repayment to be made on that Reporting Period's Payment Date. WCR may only be a positive number. |
| AADJ | | means any Annual Adjustment to be made on that Reporting Period's Payment Date. AADJ may be a positive or negative number. |
| FFPBF | | means: (a) in relation to the Payment Date following the calculation of the Fixed Fee for the first Franchisee Year during the term of the ERMA and the Performance Based Fee for the relevant Franchisee Year the Fixed Fee for the first Franchisee Year during the term of the ERMA, determined in accordance with paragraph 15.1 of this Schedule 8.1A and the Performance Based Fee for the relevant Franchisee Year calculated in accordance with Schedule 8.1B (<i>Performance Based Fee</i>) to be paid on the first Payment Date following the determination of the Fixed Fee and Performance Based Fee in accordance with paragraph 15 (<i>Fixed Fee and Performance Based Fee</i>) of this Schedule 8.1A, which the Parties acknowledge may be after the expiry of the term of the ERMA; or |

| | |
|------------------------|--|
| | <p>(b) in relation to the Payment Date following the calculation of the Fixed Fee for the second Franchisee Year during the term of the ERMA including any Extended Term and the Performance Based Fee for the relevant Franchisee Year, the Fixed Fee for the second Franchisee Year including any relevant Extended Term determined in accordance with paragraph 15.1 of this Schedule 8.1A and the Performance Based Fee for the relevant Franchisee Year calculated in accordance with Schedule 8.1B (Performance Based Fee) to be paid on the first Payment Date following the determination of the Fixed Fee for the second Franchisee Year including any relevant Extended Term and the Performance Based Fee for the relevant Franchisee Year in accordance with paragraph 15 (Fixed Fee and Performance Based Fee) of this Schedule 8.1A, which the Parties acknowledge shall be no earlier than the release of the Annual Audited Accounts for Franchisee Year 2021-2022, unless the Secretary of State decides (in the Secretary of State's sole discretion) that Final Accounts shall also be used for the determination, and in each instance, may be after the expiry of the term of the ERMA;</p> <p>(c) in relation to any other Payment Date, zero.</p> <p>Subject to paragraph 15.2 of this Schedule 8.1A, for the purposes of paragraph (a) above FFPBF may only be a positive number.</p> |
| <p>FWCA</p> | <p>means the Final Working Capital Adjustment to be made in the Reporting Period immediately following the expiry of the term of the ERMA. FWCA may be a positive or negative number.</p> |
| <p>RCP</p> | <p>means an amount equal to the Residual Components for the preceding Reporting Period. RCP may be a positive or negative number.</p> |
| <p>EMA MFPP</p> | <p>means:</p> <p>(a) in relation to the first Payment Date following:</p> <p>(i) the receipt by the Secretary of State of the relevant Audited Accounts Reconciliation and other relevant financial information provided in accordance with paragraph 9.4 of Schedule 11.2 covering the period 1 March 2020 to the end of the EMA Term; and</p> <p>(ii) the determination of the Management Fee and Performance Payment in accordance with</p> |

| | |
|--|--|
| | <p>Paragraph 11 of Schedule 8.A (Franchise Payments),</p> <p>the Management Fee and Performance Payment, determined in accordance with paragraph 11.1 of Schedule 8.A (Franchise Payments) of the EMA (and, subject to paragraph 11.2 of schedule 8.A of the EMA, EMA MFPP may only be a positive number); or</p> <p>(b) in relation to any other Payment Date, zero.</p> |
|--|--|

1.4 ⁶⁸⁷**The Parties agree that:**

- (a) **where £FP or £FFP is a positive number, the Secretary of State shall pay that amount to the Franchisee on the Payment Date for that Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable);**
- (b) **where £FP or £FFP is a negative number, the Franchisee shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable); and**
- (c) **where £FP or £FFP is zero, neither Party shall make a payment to the other Party on the Payment Date for that Reporting Period.**

2. Payment of Franchise Payments

- 2.1 ⁶⁸⁸**The Secretary of State shall notify the Franchisee, no less than seven days prior to the start of each Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable), of the amount of the Franchise Payment payable in respect of that Reporting Period.**
- 2.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.
- 2.3 ⁶⁸⁹**The Payment Date for a Reporting Period shall be the first Weekday of that Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable).**
- 2.4 ⁶⁹⁰**Each Franchise Payment shall be payable by the Franchisee or, as the case may be, the Secretary of State in the amount notified**

⁶⁸⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁸⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁸⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁹⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

by the Secretary of State in accordance with paragraph 2.1 of this Schedule 8.1A on the Payment Date of the Reporting Period to which it relates (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable).

2.5 Each Franchise Payment shall be made:

- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
- (b) so that cleared funds are received in that account on or before the due date for payment.

3. ⁶⁹¹Interest

If:

- (a) **the Franchisee fails to pay any amount to the Secretary of State on its due date; or**
- (b) **the Secretary of State fails to pay to the Franchisee the Franchise Payment on its due date,**

that Party which has failed to pay shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.

4. ⁶⁹²Disputes under Schedule 8

If either the Franchisee or the Secretary of State disputes the amount of a Franchise Payment, the dispute shall, unless the Franchisee and the Secretary of State otherwise agree, be resolved in accordance with the provisions of Clause 17 (Governing Law and Jurisdiction) of the Franchise Agreement. Any such dispute shall not affect the obligation of either Party to pay a Franchise Payment notified in accordance with this Schedule 8.1A.

5. ⁶⁹³Not Used.

6. ⁶⁹⁴No Double Recovery

6.1 **Neither Party shall be entitled to recover (by way of an adjustment to Franchise Payments or otherwise) more than once in respect of the same amount. In particular:**

- (a) **no amount shall be categorised as both Capital Expenditure and as a Cost for the purpose of this Schedule 8.1A, or**

⁶⁹¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁹² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁹³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁶⁹⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

inconsistently with the accounting treatment assumed for the same capital expenditure in calculating the Franchise Payments under the Franchise Agreement prior to and after the implementation of the EMA and the ERMA; and

- (b) **neither Party shall be entitled to recover pursuant to the terms of the ERMA a sum that has already been recovered pursuant to the terms of the EMA and vice versa.**

- 6.2 **In the event that the Franchisee is successful in obtaining any governmental support or support from any local authority or other such body that is offered in relation to the impact of and/or recovery from the impacts of COVID-19, this shall be taken into account in relation to the relevant payment and adjustments in this Schedule 8.1A such that the Franchisee does not benefit from double recovery or double counting.**

7. ⁶⁹⁵Force Majeure and Payments

- 7.1 **Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue to be calculated in accordance with this Schedule 8.1A and the payment of such Franchise Payments shall continue unaffected.**

8. ⁶⁹⁶Revisions to the Budget

- 8.1 **Without limiting the requirement for any other meeting, the Parties shall, subject to paragraph 9.14 of this Schedule 8.1A, hold a forecast Budget review meeting at least once in each Quarter (a "Quarterly Budget Forecast Review Meeting") at a time and location notified to the Franchisee by the Secretary of State following provision of the information referred to in paragraph 8.2 of this Schedule 8.1A. The purpose of the meeting shall be to review and seek to agree:**

- (a) **revisions (if any) to the Budget for the remaining Reporting Periods of the Budget, including inserting such additional information as may be required in relation to the period of any possible Extended Term;**
- (b) **the content of any necessary or desirable corresponding addendum to the Supporting Materials;**
- (c) **whether and (if applicable) the extent to which the provisions of Schedule 9.1 (Financial and Other Consequences of Change) apply to any such revisions agreed in accordance with this paragraph 8.1 of this Schedule 8.1A;**
- (d) **any new contracts with an Affiliate which the Franchisee proposes to enter into or renew, any existing contracts with an Affiliate which the Franchisee proposes to amend or extend**

⁶⁹⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁹⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

and details of any contract procurement process (pursuant to which the Franchisee proposes to enter into a contract with the successful bidder) in which the Franchisee reasonably expects an Affiliate to participate; and

- (e) whether any adjustment to the value(s) of Base Cash Position, Ceiling Cash Position and/or Floor Cash Position is necessary.

The Franchisee shall ensure that the representatives of the Franchisee at the Quarterly Budget Forecast Review Meeting shall include the Finance Director of the Franchisee or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Secretary of State.

- 8.2 The Franchisee shall, prior to the date of each Quarterly Budget Forecast Review Meeting provide to the Secretary of State the relevant information required pursuant to paragraph 9.3 (Quarterly Financial Information) of Schedule 11.2 (Management Information), together with a draft periodic budget prepared using the cost and revenue categories within (and to the same level of disaggregation at) the "P&L2" tab of the Financial Model, updated to reflect Actual Costs, Actual Capex and Actual Revenues as reflected in the latest Management Accounts and revised Budgeted Costs and Budgeted Capex and Estimated Revenue (or EMA Estimated Revenue, as applicable) for the period to which such forecast relates, in accordance with the timescales set out therein, and shall provide the Secretary of State with all further information as the Secretary of State may request from time to time for the purposes of the operation of this paragraph 8.2, within such time as the Secretary of State may reasonably specify for that purpose (and this paragraph 8 shall continue to apply such that the number of requests which the Secretary of State may make is not limited).
- 8.3 If the Parties fail to agree the matters referred to in paragraphs 8.1(a) to 8.18.1(e) of this Schedule 8.1A at the relevant Quarterly Budget Forecast Review Meeting, the Secretary of State shall reasonably determine such matters.
- 8.4 Such revisions to the Budget and addenda to the Supporting Materials as agreed or determined shall take effect from the first day of the Reporting Period immediately following the date on which the Quarterly Budget Forecast Review Meeting (at which such matters were discussed) took place, provided that, if such revisions or addenda are not agreed by the first day of that Reporting Period, the relevant revisions and addenda shall take effect from the first day of the Reporting Period which falls at least 10 Weekdays after those revisions and addenda are agreed or determined.
- 8.5 Each revision to the Budget and/or addendum to the Supporting Materials shall (unless the Parties otherwise agree):
 - (a) adopt the same format and structure as the original version in agreed terms (or where the preceding version has included any changes from that format and structure expressly agreed by the Parties for this purpose) from the preceding version;

- (b) **make no assumptions or include any costs, revenue or other adjustments which are not consistent with the definitions of Costs, Capital Expenditure and Revenue or which represent Disallowable Costs or Revenue Foregone or liabilities in respect of SoS Claims (except as may be otherwise expressly agreed by the Parties for that purpose);**
 - (c) **adopt the same accounting principles and standards as the original version (as these may be expressly varied by agreement between the Parties for this purpose or, in the case of accounting standards, as these may be reasonably revised by the Secretary of State to take account of changes to GAAP in the United Kingdom); and**
 - (d) **otherwise facilitate easy comparison with the definitions of Costs, Capital Expenditure, Revenue, Disallowable Costs and Revenue Foregone and with the information reported in the Management Accounts, Annual Management Accounts, the Annual Audited Accounts and the Final Accounts.**
- 8.6 **Each time it is agreed or determined that the Budget is to be revised and/or an addendum is to be added to the Supporting Materials, the Secretary of State shall be entitled to:**
 - (a) **make the agreed or determined revisions to the Budget and/or Supporting Materials (or procure this is done on the Secretary of State's behalf) and provide copies of those revised documents to the Franchisee; or**
 - (b) **require the Franchisee to provide the agreed or determined revisions to the Budget and/or Supporting Materials for approval by the Secretary of State, which the Franchisee shall do and provide revised versions to the Secretary of State within such time as the Secretary of State shall specify for this purpose.**
- 8.7 **The Franchisee shall not enter into any contract or arrangement with an Affiliate (including entering into a new contract or arrangement and/or renewing or amending an existing contract or arrangement) unless:**
 - (a) **the Secretary of State has, in the Secretary of State's sole discretion (and for this purpose Clause 6.4 of the Franchise Agreement shall not apply) first consented to the terms of such contract and to it being entered into on those terms (which shall be at least as favourable to the Franchisee as terms on an arm's length basis), whether at or following a Quarterly Budget Forecast Review Meeting (where such contract forms part of the agenda for that meeting) or otherwise; and**
 - (b) **the Franchisee has procured that any such contract or arrangement which has a term that is longer than seven Reporting Periods and/or which may extend beyond the ERMA Term or Extended Term is capable of being terminated in accordance with its terms upon the expiry of the ERMA Term or Extended Term such that the Franchisee shall not incur any liability or be required to make any termination payment to the**

relevant Affiliate if the Franchisee elects or is directed by the Secretary of State to exercise any such termination right in accordance with the terms of the relevant contract.

- 8.8 The Secretary of State may direct the Franchisee to re-procure (in accordance with the terms of such contract or arrangement) any:
- (a) contract or arrangement with an Affiliate that was entered into on or after the ERMA Start Date that has been entered into in breach of paragraph 8.7 above of this Schedule 8.1A;
 - (b) contract or arrangement with an Affiliate that was entered into on or after the ERMA Start Date where the Secretary of State has directed the Franchisee to exercise the termination right outlined in paragraph 8.7(b) above of this Schedule 8.1A; or
 - (c) contract or arrangement with an Affiliate that was entered into prior to the ERMA Start Date which has a remaining term that is longer than seven Reporting Periods as at the ERMA Start Date and/or which may extend beyond the ERMA Term or Extended Term, provided that the relevant contract is capable of being terminated by the Franchisee in accordance with its terms to allow the Franchisee to undertake such re-procurement without the Franchisee being in breach of the terms of such contract or incurring any liability or being required to make any termination payment to the relevant Affiliate.
- 8.9 For the purpose of this paragraph 8, the Secretary of State shall be entitled to consider any information provided to the Secretary of State by the Franchisee and any other sources of information which the Secretary of State considers to be relevant and the Secretary of State shall be entitled to request such information from the Franchisee as the Secretary of State requires in connection with the matters referred to in this paragraph 8. Without prejudice to the generality of the foregoing, in considering any revisions to the Budget, regard shall be had to the definitions of Costs, Revenue, Capital Expenditure, Good and Efficient Operator, Disallowable Costs and Revenue Foregone, so as to ensure that the revisions to the Budget are consistent with those definitions.
- 8.10 Subject to the Secretary of State's rights set out in paragraph 8.7 of this Schedule 8.1A, the Parties shall at all times act in good faith, reasonably and in a timely manner in the interpretation and application of the provisions for agreeing revisions to the Budget and any addendum to the Supporting Materials.

9. ⁶⁹⁷Review of Franchisee's performance against Budget

Finance Review Meeting

⁶⁹⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 9.1 **Without limiting the requirement for any other meeting, the Parties shall, subject to paragraph 9.14 of this Schedule 8.1A, hold a finance review meeting in every Reporting Period ("Periodic Finance Review Meeting") at such time(s) and location(s) notified to the Franchisee by the Secretary of State following the provision of the information referred to in paragraph 9.2 of this Schedule 8.1A and:**
- (a) **the purpose of the Periodic Finance Review Meeting shall be to review the financial performance of the Franchisee. This shall include:**
 - (i) **a review and discussion of variances arising in the preceding Reporting Period between Actual Costs, Actual Capex and Actual Revenue, and Budgeted Costs, Budgeted Capex and Estimated Revenue respectively, Actual Revenues to be received by the Franchisee and potential Revenue Foregone, and confirmation of the value of the Periodic Adjustment to be applied to the Franchise Payment to be paid in the Reporting Period following the Reporting Period in which the Periodic Finance Review Meeting is taking place (or, in relation to the second and third Reporting Periods during the term of the ERMA, the EMA Periodic Adjustment Payment);**
 - (ii) **a review and discussion regarding any Actual Costs with respect to all payments made by the Franchisee under contracts or other arrangements with Affiliates (and any payments, costs or liabilities in connection with such contracts or arrangements which are not consistent with the Franchisee acting as a Good and Efficient Operator shall be Disallowable Costs);**
 - (iii) **a review of fees and payments (including bonuses) actually paid by the Franchisee to its directors and officers during the preceding Reporting Period as against the Budgeted Costs for such fees and payments as stated in the then current Budget;**
 - (iv) **a review and discussion of the Franchisee's management of its working capital and the Franchisee's Forecast Closing Cash Position for that Reporting Period in which the Periodic Finance Review Meeting is taking place and any Working Capital Payment or Working Capital Repayment to be applied to the Franchise Payment to be paid in the Reporting Period following the Reporting Period in which the Periodic Finance Review Meeting is taking place;**
 - (v) **actions to be taken in respect of the Franchisee's financial performance;**
 - (vi) **identification of any potential Non-Recoverable Costs, Disallowable Costs, Unreimbursed Disallowable Costs, Revenue Foregone and SoS Claims that may have been incurred within the preceding or current Reporting Period; and**
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- (vii) **confirmation and valuation of any Disallowable Costs, Unreimbursed Disallowable Costs, Revenue Foregone and SoS Claims (and/or in accordance with paragraph 9.13 of this Schedule 8.1A, relevant Initial SoS Claim Amounts, as applicable) which have been identified pursuant to sub-paragraph (vi) above in previous Periodic Finance Review Meetings;**
- (b) **the Franchisee shall ensure that the representatives of the Franchisee at the meeting shall include the Finance Director of the Franchisee or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Secretary of State; and**
- (c) **the Secretary of State shall ensure that the representatives of the Secretary of State shall include a senior civil servant where the confirmation and valuation of any Disallowable Costs, Unreimbursed Disallowable Costs, Revenue Foregone and/or SoS Claims (and/or in accordance with paragraph 9.13 of this Schedule 8.1A, relevant Initial SoS Claim Amounts, as applicable) are to be considered as part of any Periodic Finance Review Meeting,**

and the purpose of the Periodic Finance Review Meeting held in the first Reporting Period of the term of the ERMA (the "EMA Finance Review Meeting") shall be to discuss the financial performance of the Franchisee during the final Reporting Period during the term of the EMA and for the purposes of the EMA Finance Review Meeting, references in paragraph (a) to "Actual Costs", "Actual Capex", "Actual Revenue", "Budgeted Costs", "Budgeted Capex", "Estimated Revenue", "Disallowable Costs", "Revenue Foregone" and "SoS Claims" shall be construed to be references to Actual EMA Costs, Actual EMA Capex, Actual EMA Revenue, Budgeted EMA Costs, Budgeted EMA Capex, EMA Estimated Revenue, EMA Disallowable Costs, EMA Revenue Foregone and EMA SoS Claims (respectively).

- 9.2 **The Franchisee shall, prior to the date of each Periodic Finance Review Meeting, provide to the Secretary of State the relevant information required pursuant to paragraph 9.2 of Schedule 11.2 (Management Information) (or, in relation to the EMA Finance Review Meeting, the relevant information required pursuant to paragraph 9.2 of schedule 11.2 (Management Information) of the EMA) in relation to the previous Reporting Period together with a statement of the Franchisee's Forecast Closing Cash Position applicable to that Reporting Period, in accordance with the timescales set out therein, and shall provide the Secretary of State with all further information as the Secretary of State may request from time to time for the purposes of the operation of paragraph 9.1 of this Schedule 8.1A, within such time as the Secretary of State may reasonably specify for that purpose (and this paragraph 9 shall continue to apply such that the number of requests which the Secretary of State may make is not limited).**
- 9.3 **The Secretary of State shall be entitled to consider any information provided to the Secretary of State by the Franchisee and any other**

sources of information which the Secretary of State considers to be relevant and the Secretary of State shall be entitled to request such information from the Franchisee as the Secretary of State requires for the purposes of the operation of this paragraph 9. The Franchisee shall provide the information within such time as the Secretary of State may reasonably specify for the purpose (and this paragraph 9 shall continue to apply such that the number of requests which the Secretary of State may make is not limited).

9.4 **If, within 10 Weekdays following the relevant Periodic Finance Review Meeting:**

- (a) **the Parties have failed to agree the matters referred to in paragraph 9.1(a)(vii) of this Schedule 8.1A; and**
- (b) **such matters either individually or in the aggregate exceed [REDACTED⁶⁹⁸],**

then each Party shall respectively procure that such matter or matters (as the case may be) shall be escalated to any senior civil servant within the Department for Transport's Rail Group (excluding the Passenger Services Group) on behalf of the Secretary of State and any statutory director of any Affiliate of the Franchisee on behalf of the Franchisee. Those representatives shall meet at the earliest convenient time and in any event within 20 Weekdays of the date of the relevant Periodic Finance Review Meeting and negotiate in good faith and attempt to agree the relevant matters.

9.5 **If:**

- (a) **the Parties fail to agree the matters referred to in paragraph (a) of this Schedule 8.1A at the relevant Periodic Finance Review Meeting, in circumstances where paragraph 9.4 of this Schedule 8.1A does not apply;**
- (b) **the representatives of the Parties fail to agree the matters referred to in paragraph (a)(vii) of this Schedule 8.1A within 10 Weekdays of first meeting to agree such matters in accordance with paragraph 9.4 of this Schedule 8.1A, in circumstances where that paragraph applies; or**
- (c) **the Franchisee fails to provide the relevant information required pursuant to Schedule 11.2 (Management Information) (or, in relation to the EMA Finance Review Meeting, the relevant information required pursuant to paragraph 9.2 of schedule 11.2 (Management Information) of**

⁶⁹⁸ 15 January 2021 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

the EMA, in accordance with the timescales set out therein, or otherwise in accordance with this paragraph 9,

the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the relevant matters in accordance with this paragraph 9 and all other applicable provisions of this Schedule 8.1A but by reference to the relevant information available to the Secretary of State at the time of such determination.

Accrued Disallowable Costs, Accrued Revenue Foregone and SoS Claims

- 9.6 **Without prejudice to paragraphs 9.3 to 9.5 of this Schedule 8.1A, if subsequent to any Periodic Finance Review Meeting, the Secretary of State later identifies any item (applicable to that period to which the relevant Periodic Finance Review Meeting relates) which the Secretary of State considers is or may be a Disallowable Cost or an instance of Revenue Foregone or any SoS Claims (whether following a review of the Franchisee's Annual Audited Accounts, Final Accounts or otherwise) the Secretary of State shall within 28 days of identifying such item be entitled to:**
- (a) **notify the Franchisee in writing, identifying the item concerned; and**
 - (b) **request further information from the Franchisee in connection with the item for the purposes of the operation of this paragraph 9.6 and paragraphs 9.7 to 9.9 of this Schedule 8.1A. The Franchisee shall provide the information within such time as the Secretary of State may reasonably specify for the purpose.**
- 9.7 **The Parties shall seek to agree the value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 9.13 of this Schedule 8.1A, relevant Initial SoS Claim Amounts, as applicable) identified by the Secretary of State pursuant to paragraph 9.6 of this Schedule 8.1A within 20 Weekdays of the later of the Secretary of State's notice referred to in paragraph (a) of this Schedule 8.1A and the date specified by the Secretary of State for the delivery of further information in accordance with paragraph (b) (the "Escalation Trigger Date").**
- 9.8 **If:**
- (a) **the Parties fail to agree the matters referred to in paragraph 9.7 of this Schedule 8.1A; and**

- (b) **such matters either individually or in the aggregate exceed [REDACTED⁶⁹⁹]; then**

each Party shall respectively procure that such matter or matters (as the case may be) shall be escalated to any senior civil servant within the Department for Transport's Rail Group (excluding the Passenger Services Group) on behalf of the Secretary of State and any statutory director of the Franchisee or any Affiliate of the Franchisee on behalf of the Franchisee. Those representatives shall meet at the earliest convenient time and in any event within 20 Weekdays of the Escalation Trigger Date, negotiate in good faith and attempt to agree the relevant matters.

9.9 If:

- (a) **the Parties fail to agree the matters referred to in paragraph 9.7 in circumstances where paragraph 9.8 does not apply;**
- (b) **the representatives of the Parties fail to agree the matters referred to in paragraph 9.7 within 10 Weekdays of first meeting to agree such matters in accordance with paragraph 9.8 or the Parties fail to meet to attempt to agree the relevant matters, in circumstances where that paragraph applies; or**
- (c) **the Franchisee fails to provide the relevant information required pursuant to paragraph (b) in accordance with the specified timescales, then**

the Secretary of State shall reasonably determine the value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 9.13, relevant Initial SoS Claim Amounts, as applicable).

9.10 The value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 9.13, relevant Initial SoS Claim Amounts as applicable) as agreed or determined whether pursuant to paragraph 9.4, paragraph 9.5, paragraph 9.8, paragraph 9.9 or paragraph 9.13 shall be referred to as "Accrued Disallowable Costs" and "Accrued Revenue Foregone" and "Accrued Claims" (as applicable).

9.11 Subject to paragraph 9.12, the value of any Accrued Disallowable Costs and/or Accrued Revenue Foregone and/or Accrued Claims on each occasion accumulated pursuant to paragraph 9.10 shall be aggregated with the total of all Disallowable Costs, Revenue Foregone and SoS Claims which have been previously accumulated, such aggregated value from time to time being the "Aggregated Costs and Revenues Liabilities".

⁶⁹⁹ 15 January 2021 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 9.12 **The value of the Aggregated Costs and Revenues Liabilities shall be limited to:**
- (a) **in the event that there has been no extension to the term of the ERMA, the sum of:**
 - (i) **the Fixed Fee payable for the Reporting Periods in that Franchisee Year (which shall take account of any early expiry or termination of the ERMA) calculated pursuant to paragraph 15.1;**
 - (ii) **the maximum potential Performance Based Fees for the PBF Assessment Periods in that Franchise Year calculated in accordance with Schedule 8.1B (Performance Based Fee); and**
 - (iii) **any remaining amounts as a debt from the Franchisee which the Secretary of State shall be entitled to claim in accordance with the Funding Deed or the Performance Bond on expiry or termination of this Franchise Agreement; or**
 - (b) **in the event that there has been an extension to the term of the ERMA, the sum of:**
 - (i) **the Fixed Fee payable for the Reporting Periods in that Franchisee Year calculated pursuant to paragraph 15.1;**
 - (ii) **the maximum potential Performance Based Fees for the PBF Assessment Periods in that Franchise Year calculated in accordance with Schedule 8.1B (Performance Based Fee); and**
 - (iii) **any remaining amounts as a debt from the Franchisee which the Secretary of State shall be entitled to claim in accordance with the Funding Deed or the Performance Bond on expiry or termination of this Franchise Agreement.**
- 9.13 **If any SoS Claim is a contingent or unliquidated claim (a "Contingent SoS Claim"), the Parties shall, pursuant to paragraph 9.4, paragraph 9.7 or paragraph 9.8 (as applicable) seek to agree (or in the absence of agreement, the Secretary of State may for the purposes of paragraph 9.5 and shall for the purposes of paragraph 9.9, reasonably determine) an initial value for such Contingent SoS Claim (the "Initial SoS Claim Amount") and the Initial SoS Claim Amount shall be deemed to be an Accrued Claim for the purposes of paragraph 9.10. If the value of Contingent SoS Claim once fully liquidated (that is, being agreed or determined through dispute resolution) is:**
- (a) **in excess of the Initial SoS Claim Amount, the Secretary of State shall be entitled to claim such amount in excess of the Initial SoS Claim Amount from the Franchisee:**
 - (i) **as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of FFPBF,**

where Franchise Payments in favour of the Secretary of State remain to be paid after the date on which the Contingent SoS Claim has become fully liquidated; and/or

- (ii) as an adjustment to the Franchise Payment payable after the expiry of the term of the ERMA; and/or
 - (iii) as a debt from the Franchisee which the Secretary of State shall be entitled to claim in accordance with the Funding Deed or from the Performance Bond on expiry or termination of the Franchise Agreement; or
- (b) is less than the Initial SoS Claim Amount, the Secretary of State shall repay to the Franchisee the difference between the actual liquidated value of the relevant SoS Claim and the Initial SoS Claim Amount either:
- (i) as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of FFPBF, where Franchise Payments remain to be paid after the date on which the Contingent SoS Claim has become fully liquidated; or
 - (ii) where no Franchise Payment is payable after the date on which the Contingent SoS Claim becomes fully liquidated as a payment to the Franchisee.

9.14 The Secretary of State shall have the sole discretion (acting reasonably) to decrease (and subsequently increase) the required frequency of the Quarterly Budget Forecast Review Meetings and/or the Periodic Finance Review Meetings, provided they shall be no more frequent than once a Reporting Period.

9.15 Any Quarterly Budget Forecast Review Meeting or Period Finance Review Meeting (or part thereof) may be held remotely with the prior agreement of the Parties.

Unreimbursed Disallowable Costs

9.16 If the value of any Disallowable Cost is agreed or determined pursuant to this paragraph 9, the Franchisee may (subject to the prior written consent of the Secretary of State) request that the Guarantor pay to the Franchisee within 10 Weekdays of receipt of such request a sum equal to the value as such Disallowable Cost (such sum, once paid to the Franchisee in accordance with this paragraph 9.16, being an "Unreimbursed Disallowable Cost").

9.17 Paragraph 9.16 shall not apply in relation to Disallowable Costs specified in paragraph 1.5 or paragraph 1.11 of Appendix 1 (Disallowable Costs) to this Schedule 8.1A.

9.18 Any Unreimbursed Disallowable Costs shall be disregarded for the purposes of:

- (a) paragraph 1.17 (Disallowable Costs) of Schedule 10.2 (Events of Default and Termination Events); and

- (b) calculating any Costs for the purposes of any Franchise Payment.

10. ⁷⁰⁰Periodic Adjustments

10.1 The value of PADJ for the current Reporting Period ("n") (other than the second and third Reporting Periods during the term of the ERMA) shall be equal to the following

| | |
|---------------------------------------|---|
| PADJ for Reporting Period(n) = | $(ACRP_{n-3} - BCRP_{n-3}) + (ACAP_{n-3} - BCAP_{n-3}) - (ARRP_{n-3} - ERRP_{n-3})$ |
|---------------------------------------|---|

Where:

| | |
|---------------------------|---|
| ACRP_{n-3} | means the total Actual Costs in the third preceding Reporting Period ("n-3") as set out in the Management Accounts for that preceding Reporting Period, provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ACRP_{n-3} may only be a positive number. |
| BCRP_{n-3} | means the total Budgeted Costs in respect of the third preceding Reporting Period ("n-3") (based on the version of the Budget which applied for the purpose of the calculation of the Franchise Payment for that preceding Reporting Period (n-3)), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. BCRP_{n-3} may only be a positive number. |
| ACAP_{n-3} | means the total Actual Capex for the third preceding Reporting Period ("n-3"), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ACAP_{n-3} may only be a positive number. |
| BCAP_{n-3} | means the Budgeted Capex in respect of the third preceding Reporting Period ("n-3") (based on the version of the Budget which applied for the purpose of the calculation of the Franchise Payment for that preceding Reporting Period (n-3)), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. BCAP_{n-3} may only be a positive number. |
| ARRP_{n-3} | means the total Actual Revenue for the third preceding Reporting Period ("n-3"), provided |

⁷⁰⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

| | |
|---------------------------|--|
| | that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ARRP may only be a positive number. |
| ERRP_{n-3} | means the total Estimated Revenue in respect of the third preceding Reporting Period (n-3), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ERRP may only be a positive number. |

- 10.2 The value of PADJ in respect of a Reporting Period (other than the second and third Reporting Periods during the term of the ERMA) shall be made as an adjustment to the second Franchise Payment payable after that calculation of PADJ is determined, provided that no such adjustment shall apply in respect of the first Reporting Period during the term of the ERMA (a "Periodic Adjustment"). A Periodic Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3 of this Schedule 8.1A.
- 10.3 The Secretary of State agrees that, provided the Management Accounts (in a form consistent with the obligations of the Franchisee under Schedule 11.2 (Management Information)) are received from the Franchisee within the timescale specified in paragraph 9.2(a) of Schedule 11.2 (Management Information), the Secretary of State shall provide the Franchisee with the value of PADJ in sufficient time for the Periodic Adjustment to be included in the relevant Franchise Payment in accordance with paragraph 10.2 of this Schedule 8.1A above.
- 10.4 If the Franchisee fails to provide the Management Accounts in accordance with its obligations under Schedule 11.2 (Management Information), the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the amount of any Periodic Adjustment in accordance with this paragraph 10 but by reference to the relevant information available to the Secretary of State at the time of such determination.

11. ⁷⁰¹Annual Adjustments

11.1 AADJ shall be equal to the following:

| | |
|---------------|---|
| AADJ = | (TotalAC – TotalAR) + TotalACAP – (TotalPFP + TotalPBCP) – TotalPADJ |
|---------------|---|

Where, subject to paragraph 11.5 below:

| | |
|----------------|--|
| TotalAC | means the total Actual Costs of the Franchisee for the relevant Franchisee Year as set out in the Annual Audited Accounts for the relevant |
|----------------|--|

⁷⁰¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

| | |
|------------------|--|
| | Franchisee Year. TotalAC may only be a positive number. |
| TotalAR | means the total Actual Revenue for the relevant Franchisee Year as set out in the Annual Audited Accounts for the relevant Franchisee Year. TotalAR may only be a positive number. |
| TotalACAP | means the total Actual Capex for the relevant Franchisee Year as set out in the Annual Audited Accounts for the relevant Franchisee Year. TotalACAP may only be a positive number. |
| TotalPFP | means the total net value of the First Franchise Payment and all of the Periodic Franchise Payments paid to the Franchisee during the relevant Franchisee Year. TotalPFP may be positive or negative. |
| TotalPBCP | means the total net value of all of the FPBCP and the Periodic Budgeted Capex Payments paid to the Franchisee during the relevant Franchisee Year. TotalPBCP may only be a positive number. |
| TotalPADJ | means the total net value of PADJ paid in respect of each Reporting Period during the relevant Franchisee Year. TotalPADJ may be positive or negative. |

- 11.2 The value of AADJ in respect of the relevant Franchisee Year (whether negative or positive) shall be made as an adjustment to the next Franchise Payment payable after the calculation of AADJ is determined (the "Annual Adjustment") and the Parties acknowledge this may be payable as part of the Franchise Payments following the completion of the term of the ERMA. The Annual Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3 of this Schedule 8.1A.
- 11.3 If the Franchisee fails to provide the information required by paragraphs 9.4(b), 9.4(c) and 9.4A(m) of Schedule 11.2 (Management Information), including Annual Audited Accounts, Final Accounts and the Audited Accounts Reconciliation by the date specified pursuant to that paragraph the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the amount of any Annual Adjustment in accordance with this paragraph 11 but by reference to the relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year to date Management Accounts or in the Annual Management Accounts.
- 11.4 The Parties agree that notwithstanding the provisions of the EMA, no EMA Final Adjustment shall be payable in respect of the term of the EMA and (unless otherwise so requested by the Secretary of State) the Franchisee shall not be required to provide the EMA Final Reviewed Accounts.

- 11.5 The Secretary of State may, in the Secretary of State’s sole discretion, determine that the relevant information set out in the Final Accounts, as well as of the Annual Audited Accounts shall be used for the purposes of calculating the components of AADJ, as set out in this paragraph 11.

12. ⁷⁰²Working Capital Payments

- 12.1 A Working Capital Payment shall become payable to the Franchisee as part of a Reporting Period’s Franchise Payment where the Forecast Closing Cash Position for the preceding Reporting Period is less than the Floor Cash Position. The value of the Working Capital Payment shall be calculated in accordance with paragraph 12.3.
- 12.2 The Franchisee shall provide the Secretary of State with a statement of the Franchisee’s Forecast Closing Cash Position prior to each Periodic Finance Review Meeting in accordance with paragraph 9.2.
- 12.3 The Working Capital Payment, if payable in any Reporting Period, shall be equal to the following:

| | |
|--------------|-------------------|
| WCP = | BCP – FCCP |
|--------------|-------------------|

Where:

| | |
|-------------|---|
| BCP | the Base Cash Position. |
| FCCP | the Forecast Closing Cash Position applicable to the preceding Reporting Period. |

- 12.4 If, during a Reporting Period, the Franchisee becomes aware that in its opinion (acting reasonably), prior to the payment of the Franchise Payment in respect of the following Reporting Period, the Franchisee's available Cash Balance will be insufficient to meet its liabilities that will fall due prior to the payment of the Franchise Payment applicable to that Reporting Period (the "Working Capital Shortfall"), the Franchisee shall immediately:
 - (a) notify the Secretary of State that a Working Capital Shortfall is likely to occur during that Reporting Period;
 - (b) provide, in or with that notice, supporting information (including relevant accounts and calculations) evidencing the likely Working Capital Shortfall and the amount of additional working capital that the Franchisee considers it will require to ensure that the Working Capital Shortfall is remedied; and

⁷⁰² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (c) **provide such further supporting information as the Secretary of State shall reasonably require.**
- 12.5 **The Parties shall agree or (where the Parties fail to agree) the Secretary of State shall reasonably determine the amount required to remedy the Working Capital Shortfall (an "Emergency Working Capital Payment") and when such Emergency Working Capital Payments are required to be paid for that purpose.**
- 12.6 **The Secretary of State shall pay to the Franchisee any Emergency Working Capital Payment in accordance with the timescales agreed or determined in accordance with paragraph 12.5 of this Schedule 8.1A.**
- 12.7 **If the Franchisee fails to provide any information required by this paragraph 12, or any information in accordance with its obligations in Schedule 11.2 (Management Information) to enable the Secretary of State to calculate the amount of any Working Capital Payment or Emergency Working Capital Payment, the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the amount of WCP in accordance with this paragraph 12 but by reference to the relevant information available to the Secretary of State at the time of such determination.**
- 12.8 **The Secretary of State shall at any time on reasonable prior notice to the Franchisee be entitled to adjust the value of the Ceiling Cash Position, the Base Cash Position and/or the Floor Cash Position provided that the Secretary of State shall have first consulted the Franchisee as to any such adjustments as the Secretary of State is considering making.**

13. ⁷⁰³Working Capital Repayment

- 13.1 **A Working Capital Repayment shall become payable by the Franchisee as part of a Reporting Period's Franchise Payment where the Franchisee's Forecast Closing Cash Position in the preceding Reporting Period is greater than the Ceiling Cash Position. The value of the Working Capital Repayment shall be calculated in accordance with paragraph 13.2 of this Schedule 8.1A.**
- 13.2 **A Working Capital Repayment, if payable in any Reporting Period, shall be equal to the following:**

| | |
|--------------|-------------------|
| WCR = | FCCP – BCP |
|--------------|-------------------|

Where:

| | |
|-------------|---|
| FCCP | means the Forecast Closing Cash Position applicable to the preceding Reporting Period. |
|-------------|---|

⁷⁰³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

| | |
|------------|--------------------------------------|
| BCP | means the Base Cash Position. |
|------------|--------------------------------------|

14. ⁷⁰⁴Final Working Capital Adjustment

14.1 The value of FWCA shall equal:

| | |
|---------------|-------------------------------------|
| FWCA = | (TotalWCP – TotalWCR) + FWCP |
|---------------|-------------------------------------|

Where:

| | |
|-----------------|---|
| FWCP | means an amount equal to the FWCP that was paid in the First Franchise Payment in accordance with paragraph 1.2 above. |
| TotalWCP | means the aggregate of all Working Capital Payments, EMA Working Capital Payments, Emergency Working Capital Payments and EMA Emergency Working Capital Payments paid to the Franchisee during the term of the ERMA and the EMA (as applicable). |
| TotalWCR | means the aggregate of all Working Capital Repayments and EMA Working Capital Repayments paid by the Franchisee during the term of the ERMA and the EMA (as applicable). |

14.2 The value of FWCA shall be payable as an adjustment to the Franchise Payment payable in the Reporting Period immediately following the expiry of the term of the ERMA. FWCA may be positive or negative.

14.3 If the Franchisee fails to provide any information in accordance with its obligations in Schedule 11.2 (Management Information) to enable the Secretary of State to calculate any Working Capital Repayment, EMA Working Capital Repayment or the Final Working Capital Adjustment, the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the amount of WCR, EWCR or FWCA (as the case may be) in accordance with this paragraph 14 but by reference to the relevant information available to the Secretary of State at the time of such determination.

15. ⁷⁰⁵Fixed Fee and Performance Based Fee

15.1 Subject to paragraphs 15.2 to 15.4 (inclusive), the value of FFPBF shall equal:

| | |
|----------------|------------------------|
| FFPBF = | (FF+PBF) – ACRL |
|----------------|------------------------|

⁷⁰⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁰⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

Where, subject to paragraph 15.5 below:

| | |
|-------------|---|
| FF | means the Fixed Fee. |
| PBF | means the sum of all the Performance Based Fee for the PBF Assessment Periods in the relevant Franchisee Year calculated in accordance with Schedule 8.1B (Performance Based Fee). PBF may only be a positive number. |
| ACRL | <p>Means, for the purposes of this paragraph 15, the sum of the total value of the Aggregated Costs and Revenues Liabilities in the relevant Franchisee Year:</p> <p>calculated on the basis of the Franchisee's Audited Accounts Reconciliation and/or the Final Accounts, at the Secretary of State's sole discretion; and</p> <p>as agreed or reasonably determined (in accordance with paragraphs 9.4 and 9.5 of this Schedule 8.1A) at the Payment Date for FFPBF pursuant to paragraph 15.3 of this Schedule 8.1A.</p> <p>ACRL may only be a positive number.</p> |

15.2 If the value of FFPBF is a negative amount:

- (a) for the purposes of paragraph 1.2 of this Schedule 8.1A, FFPBF shall be deemed to equal zero; and
- (b) the Secretary of State shall be entitled to claim the value of FFPBF (expressed as a positive value) from the Franchisee as an adjustment to the Franchise Payment following determination of the amount of the relevant Franchise Payment.

15.3 Subject to paragraph 15.4 of this Schedule 8.1A, the value of FFPBF may be made as an adjustment to the next Franchise Payment payable after:

- (a) the value of the Performance Based Fee in relation to all PBF Assessment Periods in that Franchisee Year has been finally calculated pursuant to Schedule 8.1B (Performance Based Fee); and
- (b) the value of the Aggregate Costs and Revenue Liabilities have been agreed or determined for the purposes of this paragraph 15.

FFPBF shall be calculated on the basis that no interest is due pursuant to paragraph 3 of this Schedule 8.1A.

The Parties acknowledge that the adjustment referred to in this paragraph 15.3 may occur after the expiry of the term of the ERMA.

- 15.4 **Nothing in this paragraph 15 shall limit the rights and remedies of the Secretary of State in respect of any Disallowable Costs, Non-Recoverable Costs, Revenue Foregone and/or SoS Claims not taken into account in the calculation of ACRL. The Secretary of State's rights and remedies in respect of any Disallowable Costs, Non-Recoverable Costs, Revenue Foregone and/or SoS Claims not taken into account in the calculation of ACRL shall include claims pursuant to and in accordance with the Funding Deed and/or Performance Bond.**
- 15.5 **The Secretary of State may, in the Secretary of State's sole discretion, determine that the relevant information set out in the Final Accounts, as well as the Annual Audited Accounts or Audited Accounts Reconciliation, shall be used for the purposes of calculating the components of FFPBF, as set out in this paragraph 15.**
16. ⁷⁰⁶**Further Secretary of State's rights in relation to accounting matters**
- 16.1 **Where the Secretary of State reasonably considers that in calculating any matter which has an impact on the calculation of a Franchise Payment Component, any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance of the item or transaction) and having regard to all circumstances, including GAAP (as may be amended from time to time), the Secretary of State shall be entitled to require it to be accounted for on such other basis as the Secretary of State may reasonably determine and notify to the Franchisee provided that the Secretary of State shall not be entitled pursuant to this paragraph to alter the accounting policies of the Franchisee from those set out in the Supporting Materials and applied through the Financial Model.**
- 16.2 **Where the Annual Audited Accounts or Final Accounts are subject to adjustment or restatement, the Secretary of State shall have the sole discretion to require the recalculation of any affected Franchise Payment Component for the relevant Franchisee Year and to require that the Franchisee shall pay to the Secretary of State the amount which is the difference between:**
- (a) **any amount actually paid to the Secretary of State or adjusted in favour of the Secretary of State and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts or Final Accounts; and/or**

⁷⁰⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (b) **any amount actually paid by the Secretary of State or adjusted in favour of the Franchisee and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts or Final Accounts.**

16.3 **Any payment due to the Secretary of State shall be paid by the Franchisee within thirty (30) days of the Secretary of State notifying the Franchisee that the Secretary of State requires a payment to be made pursuant to this paragraph 16.**

17. ⁷⁰⁷Indexation

The Parties agree that the Franchise Payments and any sum shown in any Budget for any given Franchisee Year (or other period) shall not be subject to automatic indexation or adjustment to take into account the effect of inflation provided that this paragraph 17 is without prejudice to the adjustment of the Budget in accordance with paragraph 8 (Revisions to the Budget) of this Schedule 8.1A and/or the adjustment of the Franchise Payments in accordance with paragraph 10 (Periodic Adjustments) and paragraph 11 (Annual Adjustments) of this Schedule 8.1A.

18. ⁷⁰⁸Further obligations of the Franchisee

18.1 **Except to the extent otherwise agreed by the Secretary of State, the Franchisee shall act as a Good and Efficient Operator in all respects in connection with the operation of this Schedule 8.1A and shall not act in a way that is contrary to the principles of the ERMA or the Franchise Agreement by using the existence or cessation of the ERMA to increase the profitability of the Franchisee.**

18.2 **The Franchisee warrants on a continuing basis and shall, if requested at any time by the Secretary of State, provide written confirmation from a statutory director of the Franchise confirming that the Franchisee is not (and, during the term of the ERMA, was not) party to any arrangement of any kind whatsoever (except if the Secretary of State provided prior written consent to such arrangement) under which:**

- (a) **any amounts which the Franchisee might otherwise have received from a third party are reduced, waived or otherwise suppressed; and/or**
- (b) **any amounts which the Franchisee might otherwise be properly obliged to pay or be liable are increased; and/or**

⁷⁰⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁰⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (c) **any amounts required to be paid or accounted for by the Franchisee become or are recorded as paid or accounted for during the term of the:**
 - (i) **ERMA, which might otherwise be paid or accounted for in the periods preceding or following the term of the ERMA; and/or**
 - (ii) **EMA, which might otherwise be paid or accounted for in the periods preceding or following the term of the EMA; and/or**
 - (d) **any amounts which the Franchisee might otherwise have received from a third party during the term of the:**
 - (i) **ERMA are recovered or accounted for in the periods preceding or following the term of the ERMA; and/or**
 - (ii) **EMA are recovered or accounted for in the periods preceding or following the term of the EMA; and/or**
 - (e) **Revenue and/or EMA Revenue is accounted for in the periods preceding or following the term of the:**
 - (i) **ERMA which should have been accounted for during the term of the ERMA; and/or**
 - (ii) **EMA which should have been accounted for during the term of the EMA.**
- 18.3 **Without limiting any other constraints which operate by virtue of any other part of the Franchise Agreement or otherwise, no application shall be made or other step taken by or on behalf of the Franchisee in respect of the winding up or striking off of the Franchisee (or any similar or analogous process) and nor shall the Franchisee permit or facilitate the same:**
- (a) **until all the adjustments and payments for which this Schedule 8.1A provides have been made and discharged in full; and/or**
 - (b) **without the prior written consent of the Secretary of State.**
- 18.4 **The Secretary of State shall be entitled to notify the Franchisee of any future initiatives or proposals that the Secretary of State considers may have the potential to reduce certain Actual Costs below the applicable Budgeted Costs and the Franchisee shall, acting reasonably and in good faith, discuss with the Secretary of State all such matters as are relevant to the possible implementation of such initiatives.**
- 18.5 **The Franchisee shall:**
- (a) **upon the Secretary of State's direction, maintain an amount equal to the Season Ticket Fare suspense liabilities in a separate bank account as the Secretary of State may nominate from time to time and the Franchisee shall secure the proceeds**

of any such account as chargor for the benefit of the Secretary of State as chargee under a relevant security agreement, as the Secretary of State may direct and to the Secretary of State's satisfaction; and

- (b) within 10 Weekdays of the start of each Reporting Period, provide to the Secretary of State a written warranty from a Director that the value of the cash held in the account (if applicable) is equal to or more than the value of the Season Ticket Fare suspense liabilities, as reported to the Secretary of State in the previous Reporting Period.

19. ⁷⁰⁹ **Capex review**

19.1 The Parties acknowledge and agree that:

- (a) the provisions of paragraph 17 (Capex Review) of schedule 8.A (Franchise Payments) of the EMA shall not apply; and
- (b) at the end of the term of the ERMA, the Secretary of State shall review the funding of capital expenditure assumed for the calculation of the contracted Annual Franchise Payments in the Financial Model that is Placed in Escrow. If the funding of such assumed capital expenditure through the Franchise Payments under Schedule 8.1 has been distorted by the implementation of the EMA and/or the ERMA, including by the implementation of the EMA and/or the ERMA in a part of a Franchisee Year in which the term of the EMA and/or the ERMA comes to an end, the Parties shall seek to agree an appropriate compensating amount. This amount may be payable either by the Secretary of State or by the Franchisee. In the event that this amount cannot be agreed, the Secretary of State shall reasonably determine the amount and direction of this payment.

⁷⁰⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

Appendix 1 to Schedule 8.1A⁷¹⁰
Disallowable Costs

Any references in this Appendix 1 to Schedule 8.1A to costs, payments, expenses, fees, liabilities or other amounts shall be deemed to refer to Costs and/or Capital Expenditure as the context may require.

1.

- 1.1 Any costs that were incurred otherwise than in accordance with those expected to be incurred by a Good and Efficient Operator. Variations between Actual Costs and Budgeted Costs and/or Actual Capex and Budgeted Capex (as the case may be) likely to be considered to be inconsistent with those expected of a Good and Efficient Operator include but are not limited to:**
- (a) staff, director or officer costs in excess of the Budget (except where evidenced by the Franchisee as appropriate for delivery of the Franchise or of reasonable scale given the requirement for delivery of the Franchise, provided that any costs referred in to in paragraph 1.2 or paragraph 1.3 of this Appendix shall not in any circumstance be considered appropriate for the delivery of the Franchise or of a reasonable scale given the requirement for delivery of the Franchise);**
 - (b) costs that do not reflect the contracted position under existing contracts as at the EMA Start Date unless such change has been agreed by the Secretary of State (such agreement not to be unreasonably withheld or delayed);**
 - (c) new contracts entered in to by the Franchisee which have not been procured in compliance with the Franchisee's usual procurement procedures;**
 - (d) variations to existing contracts which have not been made in accordance with the Franchisee's usual procurement procedures; or**
 - (e) any Costs or Capital Expenditure where the Franchisee has been unable to provide evidence to the satisfaction of the Secretary of State that such costs or expenditure have been properly incurred and are consistent with the Franchisee acting as a Good and Efficient Operator.**
- 1.2 Any bonuses, rewards or discretionary benefits paid to any staff, directors or officers under any schemes which have not previously been approved by the Secretary of State (in the Secretary of State's sole discretion) in writing.**

⁷¹⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 1.3 **Any expenses, disbursements or equivalent costs (to which the Franchisee's expenses policy would apply) which are incurred other than in compliance with the Franchisee's expenses policy.**
- 1.4 **Costs incurred or to be incurred by the Franchisee:**
- (a) **in relation to:**
 - (i) **developing any Remedial Plan put in place in respect of breaches which occurred on or after the EMA Start Date; or**
 - (ii) **implementing any Remedial Plan put in place in respect of breaches which occurred on or after the EMA Start Date that:**
 - (A) **a Good and Efficient Operator would not have incurred; or**
 - (B) **are greater than the costs that the Franchisee would have incurred in connection with complying with the obligation to which the Remedial Plan relates had it acted as a Good and Efficient Operator prior to the implementation of the relevant Remedial Plan;**
 - (b) **in relation to Remedial Plans in respect of breaches which occurred prior to the EMA Start Date, cost in respect of implementing any such Remedial Plan unless such costs are specifically approved in writing by the Secretary of State; or**
 - (c) **other costs in relation to Remedial Plans, NRPS Improvement Proposals or agreements unless such costs are specifically approved in writing by the Secretary of State;**
 - (d) **in removing branding or Marks under paragraph 2.2 of Schedule 14.2 (Maintenance of Operating Assets) except for branding or Marks whose removal from particular assets the Secretary of State has explicitly agreed for the purpose of this provision should be an allowable cost;**
 - (e) **in relation to the inspection costs referred to in paragraph 6.4 of Schedule 11.2 (Management Information);**
 - (f) **in meeting NS Groep N.V. and Mitsui & Co Ltd audit requirements to the extent these are additional to audit costs which would otherwise be incurred by the Franchisee; and/or**
 - (g) **in relation to any reasonable enforcement costs incurred by the Secretary of State pursuant to Clause 14.7.**
- 1.5 **Any cost that the Franchisee may incur as a result of:**
- (a) **it failing to comply with its obligations under or in connection with the Franchise Agreement (including the grant thereof) save in respect of any failures which result from the Franchisee acting as a Good and Efficient Operator;**

- (b) **it failing to comply with its obligations under or in connection with any agreements which are ancillary to the Franchise Agreement save in respect of any failures which result from the Franchisee acting as a Good and Efficient Operator;**
 - (c) **it failing to comply with any applicable Laws, if this gives rise to a criminal liability. Paragraph (a) above shall apply in respect of any other consequence of a failure by the Franchisee to comply with any applicable Laws; or**
 - (d) **indemnifying the Secretary of State for any matter which the Franchisee is obliged to indemnify the Secretary of State pursuant to the Franchise Agreement or any agreements which are ancillary to the Franchise Agreement.**
- 1.6 **Any Facilitation Fee or Administration Fee pursuant to Clause 8 (Change of Control and Facilitation Fee).**
- 1.7 **Any costs incurred by the Franchisee arising out of or in connection with a lawful demand by the Secretary of State under the Performance Bond or Season Ticket Bond or under the Funding Deed or under the PCS Bond (as defined in the Funding Deed).**
- 1.8 **Any payments, costs or other liabilities owed to Affiliates save in respect of such payments costs or other liabilities which have been incurred by the Franchisee acting as a Good and Efficient Operator.**
- 1.9 **Costs of developing and protecting any intellectual property rights which are not owned by the Secretary of State or the Franchisee or are so owned, but where the costs are not ancillary to an activity included in the Budget.**
- 1.10 **Marketing or advertising costs incurred substantially to the benefit of wider group products or group brand recognition and which are not primarily for the benefit of Franchise Services.**
- 1.11 **Fines from government or regulatory bodies.**
- 1.12 **Costs of financial hedging, or gains/losses from hedging activity except with prior agreement from the Secretary of State or where such costs or gains/losses arise from the Franchisee's participation in an industry recognised hedging scheme or activity which has been agreed by the Secretary of State or which the Secretary of State reasonably considers have been made in good faith on an arm's length basis to any Affiliate in connection with fuel hedging instruments to help manage the exposure of the Franchisee to diesel fuel costs.**
- 1.13 **The amount by which the Purchase Price payable by the Franchisee to the successor operator under the Supplemental Agreement at the end of the Franchise Period is higher than it would have been but for the Franchisee:**
- (a) **incurring Disallowable Costs; or**
 - (b) **otherwise acting other than as Good and Efficient Operator.**

- 1.14 **Third party costs in relation to the development and preparation of any Remedial Plan or NRPS Improvement Proposal required by this Agreement, excluding such costs as approved by the Secretary of State, in the Secretary of State's sole discretion, prior to such costs being incurred by the Franchisee.**
- 1.15 **The amount of any interest payable by the Franchisee to the Secretary of State in accordance with paragraph 3 of this Schedule 8.1A.**
- 1.16 **Any costs incurred by the Franchisee in pursuing or defending any claim against the Secretary of State in respect of or in connection with the Franchise Agreement or otherwise.**
- 1.17 **Any costs incurred in relation to the period prior to the EMA Start Date which a Good and Efficient Operator would usually have discharged in the period prior to the EMA Start Date.**
- 1.18 **Any costs incurred in relation to the period prior to the expiry of the term of the ERMA which a Good and Efficient Operator would usually have discharged in the period following the expiry of the term of the ERMA.**
- 1.19 **Any costs incurred in relation to the discharge or carrying out of Committed Obligations which are in excess of the amounts a Good and Efficient Operator would ordinarily have expended on discharging the Committed Obligation in accordance with the contractual programme and to minimum specification contractually required.**
- 1.20 **Where costs are incurred during the term of the ERMA as the result of an obligation to incur expenditure from a fund required to be maintained pursuant to the Franchise Agreement (including, but not limited to, Minor Works and the CCI Amount), such expenditure shall be a Disallowable Cost except and to the extent that it relates to expenditure required to be incurred in relation to Franchisee Years beginning after 31 March 2020.**

After the expiry of the ERMA, the Parties shall agree or the Secretary of State shall determine the remaining amounts in such funds with reference to the amounts available to be expended in the funds and the aggregate amount of expenditure incurred since the ERMA Start Date in relation to obligations related to those funds.
- 1.21 **Interest paid or payable on PCS Advances (as defined in the Funding Deed).**
- 1.22 **Except with the prior agreement of the Secretary of State (not to be unreasonably withheld), any costs, charges, penalties, compensation or similar payments that the Franchisee may incur as a result of the termination of any contract or other arrangement.**
- 1.23 **Except with the prior agreement of the Secretary of State, losses on disposals of fixed or non-current assets.**

- 1.24 **Maintenance costs where the maintenance activity was previously scheduled to be undertaken prior to or after the term of the ERMA or where (and to the extent that) it would have been reasonable and/or prudent for the maintenance to have been carried out prior to or after the term of the ERMA.**
- 1.25 **Depreciation or Capital Expenditure to the extent that the capital cost of acquisition of the relevant assets was (or was assumed in the Financial Model) to be funded by a third party.**
- 1.26 **Costs of any audit pursuant to paragraph 9.7(b) or paragraph 9.9 of Schedule 11.2 (Management Information).**
- 1.27 **Legal, accountancy and other costs and expenses incurred in connection with the preparation and implementation of the ERMA (and any associated budgets, principles documents and other documents) and the EMA (and its associated heads of terms).**
- 1.28 **Additional costs or expenses incurred by the Franchisee in procuring any new Performance Bond where required to do so pursuant to paragraph 4.3(c) of Schedule 12 (Financial Covenants and Bonds).**
- 1.29 **Costs incurred in relation to preparing and negotiating the direct award of a new contract to the Franchisee in relation to the Franchise.**
- 1.30 **Compensating the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out enhanced monitoring of the Franchisee's performance of any relevant obligations pursuant to paragraph 7.1 of Schedule 10.1 (Procedure for Remedying a Contravention of the Franchise Agreement).**
- 1.31 **Any costs incurred in connection with or otherwise attributable to discharging its obligations pursuant to Schedule 14 (Preservation of Assets) insofar as they relate to supporting the transfer of the franchise to a Successor Operator at the end of the Franchise Period.**
- 1.32 **Any costs incurred in connection with discharging its obligations following termination in accordance with Schedule 15 (Obligations Associated with Termination).**
- 1.33 **Any costs incurred in connection with conducting, or otherwise procuring, any surveys or statement of condition of leased property as may be required at the end of the Franchise Period in accordance with the terms of the relevant Property Lease and/or to otherwise establish the condition of any other asset at the end of the Franchise Period, except to the extent such survey is required to be carried out by the Franchisee to comply with paragraph 12.1 of Schedule 1.7 (Stations).**
- 1.34 **Unless otherwise agreed by the Secretary of State, any costs incurred in connection with maintenance of the Franchisee's leased property and/or other assets (other than any lifecycle maintenance costs or costs incurred in ensuring the Standard of Repair is maintained in relation to the Stations pursuant to**

paragraph 2 of Schedule 1.7 (Stations)) if and to the extent that the aggregate of such costs exceeds one hundred and fifty per cent. (150 %) of maintenance costs incurred by the Franchisee in relation to such leased property and/or other assets (other than any lifecycle maintenance costs or costs incurred in ensuring the Standard of Repair is maintained in relation to the Stations pursuant to paragraph 2 of Schedule 1.7 (Stations)) in the Franchisee Year ending on 31 March 2020.

- 1.35 **Any lifecycle maintenance costs (other than lifecycle maintenance costs incurred in ensuring the Standard of Repair is maintained in relation to the Stations pursuant to paragraph 2 of Schedule 1.7 (Stations)) in respect of any leased property or other assets which the Secretary of State reasonably considers should have been incurred in the period prior to 1 March 2020.**
- 1.36 **Any sums payable by the Franchisee to the Lessor (as defined in Schedule 2 (Termination of the Franchise Agreement) to the ERMA) in respect of any Rolling Stock Dilapidations Liability (as defined in Schedule 2 (Termination of the Franchise Agreement) to the ERMA)**
- 1.37 **Any costs incurred in connection with ensuring the Standard of Repair is maintained in relation to the Stations pursuant to paragraph 2 of Schedule 1.7 (Stations), such costs to exclude the deposits into the Station Condition Account pursuant to paragraph 3 of Schedule 1.7 (Stations).**
- 1.38 **Any legal, accountancy and other costs and expenses incurred in connection with determining or agreeing the Termination Sum, the Interim Net Assets Payment Amount, the Updated Net Assets Amount and/or the Net Assets Reconciliation Amount, as applicable (and any associated models and other documents).**
- 1.39 **Any costs incurred in relation to preparing, determining or agreeing any statements or amounts in connection with schedule 3 (Early ERMA Termination) to the ERMA.**

**Appendix 2 to Schedule 8.1A⁷¹¹
EMA Periodic Adjustment Payment**

The EMA Periodic Adjustment Payment shall be calculated in accordance with the following formula.

