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Dated

28 February 2020

- (1) THE SECRETARY OF STATE FOR TRANSPORT
- (2) DFT OLR HOLDINGS LIMITED
- (3) NORTHERN TRAINS LIMITED

SERVICES AGREEMENT
RELATING TO THE
NORTHERN FRANCHISE

Withdrawn

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Withdrawn

THIS AGREEMENT is dated 28 February 2020

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**");
- (2) **DFT OLR HOLDINGS LIMITED** (Company Number: 07141122), whose registered office is at Great Minster House, 33 Horseferry Road, London SW1P 4DR ("**DOHL**"); and
- (3) **NORTHERN TRAINS LIMITED** (Company Number: 03076444), whose registered office is 8th Floor, Albany House, 94-98 Petty France, London, England, SW1H 9EA (the "**Service Provider**").

BACKGROUND

- (A) Arriva Rail North Limited (Company Number: 04337712) whose registered office is at 1 Admiral Way, Doxford International Business Park, Sunderland, Tyne & Wear, SR3 3XP ("**ARN**") has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to the Previous Franchise Agreement.
- (B) The Secretary of State has a duty under section 30 of the Act to secure the continuity of the provision of passenger rail services in circumstances where the Previous Franchise Agreement terminates and no further franchise agreement has been entered into in respect of the passenger services formerly provided under this Agreement (the "**Section 30 Duty**").
- (C) The Previous Franchise Agreement is to terminate at 0159 on 1 March 2020 and no further franchise agreement has been entered into in respect of the passenger services formerly provided under the Previous Franchise Agreement. In consequence the Secretary of State's Section 30 Duty has become effective.
- (D) DOHL is a wholly owned subsidiary of the Secretary of State which has been established for the purposes of undertaking, on behalf of the Secretary of State, the Section 30 Duty in respect of the Services formerly provided by ARN under the Previous Franchise Agreement. The Service Provider is a wholly owned subsidiary of DOHL and will operate the Services in respect of which the Section 30 Duty applies.
- (E) The Secretary of State, DOHL and the Service Provider have agreed that whilst this Agreement does not constitute a franchise agreement (within the meaning of the Act) in order to ensure (so far as possible) that the Services are operated and managed in a manner consistent with how railway passenger services are provided by franchisees under franchise agreements it is appropriate for DOHL and the Service Provider to provide the Services in accordance with the terms of this Agreement.

1. INTERPRETATION

1.1 In this 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 this Agreement;
- (c) references to "Parties" shall mean the Secretary of State, DOHL and the Service Provider (and references to a "Party" shall mean the Secretary of State, DOHL or the Service Provider as the context requires);
- (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 this Agreement as in section 1162 of the Companies Act 2006;
- (g) references in any of the agreements comprising this 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 this 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 this 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 Service Provider bidding for Train Slots or a Timetable shall mean the final action incumbent on the Service Provider under the Network Code to confirm to the Infrastructure Manager 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 Infrastructure Manager 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 Service Provider shall be to such sums exclusive of Value Added Tax;
- (w) **NOT USED;**
- (x) **NOT USED;**
- (y) wherever provision is made for a Party to **"procure"** or **"ensure"** the delivery of an obligation under this Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on that Party to deliver that obligation;
- (z) references to **"profit"** shall be construed as meaning profit before corporation tax, determined in accordance with GAAP; and
- (aa) references to **"process"** or **"processing"** or **"processed"** are to be construed in accordance with the Data Protection Legislation for the purposes of Schedule 1.5 (Information about Passengers), paragraph 2.1 of Schedule 14.4 (Preservation of Service Assets) and paragraph 9 (Apprenticeships) of Schedule 13.1 (Rail Industry Initiatives and Co-operation) and paragraph 11 (Data Protection) of Schedule 17 (Confidentiality and Data Protection).

- 1.2 Where there is a requirement on the Service Provider to **"fully and effectively co-operate"** with one (1) or more other third parties with regard to an objective, that requirement relates to the quality of co-operation to be provided by the Service Provider taking into account and subject to the response of the other third parties concerned. It does not indicate an obligation on the

Service Provider beyond co-operation, relating to the funding of detailed design and development of an infrastructure project, actual delivery or subsequent operation (including in each case performance cost and revenue effects). It does indicate that the Service Provider shall participate actively in relation to the relevant objective including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Service Provider reasonably considers in all of the circumstances to be an appropriate use of its resources and effective to achieve the relevant objective.

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 Service Provider.

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

AA	Alliance Agreement;
ABD	Actual Benchmark Data;
BTP	BTP Methodology;
CBS	Co-Branded Stations;
CSES	Customer & Stakeholder Engagement Strategy;
DSMI	Data Site Monitor and Index;
DL	Depot Lease;
ERTMSP	Proposed ERTMS Implementation Plan;
IEPR	IEP Requirements;
JITR	JIT Report;
NTTM	Ticketless Travel Survey Methodology;
PC	Passenger's Charter;
PFD	PTV/Protected Fares Document;
PSM	Passenger Survey Methodology;
SCDP	Station Social and Commercial Development Plan;
SDS	Sustainable Development Strategy;
SL	Station Lease;
SPB	Budget;
TOR	Terms of Reference – People Strategy
TP	Train Plan;
TSR	Train Service Requirement;
TWFSA	Tyne and Wear Fares Side Agreement.

3. **DEFINITIONS**

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

- "16 to 25 Railcard"** means a Discount Card issued under the Discount Fare Scheme referred to in paragraph (a)(ii) of the definition of Discount Fare Scheme;
- "100 Day Review"** has the meaning given to it in paragraph 1 of Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligations);
- "2019 Nominal Ticket Sales"** has the meaning given to it in paragraph 3 of Schedule 5.4 (*Regulation of Fares Basket*);
- "2019 Ticket Revenue"** has the meaning given to it in paragraph 4 of Schedule 5.4 (*Regulation of Fares Basket*);
- "Access Agreement"** has the meaning given to the term **"access agreement"** in section 8(1) of the Act;
- "ACoRP"** means the Association of Community Rail Partnerships whose principal place of business is The Old Water Tower, Huddersfield Railway Station, St Georges Square, Huddersfield, HD1 1JF or any successor body whose purpose is to support Community Rail Partnerships;
- "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;
- "Actual All Cancellations Performance Level"** has the meaning given to it in paragraph 1.1 of Schedule 7.1 (*Operational Performance*);
- "Actual Benchmark Data" or "ABD"** means the document in the agreed terms marked **ABD**;
- "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"** means the actual Costs of the Service Provider in the relevant period;
- "Actual Passenger Demand"** has the meaning given to it in paragraph 1.1 of Schedule 1.5 (*Information about Passengers*);

"Actual T-3 Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Actual T-15 Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"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;
"Advance Purchase Train-specific Fares"	has the meaning given to it under the Ticketing and Settlement Agreement;
"Affected Train Fleet"	has the meaning given to it in paragraph 11.1 (a)(ii)(B) of Schedule 13.1 (Rail Industry Initiatives and Co-operation);
"Affected Service Quality Area"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Affected Service Quality Indicator"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Affiliate"	<p>means,</p> <p>(a) in respect of any person ("A"):</p> <ul style="list-style-type: none"> (i) any person which A Controls or which Controls A; or (ii) any person which is Controlled by any other Affiliate of A, <p>(b) NOT USED</p> <p>and for the purpose of this definition none of Network Rail or HS2 Limited shall be construed as being an affiliate of the Secretary of State;</p>
"Agreement"	means clauses 1 to 17 and Schedules 1 to 17 including any Appendices and Annexes as varied from time to time;
"All Cancellations"	means the sum of Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations relating to the Services as produced and/or published by Network Rail;

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"All Cancellation Figures"	means the moving annual average percentage published by Network Rail in respect of All Cancellation, rounded to one (1) decimal place;
"Alliance Agreement"	means the agreement in the agreed terms marked AA , as amended from time to time with the prior consent of the Secretary of State in accordance with paragraph 2.3 of Schedule 6.4 (<i>Alliances</i>);
"Alternative NRPS"	has the meaning given to such term in paragraph 2.6 of Schedule 7.2 (Customer Experience and Engagement);
"Ancillary Service"	means any service specified in paragraph 4 of Part 1 (<i>Services</i>) of Schedule 1.1 (<i>Services and Service Development</i>);
"Annual All Cancellations Measure"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual All Cancellations Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual Audited Accounts"	means the accounts of the Service Provider which: <ul style="list-style-type: none"> (a) comply with paragraph 9.5(b) of Schedule 11.2 (<i>Management Information</i>); and (b) are delivered to the Secretary of State by the Service Provider in accordance with paragraph 9.4(b) of Schedule 11.2 (<i>Management Information</i>) and certified by the Service Provider'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;
"Annual Business Plan"	means the plan to be provided by the Service Provider to the Secretary of State in accordance with paragraph 10.2 of Schedule 11.2 (<i>Management Information</i>);
"Annual Cancellations Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual Cancellations Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual Cap Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual Floor Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);

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"Annual Management Accounts"	means the management accounts of the Service Provider which: <ul style="list-style-type: none"> (a) comply with paragraph 9.5(a) of Schedule 11.2 (<i>Management Information</i>); and (b) are delivered to the Secretary of State by the Service Provider in accordance with paragraph 9.4(a) of Schedule 11.2 (<i>Management Information</i>);
"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 (<i>Operational Performance</i>);
"Annual Short Formation Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual T-3 Measure"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual T-3 Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual T-15 Measure"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual T-15 Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual Target Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual TOC Minute Delay Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual TOC Minute Delay Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Apprenticeship"	means (as the context requires) an individual apprenticeship pursuant to: <ul style="list-style-type: none"> (a) an apprenticeship programme operated by the Service Provider: <ul style="list-style-type: none"> (i) in connection with an apprenticeships framework listed on the Federation for Industry Sector Skills & Standards' "Frameworks Library" (as located at the date of this Agreement at:

<http://www.afo.sscalliance.org/frameworkorkslibrary/>); and

- (ii) in compliance with the "Specification of Apprenticeship Standards for England" pursuant to the Apprenticeships, Skills, Children and Learning Act 2009; and/or
- (b) an apprenticeship programme operated by the Service Provider pursuant to (and in accordance with applicable requirements of) such statutory apprenticeships system as may be introduced in replacement of, or in variation or addition to, the apprenticeships frameworks system described in paragraphs (a)(i) and (ii) above,

and references to **"Apprenticeships"** shall be construed accordingly;

"Apprenticeships Data Collection Form"

means the excel table provided by the Secretary of State and populated by the Service Provider and included within the Skills and Leadership Strategy specifying in relation to each Service Year the number of Apprenticeships to be commenced in such Service Year, the number of such Apprenticeships at each of level 1 – 8, the job and skills category within which each such Apprenticeship falls and other information as the table may be amended or replaced with the prior written consent of the Secretary of State following a review of the Skills and Leadership Strategy pursuant to paragraph 11.4 of Schedule 13.1 (*Rail Industry Initiatives and Cooperation*);

"Approved CCI Scheme"

means a CCI Scheme approved by the Secretary of State in accordance with paragraph 11.4 of Schedule 7.2 (*Customer Experience and Engagement*);

"BAME"

means Black, Asian and Minority Ethnic;

"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;

"Bank Holiday"

means any day other than a Saturday or Sunday on which banks in the City of London are not open for business;

"Barton-on-Humber Transfer Date"

means the Passenger Change Date occurring in May 2021 or such other date as at the Secretary of Secretary may specify;

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"Benchmark"	means any of the Cancellations Benchmark, the TOC Minute Delay Benchmark or the Short Formation Benchmark (as the context may require);
"Benchmark Table"	means, in relation to: <ul style="list-style-type: none"> (a) any Cancellations Benchmark, the Cancellations Benchmark Table; (b) any TOC Minute Delay Benchmark, the TOC Minute Delay Benchmark Table; and any Short Formation Benchmark, the Short Formation Benchmark Table;
"Boxing Day Services"	has the meaning given to it in paragraph 7.1 (a) of Part 4 of Schedule 6.1 (<i>Service Specific Obligations</i>);
"Brand Licence"	means any licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Service Provider in respect of any registered or unregistered trademarks which are listed in Appendix 1 (<i>List of Trade Marks</i>) of Schedule 14.2 (<i>Maintenance of Operating Assets and Handling</i>);
"Breach Notice"	has the meaning given to it in clause 8 of this Agreement;
"Breach Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"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);
"BTP Methodology"	has the meaning given to it in paragraph 6.7 of Schedule 1.7 (<i>Stations</i>);
"Budget"	means the budget to be agreed by the Secretary of State and the Service Provider in respect of the operation of the Services pursuant to the 100 Day Review (as such budget once agreed may be further amended pursuant to paragraph 4 of Schedule 8.1 (Fixed Service Payment) and which once agreed will be marked in the agreed terms marked SBP ;
"Budgeted Costs"	means the Costs budgeted to be incurred by the Service Provider in each Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 4 of this Schedule 8.1 (Fixed Service Payments);
"Business Action Plan"	means an action plan produced by the Service Provider in relation to the delivery of any aspect of the Services

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(including in respect of any outcome anticipated by its Business Plan, in accordance with 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 Service Provider 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:

- (a) which is included in the Enforcement Plan of the Day and which is cancelled for reasons attributed to the Service Provider pursuant to its Track Access Agreement;
- (b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of the scheduled mileage (as prescribed in the Enforcement Plan of the Day) for reasons attributed to the Service Provider pursuant to its Track Access Agreement;

“Cancellations Benchmark”

means any of the performance levels in respect of Cancellations and/or 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 (*Operational Performance*);

“Cancellations Figures”

means the number of:

- (a) Cancellations and Partial Cancellations; and
- (b) Network Rail Cancellations and Network Rail Partial Cancellations,

in each case, relating to the Passenger Services operated in each Reporting Period;

“Capacity Mitigation Proposal”

has the meaning given to it in paragraph 15.1 of Part 2 (*Service Development*) of Schedule 1.1 (*Services and Service Development*);

“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*);

“CCI Amount” means the sum of £1,000,000 (pounds sterling one million) per Service Year (excluding the first Service Year) save that for each Service Year after the second Service Year the amount shall be subject to adjustment as follows:

CCI AMOUNT x RPI

“CCI Period” has the meaning given to it in paragraph 1.1 of Schedule 7.2 (Customer Experience and Engagement);

“CCI Scheme” has the meaning given to it in paragraph 11.1 of Schedule 7.2 (*Customer Experience and Engagement*);

“CCI Scheme Cost” means in respect of any CCI Scheme, the total cost to the Service Provider of developing and implementing that CCI Scheme;

“CCI Scheme Revenue” means in respect of any CCI Scheme, the revenue earned by the Service Provider from that CCI Scheme;

“CCI Scheme Shortfall” means, in relation to a CCI Scheme, the amount (if any) by which the CCI Scheme Revenue is less than the aggregate of the CCI Scheme Costs;

“CCTV Guidance” means the Rail Delivery Group’s *“National Rail & Underground Closed Circuit Television (CCTV)”* guidance, the British Transport Police’s *“Output requirements from CCTV Systems”* guidance, Home Office’s *“Surveillance Camera Code of Practice June 2013”*, each as updated from time to time and any other guidance reasonably required by the Secretary of State;

“Ceased Services” has the meaning given to it in paragraph 2.1 of Schedule 7.3 (*Service Quality Regime*);

“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; or
- (d) Executive Agency;

“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 Service Provider;
- (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 Service Provider as part of the Passenger Services;

“Chat Moss Route”

means the route between Liverpool and Manchester via Newton le Willows;

“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;

“City Line Station”

means any station on the lines from Liverpool Lime Street to Hough Green, Newton le Willows and Garswood, being as follows:

Liverpool Lime Street, Edge Hill, Wavertree Technology Park, Broad Green, Roby, Huyton, Whiston, Rainhill, Lea Green, St Helens Junction, Earlestown, Newton-le-Willows, Mossley Hill, West Allerton, Allerton, Hunts Cross, Halewood, Hough Green, Prescot, Eccleston Park, Thatto Heath, St Helens Central and Garswood;

“Closed Scheme Employees”

has the meaning given to it in paragraph 3.2 of Schedule 16.1 (Railways Pension Schemes);

“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

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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/accessibile-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 Service Provider with Network Rail or any other the Service Provider as a condition to any Access Agreement of which the Service Provider is the beneficiary;

“Combined Ticket”

has the meaning given to it in paragraph 3.1 of Schedule 5.8 (*Fares Regulation Information and Monitoring*);

“Combined Ticket Notification”

has the meaning given to it in paragraph 3.2 of Schedule 5.8 (*Fares Regulation Information and Monitoring*);

“Committed Obligations” or “COs”

means any of the Service Provider’s obligations listed in Part 1 (*Committed Obligations*) of Schedule 6.2 (*Committed Obligations*) or any other obligation of the Service Provider expressed as a Committed Obligation under this Agreement;

“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 2.5 of Schedule 12.1 (*Rail Industry Initiatives and Co-operation*);

“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 Service Level Commitments”

has the meaning given to it in paragraph 2.16 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);

“Community Rail Development Strategy”

means the Community Rail 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;

“Compensation Rights”

has the meaning given to it in paragraph 1A.1(d) of Part 3 of Schedule 6.1 (*Service Specific Obligations*);

“Compulsory Inter available Flow”

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

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"Computer System"	means computer hardware and computer software, including licensed third party software and data protocols;
"ComREG"	has the meaning given to it in paragraph 2.12 of Schedule 13.1 (Rail Industry Initiatives and Co-operation);
"Confidential Information"	has the meaning given to it in paragraph 1 of Schedule 17 (Confidential Information and Data Protection);
"Connection"	means a connection (however described) between any of the Passenger Services provided by the Service Provider and any other railway passenger service provided by the Service Provider or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;
"Contingency Plan"	has the meaning given to it in paragraph 1(a)(iv) of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>);
"Continuation Document"	means any franchise agreement, direct award, interim franchise agreement or other arrangement pursuant to which the Service Provider is required to provide services for the carriage of passengers by railway which is entered into by the Service Provider 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 this Agreement;
"Contract Manager"	means a person appointed from time to time by the Service Provider to fulfil certain duties including to manage this Agreement on behalf of the Service Provider and to facilitate the performance by the Service Provider of its obligations under this Agreement;
"Controller"	has the meaning given to it in the Data Protection Legislation;
"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;
"Corresponding Period"	has the meaning given to it in paragraph 1 of Schedule 8.2 (Performance Review Provisions)
"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 (<i>Information about Passengers</i>);

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“Creating”	has the meaning given to it in the Ticketing and Settlement Agreement and cognate expressions and references to “Create” shall be construed accordingly;
“CRM Data”	means Personal Data (including any or all of name, address, e-mail address and ticket purchasing history, credit and debit card details) collected by or on behalf of the Service Provider relating to: <ul style="list-style-type: none"> (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) NOT USED;
“CRM Data Obligations”	has the meaning given to it in paragraph 4.4 of Schedule 1.5 (<i>Information about Passengers</i>);
“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;
“CRP Amount”	means the sum of £155,000 (pounds sterling five hundred and fifty five thousand) save that for each Service Year after the first Service Year, the amount shall be subject to adjustments as follows: <p style="text-align: right;">CRP Amount x RPI</p>
“CRP Policies and Plans”	has the meaning given to it in paragraph 2.12 of Schedule 13.1 (<i>Rail Industry Initiatives Co-operation</i>);
“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 9 (<i>Customer and Stakeholder Engagement Strategy</i>) of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“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 (<i>Customer Report</i>) of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“Cyber Information Sharing Platform”	has the meaning given to it in paragraph 17.1 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
“Cyber Security Information Sharing Strategy” or “CSISS”	has the meaning given to it in paragraph 17.1 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);

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“Data Protection Act”	means the Data Protection Act 2018;
“Data Protection Legislation”	means all Laws relating to data protection, the Processing of Personal Data and privacy in force from time to time including the Data Protection Act 2018, (for so long as and to the extent that the law of the European Union has legal effect in the United Kingdom) the GDPR, and, to extent that they are applicable, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications);
“Data Subject”	has the meaning given to it in the Data Protection Legislation;
“Data Site Information”	has the meaning given to it in paragraph 3.1 (<i>Data Site Information</i>) of Schedule 15.1 (<i>Reletting Provisions</i>);
“Data Site Monitor and Index” or “DSMI”	has the meaning given to it in paragraph 3.1 (<i>Data Site Information</i>) of Schedule 15.1 (<i>Reletting Provisions</i>);
“Delayed Cascade Mitigation Plan”	has the meaning given to it in paragraph 3.9 of Schedule 2.2 (<i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i>);
“Departure Station”	has the meaning given to it in paragraph 2.2 of Appendix 2 (<i>Accessible Transport Arrangements</i>) to Schedule 4 (<i>Accessibility and Inclusivity</i>);
“Depot”	means a depot in respect of which the Service Provider 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” or “DL”	means: <ul style="list-style-type: none"> (a) any lease of a depot to which the Service Provider is a party as at the Service Commencement Date; or (b) any other lease of a depot in relation to which the Service Provider becomes the Facility Owner at any time during the Service 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 Employer”	has the meaning given to it in the Pension Trust;

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“Destination Station”	has the meaning given to it in paragraph 2.2 of Appendix 2 (<i>Accessible Transport Arrangements</i>) to Schedule 4 (<i>Accessibility and Inclusivity</i>);
“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 (<i>Key Contracts</i>);
“Disabled People’s Protection Policy”	means the Service Provider’s policy for the protection of persons with disabilities which the Service Provider 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;
“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 Appendix 1 (<i>List of Transport, Travel and Other Schemes</i>) to Schedule 2 (<i>Transport, Travel and Other Schemes</i>);
“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/RIDR Rules.pdf (or such other applicable web address that is adopted from time to time);
“Disputed 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; 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 attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Service Provider pursuant to the Track Access Agreement;

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“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 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 Service Provider pursuant to the Track Access Agreement;

“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*);

“Efficiency Benefit Share Mechanism” or “EBS” 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 performance (or downsides of failure to achieve efficiency targets) are to be shared between Network Rail and train operators whether or not at route level;

“Emergency Events” has the meaning given to it in paragraph 1(c) of Schedule 10.3 (*Force Majeure and Business Continuity*);

“Enabling Works” has the meaning given to it in paragraph 5.2 of Part 4 (Bespoke Obligations) of Schedule 6.1 (Service Specific Provisions);

“EMV” has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);

“Enforcement Plan of the Day” means the Plan of the Day except for any:

- (a) additions to such Plan of the Day of any railway passenger services which are not included in the Timetable;
- (b) omissions from such Plan of the Day of any Passenger Services included in the Timetable; and/or

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(c) rescheduling in such Plan of the Day of any Passenger Services from their scheduling in the Timetable,

in each case:

(i) as proposed by the Service Provider in breach of its obligations in paragraph 4 of Schedule 1.2 (*Operating Obligations*); or

(ii) as agreed by the Service Provider in breach of its obligations in paragraph 3 of Schedule 1.2 (*Operating Obligations*);

“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(e) 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 relevant Central Government Body in relation to such regulations;

“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*);

“ERTMS” means the European Rail Traffic Management System;

“ERTMS Enabled Network” has the meaning given to it in paragraph 11.1(a)(iv) of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);

“ERTMS Programme” means the Network Rail cross rail industry programme for delivering the national implementation of ERTMS;

“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;

- “Evening Peak Service”** means a Passenger Service which departs from a Station in the Evening Peak;
- “Excluded Data”** has the meaning given to it in paragraph 15.1(a)(i) (*Environmental Information*) of Schedule 11.2 (*Management Information*);
- “Executive Stations”** means:
- (a) any of the MPTE Stations, the TfGM Stations, the SYPTe Stations, T&WPTE Stations and WYPTE Stations in respect of which the Service Provider is and remains the Facility Owner during the Service Term; or
 - (b) any New Station designated by the Secretary of State as an Executive Station and in respect of which the Service Provider is the Facility Owner;
- “Expiry Date”** means 01.59am on 1 March 2022 or, subject to compliance with the requirements of Article 5(5) of Regulation 1370/2007, such other earlier or later date as the Secretary of State may notify to DOHL and the Service Provider;
- “Facility Owner”** has the meaning given to the term facility owner in section 17(6) of the Act;
- “Fare”** means:
- (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 Schedules 5.3 (Allocation of Fares to the PTE/Protected Fares Basket) to Schedule 5.8 (Fares Regulation Information and Monitoring) (inclusive) and the definitions of PTE 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

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	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) not used;
"Fare Year"	means the period from 1 January in any year to 31 December in the same year;
"Fares Basket"	means the Protected Fares Basket;
"Fares Document"	means the Protected Fares Document;
"Fares Setting Round"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Final Service Year"	means the Service Year ending on the last day of the Service Period;
"Financial Action Plan"	means any action plan produced by the Service Provider pursuant to paragraph 9.2(b)(vi) of Schedule 11.2 (<i>Management Information</i>), where the level of its financial performance specified in the Management Accounts is materially worse than forecast by the Service Provider 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;
"First in Class Unit"	has the meaning given to it in paragraph 11.1 (a)(i) of Schedule 13.1 (Rail Industry Initiatives and Co-operation);
"Fixed Service Payment"	means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 2 of Schedule 8.1 (Fixed Service Payments) of this Agreement;
"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 (<i>Force Majeure and Business Continuity</i>) where the conditions specified in paragraph 2 of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>) are satisfied;

“Forecast Passenger Demand”

means the forecast prepared by the Service Provider pursuant to paragraph 12.2 of Part 2 (*Service Development*) of Schedule 1.1 (*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 Data Breach”

means any Personal Data Breach or any infringement of the rights afforded to a Data Subject under the Data Protection Legislation relating in whole or in part to CRM Data and/or Franchise Employees which is notified to or otherwise comes to the attention of the Information Commissioner (defined below) whether by way of the Franchisee in its capacity as Data Controller, by any affected Data Subject, by any other person whatsoever, or in any other way, and which results in the Information Commissioner having any material engagement with the Franchisee in respect of the same (which shall mean any correspondence, request, direction or other form of engagement with the Franchisee in connection with a Personal Data Breach or the infringement of rights other than:

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- (a) the Information Commissioner’s acknowledgement of receipt of the notification or of it otherwise having awareness of the Personal Data Breach or the infringement of rights;
- (b) the Information Commissioner’s first request for information following receipt of the notification or of it otherwise having awareness of the Personal Data Breach or the infringement of rights; and
- (c) the Information Commissioner’s written confirmation that no action (whether formally or informally) shall be taken under the Data

Protection Legislation in relation to the Personal Data Breach or the infringement of rights);

“Franchise Data Processor” means any Processor who, from time to time, is processing or has processed CRM Data and/or Personal Data relating to Franchise Employees on behalf of the Franchisee;

“Franchise Employee” means:

- (a) any employee of the Service Provider 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 Services or services which are in support of or ancillary to the Services have been subcontracted (at any tier) or delegated by the Service Provider; 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 Service 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 Sections” has the meaning given to it in paragraph 2 of Schedule 16.1 (Railways Pension Schemes);

“Franchise Section Rules” has the meaning given to it in paragraph 4.2(a) of Schedule 16.1 (Railways Pension Schemes);

“Franchisee Access Station” means any station at which the Passenger Services call (other than any Station);

“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 11.2 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);

“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;

“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;

"GDPR"

means the General Data Protection Regulation (Regulation (EU) 2016/679);

"Geographical Area"

means that area of the United Kingdom bounded by a reasonably drawn line running through the railway stations at the following places:

- (a) Carlisle – Chathill – Scarborough – Cleethorpes – Lincoln Central – Nottingham – Derby – Stoke-on-Trent – Crewe – Chester – Liverpool Lime Street – Whitehaven – Workington – Maryport – Carlisle and including all of the land area within which the Routes are located; or
- (b) as redefined from time to time by agreement with the Secretary of State, or in the absence of such as agreement as determined by the Secretary of State;

"Gross Revenue"

means, in relation to any period and any Fare, the gross revenue to the Service Provider (or any relevant predecessor of the Service Provider) 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;

"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;

"HS2 Limited"

means High Speed Two (HS2) Limited, a company registered in England with registered number 06791686

Without prejudice

whose registered office is at 2 Snowhill, Queensway, Birmingham, B4 6GA or such other entity as may be appointed infrastructure manager in relation to the HS2 Network from time to time;

"HS2 Network"	means the network in respect of which HS2 Limited is the Facility Owner;
"HS2 Project"	means the project for the construction and development of a high speed railway from London to Birmingham, Manchester and Leeds known as "HS2" or "High Speed 2" and all related infrastructure works including the enabling works at London Euston Station;
"Humber Region CRP"	has the meaning given to it in paragraph 2.1 of Schedule 13.1 (Rail Industry Initiatives Co-operation);
"IEP Depots"	has the meaning given to it in paragraph 5.1 of Part 4 (Bespoke Obligations) of Schedule 6.1 (Franchise Specific Provisions);
"IEP Requirements"	has the meaning given to it in paragraph 5.1 of Part 4 (Bespoke Obligations) of Schedule 6.1 (Franchise Specific Provisions);
"IEPs"	has the meaning given to it in paragraph 5.1 of Part 4 (Bespoke Obligations) of Schedule 6.1 (Franchise Specific Provisions);
"Incident Response Plan"	has the meaning given to it in paragraph 16.1 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
"Independent Service Quality Audits"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Independent Station Access Conditions"	has the meaning given to it in the Access Agreement to which it relates;
"Industrial Action"	means any concerted action taken in connection with the employment of any employees of the Service Provider or of any of the employees of persons listed in paragraphs 1(f)(i) to 1(f)(iii) of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>) (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 Service Provider being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the Secretary of State;

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"Industry Schemes"	has the meaning given to it in paragraph 4 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
"Information Commissioner"	has the same meaning as "Commissioner" in section 3 of the Data Protection Act;
"Infrastructure Manager"	means Network Rail;
"Initial Business Plan"	means the business plan to be provided by the Service Provider to the Secretary of State as described in paragraph 10.1 of Schedule 11.2 (<i>Management Information</i>);
"Initial Dataset"	has the meaning given in paragraph 15.1(b) of Schedule 11.2 (<i>Management Information</i>);
"Initial Permanent Fare"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Inspections"	has the meaning given to it in paragraph 5.1 of Schedule 15.1 (<i>Reletting Provisions</i>);
"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;
"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 trademarks, registered designs, unregistered design rights, unregistered trademarks, 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 Service Provider, determine from time to time) during any period in which an amount payable under this Agreement remains unpaid;
"Inter-Operator Schemes"	means the list of schemes in paragraph 4 of Appendix 1 (<i>List of Transport, Travel and Other Schemes</i>) to Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>);

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- “International Organisation for Standardisation”** means the international standard setting body known as **“ISO”** or any such successor body;
- “ISO 50001:2011”** 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;
- “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;
- “ISO 55001:2014”** 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 14001:2015”** 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;
- “ISO 50001 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;
- “ITSO Ltd”** has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);
- “ITSO Specification”** means the common specification issued by ITSO Ltd and which enables the use of interoperable Smart Media in transport and other areas;
- “ITSO Certified Smartmedia”** has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);

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"ITSO Operating Licence"	has the meaning given to it in paragraph 1.1 of Schedule 5.9 (<i>Smart Ticketing</i>);
"ITSO Smart Media Ticketing Scheme"	has the meaning given to it in paragraph 1.1 of Schedule 5.9 (<i>Smart Ticketing</i>);
"Joint Task"	has the meaning given to it in the Alliance Agreement;
"Joint Task Agreement"	has the meaning given to it in the Alliance Agreement;
"JIT Options"	has the meaning given to it in paragraph 6.1 of Part 4 of Schedule 6.1 (Franchise Specific Obligations);
"JIT Report"	has the meaning given to it in paragraph 6.1 of Part 4 of Schedule 6.1 (Franchise Specific Obligations);
"Key Contract"	<p>means:</p> <ul style="list-style-type: none"> (a) each agreement and contract listed in Appendix 1 (<i>List of Key Contracts</i>) to Schedule 14.3 (<i>Key Contracts</i>) as at the date of this Agreement; and (b) any other agreement, contract, licence or other arrangement to which the Service Provider is a party or under which the Service Provider is the beneficiary, from time to time which is designated as such pursuant to Schedule 14.3 (<i>Key Contracts</i>), <p>but excluding any such agreement, contract, licence or other arrangement which ceases, in accordance with the terms of this Agreement, to be designated as a Key Contract;</p>
"Key Personnel"	means those persons identified by the Service Provider in accordance with paragraph 3.1 of Schedule 11.2 (<i>Management Information</i>);
"Know-How"	means formulae, methods, plans, inventions, discoveries, improvements, processes, performance methodologies, techniques, specifications, technical information, tests, results, reports, component lists, manuals and instructions;
"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);

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- “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;
- “Licences”** means such licences and/or statements of national regulatory provisions granted or to be granted under applicable law as the Service Provider 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 Services;
- “Light Maintenance Service”** means any service specified in paragraph 3 of Part 1 (*Services*) of Schedule 1.1 (*Services and Service Development*) which may be provided by the Service Provider 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;

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- (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;

“Local Authority Decrement Scheme”

means any scheme proposed by a Local Authority involving decremental de-specification to a part of the Passenger Services provided under contract with such Local Authority which does not conflict with the Train Service Requirement;

“Local Authority Increment Scheme”

means any scheme proposed by a Local Authority involving incremental additions and improvements to a part of the Passenger Services which does not conflict with the Train Service Requirement pursuant to a contract with such Local Authority;

“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 prior to such station;

“Maintenance Contract”

means any contract or arrangement to which the Service Provider is a party, which includes the carrying out for the Service Provider of any maintenance work (including Night Maintenance Services) or service provision in respect of rolling stock vehicles used by the Service Provider 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;

“Maintainer”

has the meaning given to it in paragraph 5.1 of Part 4 (Bespoke Obligations) of Schedule 6.1 (Service Specific Provisions);

“Major Flow Operation”

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 Services where the Infrastructure Manager is the Facility Owner or becomes the Facility Owner during the Service Period;

“Managed Station Area”

means the premises comprising part or parts of a Managed Station to be occupied by the Service Provider on or after the Service Commencement Date and to be used for or in connection with the provision of the Services;

“Management Accounts”

means, in relation to any Reporting Period, the Service Provider’s management accounts which:

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- (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 Service Provider in accordance with paragraphs 9.2(a) and 9.2(b) of Schedule 11.2 (*Management Information*);

“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 Service Provider may apply to any Service Asset or other asset used by it under a Key Contract, which are applied on the expiry of the Service Period and are not the subject of a Brand Licence;

“Material Discrepancies”

has the meaning given to it in paragraph 2.1 of Schedule 7.3 (*Service Quality Regime*);

“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 3A.1 of Schedule 4 (*Accessibility and Inclusivity*);

“Minor Works’ Budget”

means £200,000 (pounds sterling two hundred and eighty thousand) for each Service Year (other than the first Service Year) allocated by the Service Provider for the purpose of facilitating Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, save that:

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

Minor Works’ Budget x RPI

“Minor Works’ Programme”

means the Service Provider’s programme of Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, developed prior to the start of each Service Year (other than the first Service 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 Service Provider or the Infrastructure Manager (as the case may be) pursuant to the Track Access Agreement and disregarding any

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	minutes of delay that are imputed to Passenger Services that were cancelled;
"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;
"Morning Peak Service"	means a Passenger Service which arrives at a Station in the Morning Peak;
"Multi-Modal Tickets"	means passengers who hold tickets that are created pursuant to the multi modal schemes described in paragraph 2 of the Appendix to Schedule 2.5 (Transport, Travel and Other Schemes);
"National Community Rail Steering Group"	means the National Community Rail Steering Group administered by the Department for Transport, or such successor organisation;
"National Cyber Security Centre"	has the meaning given to it in paragraph 17.1 of Schedule 3.1 (<i>Rail Industry Initiatives and Co-operation</i>);
"National Joint ROSCO First-In-Class Project"	means the joint project between Angel Trains Limited, Freshfield Rail (UK) Limited and Porterbrook Leasing Company 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 RDG, providing information to customers regarding rail journeys throughout the country;
"National Rail Passenger Survey"	means a passenger satisfaction survey in respect of the Services to be carried out by the Passengers' Council as described in paragraph 2 of Schedule 7.2 (<i>Customer Experience and Engagement</i>) and shall include any Alternative NRPS as referred to in paragraph 2.6 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"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;
"Network Change"	has the meaning given to it in the Network Code;

“Network Change Compensation Claims”

has the meaning given to it in paragraph 11.4(a) of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);

“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:

- (a) the network or any relevant facility:
 - (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 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 Service Provider and which the Secretary of State decides (in the Secretary of State’s absolute discretion) to add to the RPC Database;

“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

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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’s Traction Electricity Rules”

means the document entitled “*Traction Electricity Rules*” as published by the ORR;

“New Facilities”

has the meaning given to it in paragraph 2.1 of Schedule 7.3 (*Service Quality Regime*);

“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 Services”

has the meaning given to it in paragraph 2.1 of Schedule 7.3 (*Service Quality Regime*);

“New Station”

means:

(a) a station not served by railway passenger services as at 1 January 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 this Agreement or otherwise) railway passenger services operated by the Service Provider call;

“Nominee”

has the meaning given to it in paragraph 5.1 of Schedule 15.1 (*Reletting Provisions*);

“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 the PTE/Protected Fares Basket*) and which has not been de-designated as such pursuant to paragraph 1.1 of Schedule 5.7 (*Changes to Fares and Fares Regulation*);

“Northern Connect Passenger Services”

means the Passenger Services operated on the routes specified below and which meet the requirements specified in respect thereto:

(a) between Manchester Airport and Blackpool North - 18 trains per day in each direction (Monday to Saturday) and 16 trains per day in each direction (Sunday);

- (b) between Manchester Airport and Lancaster:
 - (i) 15 trains per day in each direction (Monday to Saturdays), of which a minimum of 8 in each direction shall be extended to/from Barrow-in-Furness and 4 in each direction shall be extended to/from Windermere;
 - (ii) 11 trains per day in each direction on Sundays, of which a minimum of 6 in each direction shall be extended to/from Barrow-in-Furness and 4 in each direction shall be extended to/from Windermere;
- (c) between Manchester Airport and Liverpool Lime Street via Warrington Central – 16 trains per day in each direction (Monday to Saturday) and 15 trains per day in each direction (Sunday);
- (d) between Chester and Leeds via Warrington Bank Quay 14 trains per day in each direction (Monday to Saturday) and 10 trains per day in each direction (Sunday);
- (e) between Blackpool and York 14 trains per day in each direction (Monday to Saturday) and 12 trains in each direction (Sunday);
- (f) between Sheffield and Scarborough 13 trains per day in each direction (Monday to Saturday) and 11 trains in each direction (Sunday);
- (g) between Middlesbrough and Carlisle via Durham Coast Line 10 trains per day in each direction (Monday to Saturday);
- (h) between Leeds and Lincoln 10 trains per day in each direction (Monday to Saturday); and
- (i) between Bradford and Nottingham 10 trains per day in each direction (Monday to Saturday);

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“Northern Line Station”

means any station on the lines from:

Ormskirk to Liverpool;

Southport to Liverpool to Hunts Cross; and

Kirkby Merseyside to Liverpool,

being as follows:

Aigburth, Ainsdale, Aintree, Bank Hall, Birkdale, Blundellsands & Crosby, Bootle New Strand, Bootle Oriel Road, Brunswick, Cressington, Fazakerley, Formby, Freshfield Merseyside, Garston Merseyside, Hall Road,

Hightown, Hillside, Hunts Cross, Kirkby Merseyside, Kirkdale, Liverpool Central, Liverpool Moorfields, Maghull, Old Roan, Orrell Park, Rice Lane, Sandhills, Seaforth & Litherland, Southport, Spital, St Michaels, Wallasey Grove Road, Walton Merseyside, Waterloo Merseyside, Aughton Park, Ormskirk and Town Green;

- "Notified Fault"** has the meaning given to it 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 Benchmark"** has the meaning given to it in paragraph 1.1 of Schedule 7.2 (*Customer Experience and Engagement*);
- "NRPS Benchmark Table"** has the meaning given to it in paragraph 1.1 of Schedule 7.2 (*Customer Experience and Engagement*);
- "NRPS Improvement Proposal"** has the meaning given to it in paragraph 5.1 of Schedule 7.2 (*Customer Experience and Engagement*);
- "NRPS Improvement Plan"** has the meaning given to it in paragraph 5.3 of Schedule 7.2 (*Customer Experience and Engagement*);
- "NRPS Measure"** has the meaning given to it in paragraph 1.1 of Schedule 7.2 (*Customer Experience and Engagement*);
- "Off-Peak Passenger Service"** means Passenger Service that is not a Morning Peak Service or an Evening Peak Service;
- "On Time"** means the percentage of recorded station stops called at within 59 seconds of the planned time relating to the Passenger Services as produced and/or published by Network Rail;
- "On Time Figure"** means the moving annual average percentage published by Network Rail in respect of On Time, rounded to one (1) decimal place;
- "Operating Assets"** means all assets (including any Intellectual Property Rights or intangible assets) employed by the Service Provider in the performance of the Service Provider's obligations under this Agreement;
- "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;

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“Other Passenger Route Within the Geographical Area”	means any route which is not a Route but is a route in the Geographical Area over which a passenger train operator other than the Service Provider operates passenger services included in the National Rail Timetable;
“Parent”	means DfT OLR Holdings Limited (company number 07141122) and having its registered office at 8 th Floor, Albany House, 94-98 Petty France, London SW1H 9EA;
“Park Mark”	has the meaning given to it in paragraph 6.7 of Schedule 1.7 (<i>Stations</i>);
“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 mileage as prescribed in the Enforcement Plan of the Day, in each case, for reasons which are attributed to the Service Provider pursuant to its Track Access Agreement;
“Participating Employer”	has the meaning given to it in the Pension Trust;
“Pass Rate”	has the meaning given to it in paragraph 2.1 of Schedule 7 (<i>Service Quality Regime</i>);
“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 (<i>The Rolling Stock</i>) or determined by the Secretary of State in accordance with paragraph 3.4 of Schedule 1.6 (<i>The Rolling Stock</i>)) 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 Service Provider’s railway passenger services as specified in any Timetable and/or Plan of the Day including those railway passenger services which the Service Provider may delegate or subcontract or

	otherwise secure through any other person from time to time in accordance with this Agreement;
"Passenger Survey Methodology" or "PSM"	has the meaning given to it in paragraph 2.4 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"Passenger's Charter" or "PC"	means the Service Provider'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 (<i>Passenger Facing Obligations</i>);
"Passengers' Council"	means the passengers' council established under section 19 of the Railways Act 2005 (as amended by The Passengers' Council (Non-Railway Functions) Order 2010). The Passengers' Council shall be generally known as "Transport Focus" from 30 March 2015;
"Payment Date"	means the date for the payment of Fixed Service Payments in accordance with paragraph 3 of Schedule 8.1 (<i>Fixed Service Payments</i>);
"Peak"	means the Morning Peak and the Evening Peak;
"Peak Passenger Service"	means, as the case may be, a Morning Peak Service or an Evening Peak Service;
"Pension Trust"	means the pension trust governing the Railways Pension Scheme;
"Pensions Committee"	means the pension trust governing the Railways Pension Scheme;
"Performance Meeting"	means a meeting between the Secretary of State and the Service Provider to be held in accordance with paragraph 1 of Schedule 11.1 (<i>Performance Meetings</i>);
"Performance Strategy Plan"	means any joint plan, which the Service Provider and Network Rail are party to, which has been designed to achieve the performance objectives set out in Part L of the Network Code (and/or other objectives related to train service reliability and punctuality as agreed by the parties);
"Permitted Aggregate Increase" or "PAI"	has the meaning given to it in paragraph 4.2 of Schedule 5.4 (<i>Regulation of Fares Basket Values</i>);
"Permitted Individual Increase" or "PII"	has the meaning given to it in paragraph 2.2 of Schedule 5.5 (<i>Regulation of Individual Fares</i>);
"Personal Data"	has the meaning given to it in the Data Protection Legislation;

"Personal Data Breach"	has the meaning given to it in the Data Protection Legislation;
"Plan"	has the meaning given to it in paragraph 14.2(c) of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
"Plan of the Day"	means, in relation to each day during the Service Term, the Passenger Services scheduled to be operated on that day through specification in the Timetable or as notified to the Service Provider by the Infrastructure Manager from time to time prior to 2200 on the previous day;
"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);
"Preceding Year Ticket Price"	has the meaning given to it in paragraph 2.1 of Schedule 5.5 (<i>Regulation of Individual Fares</i>);
"Pre-condition"	has the meaning given to it in paragraph 8.1 of Part 2 of Schedule 6.2 (<i>Committed Obligations</i>);
"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 Service Provider, as part of the development of the RPC Database;
"Previous Franchise Agreement"	means franchise agreement dated 22 December 2015 under which services equivalent to the Services (or a material proportion thereof) were provided by Arriva Rail North Limited on or about the day prior to the Service Commencement Date;
"Previous Franchisee"	means Arriva Rail North Limited with company number: 04337712 of C/O Arriva Plc, 1 Admiral Way, Doxford International Business Park, Sunderland, Tyne & Wear, SR3 3XP;
"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 (<i>Fares and Smart Ticketing</i>) to the Ticketing and Settlement Agreement;
"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

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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;

"Processor"

has the meaning given to it in the Data Protection Legislation;

"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 and any lease in respect of a Managed Station Area, any lease in respect of the 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 Service Provider 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 of operation of the Services;

"Proposed ERTMS Implementation Plan"

means Network Rail's plans for the implementation of the ERTMS Programme as more particularly described in the document in agreed terms marked ERTMSP;

"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 the PTE/Protected Fares Basket*);
- (b) for the purposes of regulating their aggregate Prices 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 Protected Fares Document;

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“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 Service Provider is entitled or obliged from time to time to set the 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 Service Provider is entitled or obliged from time to time to set the Price under the Ticketing and Settlement Agreement,

Withdrawn

except in each case to the extent that a Return Fare for any such Flow is a PTE 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 Service Provider is entitled or obliged, from time to time, to set the Price of under the Ticketing and Settlement Agreement except to the extent that a Weekly Season Ticket for any such Flow is a PTE Fare;

“PTE Fare”

means a TfGM Fare, an MPTE Fare, a SYPTTE Fare or a WYPTTE Fare;

"PTE/Protected Fares Basket"	<p>means the grouping of PTE Fares and Protected Fares:</p> <ul style="list-style-type: none"> (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares to the PTE/Protected Fares Basket); (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 PTE/Protected 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 <p>set out in the PTE/Protected Fares Document;</p>
"PTE/Protected Fares Document"	means the document in the agreed form marked PFD , as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);
"Public Sector Operator"	means any person (other than the Service Provider 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;
"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 Delivery Group" or "RDG"	means the Rail Delivery Group Limited (company number 08176197) (including any of its successors and assigns) whose principal place of business is at 2 nd Floor, 200-202 Aldersgate Street, London EC1A 4HD, which is responsible for preserving and enhancing the benefits for passengers of Britain's national rail network policy formulation and communications on behalf of the whole rail industry;
"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 Product"	has the meaning given to it in the Ticketing and Settlement Agreement and references to "Rail Products" shall be construed accordingly;
"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, 4 th Floor, One South Place, London, EC2M 2RB;

“Railmaster”	means the fare of that name which as at the date hereof appears in the South Yorkshire Passenger Transport Executive section of the fares systems of the RSP;
“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 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 (<i>Fares and Smart Ticketing</i>) 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 Service Provider 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);
“RDG Guidance on Emergency Planning, Knowledge, Understanding and Responsibilities”	has the meaning given to it in paragraph 16.1 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
“Re-inspection Failure”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Reference Fare”	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>);
“Reference Flow”	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>);
“Reference Revenue”	means the aggregate Gross Revenue recorded by RSP as attributable to sales of all PTE Fares or Protected Fares for the period of twelve (12) months which ended 31 March 2019 or such other reference period as the Secretary of State may require pursuant to paragraph 3.1(a) of Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>);
“Regulated Child Price”	means the Child Price that is permitted to be charged by the Service Provider in respect of any Fare in any Fare Year as specified in paragraph 1.3 of Schedule 5.5 (<i>Regulation of Individual Fares</i>);
“Regulated Price”	means the Price that is permitted to be charged by the Service Provider 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 Qualifications Framework”

means the Regulated Qualifications Framework introduced by Ofqual on 1 October 2015 as located at the date of this Agreement at <https://www.gov.uk/find-a-regulated-qualification>;

“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*);

“Regulation 1370/2007”

means Regulation (EC) No 1370/2007 of the European parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70;

“Regulations”

has the meaning given to it in paragraph 1.2 of Schedule 2.5 (*Transport, Travel and Other Schemes*);

“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 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 Third Party”

has the meaning given to it in paragraph 8.1 of Part 4 of Schedule 6.1 (*Service Specific Obligations*);

“Reported Reporting Periods”

has the meaning given to it in paragraph 9 of Schedule 1.4 (*Passenger Facing Obligations*);

“Reporting Period”

means:

- (a) **NOT USED;**
- (b) a period of twenty eight (28) days, provided that:
 - (i) the first such period during the Service Period shall exclude any days up to but not including the Service Commencement 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 Service Provider;

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- (iii) each such period shall start on the day following the last day of the preceding such period; and
- (iv) the last such period during the Service Period shall end at the end of the Service Period;

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

“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 Service Provider, determine to be appropriate in the circumstances;

“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 zone 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” has the meaning given to it in paragraph 1 of Schedule 8.1 (Fixed Service Payments) and references to **“Revenues”** shall be construed accordingly;

“Rolling Stock Lease” means any agreement for the leasing of rolling stock vehicles to which the Service Provider is a party as at the Service Commencement 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 Service Provider is a party from time to time during the Service Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement;

“Rolling Stock Quality Requirements” means each of the following requirements:

- (a) air conditioning and heating systems that are designed to operate effectively and reliably within the range of ambient temperatures normally experienced in the north of England throughout the year;

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- (b) fixed or folding tables at a minimum of 90% of seats;
- (c) power sockets or USB charging points with a minimum of one socket provided for every two seats;
- (d) adequate space for luggage which takes account of the fact that the Northern Connect Passenger Services shall be operated to and from airports and other significant tourist venues;
- (e) toilet facilities (including, baby-change facilities and toilets which are Controlled Emission Toilets);
- (f) full compliance with the accessibility requirements in the Railways (Interoperability) Regulations 2011 notwithstanding that compliance is not required by law until 1 January 2020; and

electronic seat reservation systems;

"Rolling Stock Related Contract"

means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;

"Rolling Stock Units"

has the meaning given to it in paragraph 1(c) of Schedule 10.3 (*Force Majeure and Business Continuity*);

"Route"

means any route specified in the Timetable over which the Service Provider has permission to operate the Passenger Services pursuant to any Track Access Agreement;

"Route Map"

means a map (which may be a topological map) showing each of the Routes and each Other Passenger Route Within the Geographical Area meeting the requirements set out in paragraph 10 of Schedule 1.4 (*Passenger Facing Obligations*);

"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;

"RSP"

means Rail Settlement Plan Limited;

"RSPS3002"

has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);

"Safeguarding on Rail Audit"

means the principles and measures to protect vulnerable children and adults at risk on rail transport,

published by the British Transport Police (as amended or replaced from time to time);

- “Safeguarding Strategy”** means a safeguarding strategy to promote and enforce the principles and measures set out in the Safeguarding on Rail Audit and approved by the British Transport Police;
- “Safety Certificate”** means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Service Provider’s safety management system (as defined in those regulations) and the provisions adopted by the Service Provider 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 systems of the RSP as at the date of each Fares Setting Round;
- “Scheduled Consist Data”** means information as to the type of individual vehicles of rolling stock that have been scheduled by the Service Provider 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 Fare”** means:

 - (a) **NOT USED**; and
 - (b) 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;
- “Secretary of the Access Disputes Committee”** means the person appointed as the secretary of the Access Disputes Committee from time to time;
- “Secure Stations Accreditation”** has the meaning given to it in paragraph 6.7 of Schedule 1.7 (*Stations*);
- “Secure Stations Scheme”** has the meaning given to it in paragraph 6.7 of Schedule 1.7 (*Stations*);
- “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;

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"Service Assets"	means the property, rights and liabilities of the Service Provider used in the provision of the Services except as referred to in paragraph 1.2 of Schedule 14.4 (Service Assets);
"Service Commencement Date"	means 02:00 on 1 March 2020;
"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 Period"	means the period from the Service Commencement Date to the Expiry Date;
"Service Quality Area"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Service Quality Failure"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Service Quality Indicator"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Service Quality Inspection"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Service Quality Performance Payment"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Service Quality Regime" or "SQR"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Service Quality Re-inspection"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Service Quality Schedules"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"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 Service Provider:</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>

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- (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 the Infrastructure Manager for the purpose of minimising such disruption pursuant to paragraph (a);
- (c) in accordance with the principles of service recovery set out in the **"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 Service Provider, the Infrastructure Manager and any other affected Train Operator; and
 - (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of the Infrastructure Manager;

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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*);

"Service Term"

means the period commencing on the Service Commencement Date and expiring on the Expiry Date;

"Service Year"

means any period of twelve (12) months during the Service Period, beginning on 1 April and ending on 31 March, except that:

- (a) the first and last Service Years may be for a period of less than twelve (12) months and the first Service Year shall begin on the Service Commencement Date and the last Service Year

shall end on the last day of the Service Period;
and

- (b) for the purposes of Schedule 7.3 (Service Quality Regime) only the provisions of paragraph 2.2 of that Schedule shall apply;

“Services”

means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Service Provider may provide or operate from time to time, including any of such services as the Service Provider may delegate or subcontract or otherwise secure through any other person from time to time in accordance with this Agreement;

“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 Service Provider and Network Rail carry out their respective activities concurrently;

“Shared Projects”

has the meaning given to it in paragraph 2.16(c) of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*)

“Short Formation Benchmark”

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

“Short Formation Benchmark Table”

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

“Short Formation Figures”

means the number of Passenger Services in any Reporting Period formed with less than the Passenger Carrying Capacity specified in the Train Plan;

“Short Formation Peak Passenger Service”

means any Passenger Service that:

- (a) arrives at a Short Formation Peak Station during the Morning Peak; or
- (b) departs from a Short Formation Peak Station during the Evening Peak,

provided that a Passenger Service arriving at more than one Short Formation Peak Station in the Morning Peak or departing from more than one Short Formation Peak Station in the Evening Peak shall only be counted once for the purposes of the relevant provisions of Schedule 7.1 (*Operational Performance*);

“Short Formation Peak Station”

means any of the following Stations:

- (a) Manchester Piccadilly;

- (b) Manchester Victoria;
- (c) Manchester Oxford Road;
- (d) Leeds;
- (e) Sheffield;
- (f) Newcastle; and
- (g) Liverpool Lime Street;

“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:

- (a) the addition or removal of railway passenger services;
- (b) changes to stopping patterns or destinations or origin;
- (c) changes of timing for first/last trains by more than 10 minutes;
- (d) changes to clock face (or near clock face) service patterns meaning the provision of railway passenger services at a specified time or times (relative to the hour); and/or
- (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 published by the Royal Institute of Chartered Surveyors;

“Skills and Leadership Strategy”

means the skills and leadership strategy of the Service Provider required to be implemented pursuant to paragraph 9 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*) as it may be revised pursuant to such paragraph;

means any individual micro, small or medium sized enterprise meeting the requirements set out in

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“Small and Medium-sized Enterprises” or “SMEs”

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”

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 the Service Provider at station or on board trains;
- (c) ITSO Certified Smart Media;
- (d) contactless payment media (cEMVs);
- (e) Oyster (TfL’s smartcard); and

any of the above formats stored and presented on a portable electronic device;

“Smart Ticketing Scheme”

has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);

“Smart Media Target”

has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);

“SMP Data”

has the meaning given to it in paragraph 1.1(d)(ii) of Schedule 1.7 (Stations);

“SoS Audits”

has the meaning given to it in paragraph 2.1 of Schedule 7.3 (*Service Quality Regime*);

“SoS Nominee”

has the meaning given to it in paragraph 2.1 of Schedule 7.3 (*Service Quality Regime*);

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"SoS Service Quality Inspection"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"SoS Service Quality Inspection Period"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"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 Categories of Personal Data"	has the meaning given to it in the Data Protection Legislation;
"Specified Additional Rolling Stock"	has the meaning given in paragraph 2.1(b) of Schedule 1.6 (<i>The Rolling Stock</i>);
"Specified Unit"	has the meaning given in Explanatory Note A under paragraph 1 of Appendix 1 (The Composition of the Train Fleet) to Schedule 1.6 (The Rolling Stock);
"SQR Benchmark"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"SQR Management System"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"SQR Register"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"SQR Station"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"SQR Station Benchmark"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"SQR Train"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"SQR Train Benchmark"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"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

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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 Occupational Classification Codes”

means the codes published in the Standard Occupational Classification 2010 as provided by the Office for National Statistics which can be found at <https://www.ons.gov.uk/methodology/classificationsandstandards/standardoccupationalclassificationsoc/soc2010/soc2010volume2thestructureandcodingindex>;

“Station”

means:

- (a) any station in respect of which the Service Provider has entered into a Station Lease; or
- (b) any New Station at which the Service Provider becomes the Facility Owner;

“Station Access Conditions”

has the meaning given to it in the relevant Access Agreement to which it relates;

“Station Asset Management Plan”

means the plan created by the Service Provider pursuant to paragraph 1.2(a) 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 Service Provider’s station asset management organisation and systems for Stations as complying with the requirements of ISO5001:2014 (or such other reasonably equivalent standards as may be approved in writing by the Secretary of State from time to time in place of ISO5001:2014);

“Station Asset Management Plan Accreditation Certificate”

has the meaning given to it in paragraph 1.2(a) of Schedule 1.7 (*Stations*);

“Station Change”

has the meaning given to the term “Proposal for Change” under the Station Access Conditions;

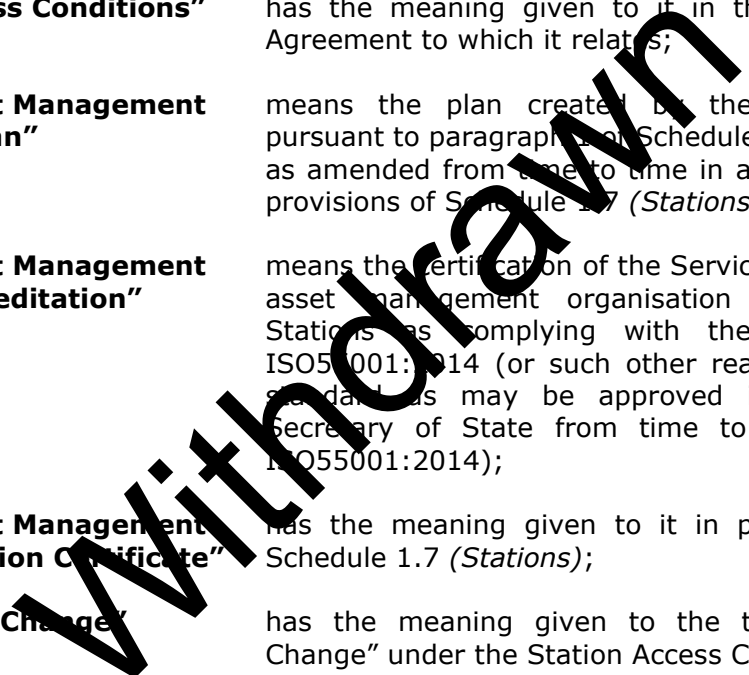
“Station Lease” or “SL”

means:

- (a) any lease of a station that the Service Provider is a party to as at the Service Commencement Date; or
- (b) a lease of any other station to which the Service Provider becomes the Facility Owner at any time during the Service Period;

“Station Service”

means any service specified in paragraph 2 of Part 1 (*Services*) of Schedule 1.1 (*Services and Service Development*) which may be provided by the Service Provider at the Stations;



- "Station Service Quality Inspection"** has the meaning given to it in paragraph 2.1 of Schedule 7.3 (*Service Quality Regime*);
- "Station Social and Commercial Development Plan" or "SCDP"** means the Service Provider'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 3 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;
- "Stored Credit Balance"** means any monetary amount held by the Service Provider which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium);
- "Subcontractor"** has the meaning given to it in paragraph 7.3 (b) of Schedule 1.5 (*Information about Passengers*);
- "Successor Operator"** means a Train Operator succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Service Provider by the Secretary of State) the Service Provider in the provision or operation of all or any of the Services including, where the context so admits, the Service Provider where it is to continue to provide or operate the Services following termination of this Agreement;
- "Successor Operator Timetable"** has the meaning given to it in paragraph 2.2(a) of Schedule 1.1 (*Maintenance of Franchise*);
- "Suicide Prevention Strategy"** means the 'From Crisis to Care' strategy document for the period 2016-2019 (as amended or replaced from time to time) published by the British Transport Police;
- "Suicide Prevention Duty Holders' Group's 9 Point Plan"** means the best practice plan established and published by the "cross-industry suicide prevention group", setting out nine deliverables aimed at suicide reduction (as amended or replaced from time to time);
- "Sustainable Development Strategy" or "SDS"** means the Service Provider's strategy for sustainable development as set out in the agreed terms and marked **SDS**;
- "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 (*Operational Performance*);

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- “TDR Amendment”** has the meaning given to it in paragraph 12.7 of Part 2 (*Service Development*) of Schedule 1.1 (*Services and Service Development*);
- “Technical Support Contract”** means a contract for technical support to which the Service Provider 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 of Schedule 15.1 (*Reletting Provisions*);
- “Terms of Reference – People Strategy”** means the terms of reference in the agreed terms marked **TOR**;
- “TfGM Fare”** means any:

 - (a) Single Fare;
 - (b) Return Fare;
 - (c) Weekly Season Ticket;
 - (d) Monthly Season Ticket;
 - (e) Quarterly Season Ticket; or
 - (f) Annual Season Ticket,

which is valid for use only on Railway Passenger Services and not on any other form of transport, including bus, tram or light rail (but including any such Fare where the origin or destination station is stated to be Manchester Central Zone regardless of whether such Fare is valid for use on any other form of transport within Manchester City Centre), for a journey where the origin and destination stations are both TfGM Stations, including where the origin or destination station is stated to be Manchester Central Zone;
- “TfGM Stations”** means:

 - (a) for the purposes of the definition of TfGM Fare, any passenger railway station within the Greater Manchester Metropolitan County (as defined in the Local Government Act 1972) together with Dinting, Disley, Glazebrook, Glossop, Hadfield and New Mills Newtown stations; and
 - (b) for all other purposes, each of the following stations:

 - Altrincham, Appley Bridge, Ardwick, Ashburys, Ashton-Under-Lyne, Atherton, Belle Vue, Blackrod, Bolton, Bramhall, Bredbury, Brinnington, Bromley Cross, Bryn, Broadbottom, Burnage, Castleton (Manchester), Chassen

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Road, Cheadle, Clifton, Hulme, Daisy Hill, Davenport, Deansgate, Denton, Dinting, East Didsbury, Eccles, Fairfield, Farnworth, Flixton, Flowery Field, Gathurst, Gatley, Glazebrook, Glossop, Godley, Gorton, Greenfield, Guide Bridge, Hadfield, Hag Fold, Hale, Hallith Wood, Hattersley, Hazel Grove, Heald Green, Heaton Chapel, Hindley, Humphrey Park, Hyde Central, Hyde North, Kearsley, Ince, Irlam, Levenshulme, Littleborough, Lostock, Manchester Victoria, Manchester Oxford Road, Manchester United Halt, Marple, Mauldeth Road, Middlewood, Mills Hill, Moses Gate, Moorside, Moston, Mossley, Navigation Road, Newton-For-Hyde, Orrell, Patricroft, Pemberton, Rose Hill Marple, Reddish North, Reddish South, Rochdale, Romiley, Ryder Brow, Salford Central, Salford Crescent, Smithy Bridge, Strines, Swinton (Manchester), Trafford Park, Urmston, Walkden, Westhoughton, Wigan Wallgate, Woodley and Woodsmoor;

“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 Service Provider and which the Secretary of State decides (in the Secretary of State’s absolute discretion) to add to the RPC Database;

“Through Ticketing (Non-Travelcard) Agreement”

means the agreement of that name referred to in paragraph 4.1(e) of Appendix 1 (*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 22 July 1995 between RSP, the Service Provider and the other Train Operators named therein, as amended from time to time with the approval of the Secretary of State;

“Ticketless Travel Survey Methodology” or “TTSM”

means the document in the agreed terms marked **TTSM**;

“Ticketless Travel Baseline Survey”

has the meaning given to it in paragraph 35.1 of Part 1 of Schedule 6.2 (Committed Obligations)

“Ticketless Travel Target”

has the meaning given to it in paragraph 35.2 of Part 1 of Schedule 6.2 (Committed Obligations)

“Time to 3 Minutes” or “T-3” or “Time to 3”

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;

“Time to 15 Minutes” or “T-15” or “Time to 15”

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;

- “Time to 3 Minutes Figures”** means the moving annual average percentage published by Network Rail in respect of Time to 3 Minutes, rounded to one (1) decimal place;
- “Time to 15 Minutes Figures”** means the moving annual average percentage published by Network Rail in respect of Time to 15 Minutes, rounded to one (1) decimal place;
- “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 the Service Provider Access Stations; and
 - (b) principal Connections at those stations and other stations;
- “Timetable Development Rights”** means all or any of the rights of the Service Provider 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 the Infrastructure Manager 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 Service Provider by the Infrastructure Manager 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 the Infrastructure Manager; and
 - (f) seek from the Infrastructure Manager additional benefits as a condition to granting any consent to any actual or proposed act or omission by the Infrastructure Manager;
- “Timetable Planning Rules”** has the meaning given to it in the Network Code;
- “Timetabled Services”** means any 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

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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*);

“TOC Minute Delay Benchmark”

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

“TOC Minute Delay Benchmark Table”

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

“TPE Chat Moss Route Service Specification”

means the requirement in the train service requirement of the TransPennine Express Franchisee to operate passenger services in both directions between Liverpool and Manchester via the Chat Moss Route and between Liverpool and stations in Scotland via Preston;

“TPE Hope Valley Route Service Specification”

means the requirement in the train service requirement of the TransPennine Express Franchisee to operate passenger services in both directions between Manchester and Sheffield via the Hope Valley Route;

“TPE Route Services Specifications”

means any of the TPE Chat Moss Route Service Specification, the TPE Hope Valley Route Service Specification;

“Track Access Agreement”

means each Access Agreement between Network Rail and the Service Provider which permits the Service Provider to provide the Passenger Services on track operated by Network Rail;

“Transfer Agreement”

shall have the meaning given to such term in Clause 10.1;

“Train Fleet”

means:

- (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 Mileage”

means, in relation to any period, the aggregate train mileage covered during such period by each train used in the provision of the Passenger Services (excluding, any train mileage covered as a result of positioning or other movements of rolling stock vehicles outside the Timetable) and “Train Miles” shall be construed accordingly;

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"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"	has the meaning given to it in paragraph 10 of Part 2 (<i>Service Development</i>) of Schedule 1.1 (<i>Services and Service Development</i>);
"Train Service Quality Inspection"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Train Service Requirement" or "TSR"	means the train service requirement more particularly described in paragraph 9 of Part 2 (<i>Service Development</i>) of Schedule 1.1 (<i>Services and Service Development</i>) as such train service requirement may subsequently be amended or replaced in accordance with Schedule 1.1 (<i>Services and Service Development</i>);
"Train Slots"	has the meaning given to it in the Network Code;
"TransPennine Express Franchise"	means the rights tendered by the Secretary of State to operate certain railway passenger services identified by him as the TransPennine Express passenger services (or by such other name as the Secretary of State may notify to the Service Provider for this purpose from time to time);
"TransPennine Express Franchisee"	means the Service Provider appointed by the Secretary of State on or about the date of this Agreement to operate the TransPennine Express Franchise;
"TransPennine Route Upgrade"	<p>means the rail infrastructure upgrade (also known as the 'North TransPennine Upgrade') of the route between Salybridge and York and Leeds and Selby (with a possible extension to Hull if the business case is approved) involving some or all of the following components:</p> <ul style="list-style-type: none"> (a) electrification; (b) signalling works; (c) line speed enhancements; (d) capacity enhancements; and (e) other miscellaneous rail infrastructure works, <p>it being acknowledged that each such rail infrastructure upgrade may be completed in one or more phases with each such phase being, for the purposes of the Franchise Agreement, a TransPennine Route Upgrade;</p>

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“TransPennine Route Upgrade Services Proposal”	means a proposal from the Service Provider in response to a Request for the TransPennine Route Upgrade Services Proposal;
“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;
“Transport for the North”	means the partnership body responsible for transport infrastructure and the co-ordination of public transport in the north of England;
“Transport Infrastructure Skills Strategy”	means the document of that name launched by the Department for Transport on 28 January 2016 (as located at the date of this Agreement at: https://www.gov.uk/government/publications/transport-infrastructure-skills-strategy-building-sustainable-skills);
“Travel Safety Officers”	has the meaning given to it in paragraph 41.1(c) of Part 1 of Schedule 6.2 (Committed Obligations);
“Travelcard Agreement”	means the agreement of that name referred to in paragraph 4.1(d) of Appendix 1 (<i>List of Transport, Travel and Other Schemes</i>) to Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>);
“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;
“TRH Score”	has the meaning given to it in paragraph 6.7 of Schedule 1.7 (<i>Stations</i>);
“TSR (Deconfliction) Amendment”	has the meaning given to it in paragraph 12A.3 of Part 2 of Schedule 1.1 (Services and Service Development);
“Trustee”	has the meaning given to it in paragraph 4.1 of Schedule 16.1 (Railways Pension Scheme);
“TSI”	means any Technical Standard for Interoperability with which the Service Provider 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 Service Provider from the sale of Fares, other revenue and the receipt of Fixed Service Payments during such period;
"T&WPTE"	means Transport for Tyne & Wear, whose principal place of business is at Nexus House, 33 St. James' Boulevard, Newcastle Upon Tyne, NE1 4AX;
"T&WPTE Fare"	means a fare for a flow in either direction between the following stations: (a) Newcastle - Sunderland; (a) Newcastle - Heworth; or (b) Heworth - Sunderland;
"T&WPTE Season Ticket Fare"	means a T&WPTE 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 zones for which, such T&WPTE Fare is valid;
"T&W Fares Side Agreement"	means the side agreement, relating to certain Fares, and currently between T&WPTE and the Service Provider in the agreed terms marked " T&WFSA ";
"Underspend"	has the meaning given to it in paragraph 3(a) of Part 2 (<i>Special Terms related to the Committed Obligations</i>) of Schedule 6.2 (<i>Committed Obligations</i>);
"Undisputed Cancellation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Undisputed Network Rail Cancellation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Undisputed Network Rail Partial Cancellation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Undisputed Partial Cancellation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"User"	has 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;

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“Value Added Tax”	means value added tax as provided for in the Value Added Tax Act 1994;
“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;
“Welsh Ministers”	has the meaning given to it in section 45(2) of the Government of Wales Act 2006;
“Wireless Internet Service”	has the meaning given to it in paragraph 1 of Part 1 of Schedule 6.2 (Committed Obligations);
“Wirral Line Station”	means any station on the lines from: <ul style="list-style-type: none"> (a) Chester to Liverpool Central; (b) Ellesmere Port to Liverpool Central; (c) Liverpool Moorfields to Chester; (d) Liverpool Moorfields to Ellesmere Port; (e) Liverpool Moorfields to New Brighton; (f) Liverpool Moorfields to West Kirby; (g) New Brighton to Liverpool Central; and (h) West Kirby to Liverpool Central;
“Yield Management Data”	means data collected by or on behalf of the Service Provider 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: <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

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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. SERVICE COMMENCEMENT DATE

The Service Provider shall commence provision of the Services on the Service Commencement Date.

5. TERM AND TERMINATION

This Agreement shall commence on the Service Commencement Date and terminate on the Expiry Date.

6. GENERAL OBLIGATIONS

6.1 DOHL undertakes to secure that the Service Provider provides the Services subject to and in accordance with the terms and conditions of this Agreement and otherwise complies with its obligations, duties and undertakings under this Agreement (as amended from time to time in accordance with this Agreement or by agreement between the Service Provider and the Secretary of State).

6.2 The Service Provider shall perform its obligations under this 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.

6.3 Any obligation on the part of the Service Provider 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.

6.4 The Service Provider shall cooperate 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 this Agreement.

6.5 The Secretary of State shall act reasonably and in good faith in and about the performance of the Secretary of State’s obligations and the exercise of Secretary of State’s rights pursuant to this Agreement.

7. NOT USED

8. BREACH NOTICES

8.1 If the Secretary of State is satisfied that the Service Provider is contravening or is likely to contravene any provision of this Agreement the Secretary of State may serve written notice (**“Breach Notice”**) upon the Service Provider setting out:

- (a) the provision of this Agreement which the Secretary of State is satisfied that the Service Provider is contravening or is likely to contravene;

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- (b) the act or omissions which, in the Secretary of State's opinion, constitute or would constitute contraventions of such provision; and
- (c) the date and time of any meeting that the Secretary of State may require the Service Provider to attend to discuss the causes of the contravention and the measures to be implemented to: (i) remedy the contravention and/or (ii) prevent the occurrence of such contravention; and

the Secretary of State shall be entitled to request such information from the Service Provider as the Secretary of State requires for the purposes of the operation of this clause 8. The Service Provider shall provide the information within such time as the Secretary of State may reasonably specify for the purpose.

8.2 The Service Provider shall:

- (a) ensure that the representatives of the Service Provider and representatives of the Parent (as may be specified by the Secretary of State) attend any meeting convened by the Secretary of State at the time and place stated in the Breach Notice; and
- (b) at the meeting referred to in Clause 8.2(a), present such reports, plans and/or other information as the Secretary of State may specify pursuant to Clause 8.1.

8.3 Following the issue of any Breach Notice or, if applicable following any meeting referred to in Clause 8.2, the Secretary of State may issue a further notice (a "**Breach Remedial Notice**") setting out the steps which the Secretary of State reasonably requires the Service Provider to take in order to remedy or prevent the occurrence of any such contravention and the period within which the Secretary of State requires such steps to be taken.

8.4 The Service Provider shall comply with the terms of any Breach Remedial Notice except in circumstances where to do so would result in the Service Provider being in breach of any legal or statutory duty. In those circumstances, the Service Provider shall as soon as reasonably possible, give notice to the Secretary of State and DOHL with details of the breach which would arise and comply with any reasonable instructions issued by the Secretary of State in those circumstances.

8.5 The Secretary of State agrees that it is not Secretary of State's intention that DOHL or the Service Provider will in any circumstances be liable to the Secretary of State for any loss or damage caused by any breach of this Agreement or tortious act or omission or breach of statutory duty by DOHL or the Service Provider in respect of the Services to the extent permitted by Law. All and any such liability as would, but for this clause, arise is expressly excluded provided that nothing in this Clause shall restrict the ability of the Secretary of State to seek an order for specific performance of this Agreement.

9. **COMPLIANCE WITH LAWS**

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

10. **TRANSFER OF PROPERTY RIGHTS AND LIABILITIES ON EXPIRY**

10.1 The Service Provider agrees that on the termination of this Agreement it will, at the request of the Secretary of State, enter into an agreement in substantially the same form as the document set out in Schedule 15 or in such other form as the Secretary of State may prescribe (the "**Transfer Agreement**") for the purposes of:

- (a) transferring to a Successor Operator all the property, rights and liabilities of the Service Provider; and

- (b) determining the amounts to be paid in respect of such property, rights and liabilities so transferred to a Successor Operator under the Transfer Agreement.

10.2 The Service Provider shall comply with its obligations under the Transfer Agreement.

10.3 The Secretary of State agrees, that if the Secretary of State requires the Service Provider to enter into the Transfer Agreement, the Secretary of State shall impose an obligation on the Successor Operator to enter into the Transfer Agreement and comply with its obligations thereunder.

11. DISPUTE RESOLUTION PROCEDURE

11.1 *Disputes under this Agreement*

- (a) Wherever this Agreement provides that the Secretary of State may reasonably determine any matter, the Service Provider may, unless this 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 this Agreement, to refer a dispute arising out of or in connection with this 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 this Agreement entitling it to do so, either Party wishes to refer a dispute arising out of or in connection with this 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 17 (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 Service Provider 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 Service Provider 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 Service Provider's ability to comply with its obligations under this Agreement or on the provision of the 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 Service Provider shall provide such further details of any dispute referred to in clause 11.1(d) (*Disputes under this 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 8.1 (*Fixed Service Payments*) of this Agreement.

12. **NOTICES**

12.1 **Notices**

- (a) Any notice, notification or other communication under or in connection with this 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 Market Lead – Northern Franchise

Name:	DFT OLR Holding Limited
Address:	Great Minster House, 33 Horseferry Road, London SW1P 4DR
Email:	franchise.notices@dohl.co.uk
Attention:	Company Secretary
Name:	Northern Trains Limited
Address:	8th Floor, Albany House, 94-98 Petty France, London, England, SW1H 9EA
Email:	Steffi.Cunningham@dft.org.uk
Attention:	Company Secretary

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; or
- (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; or
- (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, if any); or
- (d) if sent through the Secretary of State's contract management system, an **"actual date"** confirmation in the audit log from the Secretary of State's contract management system.

13. **PAYMENTS FREE AND CLEAR**

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

14. **MISCELLANEOUS PROVISIONS**

14.1 **Waivers**

- (a) Any Party may at any time waive any obligation of any other Party owed to it under this 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 this 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 this 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 this 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 this Agreement or by law is only effective if given in writing by the Secretary of State.

14.2 **Time Limits**

Where in this 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): (i) 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; (ii) the Parties shall consult on the relevant Party's failure to perform the obligation within the specified time limit; and (iii) the relevant Party shall, as applicable, continue to use all reasonable endeavours or reasonable endeavours to do or procure that the relevant thing is done as soon as reasonably practicable thereafter.

14.3 **Partial Invalidity**

If any provision in this 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 this Agreement but the legality, validity and enforceability of the remainder of this 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 this Agreement.

14.5 **Rights of Third Parties**

- (a) A person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this 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 Service Provider 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) This Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of this 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 Service 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 Service Provider which may constitute a contravention of

Schedule 15 (Obligations Associated with Termination) or has been afforded a reasonable opportunity to indicate to the Service Provider 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 this 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 the Secretary of State considers appropriate, which may include the adjustment of any of the terms of this Agreement.

14.7 NOT USED

14.8 Arm's Length Dealings

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

14.9 Non-Discrimination

The Service Provider shall 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).

14.10 Statutory Director's Written Confirmation, Statement and/or Certificate

It shall be a contravention of the Agreement if any written confirmation, statement and/or certification from a statutory director of the Service Provider, in the reasonable opinion of the Secretary of State, in any material respect, is untrue, inaccurate and/or misleading.

14.11 NOT USED.

14.12 NOT USED.

15. NOT USED.

16. SUB CONTRACTING/ASSIGNMENT

16.1 Neither DOHL nor the Service Provider may subcontract or delegate the provision of any of the Services which are to be provided under this Agreement without the prior written consent of the Secretary of State.

16.2 DOHL and the Service Provider shall not without the prior written consent of the Secretary of State assign, or grant a Security Interest in or over, this Agreement or any part thereof or any benefit or interest or rights therein or thereunder

17. **VARIATIONS IN WRITING**

17.1 The terms of this Agreement may be varied:

- (a) by the Secretary of State in relation to any aspects of the Services and any provision of this Agreement by notice in writing referring to this Clause 17.1 and setting out the variation to the terms of this Agreement; and
- (b) otherwise by agreement in writing between the parties and signed by duly authorised representatives of the parties.

17.2 The consent or approval of DOHL shall not be required for any variation or amendment of the rights or obligations of the Secretary of State and the Service Provider under this Agreement.

18. **ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the Parties in relation to the subject matter of this Agreement and supersedes all prior agreements and arrangements between the Parties.

19. **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, except as expressly set out in this Agreement.

Withdrawn

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

SEAL REF No.

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

**Authenticated by authority of
the Secretary of State for
Transport**

SIGNED FOR AND ON BEHALF OF)
DFT OLR HOLDINGS LIMITED)
ACTING BY ONE DIRECTOR IN THE PRESENCE)
OF A WITNESS)

Director

Witness signature

Witness name

Witness address

Witness occupation

SIGNED FOR AND ON BEHALF OF)
NORTHERN TRAINS LIMITED)
ACTING BY ONE DIRECTOR IN THE PRESENCE)
OF A WITNESS)

Director

Witness signature

Witness name

Witness address

Withdrawn

Witness occupation

Withdrawn

SCHEDULE 1

PASSENGER SERVICE OBLIGATIONS

Schedule 1.1:	Services and Service Development
	Part 1 – 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 accreditations
	Appendix 2: Information about Station Improvement Measures
	Appendix 3: NOT USED
	Appendix 4: NOT USED

Withdrawn

Schedule 1.1

Services and Service Development

Part 1 - Services

1. Services

- 1.1 The Service Provider may at all times during the Service Term provide and operate the Services specified in this Schedule 1.1. The Service Provider is required to provide the Passenger Services that comply with the Train Service Requirement and (without prejudice to the other provisions of this Agreement) is permitted to provide other Services subject to the provisions of Part 1 of this Schedule 1.1.
- 1.2 The Service Provider 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 Services.
- 1.3 Nothing in this Schedule 1.1 shall restrict any Affiliate of the Service Provider from having an interest in or participating in any business or activity.
- 1.4 The Service Provider 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
 - (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 Service Provider may provide, or may be required to provide, under any Access Agreement in effect on the Service Commencement 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;

Withdrawn

- (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) 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 Service Provider may provide, or may be required to provide, under any Access Agreement in effect on the Service Commencement Date or as lawfully directed by the ORR from time to time.

4. Ancillary Services

4.1 The Service Provider 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, 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) 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(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) in any Reporting Period, the subleasing, hiring or licensing of up to ten per cent (10%) of the rolling stock vehicles used in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock vehicles are sub-let, hired or licensed and the aggregate period of time for which they are used in the provision of the Passenger Services);
- (d) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:
 - (i) up to one per cent (1%) of the number of Franchise Employees as at the Service Commencement Date, for over ninety per cent (90%) of their normal working hours during such Reporting Period (including on a full-time basis); and
 - (ii) one per cent (1%) of any other Franchise Employees as at the Service Commencement Date,

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 4(a) to 4(c) inclusive and paragraphs 4(e) to 4(p) inclusive, or engaged in any other activity which is permitted under this Schedule 1.1;

- (e) 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), subject to the number of persons engaged or employed in such activity not exceeding by more than ten per cent (10%) the number so engaged or employed on the Service Commencement Date:
- (i) Heaton Depot.
- (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 Service Provider on or before the date of this 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;
- (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 Service Provider;
- (k) the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Service Provider or the lending, hiring or contracting out of any employees of the Service Provider or the provision of any other services to Network Rail or any other Train Operator on an emergency basis;
- (l) the licensing or permitting of any other person (including an Affiliate of the Service Provider) to carry out any activity or business, in connection with the provision of the Services, or otherwise, on any rolling stock vehicle operated by the Service Provider, 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 Services or complying with this Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Service Provider;

- (n) the subleasing to any other person of the following property which is not comprised in a Station or Depot:
 - (i) **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 Service Provider in such Reporting Period;
- (p) the provision of consultancy services reasonably ancillary to the provision of the other Services; and
- (q) any services or activity not falling within paragraphs 2, 3, 4(a) to 4(p) above, 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 Service Year, per item and in aggregate, two hundred and fifty thousand pounds (£250,000) per annum in each Service Year provided that in the second and each subsequent Service Year, these amounts will be increased by RPI.

5. Royal Train

- 5.1 The Service Provider 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 Service Provider, 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 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 locomotive 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. Restrictions relating to Services

- 6.1 The Service Provider 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) Newcastle to Carlisle (via Hexham);
 - (b) Newcastle to Chathill;
 - (c) Newcastle to Middlesbrough (via Hartlepool);
 - (d) Newcastle to Darlington;
 - (e) Stockton to Eaglescliffe;
 - (f) Darlington to Bishop Auckland;
 - (g) Darlington to Stockton;

- (h) Darlington to Middlesbrough;
- (i) Middlesbrough to Saltburn;
- (j) Middlesbrough to Whitby;
- (k) York to Leeds (via Harrogate);
- (l) York to Leeds (via Micklefield);
- (m) York to Selby (via Hambleton North Junction);
- (n) York to Moorthorpe (via Sherburn-in-Elmet and Pontefract Baghill);
- (o) Sherburn-in-Elmet to Selby;
- (p) Leeds to Hull;
- (q) Hull to Scarborough;
- (r) Scarborough to York;
- (s) Leeds to Castleford;
- (t) Castleford to Goole;
- (u) Leeds to Sheffield (via Wakefield Kirkgate and Bamsley);
- (v) Leeds to Sheffield (via Moorthorpe);
- (w) Leeds to Doncaster;
- (x) Doncaster to Selby;
- (y) Doncaster to Hull (via Kirk Sandall);
- (z) Doncaster to Moorthorpe;
- (aa) Doncaster to Sheffield (via Conisbrough);
- (bb) Sheffield to Retford (high level and low level);
- (cc) Retford (low level) to Lincoln;
- (dd) Retford to Cleethorpes (via Brigg);
- (ee) from the Service Commencement Date until the Barton-on-Humber Transfer Date, Barton-on-Humber to Habrough;
- (ff) Sheffield to Nottingham (via Langley Mill);
- (gg) Sheffield to Nottingham (via Derby);
- (hh) Sheffield to Huddersfield;
- (ii) Huddersfield to Castleford (via Wakefield Kirkgate);

- (jj) Knottingley to Wakefield Westgate;
- (kk) Leeds to Manchester Victoria (via Dewsbury and Huddersfield);
- (ll) Leeds to Manchester Victoria (via Dewsbury and Hebden Bridge);
- (mm) Leeds to Bradford Interchange;
- (nn) Bradford Interchange to Huddersfield (via Brighouse);
- (oo) Bradford Interchange to Manchester Victoria (via Hebden Bridge);
- (pp) Leeds to Bradford Forster Square;
- (qq) Leeds to Skipton;
- (rr) Skipton to Carnforth;
- (ss) Skipton to Carlisle via Settle;
- (tt) Leeds to Ilkley;
- (uu) Bradford Forster Square to Skipton;
- (vv) Bradford Forster Square to Ilkley;
- (ww) Manchester Piccadilly to Stalybridge (via Guide Bridge);
- (xx) Manchester Piccadilly to Glossop and Hafield;
- (yy) Manchester Piccadilly to Sheffield (via Riddish North and Marple);
- (zz) Manchester Victoria to Ashburys (via the Ardwick Branch);
- (aaa) Guide Bridge to Romiley;
- (bbb) Romiley to Rose Hill;
- (ccc) Guide Bridge to Stockport;
- (ddd) Manchester Piccadilly to Chinley (via Stockport);
- (eee) Manchester Piccadilly to Buxton;
- (fff) Manchester Piccadilly to Stoke on Trent (via Macclesfield);
- (ggg) Stockport to Crewe;
- (hhh) Manchester Piccadilly to Manchester Airport;
- (iii) Manchester Airport to Crewe;
- (jjj) Heald Green to Styal;
- (kkk) Manchester Piccadilly to Chester via Altrincham;
- (lll) Manchester Piccadilly to Chester and Ellesmere Port (via Newton-le-Willows);

- (mmm) Frodsham to Runcorn;
- (nnn) Manchester Piccadilly to Liverpool Lime Street (via Warrington Central);
- (ooo) Manchester Victoria to Liverpool Lime Street (via Earlestown);
- (ppp) Manchester Piccadilly to Salford Crescent;
- (qqq) Manchester Victoria to Salford Crescent;
- (rrr) Manchester Piccadilly to Manchester Victoria (via Ordsall Chord, once completed);
- (sss) Salford Crescent to Kirkby and Southport (via Atherton and Wigan Wallgate);
- (ttt) Bolton to Wigan North Western;
- (uuu) Wigan North Western to Newton-le-Willows;
- (vvv) Wigan North Western to Patricroft;
- (www) Salford Crescent to Bolton;
- (xxx) Bolton to Clitheroe (via Blackburn);
- (yyy) Clitheroe to Hellifield;
- (zzz) Bolton to Preston;
- (aaaa) Liverpool Lime Street to Warrington Bank Quay (via Earlestown);
- (bbbb) Liverpool Lime Street to Preston (via St Helens Central or St Helens Junction);
- (cccc) Preston to Ormskirk;
- (dddd) Preston to Blackpool North and Blackpool South;
- (eeee) Preston to Hebburn Bridge and Colne;
- (ffff) Burnley Manchester Road to Todmorden;
- (gggg) Preston to Windermere;
- (hhhh) Lancaster to Morecambe and Heysham Port;
- (iiii) Bare Lane to Carnforth; and
- (jjjj) Carnforth to Carlisle (via Barrow-in-Furness).

6.2 It is acknowledged that a Passenger Service to be operated by the Service Provider on the routes specified above 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 Secretary of State's consent as the Secretary of State considers appropriate for the purpose of securing the continuity of the provision of the Services at the end of the Service Term.

- 6.4 The Service Provider shall not during the Service 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 Service Provider'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. Restrictions on Closures of Railway Passenger Services or Railway Facilities

- 7.1 Except to the extent that the Secretary of State agrees otherwise, the Service Provider 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 Service Provider shall, 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 him under Part 4 of the Railways Act 2005 in relation to such Closure.

8. Subcontracting any Passenger Services

- 8.1 Subject to paragraph 8.2, the Service Provider may not subcontract or delegate the provision of the Passenger Services without the prior written consent of the Secretary of State.
- 8.2 The Service Provider 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 Service Provider 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 Service Provider 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 Service Provider in any Reporting Period; and
- (e) the Service Provider 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 Service Provider from any of its obligations under this Agreement, including its obligations under this paragraph 8 and Schedule 14 (*Preservation of Assets*).

Withdrawn

Part 2 - Service Development

9. Train Service Requirement - Purpose and Responsibility

- 9.1 This Part 2 of Schedule 1.1 sets out the obligations of the Service Provider 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 Service Provider 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 Service Provider's obligations pursuant to paragraph 14 of this Schedule 1.1.
- 9.2 The Train Service Requirement is the specification of the Passenger Services to be provided by the Service Provider during the Service Term and the Service Provider shall not without the Secretary of State's consent provide any other Passenger Services which are in addition to those specified in the Train Service Requirement.
- 9.3 The Train Service Requirement as at the date of this Agreement is the document in the agreed terms marked "TSR".
- 9.4 **NOT USED.**
- 9.5 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.
- 9.6 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 Service Provider 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 Service Period in accordance with this Agreement.
- 10.2 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*):
- where such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement;
 - where such amendments proposed by the Service Provider have prior approval from the Secretary of State; or
 - where such amendments are requested by the Secretary of State.
- 10.3 The Service Provider 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 Service Provider 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.
- 10.6 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.
- 10.7 From the Service Commencement Date until the next Passenger Change Date the Service Provider shall adopt as the Train Plan the document in the agreed terms marked TP. It is acknowledged that the Train Plan in the agreed terms marked TP shall be replaced from time to time during the Service Period in accordance with the provisions of paragraph 14.4.
- 11. Consultation on Significant Alterations to the Timetable**
- 11A Notwithstanding any consultation the Secretary of State must separately undertake in respect of any amended or new draft Train Service Requirements issued pursuant to paragraph 16, the Service Provider shall where it intends that any future timetable will contain Significant Alterations compared to the Timetable then in force:
- (a) consult with the Secretary of State regarding the nature, extent and rationale for such Significant Alterations; and
 - (b) agree with the Secretary of State whether such Significant Alterations to a future Timetable proposed by the Service Provider are likely to have a material adverse effect as described in paragraph 11.1(b). If the Parties are unable to reach such an agreement, the Secretary of State shall reasonably determine whether or not the proposed Significant Alterations are likely to have a material adverse effect as described in paragraph 11.1(b).
- 11.1 If following such consultation with the Secretary of State referred to in paragraph 11.A:
- (a) the Service Provider wishes to continue to pursue the Significant Alterations to any future Timetable on which it has consulted with the Secretary of State pursuant to paragraph 11.A; and
 - (b) such Significant Alterations are likely to have, as agreed or determined by the Secretary of State pursuant to paragraph 11.A, 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,

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

- 11.2 The first Timetable to which these apply is the Timetable with effect from the Passenger Change Date with effect from the Passenger Change Date in May 2021.
- 11.3 Accordingly the Service Provider 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 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 Service Provider to them and notification of how the Service Provider will 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.

12. Timetable Development Rights

- 12.1 The Service Provider 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 this 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 that complies with the Train Service Requirement the Service Provider shall:
- (a) propose to the Secretary of State amendments to the then current Train Service Requirement for the purposes of optimising the delivery of railway passenger services relative to Target Passenger Demand (or for any other purpose as may be specified by the Service Provider in such proposal). Any such proposal shall include:
 - (i) the Service Provider's reasons why it believes that the proposed amendment to the railway passenger services is required;

- (ii) the Service Provider’s informed opinion (with supporting reasons) as to the changes to resources (and, if applicable, adjustments to the Budget and/or the Benchmarks) which would be required in consequence of the proposed amendments;
- (iii) any implications for Timetable Development Rights (including whether any additional timetable development rights would be required) as a consequence of the proposed amendments;
- (iv) a draft of the Train Plan that it considers that the proposed amendment would require; and
- (v) its informed opinion on the process required to obtain a Timetable compliant with such amended Train Service Requirement.

The Secretary of State shall give due consideration to any such proposal submitted by the Service Provider pursuant to this paragraph 12.2(a) but shall be under no obligation to make any change to the Train Service Requirement. If the Secretary of State agrees to the proposed amendment the Secretary of State shall issue an amended Train Service Requirement prior to the commencement of the timetable development process and such amended Train Service Requirement shall replace the then current Train Service Requirement; and

- (b) make an informed estimate of Forecast Passenger 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 Service Period) with the estimate being in such format and to such level of disaggregation as the Secretary of State may reasonably require.

12.3 Subject to the remaining provisions of this paragraph 12, the Service Provider 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 Where the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 If the Secretary of State does not consider that the Service Provider has taken sufficient steps under paragraph 12.5, the Secretary of State may require the Service Provider 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
 - (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 Service Provider complying with its obligations under paragraph 12.5 above, it shall not be liable for any failure to secure a Timetable that enables the Service Provider 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) the Service Provider's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Service Provider 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 above;
 - (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 **TDR Amendments**
- (a) If and to the extent that the Service Provider 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) below) issue to the Service Provider 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 Service Provider to secure a Timetable that is compliant with the Train Service Requirement by exercise of the Timetable Development Rights that the Service Provider 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 Service Provider:
 - (i) has failed to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.1; and
 - (ii) is not relieved by paragraph 12.7 above from liability for such failure to secure a Timetable that enables the Service Provider to operate railway passenger services that comply with the Train Service Requirement.
 - (c) The Service Provider shall not be relieved from its obligations to obtain a Timetable that enables the Service Provider 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 Service Provider to operate the Train Service Requirement is partly due to the default of the Service Provider in not properly complying with its obligations under this Agreement in relation to securing timetable development rights. Accordingly any TDR Amendment may be drafted so that it does not relieve the Service Provider 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 Service Provider and the Service Provider may therefore be in contravention of this Agreement.

12.9 Following issue of any TDR Amendment pursuant to paragraph 12.8 the Service Provider 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 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 Service Provider 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) be an event which shall have the potential to give rise to revisions to the Budget pursuant to paragraph 4 of Schedule 8.1 (Fixed Service Payments).

12.11 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) the cessation of such TDR Amendment shall be an event which shall have the potential to give rise to revisions to the Budget pursuant to paragraph 4 of Schedule 8.1 (Fixed Service Payments).

12.12 **Development of Post-Franchise Timetables (TRS2)**

For the avoidance of doubt, the Service Provider shall comply with its obligations in paragraph 2 of Schedule 14.1 (*Maintenance as a Going Concern*) with respect to securing suitable rights related to timetables that will be operated during any period falling wholly or partly after the expiry of the Service Term.

12A Deconfliction

12A.1 Before seeking to amend and/or enter into Access Agreements pursuant to paragraph 12.1 of this part 2 of Schedule 1.1 or exercising its Timetable Development Rights pursuant to paragraph 12.3 of this part 2 of Schedule 1.1 the Service Provider shall consult with Network Rail, the TransPennine Express Franchisee and all other Train Operators and freight operators who use or may seek to use relevant Routes for the purpose of deciding if such potential actions by the Service Provider are likely to prevent (whether individually or in combination with the planned actions of any other Train Operator or freight operator) the TransPennine Express Franchisee from complying in full with any of the TPE Route Services Specifications.

12A.2 Having due and appropriate regard to the outcome of the consultations referred to in paragraph 12A.1 above the Service Provider shall use all reasonable endeavours to comply with its obligations pursuant to paragraphs 12.1 and 12.3 of this part 2 of Schedule 1.1 in a manner

consistent with both obtaining a Timetable fully compliant with the Train Service Requirement and the obtaining by the TransPennine Express Franchisee of a timetable fully compliant with the TPE Route Service Specifications. If despite using all reasonable endeavours it is unable to do so then the Service Provider shall act in such manner that ensures that:

- (a) no action of the Service Provider relating to the obtaining or exercise of timetable development rights directly or indirectly prevents the TransPennine Express Franchisee obtaining a timetable fully compliant with the TPE Route Service Specifications; and
- (b) without prejudice to sub paragraph (a) above the Service Provider obtains a Timetable compliant with the Train Service Requirement to the greatest extent reasonably practicable.

12A.3 If the Service Provider has complied with its obligations pursuant to paragraph 12A.2 and in consequence it is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Train Service Requirement then the Secretary of State shall issue to the Service Provider such amendments to the Train Service Requirement ("**TSR (Deconfliction) Amendment**") as the Secretary of State considers necessary such that the Service Provider is able to secure a Timetable in compliance with the Train Service Requirement as amended by the TSR (Deconfliction) Amendment.

12A.4 Any TSR (Deconfliction) Amendment issued pursuant to paragraph 12A.3 shall:

- (a) unless otherwise required by the Secretary of State, cease to have effect on the date (if any) from which the Secretary of State acting reasonably believes that the Service Provider would be able to deliver the Train Service Requirement as it existed prior to the making of the relevant TSR (Deconfliction) Amendment without directly or indirectly preventing the TransPennine Express Franchisee from obtaining a timetable fully compliant with the relevant TPE Route Service Specifications; and
- (b) in the case only of a TSR (Deconfliction) Amendment related to the incompatibility of the Train Service Requirement with the TPE Chat Moss Route Service Specification or the TPE Hope Valley Route Service Specification (and not otherwise) have the potential to give rise to revisions to the Budget pursuant to paragraph 4 of Schedule 8.1 (Fixed Service Payments).

12A.5 With effect from the date on which any TSR (Deconfliction) Amendment ceases to have effect in accordance with paragraph 12A.4:

- (a) the Train Service Requirement without such TSR (Deconfliction) Amendment shall thereafter apply; and
- (b) in circumstances where there was a revision to the Budget pursuant to paragraph 12A.4(b) there shall be a further revision to the Budget pursuant to paragraph 4 of Schedule 8.1 (Fixed Service Payments) from the date that the TSR (Deconfliction) Amendment ceases to have effect so as, with effect from such date, to disapply the effect of the revision to the Budget referred to in paragraph 12A.4(b) from such date to take into account the fact that the Service Provider will have ceased to make a saving.

13. Certification and Notification by the Service Provider of Exercising Timetable Development Rights

13.1 Before exercising any Timetable Development Right to bid for Train Slots, the Service Provider shall provide a certificate addressed to the Secretary of State and signed by a statutory director of the Service Provider 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 Service Provider agrees to demonstrate to the reasonable satisfaction of the Secretary of State that the Service Provider'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 Service Provider 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 Service Provider, have a material impact on the ability of the Service Provider 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.

14. Planning to meet Target Passenger Demand

14.1 Capacity and Timetable Planning

- (a) The Service Provider shall, in preparing its Timetable and Train Plan, unless the Secretary of State otherwise agrees (such agreement not to be unreasonably withheld or delayed), provide for at least the capacity specified in the Train Service Requirement.
- (b) The Service Provider 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 Service Provider shall use all reasonable endeavours to provide passengers with a reasonable expectation of a seat:
 - (i) on boarding any On 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.

14.2 Allocation of rolling stock where the Service Provider is unable to meet the capacity requirements

If at the time it prepares its Timetable and/or Train Plan, having exercised all reasonable endeavours, the Service Provider 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) 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.

14.3 Preparation of Timetable and Train Plan

- (a) Subject to paragraph 14.3(b), the Service Provider 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 Service Provider 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) at such times outside the Peak where such deployment of the entire Train Fleet is reasonably required to meet the Service Provider's obligations pursuant to paragraphs 14.1 and 14.2 above.

14.4 Finalising the Train Plan

- (a) The Service Provider 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 Service Provider 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 Service Provider as being true and accurate and including the minimum capacity specified in the Train Service Requirement.
- (d) The Service Provider 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. Capacity Mitigation Proposal

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

- (a) remedy the circumstances leading to the Service Provider 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 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 Service Provider 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 Service Term) the Secretary of State shall have the right to serve notice on the Service Provider specifying those future circumstances and the date that the Service Provider 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 Service Provider'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 Service Provider 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 Fixed Service 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 Service Provider 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 pursuant to clause 17.1(a).

- 16. **New or amended Train Service Requirement by the Secretary of State and the Service Provider Informed Opinion**
- 16.1 As and when required, whether for the purposes of considering alterations to the Train Service Requirement or otherwise, the Service Provider 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 Fixed Service Payments;
 - (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 Fixed Service 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 Service Provider considers that each set of proposed changes would require.
- 16.2 Prior to issuing any amended or new Train Service Requirement the Secretary of State shall provide to the Service Provider 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 On receipt of any such draft of a proposed amended or new Train Service Requirement the Service Provider 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;
 - (b) with supporting reasons as to the changes to resources and adjustment to Fixed Service 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;

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- (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 Service Provider 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 Service Provider 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 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 The Secretary of State may, in accordance with any stipulation made under paragraph 17.2, issue to the Service Provider any amended or new Train Service Requirement that the Secretary of State requires the Service Provider to operate and notify 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. Any change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with this paragraph 16.6 shall be an event which shall have the potential to give rise to revisions to the Budget pursuant to paragraph 4 of Schedule 8.1 (*Fixed Service) Payments*)
- 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.
- 16.8 At the same time as the Secretary of State provides the Service Provider 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 Service Provider the Secretary of State's opinion of any amendments (if any) that are required to the Benchmarks and/or the Annual Benchmarks.
- 16.9 Any change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with this paragraph 16.9 shall be an event which shall have the potential to give rise to revisions to the Budget pursuant to paragraph 4 of Schedule 8.1 (*Fixed Service) Payments*).

17. Procedural Arrangements and Timescales

- 17.1 The Service Provider agrees that the effective operation of the provisions of this part 2 of 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 Service Provider, Network Rail and others.
- 17.2 The Service Provider 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 Service Provider 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 Service Provider 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) **NOT USED**; and
 - (c) may provide for iterations of drafts of any amended or new Train Service Requirement, Train Plan or Timetable.
- 17.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2 shall have contractual effect between the Service Provider and the Secretary of State in accordance with the terms of such stipulation.

18. **Obligations in relation to other Train Operators**

- 18.1 Subject to the terms of the Licences and any applicable Law, the Service Provider shall co-operate with other Train Operators in respect of their timetable development rights where such other Train Operators provide railway passenger services meeting common or displaced passenger demand, with a view to ensuring that:
- (a) 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;
 - (b) 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 Service Provider; and
 - (c) 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 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under this 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, the Secretary of State may require the Service Provider:
- (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.

If the Secretary of State requires the Service Provider to take any action pursuant to paragraph 19.1(a) and/or 19.1(b) then such exercise by the Secretary of State of the Secretary of State's rights under such paragraph 19.1(a) and/or 19.1(b) shall be an event which shall have the potential to give rise to revisions to the Budget pursuant to paragraph 4 of Schedule 8.1 (Fixed Service Payments).

19.2 Except to the extent that the Secretary of State otherwise indicates from time to time, the Service Provider 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.

19.3 The Service Provider 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) the Secretary of State exercises the Secretary of State's rights pursuant to paragraph 19.1;
 - (b) the Service Provider's compliance with the Secretary of State's requirements pursuant to paragraph 19.1 would lead to the unavoidable consequence of the Service Provider contravening any other terms of this Agreement; and
 - (c) the Service Provider duly complies with such requirements,
- no such contravention of this Agreement 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 Service Provider shall ensure, for each period between two (2) consecutive Passenger Change Dates during the Service Term that the Timetable for such period is, in its reasonable opinion, not materially different from the relevant working timetable issued by Network Rail.

Withdrawn

Schedule 1.2

Operating Obligations

1. Daily Operating Obligations

The Service Provider agrees to use all reasonable endeavours to operate on each day of the Service 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 Service Provider shall notify the Secretary of State as soon as reasonably practicable if it has on any day of the Service 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 If the Secretary of State considers that the Service Provider 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 (*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 this Agreement or otherwise, have the right, by serving notice on the Service Provider, to instigate an investigation of the Service Provider'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 (*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 Service Provider ("**Timetabling and Train Planning Compliance Investigation**").

2.2 Following the service of such a notice the Service Provider shall:

- (a) provide such information as the Secretary of State may reasonably require for the purposes of determining if the Service Provider has complied with its obligations under paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (*Services and Service Development*) and/or paragraph 1 of this Schedule 1.2 including evidence of:
 - (i) the steps taken by the Service Provider 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 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 Service Provider 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 Service Provider; and
 - (v) the alternative solutions considered by the Service Provider 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 Service Provider to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of Schedule 1.1 (*Services and Service Development*) and fully co-operate with and provide all information needed to facilitate such audit.

2.3 **Contravention of this Agreement**

- (a) The Service Provider shall be in contravention of this 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 Service Provider 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 (*Services and Service Development*) and/or paragraph 1 of this Schedule 1.2 including where the Service Provider:
 - (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 Service Provider.
- (b) Not Used.
- (c) The Secretary of State shall, in accordance with Clause 8, notify the Service Provider if the Secretary of State concludes pursuant to paragraph 2.3(a) that the Service Provider is in contravention of this Agreement.

3. **Timetable changes proposed by Network Rail**

- 3.1 The Service Provider shall notify the Secretary of State promptly after being notified by Network Rail that Network Rail has decided to propose 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 Service Provider, materially (having regard to both duration and scale) prejudice the Service Provider's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan the Service Provider shall explain in such notification the way in which, in its reasonable opinion, such omission or rescheduling may materially prejudice the Service Provider's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan.
- 3.3 The Service Provider 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 Service Provider proposes to take pursuant to paragraph 3.4.
- 3.4 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 Service Provider, materially prejudice the Service Provider's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan, the Service Provider agrees (unless the Secretary of State specifically agrees otherwise) to 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 any actual or proposed omission or rescheduling of Passenger Services by Network Rail.

3.5 **NOT USED.**

3.6 **NOT USED.**

4. **Timetable changes proposed by the Service Provider**

4.1 The Service Provider agrees, subject to paragraph 4.3, 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 Service Provider shall submit to the Secretary of State an amended Train Plan in respect of each Timetable change proposal.

4.3 **NOT USED.**

4A **Special Events**

4A.1 The Service Provider 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 Service Provider 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. **Timetable changes and Train Plan changes requested by the Secretary of State**

5.1 The Service Provider 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 The Secretary of State may reasonably request that the Service Provider shall submit to the Secretary of State an amendment to the Train Plan at any time.
- 6. Obligations of the Service Provider 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 Service Provider 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 Service Provider'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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 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 Service Provider (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 7.1), having regard to all the circumstances.

7.2 The matters to which the Service Provider 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 Service Provider;
- (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; and
- (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction).

7.3 For the purpose of taking measures in respect of any disruption to the 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 Services;
 - (ii) similar services both by the Service Provider and/or its predecessors; and
 - (iii) other services of a type similar to the 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 Service Provider 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 Service Provider, 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) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing the Service Provider's rights under such Track Access Agreement.

7.5 The Service Provider 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 this Agreement, the Service Provider 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 When and to the extent reasonably requested by the Secretary of State, the Service Provider shall provide to the Secretary of State evidence of the steps taken by it in order to comply with its obligations under this paragraph 7.
- 8. Additional Requirements for the Northern Connect Passenger Services**
- 8.1 As far as it is possible to do so given the size and composition of the Train Fleet and without contravening the requirements of paragraph 14 of part 2 of Schedule 1.1 (Services and Service Development), the Service Provider shall, in preparing its Timetable and Train Plan, deploy the Train Fleet in a manner that meets each of the Rolling Stock Quality Requirements in delivering the Northern Connect Passenger Services by no later than the Passenger Change Date occurring in May 2020.
- 8.2 The Service Provider agrees to use all reasonable endeavours to operate each of the Northern Connect Passenger Services using the Train Fleet vehicles specified for those Northern Connect Passenger Services in the Train Plan prepared by the Service Provider in accordance with the requirements of paragraph 8.1.
- 8.3 At the same time as the Service Provider is required to submit its Train Plan to the Secretary of State pursuant to paragraph 7.4 of part 1 of Schedule 1.1, the Service Provider shall also submit:
- (a) a plan which sets out for each Northern Connect Passenger Service in the Timetable to which it relates:
 - (i) its start point and departure time;
 - (ii) its termination point and arrival time; and
 - (iii) the number and class of rolling stock vehicles allocated to such passenger service in the Train Plan prepared in accordance with the requirements of paragraph 8.1; and
 - (b) a certificate addressed to the Secretary of State and certified by a statutory director of the Service Provider confirming that:
 - (i) the plan submitted by the Service Provider in accordance with paragraph 8.3(a) is:
 - (A) consistent with the Timetable and Train Plan;
 - (B) accurately reflects the manner in which the Service Provider plans to deploy its Train Fleet in delivering each of the Northern Connect Passenger Services; and
 - (ii) the Service Provider has complied with its obligations as specified in paragraph 8.1.
- 8.4 It shall be a contravention of this Agreement if any certificate submitted to the Secretary of State in accordance with this paragraph 8.3(b) is, in the reasonable opinion of the Secretary of State, in any material respect, untrue, inaccurate and/or misleading.
- 8.5 In addition and without prejudice to any other rights the Secretary of State may have under this Agreement (including pursuant to paragraph 12 of Schedule 11.2 (Management Information)) the Service Provider shall promptly 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

reasonably request for the purposes of monitoring and enforcing the Service Provider's compliance with the requirements of paragraphs 8.1 to 8.3.

8.6 The Service Provider shall, when future infrastructure enhancements permit additional paths to become available, following consultation with the Secretary of State use its reasonable endeavours to operate the following specified number of Passenger Services on the relevant Routes and days so specified:

- (a) between Bradford and Nottingham 10 trains per day in each direction (Monday to Saturday); and
- (b) between Manchester Airport and Bradford Interchange 13 trains per day in each direction (Monday to Saturday) and 11 trains in each direction (Sunday);
- (c) between Liverpool and Bradford Interchange 12 trains per day in each direction (Monday to Saturday),

and such Passenger Services shall from the date on which they commence operation shall be deemed to be "Northern Connect Passenger Services" for the purposes of this Agreement.

Withdrawn

Schedule 1.3

NOT USED

Withdrawn

Schedule 1.4**Passenger Facing Obligations****1. Publishing the Timetable****1.1 The First Timetable**

The Service Provider shall publish on the Service Commencement 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) at each the Service Provider 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 specified in paragraphs (i) and (ii); and
 - (iv) on the Service Provider's website; and
- (b) the timetables of other Train Operators at Stations, in accordance with paragraph 1.4.

1.2 Timetable Revisions and Alterations

The Service Provider 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 the Service Provider 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
- (d) in the case of the Service Provider's website, at least four (4) weeks before the changes come into effect.

1.3 In addition, the Service Provider shall:

- (a) subject to paragraph 1.4, display posters at each Station advising passengers of all Significant Alterations between any two 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 the Service Provider Access Stations, advising passengers of all Significant Alterations between any two (2) Passenger Change Dates to the Passenger Services which call at such the Service Provider Access Stations, in sufficient time for such information to be published by such operators within the time limit provided for in paragraph 1.3(a).

1.4 Other Train Operators' Timetables

The Service Provider 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 Service Provider the relevant information and materials in sufficient time for the Service Provider 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 Service Provider.

1.5 National Rail Timetable and National Rail Enquiry Scheme

The Service Provider 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), 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.

1.6 The Service Provider 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 Save in respect of Significant Alterations, for which the provisions of paragraphs 1.3 and 1.6 shall apply, the Service Provider 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 Service Provider Access Stations, as appropriate, including by providing such operators with revised posters; and
- (c) updating the Service Provider's website.

2.3 The Service Provider 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 Service Provider is unable to provide the information specified in paragraph 2.1 because the relevant revisions are made on an emergency basis, the Service Provider 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 Service Provider 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 Service Provider as far in advance as is reasonably practicable.

3. Fares Selling Restrictions

3.1 Restrictions on Sales

The Service Provider shall ensure that the purchaser of any PTE Fare, Protected Fare or T&WPTE 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 PTE Fare, Protected Fare or T&WPTE Fare (as the case may be) and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as the Service Provider may reasonably require, or in the case of a T&WPTE Season Ticket Fare, as the T&WPTE may reasonably require by notice in writing to the Service Provider; 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 PTE Fare, Protected Fare or T&WPTE Fare (as the case may be) on a Passenger Service.

3.2 The Service Provider shall procure that for any

- (a) Protected Return Fare, Single Fare or Return Fare which is a PTE Fare or T&WPTE Fare (as the case may be), 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 PTE Fare or a T&WPTE Season Ticket Fare (as the case may be), 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,

in each case, either by the Service Provider 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).

3.3 Where the Service Provider sets a limit on the number of PTE Fares, Protected Fares or T&WPTE 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 Service Provider shall not sell or offer to sell:

- (a) 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 (*Regulation of Fares Basket Values*) and Schedule 5.5 (*Regulation of Individual Fares*); and
 - (ii) Child Prices are regulated under paragraph 1.3 of Schedule 5.5 (*Regulation of Individual Fares*) at prices that are no 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 Service Provider

The Service Provider shall procure that all persons selling or offering to sell Fares on its behalf (whether under the terms of the Ticketing and Settlement Agreement or otherwise):

- (a) 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 (*Regulation of Fares Basket Values*) and Schedule 5.5 (*Regulation of Individual Fares*); and
 - (ii) **NOT USED;**
- (b) for Fares in respect of which the Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (*Service Provider's Obligation to Create Fares*), sell or offer to sell such Fares to any person under the age of 16 for an amount which is no greater than fifty per cent (50%) of the Price of the relevant Fare; 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 Service Period and Other Conduct of Business Provisions*) to the extent they apply to the selling of Fares by the Service Provider.

3.6 Additional Ancillary Services

The Service Provider shall, subject to this paragraph 3, (and in respect of a T&WPTE Fare subject to paragraph 3.9) be entitled to charge a purchaser of any PTE Fare, Protected Fare or T&WPTE Fare for any additional services:

- (a) which are ancillary to the railway passenger service for which such PTE Fare, Protected Fare, T&WPTE 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 Service Provider 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 Sunday.

3.8 **Car Parking Charges at Executive Stations**

The Service Provider shall not:

- (a) introduce new car parking charges at any Executive Station; or
- (b) vary any car parking charge applicable at any Executive Station immediately prior to the Service Commencement Date,

in each case, without the prior written consent of the Secretary of State.

3.9 **Carriage of bicycles on Passenger Services operated within the former metropolitan county of Tyne & Wear**

Unless otherwise specified by the Secretary of State from time to time, there shall be no charge for the carriage of bicycles and other accompanied items on the Passenger Services operated within the former metropolitan county of Tyne & Wear.

3.10 **Mersey Rail Electrics Fares**

The Service Provider shall offer for sale to passengers the same range of tickets (including "Saveaway" and "Trio") as are available at the Service Commencement Date at stations operated by Merseyrail Electrics 2002 Ltd.

4. **Passenger's Charter**

4.1 **Content**

The Service Provider 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) **NOT USED**; and
- (c) state the date of publication clearly on the front cover of the Passenger's Charter.

4.2 The Service Provider 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 Service Provider 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 Service Commencement Date, in which case the Service Provider shall publicise such Passenger's Charter in the manner contemplated by this paragraph 4.3 on and from the Service Commencement Date.

- 4.4 The Service Provider 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 Service Provider by such other Train Operator.
- 4.5 The Service Provider shall provide copies of its Passenger's Charter to the operators of the Service Provider Access Stations to enable such operators to publish it.
- 4.6 ***Passenger's Charter Payments and Other Obligations***

The Service Provider shall:

- (a) make all payments which passengers may reasonably expect to be made (which for these purposes shall include delay repair compensation in relation to delays to journeys (including delays to journeys undertaken by passengers who hold Multi-Modal Tickets)) or provided from time to time under the terms of the Passenger's Charter (whether or not the Service Provider 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 and in doing so shall ensure that, for any such announcements, delay is measured by reference to the Plan of the Day (and not, for the avoidance of doubt, by reference to the Timetable);
 - (iii) making compensation claim forms readily available to passengers at Stations and on the Service Provider's website; and
 - (iv) any other reasonable means to reflect future advancements in technology proposed in writing either by the Service Provider 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,
 - (iii) as are comprised in its Passenger's Charter from time to time.

5. End to End Journeys and Cycles

The Service Provider 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 Service Provider shall permit the carriage of folding cycles on all Passenger Services and non-folding cycles wherever reasonably practicable.

6. Statutory Notices

If requested by the Secretary of State, the Service Provider shall publish and display at the Stations (and shall use all reasonable endeavours to procure the publication and display at the Service Provider 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 Service Provider shall:

- 7.1 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 Service Provider 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 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 Service Provider 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 Service Term.

8. Publication of Performance Data

8.1 The Service Provider 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 Service Provider's website in relation to each Reporting Period during the Service Term the performance of the Service Provider by reference to:

- (a) Cancellations Figures;
- (b) **NOT USED;**
- (c) **NOT USED;**
- (d) **NOT USED;**
- (e) Short Formation Figures;
- (f) Time to 3 Minutes Figures;
- (g) Time to 15 Minutes Figures;

- (h) All Cancellations Figures; and
- (i) On Time Figures.

Such data shall be published by the Service Provider within ten (10) Weekdays of it becoming available to the Service Provider.