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| EMAPADJ for Reporting Period(n) = | (AECRP_{n-3} - BECRP_{n-3}) + (AECAP_{n-3} - BECAP_{n-3}) - (AERRP_{n-3} - EERRP_{n-3}) |
|--|--|

Where:

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| AECRP_{n-3} | means the total Actual EMA Costs in the third preceding Reporting Period (n-3) as set out in the Management Accounts for that preceding Reporting Period. ACRP_{n-3} may only be a positive number. |
| BECRP_{n-3} | means the total Budgeted EMA Costs in respect of the third preceding Reporting Period (n-3) based on the version of the EMA Budget which applied for the purpose of the calculation of the Franchise Payment for that preceding Reporting Period. BCRP_{n-3} may only be a positive number. |
| AECAP_{n-3} | means the total Actual EMA Capex for the third preceding Reporting Period (n-3). ACAP_{n-3} may only be a positive number. |
| BECAP_{n-3} | means the Budgeted EMA Capex in respect of the third preceding Reporting Period (n-3) based on the version of the EMA Budget which applied for the purpose of the calculation of the Franchise Payment for that Reporting Period. BCAP_{n-3} may only be a positive number. |
| AERRP_{n-3} | means the total Actual EMA Revenue for the third preceding Reporting Period (n-3). ARRP may only be a positive number. |
| EERRP_{n-3} | means the total Estimated EMA Revenue in respect of the third preceding Reporting Period (n-3). ERRP may only be a positive number. |

⁷¹¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

Schedule 8.1B⁷¹²
Performance Based Fee

1. Definitions

For the purposes of this Schedule 8.1B only, the following words and expressions shall have the following meanings unless otherwise specified:

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| <p>"Amendable Financial Target"</p> | <p>means a:</p> <ul style="list-style-type: none"> a) Target Cost; b) Target Cost Cap; c) Target Cost Floor; d) Target Profit; e) Target Profit Cap; and/or f) Target Profit Floor, <p>as the case may be;</p> |
| <p>"Assumed Schedule of Contributions"</p> | <p>means the schedule of contributions for a Franchise Section which as at the date of agreement or determination of the Target Cost Template or Target Profit Template (as applicable) applies for the relevant PBF Assessment Period;</p> |
| <p>"Audited Accounts Reconciliation"</p> | <p>has the meaning given to that term in paragraph 9.4(b)(ii) of Schedule 11.2 (<i>Management Information</i>);</p> |
| <p>"Budget Supporting Materials"</p> | <p>means the supporting materials that were provided to the Secretary of State by the Franchisee in August and September 2020 in response to the Secretary of State's request for a budget forecast;</p> |
| <p>"Category A Target Amendment Trigger Event"</p> | <p>means:</p> <ul style="list-style-type: none"> a) in relation to a Target Cost, Target Cost Cap or Target Cost Floor an event listed in paragraph 1 (<i>Target Cost Target Amendment Trigger Events</i>) of Appendix 6 (<i>Category A Target Amendment Trigger Events</i>) of this Schedule 8.1B; and |

⁷¹² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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| | <p>b) in relation to a Target Profit, Target Profit Cap or Target Profit Floor an event listed in paragraph 2 (<i>Target Profit Target Amendment Trigger Events</i>) of Appendix 6 (<i>Category A Target Amendment Trigger Events</i>) of this Schedule 8.1B;</p> |
| "Category B Target Amendment Trigger Event" | has the meaning given to that term in paragraph 6.1(b) of this Schedule 8.1B; |
| "Category C Target Amendment Trigger Event" | has the meaning given to that term in paragraph 6.1(c) of this Schedule 8.1B; |
| "CB Components" | <p>means:</p> <ul style="list-style-type: none"> a) Network Rail Collaboration; b) SoS Collaboration; and c) Other Collaboration; |
| "CE(NRPS)" | means the element of the Customer Experience Fee that is calculated in accordance with the NRPS Methodology; |
| "CE(SC)" | means the element of the Customer Experience Fee that is calculated in accordance with the Scorecard Methodology; |
| "Collaborative Behaviour Fee" or "CB" | <p>means the element of the Performance Based Fee attributable to the sum of:</p> <ul style="list-style-type: none"> a) Network Rail Collaboration; b) SoS Collaboration; and c) Other Collaboration; |
| "Combined Scorecard/NRPS Methodology" | means, in relation to the Customer Experience Fee, a combination of the Scorecard Methodology and the NRPS Methodology; |
| "Cost Target Methodology" | means the methodology set out in paragraph 4.3 (<i>Calculation of FIN(CC)</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 8.1B; |
| "COVID-19 Guidance and Regulation" | means guidance and/or regulation relating to COVID-19 as from time to time issued by the ORR, Public Health England |

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| | or any other relevant government department, agencies or public bodies; |
| "Customer Experience Component" | means the NRPS Measures; |
| "ERMA Evidence Report" | has the meaning given to it in paragraph 2.1 of Appendix 1 (<i>PBF Assessment Period Review</i>) of this Schedule 8.1B (and "ERMA Evidence Reports" shall be construed accordingly); |
| "Exceptional Event" | <p>means an event, the effect of which, in the opinion of the Secretary of State (acting reasonably), is that:</p> <ul style="list-style-type: none"> a) it would no longer be reasonably practicable to collect the data required to assess the Franchisee's performance against one or more of the QTM Targets in respect of a PBF Assessment Period; or b) the degree of challenge involved in meeting any one or more of the QTM Targets is likely to be increased or decreased to such a significant extent that it would no longer be appropriate to assess the Franchisee's performance against such QTM Targets; |
| "Final PBF Assessment Period" | means the final PBF Assessment Period to occur during the term of the ERMA, being (subject to paragraph 7 (<i>Effect of Extended Term and amendments to the PBF Assessment Period</i>) of this Schedule 8.1B) the PBF Assessment Period commencing on 1 April 2021 and ending at 01:59 on 19 September 2021 |
| "Financial Performance Fee" or "FIN" | means the element of the Performance Based Fee, the purpose of which is to measure the Franchisee's effectiveness in controlling costs, and driving revenue growth (subject to the constraints of the Government's public health requirements) and deterring ticketless travel; |
| "Financial Targets" | <p>means, as the case may be:</p> <ul style="list-style-type: none"> a) the Target Cost; and/or; b) the Target Profit; |

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| "Initial PBF Assessment Period" | means the PBF Assessment Period commencing on the ERMA Start Date and ending at 01:59 on 1 April 2021; |
| "Maximum Performance Based Fee" or "MPBF" | has the meaning given to that term in paragraph 2 of this Schedule 8.1B; |
| "Network Rail Collaboration" or "NRC" | means the element of the Performance Based Fee that relates to collaboration with Network Rail, other Train Operators, suppliers and industry bodies; |
| "Notifying Party" | means: <ul style="list-style-type: none"> a) in relation to a Category A Target Amendment Trigger Event, either the Secretary of State or the Franchisee, as the case may be; b) in relation to a Category B Target Amendment Trigger Event, the Franchisee; and c) in relation to a Category C Target Amendment Trigger Event, the Secretary of State; |
| "NRPS Methodology" | means the methodology set out in paragraph 3.5 (<i>Calculation of CE(NRPS)</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 8.1B; |
| "NRPS Target" | means the target, expressed as a range within which the Franchisee's performance is expected to fall, which applies to a NRPS Measure during the relevant PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of this Schedule 8.1B; |
| "Other Collaboration" or "OC" | means the element of the Performance Based Fee attributable to collaboration with applicable stakeholders, including those specified in paragraph 6.2 (<i>Two (2): Acceptable</i>) of Appendix 3 (<i>Scorecard Criteria</i>) of this Schedule 8.1B; |
| "PBF Assessment Period Review" | means a review carried out (or to be carried out) with respect to a PBF Assessment Period in accordance with Appendix 1 (<i>PBF Assessment Period Review</i>) of this Schedule 8.1B; |

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| "PBF Assessment Period Review Checklist" | means, in respect of a PBF Assessment Period Review, a checklist completed (or, as the case may be, to be completed) substantially in the form of that set out in Appendix 2 (<i>PBF Assessment Period Review Checklist</i>) of this Schedule 8.1B; |
| "PBF Assessment Period Review Meeting" | means, in respect of a PBF Assessment Period Review, a meeting held between the Parties to discuss the performance of the Franchisee during the relevant PBF Assessment Period; |
| "PBF Assessment Period Scorecard" | means, in respect of a PBF Assessment Period, a scorecard completed (or, as the case may be, to be completed) by the Secretary of State in accordance with paragraph 6 (<i>PBF Assessment Period Review Scoring</i>) of Appendix 1 (<i>PBF Assessment Period Review</i>) of this Schedule 8.1B; |
| "PBF Component" | <p>means each of the following components which shall be individually assessed to calculate the corresponding element of the PBF:</p> <ul style="list-style-type: none"> a) Operational Performance Fee; b) Customer Experience Fee; c) Financial Performance Fee; d) Collaborative Behaviour Fee; and e) any additional component to be implemented from time to time pursuant to paragraph 4.4(g) of this Schedule 8.1B; |
| "Primary Delay" | means a delay that is attributed as "Primary Delay" in accordance with the Delay Attribution Principles and Rules; |
| "Profit Target Methodology" | means the methodology set out in paragraph 4.4 (<i>Calculation of FIN(P)</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 8.1B; |
| "QTM Matters" | has the meaning given to it in paragraph 4.5(a) of this Schedule 8.1B; |
| "QTM PBF Components" | <p>means each of the:</p> <ul style="list-style-type: none"> a) Operational Performance Fee; |

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| | <p>b) Customer Experience Fee; and</p> <p>c) Financial Performance Fee;</p> |
| "QTM Targets" | <p>means any:</p> <p>a) OP Targets;</p> <p>b) NRPS Targets;</p> <p>c) [Not used]; and/or</p> <p>d) Financial Targets,</p> <p>as applicable;</p> |
| "Quarterly Financial Information" | <p>means the financial information provided by the Franchisee to the Secretary of State pursuant to paragraph 9.3 (<i>Quarterly Financial Information</i>) of Schedule 11.2 (<i>Management Information</i>);</p> |
| "Reactionary Delay" | <p>means a delay that is attributed as "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules;</p> |
| "Relevant Threshold Amount" | <p>means:</p> <p>a) in relation to a Target Cost, the applicable non-indexed Threshold Amount multiplied by two; and</p> <p>b) in relation to a Target Profit, an amount reasonably determined by the Secretary of State prior to the relevant PBF Assessment Period.</p> |
| "Revenue" | <p>has the meaning given to that term in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);</p> |
| "Scorecard Criterion" | <p>means each criterion set out in Appendix 3 (<i>Scorecard Criteria</i>) of this Schedule 8.1B, in respect of which the Franchisee's performance is measured (in whole or in part) in relation to a PBF Assessment Period and for which a score shall be awarded in the PBF Assessment Period Scorecard (and "Scorecard Criteria" means the plural of Scorecard Criterion);</p> |

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| "Scorecard Methodology" | means, in relation to a PBF Component, the methodology set out in Appendix 4 (<i>Scorecard Methodology</i>) of this Schedule 8.1B; |
| "SoS Collaboration" or "SC" | means the element of the Performance Based Fee attributable to collaboration with the Secretary of State; |
| "Subsequent CE Methodologies" | means, in relation to the Customer Experience Fee: <ul style="list-style-type: none"> a) the Scorecard Methodology only; or b) the Combined Scorecard/NRPS Methodology; c) [Not used]; d) [Not used]; |
| "Subsequent FP Methodologies" | means, in relation to the Financial Performance Fee: <ul style="list-style-type: none"> a) the Scorecard Methodology as applied in whole or in part; and/or b) the Cost Target Methodology; and/or c) [Not used] d) the Profit Target Methodology, and "Subsequent FP Methodology" shall be construed accordingly; |
| "Subsequent PBF Assessment Period" | means each PBF Assessment Period that falls after the end of the Initial PBF Assessment Period; |
| "Target Amendment Trigger Event" | means a: <ul style="list-style-type: none"> a) Category A Target Amendment Trigger Event; b) Category B Target Amendment Trigger Event; or c) Category C Target Amendment Trigger Event, as the case may be; |

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| "Target Cost Cap" or "TCC" | means the value in relation to the Target Cost agreed or determined (as applicable) pursuant to paragraph 5.1 (<i>Target Cost</i>) of this Schedule 8.1B; |
| "Target Cost Floor" or "TCF" | means the value in relation to the Target Cost agreed or determined (as applicable) pursuant to paragraph 5.1 (<i>Target Cost</i>) of this Schedule 8.1B; |
| "Target Profit Cap" or "TPC" | means the value in relation to the Target Profit agreed or determined (as applicable) pursuant to paragraph 5.2 (<i>Target Profit</i>) of this Schedule 8.1B; |
| "Target Profit Floor" or "TPF" | means the value in relation to the Target Profit agreed or determined (as applicable) pursuant to paragraph 5.2 (<i>Target Profit</i>) of this Schedule 8.1B; |
| "W _{CB} " | means twenty-two point five per cent (22.5%), or such alternative percentage as may be agreed or determined pursuant to paragraph 4.4(h) of this Schedule 8.1B; |
| "W _{CC} " | means the weighting applied to the Cost Target Methodology pursuant to and in accordance with paragraph 4.4(d) of this Schedule 8.1B; |
| "W _{CE} " | means twenty-two point five per cent (22.5%), or such alternative percentage as may be agreed or determined pursuant to paragraph 4.4(h) of this Schedule 8.1B; |
| "W _{CESC} " | in relation to the Initial PBF Assessment Period means one hundred per cent (100%); and in relation to each Subsequent PBF Assessment Period has the meaning given to that term in paragraph 3.3(a) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 8.1B; |
| "W _{FIN} " | means thirty per cent (30%), or such alternative percentage as may be agreed or determined pursuant to paragraph 4.4(h) of this Schedule 8.1B; |
| "W _{NRPS} " | has the meaning given to that term in paragraph 3.3(c) of Appendix 5 |

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| | (Quantified Target Methodology) of this Schedule 8.1B; |
| "W_{OP}" | means twenty-five per cent (25%), or such alternative percentage as may be agreed or determined pursuant to paragraph 4.4(h) of this Schedule 8.1B; |
| "W_P" | means the weighting applied to the Profit Target Methodology pursuant to and in accordance with paragraph 4.4(d) of this Schedule 8.1B; |

2. Maximum Fee

The Performance Based Fee attributable to any given PBF Assessment Period shall not exceed £M*N (the "Maximum Performance Based Fee" or "MPBF"), where:

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| M | means [REDACTED⁷¹³]; and |
| N | means the number of Reporting Periods that fall within the relevant PBF Assessment Period. |

3. Calculation of the Performance Based Fee for the Initial PBF Assessment Period

3.1 The Performance Based Fee in relation to the Initial PBF Assessment Period shall be calculated in accordance with this paragraph 3.

3.2 The Performance Based Fee for the Initial PBF Assessment Period shall be calculated as the sum of the individual PBF Components calculated and weighted in accordance with the Scorecard Methodology in accordance with the following formula:

| | |
|---------------|---------------------------|
| £PBF = | OP + CE + FIN + CB |
|---------------|---------------------------|

where:

| | |
|-------------|--|
| £PBF | shall have a value between zero and the Maximum Performance Based Fee in relation to the Initial PBF Assessment Period; |
| OP | means the sum (in pounds sterling) that is zero or a positive number in relation to the Operational |

⁷¹³ 15 January 2021 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

| | |
|------------|---|
| | Performance Fee calculated in accordance with the Scorecard Methodology; |
| CE | means the sum (in pounds sterling) that is zero or a positive number in relation to the Customer Experience Fee calculated in accordance with the Scorecard Methodology; |
| FIN | means the sum (in pounds sterling) that is zero or a positive number in relation to the Financial Performance Fee calculated in accordance with the Scorecard Methodology; and |
| CB | means the sum (in pounds sterling) that is zero or a positive number in relation to the Collaborative Behaviour Fee calculated in accordance with the Scorecard Methodology. |

4. Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period

4.1 Subject to the inclusion of any additional PBF Component(s) pursuant to paragraph 4.4(g) below, the Performance Based Fee for each Subsequent PBF Assessment Period shall be calculated as the sum of the individual PBF Components for that period assessed using the Quantified Target Methodology and/or the Scorecard Methodology (as applicable) in accordance with the following formula:

| | |
|---------------|---------------------------|
| £PBF = | OP + CE + FIN + CB |
|---------------|---------------------------|

where:

| | |
|-------------|---|
| £PBF | shall have a value between zero and the Maximum Performance Based Fee in relation to the applicable PBF Assessment Period; |
| OP | means the sum in pounds sterling calculated in relation to the Operational Performance Fee in accordance with the Scorecard Methodology or the Quantified Target Methodology (as applicable during that PBF Assessment Period); |
| CE | means the sum in pounds sterling calculated in relation to the Customer Experience Fee in accordance with the Scorecard Methodology or the Quantified Target Methodology (as applicable during that PBF Assessment Period); |
| FIN | means the sum in pounds sterling calculated in relation to the Financial Performance Fee in accordance with the Scorecard Methodology or the Quantified Target Methodology (as applicable during that PBF Assessment Period); and; |

| | |
|-----------|---|
| CB | means the sum in pounds sterling calculated in relation to the Collaborative Behaviour Fee in accordance with the Scorecard Methodology. |
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4.2 In relation to each Subsequent PBF Assessment Period:

- (a) **two months prior to the relevant PBF Assessment Period, the Secretary of State may notify the Franchisee whether:**
- (i) **the Scorecard Methodology shall apply in relation to all of the PBF Components; or**
 - (ii) **the Secretary of State is minded to apply the Quantified Target Methodology to one or more of the QTM PBF Components during that PBF Assessment Period,**

and set out the information that the Secretary of State requires the Franchisee to provide (and the date by when the Secretary of State requires the Franchisee to provide such information) to enable the Parties to agree (or the Secretary of State to determine, as the case may be) the applicable matters set out in paragraph 4.4 below (a "Subsequent PBF Assessment Period Notification");

- (b) **after the Secretary of State issues a Subsequent PBF Assessment Period Notification to the Franchisee, the Parties shall seek to agree the applicable matters set out in paragraph 4.4 below, each acting reasonably and in a timely manner. If, by the date falling ten (10) Weekdays prior to the commencement of the relevant PBF Assessment Period, the Parties have not agreed the matters set out in paragraph 4.4 below, the Secretary of State may:**
- (i) **reasonably determine such matters and notify the Franchisee accordingly prior to the commencement of the relevant PBF Assessment Period; or**
 - (ii) **in the Secretary of State's sole discretion, notify the Franchisee that the Scorecard Methodology will continue to apply to any or all of the QTM PBF Components; and**
- (c) **the Collaborative Behaviour Fee shall be assessed in accordance with the Scorecard Methodology.**

4.3 If:

- (a) **the Secretary of State does not issue a Subsequent PBF Assessment Period Notification to the Franchisee pursuant to and in accordance with paragraph 4.2(a) above (and paragraph 7.4 below, if applicable), the Scorecard Methodology shall apply to each of the PBF Components during the relevant Subsequent PBF Assessment Period; and**
- (b) **the Secretary of State issues a Subsequent PBF Assessment Period Notification to the Franchisee which proposes that the**

Quantified Target Methodology shall apply to some (but not all) of the QTM PBF Components, the Scorecard Methodology shall continue to apply to each of the QTM PBF Components in relation to which the Secretary of State has not proposed to apply the Quantified Target Methodology.

- 4.4 **Not later than ten (10) Weekdays before the commencement of a Subsequent PBF Assessment Period in relation to which the Secretary of State has issued a Subsequent PBF Assessment Period Notification to the Franchisee pursuant to and in accordance with paragraph 4.2(a) above, the Parties shall seek to agree (each acting reasonably and in a timely manner) as applicable:**
- (a) **whether the Quantified Target Methodology shall be applied to any or all of the QTM PBF Components;**
 - (b) **in accordance with the provisions set out in paragraph 4.5 below, the OP Targets, Breach Performance Levels and Default Performance Levels in respect of Cancellations, TOC Minutes Delay and Short Formations, the NRPS Service Groups that apply, NRPS Targets and/or Improvement Plan Levels that shall apply during the relevant PBF Assessment Period;**
 - (c) **which, if any, of the:**
 - (i) **Subsequent CE Methodologies shall apply to the Customer Experience Fee during the relevant PBF Assessment Period; and**
 - (ii) **Subsequent FP Methodologies shall apply to the Financial Performance Fee during the relevant PBF Assessment Period;**
 - (d) **if more than one Subsequent FP Methodology applies to the Financial Performance Fee pursuant to paragraph 4.4(c)(ii) above, the weighting to be applied to each Subsequent FP Methodology, provided that the sum of such weightings shall equal one hundred per cent (100%);**
 - (e) **the terms of the Passenger Survey Methodology, based upon the template provided in Appendix 8 (Passenger Survey Methodology Template) which shall include:**
 - (i) **the NRPS indicators which make up each NRPS Measure;**
 - (ii) **the NRPS Improvement Plan Levels for each NRPS Measure (including any NRPS Improvement Plan Levels which will be set at a Service Group level); and**
 - (iii) **the calculation of the NRPS Measure scores from the surveys, including how this will be calculated where there is reporting at a Service Group level;**
 - (f) **any amendments to the Scorecard Criteria, which such amendments may amend, insert or remove requirements but shall not materially:**
-

- (i) **change the overall purpose of the relevant Scorecard Criterion; and/or**
- (ii) **improve or impede the ability of the Franchisee (acting as a Good and Efficient Operator) to achieve any particular score in accordance with the Scorecard Criteria;**
- (g) **whether any additional PBF Components shall apply for the purposes of calculating the Performance Based Fee for that PBF Assessment Period, provided that the aggregate weighting to be applied to such additional PBF Component(s) ("WADD") shall not exceed fifteen per cent (15%) and the aggregate weighting to be applied to the PBF Components shall equal one hundred per cent (100%) and the calculation of any additional PBF Component (or PBF Components) shall provide the Franchisee with an opportunity to earn an amount of Performance Based Fee in respect of such additional component (or such additional components in aggregate) in the relevant PBF Assessment Period of up to $WADD * MPBF$;**
- (h) **any changes to the weightings WNR, WSOS and/or WOTH, provided that the sum of such weightings shall equal one hundred per cent (100%); and**
- (i) **any changes to the weightings WOP, WCE, WFIN and/or WCB, provided that such weightings shall not fall below the minimum value or exceed the maximum value specified in the table below.**

| PBF Component | Weighting | Minimum Weighting | Maximum Weighting |
|------------------------------------|------------------------|--------------------------|--------------------------|
| Operational Performance Fee | W_{OP} | 17.5% | 32.5% |
| Customer Experience Fee | W_{CE} | 15% | 30% |
| Financial Performance Fee | W_{FIN} | 25% | 40% |
| Collaborative Behaviour Fee | W_{CB} | 15% | 30% |

4.5 If the Quantified Target Methodology applies to any of the QTM PBF Components during the relevant PBF Assessment Period:

- (a) **the Parties shall seek to agree:**
 - (i) **the OP Targets that shall apply with respect to each Operational Performance Component and the Breach Performance Levels and the Default Performance Levels that shall apply with respect to Cancellations, TOC**

Minutes Delay and Short Formations, during each Reporting Period which falls during the Final PBF Assessment Period; and/or

- (ii) **the NRPS Service Groups that apply, the NRPS Targets that shall apply with respect to each Customer Experience Component, and the Improvement Plan Levels that shall apply for each NRPS Measure in each NRPS Service Group during the relevant PBF Assessment Period; and**
- (iii) **the Passenger Survey Methodology,**

(the "QTM Matters") as applicable (each acting reasonably and in a timely manner, and by no later than the date falling ten (10) Weekdays before the commencement of the relevant PBF Assessment Period);

- (b) **each OP Target and/or NRPS Target (as applicable) shall be expressed as a range within which the Franchisee's performance is expected to fall and shall be expressed substantively in the format set out in Appendix 7 to this Schedule 8.1B (Pro Forma Target Tables);**
- (c) **each Breach Performance Level and Default Performance Level shall be expressed as a number beneath which the Franchisee's performance is not expected to fall and shall be expressed substantively in the format set out in Appendix 7 to this Schedule 8.1B (Pro Forma Target Tables);**
- (d) **if the Parties have agreed any of the QTM Matters in accordance with paragraph 4.5(a) above, prior to the date falling ten (10) Weekdays before the commencement of the relevant PBF Assessment Period, then such agreed QTM Matters shall apply during the relevant PBF Assessment Period;**
- (e) **if the Parties have not agreed any of the QTM Matters in accordance with paragraph 4.5(a) above prior to the date falling ten (10) Weekdays before the commencement of the relevant PBF Assessment Period, then the Secretary of State shall:**
 - (i) **either:**
 - (A) **reasonably determine the relevant QTM Matters (if such QTM Matters have not been agreed by the Parties pursuant to paragraph 4.5(c) above) that shall apply during the relevant PBF Assessment Period; and/or**
 - (B) **in the Secretary of State's sole discretion, notify the Franchisee that the Scorecard Methodology will continue to apply to any or all of the QTM PBF Components; and**
 - (ii) **notify the Franchisee of such decision not later than the commencement of the relevant PBF Assessment Period, in which case (unless the Secretary of State has notified the Franchisee that the Scorecard Methodology will**

continue to apply to the QTM PBF Components pursuant to sub-paragraph (i)(B) above) the QTM Matters determined by the Secretary of State in accordance with this paragraph 4.5(e) shall apply during the relevant PBF Assessment Period;

- (f) the range for each OP Target, and/or NRPS Target (in each case, as applicable), agreed or determined in accordance with this paragraph 4.5 shall comprise a range or value (as applicable) that:
 - (i) a competent Train Operator, acting efficiently, can reasonably be expected to achieve in the circumstances that are prevailing for the relevant PBF Assessment Period (and in relation to each OP Target, having regard to normal seasonal variability of operating performance); and
 - (ii) a high-performing Train Operator could have a realistic prospect of exceeding and would therefore attain the maximum possible amount of Performance Based Fee attributable to the relevant QTM PBF Component during the relevant PBF Assessment Period; and
- (g) the value of each:
 - (i) Breach Performance Level agreed or determined in accordance with this paragraph 4.5 shall be set at a level that a competent Train Operator, acting efficiently, can reasonably be expected not to fall below (and in relation to each OP Target, having regard to normal seasonal variability of operating performance); and
 - (ii) Default Performance Level agreed or determined in accordance with this paragraph 4.5 shall be set at a level that affords a reasonable opportunity for a competent Train Operator, having performed worse than the Breach Performance Level, to implement any necessary remedial actions to avoid performance deteriorating to that Default Performance Level (in relation to each OP Target, having regard to normal seasonal variability of operating performance).

5. Financial Targets

5.1 Target Cost

- (a) If the Secretary of State notifies the Franchisee that the Secretary of State is minded to apply the Cost Target Methodology in relation to the Financial Performance Fee pursuant to paragraph 4.2(a) of this Schedule 8.1B, no later than five (5) Weekdays following receipt of the relevant Subsequent PBF Assessment Period Notification the Franchisee shall deliver to the Secretary of State a spreadsheet setting out the Franchisee's proposed Target Cost, with lines of forecast expenditure for each Reporting Period of the relevant PBF

Assessment Period, in at least the level of disaggregation of the most disaggregated of:

- (i) **the Financial Formats;**
- (ii) **the "P&L2" tab of the Financial Model;**
- (iii) **any set of Management Accounts for any period of the EMA or the ERMA; or**
- (iv) **any previous Audited Accounts Reconciliation,**

(the "Target Cost Template"). The Target Cost Template shall allocate forecast expenditure consistently with the most disaggregated of the items listed in paragraphs (i) to (iv) above with no netting off between lines. Unless otherwise directed by the Secretary of State the Target Cost Template shall assume that employer pension contributions payable to each Franchise Section are at the rate(s) and/or amount(s) set out in the Assumed Schedule of Contributions for that Franchise Section for the relevant period.

- (b) **Within five (5) Weekdays of delivering the Target Cost Template to the Secretary of State, the Franchisee shall deliver to the Secretary of State a Target Cost Record of Assumptions which shall include the Franchisee's proposed Target Cost Cap and Target Cost Floor based on benchmarking evidence gathered by the Franchisee consistent with the principles set out in paragraphs (d)(ii) and (e)(ii) below.**
- (c) **The Parties shall seek to agree (each acting reasonably, in a timely manner and through sufficiently senior representatives) the Target Cost, Target Cost Cap and Target Cost Floor for the relevant PBF Assessment Period.**
- (d) **The Target Cost Cap shall be set at a value:**
 - (i) **lower than the value of the Target Cost; and**
 - (ii) **that the Parties agree (or, if the Parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Secretary of State may reasonably determine) that a highly efficient Train Operator would have a realistic prospect of achieving.**
- (e) **The Target Cost Floor shall be set at a value:**
 - (i) **greater than the value of the Target Cost; and**
 - (ii) **that the Parties agree (or, if the Parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Secretary of State may reasonably determine) that a broadly competent Train Operator would be likely to achieve or exceed.**

- (f) **Within five (5) Weekdays of the Target Cost Cap and the Target Cost Floor being agreed or determined in accordance with this paragraph 5, the Franchisee shall apply the Target Cost Cap and the Target Cost Floor to the Target Cost Template which shall then be Placed in Escrow.**

5.2 Target Profit

- (a) **If the Secretary of State notifies the Franchisee that the Secretary of State is minded to apply the Profit Target Methodology in relation to the Financial Performance Fee pursuant to paragraph 4.2(a) of this Schedule 8.1B, no later than five (5) Weekdays following receipt of the relevant Subsequent PBF Assessment Period Notification the Franchisee shall deliver to the Secretary of State a spreadsheet setting out the Franchisee's proposed Target Profit, with lines of forecast revenue and expenditure for each Reporting Period of the relevant PBF Assessment Period, in at least the level of disaggregation of the most disaggregated of:**
 - (i) **the Financial Formats;**
 - (ii) **the "P&L2" tab of the Financial Model;**
 - (iii) **any set of Management Accounts for any period of the EMA or ERMA; or**
 - (iv) **any previous Audited Accounts Reconciliation,**

(the "Target Profit Template"). The Target Profit Template shall allocate forecast revenue and expenditure consistently with the most disaggregated of the items listed in paragraphs (i) to (iv) above with no netting off between lines. Unless otherwise directed by the Secretary of State the Target Profit Template shall assume that employer pension contributions payable to each Franchise Section are at the rate(s) and/or amount(s) set out in the Assumed Schedule of Contributions for that Franchise Section for the relevant period.
- (b) **Within five (5) Weekdays of delivering the Target Profit Template to the Secretary of State, the Franchisee shall deliver to the Secretary of State a Target Profit Record of Assumptions which shall include the Franchisee's proposed Target Profit Cap and Target Profit Floor based on benchmarking evidence gathered by the Franchisee consistent with the principles set out in paragraphs 5.2(d)(ii) and 5.2(e)(ii) below.**
- (c) **The Parties shall seek to agree (each acting reasonably, in a timely manner and through sufficiently senior representatives) the Target Profit, Target Profit Cap and Target Profit Floor for the relevant PBF Assessment Period.**
- (d) **The Target Profit Cap shall be set at a value:**
 - (i) **greater than the value of the Target Profit; and**

- (ii) **that the Parties agree (or, if the Parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Secretary of State may reasonably determine) that a highly efficient Train Operator maximising its financial return would have a realistic prospect of achieving.**
- (e) **The Target Profit Floor shall be set at a value:**
 - (i) **lower than the value of the Target Profit; and**
 - (ii) **that the Parties agree (or, if the Parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Secretary of State may reasonably determine) that a broadly competent Train Operator would be likely to improve upon.**
- (f) **Within five (5) Weekdays of the Target Profit Cap and the Target Profit Floor being agreed or determined in accordance with this paragraph 5, the Franchisee shall apply the Target Profit Cap and the Target Profit Floor to the Target Profit Template which shall then be Placed in Escrow.**

5.3 Continued application of Scorecard Methodology

If the Parties have not agreed (or, if applicable, the Secretary of State has not determined) any or all of the Target Cost, Target Cost Cap, Target Cost Floor, Target Profit, Target Profit Cap and/or Target Profit Floor in accordance with paragraph 5.1 (Target Cost) or 5.2 (Target Profit), as applicable, then the Secretary of State may notify the Franchisee that the Scorecard Methodology shall continue to apply unaltered in relation to the Financial Performance Fee.

6. Target Amendments

- 6.1 **The Secretary of State may amend any Amendable Financial Target (in each case a "Performance Fee Target Amendment") during the relevant PBF Assessment Period following the occurrence of:**
 - (a) **a Category A Target Amendment Trigger Event which one Party has notified to the other;**
 - (b) **an event that:**
 - (i) **is outside the control of the Franchisee and its Affiliates;**
 - (ii) **the Franchisee has notified to the Secretary of State; and**
 - (iii) **the Secretary of State has agreed (acting reasonably) on the basis of evidence provided to the Secretary of State by the Franchisee has caused the applicable Amendable Financial Target to require amendment to ensure that the Franchisee is no more and no less likely to achieve the Amendable Financial Target than if such event had not occurred,**

(a "Category B Target Amendment Trigger Event"); or

- (c) **an event that:**
- (i) **was caused by the Secretary of State; or**
 - (ii) **is outside the control of the Franchisee and its Affiliates; and**
 - (iii) **in either case:**
 - (A) **the Secretary of State has notified to the Franchisee; and**
 - (B) **in the opinion of the Secretary of State, acting reasonably, has caused the applicable Amendable Financial Target to require amendment to ensure that the Franchisee is no more and no less likely to achieve the Amendable Financial Target than if such event had not occurred,**

(a "Category C Target Amendment Trigger Event"),

which either the Parties have agreed or the Secretary of State has reasonably determined pursuant to paragraphs 6.4 to 6.6 below has caused one or more of the Amendable Financial Targets to require amendment by a net financial value (an "Amendment Amount") that is equal to or greater than the Relevant Threshold Amount.

- 6.2 **The Notifying Party may notify the other Party of the occurrence of a Target Amendment Trigger Event (and, if the Notifying Party is the Franchisee, shall provide sufficient evidence to enable the Secretary of State to calculate the impact of the Target Amendment Trigger Event on the Amendable Financial Target(s)) at any time between the date falling twenty (20) Weekdays prior to the commencement of a PBF Assessment Period and the date falling twenty (20) Weekdays following the end of a PBF Assessment Period, provided that the Notifying Party shall notify the other Party no later than ten (10) Weekdays following the day on which:**
- (a) **the Target Amendment Trigger Event occurs; or**
 - (b) **the Franchisee ought reasonably to have become aware of the occurrence of such Target Amendment Trigger Event.**
- 6.3 **Within ten (10) Weekdays of the Secretary of State receiving a notice pursuant to paragraph 6.2 above, the Secretary of State shall issue a provisional notice to the Franchisee confirming whether in the opinion of the Secretary of State (acting reasonably) a Target Amendment Trigger Event has occurred.**
- 6.4 **Within twenty (20) Weekdays of receipt of:**
- (a) **a notice from the Secretary of State pursuant to paragraph 6.2 above; or**

- (b) a provisional notice from the Secretary of State pursuant to paragraph 6.3 above,
- the Parties shall seek to agree (each acting reasonably and in a timely manner) whether a Target Amendment Trigger Event has occurred and the value of the relevant Performance Fee Target Amendment, if any. If the Franchisee does not respond to the relevant notice within five (5) Weekdays of receipt, then the Franchisee shall be deemed to have accepted the conclusions set out in the relevant notice and any Performance Fee Target Amendment proposed by the Secretary of State shall apply in accordance with paragraph 6.7 below.**
- 6.5 **If the Parties have agreed whether a Target Amendment Trigger Event has occurred and the value of the associated Performance Fee Target Amendment, if any, within twenty (20) Weekdays, then the Performance Fee Target Amendment (if any) agreed between the Parties shall apply in accordance with paragraph 6.7 below.**
- 6.6 **If the Parties have not agreed whether a Target Amendment Trigger Event has occurred and/or the value of the associated Performance Fee Target Amendment, if any, within twenty (20) Weekdays of receipt by the Franchisee of the provisional notice pursuant to paragraph 6.3 above, then the Secretary of State:**
- (a) **shall reasonably determine whether a Target Amendment Trigger Event has occurred and the value of the associated Performance Fee Target Amendment, if any; and**
- (b) **shall promptly notify the Franchisee of such decision, in which case the Performance Fee Target Amendment, if any, determined by the Secretary of State in accordance with this paragraph 6.6 shall apply in accordance with paragraph 6.7 below.**
- 6.7 **A Performance Fee Target Amendment shall apply retrospectively from the date on which the Target Amendment Trigger Event occurred and shall continue to apply until the end of the relevant PBF Assessment Period.**
- 6.8 **A Target Amendment Trigger Event may trigger a Performance Fee Target Amendment in relation to two PBF Assessment Periods, if:**
- (a) **the aggregate Amendment Amount across both relevant PBF Assessment Periods is greater than the Relevant Threshold Amount; and**
- (b) **the Target for the later of the two PBF Assessment Periods has already been agreed or determined on the date on which the Target Amendment Trigger Event occurred,**
- in which case the Amendable Financial Target for each relevant PBF Assessment Period shall be amended accordingly.**
- 6.9 **Within five (5) Weekdays of:**

- (a) **the Parties agreeing (or the Franchisee being deemed to have agreed) a Performance Fee Target Amendment pursuant to paragraph 6.4 above; or**
 - (b) **the Secretary of State notifying the Franchisee of a Performance Fee Target Amendment pursuant to paragraph 6.6 above,**
the Franchisee shall apply the Performance Fee Target Amendment to the Target Cost Template or Target Profit Template (as applicable) then Placed in Escrow in accordance with paragraph 10.1(d) of Schedule 11.2 (Management Information) and submit such amended Target Cost Template and/or Target Profit Template to the Secretary of State along with any applicable information in relation to the impact of such amendment(s) on the Financial Targets and an updated version of the Target Cost Record of Assumptions or the Target Profit Record of Assumptions (as applicable).
- 6.10 **Within ten (10) Weekdays of receipt of the amended Target Cost Template and/or Target Profit Template (as applicable) pursuant to paragraph 6.9 above, the Secretary of State shall either:**
- (a) **agree the amended Financial Targets; or**
 - (b) **reasonably determine any necessary amendments to the Target Cost Template and/or Target Profit Template (as appropriate) and associated Financial Targets to ensure the proper application of the Performance Fee Target Amendment,**
and within five (5) Weekdays of such agreement or determination the updated Target Cost Template and/or Target Profit Template (as appropriate) shall be Placed in Escrow in accordance with paragraph 10.1(d) of Schedule 11.2 (Management Information).
- 6.11 **Nothing in this paragraph 6 shall automatically result in an amendment to any then-current Budget, Annual Business Plan or Quarterly Budget.**
- 7. Effect of Extended Term and amendments to the PBF Assessment Period**
- 7.1 **If the Secretary of State elects to extend the term of the ERMA pursuant to clause 3.3 of the ERMA the Secretary of State shall promptly notify the Franchisee whether:**
- (a) **the duration of the originally scheduled Final PBF Assessment Period shall be extended; or**
 - (b) **an additional PBF Assessment Period shall apply which shall be deemed to be the Final PBF Assessment Period; and**
- 7.2 **Following an amendment to the duration of a PBF Assessment Period for any reason, the Parties shall seek to agree (each acting reasonably, in a timely manner and through sufficiently senior representatives):**

- (a) **any necessary amendments to the applicable Amendable Financial Targets in respect of the relevant PBF Assessment Period; and**
- (b) **the OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) for the relevant PBF Assessment Period in respect of each of the additional Reporting Periods,**

taking into consideration the amendment to the duration of the relevant PBF Assessment Period. If the Parties have agreed any amendment(s) to the applicable Amendable Financial Targets and/or the applicable OP Targets, Breach Performance Levels and/or Default Performance Levels within twenty (20) Weekdays of the amendment to the duration of the relevant PBF Assessment Period, then such agreed matters shall apply in accordance with paragraph 7.4 below.

7.3 If the Parties have not agreed any necessary amendments to the applicable Amendable Financial Targets and/or the applicable OP Targets, Breach Performance Levels and/or Default Performance Levels for the relevant PBF Assessment Period within twenty (20) Weekdays of the amendment to the duration of the relevant PBF Assessment Period, then the Secretary of State:

- (a) **may reasonably determine any necessary amendments to the applicable Amendable Financial Targets for the relevant PBF Assessment Period;**
- (b) **may reasonably determine the OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) for the relevant PBF Assessment Period; and**
- (c) **shall promptly notify the Franchisee of such decision, in which case the amendment(s) to the applicable Amendable Financial Targets (if any) and the OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) determined by the Secretary of State in accordance with this paragraph 7.3 shall apply in accordance with paragraph 7.4 below.**

7.4 Any amendment(s) to the applicable Amendable Financial Targets (if any) and any new OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) shall apply retrospectively from the date on which the amendment to the duration of a PBF Assessment Period occurred and shall continue to apply until the end of the relevant PBF Assessment Period.

7.5 If the Secretary of State:

- (a) **elects to extend the term of the ERMA pursuant to clause 3.3 of the ERMA; and**
- (b) **intends to notify the Franchisee that an additional PBF Assessment Period shall apply pursuant to paragraph 7.1(b) above,**

the Secretary of State may (notwithstanding the requirement to issue a Subsequent PBF Assessment Period Notification two months prior to the relevant PBF Assessment Period pursuant to paragraph 4.2(a) above) issue a Subsequent PBF Assessment Period Notification no later than the Weekday following the date of the notice issued to the Franchisee pursuant to paragraph 7.1(b) above, in which case the provisions of paragraph 7.1(b) (Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period) shall apply.

8. Exceptional Events

Following the occurrence of an Exceptional Event, the Secretary of State may, acting reasonably:

- 8.1 if the Quantified Target Methodology applies to any QTM PBF Component pursuant to and in accordance with paragraph 4 (Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period) of this Schedule 8.1B, notify the Franchisee that from the date of such notification (or such alternative date as may be specified in the notification) the Scorecard Methodology shall apply in lieu of the Quantified Target Methodology in relation to any or all of the QTM PBF Components during the relevant PBF Assessment Period;**
- 8.2 suspend any applicable Amendable Financial Target, NRPS Target and/or OP Target and apply the Scorecard Methodology in a manner which, as far as is reasonably practicable, aligns with any suspended target which has already been set for that PBF Assessment Period; and**
- 8.3 for the relevant PBF Assessment Period, calculate the Performance Based Fee attributable to each QTM PBF Component on a pro-rata basis according to the duration of the period for which each of the Quantified Target Methodology and the Scorecard Methodology applied to such QTM PBF Component.**

Appendix 1 to Schedule 8.1B⁷¹⁴
PBF Assessment Period Review

1. Purpose of the PBF Assessment Period Review

- 1.1 **The purpose of a PBF Assessment Period Review is for the Secretary of State to undertake a review of the Franchisee's performance in relation to the Franchise Services over the course of the relevant PBF Assessment Period.**
- 1.2 **The Secretary of State shall carry out a PBF Assessment Period Review with respect to each PBF Assessment Period.**
- 1.3 **At each periodic Franchise Performance Meeting, the Parties shall discuss and review:**
 - (a) **without prejudice to the Secretary of State's right to determine each score that the Franchisee will achieve in accordance with Appendix 3 (Scorecard Criteria), the Franchisee's progress against the Scorecard Criteria and any other assessment criteria implemented pursuant to this Schedule 8.1B; and**
 - (b) **the evidence to be included within an ERMA Evidence Report for the Reporting Period to which that Franchisee Performance Meeting relates and/or for any other Reporting Period.**
- 1.4 **Each PBF Assessment Period Review shall be carried out in accordance with the process set out in this Appendix 1 to Schedule 8.1B.**

2. ERMA Evidence Report

- 2.1 **In advance of each Franchise Performance Meeting, the Secretary of State shall provide the Franchisee with a report detailing the information and evidence that the Secretary of State considers to be relevant to the PBF Assessment Period Review and the assessment of the Franchisee's performance against the Scorecard Criteria (each, an "ERMA Evidence Report"). Each ERMA Evidence Report shall contain only new information and evidence and shall not repeat the information and evidence that was included in a previous ERMA Evidence Report, except if that information and evidence has changed.**
- 2.2 **The Franchisee shall, following receipt of an ERMA Evidence Report, notify the Secretary of State of any information or evidence, in addition to that set out in the ERMA Evidence Report, which the Franchisee considers to be relevant to the PBF Assessment Period Review and the assessment of the Franchisee's performance against the Scorecard Criteria.**
- 2.3 **The Secretary of State shall, following receipt of a notice pursuant to paragraph 2.2 of this Appendix 1 to Schedule 8.1B, provide**

⁷¹⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

written confirmation to the Franchisee of whether the Secretary of State considers such information or evidence to be relevant to the PBF Assessment Period Review and, where the Secretary of State considers such information or evidence to be relevant, the Secretary of State shall either amend the relevant ERMA Evidence Report to include such information or evidence or include the information or evidence in the next, or any subsequent, ERMA Evidence Report.

- 2.4 The Parties acknowledge and agree that the ERMA Evidence Report is not intended to be the final record of all information or evidence in respect of the Reporting Period to which the Franchise Performance Meeting relates and the Parties shall be entitled to agree, at or in advance of any subsequent Franchise Performance Meeting, that additional evidence relating to such Reporting Period may be added to that, or any subsequent, ERMA Evidence Report.

3. Notice of PBF Assessment Period Review Meeting

- 3.1 The Secretary of State shall notify the Franchisee of the date, time and location for the relevant PBF Assessment Period Review Meeting (or, where the Secretary of State considers that more than one PBF Assessment Period Review Meeting is necessary, each PBF Assessment Period Review Meeting) by no later than the end of the relevant PBF Assessment Period, provided always that any PBF Assessment Period Review Meeting shall take place no earlier than the last day in the relevant PBF Assessment Period and no later than sixty (60) days after the end of the relevant PBF Assessment Period.
- 3.2 Nothing in this Schedule 8.1B shall prevent the Parties from discussing any matter relevant to a PBF Assessment Period Review outside of any PBF Assessment Period Review Meeting.

4. PBF Assessment Period Review Checklist

- 4.1 Not less than thirty (30) days prior to the end of the relevant PBF Assessment Period, the Secretary of State, acting reasonably, shall notify the Franchisee in writing of any additional evidence or information that the Franchisee is required to submit at the same time as the completed PBF Assessment Period Review Checklist.
- 4.2 Not less than fifteen (15) days prior to the end of each PBF Assessment Period, the Franchisee shall notify the Secretary of State in writing of any evidence or information in addition to that set out in the PBF Assessment Period Review Checklist, each ERMA Evidence Report or the information notified to the Franchisee by the Secretary of State in accordance with paragraph 4.1 of this Appendix 1 to Schedule 8.1B, which the Franchisee considers to be relevant for the PBF Assessment Period Review. The Secretary of State shall, within ten (10) days of receiving such notice, provide written confirmation to the Franchisee of whether the Secretary of State considers such matters to be relevant to the PBF Assessment Period Review.
- 4.3 As soon as reasonably practicable after the end of each PBF Assessment Period, and in any event no later than ten (10) days

after the end of the relevant PBF Assessment Period, the Franchisee shall deliver to the Secretary of State a duly completed copy of the PBF Assessment Period Review Checklist in respect of that PBF Assessment Period.

4.4 The PBF Assessment Period Review Checklist delivered by the Franchisee pursuant to paragraph 4.3 of this Appendix 1 to Schedule 8.1B shall include written commentary from the Franchisee in respect of the PBF Assessment Period covering:

- (a) each of the matters listed in the PBF Assessment Period Review Checklist;
- (b) the evidence and information included in the ERMA Evidence Reports;
- (c) any other matter notified by the Secretary of State to the Franchisee pursuant to paragraph 4.1 of this Appendix 1 to Schedule 8.1B; and
- (d) any other matter which the Secretary of State has confirmed as relevant for the PBF Assessment Period Review in accordance with paragraph 4.2 of this Appendix 1 to Schedule 8.1B.

4.5 The Secretary of State shall provide the Franchisee with:

- (a) a written commentary on the completed PBF Assessment Period Review Checklist and the evidence and information included in the ERMA Evidence Reports (including any commentary provided by the Franchisee under paragraph 4.4 of this Appendix 1 to Schedule 8.1B); and
- (b) any evidence or information additional to that:
 - (i) contained in the ERMA Evidence Reports; or
 - (ii) contained in or submitted by the Franchisee at the same time as the PBF Assessment Period Review Checklist (in accordance with paragraph 4.1 of this Appendix 1 to Schedule 8.1B),

which the Secretary of State has used or intends to use to assess the Franchisee's performance,

in each case, no later than ten (10) days prior to the relevant PBF Assessment Period Review Meeting.

5. PBF Assessment Period Review Meeting

5.1 The PBF Assessment Period Review Meeting shall take place at the date, time and location notified by the Secretary of State to the Franchisee in accordance with paragraph 3.1 of this Appendix 1 to Schedule 8.1B and shall be attended by representatives of each of the Secretary of State and the Franchisee.

- 5.2 **The Franchisee shall ensure that the representatives of the Franchisee at the PBF Assessment Period Review Meeting include such:**
- (a) **appropriate and qualified personnel of the Franchisee;**
 - (b) **directors and/or senior managers of the Franchisee; and**
 - (c) **directors and/or senior managers of the Parent,**
as the Secretary of State may reasonably require.
- 5.3 **At the PBF Assessment Period Review Meeting, the Parties shall discuss the Franchisee's performance by reference to the PBF Assessment Period Review Checklist and each ERMA Evidence Report, together with any supporting commentary, documents or evidence submitted by the Franchisee to the Secretary of State pursuant to paragraphs 4.3 and 4.4 of this Appendix 1 to Schedule 8.1B and any commentary and/or information provided by the Secretary of State to the Franchisee in accordance with paragraph 4.5 of this Appendix 1 to Schedule 8.1B.**

6. PBF Assessment Period Review Scoring

- 6.1 **The Secretary of State may take such steps as the Secretary of State considers (acting reasonably) to be necessary or appropriate to take into consideration any representations or evidence provided by Network Rail and/or any other relevant third party to the extent relevant to the Scorecard Criteria, including:**
- (a) **procuring views or evidence from Network Rail and/or other relevant stakeholders;**
 - (b) **directing the Franchisee to procure such views or evidence, which shall be submitted with the Franchisee's own information and evidence pursuant to paragraph 2 (ERMA Evidence Report) of this Appendix 1 to Schedule 8.1B; and/or**
 - (c) **subject to any requirements in relation to confidentiality, sharing extracts (on an anonymised or redacted basis, if required) of evidence supplied by the Franchisee with Network Rail and/or other relevant stakeholders.**
- 6.2 **The Secretary of State shall provide to the Franchisee, no later than seventy (70) days after the end of the relevant PBF Assessment Period, a duly completed PBF Assessment Period Scorecard setting out the Franchisee's performance in each of the Scorecard Criteria and any other assessment criteria implemented pursuant to this Schedule 8.1B for the PBF Assessment Period.**
- 6.3 **The Franchisee shall be scored three (3), two (2) or one (1) in relation to each Scorecard Criterion and, in relation to any other assessment criteria implemented pursuant to this Schedule 8.1B, shall be assessed or scored (as applicable) in accordance with such assessment criteria.**

- 6.4 **Scores in the PBF Assessment Period Scorecard shall be awarded by the Secretary of State having regard to the matters set out in the PBF Assessment Period Scorecard. One single, integer, overall score shall be awarded in relation to each Scorecard Criterion based on the Secretary of State's assessment of the Franchisee's performance in respect of that Scorecard Criterion and taking into account:**
- (a) **each ERMA Evidence Report;**
 - (b) **the PBF Assessment Period Review Checklist provided to the Secretary of State by the Franchisee in accordance with paragraphs 4.3 and 4.4 of this Appendix 1 to Schedule 8.1B;**
 - (c) **any commentary provided to the Franchisee by the Secretary of State in accordance with paragraph 4.5 of this Appendix 1 to Schedule 8.1B;**
 - (d) **any discussions between the Franchisee and the Secretary of State at the PBF Assessment Period Review Meeting(s); and**
 - (e) **any representations or evidence provided by Network Rail and/or any other relevant third party pursuant to paragraph 6.1 of this Appendix 1 to Schedule 8.1B.**
- 6.5 **The PBF Assessment Period Review shall be complete once the Secretary of State has sent a duly completed PBF Assessment Period Scorecard to the Franchisee in accordance with paragraph 6.2 of this Appendix 1 to Schedule 8.1B.**
- 6.6 **If the Franchisee:**
- (a) **is operating at a level that would, or would likely, be scored "one (1)"; or**
 - (b) **has received a score of "one (1)",**

in relation to any of the Scorecard Criteria during a PBF Assessment Period, then the Secretary of State may require a Remedial Plan and the provisions of Schedule 10.1 (Procedure for Remedying a Contravention of the Franchise Agreement) of the Franchise Agreement shall apply.

Appendix 2 to Schedule 8.1B⁷¹⁵
PBF Assessment Period Review Checklist

1. Operational Performance

A report on the Franchisee's operational performance, including:

- 1.1 **an explanation of the level of performance achieved during the PBF Assessment Period and the underlying drivers of that performance, including evidence of the impacts of any significant actions the Franchisee has undertaken during the PBF Assessment Period to improve performance or to reduce the impacts of incidents;**
- 1.2 **in respect of significant or repeated failures to deliver the Enforcement Plan of the Day, an explanation of the underlying causes of those failures setting out (if relevant) any act, omission or failure of a third party which has impacted performance and the extent of that impact;**
- 1.3 **a summary of the Franchisee's approaches to service recovery, Depot and Train Fleet management and train crew management during the PBF Assessment Period, including any significant actions take to improve those approaches, supported by evidence of their effectiveness; and**
- 1.4 **evidence of how the ratio of Reactionary Delay to Primary Delay, and incidences of delay attributable to Depot, Train Fleet and train crew related causes, compare with historic trends.**

2. Customer Experience

A report on the customer experience delivered by the Franchisee, including:

- 2.1 **tables, charts and other data (as appropriate) showing, for the PBF Assessment Period:**
 - (a) **delivery of Station and train cleans against the planned programme;**
 - (b) **level of adherence to staffing rosters;**
 - (c) **a summary of the availability of key assets such as Station and train toilets and ticket vending machines, and the length of time taken to remedy any faults; and**
 - (d) **a summary of how the Franchisee has provided consistently accurate, timely and relevant information to customers at stations, on rolling stock used to deliver the Passenger Services and online;**

⁷¹⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 2.2 **an explanation of the level of performance achieved during the PBF Assessment Period in respect of each of the above and the underlying drivers of that performance, including evidence of the impacts of any significant actions the Franchisee has undertaken during the PBF Assessment Period to improve performance;**
- 2.3 **a summary of customer feedback obtained during the PBF Assessment Period, including insights gathered through complaints, surveys where relevant (including Wavelength and National Rail Passenger Survey, if available), social media and any other relevant sources;**
- 2.4 **a summary of how the Franchisee has used these customer insights to identify and address customer needs; and**
- 2.5 **the results of any research or assessments undertaken by Transport Focus, the ORR or any other independent bodies which demonstrate the Franchisee's compliance with any of the Scorecard Criteria.**

3. Financial Performance

A report detailing the extent to which the Franchisee has acted as a Good and Efficient Operator, including evidence of:

- 3.1 **the actions which the Franchisee has taken to drive the recovery of revenue and demand, and the effect those actions have had on revenue and demand;**
- 3.2 **the actions the Franchisee has taken to reduce costs and improve efficiency, and the effect those actions have had on costs;**
- 3.3 **the approach the Franchisee has taken to balancing the short, medium and long term financial interest of the franchise (both within and beyond the Franchise Term); and**
- 3.4 **appropriate revenue protection being applied to reduce ticketless travel or travel with invalid tickets to the greatest extent reasonably practicable with the intention of maximising revenue while also treating passengers fairly and reasonably (and/or otherwise evidence that the Franchisee has followed government guidance prevailing at the time regarding revenue collection).**

4. Collaborative Behaviour

- 4.1 **Collaboration with Network Rail, other Train Operators, suppliers and industry bodies**

A report detailing the Franchisee's collaboration with Network Rail, other Train Operators, suppliers and industry bodies, including evidence of:

- (a) **the actions taken by the Franchisee to comply with the obligations in part 1 (Co-operation) of Schedule 6.3 (ERMA Specific Obligations) of the Franchise Agreement insofar as they relate to collaboration with those persons;**

- (b) **the actions taken by the Franchisee to collaborate with those parties in each of the areas identified in paragraph 4.2(b) of Appendix 3 (Scorecard Criteria) to Schedule 8.1B;**
- (c) **how those collaborative actions have demonstrably resulted in improved passenger outcomes and/or whole-industry financial efficiency or can reasonably be expected to result in such improvement (either during the Franchise Term or in the long term);**
- (d) **how the Franchisee has monitored the quality of its collaboration with those parties, any shortcomings identified and the remedial actions taken.**

4.2 SoS Collaboration

A report detailing the Franchisee's collaboration with the Secretary of State, including evidence of:

- (a) **the actions taken by the Franchisee to support the development, design and (where appropriate) implementation of initiatives to improve the long term financial performance of the Franchise, outcomes for passengers and/or other public policy objectives;**
- (b) **the actions taken by the Franchisee to share data with the Secretary of State, and to facilitate the sharing of data held by third parties on the Franchisee's behalf, pursuant to paragraphs 12 (Further Information) and 13 (Information from Third Parties) of Schedule 11.2 (Management Information);**
- (c) **the Franchisee having complied with the reporting requirements set out in the Franchise Agreement, and provided supporting commentary, analysis and (when requested) additional information to help the Secretary of State to assess and understand the drivers of the performance of the delivery of the Franchise Services;**
- (d) **how the Franchisee has managed its requests for guidance, consents, directions, derogations and other decisions so as to ensure they are accompanied by sufficient high-quality supporting evidence and allow sufficient time for due consideration by the Secretary of State;**
- (e) **the Franchisee's approach to collaborating with the Secretary of State in respect of business planning, budget setting and (where applicable) seeking to agree the matters described in paragraph 4.4 of Schedule 8.1B, the Target Cost, the Target Profit and/or any Performance Fee Target Amendment, and in particular how its approach has enabled the Secretary of State to agree such matters without the need for substantial amendment; and**
- (f) **how the Franchisee has monitored the quality of its collaboration with the Secretary of State, any shortcomings identified and the remedial actions taken.**

4.3 Other Collaboration

A report detailing the Franchisee's collaboration with stakeholders specified in paragraph 6.2(a) of Appendix 3 (Scorecard Criteria) to Schedule 8.1B, including evidence of:

- (a) the collaborative actions the Franchisee has taken in each of the areas in paragraph 6.2(b) of Appendix 3 (Scorecard Criteria) to Schedule 8.1B, how those collaborative actions have directly improved outcomes for passengers and/or other stakeholders, and whether (and, if so, how) those actions have helped to leverage in third party funding for improvements to the railway infrastructure or to the Passenger Services;**
- (b) how the Franchisee has collaborated with persons with disabilities and their representative bodies in particular, and how this collaboration has directly improved outcomes for such passengers.**
- (c) the processes the Franchisee has put in place to monitor stakeholders' satisfaction with the quality of their collaboration and engagement, the results of that monitoring, any shortcomings identified and the actions taken to remedy them.**

Appendix 3 to Schedule 8.1B⁷¹⁶
Scorecard Criteria

1. Operational Performance

1.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a 'two (2)'.

1.2 Two (2): Acceptable

(a) The Franchisee has generally delivered the Passenger Services in accordance with the applicable Enforcement Plan of the Day, such that where there have been significant or repeated failures to deliver the applicable Enforcement Plan of the Day:

(i) these have typically been due to external factors and/or incidents beyond the reasonable control of the Franchisee;

(ii) the Franchisee has taken reasonable steps to recover the Passenger Services as quickly as possible so as to minimise passenger inconvenience and delay, regardless of whether or not the root cause was within the Franchisee's reasonable control; and

(iii) the Franchisee has undertaken reviews of the root cause(s) of such failure(s) to deliver the applicable Enforcement Plan of the Day and the effectiveness of the Franchisee's actions to deal with the incident and recover the Passenger Services.

(b) The Franchisee has in place and has implemented appropriate Depot and Train Fleet management plans that have been generally effective in minimising the number of instances of insufficient rolling stock vehicles being available to resource the applicable Enforcement Plan of the Day.

(c) The Franchisee has in place and has implemented appropriate plans for train crew management (including to mitigate risks relating to COVID-19), recruitment, training, succession and contingency management that have generally been effective in minimising the number of instances of insufficient train crew being available to resource the applicable Enforcement Plan of the Day.

1.3 Three (3): Good

(a) The Franchisee has fully met the criteria for a "two (2)" and in addition:

⁷¹⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (i) **there have been very few, if any, significant or repeated failures to deliver the applicable Enforcement Plan of the Day that have been due to factors and/or incidents within the reasonable control of the Franchisee;**
- (ii) **the Franchisee's approach to service recovery has been particularly robust and, as a result, the ratio of Reactionary Delay to Primary Delay in respect of the Passenger Services has been low by historical standards (taking account of all Primary Delay, whether attributed to the Franchisee or not);**
- (iii) **the reviews referred to in paragraph 1.2(a)(iii) of this Appendix 3 to Schedule 8.1B have been particularly thorough and, as a result of those reviews, the Franchisee has identified and implemented significant actions that have minimised (or will minimise) the likelihood and the impacts on passengers of similar incidents occurring in future; or**
- (iv) **the Franchisee's Depot, Train Fleet and train crew management has been particularly robust and, as a result, the number of instances of insufficient rolling stock or train crew being available to deliver the Enforcement Plan of the Day have been low by historical standards.**

2. Customer Experience

2.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

2.2 Two (2): Acceptable

- (a) **The Franchisee has taken a proactive approach to managing customer experience for all customers, with appropriate plans and processes in place that have been generally effective in:**
 - (i) **providing information on rolling stock used to deliver the Passenger Services (where appropriate), online and at stations at which the Passenger Services call that is accurate, timely and easy for customers to understand, taking account of the needs of different customers and which covers (but is not limited to):**
 - (A) the timetable being operated;**
 - (B) planned and unplanned disruption;**
 - (C) fares and ticketing;**
 - (D) passenger rights (including compensation and redress);**
 - (E) the availability of station and train facilities; and**

- (F) (when appropriate) COVID-19 Guidance and Regulation;**
- (ii) ensuring that all customer contact surfaces are cleaned regularly and keeping Stations and rolling stock used to deliver the Passenger Services free from litter, dirt and other unhygienic substances;**
 - (iii) ensuring that all Stations, rolling stock used to deliver the Passenger Services and online services have been staffed as required to provide a visible, helpful and proactive customer-facing service; and**
 - (iv) maintaining all Station and train facilities so that they are fully functional, available for use and presented in good condition, with any non-availability of facilities for repair or maintenance being kept to the minimum necessary.**
- (b) The Franchisee has regularly and at an appropriate frequency monitored compliance with those plans and processes and has taken prompt remedial action when they have been found not to be working.**
 - (c) The Franchisee has used some survey results and other relevant data and information to review customer needs and the extent to which they are being met (including, but not limited to, Wavelength and National Rail Passenger Survey data, where available). Where needs are not being met, the Franchisee has (where consistent with the requirement to act as a Good and Efficient Operator, or where the Secretary of State has otherwise consented) taken action to address them, and these actions have demonstrably resulted in meaningful improvements in outcomes for customers (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term).**

2.3 Three (3): Good

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) the Franchisee's plans and processes described in paragraph 2.2(a) of this Appendix 3 to Schedule 8.1B have been particularly robust, such that there have been very few, if any, repeated or systemic failures to:**
 - (i) provide timely, accurate and relevant information in the manner described in paragraph 2.2(a)(i) of this Appendix 3 to Schedule 8.1B;**
 - (ii) undertake cleaning activities and maintain high levels of cleanliness at Stations and on rolling stock used to deliver the Passenger Services;**

- (iii) **staff Stations, rolling stock used to deliver the Passenger Services and online services to provide a proactive customer-facing service; and**
- (iv) **maintain Station and train facilities so that they are fully functional and well-presented,**

that have been due to factors and/or incidents within the reasonable control of the Franchisee.

- (b) **The Franchisee's plans and processes for managing customer experience have been particularly thorough and, as a result, any potential issues have consistently been identified and resolved in a swift and effective manner. Any actual issues have also been few in number and low in impact, and the Franchisee has taken prompt and effective remedial action when they have occurred.**
- (c) **The Franchisee has regularly used a range of different survey results and other relevant data and information (when possible) to review customer needs and the extent to which they are being met (including Wavelength and National Rail Passenger Survey data, where available), and the prompt actions taken to address those needs have demonstrably resulted in substantial improvements in outcomes for customers.**

3. Financial Performance

3.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

3.2 Two (2): Acceptable

- (a) **The Franchisee has consistently acted as a Good and Efficient Operator and has been effective in optimising the financial prospects of its business over the short, medium and long term by:**
 - (i) **driving the recovery of passenger demand and revenue; and**
 - (ii) **robustly controlling the Franchisee's costs.**
- (b) **In driving the recovery of passenger demand and revenue, the Franchisee has taken effective action (in each case within the limits arising from COVID-19 Guidance and Regulation) to:**
 - (i) **promote rail as a safe mode of transport and to raise public awareness of the steps taken by the Franchisee and the wider rail industry to minimise public health risks;**
 - (ii) **monitor and deter ticketless travel; and**

- (iii) **implement such further actions as may have been directed by the Secretary of State with a view to promoting demand and revenue growth.**
- (c) **In robustly controlling the Franchisee's costs, the Franchisee has:**
 - (i) **put in place internal processes which are comparable to (or better than) those adopted by the Franchisee prior to the EMA Start Date and which have been effective in managing the Franchisee's expenditure across all areas of the business, so as to improve efficiency and guard against unnecessary or excessive spend; and**
 - (ii) **implemented such further actions as may have been directed by the Secretary of State with a view to controlling costs,**

while also continuing to incur such expenditure as is reasonably necessary to meet the Franchisee's obligations under this Agreement and to protect the long-term financial interests of the franchise (both during the Franchise Term and in the longer term).
- (d) **If and to the extent that there are any specific instances where the Franchisee has not fully complied with the requirements described above, such instances have been few in number and limited in impact, and the Franchisee has taken prompt and effective remedial action following any such instances.**

3.3 **Three (3): Good**

The Franchisee has fully met the criteria for a "two (2)" and in addition on its own initiative, has developed and implemented (subject to the Secretary of State's consent where required pursuant to the Franchise Agreement) significant initiatives, the effect of which has been (or, in the Secretary of State's opinion (acting reasonably), will be):

- (a) **to substantially accelerate the recovery of passenger demand and revenue (while avoiding material increases in costs, either during the Franchise Term or thereafter); and/or**
- (b) **to substantially reduce the costs of operating the franchise and/or improve its cost efficiency (while avoiding material adverse impacts on passenger outcomes or revenues).**

4. **Collaborative behaviours (collaboration with Network Rail, other Train Operators, suppliers and industry bodies)**

4.1 **One (1): Below acceptable standard**

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

4.2 **Two (2): Acceptable**

- (a) **The Franchisee has complied with the obligations set out part 1 (Co-operation) of Schedule 6.3 (ERMA Specific Obligations) of the Franchise Agreement insofar as they relate to collaboration with Network Rail, other Train Operators, suppliers and industry bodies;**
- (b) **In complying with those obligations, the Franchisee has demonstrated good collaborative behaviours in working with Network Rail, other Train Operators, suppliers and relevant industry bodies (as applicable) in each of the following areas:**
 - (i) **improving operational performance, which shall include (in particular) reducing Reactionary Delay, improving service recovery and investigating and addressing the root causes of sub-threshold delay;**
 - (ii) **improving the efficiency and effectiveness of the timetable development process, with the result that timetables better meet the needs of passengers while also being operationally robust and delivering high levels of performance;**
 - (iii) **optimising the planning of access and possessions, so as to achieve an appropriate balance between protecting journey opportunities for passengers and minimising the cost of carrying out necessary works;**
 - (iv) **identifying and implementing opportunities to deliver whole-industry cost efficiencies, including by sharing resources, establishing joint teams and/or eliminating duplication of activities across multiple organisations at Stations, control centres and elsewhere;**
 - (v) **delivering major projects (including infrastructure upgrades, introduction of new or cascaded rolling stock fleets) efficiently, successfully and in a way that minimises any adverse passenger impacts; and**
 - (vi) **openly and proactively sharing data with Network Rail, in accordance with paragraph 9 (Sharing Data with Network Rail) part 1 (Co-operation) of Schedule 6.3 (ERMA Specific Obligations) of the Franchise Agreement , as necessary to maximise the effectiveness of collaboration in each of the areas listed above.**
- (c) **The Franchisee's collaborative actions in some of the areas listed in paragraph 4.2(b) of this Appendix 3 to Schedule 8.1B have demonstrably resulted in meaningful improvements in passenger outcomes and/or meaningful whole-industry financial efficiencies (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term).**
- (d) **If and to the extent that there are any specific instances where the Franchisee has not demonstrated good collaborative behaviours, these have been few in number and of minor impact and the Franchisee has taken prompt and effective remedial**

action where the Franchisee has become aware (or should reasonably have become aware) of any such instances.

4.3 Three (3): Good

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) the Franchisee's collaborative actions in most or all of the areas listed in paragraph 4.2(b) of this Appendix 3 to Schedule 8.1B have demonstrably resulted in meaningful improvements in passenger outcomes and/or meaningful whole-industry financial efficiencies (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term); or**
- (b) the Franchisee's collaborative actions in some of the areas listed in paragraph 4.2(b) of this Appendix 3 to Schedule 8.1B have demonstrably resulted in very substantial improvements in passenger outcomes and/or very substantial whole-industry financial efficiencies (or, in the reasonable opinion of the Secretary of State, will result in such improvements, either during the Franchise Term or in the long term).**

5. Collaborative behaviours (collaboration with the Secretary of State)

5.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

5.2 Two (2): Acceptable

- (a) The Franchisee has co-operated with the Secretary of State in the development, design and (where applicable) implementation of initiatives to improve the long-term financial performance of the Franchise, outcomes for passengers and/or other public policy objectives (including Future Initiatives and Franchisee Initiatives pursuant to and in accordance with part 1 (Co-operation) of Schedule 6.3 (ERMA Specific Obligations) of the Franchise Agreement that relate to co-operation with the Secretary of State and prospective Fares, ticketing and ticket retailing reform pursuant to and in accordance with Schedule 5.11 (Fares, Ticketing and Retail Reform)).**
- (b) The Franchisee has shared data fully and openly with the Secretary of State, and has taken reasonable steps to facilitate the sharing of data held by third parties on the Franchisee's behalf, in accordance with paragraphs 12 (Further Information) and 13 (Information from Third Parties) of Schedule 11.2 (Management Information);**
- (c) The Franchisee has provided periodic reporting packs on time and to a good standard, including all data required by the Franchise Agreement with commentary and analysis to allow the Secretary of State to assess the performance of the Franchise Services and to understand the underlying drivers.**

Appropriate representatives of the Franchisee have attended each Franchise Performance Meeting. The Franchisee has responded to requests for additional information positively and within agreed timescales.

- (d) **Requests for the Secretary of State to provide guidance, consents, directions, derogations and other decisions have been made in sufficient time to allow for due consideration by the Secretary of State. Such requests having been supported by appropriate supporting evidence and analysis to enable the Secretary of State to make an informed decision. Unnecessary or spurious requests have been avoided.**
- (e) **The Franchisee has worked constructively with the Secretary of State to agree appropriate business plans, budgets and (where applicable) the matters described in paragraph 4.4 of Schedule 8.1B, the Target Cost, the Target Profit and/or any Performance Fee Target Amendment, in each case in a timely manner. In particular, the Franchisee's proposals in respect of these matters have been provided in accordance with required timescales, underpinned by sound assumptions and good supporting evidence, enabling the Secretary of State to accept them without the need for substantial amendment.**
- (f) **If and to the extent that there are any specific instances where the Franchisee has not demonstrated good collaborative behaviours, these have been few in number and of minor impact and the Franchisee has taken prompt and effective remedial action where the Franchisee has become aware (or should reasonably have become aware) of any such instances.**

5.3 Three (3): Good

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) **both proactively and in response to any specific requests by the Secretary of State, the Franchisee has developed and presented to the Secretary of State a variety of high-quality, credible reform initiatives to materially strengthen the long-term financial sustainability of the franchise, improve passenger outcomes and support other public policy objectives;**
- (b) **such proposals have been accompanied by credible delivery plans and clear, robust analysis of the financial and practical consequences, associated risks and other implications; and**
- (c) **when such proposals have been consistent with what a Good and Efficient Operator would do, or have otherwise been approved by the Secretary of State, the Franchisee has implemented those proposals in accordance with their terms (or, where applicable, the Franchisee's actions during the PBF Assessment Period have given the Secretary of State good confidence that the Franchisee will do so).**

6. Collaborative behaviours (collaboration with other stakeholders)**6.1 One (1): Below acceptable standard**

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

6.2 Two (2): Acceptable**(a) The Franchisee has demonstrated good collaborative behaviours in working with stakeholders, including:**

- (i) passengers (including, and in particular, passengers with disabilities) and their representative bodies;**
- (ii) devolved administrations (where applicable);**
- (iii) local authorities;**
- (iv) community rail partnerships;**
- (v) local enterprise partnerships and other representatives of the business community; and**
- (vi) other transport operators,**

but excluding the Secretary of State, Network Rail and other industry parties as identified in paragraph 4 (Collaborative behaviours (Collaboration with Network Rail, other Train Operators, suppliers and industry bodies)) of this Appendix 3 to Schedule 8.1B.

(b) In particular, the Franchisee has:

- (i) sought feedback from such stakeholders about the Franchise Services;**
- (ii) consulted with such stakeholders and involved them in significant decisions that affect them, such that they have had a meaningful opportunity to influence those decisions;**
- (iii) provided feedback to those stakeholders on significant decisions that affect them and the reasons for those decisions;**
- (iv) routinely and actively involved passengers with disabilities and their representatives in designing and developing the facilities and Passenger Services provided by the Franchisee, and in other decisions that may have a particular impact on passengers with disabilities; and**
- (v) provided support to prospective third party promoters and funders of improvements to the railway when requested to do so by the Secretary of State or the third party concerned.**

- (c) **The Franchisee's collaborative actions in the areas identified in this paragraph 6.2 of Appendix 3 to Schedule 8.1B have resulted in some improvements in outcomes for passengers and other stakeholders served by the Franchisee, including in particular for passengers with disabilities (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term).**

6.3 Three (3): Good

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) **the Franchisee has in place and has implemented effective processes to monitor stakeholder satisfaction with the quality of the Franchisee's collaboration and engagement with them, and the results of this monitoring show consistently excellent levels of stakeholder satisfaction during the PBF Assessment Period; and**
- (b) **regular, open collaboration, proactively initiated by the Franchisee, has demonstrably resulted in (or, in the opinion of the Secretary of State (acting reasonably) will, either during the Franchise Term or in the longer term, result in):**
 - (i) **substantial improvements in outcomes for passengers and/or other stakeholders (including in particular passengers with disabilities); and/or**
 - (ii) **third party investment or other funding contributions to significantly improve the Passenger Services and/or the railway infrastructure.**

Appendix 4 to Schedule 8.1B⁷¹⁷
Scorecard Methodology

1. Application of the Scorecard Criteria and calculation of Performance Based Fee

Each PBF Component to be calculated in accordance with the Scorecard Methodology shall be assessed with respect to the Franchisee's PBF Assessment Period Review score for the relevant PBF Assessment Period by reference to the Scorecard Criteria, then the score shall be used to calculate the value of the Performance Based Fee attributable to that PBF Component, as applicable, as set out below:

| PBF Component | PBF Assessment Period Scorecard score for relevant Scorecard Criterion | PBF £ |
|------------------------------------|---|---|
| Operational Performance Fee | Three (3) | £ MPBF * W_{OP} |
| | Two (2) | £ MPBF * W_{OP} * Seventy-five per cent (75%) |
| | One (1) | Zero pound (£0) |
| Customer Experience Fee | Three (3) | £ MPBF * W_{CE} * W_{CESC} |
| | Two (2) | £ MPBF * W_{CE} * W_{CESC} * Seventy-five per cent (75%) |
| | One (1) | Zero pound (£0) |
| Financial Performance Fee | Three (3) | £ MPBF * W_{FIN} * W_{FINSC} |

⁷¹⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

| | | |
|----------------------------|-----------|---|
| | Two (2) | \pounds MPBF * W_{FIN} * W_{FINSC} * Fifty per cent (50%) |
| | One (1) | Zero pound (£0) |
| Network Rail Collaboration | Three (3) | \pounds MPBF * W_{CB} * W_{NR} |
| | Two (2) | \pounds MPBF * W_{CB} * W_{NR} * Seventy-five per cent (75%) |
| | One (1) | Zero pound (£0) |
| SoS Collaboration | Three (3) | \pounds MPBF * W_{CB} * W_{SOS} * |
| | Two (2) | \pounds MPBF * W_{CB} * W_{SOS} * Seventy-five per cent (75%) |
| | One (1) | Zero pound (£0) |
| Other Collaboration | Three (3) | \pounds MPBF * W_{CB} * W_{OTH} |
| | Two (2) | \pounds MPBF * W_{CB} * W_{OTH} * Seventy-five per cent (75%) |
| | Three (1) | Zero pound (£0) |

where:

| | |
|----------------------------|---|
| "W_{FINSC}" | <p>means:</p> <p>if the Financial Performance Fee for that PBF Assessment Period is to be assessed solely in accordance with the Scorecard Methodology, the weighting to be applied to the Scorecard Methodology for that PBF Assessment Period, being one hundred per cent (100%); and</p> <p>if the Financial Performance Fee is to be assessed in accordance with one or more of the Subsequent FP Methodologies for that PBF Assessment Period, the weighting to be applied to the Scorecard Methodology with respect to the Financial Performance Fee for that PBF Assessment Period, being the value agreed or determined in accordance with paragraph 4.4(d) of Schedule 8.1B,</p> <p>provided that no calculation using the Scorecard Methodology shall be required in relation to the Financial Performance Fee if the value of W_{FINSC} is zero;</p> |
| "W_{NR}" | <p>means the weighting to be applied to Network Rail Collaboration when calculating the amount of the Collaborative Behaviour Fee for that PBF Assessment Period, being forty per cent (40%) or such alternative as may be agreed or determined pursuant to paragraph 4.4(h) of Schedule 8.1B;</p> |
| "W_{SOS}" | <p>means the weighting to be applied to SoS Collaboration when calculating the amount of the Collaborative Behaviour Fee for that PBF Assessment Period, being forty per cent (40%) or such alternative as may be agreed or determined pursuant to paragraph 4.4(h) of Schedule 8.1B;</p> |
| "W_{OTH}" | <p>means the weighting to be applied to Other Collaboration when calculating the amount of the Collaborative Behaviour Fee for that PBF Assessment Period, being twenty per cent (20%) or such alternative as may be agreed or determined pursuant to paragraph (g) of Schedule 8.1B.</p> |

**Appendix 5 to Schedule 8.1B⁷¹⁸
Quantified Target Methodology**

1. Application of the Quantified Target Methodology

- 1.1 The Performance Based Fee in relation to each Subsequent PBF Assessment Period shall be either:**
- (a) the sum of the amounts corresponding to each of the PBF Components calculated in accordance with paragraph 1 (Application of the Scorecard Criteria and calculation of Performance Based Fee) of Appendix 4 (Scorecard Methodology) to Schedule 8.1B; or**
 - (b) the sum of:**
 - (i) the amounts corresponding to each of the QTM PBF Components (if any) which, pursuant to paragraph 4.2(a) of this Schedule 8.1B, are to be calculated in accordance with paragraph 1 (Application of the Scorecard Criteria and calculation of Performance Based Fee) of Appendix 4 (Scorecard Methodology) to Schedule 8.1B; and**
 - (ii) the amounts corresponding to each of the QTM PBF Components (if any) which, pursuant to paragraph 4.2(a) of this Schedule 8.1B, are to be calculated in accordance with this Appendix 5 to Schedule 8.1B; and**
 - (iii) the amount of the Collaborative Behaviour Fee calculated in accordance with paragraph 1 (Application of the Scorecard Criteria and calculation of Performance Based Fee) of Appendix 4 (Scorecard Methodology) to this Schedule 8.1B.**
- 1.2 If it has been agreed or determined pursuant to paragraph 4.2(a) of Schedule 8.1B that the Operational Performance Fee shall be calculated by reference to the Quantified Target Methodology, paragraph 2 (Operational Performance) of this Appendix 5 to Schedule 8.1B shall apply in respect of the value of the Performance Based Fee attributable to the Operational Performance Fee.**
- 1.3 If it has been agreed or determined pursuant to paragraph 4.2(a) of Schedule 8.1B that the Customer Experience Fee shall be calculated by reference to the Quantified Target Methodology, paragraph 3 (Customer Experience) of this Appendix 5 to Schedule 8.1B shall apply in respect of the value of the Performance Based Fee attributable to the Customer Experience Fee.**
- 1.4 If it has been agreed or determined pursuant to paragraph 4.2(a) of Schedule 8.1B that the Financial Performance Fee shall be**

⁷¹⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

calculated by reference to the Quantified Target Methodology, paragraph 4 (Financial Performance) of this Appendix 5 to Schedule 8.1B shall apply in respect of the value of the Performance Based Fee attributable to the Financial Performance Fee.

2. Operational Performance

- 2.1 The OP Targets agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B shall apply to each Reporting Period during the relevant PBF Assessment Period.
- 2.2 For each Reporting Period within the relevant PBF Assessment Period, the Secretary of State shall calculate a financial sum in respect of each Operational Performance Component in accordance with the applicable formula set out below based on whether:
 - (a) the Franchisee's Actual All Cancellations Performance Level, Actual T-3 Performance Level and Actual T-15 Performance Level; and
 - (b) the Franchisee's actual performance in relation to Cancellations, TOC Minutes Delay and Short Formations as determined in accordance with Schedule 7.1 (Operational Performance):

are worse than, within or better than the expected range, in each case specified as the OP Target for the applicable Operational Performance Component in the relevant Reporting Period:

| Operational Performance Component | Worse than the expected range | Within the expected range | Better than the expected range |
|--|--------------------------------------|---|--|
| Cancellations | Zero (£0) | Twenty-two point five per cent (22.5%) * MPBF * W_{OP}/N | Thirty per cent (30%) * MPBF * W_{OP}/N |
| TOC Minutes Delay | Zero (£0) | Fifteen per cent (15%) * MPBF * W_{OP}/N | Twenty per cent (20%) * MPBF * W_{OP}/N |
| Short Formations | Zero (£0) | Seven point five per cent (7.5%) * MPBF * W_{OP}/N | Ten per cent (10%) * MPBF * W_{OP}/N |
| T-3 | Zero (£0) | Seven point five per cent | Ten per cent (10%) * MPBF * W_{OP}/N |

| | | | |
|--------------------------|------------------|---|--|
| | | (7.5%) * MPBF * W_{OP/N} | |
| T-15 | Zero (£0) | Seven point five per cent (7.5%) * MPBF * W_{OP/N} | Ten per cent (10%) * MPBF * W_{OP/N} |
| All Cancellations | Zero (£0) | Fifteen per cent (15%) * MPBF * W_{OP/N} | Twenty per cent (20%) * MPBF * W_{OP/N} |

where:

| | |
|----------|---|
| N | means the number of Reporting Periods that fall within the relevant PBF Assessment Period. |
|----------|---|

2.3 The value of OP for the purposes of the formula set out in paragraph 4.1 of Schedule 8.1B shall be calculated as the sum of each of the calculations performed pursuant to paragraph 2.2 of this Appendix 5 to Schedule 8.1B in respect of each OP Component in each Reporting Period during the relevant PBF Assessment Period.

3. Customer Experience

3.1 For each relevant PBF Assessment Period, the Secretary of State shall calculate the element of the Performance Based Fee attributable to the Customer Experience Fee in accordance with the formula set out below.

| | |
|--------------|--------------------------|
| £CE = | CE(SC) + CE(NRPS) |
|--------------|--------------------------|

3.2 If the weighting of CE(NRPS) is zero in accordance with paragraph 3.3 of this Appendix 5 to Schedule 8.1B then the value attributable to such component shall be zero and such component shall be removed from the formula set out in paragraph 3.1 of this Appendix 5 to Schedule 8.1B for the purpose of calculating the value of the Performance Based Fee attributable to the Customer Experience Fee.

3.3 If the Customer Experience Fee for the relevant PBF Assessment Period is to be assessed in accordance with one or more of the Subsequent CE Methodologies, the weighting to be applied to:

- (a) the Scorecard Methodology ("WCESC"); and/or
- (b) [Not used]
- (c) the NRPS Methodology ("WNRPS"),

shall be the weighting specified in this paragraph 3.3.

| Methodology to be applied | W_{CESC} | W_{NRPS} |
|--|------------------------------------|-----------------------------------|
| Scorecard Methodology only | One hundred per cent (100%) | Zero per cent (0%) |
| Combined Scorecard/NRPS Methodology | Sixty-five per cent (65%) | Thirty-five per cent (35%) |

3.4 **If:**

- (a) **WNRPS) is not zero in accordance with paragraph 3.3 above, the value attributable to CE(NRPS) shall be calculated in accordance with paragraph 3.5 (Calculation of CE(NRPS)) below;**
- (b) **[Not used]**
- (c) **WCESC is not zero, the value of CE(SC) shall be calculated in accordance with the Scorecard Methodology as it relates to the Customer Experience Fee.**

3.5 **Calculation of CE(NRPS)**

- (a) **The NRPS Targets agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B shall apply during the relevant PBF Assessment Period.**
- (b) **If:**
 - (i) **no findings of the National Rail Passenger Survey are published during the relevant PBF Assessment Period; or**
 - (ii) **in the opinion of the Secretary of State (acting reasonably) the findings of the National Rail Passenger Survey are not sufficiently robust to support the calculation of CE(NRPS),**

the Customer Experience Fee for the relevant PBF Assessment Period shall be assessed using the Scorecard Methodology, the weightings specified in paragraph 3.3 above in relation to such methodology shall apply, and the Secretary of State may reasonably determine such amendments to the Scorecard Methodology as may be reasonably appropriate in consequence of the unavailability or unsuitability of the National Rail Passenger Survey findings.

- (c) **For each relevant PBF Assessment Period, the Secretary of State shall calculate the Franchisee's performance against each of the NRPS Targets in accordance with the applicable formula set out below based on whether the Franchisee's applicable Overall Performance Score in respect of the applicable NRPS Target is:**

- (i) worse than the expected range;
- (ii) within the expected range; or
- (iii) better than the expected range,

in each case specified as the NRPS Target for the applicable NRPS Measure:

| NRPS Measure | Worse than the expected range | Within the expected range | Better than the expected range |
|---------------------|-------------------------------|--|---|
| Stations | Zero pound (£0) | Eighteen point seven five per cent (18.75%) * MPBF * W _{CE} * W _{NRPS} | Twenty-five per cent (25%) * MPBF * W _{CE} * W _{NRPS} |
| Trains | Zero pound (£0) | Eighteen point seven five per cent (18.75%) * MPBF * W _{CE} * W _{NRPS} | Twenty-five per cent (25%) * MPBF * W _{CE} * W _{NRPS} |
| Customer Service | Zero pound (£0) | Eighteen point seven five per cent (18.75%) * MPBF * W _{CE} * W _{NRPS} | Twenty-five per cent (25%) * MPBF * W _{CE} * W _{NRPS} |
| Dealing with Delays | Zero pound (£0) | Eighteen point seven five per cent (18.75%) * MPBF * W _{CE} * W _{NRPS} | Twenty-five per cent (25%) * MPBF * W _{CE} * W _{NRPS} |

- (d) For each relevant PBF Assessment Period, the Secretary of State shall calculate the value of the Performance Based Fee attributable to CE(NRPS) in accordance with the formula set out below.

| | |
|-----------------------|----------------------|
| £CE(NRPS) = | S + T + C + D |
|-----------------------|----------------------|

where:

| | |
|----------|---|
| S | means the value attributable to the Stations NRPS Measure calculated in accordance with paragraph 3.5(c) above; |
| T | means the value attributable to the Trains NRPS Measure calculated in accordance with paragraph 3.5(c) above; |
| C | means the value attributable to the Customer Service NRPS Measure calculated in accordance with paragraph 3.5(c) above; and |
| D | means the value attributable to the Dealing with Delays NRPS Measure calculated in accordance with paragraph 3.5(c) above. |

3.6 Not used.

4. Financial Performance

4.1 For each relevant PBF Assessment Period the Secretary of State shall calculate the value of the Performance Based Fee attributable to the Financial Performance Fee in accordance with the formula set out below.

| | |
|---------------|-----------------------------------|
| £FIN = | FIN(CC) + FIN(P) + FIN(SC) |
|---------------|-----------------------------------|

4.2 If the weighting of any of FIN(CC), FIN(P) and/or FIN(SC) is zero in accordance with paragraph (d) of Schedule 8.1B, then the value attributable to each such component shall be zero and such component shall be removed from the formula set out in paragraph 4.1 above for the purpose of calculating the value of the Performance Based Fee attributable to the Financial Performance Fee.

4.3 Calculation of FIN(CC)

- (a) Subject to paragraph 6 (Target Amendments), the Target Cost agreed or determined in accordance with paragraph 5.1 (Target Cost) shall apply to the relevant PBF Assessment Period.
- (b) The Franchisee shall provide to the Secretary of State all financial information required for the purposes of making each of the calculations required pursuant to this paragraph 4.3 in accordance with paragraph 9.1 (Accounting Records) to paragraph 9.4 (Annual Financial Information) of Schedule 11.2 (Management Information).
- (c) Within twenty eight (28) days of receipt of all financial information required for the purposes of making the relevant calculations, the Secretary of State shall calculate the value of the Performance Based Fee attributable to FIN(CC) in accordance with the applicable formula set out below based on whether the Outturn Cost is:

- (i) **greater than the Target Cost Floor;**
- (ii) **greater than the Target Cost but less than or equal to the Target Cost Floor;**
- (iii) **less than or equal to the Target Cost but greater than the Target Cost Cap; or**
- (iv) **less than or equal to the Target Cost Cap.**

| Outturn Cost | £FIN(CC) |
|--|---|
| Greater than TCF | Zero (£0) |
| Greater than Target Cost, less than or equal to TCF | $[(TCF - OTC)/(TCF - TC)] * W_{FIN} * W_{CC} * MPBF * \text{Fifty per cent (50\%)}$ |
| Less than or equal to Target Cost, greater than TCC | $[W_{FIN} * W_{CC} * MPBF] - \{[(OTC - TCC)/(TC - TCC)] * W_{FIN} * W_{CC} * MPBF * \text{Fifty per cent (50\%)}\}$ |
| Less than or equal to TCC | $W_{FIN} * W_{CC} * MPBF$ |

4.4 Calculation of FIN(P)

- (a) **Subject to paragraph 6 (Target Amendments) of Schedule 8.1B, the Target Profit agreed or determined in accordance with paragraph 5.2 (Target Profit) of Schedule 8.1B shall apply to the relevant PBF Assessment Period.**
- (b) **The Franchisee shall provide to the Secretary of State all financial information required for the purposes of making each of the calculations required pursuant to this paragraph 4.4 in accordance with paragraph 9.1 (Accounting Records) to paragraph 9.4 (Annual Financial Information) of Schedule 11.2 (Management Information).**
- (c) **Within twenty eight (28) days of receipt of all financial information required for the purposes of making the relevant calculations, the Secretary of State shall calculate the value of the Performance Based Fee attributable to FIN(P) in accordance with the applicable formula set out below based on whether the Outturn Profit is:**
 - (i) **greater than the Target Profit Cap;**
 - (ii) **greater than the Target Profit but less than or equal to the Target Profit Cap;**
 - (iii) **less than or equal to the Target Profit but greater than the Target Profit Floor; or**

(iv) **less than or equal to the Target Profit Floor:**

| | |
|--|---|
| Outturn Profit | £FIN(P) |
| Greater than TPC | $W_{FIN} * W_P * MPBF$ |
| Greater than Target Profit, less than or equal to TPC | $[W_{FIN} * W_P * MPBF] - \{[(TPC - OTP)/(TPC - TP)] * W_{FIN} * W_P * MPBF * \text{Fifty per cent (50\%)}\}$ |
| Less than or equal to Target Profit, greater than TPF | $[(OTP - TPF)/(TP - TPF)] * W_{FIN} * W_P * MPBF * \text{Fifty per cent (50\%)}$ |
| Less than or equal to TPF | Zero (£0) |

4.5 **Not used.**

4.6 **Calculation of FIN(SC)**

(a) **FIN(SC) shall be calculated using the Scorecard Methodology as it applies to the Financial Performance Fee.**

Appendix 6 to Schedule 8.1B⁷¹⁹
Category A Target Amendment Trigger Events

1. Target Cost Target Amendment Trigger Events

- 1.1 **Any variation in the rate of employer pension contributions (or, to the extent applicable, the amount of any lump sum employer deficit contributions) payable to a Franchise Section from the rate (or amount) set out in the Assumed Schedule of Contributions applicable to that Franchise Section which is not already provided for in the Target Cost Template provided that, to the extent the Franchisee's consent or permission was required for that variation, the Franchisee has complied with its obligations pursuant to Schedule 16 (Pensions), including the obligations to:**
- (a) **obtain the Secretary of State's prior written consent in respect of any such variation; and**
 - (b) **act in a Reasonable Commercial Manner.**
- 1.2 **For reasons related to COVID-19 or otherwise in the national interest, the Secretary of State or Network Rail requires the Franchisee to operate the Passenger Services to a specification that is materially reduced compared to the specification that was assumed when the Target Cost was established.**
- 1.3 **Either:**
- (a) **the Secretary of State designates the occurrence of Industrial Action as a Category A Target Amendment Trigger Event pursuant to paragraph 5.3 of part 2 (Industrial Relations and Dispute Handling) of Schedule 6.3 (ERMA Specific Obligations); or**
 - (b) **the occurrence of Industrial Action in the circumstances set out in paragraph 5.4 of part 2 (Industrial Relations and Dispute Handling) of Schedule 6.3 (ERMA Specific Obligations).**
- 1.4 **A Variation which either results in the Franchisee incurring additional expenditure or would reasonably result in the Franchisee incurring lower expenditure than if the Variation had not been implemented.**
- 1.5 **An event set out in any Secretary of State Risk Assumptions specified in Schedule 9.4 (Secretary of State Risk Assumptions).**
- 1.6 **A Charge Variation.**
- 1.7 **A Change of Law.**
- 1.8 **A change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service**

⁷¹⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

Requirement in accordance with paragraph 16.5 of Schedule 1.1 (Franchise Services and Service Development).

- 1.9 **The Franchisee being required to take any action pursuant to paragraph 19.1(a) and/or paragraph 19.1(b) of Schedule 1.1 (Franchise Services).**
- 1.10 **The imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (Accessibility and Inclusivity), of any increased access charges in respect of EA Requirements at Franchisee Access Stations.**
- 1.11 **The exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 15.1(c) (Environmental Information Data Collection Plan) of Schedule 11.2 (Management Information).**
- 1.12 **The circumstances set out in paragraph 3.2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases) occur.**
- 1.13 **The Secretary of State issues a TDR Amendment pursuant to paragraph 12.8 (TDR Amendments) of Schedule 1.1 (Franchise Services and Service Development) in the circumstances described in paragraph 12.10(b) of Schedule 1.1 (Franchise Services and Service Development).**
- 1.14 **The circumstances contemplated in paragraph 12.11(b) of Schedule 1.1 (Franchise Services and Service Development) occur.**
- 1.15 **The delay of an item of expenditure or a group of items of similar expenditure where the timing of expenditure is materially different from that included in the Target Cost.**
- 1.16 **The Secretary of State issuing any other guidance or instruction which could reasonably be expected to have a material impact on the Franchisee's ability to achieve, exceed or fail to achieve the relevant Target Cost.**

2. Target Profit Target Amendment Trigger Events

- 2.1 **Any variation in the rate of employer pension contributions (or, to the extent applicable, the amount of any lump sum employer deficit contributions) payable to a Franchise Section from the rate (or amount) set out in the Assumed Schedule of Contributions applicable to that Franchise Section which is not already provided for in the Target Profit Template provided that, to the extent the Franchisee's consent or permission was required for that variation, the Franchisee has complied with its obligations pursuant to Schedule 16 (Pensions), including the obligations to:**
 - (a) **obtain the Secretary of State's prior written consent in respect of any such variation; and**
 - (b) **act in a Reasonable Commercial Manner.**
- 2.2 **For reasons related to COVID-19 or otherwise in the national interest, the Secretary of State or Network Rail requires the**

Franchisee to operate the Passenger Services to a specification that is materially reduced compared to the specification that was assumed when the Target Profit was established.

2.3 Either:

- (a) the Secretary of State designates the occurrence of Industrial Action as a Category A Target Amendment Trigger Event pursuant to paragraph 5.3 of part 2 (Industrial Relations and Dispute Handling) of Schedule 6.3 (ERMA Specific Obligations); or**
- (b) the occurrence of Industrial Action in the circumstances set out in paragraph 5.4 of part 2 (Industrial Relations and Dispute Handling) of Schedule 6.3 (ERMA Specific Obligations).**

2.4 A Variation which:

- (a) results in the Franchisee incurring additional expenditure;**
- (b) would reasonably result in the Franchisee incurring lower expenditure;**
- (c) results in the Franchisee earning less revenue; or**
- (d) would reasonably result in the Franchisee earning greater revenue,**

than if the Variation had not been implemented.

2.5 An event set out in any Secretary of State Risk Assumptions specified in Schedule 9.4 (Secretary of State Risk Assumptions).

2.6 A Charge Variation.

2.7 A Change of Law.

2.8 A change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with paragraph 16.5 of Schedule 1.1 (Franchise Services and Service Development).

2.9 The Franchisee being required to take any action pursuant to paragraph 19.1(a) and/or paragraph 19.1(b) of Schedule 1.1 (Franchise Services).

2.10 The Secretary of State effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of section 28 of the Act.

2.11 The Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 4.5 of Schedule 2.5 (Transport, Travel and Other Schemes) if the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

- 2.12 **The imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (Accessibility and Inclusivity), of any increased access charges in respect of EA Requirements at Franchisee Access Stations.**
- 2.13 **The Secretary of State exercises the Secretary of State's power pursuant to paragraph 5 (Changes to Fares Regulation) of Schedule 5.7 (Changes to Fares and Fares Regulation) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (Fares and Smart Ticketing).**
- 2.14 **The Franchisee is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment.**
- 2.15 **The exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 15.1(c) (Environmental Information Data Collection Plan) of Schedule 11.2 (Management Information).**
- 2.16 **The circumstances set out in paragraph 3.2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases) occur.**
- 2.17 **The Secretary of State issues a TDR Amendment pursuant to paragraph 12.8 (TDR Amendments) of Schedule 1.1 (Franchise Services and Service Development) in the circumstances described in paragraph 12.10(b) of Schedule 1.1 (Franchise Services and Service Development).**
- 2.18 **The circumstances contemplated in paragraph 12.11(b) of Schedule 1.1 (Franchise Services and Service Development) occur.**
- 2.19 **The delay of an item of expenditure or a group of items of similar expenditure where the timing of expenditure is materially different from that included in the Target Profit.**
- 2.20 **The Secretary of State issuing any other guidance or instruction which could reasonably be expected to have a material impact on the Franchisee's ability to achieve, exceed or fail to achieve the relevant Target Profit.**

**Appendix 7 to Schedule 8.1B⁷²⁰
Pro Forma Target Tables**

- 1. Table 1: Required when the Operational Performance Fee is assessed using the Quantified Target Methodology. Each item marked with ✓ is to be agreed or reasonably determined in respect of each Reporting Period within the relevant PBF Assessment Period pursuant to paragraph 4.5 of Schedule 8.1B.**

| Indicator | Default Performance Level | Breach Performance Level | Range within which the Franchisee’s performance is expected to fall | |
|--------------------------|---------------------------|--------------------------|---|----|
| | | | From | To |
| Cancellations | ✓ | ✓ | ✓ | ✓ |
| TOC Minutes Delay | ✓ | ✓ | ✓ | ✓ |
| Short Formations | ✓ | ✓ | ✓ | ✓ |
| T-3 | n/a | | ✓ | ✓ |
| T-15 | | | ✓ | ✓ |
| All Cancellations | | | ✓ | ✓ |

- 2. Table 2: Required when the Customer Experience Fee is assessed (wholly or in part) using the NRPS Methodology. Each ✓ indicates a single figure to be agreed or reasonably determined for the whole PBF Assessment Period. This table shall be amended to reflect any different NRPS Service Groups agreed pursuant to paragraph 4.5 of Schedule 8.1B.**

| Indicator | NRPS Improvement Plan Level | Range within which the Franchisee's performance is expected to fall | |
|------------------------------|-----------------------------|---|----|
| | | From | To |
| NRPS Trains | | ✓ | ✓ |
| NRPS Stations | | ✓ | ✓ |
| NRPS Customer Service | | ✓ | ✓ |

⁷²⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

| | | | |
|--|---|---|---|
| NRPS Dealing with Delays | | ✓ | ✓ |
| NRPS Trains – Mainline | ✓ | | |
| NRPS Trains – Rural | ✓ | | |
| NRPS Trains – Stansted Express | ✓ | | |
| NRPS Trains – West Anglia | ✓ | | |
| NRPS Stations – Mainline | ✓ | | |
| NRPS Stations – Rural | ✓ | | |
| NRPS Stations – Stansted Express | ✓ | | |
| NRPS Stations – West Anglia | ✓ | | |
| NRPS Customer Service – Mainline | ✓ | | |
| NRPS Customer Service – Rural | ✓ | | |
| NRPS Customer Service – Stansted Express | ✓ | | |
| NRPS Customer Service – West Anglia | ✓ | | |
| NRPS Dealing with Delays – Mainline | ✓ | | |
| NRPS Dealing with Delays – Rural | ✓ | | |
| NRPS Dealing with Delays – Stansted Express | ✓ | | |

| | | | |
|---|---|--|--|
| NRPS Dealing with Delays – West Anglia | ✓ | | |
|---|---|--|--|

3. Not used.

4. Not used.

Appendix 8 to Schedule 8.1B⁷²¹
Passenger Survey Methodology Template

Guidance on the Passenger Survey Methodology for East Anglia franchise

How East Anglia National Rail Passenger Survey (NRPS) Measure scores are calculated

Introduction

- 1. The East Anglia Franchise Agreement makes provision for NRPS Measures, derived from NRPS results, to be used to measure the franchisee's performance against NRPS Improvement Plan Levels and NRPS Targets for passenger satisfaction on four aspects of service set out below.**
- 2. Different types of NRPS indicator have been identified and grouped to form four specific NRPS Measures:**
 - 2.1 Stations (S)**
 - 2.2 Trains (T)**
 - 2.3 Customer Services (C)**
 - 2.4 Dealing with Delays (D)**
- 3. The NRPS indicators within each NRPS satisfaction measure grouping are as follows: [Note: parties to agree the indicators within each Measure pursuant to paragraph 4 of Schedule 8.1B]:**
- 4. NRPS Improvement Plan Levels (including any NRPS Improvement Plan Levels which will be set at a Service Group level) are set as follows: [Note: parties to agree how these will be set for each Measure, and in particular whether they will be set at Service Group level or aggregated on some other basis, pursuant to paragraph 4 of Schedule 8.1B]**
- 5. This means that there are a total of [] NRPS Measures for each PBF Assessment Period. [Note: this will follow the indicators listed in paragraph 3 and the basis upon which NRPS Improvement Plan Levels are set in paragraph 4].**
- 6. A total of [xx] different survey questions are used in the assessment. [Note: this will reflect the questions that apply.]**
- 7. All journeys on the East Anglia franchise are included in the calculation of the scores, irrespective of where the journey starts on the East Anglia network or who runs the particular station where the East Anglia passenger started their journey from.**

⁷²¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

Calculation of the NRPS Measure scores

- 8. NRPS Measure scores are calculated for each applicable PBF Assessment Period, based on the number of surveys published in that period. This will typically be one survey wave (Spring or Autumn). Scores for each question are added together, prior to rounding, and the overall total is then divided by the number of questions contained within the NRPS Measure to calculate the final score for the Measure.**
- 9. If more than one survey is published in a PBF Assessment Period, scores for each question for each survey wave are added together, then divided by the number of applicable surveys, to create the average score for each question. These are then summed and the overall total is then divided by the number of questions within the NRPS Measure to calculate the final score.**
- 10. Final scores will be rounded to one decimal place with the midpoint (that is, 74.45) rounded upwards (that is, 74.5). This is then compared to the NRPS Improvement Plan Level for the PBF Assessment Period to establish whether this has been met, exceeded or missed.**
- 11. Performance against the NRPS Targets is determined in accordance with paragraph 4 of Schedule 7.2 and paragraph 4.5 of Schedule 8.1B.**

SCHEDULE 8.2

NOT USED⁷²²

⁷²² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 8.3

NOT USED⁷²³

⁷²³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 8.4

NOT USED⁷²⁴

⁷²⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 9**Changes and Variations**

| | |
|---------------|--|
| Schedule 9.1: | Financial and Other Consequences of Change |
| | Appendix 1: Definition of Threshold Amount |
| | Appendix 2: Agreement or Determination of Revised Inputs |
| Schedule 9.2: | Identity of the Financial Model |
| Schedule 9.3: | Variations to the Franchise Agreement and Incentivising Beneficial Changes |
| Schedule 9.4: | Secretary of State Risk Assumptions |

SCHEDULE 9.1

NOT USED⁷²⁵

⁷²⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 9.2**Identity of the Financial Model****1. Franchisee's Obligations**

- 1.1 The Franchisee shall deliver two copies of each of the Financial Model, the Operational Model and the Record of Assumptions (each such copy in electronic format on CD-ROM or other appropriate electronic medium) together with hard format copies of the output template of the Financial Model in the format set out in the document in the agreed terms marked FF (the "**Escrow Documents**") to the Secretary of State in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow.
- 1.2 The Franchisee shall deliver the Escrow Documents to the Secretary of State in accordance with paragraph 1.1:
 - (a) on the date of the Franchise Agreement;
 - (b) within seven (7) days of the Start Date, but updated only as strictly necessary for any elapsed time between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (c) within seven (7) days of any approval or audit of a Run of the Financial Model as provided for in paragraph 7 of Schedule 9.1 (Financial and Other Consequences of Change), but updated with the Revised Inputs and any Model Changes together with an updated Record of Assumptions and copies of both the modified and unmodified Financial Model.
- 1.3 The Franchisee shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:
 - (a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
 - (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and
 - (c) if required by the Secretary of State, a certificate from independent auditors approved by the Secretary of State, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.1 or (as the case may be) is in accordance with paragraphs 1.2(a), 1.2(b) or 1.2(c).

2. Secretary of State's Obligations

- 2.1 The Secretary of State shall:
 - (a) within three (3) days following receipt, acknowledge receipt to the Franchisee of any version of the Escrow Documents delivered to him for the purposes of being Placed in Escrow;
 - (b) save as provided under paragraph 2.1(c), store each copy of the Escrow Documents in a different physical location from any other copy of each such

document and use all reasonable endeavours to ensure that each copy of the Escrow Documents is at all times kept in a safe and secure environment. In so doing the Secretary of State shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of the Franchise Agreement;

- (c) notify the Franchisee if he becomes aware at any time during the term of the Franchise Agreement that any copy of the Escrow Documents or part thereof stored in a particular location has been lost, damaged or destroyed. In such an event, the Secretary of State shall be permitted to create a new copy of the Escrow Documents or part thereof from the other copy Placed in Escrow and shall within seven (7) days notify the Franchisee accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a "complete and accurate" copy has been made. Following the making of such a new copy of the Escrow Documents, the Secretary of State shall retain all copies of the Escrow Documents in accordance with paragraph 2.1(b);
 - (d) within seven (7) days of receipt of a notice from the Franchisee stating that the Escrow Documents are required for the purposes of a Run of the Financial Model in relation to any Change, or should the Secretary of State himself so decide that the Escrow Documents are required by the Franchisee or by the Secretary of State for such purposes release one copy of the Escrow Documents accordingly and retain one copy of the Escrow Documents in escrow in accordance with paragraph 2.1(b);
 - (e) maintain a record of any release of any copy of any version of the Escrow Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Escrow Documents are released;
 - (f) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Escrow Documents; and
 - (g) not be liable for any loss, damage or destruction caused to the Franchisee arising from any loss of, damage to or destruction of the Escrow Documents.
- 2.2 If the Franchisee fails to perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (Financial and Other Consequences of Change) or fails to return the copy of the Escrow Documents released pursuant to paragraph 2.1(d):
- (a) such failure to perform or to return the released copy to the Secretary of State shall be a contravention of the Franchise Agreement;
 - (b) the Secretary of State may release the other copy of the Escrow Documents Placed in Escrow and take a copy thereof (the "**Replacement Copy**") in order that the Secretary of State may perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (Financial and Other Consequences of Change);
 - (c) once copied, the second copy of the Escrow Documents released pursuant to this paragraph 2.2 shall be Placed in Escrow; and
 - (d) once the Run of the Financial Model has been approved or audited as provided for in paragraph 7 of Schedule 9.1 (Financial and Other

Consequences of Change), two copies of the Replacement Copy shall also be Placed in Escrow.

Nothing in this Schedule 9.2 shall prevent the Secretary of State or the Franchisee each retaining for their working use one or more copies of any of the Escrow Documents Placed in Escrow provided that no such working copy shall (unless otherwise explicitly agreed by the Parties) be regarded as a copy released from Escrow for the purposes of this Schedule 9.2 or any Run of the Financial Model.

3. Errors in Escrow Documents

3.1 Any feature of the Escrow Documents which is in the reasonable opinion of the Secretary of State an error will be addressed as follows:

- (a) if rectification of such an error would (as the case may be) over the Franchise Term result in a net increase in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net decrease in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified provided that there shall not be a restatement of the values of the Annual Franchise Payment Components and the Profit Share Components;
- (b) if rectification of such an error would (as the case may be) over the Franchise Term result in a net decrease in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net increase in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified and the values of the Annual Franchise Payment Components and the Profit Share Components shall be restated where appropriate;
- (c) a record of the error shall be noted in the Record of Assumptions and, if applicable, the Financial Model; and

as soon as reasonably practicable after the date of the rectification of the error, the Franchisee shall (unless otherwise agreed by the Secretary of State) deliver to the Secretary of State a certificate from independent auditors approved by the Secretary of State confirming that the error has been rectified as required by this paragraph 3 and is now in the agreed form in accordance with paragraphs 1.1, 1.2(a), 1.2(b) or 1.2(c) as the case may be.

SCHEDULE 9.3**Variations to the Franchise Agreement and Incentivising Beneficial Changes****1. Variations**

1.1 The terms of the Franchise Agreement may be varied as follows but not otherwise:

(a) by the Secretary of State in relation to:

(i) any aspect of the Franchise Services; and/or

(ii) any provision of the Franchise Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the Franchisee referring to this paragraph 1.1(a) and setting out the variation to the terms of the Franchise Agreement; and

(b) in relation to any other provision of the Franchise Agreement, by agreement in writing between the Parties to that effect,

(each a "**Variation**").

1.2 Without prejudice to the Secretary of State's rights under paragraph 1.1(a), the terms of each of:

(a) clauses 5 (Duration of the Franchise Agreement), 7 (Assignment), 10 (Cumulative Rights and Remedies), 11 (Dispute Resolution), 12 (Notices), 13 (Set-Off) and 14 (Miscellaneous Provisions) of this Agreement;

(b) Schedules 8 (Payments), 9 (Changes and Variations), 10 (Remedies, Events of Default and Termination Events), 12 (Financial Covenants and Bonds) and 14 (Preservation of Assets) of this Agreement; and

(c) the definitions set out at clause 3 (Definitions) of this Agreement insofar as such affect the respective rights and obligations of the Secretary of State and the Franchisee pursuant to the provisions referred to at (a) and (b) above,

shall not be varied at any time other than in accordance with the terms of the Franchise Agreement or with the agreement of the Parties.

1.3 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.

1.4 The Secretary of State may:

(a) issue, revise and withdraw from time to time procedures that he requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and

- (b) require the Franchisee to provide any information that the Secretary of State reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).
- 1.5 Procedures issued pursuant to paragraph 1.4 may provide for indicative iterations of Runs of the Financial Model in relation to one or more Changes that the Secretary of State is considering and may also provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the Financial Model.
- 1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the Parties in accordance with their terms.
- 1.7 The Franchisee may notify the Secretary of State of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:
- (a) the timescale for doing so;
 - (b) the effect (if any) on the timing of the performance of its other obligations under the Franchise Agreement;
 - (c) the impact of effecting the proposed Variation on the provision of the Franchise Services and the Franchisee's proposals as to how to minimise such impact; and
 - (d) the financial consequences of implementing the Variation proposed by the Franchisee in terms of the Revised Inputs that the Franchisee considers the Variation would require.

2. ⁷²⁶Not Used.

3. Capital Expenditure

3.1 Capital Expenditure Threshold

The Franchisee shall notify the Secretary of State promptly if it reasonably expects that a Change to which paragraph 1 or 2 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of one per cent (1%) of its annual Turnover as disclosed by its latest available Annual Audited Accounts and, when so notified, the Secretary of State shall either:

- (a) withdraw (or direct the Franchisee to withdraw) the Change;
- (b) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (c) direct the Franchisee to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial

⁷²⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in the Franchisee failing to comply with the financial covenants contained in Schedule 12 (Financial Covenants and Bonds).

3.2 **Franchisee to Seek Finance**

If the Secretary of State elects to require the Franchisee to use all reasonable endeavours as described in paragraph 3.1(c) then the Franchisee shall:

- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to the Franchisee, the Guarantor and the Parent;
- (b) if it is unable to raise funding, provide the Secretary of State with all information the Secretary of State may reasonably require in relation to the efforts made by the Franchisee and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), the Franchisee shall provide to the Secretary of State letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if the Secretary of State so requires, arrange and attend meetings with them for the Secretary of State to discuss those reasons; and
- (d) if funding is not available, or is not available on terms that the Secretary of State considers to be commercial terms or at rates which are consistent with market conditions at that time the Secretary of State may:
 - (i) withdraw the Change; or
 - (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

3.3 **Treatment of Borrowings in Revised Inputs**

In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 3, the Franchisee shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

3.4 **Meaning of Capital Expenditure**

The expression "**Capital Expenditure**" when used in this Schedule 9.3 refers to the nature of the expenditure incurred by the Franchisee and, accordingly, does not include expenditure incurred under operating leases.

SCHEDULE 9.4**Secretary of State Risk Assumptions****1. ERTMS**

It shall be a Change if there is a material change to the actual implementation plans (including the relevant timescales for the delivery of such plans) adopted by Network Rail in respect of the ERTMS Programme when compared to the plans as specified in the Network Rail ERTMS Implementation Plan and, as a result, after taking into account any compensation that the Franchisee is entitled to claim whether under Schedule 4 of the Track Access Agreement, Condition G.2 of the Network Code or otherwise (and for these purposes it shall be assumed that the Track Access Agreement complies with the provisions of paragraph 11.2 of Schedule 13.1 (Rail Industry Initiatives)), the Franchisee is financially better off than would otherwise have been the case.

2. Crossrail

From the Passenger Change Date in May 2019 those Crossrail Services which operated between Shenfield, Gidea Park, Ilford and Liverpool Street High Level prior to such date are not diverted to operate to Paddington through the Crossrail Central Core with a residual Crossrail Service of four trains per hour between Gidea Park and Liverpool Street High Level in the weekday peak periods in accordance with the Crossrail May 2019 Timetable.

3. Structural Assessments

3.1 Where Repair Works and/or Mitigation Works (as the case may be) are required to be undertaken:

- (a) in order to ensure that a Structure listed on the Affected Asset List will be capable of Passing a Structural Assessment; and
- (b) no further funding is to be made available to carry out the Repair Works and/or Mitigation Works pursuant to the SA Agreement,

the Franchisee shall notify the Secretary of State of such together with reasonable details of the Repair Works and/or Mitigation Works required and an outline estimate of the costs of such together with all supporting documentation, including the failed assessment report and any remedial plan provided by NR ("**SA Notice**").

3.2 The Secretary of State shall within thirty (30) Weekdays of the date of receipt of the SA Notice notify the Franchisee in writing whether the Secretary of State (in his absolute discretion) elects that:

- (a) the Secretary of State shall provide the additional funding required to Network Rail so that the Repair Works and/or Mitigation Works (as the case may be) may be carried out pursuant to the SA Agreement; or
- (b) require the Franchisee to undertake the Repairs Works and/or Mitigation Works (as the case may be) necessary so that the Structure will be capable of Passing a Structural Assessment (and where the Secretary of State fails to respond within thirty (30) Weekdays of the date of receipt of the SA Notice this election shall be deemed to have been made).

- 3.3 It shall be a Qualifying Change where the Secretary of State notifies the Franchisee pursuant to paragraph 3.2 (b) that it requires the Franchisee to procure the necessary Repair Works and/or Mitigation Works (as the case may be) so that the Structure will be capable of Passing a Structural Assessment and in these circumstances:
- (a) the Franchisee shall consult on and agree with the Secretary of State (i) the Repair Works and/or Mitigation Works (as the case may be) necessary so that the Structure will be capable of Passing a Structural Assessment; and (ii) the programme for carrying out such works (or on failing to agree either or both (i) and (ii) such will be as reasonably determined by the Secretary of State);
 - (b) carry out the Repair Works and/or Mitigation Works (as the case may be) in accordance with the programme as such are either agreed or determined in accordance with paragraph 3.3 (a);
 - (c) the Franchisee shall ensure that the costs of carrying out the Repair Works and/or Mitigation Works (as the case may be) necessary so that the Structure will be capable of Passing a Structural Assessment are as low as reasonably practicable.

4. Level Crossings

4.1 It shall be a Qualifying Change where:

- (a) by the Passenger Change Date in May 2019, Network Rail has failed to procure and complete the Level Crossing Upgrade Works; and
- (b) solely and directly as a result of such failure by Network Rail to complete the Level Crossing Upgrade Works, the Franchisee is not able to meet the Minimum TSR2 Requirements,

provided that the Franchisee has complied with the provisions of paragraph 4.2 of this Schedule 9.4, paragraph 12.1 and paragraph 13.3 of Part 2 of Schedule 1.1 (Franchise Service and Service Development).

4.2 The Franchisee shall use all reasonable endeavours to co-operate with Network Rail in respect of:

- (a) any survey Network Rail requires to undertake in respect of the Level Crossings; and
- (b) the implementation of the Level Crossing Upgrade Works.

5. Power Supply

5.1 It shall be a Qualifying Change where:

- (a) by the Passenger Change Date in May 2019, Network Rail has failed to procure and complete the Power Supply Upgrade Works; and
- (b) solely and directly as a result of such failure by Network Rail to complete the Power Supply Upgrade Works, the Franchisee is not able to meet the Minimum TSR2 Requirements,

provided that the Franchisee has complied with the provisions of paragraph 4.2 of this Schedule 9.4, paragraph 12.1 and paragraph 13.3 of Part 2 of Schedule 1.1 (Franchise Service and Service Development).

- 5.2 The Franchisee shall use all reasonable endeavours to co-operate with Network Rail in respect of:
- (a) any survey Network Rail requires to undertake in respect of the Power Supply; and
 - (b) the implementation of the Power Supply Upgrade Works.

SCHEDULE 10**Remedies, Events of Default and Termination Events**

| | |
|----------------|--|
| Schedule 10.1: | Procedure for remedying a Contravention of the Franchise Agreement |
| Schedule 10.2: | Events of Default and Termination Events |
| Schedule 10.3: | Force Majeure and Business Continuity |
| Schedule 10.4: | Liability |

SCHEDULE 10.1**Procedure for remedying a Contravention of the Franchise Agreement****1. Contraventions of the Franchise Agreement**

- 1.1 The Franchisee shall notify the Secretary of State, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Franchisee of any provision of the Franchise Agreement. This includes where the Franchisee is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.
- 1.2 The Franchisee shall deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, the Franchise Agreement.

2. Remedies for Contraventions of the Franchise Agreement⁷²⁷ **If:**

- (a) **the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene any term of the Franchise Agreement; and/or**
- (b) **the:**
- (i) **Secretary of State is satisfied that the Franchisee is operating at a level that would, or would likely, be scored "1"; or**
- (ii) **Franchisee has received a score of "1",**
- (c) **the Franchisee has received a score of "1" in relation to any EMA Scorecard Criterion in accordance with the EMA Review process set out in appendix 1 (EMA Review) of Schedule 8.B (Performance Payment) of the Franchise Agreement as amended by the EMA:**

the Secretary of State may serve a notice on the Franchisee requiring it to:

- (d) **propose such steps as the Franchisee considers appropriate for the purpose of securing or facilitating compliance with the term in question; and/or**
- (e) **address and overcome the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion or EMA Scorecard Criterion (as applicable),**

⁷²⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

as applicable, (each a "Remedial Plan Notice").

3. ⁷²⁸Remedial Plan Notices

3.1 Each Remedial Plan Notice shall specify the following:

(a) the:

- (i) term or terms of the Franchise Agreement that the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene (each a "Relevant Term"); and/or
- (ii) specific Scorecard Criterion under the PBF Assessment Period Scorecard that the Secretary of State is satisfied that the Franchisee is likely to score, or has scored, "1" in; and/or
- (iii) specific EMA Scorecard Criterion under the EMA Review Scorecard in respect of which the Franchisee has scored "1",

as applicable; and

- (b) the time period ("Remedial Plan Period") within which the Secretary of State requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with such Relevant Term and/or addressing and overcoming the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion or EMA Scorecard Criterion, as applicable (a "Remedial Plan").

4. Remedial Plans

4.1 If the Secretary of State issues a Remedial Plan Notice, the Franchisee shall submit a Remedial Plan to the Secretary of State within the Remedial Plan Period.

4.2 ⁷²⁹Each Remedial Plan shall set out:

(a) the:

- (i) Relevant Term which has caused such Remedial Plan to be required; and/or
- (ii) the Scorecard Criterion in respect of which the Franchisee has received, or is likely to receive, a score of "1"; and/or
- (iii) the EMA Scorecard Criterion in respect of which the Franchisee has received a score of "1",

⁷²⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁷²⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

as applicable;

(b) an explanation of the reasons for:

- (i) the contravention or likely contravention of the Relevant Term; and/or**
- (ii) the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion; and/or**
- (iii) the Franchisee receiving a score of "1" with respect to the relevant EMA Scorecard Criterion,**

as applicable;

(c) the steps proposed for the purposes of:

- (i) securing or facilitating compliance with the Relevant Term; and/or**
- (ii) addressing and overcoming the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion and/or EMA Criterion (as applicable),**

as applicable; and

(d) the time period within which the Franchisee proposes to implement those steps.

5. Remedial Agreements

5.1 If the Secretary of State is satisfied that the matters within such Remedial Plan referred to in paragraphs 4.2(c) and (d) are appropriate (with or without further modification as the Parties may agree) he may require the Franchisee to enter into a supplemental agreement (the "**Remedial Agreement**") with the Secretary of State to implement those matters.

5.2 It is a term of the Franchise Agreement that the Franchisee (at its own cost) complies with each Remedial Agreement in accordance with its terms.

6. Effect of Force Majeure Event on a Remedial Agreement

6.1 Without prejudice to the operation of paragraph 2.1 of Schedule 10.2 (Events of Default and Termination Events), the following provisions shall apply in relation to Force Majeure Events affecting the Franchisee's performance of their obligations pursuant to a Remedial Agreement:

- (a) the Franchisee shall give written notice to the Secretary of State promptly after the Franchisee becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchisee's ability to comply with a Remedial Agreement within the period specified therein;**
- (b) each notice submitted in accordance with paragraph 6.1(a) shall state the extent or likely extent of the relevant Force Majeure Event and, in the case**

of a Force Majeure Event which has not occurred at such time, the reasons why the Franchisee considers it likely to occur;

- (c) the Franchisee shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
- (d) subject to the Franchisee having complied with its obligations under paragraphs 6.1(a) to 6.1(c) (inclusive) the Franchisee shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with that Remedial Agreement.