8.2 The Service Provider 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) include details of:
 - (i) the number of Passenger Services operated by the Service Provider during each relevant Reporting Period which are late in arriving at their final scheduled destination in the Plan of the Day:
 - (A) by between 30 minutes and 59 minutes,
 - (B) by between 60 minutes and 119 minutes, and
 - (C) by 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 As part of each Customer Report to be provided (excluding the first (1st) Customer Report) by the Service Provider pursuant to paragraph 10.1 of Schedule 7.2 (*Customer Experience and Engagement*), the Service Provider 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 Customer Report and, in the case of the first (1st) Customer Report, those Reporting Periods that have elapsed since the last Reporting Period reported on in the Previous Customer Report (and "Reporting Period" shall be as defined in the Previous Franchise Agreement with respect to those Reporting Periods falling prior to the Service Commencement Date) provided that such data is available pursuant to the terms of the Previous Franchise Agreement;
- (b) the latest Time to 3 Minutes Figures, Time to 15 Minutes Figures, All Cancellation Figures and On Time Figures for the last Reporting Period before publication of the relevant Customer Report;
- (c) 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 Reporting Period(s) falling 13

Reporting Periods before the Reporting Periods referred to in paragraph 8.3(a) and 8.3(b) including where such previous Reporting Periods fall before the Service Commencement Date (and "Reporting Period" shall have the meaning given in the Previous Franchise Agreement with respect to those Reporting Periods falling before the Service Commencement Date) provided that such statistics were produced under the Previous Franchise Agreement;

- (d) an update on the key activities undertaken by the Service Provider 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 Service Provider 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

9.1 As part of each Customer Report to be provided (excluding the first (1st) Customer Report) by the Service Provider pursuant to paragraph 10.1 of Schedule 7.2 (Customer Experience and Engagement), the Service Provider 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 and in the case of the second (2nd) Customer Report, those Reporting Periods that have elapsed since the Service Commencement Date (the **"Reported Reporting Periods"**):

- (a) a summary of the data published by the ORR from time to time in relation to the handling of passenger complaints regarding the Service Provider's operation of the Passenger Services;
- (b) details of the number of faults notified to the Service Provider by passengers or station users through specified channels including the website of the Service Provider (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 Faults;
- (c) the mean average time taken by the Service Provider:
 - (i) to resolve Notified Faults; and
 - (ii) where Notified Faults are not 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; and
- (d) from the third (3rd) Customer Report onwards a summary comparison of:
 - (i) the mean average number of Notified Faults notified to the Service Provider;
 - (ii) the mean average time taken by the Service Provider to resolve Notified Faults; and
 - (iii) the mean average time taken by the Service Provider, 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 Service Year.

10. Route Maps

- 10.1 The Service Provider shall produce a Route Map which shall include as a minimum;
- (a) all stations served by the Passenger Services; and
 - (b) key stations located on any Other Passenger Route Within the Geographical Area (which shall either be selected by the Service Provider on a reasonable basis or, if so directed by the Secretary of State, specified by the Secretary of State in a notice to the Service Provider).
- 10.2 The Route Map shall include notes identifying:
- (a) in relation to any Other Passenger Route Within the Geographical Area with a principal destination point outside of the Geographical Area, such ultimate origin or ultimate destination point; and
 - (b) those Routes over which services are also operated and such service is:
 - (i) operated by a passenger train operator other than the Service Provider; and
 - (ii) run on a more frequent basis (as stated in the National Rail Timetable) than the Passenger Services.
- 10.3 The Service Provider shall, as soon as reasonably practicable, update the Route Map in all places where it is displayed where there is any change:
- (a) to the Passenger Services, leading to a change in the routes falling within the definition of Route; or
 - (b) to the passenger services operated by another passenger train operator (as stated in the National Rail Timetable), leading to a change to the routes falling within the definition of Other Passenger Route Within the Geographical Area.
- 10.4 The Route Map shall at all times be displayed:
- (a) in every passenger carrying vehicle within the Train Fleet;
 - (b) at every Station; and
 - (c) on its website.
- 10.5 The Service Provider shall be regarded as having complied with the requirement of paragraph 10.1 if a map that meets the requirements of a Route Map is produced by a Local Authority or other relevant Stakeholder. The provisions of paragraphs 10.3 and 10.4 shall apply in relation to any such map.

Schedule 1.5

Information about Passengers

1. Passenger Numbers Information

1.1 The Service Provider 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 Service Provider 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 paragraph 1.1 being referred to together as "**Actual Passenger Demand**").

1.2 The Service Provider shall obtain and collate the information specified in paragraph 1.1 by using the technology specified in paragraph 3. The Service Provider 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 Service Period. The Service Provider 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 Service Provider has, or might properly 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 Service Provider 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) 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 Service Provider'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 Service Provider 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 Service Provider to collect such information such that the Secretary of State is able to download such information,

and such information may be used by the Secretary of State for such purposes 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 Service Provider 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 **NOT USED.**

2. Manual Passenger Counts

2.1 The Secretary of State shall have the right to require the Service Provider 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 level of accuracy and the number of days) as may be specified from time to time by the Secretary of State including if, exceptionally, the Service Provider 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 him 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 Service Provider 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 doorway mounted optical directional sensors. Such technology shall be connected to the Wireless Internet Service by the date that such Wireless Internet Service is to be provided by the Service Provider pursuant to paragraph 19 of part 1 of Schedule 6.2 (Committed Obligations and Service Specific Provisions) such that the information required to be obtained and collated by the Service Provider as specified in paragraph 1.1 can be communicated back to a central computer with the effect that the Service Provider can provide real time information about train loadings to passengers via mobile apps or customer information systems at stations.

3.2 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 28 September 2021, to every vehicle comprised within no less than forty per cent (40%) 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 Service Provider 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). The Service Provider shall comply with its obligation under this paragraph 3 from the date(s) such rolling stock is incorporated into the Train Fleet.
- 3.4 The Parties acknowledge that the information supplied under paragraph 1.1 above, 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 and Data Protection*) applies.
- 4. Client Relationship Management (CRM) Data**
- 4.1 The Service Provider shall ensure that any CRM System is the property of the Service Provider or is licensed to the Service Provider 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 Service Provider shall be:
- (a) obtained on terms such that the Service Provider shall be the Controller of such data; and
- (b) the property of the Service Provider.
- 4.2 In relation to any CRM Data obtained by or on behalf of the Service Provider, the Service Provider shall:
- (a) ensure that the CRM Data is collected and processed by or on behalf of the Service Provider in accordance with the Data Protection Legislation;
- (b) without prejudice to paragraph 4.2(a) ensure that the fairness principle of the Data Protection Legislation is satisfied including by issuing all relevant privacy notices in relation to its collection and processing of the CRM Data;
- (c) without prejudice to paragraph 4.2(a) ensure that there is a lawful basis for its collection and processing of the CRM Data;
- (d) without prejudice to paragraph 4.2(a) ensure that the principles of fairness and lawfulness are satisfied in particular in respect of the disclosure of the CRM Data to any Successor Operator and/or the Secretary of State such that the CRM Data may be processed by any Successor Operator for the same purposes as are relevant to the processing of the CRM Data by the Service Provider; and
- (e) without prejudice to paragraph 4.2(a) ensure that where consents are required under the Data Protection Legislation for the processing of the CRM Data by the Service Provider and any Successor Operator (including in relation to marketing, sign up for notifications or general alerts, sign up for newsletters, and (as relevant) processing of Special Categories of Personal Data) all such consents are sought in such a way as to enable any Successor

Operator to process the CRM Data for the same purposes as are relevant to the processing of it by the Service Provider.

- 4.3 The consents referred to in paragraph 4.2(e) 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 Service Provider 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 Service Provider shall:
 - (a) disclose, publish, share, provide and otherwise make available the CRM Data to any person (including a Successor Operator or any participant involved with the re-letting of the Franchise); and
 - (b) provide access to any CRM System,

in each case pursuant to the terms of this Agreement (together, the “**CRM Data Obligations**”) to the extent that compliance with the CRM Data Obligations is in accordance with the Data Protection Legislation.

5. Yield Management Data

5.1 The Service Provider shall ensure that any Yield Management Data and Yield Management System are the property of the Service Provider and are licensed to the Service Provider on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).

5.2 NOT USED.

5.3 The Service Provider 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 The Service Provider 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. NOT USED

7. Rail Passenger Counts Database

7.1 Subject to compliance by the Service Provider with its obligations set out in this Schedule 1.5, the Secretary of State shall as soon as reasonably practicable following the date of this Agreement:

- (a) use reasonable endeavours to set up and thereafter maintain the RPC Database;

- (b) use reasonable endeavours to populate the RPC Database with such Actual Passenger Demand information as the Service Provider shall provide pursuant to the Service Provider's obligations contained elsewhere in this Agreement and any other information that the Secretary of State shall desire; and
- (c) use reasonable endeavours to provide the Service Provider with log-in details to the RPC Database in order to allow the Service Provider to access Actual Passenger Demand information that has been provided by the Service Provider, 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 Service Provider 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 Service Provider, NR or a third party; or
 - (ii) any failure of the RPC Database to achieve any particular business result for the Service Provider. For the avoidance of doubt, it is the responsibility of the Service Provider to decide the appropriateness of using the RPC Database to achieve its own business results; or
 - (iii) any loss, destruction, corruption, degradation, inaccuracy or damage of or to the Actual Passenger Demand information following its submission to the RPC Database; or
 - (iv) any loss or damage to the property or assets of the Service Provider (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.
- (b) The Secretary of State's total liability for the duration of this 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 Service Provider 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 Service Provider to make a request pursuant to paragraph 7.3(b)(i) above if the value of the Service Provider's losses does not exceed [REDACTED¹];
 - (iii) prior to accounting to the Service Provider 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) 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) The Service Provider shall use all reasonable endeavours to mitigate any losses incurred by it 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.

7.4 The Parties acknowledge that it is intended that the RPC Database will also contain actual passenger demand information relating to the Service Providers other than the Service Provider but a the Service Provider will have access only to information relating to its own franchise (in the case of the Service Provider, via the log on details provided pursuant to paragraph 7.1(c)). For the avoidance of doubt, the licence granted at paragraph 6.3 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 Service Provider.

7.5 Without prejudice to Schedule 14.4 (*Service 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 Service Provider agrees that, following the expiry or termination by whatever means of this Agreement and any Continuation Document, the Secretary of State shall be entitled to allow access to the Service Provider'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 Service Provider) 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 Service Provider by operation of law, the Service Provider hereby assigns such rights to the Secretary of State.
- 8.2 Subject to 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 Service Provider and (subject as previously stated) to the extent that any rights in the Actual Passenger

¹ 31 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.

Demand information vest in the Secretary of State by operation of law, the Secretary of State hereby assigns such rights to the Service Provider.

- 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 Service Provider by operation of law, the Secretary of State and/or the Service Provider (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 Service Provider by operation of law, the Secretary of State and/or the Service Provider (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 (*Service 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 Service Period, the Service Provider 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 Service Provider 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) 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

Withdrawn

- (d) to the extent permitted by the other provisions of this 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
- (e) to allow a future operator of the Passenger Services (whether or not in direct succession to the Service Provider) 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 this Agreement or any Continuation Document, together with any other provisions which expressly or impliedly continue in force after the expiry or termination of this 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.

Withdrawn

Schedule 1.6

The Rolling Stock

1. Purpose

1.1 This Schedule records the rolling stock vehicles which shall be comprised in the Train Fleet from the Service Commencement Date (Original Rolling Stock shown in Table 1) and further additional rolling stock that will become part of the Train Fleet during the Service 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. The Composition/Deployment of the Train Fleet

2.1 The Train Fleet consists of:

(a) from the Service Commencement Date until the lease expiry dates referred to in Column 5 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 of Table 1 in Appendix 1 to this Schedule 1.6; and

(b) from the dates specified in Column 5 of Table 2 in Appendix 1 to this Schedule 1.6 until the lease expiry dates referred to in Column 6 of Table 2 in Appendix 1 to this Schedule 1.6 the rolling stock vehicles ("**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 of Table 2 in Appendix 1 to this Schedule 1.6;

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 or 3 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).

2.5 The Service Provider shall procure that the rolling stock vehicles described in the Tables 1 or 2 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 Service Provider shall maintain the composition of the Train Fleet during the Service 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 NOT USED

3.3 During the Service Period, the Service Provider 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 If any change is made to the Train Fleet in accordance with this Schedule 1.6, the Secretary of State may, after consulting the Service Provider, 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 Service Provider of the Secretary of State's determination of any such Passenger Carrying Capacity.

4. **Rolling Stock Testing and Commissioning**

4.1 The Service Provider shall, to the extent reasonably requested by the Secretary of State and subject to payment of the Service Provider'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 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. **Controlled Emission Toilets**

5.1 Subject to paragraph 5.2, the Service Provider shall ensure that all rolling stock vehicles comprised in the Train Fleet used for the provision of the Passenger Services which have on board toilet facilities shall be fitted with Controlled Emission Toilets with a tank capacity sufficient for the requirements of the Passenger Services by no later than 31 December 2020 so that for the remainder of the Service Term all rolling stock vehicles which have on board toilets are exclusively fitted with Controlled Emission Toilets.

5.2 The Service Provider shall ensure that any newly built rolling stock which becomes part of the Train Fleet prior to 31 December 2020 which have on board toilet facilities shall be fitted exclusively with Controlled Emission Toilets.

5.3 The Service Provider shall ensure that the contents of the toilet retention tanks relating to each Controlled Emission Toilet fitted on rolling stock vehicles are disposed of in a safe and hygienic manner at suitable facilities designed for these purposes including at Depots and stabling points.

5.4 **NOT USED.**

5.5 **NOT USED.**

6. **Baby Changing Facilities**

6.1 The Service Provider shall ensure that as soon as reasonably practicable but in any event no later than 31 December 2020, each train operated by the Service Provider in delivering the Passenger Services that is fitted with toilet facilities is also fitted with such number of baby change facilities as is necessary to be compliant with the requirements of the PRM TSI.

7. **Measurement of Traction Energy Usage**

7.1 The Service Provider 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 Service Provider to be a **"Metered Train Operator"** as defined by Network Rail's Traction Electricity Rules.

7.2 **NOT USED.**

Withdrawn

APPENDIX 1: TO SCHEDULE 1.6
The Composition of the Train Fleet

1. Original Rolling Stock

Explanatory Note A: Such rolling stock may be returned to the lessor prior to such date provided that the Service Provider shall not return any rolling stock unit to the lessor or sub lease or hire it or otherwise take steps that render it unable to be used in the delivery of the Passenger Services until after any rolling stock unit that can be reasonably regarded as replacing it has been introduced into unrestricted use delivering the Passenger Services.

Explanatory Note B: the Service Provider shall not return any rolling stock unit to the lessor or sub lease or hire it or otherwise take steps that render it unable to be used in the delivery of the Passenger Services until after any rolling stock unit that can be reasonably regarded as replacing it has been introduced into unrestricted use delivering the Passenger Services.

Table 1 (Original Rolling Stock)

Column 1 Class of vehicle/unit	Column 2 Number of vehicles in fleet and unit configuration	Column 3 Passenger Carrying Capacity per unit			Column 4 Owner/Lessor	Column 5 Lease expiry date(s)
		Seats	Standing	Total		Scheduled Lease Expiry Date
Class 142	12 (6 x 2 Car)	106, 114 or 121	16, 23 or 31	137	Angel Trains Limited	31 May 2020 (see Note A)
Class 144	26 (13 x 2 Car)	99	49	148	Porterbrook Leasing Company Limited	31 August 2020 (see Note A)
Class 144	30 (10 x 3 Car)	157	65	222	Porterbrook Leasing Company Limited	31 August 2020 (see Note A)
Class 150	134 (67 x 2 Car)	124, 131, or 149	49, 57 or 60	198 or 204	Angel Trains Limited	End of Service Term
Class 150	6 (2 x 3 Car)	194	135	329	Angel Trains Limited	End of Service Term
Class 150	22 (11 x 2 Car)	124 or 131	67 or 89	213	Porterbrook Leasing Company Limited	End of Service Term
Class 153	12 (12 x 1 Car)	75	23	98	Angel Trains Limited	End of Service Term
Class 153	8 (8 x 1 Car)	73	25	98	Porterbrook Leasing Company Limited	End of Service Term

Table 1 (Original Rolling Stock)						
Column 1	Column 2	Column 3			Column 4	Column 5
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Passenger Carrying Capacity per unit			Owner/Lessor	Lease expiry date(s)
		Seats	Standing	Total		Scheduled Lease Expiry Date
Class 155	14 (7 x 2 Car)	152 or 160	56 or 60	208 or 220	Porterbrook Leasing Company Limited	End of Service Term
Class 156	58 (29 x2 Car)	138 or 152	66 or 72	204 or 224	Angel Trains Limited	End of Service Term
Class 156	36 (18 x 2 Car)	138 or 146	66 or 78	204 or 224	Porterbrook Leasing Company Limited	End of Service Term
Class 158	20 (10 x 2 Car)	138 or 143	81 or 88	219 or 231	Eversholt Rail (UK) Limited	End of Service Term
Class 158	70 (35 x 2 Car)	138 or 143	81 or 88	219 or 231	Angel Trains Limited	End of Service Term
Class 158	24 (8 x 3 Car)	207 or 221	118 or 122	329 or 339	Porterbrook Leasing Company Limited	End of Service Term
Class 170	32 (16 x 2 Car)	198	132	330	Porterbrook Leasing Company Limited	End of Service Term
Class 195	36 (18 x 2 Car)	124	97	221	Eversholt Rail (UK) Limited	End of Service Term
Class 195	84 (28 x 3 Car)	204	142	346	Eversholt Rail (UK) Limited	End of Service Term
Class 319	69 (23 x 3 Car)	286 or 303	105 or 109	391 or 412	Porterbrook Leasing Company Limited	28 August 2021 (see Note B)
Class 321/2	24 (6 x 4 Car)	289 or 298	112 or 120	401 or 410	Eversholt Rail (UK) Limited	17 May 2020 (see Note A)
Class 323	51 (17 x 3 Car)	259 or 289	68 or 98	327	Porterbrook Leasing Company Limited	End of Service Term
Class 331	57 (19 x 3 Car)	204	141	345	Eversholt Rail (UK) Limited	End of Service Term
Class 331	48 (12 x 4 Car)	284	185	469	Eversholt Rail (UK) Limited	End of Service Term
Class 333	64 (16 x 4 Car)	360	107	467	Angel Trains Limited	End of Service Term

2. Specified Additional Rolling Stock

Table 2 (Specified Additional 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			Owner/Lessor	Date of introduction into revenue earning passenger service	Lease expiry date(s)
		Seats	Standing	Total			
Class 195	14 (7 x 2 Car)	124	97	221	Eversholt Rail (UK) Limited	The applicable date specified in column 1 of the Table in Appendix 1 of Part 1 to Schedule 6.2 (Committed Obligations)	End of the Service Term
Class 195	15 (5 x 3 Car)	204	142	346	Eversholt Rail (UK) Limited		End of the Service Term
Class 323	51 (17 x 3 Car)	259 or 289	68 or 98	357	Porterbrook Leasing Company Limited		End of the Service Term
Class 331	36 (12 x 3 Car)	204	141	345	Eversholt Rail (UK) Limited		End of the Service Term
Class 769	32 (8 x 4 Car)	286 or 303	105 or 109	391 or 412	Porterbrook Leasing Company Limited		No later than the Passenger Change Date in May 2020

Withdrawn

3. NOT USED.

Withdrawn

Schedule 1.7

Stations

1. Station Asset Management Plan

1.1 The Service Provider shall ensure that:

- (a) Not used;
- (b) prior to the Service Commencement Date, the processes and procedures for the management of assets as detailed in the Station Asset Management Plan have been certified 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) (the "**Station Asset Management Plan Accreditation**");
- (c) it has put in place such arrangements as are necessary (to the 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 so that the Successor Operator is able to access, use and amend the Station Asset Management Plan using the same format;
- (d) in relation to the asset management system utilised by the Service Provider (which as at the Service Commencement Date is known as the "MCMCS") for the purposes of recording all information relating to the condition of all assets and facilities at Stations, the Service Provider shall:
 - (i) ensure that any such asset management system is the property of the Service Provider or is licensed to the Service Provider on terms which permit the transfer, at the end of the Franchise Period, of such licence to the Secretary of State or the Secretary of State's nominee on terms which are substantially the same as that which applied to the Service Provider in the last 13 months immediately preceding the end of the Franchise Period;
 - (ii) ensure that any data or information relating to or contained in such asset management system is the property of the Service Provider (the "**SMP Data**"); and
 - (iii) immediately on expiry of the Franchise Period provide to the Secretary of State and the Successor such access to such asset management system and/or make available to the Secretary of State and the Successor Operator the SMP Data in such format as may be reasonably specified by the Secretary of State. If, at the end of the Franchise Period, the SMP Data is transferred to the Secretary of State or the Secretary of State's nominee (whether pursuant to the Transfer Scheme or otherwise) the transfer value of such SMP Data shall be nil.

1.2 The Service Provider shall:

- (a) promptly upon receipt by the Service Provider, provide to the Secretary of State a certificate of accreditation issued by an organisation accredited by the United Kingdom Accreditation Service (UKAS) which has been signed by a statutory director of the Service Provider and which confirms that the Station Asset Management Plan Accreditation has been achieved (the "**Station Asset Management Plan Accreditation Certificate**"); and

- (b) maintain the Station Asset Management Plan Accreditation from the date that it is required to be achieved (being the first anniversary of the Service Commencement Date) for the remainder of the Service Term.

If the Station Asset Management Plan Accreditation is at any time lost then the Service Provider shall promptly report that fact to the Secretary of State and secure the restoration of the Station Asset Management Plan Accreditation as soon as reasonably practicable, reporting to the Secretary of State on the measures it is proposing to take to achieve that restoration and progress made.

- 1.3 By the date of each anniversary of the "Start Date" of the Previous Franchise Agreement, the Service Provider shall conduct consultations with relevant stakeholders (including ACoRP, passengers, Station users and members of relevant local communities) in relation to the potential risks, opportunities and priorities for investment and operational efficiencies in relation to Stations. The Service Provider shall act reasonably in determining the scope of the specification of such consultations including the Stations to be considered.
- 1.4 By the date of each anniversary of the "Start Date" of the Previous Franchise Agreement the Service Provider shall have reviewed the Station Asset Management Plan and shall submit to the Secretary of State a draft updated version of the Station Asset Management Plan incorporating a schedule of any revisions to the Station Asset Management Plan and a brief summary of the rationale supporting any change for review and approval. Updating shall reflect changed and developing circumstances and the requirements of the Station Asset Management Plan Accreditation (when obtained) together with, where relevant, the outcomes of, and the Service Provider's responses to the stakeholder consultation process described in paragraph 1.3 above. The updated Station Asset Management Plan shall include the information required by paragraph 1.1(a) of Schedule 6.2 of the Previous Franchise Agreement, save that for the purposes of this paragraph 1.4, references to "Start Date" in that paragraph 1.1(a) shall be read as "the date on which the Station Asset Management Plan is reviewed by the Service Provider in accordance with paragraph 1.3 of this Schedule". The Station Asset Management Plan shall be updated so that following each update it continues to cover a four year time period from the date of the update.
- 1.5 If:
 - (a) the Secretary of State approves an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.4 above, such document shall become the then current Station Asset Management Plan; or
 - (b) the Secretary of State does not approve an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.4 above, then the Service Provider shall make such amendments to it as the Secretary of State shall reasonably direct.

2. NOT USED

3. Station Social and Commercial Development Plan

- 3.1 The Service Provider shall implement, resource and comply with the Station Social and Commercial Development Plan as it may be amended in accordance with this paragraph 3.
- 3.2 Any amendments to the Station Social and Commercial Development Plan must be agreed by the Secretary of State in accordance with this paragraph 3.
- 3.3 The Service Provider shall revise the Station Social and Commercial Development Plan within three (3) months of the Service Commencement Date (and thereafter when required by the Secretary of State) and shall submit it to the Secretary of State for review and approval. The

Service Provider shall ensure that each revised Station Social and Commercial Development Plan submitted to the Secretary of State shall comply with the following minimum requirements:

- (a) identify schemes to develop currently redundant or under-utilised station buildings and facilities for use by community groups and social enterprise organisation or for commercial development including schemes which sustain and enhance the viability of existing facilities at Stations or lead to the development of new facilities including through appropriate sub leasing of station buildings;
 - (b) appropriately reflect changed and developing circumstances to the extent relevant and appropriate
 - (c) appropriately reflect the outcome of the consultation which it is required to carry out pursuant to paragraph 4 below in relation to concerns, issues, opportunities and risks relating to the Stations and priorities for investment;
 - (d) effectively evaluate, prioritise and develop such schemes taking account of customer and community views expressed in the consultation carried out by the Service Provider;
 - (e) provide for the implementation of schemes specified pursuant to paragraph 3.3(a) above in accordance with a plan which allocates a priority between such schemes by reference to specified criteria and includes planned timescales for the delivery of relevant outputs; and
 - (f) be for a period of ten (10) years on the basis that it shall continue to be reviewed on a rolling annual basis;
 - (g) include a review and refreshed feasibility study in respect of each of the schemes identified under the Previous Franchise Agreement in respect of the potential to redevelop for social use redundant or underutilised buildings at Mytholmroyd and Cottingham (including the old ticket office Platform 2 at Cottingham Station).
- 3.4 Each updated version of the Station Social and Commercial Development Plan shall incorporate a schedule of revisions to the Station Social and Commercial Development Plan compared to the previous version and a brief summary of the rationale supporting each such revision.
- 3.5 The Service Provider 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.
- 3.6 If:
- (i) the Secretary of State approves an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 3.3, such document shall become the then current Station Social and Commercial Development Plan; or
 - (ii) the Secretary of State does not approve an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 3.3, then the Service Provider shall:
 - (A) make 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,

it being agreed that it will be unreasonable for the Secretary of State to make amendments that increase cost and risk to the Service Provider beyond parameters specified in the Record of Assumptions.

4. Consultations

4.1 On 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 Service Provider 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 Service Provider shall act reasonably in determining the scope of the specification of such consultations including the Stations to be considered.

5. NOT USED.

6. Security at Stations

6.1 The Service Provider shall maintain for the duration of the Service Period the Secure Stations Accreditation at each of the Stations set out in Appendix 1 to this Schedule 1.7.

6.2 The Service Provider shall maintain for the duration of the Service Period the Park Mark scheme at the car parks located at each of the Stations set out in Appendix 1 to this Schedule 1.7.

6.3 In the event that the TRH Score for a Station increases by five per cent (5%) or more from the previous year's TRH Score for such Station, the Service Provider shall:

(a) in respect of a Station that does not have Secure Station Accreditation, notify the Secretary of State of such increase and, as soon as reasonably practicable, obtain Secure Station Accreditation for such Station and shall maintain the same throughout the Franchise Period; or

(b) in respect of a Station that already has Secure Station Accreditation (either pursuant to paragraph 6.1 above or because the Service Provider has been required to obtain Secure Station Accreditation pursuant to paragraph 6.3(a) above), notify the Secretary of State of such TRH Score increase and the provisions of paragraph 6.4 shall apply.

6.4 Upon the Secretary of State receiving notification pursuant to paragraph 6.3(b) above, the Secretary of State may, following consultation with the British Transport Police, revoke the Secure Station Accreditation for such Station.

6.5 Where a Station loses its Secure Station Accreditation (whether pursuant to paragraph 6.4 or otherwise) the Service Provider shall:

(a) obtain Secure Station Accreditation for such Station as soon as reasonably practicable, in any event no later than twelve (12) months from and including the date of the loss of such Secure Station Accreditation; and

(b) maintain such Secure Station Accreditation once obtained for the duration of the Franchise Period.

6.6 NOT USED.

6.7 In this paragraph 6:

- (a) **"BTP Methodology"** means the document in the agreed form marked BTP Methodology;
- (b) **"Park Mark"** means the certification scheme administered by the parking industry and which sets car park design and management safety standards for crime reduction within car parks;
- (c) **"Secure Stations Accreditation"** means Stations which have achieved accreditation under the Secure Stations Scheme;
- (d) **"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; and
- (e) **"TRH Score"** means the threat, risk harm score for each Station calculated by the British Transport Police in accordance with the BTP Methodology at railway stations.

7. Information about Station Improvement Measures

- 7.1 The Service Provider shall at all times during the Service Term 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 Table A below.
- 7.2 The Service Provider shall, subject to paragraph 7.3 below, provide to the Secretary of State the information set out in Table A within one Reporting Period on each 1 April during the Service Term.
- 7.3 When so requested by the Secretary of State, the Service Provider 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
 - (b) any particular Station as is reasonably specified by the Secretary of State.
- 7.4 The information to be provided by the Service Provider to the Secretary of State within the timescales stipulated in paragraph 7.2 are set out in the Table in the Appendix to this Schedule 1.7.

8. Station Transfers

- 8.1 The Service Provider shall at all times during the Service Term, continue to be an active member of the Greater Manchester Rail Station Alliance and co-operate in good faith with the other Greater Manchester Rail Station Alliance members.
- 8.2 The Service Provider shall co-operate in good faith and shall provide such assistance and information as the Secretary of State may reasonably require to assist.
- 8.3 If, during the Service Term, agreement is reached between the Secretary of State and the TfGM Station Transferee in relation to the transfer of all or some of the TfGM Stations then the Secretary of State may direct the Service Provider (including by exercising the Secretary of State's rights under paragraph 12 of Schedule 1.1 (Services and Service Development)) to take such actions as may be necessary to give effect to the transfer of such TfGM Stations to the TfGM Station Transferee. Any such direction by the Secretary of State shall be an event which shall have the potential to give rise to revisions to the Budget pursuant to paragraph 4 of Schedule 8.1 (Fixed Service Payments).

- 8.4 For the purposes of paragraph 8.3, "**TfGM Station Transferee**" shall mean:
- (a) the Greater Manchester Rail Station Alliance (being the alliance that forms part of Greater Manchester Combined Authority's station partnership programme and comprising the Greater Manchester Combined Authority, Network Rail, Transport for Greater Manchester, London Continental Railway Limited, the Service Provider, and the franchisee of the TransPennine Express franchise (or their respective successors); or
 - (b) any other third party.

9. **Station Investment**

- 9.1 The Service Provider shall at all times during the Service Term, co-operate with the Secretary of State and any third party nominated by the Secretary of State and notified to the Service Provider in developing opportunities for financing investment at Stations and the Service Provider Access Stations in order to improve the station environment at such stations.
- 9.2 In co-operating with the Secretary of State and/or any nominated third party in developing any such financing opportunities, the Service Provider shall:
- (a) attend meetings with the Secretary of State and/or such third party to discuss such opportunities;
 - (b) provide the Service Provider's opinion on those opportunities;
 - (c) review and comment on implementation arrangements 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.

10. **Station Toilet Access**

- 10.1 The Service Provider shall ensure that access to toilet facilities at all Stations is provided free of charge.

Withdrawn

APPENDIX 1 TO SCHEDULE 1.7

List of Stations and Car Parks with accreditation

1. Stations

- (i) Adwick;
- (ii) Alnmouth;
- (iii) Barnsley;
- (iv) Bishop Auckland;
- (v) Bredbury;
- (vi) Broad Green;
- (vii) Chapeltown;
- (viii) Chester Le Street;
- (ix) Eaglescliffe;
- (x) Ecclestone Park;
- (xi) Edge Hill;
- (xii) Halewood;
- (xiii) Hartlepool;
- (xiv) Hexham;
- (xv) Horwich Parkway;
- (xvi) Huyton;
- (xvii) Lea Green;
- (xviii) Meadowhall;
- (xix) Morpeth;
- (xx) Mossley Hill;
- (xxi) Newton-Le-Willows;
- (xxii) Prescot;
- (xxiii) Rainhill;
- (xxiv) Redcar Central;

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- (xxv) Roby;
- (xxvi) Rotherham Central;
- (xxvii) St Helens Central;
- (xxviii) Sunderland;
- (xxix) Swinton South Yorks;
- (xxx) Thorne North;
- (xxxi) Wavertree Tech Park;
- (xxxii) West Allerton;
- (xxxiii) Whiston;
- (xxxiv) Wombwell;
- (xxxv) Arnside;
- (xxxvi) Barrow-in-Furness;
- (xxxvii) Birchwood;
- (xxxviii) Burneside;
- (xxxix) Carnforth;
- (xl) Grange Over Sands;
- (xli) Kendal;
- (xlii) Staveley;
- (xliii) Ulverston;
- (xliv) Warrington Central; and
- (xlv) Windermere.

2. Car Parks

- (i) Baildon
- (ii) Barnsley Interchange
- (iii) Ben Rhydding
- (iv) Beverley
- (v) Bolton On Dearne
- (vi) Bradford Forster Square

- (vii) Bridlington
- (viii) Brighouse
- (ix) Burley in Wharfedale
- (x) Crossflats
- (xi) Darton
- (xii) Dore & Totley
- (xiii) Eaglescliffe
- (xiv) Goole
- (xv) Harrogate (Long Stay)
- (xvi) Harrogate (Short Stay)
- (xvii) Hebden Bridge
- (xviii) Hexham
- (xix) Hexham (Rear Car Park)
- (xx) Kirkstall Forge
- (xxi) Mexborough
- (xxii) Morpeth
- (xxiii) Outwood
- (xxiv) Pontefract Monkhill
- (xxv) Redcar Central
- (xxvi) Rotherham Central
- (xxvii) Sandall & Agbrigg
- (xxviii) Skipton
- (xxix) Sowerby Bridge
- (xxx) Steeton & Silsden
- (xxxi) Thorne North
- (xxxii) Todmorden
- (xxxiii) Wakefield Kirkgate
- (xxxiv) Whitby

Withdrawn

- (xxxv) Woodlesford
- (xxxvi) Accrington
- (xxxvii) Adlington
- (xxxviii) Ashton Under Lyne
- (xxxix) Bamber Bridge
- (xl) Bare Lane
- (xli) Blackburn Boulevard
- (xlii) Blackpool North
- (xliii) Blackrod
- (xliv) Bredbury
- (xlv) Broadbottom
- (xlvi) Bromley Cross
- (xlvii) Buckshaw Parkway
- (xlviii) Burnley Central
- (xlix) Burnley Manchester Road
- (l) Burscough Bridge
- (li) Burscough Junction
- (lii) Buxton
- (liii) Carnforth
- (liv) Castleton
- (lv) Chinley
- (lvi) Chorley
- (lvii) Congleton
- (lviii) Daisy Hill
- (lix) Earlestown
- (lx) Euxton Balshaw Lane
- (lxi) Goostrey
- (lxii) Guide Bridge

Withdrawn

- (lxiii) Hindley
- (lxiv) Holmes Chapel
- (lxv) Horwich Parkway
- (lxvi) Hough Green
- (lxvii) Huyton
- (lxviii) Kirkham & Wesham
- (lxix) Knutsford
- (lxx) Layton
- (lxxi) Lea Green
- (lxxii) Leyland
- (lxxiii) Littleborough
- (lxxiv) Lostock Parkway
- (lxxv) Marple
- (lxxvi) Mossley Hill
- (lxxvii) Mossley
- (lxxviii) New Mills Newtown
- (lxxix) Northwich
- (lxxx) Poynton
- (lxxx1) Prescott
- (lxxx2) Romiley
- (lxxx3) Rose Hill
- (lxxx4) Sandbach
- (lxxx5) St Annes On The Sea
- (lxxx6) St Helens Central
- (lxxx7) St Helens Junction
- (lxxx8) Thatto Heath
- (lxxx9) Whiston
- (xc) Widnes

Withdrawn

- (xci) Wilmslow
- (xcii) Aspatria
- (xciii) Cark and Cartmel
- (xciv) Harrington Station
- (xcv) Maryport Station
- (xcvi) Sellafield Station
- (xcvii) Whitehaven Station
- (xcviii) Workington Station
- (xcix) Worksop Station Main
- (c) Worksop Station Overflow
- (ci) Warrington Central
- (cii) Barrow in Furness
- (ciii) Carnforth
- (civ) Grange over Sands
- (cv) Ulverston
- (cvi) Windermere

Withdrawn

APPENDIX 2 TO SCHEDULE 1.7

Information about Station Improvement Measures

Information to be provided	Information (format)	When information to be provided
Cost for provision of services at stations		
Total investment (Capex) in station schemes	Number	As per paragraph 7.2 but subject to paragraph 7.3.
SIF station spend	Report	As per paragraph 7.2 but subject to paragraph 7.3.
% of stations with real time information	Number	As per paragraph 7.2 but subject to paragraph 7.3.
% of stations with ticket vending machines	Number	As per paragraph 7.2 but subject to paragraph 7.3.
% of stations with CCTV	Number	As per paragraph 7.2 but subject to paragraph 7.3.
Cost of Planned Preventative Maintenance	Number	As per paragraph 7.2 but subject to paragraph 7.3.
Cost of Reactive Maintenance	Number	As per paragraph 7.2 but subject to paragraph 7.3.
Car parking investment	Number	As per paragraph 7.2 but subject to paragraph 7.3.
Passenger satisfaction with stations		
NRPS - Stations contracted score in FA	Number	As per paragraph 7.2 but subject to paragraph 7.3.
NRPS - Overall satisfaction with the station	Number	As per paragraph 7.2 but subject to paragraph 7.3.
NRPS - Ticket buying facilities	Number	As per paragraph 7.2 but subject to paragraph 7.3.
NRPS - Upkeep/repair of station buildings	Number	As per paragraph 7.2 but subject to paragraph 7.3.
NRPS - Cleanliness of the station	Number	As per paragraph 7.2 but subject to paragraph 7.3.
NRPS - Facilities and services at the station	Number	As per paragraph 7.2 but subject to paragraph 7.3.
NRPS - Connections with public transport	Number	As per paragraph 7.2 but subject to paragraph 7.3.

Information to be provided	Information (format)	When information to be provided
NRPS - Facilities for car parking	Number	As per paragraph 7.2 but subject to paragraph 7.3.
NRPS - Overall environment of the station	Number	As per paragraph 7.2 but subject to paragraph 7.3.
NRPS - Personal security at station	Number	As per paragraph 7.2 but subject to paragraph 7.3.
NRPS - Provision of shelter facilities	Number	As per paragraph 7.2 but subject to paragraph 7.3.
NRPS - Availability of seating	Number	As per paragraph 7.2 but subject to paragraph 7.3.
NRPS - Facilities for bicycle parking	Number	As per paragraph 7.2 but subject to paragraph 7.3.
NRPS - Overall station satisfaction (by route)	Number	As per paragraph 7.2 but subject to paragraph 7.3.
NRPS - Station Manager (overall station)	Number	As per paragraph 7.2 but subject to paragraph 7.3.
SQ benchmark - Ambience	Number	As per paragraph 7.2 but subject to paragraph 7.3.
SQ benchmark - Maintenance	Number	As per paragraph 7.2 but subject to paragraph 7.3.
SQ benchmark - Cleanliness	Number	As per paragraph 7.2 but subject to paragraph 7.3.
SQ benchmark - Information	Number	As per paragraph 7.2 but subject to paragraph 7.3.
SQ benchmark - Ticketing	Number	As per paragraph 7.2 but subject to paragraph 7.3.
SQ failures	Number	As per paragraph 7.2 but subject to paragraph 7.3.
Number of station audits	Number	As per paragraph 7.2 but subject to paragraph 7.3.
Number of complaints about stations	Number	As per paragraph 7.2 but subject to paragraph 7.3.
Letters/emails of praise about stations	Number	As per paragraph 7.2 but subject to paragraph 7.3.
Accidents - slips trips falls at stations	Number	As per paragraph 7.2 but subject to paragraph 7.3.

Withdrawn

Information to be provided	Information (format)	When information to be provided
Levels of inclusivity and accessibility		
Number of step free stations	Number	As per paragraph 7.2 but subject to paragraph 7.3.
Percentage of station footfall step free	Number	As per paragraph 7.2 but subject to paragraph 7.3.
Meeting the community's need		
Number of buildings used for community use	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3.
Awards and rewards	Narrative	As per paragraph 7.2 but subject to paragraph 7.3.
CCIF spend	Number	As per paragraph 7.2 but subject to paragraph 7.3.
Third party funding secured	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3.
Number of station travel plans	Number	As per paragraph 7.2 but subject to paragraph 7.3.
Retail activity		
Letting income by station	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3.
Total station letting income	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3.
Square meterage of space let commercially	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3.
Space filled for social use (Sq M)	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3.
Vacant space (Sq M)	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3.
Number of parking spaces (total)	Number	As per paragraph 7.2 but subject to paragraph 7.3.
Spaces with Park Mark award	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3.
Car parking revenue	Number	As per paragraph 7.2 but subject to paragraph 7.3.

APPENDIX 3 TO SCHEDULE 1.7

NOT USED

Withdrawn

APPENDIX 4 TO SCHEDULE 1.7

NOT USED

Withdrawn

SCHEDULE 2

ASSETS, LEASES, OTHER THE SERVICE PROVIDERS AND 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 Franchisee's
Schedule 2.4:	NOT USED
Schedule 2.5:	Transport, Travel and Other Schemes
	Appendix 1: List of Transport, Travel and Other Schemes

Withdrawn

Schedule 2.1**Asset Vesting and Transfer****1. Vesting of Property Leases at the Service Commencement Date**

- 1.1 The Service Provider 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 Service Provider 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 any new Property Leases with Network Rail, the Service Provider 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 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 Service Provider acknowledge that it is their intention that section 31 of the Act shall continue to apply to such assigned or amended lease.
- 1.4 The Service Provider shall use all reasonable endeavour to ensure that any Station Lease that it enters into accurately records all fixtures and fittings in relation to such Station Lease.

Withdrawn

Schedule 2.2

Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases

1. Novation of Access Agreements during the Service Term

1.1 The Service Provider shall, to the extent so requested by the Secretary of State (other than on termination of this Agreement, for which the provisions of paragraph 1 of Schedule 15.4 (Provisions applying on and after Termination) apply):

- (a) following receipt of a notice purporting to terminate any Access Agreement to which it is a party, in relation to such Access Agreement; or
(b) 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 the Secretary of State 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 Service Provider 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 the Secretary of State's 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 the Secretary of State's nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a contravention referred to in paragraph 1.3(a),

but shall not, unless the Service Provider otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Service Provider arising prior to the date of such novation.

1.4 The Service Provider 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 Service Provider 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 the Secretary of State 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider or the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of this 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 Service Provider 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 Service Provider (or an Affiliate of the Service Provider) 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 Service Provider's proposed maintenance strategy for the relevant rolling stock and/or the Service Provider'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 Service Provider, the Service Provider shall use reasonable endeavours to obtain the relevant information or documentation from a third party (including any person from whom the Service Provider leases rolling stock).

2.4 The Service Provider 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 Service Commencement Date; or
- (b) enter into any new insurance arrangements after the Service Commencement 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 Service Provider 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 Service Provider, whether on a reciprocal basis or otherwise.

3A Train Maintenance

- 3A.1 The Service Provider shall procure that heavy maintenance of Train Fleet is undertaken in accordance with the standard expected of a competent, skilled and experienced train operator.
- 3A.2 The Service Provider shall seek approval from the Secretary of State for any changes to the heavy maintenance regime for the Train Fleet where such change will result in any cost saving to the Service Provider including the reduction of any lease payments for the relevant Rolling Stock (such approval not to be unreasonably withheld or delayed).

3. **Cascaded Rolling Stock and Delayed Cascade Mitigation Plan**

3.1 For the purpose of this paragraph 3:

"Cascaded Rolling Stock" means rolling stock proposed to be used by the Service Provider 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 Service Provider;

"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 Service Provider.

3.2 Without limiting paragraph 2.1 (*Rolling Stock, related Contracts and Insurance Arrangements*), where the rolling stock to be leased by the Service Provider under any Rolling Stock Lease is Cascaded Rolling Stock the Secretary of State may:

(a) as a condition of giving the Secretary of State's consent to the Service Provider executing such Rolling Stock Lease, require that such Rolling Stock Lease contains a provision whereby, in the event of a Relevant Delay, the Secretary of State may require that such Cascaded Rolling Stock can continue to be used by the Prior Train Operator during such period as the Secretary of State shall specify. Without limitation this may include the Service Provider purchasing the Cascaded Rolling Stock back to the Prior Train Operator and/or a delay to the date on which the Cascaded Rolling Stock is required to be delivered to the Service Provider under such Rolling Stock Lease; and

(b) where the Secretary of State requires such a provision to be included in the relevant Rolling Stock Lease, if a Relevant Delay occurs, require the Service Provider to make the Cascaded Rolling Stock available for use by the Prior Train Operator during such period as the Secretary of State may require.

3.3 Where the Secretary of State exercises the Secretary of State's right pursuant to paragraph 3.2(b) to make Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period the exercise of such right shall be an event which shall have the potential to give rise to revisions to the Budget pursuant to paragraph 4 of Schedule 8.1 (Fixed Service Payments).

3.4 **NOT USED.**

3.5 **NOT USED.**

3.6 **NOT USED.**

- 3.7 Where the Secretary of State exercises the Secretary of State's right pursuant to paragraph 3.2(b) to require the Service Provider to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period, the Service Provider shall not be liable for any failure to comply with its obligations under this Agreement to the extent that:
- (a) such failure to comply arises directly as a result of the Service Provider being unable to use the Cascaded Rolling Stock; and
 - (b) the Service Provider uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.
- 3.8 The Service Provider 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 Service Provider shall use all reasonable endeavours to mitigate the impact on the delivery of the 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.
- 3.9 If a Relevant Delay has occurred or the Secretary of State believes that there is a material risk that a Relevant Delay will occur the Secretary of State may serve a notice on the Service Provider 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 Service Provider 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:
- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Fixed Service Payments;
 - (b) the implications (if any) for the Benchmarks; and
 - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- 3.10 The Service Provider 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.
- 3.11 Where any rolling stock vehicles cease to be part of the Train Fleet but are acquired by another Train Operator for use in delivering passenger services the Service Provider shall:
- (a) ensure that:
 - (i) such rolling stock is in an acceptable redelivery condition consistent with the hand back terms agreed with the lessor;
 - (ii) a complete set of maintenance and mileage records are handed over in a suitable format; and
 - (iii) the Train Operator is given reasonable access to the relevant rolling stock prior to handover to assist with an effective hand over in relation to both operation and maintenance; and

- (b) use reasonable endeavours to ensure that:
- (i) the Train Operator is offered 'knowledge transfer' sessions to enable recipient engineers and operational personnel to learn from informed peers;
 - (ii) the Train Operator is offered on-train development programmes to train their maintenance staff to an appropriate level of competence; and
 - (iii) it offers medium-term support and advice in relation to such rolling stock including technical and operational support.

4. **Assignment of Property Leases during the Service Term**

- 4.1 The Service Provider shall (other than on termination of this 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 the Secretary of State 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 Service Provider 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 antecedent 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 contravention referred to in paragraph 4.2(a), and the Service Provider shall indemnify the Secretary of State or his nominee, as the case may be, on an after-the-fact basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- 4.3 The Service Provider 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 Service Provider 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 the Secretary of State 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 Service Provider 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 Service Provider to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. **Station and Depot Leases**

- 5.1 The Service Provider shall at all times enforce its rights under each Station Lease and Depot Lease.

5.2 The Service Provider 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 Service Provider 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 Service 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 Service Provider 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 this 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 Service Provider 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 Service 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 Service Provider 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 Service 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 Service Provider shall notify the Secretary of State immediately on it becoming aware of any event which might give the Service Provider a right to forfeit or terminate any Station Sublease. The Service Provider 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

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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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

Withdrawn

Schedule 2.5

Transport, Travel and Other Schemes

1. Local Authority Concessionary Travel Schemes

1.1 The Service Provider shall:

- (a) participate in and comply with its obligations under:
 - (i) the concessionary travel schemes listed in Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
 - (ii) any other concessionary travel scheme which the Service Provider is required to participate in during the Service Term pursuant to paragraph 1.1(b); and
- (b) if so requested by the Secretary of State, participate in and comply with its prospective obligations under:
 - (i) any concessionary travel scheme listed in this Agreement the terms of which have been amended since the date of this Agreement; and
 - (ii) such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in.

1.2 **NOT USED.**

1.3 **NOT USED.**

1.4 **NOT USED.**

1.5 The Service Provider 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.

1.6 **NOT USED.**

2. Multi-modal Fares Schemes

2.1 The Service Provider shall:

- (a) participate in and comply with its obligations under:
 - (i) the multi-modal fares schemes set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
 - (ii) any other multi-modal fares scheme which the Service Provider is required to participate in during the Service Term pursuant to paragraph 2.1(b);

including by co-operating in the implementation of any Smart Media technology pursuant to any such multi modal fares schemes; and
- (b) 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 Appendix 1 (*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 **NOT USED.**

2.3 **NOT USED.**

2.4 **NOT USED.**

2.5 **NOT USED.**

2.6 The Service Provider 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.

2.7 **NOT USED.**

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,

then the Secretary of State shall provide a reasonable opportunity to the Service Provider to make representations to the Secretary of State before amending, introducing or ceasing to approve a Discount Fare Scheme.

3.2 Not Used.

3.3 The Service Provider 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 Service Provider 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 Service Provider 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 Service Provider shall not amend, or agree or propose to amend, any Inter-Operator Scheme other than in accordance with its terms.

4.4 The Service Provider 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 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 an event which shall have the potential to give rise to revisions to the Budget pursuant to paragraph 4 of Schedule 8.1 (Fixed Service Payments).

Withdrawn

APPENDIX 1 TO SCHEDULE 2.5**List of Transport, Travel and Other Schemes****1. Local Authority Concessionary Travel Schemes**

1.1 Each of the following schemes as at the Service Commencement Date:

- (a) Transport for Greater Manchester: Concessionary Fares Scheme (free, discounted price or flat fares for elderly, disabled and young persons).
- (b) Merseytravel: Concessionary Fares Scheme (free or discounted price travel for elderly, disabled and young persons).
- (c) West Yorkshire Combined Authority: Concessionary Fares Scheme (free or discounted price travel for senior citizens, blind, disabled and young persons).
- (d) South Yorkshire Passenger Transport Executive: Concessionary Fares Scheme.
- (e) Tyne & Wear Passenger Transport Executive: Concessionary Fare Scheme.
- (f) Education season ticket schemes also operate with the following:
Lancashire County Council, Cheshire County Council, Derbyshire County Council, and Cumbria County Council.
- (g) Concessionary schemes with the following modes:
Durham County Council, North Lincolnshire County Council, North East Lincolnshire County Council, Hull City Council and Derbyshire County Council.
- (h) Scholar Season Ticket schemes with the following authorities:
North Lincolnshire County Council, North East Lincolnshire County Council, West Yorkshire Combined Authority, Lincolnshire County Council, North Yorkshire County Council (one scheme on the Wharfedale branch line and one relating to the Esk Valley Rail Partnership), Northumberland County Council, Hull City Council.

1.2 Any other concessionary travel scheme which the Service Provider is required to participate in during the Service Term pursuant to paragraph 1.1 (b) of Schedule 2.5.

2. Multi-modal Fares Schemes

2.1 Each of the following schemes as at the Service Commencement Date:

- (a) Transport for Greater Manchester:
 - (i) County Cards (Greater Manchester Travelcards Limited season tickets);
 - (ii) Metrolink tickets (Metro and train);
 - (iii) Wayfarer tickets (bus, Metro and train);
 - (iv) Day Saver (Off peak Rover ticket with bus, train and tram combinations); and
 - (v) Rail Ranger.
- (b) Merseytravel:

TRIO, Rail Pass and Saveaway-Multi-modal season tickets and off peak Rovers.

- (c) West Yorkshire Combined Authority:
 - (i) Metrocards/M-Cards;
 - (ii) Metro Dayrover tickets (daily off-peak);
 - (iii) Not used;
 - (iv) Metrorover tickets (half-price travel for the unemployed).
- (d) Tyne & Wear Passenger Transport Executive:

Network Travel tickets.
- (e) South Yorkshire Passenger Transport Executive:
 - (i) Travelmaster;
 - (ii) Railmaster.
- (f) Derbyshire County Council

Derbyshire Wayfarer - off peak Rover.

2.2 Any other multi-modal fares travel scheme which the Service Provider is required to participate in during the Service Term pursuant to paragraph 2.1(b) of Schedule 2.5.

3. Discount Fare Schemes

3.1 Each of the following schemes as at the Service Commencement Date:

- (a) Disabled Persons Railcard Scheme dated 23 July 1995 between the participants therein;
- (b) Young Persons Railcard Scheme dated 23 July 1995 between the participants therein; and
- (c) Senior Railcard Scheme dated 23 July 1995 between the participants therein; or
- (d) Not Used; or
- (e) 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 as at the Service Commencement Date which relate to arrangements between the Service Provider and other participants in the railway industry:

- (a) Staff Travel Scheme dated 23 July 1995 between the participants named therein;
- (b) Ticketing and Settlement Agreement;
- (c) 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) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Service Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts;
- (h) any Discount Fare Scheme; and
- (i) the 16-17 Saver railcard scheme introduced for use with effect from 2 September 2019 between the participants named therein.
- (j) ²**the Veterans Railcard scheme introduced on or about 11 November 2020 between the participants named therein.**

Withdrawn

² 10 November 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 3

NOT USED

Withdrawn

SCHEDULE 4

ACCESSIBILITY AND INCLUSIVITY

Schedule 4:	Accessibility and Inclusivity
	Appendix 1: Minor Works
	Appendix 2: Accessible Transport Arrangements

Withdrawn

1. **Relationship with other obligations relating to persons with disabilities**
 - 1.1 The Service Provider 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 this 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 Service Provider directed at meeting the needs of persons with disabilities.
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 Service Provider that:
 - (a) there is limited funding available to the Secretary of State to assist the Service Providers 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 Service Provider 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 Service Provider'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 Service Provider 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 Service Provider 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 Service Term:

- (a) the Service Provider 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 below concerning Minor Works; and
- (b) notwithstanding such compliance, the Service Provider 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 Service Provider may seek funding from the Secretary of State in respect of that expenditure.

2.5 If the Service Provider 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 Fixed Service 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 Fixed Service Payments in accordance with this paragraph 2.5 in any Service Year:

- (a) the Secretary of State shall make such adjustment to the Fixed Service Payments; and
- (b) the Service Provider 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 Service Provider of.

2.6 If and to the extent the Service Provider 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 the Service Provider Access Station, provided that the Service Provider:

- (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 Service Provider may have in respect thereof,

the imposition of the increased access charges shall be an event which shall have the potential to give rise to revisions to the Budget pursuant to paragraph 4 of Schedule 8.1 (Fixed Service Payments).

3A **Minor Works**

3A.1 For the purposes of this Schedule 4, "**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.

3A.2 The Minor Works:

- (a) may, but shall not necessarily include, the Minor Works described in Appendix 1 (*Minor Works*) to this Schedule 4;
- (b) shall not include any works which Network Rail, the Service Provider or any other person has a separate obligation to carry out, except where:
 - (i) such obligation is an obligation of the Service Provider under the EA; or
 - (ii) the inclusion of such works would lead to the acceleration of the timescale for their completion and the Secretary of State gives the Secretary of State's consent pursuant to paragraph 3A.2(c);
- (c) shall only include works other than those permitted by paragraphs 3A.2(b)(i) and 3A.2(b)(ii) with the prior consent of the Secretary of State; and
- (d) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of the Secretary of State.

3A.3 The Service Provider shall:

- (a) establish and manage the Minor Works' Budget to fund the carrying out of Minor Works;
- (b) as soon as reasonably practicable (and in any event within four (4) months) after the Service Commencement Date and thereafter before the start of each Service Year:
 - (i) develop a Minor Works' Programme and consult with the Disabled Persons Transport Advisory Committee and relevant Passengers' Council in relation thereto;
 - (ii) in conjunction with its activities in paragraph 3A.3(b)(i), and, consistent with its obligations under paragraph 3A.3(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 3A.3(b)(i) and 3A.3(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 Service Year (other than the first Service Year) and in doing so, spend at least the amount of the Minor Works' Budget for the relevant Service Year in such Service 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 Service Provider 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 Service Provider shall:
- (a) notify the Secretary of State within seven (7) days of receiving notification of the EA Claim. the Service Provider 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 Service Provider'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 Service Provider, 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 Service Provider'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 Service Provider to defend the EA Claim (or any aspect of it) then the Service Provider shall defend the EA Claim in accordance with paragraph 3.1.
- 3.4 If the Service Provider 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 Service Provider:
- (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 Service Provider 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 Service Provider 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 The Service Provider shall establish and implement procedures necessary to:

- (a) record the making of reservations for seating accommodation 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 Disabled People's Protection Policies);
- (b) record whether such seating accommodation and/or assistance is actually provided; and
- (c) provide such records to the Secretary of State on his request.

4.2 Any helpline established by the Service Provider for the purposes of making reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities shall be provided free of charge.

4.3 Where the Service Provider's Disabled People's Protection Policy:

- (a) has been established before the date of this Agreement; and
- (b) has not been revised and approved by the ORR to take into account the ORR's most recent published guidance on Disabled People's Protection Policies as at the date of this Agreement,

the Service Provider shall within six (6) months of the date of this Agreement revise its Disabled People's Protection Policy such that it complies with that guidance, and obtain the ORR's approval of the revised version.

4.4 The Service Provider 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.

Withdrawn

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 Service Provider 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 Service Provider shall provide accessible transport arrangements for that passenger in accordance with paragraph 3.
3. The Service Provider 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 Service Provider 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 Service Provider'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 Service Provider has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such accessible transport arrangements).

Withdrawn

SCHEDULE 5
FARES AND SMART TICKETING

Schedule 5.1:	Purpose, Structure and Construction
Schedule 5.2:	The Service Provider’s Obligation to Create Fares
Schedule 5.3:	Allocation of Fares to the PTE/Protected Fares Basket
Schedule 5.4:	Regulation of PTE/Protected 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 5.10:	Trials
Schedule 5.11	Fares Setting and Monitoring

Withdrawn

Schedule 5.1

Purpose, Structure and Construction

1. Purpose of provisions relating to Creating Fares

1.1 The purpose of Schedule 5.2 (the Service Provider's Obligation to Create Fares) is to ensure that PTE Fares and Protected Fares are Created in accordance with the Ticketing and Settlement Agreement and to place appropriate restrictions on the Service Provider's ability to Create Fares.

1.2 Purpose of Fares Regulation

- (a) The purpose of Schedule 5.3 (Allocation of Fares to the PTE/Protected Fares Basket) 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.
- (b) For the purpose of regulating Fares, each Fare that is to be regulated shall be allocated in accordance with this Schedule 5.1 to the PTE/Protected Fares Basket.
- (c) The Secretary of State's regulation of Fares places a limit on:
- (i) the Price of each Fare that is allocated by the Secretary of State to the PTE/Protected Fares Basket. The limit on the Price of each Fare is set by reference to:
 - (A) the overall increase of the Prices of all Fares in the PTE/Protected Fares Basket;
 - (B) the individual increase in the Price of each Fare in the PTE/Protected Fares Basket; and
 - (ii) the Child Price of each Fare as specified in paragraph 1.3 of Schedule 5.5 (Regulation of Individual Fares).
- (d) Subject to the more detailed provisions of Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares):
- (i) the overall increase of the Prices of all Fares in the PTE/Protected Fares Basket may not exceed the Retail Prices Index + k per cent per annum in respect of each Fare Year; and
 - (ii) the increase in the Price of any individual Fare in the PTE/Protected 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 1.2(d)(i), "k" shall have the meaning given to it in paragraph 4.2 of Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) and for the purposes of paragraph 1.2(d)(ii) "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).

- (e) 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 (the Service Provider's Obligation to Create Fares) sets out or refers to the Service Provider's obligations to Create Fares.

- 2.2 Schedule 5.3 (Allocation of Fares to the PTE/Protected Fares Basket) sets out the allocation of Fares to the PTE/Protected Fares Basket.
- 2.3 Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) sets out the limits applicable to the overall increase in Prices of all Fares in the PTE/Protected Fares Basket.
- 2.4 Schedule 5.5 (Regulation of Individual Fares) sets out the limits applicable to the increase in the Price of any individual Fare in the PTE/Protected Fares Basket and the Child Price of each Fare.
- 2.5 Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) sets out the consequences of the Service Provider exceeding:
- (a) the Regulated Value of the PTE/Protected Fares Basket; or
 - (b) the Regulated Price and/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. **References to "Fare"**

3.1 For the purposes of:

- (a) Schedule 5.2 (the Service Provider'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 the PTE/Protected Fares Basket) 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 Service Provider has Created or can Create in respect of that Flow as the Secretary of State may specify.

4. **PTE/Protected Fares Document**

4.1 In the event that, in the Secretary of State's reasonable opinion, there is an immaterial inconsistency between the Fares or the maximum Price (as the case may be) for any Fare recorded by RSP in 2019 or the 2019 Nominal Ticket Sales:

- (a) described in or determined in accordance with this Schedule 5; and
- (b) described in the PTE/Protected Fares Document,

the PTE/Protected Fares Document shall prevail.

4.2 In the event that, in the Secretary of State's reasonable opinion, there is a material inconsistency between the Fares or the maximum Price (as the case may be) for any Fare recorded by RSP in 2019 or the 2019 Nominal Ticket Sales:

- (a) described in or determined in accordance with this Schedule 5; and

(b) described in the PTE/Protected Fares Document,
 this Schedule 5 shall prevail.

5. Setting of Child Prices

5.1 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare shall be satisfied by the Service Provider 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 5.1(b)(i).

6. New Stations

6.1 Subject to paragraph 3.2, the Secretary of State may include within the definitions of:

- (a) PTE/Protected Fares Basket;
- (b) PTE Fare; and
- (c) Protected Fare,

Fares to or from any New Station, on such basis as the Secretary of State may, after consultation with the Service Provider, reasonably determine and references in this Schedule 5 to PTE/Protected Fares Basket, PTE Fare, Protected Fare and Fares and other relevant definitions shall be construed accordingly.

Withdrawn

Schedule 5.2

The Service Provider's Obligation to Create Fares

1. Creation of PTE Fares and Protected Fares

The Service Provider shall ensure that each PTE Fare and 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 Service Provider 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 fifty per cent (50%) of the Price of the relevant Fare.

2.2 The Service Provider 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).

Withdrawn

Schedule 5.3**Allocation of Fares Basket****1. Allocation of Fares to Fares Baskets**

- 1.1 On or prior to the Service Commencement Date the Secretary of State shall allocate each PTE Fare and Protected Fare to the PTE/Protected Fares Basket in accordance with this Schedule 5.3.
- 1.2 Subject to paragraph 2, every PTE Fare and Protected Fare shall be allocated by the Secretary of State to the PTE/Protected Fares Basket.

2. Designation of Non Fares Basket Fares

- 2.1 On or prior to the Service Commencement 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) rank, in descending order according to their Gross Revenue for the period of twelve (12) months which ended 31 March 2019:
- (i) all PTE Fares; and
- (ii) all Protected Fares;
- (b) aggregate, following such ranking:
- (i) those PTE 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 PTE Fares;
- (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 PTE 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 the PTE/Protected Fares Basket to change at any time prior to the Service Commencement 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 PTE Fare or Protected Fare that is also designated as a Non Fares Basket Fare shall not be allocated to the PTE/Protected 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 PTE/Protected Fares Basket Values

1. Value of PTE/Protected 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 Service Provider shall procure that the Value of the PTE/Protected Fares Basket at any time in any Fare Year does not exceed its Regulated Value for that Fare Year.

2. Value

The Value of the PTE/Protected Fares Basket at any time shall be the aggregate of the Projected Revenue of each Fare in the PTE/Protected Fares Basket at that time.

3. Projected Revenue

The Projected Revenue of any Fare at any time shall be an amount equal to:

P x 2019 Nominal Ticket Sales	
where:	
P	is the Price of that Fare at that time; and
2019 Nominal Ticket Sales	is the number of nominal ticket sales of that Fare for 2019, 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(b) of Schedule 5.3 (Allocation of Fares to the PTE/Protected Fares Basket) for the period of twelve (12) months which ended 31 March 2019; and
	is the Price for that Fare recorded by RSP in February 2019.

4. Regulated Value

4.1 The Regulated Value of the PTE/Protected Fares Basket for any Fare Year shall be an amount equal to:

2019 Ticket Revenue x PPAI	
where:	
2019 Ticket Revenue	is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in the PTE/Protected Fares Basket for the period of twelve (12) months which ended 31 March 2019;
PPAI	is:
	where:
(a)	in respect of the Fare Year commencing 1 January 2020, the Permitted Aggregate Increase for that Fare Year; and

	(b)	in respect of each Fare Year commencing on or after 1 January 2021, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1 January 2020 (inclusively).
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4.2 The Permitted Aggregate Increase in any Fare Year shall be an amount equal to:

PAI =	$PAI = \frac{(100 \times RPI) + k}{100}$	
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.	

Withdrawn

Schedule 5.5

Regulation of Individual Fares

1. Price not to exceed Regulated Price or Regulated Child Price

1.1 The Service Provider shall procure that the Price of:

- (a) Not Used;
- (b) each PTE Fare and each Protected Fare included in the PTE/Protected Fares Basket.

in any Fare Year does not exceed the Regulated Price for such Fare in that Fare Year.

1.2 The Service Provider shall procure that the Price of any Season Ticket Fare shall be the same in both directions.

1.3 The Service Provider shall procure that the Child Price of each Fare in any Fare Year does not exceed fifty per cent (50%) of the Price for such Fare in that Fare Year.

2. Regulated Price

2.1 The Regulated Price for any Fare in any Fare Year shall be an amount equal to the greater of:

(a)	Preceding Year Ticket Price + £0.20p; and
(b)	Preceding Year Ticket Price x PII provided that where Preceding Year Ticket Price x PII when rounded to two (2) decimal places results in a value: <ul style="list-style-type: none"> (i) ending in five (5) pence to nine (9) pence (inclusive), then Preceding Year Ticket Price x PII shall be rounded up to the nearest whole multiple of £0.10; or (ii) ending in one (1) pence to four (4) pence (inclusive), then Preceding Year Ticket Price x PII shall be rounded down to the nearest whole multiple of £0.10;
where:	
Preceding Year Ticket Price	for the Fare Year commencing 1 January 2020, is the maximum Price for that Fare recorded by RSP in 2019 and, for any subsequent Fare Year, is the maximum Price recorded by RSP in the Fare Year preceding that Fare Year, provided that such maximum Price complied with the requirements of this Schedule 5. If such maximum Price did not so comply, then such maximum Price shall be the last Price 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;

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.
f	is equal to zero (0).

2.3 Where:

- (a) the Service Provider sets the Price of any PTE Fare or Protected Fare in any Fare Year; and
- (b) the Secretary of State reasonably determines that the Price of such PTE 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 purpose of determining the Regulated Price pursuant to paragraph 2.1 in the next Fare Year shall be the maximum Price prior to such setting that complied with the requirements of this Schedule 5, as recorded by RSP in the relevant preceding Fare Year.

3. **T&W Fares Side Agreement**

- 3.1 The Service Provider shall on or before the Service Commencement Date enter into the T&W Fares Side Agreement.
- 3.2 The Service Provider shall negotiate in good faith with T&WPTE in order to seek to agree amendments and updates to the T&W Fares Side Agreement (as may be appropriate in the relevant circumstances) and shall, prior to entering into any revised T&W Fares Side Agreement deliver such draft agreement, containing all proposed revisions, for the Secretary of State's approval (such approval not to be unreasonably withheld or delayed).

4. **Compulsory Inter available Flows**

3.1 Where the Service Provider:

- (a) as Lead Operator for a Compulsory Inter available Flow, is responsible for setting the Price of a Fare for that Flow; and
- (b) has notified RSP of the Price of that Fare in any Fares Setting Round,

the Service Provider shall not increase the Price of that 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 Service Provider is in contravention of paragraph 1 of Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) in respect of either the PTE/Protected Fares Basket:
 - (a) it shall reduce the Price of Fares in the PTE/Protected 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 PTE/Protected Fares Basket Values) from such date; and
 - (b) the Secretary of State may adjust Fixed Service Payments by an amount equivalent in the Secretary of State’s opinion to the sum of:
 - (i) any additional gross revenue accruing to the Service Provider or any person selling Fares on its behalf as a result of the Value of the PTE/Protected Fares Basket exceeding its Regulated Value permitted under Schedule 5.4 (Regulation of PTE/Protected 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 Fixed Service Payments by the Secretary of State pursuant to paragraph 1.1:
 - (a) NOT USED; and
 - (b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or this Agreement in respect of such contravention.
- 1.3 It shall not be a contravention of paragraph 1 of Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) if and to the extent that:
 - (a) the Value of the PTE/Protected Fares Basket exceeds its Regulated Value in any Fare Year;
 - (b) such excess is caused by the Price of any relevant PTE Fare being set pursuant to the terms of the Ticketing and Settlement Agreement by another person (other than an Affiliate); and
 - (c) the Service Provider does not have a reasonable opportunity, under any procedure for consulting or notifying Train Operators of alterations to the Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other PTE/Protected Fares in the Fares Basket so as to avoid the Value of the PTE/Protected 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 Service Provider shall not subsequently increase during that Fare Year, or any subsequent Fare Year, the Price of any PTE Fare in the PTE/Protected Fares Basket which it is entitled to set pursuant to the terms of the Ticketing and Settlement Agreement, unless, following such increase, the Service Provider would, otherwise than under paragraph 1.3, comply with the provisions of paragraph 1 of Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) in relation to the PTE/Protected Fares Basket.
- 1.5 Where circumstances described in paragraph 1.3 prevail in any Fare Year, the Service Provider shall not be required to reduce the Price of any other PTE Fare at any time during that Fare Year, or any subsequent Fare Year, where such Price has previously been set in a Fares Setting Round.

2. **Exceeding the Regulated Price or Regulated Child Price**

2.1 If the Service Provider is in contravention of any of the provisions of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares):

- (a) it shall reduce the Price and/or Child Price (as the case may be) 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 Fixed Service Payments by an amount equivalent in the Secretary of State’s opinion to the sum of:
 - (i) any additional gross revenue accruing to the Service Provider 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 Fixed Service Payments by the Secretary of State pursuant to paragraph 2.1:

- (a) NOT USED; and
- (b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or this Agreement in respect of such contravention.

Withdrawn

Schedule 5.7

Changes to Fares and Fares Regulation

1. Changes to PTE/Protected Fares Basket

1.1 The Secretary of State may require the content of the PTE/Protected Fares Basket to change in accordance with the following:

(a) where the Secretary of State is not satisfied that the Price of any Non Fares Basket Fare is reasonably constrained by the 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 PTE/Protected Fares Basket,

the Secretary of State may de-designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the PTE/Protected Fares Basket;

(b) where any PTE Fare for a Flow has been included in the PTE/Protected Fares Basket, the Secretary of State may require the inclusion in the PTE/Protected 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 2019;

(c) where any Protected Fare for a Flow has been included in the PTE/Protected Fares Basket, the Secretary of State may require the inclusion in the PTE/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 PTE/Protected 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 the PTE/Protected 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 Service Commencement Date) of paragraph 2 of Schedule 5.3 (*Allocation of Fares to the PTE/Protected Fares Basket*); and/or

(iii) de-designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the PTE/Protected Fares Basket.

1.2 The Secretary of State shall serve notice in writing on the Service Provider:

(a) at any time prior to the Service Commencement Date; and

(b) thereafter, no later than the commencement of any Fares Setting Round,

to require any Fare to be included in PTE/Protected Fares Basket or to designate any Fare as a Non Fares Basket Fare pursuant to paragraph 1.1.

2. Changes to the 2019 Nominal Ticket Sales

2.1 The Service Provider may, in the event of any significant change to the pattern of travel on the Passenger Services during the Service Term, apply to the Secretary of State for the **value of factors A and/or B** in the formula for determining 2019 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of PTE/Protected 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 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 PTE/Protected Fares Basket.

3. Changes to the Reference Revenue, Gross Revenue, 2019 Nominal Ticket Sales and/or 2019 Ticket Revenue

3.1 The Secretary of State may, by notice in writing served on the Service Provider no later than the date of commencement of any Fares Setting Round, require:

- (a) the Reference Revenue of the PTE/Protected 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 the PTE/Protected Fares Basket) than the period of twelve (12) months ended 31 March 2019; and/or
- (b) the Gross Revenue of all PTE Fares and Protected Fares to be recalculated for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to the PTE/Protected Fares Basket) by reference to a different reference period than the period of twelve (12) months ended 31 March 2019; and/or
- (c) **the value of factor A** in the formula for determining the 2019 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) to be recalculated in respect of any Fare by reference to a different reference period than the period of twelve (12) months ended 31 March 2019; and/or
- (d) **the value of factor B** in the formula for determining the 2019 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) to be recalculated in respect of any Fare by reference to a different reference date other than February 2019; and/or
- (e) the 2019 Ticket Revenue in respect of the PTE/Protected Fares Basket to be re calculated for the purpose of paragraph 4 of Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) by reference to a different reference period than the period of twelve (12) months ended 31 March 2019.

3.2 Where, in accordance with paragraph 3.1(e), the 2019 Ticket Revenue in respect of the PTE/Protected 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 PTE/Protected 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 Service Provider may from time to time submit proposals to the Secretary of State to increase any Prices beyond the levels permitted under Schedule 5.4 (Regulation of PTE/Protected 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 consider any such proposal and may, at his sole discretion) require the Service Provider to implement any such proposal in whole or in part.

5. **Changes to Fares Regulation**

5.1 The Parties agree that the Secretary of State shall have the power at any time and on more than one occasion during the Service Term to alter the obligations of, and restrictions on, the Service Provider 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 PTE/Protected 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)).

5.2 **NOT USED.**

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 PTE 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 the Secretary of State's consent to the abolition of the Reference Flow, by written notice to the Service Provider, require any Fare Created in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in the PTE/Protected 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 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 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 Service Provider 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 Service Provider shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Service Provider becoming the Lead Operator in respect of any Flow, the

Secretary of State may without limiting paragraph 3, exercise the Secretary of State's rights pursuant to paragraph 3 in relation to the PTE/Protected Fares Basket.

7.3 The Service Provider shall inform the Secretary of State if it ceases to be a Major Flow Operator in respect of any Flow.

8. Changes to the PTE/Protected Fares Document

8.1 Following:

- (a) any allocation of Fares to the PTE/Protected Fares Basket pursuant to Schedule 5.3 (Allocation of Fares to the PTE/Protected Fares Basket); or
- (b) any subsequent adjustment thereof pursuant to this Schedule 5.7,

the Secretary of State shall set out in the PTE/Protected Fares Document all Fares then included in the PTE/Protected Fares Basket and, as soon as reasonably practicable thereafter, the Secretary of State shall reissue the PTE/Protected Fares Document to the Service Provider.

9. Overlapping Fares

9.1 Subject to paragraph 9.2, the Service Provider shall, with respect to Service Provider Dedicated Fares offered on each Overlapping Flow, ensure that during the Dual Operating Period such Service Provider Dedicated Fares:

- (a) remain available at the same Price and/or Class Price (as the case may be) as was offered by the Previous Franchisee immediately prior to the Service Commencement Date and shall not be increased in each Fare Year by more than $RPI + k$ (and for these purposes "RPI" and "k" shall have the meanings given in paragraph 2.2 of Schedule 5.5); and
- (b) continue to be offered for the same number of seats on each Passenger Service as were offered by the Previous Franchisee on each equivalent Passenger Service on each Overlapping Flow immediately prior to Service Commencement Date.

9.2 The restrictions in paragraph 9.1 shall not apply to any change (whether of the nature contemplated in paragraph 9.1 or otherwise) to a Service Provider Dedicated Fare which was initiated or introduced by the Previous Franchisee but which was only effective from a date on or following the Service Commencement Date.

9.3 For the purposes of this paragraph 9.1:

- (a) "**Dual Operating Period**" means the period commencing at 02:00 on 1 March 2020 and expiring on the earlier to occur of: (a) either of the Service Provider or LNER or both the Service Provider and LNER ceasing to be a wholly owned subsidiary of the Secretary of State; or (b) either of LNER or the Service Provider or both the Service Provider and LNER ceasing to operate passenger Services on an Overlapping Flow;
- (b) "**LNER**" means London North Eastern Railway Limited (company number 04659712);
- (c) "**Overlapping Flow**" means any point to point Flow with respect to which passenger services are operated by both the Service Provider and LNER; and
- (d) "**Service Provider Dedicated Fare**" means a Fare offered on an Overlapping Flow which entitles the purchaser to travel only on the passenger services operated by the Service Provider.

Schedule 5.8

Fares Regulation Information and Monitoring

1. Information

- 1.1 The Service Provider 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 of the PTE Fares or Protected Fares it is intending to set.
- 1.2 The Service Provider shall notify, or procure the notification to, the Secretary of State of any proposed increase to the Price of any PTE Fare or 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 Service Provider shall make available, or procure that RSP makes available, to the Secretary of State, for any Fares Setting Round during the Service Term, such details (including the proposed Prices) of the Initial Permanent Fare of any PTE 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 Service Provider shall provide to the Secretary of State
 - (a) such access as the Secretary of State may require to information pertaining to the Prices of PTE 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 Service Provider 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 Service Provider shall provide to the Secretary of State written confirmation from a statutory director of the Service Provider of whether the Service Provider has complied with its obligations under this Schedule 5 (*Fares and Smart Ticketing*) during each such Fares Setting Round.
- 2.3 the Service Provider shall take such action as the Secretary of State may require following receipt of any details from the Service Provider pursuant to paragraph 1 in order to ensure that the Service Provider shall comply with the provisions of Schedule 5.2 (the Service Provider's Obligation to Create Fares) to this Schedule 5.8 (inclusive).

3. Car Park Revenue

- 3.1 Where the Service Provider sells Fares that incorporate car park tickets in the purchase price (each a "**Combined Ticket**"), the Service Provider shall ensure that the revenue received from such sales is apportioned between passenger revenue and car park revenue so as to reflect the respective value of the Fare and the car park ticket.
- 3.2 Notwithstanding paragraph 3.1 of this Schedule 5.8, the Service Provider shall notify the Secretary of State in writing of any proposals to:
 - (a) introduce new Combined Tickets; and/or
 - (b) change the apportionment of revenue received from Combined Tickets between passenger revenue and car park revenue,

(each a "**Combined Ticket Notification**").

- 3.3 Each Combined Ticket Notification shall be provided to the Secretary of State not less than thirty (30) days prior to the proposed implementation of the introduction or change that is the subject of the Combined Ticket Notification and shall include the following information:
- (a) details of the applicable Fare and car park ticket (including the origin, destination and type of Fare and the location of the car park) that comprise the Combined Ticket or that will comprise the proposed Combined Ticket (as applicable);
 - (b) a breakdown of how the existing Combined Ticket or proposed Combined Ticket revenue (as applicable) will be apportioned between passenger revenue and car park revenue; and
 - (c) the revenue that would have been derived from the Fare and car park ticket comprising the existing Combined Ticket or proposed Combined Ticket (as applicable) had they been sold separately.
- 3.4 The Secretary of State may consider whether the proposed apportionment between passenger revenue and car park revenue as set out in the Combined Ticket Notification is reasonable. Where the Secretary of State determines that such apportionment is not reasonable, the Secretary of State may amend such apportionment accordingly.
- 3.5 Within thirty (30) days of any request by the Secretary of State, the Service Provider shall provide a report setting out:
- (a) the total sales of Combined Tickets;
 - (b) the information set out in paragraph 3.3 of this Schedule 5.8 in respect of such Combined Tickets; and
 - (c) any further information requested by the Secretary of State from time to time.

Withdrawn

Schedule 5.9

Smart Ticketing

1. Definitions

- 1.1 For the purposes of this Schedule 5.9, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

"EMV" means contactless payment cards and any other devices that conform to the international standards issued by EMVCo (owned by American Express, Discover, JCB, MasterCard, UnionPay and Visa);

"ITSO Ltd" means the non profit distributing organisation run by its members for the benefit of members and users of Smart Media;

"ITSO Certified Smart Media" 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 certified by ITSO Ltd;

"ITSO Operating Licence" means the licence granted to Train Operators by ITSO Ltd which, among other things, permits the Train Operators to issue ITSO Specification compliant cards and issue, sell and accept ITSO Specification compliant products;

"ITSO Smart Media Ticketing Scheme" means a Smart Ticketing Scheme that utilises ITSO Certified Smart Media;

"Previous Franchisee ITSO Smart Media Ticketing Scheme" means any ITSO Smart Media Ticketing Scheme operated by the Previous Franchisee prior to the Service Commencement Date;

"RSPS3002" means the RSP document with reference RSPS3002, version 3 (03-00) published on 27 September 2017 (or amended publications that replace this) which specifies standards for issuing, checking and validating rail products on ITSO Certified Smart Media and defines the rail specific rules required to ensure interoperability across the rail network;

"Smart Ticketing Scheme" 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 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;

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

“Smart Media Target”

means that no less than 75% of journeys made on Passenger Services within the geographic boundary of the Services are made by passengers holding Smart Media.

2. Smart Ticketing

2.1 The Service Provider shall:

- (a) join and comply with any RDG approved Smart Ticketing Schemes relevant to some or all of the Passenger Services unless otherwise directed by the Secretary of State;
- (b) fully and effectively co-operate with Network Rail and other Train Operators and relevant Local Authorities, including in relation to the provision any required equipment, to implement and operate Smart Ticketing Schemes; and
- (c) fully and effectively co-operate with other Train Operators and relevant Local Authorities in relation to proposals to apply Smart Ticketing Schemes to new or existing multi modal fares schemes including in the implementation of any Smart Media technology pursuant to any multi-modal fares schemes that it may participate in pursuant to its obligations under paragraph 2.1 of Schedule 2.5 (Transport, Travel and Other Schemes); and
- (d) prepare and submit a report to the Secretary of State in advance of each Performance Meeting (in such form as the Secretary of State may reasonably require) setting out:
 - (i) the baseline of uptake and journey usage of Smart Media from the Service Commencement Date and level of migration from magstripe tickets and increased take-on and journeys made using Smart Ticketing Schemes, as a minimum disaggregated between types of fares (Season Fares, Single Fares and Return Fares) and type of Smart Media (using the Lennon database as the sole source of data unless otherwise agreed with the Secretary of State) by users of the Passenger Services, for each completed Reporting Period during the Service Term;
 - (ii) the Service Provider’s performance towards or achievement of the Smart Media Target in that Service Year (as the case may be); and
 - (iii) the steps that the Service Provider is taking, including other Train Operators, Network Rail, Local Authorities or other organisations that it will be working with, to increase channel shift to Smart Ticketing Schemes operated by the Service Provider, or enabled by the Service Provider for other Smart Ticketing Schemes, and increase usage of Smart Ticketing Schemes by users of the Passenger Services,

and the Service Provider shall present the report at the Performance Meeting.

- 2.2** The Service Provider shall ensure, with effect from the Service Commencement Date in relation to any Previous Franchisee ITSO Smart Media Ticketing Scheme and from the date of commissioning in relation to any Smart Media Ticketing Scheme introduced by it, that from such relevant date until the end of the Service Term:

- (a) it continues to provide, make available and promote (and where applicable effectively maintain) such Smart Media Ticketing Scheme (including any associated infrastructure);
- (b) all components of the Smart Media Ticketing Scheme (and any amendment, extension or replacement thereof) inherited, used or introduced by the Service Provider (whether on a permanent or a trial basis) are at all times compliant with:
 - (i) version 2.1.4 of the ITSO Specification;
 - (ii) the ITSO Operating Licence; and
 - (iii) RSPS3002,
 or such subsequent versions as the Service Provider and the Secretary of State may agree;
- (c) any Certified Smart Media readers introduced by the Service Provider (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);
- (d) it pays all costs of participating in the relevant ITSO Smart Media Ticketing Scheme including the costs of maintaining all required scheme components to the standards specified in this Schedule 5.9;
- (e) both the RDG operated central back office and the RSP owned product set that is compliant with the ITSO Specification are used;
- (f) all available Fares on all Flows for which it is Lead Operator are capable of residing upon and being fulfilled as soon as reasonably practicable by the use of ITSO Certified Smart Media; and
- (g) if so requested in writing by another Train Operator the Service Provider shall as soon as reasonably practicable give all necessary permissions to that Train Operator so that all available Fares on all Flows for which that Train Operator is Lead Operator are capable of residing upon and being fulfilled by the use of ITSO Certified Smart Media.

- 2.3 Where the Previous Franchisee was a participant in any RDG approved Smart Ticketing Scheme pursuant to the Previous Franchise Agreement, the Service Provider shall take such action as may be required to ensure that it continues to participate in such Smart Ticketing Scheme from the Service Commencement Date without any disruption to the continuity of service received by passengers unless otherwise directed by the Secretary of State.
- 2.4 Without prejudice to its other obligations pursuant to this Schedule 5.9, the Service Provider shall undertake such further actions as the Secretary of State may reasonably require in connection with the introduction of Smart Ticketing Schemes.
- 2.5 **NOT USED.**
- 2.6 Either Party may propose, or the Secretary of State may reasonably determine, a change to the definition of "Smart Media" to include any new technology which enables the fulfilment of a Smart Ticketing Scheme.

- 3. **NOT USED**
- 4. **NOT USED**
- 5. **Smart Media Target**
 - 5.1 The Franchisee shall achieve the Smart Media Target during the third Service Year.

Withdrawn

Schedule 5.10

Trials

1. In order to investigate improved fares and ticketing options for passengers, the Service Provider shall, as requested by the Secretary of State, co-operate with the Secretary of State in the planning, proposed implementation and evaluation by the Service Provider of trials in the Franchise area that relate to fares, ticketing and ticket retail reforms, including, but not limited to, single-leg pricing, part-time season tickets and smart based ticketing solutions (the "**Fares, Ticketing and Retail Trials**").
2. The Parties shall agree or the Secretary of State may reasonably determine the form and scope of any Fares, Ticketing and Retail Trial as agreed or determined.

Withdrawn

Schedule 5.11

Fares Setting and Monitoring

1. Definitions and Objective

1.1 For the purposes of this Schedule 5.11, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

“Alternative Fare” Has the meaning given to it in paragraph 3.3(b) of this Schedule 5.11 (Fares Setting and Monitoring);

“Fares Plan” means the Service Provider’s plan with respect to those matters set out in paragraph 2.2 of this Schedule 5.11 (Fares Setting and Monitoring); and

“Good Operator Standard” the standard of a skilled and experienced Train Operator bearing the farebox revenue risk in relation to a railway passenger services franchise of a type, size and complexity similar to the Services and seeking to maximise its profit consistent with its other obligations under a franchise agreement under which it bears cost and revenue risk but which is otherwise in terms similar to the Franchise Agreement (including compliance with Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares)).

1.2 This Schedule sets out:

- (a) the terms and conditions and the further restrictions that are placed on the Service Provider’s ability to Create Fares, in addition to those contained in Schedules 5.1 (Purpose, Structure and Construction) to 5.7 (Changes to Fares and Fares Regulations) and Schedule 5.9 (Smart Ticketing); and
- (b) information and monitoring provisions which apply to all Fares Created, which are in addition to those set out in Schedule 5.8 (Fares Regulation Information and Monitoring).

2. Fares Plan

2.1 Within three (3) Reporting Periods of the Service Commencement Date the Service Provider shall deliver to the Secretary of State the Service Provider’s Fares Plan in respect of the Service Term for the Secretary of State’s approval.

2.2 The Fares Plan prepared by the Service Provider in accordance with paragraph 2.1 shall include:

- (a) a clear and quantified description of the planned structure and policy to be adopted by the Service Provider in respect of:
 - (i) the Creation of PTE/Protected Fares, such planned structure and policy to be at all times in compliance with the requirements of Schedule 5 of the Services Agreement and the Ticketing and Settlement Agreement; and

- (ii) the creation, setting, retailing and marketing of Unregulated Fares, consistent with the Good Operator Standard;
- (b) a detailed description as to how the Service Provider will Create, retail and market Fares consistent with the Good Operator Standard;
- (c) a detailed description of the Service Provider's planned expenditure and activities to advertise, market and promote the Passenger Services for the purposes of growing passenger revenue in each Service Year, including details of the arrangements that the Service Provider will put in place for the purposes of measuring the effectiveness of such planned expenditure and activities; and
- (d) specify any new fares and ticketing measures that the Service Provider wishes to implement including any Fares trials or simplification measures as approved by the Secretary of State.

3. Changes to the Fares Plan

- 3.1 Subject to paragraph 3.2 and paragraph 3.3, for each Fares Setting Round the Service Provider shall Create such Fares as are specified in the Fares Plan.
- 3.2 The Service Provider shall, in advance of every Fares Setting Round review:
- (a) whether changes are necessary to the Fares Plan or the price or terms of any Fare specified in the Fares Plan; and
 - (b) if so, what the changes to the Fares Plan or any such Fare should be,
- and in doing so the Service Provider shall act in a reasonable and proper manner and consistent with its obligations to act as a Good and Efficient Operator.
- 3.3 By no later than week 4 of each Fares Setting Round, the Service Provider shall provide to the Secretary of State details (including supporting documentation) of any Fare specified in the Fares Plan where, in the reasonable opinion of the Service Provider, the Creation of such Fare would require the Service Provider to act other than to a Good Operator Standard, together with:
- (a) a detailed explanation of the reasons for the Service Provider's opinion pursuant to paragraph 3.3 and, if applicable, an explanation of the changes that would need to be made to the Fares Plan to ensure that the Creation of any Fares specified in such amended Fares Plan in any subsequent Fares Setting Rounds would not require the Service Provider to act other than to a Good Operator Standard;
 - (b) the details of such alternative Fare (including the Price or Child Price (as the case may be) and the terms of such alternative Fare) that it wishes to Create in place of the relevant Fare contained in the Fares Plan (plus supporting documentation to evidence that Creation of such Fare would not require the Service Provider to act other than to a Good Operator Standard ("**Alternative Fare**")); and
 - (c) written confirmation from a statutory director of the Service Provider which confirms that Creation of the Alternative Fare would not require the Service Provider to act other than to a Good Operator Standard.
- 3.4 On receipt of the information required by paragraph 3.3, the Secretary of State may, by no later than week 9 of each Fares Setting Round, by notice to the Service Provider:

- (a) confirm the Secretary of State’s agreement to the modification of the Fares Plan as proposed by the Service Provider pursuant to paragraph 3.2 and the Fares Plan as so modified shall apply indefinitely (in accordance with the terms of this paragraph (3.4(a)) or such alternative period as the Secretary of State may specify; or
- (b) decline to agree the modification, in which case the Service Provider shall continue Create Fares in accordance with the requirements of the Fares Plan as required by paragraph 3.1.

If the Secretary of State does not notify the Service Provider within the time specified, the Secretary of State shall be deemed to have declined to agree and the provisions of paragraph 3.4(b) shall apply.

Withdrawn

SCHEDULE 6

SERVICE SPECIFIC OBLIGATIONS AND COMMITTED OBLIGATIONS

Schedule 6.1:	Franchise Specific Obligations
	Part 1: NOT USED
	Part 2: NOT USED
	Part 3: Franchise Specific Obligations
	Part 4: Bespoke Obligations
Schedule 6.2:	Committed Obligations
	Part 1: List of Committed Obligations
	Part 2: Special Terms related to the Committed Obligations
Schedule 6.3:	NOT USED
Schedule 6.4:	Alliances
Schedule 6.5:	NOT USED
Schedule 6.6:	NOT USED

Withdrawn

Schedule 6.1

Franchise Specific Obligations

PART 1 – NOT USED

Withdrawn

PART 2 – NOT USED

Withdrawn

PART 3 – SERVICE SPECIFIC OBLIGATIONS**1A Entitlements from and claims against third parties**

1A.1 It is acknowledged by each of the Secretary of State and the Service Provider that the Service Provider:

- (a) is entitled to payments from Network Rail and, where relevant, third parties pursuant to:
 - (i) Schedule 4 and Schedule 8 of the Track Access Agreement;
 - (ii) Parts F and G of the Network Code;
 - (iii) Parts C3.2, C3.4 and Part L of the Depot Access Conditions;
 - (iv) Part C3.2, C3.4 and Part L of the Station Access Conditions,

in order to compensate the Service Provider against, inter alia, costs and losses arising from certain events specified in the provisions referred to in paragraphs 1A.1(a)(i) to (iv) above; and

- (b) may become entitled to payments from third parties pursuant to claims or other contractual rights against those third parties in order to compensate the Service Provider against, inter alia, costs and losses for which that third party is contractually liable, and

the rights and entitlements referred to in paragraphs 1A.1(a) and 1A.1(b) shall for the purposes of this paragraph 1A be referred to as the “**Compensation Rights**”.

1A.2 Accordingly the Service Provider:

- (a) hereby agrees to hold the benefit of the Compensation Rights on trust for the benefit of the Secretary of State; and
- (b) without limiting paragraph 1A.2(a) shall, immediately on demand, indemnify the Secretary of State for any loss that is suffered by the Secretary of State as a result of an event for which the Service Provider is compensated pursuant to the Compensation Rights provided that:
 - (i) the Service Provider's maximum liability under the indemnity specified in this paragraph 1A.2(b) shall not exceed the amount that the Service Provider actually receives from Network Rail or a relevant third party in respect of any claim under the Compensation Rights; and
 - (ii) there shall be no double recovery by the Secretary of State pursuant to paragraphs 1A.2(a) and 1A.2(b).

PART 4 – BESPOKE OBLIGATIONS**1. Efficiency Benefit Share**

- 1.1 The Service Provider 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 or otherwise change its position (opted in or out) in respect of the Efficiency Benefit Share Mechanism.

2. Stations related provisions**Inclusive design**

- 2.1 The Service Provider shall ensure that all renewal, enhancement and other building works at Stations are implemented in accordance with the Principles of Inclusive Design.

Addressing issues of security, antisocial behaviour and crime at Stations

- 2.2 The Service Provider shall, on a continuous basis during the Service Term, 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 in each case take active and vigorous steps to address, minimise and avoid future instances of anti-social behaviour and criminality at Stations taking account of such data. The Service Provider may comply with its obligations to monitor and record incidents under this paragraph by providing copies of relevant information provided by the Service Provider to the British Transport Police where such information is relevant.

- 2.3 The Service Provider 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 Service Provider's compliance with the requirements of paragraph 2.2 above.

3. Co-operation with Local Authority Increment and Decrement schemes

Without prejudice to its other obligations to the Secretary of State pursuant to this Agreement the Service Provider shall fully and effectively co-operate with relevant Local Authorities and act reasonably and in good faith in its engagement with each of them in relation to any Local Authority Increment Schemes and/or Local Authority Decrement Schemes proposed by a Local Authority during the Service Term.

4. Interface with Rail North Partnership and Transport for the North

- 4.1 The Service Provider:

- (a) agrees that it shall co-operate with the Secretary of State and Transport for the North for the purposes of facilitating the management of this Agreement;
- (b) acknowledges the Rail North Partnership Agreement and the matters relating to each party to that agreement; and
- (c) shall at the request of the Secretary of State, deliver to Secretary of State and/or Transport for the North (as the case may be) such information as may be reasonably required for the purposes of Rail North Partnership committees and meetings (and any other meetings as the Secretary of State may request); and

- (d) shall attend Rail North Partnership committees and meetings, and any other meetings, at the request of the Secretary of State, the representatives of the Service Provider being appropriate to the matters under discussion at such committees and meetings.

5. Heaton Depot and Neville Hill Depot – IEP

5.1 The Service Provider, for so long as it remains Depot Facility Owner of Heaton Depot and Neville Hill Depot (the "**IEP Depots**"), shall co-operate and engage constructively and in a timely fashion with the Secretary of State, Agility Trains East Limited, Hitachi Rail Europe Limited (the "**Maintainer**"), Network Rail and other relevant third parties in relation to the provision of services and facilities required to support the ongoing maintenance of the Intercity Express Trains ("**IEPs**") by the Maintainer at the IEP Depots, being those services and facilities set out in the document in the agreed terms marked "**IEPR**" (the "**IEP Requirements**"). Such co-operation and engagement shall include (but not be limited to):

- (a) supporting third parties in planning for and facilitating implementation of the Enabling Works;
- (b) acting in good faith in relation to the agreement of revised depot access arrangements to reflect the provision of the required services and facilities; and
- (c) once revised depot access agreements have been agreed, complying with such agreements by providing the IEP Requirements to the Maintainer for the duration of the Service Term.

5.2 For the purposes of this paragraph 5, "**Enabling Works**" means those works required to be performed at each of the IEP Depots pursuant to implementation agreements between the Maintainer and Network Rail, which are necessary to ensure that:

- (a) each IEP Depot is compatible with the IEPs; and
- (b) the Service Provider and/or the Maintainer (as applicable) is capable of performing the maintenance of the IEPs for use on railway passenger service and making IEPs available to operators of railway passenger services at each of the IEP Depots.

6. Journey Time Improvements

6.1 With respect to the feasibility study and report produced under the Previous Franchise Agreement which identifies options ("**JIT Options**") for delivering journey time improvements on Routes (the "**JIT Report**" in agreed terms marked "**JITR**"), the Service Provider shall:

- (a) promptly respond to the Secretary of State's reasonable queries in relation to the JIT Report (including the provision of such assistance as the Secretary of State may reasonably require in connection with the verification of any information contained in such report); and
- (b) upon reasonable notice, attend any such meeting as the Secretary of State may reasonably require for the purposes of discussing the contents of the JIT Report.

6.2 The Service Provider shall, at the request of the Secretary of State, co-operate with Network Rail and other relevant Stakeholders to undertake further development and, if appropriate, implementation of any or all of the JIT Options. The Secretary of State and the Service Provider acknowledge and agree that if any or all of the JIT Options are to be implemented this will be by way of amendment to the Train Service Requirement or by the Secretary of State requiring a variation to this Agreement in accordance with Clause 17.

7. Boxing Day Services

7.1 The Service Provider shall:

- (a) in each Service Year, consult with the Secretary of State and such persons as the Secretary of State may nominate in respect of identifying the passenger services to be operated on 26 December in that Service Year in accordance with the Train Service Requirement ("**Boxing Day Services**"). Such consultation shall take place prior to any application made by the Service Provider to Network Rail in respect of those passenger services;
- (b) without limiting the Service Provider's obligations under Part 2 of Schedule 1.1, the Service Provider shall provide prompt update reports to the Secretary of State of any changes to the proposed Boxing Day Services which arise following the application made to Network Rail in respect of the same; and
- (c) in each Service Year, provide such information and proposals as the Secretary of State may require with respect to supporting the operation of passenger services (including the opening of Stations) on 26 December in that Service Year and shall comply with any directions by the Secretary of State in that regard.

8. Co-operation with third party promoted franchise schemes

8.1 The Service Provider shall at all times during the Service Term as requested by the Secretary of State fully and effectively co-operate with the Secretary of State, the Welsh Ministers, Network Rail, any Local Authority and/or any relevant third party (each, other than the Secretary of State, being for the purposes of this paragraph 8 a "**Relevant Third Party**") in the development and implementation of plans and proposals to:

- (a) enhance existing stations;
- (b) open new stations;
- (c) open new rail routes, or re-open existing rail routes that are not currently used to operate regular passenger services;
- (d) regenerate and redevelop the area of or immediately surrounding stations; and
- (e) otherwise enhance rail infrastructure.

8.2 The obligation to co-operate pursuant to paragraph 8.1 shall include the Service Provider carrying out in a timely manner all the activities and actions reasonably required to be carried out or taken by a Train Operator who:

- (a) in the case of paragraph 8.1(a) only, is the Facility Owner at the relevant station;
- (b) in any of cases of paragraphs 8.1(a)-(e) (inclusive) is or is likely to be a provider of passenger services at the station or on the route in question.

8.3 Without limiting the above, the obligation to co-operate pursuant to paragraph 8.1 shall also include:

- (a) attending meetings with the Secretary of State, Network Rail, a Local Authority or any Relevant Third Party (as the case may be);
- (b) reviewing and commenting on the implementation and programme plans for the development of a brand new station;
- (c) providing analysis and advice to the Secretary of State and any Relevant Third Party in relation to station location and design, timetabling, staffing, marketing, rolling stock and other relevant operational and practical issues;

- (d) negotiating in good faith with the Secretary of State and/or any Relevant Third Party with a view to reaching agreement with that person in relation to the terms (including price) for provision of Passenger Services at any new station or on any new or re-opened rail route;
- (e) maintaining records of usage and financial performance of passenger services calling at the relevant stations or operating on the relevant routes;
- (f) make available those records to the Secretary of State or Relevant Third Party;
- (g) co-operate with any reasonable request by the Secretary of State or Relevant Third Party to undertake a review of the operational and financial performance of the Passenger Services at the relevant stations or on the relevant routes (including their value for money); and
- (h) in the case of paragraph 8.1(a) or 8.1(b) above only, using reasonable endeavours to achieve any necessary amendments to any Station Lease or enter into new station leases as may be required for the purposes of the development and implementation of any such new station.

9. Branding

- 9.1 The Service Provider shall continue to use the co-branding as was used by the Previous Franchisee (and in the same way as used by the Previous Franchisee) in the operation of the Services immediately prior to the Service Commencement Date (except as agreed by the Secretary of State from time to time, including to take into account any adjustments reasonably necessary to take into account matters which are consequential on compliance by the Service Provider with its other obligations under this Agreement) by continuing to co-brand each Station listed in the document in the agreed terms marked "CBS" in the same manner as applied immediately prior to the Service Commencement Date and as specified in relation to such Station in the agreed terms document "CBS".
- 9.2 The Secretary of State may review, provide comments and/or require the Service Provider to update the CBS from time to time and the Franchisee shall update the CBS and submit the revised draft of the CBS for the Secretary of State's approval as soon as is reasonably practicable. Following the approval of the revised draft of the CBS by the Secretary of State (such approval not to be unreasonably withheld) and if the Secretary of State requires no further amendments to be made to the revised draft of the CBS by the Service Provider, then the approved draft of the CBS shall become the updated "CBS".

10. Barton-on-Humber Transfer

- 10.1 The Service Provider shall, from the Barton-on-Humber Transfer Date and at the request of the Secretary of State:
- (a) assign, novate or surrender its rights under the Station Leases applicable in respect of the following Stations. The terms of any such assignment, novation or surrender shall be as set out in paragraph 4.2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases):
 - (i) Barrow Haven;
 - (ii) Barton-on-Humber;
 - (iii) Goxhill;
 - (iv) Great Coates;

- (v) Grimsby Docks;
- (vi) Harbrough;
- (vii) Healing;
- (viii) New Clee;
- (ix) New Holland;
- (x) Stallingborough;
- (xi) Thornton Abbey; and
- (xii) Ulceby; and,

from the date of any such assignment, novation or surrender of rights, the aforementioned stations shall cease to be Stations for the purposes of this Agreement. The Service Provider shall not object to any application made by the Train Operator of the East Midlands franchise under the Ticketing and Settlement Agreement to become the Lead Operator in respect of the Compulsory Inter available Flows between Barton-on-Humber and Cleethorpes.

- 10.2 The provisions of paragraph 2.1 of Schedule 15.1 (Related Provisions) shall apply, mutatis mutandis, to the proposed remapping of the passenger services and the transfer of the Stations as if the proposed remapping and transfer were a part of this Agreement.
- 10.3 The Service Provider shall co-operate and engage constructively with the Secretary of State and the Train Operator of the East Midlands franchise in relation to the proposed remapping of the passenger services and the transfer of the Stations as required under paragraph 10.1.
- 10.4 The Service Provider shall use all reasonable endeavours to agree and enter into any trading arrangement with the Train Operator of the East Midlands franchise as may be necessary to allow the Service Provider to continue to operate the Passenger Services between Barton-on-Humber and Cleethorpes until the Barton-on-Humber Transfer Date.

11. The TransPennine Route Upgrade

- 11.1 The Service Provider and the Secretary of State acknowledge that:
 - (a) the timing of the TransPennine Route Upgrade is uncertain and may be completed in phases (with potentially a few years between the completion of each such phase); and
 - (b) if a TransPennine Route Upgrade is completed during the Service Term it is likely that the Secretary of State will wish to vary the Services to ensure that the outputs of a TransPennine Route Upgrade Infrastructure are appropriately utilised.
- 11.2 The Service Provider shall from the Service Commencement Date until the completion of a TransPennine Route Upgrade engage constructively with Network Rail and all other relevant parties responsible for the delivery of it with the intention of assisting its timely, efficient and cost effective completion.
- 11.3 The Service Provider acknowledges the role of the TransPennine Express Franchisee as the delivery partner to the Secretary of State in relation to the planning of the TransPennine Route Upgrade and accordingly it shall use all reasonable endeavours to co-operate with the TransPennine Express Franchisee to facilitate its role of leading and co-ordinating train operator input into the planning and delivery process for a TransPennine Route Upgrade with the intention that the TransPennine Route Upgrade is to the greatest extent reasonably practicable:

- (a) designed in a way that optimises the ability of train operators to utilise the outputs of the TransPennine Route Upgrade; and
- (b) delivered in a cost efficient and effective manner balancing the needs to avoid undue disruption to passenger services and facilitate appropriate possessions.
- 11.4 To the extent that the TransPennine Route Upgrade leads to the Service Provider having rights under railway industry procedures (including Network Change and Station Change) the Service Provider shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of such TransPennine Route Upgrade and the Service Provider 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 Service Provider in accordance with the relevant railway industry procedures.
- 11.5 The Service Provider shall fully and effectively co-operate with the Secretary of State and Network Rail in the development and amendment of the specification of the TransPennine Route Upgrade in accordance with the reasonable requirements of the Secretary of State. The Service Provider may be required to provide its opinion, as a skilled and experienced train operator, on the operational and commercial impacts of the proposed specification and any amendment to it and the benefits and disbenefits of different options to achieve the output specification required by the Secretary of State. The Service Provider may be required to comment on rolling stock implications of options under consideration.
- 11.6 The Secretary of State may at any time issue a Request for a TransPennine Route Upgrade Services Proposal. The matters to be addressed in the TransPennine Route Upgrade Services Proposal shall be those specified by the Secretary of State and may include:
- (a) the implications of proposed changes to the Train Service Requirement;
- (b) the acquisition of electrically powered rolling stock and related depot facilities and stabling solutions and their specification;
- (c) proposals for a cascade of diesel rolling stock expected to be displaced by new electric rolling stock;
- (d) the implications for the Franchise Employees including in relation to training and recruitment;
- (e) support of integration of new electrically powered rolling stock and new infrastructure and the management of delivery and commissioning of new rolling stock and depot and stabling facilities;
- (f) potential staged changes to the specification of the Passenger Services in consequence of any staged completion of the outputs of the TransPennine Route Upgrade; and
- (g) the impacts of consequent alterations to costs and revenues.

The Service Provider shall submit the TransPennine Route Upgrade Services Proposal on or before such date as the Secretary of State shall reasonably specify.

- 11.7 The Service Provider shall provide such further or additional information as the Secretary of State may reasonably require for the purposes of considering and developing the TransPennine Route Upgrade Services Proposal and shall meet with the Secretary of State for discussion purposes as the Secretary of State shall reasonably require.
- 11.8 The Secretary of State may require a variation to this Agreement in accordance with Clause 17 to implement the changes to the Services reasonably required to utilise the outputs of a TransPennine Route Upgrade.

12. **Acceptance of Tyne & Wear Metro tickets on Passenger Services operating on the T&WPTE Flows**

Tickets which are valid for travel on Tyne & Wear Metro on the T&WPTE Flows (being those flows referred to in the definition of T&WPTE Fare) shall be accepted by the Service Provider, without further charge, for travel on the Passenger Services on the T&WPTE Flows.

13. **Through Fares Between City Line Stations And Northern or Wirral Line Stations**

Where the Service Provider is the Lead Operator in respect of a Flow in either direction between any City Line Station and any Northern Line Station or Wirral Line Station, the Service Provider shall not set the Price or Child Price of any Fare between any City Line Station and any Northern Line Station or Wirral Line Station in either direction at an amount which is greater than the sum of the Price or Child Price (as the case may be) of the same or equivalent Fare for that part of the journey which is between City Line Stations and the Price or the Child Price (as the case may be) of the same or equivalent Fare for that part of the journey which is between Northern Line Stations and/or Wirral Line Stations.

14. **Termination rights prior to the Acceptance of the New DMUs and the New EMUs**

14.1 The Service Provider shall keep the Secretary of State fully informed of progress in relation to the performance by the Manufacturer of its obligations pursuant to the New DMU MSA and the New EMU MSA (as the case may be). In particular the Service Provider shall keep the Secretary of State updated on progress in relation to compliance with the anticipated delivery schedule of New DMUs and the New EMUs and risk that a Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right will become exercisable prior to the date upon which all of the New DMUs and New EMUs that have been ordered have been Accepted. In the absence of significant unforeseen adverse developments (in which case the Service Provider shall keep the Secretary of State promptly informed), the Service Provider may keep the Secretary of State so informed through the regular reporting contemplated at paragraph 17 of Part 2 of Schedule 6.2 (Committed Obligations and Related Provisions).

14.2 The Service Provider shall consult with the Secretary of State if the Minimum Fleet Requirement Termination Right has become exercisable or is likely to become exercisable or if any Manufacturer Events of Default Termination Right has become exercisable or is likely to become exercisable prior to the date upon which all of the New DMUs and New EMUs which have been ordered have been Accepted. The Service Provider shall not exercise the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right prior to the date upon which all of the New DMUs and New EMUs that has been ordered have achieved Accepted Unit status without the prior consent of the Secretary of State.

14.3 If the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right has arisen or the Secretary of State believes that there is a material risk that the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right may arise the Secretary of State may serve a notice on the Service Provider requiring it to produce a draft of a plan to a reasonable specification provided with the notice to mitigate the direct or indirect impact of the exercise of the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right ("**Termination Mitigation Plan**"). The draft Termination Mitigation Plan shall be provided with a reasonably detailed analysis taking account of the circumstances backed by relevant data and assumptions of:

- (a) all cost and revenue and other financial implications of options contained within;
- (b) the implications (if any) for the Benchmarks; and
- (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

The Service Provider shall meet with the Secretary of State to discuss the Termination Mitigation Plan and provide such further information or analysis and further iterations of the draft Termination Mitigation Plan as the Secretary of State shall reasonably require. The Secretary of State and the Service Provider shall use all reasonable endeavours to agree the terms of the Termination Mitigation Plan and in the absence of agreement the Secretary of State shall have the right to reasonably determine such terms.

- 14.4 If the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right is exercised prior to the date upon which all of the New DMUs and/or New EMUs that have been ordered have achieved Accepted Unit status the Secretary of State shall have the right to require the Service Provider to comply with the Termination Mitigation Plan as agreed or as reasonably determined by the Secretary of State.
- 14.5 For the purposes of this paragraph 14:
- (a) **"Accepted Unit"**, **"Owner"** and **"Manufacturer"** shall each have the meaning ascribed to it in the New DMU MSA and the New EMU MSA (as the case may be);
 - (b) **"New DMUs"** and **"New EMUs"** shall each have the meaning given to it in paragraph 1 of Schedule 6.2 (Committed Obligations);
 - (c) **"Manufacturer Events of Default Termination Right"** means the right given to the Service Provider jointly with the Owner pursuant to:
 - (i) in relation to the New DMUs, clause 31 of the New DMU MSA; and
 - (ii) in relation to the New EMUs, clause 31 of the New EMU MSA,
 in each case to terminate such agreement in specified circumstances;
 - (d) **"Minimum Fleet Requirement Termination Right"** means the right given to the Service Provider jointly with the Owner pursuant to:
 - (i) in relation to the New DMUs, clause 32 of the New DMU MSA; and
 - (ii) in relation to the New EMUs, clause 32 of the New EMU MSA,
 in each case to terminate such agreement if a minimum quantity of New DMUs and New EMUs are not supplied by a specified date;
 - (e) **"New DMU MSA"** means the manufacture and supply agreement in respect of the fleet of 25 x 2 car and 30 x 3 car Civity UK diesel multiple units and associated equipment dated 21 January 2016 and originally entered into between Construcciones y Auxiliars de Ferrocarriles, SA, European Rail Finance (GB) Limited and Arriva Rail North Limited; and
 - (f) **"New EMU MSA"** means the manufacture and supply agreement in respect of the fleet of 12 x 4 car and 31 x 3 car Civity UK electric multiple units and associated equipment dated 21 January 2016 and originally entered into between Construcciones y Auxiliars de Ferrocarriles, SA, European Rail Finance (GB) Limited and Arriva Rail North Limited.

15. Bilateral Arrangements

- 15.1 The Parties agree and acknowledge that the Bilateral Arrangements are necessary for the effective delivery of the Services.
- 15.2 In respect to those Bilateral Arrangements that have not been assigned or novated to the Service Provider at the Service Commencement Date the Service Provider shall, in respect of such arrangements, use all reasonable endeavours to either (as the case may be):

- (a) accede to the terms of the relevant Bilateral Agreement; or
- (b) enter into a new contract with the relevant counterparty on terms that are substantially the same or similar to the relevant Bilateral Arrangement,

in either case within three (3) months of the Service Commencement Date.

15.3 For the purposes of this paragraph 15, **"Bilateral Arrangements"** means the contracts or arrangements listed and described in Appendix 1 to this Part 4 of Schedule 6.1 to which the Previous Franchisee was a party.

Withdrawn

APPENDIX

Bilateral Arrangements

Local Authority	Agreement/ arrangement and description
<p>West Yorkshire Combined Authority</p>	<p>Rail Park & Ride Phase 1: Garforth. Section 56 agreement dated 16 May 2018</p>
	<p>Rail Park & Ride Phase 1: Garforth. Further Section 56 agreement dated 19 June 2019</p>
	<p>Rail Park & Ride Phase 1: Steeton and Silsden. Section 56 agreements dated 11 December 2009</p>
	<p>Rail Park & Ride Phase 1: Hebden Bridge Normanton Mirfield A&C Mytholmroyd Shipley Steeton & Silsden South Elmsall Section 56 agreements dated January 2017</p>
	<p>Rail Park & Ride Phase 1: Hebden Bridge. Further Section 56 agreement dated August 2017.</p>
	<p>Rail Park & Ride Phase 1: Mytholmroyd. Further Section 56 agreement dated March 2018.</p>
	<p>Rail Park & Ride Phase 1: Mytholmroyd. Further Section 56 agreement dated 18 November 2019.</p>
	<p>Rail Park & Ride Phase 1: Moorthorpe. Section 56 agreement dated 02 May 2018.</p>
	<p>Rail Park & Ride Phase 1: Mirfield. Section 56 agreement dated 5 January 2018.</p>
	<p>Rail Park & Ride Phase 1 : Steeton & Silsden Shipley Further Section 56 agreements dated 2 May 2018.</p>
	<p>Development – Station Improvement: Castleford. Section 56 agreement dated 27 February 2018.</p>
	<p>Development – Station Improvement: Castleford. Further Section 56 agreement dated 23 August 2018.</p>
	<p>Development – Station Improvement: Castleford. Further Section 56 agreement dated October 19.</p>
	<p>Development Car Park Extensions: New Pudsey. Section 56 agreement dated October 2018.</p>
	<p>Development New Stations: White Rose. Memorandum of Understanding</p>
	<p>Rail Park and Ride Programme: Phase 1 Sites</p>
	<p>Partners on Park and Ride Programme Board: Steering of the Park and Ride sites programme. Heads of Terms.</p>
	<p>Future Car Park Extensions: Normanton</p>
<p>Future Car Park Extensions: Moorthorpe</p>	
<p>Future Car Park Extensions: Shipley</p>	

Withdrawn

	<p>WYCA Owned Rail Car Parks: Low Moor. Dated September 2017.</p> <p>Maintenance and management of WYCA owned Rail Car Parks: Apperley Bridge Glasshoughton Brighouse Steeton & Silsden</p> <p>WYCA Leased Car Park: Keighley</p> <p>Station assets provided by WYCA: Station signage, appearance and assets</p> <p>Sign totems on railway land: Station signage, appearance and assets</p> <p>ITSO Smart Card readers at stations. Dated March 2016</p> <p>Patronage data. Non-disclosure agreement dated 11/11/2019.</p> <p>Car Park Charging: Castleford (payment of enforcement proceeds to Wakefield Council)</p> <p>Car Park Charging: Wakefield Kirkgate (charging and proceeds)</p> <p>Lease agreement: Bradford Interchange</p>
NEXUS	<p>Sunderland Station – Boxing Day opening</p> <p>Recognition of NERMU’s roles and responsibilities</p>
SYLTE/ Sheffield City Region	<p>Penistone CCTV: £8,000 SYLTE Contribution to wider station improvements (Purchase Order: RAIL1789377)</p> <p>Kirk Sandall CCTV: SYLTE Contribution to deliver CCTV improvements (Purchase Order: RAIL1780937)</p> <p>Adwick Station – Building Maintenance: Repair damage to SYLTE building after removal of rail ticket machine</p> <p>License Agreement for SIF Assets installed on SYLTE land - Several assets (Ticket Machine) installed on SYLTE land and use of SYLTE utilities</p> <p>SIF (Accessibility Hub) Barnsley Station - Proposed works affect SYLTE’s sub-leased area and associated responsibilities</p> <p>TCF (Transforming Cities Fund) - Support delivery of new facilities incorporated within the SYLTE TCF bid</p> <p>Tram/Train Rotherham Central - Provision of services related to operating new level platforms at Rotherham Central station relating to the tram train service</p>
Transport for Greater Manchester	<p>Long Term Charge Horwich Parkway Rail Station – payment to TfGM (as SFO and owner of station assets) of a Long Term Charge</p> <p>Horwich maintenance and OPEX - includes events mgt. costs Bolton Wanderers match days (contracting out the day to day operation and maintenance of the station to Service Provider)</p> <p>Altrincham-ticket commission sales (TfGM sales of Rail Tickets)</p> <p>Ticket acceptance scheme - for ticket acceptance at times of disruption</p> <p>RSIS Schemes - TfGM funded station improvement schemes which are delivered by the Service Provider</p>
Merseytravel	<p>Prescot station - Access and park and ride. Delivery of new lifts and improved park and ride in conjunction with other work within the Liverpool City Region.</p> <p>Broad Green – Access - Delivery of GRIP 3 design for new lifts. This is funded partly through Access for All and will require a delivery contract in the near future.</p>

Withdrawn

	Newton-le-Willows - Park and Ride - Lease agreement between LCR and the Service Provider to maintain and operate the park and ride owned by the LCR
	City Lines - Voluntary ticketing scheme and concessionary passes. Acceptance and retail of multi operator and modal ticketing and of local concessionary passes

Withdrawn

Schedule 6.2

Committed Obligations

PART 1 - COMMITTED OBLIGATIONS

1. Definitions

1.1 In this part 1 of Schedule 6.2 except to the extent the context otherwise requires the following words and expressions have the following meanings:

- “100 Day Review”** has the meaning given to it in paragraph 2.1 of Part 1 of Schedule 6.2;
- “319 FLEX Project”** means the project involving all design, modification works and testing required to convert eight (8) Class 319 units from electric multiple units to bi-mode multiple units;
- “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;
- “BlueAssist Scheme”** means the system, promoted by BlueAssist UK Limited, which enables any person with difficulty communicating to ask for help or assistance using a BlueAssist Card;
- “BlueAssist Card”** means a card provided through the BlueAssist Scheme and on which a person can write any requests or queries for the purposes of communicating with Franchise Employees;
- “Car Parking Scheme Business Case”** has the meaning given to it in paragraph 54.3 of Part 1 of Schedule 6.2;
- “Car Parking Schemes”** has the meaning given to it in paragraph 54.1 of Part 1 of Schedule 6.2;
- “Current Innovation Schemes”** has the meaning given in paragraph 7.1;
- “Darwin”** means a train running information system known by that name in the rail industry in Great Britain and which provides real-time arrival and departure predictions, platform numbers, delay estimates, schedule changes and cancellations;
- “Deep Clean Specification”** means a clean to the highest standard reasonably obtainable of both the interior and exterior of relevant rolling stock vehicles including a clean of the interior of all toilet cubicles, all upholstery, floor coverings,

windows, ceilings, walls, body sides and other visible surfaces;

“Eyewatch”

has the meaning given to it in paragraph 42.1;

“Flexi-Season Fare”

means a Fare which entitles the purchaser to make specified number of journeys as that purchaser may choose to purchase during the period for which, and between the stations for which, such Fare is valid;

“Inclusive Hub”

means a station fully inclusive to all users of such station regardless of ability and which includes the following facilities and services:

- (a) improved journey opportunities getting to and from such station;
- (b) improved wayfinding and signage;
- (c) provision of an obstacle and step free route from the point of arrival at such station to the point of boarding a train at such station including equipment to improve mobility such as handrails, automatic doors, resting places, tactile surfaces (wayfinding), and improved signage and pictograms;
- (d) provision of toilets that can be used by all persons including Disabled Persons;
- (e) improved access to information for all, particularly during times of disruption to the Passenger Services departing or arriving at such station;
- (f) offering other inclusive transport or helping the passenger to complete their journey; and
- (g) provision of customer service and assistance by the Franchise Employees who have been adequately briefed and trained to provide such customer services and assistance;

“Internal CCTV Specification”

means closed circuit television in rolling stock vehicles which gives good visibility in relation to all areas of such rolling stock vehicles to which passengers have access including all inter-carriage gangways, external doors and

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internal doors including to drivers cabs and toilets;

“Living Wage”

means an hourly rate which is calculated independently (and updated annually) by the Living Wage Foundation according to the basic cost of living in the United Kingdom, and which is, at the Service Commencement Date, £8.21 (pounds sterling eight and twenty-one pence);

“Minimum Wi-Fi Service Requirements”

means as follows:

(a) the Wireless Internet Service shall permit passengers connected to such service to browse web pages on the internet and send and receive mails electronically through any mobile, tablet or computer device they may use for this purpose; and

(b) subject to the availability of the Train To Internet Coverage the Wireless Internet Service shall be available for use by passengers at all times for the duration of each passenger's journey;

“New DMUs”

has the meaning given to it in paragraph 13.1;

“New EMUs”

has the meaning given to it in paragraph 14.1;

“Northern Connect Seats”

means the total number of seats diagrammed in accordance with the Train Plan to be provided on Northern Connect Passenger Services (the seating capacity of each relevant rolling stock unit to be determined by reference to seat capacity as specified in Column 3 of the tables in Schedule 1.6 (The Rolling Stock));

“Northern Trains Limited Employee”

an employee of the Service Provider

“Passenger Book Differentials”

means differences (other than roundings) between arrival times shown in any Timetable published by the Service Provider and the corresponding arrival times shown in any working timetable in accordance with which any Passenger Services are actually being operated;

“Passenger Information System Specification”

means the following specification for a passenger information system fitted to rolling stock vehicles:

(a) a public address system integrated with the real time dot-matrix

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passenger information system referred to below;

(b) a real time dot-matrix passenger information system capable of connecting via Wi-Fi to external sources of real-time information such as Darwin and displaying relevant information to passengers;

(c) an LCD screen in each carriage capable of connecting via Wi-Fi to external sources of real-time information such as Darwin and having at least the following functionality;

real time information on the progress of the relevant Passenger Service;

information relating to the next station at which the Passenger Service is to stop, including information about Connections; and

advice as to alternative passenger services available in the event of any delays or service disruption on the railway;

“Passenger Services Enhancement Options”

has the meaning given to it in paragraph 51.1 of Part 1 of Schedule 6.2 (Committed Connections);

“Platform Extension Projects”

In respect of each Station on the Routes specified in column (1) of Table 1 in Appendix 2 to this Part 1 of Schedule 6.2, the extension of each platform at that Station where such extension is required to facilitate the operation of trains of at least the length indicated in column (2) of Table 1 set out in in Appendix 2 to this Part 1 of Schedule 6.2;

“Seat Selector Tool”

has the meaning given to it in paragraph 50.4(c);

“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 equipment installed on trains to permit access to the internet;

“TVM”

means ticket on departure collect ticket vending machine accredited by RSP;

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“VideoAssist” means a bi-directional audio-visual link to connect customers with Franchise Employees providing customer service support;

“Wavelength Programme” has the meaning given to it in paragraph 52.2 of Part 1 of Schedule 6.2 (Committed Obligation);

“Wavelength Survey” has the meaning given to it in paragraph 52.2 of Part 1 of Schedule 6.2 (Committed Obligation); and

“Wireless Internet Service” has the meaning given to it in paragraph 19.1.