7. Monitoring by the Secretary of State

7.1

- (i) Following the occurrence of a contravention of the Franchise Agreement; and/or
- (ii) ⁷³⁰ **where the Secretary of State is satisfied that the Franchisee is operating at a level that would, or would likely, be scored "1" or the Franchisee has received a score of "1" in relation to any of the Scorecard Criteria for a particular PBF Assessment Period, in accordance with the PBF Assessment Period Review process set out in Schedule 8.1B (Performance Based Fee); and/or**
- (iii) ⁷³¹ **where the Franchisee has received a score of "1" in relation to any of the EMA Scorecard Criteria in accordance with the EMA Review process set out in appendix 1 (EMA Review) of Schedule 8.B (Performance Payment) of the Franchise Agreement as amended by the EMA,**

the Secretary of State may at his option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Franchisee's performance of any relevant obligations until such time as the Franchisee demonstrates, to the Secretary of State's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the Franchise Agreement.

- 7.2 The Franchisee shall co-operate fully with the Secretary of State in relation to the monitoring referred to in paragraph 7.1.
- 7.3 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11.1 (Franchise Performance Meetings).

⁷³⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷³¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 7.4 ⁷³²**The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out such monitoring. Any such compensation shall be a Disallowable Cost pursuant to Appendix 1 (Disallowable Costs) to Schedule 8.1A (Franchise Payments).**

⁷³² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 10.2**Events of Default and Termination Events****1. Definition of Events of Default**

Each of the following is an **"Event of Default"**:

1.1 Insolvency

- (a) **Administration:** Any step being taken by any person with a view to the appointment of an administrator to the Franchisee, the Parent, any Bond Provider or the Guarantor;
- (b) **Insolvency:** Any of the Franchisee, the Parent, any Bond Provider or the Guarantor stopping or suspending or threatening to stop or suspend payment of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph the words **"it is proved to the satisfaction of the court that"** in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;
- (c) **Arrangements with Creditors:** The directors of the Franchisee, the Parent, any Bond Provider or the Guarantor making any proposal under Section 1 of the Insolvency Act 1986, or any of the Franchisee, the Parent, any Bond Provider or the Guarantor proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** Any expropriation, attachment, sequestration, execution or other enforcement action or other similar process affecting any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent, any Bond Provider or the Guarantor, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Franchisee, the Parent, any Bond Provider or Guarantor with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee, the Parent, any Bond Provider or Guarantor ceasing or threatening to cease to carry on all or, in the reasonable opinion of the Secretary of State, a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Secretary of State before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Franchisee under Sections 60 to 62 of the Act; and

- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 1.1,

subject, in the case of any relevant event occurring in relation to a Bond Provider where no such other Event of Default has occurred and is unremedied or continuing at such time, to a period of twenty (20) Weekdays having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

1.2 **Non-payment**

The Franchisee failing to pay to the Secretary of State any amount due under the Franchise Agreement within twenty eight (28) days of the due date for such payment.

1.3 **Change of Control**

A Change of Control other than in accordance with the prior consent of the Secretary of State pursuant to clause 8 (Change of Control and Facilitation Fee).

1.4 **Revocation of Licence**

Revocation of any Licence required to be held by the Franchisee in order to comply with its obligations under the Franchise Agreement.

1.5 **Safety Certificate and Safety Authorisation**

The Safety Certificate and/or Safety Authorisation of the Franchisee being withdrawn or terminated.

1.6 **[NOT USED] ~~Passenger Service Performance~~**

~~Except in respect of any Reporting Period falling within the Initial Reporting Period, the Franchisee's performance in relation to any Benchmark is equal to or worse than the Default Performance Level for that Benchmark for:~~

- ~~(a) any three (3) consecutive Reporting Periods;~~
- ~~(b) any four (4) Reporting Periods within a period of thirteen (13) consecutive Reporting Periods; or~~
- ~~(c) any five (5) Reporting Periods within a period of twenty six (26) consecutive Reporting Periods.⁷³³~~

1.7 **Non-compliance with Remedial Agreements and Orders under the Act**

⁷³³ Unless otherwise instructed by the Secretary of State, paragraph 1.6 shall not apply during the term of the ERMA, provided that the Parties agree that paragraph 1.6 shall automatically apply if the Parties agree (or the Secretary of State determines, as applicable) that the Quantified Target Methodology shall apply to the Operational Performance Fee pursuant to and in accordance with the terms of Schedule 8.1B (Performance Based Fee).

- (a) Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is reasonably considered by the Secretary of State to be material.
- (b) Non-compliance by the Franchisee with:
 - (i) a provisional order;
 - (ii) a final order;
 - (iii) a penalty; or
 - (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order,

in each case made by the Secretary of State under the Act.

- (c) Non-compliance by the Franchisee with any enforcement notice issued to it by the Secretary of State pursuant to Section 120 of the Act.
- (d) Non-compliance by the Franchisee with:
 - (i) a provisional order;
 - (ii) a final order;
 - (iii) any other order made pursuant to Section 55 of the Act,

in each case made by the ORR and relating to a contravention by the Franchisee of condition 27 of its Licence in respect of Stations.

1.8 **Not Used**

1.9 **Breach of Law**

- (a) It becoming unlawful for the Franchisee to provide all or, in the reasonable opinion of the Secretary of State, a material part of the Passenger Services or to operate all or, in the reasonable opinion of the Secretary of State, a material number of the Stations or Depots (except to the extent not required under the Franchise Agreement);
- (b) The Franchisee or any of the directors or senior managers of the Franchisee being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Franchise Services; or
- (c) The Franchisee being, in the reasonable opinion of the Secretary of State, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the Franchisee makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 1.9(c) until such appeal has been determined to be unsuccessful.

1.10 **Contravention of Other Obligations**

The occurrence of the following:

- (a) the Franchisee contravening to an extent which is reasonably considered by the Secretary of State to be material any one or more of its obligations under the Franchise Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.2 other than this paragraph 1.10);
- (b) the service by the Secretary of State on the Franchisee of a written notice specifying:
 - (i) such contravention; and
 - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Franchisee is required to so remedy; and
- (c) the Franchisee:
 - (i) contravening such obligation or obligations again to an extent which is reasonably considered by the Secretary of State to be material; or
 - (ii) permitting the contravention to continue; or
 - (iii) if the contravention is capable of remedy, failing to remedy such contravention within such period as the Secretary of State has specified in the notice served pursuant to paragraph 1.10(b)(ii).

1.11 **Non-membership of Inter-Operator Schemes**

The Franchisee ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

1.12 **Bonds**

- (a) Any Performance Bond or Season Ticket Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for such Bond Provider to perform its obligations thereunder;
- (b) A failure by the Franchisee to procure the provision to the Secretary of State of a Performance Bond (or Performance Bonds provided pursuant to paragraph 4.3 of Schedule 12 (Financial Covenants and Bonds)) which individually or in aggregate fulfil the requirements of Schedule 12 (Financial Covenants and Bonds); or
- (c) A failure by the Franchisee to procure the provision to the Secretary of State of a Season Ticket Bond which fulfils the requirements of Schedule 12 (Financial Covenants and Bonds).

1.13 **Key Contracts**

Termination of any Key Contract, or the failure by the Franchisee to take all reasonable steps to enter into an appropriate replacement contract prior to the scheduled expiry date of any Key Contract, except where requested by the Secretary of State or to the extent that the Franchisee has demonstrated to the reasonable satisfaction of the Secretary of State that for the duration of the Franchise Term:

- (a) it is no longer necessary for it to be party to such Key Contract; or
- (b) it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

1.14 **Funding Deed**

A failure by the Franchisee or the Guarantor to comply with their respective obligations under the Funding Deed.

1.15 **Rolling Stock Leases**

A failure by the Franchisee to enter into a new Rolling Stock Lease in accordance with paragraph 2.5 of Schedule 1.6 (The Rolling Stock) in respect of substitute rolling stock vehicles which meet the requirements of paragraph 2.1(d) of Schedule 1.6 (The Rolling Stock).

1.16 **Key Performance Indicator**

The Franchisee's performance in respect of a Key Performance Indicator is such that the Average KPI Performance for that Key Performance Indicator is less than the CE Lower KPI Threshold for that Key Performance Indicator at two (2) or more Performance Review Dates within any three (3) consecutive Performance Review Dates.

1.17 ⁷³⁴**Aggregated Costs and Revenues Liabilities**

The Franchisee's Aggregated Costs and Revenues Liabilities exceed the maximum value for Aggregated Costs and Revenues Liabilities as specified in paragraph 9.12 of Schedule 8.1A (Franchise Payments) to this Agreement.

2. **Definition of Termination Events**

Each of the following is a **"Termination Event"**:

- 2.1 any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months; or
- 2.2 the warranty given by the Franchisee pursuant to paragraph 6.1 of Schedule 12 (Financial Covenants and Bonds) is materially untrue; or

⁷³⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 2.3 the Franchisee commits a material breach of its obligation to notify the Secretary of State of any Occasion of Tax Non-Compliance in respect of any Affected Party (as defined in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds)) as required by paragraph 6.2(a) of Schedule 12 (Financial Covenants and Bonds); or
- 2.4 the Franchisee fails to provide details of proposed mitigating factors as required by paragraph 6.2(b) of Schedule 12 (Financial Covenants and Bonds) which in the reasonable opinion of the Secretary of State, are acceptable.

3. Consequences of Events of Default

The occurrence of an Event of Default shall constitute a contravention of the Franchise Agreement by the Franchisee. On the occurrence of an Event of Default the provisions of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement) shall apply.

4. Notification of Event of Default

The Franchisee shall notify the Secretary of State as soon as reasonably practicable on, and in any event within twenty four (24) hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Franchisee shall take such action or steps as the Secretary of State may require to remedy any Event of Default or potential Event of Default.

5. Termination Notices

- 5.1 The Secretary of State may, on and at any time after the occurrence of:
 - (a) (subject to paragraphs 5.2 and 5.3) an Event of Default which:
 - (i) is unremedied or continuing; and
 - (ii) the Secretary of State considers to be material; or
 - (b) a Termination Event specified in paragraph 2.1 of this Schedule 10.2 which is unremedied or continuing; or
 - (c) a Termination Event specified in paragraph 2.2, 2.3 and 2.4 of this Schedule 10.2,terminate the Franchise Agreement by serving a Termination Notice on the Franchisee. The Franchise Agreement shall terminate with effect from the date specified in any such Termination Notice.
- 5.2 The Secretary of State may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the Remedial Plan Period has expired.
- 5.3 The Secretary of State may not serve a Termination Notice in respect of an Event of Default for which the Franchisee is implementing a Remedial Agreement in accordance with its terms.

6. Consequences of Termination or Expiry

- 6.1 Upon termination of the Franchise Agreement (whether through default or effluxion of time or otherwise) the obligations of the Parties shall cease except for:
- (a) any obligations arising as a result of any antecedent contravention of the Franchise Agreement;
 - (b) any obligations which are expressed to continue in accordance with the terms of the Franchise Agreement; and
 - (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.
- 6.2 Nothing in this paragraph 6 shall prevent the Secretary of State from bringing an action against the Franchisee in connection with the termination of the Franchise Agreement prior to the expiry of the Franchise Term.

SCHEDULE 10.3**Force Majeure and Business Continuity****1. Definition of Force Majeure Events**

The following events shall constitute "**Force Majeure Events**", subject to the conditions specified in paragraph 2 being satisfied:

- (a) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:
 - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Franchisee is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1(a)(i) and 1 (a) (ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
 - (iv) "**Contingency Plan**" means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of Network Rail, or such other contingency or recovery plan as the Secretary of State may agree from time to time;
- (b) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail or any Facility Owner (other than a Facility Owner which is an Affiliate of the Franchisee) from entering or leaving:
 - (i) any station or part thereof (excluding any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
- (c) any of the following events occurs:
 - (i) a programme of Mandatory Modifications commences;

- (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
- (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,

and, in each case, the greater of two (2) Rolling Stock Units and ten (10) per cent of all rolling stock vehicles used by the Franchisee in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;

- (d) the Franchisee prevents or restricts the operation of any train on safety grounds provided that:
 - (i) the Franchisee has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
 - (ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;
- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion (together "**Emergency Events**") or the act of any government instrumentality (including the ORR but excluding the Secretary of State) in so far as the act of government instrumentality directly relates to any of the Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1(e) by reason of:
 - (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
 - (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
 - (iii) an act of God which results in the Franchisee or its agents or subcontractors being prevented or restricted by Network Rail from gaining access to any relevant section or part of track; or
 - (iv) ⁷³⁵ **for the duration of the ERMA, the occurrence and impact, whether direct or indirect, of COVID-19; and**

⁷³⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (f) any strike or other Industrial Action by any or all of the employees of the Franchisee or any or all of the employees of:
- (i) Network Rail;
 - (ii) the operator of any other railway facility; or
 - (iii) any person with whom the Franchisee has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Franchisee in the provision of the Franchise Services,
- or of the agents or sub-contractors of any such person listed in paragraphs 1(f)(i) to 1(f)(iii).

⁷³⁶**The definition of "Force Majeure Event" shall for the duration of the ERMA exclude the occurrence and impact, whether direct or indirect, of COVID-19.**

2. Conditions to Force Majeure Events

- 2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:
- (a) in relation to an event occurring under paragraph 1 (a), that event has continued for more than twelve (12) consecutive hours;
 - (b) the Franchisee notifies the Secretary of State within two (2) Weekdays of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:
 - (i) the occurrence or likely occurrence of the relevant event; and
 - (ii) the effect or the anticipated effect of such event on the Franchisee's performance of the Passenger Services;
 - (c) at the same time as the Franchisee serves notification on the Secretary of State under paragraph 2.1(b), it informs the Secretary of State of the steps taken and/or proposed to be taken by the Franchisee to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;
 - (d) the relevant event did not occur as a result of:
 - (i) any act or omission to act by the Franchisee or its agents or subcontractors, save that in respect of the occurrence of Industrial Action in accordance with paragraph 1(f), the provisions of paragraph 2.2 apply; or

⁷³⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (ii) the Franchisee's own contravention of, or default under, the Franchise Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) the Franchisee used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event; and
- (f) the Franchisee shall, to the extent reasonably so requested by the Secretary of State, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1(f) occurs as a result of an act or omission to act by the Franchisee or its agents or subcontractors;
- (b) the Secretary of State reasonably believes that it was reasonable for the Franchisee, its agents or subcontractors (as the case may be) so to act or omit to act; and
- (c) the other conditions specified in paragraph 2.1 have been satisfied,

such occurrence shall be a Force Majeure Event.

3. Consequences of Force Majeure Events

- 3.1 The Franchisee shall not be responsible for any failure to perform any of its obligations under the Franchise Agreement, nor shall there be any contravention of the Franchise Agreement if and to the extent that such failure is caused by any Force Majeure Event.
- 3.2 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months, it shall be a Termination Event in accordance with paragraph 2 of Schedule 10.2 (Events of Default and Termination Events).
- 3.3 ⁷³⁷ **Notwithstanding any other provision of this Agreement, and without prejudice to the Parties' positions as to whether the Force Majeure provisions would otherwise be engaged, the Franchisee agrees that it shall not for the duration of the ERMA be entitled to further relief from obligations pursuant to the Force Majeure provisions under this Schedule 10.3 as a direct or indirect impact of COVID-19.**

⁷³⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

4. Business Continuity**4.1 Obligation to Produce a BCP**

- (a) Within one (1) month following the Start Date the Franchisee shall produce and provide to the Secretary of State a written Business Continuity Plan in respect of the Franchise Services and the people, facilities and assets used to provide them which is consistent with the requirements of ISO 22301.
- (b) Within one (1) month of the end of each Franchisee Year the Franchisee shall provide to the Secretary of State a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that the Business Continuity Plan is consistent with the requirements of the ISO 22301.

4.2 No Relief under Force Majeure

- (a) Nothing in paragraph 3 (Consequences of Force Majeure Events) will relieve the Franchisee from its obligations under the Franchise Agreement to create, implement and operate the Business Continuity Plan.
- (b) If a Force Majeure Event affecting the Franchisee occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, then paragraph 3.1 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if:
 - (i) the Franchisee had complied with this paragraph 4; and
 - (i) the Business Continuity Plan had been fully and properly implemented and operated in accordance with this paragraph 4 and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

SCHEDULE 10.4**Liability****1. Exclusion of Liability****1.1 Liability with respect to Passengers and Third Parties**

- (a) The Franchisee hereby acknowledges that the Secretary of State will not be responsible for the actions of the Franchisee or any Affiliate of the Franchisee and that, except as expressly provided in the Franchise Agreement, the Franchisee shall provide and operate the Franchise Services at its own cost and risk without recourse to the Secretary of State or government funds or guarantees.
- (b) The Franchisee, on demand, shall hold the Secretary of State fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Secretary of State in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the Franchise Services which is caused or contributed to by the Franchisee, any Affiliate of the Franchisee, or any employee, agent, contractor or sub-contractor of the Franchisee or of any Affiliate of the Franchisee.

1.2 Liability of the Secretary of State

Neither the Secretary of State nor any of his officers, agents or employees shall in any circumstances be liable to the Franchisee for any loss or damage caused by the negligent exercise of any powers reserved to the Secretary of State under the Franchise Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Secretary of State under the Franchise Agreement. The Franchisee may not recover from the Secretary of State or any of his officers, agents, or employees any amount in respect of loss of profit or consequential loss.

2. Review or Monitoring by the Secretary of State

- 2.1 The Secretary of State may for his own purposes (whether under the Franchise Agreement or under any other arrangement or otherwise and whether before or after the date of the Franchise Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchisee under the Franchise Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Secretary of State during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either Party from or reduce or otherwise affect the obligations of such Party under the Franchise Agreement.
- 2.2 The exercise by or on behalf of the Secretary of State of (or, as the case may be, any failure to exercise) any of his functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on the Secretary of State to any other Party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Secretary of State of an express provision of the Franchise Agreement and the Secretary of State does not make or give any representation or warranty, either express or implied, as to whether

any proposal, plan or project will enable either Party to comply with its obligations under the Franchise Agreement.

SCHEDULE 11**Franchise Performance Meetings and Management Information**

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|----------------|---|
| Schedule 11.1: | Franchise Performance Meetings |
| Schedule 11.2: | Management Information |
| | Appendix 1: Environmental Information |
| | Appendix 2: Operational Information |
| | Appendix 3: Summary of Reporting and Other Requirements |

SCHEDULE 11.1**Franchise Performance Meetings****1. Franchise Performance Meetings**

1.1

- (a) The Parties shall hold a Franchise Performance Meeting at least once in every Reporting Period (or such other interval as the Secretary of State may notify to the Franchisee in writing) at a time and location notified to the Franchisee by the Secretary of State.
- (b) The Franchisee shall ensure that:
 - (i) each of its representatives at all Franchise Performance Meetings have full power and authority delegated to them by the Franchisee to act and to make binding decisions on behalf of the Franchisee and shall include such directors and/or senior managers of the Franchisee as the Secretary of State may require; and
 - (ii) representatives of the Parent (which shall include such directors and/or senior managers of the Parent as the Secretary of State may require) attend every quarterly Franchise Performance Meeting.

1.2 The Franchisee shall prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably request. The Franchisee's obligations under this paragraph 1.2 are subject to the Franchisee receiving at least twenty eight (28) days' notice of the requirement to prepare and present any such report.

1.3 No comment or failure to comment nor any agreement or approval, implicit or explicit by the Secretary of State at such meetings will relieve the Franchisee of any of its obligations under the Franchise Agreement. The Franchisee shall only be relieved of any of its obligations under the Franchise Agreement through the signed written agreement of the Secretary of State.

SCHEDULE 11.2**Management Information****1. Corporate Information**

- 1.1 The Franchisee shall provide the following information to the Secretary of State on the Start Date and shall notify the Secretary of State of any change to such information within twenty one (21) days of such change:
- (a) its name;
 - (b) its business address and registered office;
 - (c) its directors and company secretary;
 - (d) its auditors;
 - (e) its trading name or names; and
 - (f) to the best of the Franchisee's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than twenty per cent (20%) of the votes at general meetings of the Franchisee.
- 1.2 The Franchisee shall inform the Secretary of State of any material change or proposed material change in its business (including the employment or the termination of employment of any Key Personnel, the termination of any Key Contract and any litigation or other dispute which may have a material effect on its business) and any material change in or restructuring of the capitalisation or financing of the Franchisee, the Parent or the Guarantor.

2. Information about Assets used in the Franchise

- 2.1 The Franchisee shall at all times during the Franchise Term maintain (and shall provide copies to the Secretary of State when requested to do so from time to time) records covering the following information:
- (a) for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:
 - (i) the progress and completion of all work described in the maintenance schedules and manuals;
 - (ii) all operating manuals (including any safety related regulations);
 - (iii) all permits, licences, certificates or other documents required to operate such asset; and
 - (iv) a printed or electronic list of all assets owned by the Franchisee from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items); and

- (b) ⁷³⁸ **each capital asset acquired by the Franchisee during the term of the EMA and the ERMA with a value of over £50,000, including the Franchisee's source of funding for such asset, the depreciation policy for such asset, the assumed asset life on bringing such asset into use and the remaining asset life of such asset as at the date of any request from the Secretary of State for this information.**
- 2.2 ⁷³⁹ **As soon as practicable and, in any event, no later than 27 November 2020, the Franchisee shall identify and provide to the Secretary of State a list and reasonable details of all contracts it has entered into with third parties (including Affiliates) which the Franchisee would not be entitled to terminate on expiry of the Franchise Term without incurring liability in relation to the termination of such contract on that date.**

3. Identification of Key Personnel and Provision of Organisation Chart

- 3.1 The Franchisee shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Franchisee in the performance of the Franchise Agreement. This shall include, but not be limited to, the following persons:
- (a) a managing director whose role will include the overall management of the operation of the Franchise Services;
 - (b) ⁷⁴⁰ **a train service delivery director, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1 (Operational Performance);**
 - (c) a safety director, whose role will include responsibility for ensuring that the Franchisee complies with its legal obligations in relation to the Franchise Services including the Safety Certificate; and
 - (d) ⁷⁴¹ **a finance director, whose role will include responsibility in relation to the Budget, the Annual Audited Accounts, the Final Accounts and the provision of other financial data to Secretary of State.**
- 3.2 ⁷⁴² **The Franchisee shall nominate a board level director of the Franchisee (or at the Secretary of State's sole discretion, a director of a Parent or an Affiliate) within seven (7) days of the date of this Agreement. Such director's responsibilities include overseeing, at a strategic level, the Franchisee's interface with the Secretary of State in relation to Sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of the Franchisee in connection with the**

⁷³⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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⁷⁴⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁷⁴¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁷⁴² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

Franchisee's compliance with relevant instructions issued by the Secretary of State under Section 119 of the Act from time to time. Such director shall be identified by job title in the organisation chart referred to in paragraph 3.3 and shall be deemed part of the Key Personnel.

- 3.3 ⁷⁴³ On or before the Start Date, the Franchisee shall provide to the Secretary of State the schedule of Key Personnel and the organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update the schedule and organisation chart (and provide copies to the Secretary of State promptly thereafter), as and when any changes occur.

4. Operational Performance Information

⁷⁴⁴ The Franchisee shall provide to the Secretary of State the information specified in Schedule 11.2 (*Operational Performance Information*) to this Schedule 11.2 at the times specified therein.

5. ⁷⁴⁵ Maintenance of Records

- 5.1 The Franchisee shall at all times create and maintain true, up to date and complete records, books and other materials relating to the:

- (a) operation and maintenance of Franchise Assets;
- (b) operation of the Franchise Services; and
- (c) financial performance of the Franchise,

in each case, in exercising that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would reasonably be expected from a prudent and leading Train Operator and in order to fulfil the requirements of the Franchise Agreement, including in relation to maintenance of the Franchise as a going concern in accordance with paragraph 1 of Schedule 14.1 (*Maintenance of Franchise*).

- 5.2 Unless otherwise agreed by the Secretary of State, all records, books and materials required to be maintained by the Franchisee in accordance with this Schedule 11.2 shall be held in a form that is capable of audit for a period of not less than six (6) years following the Expiry Date or the date of any earlier termination of this Agreement.
- 5.3 References to records, books and materials in this Schedule 11.2 shall include records, books and materials maintained under any Previous Franchise Agreement to the extent that such records relate to services equivalent to the Franchise Services and the Franchisee

⁷⁴³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁷⁴⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁷⁴⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

has access to them (which it shall use all reasonable endeavours to secure). Notwithstanding the requirements of paragraphs 5.2 and 5.4, the Franchisee shall only be required to hold such records, books and materials created under any Previous Franchise Agreement for a period of six (6) years following the date of this Agreement.

- 5.4 The Franchisee shall not be responsible for any records, books or materials maintained under any Previous Franchise Agreement, as referred to in paragraph 5.3, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records, books or materials are not true, complete and up to date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records, books or materials in accordance with paragraph 5.1.

6. ⁷⁴⁶Right to Inspect

- 6.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and the Secretary of State's representatives and advisers:
- (a) to inspect and copy any records referred to in this Schedule 11.2, Schedule 8.1A (*Franchise Payments*) or Schedule 8.1B (*Performance Based Fee*) and the Secretary of State may verify any such records; and/or
 - (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services.
- 6.2 The Franchisee shall make available to the Secretary of State, the Secretary of State's representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, the Secretary of State's representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 6.2 shall include an obligation on the Franchisee to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 6.1 is kept by or on behalf of the Franchisee.
- 6.3 The Secretary of State, the Secretary of State's representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.
- 6.4 If any inspection reveals that information previously supplied to the Secretary of State was, in the reasonable opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchisee's obligations under the Franchise Agreement which the Secretary of State considers to be

⁷⁴⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

material, the costs of any such inspection shall be borne by the Franchisee and which, for the avoidance of doubt, shall be Disallowable Costs pursuant to Appendix 1 (*Disallowable Costs*) to Schedule 8.1A.

7. Information to the Passengers' Council and Local Authorities

The Franchisee shall comply with any reasonable requests and guidance issued by the Secretary of State from time to time in respect of the provision of information to and co-operation and consultation with the Passengers' Council and Local Authorities.

7A ⁷⁴⁷Information relating to Committed Obligations and Franchise Specific Obligations

7.1 As soon as practicable and, in any event no later than 27 November 2020, the Franchisee shall deliver to the Secretary of State a statement in respect of the status of each Franchise Specific Obligation and Committed Obligation as at 1 March 2020 including:

- (a) a breakdown of Franchise Specific Obligations and Committed Obligations setting out those which:**
 - (i) were completed in full and in respect of which the Franchisee has no further obligations;**
 - (ii) were fully implemented but where the Franchisee retained ongoing obligations in relation to the continued discharge of the relevant Franchise Specific Obligation and/or Committed Obligation (as applicable);**
 - (iii) were partially implemented and in respect of which the Franchisee retained ongoing obligations; and**
 - (iv) the Franchisee had not yet commenced implementing;**
- (b) in respect of each of the Franchise Specific Obligations and Committed Obligations identified in paragraph (i)(B)-(C) above, details of:**
 - (i) the progress of implementation of the relevant Franchise Specific Obligation or Committed Obligation (as applicable) and any Franchisee obligations which remain outstanding or are continuing;**
 - (ii) where applicable, the reason(s) for any delay in implementing the relevant Franchise Specific Obligation or Committed Obligation (as applicable), together with any supporting evidence; and**

⁷⁴⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (iii) **the Franchisee's actual expenditure together with a reconciliation against the amount it was obliged or otherwise projected to spend up to 1 March 2020 in respect of the implementation and continued discharge (as applicable) of the relevant Franchise Specific Obligation or Committed Obligation (as applicable).**
- 7.2 **Without prejudice to the Secretary of State's rights pursuant to paragraph 7A(c) below, the Secretary of State may exercise the Secretary of State's rights under paragraph 9.9 of Schedule 11.2 to audit or otherwise investigate any of the matters described in paragraph 7A(a).**
- 7.3 **Without prejudice to the Franchisee's obligations under paragraph 7A(a) above, the Secretary of State reserves the right to determine, in the Secretary of State's sole discretion, the position in respect of the matters described in paragraph 7A(a) by reference to all the information available to it.**

8. ⁷⁴⁸Periodic Update Reports

- 8.1 **The Franchisee shall prepare and submit to the Secretary of State a periodic report in each Reporting Period which shall:**
- (a) **contain updates on the Franchisee's progress in complying with its Committed Obligations together with any other information as the Secretary of State may specify from time to time;**
 - (b) **relate to the period preceding the date of the report, unless another period is reasonably required by the Secretary of State; and**
 - (c) **be disaggregated to the extent required by the Secretary of State.**
- 8.2 **Where, as part of the periodic report referred to in paragraph 8.1, the Secretary of State requires the Franchisee to provide information and/or details in addition to those required pursuant to paragraph 8.1, the Franchisee shall ensure that the periodic report includes such additional information and/or details, subject to the Franchisee having received at least twenty eight (28) days' notice of the additional information and/or details required by the Secretary of State.**
- 8.3 **Without prejudice to any other reporting obligations of the Franchisee, the Franchisee shall, at the end of each Reporting Period, provide a separate and standalone progress update to the Secretary of State in respect of:**

⁷⁴⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (a) **the matters included in Schedule 2 (*Termination of the Franchise Agreement*) to the ERMA and the matters referenced in paragraphs 2.2 and 7A of this Schedule 11.2; and**
- (b) **such other related information as the Secretary of State may request.**

9. Financial Information

9.1 ⁷⁴⁹Accounting Records

The Franchisee shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period of the Franchisee Year. In particular, the Franchisee shall ensure that such accounting records are produced and maintained in a form which distinguishes between transactions which reasonably and properly relate, on the accruals basis, to:

- (a) **the period prior to 1 March 2020;**
- (b) **the period from 1 March 2020 to the EMA Start Date;**
- (c) **the term of the EMA;**
- (d) **the term of the ERMA; and**
- (e) **the period after the term of the ERMA (if any).**

9.2 ⁷⁵⁰Reporting Period Financial Information

- (a) **The Franchisee shall deliver to the Secretary of State, within ten (10) Weekdays of the end of each Reporting Period:**
 - (i) **Management Accounts for such Reporting Period, setting out a cash flow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date;**
 - (ii) **written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the Franchisee, contain a true and accurate reflection of the current revenues, costs, assets and liabilities of the Franchisee (including contingent assets or liabilities and known business risks and opportunities) and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further**

⁷⁴⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁷⁵⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

information that the Secretary of State shall reasonably require in relation; and

- (iii) written confirmation from a statutory director of the Franchisee that the Franchisee has complied with the restrictions applicable during the Lock-up Period pursuant to paragraph 3 of Schedule 12 (*Financial Covenants and Bonds*).**

(b) The Management Accounts shall also set out:

- (i) sufficient information to enable the Secretary of State to calculate with reasonable accuracy the Forecast Closing Cash Position as at the end of the following three (3) Reporting Periods;**
- (ii) the Franchisee's forecast of:**
 - (A) the Franchisee's daily Cash Balance for the period of thirteen (13) weeks following the Reporting Period to which the Management Accounts relate;**
 - (B) the amount of Working Capital Payment (if any) that the Franchisee forecasts that it will require pursuant to paragraph 9 (*Review of Franchisee's performance against Budget*) of Schedule 8.1A in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate, which forecasts shall provide an explanation in relation to any material differences between the actual and forecast payments to and from Affiliates as referred to in paragraph 9.2(b)(iv)(C) below; and**
 - (C) payments to and from Affiliates of the Franchisee, disaggregated between each individual Affiliate entity, in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate;**
- (iii) a detailed statement of the Franchisee's actual payments to and from Affiliates of the Franchisee and the net balance of such payments, disaggregated between each individual Affiliate entity in respect of the Reporting Period to which the Management Accounts relate, setting out the details of the specific company or legal entity the transactions were with and the nature of the goods or services exchanged in respect of the Reporting Period to which the Management Accounts relate, which shall provide separate identification of:**
 - (A) the Affiliate to or from whom each such payment was made; and**
 - (B) a description of the nature of the services rendered in relation to each such payment;**

- (iv)
 - (A) a comparison of the Franchisee's financial performance during such period against the forecast provided by the Franchisee in the then current Business Plan and Quarterly Forecast;
 - (B) a comparison on a line by line basis of Actual Costs, Actual Capex and Actual Revenue of the Franchisee compared to the Budgeted Costs, Budgeted Capex and Estimated Revenue for that Reporting Period; and
 - (C) a detailed statement and a detailed and comprehensive written explanation of any material differences between the actual payments to and from Affiliates of the Franchisee and the forecast of such payments as referred to in paragraph 9.2(b)(ii) above as set out in the Management Accounts in relation to the preceding Reporting Period;
- (v) a comparison of the Franchisee's cumulative financial performance during the Franchisee Year in which such period occurs against the then current Business Plan and Quarterly Forecast and in particular of cumulative Actual Costs, Actual Capex and Actual Revenue of the Franchisee compared to cumulative forecasts of the same in the then current Business Plan and Quarterly Forecast;
- (vi) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Management Accounts and the forecasts referred to in paragraph 9.2(b)(ii) above as set out in the Management Accounts in relation to the preceding Reporting Period and a detailed and comprehensive explanation of the variances between Actual Costs and Budgeted Costs, Actual Capex and Budgeted Capex, and Actual Revenues and Estimated Revenue and a description of (1) the steps which have been taken by the Franchisee to address and mitigate any Costs in excess of Budgeted Costs and/or Capex variances to Budgeted Capex and/or Estimated Revenue shortfall and/or (2) which could otherwise be taken for that purpose;
- (vii) where:
 - (A) the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Secretary of State, materially worse than forecast by the Franchisee in its then current Business Plan or Quarterly Forecast (whichever is more recent);
 - (B) the Franchisee's Outturn Cost and/or Outturn Profit (as applicable) in relation to the preceding PBF Assessment Period was worse than the applicable Target Cost or Target Profit pursuant to Schedule 8.1B (*Performance Based Fee*); or

(C) the Secretary of State considers (acting reasonably) that it is likely that the Franchisee's Outturn Cost and/or Outturn Profit (as applicable) in relation to the current PBF Assessment Period or the preceding PBF Assessment Period (if the Outturn Cost and/or Outturn Profit has not yet been calculated)),

the Secretary of State may require the Franchisee to prepare and submit to the Secretary of State, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan; and

(viii) if applicable, a detailed statement and explanation of any PCS Advances (as defined in the Funding Deed) provided during such Reporting Period;

(ix) a detailed statement and a detailed and comprehensive written explanation of any material differences between such payments to and from Affiliates and the forecast referred to in paragraph 9.2(b)(ii)(C);

(x) sufficient information to enable the Secretary of State to calculate the Performance Based Fee, including (where applicable) a clear and detailed comparison of the:

(A) cumulative Actual Costs less any cumulative Disallowable Costs in relation to the PBF Assessment Period to date, as compared with the cumulative forecast Costs set out in the Target Cost Template as Placed in Escrow; and

(B) cumulative Actual Costs less any cumulative Disallowable Costs and cumulative Actual Revenue plus cumulative Revenue Foregone in relation to the PBF Assessment Period to date, as compared with the cumulative forecast Costs and Revenues set out in the Target Profit Template as Placed in Escrow,

and any other information which the Secretary of State may request (acting reasonably).

(c) Within five (5) Weekdays after receipt of the Management Accounts for each Reporting Period in accordance with paragraphs (a) and (b) above, the Secretary of State shall notify the Franchisee of any further information, explanation or analysis which the Secretary of State requires in relation to the Management Accounts (including information in relation to the calculation of the Franchise Payment under the provisions of Schedule 8.1A (*Franchise Payments*)) and the Franchisee shall promptly provide such further information or analysis.

9.3 ⁷⁵¹Quarterly Financial Information

- (a) **Within twenty (20) weekdays after the end of the 3rd, 6th and 9th Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information (a "Quarterly Forecast"):**
- (i) **a comprehensive updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided as part of either the current Annual Business Plan in accordance with paragraph 10.1 (*Annual Business Plans*) of this Schedule 11.2 or the then-current Quarterly Forecast (whichever is more recent) together with a detailed and comprehensive written explanation as to any changes in such forecast from the previous forecast provided pursuant to the provisions of this Schedule 11.2, for each of the following thirteen (13) Reporting Periods or for each of the Reporting Periods to 31 March 2022, whichever is greater;**
 - (ii)
 - (A) a copy of each new contract with an Affiliate which the Franchisee proposes to enter into or renew in the next 6 months;**
 - (B) a copy of each existing contract with an Affiliate which the Franchisee proposes to amend in the next 6 months; and**
 - (C) details of any potential contract procurement process (pursuant to which the Franchisee proposes to enter into a contract with the successful bidder) in which the Franchisee reasonably expects an Affiliate to participate in the next 6 months,****in each case following the end of the relevant Quarter; and**
 - (iii) **a statement from a statutory director of the Franchisee confirming that the profit and loss forecast delivered pursuant to paragraph 9.3(a)(i) has been prepared in accordance with the requirements of the Franchise Agreement.**
- (b) **Where any Reporting Period falls partly within one (1) Franchisee Year and partly within another, the results for each section of such Reporting Period falling either side of such Franchisee Year end shall be prepared on an accruals basis for each such section of such Reporting Period.**
- (c) **The Franchisee shall, promptly and in any event within twenty-five (25) Weekdays of a request from the Secretary of State (acting reasonably), deliver to the Secretary of State an updated forecast**

⁷⁵¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

in relation to the information required to be delivered pursuant to paragraphs 9.3(a) and 9.3(b) in the same level of detail as is required pursuant to paragraphs 9.3(a) and 9.3(b).

- (d) **If:**
- (i) **the Secretary of State has issued a notice to the Franchisee pursuant to paragraph 4.2(a) of Schedule 8.1B (*Performance Based Fee*) in relation to a PBF Assessment Period commencing on any date other than 1 April in any Franchisee Year; and**
 - (ii) **the Franchisee has not delivered a Quarterly Forecast to the Secretary of State in accordance with this paragraph 9.3 for the most recent quarter,**

the Secretary of State may reasonably determine the contents of the Quarterly Forecast for the purposes of setting the Target Cost and/or the Target Profit (as applicable).

9.4 ⁷⁵²**Annual Financial Information**

- (a) **Within fifteen (15) Weekdays of the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State:**
- (i) **its Annual Management Accounts for that Franchisee Year, divided between Reporting Periods:**
 - (A) **prior to 1 March 2020;**
 - (B) **during the period from 1 March 2020 to the EMA Start Date;**
 - (C) **during the term of the EMA;**
 - (D) **during the term of the ERMA; and**
 - (E) **following the term of the ERMA (if any).**

For all Reporting Periods, line items should be disaggregated between sections in relation to Actual Costs, Actual Revenues, Actual Capex, Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs, Accrued Revenue Foregone, accrued SoS Claims, Non-Recoverable Costs and Unreimbursed Disallowable Costs; and

- (ii) **a supplementary explanation setting out details of any Non-Recoverable Costs and Disallowable Costs that have not been reimbursed for that Franchisee Year.**

⁷⁵² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) **Within four (4) Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:**
- (i) **xxiii xxiv xxv certified true copies of its annual report and Annual Audited Accounts for that Franchisee Year, together with copies of all related directors' and auditors' reports. Additionally, the auditors shall certify that the accounting for and reporting of any annual related bonuses paid to the directors and managers is reasonably consistent with GAAP;**
 - (ii) **a detailed and comprehensive reconciliation between the Annual Audited Accounts and the Management Accounts for the Franchisee Year (the "Audited Accounts Reconciliation"). The Audited Accounts Reconciliation shall:**
 - (A) **include a detailed reconciliation, disaggregating Actual Costs, Actual Revenues, Actual Capex, Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs, Accrued Revenue Foregone, accrued SoS Claims, Non-Recoverable Costs and Unreimbursed Disallowable Costs in the Annual Audited Accounts to: (1) each of the periodic Management Accounts within that Franchisee Year and (2) the Annual Management Accounts in relation to that Franchisee Year, all in a format to be from time to time reasonably specified by the Secretary of State. This reconciliation shall:**
 - (i) **disaggregate the Actual Costs, Actual Capex and Actual Revenues in the Annual Audited Accounts so as to report against (and show in a format consistent with that used in) the Budget and, where relevant, the Target Cost Template and/or the Target Profit Template held in Escrow in relation to any PBF Assessment Periods within that Franchisee Year; and**
 - (ii) **facilitate the identification of Actual Costs, Actual Capex and Actual Revenues as reported in the Annual Audited Accounts;**
 - (B) **include a statement of the Franchisee's balance sheet included within the Annual Audited Accounts in relation to the previous Franchisee Year (the "Opening Balance Sheet"), disaggregated between balances payable to or receivable from the Secretary of State and the aggregate amount of all other balances (such aggregated other balances being the "Opening Operational Balances");**
 - (C) **include a statement of the Franchisee's audited balance sheet included within the Annual Audited Accounts as at the end of the Franchisee Year (the "Closing Balance Sheet"), disaggregated between balances payable to or receivable from the Secretary**

- of State and the aggregate amount of all other balances (such aggregated other balances being the "Closing Operational Balances");
- (D) include a statement identifying and explaining the differences between the Opening Operational Balances and the Closing Operational Balances (such differences comprising the "Operational Delta") in sufficient detail to allow the Secretary of State to obtain a full understanding of the reasons for the Operational Delta;
 - (E) clearly identify and distinguish between transactions within the Operational Delta which reasonably and properly relate, on the accruals basis to each of that Franchisee Year, any other Reporting Periods during the term of the EMA or the ERMA, and any Reporting Periods prior to 1 March 2020, sufficient to allow identification of transactions and accounting adjustments which do not relate to the term of the EMA or the ERMA;
 - (F) identify the total Actual Costs and total Actual Revenue that are included within the Operational Delta;
 - (G) identify any and all Accrued Disallowable Costs or Accrued Revenue Foregone which are in the Opening Balance Sheet or Closing Balance Sheet, and any Accrued Revenue Foregone which is not included in the Closing Balance Sheet but which existed at 19 September 2020;
- (iii) a statement from the Franchisee's auditors (in a format to be reasonably specified by the Secretary of State from time to time, on the basis of providing the Secretary of State with reasonable assurance) that the Audited Accounts Reconciliation has been undertaken accurately;
 - (iv) [Not used]
 - (v) a statement from the Franchisee's auditors confirming that GAAP has been applied in a fair and consistent manner;
 - (vi) [Not used];
 - (vii) [Not used]; and
 - (viii) sufficient information for the Secretary of State to calculate the Final Adjustments, the Final Working Capital Adjustment and the Performance Based Fee.

9.4A ⁷⁵³ Additional Financial Information

- (c) **By no later than the end of the first Reporting Period following the date of the ERMA, the Franchisee shall deliver to the Secretary of State:**
- (i) **a draft of the Franchisee’s balance sheet as at 1 March 2020, prepared in accordance with GAAP, on the accruals basis and on the basis of all knowledge and information available to the Franchisee at the time of preparation, such balance sheet being disaggregated between balances payable to or receivable from the Secretary of State (such balances in aggregate being the “Restated P2012 SoS Balances”) and all other balances (such other balances in aggregate being the “Restated P2012 Operational Balances”), both provided in a level of detail to be specified from time to time by the Secretary of State (the “Restated P2012 Balance Sheet”); and**
 - (ii) **a reconciliation to the Restated P2012 Balance Sheet within the Annual Audited Accounts provided by the Franchisee for the Franchisee Year ending on the date that is closest to 1 March 2020.**
- (d) **Within 10 Weekdays following the date on which the Restated P2012 Balance Sheet is agreed or determined by the Secretary of State in accordance with paragraphs 9.4A(k) or 9.4A(l) (as applicable) below, the Franchisee shall deliver to the Secretary of State:**
- (i) **a draft of the Franchisee’s balance sheet as at 20 September 2020 prepared in accordance with GAAP, on the accruals basis and on the basis of all knowledge and information available to the Franchisee at the time of preparation, such balance sheet being disaggregated between balances payable to or receivable from the Secretary of State (such balances in aggregate being the “Restated P2106 SoS Balances”) and all other balances (such other balances in aggregate being the “Restated P2106 Operational Balances”) both provided in a level of detail to be specified from time to time by the Secretary of State (the “Restated P2106 Balance Sheet”); and**
 - (ii) **a reconciliation between the Restated P2012 SoS Balances and the Restated P2106 SoS Balances, and between the Restated P2012 Operational Balances and the Restated P2106 Operational Balances.**

⁷⁵³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (e) **As soon as practicable and in any event by no later than two (2) months following the term of the ERMA, the Franchisee shall deliver to the Secretary of State:**
- (i) **a draft of the Franchisee's balance sheet as at the date of the end of the ERMA term, prepared in accordance with GAAP, on the accruals basis and on the basis of all knowledge and information available to the Franchisee at the time of preparation, such balance sheet being disaggregated between balances payable to or receivable from the Secretary of State (such balances in aggregate being the "Final ERMA SoS Balances") and all other balances (such other balances in aggregate being the "Final ERMA Operational Balances") both provided in a level of detail to be specified from time to time by the Secretary of State (the "Final ERMA Balance Sheet"); and**
 - (ii) **a reconciliation between the Restated P2012 SoS Balances and the Final ERMA SoS Balances, and between the Restated P2012 Operational Balances and the Final Operational Balances,**
- with such Final ERMA Balance Sheet being a Closing Balance Sheet as at the date of the end of the ERMA term and, where such date is also the Expiry Date, shall include and be reconciled to the Net Asset Statement (as defined in Appendix 2 (*Form of Supplemental Agreement*) to Schedule 15.4 (*Provisions applying on and after Termination*)) of the Franchisee.**
- (f) **The Franchisee shall ensure that each of the schedule of Restated P2012 Operational Balances, schedule of Restated P2106 Operational Balances and schedule of Final ERMA Operational Balances in each Balance Sheet (as defined below) shall clearly identify the assets and liabilities to the account of the Franchisee (being balance sheet items of the Franchisee), properly prepared on an accruals basis for, and disaggregated between, all relevant items including:**
- (i) **reserves, equity or any other balance sheet items in relation to any Performance Based Fee, Fixed Fee or Management Fee and Performance Payment (as such term is defined in schedule 8.A (*Franchise Payments*) of the EMA);**
 - (ii) **if applicable, any PCS Advances, Outstanding AFC (each as defined in the Funding Deed), and any interest payable on such amounts, in accordance with the terms of the ERMA;**
 - (iii) **fixed assets designated as Primary Franchise Assets and/or Residual Value Assets (as applicable); and**
 - (iv) **fixed assets that have been funded by the Secretary of State in accordance with the terms of the ERMA.**
- (g) **The Franchisee shall ensure that each of the schedule of Restated P2012 SoS Balances, schedule of Restated P2106 SoS Balances and schedule of Final ERMA SoS Balances in each Balance Sheet (as**

defined below) shall clearly identify the assets and liabilities to the account of the Franchisee (being balance sheet items of the Franchisee), properly prepared on the accruals basis for, and disaggregated between, all relevant items including but not being limited to:

- (i) any Accrued Disallowable Costs, Accrued Revenue Foregone and accrued SoS Claims;
 - (ii) the Working Capital Payment or Working Capital Repayment (if any) pursuant to Schedule 8.1A (*Franchise Payments*);
 - (iii) accruals in relation to any Franchise Payment;
 - (iv) deferred or accrued Franchise Payments relating to the period prior to 1 March 2020;
 - (v) deferred or accrued Franchise Payments relating to the period from 1 March 2020 onwards; and
 - (vi) accruals or provisions for claims between the Franchisee and the Secretary of State relating to Change or SOSRA.
- (h) The Franchisee shall ensure that each of Restated P2012 Balance Sheet, Restated P2106 Balance Sheet and Final ERMA Balance Sheet shall clearly identify:
- (i) where provisions or accruals have been created for the period following 1 March 2020, a clear evidence base for how these provisions or accruals have been valued by the Franchisee; and
 - (ii) where provisions or accruals exist as at the date of any Balance Sheet and such provisions or accruals relate to the period prior to 1 March 2020:
 - (A) a summary of these items;
 - (B) where such items are included with the relevant Balance Sheet(s); and
 - (C) the Franchisee's proposed approach to winding down these items over the term of the ERMA.
- (i) Each of the Restated P2012 Balance Sheet, the Restated P2016 Balance Sheet and the Final ERMA Balance Sheet (together, the "Balance Sheets") shall be accompanied by a statement from a director of the Franchisee confirming that such Balance Sheet gives a true and fair view of the assets, liabilities, equity and reserves of the Franchisee as at the relevant dates in accordance with GAAP consistently applied and on the basis of all knowledge and information available to the Franchisee on the date of provision to the Secretary of State in each case.
- (j) The Franchisee shall promptly supply, or procure prompt supply of, all supporting information on an open book basis the Secretary of

State may reasonably require in relation to each delivery of any Balance Sheet. If requested by the Secretary of State to do so, the Franchisee shall procure a statement from the Franchisee's auditor confirming that GAAP has been applied in a fair and consistent manner in any such Balance Sheet, including any version of such Balance Sheet after any amendments have been made. As requested by the Secretary of State, the Franchisee shall promptly provide updated versions of any such Balance Sheet to reflect amendments prior to final agreement or determination in accordance with paragraphs 9.4A(k) or 9.4A(l) (as applicable) below.

- (k) After receipt of each Balance Sheet by the Secretary of State in accordance with this paragraph 9.4A, the Franchisee and the Secretary of State shall seek to promptly agree any amendments required to the Balance Sheets in order to give a true and fair view of the assets, liabilities, equity and reserves of the Franchisee as at the relevant dates in accordance with GAAP consistently applied and on the basis of all knowledge and information available to the Franchisee and the Secretary of State at the time of consideration. The Franchisee and the Secretary of State recognise and agree that this will require the most recent revaluation of assets and liabilities of the Franchisee as at the dates of each Balance Sheet, and that such revaluation shall be included in place of any earlier valuation provided in the balance sheets included in any Management Accounts, Annual Management Accounts or Annual Audited Accounts
- (l) Subject to paragraph 9.4A(m) below, in the event that the Franchisee and the Secretary of State cannot agree final versions of any Balance Sheets which, in the Secretary of State's opinion (acting reasonably), give a true and fair view on the basis of the evidence available to the Secretary of State, the Secretary of State may reasonably determine any values within any such Balance Sheets.
- (m) The Secretary of State shall not be entitled to reasonably determine any Final ERMA Balance Sheet values in accordance with paragraph 9.4A(l) above until the later of:
 - (i) seven (7) Reporting Periods following the termination of the EMA; or
 - (ii) the date upon which the Annual Audited Accounts and Annual Accounts Reconciliation for the Franchisee Year in which the ERMA ends are due to be provided.

Where the value of any assets or liabilities within the Final ERMA Balance Sheet have previously been determined by the Reporting Accountants pursuant to Appendix 2 (*Template Form of Supplemental Agreement*) to Schedule 15.4 (*Provisions applying on and after Termination*), the Secretary of State shall only be entitled to reasonably determine a different value in the case of manifest error being discovered in the valuation previously determined by the Reporting Accountants.

- (n) **The Franchisee shall unwind the Final ERMA Balance Sheet promptly following the date on which the Final ERMA Balance Sheet is agreed or determined by the Secretary of State, acting as a Good and Efficient Operator.**
- (o) **The Franchisee shall, if requested to do so by the Secretary of State and in the Secretary of State's sole discretion, within two (2) Reporting Periods following the final Reporting Period of the ERMA Term or the Extended Term (as applicable) deliver to the Secretary of State:**
 - (i) **certified true copies of its Final Accounts for the ERMA Stub Reporting Periods in aggregate, together with copies of all related directors' and auditors' reports;**
 - (ii) **a detailed and comprehensive reconciliation between the Final Accounts and the Management Accounts for the ERMA Stub Reporting Periods (the "Final Audited Accounts Reconciliation"). The Final Audited Accounts Reconciliation shall:**
 - (A) **include a detailed reconciliation, disaggregating Actual Costs, Actual Revenues, Actual Capex, Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs, Accrued Revenue Foregone, accrued SoS Claims, Non-Recoverable Costs and Unreimbursed Disallowable Costs in the Final Accounts to: (1) each of the periodic Management Accounts within the ERMA Stub Reporting Periods and (2) the Annual Management Accounts in relation to that Franchisee Year, all in a format to be from time to time reasonably specified by the Secretary of State. This reconciliation shall:**
 - (i) **disaggregate the Actual Costs, Actual Capex and Actual Revenues in the Final Accounts so as to report against (and show in a format consistent with that used in) the Budget and, where relevant, the Target Cost Template and/or the Target Profit Template held in Escrow in relation to the ERMA Stub Reporting Periods; and**
 - (ii) **facilitate the identification of Actual Costs, Actual Capex and Actual Revenues as reported in the Final Accounts;**
 - (B) **include a statement of the Franchisee's balance sheet included within the Final Accounts in relation to the ERMA Stub Reporting Periods (the "Final Opening Balance Sheet"), disaggregated between balances payable to or receivable from the Secretary of State and the aggregate amount of all other balances (such as aggregated other balances being the "Final Opening Operational Balances");**

State is entitled to take this information into consideration in the exercise of any further rights or obligations in this paragraph 9.4A.

9.5 ⁷⁵⁴**Accounting Standards and Practices**

- (a) **Each set of Management Accounts and Annual Management Accounts shall:**
- (i) **be in the format as the Secretary of State may reasonably specify from time to time;**
 - (ii) **be prepared:**
 - (A) **in accordance with the Franchisee's obligations in Clause 6.1 (*General Obligations*); and**
 - (B) **consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and**
 - (iii) **not include any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cash flow projection and the balance sheet contained in the last Quarterly Forecast provided pursuant to paragraph 9.3 (*Quarterly Financial Information*) without the prior approval of the Secretary of State.**
- (b) **The Annual Audited Accounts and Final Accounts shall:**
- (i) **be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and**
 - (ii) **give a true and fair view of:**
 - (A) **the state of affairs, profits and financial condition of the Franchisee for the period covered by such accounts; and**
 - (B) **the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee, such revenue to be disaggregated by reference to revenue derived by the Franchisee from:**
 - (i) **the sale of tickets;**

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- (ii) **income received from Network Rail pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement;**
- (iii) **car park revenue; and**
- (iv) **other income; and**

(C) **Not Used.**

9.5A ⁷⁵⁵Changes to Accounting Policies

The Franchisee shall not, without the express written consent of the Secretary of State, make any alteration to its accounting policies or basis of preparation in relation to its Management Accounts, Annual Management Accounts, Annual Audited Accounts or Final Accounts.

9.6 ⁷⁵⁶Parent and Affiliate Accounts and Affiliate Trading

- (a) **The Franchisee shall, upon the request of the Secretary of State, promptly deliver to, or procure delivery to, the Secretary of State:**
 - (i) **certified true copies of the annual reports and audited accounts of each Parent and any Affiliate, together with copies of all related directors' and auditors' reports. If any of the Parents or any Affiliate is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the relevant Parent or Affiliate (as applicable) shall be delivered to the Secretary of State;**
 - (ii) **certified true copies of and/or details of (as instructed by the Secretary of State) any contracts or non-contractual arrangements with any Affiliate, including those which give rise to payments from an Affiliate to the Franchisee or payments from the Franchisee to an Affiliate (including payments or charges in relation to management services);**
 - (iii) **procurement policies in relation to contracts and non-contractual arrangements with Affiliates, including policies in relation to Affiliates procuring services from third parties on behalf of the Franchisee; and**
 - (iv) **evidence that all services provided by Affiliates (including management services) have been procured competitively and on an arm's length basis, have a sound business case, comply with of the Franchise Agreement and are in all ways appropriate.**
- (b) **The Franchisee shall procure that any new contract entered into between the Franchisee and any of its Affiliates is capable of being**

⁷⁵⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

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terminated in accordance with its terms after a period of seven (7) Reporting Periods and that the Franchisee shall not incur any penalty or be required to make any termination payment to the relevant Affiliate if the Franchisee elects to exercise any such termination right.

9.7 ⁷⁵⁷ Secretary of State Audit of Calculations provided pursuant to paragraphs 9.2, 9.3 and 9.4

- (a) Without prejudice to paragraph 2.2 of Schedule 12 (*Financial Covenants and Bonds*) or to any other rights of the Secretary of State under the Franchise Agreement, the Secretary of State and the Secretary of State's representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts, the Annual Audited Accounts, the Audited Accounts Reconciliation, the Final Accounts and any information held or provided in connection with the Franchisee's obligations under paragraph 2 of Schedule 12 (*Financial Covenants and Bonds*) or Schedule 8.1A (*Franchise Payments*).
- (b) The Franchisee shall make available to the Secretary of State and the Secretary of State's representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 9.7(a). If any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts, then:
- (i) the Secretary of State may:
- (A) reasonably determine any item contained in or relating to the Management Accounts; or
- (B) require any item contained in or relating to the Management Accounts to be adjusted in a manner which is fair and reasonable and, so far as reasonably determinable, on the basis on which such particular item contained in or relating to the Management Accounts should have been accounted for by the Franchisee as reasonably determined by the Secretary of State,

in either case to the extent that the Secretary of State considers appropriate in the circumstances for the purpose of making any such reasonable determination; and

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- (ii) **the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 7.4 of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*). The Franchisee shall not in any circumstances be entitled to claim back any such costs from the Secretary of State whether pursuant to Schedule 8.1A (*Franchise Payments*) or otherwise.**
- (c) **Without prejudice to paragraphs 9 (*Review of Franchisee's performance against Budget*), 10 (*Periodic Adjustments*), 11 (*Annual Adjustments*) or 17 (*Indexation*) of Schedule 8.1A (*Franchise Payments*), if any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Annual Audited Accounts the Final Accounts and/or the contents or form of the Audited Accounts Reconciliation then the Secretary of State shall have the right to reasonably determine the Opening Operational Balance, the Closing Operational Balance and/or any Franchise Payment Components for the purposes of correcting the effect of such material inaccuracy.**

9.8 ⁷⁵⁸ **Adjustment and Restatement of the Annual Audited Accounts or Final Accounts**

The Franchisee shall promptly notify the Secretary of State as soon as it becomes aware of any requirement to adjust or restate the Annual Audited Accounts or the Final Accounts and shall deliver to the Secretary of State any such adjusted or restated Annual Audited Accounts or Final Accounts, as soon as such accounts are available.

9.9 ⁷⁵⁹ **Access to financial information**

The Secretary of State, the Secretary of State's representatives and/or advisors shall be permitted to inspect at any time the books, records and other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the financial information provided pursuant to paragraph 8 (*Periodic Update Reports*) and this paragraph 9 or paragraph 7A of this Schedule 11.2 and paragraph 2 of schedule 3 (*Early Termination*) to the ERMA, and to request further information or review of this information, including:

- (a) **the use of an external auditor;**
- (b) **provision of full access to this information by the Secretary of State's officials, representatives and/or advisors on an "open book" basis; and**

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- (c) **provision of full access to this information by the National Audit Office or other equivalent body on an "open book" basis.**

10. Business Plans

10.1 ⁷⁶⁰Annual Business Plans

- (a) **By no later than the day falling 40 Weekdays prior to the start of the first Reporting Period in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the Franchisee's business plan for the forthcoming Franchisee Year (the "Annual Business Plan"). The Annual Business Plan shall be a detailed and comprehensive description of the Franchisee's planned activities for such Franchisee Year and the manner in which the Franchisee will meet its obligations under the Franchise Agreement in respect of that Franchisee Year and include:**
- (i) **a revised profit and loss forecast (prepared in accordance with the accounting standards and practices set out in paragraph 9.5 (*Accounting Standards and Practices*) and GAAP), which shall include a forecast of Costs, Revenue, Capital Expenditure and any forecast Disallowable Costs, Non-recoverable Costs and Revenue Foregone, in the same format and structure, and using the allocation of Costs and Revenues to individual lines, as either (a) the Financial Formats; or (b) the "P&L2" tab of the Financial Model (whichever format and structure has the more detailed breakdown of costs and revenues), a revised cash flow forecast which clearly states the gross amount of Capital Expenditure forecast to be incurred by the Franchisee (separately identifying any amounts funded by third parties) and a revised forecast balance sheet for each of the thirteen (13) Reporting Periods in each Franchisee Year during the Franchise Term;**
 - (ii) **a statement from a statutory director of the Franchisee confirming that the profit and loss forecast delivered pursuant to paragraph 10.1(a)(i) has been prepared in accordance with the requirements of the Franchise Agreement;**
 - (iii)
 - (A) **a forecast of the Franchisee's Forecast Closing Cash Position for the last day of each of the following thirteen (13) Reporting Periods; and**
 - (B) **a statement demonstrating how the Franchisee intends to ensure that at the end of each of the following thirteen (13) Reporting Periods it will have**

⁷⁶⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

an available Forecast Closing Cash Position which is not less than the Floor Cash Position;

- (iv) **an annual improvement plan providing:**
- (A) **details of any new technologies, processes, developments and/or proposals which could improve the provision of the Franchise Services, reduce the cost of providing the Franchise Services or enable the Franchise Services to be provided more efficiently;**
 - (B) **an analysis of the impact of any technologies, processes, developments and/or proposals that are proposed in relation to the Franchise Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of the Franchise Services;**
 - (C) **details of those technologies, processes, developments and/or proposals which the Franchisee proposes to implement during that Franchisee Year; and**
 - (D) **an analysis of the technologies, processes, developments and/or proposals which the Franchisee implemented in the previous Franchisee Year, including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for the previous Franchisee Year;**
- (v) ⁷⁶¹**a statement from each of, a statutory director of the Franchisee and, a statutory director of the Parent confirming that the Annual Business Plan has been provided to, considered and endorsed by the board of directors of each Parent and that the board of directors of each Parent is not aware of any other plan which may alter, vary of impact on the Business Plan and shall at any time during the following twelve (12) months notify the Secretary of State should any of them become aware of any such plan; and**
- (vi) ⁷⁶²**information in relation to arrangements with Affiliates, including:**
- (i) **a forecast of payments to or from any Affiliate;**
 - (ii) **a forecast of fees, remuneration, pension contributions or any other payment to or in**

⁷⁶¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁶² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

respect of any director or officer of the Franchisee; and

- (iii) evidence that all such payments are on arms' length commercial terms in the ordinary course of business and are otherwise compliant with the terms of the Franchise Agreement.

(b) **If:**

- (i) the Secretary of State has issued a notice to the Franchisee pursuant to paragraph 4.2(a) of Schedule 8.1B (*Performance Based Fee*) in relation to a PBF Assessment Period commencing on 1 April in any Franchisee Year; and
- (ii) the Franchisee has not delivered the Annual Business Plan to the Secretary of State in accordance with paragraph 10.1(a),

the Secretary of State may reasonably determine the contents of the Annual Business Plan for the purposes of setting the Target Cost and/or the Target Profit (as applicable and in each case as defined in Schedule 8.1B (*Performance Based Fee*)).