2. 100 Day Review

2.1 By no later than 8 June 2020, the Service Provider shall deliver to the Secretary of State the Service Provider’s ‘top to bottom’ review of all aspects of the Northern franchise, setting out its plans and proposals for delivery of the Services and its obligations pursuant to this Agreement in a way that provides real and tangible improvements across the Northern rail network and enhances customers’ experience (the **“100 Day Review”**). The 100 Day Review shall include:

- (a) a review of the management structure and organisation covering operational management, senior management and any regional structure;
- (b) the Service Provider’s strategy for restoring passenger satisfaction and experience to levels equal to or better than the NRPS scores achieved prior to May 2018, together with proposed metrics for monitoring passenger satisfaction for the purposes of Schedule 8.2 (Performance Review Provisions);
- (c) a strategy to support greater reliability and efficiency in the delivery of the Passenger Services, prepared in response to reflect the Terms of Reference – People Strategy;
- (d) a proposed methodology (including proposed milestones and targets) for monitoring the Service Provider’s performance in delivering resilient resource management through its people and train crew plans for the purposes of Schedule 8.2 (Performance Review Provisions);
- (e) proposals to improve delivery and promotion of Community Rail, sustainability and accessibility requirements;
- (f) proposals with respect to employee engagement and welfare including plans for the modernisation of employee facilities together with a proposed methodology for monitoring Northern Trains Limited Employee satisfaction for the purposes of Schedule 8.2 (Performance Review Provisions);
- (g) the Service Provider’s approach, proposals and initiatives for improving engagement with Stakeholders to include: (i) the Service Provider’s plans to develop and deliver a dedicated online portal for Stakeholders; (ii) proposals in relation to biannual surveys to gauge Stakeholder satisfaction against specified metrics for the purposes of Schedule 8.2 (Performance Review Provisions);
- (h) proposals for programme management to support delivery of future projects and initiatives whether delivered by the Service Provider, a Stakeholder, the Infrastructure Manager or a Train Operator;
- (i) any proposals for branding of the Northern franchise;

- (j) a detailed plan, which shall include a breakdown of all associated costings, demonstrating how the Service Provider will (i) provide the necessary equipment and systems and (ii) promote take-up by passengers in order to meet or exceed the Smart Media Target;
- (k) the Service Provider's Budget breakdown for the Service Term, such Budget to be within the Secretary of State's affordability envelope, together with proposed targets for revenue growth for the purposes of monitoring the growth of Outturn Passenger Revenue in accordance with Schedule 8.2 (Performance Review Provisions); and
- (l) the scope and timing of a business plan for the Northern franchise to address the long-term priorities of the Secretary of State, as advised by the Secretary of State, to reflect the recommendations from the Williams Rail Review and stakeholder views.

Where applicable, the Service Provider shall include within its 100 Day Review with respect to each of its plans, proposals and/or initiatives set out therein: (i) details of the projected implementation, operating and/or capital costs; and (ii) a programme for delivery.

2.2 The Secretary of State shall be entitled to:

- (a) request further information from the Service Provider with respect to any aspect of the 100 Day Review and the Service Provider shall submit such further information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or
- (b) require the Service Provider to attend meetings with the Secretary of State to discuss any aspect of the 100 Day Review at such time and place as the Secretary of State may reasonably require.

2.3 The Secretary of State shall be entitled to direct the Service Provider to:

- (a) make such amendments to any part of the 100 Day Review as the Secretary of State may specify from time to time; and
- (b) implement all or any part of the Service Provider's 100 Day Review (as may be amended by the Secretary of State pursuant to paragraph 2.3(a)) as the Secretary of State may specify from time to time.

The Service Provider shall comply with any directions issued by the Secretary of State in accordance with this paragraph 2.3 in such timescales as the Secretary of State may reasonably require and the Secretary of State shall be entitled to require amendments to this Agreement pursuant to Clause 17 (Variations) in order to give effect to such Secretary of State directions.

3. Diversity and Equality

3.1 Without prejudice to the provisions of Clause 9 (Compliance With Laws), the Service Provider shall use all reasonable endeavours to achieve by the Service Commencement Date and thereafter maintain an increase in the percentage of:

- (a) Northern Trains Limited Employees who are women by 33% as compared to the percentage of Northern Trains Limited Employees who are women as at 1 April 2016; and
- (b) Northern Trains Limited Employees who are of BAME origins by 42% as compared to the percentage of Northern Trains Limited Employees of BAME origins as at 1 April 2016.

4. Zero Work Hours and Living Wage

4.1 The Service Provider shall:

- (a) not at any time during the Service Term enter into a contract of employment with any person who is to become a Northern Trains Limited Employee whereby the terms and conditions of such contract of employment include no obligation on the Service Provider to offer minimum working hours to such a person or no obligation on such a person to accept any work offered by the Service Provider;
- (b) ensure that from the Service Commencement Date and throughout the Service Term all Northern Trains Limited Employees are paid at least the Living Wage.

4.2 The Service Provider shall use all reasonable endeavours to procure that the suppliers of goods and services relating to the delivery of the Services adopt in relation to their employees the requirements specified in paragraph 4.1.

5. Learning and Talent Management

5.1 From the Service Commencement Date and throughout the Service Term the Service Provider shall:

- (a) maintain and continue to implement a graduate recruitment programme for the recruitment of at least 5 university graduates every year during the Service Term and, with respect to the first year during the Service Term, including the part of that year preceding the Service Commencement Date, and
- (b) undertake the following programmes to encourage young people to join as Northern Trains Limited Employees in various fields:
 - (i) work with organisations such as the National Skills Academy for Railway Engineering, the UK Government National Apprenticeship Scheme and the Institute of Railway Operators and recruit and train:
 - (A) a minimum of 16 new engineering apprentices in each Service Year (other than the first Service Year) such that at any time there are a minimum of 16 engineering apprentices undergoing training within the Service Provider's organisation. The Service Provider shall use all reasonable endeavours to secure that each such new engineering apprentice completes a three year apprenticeship programme with the Service Provider's organisation; and
 - (B) apprentices over the Service Term in the roles of train planning, customer services and operations, using reasonable endeavours to recruit at least 3 apprentices in customer services and operations in each Service Year (other than the first Service Year) and at least 2 train planning apprentices in each Service Year (other than the first Service Year).

Each apprenticeship programme pursuant to this paragraph 5.1(b)(i) shall be for a period of at least 40 weeks for non-engineering roles and three years for engineering roles;

- (ii) introduce and offer to students attending universities and colleges based within the geographical area of the Services or living in the geographical area of the Services, such that in each Service Year (excluding the first Service Year) there are at least 10 placement schemes offered to such students, each such placement scheme to be offered for a duration of at least 44 weeks. Work in partnership with universities and colleges based within the geographical area of the Services to offer at least

50% of the above placements to students attending such universities and colleges; and

- (iii) recruit production trainees (with at least 3 such trainees being recruited every year during the Service Term and, with respect to the first year during the Service Term, including the part of that year preceding the Service Commencement Date) to undertake control, rostering and planning roles within the Franchise; and
- (c) in partnership with social housing trusts and social enterprise schemes located within the geographical area of the Services (such as organisations known as "Procure Plus" and the Trafford Housing Trust), provide opportunities for employment or structured work experience to be offered to persons who have faced difficulties in accessing employment (such as persons from deprived backgrounds, ex-offenders, people with learning disabilities or people who have experienced mental health difficulties) at an appropriate level to enable candidates to gain skills and qualifications in the Railway industry.

6. LED lighting

6.1 To deliver useful environmental benefits and significant cost-savings, by the end of the Service Term, the Service Provider shall replace all of the lighting at Depots and Stations with LED lighting where it does not exist as at the Service Commencement Date.

7. Innovation programme

7.1 The Service Provider will deliver the following schemes (which were commenced but uncompleted "Approved Innovation Schemes" for the purposes of and as defined in the Previous Franchise Agreement) (the "**Current Innovation Schemes**"):

- (a) Controller Qualification Pilot: develop an industry first qualification for Rail Controller roles;
- (b) Exploration of Alternative Fuelled Trains: development of proposals for commercially viable alternatively fuelled train vehicles;
- (c) Manchester Vic Living World Pilot: to determine the effectiveness of the removal of DEEE emissions in an enclosed environment with significant diesel combustion;
- (d) Combined CCTV and LED Units: a combined unit that offers advanced analytics, which in turn provides safety and security information to station staff and CCTV controllers;
- (e) Ill Passenger Support Tool: A mobile app that supports decision making to deliver the optimal solution for getting an ambulance to the person at the right station with the least delay; and
- (f) Capacity vs Demand (Phase 1 & 2): Provision of accurate data and improved insight into the capacity vs demand on the Passenger Services.

The Service Provider shall deliver the Current Innovation Schemes within those timescales as were previously approved by the Secretary of State pursuant to the terms of the Previous Franchise Agreement.

8. Hand held tablet devices and train crew depot Wi-Fi

8.1 The Service Provider shall ensure that all the operational hand held tablet devices issued to Franchise Employees who are train crew or train crew managers are integrated with the Service Provider's train crew management systems to provide access to train crew rostering information.

8.2 The Service Provider shall continue to ensure that all Franchise Employees who are train crew or train crew managers continue to be issued with operational hand held tablet devices with no less

capability than those issued to that category of employees as at the Service Commencement Date and that train crew depots operated by it are fitted with commissioned and operational Wi-Fi facilities.

9. Timetable Planning Rules and Passenger Book Differentials

9.1 By no later than the May 2021 Passenger Change Date (or such other date as may be specified by the Secretary of State), the Service Provider shall complete a systematic review of the values contained in the Timetable Planning Rules in respect of the Routes drawing on all data derived from GPS-based systems fitted to rolling stock units within the Train Fleet which is available for review. The review shall identify and make recommendations for:

- (a) Routes in respect of which it is reasonable to expect that Passenger Book Differentials could (from the May 2021 Passenger Change Date or a later date), be eliminated; and
- (b) actions required to achieve that elimination.

9.2 In undertaking the review referred to in paragraph 9.1, the Service Provider shall fully and effectively co-operate and consult with Network Rail including by:

- (a) sharing such GPS data as Network Rail may reasonably request, in such form as it may reasonably request; and
- (b) so far as practicable, taking into account Network Rail's comments and obtaining Network Rail's support for the Service Provider's recommendations or the reasons for Network Rail not being able to support the Service Provider's recommendations.

9.3 The Service Provider shall fully and effectively cooperate with Network Rail to develop new timetable planning rules as needed in respect of new build rolling stock to be leased by the Service Provider, and any other rolling stock for which the relevant rules do not currently exist for the Routes on which they will operate.

9.4 In addition and without prejudice to the provisions of paragraph 14.3 of Part 2 to Schedule 1.1 (Services and Service Development) and in relation to Passenger Services operating over each of the Routes the Service Provider shall:

- (a) use all reasonable endeavours to ensure that in respect of each Route there are no Passenger Book Differentials with effect from the date on which the review of the Timetable Planning Rules referred to in paragraph 9.1 has been completed or any later date by which any actions identified in the review in relation to such Route as being reasonably required to permit the removal of Passenger Book Differentials have been implemented; and
- (b) not seek, and shall use all reasonable endeavours to avoid, other amendments to the Timetable Planning Rules that would neutralise in whole or in part the impact of eliminating the positive impact on published journey times of removing any Passenger Book Differentials.

10. Train Crew Recruitment

10.1 By no later than the date which falls three (3) months after the Service Commencement Date, the Service Provider shall provide to the Secretary of State a comprehensive and accurate report setting out the Service Provider's:

- (a) latest assessment of the number of train crew required to be recruited and trained in order to operate the Timetable planned to commence on the Passenger Change Date in May 2021 in an operationally robust manner;

- (b) detailed plans for the recruitment and training of the necessary train crew, the progress that has been made to date (including by the Train Operator under the Previous Franchise Agreement) in achieving such plans; and
- (c) assessment of risks that may affect the successful delivery of the plans referred to in paragraph 10.1(b) above and any mitigating actions it proposes to take to address any identified risks,

(together the **"Recruitment Progress Report"**).

- 10.2 The Service Provider shall provide a comprehensive and accurate update to the Recruitment Progress Report and shall submit such updated Recruitment Progress Report (the **"Updated Progress Report"**) to the Secretary of State at least once every quarter or, in the event that the Service Provider identifies any material risks to the delivery of the Timetable to take effect from the May 2021 Passenger Change Date, as soon as is reasonably practicable from the date the Service Provider becomes aware of such material risk.
- 10.3 The Service Provider shall meet with the Secretary of State to discuss the Recruitment Progress Report and the Updated Recruitment Progress Report provided to the Secretary of State pursuant to paragraphs 10.1 and 10.2 as directed by the Secretary of State.
- 10.4 If the Secretary of State, acting reasonably, is not satisfied with any plans and/or mitigating actions contained in the Recruitment Progress Report and/or the Updated Recruitment Progress Report the Secretary of State may require the Service Provider to prepare and implement a reasonable and appropriate action plan or to take such steps as the Secretary of State may reasonably require (having first consulted with the Service Provider and taken due regard of its views).

11. Platform Lengthening

11.1 The Service Provider shall:

- (a) use all reasonable endeavours to procure the delivery of the Platform Extension Projects and that such extensions are delivered as soon as reasonably practicable following the Service Commencement Date, in each case except to the extent that the Secretary of State may (at the Secretary of State's absolute discretion) otherwise agree;
- (b) co-operate fully and effectively with Network Rail as necessary or desirable for the purpose of delivering and implementing the Platform Extension Projects; and
- (c) identify and take all steps required to apply in a timely and compliant fashion for any available funding from Network Rail or any other source for the delivery and/or implementation of the Platform Extension Projects.

12. Automatic Selective Door Opening capability of the Train Fleet

12.1 Unless the Secretary of State otherwise directs the Service Provider shall ensure that:

- (a) any rolling stock units that are, as at the Service Commencement Date, fitted with Automatic Selective Door Opening shall continue to be so fitted, and the equipment shall be maintained in working order; and
- (b) any Rolling Stock Related Contract entered into with respect to other rolling stock units intended to be part of the Train Fleet after the Service Commencement Date shall permit and facilitate the option for the Service Provider to procure the fitment of Automatic Selective Door Opening equipment to such rolling stock.

13. New Diesel Multiple Units

13.1 With respect to the 140 new Diesel Multiple Unit vehicles (“**New DMUs**”) formed into 25 two car units and 33 three car units referred to in Table 2 of Schedule 1.6 the Service Provider shall use all reasonable endeavours to introduce such rolling stock into unrestricted passenger carrying service as soon as reasonably practicable (which shall include all reasonable endeavours to ensure that the Lessor exercises its rights to procure the introduction of the New DMUs as soon as reasonably practicable).

14. New Electric Multiple Units

14.1 With respect to the 141 new Electric Multiple Unit vehicles formed into 31 three car units and 12 four car units referred to in Table 2 of Schedule 1.6 (“**New EMUs**”), the Service Provider shall use all reasonable endeavours to introduce such rolling stock into unrestricted passenger carrying service as soon as reasonably practicable (which shall include all reasonable endeavours to ensure that the Lessor exercises its rights to procure the introduction of the New EMUs as soon as reasonably practicable).

15. Delayed Rolling Stock

15.1 Where any new rolling stock to be introduced pursuant to the obligations of the Service Provider under any of paragraph 13 (New Diesel Multiple Units) or paragraph 14 (New Electric Multiple Units) is not introduced into unrestricted passenger carrying service by the relevant target date set out in each of the tables specified in Appendix 1 (a “**New Rolling Stock Delivery Delay**”) then, in any such case:

- (a) the Service Provider shall (unless directed otherwise by the Secretary of State) diligently enforce against the manufacturer of the new rolling stock all rights and entitlements as the Service Provider may have against that manufacturer as a consequence of the New Rolling Stock Delivery Delay;
- (b) the Service Provider shall, in accordance with paragraph 9 of Schedule 11.2 (Management Information), account to the Secretary of State any compensation or damages that are paid to the Service Provider pursuant to paragraph 15.1(a).

16. 319 FLEX Project

16.1 The Service Provider shall complete the 319 FLEX Project in such timescales so as to ensure that all eight (8) Class 769 rolling stock units are available for use in delivering Passenger Services by no later than the Passenger Change Date occurring in May 2020.

16.2 It is acknowledged that the Class 319 rolling stock units once modified pursuant to the 319 FLEX Project will be designated as Class 769 rolling stock units.

17. Timetable Readiness Report

17.1 Until such time as the Service Provider has complied with its obligations in paragraphs 14.1, 15.1 and 16.1, the Service Provider shall within 5 Weekdays of the end of each week, deliver to the Secretary of State the weekly timetable readiness report (in the form approved pursuant to the Previous Franchise Agreement). Such report shall include the following:

- (a) the ‘Ensuing Timetable Change Readiness’ dashboard, showing key activities and progress against these;
- (b) implementation risks and issues showing impact, mitigation and risk level by new train introduction to service phase;

- (c) the 'New Train Introduction Phase' map showing geography of services for outstanding introduction of the New EMUs and New DMUs;
- (d) a New EMUs and New DMUs progress update showing supply pipeline, highlights, upcoming activities key issues and actions;
- (e) a Class 769 vehicle progress update showing supply pipeline, highlights, upcoming activities key issues and actions;
- (f) details of the New EMUs and New DMUs in operation (in a tabular format) by phase intervention date showing vehicle class, construct total units in service and maintenance units;
- (g) driver training progress (in a tabular format) by class and phase showing depot, drivers trained, drivers required and projected training output by the next phase;
- (h) planned and actual driver training in a graphical format, by region;
- (i) bullet point summary of activities by phase;
- (j) bullet point summary of activities planned for the next Passenger Change Date;
- (k) retirement profile for the Class 142 and Class 144 vehicles, and
- (l) retention map showing geography of services operated by Class 142 and Class 144 vehicles and anticipated duration for such retention.

18. Fleet Refurbishment

- 18.1 By 28 September 2021, the Service Provider shall, unless otherwise agreed or specified by the Secretary of State:
- (a) undertake all refurbishment works to the standard specified in paragraph 18.2 on rolling stock vehicles within the Train Fleet as at the Service Commencement Date; and
 - (b) ensure that all rolling stock vehicles which become part of the Train Fleet after the Service Commencement Date are refurbished to the standard specified in paragraph 18.2.
- 18.2 The Service Provider shall ensure all refurbishment works meet the following specification:
- (a) recovering of all seats and the replacement of all seat cushions;
 - (b) new floor coverings throughout;
 - (c) repainting of all interior panels;
 - (d) powder coating of all grab poles and rails;
 - (e) a clean compliant with the Deep Clean Specification;
 - (f) full exterior repaint;
 - (g) fitting of Wi-Fi compliant with at least the Minimum Wi-Fi Service Requirements;
 - (h) fitting of at least one PRM TSI compliant toilet with baby-change facility per multiple unit;
 - (i) fitting of LED lighting, with lighting intensity complying with EN 13272 'Railway Applications – Electrical Lighting for Rolling Stock in Public Transport Systems';

- (j) fitting of a passenger information system compliant with the Passenger Information System Specification;
- (k) fitting of CCTV compliant with the Internal CCTV Specification;
- (l) fitted with a driver advisory system to advise the driver on the most economical method of driving consistent with good timekeeping;
- (m) fitted with forward facing CCTV;
- (n) remote condition monitoring equipment of a reasonably appropriate specification;
- (o) fitted to be "ERTMS-ready" so that when ETCS equipment needs to be installed in accordance with the Network Rail programme it can be done without needing intrusive works including because necessary wiring is in place and space for the equipment has been kept free as part of the refurbishment works;
- (p) fitted with at least one (1) USB socket every two (2) seats; and
- (q) infrastructure monitoring equipment for purposes which shall include the identification of faults on infrastructure before the occurrence of an incident.

18.3 In addition to the specification in paragraph 18.2:

- (a) all Class 158 vehicles will be fitted with new seats;
- (b) 12 Class 158 units will be refurbished to a standard that meets the Rolling Stock Quality Requirements and be fitted with remote condition monitoring equipment; and
- (c) each Class 319 and Class 333 unit shall be fitted with pantograph monitoring CCTV.

18.4 The Service Provider shall within 10 weeks of the end of each Reporting Period, report to the Secretary of State progress against the fleet refurbishment plan, by fleet and painted number. Such report shall include a detailed narrative addressing the following areas:

- (a) internal and external refresh;
- (b) digital works;
- (c) PRM TSI compliance;
- (d) Controlled Emission Toilet fitment; and
- (e) the Class 170 and Class 158 vehicles' Northern Connect seat reservation equipment fitment.

19. Minimum Requirement for the Provision of Wi-Fi on board

19.1 The Service Provider shall:

- (a) by no later than 28 September 2021 provide an operating wireless internet service ("**Wireless Internet Service**") on all its Train Fleet used for the provision of the Passenger Services; and
- (b) use all reasonable endeavours to provide a Wireless Internet Service on all rail replacement buses provided by the Service Provider in accordance with its obligations pursuant to paragraph 6.2 of Schedule 1.2 (Operating Obligations).

- 19.2 The Wireless Internet Service procured by the Service Provider pursuant to paragraph 19.1 shall:
- (a) be made available to all passengers who use the Passenger Services at no cost to the passenger which for these purposes, but without limitation, shall mean that:
 - (i) the passenger will not have to pay directly or indirectly to use such Wireless Internet Service whether on an intermittent or continuous basis; and
 - (ii) the passenger is able to access the Wireless Internet Service without utilising any minutes data or other allowance (such as 3G or 4G mobile broadband connection) that may be available to such passenger through any subscription they may have with one or more internet service providers or mobile network operators; and
 - (b) comply with the Minimum Wi-Fi Service Requirements.
- 19.3 the Service Provider shall monitor the performance of the Wireless Internet Service for the purposes of providing to the Secretary of State a report on the performance of the Wireless Internet Service. Such report shall include information on the customer usage statistics, statistics on the availability of the Wireless Internet Service including information on the average internet speed (in Megabits per second) and the latency figures (in milliseconds) and shall be submitted to the Secretary of State one month after the end of each Service Year.
- 19.4 By no later than 28 September 2021, the Service Provider shall procure that all rolling stock vehicles comprised in its Train Fleet and used for the provision of the Passenger Services are fitted with such equipment as is necessary to ensure compliance with the requirements of paragraph 19. Any such equipment shall, subject to paragraph 19.5, include the following:
- (a) CAT-7 Ethernet cabling (or such other local area network cabling technology that offers equivalent or better bandwidth to Ethernet) forming a through rolling stock unit Ethernet backbone including inter-carriage connectivity; and
 - (b) an additional CAT-7 Ethernet cable (or such other local area network cabling technology that offers equivalent or better bandwidth to Ethernet) with supporting Power over Ethernet from the designated rolling stock vehicle equipment space to the middle of the void located at the ceiling of each rolling stock vehicle so as to permit the connection of additional internet access point equipment in the future.
- 19.5 Where any rolling stock vehicle comprised in the Train Fleet as at the Service Commencement Date is already fitted with through rolling stock unit Ethernet backbones that are not compliant with the requirements of paragraphs 19.4(a) or 19.4(b), the Service Provider shall be permitted to retain these cables and the provisions of paragraph 19.4(a) and 19.4(b) shall not apply in respect of such rolling stock vehicle.

20. Shipley Stabling Feasibility Study

- 20.1 By no later than 1 March 2021, the Franchisee shall:
- (a) complete a detailed feasibility study to understand the suitability of areas adjacent to Shipley station and other potential proximate locations as additional maintenance and stabling facilities for EMU rolling stock (the "**Shipley Stabling Feasibility Study**"); and
 - (b) submit a copy of the Shipley Stabling Feasibility Study for the Secretary of State's consideration and promptly provide any other information or supporting documents related to such study as reasonably requested by the Secretary of State.

21. **Wheel Lathe at Newton Heath**

ⁱⁱBy no later than 30 July 2020 the Service Provider shall install and commission a wheel lathe at Newton Heath depot.

22. **Roof access**

The Service Provider shall install and commission roof access equipment for the purpose of facilitating the inspection and maintenance of vehicle roof mounted heating, ventilation and air conditioning systems:

- (a) ⁱⁱⁱat Neville Hill depot by 28 May 2020; and
- (b) ^{iv}at Newton Heath depot by 31 August 2020.

23. ^{v 3}**Newton Heath Depot**

- (a) **By no later than 30 November 2020, the Service Provider shall enter into service the facility at Newton Heath depot; and**
- (b) **achieve handback certification from Network Rail Route Asset Manager as Depot Owner by the 31 March 2021.**

24. **Additional CET Systems**

24.1 ^{vi vii}The Service Provider shall use all reasonable endeavours to as soon as reasonably practicable:

- (a) upgrade Carlisle station by installing and commissioning one mobile battery powered Controlled Emission Toilet extraction unit housed in a powered pedestrian controlled cart with supporting infrastructure to enable effluent to be extracted on two roads (platforms 5 and 6) and where practicable other roads at the station;
- (b) install and commission at Marlinton station one mobile battery powered Controlled Emission Toilet extraction unit housed in a powered pedestrian controlled cart with supporting infrastructure to enable effluent to be extracted overnight from all rolling stock stabled overnight in day platforms 2 and 3;
- (c) upgrade Ardwick depot by installing and commissioning three fixed Controlled Emission Toilet extraction points between new stabling roads C and D with supporting infrastructure to enable effluent to be extracted from both these roads and the adjacent fuel road simultaneously;
- (d) install and commission at Buxton station one mobile battery powered Controlled Emission Toilet extraction unit housed in a powered pedestrian controlled cart with supporting infrastructure to enable effluent to be extracted overnight from all rolling stock stabled overnight on the three roads (platforms 1 and 2 and the central road) at the station,

³ 5 October 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

(together the **"Additional CET Systems"**) and in any event shall have delivered the Additional CET Systems by 31 March 2020.

25. **Holbeck Stabling Capacity**

The Service Provider shall use all reasonable endeavours to as soon as reasonably practicable procure the provision of three (3) new operational and fully commissioned 75 metre roads at Holbeck depot to provide increased stabling to accommodate at least 3 x 3 additional car units (the **"Holbeck Stabling Capacity"**) and in any event shall have delivered the Holbeck Stabling Capacity by 31 March 2020.

26. **Hull Botanic Gardens Depot study**

By 31 March 2020 the Franchisee shall have completed a feasibility study, site survey and outline design to develop a scope of work to increase the maintenance capacity at Hull Botanic Gardens depot (the **"Hull Botanic Gardens study"**).

27. **CET and Holbeck Stabling/ Hull Botanic Gardens study Fund**

27.1 In this paragraph 27, **"CET and Holbeck Stabling/Hull Botanic Gardens study Fund"** means funding of [REDACTED⁴] to be funded by Network Rail from its Rail Network Enhancements Pipeline Control Period 6 grant.

27.2 The parties have acknowledged that it is intended that the CET and Holbeck Stabling/Hull Botanic Gardens study Fund shall be used to pay the Service Provider's costs for delivering the CET and Facilities Works on the following terms:

(a) the Service Provider shall provide such information at such intervals as Network Rail and/or the Secretary of State may reasonably require on progress on delivering the CET and Facilities Works, including any changes to the cost of delivering the CET and Facilities Works; and

(b) it is acknowledged by the parties that the Secretary of State shall not be responsible for funding costs incurred by the Service Provider in respect of the CET and Facilities Works whether or not the CET and Facilities Works proceed or are abandoned for any reason prior to their completion.

27.3 The Service Provider shall not be deemed to be in breach of this Agreement as a result any failure to deliver its obligations under paragraphs 24, 25 and/or 26 of this Schedule 6.2 to the extent that the Service Provider

(a) has complied with paragraph 27.2 of this Schedule 6.2; and

(b) can demonstrate that such failure is caused by Network Rail either:

(i) failing to provide the CET and Holbeck Stabling/Hull Botanic Gardens study Fund; or

(ii) causing delay in making the CET and Holbeck Stabling/Hull Botanic Gardens study Fund.

27.4 The Parties acknowledge that it is intended that the facilities set out in paragraphs 24, 25 and 26 (together the **"CET and Facilities Works"**) shall be constructed using the CET and Holbeck

⁴ 31 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.

Stabling/Hull Botanic Gardens study Fund, subject to the conditions set out in relation to that fund.

27.5 The Service Provider shall, following completion of any of the obligations set out in paragraphs 24.1(a) and 25 of this Schedule 6.2, if instructed by the Secretary of State transfer ownership of the asset delivered by the obligation to Network Rail for nil value.

27.6 The Service Provide shall, in accordance with the Secretary of State's instructions, undertake the relevant works identified in Hull Botanic Gardens study if that study is approved by the Secretary of State.

28. **Neville Hill Enhancements**

28.1 The Service Provider acknowledges that Network Rail is developing proposals for long term schemes to increase capacity at Neville Hill depot.

28.2 The Service Provider shall effectively cooperate with Network Rail, the Secretary of State and all other relevant parties in the development of the proposals set out in paragraph 28.1 with the intention of ensuring the timely, efficient and cost effective delivery of such proposals.

29. **Special Research Trains**

The Service Provider shall permit an electric multiple unit or a diesel multiple unit to be maintained in an operational state and made available, free of charge and (where necessary) with the services of a driver, for use to support the research activities of the Centre for Railway Research or other suitable research establishment. Such multiple units will not be supplied when doing so would result in the cancellation of a passenger service.

30. **Support for cascaded fleets**

30.1 Where any rolling stock vehicles cease to be part of the Train Fleet but are leased by another Train Operator for use in delivering passenger services the Service Provider shall ensure that:

- (a) such rolling stock is in an acceptable "hand back" condition consistent with the hand back terms agreed with the lessee;
- (b) a complete set of maintenance and mileage records are handed over in a suitable format;
- (c) the Train Operator is given reasonable access to the relevant rolling stock prior to handover to assist with an effective handover in relation to both operation and maintenance;
- (d) the Train Operator is offered 'mind mining' sessions to enable recipient engineers and operational personnel to learn from informed peers;
- (e) the Train Operator is offered on-train development programmes to train their maintenance staff to an appropriate level of competence; and
- (f) it offers medium-term support and advice in relation to such rolling stock including technical and operational support.

31. **Simplification of Fares**

31.1 Without prejudice to its obligations under paragraph 3 of Schedule 1.4 (Passenger Facing Obligations) and Schedule 5 (Fares and Smart Ticketing), the Service Provider:

- (a) continue to offer for sale all "Off-peak Day Return" Fares as were offered immediately prior to the Service Commencement Date which shall be priced at all times during the Service Term on the basis that each such "Off-peak Day Return" Fare on a Flow offers at least a

15% saving when compared to the "Anytime Day Return" Fare applicable in relation to the same Flow;

- (b) by no later than 1 April 2020 introduce for sale a Flexi-Season Fare which will provide discounts of at least 10% on the equivalent 'Standard Anytime Day Return' and 'Off-Peak Day Return' Fares. The Service Provider shall procure that, by no later than 1 October 2020, Flexi-Season Fares are offered for sale on Smart Media by the Service Provider (or by any person authorised to sell Fares on its behalf) to customers on all Flows that support the validation of Smart Media and the Service Provider will make these fulfilment options available to users of the Service Provider's online channels and TVMs.

32. Job Seeker Discounts

32.1 The Service Provider shall from the Service Commencement Date and for the remainder of the Service Term make available to Job Seekers a discount of no less than:

- (a) 50% on any return ticket valid for one day, or two singles if bought at the same time for a return journey on the same day to allow such Job Seekers to travel on the Passenger Services to attend job interviews; and
- (b) 50% on the first Season Ticket Fare to be purchased by such Job Seeker for the purposes of travelling to work using the Passenger Services once they secure employment.

33. Improved Station Retailing and Support

33.1 The Service Provider shall continue to operate and maintain all TVMs in existence as at the Service Commencement Date and by no later than 31 March 2021 complete the installation of thirty-three (33) TVMs.

33.2 The Service Provider shall ensure that all TVMs:

- (a) have braille and induction loop support installed;
- (b) VideoAssist function for use by customers at all times including during those periods of the day when the Passenger Services are in operation but Franchise Employees are not present at Stations to provide customer support; and
- (c) include a functionality whereby customers are able to purchase railcards via TVMs such that railcards are issued via the TVMs following payment thereby allowing the customer to be able to immediately purchase a discounted ticket for travel on the relevant railway passenger services.

34. On-board Retailing

The Service Provider shall by no later than 31 March 2021, refresh the existing on-board retailing system.

35. Loss Prevention Strategy

35.1 The Service Provider shall ensure that all automatic ticket gates installed at Stations:

- (a) include walkways and are equipped with the capability to read magnetic stripe tickets, barcode tickets and smartcards;
- (b) are manned by at least one Franchise Employee on each day from the time of the first Passenger Service scheduled to arrive at each relevant Station until the time of the last Passenger Service scheduled to depart from such relevant Station on that day; and

- (c) work with Network Rail in relation to Managed Stations and other Facility Owners in relation to other stations where the Passenger Services call such that automatic ticket gates installed at such Managed Stations and such other stations are manned by at least one Franchise Employee on each day and at the times specified in paragraph 35.1(b).

35.2 The Service Provider shall:

- (a) as soon as reasonably practicable and in any event by no later than 1 May 2020 have conducted a ticketless travel survey (the "**Baseline Ticketless Travel Survey**");
- (b) reduce levels of ticketless travel on the Passenger Services by at least:
 - (i) 1 percentage point by 31 March 2021; and
 - (ii) 3.5 percentage points by 28 February 2022,

from the percentage of ticketless travel journeys recorded in the Baseline Ticketless Travel Surveys (each target set out in paragraph 35.2(b)(i) and paragraph 35.2(b)(ii) being a "**Ticketless Travel Target**" and together the "**Ticketless Travel Targets**"). The methodology to be adopted by the Service Provider for any ticketless travel surveys to be carried out by the Service Provider for the purposes of assessing its performance against the Ticketless Travel Targets whether for the purposes of paragraph 35.2(b) or Schedule 8.2 (Performance Review Provisions) shall be consistent with that specified in the document in the agreed terms marked NTTM;

- (c) from the Service Commencement Date, maintain a loss prevention team (being Loss Protection Officers and Managers) of no less than 80 full time equivalent individuals so that such Loss Protection Officers and Managers are allocated to work across each of the Franchise Regions;
- (d) ensure that all newly appointed Loss Protection Officers (including those promoted from the role of revenue protection assistants) achieve the accreditation known as the "Level 3 National Vocational Qualification Professional Certificate in Investigative Practice";
- (e) use best endeavours to implement Penalty Fare Zones on all Routes by 28 February 2022. The Service Provider shall be responsible for obtaining any approval required under Section 130 of the Act prior to the implementation of the Penalty Fare Zone;
- (f) from the date that a Penalty Fares Zone is implemented as required pursuant to paragraph 35.2(e), publish in its Customer Report the data relating to the number of penalty fares charged and the success rate on appeals relating to penalty fares for each Reporting Period.

35.3 The Service Provider shall monitor the performance and effectiveness of its revenue protection activities for the purposes of providing to the Secretary of State within ten (10) Weekdays of the end of each Reporting Period, a report on the performance and effectiveness of its revenue protection activities during that Reporting Period. Such report shall include in relation to the relevant Reporting Period information on:

- (a) the availability of retail infrastructure;
- (b) data relating to the number penalty fares prosecutions and appeals;
- (c) revenue protection staff deployment.

36. Customer Focused Organisation

- 36.1 The Service Provider shall through the Service Term retain the level of staffing at each Station at the level of the planned staffing establishment which existed for that Station as at the Service Commencement Date and without prejudice to the foregoing shall retain that level of staffing such that:
- (a) a Station which is staffed immediately prior to the Service Commencement Date will not cease to be staffed; and
 - (b) there will be no reduction in the hours of the day during which any such Station is staffed when compared to the staffing hours applicable at such Station immediately prior to the Service Commencement Date.

37. Service Mark Accreditation

- 37.1 ^{viii}From the 1 July 2020 until the Expiry Date, the Service Provider shall be a member of the Institute of Customer Service and shall maintain the Service Mark accreditation by the Institute of Customer Service.

38. Customer experience research manager

- 38.1 In each Service Year, the Service Provider shall fund a customer experience research manager, which shall be a post within Transport Focus.

39. Northern Mobile App

- 39.1 The Service Provider shall from the Service Commencement Date continue to make available to customers for use on Smart Devices the Northern mobile app which was introduced under the Previous Franchise Agreement, or an alternative with equivalent functionality.

40. Customer call centre

From the Service Commencement Date, the Service Provider shall ensure that, on each day of the Service Term that Passenger Services are scheduled to operate, customers can speak to someone representing the Service Provider by means of the Service Provider's "customer experience centre" call centre during the 22 hours on each such day between the hours of 0400 and 0200.

41. Personal safety

- 41.1 In order to reduce criminality on the network and enhance passengers' personal safety and passenger's perception of safety, the Service Provider shall throughout the Service Term:
- (a) continue to employ a crime reduction manager, whose responsibilities shall include the safety and security of passengers and staff, and helping manage the deployment of travel safety officers;
 - (b) continue to employ two community safety managers who shall be responsible for intelligence led resource deployment and leadership of the travel safety officers;
 - (c) continue to maintain a team of at least 55 full time equivalent travel safety officers, including a team based at Newcastle train crew depot for the purposes of providing a visible security presence on Passenger Services ("**Travel Safety Officers**"). The Service Provider shall ensure that at least 18 of the Travel Safety Officers are deployed to provide extra cover of late night Passenger Services and working continuously with the British Transport Police to target resources where passengers have a poor perception of security; and

- (d) ensure that all of its Travel Safety Officers appointed pursuant to paragraph 41.1(c) and any travel safety officers appointed at any time are accredited under the "Railway Safety Accreditation Scheme".

42. **[Deleted⁵]**

Accessing the network

43. **Travel integration and accessibility manager**

From the Service Commencement Date the Service Provider shall appoint (or continue to engage, as the case may be), on a full-time basis, a travel integration and accessibility manager who shall be responsible for promoting accessibility of the Services, champion the Service Provider's door to door plans and policies and manage the relationship between the Service Provider and other transport providers.

44. **Step-free station map**

44.1 The Service Provider shall throughout the Service Term continue to maintain a map showing the step-free access that is available at the Stations, Managed Station and other stations served by the Passenger Services. This map shall be made prominently available:

- (a) within the Service Provider's Passengers' Charter documents; and
 (b) on the Service Provider's web site.

45. **Customers with communication and hidden difficulties**

45.1 The Service Provider shall for the duration of the Service Term, continue to operate the BlueAssist Scheme and:

- (a) provide a link to the BlueAssist scheme on the Service Provider's website; and
 (b) ensure that all Franchise Employees in customer facing roles can and do respond to customers' use of a BlueAssist Card in an appropriate manner.

46. **Charity incentive fund**

46.1 In order to provide training and raise staff awareness of the needs of customers with disabilities, the Service Provider shall maintain a charity incentive fund, the operation of which shall include:

- (a) working with relevant charities to support understanding of accessibility issues; and
 (b) ensuring that, throughout the Service Term, thirty (30) Franchise Employees per year undertake disability awareness training.

47. **Station Improvement Fund**

47.1 By no later than 31 March 2021, the Service Provider shall deliver and implement the facilities described in column (1) of Table 1 below in the number or quantities specified in corresponding row in column (2) of that table:

⁵ 30 July 2020 (Date of Contract Change Letter) – Contract deletion agreed by the Secretary of state and Franchisee.

Table 1

Column (1)	Column (2)
Facility to be delivered	Number/ quantity to be delivered
Replacement shelters	54
Refurbished shelters	9
New seating	108
Toilet refurbishment	1
Waiting room refurbishment	2
CIS screens	43
Upgrades to public announcement facilities	118
Help Points	97
CCTV cameras	193

48. Inclusive Stations

48.1 The Service Provider shall by no later than 31 March 2021 create no less than ten Inclusive Hubs at Stations. Any Inclusive Hub created at a Station in accordance with this paragraph 48 shall comply with the design standards for accessible railway stations as set out in the document published by the Department for Transport and Transport Scotland on 23 March 2015 and entitled "Design Standards for Accessible Railway Stations".

49. Installation of Harrington Humps

In addition to and without prejudice to its obligations in paragraph 2.7 of Schedule 4 (Persons with Disabilities and Disability Discrimination) and paragraphs 3.3 to 3.11 of Schedule 7.2 (Customer Experience and Engagement), the Service Provider shall, by no later than 31 March 2021, install 17 humps known in the rail industry as 'Harrington Humps' at such Stations where in the reasonable determination of the Service Provider platform stepping distance is of particular concern.

50. Northern Connect customer experience

50.1 In relation to all the stations specified in paragraph 50.2 below, the Service Provider shall, by no later than the Passenger Change Date occurring in May 2020:

- (a) install and operate station Wi-Fi and thereafter ensure that the availability of such station Wi-Fi is communicated to customers through its Customer Report and such other publication channel as the Service Provider deems appropriate;
- (b) install and operate improved lighting;
- (c) establish and procure the operation of a catering outlet; and
- (d) ensure that each station is staffed during the hours from 0600 to 2200 with staff engaged in customer service focused activities, seven days per week provided that where immediately prior to the Service Commencement Date, any station referred to in paragraph 50.2 below is staffed by Franchise Employees for periods that are earlier and/or

later than that specified in this paragraph then the Service Provider’s obligation in this paragraph 50.1(d) shall be construed as an obligation to maintain staff presence at such stations for a period that is the same as that which applied immediately prior to the Service Commencement Date.

50.2 For the purpose of paragraph 50.1 above, the relevant stations are the thirty-six (36) stations listed in Table 2:

Table 2

1. Accrington	10. Chorley	20. Manchester Oxford Road	29. Sowerby Bridge
2. Barnsley	11. East Didsbury	21. Manchester Victoria	30. Todmorden
3. Barrow	12. Earlestown	22. Meadowhall	31. Ulverston
4. Birchwood	13. Grange-over-Sands	23. Metrocentre	32. Wakefield Kirkgate
5. Blackburn	14. Halifax	24. New Pudsey	33. Warrington Central
6. Blackpool North	15. Heald Green	25. Newton-le-Willows	34. Warrington West
7. Bolton	16. Hebden Bridge	26. Poulton-le-Fylde	35. Windermere
8. Bradford Interchange	17. Hexham	27. Rochdale	36. Worksop
9. Burnley Manchester Road	18. Bridlington	28. Salford Crescent	
	19. Huyton		

50.3 In addition to paragraphs 50.1 and 50.2, the Service Provider shall use all reasonable endeavours to ensure that the facilities and services at all stations served by Northern Connect Passenger Services are no worse than the standards described in paragraph 50.1 above. In particular, where for any such station the Service Provider is not the Station Facility Owner, it shall work with other parties (such as Network Rail and/or the Facility Owner at the relevant station) for the purposes of facilitating this.

50.4 The Service Provider shall ensure, where a passenger holds a valid ticket for travel on any of the Northern Connect Passenger Services, such passenger shall have, with effect from the Passenger Change Date occurring in May 2020:

- (a) the ability, without charge, to make a seat reservation on such Northern Connect Passenger Service up to 15 minutes before the scheduled departure time of that Northern Connect Passenger Service from its origin station; and
- (b) at the time of booking their ticket for travel on the relevant Northern Connect Passenger Service, the ability to:
 - (i) select their seat on; and
 - (ii) view features of (such as where plug sockets are located),

the rolling stock to be used for the provision of such Northern Connect Passenger Service (the “**Seat Selector Tool**”). Subject to data being available from other Train Operators, the Service Provider shall from such date also make the Seat Selector Tool available to all passengers traveling on passenger services operated by other Train Operators;

50.5 The Service Provider shall ensure that from the Passenger Change Date occurring in May 2020:

- (a) there shall be made available for sale to passengers at the lowest price point for Advance Purchase Train-specific Fares set for that week a number of such Advance Purchase Train-specific Fares that is at least equal to 10% of all Northern Connect Seats diagrammed to be provided in accordance with the Train Plan for each such week; and
- (b) the number of Advance Purchase Train-specific Fares offered for sale in relation to each Northern Connect Passenger Service operated in that week shall be a number that is at least equal to 25% of all Northern Connect Seats diagrammed to be provided on such Northern Connect Passenger Service in accordance with the Train Plan.

51. Development of Proposals for Service Enhancements

51.1 Without limiting its obligations pursuant to paragraph 16.1 of Part 2 of Schedule 1.1, the Service Provider shall work to identify options (the "**Passenger Services Enhancement Options**") for delivering incremental enhancements to Passenger Services on Routes where such improvements can be delivered including:

- (a) by taking advantage of changes to the existing infrastructure (including any potential changes pursuant to any third party promoted franchise schemes described in paragraph 8 of Part 4 of Schedule 6.1);
- (b) by taking advantage of changes in rolling stock capability or reliability as a result of changes in the Train Fleet;
- (c) by implementing changes in service patterns; and

including for this purpose (i) any such options which arise after the expiry of the Service Term and/or (ii) such other options or schemes as the Secretary of State may (in the Secretary of State's absolute discretion) nominate from time to time.

51.2 The Service Provider will provide a report to the Secretary of State not less than quarterly in respect of work undertaken by the Service Provider to identify potential Passenger Services Enhancement Options, providing details any new Passenger Services Enhancement Options identified and providing an update in respect of other activities undertaken by the Service Provider pursuant to its obligations under this clause.

51.3 The Service Provider shall if requested by the Secretary of State submit to the Secretary of State a feasibility report in respect of any potential Passenger Services Enhancement Options (whether identified by the Service Provider or otherwise). Any such feasibility report shall be submitted with the timescales specified in such request (or such other timescales as may be agreed by the Secretary of State and the Service Provider) and unless otherwise agreed or requested by the Secretary of State the Service Provider shall, as part of the production of the feasibility report and as a minimum:

- (a) consult with passengers, other train operators licensed under the Act who operate along the affected Routes, relevant user groups and other relevant Stakeholders;
- (b) work with Network Rail with a view to considering the feasibility of implementing any of the Passenger Services Enhancement Options where Network Rail input is required or where implementation of such Passenger Services Enhancement Options will require changes to the infrastructure or the Timetable. the Service Provider shall robustly challenge Network Rail to identify efficient and cost-effective ways by which such Passenger Services Enhancement Options could be implemented and provide evidence that it has complied with this requirement in the report to be submitted to the Secretary of State;
- (c) prepare an initial assessment of the likely costs and benefits of implementing the Passenger Services Enhancement Options; and

- (d) engage with third party funders (including Local Authorities and local development agencies) to identify opportunities to secure grant funding for the purposes of implementing some or all of the Passenger Services Enhancement Options.
- 51.4 Following the submission of the report required pursuant to paragraph 51.3 the Service Provider shall:
- (a) promptly respond to the Secretary of State's reasonable queries in relation to such report (including the provision of such assistance as the Secretary of State may reasonably require in connection with the verification of any information contained in such report); and
- (b) upon reasonable notice, attend any such meeting as the Secretary of State may reasonably require for the purposes of discussing the contents of such report.
- 51.5 The Service Provider shall, at the request of the Secretary of State, co-operate with Network Rail and other relevant Stakeholders to undertake further development and, if appropriate, implementation of any or all of the Passenger Services Enhancement Options.
- 51.6 The Secretary of State and the Service Provider acknowledge and agree that if any or all of the Passenger Services Enhancement Options are to be implemented, this will be by way of amendment to the Train Service Requirement or by the Secretary of State varying this Agreement in accordance with Clause 17.
- 51.7 The Service Provider shall throughout the Service Term allocate such appropriate Franchise Employees and other relevant resource as is reasonably required for the purpose of complying with its obligations under this paragraph 51.

52. Wavelength

52.1 The Service Provider shall:-

- (a) fully and effectively engage with the Wavelength Programme;
- (b) 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 Surveys undertaken during that Reporting Period (which, for the avoidance of doubt, shall include the Service Provider's "Heartbeat" and "Customer Promises" performance), such results to be presented in such aggregated or disaggregated format as the Secretary of State may specify from time to time;
- (c) provide, on a quarterly basis, a report to the Secretary of State detailing:
- (i) how the Service Provider has used the full range of Wavelength Programme insights (including the analysis of data received through Wavelength Surveys) 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 52.1(c)(i) have: (A) resulted in any improvement in the Wavelength Survey scores collected to date; and/or (B) any other improvement or benefits to the Service Provider.

52.2 For the purpose of this paragraph 52:

- (a) "**Wavelength Programme**" means the programme of work being developed by the rail industry which aims to collect a wider range of information about the customer experience, tracking performance against journey touchpoints (described as the "Heartbeat") and a

series of key commitments based on core passenger priorities (described as "Customer Promises"); and

- (b) **"Wavelength Survey"** means the weekly survey, relating to the Services, which is undertaken as part of the Wavelength Programme (including tracking performance against journey touchpoints (described as the "Heartbeat") and a series of key commitments based on core passenger priorities (described as "Customer Promises").

53. Network Rail Alliance

53.1 By no later than the date which is six (6) months after the Service Commencement Date the Service Provider shall undertake a review of the Alliance Agreement with Network Rail.

53.2 The Parties agree and acknowledge that this paragraph 53 is without prejudice to Schedule 6.4 and in particular the generality of paragraph 1.1 of Schedule 6.4.

54. Car Parking Charges

54.1 On or before the expiry of nine (9) months from the Service Commencement Date, the Service Provider shall:

- (a) undertake a survey in relation to car parking charges at all Stations (where public car parking facilities are made available by the Service Provider) which shall assess the potential for and impact of implementing car parking charges or amending car parking charges (as the case may be) at those Stations, and
- (b) present to the Secretary of State a report, based on the findings of the car park charges survey referred to in paragraph 54.1(a), identifying at least five (5) Stations where schemes for car parking charges or changes to existing car parking charges are proposed by the Service Provider to be implemented (the "**Car Parking Schemes**").

54.2 The Service Provider shall provide such additional information in relation to the findings of the car parking charges survey and the associated report referred to in paragraph 54.1 as the Secretary of State may require.

54.3 The Secretary of State shall be entitled to notify the Service Provider of the Car Parking Schemes (if any) in respect of which it requires the Service Provider to produce a business case as to the viability of the implementation of such schemes (each such business case being a "**Car Parking Scheme Business Case**"). In preparing each Car Parking Scheme Business Case the Service Provider shall consult and engage with Stakeholders and shall reflect the outcomes of that consultation and engagement in each Car Parking Scheme Business Case.

54.4 Within six (6) months of the Secretary of State's notice referred to in paragraph 54.3, the Service Provider shall prepare and deliver to the Secretary of State the Car Parking Scheme Business Cases.

54.5 The Service Provider shall:

- (a) provide such additional information in relation to the Car Parking Scheme Business Cases; and
- (b) make such amendments to the Car Parking Scheme Business Cases,
as requested by the Secretary of State.

54.6 If the Secretary of State notifies the Service Provider of the Secretary of State's approval of any or all of the Car Parking Business Cases, then, in respect of each approved Car Parking Business Case:

- (a) the Service Provider shall:
 - (i) engage with Stakeholders regarding the implementation of the relevant Car Parking Schemes; and
 - (ii) implement the relevant Car Parking Schemes in accordance with the applicable Car Parking Scheme Business Case in a timely manner (having regard to the engagement with Stakeholders referred to in paragraph 54.6(a)(i)); and
- (b) the parties shall consider any revisions to the Budget pursuant to paragraph 4 of Schedule 8.1 (Fixed Service Payments) which are required as a result of the implementation and the ongoing operation of the Car Parking Schemes referred to in this paragraph 54.6.

55. **TSR Experimental Services**

55.1 The parties agree and acknowledge that certain passenger services in the TSR are identified as "experimental services". It is acknowledged that, in accordance with and subject to the relevant note stated in the TSR applicable to each such experimental service, the Service Provider shall only be required to operate each such experimental service provided that the funding required to operate that service has been provided by the relevant funder, each as so specified in the applicable note in the TSR.

56. **Leeds York via Harrogate and Knaresborough TSR enhancement**

Subject to the completion of necessary infrastructure enhancements by Network Rail to permit a broadly half hourly service in each direction between Harrogate and York in addition to the passenger services that other Train Operators are required to operate north of York by virtue of the Train Service Requirements in their respective franchise agreements the Secretary of State shall (without prejudice to the Secretary of State's rights pursuant to Clause 17 of this Agreement) be entitled to amend the Train Service Requirement to require the provision of a minimum of 30 trains per day in each direction, Monday to Saturday, between Leeds and York (via Harrogate and Knaresborough) and a minimum of 2 trains per day in each direction on Sundays.

57. **Performance Schemes**

57.1 The Service Provider shall:

- (a) by no later than 31 October 2021 have installed a double headed wheel lathe at Allerton Depot; and
- (b) by no later than the last day of the Service Term, have installed an engine drop table at Heaton Depot.

57.2 Within the first three (3) months of each Service Year, the Service Provider will provide an action plan report to the Secretary of State, providing details of activities to be undertaken by the Service Provider to improve the performance of Passenger Services and any potential options for delivering future improvements in performance ("**Performance Improvement Options**").

57.3 The Service Provider shall if requested by the Secretary of State submit to the Secretary of State a feasibility report in respect of any Performance Improvement Options (whether identified by the Service Provider or otherwise). Any such feasibility report shall be submitted with the timescales specified by the Secretary of State and unless otherwise agreed or requested by the Secretary of State the Service Provider shall, as part of the production of the feasibility report and as a minimum with respect to each Performance Improvement Option:

- (a) work with Network Rail with a view to considering the feasibility of implementing the Performance Improvement Option where:

- (i) input from Network Rail is required;
- (ii) implementation of such Performance Improvement Option will require changes to the infrastructure or the Timetable, and

the Service Provider shall robustly challenge Network Rail to identify efficient and cost-effective ways by which such Performance Improvement Option could be implemented and provide evidence that it has complied with this requirement in the feasibility report to be submitted to the Secretary of State;

- (b) prepare an initial assessment of the likely costs and benefits of implementing the Performance Improvement Option; and
- (c) engage with third party funders (including Local Authorities and local development agencies) to identify opportunities to secure grant funding for the purposes of implementing the Performance Improvement Option.