- (c) **If the Secretary of State has not issued a notice to the Franchisee pursuant to paragraph 4.2(a) of Schedule 8.1B (*Performance Based Fee*) in relation to a PBF Assessment Period commencing on 1 April of any Franchisee Year, the Franchisee may elect to deliver to the Secretary of State an updated Annual Business Plan within twenty (20) Weekdays of the start of that Franchisee Year.**
- (d) **If the Parties have agreed or the Secretary of State has reasonably determined the value of the Target Cost and/or the Target Profit pursuant to paragraphs 5.1 and 5.2 of Schedule 8.1B (*Performance Based Fee*), the Franchisee shall:**
 - (i) **update the Annual Business Plan to reflect the Target Cost as agreed or determined (as applicable) pursuant to paragraph 5.1 of Schedule 8.1B (*Performance Based Fee*);**
 - (ii) **update the Target Cost Template, the Target Cost Record of Assumptions, the Target Profit Template and/or the Target Profit Record of Assumptions (in each case, as applicable) to reflect the:**
 - (A) **Target Cost, Target Cost Cap and Target Cost Floor; and/or**
 - (B) **Target Profit, Target Profit Cap and Target Profit Floor,**

(as applicable) as agreed or determined pursuant to paragraphs 5.1 and 5.2 of Schedule 8.1B (*Performance Based Fee*); and

- (iii) **deliver the updated Annual Business Plan, Target Cost Template, Target Cost Record of Assumptions, Target Profit Template and/or Target Profit Record of Assumptions (as applicable) to the Secretary of State by no later than 1 April 2021,**

and the Target Cost Spreadsheet, Target Cost Record of Assumptions, Target Profit Template and/or Target Profit Record of Assumptions (as applicable) shall be Placed in Escrow once the Secretary of State is satisfied that such documents accurately reflect the:

- (i) **Target Cost, Target Cost Cap and Target Cost Floor; and/or**
- (ii) **Target Profit, Target Profit Cap and Target Profit Floor,**

(as applicable) as agreed or determined pursuant to paragraphs 5.1 and 5.2 of Schedule 8.1B (*Performance Based Fee*).

- (e) **If at any time during a Franchisee Year the Franchisee produces any other annual business plan or periodic plan which is delivered to its Parents, it shall at the same time as delivering such plan to its Parents notify the Secretary of State of all such plans. The Secretary of State shall be entitled to copies of such further plans as the Secretary of State shall reasonably determine.**

10.2 **Business Action Plan**

- (a) The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
 - (i) timetable and service pattern development;
 - (ii) Station facility improvement;
 - (iii) performance management improvement;
 - (iv) customer service improvement; and
 - (v) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- (b) The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.
- (c) ⁷⁶³**Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is**

⁷⁶³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

appropriate to do so and subject to any conditions which the Secretary of State may impose.

11. Safety Information

11.1 Safety

- (a) The Franchisee shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.
- (b) The Franchisee shall notify the Secretary of State as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from the ORR. Immediately upon receipt of such notification or notice, the Franchisee shall provide the Secretary of State with a copy of such notification or notice.
- (c) The Franchisee shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

12. Further Information

12.1 ⁷⁶⁴The Franchisee shall:

- (a) **deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such data, information, records or documents as he may request within such period as he may reasonably require and which relate to or are connected with the Franchisee's performance of the Franchise Agreement; and**
- (b) **procure that each Affiliate of the Franchisee complies with paragraph 12.1(a) in respect of any data, information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of its obligations under the Franchise Agreement.**

12.2 The information referred to in paragraph 12.1 shall include:

- (a) any agreement, contract or arrangement to which the Franchisee is a party in connection with any rolling stock vehicles used in the operation of the Passenger Services;
- (b) in so far as the Franchisee has or is able to obtain the same, any other agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock vehicles;

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- (c) any agreement for the manufacture or supply of any rolling stock vehicles; and
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

12.3 The Secretary of State may require the Franchisee to provide:

- (a) the information required to be provided under this Schedule 11.2 more frequently than set out in this Schedule 11.2;
- (b) ⁷⁶⁵**the information required to be provided under this Schedule 11.2, or, in the Secretary of State's sole discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise;**
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time;
- (d) ⁷⁶⁶**research or survey datasets which relate to or are connected with the Franchisee's performance of the Franchise Agreement;**
- (e) ⁷⁶⁷**any data or information which supports operational and business functions; and**
- (f) ⁷⁶⁸**information about any agreement, contract or arrangement to which the Franchisee is a party and which relate to or are connected with the Franchisee's performance of the Franchise Agreement.**

12.4 ⁷⁶⁹**Request for Data**

- (a) **If the Secretary of State requires any further information, data, records or documents during the Franchise Term which the Franchisee is not otherwise required to provide pursuant to this Franchise Agreement (the "Relevant Data"), the Secretary of State may issue a request to the Franchisee specifying:**
 - (i) **the Relevant Data the Franchisee is to provide to the Secretary of State;**
 - (ii) **any requirements in relation to timeliness, format and method of delivery of such Relevant Data; and**

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⁷⁶⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁶⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁶⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (iii) **where such Relevant Data is required to be provided on an ongoing basis, may include the frequency with which such Relevant Data shall be required to be delivered,**

(each a "Request for Data").

- (b) **The Franchisee acknowledges and agrees that any Relevant Data provided by the Franchisee pursuant to a Request for Data may be shared with other persons who are acting on the Secretary of State's behalf or such other persons as the Secretary of State may notify, in each case, in accordance with Schedule 17 (*Confidentiality, Freedom of Information and Data Protection*).**
- (c) **Within fourteen (14) days of the date of issuance of a Request for Data by the Secretary of State or such other timeframe as may be specified in the relevant Request for Data, the Franchisee shall:**
 - (i) **provide to the Secretary of State all Relevant Data specified in the Request for Data as it is reasonably able to provide or procure within such period; and**
 - (ii) **if the Franchisee has not provided all the Relevant Data specified in the Request for Data, it shall provide the Secretary of State with:**
 - (A) **details of any further action that would be required to enable it to provide such Relevant Data, including the rationale for requiring such further action together with relevant supporting evidence;**
 - (B) **the Franchisee's proposed timescales for taking such action in timely manner and the rationale for arriving at such timeframe; and**
 - (C) **where applicable, an estimate (including a breakdown of the individual cost components) of any additional costs the Franchisee expects to incur (acting reasonably) in order to provide such Relevant Data together with relevant supporting evidence.**
- (d) **The Secretary of State may, following review of the Franchisee's response pursuant to paragraph 12.4(c)(ii), require the Franchisee to take such further action as the Secretary of State may specify (acting reasonably), including providing part or all of the Relevant Data which remains outstanding or taking any steps to mitigate the amount of any costs that the Franchisee may incur in order to comply with the Request for Data.**

12.5 ⁷⁷⁰**The Franchisee shall provide an audit of data sources and information that are used by the Franchisee's business, as requested by the Secretary of State (acting reasonably) from time to time. The**

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Secretary of State may also request information and guidance from the Franchisee about its data sources, including the purpose for collecting such data, any risks associated with handling or sharing such data, and any third party contracts or agreements used to collect and process the data.

- 12.6 ⁷⁷¹ **Nothing in paragraphs 12 or 13 shall require the Franchisee to provide any Relevant Data or any other data, information, records or documents which would, or is reasonably likely to:**
- (a) **require it to incur additional costs, over and above those a Good and Efficient Operator would incur, unless the Secretary of State otherwise directs or gives consent or such additional costs were contemplated when the Secretary of State agreed or reasonably determined the Franchisee's most recent business plan and cost budget in accordance with the terms of Schedule 8.1A, and this Schedule 11.2; or**
 - (b) **put it in breach of any applicable law or regulation.**
- 12.7 ⁷⁷² **If the Franchisee reasonably considers that any provision of paragraphs 12 and 13 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Secretary of State may reasonably provide or direct.**

13. Information from Third Parties

- 13.1 ⁷⁷³ **The Franchisee shall, if the Secretary of State so requests, through a Request for Data or otherwise, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Franchisee which is or are maintained by third parties and to which the Secretary of State is entitled to have access, or of which the Secretary of State is entitled to receive a copy under the Franchise Agreement.**
- 13.2 The Franchisee shall, if the Secretary of State so requests, procure the provision by RSP to the Secretary of State of such information, data and records as the Franchisee is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.
- 13.3 The obligations of the Franchisee under this Schedule 11.2 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that he has received the relevant information directly from any other person (including Network Rail or RSP). The Franchisee shall,

⁷⁷¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁷² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁷³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.

- 13.4 ⁷⁷⁴**The Franchisee shall promptly advise the Secretary of State of any changes that are to be made to the databases, systems or processes which are owned, operated or otherwise used by the Franchisee which may have an impact on the Franchisee's ability to meet its data sharing obligations pursuant to the Franchisee Agreement or any Request for Data issued by the Secretary of State or will, in the reasonable opinion of the Franchisee, materially affect the continuity of any the supply of information or data that the Franchisee is required to provide to the Secretary of State pursuant to this Schedule 11.2. Any such advice shall include an assessment of the materiality of the relevant change.**
- 13.5 ⁷⁷⁵**To the extent that collection or supply of any data, information, records or documents is managed by a third party on the Franchisee's behalf:**
- (a) **the Franchisee shall use all reasonable endeavours to ensure that all relevant third party service providers permit the sharing with the Secretary of State of all data, information, records or documents which such third party service provider shall be required to provide or may provide on request to the Franchisee; or**
 - (b) **where the Franchisee is unable to procure access pursuant to paragraph 13.5(a), it shall use all reasonable endeavours to agree a variation or amendment to any contract or other arrangement in place between the Franchisee and the relevant third party as may be required to comply with paragraph 13.5(a).**
- 13.6 ⁷⁷⁶**During the Franchise Term, the Franchisee shall:**
- (a) **not enter into any new contracts or other arrangements which may materially adversely affect the Franchisee's ability to comply with paragraphs 12 and 13 of this Schedule 11.2, without the prior written consent of the Secretary of State; and**
 - (b) **to the extent it is entering into any material amendments to any existing contracts or arrangements with third parties, use all reasonable endeavours to ensure that the contract or arrangement (as amended) does not materially adversely affect the Franchisee's ability to comply with its requirements pursuant to paragraphs 12 and 13.**

⁷⁷⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁷⁷⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁷⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

14. Compatibility of Information

- 14.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under the Franchise Agreement shall be provided, if so requested by the Secretary of State, in a form compatible with the Secretary of State's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraph 3 of Schedule 13.1 (Rail Industry Initiatives).
- 14.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under the Franchise Agreement will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.

15. Environmental Information

15.1A ⁷⁷⁷Data Sharing

- (a) **The Franchisee shall share all available environmental data with the Secretary of State and RSSB as requested from time to time by the Secretary of State and/or RSSB, each acting reasonably, including in relation to:**
- (i) **air pollution emissions referenced in the Clean Air Strategy 2019 (including nitrogen oxides and particulate matter);**
 - (ii) **emissions of Greenhouse Gases (as defined in the Kyoto Protocol to the United Nations Framework Convention on Climate Change); and**
 - (iii) **energy usage.**
- (b) **The Secretary of State and/or (with the prior approval of the Secretary of State) RSSB, each acting reasonably, may instruct the Franchisee to collect and share with the Secretary of State and/or RSSB (as applicable) such additional environmental data as the Secretary of State and/or RSSB (as applicable) may require from time to time.**

15.1 Environmental Information Data Collection Plan

- (a) The Franchisee shall, by no later than three (3) months after the Start Date, provide a report to the Secretary of State setting out:
- (i) which measures included in the Dataset the Franchisee is unable to provide, despite using reasonable endeavours to do so ("**Excluded Data**");

⁷⁷⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (ii) for each item of Excluded Data, the technical, operational or commercial reason why the Franchisee is unable to provide the Excluded Data; and
 - (iii) a plan ("**Environmental Data Collection Plan**") detailing, in relation to each item of Excluded Data, the actions which the Franchisee would need to take in order to be able to provide such Excluded Data, the Franchisee's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Franchisee would be able to begin providing such Excluded Data to the Secretary of State.
- (b) The Dataset, excluding any measures which the Secretary of State agrees, acting reasonably, that the Franchisee is, despite using reasonable endeavours, unable to provide, shall be referred to as the "**Initial Dataset**".
- (c) The Secretary of State may require:
 - (i) the Franchisee to implement the Environmental Data Collection Plan in whole or in part; and/or
 - (ii) the Franchisee to take such other actions as, in the reasonable opinion of the Secretary of State, would enable the Franchisee to provide any item of Excluded Data,following which the relevant item of Excluded Data will form part of the Initial Dataset.
- (d) Where the Franchisee is:
 - (i) undertaking works, whether at a Station or Depot or in respect of rolling stock;
 - (ii) procuring rolling stock; or
 - (iii) taking any other action which could enable the Franchisee to provide any items of Excluded Data in a cost effective manner,the Franchisee will use reasonable endeavours to do so in a manner which would enable the Franchisee to provide any relevant item of Excluded Data (and any item of Excluded Data which the Franchisee becomes able to provide as a result will, with effect from the date on which the Franchisee becomes able to provide the same, form part of the Initial Dataset).
- (e) With effect from the Start Date, the Franchisee shall measure and collect the data included in the Initial Dataset.
- (f) The Franchisee may, in its discretion, measure and collect additional data, provided that the minimum required under the Initial Dataset is adhered to and the Franchisee will co-operate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.
- (g) The Franchisee shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated periodic or annual usage figure

to the Secretary of State as specified for each measure in paragraph 1 of Appendix 1 (*Environmental Information*) to this Schedule 11.2.

- (h) ⁷⁷⁸**In addition to paragraph (g) above, the Franchisee shall deliver the information required to be delivered pursuant to and in accordance with paragraph 1 (*Environmental Impact Monitoring Dataset*) of Appendix 1 (*Environmental Information*) to this Schedule 11.2 through the RSSB's online "Environmental Reporting Tool".**

15.2 Environmental Impact Monitoring Report and Environmental Impact Monitoring Audit

- (a) ⁷⁷⁹**Subject to paragraph 15.2A, the Franchisee shall submit to the Secretary of State a report setting out the result of the data collection of the Initial Dataset required by this paragraph 15 in accordance with the applicable granularity and regularity specified in paragraph 15 of Appendix 1 (*Environmental Information*) to this Schedule 11.2 (the "Environmental Impact Monitoring Report") within three (3) months following the end of each Franchisee Year.**
- (b) ⁷⁸⁰**Subject to paragraph 15.2A, the Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an annual independent written audit of the data provided in the Environmental Impact Monitoring Report and the collection methodology of the Initial Dataset in respect of each Franchisee Year (the "Environmental Impact Monitoring Audit").**
- (c) The Franchisee shall procure that the independent body appointed pursuant to paragraph 15.2(b) includes in the Environmental Impact Monitoring Audit:
- (i) a retrospective assessment (covering the Franchisee Year to which the audit relates) of the Franchisee's data collection methodology and level of data granularity carried out in accordance with this paragraph 15.2 and any recommendations by the independent body in respect of such methodology;
 - (ii) a verification of the accuracy of past data submissions made in respect of the Initial Dataset and as summarised in the Environmental Impact Monitoring Report; and
 - (iii) an assessment of the Franchisee's proposed data collection methodology and level of data granularity for the following Franchisee Year's data collection, and
 - (iv) where the independent body has identified as part of its audit any errors, discrepancies or concerns with any of the items described

⁷⁷⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁷⁹ 3 December 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁷⁸⁰ 3 December 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

in paragraphs 15.2(c)(i) to (iii) above, whether these are, in the reasonable opinion of the independent body undertaking the audit material or minor errors, discrepancies or concerns.

- (d) The Franchisee shall submit a copy of the Environmental Impact Monitoring Audit to the Secretary of State at the same time as Environmental Impact Monitoring Report is submitted in accordance with paragraph 15.2(a) above.
 - (e) Where the Environmental Impact Monitoring Audit highlights errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, the Franchisee shall:
 - (i) in the case of minor errors, discrepancies or concerns which are capable of rectification without material additional expenditure, rectify such minor errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays of the date of the submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question;
 - (ii) in the case of material errors, discrepancies or concerns which are capable of rectification, rectify such material errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays, following the date of submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question; and
 - (iii) in the case of concerns in relation to the Franchisee's data collection methodology and level of data granularity for the forthcoming Franchisee Year's data collection, make such amendments to such methodology as recommended in the Environmental Impact Monitoring Audit so as to address those concerns.
- 15.2A ⁷⁸¹ **For the duration of the COVID-19 Restriction Period, the Franchisee shall (taking into account the COVID-19 Guidance and Regulation) use all reasonable endeavours to comply with its obligations under paragraphs 15.1(a) and 15.1(b).**
- 15.3 ⁷⁸² **Air Quality Monitoring and Improvement**
- (a) **The Franchisee shall for the purposes of air quality monitoring at Stations under its control:**

⁷⁸¹ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁸² 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (i) **provide to the Secretary of State all existing data in relation to air quality and measures that the Franchisee is implementing to improve air quality at Stations under its control;**
 - (ii) **provide to the Secretary of State, RSSB, or any person whom the Secretary of State might reasonably specify, access to any sites, power supplies and telemetry under its control as requested by the Secretary of State or RSSB from time to time, including for the purpose of installing air quality monitors; and**
 - (iii) **assist the Secretary of State, RSSB or any person whom the Secretary of State might reasonably specify in the placement, replacement and dispatch of diffusion tubes.**
- (b) **The Franchisee shall for the purposes of air quality monitoring on rolling stock vehicles:**
 - (i) **provide to the Secretary of State, RSSB or any person whom the Secretary of State might reasonably specify during the Franchise Term, free-of-charge access to rolling stock vehicles whilst in or out of service;**
 - (ii) **consent for equipment to be installed on rolling stock vehicles for the purposes of air quality monitoring;**
 - (iii) **provide available on-train air quality data as the Secretary of State may require from time to time; and**
 - (iv) **consider cost-effective opportunities to improve air quality on rolling stock vehicles through operational or maintenance changes and, where reasonable and with the agreement or direction of the Secretary of State, make changes to rolling stock vehicles to improve on-board air quality.**
- (c) **The Franchisee shall for the purposes of monitoring and reducing emissions from traction:**
 - (i) **through an RSSB-led industry working group, support the development and delivery of a policy in relation to the maximum time for which a train's engine may be kept idling while stationary;**
 - (ii) **use all reasonable endeavours to work with the fleet owner to develop an emissions reduction pathway for all diesel rolling stock vehicles;**
 - (iii) **consider cost-effective opportunities to reduce emissions through operational or maintenance changes and, where reasonable and with the agreement or direction of the Secretary of State, make changes to rolling stock vehicles to reduce their air pollution impact;**

- (iv) **provide to the Secretary of State, RSSB or any person whom the Secretary of State might reasonably specify free-of-charge access to rolling stock vehicles and infrastructure for emissions testing as requested by the Secretary of State from time to time; and**
 - (v) **provide to the Secretary of State such information and/or data in relation to exhaust emissions from rolling stock vehicles comprised within the Train Fleet as the Secretary of State may reasonably require from time to time for the purposes of data collection and analysing the consequent impact of such emissions on air quality in Depots and Stations and along the Routes on which such rolling stock vehicles are deployed.**
- (d) **The Franchisee shall for the purposes of supporting wider industry approaches to emissions reduction:**
- (i) **consider the impact of any rolling stock vehicle, operational or infrastructure changes on emissions; and**
 - (ii) **provide to the Secretary of State and RSSB a named contact as a point of enquiry in relation to air quality.**

16. Environmental Impact Targets

16.1 Environmental Impact Targets set by the Secretary of State

The Secretary of State sets out in paragraph 2 of Appendix 1 (*Environmental Information*) of this Schedule 11.2 the targets for improving the environmental performance of the Franchise (the "**Environmental Impact Targets**"), and the Franchisee shall meet such Environmental Impact Targets during the Franchise Period.

16.2 Performance against the Environmental Impact Targets

- (a) For each Franchisee Year the Secretary of State shall determine the Franchisee's performance against each Environmental Impact Target on an annual basis (within two (2) Reporting Periods of receipt of the Environmental Impact Monitoring Report) by comparing:
- (i) for **traction carbon emissions:** the Franchisee's performance set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Target for the relevant Franchisee Year, in accordance with the annual trajectory specified in the Sustainable Development Strategy;
 - (ii) **for non-traction energy use:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;
 - (iii) **for waste:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the

Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;

- (iv) **for mains water:** for the second (2nd) Franchisee Year, the number of automatic water meters installed against the total number of water meters. These details shall be reported by the Franchisee within three (3) months of the end of the second (2nd) Franchisee Year. For subsequent Franchisee Years, the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets.
- (b) For the purposes of undertaking the comparison pursuant to paragraph 16.2(a), the results referred to in paragraphs 16.2(a)(i) to (iii) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).
- (c) ⁷⁸³**As soon as reasonably practicable following the Start Date and in any event within six (6) months of the Start Date, the Franchisee shall produce and provide to the Secretary of State for approval an implementation plan for the duration of the Franchise Period which is capable of achieving each of the Environmental Impact Targets each Franchisee Year (as such implementation plan may be revised in accordance with paragraph 16.3 (Remedial Actions) below (the "Environmental Impact Targets Plan"))**.
- (d) Following the Secretary of State's approval, the Franchisee shall use all reasonable endeavours to implement the Environmental Impact Targets Plan (including any such plan which is revised in accordance with paragraph 16.2(e)) in order to achieve the Environmental Impact Targets.
- (e) Notwithstanding the requirements of this paragraph 16.2, the Franchisee shall review its then current Environmental Impact Targets Plan and revise such plan as necessary by the end of the fifth (5th) Franchisee Year to ensure that such plan, in the reasonable opinion of the Secretary of State, is capable of achieving each Environmental Impact Target in each Franchisee Year.

16.3 Remedial Actions

- (a) In the event that an Environmental Impact Target is not met in any Franchisee Year, the Franchisee shall as soon as reasonably practicable produce and provide to the Secretary of State a revised Environmental Impact Targets Plan which, in the reasonable opinion of the Secretary of State, is capable of achieving the Environmental Impact Targets.
- (b) The Franchisee shall use all reasonable endeavours to implement the revised Environmental Impact Targets Plan, which shall be the Environmental Impact Targets Plan for the purposes of the Franchise Agreement.

⁷⁸³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

16.4 ⁷⁸⁴**Publication**

- (a) **The Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of its performance against the Environmental Impact Targets (the "Performance Information") in widely accessible forms, including, as a minimum, publishing them on its website and in each Customer Report.**
- (b) **The Franchisee:**
 - (i) **agrees that the Secretary of State shall be permitted to publish the Performance Information from time to time in such format and through such media as the Secretary of State may elect; and**
 - (ii) **shall co-operate with any programme or other initiative mandated or undertaken by the Secretary of State to publish the Performance Information.**

⁷⁸⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

APPENDIX 1 TO SCHEDULE 11.2

Environmental Information

1. Environmental Impact Monitoring Dataset

| Subject | Unit | Granularity | Regularity |
|--------------------|---|--|---------------------------------|
| TRACTION | EC4T (kWh) | Breakdown per distinct fleet - metered | Four (4) week period |
| | EC4T (kWh) | Breakdown per distinct fleet - unmetered | Four (4) week period |
| | Gas-oil (litres) | Breakdown per distinct fleet | Four (4) week period |
| NONTRACTION | Electricity (kWh) | Total | Four (4) week period or monthly |
| | Gas (kWh) | Total | Four (4) week period or monthly |
| | Gas-oil (litres) | Total | Four (4) week period or monthly |
| CARBON | Scope 1 emissions (tonnes) | Total | Annual |
| | Scope 2 emissions (tonnes) | Total | Annual |
| | Embodied carbon in new infrastructure projects over the amount set out in paragraph 10.3 (b) (<i>Sustainable Construction</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>)⁷⁸⁵ | Total | Per project |
| WATER | Mains Water consumption (m ³) | Total | Annual |
| | Water recycling initiatives | Narrative | Annual |
| WASTE | Waste generated (tonnes) | Total | Annual |
| | Waste recycled (tonnes) | Total | Annual |
| | Waste subject to other recovery (tonnes) | Total | Annual |
| | Waste to landfill (tonnes) | Total | Annual |

⁷⁸⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

| Subject | Unit | Granularity | Regularity |
|--|--|-------------|------------|
| | Hazardous waste | Total | Annual |
| ENVIRONMENTAL MANAGEMENT SYSTEM (EMS) | Enforcement/information Notices | Total | Annual |
| | Environmental fines or prosecutions | Total | Annual |
| | Environmental incidents reported through the EMS | Total | Annual |
| | Environmental training records % personnel briefed/trained | Total | Annual |

2. ⁷⁸⁶Environmental Impact Targets

| Traction Carbon Emissions | Non-Traction Energy Use | Waste | Mains Water |
|---|---|--|--|
| <p>Meet the Annual Traction Carbon Trajectory for CO2E per vehicle/km.</p> | <p>1</p> <p>For the first (1st) Franchisee Year is a reduction in kilowatt hours (kWh) of two point five per cent (2.5%) against the 2014 baseline figure of 32,714,742 kWh.</p> <p>For each subsequent Franchisee Year, a reduction in kilowatt hours (kWh) of two point five per cent (2.5%) against the preceding Franchisee Year.</p> | <p>From the end of the second (2nd) Franchisee Year, the Franchisee must send zero waste to landfill and must recycle or prepare for re-use, ninety per cent (90%) of waste (by weight) per Franchisee Year.</p> | <p>By the end of the second (2nd) Franchisee Year, the Franchisee must install automatic meter readings (AMR) for all water meters, where practicable.</p> <p>The Franchisee shall determine a baseline of water consumption by the end of the third (3rd) Franchisee Year, such baseline to be agreed with the Secretary of State.</p> <p>The Franchisee shall develop a target to reduce water consumption</p> |

⁷⁸⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

| Traction Carbon Emissions | Non-Traction Energy Use | Waste | Mains Water |
|----------------------------------|--------------------------------|--------------|--|
| | | | <p>against the agreed baseline referred to above by the end of the fourth (4th) Franchisee Year, such target to be agreed with the Secretary of State.</p> |

APPENDIX 2 TO SCHEDULE 11.2**Operational Information**

- 1** ⁷⁸⁷Information about the operational performance of the Franchisee
- 1.1** The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under the Franchise Agreement, covering the areas and the information described in this Appendix 2. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
- 1.2** The Franchisee shall, subject to paragraph 1.3, provide to the Secretary of State the information set out in the following tables at the frequency specified in the Column of each such table headed "When information to be provided".
- 1.3** When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
- 1.3.1** such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
- 1.3.2** any particular day, week or other longer period as is reasonably specified by the Secretary of State.
- 1.4** ⁷⁸⁸The following key shall apply to the table in this Appendix 2:
- A =** Information to be provided on or before any Passenger Change Date;
- B =** Information to be provided for every Reporting Period within ten (10) Weekdays of the last day of each Reporting Period; and
- C =** Information to be provided annually within ten (10) Weekdays of the last day of each Franchisee Year.
- 1.5** ⁷⁸⁹For the purposes of this Schedule 11.2, the following words and expressions shall have the following meanings:
- | | |
|--|---|
| Number of Primary Minutes Delay attributable to | means the number of minutes of delay to the Passenger Services that are: |
| | (a) attributed as a "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and |

⁷⁸⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁷⁸⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁸⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

| | |
|--|---|
| any other Train Operator | (b) attributable to any other Train Operator; |
| Number of Primary Minutes Delay attributable to Network Rail | <p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(c) attributed as a "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(d) attributable to Network Rail;</p> |
| Number of Primary Minutes Delay attributable to the Franchisee | <p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(e) attributed as a "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(f) attributable to the Franchisee;</p> |
| Number of Primary Minutes Delay on other Operators attributable to the Franchisee | <p>means the number of minutes of delay to passenger services operated by any other Train Operator or services operated by freight operators that are attributed:</p> <p>(g) as "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(h) to the Franchisee pursuant to the Track Access Agreement,</p> <p>disregarding any minutes of delay that are imputed to other Train Operators' passenger services that were cancelled.</p> |
| Number of Reactionary Minutes Delay attributable to any other Train Operator | <p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(i) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(j) attributable to any other Train Operator;</p> |
| Number of Reactionary Minutes Delay attributable to Network Rail | <p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(k) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(l) attributable to Network Rail;</p> |
| Number of Reactionary Minutes Delay attributable to the Franchisee | <p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(m) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(n) attributable to the Franchisee; and</p> |
| Number of Reactionary Minutes Delay on other | <p>means the number of minutes of delay to passenger services operated by any other Train Operator or services operated by freight operators that are attributed:</p> |

- Operators attributable to the Franchisee**
- (o) as "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and
 - (p) to the Franchisee pursuant to the Track Access Agreement,
- disregarding any minutes of delay that are imputed to other Train Operators' passenger services that were cancelled.

1.6 ⁷⁹⁰This Appendix 2 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

| Table 1 - Operational Performance Information | | |
|---|----------------------|---------------------------------|
| Information to be provided | Information (format) | When information to be provided |
| Number of Passenger Services | | |
| Number of Passenger Services in the Timetable | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day | [number] | B |
| Number of Cancellations and Partial Cancellations | | |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation | [number] | B |

⁷⁹⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

| Table 1 - Operational Performance Information | | |
|---|-----------------------------|--|
| Information to be provided | Information (format) | When information to be provided |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation | [number] | B |
| Number of Disputed Cancellations and Disputed Partial Cancellations for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee | [number] | B |
| Number of Disputed Cancellations and Disputed Partial Cancellations from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee | [number] | B |
| Where there is a difference between the Timetable and the Plan of the Day on any day the following: (a) the fact of such difference; and (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day | [number] | B |
| Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day: (a) the fact of such difference; (b) the number of: | [number] | B |

| Table 1 - Operational Performance Information | | |
|---|-----------------------------|--|
| Information to be provided | Information (format) | When information to be provided |
| (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Plan of the Day had been the same as the Enforcement Plan of the Day | | |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event | [number] | B |
| ⁷⁹¹ Number of Short Formations | | |
| ⁷⁹² Short Formations | | |
| Number of Short Formation Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan | [number] | B |
| Number of Short Formation Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan | [number] | B |
| Number of Short Formation Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the | [number] | B |

⁷⁹¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁷⁹² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

| Table 1 - Operational Performance Information | | |
|---|-----------------------------|--|
| Information to be provided | Information (format) | When information to be provided |
| Train Plan attributable to the occurrence of a Force Majeure Event | | |
| Number of Short Formation Peak Passenger Services scheduled (excluding Cancellations or Partial Cancellations) All Day Short Formations for weekends will be recorded for reporting purposes only. | [number] | B |
| Minutes Delay | | |
| Number of Minutes Delay attributable to the Franchisee | [number] | B |
| Number of Primary Minutes Delay attributable to the Franchisee | [number] | B |
| Number of Reactionary Minutes Delay attributable to the Franchisee | [number] | B |
| Number of Minutes Delay attributable to Network Rail | [number] | B |
| Number of Primary Minutes Delay attributable to Network Rail | [number] | B |
| Number of Reactionary Minutes Delay attributable to Network Rail | [number] | B |
| Number of Minutes Delay attributable to any other Train Operator | [number] | B |
| Number of Primary Minutes Delay attributable to any other Train Operator | [number] | B |
| Number of Reactionary Minutes Delay attributable to any other Train Operator | [number] | B |
| Number of Primary Minutes Delay on other Operators attributable to the Franchisee | [number] | B |
| Number of Reactionary Minutes Delay on other Operators attributable to the Franchisee | [number] | B |
| Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee | [number] | B |
| Number of Minutes Delay for the twelve (12) preceding Reporting Periods for | [number] | B |

| Table 1 - Operational Performance Information | | |
|--|-----------------------------|--|
| Information to be provided | Information (format) | When information to be provided |
| which the attribution remains in dispute between Network Rail and the Franchisee | | |
| Number of Minutes Delay from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination | [number] | B |
| Number of Minutes Delay attributed to the occurrence of a Force Majeure Event | [number] | B |
| T-3, T-15, On Time and All Cancellations | | |
| Time to 3 Minutes percentage published by Network Rail, rounded to two (2) decimal places | [number] | B |
| Time to 15 Minutes percentage published by Network Rail, rounded to two (2) decimal places | [number] | B |
| On Time percentage published by Network Rail, rounded to two (2) decimal places | [number] | B |
| All Cancellations percentage published by Network Rail rounded to two (2) decimal places | [number] | B |
| Train Mileage | | |
| Planned Train Mileage | [mileage] | A |
| Actual Train Mileage | [mileage] | B |

APPENDIX 3 TO SCHEDULE 11.2⁷⁹³**Summary of Reporting and Other Requirements**

This Appendix 3 contains a non-exhaustive summary of the obligations on the Franchisee throughout this Agreement in respect of the provision of information to the Secretary of State which are not set out in this Schedule 11.2. This summary is for guidance only. If there are any inconsistencies with the other contents of the Schedules mentioned below (including any Appendix), those other contents shall apply.

| Reference | Summary of Obligation |
|--|---|
| Paragraph 11.2(a) (<i>Consultation on Significant Alterations to the Timetable</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>) | Requirement for Franchisee to provide a comprehensive summary of the proposed changes from the Timetable then in force. |
| Paragraph 11.2(e) (<i>Consultation on Significant Alterations to the Timetable</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>) | Requirement for the Franchisee to publish a report containing a summary of the main issues raised by respondents to the consultation. |
| Paragraph 13.1 (<i>Certification and Notification by Franchisee of Exercising Timetable Development Rights</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>) | Obligation on the Franchisee to provide a certificate addressed to the Secretary of State, signed by a statutory director of the Franchisee before exercising any Timetable Development Right to bid for Train Slots. |
| Paragraph 13.3(a) (<i>Certification and Notification by Franchisee of Exercising Timetable Development Rights</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>) | Requirement to keep the Secretary of State fully informed of any discussions with Network Rail in relation to the matters referred to in Schedule 1.1 (<i>Franchise Services and Service Development</i>). |
| Paragraph 14.4 (<i>Finalising the Train Plan</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>) | Requirement for Franchisee to provide the Train Plan, certified as true and accurate by the statutory director. |
| Paragraph 15.1 (<i>Capacity Mitigation Plan</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>) | Requirement for Franchisee to provide a Capacity Mitigation Plan if required by the Secretary of State. |
| Paragraph 16.2 (<i>New or amended Train Service Requirement by Secretary of State and Franchisee Informed Opinion</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>) | Requirement for Franchisee to provide informed opinion in respect of a new or amended Train Service Requirement. |

⁷⁹³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

| Reference | Summary of Obligation |
|--|---|
| Paragraph 17.2 (<i>Procedural Arrangements and Timescales</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>) | Requirement for Franchisee to provide informed opinion in respect of a new or amended Train Service Requirement. |
| Paragraph 7.4 of Schedule 1.2 (<i>Operating Obligations</i>) | Reporting requirements in respect of the requirement to actively manage NR's performance of its contractual relationship with the Franchisee, i.e. reviewing delivery of local output commitment by NR and cooperating with NR in the development of a Performance Strategy Plan and any recovery plans necessary. |
| Paragraph 7.7 of Schedule 1.2 (<i>Operating Obligations</i>) | Provide evidence to the Secretary of State of the steps taken under Paragraph 7 (Obligation to use all reasonable endeavours under this Schedule 1.2 (<i>Operating Obligations</i>)). |
| Paragraph 8 (<i>Publication of Performance Data</i>) of Schedule 1.4 (<i>Passenger Facing Obligations</i>) | Requirements to publish performance data. |
| Paragraph 9 (<i>Publication of Complaints and Faults Handling Data</i>) of Schedule 1.4 (<i>Passenger Facing Obligations</i>) | Requirements to publish complaints and fault handling data. |
| Paragraph 1 (<i>Passenger Numbers Information</i>) of Schedule 1.5 (<i>Information about Passengers</i>) | Requirement to provide Secretary of State information about the use by passengers of the Passenger Services. |
| Paragraph 11 (<i>Information about Station Improvement Measures</i>) of Schedule 1.7 (<i>Stations</i>) | Requirement to maintain and provide records regarding Station improvement measures and measures taken to improve Station environments. |
| Paragraph 2.2 (<i>Rolling Stock Related Contracts and Insurance Arrangements</i>) of Schedule 2.2 (<i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i>) | Obligation to provide a copy of all draft Rolling Stock Related Contracts and all executed Rolling Stock Related Contracts and any agreements amending the Rolling Stock Related Contracts, including such other information as required by the Secretary of State together with a justification of the Franchisee's proposed rolling stock maintenance strategy and provision of analysis of whole life costs. |
| Paragraph 3.5(b) (<i>Cascaded Rolling Stock and Delayed Cascade Mitigation Plan</i>) of Schedule 2.2 (<i>Security of Access</i>) | Requirement to produce a Delayed Cascade Mitigation Plan. |

| Reference | Summary of Obligation |
|---|--|
| Agreements, Rolling Stock Leases, Station and Depot Leases) | |
| Paragraph 1.5 (Local Authority Concessionary Travel Schemes) of Schedule 2.5 (Transport, Travel and Other Schemes) | Requirement to provide information about concessionary travel schemes. |
| Paragraph 2.6 (Multi-Modal Fares Schemes) of Schedule 2.5 (Transport, Travel and Other Schemes) | Requirement to provide information about multi-modal fares schemes. |
| Paragraph 3.3 (Discount Fares Schemes) of Schedule 2.5 (Transport, Travel and Other Schemes) | Requirement to provide information about Discount Fares Schemes. |
| Paragraph 4 (Specific additional obligations relating to persons with disabilities) of Schedule 4 (Accessibility and Inclusivity) | Recording of obligations relating to persons with disabilities. |
| Paragraph 1 (Information) and Paragraph 2 (Monitoring) of Schedule 5.8 (Fares Regulation Information and Monitoring) | Requirement to record and monitor Prices and Child Prices of Commuter Fares and Protected Fares. |
| Paragraph 1.5 (Smart Ticketing) of Schedule 5.9 (Smart Ticketing) | Requirement to provide a detailed explanation of delays under the terms of the SEFT Deed. |
| Paragraph 5 (Review of Compliance) of Schedule 6.2 (Committed Obligations) Part 2 (Special Terms related to Committed Obligations) | Requirement to provide such evidence of compliance with Committed Obligations as the Secretary of State may request. |
| Paragraph 2 (Reporting Requirements) of Schedule 7.1 (Operational Performance) | Reporting requirements relating to Cancellations Benchmarks and Annual Cancellations Benchmarks. |
| Paragraph 9 (Information provisions relating to TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) of Schedule 7.1 (Operational Performance) | Reporting requirements relating TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks. |
| Paragraph 15 (Short Formation Benchmarks and Annual Short Formation Benchmark) of Schedule 7.1 (Operational Performance) | Reporting requirements relating to Short Formation Benchmarks and Annual Short Formation Benchmarks. |
| Paragraph 18.6 (Submission of Records relating to the implementation of a Service Recovery Plan) of Schedule 7.1 (Operational Performance) | Reporting requirements relating to the implementation of a Service Recovery Plan. |
| Paragraph 9.1 (Action Plans) of Schedule 7.1 (Operational Performance) | Requirement to produce an Action Plan to secure a Required Performance Improvement. |

| Reference | Summary of Obligation |
|---|--|
| Paragraph 9 (<i>Customer and Stakeholder Engagement Strategy</i>) of Schedule 7.2 (<i>Customer Experience and Engagement</i>) | Requirement to provide to the Secretary of State any proposed revisions to the Customer and Stakeholder Engagement Strategy. |
| Paragraph 10 (<i>Customer Report</i>) of Schedule 7.2 (<i>Customer Experience and Engagement</i>) | Requirement to produce and publish a Customer Report. |
| Paragraph 11 (<i>Customer and Communities Investment(CCI) Scheme</i>) of Schedule 7.2 (<i>Customer Experience and Engagement</i>) | Requirement to provide details of any CCIF Scheme proposed by the Franchisee. |
| Paragraph 12.1 (<i>Customer Service and Satisfaction Data</i>) of Schedule 7.2 (<i>Customer Experience and Engagement</i>) | Requirement to publish details of the Franchisee's level of adherence to scheduled ticket office opening hours and performance in respect of Passenger Assistance service. |
| Paragraph 12.2 and 12.3 (<i>Customer Service and Satisfaction Data</i>) of Schedule 7.2 (<i>Customer Experience and Engagement</i>) | Requirement to publish NRPS scores achieved by the Franchisee. |
| Paragraph 2 (<i>Relevant Profit Report</i>) of Schedule 8.2 (<i>Profit Share Mechanism</i>) | Reporting requirements relating to Relevant Profit Reports. |
| Paragraph 11 (<i>Information</i>) of Schedule 9.1 (<i>Financial and Other Consequences of Change</i>) | Requirement to provide information in respect of obligations under Schedule 9.1 (<i>Financial and Other Consequences of Change</i>) as the Secretary of State may request. |
| Paragraph 1 (<i>Franchisee's Obligations</i>) of Schedule 9.2 (<i>Identity of Financial Model</i>) | Requirement to provide the Financial Model and the Escrow Documents. |
| Paragraphs 3 (<i>Remedial Plan Notices</i>) to 4.2 (<i>Remedial Plans</i>) of Schedule 10.1 (<i>Procedure for remedying a Contravention of the Franchise Agreement</i>) | Obligation to provide certain information in a Remedial Plan Notices/Remedial Plans. |
| Paragraph 4 (<i>Business Continuity</i>) of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>) | Requirement to provide a Business Continuity Plan. |
| Paragraph 2.6 (<i>Community Rail Partnerships</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>) | Requirement to provide a Community Rail Report. |
| Paragraph 8 (<i>Small and Medium-sized Enterprises</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>) | Requirement to provide breakdown of SMEs. |

| Reference | Summary of Obligation |
|--|---|
| Paragraph 9 (<i>Apprenticeships</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>) | Requirement to provide record of apprenticeships offered. |
| Paragraph 10.1(d) of Schedule 13.1 (<i>Rail Industry Initiatives</i>) | Requirement to submit a copy of the assessment report produced by an independent body in respect of performance against the Rail Safety and Standard's Board's Sustainable Development Self-Assessment Framework. |
| Paragraph 10.1(f) of Schedule 13.1 (<i>Rail Industry Initiatives</i>) | Obligation to produce an improvement plan in respect of the targets against the Sustainable Development Strategy. |
| Paragraph 10.1(h) of Schedule 13.1 (<i>Rail Industry Initiatives</i>) | Obligation to provide a report identifying progress in respect of delivering a sustainable franchise and revisions to the Sustainable Development Strategy. |
| Paragraph 10.1(j) of Schedule 13.1 (<i>Rail Industry Initiatives</i>) | Requirement on the Franchisee to publish its Sustainable Development Strategy on the request of the Secretary of State. |
| Paragraph 10.2(b) of Schedule 13.1 (<i>Rail Industry Initiatives</i>) | Requirement to provide copies of the certification audit reports and a copy of the ISO50001 Energy Review. |
| Paragraph 11.1(d) of Schedule 13.1 (<i>Rail Industry Initiatives</i>) | Requirement to provide a Franchisee ERTMS Plan. |
| Paragraph 12.6 (<i>Minimum Wi-Fi Service on Train</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>) | Requirement to provide the Secretary of State with a report on the performance of the Mobile Communication Services. |
| Paragraph 12.12 (<i>MCS Route Signal Survey</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>) | Requirement to provide the Secretary of State with the a report of, and the data relating to, the MCS Route Signal Survey. |
| Paragraph 9 (<i>Provision of Information to the Secretary of State</i>) of Schedule 14.4 (<i>Designation of Franchise Assets</i>) | Obligation to provide such information as the Secretary of State requires in respect of Primary Franchise Assets, including details of Security Interests. |
| Paragraph 5 (<i>Miscellaneous</i>) of Schedule 14.5 (<i>Dealing with Franchise Assets</i>) | Obligation to provide such information as the Secretary of State requires in respect of Security Interests. |
| Paragraph 1.3 (<i>Process for issue of a Certificate of Completion for RV Assets</i>) of Schedule 14.6 (<i>Residual Value Mechanism</i>) | Obligation to provide such information as the Secretary of State requires in respect of RV Assets. |
| Paragraph 1.5 of Schedule 14.6 (<i>Residual Value Mechanism</i>) | Obligation to provide a schedule of condition in respect of RV Assets |

| Reference | Summary of Obligation |
|---|---|
| Paragraphs 2.1 (<i>Preparation for Reletting</i>) and 3 (<i>Data Site Information</i>) of Schedule 15.1 (<i>Reletting Provisions</i>) | Obligation to provide certain information to the Secretary of State in respect of a reletting of the franchise. |
| Paragraph 1.1 (<i>Handover Package Status</i>) of Schedule 15.3 (<i>Handover Package</i>) | Requirement to produce and maintain the Handover Package. |
| Paragraph 2 (<i>Director's Certificate</i>) of Schedule 15.3 (<i>Handover Package</i>) | Requirement to provide a director's certificate in each Franchise Year. |
| Paragraph 9 (<i>Information about Passengers</i>) of Schedule 15.4 (<i>Provisions Applying on and after Termination</i>) | Requirement to provide passenger numbers information, CRM Data and Yield Management Data on expiry of the Franchise Period. |
| Paragraph 2.2 (<i>Net Asset Statement</i>) of Appendix 2 (<i>Form of Supplemental Agreement</i>) of Schedule 15.4 (<i>Provisions Applying on and after Termination</i>) | Obligation to prepare and provide a net asset statement under the supplemental agreement. |
| Paragraph 6 (<i>Discharge of Obligations</i>) of Schedule 16 (<i>Pensions</i>) | Obligation to provide a certificate signed by the Trustee in relation to the Franchise Sections stating that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme. |
| Paragraph 10 (<i>Redactions</i>) of Schedule 17 (<i>Confidentiality and Freedom of Information</i>) | Obligation to provide details of provisions of the Franchise Documents or any such variations which the Franchisee believes are exempt from the Freedom of Information Act, Environmental Information Regulations or the Act. |

SCHEDULE 12**Financial Covenants and Bonds**

| | |
|--------------|---|
| Schedule 12: | Financial Covenants and Bonds |
| | Appendix 1 to Schedule 12: Form of Performance Bond |
| | Appendix 2 to Schedule 12: Form of Season Ticket Bond |

SCHEDULE 12**Financial Covenants and Bonds****1. Obligations**

Except to the extent that the Secretary of State may otherwise agree from time to time, the Franchisee shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;
- (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph (d) or to an employee in the ordinary course of its business);
- (c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Franchise Services;
- (d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank; or
- (e) ⁷⁹⁴**borrow any sum, or enter into any loan or lending agreement for the purpose of borrowing from any person.**

2. Not Used.**3. Breach of Financial Ratios**

3.1 The Franchisee shall not during any Lock-up Period, do any of the following without the Secretary of State's consent:

- (a) ⁷⁹⁵**declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchisee, without the prior written consent of the Secretary of State (in relation to a Permitted Dividend, such consent not to be unreasonably withheld or delayed and subject to paragraph 3.4);**
- (b) ⁷⁹⁶**pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan without the prior written consent of the Secretary of State; or**

⁷⁹⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁹⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁷⁹⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (c) make payment under any intra-group borrowings,

provided that, during the Lock-up Period, the Franchisee may repay any borrowing and/or make any payment in respect of interest accrued on such borrowing, in each case relating to the Agreed Funding Commitment in accordance with the Funding Plan (each as defined in the Funding Deed).

- 3.2 ⁷⁹⁷**"Lock-up Period" means the period commencing on the ERMA Start Date and expiring on the date which the Secretary of State confirms by notice in writing to the Franchisee that:**

- (a) **the Secretary of State considers that all the obligations of the Parties to account to each other pursuant to Schedule 8.1A (Franchise Payments) have been fully performed and discharged (such confirmation not to be unreasonably withheld or delayed); and**
- (b) **by virtue of such notice, the Lock-Up Period has expired.**

No such notice shall constitute a waiver of any rights which the Secretary of State may have under or in respect of Schedule 8.1A (Franchise Payments).

- 3.3 ⁷⁹⁸**Not used.**

- 3.4 **Subject to the Franchisee fully performing and discharging all its obligations under Schedule 8.1A (Franchise Payments) and paragraph 9 (Financial Information) of Schedule 11.2 (Management Information) in relation to that Franchisee Year to the satisfaction of the Secretary of State, the consent of the Secretary of State pursuant to paragraph 3.1(a) and/or 3.1(b) may be sought annually or, in relation to a Franchisee Year of less than 13 Reporting Periods, on the expiry or termination of the relevant Franchisee Year. Any such consent shall be subject to the Parent or such other person acceptable to the Secretary of State entering into an agreement (in form and substance acceptable to the Secretary of State) to pay to the Franchisee, at the Secretary of State's request, the amount (if any) recoverable by the Secretary of State in respect of:**

- (a) **a fully liquidated Contingent SoS Claim; and/or**
- (b) **in respect of an adjustment to the Performance Based Fee and/or the Fixed Fee in accordance with paragraphs 9.13(a) and 15 (Fixed Fee and Performance Based Fee) of Schedule 8.1A (Franchise Payments),**

provided in each case that such amount to be paid to the Franchisee by the Parent or other person acceptable to the Secretary of State shall be reduced by a percentage equivalent to the percentage rate of NTR

⁷⁹⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁷⁹⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

which applied to the corresponding Permitted Dividend payment made in respect of the Performance Based Fee and/or the Fixed Fee.

3.5 ⁷⁹⁹ **For the purposes of this paragraph 3, "Permitted Dividend" means:**

- (a) **in relation to the Franchisee Year ending on 31 March 2021:**
- (i) **in respect of the period from 1 April 2020 to 01:59 on 20 September 2020, an amount in respect of any Management Fee and Performance Payment paid to the Franchise pursuant to schedule 8.A (Franchise Payments) to the Franchise Agreement as such schedule 8.A (Franchise Payments) applied during the term of the EMA pursuant to the terms of the EMA; and**
 - (ii) **in respect of the period from the ERMA Start Date to 31 March 2021, an amount in respect of the Fixed Fee and/or a Performance Based Fee (if and to the extent that a Performance Based Fee has been included in a Franchise Payment paid in accordance with Schedule 8.1A (Franchise Payments)); and**
- (b) **in relation to any subsequent Franchisee Year, an amount in respect of the Fixed Fee and/or a Performance Based Fee (if and to the extent that a Performance Based Fee has been included in a Franchise Payment paid in accordance with Schedule 8.1A (Franchise Payments)),**

in each case calculated in accordance with the following formula:

$$\text{£PD} = \text{FFPBF} - (\text{FFPBF} \times \text{NTR})$$

where:

£PD means the Permitted Dividend;

FFPBF means for the purposes of this paragraph 3.5 only:

- (a) **in relation to the Franchisee Year ending on 31 March 2021, an amount equal to the sum of:**
- (i) **the aggregate of any Management Fee and Performance Payment paid to the Franchisee pursuant to schedule 8.A (Franchise Payments) to the Franchise Agreement as such schedule 8.A (Franchise Payments) applied during the term of the EMA pursuant to the terms of the EMA; and**
 - (ii) **in respect of the period from the ERMA Start Date to 31 March 2021, the aggregate amount of the Fixed Fee and the Performance Based Fee (if any) that has been**

⁷⁹⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

included in any Franchise Payment(s) paid in accordance with Schedule 8.1A (Franchise Payments); and

- (b) in relation to any subsequent Franchisee Year, the aggregate amount of the Fixed Fee and the Performance Based Fee (if any) that has been included in any Franchise Payment(s) paid in accordance with Schedule 8.1A (Franchise Payments).**

NTR means the rate of corporation tax (expressed as a percentage) applicable at the time at which the Secretary of State determines the value of the applicable Performance Based Fee (if any) and the Fixed Fee in accordance with Schedule 8.1A (Franchise Payments), provided that:

- (a) NTR shall not be adjusted, revalued or otherwise affected by the application of tax losses or any other reliefs to which the Franchisee may be entitled; and**
- (b) if a Permitted Dividend has been made in accordance with this paragraph 3 and there is a subsequent variation in the rate of corporation tax in the relevant tax year, the Permitted Dividend shall not be recalculated to take account of such variation.**

3A ⁸⁰⁰The Franchisee shall use reasonable endeavours to plan its business activities and working capital position such that the Forecast Closing Cash Position does not fall below the Floor Cash Position.

4. Performance Bond

4.1 The Franchisee shall procure that there shall be a valid and effective Performance Bond in place with effect from the date of the Franchise Agreement, and the Franchisee shall procure that there shall be a valid and effective Performance Bond in place:

- (a) throughout the Franchise Period; and
- (b) for a period that is the later of the date:
- (i) falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under the Supplemental Agreement; and
- (ii) that is seven (7) Reporting Periods after the end of the Franchise Period.

The provisions of this paragraph 4.1 shall survive the termination of the Franchise Agreement.

⁸⁰⁰ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

4.2 Each Performance Bond shall:

- (a) be substantially in the form of Appendix 1 (Form of Performance Bond) to this Schedule 12;
- (b) be issued by a Bond Provider;
- (c) in the case of the Initial Performance Bond, have a value of **[REDACTED⁸⁰¹]**, and in the case of any Replacement Performance Bond, have a value equal to the amount determined under paragraph 4.4; and
- (d) have a minimum duration of three (3) years.

4.3 **Provision of Replacement Performance Bond**

- (a) The Franchisee may replace the then current Performance Bond at any time.
- (b) The Franchisee shall replace each Performance Bond at least six (6) months prior to its scheduled expiry with a Replacement Performance Bond.
- (c) If at any time the Secretary of State reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Secretary of State may require the Franchisee within twenty (20) Weekdays to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State.

⁸⁰² **The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.1A (Franchise Payments) or otherwise, in respect of any additional costs or expenses incurred by the Franchisee in procuring any new Performance Bond where required to do so pursuant to this paragraph 4.3(c).**

4.4 **Amount of Replacement Performance Bond**

The value of any Replacement Performance Bond shall be as follows:

- (a) in relation to the first Replacement Performance Bond, an amount which is **[REDACTED⁸⁰³]** x RPI; and

⁸⁰¹ 15 January 2021 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁸⁰² 19 September 2020 (Date of ERMA) - Contract insertion agreed by the Secretary of State and Franchisee.

⁸⁰³ 15 January 2021 (Date of Redactions Approval) - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) in relation to each subsequent Replacement Performance Bond an amount which is the amount of the Replacement Performance Bond that it is replacing x RPI,

and, for the purpose of this paragraph 4.4, RPI shall be the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined on the date on which the Franchisee is to replace the Performance Bond divided by the Retail Prices Index for the month in which the Performance Bond that is being replaced was required to be delivered to the Secretary of State.

4.5 Demands under the Performance Bond

- (a) The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:

- (i) that the Franchise Agreement has:

(A) ⁸⁰⁴ **either terminated or expired and, in either case, in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State, including where the Franchise Period has terminated or expired but provisions of the Franchise Agreement remain in operation and effect (including Schedule 8.1A (Franchise Payments)); and/or**

(B) terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraph 2.2, 2.3 and 2.4 of Schedule 10.2 (Events of Default and Termination Events) or pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the Franchise;

- (ii) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act;

- (iii) the occurrence of an Event of Default:

(A) under paragraph 1.12(a) of Schedule 10.2 (Events of Default and Termination Events) in relation to the Performance Bond; or

(B) under paragraph 1.12(b) of Schedule 10.2 (Events of Default and Termination Events),

whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;

⁸⁰⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (iv) that the Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement;
 - (v) that the Franchisee has failed to provide a replacement Performance Bond complying with this paragraph 4 at least six (6) months prior to the scheduled expiry of the existing Performance Bond; or
 - (vi) the Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c).
- (b) If the Secretary of State makes a demand under the Performance Bond, he shall, within a reasonable period, account to the Franchisee for the proceeds of such Performance Bond less the amount of the losses, liabilities, costs or expenses which, in the reasonable opinion of the Secretary of State, the Secretary of State or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer including as a result of:
- (i) early termination of the Franchise Agreement; and/or
 - (ii) any failure by the Franchisee to perform or comply with any of its obligations to the Secretary of State under the Franchise Agreement or to a Successor Operator under the Supplemental Agreement.

and/or

- (iii) ⁸⁰⁵ **without prejudice to the generality of paragraph 4.5(b)(i), any of the following amounts which (a) in respect of any Performance Period (as defined in paragraph 1 (Definitions) of schedule 8.A (Franchise Payments) to the Franchise Agreement as amended by the EMA), the Secretary of State has not offset against MFPP in accordance with paragraph 11 (Management Fee and Performance Payment) of schedule 8.A (Franchise Payments) to the Franchise Agreement as amended by the EMA, (b) in respect of any Franchisee Year, the Secretary of State has not offset against FFPBF in accordance with paragraph 15 (Fixed Fee and Performance Based Fee) of Schedule 8.1A (Franchise Payments); or (c) are not taken into account in any payment received by the Secretary of State pursuant to the Funding Deed:**
 - (A) EMA SoS Claims, SoS Claims, Disallowable Costs, Non-Recoverable Costs and Revenue Foregone;**
 - (B) PPADC (as defined in paragraph 11.1 of schedule 8.A (Franchise Payments) to the Franchise Agreement as amended by the EMA); and**

⁸⁰⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

(C) any other sums which the Secretary of State has the right in accordance with Schedule 8.1A (Franchise Payments) to offset against FFPBF; and/or

(iv) ⁸⁰⁶**any amount of the Final Working Capital Adjustment not paid to the Secretary of State in accordance with paragraph 10.4 of Schedule 8.1A (Franchise Payments).**

(c) Nothing in paragraph 4.5(b) shall oblige the Secretary of State to account to the Franchisee for the proceeds of such Performance Bond in the circumstances described in paragraphs 4.5(a)(iii), 4.5(a)(v) or 4.5(a)(vi) until such time as the Franchisee has procured a replacement Performance Bond which complies with the requirements of paragraph 4.

(d) ⁸⁰⁷**The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.1A (Franchise Payments) or otherwise, of any losses, liabilities, costs or expenses incurred by the Franchisee arising out of or in connection with any lawful demand made by the Secretary of State under the Performance Bond pursuant to this paragraph 4.**

4.6 Characteristics of Performance Bond Provider

(a) In determining whether a Bond Provider under any replacement Performance Bond is acceptable, the Secretary of State may exercise his discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.

(b) The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.

4.7 Provision of more than one Performance Bond

The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Performance Bond by providing up to three valid and effective Performance Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 4.4. With the exception of the value of each individual Performance Bond the provisions of the Franchise Agreement in relation to the Performance Bond shall be deemed to apply separately in relation to each such Performance Bond. Where more than one Performance Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under some or all of such Performance Bonds and the extent to which he accounts for the proceeds of each such Performance Bond in accordance with the provisions of paragraph 4.5(b).

⁸⁰⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸⁰⁷ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

5. Season Ticket Bond

5.1 Provision of Season Ticket Bond

The Franchisee shall procure that, for each Franchisee Year throughout the Franchise Term and during the relevant call period specified in Clauses 4 and 5 of the Season Ticket Bond, there shall be in place a valid and effective Season Ticket Bond substantially in the form of Appendix 2 (Form of Season Ticket Bond) to this Schedule 12.

5.2 Provision of Replacement Season Ticket Bond

No later than one (1) Reporting Period before the expiry of each Bond Year, the Franchisee shall provide to the Secretary of State (or procure that the Secretary of State receives) a Season Ticket Bond for the following Bond Year:

- (a) substantially in the form of Appendix 2 (Form of Season Ticket Bond) to this Schedule 12 (or in any other form acceptable to the Secretary of State in his discretion);
- (b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and
- (c) in an amount determined in accordance with paragraph 5.3.

5.3 Amount of Season Ticket Bond

The amount of any Season Ticket Bond shall vary for each Reporting Period during the Bond Year to which the Season Ticket Bond relates in accordance with the following formula:

$$STBA = STL \times \frac{((RPI \times 100) + k)}{100} \times Z$$

where:

STBA equals the amount of the Season Ticket Bond in the relevant Reporting Period;

STL equals in respect of such Reporting Period:

- (a) the maximum amount which would be payable by the Franchisee in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) and the rights and liabilities of the Franchisee relating to an obligation of carriage under the terms of any Season Ticket Fares which were transferred under a Transfer Scheme relating to that Supplemental Agreement to a Successor Operator at that time; and
- (b) the Stored Credit Balance which would be held by the Franchisee,

if the Franchise Agreement were to terminate on any day during the Reporting Period (the "**Relevant Reporting Period**") falling thirteen (13) Reporting Periods before such Reporting Period,

provided that for these purposes only:

- (i) Season Ticket Fares shall mean any Season Ticket Fare which expires more than seven (7) days after it first comes into effect;
- (ii) the Start Date shall be assumed, where relevant, to have occurred before the commencement of the Relevant Reporting Period; and
- (iii) if STL cannot reasonably be determined at the time at which the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond (including because the Relevant Reporting Period has not yet occurred), the Relevant Reporting Period shall be the Reporting Period falling twenty six (26) Reporting Periods before the Reporting Period in the relevant Bond Year;

RPI equals the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined at the time the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond divided by the Retail Prices Index for the month falling twelve (12) months before such month;

k has the value attributed to it in Schedule 5 (Fares) for the Fare Year in which the Reporting Period in the relevant Bond Year falls; and

Z equals +1 or, if the Relevant Reporting Period falls twenty six (26) Reporting Periods before such Reporting Period, an amount equal to:

$$\frac{(RPI \times 100) + 100}{100}$$

where RPI and k are determined for the twelve (12) months and the Fare Year preceding the twelve (12) months and the Fare Year for which RPI and k are respectively determined above.

- 5.4 The Franchisee shall supply to the Secretary of State, not later than three (3) Reporting Periods before the end of each Bond Year, its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the Secretary of State may request in connection therewith.
- 5.5 The Franchisee and the Secretary of State shall endeavour to agree the amount of such Season Ticket Bond by no later than two (2) Reporting Periods before the end of each Bond Year. If the Parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond Year, the matter shall be resolved in accordance with the Dispute Resolution Rules.

5.6 If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year has not been agreed two (2) Reporting Periods before the end of the preceding Bond Year, then, until the amount is agreed or determined in accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the Secretary of State.

5.7 ⁸⁰⁸**The Secretary of State and the Franchisee may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time, and the Secretary of State may direct the Franchisee to amend the amount covered or required to be covered under a Season Ticket Bond when, in the Secretary of State's sole discretion, the STBA calculated pursuant to paragraph 5.3 above may not accurately represent the value of the Season Ticket suspense liabilities held by the Franchisee.**

5.8 **Demands under the Season Ticket Bond**

(a) The Season Ticket Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:

- (i) that the Franchise Agreement has terminated or expired;
- (ii) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act; or
- (iii) that an Event of Default:
 - (A) under paragraph 1.12(a) of Schedule 10.2 (Events of Default and Termination Events) in relation to the Season Ticket Bond; or
 - (B) under paragraph 1.12(c) of Schedule 10.2 (Events of Default and Termination Events),

has occurred (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).

(b) If the Secretary of State makes a demand under the Season Ticket Bond, he shall account to the Franchisee for the proceeds of such Season Ticket Bond remaining following settlement of all liabilities or obligations of the Franchisee in respect of any Season Ticket Fares and/or Stored Credit Balance that may be transferred or is transferred whether under a Transfer Scheme (or otherwise) to a Successor Operator.

5.9 **Characteristics of Season Ticket Bond Provider**

(a) In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Secretary of State may exercise his discretion

⁸⁰⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

and shall not be obliged to accept a Bond Provider accepted under any previous Season Ticket Bond.

- (b) The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.
- (c) The Secretary of State agrees that, subject to receipt of a Season Ticket Bond in an amount determined in accordance with paragraph 5.3 in respect of any Bond Year, he shall release the relevant Bond Provider from any liability under the Season Ticket Bond provided in relation to the preceding Bond Year on the expiry of such Bond Year, provided that no Event of Default has occurred and is unremedied or continuing.

5.10 **Meaning of Reporting Period**

References in this paragraph 5 to a Reporting Period shall be construed, where the Franchisee so requests and the Secretary of State consents (such consent not to be unreasonably withheld), to be references to each consecutive seven (7) day period (or such other period as may be agreed) during such Reporting Period. The Franchisee may only make such a request in respect of a maximum of two (2) Reporting Periods in each Bond Year and only where the amount of the Season Ticket Bond over any such period would, in the reasonable opinion of the Franchisee, differ materially if determined by reference to such seven (7) day periods.

5.11 ^{809 810} **Provision of more than one Season Ticket Bond**

The Franchise shall be permitted to meet its obligations to provide a valid and effective Season Ticket Bond by providing up to two valid and effective Season Ticket Bonds, provided that the aggregate value of the Season Ticket Bonds at all times is equal to the value determined in accordance with this paragraph 5. With the exception of the value of each individual Season Ticket Bond the provisions of the Franchise Agreement in relation to the Season Ticket Bond shall be deemed to apply separately in relation to each such Season Ticket Bond. Where more than one Season Ticket Bond is provided the Secretary of State shall have discretion as to whether to make a demand under some or all of such Season Ticket Bonds and the extent to which he accounts for the proceeds of each such Season Ticket Bond in accordance with the provisions of paragraph 5.8(b).

6. **Tax Compliance**

- 6.1 The Franchisee represents and warrants that as at the Start Date, it has notified the Secretary of State in writing of any Occasions of Tax Non-Compliance where the Franchisee (including where the Franchisee is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) is the Affected Party (as defined in paragraph 6.3 below) or any litigation that it is involved in that is in

⁸⁰⁹ 27 September 2017 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸¹⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

connection with any Occasions of Tax Non Compliance where the Franchisee (including where the Franchisee is a joint venture or consortium, the members of that joint venture or consortium) is the Affected Party.

6.2 If, at any point during the Franchise Term, an Occasion of Tax Non-Compliance occurs in relation to any Affected Party, the Franchisee shall:

- (a) notify the Secretary of State in writing of such fact within five (5) Weekdays of its occurrence; and
- (b) promptly provide to the Secretary of State:
 - (i) details of the steps which the Affected Party is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Secretary of State may reasonably require.

6.3 For the purposes of this paragraph 6, the following defined terms shall have the following meanings:

| | |
|---|---|
| "DOTAS" | means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992; |
| "General Anti-Abuse Rule" | means: <ul style="list-style-type: none"> (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions; |
| "Halifax Abuse Principle" | means the principle explained in the CJEU Case C-255/02 Halifax and others; |
| "Occasion of Tax Non-Compliance" | means, in respect of the Franchisee (including where Franchisee is an unincorporated joint venture or consortium, the members of that |

unincorporated joint venture or consortium) or the Franchisee (such party being the "Affected Party"):

- (a) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 is found to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Affected Party under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Affected Party was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion; and

"Relevant Tax Authority"

means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Affected Party is established.

7. ⁸¹¹Survival

This Schedule 12 and any other provisions of the Franchise Agreement reasonably required for the purpose of giving this Schedule 12 full effect shall survive the termination or expiry of the Franchise Term (however arising) and continue in full force and effect in accordance with its terms.

⁸¹¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

APPENDIX 1 TO SCHEDULE 12

Form of Performance Bond

[TEMPLATE]

[DOCUMENT "PB" - PERFORMANCE BOND]

Dated

20[•]

[BOND PROVIDER]

Performance Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(the Secretary of State)

Whereas:

We are informed that you have entered into a franchise agreement dated [●] (the "**Franchise Agreement**") with [name of Franchisee] (the "**Franchisee**"). Pursuant to the Franchise Agreement the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed performance bond in the amount of [*To be populated for the duration of the Bond in accordance with paragraph 4.4 of Schedule 12*] (the "**Bond Value**") to secure the performance by the Franchisee of and its compliance with their respective obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in Clause 2 hereof) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:

- (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond; and
- (b) notwithstanding anything contained herein, our liability hereunder shall expire on the earlier of:
 - (i) the date falling six (6) months after the date on which any railway administration order is made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993; and

- (ii) the later of:
 - (A) the date falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under each relevant Supplemental Agreement; and
 - (B) the date falling seven (7) Reporting Periods after the end of the Franchise Period; and
 - (C) the end of the Franchise Term; and
- (iii) [Insert Details]⁸¹²,

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value or less, after which date this undertaking shall be void whether returned to us or not.

2. Call Event means, in this Bond, any of:

- (a) the termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- (b) the termination of the Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraph 2.2, 2.3 and 2.4 of Schedule 10.2 (Events of Default and Termination Events) or pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the East Anglia franchise;
- (c) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;
- (d) the occurrence of an Event of Default under the Franchise Agreement in respect of:
 - (i) paragraph 1.12(a) of Schedule 10.2 (Events of Default and Termination Events) of the Franchise Agreement in relation to the Performance Bond; or
 - (ii) paragraph 1.12(b) of Schedule 10.2 (Events of Default and Termination Events) of the Franchise Agreement,

whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;

⁸¹² **Note:** To be populated for the duration of the Bond in accordance with paragraph 4.2(d) of Schedule 12 (Financial Covenants and Bonds).

- (e) the failure by the Franchisee to perform or comply with its obligations under any Supplemental Agreement;
 - (f) the failure by the Franchisee to provide the Secretary of State with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (Financial Covenants and Bonds) of the Franchise Agreement at least six (6) months prior the scheduled expiry of the existing Performance Bond; or
 - (g) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (Financial Covenants and Bonds) of the Franchise Agreement.
3. This undertaking is made to you, your successors and your assigns.
 4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
 5. You may make demand or give notice to us under this Bond in writing by hand or via email to us as follows:

Address: [Bond Provider's address]

Email address: [Bond Provider's email address]
 6. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and any Supplemental Agreement as amended from time to time.
 7. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.
 8. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [day and month] of [year].

SCHEDULE TO THE PERFORMANCE BOND**SPECIMEN DEMAND NOTICE**

To: **[name and address of Bond Provider]**

[date of demand notice]

We refer to the performance bond issued by you on **[date of Bond]** (the "**Performance Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and **[name of "Franchisee"]** (the "**Franchisee**") on **[Franchise Agreement signature date]**.

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on **[date of occurrence of Call Event]: [delete as appropriate]**.

[The Franchise Agreement has [terminated/expired] on **[date of termination/expiry]** in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State.]

[The Franchise Agreement has terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3 and 2.4 on **[date of termination]** in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with the termination of the **[name of franchise]** franchise.]

[A railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993.]

[That an Event of Default under the Franchise Agreement has occurred under:

[(a) paragraph 1.12(a) of Schedule 10.2 (Events of Default and Termination Events) of the Franchise Agreement in relation to the Performance Bond; or]

[(b) paragraph 1.12(b) of Schedule 10.2 (Events of Default and Termination Events) of the Franchise Agreement.]]

[The Franchise Agreement has terminated pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the **[name of franchise]** franchise.]

[The Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement.]

[The Franchisee has failed to provide a replacement Performance Bond (as described in the Franchise Agreement) complying with paragraph 4 of Schedule 12 (Financial Covenants and Bonds) of the Franchise Agreement at least six (6) months prior to the scheduled expiry of the existing Performance Bond.]

[The Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (Financial Covenants and Bonds) of the Franchise Agreement.]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[account details to which Bond monies to be paid into]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of

Secretary of State for Transport

APPENDIX 2 TO SCHEDULE 12

Form of Season Ticket Bond

[TEMPLATE]

DOCUMENT "STB" - SEASON TICKET BOND

Dated

20[.]

[BOND PROVIDER]

Season Ticket Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(the "**Secretary of State**")

Whereas:

We are informed that you have entered into a franchise agreement dated [●] (the "**Franchise Agreement**") with [name of Franchisee] (the "**Franchisee**") under which the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed season ticket bond to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in Schedule 1 (Specimen Demand Notice) and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in Clause 2) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value (as defined in Clause 3). All sums payable hereunder shall be paid free and clear of any restriction or condition and free and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:

- (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value on the date of occurrence of the Call Event stated in your written demand on us; and
- (b) you may only call on us (whether on one or more occasions) in relation to one Call Event, such Call Event to be determined by reference to the first written demand which is received by us in the form set out in Schedule 1 (Specimen Demand Notice).

2. Call Event means, in this Bond, any of:

- (a) the termination or expiry of the Franchise Agreement;
- (b) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993; or

- (c) the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (Events of Default and Termination Events) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).
- 3. Bond Value shall mean, in respect of any date, the amount specified in Schedule 2 (Bond Value) as being the value of this Bond for such date (provided that for these purposes the date of occurrence of the Call Event specified in Clause 2(c) shall be deemed to be the last date for which a Bond Value is assigned under Schedule 2 (Bond Value) of this Bond).
- 4. Notwithstanding anything contained herein, but subject to Clause 5, our liability hereunder in respect of any Call Event shall expire no later than the end of the Franchise Term and:
 - 4.1 in relation to a Call Event specified in Clauses 2(a) and 2(b), at noon (London time) on the date falling three (3) business days after the date of occurrence of such Call Event (business day being a day on which banks are open for business in the City of London); and
 - 4.2 in relation to any other Call Event, on the day falling one (1) month after the last date for which a Bond Value is assigned under Schedule 2 of this Bond unless you notify us in writing prior to the relevant expiry time that the relevant Call Event has occurred (whether or not you call on us at the same time under this Bond).
- 5. If you do notify us under Clause 4 our liability shall expire on:
 - 5.1 if the Call Event in respect of which you may call on us under this Bond is the termination of the Franchise Agreement, the date falling one (1) month after the determination of the Purchase Price (as defined in the Supplemental Agreement) under each relevant Supplemental Agreement;
 - 5.2 if the Call Event in respect of which you may call on us under this Bond is the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993, the date falling three (3) months after the making of such railway administration order; or
 - 5.3 if the Call Event in respect of which you may call on us under this Bond is the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (Events of Default and Termination Events) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof), the date falling one (1) month after your notification to us under Clause 4,

except, in each case, in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before the relevant date, after which date this undertaking shall be void whether returned to us or not.
- 6. This undertaking is made to you, your successors and your assigns.
- 7. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.

8. You may make demand or give notice to us under this Bond in writing by hand or via email to us as follows:

Address: [Bond Provider's address]

Email Address: [Bond Provider's email address]
9. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and the Supplemental Agreement as amended from time to time and terms defined therein shall have the same meaning in this Bond.
10. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.
11. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [day and month] of [year].

SCHEDULE 1 TO THE SEASON TICKET BOND
SPECIMEN DEMAND NOTICE

To: **[Name and address of Bond Provider]**

[date of demand notice]

We refer to the season ticket bond issued by you on **[date of Bond]** (the "**Season Ticket Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and **[name of Franchisee]** (the "**Franchisee**") on **[Franchise Agreement signature date]**.

We hereby notify you that the following Call Event (as defined in the Season Ticket Bond) occurred on **[date of occurrence of Call Event]**: **[delete as appropriate]**.

[The Franchise Agreement [terminated][expired] on [date of [termination][expiry]].

[A railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993.]

[An Event of Default occurred under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (Events of Default and Termination Events) of the Franchise Agreement.]

We hereby demand immediate payment from you of **[specify alternative amount if not Bond Value]** or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[account details to which Bond monies to be paid into]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of

Secretary of State for Transport

SCHEDULE 2 TO THE SEASON TICKET BOND

Bond Value

| Call Event occurring in Reporting Period | Bond Value |
|---|-------------------|
| | £ |
| 1 | [Insert Amount] |
| 2 | [Insert Amount] |
| 3 | [Insert Amount] |
| 4 | [Insert Amount] |
| 5 | [Insert Amount] |
| 6 | [Insert Amount] |
| 7 | [Insert Amount] |
| 8 | [Insert Amount] |
| 9 | [Insert Amount] |
| 10 | [Insert Amount] |
| 11 | [Insert Amount] |
| 12 | [Insert Amount] |
| 13 | [Insert Amount] |

SCHEDULE13**Rail Industry Initiatives and Innovation Obligations**

| | |
|----------------|--|
| Schedule 13.1: | Rail Industry Initiatives |
| | Appendix to Schedule 13.1: Community Rail Partnerships |
| Schedule 13.2: | Innovation Obligations |
| | Appendix to Schedule 13.2 |

SCHEDULE 13.1**Rail Industry Initiatives****1. British Transport Police**

- 1.1 The Franchisee shall give due consideration to any request by the British Transport Police to provide suitable accommodation (including additional or alternative accommodation) or facilities at Stations to enable the British Transport Police to effectively perform the services owed to the Franchisee under any contract or arrangement entered into between the British Transport Police and the Franchisee.
- 1.2 The Franchisee shall:
- (a) work with the British Transport Police to:
 - (i) reduce crime and anti-social behaviour on the railway;
 - (ii) reduce minutes lost to police-related disruption;
 - (iii) increase passenger confidence with personal security on train and on station;
 - (b) work in partnership with the British Transport Police and conduct an annual assessment of the security and crime risk at all Stations and across the Franchise generally;
 - (c) co-operate with the British Transport Police to provide it with access to records and/or systems maintained by the Franchisee which relate to lost property to enable the British Transport Police to have access to such information when dealing with items reported to them as lost; and
 - (d) consult with the British Transport Police as to its requirements in relation to records and/or systems and shall ensure that the British Transport Police has access to such records and/or systems within fifteen (15) Weekdays] of the Start Date and in any event within five (5) Weekdays of the notification of a crime by the British Transport Police.
- 1.3 The Franchisee shall consult with the British Transport Police in relation to plans to develop any part of the land within a Property Lease which could affect staff or customers and give the British Transport Police an opportunity to advise on and/or provide comments on any opportunities for the enhancement of safety and reduction in crime.

2. Community Rail Partnerships

- 2.1 The Franchisee shall become a member of and shall continue to participate in the Community Rail Partnerships relevant to the Passenger Services, including but not limited to the Community Rail Partnerships listed in the table in the Appendix to this Schedule 13.1 (and any successor Community Rail Partnerships). As part of such participation the Franchisee shall appoint a senior Franchise Employee as its community rail manager whose duties shall include:
- (a) supporting Community Rail Partnerships;

- (b) ensuring managerial focus within the Franchisee's organisation to enable the Franchisee meet its Community Rail Partnership obligations; and
 - (c) lead on the Franchisee's development of community rail projects.
- 2.2 The Franchisee shall, at the request of the Secretary of State:
- (a) co-operate with the Secretary of State, Network Rail, ACoRP, local transport authorities and/or any other person as the Secretary of State may nominate for the purposes of developing and furthering the success of Community Rail Partnerships;
 - (b) co-operate with, establish and/or participate in any Community Rail Partnership;
 - (c) provide technical support in respect of timetable specification for Community Rail Partnerships, including providing appropriate journey and revenue data; and
 - (d) co-operate in the development of the Secretary of State's initiatives to examine:
 - (i) options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route (such options to include changes in working practices of the relevant Franchise Employees, reducing rolling stock lease costs and maximising opportunities for obtaining local funding of development at relevant stations and developing new ways of maintaining and renewing relevant railway infrastructure); and
 - (ii) the actual costs incurred in operating, maintaining and renewing the infrastructure relevant for such Community Rail Route.
- 2.3 The Franchisee shall use reasonable endeavours to develop and implement Community Rail Partnership initiatives in order to increase the use of the Passenger Services by non-users of the Passenger Services and tourists including, where appropriate, the development of and implementation of marketing strategies.
- 2.4 The Secretary of State may at any time, by proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes), require the Franchisee to develop and/or implement any changes to the Franchise Services and/or the transfer of any Franchise Services to another Train Operator in order to deliver either of the initiatives that were examined pursuant to paragraph 2.2(d).
- 2.5 The Franchisee shall become a member and shall continue to participate in the National Community Rail Steering Group.
- 2.6 Within three (3) months of the Start Date in respect of the first Franchisee Year and no later than three (3) months before the start of each subsequent Franchisee Year, the Franchisee shall provide to the Secretary of State a report ("**Community Rail Report**") setting out the distribution of the CRP Amount in full amongst the Community Rail Partnerships identified in paragraphs 2.1 and 2.2.

- 2.7 The Community Rail Report shall contain the following information:
- (a) a statement confirming that the Franchisee's distribution of funds to the Community Rail Partnerships takes account of the Secretary of State's then current published Community Rail Strategy;
 - (b) a statement confirming that the Franchisee has discussed the funding of the Community Rail Partnerships with ACoRP and has taken sufficient account of ACoRP's views;
 - (c) confirmation that the Franchisee has discussed with all Community Rail Partnerships the aims and needs of such partnerships and the funding required to achieve these;
 - (d) a table setting out the relevant portions of the CRP Amount which are to be paid to each Community Rail Partnership (on a non-indexed basis) over the next three (3) years (it being acknowledged that these amounts are likely to be different for each Community Rail Partnership);
 - (e) a report on the activities undertaken by the Franchise pursuant to paragraph 2.3 of this Schedule 13; and
 - (f) such further information as the Secretary of State may from time to time request.
- 2.8 Within twenty-eight 28 days of the date of this Agreement, the Franchisee shall notify the Community Rail Partnerships of the CRP amount which shall be distributed to such partnerships during the Franchise Term. The Franchisee shall within thirty (30) days of the commencement of each Franchisee Year, make the relevant payments totalling the CRP Amount to each of the Community Rail Partnerships identified in the Community Rail Report for that year.
- 2.9 The Franchisee shall hold an annual conference for Community Rail Partnership officers and station adopters in conjunction with ACoRP to encourage the spread of best practice and to communicate plans for franchise development. The first such conference shall be held within six (6) months of the Start Date.
- 2.10 The Franchisee shall devise and implement in collaboration with relevant Community Rail Partnerships a **"station adopters scheme"** under which members of the local community can **"adopt"** a local Station and engage in activities such as:
- (a) promotion of the Passengers Services calling at the Station;
 - (b) monitoring and reporting faults, damage and anti-social and criminal behaviour;
 - (c) carrying out minor Station cleaning and maintenance tasks and the development and cultivation of station gardens.
- The Franchisee shall take reasonable steps to promote the station adopters scheme and provide safety and other training and support to participants.
- 2.11 In collaboration with relevant Community Rail Partnerships and other Stakeholders the Franchisee shall use reasonable endeavours to identify

sources of third party funding for Community Rail Partnerships and encourage such third parties to make funding commitments.

3. Development of Industry Systems

The Franchisee shall fully and effectively co-operate, in a manner consistent with it being a responsible Train Operator of the Franchise, with Network Rail, the Secretary of State, ORR and all other relevant railway industry bodies and organisations in relation to the development of anything that can reasonably be considered to be a railway industry system including systems in relation to the attribution of train delay, the allocation of revenue and the collection and dissemination of industry wide information.

4. Co-operation with Industry Schemes

The Franchisee shall co-operate (in good faith) with the Secretary of State, the relevant Local Authority and/or any other affected railway industry parties in the development and the implementation of initiatives relating to its participation in multi-modal fares schemes and Traveline (the "**Industry Schemes**"), where such Industry Schemes relate to the Franchise.

5. Co-operation with Local Authority sponsored projects

The Franchisee shall co-operate in good faith with any Local Authority that seeks to promote a scheme for the provision of additional or varied Passenger Services including by attending meetings and contributing to feasibility schemes and project plans and liaising with relevant industry participants including Network Rail. This paragraph 5 does not oblige the Franchisee to incur any cost in the actual provision of the revised Passenger Services.

6. Co-operation with Network Rail and Alliancing

6.1 The Franchisee shall:

- (a) use all reasonable endeavours to work with Network Rail to identify ways in which cooperation between the Franchisee and Network Rail can be enhanced, costs can be reduced and closer working and alignment of incentives can improve value for money within the parameters of this Agreement; and
- (b) use all reasonable endeavours to enter into an alliance agreement with Network Rail as soon as reasonably practicable following the Start Date and in any event by no later than the date that is six (6) months from the Start Date. The alliance agreement to be entered into by the Franchisee pursuant to this paragraph 6.1(b) shall be of the type that will not require the Franchisee's obligations under the Franchise Agreement to be varied in any way and shall include ways in which Network Rail and the Franchisee can work together to:
 - (i) deliver safety improvements;
 - (ii) deliver improvements in operational performance of the Passenger Services (including improvements to service quality); and
 - (iii) develop joint initiatives and projects that deliver value for money for the railway.

- 6.2 Where the Franchisee considers pursuant to its obligations under paragraph 6.1 above that it is appropriate to enter into an alliance agreement with Network Rail that would require its obligations under this Agreement to be varied (an "**Alliance Agreement**") it may make a proposal for the Secretary of State to consider. The Franchisee agrees that any such proposal (unless otherwise agreed by the Secretary of State) shall:
- (a) be for the purposes of improved delivery of some or all of the following:
 - (i) the efficient and cost effective operation of some or all of the network over which the Passenger Services operate;
 - (ii) the efficient and cost effective maintenance of some or all of the network over which the Passenger Services operate;
 - (iii) the efficient and cost effective renewal of some or all of the network over which the Passenger Services operate;
 - (iv) the efficient and cost effective delivery of some or all enhancement projects on the network over which the Passenger Services operate; and
 - (v) such other infrastructure enhancement projects as may be agreed by the Franchisee and Network Rail and approved by the Secretary of State during the Franchise Term;
 - (b) be on terms which are commercially fair and reasonable so that:
 - (i) the incentives of the Franchisee and Network Rail are more effectively aligned in a way that gives a reasonable expectation that the matters subject to the alliance will be delivered in a more efficient and effective way;
 - (ii) the financial and operational risk of the Franchisee arising out of the operation of the Franchise is not unreasonably increased (including through the agreement of appropriate limitations of liability); and
 - (iii) the Secretary of State has rights to require the termination of the Alliance Agreement in appropriate circumstances including so that the term of the alliance is aligned with the Franchise Term and liabilities do not accrue to any Successor Operator.
- 6.3 The Franchisee shall provide such information, updates and reports on the progress of its negotiation with Network Rail as the Secretary of State shall reasonably require and meet with the Secretary of State to discuss the progress of the negotiations when reasonably requested to do so.
- 6.4 On reaching agreement in principle with Network Rail on the terms of an Alliance Agreement the Franchisee shall present the draft Alliance Agreement to the Secretary of State for approval and shall not enter into any such agreement without the prior written consent of the Secretary of State (which he shall have an unfettered discretion to withhold).

- 6.5 The Franchisee agrees that any approval of an Alliance Agreement shall (without prejudice to the unfettered discretion of the Secretary of State to refuse to consent to such an alliance) be conditional upon:
- (a) the Secretary of State being satisfied that such Alliance Agreement is consistent with the provisions of paragraph 6.2(b) above;
 - (b) the Franchisee agreeing to a fair and reasonable allocation of the gain from such alliance being passed to the Secretary of State (whether through profit share or otherwise) consistent with the role of the Secretary of State in funding the railway network; and
 - (c) the Franchisee entering into a deed of amendment to the Franchise Agreement in a form reasonably determined by the Secretary of State.

7. Route Efficiency Benefit Share Mechanism/REBS Mechanism

- 7.1 The Franchisee shall obtain the prior consent of the Secretary of State prior to exercising any rights it may have under the Track Access Agreement or otherwise to opt out from the Route Efficiency Benefit Share Mechanism.
- 7.2 Where a Train Operator under a Previous Franchise Agreement has exercised its rights under a track access agreement to opt out from the Route Efficiency Benefit Share Mechanism the Franchisee shall take all steps necessary to ensure that it opts back into the Route Efficiency Benefit Share Mechanism including through agreement of a new Track Access Agreement or a variation of an existing Track Access Agreement.

8. Small and Medium-sized Enterprises

- 8.1 The Franchisee shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Franchise Services.
- 8.2 By no later than 31 January in each year (and within one (1) month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of SMEs used by the Franchisee in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

9. Apprenticeships

- 9.1 The Franchisee shall at all times keep accurate and complete records of the training and apprenticeships offered by the Franchisee and/or its immediate UK-based supply chain in delivering the Franchise Services.
- 9.2 By no later than 31 January in each year (and within one (1) month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of training and apprenticeships offered by the Franchisee and/or its supply chain in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

9A3. ⁸¹³Diversity and Inclusion**9A3.1 Diversity and Inclusion Strategy**

- (a) **Within 12 weeks after the ERMA Start Date, the Franchisee shall prepare a draft of its D&I Strategy and submit it to the Secretary of State. The draft shall include details of:**
- (i) **the diversity and inclusion principles that the Franchisee maintains and/or will establish within its organisation, including but not limited to, in relation to recruitment practices, working environments and procedures;**
 - (ii) **the activities, policies and procedures that the Franchisee will employ (for example, including in relation to targeted recruitment policies, promotion of flexible working, mentoring programmes, school visits and annual staff diversity and inclusion surveys) that will demonstrate that it is an inclusive employer;**
 - (iii) **how the Franchisee will evidence compliance with its diversity principles, policies and procedures against the Diversity KPIs (as defined in paragraph 9A3.3);**
 - (iv) **how it will achieve and/or maintain diversity accreditation in accordance with a Recognised Accreditation Scheme in accordance with paragraph 9A3.2; and**
 - (v) **how the Franchisee will comply with its Recruitment Objectives.**
- (b) **The Secretary of State may provide comments on the draft D&I strategy to the Franchisee and the Parties shall use all reasonable endeavours to agree the form of D&I Strategy within four (4) months of the date on which it was provided to the Secretary of State pursuant to paragraph 9A3.1(a).**
- (c) **If the Parties are unable to agree a D&I Strategy within the period set out in paragraph 9A3.1(b) the Secretary of State may reasonably determine the D&I Strategy.**
- (d) **The Secretary of State may, from time to time, recommend such changes to the Approved D&I Strategy as it considers reasonable.**
- (e) **The Franchisee shall use all reasonable endeavours to implement and comply with the Approved D&I Strategy.**
- (f) **In respect of any new contract or arrangements it enters into with third parties during the Franchise Term, the Franchisee shall use all**

⁸¹³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

reasonable endeavours to ensure it obliges its counterparty to comply with and implement suitable diversity and inclusion policies.

- (g) To the extent the Franchisee is entering into any material amendments to any existing contracts or arrangements with third parties, it shall use all reasonable endeavours to ensure that the contract or arrangement (as amended) does not materially adversely affect the Franchisee's ability to comply with its D&I Strategy.

9A3.2 Diversity Accreditation

The Franchisee shall use all reasonable endeavours to attain and/or maintain at least one diversity accreditation from a Recognised Accreditation Scheme within such timeframe as may be set out in its D&I Strategy which shall comply with the timescales set by the relevant Recognised Accreditation Scheme or as otherwise agreed between the Parties.

9A3.3 Performance reporting

- (a) The Franchisee shall develop D&I Initiatives KPIs and D&I Characteristics KPIs (together, the "Diversity KPIs").
- (b) The Franchisee shall design its Diversity KPIs with a focus on such areas as the Secretary of State may notify to it and in accordance with any guidance as the Secretary of State may provide.
- (c) The Franchisee shall collect suitable data to evidence its performance against the Diversity KPIs of which it shall:
 - (i) provide details on as part of the D&I Annual Report; and
 - (ii) make available, in an orderly fashion, to any Successor Operator.
- (d) The Franchisee shall submit a D&I Annual Report to the Secretary of State on the D&I Annual Reporting Date.
- (e) The Parties acknowledge and agree that the Franchisee's D&I Annual Report shall be provided substantially in the same form as the Secretary of State may request and shall include:
 - (i) evidence of the Franchisee's performance against, and impact of implementing, its D&I Strategy;
 - (ii) evidence of the Franchisee's performance against the Diversity KPIs;
 - (iii) evidence of the Franchisee working towards achieving and maintaining diversity accreditation in accordance with paragraph 9A3.2;
 - (iv) evidence of the Franchisee establishing diversity in its procurement process and using a diverse supply chain;

- (v) evidence of the Franchisee's performance against its Recruitment Objectives;**
- (vi) a record of any other diversity data collected by the Franchisee in respect of its workforce; and**
- (vii) such other information and data as the Secretary of State may reasonably request at least three (3) months prior to the D&I Annual Reporting Date.**

9A3.4 Diversity and Inclusion Champion

- (a) As soon as reasonably practicable and by no later than 31 October 2020, the Franchisee shall (to the extent that the Franchisee has not already done so) nominate a board director of the Franchisee or a member of the senior executive team of the Franchisee to act as D&I Champion.**
- (b) The Franchisee shall ensure that the D&I Champion role is filled as soon as reasonably practicable after such role becomes vacant throughout the term of this Franchise Agreement.**

9A3.5 Recruitment Targets and Objectives

- (i) The Franchisee shall set out suitable recruitment targets and associated timeframes from time to time in respect of all new recruits across all grades, jobs, positions and roles (the "Recruitment Targets") in its D&I Strategy which, amongst other things, shall include:**
 - (i) gender equality targets, including a target of 50% female new recruits across all grades, jobs, positions and roles; and**
 - (ii) targets specifying the percentage of new recruits across all grades, jobs, positions and roles which will be ethnic minorities.**
- (ii) The Secretary of State shall consider the proportionality of the Recruitment Targets by reference to:**
 - (i) the demographics of the workforce in each region as indicated by the most recent Labour Force Survey produced by the Office for National Statistics;**
 - (ii) the individual circumstances of the Franchisee; and**
 - (iii) any other information the Secretary of State reasonably determines to be relevant.**
- (iii) The Franchisee shall provide to the Secretary of State all evidence to allow the Secretary of State to reasonably determine whether any Recruitment Target is proportionate, as reasonably requested by the Secretary of State.**
- (iv) The Franchisee shall use all reasonable and lawful endeavours to:**

- (i) be objective, transparent and fair in its recruitment processes;
 - (ii) meet Recruitment Targets; and
 - (iii) improve retention rates of underrepresented groups, (together, the "Recruitment Objectives").
- (v) The Franchisee shall report on its performance against its Recruitment Objectives as part of its D&I Annual Report, together with relevant supporting evidence. Such supporting evidence may include details of Franchisee policies and procedures such as: advertising across a variety of channels to reach a broad range of candidates; blind sifting applications; engaging in CV blind interviewing; engaging in outreach programmes; establishing a returners policy; and/or establishing mentoring schemes.
- (vi) The Secretary of State shall review the Franchisee's performance against the Franchisee's Recruitment Objectives as part of the Franchisee's D&I Annual Report.
- (vii) The Secretary of State shall keep the Recruitment Targets under review and may adjust and/or suspend any Recruitment Target the Secretary of State reasonably determines to no longer be proportionate.
- (viii) Nothing in this paragraph 9A3.5 or this Schedule 13.1 is intended to impose or require any quota.

9A3.6 Data – collecting, monitoring and reporting

- (a) During the Franchise Term, the Franchisee shall monitor the diversity profile of its workforce and collect Workforce Diversity Data.
- (b) Within 6 weeks of the date of the ERMA, the Secretary of State may notify the Franchisee of any further data requirements it may have, including:
 - (i) any additions to the scope of the Workforce Diversity Data the Franchisee is required to monitor and collect;
 - (ii) the frequency in which it shall be measured or collected; and
 - (iii) the form in which the Franchisee is required to deliver this to the Secretary of State via such data hub as the Secretary of State may direct.
- (c) The Franchisee shall use reasonable endeavours to collect and submit this data in accordance with the Secretary of State's data requirements.
- (d) The Franchisee acknowledges and agrees that the Secretary of State may use any data provided to it by the Franchisee pursuant to this Schedule 13.1 for analytical and policy development purposes.

- (e) **The Franchisee shall provide a summary report to the Secretary of State of its Workforce Diversity Data by no later than the date which is six (6) months after date of the ERMA.**
- (f) **The Franchisee shall provide a detailed report to the Secretary of State of its Workforce Diversity Data by no later than the date which is twelve (12) months after the date of this ERMA and on each anniversary of this date thereafter.**
- (g) **The Franchisee shall organise the detailed report in accordance with the characteristics listed in the definition of Workforce Diversity Data.**

9A3.7 Improvement and Remedial Plans

- (e) **If and to the extent that the Secretary of State considers that the Franchisee has not adequately:**
 - (i) **delivered its D&I Strategy;**
 - (ii) **achieved accreditation in accordance with its D&I Strategy or has otherwise lost its accreditation;**
 - (iii) **used all reasonable and lawful endeavours to deliver against its Recruitment Objectives; or**
 - (iv) **collected, monitored and reported on data pursuant to paragraph 9A3.6,**

it may notify the Franchisee that it requires it to deliver a plan for how it will improve its performance in the relevant area (a "D&I Improvement Plan") for its approval. The D&I Improvement Plan shall include the Franchisee's proposed timeline for implementing any changes or actions.

- (c) **If the Parties cannot agree the D&I Improvement Plan within 20 Weekdays from the Secretary of State's notification pursuant to paragraph 9A3.7(a), the Secretary of State may impose such D&I Improvement Plan as it considers reasonable.**
- (d) **If the Franchisee fails to implement the D&I Improvement Plan, then the Secretary of State may serve a Remedial Plan Notice on the Franchisee in accordance with paragraph 2 of Schedule 10.1.**

10. Sustainability and other related initiatives

10.1 Sustainable Development Strategy

- (a) **⁸¹⁴By no later than 16 October 2018, the Franchisee shall consult with the RSSB and such other Stakeholders as agreed between the**

⁸¹⁴ 19 December 2018 – (Date of Contract Change Letter) – Contraction variation agreed by the Secretary of State and Franchisee.

Secretary of State and the Franchisee (or, in the absence of agreement, such Stakeholders as the Secretary of State shall determine) in order to agree:

- (i) key priority sustainable development areas;**
 - (ii) the outcomes associated with such key priority and sustainable development areas;**
 - (iii) the annual traction carbon trajectory (CO₂E/vehicle km) for the duration of the Franchise Term; and**
 - (iv) target levels according to the Rail Safety and Standards Board Sustainable Development Self-Assessment Framework that will be reached by the end of third (3rd) and sixth (6th) Franchisee Years.**
- (b) ⁸¹⁵**The Franchisee shall develop the Sustainable Development Strategy to reflect such consultation and the Franchisee shall propose and agree a final version of the Sustainable Development Strategy with the RSSB and the Secretary of State by no later than 16 October 2018 for the purposes of the Franchise Agreement. Such agreed strategy shall be the Sustainable Development Strategy for the purposes of the Franchise Agreement, provided that in the absence of agreement between the Parties of the Sustainable Development Strategy shall be the strategy determined by the Secretary of State (acting reasonably).**
- (c) The Franchisee shall at all times comply with the Sustainable Development Strategy. Any amendments to the Sustainable Development Strategy must be agreed by the Secretary of State.
- (d) By no later than three (3) months following the end of the third (3rd) and sixth (6th) Franchisee Years, the Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an assessment of performance against the Rail Safety and Standards Board's Sustainable Development Self-Assessment Framework and produce a report in respect of such assessment, such assessment to review performance against the targets set out in the Sustainable Development Strategy.
- (e) The Franchisee shall submit a copy of the assessment report produced by the independent body pursuant to paragraph 10.1(d) to the Secretary of State within six (6) months following the end of the third (3rd) and sixth (6th) Franchisee Years.
- (f) Where the assessment report identifies a significant shortfall against the targets set out in the Sustainable Development Strategy, the Franchisee must as soon as reasonably practicable and in any event within two (2) months, produce an improvement plan which, in the reasonable opinion of

⁸¹⁵ 19 December 2018 – (Date of Contract Change Letter) – Contraction variation agreed by the Secretary of State and Franchisee

the Secretary of State, is capable of achieving the targets set out within the Sustainable Development Strategy.

- (g) The Franchisee shall use all reasonable endeavours to implement the improvement plan referred to in paragraph 10.1(f) and improve its performance against the targets set out in the Sustainable Development Strategy against the agreed timeframes for performance as set out in the revised Sustainable Development Strategy.
- (h) ⁸¹⁶**The Franchisee shall, within three (3) months following the end of each Franchisee Year starting from the third Franchisee year, provide to the Secretary of State a report showing:**
 - (i) **progress against the outcomes in key priority sustainable development areas;**
 - (ii) **progress on development of Franchise Employees to ensure they have the skills and knowledge required to deliver a sustainable franchise; and**
 - (iii) **proposed revisions to the Sustainable Development Strategy (such revisions to include those revisions reflecting feedback and advice from Stakeholders, and which have been consulted on with RSSB).**
- (i) The Franchisee shall obtain the Secretary of State's consent to any amendments to the Sustainable Development Strategy proposed pursuant to paragraph 10.1(h)(iii) before such amendments are adopted and the Sustainable Development Strategy updated.
- (j) On request by the Secretary of State, the Franchisee shall publish (in such form as the Secretary of State may reasonably determine):
 - (i) all or any part of its Sustainable Development Strategy; and/or
 - (ii) all or any of the information described in paragraphs 10.1(h)(i) to (h)(iii).

10.2 Environmental Management and Sustainability Accreditation

- (a) ⁸¹⁷**The Franchisee shall, by no later than the date which is eighteen (18) months after the Start Date, attain and, subject to paragraph 10.2(c), at all times thereafter, maintain certification pursuant to ISO14001:2004 and ISO50001:2011 or equivalent standards.**
- (b) The Franchisee shall provide the Secretary of State with copies of the certification audit reports and a copy of their ISO50001 Energy Review

⁸¹⁶ 19 December 2018 – (Date of Contract Change Letter) – Contraction variation agreed by the Secretary of State and Franchisee.

⁸¹⁷ 3 December 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

within four (4) weeks of their certification and each subsequent recertification during the Franchise Period.

- (c) ⁸¹⁸ **For the duration of the COVID-19 Restriction Period, the Franchisee shall (taking into account the COVID-19 Guidance and Regulation) use all reasonable endeavours to maintain certification as required by paragraph 10.2(a).**

10.3 Sustainable Construction

For construction projects (including building refurbishment or fit out):

- (a) which are either being funded by the Franchisee or in respect of which the Franchisee has design responsibility; and
- (b) in respect of which the total capital cost exceeds two hundred and fifty thousand pounds (£250,000) (indexed by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments)),

the Franchisee shall use reasonable endeavours to achieve at least an **"excellent"** rating from an accredited assessor using BREEAM (or a rating equivalent to **"excellent"** in an equivalent recognised standard such as the SKA Rating Standard as appropriate) at both the design stage and the post-construction stage unless the Secretary of State (acting reasonably) agrees that the relevant project is not of a suitable scale or type to be so assessed and the Franchisee shall provide to the Secretary of State such information in relation to any construction project as the Secretary of State may reasonably request.

11. ERTMS Programme

11.1 ERTMS Programme

- (a) The Franchisee shall co-operate in good faith with the relevant third parties involved in the implementation of the ERTMS Programme (including Network Rail and any relevant ROSCO) with the intention of ensuring the timely, efficient and cost effective development and implementation of the ERTMS Programme.
- (b) The Parties agree and acknowledge that Network Rail shall be responsible for the capitals costs of implementing the infrastructure elements of the ERTMS Programme and the National Joint ROSCO Project.
- (c) The Parties agree and acknowledge that the Secretary of State shall be responsible for the Fleet Fitment and Mobilisation Costs of implementing the ERTMS Programme and where the Franchisee is required to incur Fleet Fitment and Mobilisation Costs a Qualifying Change will occur.
- (d) The Franchisee shall prepare the Franchisee ERTMS Plan and submit such plan to the Secretary of State within six (6) months of the Start Date (and

⁸¹⁸ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

keep such plan under review and provide an updated plan to the Secretary of State on a quarterly basis).

- (e) The Franchisee shall ensure that the Franchisee ERTMS Plan is prepared so that it is consistent with the Network Rail ERTMS Implementation Plan. The Franchisee shall include within the Franchisee ERTMS Plan details of how the Franchisee will deliver those activities for which the Franchisee is responsible under the ERTMS Programme including:
 - (i) the Franchisee's team responsible for delivering the Franchisee's responsibilities under the ERTMS Programme, including the team's structure and how it is integrated into the overall governance of the Franchisee's organisation;
 - (ii) milestones for ERTMS entering into service operations;
 - (iii) milestones for and requirements for obtaining approvals, consents and certification for fitment of ERTMS equipment;
 - (iv) milestones and requirements for the installation, testing and commissioning of any relevant ERTMS equipment;
 - (v) milestones and requirements for the training of Franchise Employees who are drivers, rolling stock maintenance staff and other relevant Franchise Employees, and training of any other rolling stock maintenance providers;
 - (vi) any requirements in respect of the readiness of depot and stabling points; and
 - (vii) details of mobilisation activities and issues including the on-going maintenance of any ERTMS equipment.
- (f) The Franchisee shall comply with the terms of the Franchisee ERTMS Plan, as prepared and amended in accordance with this Schedule 13.1.
- (g) The Franchisee shall provide a copy of the Franchisee ERTMS Plan to Network Rail at the request of the Secretary of State (acting reasonably) subject to redactions agreed by both Parties provided that in the absence of agreement between the Parties the redaction of the Franchisee ERTMS Plan shall be determined by the Secretary of State (acting reasonably).
- (h) The Secretary of State may request from the Franchisee such other information in relation to the implementation of the Franchisee ERTMS Plan, including additional progress reports and the latest Franchisee ERTMS Plan (as at the date of such request), as the Secretary of State may reasonably require to satisfy himself that that the Franchisee ERTMS Plan is robust and deliverable and that the Franchisee is co-operating with the implementation of the ERTMS Programme.
- (i) The Franchisee shall as soon as reasonably practicable and in any event within five (5) Weekdays following the date of receipt by the Franchisee of any such request under paragraph 11.1(h), provide such information to the Secretary of State.

- (j) The Franchisee shall, upon reasonable notice, attend any meeting as the Secretary of State may reasonably require for the purposes of discussing and explaining the Franchisee ERTMS Plan (including progress on the implementation of such plan).
- (k) If at any time the Secretary of State considers that the Franchisee has not complied or is not likely to comply with its obligations in this paragraph 11 he may at his discretion, and entirely without prejudice to his other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 2 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement).

11.2 **Network Change Compensation Claims**

- (a) The Franchisee shall use all reasonable endeavours to ensure that any Track Access Agreement that it enters into with Network Rail reflects the following principles:
 - (i) there will be no right for the Franchisee to claim compensation from Network Rail under Condition G.2 of the Network Code in relation to the direct or indirect consequences of any and all impacts on the Passenger Services due to the implementation of the ERTMS Programme except in the circumstances provided in paragraph 11.2(a)(ii) ("**Network Change Compensation Claims**"); and
 - (ii) the Franchisee will have the right to claim under Condition G.2 of the Network Code for any additional costs (which for these purposes shall include any loss of revenue which the Franchisee is entitled to claim thereunder) it incurs where there is a material change to the actual implementation plans (including the relevant timescales for the delivery of such plans) adopted by Network Rail in respect of the ERTMS Programme when compared to the plans as specified in the Network Rail ERTMS Implementation Plan except where such material change is wholly attributable to the actions or inactions of the Franchisee.
- (b) If and to the extent that the Track Access Agreement entered into by the Franchisee does not reflect any of the principles set out in paragraph 11.2(a) including as a result of:
 - (i) the Franchisee not being able to obtain the ORR's approval to any such terms; or
 - (ii) the Franchisee not complying with its obligations under paragraph 11.2(a) and entirely without prejudice to the other rights the Secretary of State may have under the Franchise Agreement consequent upon a contravention by the Franchisee of the provisions of paragraph 11.2(a),

then the Franchisee shall immediately pay to the Secretary of State (as a debt), an amount equal to any amounts received by the Franchisee from Network Rail in respect of any Network Change Compensation Claim(s).

- (c) Any amounts payable by the Franchisee to the Secretary of State pursuant to this paragraph 11.2 shall be paid on the next Payment Date following receipt by the Franchisee of any such amounts from Network Rail or where

no such Payment Date exists shall be paid within thirty (30) days of receipt by the Franchisee of any such amounts from Network Rail.

11.3 **National Joint ROSCO Project**

- (a) The Franchisee shall co-operate in good faith with the relevant third parties involved in the implementation of the National Joint ROSCO Project (including Network Rail and the relevant NJRP ROSCOs) with the intention of ensuring the timely, efficient and cost effective implementation of the National Joint ROSCO Project and, in particular assisting in the development, installation, testing, commissioning and implementation of the relevant ERTMS equipment on the first in class units for which the Franchisee is identified as the "Lead TOC" under the National Joint ROSCO Project.
- (b) The Parties agree and acknowledge that Network Rail shall be responsible for the capital costs for the design and fitment of the relevant ERTMS equipment on each first in class unit and the National Joint ROSCO Project.
- (c) If requested by the Secretary of State, the Franchisee shall provide an update on their engagement with the National Joint ROSCO Project at the Franchise Performance Meetings.

11A ⁸¹⁹**European Train Control System**

11A.1 **The Franchisee shall co-operate in good faith acting reasonably and with each of the Department for Transport, Network Rail, any relevant ROSCO and any other third party in connection with the development, implementation and operational introduction on the routes of any system which is intended to provide European Train Control System ("ETCS").**

11A.2 **In accordance with paragraph 11A.1 the Franchisee shall provide reasonable assistance to the Secretary of State, Network Rail, any relevant ROSCO and any other relevant third party, which may, amongst other things, include:**

- (i) **providing advice to the Secretary of State in respect of any ETCS proposals and plans;**
- (ii) **supporting planning activities alongside other key stakeholders;**
- (iii) **ensuring that suitable equipment is fitted to rolling stock;**
- (iv) **developing driver training programmes and procuring that drivers are suitably trained; and**
- (v) **other associated amendments or variations.**

⁸¹⁹ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

12. Minimum Wi-Fi Service on Trains

12.1 For the purposes of this paragraph 12, the following definitions shall apply:

"Ethernet" means a system for connecting a number of computer systems to form a local area network, with protocols to control the passing of information and to avoid simultaneous transmission by two or more systems, in accordance with the IEEE 802.3 standard;

"Free of Charge" shall mean:

- (i) the passenger does not have to pay to use the Mobile Communication Services on an ad-hoc or on-going basis; and
- (ii) the use of the Mobile Communication Services by the passenger is independent of any Wi-Fi or cellular minutes or Wi-Fi or cellular data allowances (such as 3G or 4G mobile broadband) the individual passenger may have through any subscription with one or more telecommunication internet service providers or mobile network operators;

"MCS Backstop Date" means by no later than 31 December 2019;

"MCS Equipment" means the equipment including the hardware, data communications cabling, power, equipment racks, external aerials and cabling required for the Mobile Communications Services;

"MCS Report" has the meaning given to it in paragraph 12.6;

"MCS Route Signal Survey" has the meaning set out in paragraph 12.12; and

"Train to Internet Coverage" means the availability of one or more commercial networks (such as 3G or 4G high speed packet access provided by third party mobile network operators) and/or any alternative network solutions installed along the rail network upon which the Passenger Services operate to work together with the MCS Equipment installed on trains to permit access to the internet.

12.2 By no later than the MCS Backstop Date and throughout the remainder of the Franchise Period, the Franchisee shall provide the Mobile Communication Services in both first class and Standard Class Accommodation on all its Train Fleet used for the provision of Passenger Service.

12.3 The Mobile Communication Services procured by the Franchisee pursuant to paragraph 12.2 shall provide the Minimum Wi-Fi Service and be provided Free of Charge to all passengers who use the Passenger Services.

12.4 The **"Minimum Wi-Fi Service"** means, subject to paragraph 12.5, a wireless internet service which allows each passenger to browse web pages on the internet and send and receive mail electronically through any mobile, tablet or computer device that they may use for this purpose and which is, subject to the availability of the Train to Internet Coverage, available for use by each passenger at all times for the duration of each passenger's journey.

12.5 To ensure a non-discriminatory Minimum Wi-Fi Service is offered to any passenger, the Franchisee shall be permitted:

- (a) to dynamically manage the available bandwidth on an active user or select vehicles basis as required, in accordance with a fair-usage policy to be published by the Franchisee; and
 - (b) to filter the type of services which may be accessed by a passenger using the Mobile Communication Services, including by restricting passenger access to video and audio streaming services, peer-to-peer file sharing and inappropriate content.
- 12.6 The Franchisee shall monitor the performance of the Mobile Communication Services for the purposes of providing to the Secretary of State a report on the performance of the Mobile Communication Services, and such report shall be submitted to the Secretary of State one (1) month after the end of each Franchisee Year or on such other more frequent basis as is agreed between the Secretary of State and the Franchisee (the "**MCS Report**").
- 12.7 The MCS Report shall include information on the:
- (a) customer usage statistics in respect of the applicable period including:
 - (i) the number of passengers using the Mobile Communication Services;
 - (ii) the average duration (in minutes and seconds) of connections to the Mobile Communication Services; and
 - (iii) the average data received and transmitted;
 - (b) statistics on the availability of the Mobile Communication Services including the duration of any significant periods of time during which the Mobile Communication Services were not available, the reason for such unavailability and the action taken by the Franchisee in respect of such unavailability; and
 - (c) information on the average internet speed (in megabits per second) and the average latency figures (in milliseconds) experienced by passengers in respect of each connected device which is using the Mobile Communication Services, by route, together with any factors which, in the Franchisee's reasonable opinion, have affected and/or contributed to such average internet speed and latency figures.
- 12.8 Where, in the Secretary of State's reasonable opinion, the performance of the Mobile Communication Services reported in the MCS Report is poor, or has changed significantly between Reporting Periods, the Franchisee shall provide reasons for such poor performance and/or fluctuating performance (as applicable) to the Secretary of State, together with any remedial or mitigating action that the Franchisee proposes to take in respect of the poor and/or fluctuating performance of the Mobile Communication Services.
- 12.9 By the MCS Backstop Date, the Franchisee shall procure that all rolling stock vehicles comprised in its Train Fleet and used for the provision of the Passenger Services are fitted with the MCS Equipment as is necessary to ensure compliance with the requirements of this paragraph 12.
- 12.10 Any MCS Equipment procured by the Franchisee in accordance with paragraph 12.9 shall, subject to paragraph 12.11, form a through rolling stock unit

Ethernet backbone including inter-carriage connectivity capable of gigabit transmission speeds.

12.11 Where any rolling stock vehicle comprised in the Train Fleet as at the Start Date is already fitted with through rolling stock unit Ethernet backbones that are not compliant with the requirements of paragraphs 12.10 but are capable of complying with the other requirements of this paragraph 12, the Franchisee shall be permitted to retain these cables and the provisions of paragraphs 12.10 shall not apply in respect of such rolling stock vehicle.

12.12 MCS Route Signal Survey

- (a) The Franchisee shall undertake a signal-strength survey of all Routes ("**MCS Route Signal Survey**") for the purposes of the Mobile Communications Services to determine the likely Train to Internet Coverage, data speeds, coverage and availability of data services to trains on that Route to establish a non-binding baseline for determining the likely:
 - (i) per passenger data connection speeds;
 - (ii) typical latencies; and
 - (iii) the number of simultaneous Wi-Fi connected passengers that can be supported.
- (b) The MCS Route Signal Survey shall be undertaken as part of the initial planning and design activities associated with the implementation of the Mobile Communication Services and installation of the MCS Equipment or as the Secretary of State reasonably directs.
- (c) A report and data in respect of the MCS Route Signal Survey shall be shared with the Secretary of State by the Franchisee in an appropriate format that will not require specialist software to access or interpret. The Franchisee shall grant to the Secretary of State a perpetual, non-exclusive, irrevocable, world-wide, paid-up, royalty-free licence to use, copy, modify, transmit, distribute and publish the MCS Route Signal Survey for any purpose, and such licence shall be transferrable and/or capable of being sub-licensed.

12.13 The Franchisee shall:

- (a) market the availability of Mobile Communication Services to passengers via:
 - (i) the Franchisee's public webpage, together with terms and conditions, a fair-usage policy and "how to use the service guides"; and
 - (ii) on-board physical notices, for example, a notice which reads: "Free Wi-Fi Available Here";
- (b) ensure all branding of the Mobile Communication Services is that of the Franchisee.

12.14 The provisions of paragraphs 5, 6, 8 and 9 of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations) shall apply in respect of the obligations of the Franchisee specified in this paragraph 13, provided that references to a 'Committed Obligation' in paragraphs 5, 6, 8 and 9 of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2

(Committed Obligations) shall be construed as references to the Franchisee's obligations under this paragraph 12 in respect of the Mobile Communication Services.

13. HS2 Project

- 13.1 The Franchisee shall from the Start Date until the completion of the HS2 Project fully and effectively co-operate and engage constructively with all relevant parties responsible for the delivery of the HS2 Project with the intention of assisting in the timely, efficient and cost effective implementation and delivery of the HS2 Project in a manner which provides the best overall solution for the network. To the extent that the HS2 Project leads to the Franchisee having rights under railway industry procedures including Network Change or Station Change the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of the HS2 Project and the Franchisee shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change. It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of the HS2 Project and their implementation on passengers and the Franchise Services, while recognising the need for the HS2 Project to be able to be undertaken in a reasonable manner.
- 13.2 The Franchisee shall provide such information in respect of the HS2 Project as the Secretary of State may reasonably request from time to time.

APPENDIX 1 TO SCHEDULE 13.1⁸²⁰**Community Rail Partnerships**

| | Community Rail Partnerships Community Partnership | Rail Line / Services forming Partnership |
|------------|--|--|
| (a) | Community Rail Norfolk | Bittern Line (Norwich – Cromer & Sheringham) Wherry Lines (Norwich to Great Yarmouth (comprises two routes – one via Cantley, the other via Lingwood) and Norwich to Lowestoft) |
| (b) | East Suffolk Lines CRP | East Suffolk Lines (Ipswich to Lowestoft and Ipswich to Felixstowe) |
| (c) | Essex & South Suffolk CRP | Sunshine Coast – Colchester to Clacton & Walton-on-the-Naze Crouch Valley Line – Wickford to Southminster Flitch Line - Braintree to Witham Gainsborough Line – Marks Tey to Sudbury Mayflower Line – Manningtree to Harwich Town |
| (d) | Hereward Community Rail Partnership | Hereward Line- Peterborough to Ely |
| (e) | Hertford East Line Community Rail Partnership | New River Line - Broxbourne to Hertford East |

⁸²⁰ 02 October 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

APPENDIX 2 TO SCHEDULE 13.1⁸²¹**Diversity and Inclusion Strategy Framework**

The Department requires a train operator who will develop and implement a tailored Diversity and Inclusion Strategy, the goal of which is to deliver a more diverse workforce, reflective of the communities that it serves, by increasing representation of under-represented groups at all levels and grades.

1. Requirement from the Franchisee

The train operator shall prepare and submit a Diversity & Inclusion Strategy in accordance with the guidance and templates contained in this framework. However, it should be noted that this is not a comprehensive framework and should only be used as a guide.

The train operator shall submit a strategic Diversity & Inclusion action plan including the steps that they will take to ensure a more diverse workforce. The train operator shall also set out the methods they propose to monitor and report on the implementation of the policy and its effectiveness.

2. Strategic Diversity and Inclusion Action Plan

The Diversity & Inclusion Strategy shall include the following:

- 2.1 Plans to implement a range of recruitment and retention policies and procedures to ensure they recruit and retain a diverse group of candidates.**
 - 2.2 A set of recruitment targets which is 50% female with BAME composition reflective of the local area.**
 - 2.3 Plans to address gaps in representation in all job types and levels to meet recruitment targets on gender and BAME.**
 - 2.4 A list of specific KPIs to measure progress/success of implementing diversity action plan.**
 - 2.5 Plans for achieving, maintaining and progressing within a specific diversity accreditation scheme.**
 - 2.6 Plans to collect, monitor and report diversity data of its workforce.**
- 3. Plans to implement recruitment and retention policies and procedures**

This is an example below of what a general diversity plan might look like.

⁸²¹ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

| Goal | Objective | Current position/ baseline | Actions | Accountability | By when | Measure of success |
|------------------------------|---|--|---|----------------|---------|--|
| Increase workforce diversity | Recruit from a diverse group of candidates | Some advertisement in different publications | Work with local employment agencies and JCP | HR | Q4 | Workforce is increasingly reflective Internal targets |
| Retain a diverse workforce | Create an inclusive culture that encourages collaboration and increases retention | Employee engagement survey | Inclusive leadership training for managers | HR | Q3 | All leaders to have D&I training Engagement results should increase |
| Monitoring diversity data | Monitor diversity data to implement a range of recruitment policies | Data is collected on gender and age but there is no action Data is not collected on other protected characteristics | Collect diversity data on all groups Monitor data every 6 months | HR | Q2 | Recruitment policies are reviewed and updated |

The Strategy should also cover most of the protected characteristics, as well as looking at caring responsibilities, social mobility and issues affecting parents returning to work. Below are some examples of what this could look like depending at what point of the journey the train operator is at.

| Goal | Objective | Actions | Measure of success |
|------------|---|---|---|
| BAME | Improve representation of people from a BAME background in leadership and across the business. Seek to undertake and publish ethnicity pay gap report and activities. | Programme of mentoring and activities | Increase in BAME representation in leadership/ across organisation 10% employees from BAME Reduction in pay gap |
| Disability | Develop appropriate environment for people. | Train managers to deliver reasonable adjustment | Increase number of disabled employees Disability Confident Leader |
| Gender | Improve gender diversity across workforce and in leadership positions. | Set targets | 25% of employees to be women |

| Goal | Objective | Actions | Measure of success |
|-------------------------|--|---|---|
| | | Programme of activities | Reduction in gender pay gap |
| LGBT+ | Be an inclusive employer of LGBT+ employees | Provide specific LGBT+ awareness/ confidence training for managers | Stonewall Inclusive Employers |
| Carers | Support carers in the workplace | Review family-friendly policies to support carers Increase awareness amongst managers of carers' needs | Level 1 Carer Confident Benchmark Carer Positive award |
| Faith and belief | Be an employer where people of different faiths and beliefs feel equally valued and respected | Provide series of briefings for employees Faith spaces for employees | Inclusive Employer status |
| Age | Transfer skills between generations | Develop inter-generational mentoring between older and younger employees | Recognised as an employer for all ages |
| Social mobility | Make sure everyone can succeed and make the most of their talents, whatever the circumstances | Promote work with ex-offenders and lone parents Collect data on social mobility | The Social Mobility Employer Index |

4. KPIs Example

The plan should be supported by an appropriate set of key performance indicators to measure progress. For example, this could include:

- 4.1 Number of positive action initiatives in employment.**
- 4.2 Number of adverts in targeted publications to reach BAME and women.**
- 4.3 Membership of networks and forums.**

SCHEDULE 13.2**Innovation Obligations****1. Innovation Strategy**

- 1.1 The Franchisee shall at all times comply with its Innovation Strategy.
- 1.2 By the second anniversary of the Start Date and thereafter every two (2) years, the Franchisee shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld) a revised Innovation Strategy updated in accordance with the requirements of paragraph 1.3.
- 1.3 Each update to the Innovation Strategy made in accordance with paragraph 1.2 must have regard to the following core requirements:
 - (a) how the Franchisee has developed, and proposes to develop during the Franchise Term, its innovation capability, including leadership, employees, systems and processes, and how progress is measured;
 - (b) how the Franchisee has utilised, and proposes to utilise during the Franchise Term, effective techniques for capturing ideas from employees, passengers, the community, industry partners and the supply chain; and,
 - (c) how, during the Franchise Term, the Franchisee will partner and collaborate with other organisations and seek third party funding (where appropriate) in order to assist bringing new technologies, processes, business models and products to the rail market, that are viable for implementation during the Franchise Term.