57.4 Following the submission of the feasibility report pursuant to paragraph 57.3 the Service Provider shall:

- (a) promptly respond to the Secretary of State's reasonable queries in relation to such feasibility report (including the provision of such assistance as the Secretary of State may reasonably require in connection with the verification of any information contained in such report); and
- (b) upon reasonable notice, attend any such meeting as the Secretary of State may reasonably require for the purposes of discussing the contents of such report.

Withdrawn

Appendix 1 to Part 1 of Schedule 6.2

New DMU delivery dates

Date	Number of two car DMUs to be introduced into unrestricted passenger carrying service by such date	Number of three car DMUs to be introduced into unrestricted passenger carrying service by such date
[REDACTED ⁶]	0	0
[REDACTED]	0	1
[REDACTED]	0	7
[REDACTED]	2	13
[REDACTED]	2	13
[REDACTED]	2	17
[REDACTED]	2	21
[REDACTED]	2	21
[REDACTED]	2	21
[REDACTED]	4	29
[REDACTED]	8	29
[REDACTED]		29
[REDACTED]	16	29
[REDACTED]	20	29
[REDACTED]	22	29
[REDACTED]	22	29
[REDACTED]	22	29
[REDACTED]	25	30

Withdrawn

⁶ 31 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.

New EMU delivery dates

Date	Number of three car EMUs to be introduced into unrestricted passenger carrying service by such date	Number of four car EMUs to be introduced into unrestricted passenger carrying service by such date
[REDACTED ⁷]	0	2
[REDACTED]	0	6
[REDACTED]	2	10
[REDACTED]	3	10
[REDACTED]	5	10
[REDACTED]	7	10
[REDACTED]	9	10
[REDACTED]	10	10
[REDACTED]	12	10
[REDACTED]	15	10
[REDACTED]	17	10
[REDACTED]	20	10
[REDACTED]		10
[REDACTED]	25	10
[REDACTED]	27	10
[REDACTED]	28	10
[REDACTED]	28	10
[REDACTED]	28	10
[REDACTED]	31	12

Withdrawn

⁷ 31 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.

Withdrawn

Appendix 2 to Part 1 of Schedule 6.2

Table 1: Platform Extension Projects

Column (1)	Column (2)
Route	Details of Platform Extension Project(s)
Sheffield - Huddersfield	Platform extensions to allow 2 x 20m + 1 x 23m train operation along the entire Route.
Liverpool - Warrington - Central Manchester	Platform extensions to allow 5 x 23m train operation in respect of Manchester - Wigan. Platform extensions to allow 4 x 23m train operation in respect of Wigan - Southport.
Manchester- Clitheroe	Platform extensions to allow 4 x 23m train operation along the entire Route.
Manchester- Marple-Sheffield	Platform extensions to allow 4 x 23m train operation along the entire Route.

Withdrawn

PART 2 - SPECIAL TERMS RELATED TO THE COMMITTED OBLIGATIONS

This Part 2 of Schedule 6.2 sets out further provisions which shall apply to the Committed Obligations contained in this Agreement and these provisions shall be construed as supplemental to the related provisions set out in Part 1 of this Schedule 6.2 and elsewhere in this Agreement.

1. Continuation of Availability

- 1.1 Where the Service Provider is obliged under this Schedule 6.2 to provide, implement or install something (whether a service, facility or otherwise) the Service Provider shall ensure that once the same is provided, implemented or installed that it continues to be provided and made available (and where relevant, effectively maintained) for the remainder of the Service Period unless the contrary is expressly stated.
- 1.2 Where Part 1 to Schedule 6.2 (*Committed Obligations*) includes a commitment:
- (a) regarding the maintenance of certain facilities or activities or other similar analogous matters which are the subject of the Committed Obligations, the Service Provider shall not be regarded as having contravened the relevant obligation due to any temporary non-availability of the facility or activity (as the case may be) due to accidental damage or vandalism or maintenance, repair or replacement activities; or
 - (b) regarding staffing requirements or particular appointments the Service Provider is required to make and maintain, the obligation of the Service Provider 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 Service Provider is recruiting for that post,

providing always that the Service Provider is using all reasonable endeavours to keep the duration of any (x) non-availability of a facility or activity or (y) vacant or unfulfilled post or appointment (as the case may be) as short as reasonably practicable.

2. Expenditure Commitments

2.1 Annual Expenditure

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 Service Provider, that amount:

- (a) is assessed net of Value Added Tax; and
- (b) is the amount required to be expended by the Service Provider itself or procured by the Service Provider to be expended.

2.2 Expenditure Commitments in real amounts

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 Service Provider, shall be indexed by Retail Prices Index (in the same as variable costs are indexed in Appendix 1 (*Annual Fixed Service Payments*) to Schedule 8.1 (*Fixed Service Payments*)).

2.3 Expenditure by Network Rail

All amounts which the Service Provider 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 Service Provider.

3. Underspend

3.1 Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, the Service Provider 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, the Service Provider shall notify the Secretary of State, together with a statement of the costs it has incurred (excluding any third party funding) in delivering the relevant obligations and a reconciliation against the amount it had committed to spend (excluding any third party funding) ("**Underspend**").

3.2 The Parties shall, acting reasonably, seek to agree an additional scheme or schemes which would give rise to benefits to passengers using the Passenger Services to be funded using one or more Underspends and, once agreed, the Service Provider shall apply such relevant Underspend in the delivery of the agreed scheme(s). In circumstances only where, despite having used reasonable endeavours the Parties fail to agree an additional scheme in relation to which relevant Underspend will be applied, the aggregate amount of unallocated Underspend shall be repaid to the Secretary of State as soon as reasonably practicable.

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 Service Provider elsewhere in this Agreement and nothing in this Schedule 6.2 (*Committed Obligations*) shall limit or restrict an obligation imposed on the Service Provider 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 Service Provider may fulfil its relevant commitment by using reasonable equivalents.

5. Review of Compliance

5.1 Progress with Committed Obligations shall be considered and discussed at Performance Meetings.

5.2 In addition to its obligation under paragraph 5.1, the Service Provider 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. Consequences of Late Completion or Non-Delivery of Committed Obligations

If the Service Provider 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 this Agreement.

7. **NOT USED**

8. **Third Party Consents, Agreement and Conditions**

8.1 A Committed Obligation may be expressed to be conditional upon the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consent and/or entering into any agreement or arrangement with a third party) ("**Pre-condition**"). Where a Committed Obligation is subject to a Pre-condition and, despite having used all reasonable endeavours, the Service Provider is not able to satisfy such Pre-condition within such timescales (if any) as are required to enable the Service Provider to deliver such Committed Obligation in accordance with its terms then the Secretary of State and the Service Provider shall agree (or on failure to agree, the Secretary of State shall reasonably determine) such modifications to such Committed Obligation as may be necessary to allow the Service Provider 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 Service Provider had delivered such Committed Obligation.

8.2 If the Service Provider and the Secretary of State agree (or on failure to agree, the Secretary of State reasonably determines) a modification to a Committed Obligation pursuant to paragraph 8.1 then to the extent that the Service Provider delivers such modified Committed Obligation by the date agreed by the Parties (or, on failure to agree reasonably determined by the Secretary of State) then the Service Provider shall not be in breach of this Agreement.

9. **NOT USED**

10. **Obligations on Delivery of a Committed Obligation**

By no later than thirty (30) days after the date of delivery of a Committed Obligation the Service Provider shall provide to the Secretary of State a certificate (in such form as may be specified by the Secretary of State from time to time) signed by a statutory director of the Service Provider confirming that such Committed Obligation has been delivered in full and in accordance with its terms, together with such supporting information as may be requested by the Secretary of State from time to time.

Withdrawn

Schedule 6.3

NOT USED

Withdrawn

Schedule 6.4

Alliances

1. Co-operation with Network Rail

1.1 General Co-operation

The Service Provider shall use all reasonable endeavours to work with Network Rail to identify ways in which co-operation between the Service Provider 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.

1.2 Sharing of information with Network Rail

The Service Provider 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.

2. Compliance with the Alliance Agreement

2.1 The Service Provider shall enter into the Alliance Agreement with Network Rail (in the agreed terms marked AA or as otherwise approved by the Secretary of State) by the Service Commencement Date.

2.2 The Service Provider shall comply with the terms of the Alliance Agreement (and any Joint Task Agreement developed pursuant to the Alliance Agreement) for the duration of the Service Period, save where the Alliance Agreement is terminated by Network Rail or by the Service Provider in accordance with the provisions of this Schedule 6.4.

2.3 The Service Provider shall not amend the Alliance Agreement without the approval of the Secretary of State (such approval not to be unreasonably withheld).

3. Termination of the Alliance Agreement

3.1 The Service Provider shall not terminate the Alliance Agreement without the consent of the Secretary of State (such approval not to be unreasonably withheld).

3.2 The Service Provider shall notify the Secretary of State if:

- (a) it receives a termination notice from Network Rail under the Alliance Agreement within one (1) Weekday of the date of receipt of such termination notice;
- (b) Network Rail takes any steps to terminate the Alliance Agreement or warned in writing to terminate the Alliance Agreement within one (1) Weekday of becoming aware such steps have been taken or receipt of any notice threatening to terminate the Alliance Agreement;
- (c) the Service Provider considers (acting reasonably) that it may have taken an action or omitted to take an action which could constitute a material or persistent breach of the Alliance Agreement.

4. Reporting on the Alliance Agreement

4.1 The Service Provider shall report to the Secretary of State in writing each quarter on activities undertaken pursuant to the Alliance Agreement including:

- (a) progress on the Joint Tasks;
- (b) reasons for any delay or obstacles to implementing the Joint Tasks and actions being taken to mitigate such delay or obstacle, where appropriate;
- (c) a report on performance against any key performance indicators agreed between Network Rail and the Service Provider to monitor the performance of the Alliance Agreement,

and each report shall include written confirmation from Network Rail that it agrees with the content of such report.

Withdrawn

Schedule 6.5

NOT USED

Withdrawn

Schedule 6.6

NOT USED

Withdrawn

**SCHEDULE 7
PERFORMANCE BENCHMARKS**

Schedule 7.1	Operational Performance
	Part 1 – Non Financial Enforcement Regime
	Part 2 – Performance Against Benchmarks
	Part 3 – Miscellaneous Provisions
	Appendix 1 to Schedule 7.1 - Cancellations Benchmarks and Annual Cancellations Benchmarks
	Part 1 - Cancellations Benchmark Table (Enforcement Regime)
	Part 2(A) – Annual Cancellations Benchmark Table
	Part 2(B) – NOT USED
	Appendix 2 to Schedule 7.1 - TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks
	Part 1 – TOC Minute Delay Benchmark Table (Enforcement Regime)
	Part 2(A) – Annual TOC Minute Delay Benchmark Table (Financial Regime)
	Part 2(B) – NOT USED
	Appendix 3 to Schedule 7.1 – Short Formation Benchmarks and Annual Short Formation Benchmarks
	Part 1 – Short Formation Benchmark Table
	Part 2(A) - Annual Short Formation Benchmark Table (Financial Regime)
	Part 2(B) – NOT USED
	Appendix 4 to Schedule 7.1 – NOT USED
	Appendix 5 to Schedule 7.1 – NOT USED
	Appendix 6 to Schedule 7.1 – Annual T-3 Measure
	Part 1 - NOT USED
Part 2(A) – Annual T-3 Table	

Withdrawn

	Part 2(B) – NOT USED
	Appendix 7 to Schedule 7.1 – Annual T-15 Measure
	Part 1 – NOT USED
	Part 2(A) – Annual T-15 Table
	Part 2(B) – NOT USED
	Appendix 8 to Schedule 7.1 – All Cancellations Measures
	Part 1 – NOT USED
	Part 2(A) – Annual All Cancellations Table
	Part 2(B) – NOT USED
Schedule 7.2	Customer Experience and Engagement
	Appendix 1 to Schedule 7.2 - NRPB Benchmark Table
	Appendix 2 to Schedule 7.2 - NOT USED
Schedule 7.3	Service Quality Regime
	Part A - Service Quality Management Process
	Part B - Inspections and Audits
	Part C - Calculations Of Pass Rates and Service Quality Performance Payments
	Part D - Publication and Reporting Requirements
	Part E - Remedies
	Appendix 1 to Schedule 7.3 - Service Quality Schedules
	Part 1 – SQR Stations
	Part 2 – SQR Trains
	Appendix 2 to Schedule 7.3 - Service Quality Areas/SQR Benchmarks/Service Quality Indicators/Weightings
	Part 1 – SQR Stations
	Part 2 – SQR Trains

Withdrawn

SCHEDULE 7.1

OPERATIONAL PERFORMANCE

1. Definitions, Charging Review, Track Access Agreement, Changes to Benchmarks and Annual Benchmarks and Notice of Performance Results

1.1 For the purposes of this Schedule 7.1 (Operational Performance) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

“Actual All Cancellations Performance Level”

means, in respect of a Service Year, the All Cancellations Figures most recently published by Network Rail for that Service Year in relation to the Service Provider, provided that where a Service Year is less than thirteen (13) Reporting Periods, then the Actual All Cancellations Performance Level for that Service Year shall be as determined pursuant to paragraph 24.1(c) of this Schedule 7.1;

“Actual T-3 Performance Level”

means, in respect of a Service Year, the T-3 Figures most recently published by Network Rail for that Service Year in relation to the Service Provider provided that where a Service Year is less than thirteen (13) Reporting Periods then the Actual T-3 Performance Level for that Service Year shall be as determined pursuant to paragraph 24.2 of this Schedule 7.1;

“Actual T-15 Performance Level”

means, in respect of a Service Year, the T-15 Figures most recently published by Network Rail for that Service Year in relation to the Service Provider provided that where a Service Year is less than thirteen (13) Reporting Periods then the Actual T-15 Performance Level for that Service Year shall be as determined pursuant to paragraph 24.2 of this Schedule 7.1;

“Annual All Cancellations Measure”

means, for each Service Year, each of the benchmarks specified in the Annual All Cancellations Table for that Service Year, provided that where a Service Year is less than thirteen (13) Reporting Periods then the Annual All Cancellations Measure for that Service Year shall be as determined pursuant to paragraph 23.1(h) of this Schedule 7.1 (Operational Performance);

“Annual All Cancellations Table”

means the table set out in Part 2(A) of Appendix 8 (Annual All Cancellations Measures) of this Schedule 7.1;

“Annual Cancellations Benchmark”

means for each Service Year, each of the benchmarks specified in the Annual Cancellations Benchmark Table for that Service Year, provided that where a Service Year is less than thirteen (13) Reporting Periods then the Annual Cancellations

Withdrawn

Benchmark for that Service Year shall be as determined pursuant to paragraph 23.1(a) of this Schedule 7.1;

“Annual Cancellations Benchmark Table”

means the table set out in Part 2(A) of Appendix 1 (*Cancellations Benchmarks and Annual Cancellations Benchmarks*) of this Schedule 7.1;

“Annual Cap Performance Level”

means in relation to:

- (a) an Annual Cancellations Benchmark for any Service Year, the number set out in Column 2 (Annual Cap Performance Level) of the Annual Cancellations Benchmark Table for that Service Year;
- (b) an Annual TOC Minute Delay Benchmark for any Service Year, the number set out in Column 2 (Annual Cap Performance Level) of the Annual TOC Minute Delay Benchmark Table for that Service Year;
- (c) NOT USED;
- (d) NOT USED;
- (e) NOT USED;

“Annual Floor Performance Level”

means in relation to:

- (a) an Annual Cancellations Benchmark for any Service Year, the number set out in Column 4 (Annual Floor Performance Level) of the Annual Cancellations Benchmark Table for that Service Year;
- (b) an Annual TOC Minute Delay Benchmark for any Service Year the number set out in Column 4 (Annual Floor Performance Level) of the Annual TOC Minute Delay Benchmark Table for that Service Year;
- (c) an Annual Short Formation Benchmark for any Service Year the number set out in Column 3 (Annual Floor Performance Level) of the Annual Short Formation Benchmark Table for that Service Year;
- (d) NOT USED;
- (e) NOT USED;
- (f) NOT USED;

“Annual Short Formation Benchmark”

means, for each Service Year, each of the benchmarks specified in the Annual Short Formation Benchmark Table for that Service Year, provided that where a Service Year is less than thirteen (13)

Withdrawn

Reporting Periods then the Annual Short Formation Benchmark for that Service Year shall be as determined pursuant to paragraph 23.1(c) of this Schedule 7.1;

“Annual Short Formation Benchmark Table” means the table set out in Part 2(A) of Appendix 3 (*Short Formation Benchmarks and Annual Short Formation Benchmarks*) of this Schedule 7.1;

“Annual T-3 Measure” means, for each Service Year the benchmark specified in the Annual T-3 Table for that Service Year, provided that where a Service Year is less than thirteen (13) Reporting Periods then the Annual T-3 Measure for that Service Year shall be as determined pursuant to paragraph 23.1(f) of this Schedule 7.1;

“Annual T-3 Table” means the table set out in Part 1 of Appendix 6 (*Annual T-3 Measures*) of this Schedule 7.1;

“Annual T-15 Measure” means, for each Service Year each of the benchmarks specified in the Annual T-15 Table for that Service Year, provided that where a Service Year is less than thirteen (13) Reporting Periods then the Annual T-15 Measure for that Service Year shall be as determined pursuant to paragraph 23.1(g) of this Schedule 7.1;

“Annual T-15 Table” means, the table set out in Part 2A of Appendix 7 (*Annual T-15 Measures*) of this Schedule 7.1;

“Annual Target Performance Level” means, in relation to:

- (a) an Annual Cancellations Benchmark for any Service Year, the number set out in Column 3 (Annual Target Performance Level) of the Annual Cancellations Benchmark Table for that Service Year;
- (b) an Annual TOC Minute Delay Benchmark for any Service Year, the number set out in Column 3 (Annual Target Performance Level) of the Annual TOC Minute Delay Benchmark Table for that Service Year;
- (c) an Annual Short Formation Benchmark for any Service Year, the number set out in Column 2 (Annual Target Performance Level) of the Annual Short Formation Benchmark Table for that Service Year;
- (d) an Annual T-3 Measure for any Service Year, the number set out in Column 2 (Annual Target Performance Level) of the Annual T-3 Table for that Service Year; or
- (e) an Annual T-15 Measure for any Service Year, the number set out in Column 2 (Annual

Withdrawn

Target Performance Level) of the Annual T-15 Table for that Service Year;

- (f) an Annual All Cancellations Measure for any Service Year, the number set out in Column 2 (Annual Target Performance Level) of the Annual All Cancellations Table for that Service Year;

“Annual TOC Minute Delay Benchmark”

means, for each Service Year, each of the benchmarks specified in the Annual TOC Minute Delay Benchmark Table for that Service Year, provided that where a Service Year is less than thirteen (13) Reporting Periods then the Annual TOC Minute Delay Benchmark for that Service Year shall be as determined pursuant to paragraph 23.1(b) of this Schedule 7.1;

“Annual TOC Minute Delay Benchmark Table”

means the table set out in Part 2(A) of Appendix 2 (*TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks*) of this Schedule 7.1;

“Benchmark”

means any of the Cancellations Benchmark, the TOC Minute Delay Benchmark or the Short Formation Benchmark (as the context may require);

“Breach Performance Level”

means, in relation to a Benchmark for any Reporting Period, the number set out in the relevant column of the Cancellations Benchmark Table, the Short Formation Benchmark Table and the TOC Minute Delay Benchmark Table and in the row of the applicable table for that Reporting Period;

“Cancellation”

means a Passenger Service:

- (a) which is included in the Enforcement Plan of the Day and which is cancelled for reasons attributed to the Service Provider pursuant to the 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 Service Provider pursuant to the 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”

means the table set out in Part 1 (Cancellations Benchmark Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) of this Schedule 7.1 (Operational Performance);

Withdrawn

“Previous Passenger Services” means:

- (a) any rail passenger services operated under a Previous Franchise Agreement that is the same or substantially the same as any Passenger Service in terms of departure and arrival times and stopping patterns;
- (b) if no such railway passenger service is found under paragraph (a) such other railway passenger services operated under a Previous Franchise Agreement which is similar in terms of departure and arrival times and stopping patterns to the Passenger Services as the Secretary of State may reasonably determine;

“Previous Performance Level” means the level of performance actually achieved in relation to the Previous Passenger Services;

“Short Formation Benchmark” means any of the performance levels in respect of the Passenger Carrying Capacity operated in delivering the Passenger Services as set out in the Short Formation Benchmark Table;

“Short Formation Benchmark Table” means the table set out in Part 1 (*Short Formation Benchmark Table*) of Appendix 3 (*Short Formation Benchmarks and Annual Short Formation Benchmarks*) to this Schedule 7.1;

“TOC Minute Delay Benchmark” means any of the performance levels in respect of TOC Minute Delay attributable to the Service Provider set out in the TOC Minute Delay Benchmark Table;

“TOC Minute Delay Benchmark Table” means the table set out in Part 1 (TOC Minute Delay Benchmark Table) of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to Schedule 7.1 (Operational Performance);

“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**

1.3 The Cancellations Benchmarks are set out in the table in Part 1 of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) to this Schedule 7.1.

Withdrawn

- 1.4 The Annual Cancellations Benchmarks are set out in the table in Part 2(A) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) of this Schedule 7.1.
- 1.5 The TOC Minute Delay Benchmarks are set out in the table in Part 1 of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule 7.1.
- 1.6 The Annual TOC Minute Delay Benchmarks are set out in the table in Part 2(A) of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule 7.1.
- 1.7 The Short Formation Benchmarks are set out in the table in Part 1 of Appendix 3 (Short Formation Benchmarks and Annual Short Formation Benchmarks) to this Schedule 7.1.
- 1.8 The Annual Short Formation Benchmarks are set out in the table in Part 2(A) of Appendix 3 (Short Formation Benchmarks and Annual Short Formation Benchmarks) to this Schedule 7.1.
- 1.9 The Annual T-3 Measure is set out in the table in Part 2(A) of Appendix 6 (Annual T-3 Measures) to this Schedule 7.1.
- 1.10 The Annual T-15 Measure is set out in the table in Part 2(A) of Appendix 7 (Annual T-15 Measures) to this Schedule 7.1.
- 1.10A The Annual All Cancellations Measure is set out in the table in Part 2(A) of Appendix 8 (Annual All Cancellations Measures) to this Schedule 7.1.

1.11 **Not Used**

1.12 **Track Access Agreement**

The Service Provider 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 **Not Used**

1.14 **Notice of Performance Results**

As soon as reasonably practicable after the end of each Reporting Period and each Service Year, the Secretary of State shall notify the Service Provider of the results of the calculations performed pursuant to this Schedule 7.1.

2. Reporting Requirements

The Service Provider 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 required for the purposes of the Secretary of State undertaking any the calculations required to be performed by the Secretary of State pursuant to this Schedule 7.1.

Withdrawn

PART 1 – NON-FINANCIAL ENFORCEMENT REGIME

3. Cancellation Calculation: Value of A

Table 1		
A	=	$\frac{B}{C} \times 100$
where:		
B		<p>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:</p> <ul style="list-style-type: none"> (a) a Cancellation shall count as 1; (b) a Partial Cancellation shall count as 0.5; and (c) any Cancellations or Partial Cancellations during that Reporting Period which were caused by: <ul style="list-style-type: none"> (i) the Service Provider'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 Service Provider has complied with paragraph 17.1 (Service Recovery Plans and Force Majeure) 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 Service Provider has complied with paragraph 17.1 (Service Recovery Plans and Force Majeure) 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 Service Provider's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event.

4. NOT USED

Table 2
NOT USED

5. NOT USED

Table 3
NOT USED

6. Cancellation Calculations

For each Reporting Period during the Service Term the Secretary of State shall calculate a moving annual average of the Service Provider's performance against the Cancellations Benchmark in accordance with the following formula:

Table 4	
$\frac{A + E}{13}$	
where:	
A	has the meaning given to it in paragraph 3 in respect of that Reporting Period; and
E	is the sum of the values of A in each of the twelve (12) Reporting Periods preceding that Reporting Period.

- 7. NOT USED.
- 8. NOT USED.
- 9. NOT USED.
- 10. NOT USED.

Table 5
NOT USED

- 11. NOT USED

Table 6
NOT USED

12. TOC Minute Delay Calculations

For each Reporting Period during the Service Term the Secretary of State shall calculate a moving annual average of the Service Provider's performance against the TOC Minute Delay Benchmark in accordance with the following formula:

Table 7	
$\frac{MD_{SRP}}{H_{SRP}}$	
where:	
MD_{SRP}	is the sum of Minutes Delay that are attributable to the Service Provider: (a) in that Reporting Period; and (b) in each of the twelve (12) Reporting Periods immediately preceding that Reporting Period; and
H_{SRP}	is ascertained as follows: $\frac{V}{1000}$
	where:
V	is the sum of Actual Train Mileage: (a) in that Reporting Period; and (b) in each of the twelve (12) Reporting Periods immediately preceding that Reporting Period.

Withdrawn

13. NOT USED.

14. NOT USED.

15. Short Formations

15.1 NOT USED.

15.2 Short Formation Calculation: Value of A^{SF}

Table A		
A^{SF}	=	$\frac{B_{SF}}{C_{SF}} \times 100$
where:		
B_{SF}	is the total number of Short Formation Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than that specified for each such Passenger Service in the Train Plan disregarding, if the Service Provider has complied with paragraph 17.1 (Service Recovery Plans and Force Majeure) of this Schedule 7.1, any such Passenger Services which were operated in that way as a result of:	
	(a)	the Service Provider's implementation of a Service Recovery Plan during that Reporting Period; or
	(b)	the occurrence or continuing effect of a Force Majeure Event; and
C_{SF}	is the total number of Passenger Services scheduled to be operated in that Reporting Period disregarding, if the Service Provider has complied with paragraph 17.1 (Service Recovery Plans and Force Majeure) of this Schedule 7.1, any such Passenger Service operated with less Passenger Carrying Capacity than that specified for each such Passenger Service in the Train Plan as a result of:	
	(a)	the Service Provider's implementation of a Service Recovery Plan during that Reporting Period; or
	(b)	the occurrence or continuing effect of a Force Majeure Event.

15.3 NOT USED

Table B
NOT USED

15.4 NOT USED

Table C
NOT USED

15.5 Short Formation Calculations

For each Reporting Period during the Service Term the Secretary of State shall calculate a moving annual average of the Service Provider's performance against the Short Formation Benchmark in accordance with the following formula:

Table D	
$\frac{A^{SF} + E^{SF}}{13}$	
where:	
A^{SF}	has the meaning given to it in paragraph 15.2 in respect of that Reporting Period; and
E^{SF}	is the sum of the values of A ^{SF} in each of the twelve (12) Reporting Periods immediately preceding that Reporting Period.

15.6 **NOT USED.**

15.7 For the purposes of the calculations to be undertaken by the Secretary of State pursuant to paragraphs 15.2 and 15.5:

- (a) if and to the extent that any Passenger Service is operated in excess of the Passenger Carrying Capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded; and
- (b) any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.

16. **Calculations**

16.1 The Secretary of State shall perform the calculations referred to in 6, 12 and 15.5 rounded to two (2) decimal places with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

16.2 For so long as fewer than thirteen (13) Reporting Periods have elapsed following the Service Commencement Date, the Secretary of State shall, for the purposes of performing the calculations referred to in paragraphs 6, 12 and 15.5, assume performance at the Previous Performance Level in respect of the relevant Reporting Periods (up to a maximum of 12 Reporting Periods) that precede the Service Commencement Date.

16.3 **NOT USED.**

17. **Service Recovery Plans and Force Majeure**

17.1 the Service Provider shall, within eight (8) weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such 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 "Approved Code of Practice 2013" or any document of a similar equivalent nature) which relate to the implementation of such Service Recovery Plan during that Reporting Period.

17.2 In performing the calculations pursuant to paragraph 12 the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

18. **Consequences for Poor Performance – Benchmarks**

18.1 The Service Provider 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 each such Reporting Period.

Withdrawn

18.2 **NOT USED**

18.3 If in any Reporting Period the Service Provider'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 a Benchmark in respect of that Reporting Period, then:

- (a) a contravention of this Agreement shall occur and the Secretary of State may serve a Breach Notice in accordance with the provisions of Clause 8 (Breach Notices); and
- (b) without prejudice to the Secretary of State's rights under Clause 8 (Breach Notices), the Service Provider shall submit a proposal to the Secretary of State setting out the steps proposed for the purposes of securing or facilitating compliance with the contravention. The steps to be proposed by the Service Provider pursuant to this paragraph 18.3(b) are those which ensure that the Service Provider's performance against the relevant Benchmark will be **better than** the Target Performance Level relating to such Benchmark.

Withdrawn

PART 2 – PERFORMANCE AGAINST BENCHMARKS

19. Annual Cancellations Calculations

At the end of each Service Year (excluding the first Service Year) the Secretary of State shall calculate the Service Provider's performance against the Annual Cancellations Benchmark in accordance with the following formula:

Table 8		
ACTUAL_c	=	$\frac{\sum A}{X}$
where:		
$\sum A$	is the sum of the values of A (A being as defined in paragraph 3 above) for each of the Reporting Periods in that Service Year; and	
X	(a) in respect of a Performance Year consisting of thirteen (13) Reporting Periods equals, 13; or (b) in respect of a Service Year consisting of less than thirteen (13) Reporting Periods, the number of Reporting Periods in such Service Year.	

20. Annual TOC Minute Delay Calculations

20.1 At the end of each Service Year the Secretary of state shall calculate the Service Provider's performance against the Annual TOC Minute Delay Benchmark in accordance with the following formula:

Table 9		
ACTUAL_{MD}	=	$\frac{AA}{AD}$
where:		
AA	is the sum of the number of Minutes Delay that are attributable to the Service Provider in each Reporting Period in that Service Year; and	
AD	is ascertained as follows:	
	$\frac{AB}{1000}$	
	where:	
AB	is the sum of the Actual Train Mileage in each Reporting Period in that Service Year.	

20.2 In performing the calculations pursuant to paragraph 20, the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

21. Annual Short Formation Calculations

21.1 At the end of each Service Year the Secretary of State shall calculate the Service Provider's performance against the Annual Short Formation Benchmark in accordance with the following formula:

Table E		
ACTUAL_{SF}	=	$\frac{\sum A_{sf}}{X}$
where:		
$\sum A_{sf}$		is the sum of the values of A ^{SF} (A ^{SF} being as defined in paragraph 15.2 above) for each of the Reporting Periods in that Service Year; and
X		(a) in respect of a Service Year consisting of thirteen (13) Reporting Periods equals, 13; or (b) in respect of a Service Year consisting of less than thirteen (13) Reporting Periods, the number of Reporting Periods in such Service Year.

21.2 For the purposes of the calculations to be undertaken by the Secretary of State pursuant to paragraph 21.1:

- (a) if and to the extent that any Passenger Service is operated in excess of the Passenger Carrying Capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded; and
- (b) any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.

22. NOT USED

22.1 NOT USED

22.2 NOT USED

22.2A NOT USED

22.3 NOT USED

Withdrawn

Table 10
NOT USED

Table 11
NOT USED

Table 12
NOT USED

Table 13
NOT USED

Table 14
NOT USED

Table 15
NOT USED

22.4 **NOT USED**

Table 16
NOT USED

Table 17
NOT USED

Table 18
NOT USED

Table 19
NOT USED

Table 20
NOT USED

Table 21
NOT USED

Withdrawn

22.5 **NOT USED**

22.6 **NOT USED**

22.7 **NOT USED**

22.7A **NOT USED**

22.7B **NOT USED**

22.7C **NOT USED**

22.8 **NOT USED**

22.9 NOT USED

23. Determination for Service Years that are less than thirteen Reporting Periods

23.1 Where a Service Year is less than thirteen (13) Reporting Periods, the Secretary of State will perform the following calculations for the purposes of determining the Annual Cancellations Benchmark, the Annual TOC Minute Delay Benchmark, the Annual Short Formation Benchmark, the Annual T-3 Measure, the Annual T-15 Measure and the Annual All Cancellations Measure relating to that Service Year:

(a) in respect of the Annual Cancellations Benchmark for that Service Year:

Table 22	
$\frac{\sum A_c}{XY}$	
where:	
$\sum A_c$	is ascertained as follows: (i) for the Annual Cap Performance Level, the sum of the data relevant for each of the Reporting Periods in that Service Year, such data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD ; or (ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Service Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD ; or (iii) for the Annual Floor Performance Level, the sum of the data relevant for each of the Reporting Periods in that Service Year, such data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD ; and
XY	is the number of Reporting Periods in that Service Year.

(b) in respect of the Annual TOC Minute Delay Benchmark for that Service Year:

Table 23	
$\frac{\sum A_{md}}{AB_{md}}$	
where:	
$\sum A_{md}$	is ascertained as follows: (i) for the Annual Cap Performance Level, the sum of the Minutes Delay attributable to the Service Provider as comprised in the data relevant for each of the Reporting Periods in that Service Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD ; or (ii) for the Annual Target Performance Level, the sum of the Minutes Delay attributable to the Service Provider as comprised in the data relevant for each of the Reporting Periods in that Service Year, such Minutes Delay data being the data which was

	<p>used for the purposes of determining the Annual Target Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD; or</p> <p>(iii) for the Annual Floor Performance Level, the sum of the Minutes Delay attributable to the Service Provider as comprised in the data relevant for each of the Reporting Periods in that Service Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD; and</p>
<p>AB_{md}</p>	<p>is ascertained as follows:</p> $\frac{B}{1000}$ <p>where: B is:</p> <p>(i) for the Annual Cap Performance Level, the sum of the Actual Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Service Year, such Actual Train Mileage data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD; or</p> <p>(ii) for the Annual Target Performance Level, the sum of the Actual Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Service Year, such Actual Train Mileage data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD; or</p> <p>(iii) for the Annual Floor Performance Level, the sum of the Actual Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Service Year, such Actual Train Mileage data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD.</p>

(c) in respect of the Annual Short Formation Benchmark for that Service Year:

<p>Table V</p>	
$\frac{\sum A_{sf}}{XY}$	
<p>where:</p>	
$\sum A_{sf}$	<p>is ascertained as follows:</p> <p>(i) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Service Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD; or</p>

	(ii) for the Annual Floor Performance Level, the sum of the data relevant for each of the Reporting Periods in that Service Year, such data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD ; and
XY	is the number of Reporting Periods in that Service Year.

(d) NOT USED

(e) NOT USED

(f) in respect of the Annual T-3 Measure for that Service Year:

Table X3	
$\frac{\sum A_{XT3}}{XY}$	
Where:	
$\sum A_{XT3}$	is ascertained as follows: (i) NOT USED; or (ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Service Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD ; (iii) NOT USED; and
XY	is the number of Reporting Periods in that Service Year.

(g) in respect of the Annual T-15 Measure for that Service Year:

Table X15	
$\frac{\sum A_{XT15}}{XY}$	
Where:	
$\sum A_{XT15}$	is ascertained as follows: (i) NOT USED; or (ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Service Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD ; (iii) NOT USED; and
XY	is the number of Reporting Periods in that Service Year.

(h) in respect of the Annual All Cancellations Measure for that Service Year:

Table XAC	
$\frac{\sum A_{XAC}}{XY}$	
Where:	
$\sum A_{XAC}$	is ascertained as follows: (i) NOT USED; or (ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Service Year, such data being the data which was used for the purposes of determining the Annual

	Target Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD ; (iii) NOT USED; and
XY	is the number of Reporting Periods in that Service Year.

24. **Determination for Service Years that are less than thirteen (13) Reporting Periods**

24.1 **NOT USED.**

24.2 Where a Service Year is less than thirteen (13) Reporting Periods, the Secretary of State will perform the following calculations for the purposes of determining the Actual T-3 Performance Level, Actual T-15 Performance Level and Actual All Cancellations Performance Level relating to that Service Year:

(a) in respect of the Actual T-3 Performance Level for that Service Year:

Table Z3	
$\frac{\sum A_{ZT3}}{XY}$	
where:	
$\sum A_{ZT3}$	is the sum of the figures published by Network Rail in respect of Time to 3 Minutes in respect of the Service Provider for each Reporting Period in that Service Year; and
XY	is the number of Reporting Periods in that Service Year.

(b) in respect of the Actual T-15 Performance Level for that Service Year:

Table Z15	
$\frac{\sum A_{ZT15}}{XY}$	
where:	
$\sum A_{ZT15}$	is the sum of the figures published by Network Rail in respect of Time to 15 Minutes in respect of the Service Provider for each Reporting Period in that Service Year; and
XY	is the number of Reporting Periods in that Service Year.

(c) in respect of the Actual All Cancellations Performance Level for that Service Year:

Table ZAC	
$\frac{\sum A_{ZAC}}{XY}$	
where:	
$\sum A_{ZAC}$	is the sum of the figures published by Network Rail in respect of All Cancellations in respect of the Service Provider for each Reporting Period in that Service Year; and
XY	is the number of Reporting Periods in that Service Year.

25. **NOT USED**

26. **NOT USED**

27. **Reporting of Actual Performance Levels**

The Service Provider shall within 10 Weekdays of the end of each Service Year provide to the Secretary of State a report setting out the Service Provider's:

- (a) the Actual T-3 Performance Level for that Service Year as against the Annual Target Performance Level for the Annual T-3 Measure in that Service Year; and
- (b) the Actual T-15 Performance Level for that Service Year as against Annual Target Performance Level for that Annual T-15 Measure in that Service Year; and
- (c) the Actual All Cancellations Measure for that Service Year as against the Annual Target Performance Level for that Annual All Cancellation Measure in that Service Year.

- 28. **NOT USED**
- 29. **NOT USED**
- 30. **NOT USED**

Withdrawn

PART 3 – MISCELLANEOUS PROVISIONS

31. Allocation of Disputed Cancellations/Disputed Partial Cancellations

For the purpose of performing the calculations referred to in paragraph 6 of this Schedule 7.1 the Secretary of State shall allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the Service Provider and Network Rail at the end of a Reporting Period and/or a Service Year (as applicable) in the following ratio of:

Table 24	
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 Service Provider) during such twelve (12) preceding Reporting Periods; and
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.

32. Allocation of Disputed Minutes Delay

Where the attribution of any Minutes Delay is in dispute between Network Rail and the Service Provider at the end of a Reporting Period and/or a Service Year (as applicable) the Secretary of State shall, for the purpose of performing the calculations referred to in paragraph 12 of this Schedule 7.1, allocate any disputed Minutes Delay between the Service Provider and Network Rail in the ratio of:

Table 25	
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 Service Provider including any disputed attributions which were resolved or determined (and attributed to the Service Provider) 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.

Withdrawn

33. Calculations

For so long as fewer than 13 Reporting Periods have elapsed following the Service Commencement Date, the Secretary of State shall, for the purposes of performing the calculations referred to in paragraphs 30 and 31, assume performance at the Previous Performance Level in respect of the relevant Reporting Periods (up to a maximum of 12 Reporting Periods) that precede the Service Commencement Date.

Withdrawn

Appendix 1 to Schedule 7.1 - Cancellations Benchmarks and Annual Cancellations Benchmarks

PART 1 - CANCELLATIONS BENCHMARK TABLE (ENFORCEMENT REGIME)

1. **Start of the Services**

The Reporting Period in the cells entitled "Period 1, Year 1" shall be the first Reporting Period of the first Service Year of the Service Period.

Column 1		Column 2		Column 3	Column 4
Year		Service Year	Reporting Period	Target Performance Level	Breach Performance Level
From	To			(% Cancelled)	(% Cancelled)
2019	2020	Year 1	13	2.93	3.68
2020	2021	Year 2	1	2.84	3.59
2020	2021	Year 2	2	2.72	3.47
2020	2021	Year 2	3	2.60	3.35
2020	2021	Year 2	4	2.49	3.24
2020	2021	Year 2	5	2.38	3.13
2020	2021	Year 2	6	2.27	3.02
2020	2021	Year 2	7	2.16	2.91
2020	2021	Year 2	8	2.05	2.80
2020	2021	Year 2	9	1.93	2.68
2020	2021	Year 2	10	1.80	2.55
2020	2021	Year 2	11	1.70	2.45
2020	2021	Year 2	12	1.60	2.35
2020	2021	Year 2	13	1.56	2.29
2021	2022	Year 3	1	1.53	2.24
2021	2022	Year 3	2	1.48	2.17
2021	2022	Year 3	3	1.47	2.14
2021	2022	Year 3	4	1.46	2.10
2021	2022	Year 3	5	1.44	2.07
2021	2022	Year 3	6	1.43	2.03
2021	2022	Year 3	7	1.42	2.00
2021	2022	Year 3	8	1.41	1.97
2021	2022	Year 3	9	1.39	1.93
2021	2022	Year 3	10	1.37	1.89
2021	2022	Year 3	11	1.37	1.86
2021	2022	Year 3	12	1.36	1.83

PART 2(A) – ANNUAL CANCELLATIONS BENCHMARK TABLE (FINANCIAL REGIME)

Year		Column 1	Column 2	Column 3	Column 4
Franchisee Year		Franchisee Year	Annual Cap Performance Level (% Cancelled)	Annual Target Performance Level (% Cancelled)	Annual Floor Performance Level (% Cancelled)
2019	2020	Year 1	Not Applicable	Not Applicable	Not Applicable
2020	2021	Year 2	0.86	1.56	1.83
2021	2022	Year 3	0.66	1.36	1.63

Withdrawn

PART 2(B) - NOT USED

Withdrawn

Appendix 2 to Schedule 7.1 - TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks

PART 1 - TOC MINUTE DELAY BENCHMARK TABLE (ENFORCEMENT REGIME)

The Reporting Period in the cells entitled "Period 1, Year 1" shall be the first Reporting Period of the first Service Year of the Service Period.

Column 1		Column 2		Column 3	Column 4
Year		Service Year	Reporti ng Period	Target Performance Level	Breach Performance Level
From	To			(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)
2019	2020	Year 1	13	21.46	29.46
2020	2021	Year 2	1	21.75	29.75
2020	2021	Year 2	2	22.08	30.08
2020	2021	Year 2	3	22.34	30.34
2020	2021	Year 2	4	22.40	30.40
2020	2021	Year 2	5	22.12	30.12
2020	2021	Year 2	6	21.75	29.75
2020	2021	Year 2	7	20.27	29.28
2020	2021	Year 2	8	20.54	28.54
2020	2021	Year 2	9	20.17	28.17
2020	2021	Year 2	10	19.97	27.97
2020	2021	Year 2	11	19.72	27.72
2020	2021	Year 2	12	19.47	27.47
2020	2021	Year 2	13	19.53	27.53
2021	2022	Year 3	1	19.32	27.32
2021	2022	Year 3	2	19.04	27.04
2021	2022	Year 3	3	18.79	26.79
2021	2022	Year 3	4	18.58	26.58
2021	2022	Year 3	5	18.40	26.40
2021	2022	Year 3	6	18.21	26.21
2021	2022	Year 3	7	17.97	25.97
2021	2022	Year 3	8	17.60	25.60
2021	2022	Year 3	9	17.19	25.19
2021	2022	Year 3	10	16.97	24.97
2021	2022	Year 3	11	16.81	24.81
2021	2022	Year 3	12	16.63	24.63

PART 2(A) – ANNUAL TOC MINUTE DELAY BENCHMARK TABLE (FINANCIAL REGIME)

Year		Column 1	Column 2	Column 3	Column 4
		Franchisee Year	Annual Cap Performance Level (relevant Minutes Delay per 1000 Actual Train Miles)	Annual Target Performance Level (relevant Minutes Delay per 1000 Actual Train Miles)	Annual Floor Performance Level (relevant Minutes Delay per 1000 Actual Train Miles)
2019	2020	Year 1	Not Applicable	Not Applicable	Not Applicable
2020	2021	Year 2	15.64	19.53	25.17
2021	2022	Year 3	12.74	16.63	22.27

Withdrawn

Part 2(B) - NOT USED

Withdrawn

APPENDIX 3 TO SCHEDULE 7.1

Short Formation Benchmarks and Annual Short Formation Benchmarks

PART 1 - SHORT FORMATION BENCHMARK TABLE (ENFORCEMENT REGIME)

The Reporting Period in the cells entitled "Period 1, Year 1" shall be the first Reporting Period of the first Service Year of the Service Period.

Column 1		Column 2		Column 3	Column 4
Year		Service Year	Reporting Period	Target Performance Level	Breach Performance Level
From	To			(% Short Formed)	(% Short Formed)
2019	2020	Year 1	13	0.00	6.08
2020	2021	Year 2	1	0.00	6.04
2020	2021	Year 2	2	0.00	6.01
2020	2021	Year 2	3	0.00	5.97
2020	2021	Year 2	4	0.00	5.92
2020	2021	Year 2	5	0.00	5.89
2020	2021	Year 2	6	0.00	5.85
2020	2021	Year 2	7	0.00	5.81
2020	2021	Year 2	8	0.00	5.77
2020	2021	Year 2	9	0.00	5.72
2020	2021	Year 2	10	0.00	5.68
2020	2021	Year 2	11	0.00	5.66
2020	2021	Year 2	12	0.00	5.63
2020	2021	Year 2	13	0.00	5.61
2021	2022	Year 2	1	0.00	5.59
2021	2022	Year 3	2	0.00	5.53
2021	2022	Year 3	3	0.00	5.43
2021	2022	Year 3	4	0.00	5.34
2021	2022	Year 3	5	0.00	5.26
2021	2022	Year 3	6	0.00	5.19
2021	2022	Year 3	7	0.00	5.10
2021	2022	Year 3	8	0.00	5.00
2021	2022	Year 3	9	0.00	4.90
2021	2022	Year 3	10	0.00	4.83
2021	2022	Year 3	11	0.00	4.78
2021	2022	Year 3	12	0.00	4.73

Withdrawn

PART 2(A) – ANNUAL SHORT FORMATION BENCHMARK TABLE (FINANCIAL REGIME)

Year		Column 1	Column 2	Column 3	Column 4
		Franchisee Year	Annual Target Performance Level (%)	Annual Intermediate Performance Level (%)	Annual Floor Performance Level (%)
2019	2020	Year 1	Not Applicable	Not Applicable	Not Applicable
2020	2021	Year 2	0	2.54	3.34
2021	2022	Year 3	0	1.56	2.36

Withdrawn

PART 2(B) – NOT USED

Withdrawn

Appendix 4 to Schedule 7.1 – NOT USED

Withdrawn

Appendix 5 to Schedule 7.1 – NOT USED

Withdrawn

Appendix 6 to Schedule 7.1 – Annual T-3 Measure

PART 1 – NOT USED

PART 2(A) – ANNUAL T-3 TABLE

Year	Column 1 Service Year	Column 2 Annual Target Performance Level (% T-3)
2019 - 2020	Year 1	Not Applicable
2020 - 2021	Year 2	78.22
2021 - 2022	Year 3	79.16

Withdrawn

PART 2(B) - NOT USED

Withdrawn

Appendix 7 to Schedule 7.1 - Annual T-15 Measure

PART 1 – NOT USED

PART 2(A) – ANNUAL T-15 TABLE

Year	Column 1 Service Year	Column 2 Annual Target Performance Level (% T-15)
2019 - 2020	Year 1	Not Applicable
2020 - 2021	Year 2	98.23
2021 - 2022	Year 3	98.39

Withdrawn

PART 2(B) - NOT USED

Withdrawn

Appendix 8 to Schedule 7.1 - All Cancellations Measures

PART 1 – NOT USED

PART 2(A) – ANNUAL ALL CANCELLATIONS TABLE

	Column 1	Column 3
Year	Service Year	Annual Target Performance Level (% All Cancelled)
2019 - 2020	Year 1	Not Applicable
2020 - 2021	Year 2	2.80
2021 - 2022	Year 3	2.57

Withdrawn

PART 2(B) – NOT USED

Withdrawn

SCHEDULE 7.2

CUSTOMER EXPERIENCE AND ENGAGEMENT

1. Definitions

- 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 Benchmark" means, in respect of a relevant Service Year, the benchmark for each NRPS Measure as set out in the NRPS Benchmark Table;

"NRPS Benchmark Table" means table 1 in Appendix 1 to this Schedule 7.2 (Customer Experience and Engagement);

"NRPS Improvement" means an improvement in the level of customer satisfaction for the relevant NRPS Measure as measured by a National Rail Passenger Survey so that such level is not lower than the related Nil Band Level; and

"NRPS Measure" means each of the factors more particularly described in the Passenger Survey Methodology and grouped as "Stations (S)", "Train (T)", "Customer Service (C)" and "Dealing With Delays (D)".

2. Conduct of National Rail Passenger Survey

- 2.1 The Service Provider agrees with the Secretary of State that:

- (a) the Passengers' Council may measure the level of passenger satisfaction with the 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 the Service Provider shall, as soon as reasonably practicable after such information is made available to the Service Provider in accordance with paragraph 2.2, publicise its performance against the NRPS Benchmarks by including such information in its Customer Report and displaying such information at all of the Stations and on its website.

2.4 It is agreed by the Service Provider 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 document in the agreed terms marked **PSM** (the "**Passenger Survey Methodology**");

2.5 If:

- (a) at any time during the Service Term the methodology adopted in conducting any National Rail Passenger Survey is, in the reasonable opinion of the Secretary of State, materially inconsistent with the Passenger Survey Methodology; and
- (b) the Secretary of State reasonably determines that in consequence a revision to the NRPS Benchmark is required in order to hold constant the risk of the Service Provider failing to satisfy the NRPS Benchmark,

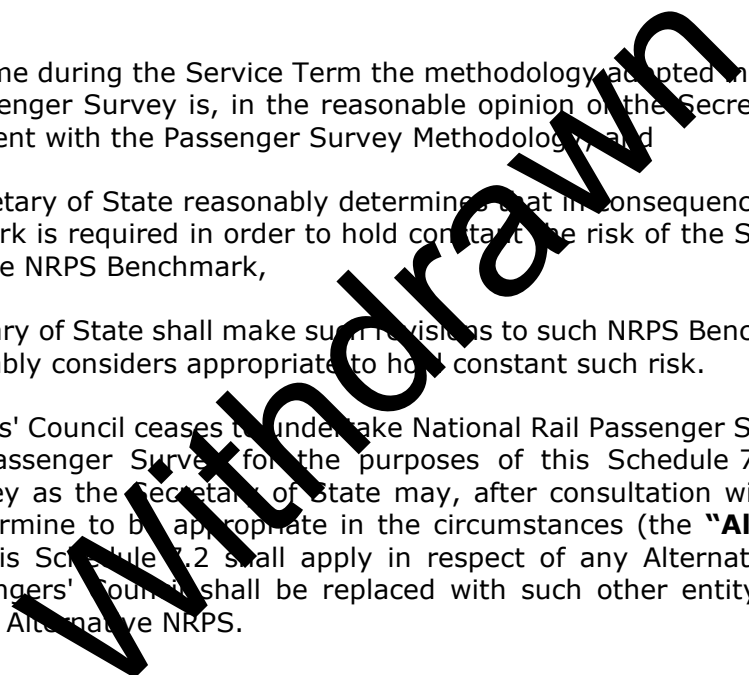
then the Secretary of State shall make such revisions to such NRPS Benchmarks as the Secretary of State reasonably considers appropriate to hold constant such risk.

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 shall be such other passenger survey as the Secretary of State may, after consultation with the Service Provider, reasonably determine to be appropriate in the circumstances (the "**Alternative NRPS**"). The provisions of this Schedule 7.2 shall apply in respect of any Alternative NRPS and for these purposes Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NRPS.

3. NRPS Benchmarks

3.1 It is agreed by the Secretary of State and the Service Provider that, subject to paragraph 2.6, the results of the National Rail Passenger Survey(s) published by the Passengers' Council in any Service Year should be used to determine the Service Provider's performance against the NRPS Benchmarks for that Service Year. If in any Service Year the Passengers' Council has published:

- (a) only one (1) National Rail Passenger Survey in that Service Year then the performance of the Service Provider against the NRPS Benchmarks shall be measured against the results of such National Rail Passenger Survey; or
- (b) more than one (1) National Rail Passenger Survey in that Service Year then the performance of the Service Provider against the NRPS Benchmarks shall be measured against the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that Service Year;



- (c) only one (1) National Rail Passenger Survey in that Service Year then the performance of the Service Provider against the NRPS Benchmarks shall be measured against the most recently published results of such National Rail Passenger Survey including, with respect to the first Service Year, where such results relate to a period preceding the Service Commencement Date.

4. Performance Review

4.1 For each Service Year the Secretary of State shall determine the Service Provider’s performance against each NRPS Benchmark by comparing:

- (a) if only one (1) National Rail Passenger Survey has been published by the Passengers’ Council in that Service Year, the results of such National Rail Passenger Survey against the NRPS Benchmarks applicable in respect of that Service Year; or
- (b) if more than one (1) National Rail Passenger Survey has been published by Passengers’ Council in that Service Year, the average of the results of all of the National Rail Passenger Surveys published by the Passengers’ Council in that Service Year against the NRPS Benchmarks applicable in respect of that Service Year.

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 any 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 is below the NRPS Benchmark for such measure then the Secretary of State shall be entitled to request from the Service Provider a plan in order to secure an NRPS Improvement.

5. NRPS Improvement Proposals

5.1 Within 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 Service Provider shall, prepare and deliver to the Secretary of State its proposal (the “**NRPS Improvement Proposal**”) for achieving an NRPS Improvement, which shall:

- (a) contain specific tangible actions points and indicate in the case of each action point:
 - (i) how that action will contribute to meeting the relevant NRPS Measure;
 - (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 Service Provider 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 Service Provider with respect to its NRPS Improvement Proposal, and the Service Provider shall submit such further information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or

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- (b) propose amendments to the NRPS Improvement Proposal and the parties shall agree and, in the 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 Service Provider 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 Service Provider shall implement the NRPS Improvement Plan in accordance with its terms.

6. **NOT USED**

7. **NOT USED**

8. **Consultations**

The Service Provider 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 protected by a Disabled People’s Protection 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 Service Provider shall comply with the Customer and Stakeholder Engagement Strategy from the Service Commencement Date.

- 9.2 The Service Provider shall
- (a) undertake and complete a review of the Customer and Stakeholder Engagement Strategy as part of the Service Provider’s 100 Day Review and thereafter in each Service Year; and
 - (b) provide the Secretary of State with any proposed revisions to the Customer and Stakeholder Engagement Strategy arising out of such review in accordance with the provisions of paragraph 2 of Part 2 (Committed Obligations) Schedule 6.2 (Committed Obligation) (with respect to the review undertaken as part of the 100 Day Review) or by no later than the end of each such Service Year (as the case may be).

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 Service Commencement 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.

Withdrawn

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 Service Provider 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, in electronic formats (such as on the Service Provider'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 13.2 of Schedule 7.3 (*Service Quality Regime*) and paragraph 16 of Schedule 11.2 (*Management Information*).

10.2 The Service Provider shall publish a Customer Report as follows:

- (a) Not Used; and
- (b) in respect of each Service Year (other than the first Service Year), the Service Provider shall be required to publish a Customer Report at least twice in that Service Year.

10.3 Without prejudice to the obligations of the Service Provider 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*), paragraph 13.2 of Schedule 7.3 (*Service Quality Regime*) and paragraph 16 of Schedule 11.2 (*Management Information*), the Secretary of State and the Service Provider acknowledge and agree that in respect of each Service Year to which the provisions of paragraph 10.2(b) apply, the first Customer Report to be published for that Service Year shall be prepared in respect of the first six (6) Reporting Periods of that Service Year and the second Customer Report to be published for that Service Year shall be prepared in respect of the last seven (7) Reporting Periods of that Service Year.

11. Customer and Communities Investment (CCI) Scheme

11.1 By no later than 1 April 2020, the Service Provider shall provide to the Secretary of State details of those initiatives, works or proposals (each a "**CCI Scheme**") which the Service Provider proposes to undertake in that CCI Period in order to resolve or mitigate issues raised with the Previous Franchisee through the consultations as carried out pursuant to the Previous Franchise Agreement. The Franchisee shall use all reasonable endeavours to propose, in respect of each CCI Period, CCI Schemes with an aggregate projected CCI Scheme Shortfall of not less than the aggregate of the CCI Amount for the relevant CCI Period.

11.1A By no later than 16 October 2021, the Service Provider shall provide to the Secretary of State details of those CCI Schemes which the Service Provider proposes could be undertaken by a Successor Operator in the period from the expiry of this Agreement and ending on 31 March 2023 in order to resolve or mitigate issues raised with the Service Provider through the consultations as carried out pursuant to paragraph 8 (*Consultations*).

11.1B The Secretary of State may advise the Service Provider of the proposed CCI Amount applicable to those CCI Schemes to be proposed by the Service Provider pursuant to paragraph 11.1A.

11.2 In relation to each CCI Scheme proposed by the Service Provider pursuant to paragraph 11.1 and paragraph 11.1A the Service Provider shall provide:

- (a) details of the specific issues which that CCI Scheme is intended to resolve or mitigate (including how those issues have been identified) and how that CCI Scheme will resolve or mitigate those issues; and
 - (b) fully worked up details of the CCI Scheme sufficient to enable the Secretary of State to evaluate the same, including:
 - (i) a timetable for the implementation of that CCI Scheme, setting out the proposed commencement and completion date of such CCI Scheme and any other key dates and milestones;
 - (ii) details of the projected CCI Scheme Cost; and
 - (iii) details of the projected CCI Scheme Revenue.
- 11.3 The Service Provider shall provide the Secretary of State with such further information in relation to any CCI Scheme proposed by the Service Provider pursuant to paragraph 11.1 and paragraph 11.1A as the Secretary of State may reasonably require.
- 11.4 A CCI Scheme proposed by the Franchisee pursuant to paragraph 11.1 shall not be an Approved CCI Scheme unless and until approved by the Secretary of State pursuant to paragraph 11.5.
- 11.5 A CCI Scheme proposed by the Service Provider pursuant to paragraph 11.1 and paragraph 11.1A must meet the following criteria:
- (a) has been identified and/or developed in accordance with the Customer and Stakeholder Engagement Strategy;
 - (b) is designed to resolve or mitigate issues raised with the Service Provider through the consultations referred to in paragraph 9;
 - (c) has a completion date falling before: (i) 31 March 2021 in respect of CCI Schemes proposed pursuant to paragraph 11.1 or (ii) 31 March 2023 in respect of CCI Schemes proposed pursuant to paragraph 11.1A;
 - (d) not used;
 - (e) is a scheme which the Service Provider is not otherwise funded to undertake; or
 - (f) is not a scheme which amounts to actions or steps which the Service Provider is otherwise obliged to take or which any competent train operator should be taking in relation to the operation of the Services.
- 11.6 Approved CCI Schemes shall be deemed to be, and treated for the purposes of this Agreement as, Committed Obligations and the provisions of Part 2 (Special Terms related to the Committed Obligations) of Schedule 6.2 (Committed Obligations) shall apply.
- 11.7 Not Used
- 11.8 Not Used
- 11.9 Not Used
- 11.10 Not Used.

Withdrawn

12. Customer Service and Satisfaction Data

- 12.1 As part of each Customer Report to be provided by the Service Provider pursuant to paragraph 10.1 of this Schedule 7.2, the Service Provider shall publish (in such format as the Secretary of State may reasonably require) details of the Service Provider'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 Service Provider and the ORR as part of the Service Provider's Disabled People's Protection Policy in respect of the Passenger Assistance service operated by the Service Provider,

in each case 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 last Reporting Period reported on in the Previous Customer Report, along with a comparison with the relevant statistics or results (as applicable) provided for the same Reporting Periods in the previous Service Year (including where applicable the final Franchisee Year of (and as defined in) the Previous Franchise Agreement).

- 12.2 The Service Provider 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 Service Term, details of the scores achieved by the Service Provider 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 Service Year, details of the scores achieved by the Service Provider in respect of each NRPS Benchmark, as calculated in accordance with paragraph 4 of this Schedule 7.2.

- 12.3 The Service Provider shall ensure that the scores achieved in relation to the NRPS Benchmarks, 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 NRPS Benchmarks were achieved, along with:
- (a) a comparison with the scores that were achieved against the NRPS Benchmarks for the same Reporting Periods in the previous Service Year (including where applicable the final Franchisee Year of (and as defined in) the Previous Franchise Agreement), accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise;
 - (b) details of any remedial work either:
 - (i) planned by the Service Provider to occur in the period in relation to which the next Customer Report will report to improve the Service Provider's performance in relation to achieving and exceeding the NRPS Benchmarks; or
 - (ii) undertaken by the Service Provider 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 last Reporting Period reported on in the Previous Customer Report, for the purposes of improving the Service

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Provider's performance in relation to achieving and exceeding the NRPS Benchmarks; and

- (c) details of any other initiatives planned to be implemented by the Service Provider to improve passenger experience.

12.4 The Service Provider 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.

Withdrawn

APPENDIX 1 TO SCHEDULE 7.2
NRPS Benchmark Table

Table 1						
NRPS BENCHMARKS						
Year		Service Year	NRPS MEASURE	NRPS MEASURE	NRPS MEASURE	NRPS MEASURE
From	To		STATION (S)(%)	TRAINS (T)(%)	CUSTOMER SERVICES (C)(%)	DEALING WITH DELAYS (D)(%)
2019	2020	Year 1	67	63	74	37
2020	2021	Year 2	68	65	75	40
2021	2022	Year 3	70	67	76	43

Withdrawn

APPENDIX 2 TO SCHEDULE 7.2

NOT USED

Withdrawn

SCHEDULE 7.3

SERVICE QUALITY REGIME

1. Purpose

1.1 This Schedule 7.3 sets out the following:

- (a) Part A – Service Quality Management Process;
- (b) Part B – Inspections and Audits;
- (c) Part C – Calculation of Pass Rates;
- (d) Part D – Publication and Reporting Requirements; and
- (e) Part E – Remedies.

2. Definitions

2.1 For the purposes of this Schedule 7.3 (*Service Quality Regime*) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

- “Affected Service Quality Indicator”** has the meaning given to such term in paragraph 20.1 of this Schedule 7.3;
- “Affected Service Quality Area”** has the meaning given to such term in paragraph 20.1(c) of this Schedule 7.3;
- “Ceased Services”** has the meaning given to such term in paragraph 3.3(c) of this Schedule 7.3;
- “Independent Service Quality Audits”** has the meaning given to such term in paragraph 7.1 of this Schedule 7.3;
- “Material Discrepancies”** has the meaning given to such term in paragraph 18.1 of this Schedule 7.3;
- “New Facilities”** has the meaning given to such term in paragraph 3.3(a)(ii) of this Schedule 7.3;
- “New Services”** has the meaning given to such term in paragraph 3.3(a)(i) of this Schedule 7.3;
- “Pass Rate”** means:
 - (a) in respect of a Reporting Period and for each Service Quality Schedule, the pass rate (*i.e. the number of Service Quality Indicators that have passed rather than failed*) for a Service Quality Area comprised in such Service Quality Schedule as calculated in accordance with paragraph 10 of this Schedule 7.3; and
 - (b) in respect of each Service Quality Schedule and for each Service Year, the pass rate (*i.e. the number of Service Quality Indicators that have*

passed rather than failed) for a Service Quality Area comprised in such Service Quality Schedule calculated in accordance with paragraph 10 of this Schedule 7.3,

both expressed as a percentage;

“Previous Pass Rate” has the meaning given to the term “Pass Rate” under the Previous Franchise Agreement;

“Previous SQR Benchmark” has the meaning given to the term “SQR Benchmark” under the Previous Franchise Agreement;

“Re-inspection Failure” has the meaning given to such term in paragraph 6.3 of this Schedule 7.3;

“Service Quality Area” means each of the service quality areas for SQR Trains and SQR Stations as set out in Column 1 of the table (s) in Appendix 2 of this Schedule 7.3;

“Service Quality Failure” has the meaning given to such term in paragraph 6.1 of this Schedule 7.3;

“Service Quality Indicator” means each of the indicators for SQR Trains and SQR Stations comprised in a Service Quality Area as specifically specified in Column 3 of the table(s) in Appendix 2 of this Schedule 7.3;

“Service Quality Inspection” has the meaning given to such term in paragraph 4.1 of this Schedule 7.3;

“Service Quality Regime” or “SQR” means the regime for the measurement of standards at SQR Stations and on SQR Trains as set out in this Schedule 7.3;

“Service Quality Re-inspection” has the meaning given to such term in paragraph 6.1 of this Schedule 7.3;

“Service Quality Schedules” means each of the service schedules for SQR Trains and SQR Stations contained in Appendix 1 of Schedule 7.3;

“SoS Audits” has the meaning given to such term in paragraph 8.1 of this Schedule 7.3;

“SoS Nominee” has the meaning given to such term in paragraph 7.6 of this Schedule 7.3;

“SoS Service Quality Inspection” means inspections undertaken by the Secretary of State or the Secretary of State’s agents in place of the Service Provider;

“SoS Service Quality Inspection Period” has the meaning given to such term in paragraph 17.2(b)(iii) of this Schedule 7.3;

“SQR Benchmark” means any SQR Train Benchmark or SQR Station Benchmark (as the context may require);

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- “SQR Floor Level”** means four (4) percentage points below the relevant SQR Benchmark;
- “SQR Management System”** has the meaning given to such term in paragraph 3.1 of this Schedule 7.3;
- “SQR Register”** means the register of the facilities and services which exist on a SQR Train or at a SQR Station and which is to be used for carrying out:

 - (a) Service Quality Inspections; and
 - (b) **NOT USED**; and
 - (c) Independent Service Quality Audits, SoS Audits or SoS Service Inspections,

in each case, as such register is required pursuant to paragraph 3.2 of this Schedule 7.3;
- “SQR Station”** means the Stations;
- “SQR Station Benchmark”** means the benchmark for each Service Quality Area relating to SQR Stations as set out in Column 2 of the table in Part 1 of Appendix 2 to this Schedule 7.3;
- “SQR Train”** means a train engaged in the provision of Passenger Services;
- “SQR Train Benchmark”** means, in relation to a SQR Train, the benchmark for each Service Quality Area as set out in Column 2 of the table in Part 2 of Appendix 2 to this Schedule 7.3;
- “Station Service Quality Inspection”** means an inspection of the facilities and services at a SQR Station in the manner specified in the Service Quality Schedules and in accordance with the requirements of this Schedule 7.3; and
- “Train Service Quality Inspection”** means an inspection of the facilities and services on a vehicle comprised within a SQR Train in the manner specified in the Service Quality Schedules and in accordance with the requirements of this Schedule 7.3.

2.2 **First Service Year**

The parties agree that:

- (a) the provisions of this Schedule 7.2 shall not apply to the first Service Year and that accordingly all references to “Service Year” in this Schedule shall exclude the first Service Year; but that
- (b) the second Service Year shall nevertheless be deemed to commence on the Service Commencement Date and expire on 31 March 2021 and accordingly shall be for a period of 13 months.

Part A - Service Quality Management Process

3. Service Quality Management

3.1 SQR Management System

- (a) The Service Provider shall operate from the Service Commencement Date and throughout the Service Term the SQR Management System.
- (b) The "**SQR Management System**" shall mean the service quality management arrangements and processes (including the collection of relevant data) which the Previous Franchisee implemented in accordance with and which complied with the terms of paragraph 2.1 of schedule 7.3 of the Previous Franchise Agreement and operated by the Previous Franchisee immediately prior to the Service Commencement Date.

3.2 SQR Register

- (a) The Service Provider shall maintain the SQR Register and update such SQR Register at such regular intervals as is reasonably necessary to ensure compliance with its obligations under this Schedule 7.3, it being acknowledged that as at the Service Commencement Date the SQR Register is not in a form that ensures compliance with the Service Provider's obligations under this Schedule 7.3 and that accordingly the Service Provider shall, as soon as reasonably practicable following the Service Commencement Date or within such other timescales as the Secretary of State may specify, deliver to the Secretary of State an updated Register for the Secretary of State's approval.
- (b) For the purposes of this paragraph the "SQR Register" shall mean the form of register compiled by the Previous Franchisee in accordance with the requirements of paragraph 2.4 of schedule 7.3 of the Previous Franchise Agreement, existing immediately prior to the Service Commencement Date.
- (c) Not Used.
- (d) the Service Provider shall provide an up to date copy of the SQR Register to the Secretary of State and/or representative of Rail North (when requested to do so from time to time) or to any person carrying out an SoS Audit or SoS Service Quality Inspection on behalf of the Secretary of State.

3.3 Changes to the Services

- (a) If at any time during the Service Term, the Service Provider:
 - (i) operates additional railway passenger services or operates additional stations which are not part of the SQR Trains or SQR Stations (as the case may be) at the Service Commencement Date (including where such are transferred from another Train Operator) ("**New Services**"); and/or
 - (ii) introduces new facilities or services on a SQR Train and/or on a SQR Station which were not in existence at the Service Commencement Date (including where such are transferred from another Train Operator) ("**New Facilities**"),

then it shall update its SQR Management System and the SQR Register to include such New Services and New Facilities by no later than the first day of the first Reporting Period which commences after the date upon which the Service Provider begins to operate such New Services or such New Facilities are introduced (as the case may be).

- (b) The requirements of this Schedule 7.3 shall begin to apply in relation to such New Services and such New Facilities from the first day of the first Reporting Period which commences after the date on which the Service Provider commences the operation of such New Services or New Facilities are introduced (as the case may be).
- (c) If at any time during the Service Term, the Secretary of State directs the Service Provider to permanently stop operating certain railway passenger services or permanently stop operating stations which are part of the SQR Trains or SQR Stations, (as the case may be) at the Service Commencement Date ("**Ceased Services**"), then the Service Provider shall update the SQR Management System and the SQR Register to remove such Ceased Services by no later than the first day of the first Reporting Period which commences after the date upon which the Service Provider stopped operating such Ceased Services.
- (d) The requirements of this Schedule 7.3 shall cease to apply in relation to such Ceased Services from the first day of the first Reporting Period which commences after the date on which the Service Provider stops the operation of such Ceased Services are introduced.

Withdrawn

Part B – Inspections and Audits

4. The Service Provider Service Quality Inspections

- 4.1 In each Reporting Period, the Service Provider shall, in accordance with the requirements of paragraph 4.3, undertake or procure the undertaking of Station Service Quality Inspections and Train Service Quality Inspections (together to be known as the "**Service Quality Inspections**"). The Secretary of State and/or Rail North (or any or their employees, agents, representatives or advisers) shall be entitled to attend and observe the carrying out of the Service Quality Inspections.
- 4.2 Not Used.
- 4.3 The Service Provider shall (as a minimum):
- (a) ensure that each Service Quality Inspection is carried out so as to determine whether any Service Quality Indicator has been passed or failed in accordance with the failure criteria specified in the Service Quality Schedules;
 - (b) ensure that each Service Quality Inspection is carried out accurately and impartially by independent persons (who for the purposes of this paragraph 4.3 only can be Franchise Employees dedicated to delivering the Service Quality Regime);
 - (c) if the Service Provider elects for Service Quality Inspections to be carried out by Franchise Employees then any such Franchise Employees must not be persons:
 - (i) who are responsible for customer service or the management or operation of any of the SQR Stations or SQR Trains which are the subject of the Service Quality Inspection; or
 - (ii) whose base salary payment or provision of any benefit (whether contractual or otherwise) are dependent on the result of any Service Quality Inspection;
 - (d) ensure that any Franchise Employee who is a member of the customer relations team or who is involved in the operation of any SQR Stations or SQR Train (including any person who is responsible for the management and operation of any such SQR Stations or SQR Train) in respect of which a Service Quality Inspection is to be undertaken is not notified or otherwise made aware of the date or time of any proposed or actual Service Quality Inspection;
 - (e) ensure that:
 - (i) each SQR Station is the subject of a Station Service Quality Inspection at least four (4) times in each Service Year; and
 - (ii) each Station Service Quality Inspection is carried out in respect of each Reporting Period at one-hundred and fifty (150) different SQR Stations with such Station Service Quality Inspection being distributed across the day and between the days of the week in proportion to typical passenger use of the SQR Station across the day and the days of the week in each such Reporting Period. Such Station Service Quality Inspections shall be reasonably apportioned so that subsequent Service Quality Inspections in respect of each SQR Station are not unduly concentrated on a particular time of the day or day of the week; and
 - (iii) NOT USED; and

- (f) ensure that:
 - (i) in respect of each Reporting Period, five hundred and fifty (550) Train Service Quality Inspections are carried out in respect of different vehicles comprised within different SQR Trains with such Train Service Quality Inspection being apportioned across the day and between the days of the week in proportion to the typical distribution of passenger journeys across the day and between the days of the week; and
 - (ii) Train Service Quality Inspections are carried out in respect of vehicles operating on each Route once every other Reporting Period. Such Train Service Quality Inspections shall not be unduly concentrated on vehicles that operate on a particular Route; and
 - (iii) **NOT USED**; and
- (g) **NOT USED.**

4.4 For any Reporting Period which is longer than thirty-two (32) days or shorter than twenty-five (25) days the minimum number of:

- (a) Station Service Quality Inspections as specified in paragraph 4.3(e); and
- (b) Train Service Quality Inspections as specified in paragraph 4.3(f);
- (c) **NOT USED,**

shall be increased or reduced pro rata based on a normal Reporting Period of twenty-eight (28) days.

4.5 For any Service Year which has less than thirteen (13) Reporting Periods:

- (a) Station Service Quality Inspections as specified in paragraph 4.3(e); and
- (b) Train Service Quality Inspections as specified in paragraph 4.3(f);
- (c) **NOT USED,**

shall be reduced pro rata based on a normal Service Year of thirteen (13) Reporting Periods.

4.6 For any Service Year which has more than thirteen (13) Reporting Periods:

- (a) Station Service Quality Inspections as specified in paragraph 4.3(e); and
- (b) Train Service Quality Inspections as specified in paragraph 4.3(f);
- (c) **NOT USED,**

shall be increased pro rata based on a normal Service Year of thirteen (13) Reporting Periods.

5. **NOT USED**

6. **Service Quality Re-Inspection**

6.1 If in any Reporting Period a "fail" is recorded against any Service Quality Indicator set out in any Service Quality Schedule ("**Service Quality Failure**") then, in relation to SQR Stations the Service Provider shall within 30 days of the occurrence of the relevant Service Quality Failure

rectify such specific Service Quality Failure and undertake an inspection of the relevant facility which resulted in the occurrence of such Service Quality Failure ("**Service Quality Re-inspection**") and the requirements of paragraphs 4.3(b) to 4.3(d) shall apply to any such Service Quality Re-inspection.

- 6.2 The provisions of this paragraph 6 shall continue to apply until such a time as the relevant facility which has resulted in the occurrence of a Service Quality Failure is rectified and a Service Quality Re-inspection in respect of that facility has not resulted in a Service Quality Failure.
- 6.3 If following two (2) Service Quality Re-inspections a Service Quality Failure is recorded against the same facility which resulted in the occurrence of a Service Quality Failure ("**Re inspection Failure**") then the Service Provider shall within fourteen (14) days of the occurrence of such Re-inspection Failure notify the Secretary of State of such failure.
- 6.4 The Service Provider shall prepare and submit to the Secretary of State together with such notice a plan which sets out the steps the Service Provider proposes to implement to ensure that the Re-inspection Failure is rectified before the next Service Quality Inspection and the Re-inspection Failure does not reoccur. The Service Provider shall implement such plan in accordance with its terms.
- 6.5 Where a Service Quality Re-inspection results in a Service Quality Failure being recorded against a facility, the scores for that Service Quality Re-inspection shall be included in the calculation of the Pass Rates for the Reporting Period in which the Service Quality Re-inspection is conducted, in accordance with the provisions of paragraph 10 (Calculation of Pass Rates) and paragraph 20 (Consequences of Performance falling below the SQR benchmark) and determining the Service Quality Payment under paragraph 11 (Calculation of the Service Quality Payments).
- 6.6 **NOT USED**
7. **Independent Service Quality Audit**
- 7.1 In respect of each Service Year the Service Provider shall procure the carrying out of an independent audit ("**Independent Service Quality Audit**").
- 7.2 the Service Provider shall agree the terms of reference for the procurement of any Independent Service Quality Audit and the identity of any independent person proposed to undertake such Independent Service Quality Audit with the Secretary of State prior to any procurement by the Service Provider of any such Independent Service Quality Audit.
- 7.3 The Independent Service Quality Audit shall be undertaken a minimum of once per year to verify and confirm that the:
- (a) SQR Management System complies with the requirements of paragraph 3.1 (SQR Management System) and has been implemented as required pursuant to this Schedule 7.3;
 - (b) Service Quality Inspections undertaken in that Service Year comply with the requirements of paragraph 4.3 (*the Service Provider Service Quality Inspections*);
 - (c) SQR Register has been maintained and updated as required pursuant to paragraph 3.2 (SQR Register);
 - (d) Pass Rates reported by the Service Provider for Reporting Periods within that Service Year have been calculated in accordance with the requirements of paragraph 10.1 (Calculation of Pass Rates);

- (e) Pass Rates reported by the Service Provider for that Service Year have been calculated in accordance with paragraph 10.2 (Calculation of Pass Rates).
- 7.4 Any Independent Service Quality Audit shall either:
- (a) confirm that, after having regard to the findings of such inspections, its assessment of the matters referred to in paragraphs 7.3(a) to 7.3(e) and any other relevant information at the disposal of any person conducting such Independent Service Quality Audit, it can reasonably be concluded that the Pass Rates reported by the Service Provider for that Reporting Periods within that Service Year and/or for that Service Year are a fair, accurate and impartial reflection of the Service Provider's performance against each Service Quality Indicator or Service Quality Area; or
- (b) state that such confirmation cannot be provided and proceed to comply with paragraph 7.9 below.
- 7.5 Any Independent Service Quality Audit carried out on behalf of the Service Provider as required under this paragraph 7 shall be for the benefit of the Secretary of State.
- 7.6 The Secretary of State (and any of the Secretary of State's employees, agents, representatives and/or advisers, including for these purposes Rail North and any of its advisers, representatives and employees (each such person to be referred to as a "SoS Nominee")) shall have the right to witness any inspection carried out as part of an Independent Service Quality Audit.
- 7.7 The Service Provider shall co-operate in good faith with the Secretary of State in permitting the Secretary of State (including a SoS Nominee) to exercise the Secretary of State's rights under paragraph 7.6 and this paragraph 7.7 including by promptly providing to the Secretary of State the details of how and when any Independent Service Quality Audit will be conducted a reasonable time (and in any event not less than two (2) weeks) prior to the commencement of any such Independent Service Quality Audit.
- 7.8 The Service Provider shall provide the report together with all data produced as a consequence of any Independent Service Quality Audit to the Secretary of State as soon as reasonably practicable after the completion of the Independent Service Quality Audit to which it relates and in any event by no later than the date that is 28 days following the last day of the Service Year to which Independent Service Quality Audit.
- 7.9 To the extent that the confirmation specified in paragraph 7.4(b) cannot be provided in respect of any Independent Service Quality Audit, the Service Provider shall procure that any such audit report specifies in detail the reasons why such confirmation cannot be provided (including details of any Material Discrepancies between any Pass Rate reported by the Service Provider in accordance with paragraph 14 (Reporting Requirements) and a comparable Pass Rate derived from the inspections carried out as part of the Independent Service Quality Audit (and in particular where any such Material Discrepancies are in favour of the Service Provider)).
- 8. Secretary of State's Right of Audit**
- 8.1 Without prejudice to any other audit rights the Secretary of State may have under this Agreement, the Secretary of State (and a SoS Nominee on the Secretary of State's behalf), shall have the right to carry out audits (the "SoS Audits") for the purposes of verifying, as a minimum, the matters referred to in paragraph 4.1 (*the Service Provider Service Quality Inspections*).
- 8.2 The Secretary of State shall use the Secretary of State's reasonable endeavours to procure that any inspections carried out as part of any SoS Audits undertaken pursuant to this paragraph 8 are conducted on a basis that is, as far as reasonable practicable, consistent with the Service Quality Inspections undertaken in respect of the Service Year to which the SoS Audit relates.

9. Access Rights

- 9.1 the Service Provider shall grant such access to information, individuals and facilities including:
- (a) access to the SQR Trains and SQR Stations;
 - (b) access to schedules of the locations and times of any actual or planned Independent Service Quality Audits or Service Quality Inspections (as the case may be); and
 - (c) access to the relevant Franchise Employees, records and information (including access to relevant third parties and information, records and other materials kept by such third parties on behalf of the Service Provider),

as is reasonably necessary to enable the Secretary of State and/or the SoS Nominees to carry out SoS Audits or SoS Service Quality Inspections (as the case may be) or to witness any Service Quality Inspections, or Independent Service Quality Audits.

- 9.2 the Service Provider shall ensure that it has necessary arrangements in place with any relevant third parties for the purposes of ensuring that it can comply with its obligations under this paragraph 9.
- 9.3 The Secretary of State shall use reasonable endeavours to ensure that the persons employed in undertaking any SoS Service Quality Inspections or SoS Audits carry out such audits diligently and objectively.
- 9.4 The Secretary of State shall use reasonable endeavours to notify the Service Provider of the result of any SoS Service Quality Inspection or SoS Audit that is undertaken.
- 9.5 In carrying out any SoS Service Quality Inspection or SoS Audit (as the case may be) or witnessing any Service Quality Inspections, or Independent Service Quality Audits, the Secretary of State shall, subject to paragraph 9.6, be responsible for ensuring that the SoS Nominees:
- (a) are appropriately trained and briefed with respect to such reasonable location-specific safety rules and regulations; and
 - (b) obey such reasonable location-specific rules and regulations in respect of security and access,

in each case, as have been notified to the Secretary of State under paragraph 9.6.

- 9.6 The Service Provider shall provide reasonable prior notice from time to time of current location-specific access, security and safety rules and regulations to the Secretary of State for the purpose of ensuring that the Secretary of State (and the SoS Nominees) can carry out their respective inspection and auditing rights in an efficient, secure and safe manner.

Part C – Calculations of Pass Rates and Service Quality Payments

10. **Calculation of Pass Rates**

10.1 From the Service Commencement Date, the Service Provider shall calculate the Pass Rates for the Train Service Quality Inspections and the Station Service Quality Inspections for each Reporting Period as follows:

Table 1		
SQA_{rp} = Σ IPR_{rp}		
where:		
SQA_{rp}	is the Pass Rate for each Service Quality Area comprised in such Service Quality Schedule for that Reporting Period;	
IPR_{rp}	is ascertained as follows:	
	$p \times w$	
	where:	
	p is ascertained as follows:	
	$P = \left(\frac{SQ_i - SQ_f}{SQ_i} \right) \times 100$	
	where:	
	SQ _i	is in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of Service Quality Inspections (and where applicable Service Quality Re-inspections), carried out in respect of that Service Quality Indicator for that Reporting Period; and
	SQ _f	is in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of Service Quality Inspections (and where applicable Service Quality Re-inspections) carried out in respect of that Service Quality Indicator for that Reporting Period where a "fail" was recorded; and
w	is the weighting as specified in Column 4 of the table in Appendix 2 of the table(s) of this Schedule 7.3 in respect of the relevant Service Quality Indicator comprised in that Service Quality Area.	

10.2 Within fourteen (14) days after the end of each Service Year, the Service Provider shall provide to the Secretary of State its calculation of the Pass Rate for the relevant Service Year in respect of each Service Quality Area comprised in each Service Quality Schedule, such Pass Rate to be separately calculated for the Train Service Quality Inspections and the Station Service Quality Inspections carried out in that Service Year as follows:

Table 2	
SQA_{yr} = Σ IPR_{yr}	
where:	

Table 2						
SQA_{yr}	is the Pass Rate for each Service Quality Area comprised in such Service Quality Schedule for that Service Year;					
IPR_{yr}	is ascertained as follows:					
	$p \times w$					
	where:					
	p is ascertained as follows:					
	$P = \left(\frac{SQ_i - SQ_f}{SQ_i} \right) \times 100$					
	where:					
	<table border="1"> <tr> <td>SQ_i</td> <td>is in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of Service Quality Inspections (and where applicable Service Quality Re-inspections), carried out in respect of that Service Quality Indicator for that Service Year;</td> </tr> <tr> <td>SQ_f</td> <td>is in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of Service Quality Inspections (and where applicable Service Quality Re-inspections) carried out in respect of that Service Quality Indicator for that Service Year where a "fail" was recorded; and</td> </tr> <tr> <td>w</td> <td>is the weighting as specified in Column 4 of the table(s) in appendix 2 of this Schedule 7.3 in respect of the Service Quality Indicator comprised in that Service Quality Area.</td> </tr> </table>	SQ _i	is in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of Service Quality Inspections (and where applicable Service Quality Re-inspections), carried out in respect of that Service Quality Indicator for that Service Year;	SQ _f	is in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of Service Quality Inspections (and where applicable Service Quality Re-inspections) carried out in respect of that Service Quality Indicator for that Service Year where a "fail" was recorded; and	w
SQ _i	is in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of Service Quality Inspections (and where applicable Service Quality Re-inspections), carried out in respect of that Service Quality Indicator for that Service Year;					
SQ _f	is in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of Service Quality Inspections (and where applicable Service Quality Re-inspections) carried out in respect of that Service Quality Indicator for that Service Year where a "fail" was recorded; and					
w	is the weighting as specified in Column 4 of the table(s) in appendix 2 of this Schedule 7.3 in respect of the Service Quality Indicator comprised in that Service Quality Area.					

10.3 The Service Provider shall perform the calculations referred to in paragraphs 10.1 and 10.2 rounded to two (2) decimal places with the midpoint (that is, 0.115) rounded upwards (that is, 0.12).

11. **Calculations related to the Service Quality Regime**

11.1 **NOT USED**

11.2 **NOT USED**

11.3 On the later of receipt of the:

- (a) notification referred to in paragraph 10.2 by the Secretary of State in respect of a Service Year; and
- (b) any audit report relating to any Independent Service Quality Audit or SoS Audit (as the case may be) undertaken in respect of that Service Year:

the Secretary of State shall:

- (i) confirm to the Service Provider whether the Secretary of State agrees with the calculation of **SQA_{yr}**; or

- (ii) where any Independent Service Quality Audit or SoS Audit (as the case may be) reveals that there were Material Discrepancies in the calculation of the Pass Rate in favour of the Service Provider for that Service Year (including where any such Independent Service Quality Audit or SoS Audit (as the case may be) fails to confirm or verify any of the matters specified in paragraph 7.1 (Independent Service Quality Audits)), notify the Service Provider of that fact and the provisions of paragraph 18 (Material Discrepancies) shall apply.

12. **NOT USED**

Withdrawn

Part D - Publication and Reporting Requirements

13. Publication of Pass Rates

- 13.1 The Service Provider shall publish (as a minimum) on its web site (in such format as the Secretary of State may reasonably require) details of:
- (a) within one (1) week of the end of each Reporting Period, the Pass Rate for SQR Stations and SQR Trains for that Reporting Period, alongside the SQR Benchmark for such Service Quality Area; and
 - (b) within two (2) weeks of receipt of the confirmation from the Secretary of State provided in accordance with paragraph 11.3(b) (ii) (Calculations related to the Service Quality Regime), the Pass Rate for each Service Quality Area for each Service Year alongside the applicable SQR Benchmark for such Service Quality Area.
- 13.2 The Service Provider shall ensure that the Pass Rates published by it pursuant to paragraph 13.1 are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable Pass Rates were achieved, along with:
- (a) a comparison with the Pass Rates achieved 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 last Reporting Period reported on in the Previous Customer Report, along with a comparison with the relevant statistics or results (as applicable) provided for the same Reporting Periods in the previous Service Year (including where applicable the final Franchisee Year of (and as defined in) the Previous Franchise Agreement);
 - (b) details of any remedial work either
 - (i) planned by the Service Provider to occur in the period in relation to which the next Customer Report will report to improve the Service Provider's performance in relation to achieving and exceeding the SQR Benchmarks in respect of any Service Quality Area where performance is below the applicable SQR Benchmark; or
 - (ii) undertaken by the Service Provider during the Reporting Periods that have elapsed since the previous Customer Report or, in the case of the first Customer Report since the last Reporting Period reported on in the Previous Customer Report, for the purposes of improving the Service Provider's performance in relation to achieving and exceeding the SQR Benchmarks for any Service Quality Area where performance was below the applicable SQR Benchmark; and
 - (c) details of any other initiatives planned to be implemented by the Service Provider to improve the Service Provider's performance against the SQR Benchmarks.

14. Reporting Requirements

- 14.1 Within fourteen (14) days after the end of each Reporting Period, the Service Provider shall provide to the Secretary of State:
- (a) a statement (disaggregated to separately show the total number of Train Service Quality Inspections and Station Service Quality Inspections carried out in that Reporting Period) setting out the following:
 - (i) the raw data produced by any Service Quality Inspection and Service Quality Re-Inspection (where applicable);

- (ii) the number of Service Quality Inspections (and where applicable Service Quality Re-inspections) carried out in respect of each Service Quality Schedule in that Reporting Period;
 - (iii) the number of Service Quality Inspections (and where applicable Service Quality Re-inspections) where a "fail" was recorded in respect of a Service Quality Indicator in that Reporting Period and setting out (to the extent known) the reasons why such failures occurred for each Service Quality Schedule;
 - (iv) the number of Service Quality Inspections (and where applicable Service Quality Re-inspections) where a "pass" was recorded in respect of a Service Quality Indicator in that Reporting Period for each Service Quality Schedule; and
 - (v) for each Service Quality Schedule and in respect of a Service Quality Area, the total number of "passes" and "fails" recorded in respect of each Service Quality Indicator comprised in such Service Quality Area; and
- (b) in respect of that Reporting Period, the Service Provider's calculation of the Pass Rate for each Service Quality Area comprised in the relevant Service Quality Schedule.
- 14.2 The Pass Rate shall be separately calculated for the Train Service Quality Inspections and the Station Service Quality Inspections in that Reporting Period determined as set out in paragraph 10 (Calculation of Pass Rates).
- 15. Additional Information Requirements for Service Quality Re-inspections**
- 15.1 In addition to the information to be provided by the Service Provider pursuant to paragraph 14 (Reporting Requirements), the Service Provider shall at the end of each Reporting Period provide to the Secretary of State a list of each facility or service or train comprised in a SQR Train and SQR Station (on a Station by Station basis) against which a "fail" was recorded during any Service Quality Inspections, or Service Quality Re-inspection (as the case may be).
- 16. Maintenance of Records**
- 16.1 Without limiting the obligations of the Service Provider pursuant to paragraph 5 (*Maintenance of Records*) of Schedule 11.2 (*Management Information*), the Service Provider shall maintain true, up to date and complete records of the results of each Service Quality Inspection, its calculations of the Pass Rates in relation to such Service Quality Inspections and the results of each Independent Service Quality Audit.
- 16.2 The Service Provider shall, immediately at the request of the Secretary of State make any records required under this Schedule 7.3 available to the Secretary of State.

Part E - Remedies**17. Consequences of a Failed Audit**

17.1 If:

- (a) following an Independent Service Quality Audit or SoS Audit (as the case may be) any such audit cannot verify or confirm any of the matters referred to in paragraph 7 (*Independent Service Quality Audits*) or any confirmation required by paragraph 7.4(a) (*Independent Service Quality Audits*) cannot be provided; or
- (b) the Service Provider fails to:
 - (i) carry out a Service Quality Inspection as required by paragraph 4.1 (the Service Provider Service Quality Inspection); or
 - (ii) calculate the Pass Rates and/or report to the Secretary of State the Pass Rates as required pursuant to paragraphs 10.1 and 10.2 (*Calculation of the Pass Rates*); or
 - (iii) procure that an Independent Service Quality Audit is carried out or fails to provide an audit report as required pursuant to paragraph 7.9 (*Independent Service Quality Audits*),

then the provisions of this paragraph 17 shall apply.

17.2 If any of the circumstances specified in paragraph 17.1 occur then:

- (a) the Secretary of State may in the case of an SoS Audit, require the Service Provider to reimburse to the Secretary of State the reasonable and proper costs incurred in undertaking any such SoS Audit; and
- (b) the Secretary of State may, in all cases:
 - (i) require the Service Provider to carry out additional Service Quality Inspections (that is, in excess of those required pursuant to paragraph 4.1 (the Service Provider Service Quality Inspections));
 - (ii) require the Service Provider to procure a further Independent Service Quality Audit (or the Secretary of State may carry out a further SoS Audit) for the purposes of verifying whether any deficiencies in the SQR Management System have led or contributed to the failure of any Independent Service Quality Audit or SoS Audit or to confirm or verify whether any of the matters referred to in paragraph 7 (*Independent Service Quality Audits*) have been subsequently rectified by the Service Provider; or
 - (iii) elect to step in and carry out SoS Service Quality Inspections in place of the Service Quality Inspections for such period as the Secretary of State may specify (the "**SoS Service Quality Inspection Period**") and in these circumstances:
 - (A) the results of each SoS Service Quality Inspection shall be used for the purposes of calculating the Pass Rates in accordance with paragraph 10 (*Calculation of Pass Rates*);
 - (B) the Service Provider's obligations to undertake Service Quality Inspections and procure an Independent Service Quality Audit shall cease to apply for the duration of the SoS Service Quality Inspection Period; and

(C) Not Used.

18. **Material Discrepancies**

18.1 For the purposes of this Schedule 7.3, "**Material Discrepancies**" means:

- (a) discrepancies in the Service Provider's calculation of the Pass Rate which in the reasonable opinion of the Secretary of State are considered to be material; or
- (b) where an Independent Service Quality Audit or SoS Audit fails to confirm or verify any of the matters specified in paragraph 7.3 (*Independent Service Quality Audits*) in circumstances where the Pass Rate has been calculated wrongly; or
- (c) where an Independent Service Quality Audit or SoS Audit confirms that there would have been a different Pass Rate if the Service Provider had complied with the requirements of paragraph 7.3 (*Independent Service Quality Audits*).

18.2 If any Independent Service Quality Audit or SoS Audit (as the case may be) identifies any Material Discrepancies (irrespective of the nature or type of such Material Discrepancy) then this shall constitute a contravention of the Agreement and the Secretary of State shall be entitled to serve a Breach Notice on the Service Provider in accordance with Clause 6 (Breach Notices).

19. **NOT USED**

20. **Consequences of Performance falling below the SQR Benchmark**

20.1 If:

- (a) the Pass Rate of any individual Service Quality Indicator falls below the SQR Benchmark (as applicable) for the applicable Service Quality Area ("**Affected Service Quality Indicator**") for:
 - (i) any three (3) consecutive Reporting Periods;
 - (ii) any four (4) Reporting Periods within any period of thirteen (13) consecutive Reporting Periods; or
- (b) the Pass Rate as calculated in accordance with paragraph 10 (Calculation of the Pass Rates) in respect of any Service Quality Area is below any SQR Benchmark for that Service Quality Area ("**Affected Service Quality Area**") for:
 - (i) any three (3) consecutive Reporting Periods; or
 - (ii) any four (4) Reporting Periods within any period of thirteen (13) consecutive Reporting Periods; or
 - (iii) any Service Year,

then the Service Provider shall immediately notify the Secretary of State of such fact and the Secretary of State shall be entitled to request from the Service Provider a plan for ensuring that the Affected Service Quality Area or Affected Service Quality Indicator (as applicable) will, as soon as reasonably practicable, be provided at a level that is equal to the SQR Benchmark (a "**Service Quality Improvement**"). With respect to:

- (x) paragraphs 20.1(a)(i) and 20.1(b)(i), for so long as fewer than 3 Reporting Periods have elapsed following the Service Commencement Date, the Previous Franchisee's performance as against the relevant Previous SQR Benchmark in respect of the

relevant Reporting Periods (up to a maximum of 2 consecutive Reporting Periods) that immediately precede the Service Commencement Date shall be taken into account for the purposes of determining the matters referred to in those paragraphs (and "Reporting Period" shall be as defined in the Previous Franchise Agreement with respect to those Reporting Periods falling before the Service Commencement Date); and

- (y) paragraphs 20.1(a)(ii) and 20.1(b)(ii), for so long as fewer than 13 Reporting Periods have elapsed following the Service Commencement Date, the Previous Franchisee's performance as against the relevant Previous SQR Benchmark in respect of the relevant Reporting Periods (up to a maximum of 12 consecutive Reporting Periods) that immediately precede the Service Commencement Date shall be taken into account for the purposes of determining the matters referred to in those paragraphs (and "Reporting Period" shall be as defined in the Previous Franchise Agreement with respect to those Reporting Periods falling before the Service Commencement Date).

20.2 Within twenty-eight (28) days of the Secretary of State's request pursuant to paragraph 20.1 (or such longer period as the Secretary of State may specify), the Service Provider shall prepare and submit to the Secretary of State (for the Secretary of State's approval) the Service Provider's proposals for achieving a Service Quality Improvement ("**Service Quality Improvement Proposal**") which shall:

- (a) contain specific tangible actions points and indicate, in the case of each action point:
- (i) how that action will contribute to meeting the relevant SQR Benchmark;
 - (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;
 - (iv) the date by which the Service Quality Improvement will be achieved; and
- (b) the additional expenditure associated with each action.

20.3 The Secretary of State shall be entitled to:

- (a) request further information from the Service Provider with respect to its Service Quality Improvement Proposal, and the Service Provider 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 Service Quality Improvement Proposal and the parties shall agree and, in the absence of agreement, the Secretary of State shall reasonably determine the amendments to the Service Quality Improvement Proposal, in which case paragraph 20.4 shall apply; or
- (c) accept the Service Quality Improvement Proposal, in which case paragraph 20.4 shall apply; or
- (d) not accept the Service Quality Improvement Proposal, in which case the Service Provider shall not be obliged to undertake any further action with respect to its Service Quality Improvement Proposal.

20.4 The Service Provider shall implement the Service Quality Improvement Proposal as amended, determined or accepted by the Secretary of State (as the case may be) in accordance with paragraph 20.3.

20.5 If:

- (a) the Service Provider fails to implement any Service Quality Improvement Proposal (as approved by the Secretary of State) as required pursuant to paragraph 20.4 within the required timescales; or
- (b) the Service Provider’s performance in relation to the Affected Service Quality Area is not at a level that is equal to or above the SQR Floor Level for that SQR Benchmark within the period specified in Service Quality Improvement Proposal,

then this shall constitute a contravention of this Agreement and the Secretary of State may serve a Breach Notice in accordance with the provisions of Clause 8 (Breach Notices).

21. **Not Used**

Withdrawn

Appendix 1 to Schedule 7.3

Service Quality Schedules

PART 1 – SQR STATIONS

Please note that a Service Quality Indicator should only be subject to a Service Quality Inspection if the relevant facility or service is included in the SQR Register for that SQR Station

FAULT TYPE	FAILURE CRITERIA
Car and Cycle Parking	<p>Fail: if any of the following apply:</p> <ol style="list-style-type: none"> 1. Cycle racks/lockers/hoops are <ol style="list-style-type: none"> (a) not fit for purpose (b) not present and is shown on map (c) contain litter rendering use impossible. 2. Car parking or waiting bays are not clearly marked. 3. There is no information or signage informing passengers of who may park in the car park and/or the sign is not legible.
CIS	<p>Fail: If any of the following apply:</p> <ol style="list-style-type: none"> (a) screen not present although shown on map for the station (b) screen is not functioning to specification or the information is illegible (c) the information displayed appears to be incorrect at the time of the audit including the expected time of arrival (accurate to within 5 minutes) and the destination of those trains.
Cleanliness	<p>Fail: If ANY or all of the following apply</p> <ol style="list-style-type: none"> (a) generally unclean in areas that passengers may come into contact with (b) staining of floor and walls, fluids on floor (c) dirt noticeable on glass surfaces (c) any area smells unpleasant through spillage, litter or general lack of cleanliness.
Graffiti and etching	<p>Fail: If any of the following apply</p> <ol style="list-style-type: none"> (a) collectively there is graffiti/and or etching of an area more than 1xA3 in lobby or WC (b) collectively there is graffiti/and or etching of an area more than 2xA3 in all other areas (c) there is graffiti/and or etching that could be viewed as racist or obscene and likely to cause offence any size (to be reported to maintenance operator for removal within 24hrs) (d) there is one or more unauthorised poster or flyer.

Withdrawn

Hazardous damage	Fail: If an area has damage that could pose a danger to passengers and cannot be failed under any other area. (example: exposed wiring/broken glass or a trip hazard).
Help Point / Call for Aid	Fail: If help point (a) not present and is shown on the map (b) not operational (c) is faulty or poor reception for use or (d) the operator fails to answer call within 30 seconds.
Lifts and escalator Operational	Fail: Fail if lift and/or escalator are not functional and operational from 15 minutes before the departure of the first train and 10 minutes after the actual arrival of the last train.
Lighting	Fail: If lighting is required or on at time of audit and more than 10% of all lights found within any area of the station in line with the station map (e.g. platform, waiting room) are defective, (lights obscured by vegetation, or with dirty lenses or bulbs that cause inconsistent illumination shall be regarded as defective) and also lights which do not have a cover and/or cover is cracked or broken.
Litter	Fail: if (a) there are more than 10 items of litter, each larger than the size of a credit card found within any area of the Station in line with the station map, for example, platform or ICP; and/or (b) more than 10 items of litter is present on the track bed or if an effluent discharge is visible.
Posters and Frames	Fail: If any one or more of the following applies: (a) poster and/or frame not present but shown on the map for the station. (b) the poster frame is damaged/rusting or insecure in any way (c) information is not visible through the full area of the front panel (d) the poster is not in correct location as agreed criteria (e) the poster is showing incorrect or out of date information (f) the poster should not be torn or damaged.
Public Address	Fail: If (a) not present if shown on map (b) not operational (c) inaudible (d) announcement not made (e) information was not provided timely or was incorrect at the time of audit.

Withdrawn

<p>Seating</p>	<p>Fail: If seats are</p> <ul style="list-style-type: none"> (a) missing if shown on map (b) damaged and unusable (including torn upholstery >5cm, splinters wooden and metal likely to cause injury or damage to clothing) (c) dirty (including rust stains) likely to cause soiling to clothing (d) seat is unsecure or unstable.
<p>Shelter/Canopy fit for purpose Includes all canopies, stand alone shelters and waiting rooms at stations and any covered area where the public are able to stand.</p>	<p>Fail: If</p> <ul style="list-style-type: none"> (a) any shelter/canopy/waiting area is damaged in any way that results in it not functioning to its design limits or is missing. (b) Any shelter will not be fit for purpose if there are holes in the panels, panels are missing or polycarbonate panels are completely opaque or have been burnt in any way (c) The shelter/canopy/waiting room is leaking or otherwise not waterproof when designed to be so. (d) Any closed shelter or waiting room is closed when it should be open
<p>Signs</p>	<p>Fail: If required and there are no signs directing passengers to any of the following facilities, or where they exist they are damaged or defaced in a way that information is not legible.</p> <ul style="list-style-type: none"> (a) platforms and destinations (b) exits (c) bridges/subways (d) ticket Offices (e) TVMs (f) waiting rooms (g) car parks (h) car park ticket machines (i) disabled access route.
<p>Ticket Buying Facilities</p>	<p>Fail: If</p> <p>The ticket machine is not present but shown on the map. Any ticket machine is not working.</p> <p>If the following information is missing or not legible, name, address of operator, range of fares available, instructions on use, methods of payment and information on what passengers should do to contact in the event of a problem or to obtain a refund.</p> <p>The Ticket Office is not open to the public when it should be available.</p>

Withdrawn

<p>Toilet(s)</p>	<p>Fail: If the following items are missing from any toilet facility:</p> <ul style="list-style-type: none"> (a) Toilet paper (b) Soap or hand wash (c) Hand towels (if no electric hand dryer provided or hand dryer is broken).
<p>Toilet(s) Operational - Fit for Use</p>	<p>Fail: If any or all the following apply to any toilet facility:</p> <ul style="list-style-type: none"> (a) The toilet is not open as specified (b) More than > 50% of cubicles are out of use (c) Lavatory or Urinals blocked (d) Flush system not operational (e) Disabled access facilities not operational (f) Baby change facilities not operational (g) Hand wash facilities not operational (h) Electric hand dryers (where fitted) not operational (i) Door locks not operational (j) Flooding on the floor.
<p>Landscaping and Vegetation</p>	<p>Fail: If any of the following apply:</p> <ul style="list-style-type: none"> (a) vegetation is obstructing walkways, signs, lighting or CCTV (b) vegetation is likely to present a tripping hazard (not to be failed under hazardous damage question) (c) any growth of vegetation poses a risk of injury to persons or damage (including staining) to their clothing or articles (d) any area intended to be laid out with vegetation should be neat and tidy and not overgrown. (e) there are leaves which are slippery underfoot in an area where passengers may come into contact with it.
<p>Winterisation</p>	<p>Fail: If no evidence of grit application or snow clearing has taken place at the time audit takes place if required by weather conditions.</p>

Withdrawn

PART 2 – SQR TRAINS

Please note that a Service Quality Indicator should only be subject to a Service Quality Inspection if the relevant facility or service is included in the SQR Register for that SQR Train.

No	Schedules	Criteria
1	Exterior cleanliness	Fail if any of the following apply: (a) slightly stained front end, (b) stained engrained dirt on body ends or streaked engrained body sides and/or body side window glass.
2	Customer information displays (Destination boards and Passenger Information Displays)	Fail if either the external or internal customer information screens are (a) not functioning (b) illegible and/or (c) showing incorrect information
3	Public address audio system	Fail if any of the following apply (a) the announcement is not audible or capable of being understood (b) an announcement of the train destination is not made immediately prior to departure from any terminal station (c) an announcement of the next station and appropriate interchange is not made on approach to the next station (d) an announcement is not made following a delay of five or more minutes.
4	Lighting (Passenger saloon, toilet and door vestibule)	Fail if either/both of the following apply (a) any light bulb or lighting tube does not illuminate when the power is on (b) any light cover is cracked or broken, is loose or is otherwise unfit for purpose or missing.
5	Vehicle interior condition	Fail if any 2 of the following list apply:- (a) unsightly damaged panel(s) or damaged panel trim(s) (b) seat tear(s) in seat fabric more than (25mm) (c) heavy wear pattern on floor coverings and seat coverings (d) loose and/or missing window seal(s) (e) broken and/or cracked window(s) (f) hole in vinyl or carpet

6	Graffiti and Etching	<p>Fail if any of the following apply</p> <ul style="list-style-type: none"> (a) graffiti/etching is present which can be viewed as racist or obscene (b) outside the vehicle any graffiti covers an area greater than a A4 sized piece of paper (c) inside the vehicle any graffiti found is greater than an area 10cm².
7	Interior cleanliness to include seats	<p>Fail if any of the following applies</p> <ul style="list-style-type: none"> (a) there is a contamination or spillage that is readily apparent to a passenger entering a carriage, (b) there is a contamination or spillage that would render the area or facility unusable and/or (c) any surface in the interior of the vehicle (excepting the floor) is subject to excessive dust, dirt (that a letter written in the dirt or dust it is clearly legible), staining or chewing gum. The floor has engrained dirt and is stained excepting recent tracked dirt from people's shoes.
8	Litter	<p>Fail if either/both of the following apply</p> <ul style="list-style-type: none"> (a) more than 6 items of litter (apart from current newspapers) per vehicle interior (b) any litter bins are full to the extent no more litter can be placed in the bins.
9	Toilet	<p>Fail if any of the following apply: The door handle or locking mechanism is faulty;</p> <ul style="list-style-type: none"> (a) Lavatory seat not in place. (b) Lavatory blocked or soiled or flush system not operational. (c) Hand wash water system not operational. (d) Toilet unavailable or "locked out of use". (e) Baby changing facilities (if fitted) are not clean and working. (f) Disabled Access and facilities (if fitted) are not working.

Withdrawn

10	Toilet facilities	<p>Fail if any of the following apply:</p> <ul style="list-style-type: none"> (a) Toilet tissue not replenished. (b) Litter and disposal bins overflowing. (c) Soap not replenished. (d) All fixtures, fittings and surfaces dirty / soiled including toilet pan, seat, panels, floor, hand driers and mirrors or the floor has puddles (not splashes). (e) Hand towels not replenished (No means of hand drying available - not toilet tissue). (f) Toilet unavailable / "locked out of use".
11	Mobile data coverage	<p>Fail if it is not possible to connect to the internet and view and refresh a webpage via the service provided by the train operator.</p>

Withdrawn

Appendix 2 to Schedule 7.3

Service Quality Areas/SQR Benchmarks/Service Quality Indicators/Weightings

PART 1 – SQR STATIONS

	Column 1	Column 2			Column 3	Column 4
	Service Quality Areas	SQS Station Benchmarks			Service Quality Indicators	Weightings
		Service Year 2	Service Year 3			
Stations	Ambience	0.89	0.90	1	Lighting	20%
				2	Seating	20%
				3	Shelters/canopies	20%
				4	Vegetation/landscaping	20%
				5	Toilet operation/fit for use	20%
	Maintenance	0.95	0.95	1	Winterisation	25%
				2	Hazardous Damage	25%
				3	Lifts/escalator operational	25%
				4	Car & cycle parking	25%
	Cleanliness	0.85	0.85	1	Cleanliness	30%
				2	Toilet cleanliness	20%
				3	Graffiti/etching	20%
				4	Litter	30%
	Information	0.90	0.91	1	Customer Information Screens operation/accuracy	30%
				2	Help points operation/response	15%
				3	Posters	10%
				4	Public address	30%
				5	Signs	15%
	Ticketing	0.96	0.97	1	Ticket vending machines operation/info	100%

PART 2 – SQR TRAINS

	Column 1	Column 2			Column 3	Column 4
	Service Quality Areas	SQS Train Benchmarks			Service Quality Indicators	Weightings
		Service Year 2	Service Year 3			
Trains	Ambience	0.91	0.91	1	Lighting	33%
				2	Vehicle interior condition	34%
				3	Toilet Operation & fit for use	33%
	Cleanliness	0.87	0.88	1	Exterior cleanliness	10%
				2	Graffiti and etching	20%
				3	Interior cleanliness	30%
				4	Litter	20%
				5	Toilet cleanliness	20%
	Information	0.94	0.94	1	Customer information display	47%
				2	Public address	47%
				3	Mobile data	6%

Withdrawn

SCHEDULE 8

PAYMENTS

Schedule 8.1:	Fixed Service Payments
Schedule 8.2	Performance Review Provisions

Withdrawn

Schedule 8.1

Fixed Service Payments

1. Definitions

The following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

"Actual Costs" means the actual Costs of the Service Provider in the relevant period;

"Actual Revenue" means the actual Revenue of the Service Provider in the relevant period;

"Budgeted Costs" means the Costs budgeted to be incurred by the Service Provider in each Reporting Period falling within a Quarter and specified in the then current Budget;

"Cash Balance" the Service Provider's cash balance excluding:

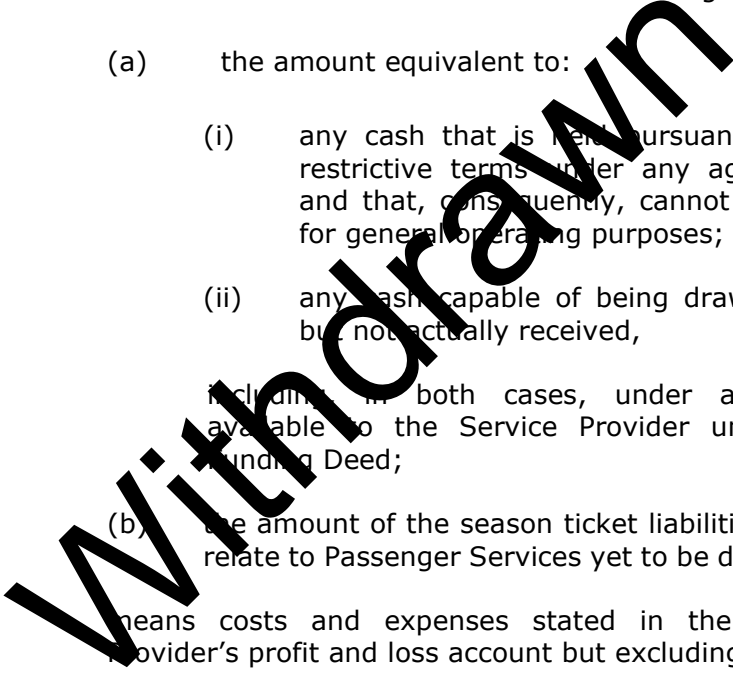
- (a) the amount equivalent to:
 - (i) any cash that is held pursuant to any restrictive terms under any agreement and that, consequently, cannot be used for general operating purposes;
 - (ii) any cash capable of being drawn down but not actually received,

including, in both cases, under any loan available to the Service Provider under the Funding Deed;

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

"Costs" means costs and expenses stated in the Service Provider's profit and loss account but excluding:-

- (a) Fixed Service Payments;
- (b) corporation tax and any deferred tax charge in the Service Provider's profit and loss account; and
- (c) any accounting transaction included in the Management Accounts, Annual Management Accounts or Annual Audited Accounts but which does not require the Service Provider to make a cash payment including notional pensions accounting adjustments;
- (d) capital expenditure;



provided that if the Service Provider’s 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;

“Forecasted Revenue”

means the Revenue forecasted to be generated by the Service Provider in each Reporting Period and specified in the then current Budget;

“FSP Quarter”

means, in respect of each Service Year, each of the following three (or four, as the case may be) Reporting Periods:

- (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,

provided that:

- (i) the first FSP Quarter shall commence on the Service Commencement Date and shall expire on the last day of the third Reporting Period of the second Service Year;
- (ii) each FSP Quarter shall start on the day following the last day of the preceding FSP Quarter; and
- (iii) the last FSP Quarter shall end at the end of the Service Period;

“Funding Deed”

has the meaning given to it in paragraph 5 of this Schedule 8.1 (Fixed Service Payment); and

“Revenue”

means the gross total revenue of the Service Provider received or receivable as stated in OLR’s profit and loss account but excluding:

- (a) Fixed Service Payments;

Withdrawn

- (b) any accounting transaction included in the Management Accounts, Quarterly Accounts, Annual Management Accounts or Annual Audited Accounts but which does not result in the Service Provider receiving a cash payment including notional pensions accounting adjustments and the accounting impact of financial instructions revaluation,

and for the avoidance of doubt it is acknowledged that any payments received by the Service Provider for the purposes of funding any capital expenditure shall not be considered Revenue for the purposes of this Agreement.

2. Fixed Service Payments

- 2.1 The Fixed Service Payment payable by the Service Provider to the Secretary of State for any Reporting Period falling within the first FSP Quarter shall be an amount equal to that specified in the second column of the Table below for that Reporting Period

Column 1 FSP Quarter 1	Column 2 Fixed Service Payment £000
1 March 2020 to 31 March 2020 Reporting Period 13 (of Service Year 1)	[REDACTED ⁸]
1 April 2020 – 2 May 2020 Reporting Period 1 (of Service Year 2)	[REDACTED]
3 May 2020 – 30 May 2020 Reporting Period 2 (of Service Year 2)	[REDACTED]
31 May 2020 – 29 June 2020 Reporting Period 3 (of Service Year 2)	[REDACTED]

- 2.2 The Fixed Service Payment payable by the Service Provider to the Secretary of State or the Secretary of State to the Service Provider (as the case may be) for any Reporting Period following the first FSP Quarter shall be determined as specified in paragraph 4.1.

- 2.3 The Parties agree that:

- (a) where the Fixed Service Payment (value of **PSP_{FSP}**) as determined pursuant to paragraph 2.2 is **a positive number**, the Secretary of State shall pay that amount to the Service Provider on the Payment Date for that Reporting Period;

⁸ 31 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.

- (b) where the Fixed Service Payment (value of PSPFSP) as determined pursuant to paragraph 2.2 is a negative number, the Service Provider shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period.

3. Payment of Fixed Service Payments

- 3.1 The Secretary of State shall notify the Service Provider, no less than seven (7) days prior to the end of each Reporting Period, of the amount of the Fixed Service Payment payable in respect of that Reporting Period.
- 3.2 Each such notification shall set out in reasonable detail how the Fixed Service Payment has been calculated.
- 3.3 The Payment Date for a Reporting Period shall be the last Weekday of that Reporting Period.
- 3.4 Each Fixed Service Payment shall be payable by the Service Provider or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 3.1 on the Payment Date of the Reporting Period to which it relates.
- 3.5 Each Fixed Service 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.

Interest

- 3.6 If either the Service Provider or the Secretary of State fails to pay any amount to the other on its due date, it 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.
- 3.7 If the amount of any Fixed Service Payment is agreed or determined to be incorrect and:
- (a) either the Service Provider or the Secretary of State has made a payment to the other which is greater than it would have made if the amount of the Fixed Service Payment had been correct, then the recipient shall repay the excess within three (3) Weekdays of the agreement or determination; or
- (b) either the Service Provider or the Secretary of State has made a payment to the other which is less than it would have made if the amount of the Fixed Service Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three (3) Weekdays of the agreement or determination,

together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Fixed Service Payment was paid until the date on which such excess amount or shortfall is paid.

Disputes under Schedule 8

- 3.8 If either the Service Provider or the Secretary of State disputes the amount of a Fixed Service Payment, the dispute shall, unless the Service Provider and the Secretary of State otherwise agree, be resolved in accordance with the provisions of clause 18 (Governing Law and Jurisdiction) of the Service Agreement. Any such dispute shall not affect the obligation of either party to pay a Fixed Service Payment notified in accordance with this Schedule 8.1.

No Double Recovery

3.9 Neither Party shall be entitled to recover (by way of an adjustment to Fixed Service Payments or otherwise) more than once in respect of the same amount.

Force Majeure and Payments

3.10 Following the occurrence of a Force Majeure Event, the payment of Fixed Service Payments shall continue to be calculated in accordance with this Schedule 8.1 (Fixed Service Payments).

4. Fixed Service Payments after the First FSP Quarter and Revisions to the Budget

Fixed Service Payments after the first FSP Quarter

4.1 Immediately following the date of completion of the revisions to the then current Budget for each FSP Quarter pursuant to paragraph 4.2, the Secretary of State and the Service Provider shall, using the Budgeted Costs and Forecasted Revenues as specified in the revised Budget for the calculate the Fixed Service Payments that will be payable by the Service Provider to the Secretary of State or Secretary of State to the Service Provider (as the case may be) for each Reporting Period falling within the next FSP Quarter as follows:

PSP_{FSP}	=	(BC_{FSP} - FR_{FSP})
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Where:

BC_{FSP}	means the Budgeted Costs for the relevant Reporting Period falling within that FSP Quarter. BC _{FSP} may only be a positive number.
FR_{FSP}	means the Forecasted Revenue for the relevant Reporting Period falling within that FSP Quarter. FR _{FSP} may only be a positive number; and

4.2 No more than thirty (30) days but no less than fifteen (15) days prior to the end of each FSP Quarter, the Service Provider shall deliver to the Secretary of State:

- (a) its proposed revisions (if any) to the then current Budget for the remaining Reporting Periods of the Service Year; and
- (b) a full and detailed explanation for the proposed revisions

and the Parties may agree (or in the absence of agreement the Secretary of State shall reasonably determine) whether revisions are to be made, and (if so) the revisions to be made, and the date from which the revised Budget shall take effect. If the date from which the revised Budget is to take effect is such that a retrospective adjustment is required to be made to the Services Payment payable in relation to any FSP Quarter then such adjustment will be made by adjustment to the next Fixed Service Payment falling more than seven (7) days later than the date upon which the revisions to the Budget are to take effect pursuant to this paragraph 4.2.