SCHEDULE 14**Preservation of Assets**

| | |
|----------------|--|
| Schedule 14.1: | Maintenance of Franchise |
| Schedule 14.2: | Maintenance of Operating Assets |
| Schedule 14.3: | Key Contracts |
| | Appendix: List of Key Contracts |
| Schedule 14.4: | Designation of Franchise Assets |
| | Appendix: List of Primary Franchise Assets |
| Schedule 14.5: | Dealing with Franchise Assets |
| Schedule 14.6: | Residual Value Mechanism |
| | Appendix to Schedule 14.6: List of the RV Assets |
| Schedule 14.7 | Incentivising Long Term Investment |

SCHEDULE 14.1**Maintenance of Franchise****1. Maintenance as a going concern**

- 1.1 The Franchisee shall maintain and manage the business of providing the Franchise Services so that, to the greatest extent possible and practicable:
 - (a) the Franchisee is able to perform its obligations under the Franchise Agreement; and
 - (b) a Successor Operator would be able to take over the business of providing the Franchise Services immediately at any time.
- 1.2 The Franchisee's obligation under paragraph 1.1 shall include an obligation to ensure that any computer and information technology systems of the Franchisee shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a stand alone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of the Franchise Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for the Franchisee to obtain consent to such arrangements relating to sharing computer and information technology systems from the Secretary of State).
- 1.3 The Franchisee shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Primary Franchise Assets for such purpose.
- 1.4 The Franchisee shall maintain and manage the business of providing the Franchise Services on the basis that such business will be transferred, in the manner contemplated under the Franchise Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator.
- 1.5 The Franchisee shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period and in so doing shall plan for the recruitment and training of Franchise Employees to continue up until the end of the Franchise Term.
- 1.6 The Franchisee shall comply with all reasonable requirements of the Secretary of State to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Term.

2. Post-Franchise timetables

- 2.1 Both prior to and following the selection of a Successor Operator (whether a franchisee or otherwise and whether or not subject to the satisfaction of any conditions), the Franchisee shall:
- (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State; and
 - (b) take such steps as may reasonably be requested by the Secretary of State, so as to ensure the continuity of, and orderly handover of control over of the Franchise Services.
- 2.2 The steps that the Secretary of State may reasonably request the Franchisee to take pursuant to paragraph 2.1 include:
- (a) participating in any timetable development process that takes place during the Franchise Period, but which relates to any timetable period applying wholly or partly after the expiry of the Franchise Term ("**Successor Operator Timetable**"), including bidding for and securing any Successor Operator Timetable, whether or not:
 - (i) the Successor Operator has been identified; or
 - (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
 - (b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Franchise Period;
 - (c) assisting the Secretary of State or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or
 - (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Franchisee shall not be required to enter into any such Access Agreement unless the Secretary of State has first provided to it confirmation in writing that he will include that Access Agreement in any Transfer Scheme pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination).

SCHEDULE 14.2**Maintenance of Operating Assets****1. Operating Assets**

- 1.1 The Franchisee shall maintain, protect and preserve the assets (including any Intellectual Property Rights or intangible assets) employed in the performance of its obligations under the Franchise Agreement (the "**Operating Assets**") in good standing or good working order, subject to fair wear and tear.
- 1.2 The Franchisee shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Franchise Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Franchise Services.
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Franchisee shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Franchisee shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under the Franchise Agreement.
- 1.4 The Secretary of State may at any time require the Franchisee to provide to the Secretary of State a schedule specifying the condition of any asset or class of assets that he specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Secretary of State may reasonably require. If the Parties are unable to agree the content of such schedule of condition, either Party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Franchisee shall comply with the Secretary of State's requirements in respect of such schedule of condition.
- 1.5 The Franchisee shall keep vested in it at all times during the Franchise Period all Franchise Assets designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets) as it may require in order to comply with:
 - (a) the Licences;
 - (b) any contracts of employment with Franchise Employees;
 - (c) any relevant Fares;
 - (d) any Key Contracts; and
 - (e) any applicable safety legislation regulations or safety standards and the Safety Certificate,

in order to ensure that the Secretary of State may designate such assets as Primary Franchise Assets.

2. Brand Licence and Branding**2.1 Brand Licences**

The Franchisee shall comply with its obligations under each of the Brand Licences.

2.2 Branding

Subject to any applicable obligations or restrictions on the Franchisee (including the terms of the Rolling Stock Leases), the Franchisee may apply registered or unregistered trade marks (including company names, livery and other distinctive get-up) to any assets owned or used by it in the operation and provision of the Franchise Services.

- (a) Subject to paragraphs 2.2(c) and (g), the Franchisee may:
 - (i) in respect of unregistered Marks, provide or procure the provision of an irrevocable undertaking to any relevant Successor Operator to the effect that neither it nor the owner of the Marks will enforce such rights as it may have or may in the future have in respect of such Marks against such Successor Operator and its successors; and
 - (ii) in respect of registered Marks, grant or procure the grant of an irrevocable licence to use such Marks to such Successor Operator and its successors.
- (b) Any such licence or undertaking under paragraph 2.2(a) shall be in such form as the Secretary of State shall reasonably require except that the terms of any such licence and, to the extent appropriate, any such undertaking shall accord with the provisions of paragraph 8.3 of Schedule 15.4 (Provisions Applying on and after Termination).
- (c) Subject to paragraph 2.2(g), to the extent that:
 - (i) the Franchisee does not provide a relevant undertaking or licence in accordance with paragraph 2.2(a);
 - (ii) the Secretary of State considers the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the Marks are applied; or
 - (iii) the Franchisee has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the Secretary of State prior to the expiry of the Franchise Period,

then the Franchisee shall pay to the relevant Successor Operator such amount as may be agreed between the Franchisee and such Successor Operator, as being the reasonable cost (including any Value Added Tax for which credit is not available under Sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the Secretary of State. Such amount shall not in any event exceed the cost to the Successor Operator of replacing such Marks with its own. If the Franchisee and the relevant Successor Operator fail to agree such cost within twenty eight (28) days of the expiry of the Franchise Period, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.

- (d) The amount to be paid to a Successor Operator under paragraph 2.2(c) may include the reasonable cost of:
 - (i) removing or covering Marks from the exterior of any rolling stock vehicle;
 - (ii) removing or covering interior indications of the Marks including upholstery and carpets;
 - (iii) replacing or covering all station or other signs including bill boards; and
 - (iv) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the Franchise Services.
- (e) The Franchisee shall, in addition to making a payment under paragraph 2.2(c) grant or procure the grant of a licence or undertaking complying with paragraphs 2.2(a) and (b) except that such licence shall only be for such period as may be agreed between the Franchisee and the Successor Operator as being reasonably required by the Successor Operator to remove the Marks from all relevant assets without causing excessive disruption to the operation of services similar to the Franchise Services provided by such Successor Operator. If such period cannot be agreed, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.
- (f) The Secretary of State shall determine at or around the end of the Franchise Period, and after consultation with the Franchisee, the maximum liability of the Franchisee under paragraph 2.2(c) and the maximum length of licence or undertaking under paragraph 2.2(e).
- (g) The provisions of paragraphs 2.2(a) to 2.2(f) shall not apply to the extent that the relevant asset is not to be used by a Successor Operator in the provision of services similar to the Franchise Services. The Secretary of State shall notify the Franchisee as soon as he becomes aware of whether or not any such asset is to be so used.

2.3 **Non-designation of New Brands**

The Secretary of State agrees not to designate as a Primary Franchise Asset any registered or unregistered trade mark which is developed by the Franchisee.

SCHEDULE 14.3**Key Contracts****1. Key Contracts**

- 1.1 The provisions of this Schedule 14.3 apply to all contracts designated as Key Contracts from time to time.
- 1.2 The Key Contracts as at the date of the Franchise Agreement are set out in the Appendix (List of Key Contracts) to this Schedule 14.3. The Franchisee shall, in respect of any category of agreement, contract, licence or other arrangement which, by virtue of the provisions of this paragraph 1.2, is a Key Contract and to which the Franchisee, as at date of the Franchise Agreement, is not already a party:
- (a) inform the Secretary of State from time to time of any such agreement, contract, licence or other arrangement which it may be intending to enter into; and
 - (b) the provisions of paragraph 5.1 shall apply in respect of any such agreement, contract, licence or other arrangement.
- 1.3 Without prejudice to the provisions of paragraphs 2, 3 and 4 of this Schedule 14.3, the Appendix (List of Key Contracts) to this Schedule 14.3 shall be amended as considered necessary from time to time to take account of any:
- (a) designation by the Secretary of State of any actual or prospective agreement, contract, licence or other arrangement or any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary pursuant to paragraph 2 of this Schedule 14.3; or
 - (b) de-designation by the Secretary of State of any Key Contract pursuant to paragraph 3 of this Schedule 14.3; or
 - (c) re-designation by the Secretary of State pursuant to paragraph 4 of this Schedule 14.3.
- 1.4 The Franchisee shall enter into any and all Key Contracts which are necessary for the Franchise Agreement to continue in accordance with clause 5.2 (Duration of the Franchise Agreement).

2. Designation of Key Contracts

- 2.1 Where the Secretary of State considers that it is reasonably necessary for securing the continued provision of the Franchise Services or the provision of services similar to the Franchise Services by a Successor Operator in accordance with the Franchise Agreement, he may make a designation pursuant to paragraph 2.2.
- 2.2 The Secretary of State may at any time, by serving notice on the Franchisee, designate as a Key Contract:
- (a) any actual or prospective agreement, contract, licence or other arrangement; and/or

- (b) any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary, with effect from the date specified in such notice.

- 2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Franchisee or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

3. De-designation of Key Contracts

The Secretary of State may at any time, by serving a notice on the Franchisee, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. Re-designation of Key Contracts

The Secretary of State may at any time, by serving notice on the Franchisee, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

5. Direct Agreements

- 5.1 Unless the Secretary of State otherwise agrees, or unless directed to do so by the ORR, the Franchisee shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

- (a) is a Train Operator; or
- (b) has entered into a Direct Agreement with the Secretary of State in respect of that prospective Key Contract, providing on a basis acceptable to the Secretary of State, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;
 - (ii) termination or expiry of the Franchise Agreement; or
 - (iii) the making of a railway administration order in respect of the Franchisee.

- 5.2 Where the Secretary of State designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Franchisee is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Franchisee is already a party to a contract, licence or other arrangement which, by virtue of the Secretary of State's designation or re-designation, is classified in such category,

the Franchisee shall use all reasonable endeavours to assist the Secretary of State in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

- 5.3 The Franchisee shall pay to the Secretary of State an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Secretary of State under the provisions of any Direct Agreement and which may be notified to the Franchisee as a result of, or in connection with:
- (a) any breach by the Franchisee of the terms of the Key Contract to which the relevant Direct Agreement relates; or
 - (b) any unsuccessful claim being brought by the Franchisee against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. Emergencies

Where any emergency may arise in connection with the provision and operation of the Franchise Services, the Franchisee:

- 6.1 may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- 6.2 need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist the Secretary of State in entering into the same;
- 6.3 shall promptly inform the Secretary of State of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- 6.4 shall take such action in relation to such emergency, contracts, licences or other arrangements as the Secretary of State may request.

7. No Amendment

The Franchisee shall not without the prior consent of the Secretary of State (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

8. Replacement of Key Contracts

The Franchisee shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter into an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Secretary of State in relation to such replacement contract.

9. Termination of Key Contracts

The Franchisee shall, to the extent so requested by the Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.

APPENDIX TO SCHEDULE 14.3**List of Key Contracts**

The following items have as at the date of the Franchise Agreement been agreed between the Parties to be Key Contracts:

1. any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner;
2. any Property Lease and all side agreements relating to such relevant Property Lease;
3. any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 and Table 2 and Table 3 of the Appendix to Schedule 1.6 (The Rolling Stock);
4. any contract for the maintenance and renewal works at Stations including any:
 - 4.1 framework delivery contracts for the provision of building and civil engineering works, mechanical and electrical works at Stations; and
 - 4.2 side agreements with Network Rail relating to maintenance and renewal works at Stations;
5. any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator or other third party of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services;
6. any contract or arrangement for the subcontracting or delegation to another Train Operator or other third party of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 4 of Schedule 1.1 (Franchise Services and Service Development));
7. any contract or arrangement with a Train Operator or other third party (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
8. any contract or arrangement with a Train Operator or other third party for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services;
9. any contract or arrangement for the supply of spare parts or Spares;
10. any contract or arrangement for the maintenance of track and other related infrastructure;
11. any licences of Marks to the Franchisee;
12. any licence of any CRM System or Yield Management System; and

13. any contract or arrangement for the provision or lending of Computer Systems (other than the CRM System and Yield Management System) used by the Franchisee for the delivery of the Franchise Services and any MCS Contract.
14. ⁸²² **Any contract or arrangement relating to the procurement or operation of the STNR System or component of it and any data processed or generated by the STNR System (including Intellectual Property Rights (or licence to use the same) associated with the STNR System and such data).**
15. ⁸²³ **Any contract or arrangement for the procurement, implementation, processing and/or operation of Delay Repay Compensation (including Intellectual Property Rights (or licence to use the same) relating to Delay Repay Compensation).**

⁸²² 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸²³ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 14.4**Designation of Franchise Assets****1. Franchise Assets**

- 1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Franchisee from time to time during the Franchise Period shall be designated as Franchise Assets and shall constitute Franchise Assets for the purposes of Section 27(11) of the Act.
- 1.2 The rights and liabilities of the Franchisee in respect of the following items shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of Section 27(11) of the Act:
- (a) any contracts of employment;
 - (b) the Franchise Agreement and any Transfer Scheme or Supplemental Agreement;
 - (c) the Ticketing and Settlement Agreement;
 - (d) any sums placed on deposit with a bank or other financial institution;
 - (e) such other property, rights and liabilities as the Franchisee and the Secretary of State may agree from time to time or as the Secretary of State may de-designate as Franchise Assets under paragraph 10.2; and
 - (f) any Rolling Stock Leases.

2. Primary Franchise Assets and Investment Assets

- 2.1 The following property, rights and liabilities shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the following dates:
- (a) the property, rights and liabilities listed as such in the table in the Appendix (List of Primary Franchise Assets) to this Schedule 14.4 (which constitute Primary Franchise Assets agreed between the Parties as at the date of the Franchise Agreement), on the Start Date;
 - (b) any additional property, rights and liabilities designated under paragraph 3 during the Franchise Period, on the date of such designation;
 - (c) any property or right which is vested in the Franchisee and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
 - (d) the rights and liabilities of the Franchisee under any Key Contract designated under paragraph 5, on the date of such designation;
 - (e) the rights and liabilities of the Franchisee in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation;

- (f) any CRM Data and/or Yield Management Data and, to the extent that any CRM System and/or Yield Management System is the property of the Franchisee, such CRM System and/or Yield Management System on the later of the Start Date and:
- (i) in relation to CRM Data or Yield Management Data, the date on which such CRM Data or Yield Management Data (as applicable) is collected; or
 - (ii) in relation to any such CRM System or Yield Management System, the date on which such CRM System or Yield Management System is created,
- save, in relation to CRM Data and Yield Management Data, any data in respect of which the Data Subject has not consented to such data being disclosed and processed by any Successor Operator and/or the Secretary of State;
- (g) any licence of any CRM System and/or Yield Management System, on the date of such licence;
- (h) ⁸²⁴ **an RV Asset on the date in which such RV Asset is brought into operational use as specified in the applicable Certification of Completion or, where applicable, a Partially Completed RV Asset on the date on which the Secretary of State issues a Certificate of Partial Completion in respect of such RV Asset;**
- (i) Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same), on the date such information is supplied to the Secretary of State pursuant to paragraph 1.1 of Schedule 1.5 (Information about Passengers); and
- (j) ⁸²⁵ **any property and rights comprised in Committed Obligations or Franchise Specific Obligations and designated by the Secretary of State as Primary Franchise Assets pursuant to paragraph 10 (Designation of Assets comprised in COs as Primary Franchise Assets) of Schedule 6.2 (Special Terms related to the Committed Obligations), on the date of such designation.**

2.2 Investment Assets

- (a) On each Investment Asset Request Date the Franchisee shall provide to the Secretary of State a list of all Franchise Assets acquired since the Start Date (in the case of the first such list) or the previous Investment Asset Request Date (in the case of subsequent lists) which it wishes the Secretary of State to designate as Investment Assets. Such list shall clearly identify each relevant Franchise Asset, its purpose, specification, usual location, acquisition price, any ongoing charge payable by the Franchisee in relation to the Franchise Asset and any other asset upon which the operation of the Franchise Asset is dependent. The Franchisee shall provide such additional

⁸²⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁸²⁵ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

information as the Secretary of State shall reasonably request in relation to any such Franchise Asset.

- (b) The Franchisee shall not be permitted to nominate as Investment Assets without the prior written consent of the Secretary of State (which the Secretary of State shall have an unfettered discretion as to whether or not to give) Franchise Assets which:
 - (i) individually have an acquisition cost exceeding two million pounds (£2,000,000);
 - (ii) when aggregated with the Franchise Assets already designated as Investment Assets in a Franchisee Year have an aggregate acquisition cost exceeding five million pounds (£5,000,000) (apportioned proportionately where a Franchisee Year is less than thirteen (13) Reporting Periods;
 - (iii) when aggregated with Franchise Assets already designated as Investment Assets during the Franchise Term have an aggregate acquisition cost exceeding fifteen million pounds (£15,000,000); or
 - (iv) are already designated as Primary Franchise Assets (including for the avoidance of doubt an RV Asset).
- (c) The Secretary of State shall designate any Franchise Asset nominated by the Franchisee as an Investment Asset within three (3) months of the Investment Asset Request Date unless he serves notice on the Franchisee of designation of such Franchise Asset as a Primary Franchise Asset in accordance with paragraph 3 of this Schedule 14.4 or if in his reasonable opinion such Franchise Asset:
 - (i) is an information technology or computer system which is of a specification which, in the reasonable opinion of the Secretary of State, materially limits its utility to a Successor Operator including because it is constructed to a bespoke specification of or otherwise intended to work with the systems of the Parent or any company of which the Parent has Control; or
 - (ii) has had branding applied to it which renders it unsuitable for continued use by a Successor Operator; or
 - (iii) is not reasonably appropriate for the purposes of delivering the Franchise Services in a reasonable, proper and cost effective manner.
- (d) The Franchisee acknowledges the definition of Franchise Assets and agrees not to put forward for designation as an Investment Asset any asset not falling within such definition including, without limitation, accounting entries and assets in which the Franchisee does not have title.
- (e) On the final Investment Asset Request Date the Franchisee shall in addition to the list referred to in paragraph 2.2(a) also provide an additional list in two parts confirming:
 - (i) in part 1 of such additional list which Investment Assets that have already been designated as such should be designated as Primary

Franchise Assets and not be capable of de-designation as such without the prior agreement of the Franchisee and which Investment Assets should not be capable of being designated as Primary Franchise Assets without the prior agreement of the Franchisee and the Secretary of State; and

- (ii) in part 2 of such additional list which Franchise Assets which the Franchisee is proposing should be designated as Investment Assets should be designated as Primary Franchise Assets and not be capable of de-designation as such without the prior agreement of the Franchisee and which should not be capable of being designated as Primary Franchise Assets without the prior agreement of the Franchisee and the Secretary of State in both cases only if such Franchise Assets are designated as Investment Assets in accordance with paragraphs 2.2(a) to 2.2(c).
- (f) The Secretary of State shall comply with the requirement of the Franchisee set out in the list referred to in paragraph 2.2(e)(i) above. The Secretary of State shall comply with the requirements of the Franchisee in the list referred to in paragraph 2.2(e)(ii) above in relation to any Franchise Assets on such list which are actually designated by the Secretary of State as Investment Assets in accordance with paragraphs 2.2(a) to 2.2(c) but not otherwise. This paragraph is without prejudice to the other rights of the Secretary of State to designate Franchise Assets as Primary Franchise Assets.

3. Designation of Additional Primary Franchise Assets

Subject to paragraph 2.2(f) the Secretary of State may at any time and from time to time during the Franchise Period, by serving notice on the Franchisee, designate any or all of the Franchise Assets as Primary Franchise Assets. Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation. On or before designation of any Franchise Asset as a Primary Franchise Asset, the Secretary of State may agree not to subsequently de-designate such Primary Franchise Asset without the prior written consent of the Franchisee. If the Secretary of State so agrees, the notice designating the relevant Franchise Asset as a Primary Franchise Asset shall state that the Secretary of State shall not de-designate such Primary Franchise Asset without the prior written consent of the Franchisee.

4. Designation during last twelve (12) months of Franchise Period

If the Secretary of State designates a Franchise Asset as a Primary Franchise Asset under paragraph 3 at any time during the last twelve (12) months of the Franchise Period then, within twenty eight (28) days of such designation, the Secretary of State may de-designate such Primary Franchise Asset by serving notice on the Franchisee provided that, in relation to any Primary Franchise Asset in respect of which the Secretary of State agreed pursuant to paragraph 3 that he would not de designate without the prior written consent of the Franchisee, such consent has been obtained. Such de-designation shall take effect upon delivery of such notice.

5. Designation of Key Contracts as Primary Franchise Assets

The Secretary of State shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Franchise Asset at any time during the

Franchise Period by serving notice on the Franchisee. Such designation shall take effect from delivery of such notice.

6. Designation of Fares and Discount Cards

The Secretary of State may designate any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchisee. Such designation shall take effect from delivery of such notice.

7. Rights and Liabilities

The Secretary of State, in designating the rights and liabilities of the Franchisee (whether under a particular contract or other arrangement) as a Primary Franchise Asset may, in his discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

8. Disputes over Designation

- 8.1 The Franchisee may object in writing to the Secretary of State to any designation pursuant to paragraph 3 or 4.
- 8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Franchisee's opinion, reasonably necessary to secure the continued provision of the Franchise Services by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or to facilitate the transfer to such Successor Operator of the provision of the Franchise Services at such time.
- 8.3 Any such objection may only be made within twenty eight (28) days of a designation made more than twelve (12) months prior to the end of the Franchise Period or fourteen (14) days of a designation made during the last twelve (12) months of the Franchise Period.
- 8.4 The Secretary of State shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Franchisee regarding the use of the relevant Primary Franchise Asset otherwise than in the provision and operation of the Franchise Services.
- 8.5 If the Franchisee's objection cannot be resolved by agreement within a period of fourteen (14) days from the date of submission of that objection, the Franchisee may refer the dispute for resolution in accordance with the Dispute Resolution Rules.
- 8.6 Any body duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or otherwise facilitating the transfer of the provision of the Franchise Services at such time, and accordingly whether or not they should cease to be so designated.

- 8.7 If any dispute as to any designation pursuant to paragraph 3 remains outstanding on the expiry of the Franchise Period, then such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant Franchise Assets shall continue to be designated as Primary Franchise Assets on and after the expiry of the Franchise Period.

9. Provision of Information to the Secretary of State

- 9.1 The Franchisee shall provide such information as the Secretary of State may reasonably require in order to satisfy the Secretary of State that any Franchise Assets which are to be designated as Primary Franchise Assets after the Start Date under this Schedule 14.4 will at the time of such designation be vested in the Franchisee. Such information may include details of any Security Interests over such property, rights and liabilities.
- 9.2 The Franchisee shall further provide such information as to the property, rights and liabilities of the Franchisee as the Secretary of State may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Secretary of State within such timescale as the Secretary of State may reasonably require.

10. De-Designation of Franchise Assets and Primary Franchise Assets

- 10.1 The Secretary of State and the Franchisee may agree in writing at any time during the Franchise Period that a Franchise Asset shall cease to be so designated as a Franchise Asset or that a Primary Franchise Asset shall cease to be so designated as a Primary Franchise Asset, and the relevant Franchise Asset or Primary Franchise Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.
- 10.2 The Secretary of State may in addition at any time during the Franchise Period, by serving notice on the Franchisee, cause a Franchise Asset which is not a Primary Franchise Asset to cease to be so designated as a Franchise Asset. Such Franchise Asset shall cease to be so designated on the date specified in such notice.
- 10.3 The Secretary of State may in addition, at any time during the Franchise Period, by serving notice on the Franchisee, cause a particular Primary Franchise Asset to cease to be designated as such provided that, in relation to any Primary Franchise Asset in respect of which the Secretary of State agreed pursuant to paragraph 3 that he would not de designate without the prior written consent of the Franchisee, such consent has been obtained. Such Primary Franchise Asset shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Asset, no later than one (1) year prior to the expiry of the Franchise Term.

11. Amendment of the List of Primary Franchise Assets

The table in the Appendix (List of Primary Franchise Assets) to this Schedule 14.4 shall be amended as the Secretary of State considers necessary or desirable from time to time to take account of designation and de-designation of Primary Franchise Assets pursuant to this Schedule 14.4.

12. Spares

The obligation of the Franchisee to maintain, preserve and protect the Operating Assets (as such term is defined in paragraph 1.1 of Schedule 14.2 (Maintenance of Operating Assets)) under Schedule 14.2 (Maintenance of Operating Assets) shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Franchise Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchisee for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

APPENDIX TO SCHEDULE 14.4**List of Primary Franchise Assets**

| Description of Primary Franchise Asset | Commitment not to de-designate |
|--|---------------------------------------|
| Lease in respect of the lease of land at Stowmarket (used for carpark) between (1) Suffolk County Council and (2) London Eastern Railway Limited (as transferred to the Franchisee). | Yes |
| A Lease in respect of land at Station Road, Marks Tey made between (1) Essex County Council and (2) London Eastern Railway Limited, dated 9 March 2011. | Yes |
| A Lease in respect of Ground Floor, Solar House, Romford Road, Stratford made with Rainham Steel Investments Limited, dated 3 June 2011. | Yes |
| Station Lease for all Stations except Stansted airport station and Harwich International Station, dated 5 February 2012. | Yes |
| Station Lease for Stansted Airport Station dated 5 February 2012. | Yes |
| Station Lease for Harwich International Station dated 5 February 2012. | Yes |
| Sub-sub-under lease of premises at Orient Way, Temple Mills, Londonmade between (1) the Secretary of State for Transport and (2) Abellio Greater Anglia and registered at the Land Registry under the number EGL343651, dated 5 February 2012. | Yes |
| Lease agreement with GE Capital dated 29 October 2013 for 30 x Shere TVMs. | No |
| ⁸²⁶ Bilateral agreement relating to land at Ilford Depot with Crossrail Ltd dated 13 May 2013, as amended by the Deed of Variation dated around 19 May 2017. | Yes |

⁸²⁶ 29 December 2017 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

| Description of Primary Franchise Asset | Commitment not to de-designate |
|---|--------------------------------|
| Lease with ING Lease (UK) Ltd for 28 S&B TVMs to 28 Sept 2017 (as amended). | Yes |
| Lease of Suite C & D, The Octagon, and Colchester with Shay Property Investments dated 31 March 2014 to 30 Apr 2019. | No |
| Depot Access Agreement in relation to Ilford and associated Collateral Agreement & Amendment according to CTOC with Bombardier Transportation UK Ltd dated 5 February 2012 (as amended on 9 August 2013). | Yes |
| Running Maintenance Facility at London Ilford Depot with Rail for London dated 9 August 2013. | Yes |
| ⁸²⁷ Depot Access Agreement – London Ilford Depot with Rail for London dated 9 August 2013, as amended by the Amending Agreement dated around 19 May 2017. | Yes |
| Facility Charge for Shenfield station decked car park with Network Rail Infrastructure Ltd dated 17 July 2014. | No |
| Framework Compensation Agreement relating to GSM-R with Network Rail in relation to York Way dated 17 June 2011. | Yes |
| Direct Agreement between (1) Rail for London and (2) Abellio Greater Anglia Ltd, dated 29 May 2015. | Yes |
| Train Service Agreement between (1) London Overground Operations Ltd and (2) Abellio Greater Anglia Ltd and dated 29 May 2015. | Yes |
| Depot Access Agreement between London Overground Operations Ltd (1) and Abellio Greater Anglia Ltd (2) and dated 29 May 2015. | Yes |
| Lea Valley Fares Agreement between (1) Transport Trading Ltd and (2) Abellio Greater Anglia (2) and dated 29 May 2015. | Yes |
| ⁸²⁸ Umbrella Agreement relating to land at Ilford Depot, with Network Rail | |

⁸²⁷ 29 December 2017 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁸²⁸ 29 December 2017 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

| Description of Primary Franchise Asset | Commitment not to de-designate |
|---|--------------------------------|
| Infrastructure, dated 13 May 2013, as amended by the Second Supplemental Agreement and Variation dated around 19 May 2017. | |
| <p>The cab simulators for the following classes of the Train Fleet:</p> <p>(i) Class 170 (company asset number LER c00108);</p> <p>(ii) Class 315 (company asset number LER 00108); and</p> <p>(iii) Class 379 (company asset number LER 10001)</p> | Yes |
| <p>£665k Cycle Fund – the remaining amount of this fund and all Cycle Parking and CCTV assets procured with this fund as follows:</p> <p>Billericay - 10 bikes, 1 scanner system & 1 key drop box</p> <p>Broxbourne- 10 bikes, 1 scanner system & 1 key drop box</p> <p>Southend - 10 bikes, 1 scanner system & 1 key drop box</p> <p>Bishops Stortford - 10 bikes, 1 scanner system & 1 key drop box</p> <p>Ely - 10 bikes, 1 stand on one rack (capacity for 10 bikes) & 1 key drop box</p> <p>Liverpool Street - 10 bikes, stands on one rack (capacity for 10 bikes) 1 scanner system, 1 key drop box</p> <p>Chelmsford - 10 bikes, stands on one rack (capacity for 10 bikes), 1 scanner system, 1 key drop box</p> <p>Colchester - 10 bikes, 1 stand on one rack (capacity for 10 bikes) & 1 key drop box</p> <p>Ipswich - 10 bikes, 1 stand on one rack (capacity for 10 bikes), 1 scanner system & 1 key drop box</p> <p>Manningtree - 10 bikes, shelter and 5 individual stands (capacity for 10 bikes) 1 scanner system & 1 key drop box</p> <p>Stowmarket - 10 bikes, 1 stand on a rack (capacity for 10 bikes), 1 scanner system & 1 key drop box</p> <p>Norwich - 10 bikes, stands on a rack (capacity for 10 bikes), 1 scanner system & 1 key drop box</p> <p>Lowestoft - 10 bikes, stands on a rack (capacity for 10 bikes), 1 scanner system & 1 key drop box</p> | |

| Description of Primary Franchise Asset | Commitment not to de-designate |
|---|--------------------------------|
| Clacton on Sea - 10 bikes, stands on a rack (capacity for 10 bikes), 1 scanner system, 1 key drop box Great Yarmouth - 10 bikes, shelter and 5 individual (capacity for 10 bikes), 1 scanner system, 1 key drop box and 1 CCTV camera | |
| Hire Purchase Agreement dated 18 December 2015 for a carriage washing machine and controlled emission toilet system | |
| Supply Agreement between Fujitsu (1) and Abellio Greater Anglia Ltd (2) dated 8 th December 2015 | No |
| Lease Agreement between Fujitsu (1) and Abellio Greater Anglia Ltd (2) dated 8 th December 2015 | No |
| Financing Addendum relating to the provision of a contract for the provision of a desktop ticket issuing system with maintenance support dated 30 June 2015 between Fujitsu Services Limited and Abellio Greater Anglia Limited | No |
| 3 Cash & Card TVMs installed at Cambridge Station (No. 5193, 5194 & 5195) | |
| 3 Card only TVMs to be installed at Cambridge Station | |
| Mobile Wheel Lathe agreement and lease between Network Rail and Abellio Greater Anglia dated 1 May 2016 | No |
| ⁸²⁹ Direct Agreement dated around 19 May 2017 in respect of the Depot Access Agreement – London Ilford Depot with Rail for London dated 9 August 2013 as amended by the Amending Agreement dated around 19 May 2017. | No |
| (i) ⁸³⁰ those parts of the STNR System funded by the Secretary of State as part of the STNR Project (including those elements set out in Annexes B and C of the STNR Scope of Work); (ii) any intellectual Property Rights (or licence to use the same) associated with those parts of the STNR System; and (iii) all | |

⁸²⁹ 29 December 2017 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸³⁰ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

| Description of Primary Franchise Asset | Commitment not to de-designate |
|--|--------------------------------|
| <p>data processed or generated by the STNR System, shall be valued at nil.</p> | |
| <p>⁸³¹all the rights, title and interest of the Franchisee in any Computer System, other system or asset owned or used by the Franchisee procurement, implementation, processing and/or operation of DR15 Compensation (including any Intellectual Property Rights (or licence to use the same) relating to such Computer System, other system or asset) and all data whatsoever relating to DR15 Compensation processed or generated by such Computer System, such other system or otherwise (it being acknowledged that pursuant to the Supplemental Agreement set out in Appendix 2 of Schedule 15.4 all right, title and interest shall be valued at nil).</p> | |
| <p>⁸³²Contract between AEA and Rail Operations Group Ltd (ROGS) regarding the movement of end of life Class 321 units.</p> | |

⁸³¹ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸³² 27 October 2020 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 14.5**Dealing with Franchise Assets****1. Assets not Designated as Primary Franchise Assets**

- 1.1 This paragraph 1 relates to any Franchise Assets that are property or rights and are not designated as Primary Franchise Assets.
- 1.2 For the purposes of Section 27(3) of the Act, the Secretary of State consents to the Franchisee:
 - (a) transferring or agreeing to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets; and
 - (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Franchise Assets.

2. Liabilities not Designated as Primary Franchise Assets

- 2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Franchise Assets.
- 2.2 For the purposes of Section 27(3) of the Act, the Secretary of State consents to the Franchisee entering into any agreement under which any such liability is released or discharged, or transferred to another person.

3. Franchise Assets and Primary Franchise Assets

- 3.1 This paragraph 3 relates to Franchise Assets (whether or not designated as Primary Franchise Assets) which are property or rights.
- 3.2 The Secretary of State hereby consents to the installation of Spares which have been designated as Primary Franchise Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.
- 3.3 For the purposes of Section 27(3) of the Act, the Secretary of State hereby consents to the Franchisee creating or agreeing to create any Security Interest over any of these Franchise Assets to the extent that the terms of any such Security Interest provided that:
 - (a) if the relevant Franchise Asset becomes the subject of a transfer scheme made under Section 12 and Schedule 2 of the Railways Act 2005, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;
 - (b) if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with the Franchise Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
 - (c) such Security Interest shall not be enforced or enforceable until the date on which such Franchise Asset ceases to be designated as a Franchise Asset.

4. Prohibition on Other Security Interests

The Franchisee shall not create or agree to create a Security Interest over any Franchise Asset except on the terms permitted under paragraph 3.3.

5. Miscellaneous

The Franchisee shall promptly inform the Secretary of State of any Security Interest arising at any time over any of its property or rights and shall provide the Secretary of State with such information in relation thereto as he may reasonably require.

SCHEDULE 14.6**Residual Value Mechanism****1. Provisions relating to RV Assets**

1.1 The provisions of paragraphs 3, 4, 7, 8 and 10 to 12 of Schedule 14.4 (Designation of Franchise Assets) (inclusive) shall not apply in respect of any RV Asset.

1.2 De-Designation of RV Assets as Primary Franchise Assets

The Secretary of State may, at any time during the Franchise Period, by serving notice on the Franchisee cause a particular RV Asset designated as a Primary Franchise Asset pursuant to paragraph 2.1(h) of Schedule 14.4 (Designation of Franchise Assets) to cease to be designated as such on the occurrence of any of the following:

- (a) ⁸³³ **such RV Asset is lost, destroyed or otherwise beyond repair after the date upon which it is designated as a Primary Franchise Asset pursuant to paragraph 2.1(h) of Schedule 14.4 (Designation of Franchise Assets) and such RV Asset is not replaced or such RV Asset is not or has ceased to be vested in the Franchisee; or**
- (b) the Secretary of State and the Franchisee agree in writing at any time during the Franchise Period that such RV Asset shall cease to be so designated as a Primary Franchise Asset; or
- (c) for an RV Asset that is a Network Rail Fixture Asset the applicable Station Access Conditions or Depot Access Conditions are amended at any time after the date of designation of such RV Asset such that the Franchisee ceases to be responsible under the applicable Station Access Conditions or Depot Access Conditions (as the case may be) for the maintenance, repair and renewal of such RV Asset.

Such RV Asset shall cease to be designated as a Primary Franchise Asset with effect from the date specified in any notice served by the Secretary of State pursuant to this paragraph 1.2 and the table in the Appendix to Schedule 14.6 (List of the RV Assets) shall be deemed to be amended and thereafter shall be amended to take account of any such de-designation.

1.3 Process for issue of a Certificate of Completion for RV Assets

- (a) ⁸³⁴ **Within twenty (20) days of the date upon which an RV Asset (which is not a Partially Complete RV Asset) is brought into operational use the Franchisee shall provide to the Secretary of State such information as is required by the Secretary of State for, and in the detail needed for demonstrating that such RV Asset has been brought into operational use and evidencing the actual capital**

⁸³³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁸³⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

cost incurred by the Franchisee on the procurement of such RV Asset including the following:

- (i) the information described in paragraph 9 of Schedule 14.4 (Designation of Franchise Assets), including such information as the Secretary of State may require pursuant to paragraph 9.2 of Schedule 14.4 (Designation of Franchise Assets);
 - (ii) information which shows the actual date upon which such RV Asset was brought into operational use (including photographic evidence or any other kind of record which shows that such RV Asset has been brought into operational use);
 - (iii) in respect of an RV Asset that is a Network Rail Fixture Asset, written confirmation from Network Rail that:
 - (A) such RV Asset will be owned by the Franchisee and remain the unencumbered asset of the Franchisee for the duration of the asset life of such RV Asset or the duration of the Franchise Period (whichever is the shorter);
 - (B) the Franchisee has the responsibility under the Station Access Conditions or the Depot Access Conditions (as the case may be) applicable in relation to such Station or Depot (as the case may be) to maintain, repair and renew such RV Asset from the date upon which such RV Asset property is brought into operational use for the duration of the asset life of such RV Asset or the duration of the Franchise Period (whichever is the shorter);
 - (iv) information evidencing the actual capital cost of procuring such RV Asset (including receipts and other supporting evidence);
 - (v) ⁸³⁵ **information which shows that such RV Asset satisfies the requirements of the Committed Obligations or Franchise Specific Obligations to which it relates; and**
 - (vi) the information required by paragraph 1.5; and
 - (vii) such other information as the Secretary of State may reasonably require for the purposes of satisfying himself that such RV Asset has been brought into operational use by a date that is no later than four (4) years after the Start Date and verifying the actual capital costs incurred by the Franchisee on the procurement of such RV Asset.
- (b) Subject to receipt of the information required in paragraph 1.3(a) and none of the events described in paragraph 1.2 having occurred, the Secretary of State shall issue to the Franchisee a certificate of completion ("**Certificate of Completion**") which shall specify for the purposes of this Agreement the date upon which the relevant RV Asset was brought into operational use

⁸³⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

provided that nothing in this paragraph 1.3(b) shall oblige the Secretary of State to issue a Certificate of Completion in respect of any RV Asset:

- (i) if the Secretary of State, acting reasonably is not satisfied that such RV Asset will at the time of such designation be vested in the Franchisee;
 - (ii) if the Secretary of State reasonably determines that such RV Asset does not satisfy the requirements of the Committed Obligation to which it relates;
 - (iii) that is brought into operational use on a date that is later than the date which is four (4) years after the Start Date; or
 - (iv) where the confirmation from Network Rail referred in paragraph 1.3(a)(iii) has not been issued.
- (c) The Secretary of State may, prior to the issue of a Certificate of Completion in respect of an RV Asset, exercise his rights under paragraph 6 of Schedule 11.2 (Management Information) to inspect an RV Asset for the purposes of satisfying himself that such RV Asset satisfies the requirements of the Committed Obligation to which it relates.

1.3A ⁸³⁶ Process for issue of a Certificate of Partial Completion for Partially Completed RV Assets

- (a) **In respect of any RV Assets listed in Column 1 of the table set out in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (Residual Value Mechanism), which are not Completed RV Assets as at 1 March 2020, the Franchisee shall, within fourteen (14) days of the date of the ERMA, provide to the Secretary of State such information as is required by the Secretary of State, and in the detail needed to demonstrate and evidence the degree to which such RV Asset could potentially be a Partially Complete RV Asset and the actual capital cost incurred by the Franchisee in respect of such RV Asset up to 1 March 2020, including the following:**
- (i) **the information described in paragraph 9 of this Schedule 14.4 (Designation of Franchise Assets), including such information as the Secretary of State may require pursuant to paragraph 9.2 of Schedule 14.4 (Designation of Franchise Assets);**
 - (ii) **information evidencing the actual capital cost incurred in respect of such RV Asset up to 1 March 2020 (including receipts and other supporting evidence) or where all information required to evidence the actual capital cost incurred in respect of such RV Asset is not yet available, the Franchisee's reasonable estimate of such actual capital cost**

⁸³⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- with a commentary explaining how the estimate has been arrived at;
- (iii) information which shows that, taking into account the works that would be required for that RV Asset to become a Completed RV Asset, such RV Asset satisfies the requirements of the Committed Obligations or Franchise Specific Obligations to which it relates;
 - (iv) details of any work completed up to 1 March 2020 and any work which remains outstanding before such RV Asset can be put into operational use; and
 - (v) such other information as the Secretary of State may reasonably require in order to determine whether such RV Asset shall qualify for a Partial Completion Certificate.
- (b) Where the Franchisee is only able to provide an estimate of the capital cost of procuring a Potential Partially Complete RV Asset pursuant to paragraph 1.3A(a) above, it shall notify the Secretary of State of the actual capital cost (incurred by the Franchisee up to 1 March 2020) of procuring such asset (with receipts and other supporting evidence) as soon as reasonably practicable and in any event within twenty eight (28) days of the date of the ERMA. The Franchisee shall provide the Secretary of State with such further information as reasonably requested for the purposes of verifying the actual capital costs incurred by the Franchisee up to 1 March 2020 in respect of such asset.
- (c) The Secretary of State may, prior to the issue of a Certificate of Partial Completion in respect of a Potential Partially Complete RV Asset, exercise Secretary of State's rights under paragraph 6 (Right to Inspect) of Schedule 11.2 (Management Information) to inspect such asset for the purposes of determining whether the Secretary of State considers it appropriate to issue a Certificate of Partial Completion in respect of that asset and for the purposes of determining its 1 March RV Asset Transfer Value.
- (d) The Secretary of State shall, for the purposes of issuing any Certificate of Partial Completion, determine (acting reasonably) the 1 March RV Asset Transfer Value of the relevant RV Asset and, in doing so, shall take into account the:
- (iv) actual capital cost incurred in respect of that asset up to 1 March 2020, which has been evidenced to the Secretary of State's satisfaction;
 - (v) state of completion of the asset as compared to what would be expected from such asset were it to have become a Completed RV Asset; and
 - (vi) capital costs that would be expected to have been incurred by an operator acting in accordance with the Franchisee's obligations under the terms of the Franchise Agreement (as in effect at the time such costs were incurred) in achieving such state of completion,

provided that, in respect of each relevant RV Asset, the 1 March RV Asset Transfer Value shall not in any event be greater than the capital cost set out in Column 5 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (List of the RV Assets).

- (e) Subject to the Secretary of State being satisfied with the information provided pursuant to this paragraph 1.3A in respect of a Potential Partially Complete RV Asset, having regard to any information available to the Secretary of State, the Secretary of State shall issue to the Franchisee a certificate of partial completion in respect of such Potential Partially Complete RV Assets specifying for the purposes of this Agreement the state of completeness as compared to what would be expected from such RV Asset when it became a Completed RV Asset and the 1 March RV Asset Transfer Value (determined in accordance with paragraph 1.3A(d)) of the relevant RV Asset ("Certificate of Partial Completion").**
- (f) Notwithstanding any other provision of this Schedule 14.6, if a Certificate of Partial Completion is issued in respect of an RV Asset listed in Column 1 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6, then no Certificate of Completion shall subsequently be issued in respect of that RV Asset.**

1.4 Adjustments to the Transfer Value

If:

- (a) the Franchise Agreement is extended as contemplated in clause 5 (Duration of the Franchise Agreement) then the Secretary of State shall adjust the RV Asset Transfer Value applicable to each RV Asset by depreciating each such RV Asset on a straight line basis from the date specified for such RV Asset in column 3 of the Appendix to this Schedule 14.6 ("**Planned Delivery Date**") until the end of the Franchise Period (as extended) and so that:**
 - (i) the Revised RV Asset Transfer Value will be the residual value of the RV Asset following such depreciation as at the end of the Franchise Period (as extended) or, if the RV Asset has been fully depreciated on that basis at that time, nil; and**
 - (ii) from the date of the extension of the Franchise Agreement Column 2 of the table in the Appendix to this Schedule 14.6 (List of the RV Assets) shall be deemed to be and shall be restated in the amounts of the Revised RV Asset Transfer Value; or**
- (b) the actual capital cost incurred by the Franchisee in procuring any RV Asset is less than the amount specified in Column 5 of the table in the Appendix to this Schedule 14.6 (List of the RV Assets) in respect of any such RV Asset, then:**
 - (i) the Secretary of State shall with effect from the date upon which a Certificate of Completion is issued in respect of such RV Asset adjust the RV Transfer Value applicable to such RV Asset by using the same principles as were specified in the Financial Model and Record of Assumption for the calculation of the initial RV Transfer Value except that actual capital cost for such RV Asset shall replace the capital cost specified for such RV Asset in Column 5 of the table of the**

Appendix to this Schedule 14.6 (List of the RV Assets) in order to calculate the Revised RV Asset Transfer Value; and

- (ii) Column 2 of the table in the Appendix to this Schedule 14.6 (List of the RV Assets) shall, from the date of any such adjustment be deemed to be restated and shall be restated in the amounts of the Revised RV Asset Transfer Value.

- (c) ⁸³⁷ **Not Used.**

1.5 ⁸³⁸ **Adjustments to the Transfer Value of RV Assets following entry into the ERMA**

- (a) **In respect of each Partially Complete RV Asset:**

- (i) **the Secretary of State shall adjust the RV Asset Transfer Value applicable to such Partially Complete RV Asset using the same principles as were specified in the Financial Model and Record of Assumption for the calculation of the initial RV Asset Transfer Value except that the 1 March RV Asset Transfer Value of such Partially Complete RV Asset shall replace the capital cost specified for such Partially Complete RV Asset in Column 5 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (List of the RV Assets) in order to calculate the Revised RV Asset Transfer Value and such adjustment shall be deemed to take effect from the date upon which the relevant Certificate of Partial Completion is issued; and**

- (ii) **Column 2 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (List of the RV Assets) shall be restated using the amounts of the Revised RV Asset Transfer Value and such restatement shall be deemed to be effective from the date of issue of a Certificate of Partial Completion.**

- (b) **The Parties acknowledge that:**

- (i) **the RV Asset Transfer Values set out in Column 2 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (List of the RV Assets) were calculated on the basis that the Franchise Term would end on 12 October 2025; and**

- (ii) **upon entry into the ERMA, the Franchise Term was amended so that it ends on the Expiry Date.**

- (c) **In order to reflect the amendment to the Term, the Parties agree that the Secretary of State shall adjust the RV Asset Transfer Value for each Completed RV Asset and each Partially Complete RV Asset (after applying any adjustments to the values in the table in**

⁸³⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁸³⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

Appendix 1 to this Schedule 14.6 (List of the RV Assets) in accordance with paragraph 1.5(a) above) by depreciating the value of each RV Asset on a straight line basis from the delivery date specified for such RV Asset in Column 3 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 ("Planned Delivery Date") until the end of the Franchise Term (as amended) so that:

- (i) **the Revised RV Asset Transfer Value will be the residual value of the RV Asset following such depreciation as at the end of the Franchise Period (as amended) or, if the RV Asset has been fully depreciated on that basis at that time, nil; and**
 - (ii) **Column 2 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (List of the RV Assets) shall be restated using the Revised RV Asset Transfer Value.**
- (d) **The adjustments to Appendix 1 of this Schedule 14.6 contemplated in paragraph 1.5(a) in relation to each Completed RV Asset are without prejudice to any other adjustments that may be made in accordance with paragraph 1.4 (Adjustments to the Transfer Value), provided that the adjustments set out in this paragraph 1.5 shall only be applied after any adjustments pursuant to paragraph 1.4 (Adjustments to the Transfer Value) are first applied.**

1.6 ⁸³⁹ Transfer Value of RV Assets commenced after 1 March 2020 or which do not become Partially Complete RV Assets

- (a) **If the Franchisee had not incurred any capital costs in respect of an RV Asset prior to 1 March 2020, the capital cost under Column 5 and the RV Asset Transfer Value under Column 2 of the table in Appendix 1 (List of the RV Assets) to the Schedule 14.6 (Residual Value Mechanism), in respect of such RV Asset shall both be deemed to be nil and Column 2 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (List of the RV Assets) shall be deemed to be restated with effect from 1 March 2020 and the Secretary of State shall not be obliged to issue a Certificate of Completion or a Certificate of Partial Completion in respect of any such RV Asset.**
- (b) **Without limiting paragraph 1.6(a) above, for any RV Asset listed in Column 1 of the table in Appendix 1 (List of the RV Assets) to the Schedule 14.6 (Residual Value Mechanism) in respect of which a Certificate of Completion or a Certificate of Partial Completion has not been issued by the end of the Franchise Period, the capital cost under Column 5 and the RV Asset Transfer Value under Column 2 of the table in Appendix 1 (List of the RV Assets) to the Schedule 14.6 (Residual Value Mechanism), in respect of such RV Asset shall both be deemed to be nil and Column 2 of the table in Appendix 1 to this**

⁸³⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

Schedule 14.6 (List of the RV Assets) shall be deemed to be restated accordingly.

2. ⁸⁴⁰Maintenance Requirements for Completed RV Assets

- 2.1 **At the same time as the Franchisee provides the information required pursuant to paragraph 1.3(a), the Franchisee shall submit to the Secretary of State a schedule of condition specifying the condition of such Completed RV Asset as at the date upon which such Completed RV Asset was brought into operational use as specified in the applicable Certificate of Completion. Such schedule of condition must be approved by the Secretary of State and shall be in respect of such aspects of a Completed RV Asset as the Secretary of State may reasonably require. The Franchisee shall ensure that each Completed RV Asset is maintained, preserved and protected in at least the same condition, subject to fair wear and tear, as specified in the applicable schedule of condition as approved by the Secretary of State in respect of such Completed RV Asset pursuant to this paragraph 2.1. In respect of any Completed RV Asset that is a Network Rail Fixture Asset the Franchisee shall ensure that any schedule of condition prepared as required by this paragraph 2.1 shall comply with the Franchisee's maintenance obligations relating to such Network Rail Fixture Asset under the applicable Station Access Conditions and/or Depot Access Conditions (as the case may be).**
- 2.2 **Subject to paragraph 2.3, where the Franchisee has failed to demonstrate to the reasonable satisfaction of the Secretary of State that it has complied with its maintenance obligations in paragraph 2.1 in respect of any Completed RV Asset then the Secretary of State may, by notice in writing to the Franchisee, require that the RV Asset Transfer Value payable by a Successor Operator required pursuant to the Supplemental Agreement to pay to the Franchisee the RV Asset Transfer Value for such Completed RV Asset (the "Relevant Successor Operator") is adjusted downwards by an amount that is equal to the amount that is agreed by the Franchisee and the Relevant Successor Operator (or on failure to agree, as reasonably determined by the Secretary of State) as being the amount reasonably expected to be incurred by the Relevant Successor Operator for putting such Completed RV Asset in the condition required pursuant to paragraph 2.1.**
- 2.3 **The provisions of paragraph 2.2 shall not apply in circumstances where the Franchisee and the Relevant Successor Operator agree that the Franchisee shall either:**
- (a) **rectify any relevant non-compliance with the requirements of paragraph 2.1; or**
 - (b) **indemnify the Relevant Successor Operator (the form of such indemnity to be in a form that is acceptable to the Relevant Successor Operator) against the reasonable costs of putting the**

⁸⁴⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

relevant Completed RV Asset in the condition required by paragraph 2.1.

2A. ⁸⁴¹Maintenance Requirements for Partially Complete RV Assets

- 2A.1 **At the same time as the Franchisee provides the information required pursuant to paragraph 1.3A(a), the Franchisee shall submit to the Secretary of State a statement of condition specifying the condition of the relevant Potential Partially Complete RV Asset. Such statement of condition must be approved by the Secretary of State. The Franchisee shall ensure that each Partially Complete RV Asset is maintained, preserved and protected in at least the same condition, subject to any further works undertaken in relation to such Partially Complete RV Asset (in which case, the Franchisee shall ensure that each further developed Partially Complete RV Asset is maintained, preserved and protected in the manner that would be expected of a Good and Efficient Operator).**
- 2A.2 **Subject to paragraph 2A.3, where the Franchisee has failed to demonstrate to the reasonable satisfaction of the Secretary of State that it has complied with its maintenance obligations in paragraph 2A.1 in respect of any Partially Completed RV Asset then the Secretary of State may by notice in writing to the Franchisee require that the RV Asset Transfer Value payable by a Successor Operator required pursuant to the Supplemental Agreement to pay to the Franchisee the RV Asset Transfer Value for such Partially Complete RV Asset ("Relevant Successor Operator") is adjusted downwards by an amount that is equal to the amount that is agreed by the Franchisee and the Relevant Successor Operator (or on failure to agree, as reasonably determined by the Secretary of State) as being the amount reasonably expected to be incurred by the Relevant Successor Operator for putting such Partially Complete RV Asset (as relevant) in the condition required pursuant to paragraph 2A.1.**
- 2A.3 **The provisions of paragraph 2A.2 shall not apply in circumstances where the Franchisee and the Relevant Successor Operator agree that the Franchisee shall either:**
- (a) **rectify any relevant non-compliance with the requirements of paragraph 2A.1; or**
 - (b) **indemnify the Relevant Successor Operator (the form of such indemnity to be in a form that is acceptable to the Relevant Successor Operator) against the reasonable costs of putting the relevant Partially Complete RV Asset in the condition required by paragraph 2A.1.**

⁸⁴¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

APPENDIX TO SCHEDULE 14.6

List of the RV Assets [REDACTED⁸⁴²]

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 |
|---|-----------------------------|-----------------------|---|------------------|
| Description of the RV Assets | RV Asset Transfer Value (£) | Planned Delivery Date | Is RV Asset a Network Rail Fixture Asset (Yes/No) | Capital Cost (£) |
| A scheme involving major upgrade works at five Stations (Harlow Town, Broxbourne, Cheshunt, Southend Victoria, Cambridge) | [REDACTED] | 31 March 2020 | Yes | [REDACTED] |

⁸⁴³ Without prejudice to the generality of clause 5.8 of the EMA Review DoA, at the end of the EMA Period, the Secretary of State will review whether any items treated as Costs or Capital Expenditure pursuant to the provisions of Schedule 8.A (Franchise Payments) during or in relation to the EMA Period related to RV Assets and where relevant, the Parties shall agree an adjustment to the RV Asset Transfer Value. In the event that such adjustment cannot be agreed, the Secretary of State will reasonably determine it.

⁸⁴² Date of redaction 05/10/2016 - where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁸⁴³ 3 December 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 14.7**Incentivising Long Term Investment**

This Schedule sets out the Secretary of State's guidance on how he approaches incentivising long term investment. Nothing in this Schedule is intended to limit or be limited by the provisions of paragraph 2.2 of Schedule 14.4 (Designation of Franchise Assets).

1. The Secretary of State wishes to encourage the Franchisee to:
 - (a) improve the efficiency;
 - (b) reduce the cost; and
 - (c) enhance the revenue earning potential of the delivery of services to passengers,from the commencement of the Franchise, through the Franchise Term and into the successor franchises.
2. It is recognised however that the Franchise Term may be perceived to be a barrier to undertaking investment or change programmes where:
 - (a) the time scale for implementation limits the benefit to the Franchisee; or
 - (b) the business case for such investment or change has a payback period longer than the Franchise Term.
3. In this context investment or change may be considered to encompass:
 - (a) capital investments undertaken solely by the Franchisee;
 - (b) capital investments undertaken by the Franchisee in association with others;
 - (c) total or partial substitution of certain train services by bus services where an enhanced service level could be provided for reduced cost or where the provision of bus services improves the overall capacity of the network or delivers other benefits;
 - (d) changes in working practices of the Franchisee's employees;
 - (e) changes in the contracted roles and responsibilities between the Franchisee and its major suppliers; and
 - (f) operational changes.
4. Accordingly, the Franchisee is encouraged to propose schemes that seek to achieve the objectives set out in paragraph 1 for consideration by the Secretary of State during the Franchise Term.

5. In considering the Franchisee's proposals for any investment or change proposed to be undertaken, the Secretary of State will recognise:
 - (a) the capital cost and proposed payment profile;
 - (b) legitimate costs of the Franchisee in developing, procuring, delivering and project managing the project;
 - (c) the life of any capital assets and the duration of the benefits stream arising;
 - (d) the remaining Franchise Term and the projected payback period;
 - (e) the benefits associated with undertaking the investment early rather than waiting until the Franchise is re-let;
 - (f) the risks of cost overrun or under performance of the projected benefits;
 - (g) a profit element for undertaking the project commensurate with the risks of the proposed project; and
 - (h) alternative benefit sharing arrangements which could be based on:
 - (i) a capital lump sum when the expenditure is incurred;
 - (ii) an enhanced Franchise Payment over the Franchise Term;
 - (iii) a balloon payment on expiry of the Franchise which allocates a proportion of future benefits to the Franchisee;
 - (iv) an ongoing payment if the benefits materialise after the Franchise Term; and/or
 - (v) any combination of any of paragraphs 5(h)(i) to 5(h)(iv) inclusive.
6. In evaluating the Franchisee's proposals for any investment or change proposed to be undertaken and to enable best value for money to be obtained from third party financiers, the Secretary of State shall also give consideration to the appropriateness of the provision, by the Secretary of State, of an undertaking (or other form of comfort) pursuant to Section 54 of the Act.

SCHEDULE 15**Obligations Associated with Termination**

| | |
|----------------|---|
| Schedule 15.1: | Reletting Provisions |
| Schedule 15.2: | Last Twelve (12) or Thirteen (13) months of Franchise Period and other conduct of business provisions |
| Schedule 15.3: | Handover Package |
| | Appendix: Form of Handover Package |
| Schedule 15.4: | Provisions Applying on and after Termination |
| | Appendix 1: Form of Transfer Scheme |
| | Appendix 2: Form of Supplemental Agreement |

SCHEDULE 15.1**Reletting Provisions****1. Reletting of Franchise**

- 1.1 The Franchisee acknowledges that the Secretary of State may wish, at or before the expiry of the Franchise Period, either to invite persons to tender for the right to provide all or some of the Passenger Services under a franchise agreement or alternatively to enter into a franchise agreement in respect of all or some of the Passenger Services without having gone through a tendering process.
- 1.2 The Franchisee further acknowledges that the Secretary of State has in certain circumstances a duty under Section 30 of the Act to secure the continued provision of services equivalent to the Passenger Services on expiry or termination of the Franchise Agreement. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development), Schedule 14 (Preservation of Assets) and this Schedule 15 (Obligations Associated with Termination).

2. Preparation for Reletting

- 2.1 The Franchisee shall, if so requested by the Secretary of State:
 - (a) provide the Secretary of State and his representatives and advisers with access to officers, the Franchise Employees and all books, records and other materials kept by or on behalf of the Franchisee in connection with the Franchise Services (including electronic or magnetic records, any CRM System and any Yield Management System) for the purpose of assisting such representatives and advisers:
 - (i) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Franchise Services;
 - (ii) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
 - (iii) to enter into any franchise agreement or other agreement (including any agreement entered into by the Secretary of State in fulfilment of his duties under Section 30 of the Act) relating to the services equivalent to the Franchise Services, without undergoing a tendering process,

provided that the exercise of such access rights by the Secretary of State and his representatives and advisers shall not unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee; and
 - (b) at its own cost, publish and display such publicity and promotional material and notices as the Secretary of State may provide to the Franchisee for the

purposes of informing passengers of any matters relating to the Tendering/Reletting Process including:

- (i) the commencement of any Tendering/Reletting Process;
 - (ii) making passengers aware of any consultation being undertaken by the Secretary of State in relation to any such Tendering/Reletting Process; and
 - (iii) informing passengers of the outcome of any Tendering/Reletting Process.
- (c) The obligation to publish and display pursuant to paragraph 2.1(b) shall mean making the relevant publicity and promotional material and notices available to passengers by such means as the Secretary of State may reasonably require including by displaying publicity and promotional material and notices at Stations and on trains, publishing relevant information in any reports published to passengers or including such information in any leaflets, newspapers or other promotional material published to passengers by the Franchisee from time to time.

3. Data Site Information

- 3.1 The Franchisee shall make available to the Secretary of State and his representatives and advisers such Data Site Information (as defined at paragraph 3.5) as they shall reasonably require in connection with the matters referred to in paragraph 2.1 by no later than three (3) months after the date of such request.
- 3.2 The Franchisee shall prepare and present such information in such manner (including in disaggregated form) as the Secretary of State may require, and shall provide such assistance as the Secretary of State may require in connection with the verification of such information.
- 3.3 The Franchisee shall provide such confirmation in relation to the accuracy of:
- (a) the contents of the documents referred to in paragraph 2.1; and
 - (b) any Data Site Information uploaded to such electronic data site as the Secretary of State may require pursuant to paragraph 3.4,
- in each case, as the Secretary of State shall require from time to time.
- 3.4 The Franchisee shall upload such Data Site Information as the Secretary of State may require to such electronic data site as he may specify and shall make a sufficient number of appropriate staff available for that purpose. The Franchisee shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Secretary of State). For the avoidance of doubt, the Data Site Information required by the Secretary of State under this paragraph may cover the entire Franchise Period or any part of it.

- 3.5 **“Data Site Information”** means information relating to any of the following:
- (a) the Franchise or the Franchisee, any Affiliate of the Franchisee or their respective businesses (including their audited and management accounts, asset registers and contract lists);
 - (b) past and present demand for the Franchise Services or any similar services (including passenger count data, Yield Management Data and CRM Data);
 - (c) information required to be provided by the Franchisee pursuant to Schedule 1.5 (Information about Passengers);
 - (d) the total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee) received or which the Franchisee expects to receive during the Franchise Period;
 - (e) the Franchisee's safety authorisation, safety certificate or safety management system (in each case as defined in the Safety Regulations);
 - (f) any other safety matter;
 - (g) the arrangements contained within the Railways Pension Scheme, the Pension Trust, the Franchise Section, or any other pension arrangement in respect of employees of the Franchisee or employees of any person who was a franchisee or franchise operator in relation to a Previous Franchise Agreement;
 - (h) the management structure of the Franchisee's business (including organograms and any planned changes);
 - (i) employees and contractors (including details of responsibilities, job title, remuneration, grade, qualifications and any other personnel records);
 - (j) terms and conditions of employment and human resources policies;
 - (k) public and working timetables;
 - (l) driver, other train crew and rolling stock diagrams;
 - (m) rolling stock (including train and vehicle miles, restrictions of use, fleet examinations and servicing, fleet performance, casualty data and any relevant reports);
 - (n) any station (including any leases, documents of title, maintenance arrangements, station facilities, plans and contingency or security plans relating to any station);
 - (o) health and safety and environmental information;
 - (p) copies of contracts (including Access Agreements, policies of insurance, property, rolling stock and other leases, catering contracts, contracts for outsourced services, and rolling stock maintenance and spares contracts);
 - (q) Network Rail charges and requirements (including rules of the route/plan);

- (r) any information technology system (hardware or software) used or owned by the Franchisee or any Affiliate of the Franchisee (including any software licences);
- (s) performance data;
- (t) customer service (including staffing levels, call volumes and opening hours);
- (u) fares and fares baskets;
- (v) relationships with stakeholders (including minutes of meetings with unions, Passenger Transport Executives, local authorities or Transport for London); or
- (w) any other matter which the Secretary of State may specify from time to time,

and in this paragraph 3.5 the term "**employee**" includes any person engaged by the Franchisee pursuant to a contract of personal service.

3.6 The Franchisee shall:

- (a) comply with its obligations under paragraph 2.1 or this paragraph 3 promptly and in any case in accordance with any reasonable timetable with which the Secretary of State requires the Franchisee by notice in writing to comply;
- (b) where the Secretary of State raises with the Franchisee any query in relation to any Data Site Information, make a full and substantive response to such query within five (5) Weekdays. Such response shall include any further information requested by the Secretary of State in relation to such query; and
- (c) nominate a person to whom:
 - (i) all queries or requests for information pursuant to paragraph 3.6(b);
 - (ii) requests for access to premises pursuant to paragraph 5; and
 - (iii) requests for access to employees,

shall be addressed and who shall be responsible for complying with any such queries or requests for information and such requests for access to employees and premises. The Franchisee shall notify the Secretary of State (his representatives and advisers) of the name and contact details of such person.

3.7 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of services equivalent to the Franchise Services (whether or not together with other railway passenger

services) at or following the end of the Franchise Period, the Franchisee agrees and acknowledges that the Secretary of State may require:

- (a) that the Franchisee provides the Secretary of State with additional information and reports and analysis in respect of such Service Groups as the Secretary of State may specify. This may include:
 - (i) information relating to the operational and financial performance of the Franchisee in relation to such Service Groups; and
 - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
 - (b) subject to paragraph 3.8, that the Franchisee reorganises the business of providing services equivalent to the Franchise Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Franchise Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:
 - (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or
 - (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Franchise Services within that Service Group; and
 - (c) that the Franchisee uploads Data Site Information to more than one data site.
- 3.8 Subject to paragraph 3.9, the Secretary of State shall reimburse any reasonable out-of-pocket expenses that the Franchisee may incur in complying with its obligations under this paragraph 3.
- 3.9 Without prejudice to any other rights the Secretary of State may have (under the Franchise Agreement or otherwise) in respect of any contravention by the Franchisee of its obligations under this paragraph 3, if the Secretary of State is of the reasonable opinion that the Franchisee does not have sufficient resources to enable its compliance with its obligations under this paragraph 3 he may:
- (a) require the Franchisee (at its own cost) to employ; or
 - (b) after notification to the Franchisee, employ,

such suitable additional resource as may be required to ensure that the Franchisee can comply with its obligations under this paragraph 3. The Franchisee shall reimburse to the Secretary of State, by way of adjustment to Franchise Payments, any proper costs (including staff costs) incurred by him in the employment of any such additional resource pursuant to paragraph 3.9(b).

- 3.10 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 3.9, the Secretary of State shall allow the Franchisee a reasonable opportunity to make representations to him concerning the exercise by the Secretary of State of his rights under paragraph 3.9 but the Secretary of State shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 3.9.

4. Non-Frustration of Transfer to Successor Operator

- 4.1 The Franchisee shall take no action or steps which is or are designed, directly or indirectly:
- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Franchise Services at the end of the Franchise Period to a Successor Operator; or
 - (b) to avoid, frustrate or circumvent any provision of the Franchise Agreement (including in particular the provisions of Schedule 14 (Preservation of Assets) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.
- 4.2 Subject to the restrictions set out in paragraph 4.1 and the other provisions of the Franchise Agreement, the Franchisee may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

5. Inspection Rights at premises used for the provision of the Franchise Services

- 5.1 Without limiting any other rights of the Secretary of State under the Franchise Agreement and subject to paragraph 5.2, the Franchisee shall, if so requested by the Secretary of State, permit the Secretary of State (or his nominee, which for these purposes shall include potential Successor Operators including potential bidders who have expressed an interest in tendering for the right and obligation to operate any or all of the Franchise Services) to have such access to premises owned or occupied by the Franchisee or any of its Affiliates (including Stations and Depots and which for these purposes shall include any premises used in connection with the provision of the Franchise Services by the Franchisee or any of its Affiliates) as the Secretary of State may reasonably require in connection with any Tendering/Reletting Process including for the purposes of inspecting such premises (including the taking of inventories) and undertaking such surveys as may be necessary or desirable for the purposes of ascertaining the condition of any such premises.
- 5.2 The Secretary of State shall use reasonable endeavours to ensure that any access rights required pursuant to paragraph 5.1 shall be undertaken so as not to unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

SCHEDULE 15.2**Last Twelve (12) or Thirteen (13) months of Franchise Period and other conduct of business provisions****1. Last Twelve (12) or Thirteen (13) Month Period**

- 1.1 Where reference is made in the Franchise Agreement to the last twelve (12) or thirteen (13) months of the Franchise Period, such period shall be deemed to commence on the earliest of the following dates:
- (a) the date which is twelve (12) or thirteen (13) months, as the case may be, prior to the Expiry Date or if the actual date of expiry of the Franchise Period is known the date which is twelve (12) or thirteen (13) months prior to that date;
 - (b) the date on which the Secretary of State notifies the Franchisee that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Secretary of State reasonably considers that an Event of Default may occur within the following twelve (12) months; or
 - (c) the date on which the Secretary of State notifies the Franchisee that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Secretary of State considers it reasonably likely that the Franchise Agreement will be terminated by agreement between the Parties within such period.
- 1.2 Any such period (which may be longer or shorter than twelve (12) or thirteen (13) months, as the case may be) shall expire on the Expiry Date or, if earlier:
- (a) in the case of periods commencing under paragraph 1.1(b) or 1.1(c), the date falling twelve (12) or thirteen (13) months after the date of any notice under paragraph 1.1(b) or 1.1(c); or
 - (b) such earlier date as the Secretary of State may determine.

2. ⁸⁴⁴Not Used.**3. ⁸⁴⁵Not Used.****4. Changes in Numbers and Total Cost of Employees**

⁸⁴⁶**Subject to and excluding any increase in the remuneration of Franchise Employees permitted under paragraph 2.1, the Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State (which shall not be unreasonably withheld) increase or during the ERMA Term the number of Franchise Employees such that:**

⁸⁴⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁸⁴⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁸⁴⁶ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

(a) **the total number of Franchise Employees or the total cost per annum to the Franchisee and each other relevant employer of employing all Franchise Employees is increased; or**

(b) **the total number of Franchise Employees is decreased,**

in each case, by more than five per cent (5%) compared to the previous period of twelve (12) months.

5. Fares

5.1 Reduction in Prices of Fares

(a) ⁸⁴⁷**During the term of the ERMA or the last thirteen (13) months of the Franchise Period (whichever is the longer), the Franchisee shall not, without the prior written consent of the Secretary of State (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the term of the ERMA or the Franchise Period (as applicable) for an amount which is less than the Price or the Child Price of that Fare immediately before the ERMA Start Date or of such thirteen (13) month period (as applicable) or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.**

(b) Paragraph 5.1(a) shall not prevent the Franchisee from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:

(i) ⁸⁴⁸**presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the ERMA Start Date or such thirteen (13) month period and to which the purchaser would have been entitled before the commencement of such period;**

(ii) presenting a Discount Card issued by another train operator;

(iii) the Passenger's Charter or the passenger's charter of any other train operator; or

(iv) any relevant conditions of carriage.

(c) The Franchisee shall procure that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with

⁸⁴⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁸⁴⁸ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

the provisions of paragraph 5.1(a) to the extent that such provisions apply to the selling of Fares by the Franchisee.

5.2 ⁸⁴⁹**Percentage Allocations**

- (a) **Except to the extent that the Secretary of State may consent from time to time (such consent not to be unreasonably withheld), the Franchisee shall not, during the term of the ERMA or in the last thirteen (13) Reporting Periods (whichever is the longer) of the Franchise Period, take any action or step which may result in its Percentage Allocation (as defined in the Ticketing and Settlement Agreement) in respect of any Rail Product (as defined in the Ticketing and Settlement Agreement) being reduced.**
- (b) **The Franchisee shall notify the Secretary of State before taking any such action or step during the term of the ERMA or in the last thirteen (13) Reporting Periods (whichever is the longer) of the Franchise Period and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take such action as the Secretary of State may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.**

5.3 **Restrictions in respect of Sale of Advance Purchase Train-specific Fares**

- (a) It is acknowledged that the Franchisee will make available for sale prior to the end of the Franchise Period Advance Purchase Train-specific Fares which are valid for travel after the end of the Franchise Period.
- (b) In making such Advance Purchase Train-specific Fares available for purchase the Franchisee shall not change its commercial practice in terms of the number of such Advance Purchase Train-specific Fares made available or the Passenger Services on which they are valid for use when compared with its previous commercial practice in respect of Advance Purchase Train-specific Fares valid for travel prior to the end of the Franchise Period.
- (c) The Franchisee will be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of the Franchisee's practice in addressing such seasonal factors in the corresponding period in the previous year.

⁸⁴⁹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

6. Voting on Scheme Councils

6.1 ⁸⁵⁰ During the term of the ERMA, the Franchisee shall give the Secretary of State reasonable notice of:

(a) any meeting of:

(i) a scheme council of an Inter-Operator Scheme on which the Franchisee is represented; or

(ii) a scheme management group of any Inter-Operator Scheme:

(A) in which the Franchisee has a permanent position; or

(B) where the Franchisee employs a member of such group;

(b) the resolutions to be voted upon at any such meeting; and

(c) the Franchisee's voting recommendations, together with its reasons.

6.2 The Franchisee shall:

(a) vote at any such meeting in the manner required by the Secretary of State; and

(b) ⁸⁵¹ present any documents or other information which the Secretary of State may request at any such meeting.

7. ⁸⁵² Not Used.

⁸⁵⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁸⁵¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁸⁵² 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 15.3**Handover Package****1. Handover Package Status**

1.1 The Franchisee shall:

- (a) on or before the Start Date, provide to the Secretary of State:
 - (i) the Handover Package; and
 - (ii) a letter in a form approved by and addressed to the Secretary of State confirming the details of any insurer providing insurance to the Franchisee and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Secretary of State, a Successor Operator or its agent on demand;
- (b) maintain the Handover Package and update it at least every three (3) Reporting Periods; and
- (c) in respect of the information required pursuant to paragraph 1.1(a)(ii), supply revised information and/or letters to the Secretary of State as and when required in order to ensure that such information and letters remain accurate and up to date.

1.2 The Franchisee shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Franchise Period.

1.3 The Franchisee shall also ensure that the Key Contacts List is provided to the Secretary of State within twenty four (24) hours of the receipt of any Termination Notice.

1.4 From the date that the Station Asset Management Plan is created pursuant to paragraph 1 of Schedule 1.7 (Stations) the Franchisee shall update the Handover Package to include the Station Asset Management Plan (and a copy of all previous Station Asset Management Plans) and shall supply updated versions of the Station Asset Management Plan whenever such plan is updated in accordance with paragraph 1 of Schedule 1.7 (Stations).

1.5 From the date that the Station Social and Commercial Development Plan is created pursuant to paragraph 7 of Schedule 1.7 (Stations) the Franchisee shall update the Handover Package to include the Station Social and Commercial Development Plan (and a copy of all previous Station Social and Commercial Development Plans) and shall supply updated versions of the Station Social and Commercial Development Plan whenever such plan is updated in accordance with paragraph 7 of Schedule 1.7 (Stations).

2. Director's Certificate

Once in each Franchisee Year, the Franchisee shall provide to the Secretary of State a certificate signed by a nominated and duly authorised director of the Franchisee, addressed to the Secretary of State, which confirms that the Handover Package contains the information and objects specified in the Appendix (Form of Handover Package) to this Schedule 15.3 and that such information is accurate as at the date of the certificate.

APPENDIX TO 15.3**Form of Handover Package****1. Property**

A list of all property owned, leased, operated or occupied by the Franchisee which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

2. Contracts

A printed or electronic list (in a format acceptable to the Secretary of State) of all contracts (sales, purchases or otherwise including leases and licences) between the Franchisee and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of the Franchisee and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Secretary of State.

3. Systems

A list of the electronic systems in use by the Franchisee, together with the name, office address and telephone number of the Franchisee's Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.

4. Daily Operations

A printed or electronic list (in a format acceptable to the Secretary of State) of all assets owned or operated by the Franchisee, together with their location.

5. Insurance

A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Franchisee, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

6. Safety Certificate

A complete copy of the Safety Certificate, an electronic copy of the Franchisee's application for the Safety Certificate (in Microsoft Word format or such other format as is acceptable to the Secretary of State) and full details of the Franchisee's safety management system in place to support the Safety Certificate.

SCHEDULE 15.4**Provisions Applying on and after Termination****1. Novation of Access Agreements on Termination of the Franchise Agreement**

- 1.1 The Franchisee shall, to the extent so requested by the Secretary of State on termination of the Franchise Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as he may direct.
- 1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.
- 1.3 Such novation shall be on such terms as the Secretary of State may reasonably require, including:
 - (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
 - (b) that neither the Secretary of State nor his nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.
- 1.4 The Franchisee shall, on the occurrence of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as he may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.
- 1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. Co-operation with Successor Operator

- 2.1 In order to ensure the continuity of, and an orderly handover of control over, the Franchise Services, the Franchisee shall co-operate with:
- (a) where a Successor Operator has been appointed, such Successor Operator; or
 - (b) where a Successor Operator has not been so appointed, the Secretary of State,

and shall take such steps as may be reasonably requested by the Secretary of State in connection therewith.

- 2.2 ⁸⁵³**In satisfaction of its obligations under paragraph 2.1, the Franchisee shall make appropriately skilled and qualified Franchise Employees reasonably available to attend such meetings with the Secretary of State, the Successor Operator, Network Rail, any rolling stock lessor or sub-lessee and/or any other relevant third party as are reasonably required in order to determine:**

- (a) **those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:**
 - (i) **Access Agreements;**
 - (ii) **Property Leases;**
 - (iii) **agreements in relation to Shared Facilities;**
 - (iv) **Rolling Stock Leases;**
 - (v) **Rolling Stock Related Contracts;**
 - (vi) **any other Key Contract; and**
- (b) **without prejudice to the Secretary of State's rights under this Schedule 15.4, those rights and liabilities as may be specified in any Transfer Scheme.**

3. Transfer of Primary Franchise Assets

3.1 Option Arrangements

- (a) The Secretary of State hereby grants to the Franchisee the right to require the Secretary of State to make, and the Franchisee hereby grants to the Secretary of State the right to make, a Transfer Scheme in accordance with Section 12 and Schedule 2 of the Railways Act 2005 for the transfer of any or all Primary Franchise Assets on the expiry of the Franchise Period.

⁸⁵³ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) On or within fourteen (14) days before the expiry of the Franchise Period:
 - (i) either Party may serve notice on the other Party specifying the Primary Franchise Assets to be transferred; and
 - (ii) the other Party may (within such timescale) serve a subsequent notice specifying any additional Primary Franchise Assets to be transferred.
- (c) The Secretary of State may (and shall if required by the Franchisee) make one or more such Transfer Schemes for the transfer of the Primary Franchise Assets specified in any such notice within fourteen (14) days after service of such notice (except in relation to any such Primary Franchise Assets which are, in accordance with Schedule 14.4 (Designation of Franchise Assets), de-designated as such prior to the end of the Franchise Period).
- (d) Any Franchise Assets or Primary Franchise Assets which are not so transferred shall cease to be designated as such fourteen (14) days after service of such notice.

3.2 Supplemental Agreement

Without prejudice to the duties, powers, rights and obligations of the Secretary of State under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on the Franchisee and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. The Franchisee shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

3.3 Payment of Estimated Transfer Price

- (a) The Secretary of State may require the Franchisee to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to the Franchisee, on the day on which the Transfer Scheme comes into force such sum as the Secretary of State may determine should be so paid having regard to:
 - (i) his estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise Assets being transferred under the relevant Transfer Scheme;
 - (ii) his estimate of any other sums likely to be paid thereunder;
 - (iii) the financial condition of the Franchisee and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
 - (iv) such other matters as the Secretary of State may consider appropriate.
- (b) The Franchisee shall pay to any such transferee the sum determined by the Secretary of State in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

3.4 Possession of Franchise Assets

On the coming into force of a Transfer Scheme, the Franchisee shall deliver up to the Secretary of State (or his nominee) possession of the Primary Franchise Assets transferred under such Transfer Scheme.

4. Associated Obligations on Termination

4.1 Assistance in Securing Continuity

- (a) In order to facilitate the continuity of the Franchise Services on expiry of the Franchise Period, the Franchisee shall take such steps, both before and after the expiry of the Franchise Period, as the Secretary of State may reasonably require, to assist and advise any Successor Operator in providing and operating the Franchise Services.
- (b) In particular, the Franchisee shall provide any Successor Operator with such records and information relating to or connected with the Franchise Services as the Secretary of State may reasonably require (other than confidential financial information but including all records relating to the Franchise Employees).

4.2 Access

⁸⁵⁴ **On the expiry of the Franchise Period, the Franchisee shall grant (or, in relation to the rolling stock vehicles, use all reasonably endeavours to procure that any sub-lessee shall provide) the Secretary of State and his representatives such access as the Secretary of State may reasonably request to any property owned, leased or operated by the Franchisee at such time, for the purpose of facilitating the continued provision of the Franchise Services.**

4.3 Key Contracts

- (a) The Franchisee shall provide such assistance to any Successor Operator as the Secretary of State may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).
- (b) In satisfaction of its obligations under paragraph 4.3(a), the Franchisee shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Franchisee to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Franchise Period.

4.4 Change of Name

The Franchisee shall cease to use any trade marks which are licensed to the Franchisee under any of the Brand Licences forthwith upon expiry of the Franchise

⁸⁵⁴ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

4.5 **Property Leases**

- (a) The Franchisee shall, on the expiry of the Franchise Period, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- (b) Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
 - (i) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (ii) that neither the Secretary of State nor his nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.5(b)(i), and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- (c) The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.5(a) in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as he may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.5(b) shall apply to any such assignment.
- (d) The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. Actions required immediately on Handover

- 5.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State:
 - (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Franchisee is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and

- (b) information concerning any contract necessary for the continued operation of the Franchise where a procurement or bidding process has been initiated.
- 5.2 The Franchisee agrees that the Secretary of State or his agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as he sees fit (for the purposes of continuing the operation of the Franchise Services).

6. Maintenance Records

⁸⁵⁵**The Franchisee shall immediately on expiry of the Franchise Period provide to the Secretary of State (or, in relation to rolling stock vehicles, use all reasonably endeavours to) procure that any sub-lessee shall provide:**

- (a) **records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;**
- (b) **records of the status of the maintenance of any lifting equipment;**
- (c) **a list of any deferred maintenance; and**
- (d) **records of the status of the maintenance of any depot or station which is a Franchise Asset,**

including the extent of completion of examinations and the modification status of each such rolling stock vehicle.

7. Ticketing Arrangements

The Franchisee shall provide immediately on expiry of the Franchise Period a statement certifying:

- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
- (b) the extent of any outstanding claims with ticketing settlement agencies;
- (c) refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
- (d) commissions owed and/or due.

⁸⁵⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

8. Franchisee's Intellectual Property

8.1

- (a) On the expiry of the Franchise Period, the Franchisee will grant to any Successor Operator licences of any Intellectual Property Rights which:
 - (i) is owned by or licensed to the Franchisee;
 - (ii) was not owned by or licensed to it immediately prior to the Start Date;
 - (iii) has not been designated as a Primary Franchise Asset;
 - (iv) does not represent or constitute a Mark; and
 - (v) may, in the reasonable opinion of the Secretary of State, be necessary for any Successor Operator to operate the Franchise Services on an efficient and economic basis after the expiry of the Franchise Period.
- (b) When agreeing the terms on which Intellectual Property Rights is to be licensed to it, the Franchisee shall use all reasonable endeavours to ensure that such terms include the right to sub-license such Intellectual Property Rights in accordance with this paragraph 8. The Franchisee shall not enter into a licence that does not include such a provision without first obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld).

8.2

- (a) Any such licence shall be granted to the relevant Successor Operator for such period as the Secretary of State may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Franchise Services and shall be free of charge and royalty-free for a period of one (1) month or less.
- (b) If such licence is for a period in excess of one month, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such Intellectual Property Rights. If the Franchisee and the relevant Successor Operator are unable to agree such royalty, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.

8.3 Any such licence shall be in such form as the Secretary of State shall reasonably determine and shall:

- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Franchise Services and will not provide for any right to use such Intellectual Property Rights for any other purpose (including its marketing or exploitation for any other purpose);
- (b) be terminable on material breach by the Successor Operator;

- (c) contain an indemnity from the Franchisee to the effect that to the best of its knowledge and belief it owns the relevant Intellectual Property Rights or has the right to license it and the licensing of it and the subsequent use of the Intellectual Property Rights will not infringe any third party Intellectual Property Rights; and
- (d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the Franchisee provided that it shall not be reasonable for the Franchisee to require any such trade mark to be used in a manner materially different from its use during the Franchise Period.

9. Information about Passengers

The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State and/or his nominee:

- (a) passenger numbers information specified in paragraph 1 of Schedule 1.5 (Information about Passengers), in such format and to such level of disaggregation as the Secretary of State and/or his nominee may reasonably require;
- (b) the CRM Data and Yield Management Data.

APPENDIX 1 TO SCHEDULE 15.4

[TEMPLATE] Form of Transfer Scheme

Dated

20[•]

**TRANSFER SCHEME
OF
THE SECRETARY OF STATE FOR TRANSPORT
MADE PURSUANT TO SCHEDULE 2 OF THE RAILWAYS ACT 2005**

**IN FAVOUR OF
[SUCCESSOR OPERATOR]**

**IN RESPECT OF
CERTAIN PROPERTY, RIGHTS AND LIABILITIES
OF
[FRANCHISEE]**

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

TRANSFER SCHEME

Whereas:

- (A) [Franchisee] (the "Transferor") has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "Secretary of State") dated [•] (the "Franchise Agreement").
- (B) The Franchise Agreement terminated or is to terminate on [•] and [Successor Operator] (the "Transferee") is to continue the provision of all or part of such services or the operation of all or some of such stations and light maintenance depots under a new franchise agreement or in connection with the performance or exercise of the duties and powers of the Secretary of State to secure the provision of such services or the operation of such stations or light maintenance depots.
- (C) Certain property, rights and liabilities of the Transferor which were designated as franchise assets for the purpose of the Franchise Agreement are to be transferred to the Transferee under a transfer scheme made by the Secretary of State under Section 12 and Schedule 2 of the Railways Act 2005.

The Secretary of State, in exercise of the powers conferred on him by Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. Definitions and Interpretation

In this Transfer Scheme functions has the meaning ascribed to it in the Railways Act 2005 and relevant enactment has the meaning ascribed to it in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. Transfer of Property, Rights and Liabilities

With effect from [•] the property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. Statutory Functions

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the functions of the Transferor under any relevant enactments if and to the extent that any such relevant enactment:

- (a) relates to any property which is to be transferred by this Transfer Scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

4. **Supplemental Agreement**

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Franchise Agreement) on the coming into force of this Transfer Scheme.

This Transfer Scheme is made by the Secretary of State on [●].

THE CORPORATE SEAL OF
THE SECRETARY OF STATE
FOR TRANSPORT IS
HEREUNTO AFFIXED:



Authenticated by authority of the Secretary of
State for Transport

SCHEDULE TO THE TRANSFER SCHEME

[List relevant Franchise Assets to be transferred to Successor Operator]

APPENDIX 2 TO SCHEDULE 15.4

[TEMPLATE] Form of Supplemental Agreement

Dated 20[•]

[OUTGOING FRANCHISEE]

- and -

[SUCCESSOR OPERATOR]

SUPPLEMENTAL AGREEMENT

to the transfer scheme dated [•] made
by the Secretary of State for Transport in respect of
certain property rights and liabilities of
[OUTGOING FRANCHISEE]

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

THIS SUPPLEMENTAL AGREEMENT is made on [•] 20[•]

BETWEEN:

- (1) **[OUTGOING FRANCHISEE]** whose registered office is at **[registered office]** (the "Transferor"); and
- (2) **[SUCCESSOR OPERATOR]** whose registered office is at **[registered office]** (the "Transferee").

WHEREAS

- (A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "**Secretary of State**") dated [•] (the "**Franchise Agreement**").
- (B) The Franchise Agreement terminated or is to terminate on [•] and the Transferee has been selected by the Secretary of State to continue the provision of all or part of such services pursuant either to a franchise agreement with the Secretary of State or arrangements made with the Secretary of State in connection with the Secretary of State's duties and powers.
- (C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Secretary of State on [•] under Section 12 and Schedule 2 of the Railways Act 2005 (the "**Transfer Scheme**").
- (D) This Agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

IT IS AGREED THAT:

1. **DEFINITIONS AND INTERPRETATION**

Definitions

- 1.1 The following words and expressions shall have the following meaning:

"Business" means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

"Credit" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"Debit" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"Estimated Completion Payment" has the meaning ascribed to that term in Clause 2.1;

"Net Asset Statement" means the statement to be drawn up pursuant to Clause 2.2;

"Net Asset Value" means the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement agreed or determined pursuant to Clause 2.2;

"Purchase Price" has the meaning ascribed to that term in Clause 2.1;

"Relevant Contract Liabilities" means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement;

"Relevant Debits and Credits" means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of Clause 11-33 of the Ticketing and Settlement Agreement;

"Relevant Employee Liabilities" means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Employees" means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Franchise Assets" means such of the property, rights and liabilities that are legally or beneficially owned by the Transferor and which are or are to be transferred to the Transferee under the Transfer Scheme;

"Reporting Accountants" means such firm of accountants as may be selected by agreement between the parties within four (4) weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State upon the request of either party;

"Season Ticket Fare" means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

"Stored Credit Balance" means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (stored in any medium);

"Taxation" comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

"TOGC" has the meaning assigned to that term in Clause 6.2;

“Transfer Date” means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

“Transfer Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

“Transferring Assets and Liabilities” has the meaning assigned to that term in Clause 2.1; and

“Undisclosed Employee” has the meaning assigned to that term in Clause 7.1(d).

Construction and Interpretation

1.2 In this Agreement terms and expressions defined in the Franchise Agreement shall have the same meaning and the terms **“contract of employment”**, **“collective agreement”**, **“employee representatives”** and **“trade union”** shall have the same meanings respectively as in the Transfer Regulations.

2. TRANSFER PRICE

2.1 Amount and Payment

The price for the transfer of:

- (a) the Relevant Franchise Assets;
- (b) the Relevant Contract Liabilities;
- (c) the Relevant Debits and Credits; and
- (d) the Relevant Employee Liabilities,

(together the **“Transferring Assets and Liabilities”**) shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value (the **“Purchase Price”**). The sum of £[amount], as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement (the **“Estimated Completion Payment”**) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement, on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be) in accordance with Clause 2.1.

2.2 Net Asset Statement

The Transferee shall procure that, as soon as practicable and in any event not later than two (2) months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

2.3 The Net Asset Statement shall be:

- (a) drawn up in the manner described in the Schedule;
- (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the schedule; and
- (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.

2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four (4) weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

2.5 **Adjustment of Price**

If the Purchase Price exceeds or is less than the Estimated Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within fourteen (14) days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. **REFERENCES TO THE REPORTING ACCOUNTANTS**

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed, provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within fourteen (14) days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under Clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;
- (b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;

- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference;
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any manifest error discovered within fourteen (14) days of the issue of their decision) be conclusive and binding (and in accordance with Clause 3(g) below) and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise; and
- (g) without prejudice to Clauses 3(a) to 3(f) above, either party may, prior to or during the course of the reference to the Reporting Accountants, seek a declaration from the court on a relevant point of law, including but not limited to a point of legal interpretation. Upon such application for a declaration being issued and served all applicable time limits relative to the reference to the Reporting Accountant shall be stayed pending the outcome of such application (including any appeal). The Reporting Accountants are bound to make their determination in a manner consistent with the findings of the Court.

4. **WARRANTY**

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

5. **INTEREST**

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. **VALUE ADDED TAX**

- 6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern ("**TOGC**") and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.

- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five (5) days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in Clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under Clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within thirty (30) days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.
- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, Clauses 6.3 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.
- 6.8 All of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- (a) preserve those records in such manner and for such periods as may be required by law; and
 - (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. EMPLOYEES

7.1 Transfer Regulations

The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in

connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- (a) the contract of employment of each of the Relevant Employees (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the **"Time of Transfer"** under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
- (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;
- (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:
 - (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
 - (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in Clause 7.4;

- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Secretary of State under Schedule 15.3 (Handover Package) of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the **"Undisclosed Employee"**) or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
 - (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
 - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his employment following the Transfer Date; and
 - (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of Clauses 7.1(b) and 7.1(c); and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

7.2 Transferee's Indemnities

The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- (a) any substantial change in the working conditions of the Relevant Employees to his or her detriment or any of them occurring on or after the Transfer Date;
- (b) the change of employer occurring by virtue of the Transfer Regulations and/or the Franchise Agreement being significant and detrimental to any of the Relevant Employees;
- (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as

those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or

- (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

7.4 **Details of Relevant Employees**

Without prejudice to the Transferor's duties under the Transfer Regulations, the Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- (b) terms and conditions of employment of each such person;
- (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
- (d) dismissals of Relevant Employees or termination of employment effected within twelve (12) months prior to the Transfer Date including the Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
- (f) all strikes or other Industrial Action taken by any Relevant Employee within twelve (12) months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

8. MISCELLANEOUS PROVISIONS

8.1 Variations in Writing

No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

8.2 Partial Invalidity

If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

8.3 Further Assurance

Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

8.4 Notices

Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

(a) in the case of the Transferor to [name of Transferor] at:

[address]

[email address]

Attention: [name]

(b) in the case of the Transferee to [name of Transferee] at:

[address]

[email address]

Attention: [name]

Any such notice or other communication shall be delivered by electronic transfer, by hand or sent by courier or prepaid first class post. If sent by courier such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two (2) Weekdays from the time of posting.

8.5 Counterparts

This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

8.6 Third Parties

This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

8.7 Governing Law and Jurisdiction

This Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

SIGNED FOR AND ON
BEHALF OF THE
[TRANSFEROR]:



DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF THE
[TRANSFeree]:



DIRECTOR:

DIRECTOR/SECRETARY:

SCHEDULE TO THE SUPPLEMENTAL AGREEMENT**Net Asset Statement**

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

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

where:

C equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:

- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;
- (b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
- (c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
- (d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

$\frac{A}{B}$ equals:

- (a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare

is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);

- (b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or
- (c) in the case of any other Fare, zero; and

E equals, if $\frac{A}{B}$ is greater than zero:

the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

2. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.
3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

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

where:

C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and

$\frac{A}{B}$ equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Start Date, zero,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) relate to a period after the Transfer Date.
5. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand Column of the following table, which shall be valued on the basis specified in the right hand Column of the following table:

| Rights and Liabilities | Value |
|--|--|
| Any accrued rights to receive payment | Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person |
| Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date | Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person |
| Any accrued liabilities to make payment | Monetary amounts so accrued |
| Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date | Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor |
| Any rights in respect of which payment has already been made by the Transferor | Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person |

| Rights and Liabilities | Value |
|---|---|
| Any liabilities in respect of which payment has already been received by the Transferor | Monetary amounts so received |
| Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement | Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability |

6. CRM Data, Yield Management Data and Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same) shall be valued at nil.
7. The Stored Credit Balance held by the Franchisee at the Transfer Date shall be valued at the monetary amount so held.
8. Any asset arising as a result of an Approved CCIF Scheme shall be valued at nil.
9. Any ITSO equipment (including smartcard and ITSO Certified Smartmedia readers and ITSO database) and any Intellectual Property Rights associated with that ITSO equipment transferred from the Transferor to the Transferee pursuant to the Transfer Scheme shall be valued at nil.
10. Any RV Asset shall be valued at an amount that is equivalent to the RV Asset Transfer Value of such RV Asset as specified in Column 2 of the table in the Appendix (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) of the Franchise Agreement, as such RV Asset Transfer Value may be adjusted or deemed to have been adjusted pursuant to paragraphs 1.4 or 1.6 of Schedule 14.6 (Residual Value Mechanism) of the Franchise Agreement.
11. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.
12. Any liability resulting from a breach of or failure by the Franchisee to comply with its obligations under the Franchise Agreement to ensure that at the end of the Franchise Term the Standard of Repair is complied with shall be valued at an amount that is equal to the amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability.
13. ⁸⁵⁶ **Each of (i) those constituent parts of the STNR System funded by the Secretary of State as part of the STNR Project (including those elements set out in Annexes B and C of the STNR Scope of Work); (ii) any Intellectual Property Rights (including licences) associated with those parts of the STNR System; and (iii) all data processed or generated by the STNR System, shall be valued at nil.**

⁸⁵⁶ 15 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

14. ⁸⁵⁷ **All:**

- (i) the rights, title and interest of the Franchisee in each of (i) any Computer System, other system and/or assets funded by the Secretary of State;**
- (ii) any Intellectual Property Rights (excluding licences) associated with such Computer System, other system and/or assets; and**
- (iii) all data processed or generated by such Computer System and/or other system,**

in each case, relating to the implementation, processing or operation of DR15 Compensation, shall be valued at nil.

⁸⁵⁷ 11 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE16**Pensions**

| | |
|--------------|--|
| Schedule 16: | Pensions |
| | Appendix to Schedule 16: List of Shared Costs Sections |

SCHEDULE 16

Pensions

1. Definitions

Unless otherwise defined in the Franchise Agreement, terms used in this Schedule 16 shall have the meanings given to them in the Railways Pension Scheme.

2. Franchise Sections

The Franchisee shall participate in and become the Designated Employer in relation to the Shared Cost Sections of the Railway Pension Scheme as specified in the Appendix to this Schedule (together the "**Franchise Sections**") in respect of the Franchise Services. Subject to paragraphs 3 and 4.2(d) membership of a Franchise Section will be offered to each employee of a Franchisee only.

3. Closed Schemes

- 3.1 Subject to any requirements of Her Majesty's Revenue and Customs, the Franchisee shall take any necessary steps (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the British Railways Superannuation Fund or the BR (1974) Pension Fund in accordance with their terms during the Franchise Period.
- 3.2 For the purposes of this paragraph 3, "**Closed Scheme Employees**" means such of the employees of the Franchisee who were, immediately prior to the commencement of their employment with the Franchisee, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

4. Variations in benefits, contributions and investment

- 4.1 If a Franchisee is considering making a proposal that falls within the scope of paragraphs 4.2(a) to 4.2(g) inclusive, it shall promptly consult with the Secretary of State in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Franchise Section, the Trustee of the Railways Pension Scheme (the "**Trustee**"), or to any trade union. The Franchisee must otherwise consult in good time with the Secretary of State in relation to any proposal falling within the scope of paragraphs 4.2(a) to 4.2(g) inclusive.
- 4.2 Separately and in addition to complying with its obligations under paragraph 4.1, the Franchisee shall not, without the prior written consent of the Secretary of State (which may be given on such terms and subject to such conditions as the Secretary of State thinks fit):
 - (a) restructure or change the composition of the earnings of employees of the Franchisee in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the rules of the Railways Pension Scheme applicable to any Franchise Section (the "**Franchise Section Rules**") or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any Franchise Section, including

varying or providing different or additional benefits under that Franchise Section or promising to do so, unless this change:

- (i) is required by Law; or
 - (ii) only affects benefits payable in respect of past service of members of that Franchise Section and on or prior to the effective date of the change the Franchisee pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on that Franchise Section; or
 - (iii) would not lead to substantial changes in the funding of any Franchise Section and is the result of the normal application of the Franchise Section Rules in the ordinary day to day running of the business of the Franchise, for example, where individual employees are, from time to time promoted or transferred to higher paid or different employment which has a different composition of earnings;
- (b) make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the Franchise Sections unless the change is required by Law;
 - (c) provide retirement, death or life assurance benefits in respect of any of its employees other than under any Franchise Section or as provided in paragraph 3;
 - (d) omit to provide the above-mentioned benefits in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the Franchisee shall not under this Schedule 16 be obliged for the purposes of the Franchise Agreement to offer such benefits to any employee employed on a fixed term contract of twelve (12) months or less;
 - (e) take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under any Franchise Section, including exercising any discretion allowed to the Franchisee as Designated Employer arising out of any actuarial valuation of a Franchise Section, and varying or providing different or additional benefits under the Franchise Sections in respect of future service, unless such action is required by Law;
 - (f) close a Franchise Section to new members; or
 - (g) take (or omit to take) any action which could result in any Franchise Section being wound up, in whole or in part.

4.3 The Franchisee shall consult with the Secretary of State on:

- (a) any proposal made by the Trustee to change the statement of investment principles applicable to any Franchise Section; and
- (b) any proposal to alter the rate of contributions payable by the Franchisee or its employees under a new schedule of contributions for the Franchise Section.

4.4 With respect to any proposal falling within the scope of paragraph 4.3(a) or 4.3(b), the Franchisee shall also consult with the Trustee on the basis of any

response it receives from the Secretary of State in relation to any such proposal.

5. Funding Liabilities

- 5.1 The Franchisee shall pay the employer contributions required under the schedule of contributions applicable to each Franchise Section (or either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates) in respect of the Franchise Term subject to the provisions of paragraph 5.2 below.
- 5.2 Where, during the Franchise Term, Franchise Services are aggregated or disaggregated by the Secretary of State (for example, as a result of remapping) and, as a consequence, a Franchise Section of which the Franchisee is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Secretary of State shall ensure that the Franchisee has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise Sections' technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under Article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above the Secretary of State shall have no liability for any future deterioration in the funding levels of the Franchise Section linked to such transfer in or out of members.
- 5.3 ⁸⁵⁸ **For the remaining term of the Franchise Agreement, the Franchisee shall:**
- (a) **not seek to or consent to lower the rate or amount of employer and/or employee contributions payable under the schedule of contributions (or any new schedule of contributions) relating to the Franchise Sections without the express written consent of the Secretary of State; and**
 - (b) **comply with its obligation under paragraph 5.4 if and to the extent applicable.**
- 5.4 ⁸⁵⁹ **Where the Franchisee's existing schedule of contributions provides for a reduction in the rate or amount of employer and/or employee contributions payable in respect of the Greater Eastern Railway Shared Cost Section during the remaining term of the Franchise Agreement, the Franchisee shall use all reasonable endeavours to amend or replace the existing schedule of contributions (and if and to the extent necessary, to put in place amendments to the Rules of the Greater Eastern Railway Shared Cost Section) so that the reduction in the rate or amount of employer and/or employees contributions does not take effect. For the avoidance of doubt, all reasonable endeavours shall include for this purpose undertaking any consultation with employees or trade unions that may be required and seeking to obtain the consent of the Trustee of the Railways Pension Scheme, any Pensions**

⁸⁵⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸⁵⁹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

Committee and the Secretary of State under paragraph 4.2(e) of Schedule 16 of the Franchise Agreement.

6. Discharge of Obligations

- 6.1 The Secretary of State may at any time during the Franchise Term seek information from the Trustee with a view to satisfying himself that the Franchisee and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to any Franchise Section.
- 6.2 The Franchisee shall, at its expense, promptly provide such information in relation to any Franchise Section, including actuarial advice and information, as the Secretary of State may from time to time request and shall authorise and consent to the Trustee doing so.
- 6.3 The Franchisee shall, in respect of the Franchise Term, use all reasonable endeavours to provide to the Secretary of State:
- (a) within one (1) month of the expiry of each Franchisee Year; and
 - (b) at other times as soon as practicable following a request by the Secretary of State,

a certificate signed by the Trustee in relation to the Franchise Sections stating either that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme, including its obligation to contribute to the Franchise Sections or, if it has not so complied, stating the extent to which it has not done so. Where the certificate is given pursuant to paragraph 6.3(a), it shall cover the relevant Franchisee Year. Where the certificate has been given pursuant to paragraph 6.3(b), it shall cover such period as the Secretary of State shall specify.

- 6.4 ⁸⁶⁰**If the Trustee does not certify under paragraph 6.3 in relation to the Franchise Sections that the Franchisee has fully complied with its obligations under the Railways Pension Scheme or if the Secretary of State otherwise reasonably considers that the Franchisee has not complied with such obligations, then, without prejudice to the other duties and obligations of the Franchisee and to any other rights the Secretary of State may have, it is acknowledged that the provisions in Schedule 8.1A (Franchise Payments) will operate to adjust the Franchise Payments payable under Schedule 8A (Franchise Payments) to take account of any contribution or payment that the Franchisee has failed to make or avoided making.**
- 6.5 ⁸⁶¹**Not Used.**

7. Termination of Franchise

The Secretary of State shall at the end of the Franchise Period ensure that the Franchisee has no liability for any deficit in the Franchise Sections (other than for

⁸⁶⁰ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

⁸⁶¹ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

contributions due and payable by the Franchisee to the Franchise Sections for any period prior to the end of the Franchise Term) and shall have no right to benefit from any surplus which may exist in the Franchise Sections. For the avoidance of doubt, this paragraph 7 shall apply where the Franchise Services are either aggregated or disaggregated (for example, as a result of remapping).

8. ⁸⁶²Franchisee obligations to participate in any Investigation and reform

8.1 In this Schedule:

(a) "Investigation" means any investigation, threatened use, or use of any statutory powers by the Pensions Regulator in relation to a section of the Railways Pension Scheme which has or had as its designated employer the Franchisee or another Train Operator (including a Successor Operator). For the avoidance of doubt, this includes any powers under section 231 of the Pensions Act 2004 or any other power which could affect the contributions payable by the employer or the liabilities of any other person in respect of that section; and

(b) "Reasonable Commercial Manner" means:

- (i) acting in the long-term interests of the Franchise taking into account the long-term affordability, sustainability and financial robustness of the Franchise Section(s) as if the Franchisee and its employees (as appropriate) were solely responsible for the funding of the Franchise Section(s) and, at all times, disregarding the actual allocation of cost risk as between the Franchisee and the Secretary of State in this Franchise Agreement;**
- (ii) or (at the option of the Secretary of State) acting in such other manner as the Secretary of State directs.**

8.2 The Franchisee shall:

- (a) act in good faith and in a Reasonable Commercial Manner at all times; and**
- (b) engage appropriately with the RDG, the Pensions Regulator and the relevant trade unions,**

in discharging its obligations under paragraph 8.3 of this Schedule 16.

8.3 The Franchisee shall take all reasonable steps to participate in:

- (a) the development and implementation of the RDG's response to the current and any future Investigation and the associated concerns raised by the Pensions Regulator regarding those sections of the**

⁸⁶² 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

Railways Pension Scheme for which a Train Operator is the designated employer;

- (b) any Investigation concerning one or more of the Franchise Sections, in which case the Franchisee shall use all reasonable endeavours to achieve an outcome from that Investigation with which a reasonable franchisee, who was in the position of the Franchisee and acting in a Reasonable Commercial Manner, would be satisfied; and**
- (c) any industry wide efforts to reform the pension arrangements or benefits payable under the Railways Pension Scheme or offered to employees of Train Operators, recognising the need for the British passenger rail industry to be affordable and offer value for money in the interests of relevant stakeholders including taxpayers.**

9. ⁸⁶³Information Powers

Where required by the Secretary of State, the Franchisee agrees to allow the Secretary of State or the Secretary of State's representatives to attend any meeting between the Franchisee and the Trustee and/or the Pensions Regulator where the meeting in whole or part relates to matters to which paragraph 8 or 10 of this Schedule 16 applies.

10. ⁸⁶⁴Pension Directions by the Secretary of State

- 10.1 The Secretary of State may, at any time, by written notice to the Franchisee, direct that the Franchisee take such action in relation to pensions for employees and workers of the Franchisee as the Secretary of State may in the Secretary of State's sole discretion determine. The Secretary of State may consult with the Franchisee before issuing any such direction under this paragraph. The Secretary of State may issue more than one direction to the Franchisee under this paragraph.**
- 10.2 Without limiting the generality of paragraph 10.1, such directions may include:**
 - (a) directing the Franchisee to propose a schedule of contributions or recovery plan to the Trustee of the Railways Pension Scheme incorporating such employer and employee contributions and over such period as the Secretary of State may determine;**
 - (b) directing the Franchisee to offer such alternative pension arrangements to employees or workers of the Franchisee as the Secretary of State may determine; and**
 - (c) directing the Franchisee to make proposals to the Trustee of the Railways Pension Scheme in relation to benefits, contributions or investments.**

⁸⁶³ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸⁶⁴ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 10.3** Where the Franchisee receives a direction under paragraph 10.1, the Franchisee will use all reasonable endeavours to implement the direction and to work in good faith and act in a Reasonable Commercial Manner with other parties to give effect to the direction.
- 10.4** To the extent that the terms of any direction given under paragraph 10.1 conflict with any of the other terms of this Schedule 16.1, the terms of the direction shall prevail to the extent of that inconsistency.
- 10.5** The Franchisee will provide the Secretary of State with any documents or information which it may reasonably request in connection with any matter which is relevant to the subject of any direction given under paragraph 10.1 or its implementation.
- 10.6** Nothing in this paragraph 10 shall require the Franchisee to breach any legal obligation to which it is subject. Where the Franchisee reasonably considers that the implementation of any aspect of the direction will cause it to breach any legal obligation of the Franchisee the Secretary of State shall work in co-operation with the Franchisee with a view to agreeing an approach to discuss changes to avoid or otherwise mitigate the risk of such breach.

APPENDIX TO SCHEDULE 16**List of Shared Costs Sections**

| Shared Costs Sections |
|--|
| Anglia Railways Shared Cost Section |
| London Eastern Railway (West Anglia) Shared Cost Section |
| Greater Eastern Railway Shared Cost Section |

SCHEDULE 17

Confidentiality and Freedom of Information

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| Schedule 17: | Confidentiality and Freedom of Information |
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SCHEDULE 17**Confidentiality and Freedom of Information****1. Confidentiality**

⁸⁶⁵Subject to the provisions of the Act, the Transport Act, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 8 and 10 inclusive of this Schedule 17 inclusive, each Party shall hold in confidence the Franchise Documents and all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement) (all together the "Confidential Information") and shall not, except with the other Party's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in the Franchise Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the Franchise Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. Disclosure of Confidential Information

2.1 Each Party may disclose any data or information acquired by it under or pursuant to the Franchise Agreement or information relating to a dispute arising under the Franchise Agreement without the prior written consent of the other Party if such disclosure is made in good faith:

- (a) to any Affiliate of such Party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (b) to any outside consultants or advisers engaged by or on behalf of such Party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such Party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in

⁸⁶⁵ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

accordance with the Franchise Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;

- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (f) to any director, employee or officer of such Party, to the extent necessary to enable such Party to perform its obligations under the Franchise Agreement or to protect or enforce its rights under the Franchise Agreement; or
- (g) by the Franchisee, to the ORR, the Passengers' Council or a Local Authority.

2.2 The Secretary of State may disclose the Confidential Information of the Franchisee:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Secretary of State or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Secretary of State (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in paragraph 2.2(a) of this Schedule 17 (including any benchmarking organisation) for any purpose relating to or connected with the Franchise;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including but not limited to its right of audit, assessment or inspection pursuant to paragraph 6 of Schedule 11.2 (Management Information) and its rights pursuant to Schedule 15.1 (Reletting Provisions);
- (f) on a confidential basis to a Local Authority or other relevant Stakeholder to the extent that the Secretary of State (acting reasonably) deems such disclosure necessary or appropriate for the purposes of the development and/or implementation of any proposal promoted by (or on behalf of) such Local Authority or other relevant Stakeholder in relation to the provision of additional, varied and/or extended Passenger Services, introduction of new stations or enhancements to Stations or other infrastructure schemes which impact on the Franchise;
- (g) on a confidential basis to a proposed successor, transferee or assignee of the Secretary of State in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement; or

- (h) ⁸⁶⁶ **on a confidential basis to any Devolved Transport Body for any proper purpose of the Secretary of State or of the relevant Devolved Transport Body,**

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Secretary of State under this paragraph 2.2 of this Schedule 17.

3. Publication of Certain Information

- 3.1 ⁸⁶⁷ **Notwithstanding the provisions of paragraph 1, the Secretary of State may publish (for purposes including section 73 of the Act and whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as he sees fit, the following (irrespective of whether the same was provided to the Secretary of State by the Franchisee or a third party):**

- (a) any or all of the Franchise Documents provided that the Secretary of State will, prior to publishing the same, redact from any Franchise Document any information contained therein which the Secretary of State and the Franchisee agree or failing which the Secretary of State determines, in his absolute discretion, is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations;
- (b) the amount of any Franchise Payments payable under the Franchise Agreement and the aggregate amount of Franchise Payments paid in each year under the Franchise Agreement;
- (c) such information as the Secretary of State may consider reasonably necessary to publish in connection with the performance of his functions in relation to any Closure or proposed Closure;
- (d) the amount of any payments by the Franchisee under the Passenger's Charter;
- (e) such information (including CRM Data and Yield Management Data) as may reasonably be required in connection with any Tendering/Reletting Process or the retendering or reletting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (f) any reports and accounts delivered to him under Schedule 13 (Rail Industry Initiatives and Innovation Obligations) including any analyses, statistics and other information derived from such reports and accounts;
- (g) the results of any monitoring or measurement of the performance of the Franchisee in the provision of the Franchise Services (including any

⁸⁶⁶ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸⁶⁷ 19 September 2020 (Date of ERMA) – Contract variation agreed by the Secretary of State and Franchisee.

information provided under Schedule 11 (Franchise Performance Meetings and Management Information));

- (h) the results, on a Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (Information about Passengers);
 - (i) the results of any survey under Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme);
 - (j) the results of any assessment or inspection under Schedule 11.2 (Management Information);
 - (k) details of the Franchisee's plans and performance in respect of safety;
 - (l) such information as the Secretary of State may reasonably require to include in his annual report in respect of the Franchisee provided that, in preparing that report, the Secretary of State shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of Section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Secretary of State;
 - (m) such information as the Secretary of State may reasonably require to publish at or around the expiry or possible termination of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services; and
 - (n) ⁸⁶⁸ **any information provided to the Secretary of State pursuant to any provision of the Franchise Agreement including pursuant to a Request for Data where in the opinion of the Secretary of State publication is appropriate for the purposes of properly carrying out its duties;**
- 3.2 Without prejudice to any other provision of this Schedule 17, the Secretary of State may publish any other information relating to the Franchisee if he has previously notified the Franchisee and the Franchisee does not demonstrate to the reasonable satisfaction of the Secretary of State within fourteen (14) days of such notification that the publication of such information would, in the reasonable opinion of the Franchisee, have a material adverse effect on its business. If the Franchisee attempts so to demonstrate to the Secretary of State but he is not so satisfied, the Secretary of State shall allow seven (7) more days before publishing the relevant information.

4. Service Development Information

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render either Party liable for, the disclosure by either Party to Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the Passengers' Council and/or any Local Authority of any information relating

⁸⁶⁸ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

to the development of the Train Service Requirement in accordance with Schedule 1.1 (Franchise Services and Service Development).

5. Publication by Secretary of State

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Secretary of State liable for, the disclosure of any information by the Secretary of State to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of his functions.

6. Provision of Information to the ORR

The Franchisee hereby authorises the Secretary of State to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Secretary of State in relation to the Franchisee under the Franchise Agreement.

7. Disclosure by Comptroller and Auditor General

The Parties recognise that the Comptroller and Auditor General may, in pursuance of his functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those Acts and which a Party to the Franchise Agreement would not be able to disclose otherwise than under this Schedule 17.

8. Continuing Obligation

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of the Franchise Agreement, irrespective of the reason for termination.

9. Freedom of Information - General Provisions

9.1 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that the Secretary of State is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly the Franchisee shall (and shall procure that its agents and subcontractors shall) assist and co-operate with the Secretary of State to enable the Secretary of State to comply with his information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations.

9.2 Notwithstanding paragraph 10 (Redactions), the Franchisee shall and shall procure that its agents and subcontractors shall:

- (a) transfer to the Secretary of State any Requests for Information received by the Franchisee (or its agents or subcontractors) as soon as practicable and in any event within two (2) Weekdays of receiving any such Request for Information;
- (b) provide the Secretary of State with a copy of all information in its (or their) possession or power in the form that the Secretary of State requires within

five (5) Weekdays of the Secretary of State's request (or within such other period as he may specify); and

- (c) provide all necessary assistance as reasonably requested by the Secretary of State to enable him to respond to any Request for Information within the time for compliance set out in Section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations as applicable.

9.3 The Secretary of State shall be responsible for determining in his absolute discretion, and notwithstanding any other provision in the Franchise Agreement or any other agreement, whether Confidential Information (as such term is defined in paragraph 1 of this Schedule 17) and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.

9.4 The Franchisee shall not and shall procure that its agents and subcontractors shall not respond directly to any Request for Information unless expressly authorised to do so by the Secretary of State.

9.5 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in the Franchise Agreement the Secretary of State may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning the Franchisee and/or its agents and subcontractors:

- (a) in certain circumstances without consulting the Franchisee (or its agents and/or subcontractors where applicable); or
- (b) following consultation with the Franchisee and having taken its views into account (and the views of its agents and/or subcontractors where applicable),

provided always that where applicable the Secretary of State shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give the Franchisee advance notice or failing that to draw the disclosure to the Franchisee's attention after any such disclosure.

10. Redactions

10.1 Subject to paragraph 9 (Freedom of Information - General Provisions), by no later than the date which is:

- (a) four (4) weeks after the date of this Agreement (in respect of the Franchise Documents referred to in paragraph (a) of the definition thereof);
- (b) thirty (30) days after the date of notification by the Secretary of State to the Franchisee of another agreement that is required for publication (in respect of the Franchise Documents referred to in paragraph (b) of the definition thereof; and
- (c) thirty (30) days after the date of any document varying the terms of any Franchise Document,

the Franchisee will provide to the Secretary of State details of any provisions of the Franchise Documents or any such variation which the Franchisee believes are exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act (the "**Redactions**").

10.2 For each such Redaction the Franchisee should specify:

- (a) the exact text of the Franchise Document or variation that the Franchisee proposes is redacted;
- (b) whether the Franchisee proposes that the Redaction applies in relation to the publication of the relevant Franchise Document or variation on the website of the Department for Transport, on the register required to be maintained by the Secretary of State pursuant to Section 73 of the Act or on both such website and such register;
- (c) the reasons why the Franchisee believes that the proposed Redaction is justified in accordance with the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act.

10.3 The Secretary of State shall consult with the Franchisee in relation to the Franchisee's proposed Redactions (provided that the same are provided to the Secretary of State in accordance with paragraph 10.1). If the Secretary of State and the Franchisee are unable to agree upon any proposed Redaction, the Secretary of State shall be entitled to determine, in his absolute discretion, whether or not to make such proposed Redaction. If the Franchisee does not provide its proposed Redactions to the Secretary of State in accordance with paragraph 10.1, the Franchisee shall be deemed to have consented to publication of the relevant document without any Redactions.

DEROGATIONS/WAIVERS POST CONTRACT SIGNATURE DATE

ⁱ 29 December 2017 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 3.4 of Schedule 6.2 of the Franchise Agreement in respect of Engineering Process Study.

Original Due Date: 31 December 2017

Revised Due Date: 31 January 2018

ⁱⁱ 28 September 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 20.1(c) of Schedule 6.2 so that the deadline for the publication of the Passengers' Charter can be extended from 30 September 2018 to 30 November 2018

ⁱⁱⁱ 28 September 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 20.1(c) of Schedule 6.2 so that the deadline for the publication of the Passengers' Charter can be extended from 30 September 2018 to 30 November 2018

^{iv} 12 April 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 48 of Schedule 6.2 of the Franchise Agreement in respect of Environmental Improvements at Existing Depots.

Original Due Date: 16 April 2018

Revised Due Date: 31 October 2018

^v 28 March 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 52.4 of Schedule 6.2 of the Franchise Agreement in respect of Staff Facilities.

Original Due Date: 31 March 2018

Revised Due Date: 31 May 2018

^{vi} 10 April 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 52.4 of Schedule 6.2 of the Franchise Agreement in respect of Staff Facilities.

Original Due Date: 31 March 2018

Revised Due Date: 31 October 2018

^{vii} 08 March 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 53.6a of Schedule 6.2 of the Franchise Agreement in respect of undertaking the Station Refresh Programme at all stations.

Original Due Date: 31 December 2018

Revised Due Date: 30 June 2019

^{viii} 29 December 2017 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 59.1 of Schedule 6.2 of the Franchise Agreement in respect of the installation of WAN at all stations.

Original Due Date: 01 January 2018

Revised Due Date: 31 March 2018

^{ix} 25 September 2017 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 61.2 of Schedule 6.2 of the Franchise Agreement in respect of Customer Experience - "Audited Portfolio".

Original Due Date: 30 September 2017

Revised Due Date: 31 January 2018

^x 30 April 2017 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 74.1 (a) of Schedule 6.2 of the Franchise Agreement in respect of Ticket Vending Machines.

Original Due Date: 31 March 2017

Revised Due Date: 30 June 2017

^{xi} 30 March 2017 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 74.1 (a)(ii) of Schedule 6.2 of the Franchise Agreement in respect of Ticket Vending Machines.

Original Due Date: 31 March 2017

Revised Due Date: 31 May 2017

^{xii} 23 March 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 74.1(c) of Schedule 6.2 of the Franchise Agreement in respect of Ticket Vending Machines.

Original Due Date: 30 April 2018

Revised Due Date: 31 July 2018

^{xiii} 31 July 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 74.1(c) of Schedule 6.2 of the Franchise Agreement in respect of Ticket Vending Machines.

Original Due Date: 30 April 2018

Revised Due Date: 31 December 2018

^{xiv} 30 April 2017 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 74.2 (b), (c), (d) and (f) of Schedule 6.2 of the Franchise Agreement in respect of Ticket Vending Machines.

Original Due Date: 30 April 2017

Revised Due Date: 31 July 2017

^{xv} 28 July 2017 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a further derogation against the requirements of paragraph 74.2 (b), (c), (d) and (f) of schedule 6.2 of the Franchise Agreement in respect of Ticket Vending Machines.

Original Due Date: 30 April 2017

Revised Due Date: 31 October 2017

^{xvi} 28 July 2017 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of paragraph 74.3 of Schedule 6.2 of the Franchise Agreement in respect of Ticket Vending Machines.

Original Due Date: 30 April 2017
Revised Due Date: 31 October 2017

xvii 30 April 2017 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of paragraph 75.3(c) of Schedule 6.2 of the Franchise Agreement in respect of Digital Ticketing.

Original Due Date: 30 April 2017
Revised Due Date: 30 June 2017

xviii 27 April 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 75.3(e) of Schedule 6.2 of the Franchise Agreement in respect of the implementation of the Flex Carnet product capable for fulfilment on ITSO and smartphone application from 30 April 2018 to 31 December 2018.

Original Due Date: 30 April 2018
Revised Due Date: 31 December 2018

xix 27 April 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 76.6 of Schedule 6.2 of the Franchise Agreement in respect of making available to passengers for the remainder of the Franchise Period Anytime Flex Carnet and the -Off Peak Flex Carnet from 1 May 2018 to 31 December 2018.

Original Due Date: 1 May 2018
Revised Due Date: 31 December 2018

xx 27 April 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 76.7 of Schedule 6.2 of the Franchise Agreement in respect of the Anytime Flex Carnet and the Off Peak Flex Carnet is capable of fulfilment on ITSO Certified Smartmedia at Stations from 1 May 2018 to 31 December 2018.

Original Due Date: 1 May 2018
Revised Due Date: 31 December 2018

xxi 25 August 2017 (Date of Derogation Letter) - The Secretary of State has granted a derogation against the requirements of paragraph 85.1 of Schedule 6.2 of the Franchise Agreement in respect of BS11000 replacement with ISO44001.

Original Due Date: 31 December 2017
Revised Due Date: 31 March 2018

xxii 23 March 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the deadline for the requirements of paragraph 85.1 of Schedule 6.2 of the Franchise Agreement in respect of ISO44001 to be extended from 31 March 2018 to 30 June 2018.

Original Due Date: 31 March 2018
Revised Due Date: 30 June 2018

xxiii 17 October 2019 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the deadline for the requirements of paragraph 9.4(c) of Schedule 11.2 of the Franchise Agreement in respect of ISO44001 to be extended from 20 July 2019 to 27 September 2019.

Original Due Date: 20 July 2019
Revised Due Date: 27 September 2019

^{xxiv} 20 May 2020 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 9.4(c) of Schedule 11.2 of the Franchise Agreement in the delay to submit audited accounts due to the Covid-19 pandemic.

Original Due Date: 20/07/2019

Revised Due Date: 26/10/2020

^{xxv} 15 October 2020 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a further derogation against the requirements of Paragraph 9.4(b)(i) (amended by the ERMA and formerly set out in Paragraph 9.4(c) of Schedule 11.2 of the Franchise Agreement) in the delay to submit audited accounts due to the Covid-19 pandemic.

Original Due Date: 20/07/2019

Revised Due Date: 28/02/2021