Provisions applying to all revisions

4.3 Each revision to the Budget 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 definition of Costs and Revenue (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 and Revenue and with the information reported in the Management Accounts, Annual Management Accounts and the Audited Annual Accounts.
- 4.4 Each time it is agreed or determined that the Budget is to be revised, the Secretary of State shall be entitled to:-
- (a) make the agreed or determined revisions to the Budget himself (or procure this is done on his behalf) and provide copies of those revised documents to the Service Provider; or
- (b) require the Service Provider to provide the agreed or determined revisions to the Budget for approval by the Secretary of State, which the Service Provider shall do and provide revised versions to the Secretary of State within such time as the Secretary of State shall specify for this purpose.
- 4.5 The Service Provider 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 4, within such time as the Secretary of State may reasonably specify for that purpose.
- 4.6 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.
- 5. Funding Deed**
- 5.1 It is acknowledged by the Secretary of State, DOHL and the Service Provider that:
- (a) a funding deed entered on or about the date hereof has been entered into between DOHL and the Service Provider (the "**Funding Deed**"); and
- (b) the Service Provider shall be entitled to make a demand under the Funding Deed if in any Reporting Period:
- (i) the available Cash Balance in that Reporting Period is below **[REDACTED⁹]**; or

⁹ 31 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.

- (ii) the Service Provider reasonably believes that its available Cash Balance will fall below **[REDACTED¹⁰]** at the end of the Reporting Period immediately following that Reporting Period.

Any amounts that the Service Provider draws down under the Funding Deed shall be repaid as specified therein.

Withdrawn

¹⁰ 31 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.

Schedule 8.2

Performance Review Provisions1. **Definitions**

The following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definition):

- "Actual Subsidy"** means Actual Costs for the relevant Service Year less Actual Revenue for the relevant Service Year;
- "Budget Management Measure"** has the meaning given to it in paragraph 8.1(c) of this Schedule 8.2 (Performance Review Provisions);
- "Budgeted Subsidy"** means Budgeted Costs for the relevant Service Year less Forecasted Revenue for the relevant Service Year;
- "Client Satisfaction Measure"** has the meaning given to it in paragraph 9.1(c) of this Schedule 8.2 (Performance Review Provisions);
- "Corresponding Period"** means:
- (a) in respect of the second Service Year, the period from 1 April 2019 to 31 March 2020 (both dates inclusive); and
 - (b) in respect of the third Service Year, the period from 1 April 2020 to 28 February 2021 (both dates inclusive);
- "Customer Experience Performance Measure"** means each of the measures measuring customer experience and satisfaction as set out in paragraph 7.1 of this Schedule 8.2 (Performance Review Provisions) and **"Customer Experience Performance Measures"** shall mean all such measures together;
- "Derogation"** means any variation or amendment to a Committed Obligation including to:
- (a) the timescales for completion or implementation of that Committed Obligation; or
 - (b) the scope of the initiatives, deliverables or outputs to be completed by the Service Provider,
- in either case as set out in the applicable paragraph of Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligation);
- "Derogation Process Measure"** has the meaning given to it in paragraph 9.1A(c) of this Schedule 8.2 (Performance Review Provisions);
- "Derogation Requests Measure"** has the meaning given to it in paragraph 9.1A(a) of this Schedule 8.2 (Performance Review Provisions);

“Derogation Timescales Measure”

has the meaning given to it in paragraph 9.1A(b) of this Schedule 8.2 (Performance Review Provisions);

“Employee Engagement Measure”

has the meaning given to it in paragraph 9.1(a) of this Schedule 8.2 (Performance Review Provisions);

“Expected Performance Level”

with respect to each Performance Measure, means the level of performance that the Service Provider is expected to achieve or attain in each Service Year as set out in:

- (a) paragraph 6.2 of this Schedule 8.2 (Performance Review Provisions) with respect to each Operational and Resource Management Performance Measure;
- (b) paragraph 7.2 of this Schedule 8.2 (Performance Review Provisions) with respect to each Customer Experience Performance Measure;
- (c) paragraphs 8.2, 8.3 and 8.4 of this Schedule 8.2 (Performance Review Provisions) as applicable to each Financial and Commercial Performance Measure; and
- (d) paragraphs 9.2 and 9.4 of this Schedule 8.2 (Performance Review Provisions) with respect to each Stakeholder Satisfaction and Programme Management Performance Measure;

“Financial and Commercial Performance Measure”

means each of the measures of the Service Provider’s financial and commercial performance as set out in paragraph 8.1 of this Schedule 8.2 (Performance Review Provisions) and **“Financial and Commercial Performance Measures”** shall mean all such measures together;

“Performance Measure”

means each of the:

- (a) Operational and Resource Management Performance Measures;
- (b) Customer Experience Performance Measures;
- (c) Financial and Commercial Performance Measures; and
- (d) Stakeholder Satisfaction and Programme Management Performance Measures,

and the term **“Performance Measures”** shall mean all such performance measures together;

“Outturn Passenger Revenue”

means the gross revenue (without any deduction for operating costs or charges except for: (i) commission charged to revenue in the normal course of business; and (ii) delay repay compensation paid to passengers by the

Service Provider in accordance with the Passenger's Charter) of the Service Provider relating to:

- (a) the sale of tickets of any type for the carriage of passengers by railway or otherwise arising out of the Service Provider permitting any person to be carried on the Passenger Services (including revenue allocated to the Service Provider through the Ticketing and Settlement Agreement and pursuant to any multi modal fares scheme, local authority concessionary travel scheme, inter operator scheme, discount fares scheme or otherwise);
- (b) any compensation for loss of revenue payable to the Service Provider by Network Rail under Schedule 4 (Engineering Access Statement, Timetable Planning Rules and Restrictions of Use) to the Track Access Agreement;
- (c) any:
- (i) compensation for loss of revenue payable to the Service Provider by Network Rail pursuant to paragraph 9 (Network Rail Performance Sum) of Schedule 4 (Performance Regime) to the Track Access Agreement (excluding any Network Rail Claim); and
 - (ii) payments from the Service Provider to Network Rail pursuant to paragraph 9 (Network Rail Performance Sum) of Schedule 8 (Performance Regime) to the Track Access Agreement;
- (d) the revenue element of any payments to the Service Provider by Network Rail under Condition G (Network Change) of the Network Code relating to the sale of tickets of any type for the carriage of passengers by railway (including revenue allocated to the Service Provider through the Ticketing and Settlement Agreement or otherwise);
- (e) the sale of any Discount Card;
- (f) the imposition of any penalty upon any person making a journey on the Passenger Services without a ticket which is valid for such journey,

but shall not include any Fixed Service Payment. Where during the Service Period the Service Provider obtains gross revenue from sources not referred to in this definition of Outturn Passenger Revenue and such revenue was derived from business activities in relation to the Services which were not provided by the Service

Provider prior to the Service Commencement Date, the Secretary of State may in his absolute discretion determine such revenue will be included within the definition of Outturn Passenger Revenue;

“Operational and Resource Management Performance Measure”

means each of the measures of the Service Provider’s operational performance as set out in paragraph 6.1 of this schedule 8.2 (Performance Review Provisions) and **“Operational and Resource Management Performance Measures”** shall mean all such measures together;

“Programme Management Performance Measure”

means each of the measures of the Service Provider’s programme management performance set out in paragraph 9.1A of this Schedule 8.2 (Performance Review Provisions) and **“Programme Management Performance Measures”** shall mean all such measures together;

“Revenue Growth Measure”

has the meaning given to it in paragraph 8.1(a) of this Schedule 8.2 (Performance Review Provisions);

“Service Year Review”

means, in respect of each Service Year (other than the first Service Year), the review of the Service Provider’s performance against each of the Performance Measures;

“Service Year Review Checklist”

means the checklist set out in Appendix 1 of this Schedule 8.2 (Performance Review Provisions), detailing the information which is to be supplied by the Service Provider to the Secretary of State as part of each Service Year Review;

“Service Year Review Meeting”

means the meeting convened between the Secretary of State and the Service Provider pursuant to paragraph 3 of this Schedule 8.2 (Performance Review Provisions);

“Stakeholder Engagement Measure”

has the meaning given to it in paragraph 9.1(b) of this Schedule 8.2 (Performance Review Provisions);

“Stakeholder Satisfaction and Programme Management Performance Measure”

means each of the measures measuring Stakeholder, employee and client satisfaction as set out in paragraph 9.1 and 9.1A of this Schedule 8.2 (Performance Review Provisions) and **“Stakeholder Satisfaction and Programme Management Performance Measures”** shall mean all such measures together;

“Target Revenue”

means the target Outturn Passenger Revenue calculated in accordance with Appendix 2 to this Schedule 8.2 (Performance Review Provisions);

“Ticketless Travel Measure”

has the meaning given to it in paragraph 8.1(b) of this Schedule 8.2 (Performance Review Provisions); and

“Train Crew Management Measure”

has the meaning given to it in paragraph 6.1(e) of this Schedule 8.2 (Performance Review Provisions).

2. Service Year Review

- 2.1 A Service Year Review Meeting shall, in accordance with this Schedule 8.2, be conducted following each Service Year (with respect to that Service Year) excluding the first Service Year such that it is agreed and acknowledged that this Schedule 8.1 shall not apply to the first Service Year.
- 2.2 The purpose of the Service Year Review is for:
- (a) the Secretary of State to undertake a review of the Service Provider's actual performance against the applicable Expected Performance Level with respect to:
 - (i) each Operational and Resource Management Performance Measure as set out in paragraph 6;
 - (ii) each Customer Experience Measure as set out in paragraph 7;
 - (iii) each Financial and Commercial Performance Measure as set out in paragraph 8; and
 - (iv) each Stakeholder Satisfaction and Programme Management Performance Measure as set out in paragraph 9,
 in respect of the most recently completed Service Year;
 - (b) the Service Provider to identify and explain the reasons for or the causes of the Service Provider's performance being worse than the relevant Expected Performance Level for a Performance Measure, as applicable;
 - (c) the Service Provider to identify and explain its practices and initiatives or any other factors which have or may have contributed to the Service Provider's performance being better than the relevant Expected Performance Level for a Performance Measure, and
 - (d) the Parties to discuss and consider the course of action and/or the initiatives which may be undertaken or implemented by the Service Provider in order to improve the Service Provider's performance to a level that is at least equal to the Expected Performance Level, as applicable to a Performance Measure.
- 2.3 The Parties shall undertake an appraisal of the Service Provider's performance by the date of the Service Year Review Meeting, unless otherwise agreed by the Parties in writing.

3. Service Year Review Meetings

- 3.1 The Secretary of State shall notify the Service Provider of the date, time and location for the Service Year Review Meeting by no later than thirty (30) days after the end of the relevant Service Year, provided always that the Service Year Review Meeting shall take place no later than two (2) months following the end of the relevant Service Year.
- 3.2 For the avoidance of doubt, nothing in this Schedule 8.2 (Performance Review Provisions) shall prevent the Parties from discussing the Service Provider's performance or any other matter relevant to a Service Year Review outside of a Service Year Review Meeting.

4. **Service Year Review Checklist**

- 4.1 No earlier than sixty (60) days but no later than fifteen (15) days, prior to the last day in each Service Year, the Secretary of State shall notify the Service Provider in writing of:
- (a) any additional information or data that the Service Provider is required to submit at the same time as the completed Service Year Review Checklist which the Secretary of State considers is reasonably necessary for undertaking the Service Year Review or otherwise understanding the Service Provider's performance during the relevant Service Year; and
 - (b) the Outturn Passenger Revenue for the Corresponding Period relevant to the applicable Service Year calculated by the Secretary of State in accordance with paragraph 8.2(b).
- 4.2 Not less than fifteen (15) days prior to the last date in each Service Year, the Service Provider shall notify the Secretary of State in writing of any matters in addition to those set out in the Service Year Review Checklist or the information notified to the Service Provider by the Secretary of State in accordance with paragraph 4.1, which the Service Provider considers to be relevant for the Service Year Review. The Secretary of State shall within five (5) days of receiving such notice, provide written confirmation to the Service Provider of whether the Secretary of State considers such matters to be relevant to the Service Year Review.
- 4.3 As soon as reasonably practicable after the end of each Service Year, and in any event no later than twenty (20) days after the end of each Service Year, the Service Provider shall deliver to the Secretary of State:
- (c) a duly completed copy of the Service Year Review Checklist in respect of the relevant Service Year; and
 - (d) written commentary on any matter which the Secretary of State has confirmed as relevant to the Service Year Review in accordance with paragraphs 4.1 and 4.2.
- 4.4 At any time following delivery by the Service Provider of the Service Year Review Checklist and other information in accordance with paragraph 4.2 and until no later than five (5) days prior to the Service Year Review Meeting, the Secretary of State may notify the Service Provider, in writing of such further detail or evidence as the Secretary of State may reasonably require the Service Provider to provide in relation to its performance during the Service Year. The Service Provider shall comply with such request within a reasonable amount of time and in any event no later than five (5) days following receipt of such request.

5. **Service Year Review Meetings**

- 5.1 Each Service Year Review Meeting shall take place at the date, time and location determined in accordance with paragraph 3.1 and shall be attended by representatives of each of the Secretary of State and the Service Provider.
- 5.2 The Service Provider shall ensure that the representatives of the Service Provider at each Service Year Review Meeting include such:
- (a) directors and/or senior managers of the Service Provider;
 - (a) directors and/or senior managers of DOHL; and

(b) appropriate and qualified personnel of the Service Provider,
as the Secretary of State may reasonably require.

5.3 At each Service Year Review Meeting the Parties shall discuss the Service Provider's performance by comparing the Service Provider's actual performance with respect to each Performance Measure against the Expected Performance Level for that Performance Measure by reference to the Service Year Review Checklist, together with any supporting commentary, documents or evidence submitted by the Service Provider in accordance with paragraph 4.3.

6. Operational and Resource Management Performance Measures

6.1 For the purposes of appraising the Service Provider's operational performance in each relevant Service Year:

(a) the performance results of the Service Provider determined pursuant to:

(i) paragraph 19 (*Annual Cancellations Calculations*) of Schedule 7.1 (Operational Performance) with respect to the Annual Cancellations Benchmark shall be compared against the Expected Performance Level for that Annual Benchmark;

(ii) paragraph 20 (*Annual TOC Minute Delay Calculations*) of Schedule 7.1 (Operational Performance) with respect to the Annual TOC Minute Delay Benchmark shall be compared against the Expected Performance Level for that Annual Benchmark; and

(iii) paragraph 21 (*Annual Short Formation Calculations*) of Schedule 7.1 (Operational Performance) with respect to the Annual Short Formation Benchmark shall be compared against the Expected Performance Level for that Annual Benchmark; and

(b) the Actual T-3 Performance Level for that Service Year shall be compared against the Expected Performance Level for the Annual T-3 Measure;

(c) the Actual T-15 Performance Level for that Service Year shall be compared against the Expected Performance Level for the Annual T-15 Measure;

(d) the Actual All Cancellations Measure for that Service Year shall be compared to the Expected Performance Level for the Annual All Cancellations Measure; and

(e) the Service Provider's improvement resilience in managing train crew resourcing will be measured by comparing the Service Provider's performance in each relevant Service Year against the relevant Expected Performance Level in accordance with the methodology agreed or determined pursuant to paragraph 6.3 ("**Train Crew Management Measure**").

6.2 The Expected Performance Level with respect to each Operational and Resource Management Performance Measure shall, in each Service Year, be:

(a) with respect to the Annual Cancellations Benchmark, Annual TOC Minute Delay Benchmark and Annual Short Formation Benchmark, equal to the applicable Annual Target Performance Level for that Annual Benchmark;

(b) with respect to the Annual T-3 Measure, equal to the applicable Annual Target Performance Level for that measure;

- (c) with respect to the Annual T-15 Measure, equal to the applicable Annual Target Performance Level for that measure;
- (d) with respect to the Annual All Cancellations Measure, equal to the applicable Annual Target Performance Level for that measure; and
- (e) with respect to the Train Crew Management Measure agreed or determined by the Secretary of State in accordance with paragraph 6.3.

6.3 The Parties agree and acknowledge that, as part of the 100 Day Review the Service Provider will deliver to the Secretary of State its methodology for measuring the Train Crew Management Measure and the related Expected Performance Level. The Secretary of State shall accordingly be entitled to amend this Agreement pursuant to Clause 17 (Variations) in order to reflect such methodology and Expected Performance Levels in this Agreement as may be agreed or determined by the Secretary of State.

7. Customer Experience Performance Measures

7.1 For the purposes of appraising customer experience and satisfaction in each relevant Service Year:

- (a) the Service Provider's performance results for that Service Year as determined by the Secretary of State pursuant to paragraph 4 of Schedule 7.2 (Customer Experience and Engagement) shall be compared against the Expected Performance Level for the relevant NRPS Measure; and
- (b) the Service Provider's Pass Rate applicable to that relevant Service Year for each Service Quality Area (as approved by the Secretary of State pursuant to paragraph 11.2 of Schedule 7.3 (Service Quality Regime)) shall be compared against the Expected Performance Level for that Service Quality Area.

7.2 The Expected Performance Level with respect to each Customer Experience Measure shall be:

- (a) with respect to each NRPS Measure, equal to the NRPS Benchmark for that NRPS Measure for the relevant Service Year; and
- (b) with respect to each Service Quality Area, equal to the SQR Benchmark for that Service Quality Area for the relevant Service Year.

7.3 It is agreed that for the purposes of paragraph 7.1(b) references to Service Year shall include the Service Provider's performance during the first Service Year pursuant to the acknowledgement in paragraph 2.2 of Schedule 7.3 (Service Quality Regime).

8. Financial and Commercial Performance Measures

8.1 The Service Provider's financial and commercial performance shall be appraised by comparing:

- (a) Outturn Passenger Revenue for the relevant Service Year against the Target Revenue for that Service Year (the "**Revenue Growth Measure**");
- (b) the reduction in that Service Year in rates of ticketless travel (determined in accordance with the results of the ticketless travel survey to be undertaken in the relevant Service Year pursuant to paragraph 35.2 of Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligations)) against the Ticketless Travel Targets for that Service Year (the "**Ticketless Travel Measure**"); and

- (c) Actual Subsidy against Budgeted Subsidy for the relevant Service Year ("**Budget Management Measure**").

8.2 The Expected Performance Level with respect to the Revenue Growth Measure shall be equal to the Target Revenue for the relevant Service Year and for the purposes of this paragraph 8.2 (Performance Review Provisions) and Appendix 2 of this Schedule 8.2:

- (a) the value of the Outturn Passenger Revenue for a Service Year shall be calculated on the basis of the Annual Management Accounts for that Service Year; and
- (b) the value of the Outturn Passenger Revenue for any Corresponding Period:
- (i) which falls (in whole or in part) during the Previous Franchise Period, shall be calculated by the Secretary of State using accounting information made available to the Secretary of State by the Previous Franchisee pursuant to the Previous Franchise Agreement or where no such information is available to the Secretary of State by reference to any relevant information available to the Secretary of State at the time of such determination; and/or
- (ii) which falls (in whole or in part) during the Service Term, shall be determined by the Secretary of State based on the Audited Annual Accounts for the Service Year in which the Corresponding Period falls,

and in each case shall be notified by the Secretary of State to the Service Provider pursuant to paragraph 4.1.

8.3 The Expected Performance Level with respect to the Ticketless Travel Measure (as a percentage point reduction against the levels of ticketless travel recorded in the Ticketless Travel Baseline Survey) shall be equal to the Ticketless Travel Target.

8.4 The Expected Performance Level with respect to the Budget Management Measure shall be equal to the total Budgeted Subsidy for the relevant Service Year (including for the avoidance of doubt, any adjustments or amendments to Budgeted Costs or Budgeted Revenue pursuant to the terms of this Agreement).

9. **Stakeholder Satisfaction and Programme Management Performance Measure**

9.1 Stakeholder satisfaction shall be appraised:

- (a) by comparing rates of employee satisfaction in each relevant Service Year as against target rates of satisfaction (as such rates and target shall be agreed or determined in accordance with paragraph 9.3) (the "**Employee Engagement Measure**");
- (b) by comparing rates of Stakeholder satisfaction in each relevant Service Year as against target rates of satisfaction (as such rates and target shall be agreed or determined in accordance with paragraph 9.3) ("**Stakeholder Engagement Measure**"); and
- (c) by measuring the Service Provider's compliance with its obligations in Schedule 11.2 in each Service Year as against the applicable Expected Performance Level for that Service Year (the "**Client Satisfaction Measure**").

- 9.1A The Service Provider's performance in its delivery of the Committed Obligations shall be appraised by comparing in each relevant Service Year as:
- (a) the number of Derogations requested by the Service Provider for each Committed Obligation against the applicable Expected Performance Level (the "**Derogation Requests Measure**");
 - (b) the timescales within which any Derogations are requested by the Service Provider prior to the date on which the Service Provider is obliged to have completed that Committed Obligation in accordance with the applicable paragraph of Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligations) against the applicable Expected Performance Level (the "**Derogation Timescales Measure**"); and
 - (c) the number of Derogations that are requested by the Service Provider other than by way of the Secretary of State's contract management system as against the applicable Expected Performance Level (the "**Derogation Process Measure**").
- 9.2 The Service Provider shall have achieved the Expected Performance Level with respect to the Client Satisfaction Measure in a relevant Service Year if the Service Provider has fully complied with all of its reporting obligations pursuant to Schedule 11.2 (Management Information). The Expected Performance Level for each relevant Service Year applicable to the Employee Engagement Measure and the Stakeholder Engagement Measure shall be agreed or determined by the Secretary of State in accordance with paragraph 9.3.
- 9.3 With respect to paragraphs 9.1(a) and 9.1(b) the Parties agree and acknowledge that, as part of the 100 Day Review the Service Provider will deliver to the Secretary of State its proposed methodology for measuring:
- (a) the satisfaction of Franchisees together with related target satisfaction rates for the purposes of establishing the Employee Engagement Measure; and
 - (b) the satisfaction of Stakeholders together with related target satisfaction rates for the purposes of establishing the Stakeholder Engagement Measure, and
- the Secretary of State shall be entitled to amend this Agreement pursuant to Clause 17 (Variations) to give effect to such methodology and related satisfaction targets as may be agreed, amended or determined by the Secretary of State.
- 9.4 With respect to each Programme Management Performance Measure, the Service Provider shall have achieved the Expected Performance Level if:
- (a) for the purposes of the Derogations Request Measure, the Service Provider has not during the Service Term requested more than one (1) Derogation with respect to each Committed Obligation;
 - (b) for the purposes of the Derogations Timescale Measure, the Service Provider has submitted in the relevant Service Year as any request for a Derogation to the Secretary of State not less than ninety (90) days prior to the date on which the Service Provider is obliged to complete that Committed Obligation, such date as specified in the applicable paragraph of Part 1 (Committed Obligation) of Schedule 6.2 (Committed Obligations);
 - (c) for the purposes of the Derogations Process Measure, the Service Provider has submitted in the relevant Service Year all requests for Derogations only through

the Secretary of State's contract management system and not by any other means.

9.5 The Service Provider shall be responsible for monitoring and collating all relevant data and information (including through reports and data generated by the Secretary of State's contract management system) required to measure its performance as against each Programme Management Performance Measure and such data and information shall be provided to the Secretary of State as part of the Review Meeting Checklist provided that, notwithstanding paragraph 5.2, nothing shall prevent or prohibit the Secretary of State considering any other information or data that may be available to the Secretary of State for the purposes of appraising the Service Provider's actual performance with respect to each Programme Management Resource Measure.

10. **Survival of Termination or Expiry**

This Schedule 8.2 (Performance Review Provisions) shall survive the termination or expiry of this Agreement.

Withdrawn

APPENDIX 1 TO SCHEDULE 8.2**Service Year Review Checklist****1. Service Year Review Checklist**

- 1.1 Each Service Year Review Checklist shall, subject to paragraph 4 of Schedule 8.2 (Performance Review Provisions) comply with the requirements of this Appendix 1.
- 1.2 With respect to each of the Performance Measures, a report setting out:
- (a) the Service Provider's actual scores achieved in the Service Year to which the Service Year Review relates, in respect to each Performance Measure as against the Expected Performance Level for that Performance Measure, the relevant actual scores being as determined in accordance with and as specified in Schedule 8.2 for each Performance Measure; and
 - (b) supporting information and data required pursuant to paragraph 9.5 of Schedule 8.2 (Performance Review Provisions).
- 1.3 A report detailing those measures and/or actions that the Service Provider proposes that it could undertake in order to achieve the relevant Expected Performance Level for each Performance Measure in the following Service Year where the Service Provider's actual level of performance for the applicable Performance Measures is worse than the relevant Expected Performance Level in the relevant Service Year.
- 1.4 The Service Provider's proposals for any cost efficiency initiatives or processes for the management of Costs which could be implemented by the Service Provider in order to reduce Costs or deliver other efficiency savings.

Withdrawn

APPENDIX 2 TO SCHEDULE 8.2

Calculation of the Target Revenue

1 Definitions

The following words and expressions shall have the following meanings for the purposes of this Appendix 2 of Schedule 8.2 unless otherwise set out in clause 3 (Definition):

“First Fare Year” means that part of a Fare Year which relates to the period from the first day of the relevant Corresponding Period to 31 December in that same Corresponding Period;

“Indexed Outturn Passenger Revenue” has the meaning given to it in paragraph 3.1;

“Percentage Target” means the percentage target applicable to each Service Year as will be determined in accordance with the 100 Day Review; and

“Second Fare Year” means that part of a Fare Year which relates to the period from 1 January in the relevant Corresponding Period to the last day of that same Corresponding Period.

2 The Target Revenue for the relevant Service Year shall equal:

TR_y =	IOPR_{cp} × (1 + TRG)
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Where:

TR_y	means the Target Revenue for the relevant Service Year;
IOPR_{cp}	means the Indexed Outturn Passenger Revenue in the Corresponding Period for the relevant Service Year calculated in accordance with paragraph 3;
TRG_y	the Target Growth Rate for the relevant Service Year which shall be equal to the Percentage Target applicable to that Service Year.

3 Indexed Outturn Passenger Revenue where there is one Fare Year only

The indexed Outturn Passenger Revenue (the **“Indexed Outturn Passenger Revenue”**) for each Corresponding Period shall be equal to:

IOPR_{cp}	=	$OPR_{cp} \times (I_{F1} + I_{F2})$
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Where:

OPR_{cp}	means the Outturn Passenger Revenue for the Corresponding Period applicable to the relevant Service Year as determined by the Secretary of State in accordance with paragraph 8.2(b)(ii) of this Schedule 8.2;
I_{F1}	is equal to: $((RPI1/RPI2)/Y) \times F$
	where:
RPI1	means the Retail Prices Index for the July of the calendar year occurring in the First Fare Year for Corresponding Period
RPI2	means the Retail Prices Index for the July of the calendar year preceding the First Fare Year for Corresponding Period
Y	means the total number of days in the Corresponding Period
F	means the number of days in the First Fare Year for that Corresponding Period
I_{F2}	is equal to: $((RPI1/RPI2)/Y) \times F$
	where:
RPI1	means the Retail Prices Index for the July of the calendar year occurring in the Second Fare Year for Corresponding Period
RPI2	means the Retail Prices Index for the July of the calendar year preceding the Second Fare Year for Corresponding Period
Y	means the total number of days in the Corresponding Period
F	means the number of days in the Second Fare Year for that Corresponding Period

Withdrawn

SCHEDULE 9

NOT USED

Withdrawn

SCHEDULE 10

REMEDIES, EVENTS OF DEFAULT AND TERMINATION EVENTS

Schedule 10.1:	NOT USED
Schedule 10.2:	NOT USED
Schedule 10.3:	Force Majeure and Business Continuity
Schedule 10.4:	NOT USED

Withdrawn

Schedule 10.1

NOT USED.

Withdrawn

Schedule 10.2

NOT USED.

Withdrawn

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 Service Provider or any of its agents or subcontractors is prevented or restricted by the 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 Service Provider 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 the Network Rail, or such other contingency or recovery plan as the Secretary of State may agree from time to time;
- (b) The Service Provider or any of its agents or subcontractors is prevented or restricted by the Network Rail or any Facility Owner (other than a Facility Owner which is an Affiliate of the Service Provider) 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 Service Provider 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.

For the purposes of this paragraph 1(c), **"Rolling Stock Units"** means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Service Provider in the provision of the Passenger Services;

- (d) The Service Provider prevents or restricts the operation of any train on safety grounds provided that:
- (i) the Service Provider 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 in a 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 Service Provider or its agents or subcontractors being prevented or restricted by the Network Rail from gaining access to any relevant section or part of track; and
- (f) any strike or other Industrial Action by any or all of the employees of the Service Provider or any or all of the employees of:
- (i) the Network Rail;
 - (ii) the operator of any other railway facility; or
 - (iii) any person with whom the Service Provider 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 Service Provider in the provision of the Services,

or of the agents or sub-contractors of any such person listed in paragraphs 1(f)(i) to 1(f)(iii).

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 Service Provider 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 Service Provider's performance of the Passenger Services;
- (c) at the same time as the Service Provider 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 Service Provider 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 Service Provider 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
 - (ii) the Service Provider's own contravention of, or default under, this Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) the Service Provider 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 Service Provider 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 Service Provider or its agents or subcontractors;
- (b) the Secretary of State reasonably believes that it was reasonable for the Service Provider, 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 Service Provider shall not be responsible for any failure to perform any of its obligations under this Agreement, nor shall there be any contravention of this Agreement if and to the extent that such failure is caused by any Force Majeure Event.
- 3.2 Without prejudice to the Secretary of State's other rights under this Agreement, if any Force Majeure Event continues, with the effect of preventing the Service Provider from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months, the Secretary of State shall be entitled to immediately terminate this Agreement.

4. Business Continuity

4.1 Obligation to Produce a BCP

- (a) Within one (1) month following the Service Commencement Date the Service Provider shall produce and provide to the Secretary of State a written Business Continuity Plan in respect of the 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 Service Year the Service Provider shall provide to the Secretary of State a certificate addressed to the Secretary of State and signed by a statutory director of the Service Provider confirming that the Business Continuity Plan is consistent with the requirements of the ISO 22301.

4.1A Obligation to Maintain the BCP

- (a) The Service Provider shall, at all times, maintain and comply with the Business Continuity Plan, and ensure that it is, at all times, able to implement the Business Continuity Plan immediately upon an event occurring which the Business Continuity Plan is expressed to cover, or reasonably can be expected to cover.
- (b) The Service Provider shall update the Business Continuity Plan at least once during each Service Year.

the Service Provider will, on request, provide a copy of the Business Continuity Plan to the Secretary of State and will provide to the Secretary of State any other information that the Secretary of State may reasonably require in relation thereto.

4.2 No Relief under Force Majeure

- (a) Nothing in paragraph 3 (Consequences of Force Majeure Events) will relieve the Service Provider from its obligations under this Agreement to create, implement and operate the Business Continuity Plan.
- (b) If a Force Majeure Event affecting the Service Provider 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 Service Provider had complied with this paragraph 4; and
 - (ii) 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

NOT USED.

Withdrawn

SCHEDULE 11

MEETINGS AND MANAGEMENT INFORMATION

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Withdrawn

Schedule 11.1

Performance Meetings

1. Performance Meetings

- 1.1 The Parties shall hold a Performance Meeting at least once in every Reporting Period (or such other interval as the Secretary of State may notify to the Service Provider in writing) at a time and location notified to the Service Provider by the Secretary of State.
- 1.2 The Service Provider shall ensure that:
- (a) the representatives of the Service Provider at a Performance Meeting shall include such directors and/or senior managers of the Service Provider as the Secretary of State may require; and
 - (b) representatives of the Parent (which shall include such directors and/or senior managers of the Parent as the Secretary of State may require) attend a Performance Meeting at least once every quarter.
- 1.3 The Service Provider shall prepare and present such reports to each Performance Meeting as the Secretary of State may reasonably request. The Service Provider's obligations under this paragraph 1.3 are subject to the Service Provider receiving at least twenty eight (28) days' notice of the requirement to prepare and present any such report.
- 1.4 No comment or failure to comment nor any agreement or approval, implicit or explicit by either Party at a Performance Meeting will relieve a party of its obligations, constitute a waiver of an obligation or otherwise vary the terms of this Agreement. The terms of this Agreement shall only be capable of waiver or variation in writing in accordance with clause 14.1 (*Waivers*) and Clause 17 (*Variations in Writing*) (respectively).

2. Contract Management System

- 2.1 The Service Provider shall, no later than the Service Commencement Date and thereafter throughout the Service Term:
- (a) use the contract management system which the Secretary of State uses to manage the delivery of the obligations under the Services Agreement; and
 - (b) use the contract management system to administer any variations to this Agreement after the Service Commencement Date.

Schedule 11.2**Management Information****1. Corporate Information**

1.1 The Service Provider shall provide the following information to the Secretary of State on the Service Commencement 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 Service Provider'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 Service Provider.

1.2 The Service Provider shall inform the Secretary of State of any:

- (a) material change or proposed material change in its business;
- (b) material change in or restructuring of the capitalisation or financing of the Service Provider; and
- (c) litigation or other dispute which may have a material effect on its business.

1.3 For the purposes of paragraph 1.2(a), a material change or proposed material change shall include the employment or the termination of employment of any Key Personnel or the termination of any Key Contract.

2. Information about Assets used in the Franchise

The Service Provider shall at all times during the Service 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 Service 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; and
 - (ii) all operating manuals (including any safety related regulations); and
 - (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 Service Provider from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items).

3. Identification of Key Personnel and Provision of Organisation Chart

3.1 The Service Provider shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Service Provider in the performance of this Agreement. This shall include but not be limited to the following persons:

- (c) a managing director whose role will include the overall management of the operation of the Services;
- (d) a train service delivery director, whose role will include responsibility for ensuring compliance by the Service Provider with Schedule 7.1 (Operational Performance);
- (e) a safety director, whose role will include responsibility for ensuring that the Service Provider complies with its legal obligations in relation to the Services including the Safety Certificate; and
- (f) a finance director, whose role will include responsibility in relation to the Budget review process.

3.2 The Service Provider shall nominate a board level director of the Service Provider (or at the Secretary of State’s discretion, a director of the Parent or an appropriate Affiliate) within fourteen (14) Weekdays of the date of this Agreement. Such director’s responsibilities include overseeing, at a strategic level, the Service Provider’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 Service Provider in connection with the Service Provider’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 3.2 and shall be deemed part of the Key Personnel.

3.3 On or before the Service Commencement Date the Service Provider shall provide to the Secretary of State an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update such organisation chart (and provide a copy to the Secretary of State promptly thereafter) and when any changes occur.

4. Operational Performance Information

The Service Provider shall provide to the Secretary of State the information specified in Appendix 2 (Operational Performance Information) to this Schedule 11.2 at the times specified therein.

5. Maintenance of Records

5.1 The Service Provider 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 Service Assets; and
- (b) operation of the Services; and
- (c) financial performance of the business.

5.2 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 this Agreement including in relation to maintenance of the business as a going concern in accordance with paragraph 1 of Schedule 14.1 (Maintenance as a going concern).

- 5.3 Unless otherwise agreed by the Secretary of State, all records, books and materials required to be maintained by the Service Provider 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.
- 5.4 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 Services and the Service Provider has access to them (which it shall use all reasonable endeavours to secure). Notwithstanding the requirements of paragraphs 5.2 and 5.4, the Service Provider 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.
- 5.5 The Service Provider 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 Service Provider 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. Right to Inspect

- 6.1 The Service Provider shall, if requested by the Secretary of State, allow the Secretary of State and his representatives and advisers:
 - (a) to inspect and copy any records referred to in this Schedule 11.2 and the Secretary of State may verify any such records; and
 - (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Service Provider and/or its auditors and any assets used by the Service Provider in connection with the Services.
- 6.2 The Service Provider shall make available to the Secretary of State, his 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, his representatives and advisers shall reasonably require in connection therewith. The obligation of the Service Provider under this paragraph 6.2 shall include an obligation on the Service Provider 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 Service Provider.
- 6.3 The Secretary of State, his 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 Service Provider's obligations under this Agreement which the Secretary of State considers to be material, the costs of any such inspection shall be borne by the Service Provider.

7. Information to the Passengers' Council and Local Authorities

The Service Provider 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.

8. Periodic Update Reports

8.1 The Service Provider shall prepare and submit to the Secretary of State a periodic report in each Reporting Period which shall:

- (a) contain updates on the Service Provider'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 Service Provider to provide information and/or details in addition to those required pursuant to paragraph 8.1, the Service Provider shall ensure that the periodic report includes such additional information and/or details subject to the Service Provider having received at least twenty eight (28) days' notice of the additional information and/or details required by the Secretary of State.

9. Financial Information

9.1 Accounting Records

The Service Provider shall prepare and at all times during the Service 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.

9.2 Reporting Period Financial Information

- (a) The Service Provider 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 Service 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 Service Provider, contain a true and accurate reflection of the current assets and liabilities of the Service Provider (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 information that the Secretary of State shall reasonably require in relation; and
 - (iii) **NOT USED.**
- (b) The Management Accounts shall also set out:

- (i) **NOT USED;**
- (ii) **NOT USED;**
- (iii) a comparison of the Service Provider's financial performance during such period against the forecast provided by the Service Provider in the then current Business Plan;
- (iv) a comparison of the Service Provider's cumulative financial performance during the Service Year in which such period occurs against the forecast referred to in paragraph 9.2(b)(iii);
- (v) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Management Accounts and the forecast referred to in paragraph 9.2(b)(iii);
- (vi) where 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 Service Provider in its current Business Plan, the Secretary of State may require the Service Provider to prepare and submit to him, 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 Service Provider shall use all reasonable endeavours to implement such Financial Action Plan; and
- (vii) **NOT USED.**

9.3 Quarterly Financial Information

- (a) Within twenty (20) Weekdays after the end of the third (3rd), sixth (6th) and, ninth (9th) Reporting Periods in each Service Year, the Service Provider shall deliver to the Secretary of State the following information:
 - (i) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 10.1(iv) 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; and
 - (ii) **NOT USED** and
 - (iii) **NOT USED.**
- (b) Where any Reporting Period falls partly within one Service Year and partly within another, the results for each section of such Reporting Period falling either side of such Service Year end shall be prepared on an accruals basis for each such section of such Reporting Period.

9.4 Annual Financial Information

- (a) Within fifteen (15) Weekdays of the end of each Service Year, the Service Provider shall deliver to the Secretary of State its Annual Management Accounts for that Service Year.
- (b) Within four (4) Reporting Periods after the end of each Service Year, the Service Provider shall deliver to the Secretary of State the following information:

- (i) certified true copies of its annual report and Annual Audited Accounts for that Service Year, together with copies of all related directors' and auditors' reports;
- (ii) a reconciliation to the Management Accounts for the same period in a format to be agreed with the Secretary of State;-
- (iii) **NOT USED;**
- (iv) **NOT USED;** and
- (v) **NOT USED.**

9.5 Accounting Standards and Practices

- (a) Each set of Management Accounts and Annual Management Accounts shall:
 - (i) be in the formats as the Secretary of State may reasonably specify from time to time;
 - (ii) be prepared consistently in accordance with the Service Provider's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
 - (iii) identify to the reasonable satisfaction of the Secretary of State, 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 Budget on the date of the Agreement.
- (b) The Annual Audited 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 Service Provider for the period covered by such accounts; and
 - (B) **NOT USED.**

9.6 Parent Accounts

The Service Provider shall, upon the request of the Secretary of State, promptly deliver to, or procure delivery to, the Secretary of State, certified true copies of the annual reports and audited accounts of the Parent, together with copies of all related directors' and auditors' reports.

9.7 **NOT USED.**

9.8 **NOT USED.**

10. Business Plans

10.1 Initial Business Plan

- (a) Within three (3) Reporting Periods of the Service Commencement Date, the Service Provider shall deliver to the Secretary of State its Initial Business Plan, describing its planned activities for each Service Year during the Service Term, which shall include:
 - (i) a description as to how the Service Provider shall meet its obligations under this Agreement for the Service Term, supported by operational plans demonstrating this;
 - (ii) details of any investments proposed to be made or procured by the Service Provider in relation to the Services during the Service Term;
 - (iii) a summary of the Service Provider's plans for marketing and developing the Services;
 - (iv) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of first thirteen (13) Reporting Periods following the Service Commencement Date and each subsequent Service Year of the Service Period, together with a list of assumptions on the basis of which each such forecast has been prepared; and
 - (v) **NOT USED.**

10.2 **Annual Business Plans**

- (a) Within twenty (20) Weekdays of the start of the twelfth Reporting Period in each Service Year the Service Provider shall deliver to the Secretary of State the Service Provider's business plan for the forthcoming Service Year (the "**Annual Business Plan**"). The Annual Business Plan shall be a detailed and comprehensive description of the Service Provider's planned activities for such Service Year and the manner in which the Service Provider will meet its obligations under this Agreement in respect of that Service Year and include:
 - (i) a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the thirteen (13) Reporting Periods in the relevant Service Year and each subsequent Service Year of the Service Period;
 - (ii) **NOT USED;** and
 - (iii) an annual improvement plan providing:
 - (A) details of any new technologies, processes, developments and/or proposals which could improve the provision of the Services, reduce the cost of providing the Services or enable the 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 Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of the Services;
 - (C) details of those technologies, processes, developments and/or proposals which the Service Provider proposes to implement during that Service Year; and
 - (D) an analysis of the technologies, processes, developments and/or proposals which the Service Provider implemented in the previous Service 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 Service Year;

- (iv) a statement from each of, a statutory director of the Service Provider 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 the Parent and that the board of directors of the Parent is not aware of any other plan which may alter, vary or impact on the Business Plan and shall at any time during the following 12 months notify the Secretary of State should any of them become aware of any such plan.
- (b) If at any time during a Service Year the Service Provider produces any other annual business plan or periodic plan which is delivered to its Parent it shall at the same time as delivering such plan to its Parent notify the Secretary of State of all such plans and shall explain to the Secretary of State how (if at all) such further plan alters, amends or otherwise varies or impacts on the applicable Annual Business Plan or the Initial Business Plan. The Secretary of State shall be entitled to copies of such further plans as the Secretary of State shall reasonably determine.

10.3 Business Action Plan

- (a) The Secretary of State may at any time require the Service Provider 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 Services.
- (b) The Service Provider 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) Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which the Secretary of State may impose.

11. Safety Information

11.1 Safety

- (a) The Service Provider 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 Service Provider 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

Service Provider shall provide the Secretary of State with a copy of such notification or notice.

- (c) The Service Provider shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

12. Further Information

12.1 The Service Provider shall:

- (a) 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 and which relate to or are connected with the Service Provider's performance of this Agreement; and
- (b) procure that each Affiliate of the Service Provider complies with paragraph 12.1(a) in respect of any information, records or documents that relate to its dealings with the Service Provider in connection with the Service Provider's performance of its obligations under this Agreement.

12.2 The information referred to in paragraph 12.1 shall include:

- (a) any agreement, contract or arrangement to which the Service Provider is a party in connection with any rolling stock vehicles used in the operation of Passenger Services;
- (b) in so far as the Service Provider has or is able to obtain the same, any agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock vehicle;
- (c) any agreement for or any documents associated with the manufacture or supply of any rolling stock vehicles; or
- (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 Service Provider 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) the information required to be provided under this Schedule 11.2, or, in the Secretary of State's discretion, more detailed financial information, at any time in connection with the re-letting of the Services; and
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time.

13. Information from Third Parties

- 13.1 The Service Provider shall, if the Secretary of State so requests, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Service Provider 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 this Agreement.

- 13.2 The Service Provider 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 Service Provider 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 Service Provider under this Schedule 11.2 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Service Provider that the Secretary of State has received the relevant information directly from any other person (including Network Rail or RSP). The Service Provider shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.
- 13.4 The Service Provider shall promptly advise the Secretary of State of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the Service Provider, materially affect the continuity of any of the records that are provided pursuant to this Schedule 11.2. Any such advice shall include an assessment of the materiality of the relevant change.

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 this 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 Service Commencement Date, as modified from time to time in accordance with paragraph 3 of Schedule 13.1 (Rail Industry Initiatives and Co-operation).
- 14.2 The Service Provider shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under this 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**

15.1 **Environmental Information Data Collection Plan**

- (a) The Service Provider shall, on or as soon as reasonably practicable after the Service Commencement Date (but in any event no later than 14 days after the Service Commencement Date), resubmit to the Secretary of State the report previously provided to the Secretary of State pursuant to paragraph 17 of Schedule 13 (Information and Industry Initiatives) of the Previous Franchise Agreement, setting out:
- (i) which measures included in the Dataset the Service Provider is unable to provide, despite using reasonable endeavours to do so ("**Excluded Data**");
 - (ii) for each item of Excluded Data, the technical, operational or commercial reason why the Service Provider 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 Service Provider would need to take in order to be able to provide such Excluded Data, the Service Provider's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Service Provider 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 agreed pursuant to the Previous Franchise Agreement, acting reasonably, that the Service Provider 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 Service Provider to implement the Environmental Data Collection Plan in whole or in part; and/or
 - (ii) the Service Provider to take such other actions as, in the reasonable opinion of the Secretary of State, would enable the Service Provider 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 Service Provider 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 Service Provider to provide any items of Excluded Data in a cost effective manner

the Service Provider shall use reasonable endeavours to do so in a manner which would enable the Service Provider to provide any relevant item of Excluded Data (and any item of Excluded Data which the Service Provider becomes able to provide as a result will, with effect from the date on which the Service Provider becomes able to provide the same, form part of the Initial Dataset).

- (e) With effect from the Service Commencement Date, the Service Provider shall measure and collect and provide to the Secretary of State in accordance with this paragraph 15, that data included in the Initial Dataset so as to allow the Secretary of State and the Service Provider to understand the current environmental performance of the Franchise and any potential for improvement in terms of environmental impact.
- (f) The Service Provider may, in its discretion, measure and collect additional data provided that the minimum required under the Initial Dataset is adhered to and the Service Provider shall 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 Service Provider 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.

15.2 Environmental Impact Monitoring Report and Environmental Impact Monitoring Audit

- (a) ^{ix}The Service Provider 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 1 of Appendix 1 (*Environmental Information*) to this Schedule 11.2 (the "**Environmental Impact Monitoring Report**") within three (3) months following the end of each Service Year.
- (b) The Service Provider 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 Service Year (the "**Environmental Impact Monitoring Audit**").

- (c) The Service Provider 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 Service Year to which the audit relates) of the Service Provider'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 Service Provider's proposed data collection methodology and level of data granularity for the following the Service 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 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 Service Provider shall submit a copy of the Environmental Impact Monitoring Audit to the Secretary of State at the same time as the 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 Service Provider 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, following 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 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; and
 - (iii) in the case of concerns in relation to the Service Provider's data collection methodology and level of data granularity for the forthcoming Service Year's data collection – make such amendments to such methodology as recommended in the Environmental Impact Monitoring Audit so as to address those concerns.

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 Service Provider shall meet such Environmental Impact Targets during the Franchise Period.

16.2 Performance against the Environmental Impact Targets

- (a) For each Service Year the Secretary of State shall determine the Service Provider'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 Service Provider'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 Service Year, in accordance with the annual trajectory specified in the Sustainable Development Strategy;
 - (ii) **for non-traction energy use:** the Service Provider'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 Service Provider'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) Service Year, the number of automatic water meters installed against the total number of water meters. These details shall be reported by the Service Provider within three (3) months of the end of the second (2nd) Service Year. For subsequent Service Years, the Service Provider'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) As soon as reasonably practicable following the Service Commencement Date and in any event within six (6) months of the Service Commencement Date, the Service Provider 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 Service Year (as such implementation plan may be revised in accordance with paragraph 16.3 (the "**Environmental Impact Targets Plan**")).
- (d) Following the Secretary of State's approval, the Service Provider shall use all reasonable endeavours to implement the Environmental Impact Targets Plan in order to achieve the Environmental Impact Targets.
- (e) NOT USED.

16.3 Remedial Actions

- (a) In the event that an Environmental Impact Target is not met in any Service Year, the Service Provider 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 Service Provider 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 this Agreement.
- (c) **NOT USED.**

16.4 **Publication**

The Service Provider shall publish (in such format as the Secretary of State may reasonably require) details of its performance against the Environmental Impact Targets in widely accessible forms including, as a minimum, publishing them on its website and in each Customer Report (excluding the first (1st) Customer Report).

Withdrawn

APPENDIX 1 TO SCHEDULE 11.2

Environmental Information

1. Environmental Impact Monitoring Dataset

Table 1			
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) (Sustainable Construction) of Schedule 15 of the Rail Industry Initiative and co-operation)	Total	Per project
WATER	Main 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
	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. Environmental Impact Targets

Table 2			
Traction Carbon Emissions	Non-Traction Energy Use	Waste	Mains Water
A reduction in kg CO2E per vehicle km in the relevant Service Year against the kg CO2E per vehicle km recorded in the preceding Service Year, such that there is a year on year reduction of kg CO2E per vehicle km over the Service Term.	A reduction in kilowatt hours (kWh) in the relevant Service Year against the kilowatt hours (kWh) recorded in the preceding Service Year such that there is a year on year reduction of kilowatt hours (kWh) over the Service Term.	A reduction in the percentage of waste to landfill in the relevant Service Year against the percentage of waste to landfill recorded in the preceding Service Year such that there is a year on year reduction in the percentage of waste to landfill over the Service Term.	A reduction in the volume (m3) of mains water used in the relevant Service Year against the volume (m3) of mains water used in the preceding Service Year such that there is a year on year reduction in usage per over the Service Term.

Withdrawn

APPENDIX 2 TO SCHEDULE 11.2

Operational Performance Information

1. Information about the operational performance of the Service Provider

1.1 The Service Provider shall at all times during the Service Term maintain records in relation to its operational performance under this 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 Service Provider's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.

1.2 The Service Provider 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 Service Provider 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 (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
- (b) any particular day, week or other longer period as may reasonably specified by the Secretary of State.

1.4 The 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 Service Year.

1.5 This 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 Service Provider'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 Service Provider'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
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 Service Provider	[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 Service Provider's previous report including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Service Provider	[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	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
(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		
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: (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]	B
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
Number of 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 Service Provider'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 Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Short Formation Peak Passenger Services scheduled (excluding Cancellations or Partial Cancellations)	[number]	B
Number of Minutes Delay attributable to the Service	[number]	B
Number of Minutes Delay attributable to Network Rail;	[number]	B
Number of Minutes Delay attributable to any other Train Operator	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Service Provider	[number]	B
Number of Minutes Delay for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Service Provider	[number]	B
Number of Minutes Delay from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Service Provider's previous report and the number of such Minutes Delay attributed to each of the Service Provider 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 and On Time		
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
Train Mileage		
Planned Train Mileage	[mileage]	A
Actual Train Mileage	[mileage]	B

Withdrawn

APPENDIX 3 TO SCHEDULE 11.2

Summary of Reporting and Other Requirements

This Appendix contains a non-exhaustive summary of the obligations on the Service Provider 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
Schedule 1.1 (Services and Service Development), paragraph 11.3(a) (Consultation on Significant Alterations to the Timetable)	Requirement for the Service Provider to provide a comprehensive summary of the proposed changes from the Timetable then in force.
Schedule 1.1 (Services and Service Development), paragraphs 11.3(e) and 11.3(f) (Consultation on Significant Alterations to the Timetable)	Requirement for the Service Provider to publish a report containing a summary of the main issues raised by respondents to the consultation.
Schedule 1.1 (Services and Service Development), paragraph 12.2(a) (Timetable Development Rights)	Requirement to provide proposals seeking amendments to the then current Train Service Requirements
Schedule 1.1 (Services and Service Development), paragraph 13.1 (Certification and Notification by the Service Provider of Exercising Timetable Development Rights)	Requirement for the Service Provider to provide a certificate addressed to the Secretary of State signed by a statutory director in respect of the exercise of timetable development rights.
Schedule 1.1 (Services and Service Development), paragraph 13.1(a) (Certification and Notification by the Service Provider of Exercising Timetable Development Rights)	Requirement for the Service Provider to provide copies to the Secretary of State of correspondence in respect of discussions with Network Rail.
Schedule 1.1 (Services and Service Development), paragraph 14.4 (Finalising the Train Plan)	Requirement for the Service Provider to provide the Train Plan certified as true and accurate by a statutory director.
Schedule 1.1 (Services and Service Development), paragraph 15.1 (Capacity Mitigation Proposal)	Requirement for the Service Provider to provide a Capacity Mitigation Proposal if required by the Secretary of State.
Schedule 1.1 (Services and Service Development), paragraph 16.1 (New or amended Train Service Requirement by the Secretary of State and the Service Provider's Informed Opinion)	Requirement for the Service Provider to provide informed opinion in respect of a new or amended Train Service Requirement.
Schedule 1.2 (Operating Obligations), paragraph 7.7 (Obligation to use all reasonable endeavours under this Schedule 1.2)	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).
Schedule 1.4 (Passenger Facing Obligations), paragraph 8 (Publication of Performance Data)	Requirements to publish performance data.

Reference	Summary of Obligation
Schedule 1.4 (Passenger Facing Obligations), paragraph 9 (Publication of Complaints and Faults Handling Data)	Requirements to publish complaints and fault handling data.
Schedule 1.5 (Information about Passengers), paragraph 1 (Passenger Numbers Information)	Requirement to provide Secretary of State information about the use by passengers of the Passenger Services.
Schedule 1.7 (Stations), paragraph 7 (Information about Station Improvement Measures)	Requirement to maintain and provide records regarding Station improvement measures and measures taken to improve Station environments.
Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases), paragraph 2.2 (Rolling Stock Related Contracts and Insurance Arrangements)	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 Service Provider's proposed rolling stock maintenance strategy and provision of analysis of whole life costs.
Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases), paragraph 3.9 (Cascaded Rolling Stock and Delayed Cascade Mitigation Plan)	Requirement to produce a Delayed Cascade Mitigation Plan.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 1.5 (Local Authority Concessionary Travel Schemes)	Requirement to provide information about Local Authority Concessionary Travel Schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 2.6 (Multi-Modal Fares Schemes)	Requirement to provide information about multi-modal fares schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 3.3 (Discount Fares Schemes)	Requirement to provide information about Discount Fares Schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 4.1 (Inter-Operator Schemes)	Requirement to provide information about Inter-Operator Schemes.
Schedule 4 (Accessibility and Inclusivity), paragraph 4 (Specific additional obligations relating to persons with disabilities)	Recording of obligations relating to persons with disabilities.
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 2.2 (Monitoring)	Requirement to provide written confirmation to the Secretary of State from a statutory director whether the Service Provider has complied with the obligations under Schedule 5 (Fares and Smart Ticketing) during each Fares Setting Round.
Part 1 to Schedule 6.2 (Committed Obligations), paragraph 2.1 (100 Day Review)	Requirement to provide by no later than 8 June 2020 the 100 Day Review.
Part 1 to Schedule 6.2 (Committed Obligations), paragraph 24 (Train Crew Recruitment)	Requirement to provide no later than 3 months after the Service Commencement Date the Recruitment Progress Report.

Withdrawn

Reference	Summary of Obligation
Part 1 to Schedule 6.2 (Committed Obligations), paragraph 34 (Timetable Readiness Report)	Requirement for the Service Provider to deliver within 5 Weekdays of the end of each week, until the Service Provider has complied with its obligations in paragraphs 30.1, 31.1 and 33.1 of Schedule 6.2, weekly timetable readiness reports.
Part 1 to Schedule 6.2 (Committed Obligations), paragraph 35.3 (Loss Prevention Strategy)	Requirement to provide a report on the Service Provider's performance against its loss prevention strategy within 10 Weekdays of the end of each Reporting Period.
Part 1 to Schedule 6.2 (Committed Obligations), paragraph 36.5 (Fleet Refurbishment)	Requirement for the Service Provider to provide within 10 Weekdays of the end of each Reporting Period progress against the fleet refurbishment plan.
Part 1 to Schedule 6.2 (Committed Obligations), paragraph 37.3 (Minimum Requirement for the Provision of Wi-Fi on board)	Requirement to provide 1 month after the end of each Service Year a report regarding the performance of the Wireless Internet Service.
Part 1 to Schedule 6.2 (Committed Obligations), paragraph 38.1(b) (Shipleigh Stabling Feasibility Study)	Requirement to provide by no later than 1 March 2021 a copy of the Shipleigh Stabling Feasibility Study.
Part 1 to Schedule 6.2 (Committed Obligations), paragraph 47.2 (CET and Holbeck Stabling / Hull Botanic Gardens Study Fund)	Requirement to provide such information as to the progress on delivering the CET and Facilities Works as the Secretary of State may request.
Part 1 to Schedule 6.2 (Committed Obligations), paragraph 102 (Development of Proposals for Service Enhancements)	Requirement to provide not less than quarterly a report in respect of the work undertaken to identify potential Passenger Service Enhancement Options, any new Options identifies and providing an update in respect of any other activities undertaken in this respect.
Part 1 to Schedule 6.2 (Committed Obligations), paragraph 105 (Wavelength)	Requirement to provide by no later than 7 Weekdays following the end of each Reporting Period, a report setting out the results of the Wavelength Surveys.
Part 1 to Schedule 6.2 (Committed Obligations), paragraph 107.2 (Network Rail Alliance)	Requirement to provide the Joint Action Plan by no later than 5 Weekdays of it being agreed.
Part 1 to Schedule 6.2 (Committed Obligations), paragraph 109.3 (Car Parking Charges)	Requirement to provide within 6 months of the Secretary of State's notice to provide such, a Car Parking Scheme Business Case.
Part 1 to Schedule 6.2 (Committed Obligations), paragraph 111.2 (Performance Schemes)	Requirement to provide within the first 3 months of each Service Year an action plan report setting out the Performance Improvement Options.
Part 2 to Schedule 6.2 (Special Terms related to Committed Obligations), paragraph 3.1 (Underspend)	Requirement to notify the Secretary of State when they have achieved an Underspend in relation to a Committed Obligation, along with providing a statement of costs incurred and a reconciliation against the amount it had committed to spend.

Withdrawn

Reference	Summary of Obligation
Part 2 to Schedule 6.2 (Special Terms related to Committed Obligations), paragraph 5 (Review of Compliance)	Requirement to provide such evidence of compliance with Committed Obligations as the Secretary of State may request.
Part 2 to Schedule 6.2 (Special Terms related to Committed Obligations), paragraph 10 (Obligations on Delivery of a Committed Obligation).	Requirement to provide by no later than 30 days after the date of delivery of a Committed Obligation a certificate signed by a statutory director confirming that such Committed Obligation has been delivered.
Schedule 6.4 (Alliance Framework Agreement), paragraph 3.2 (Alliance Framework Agreement with Network Rail)	Requirement to notify the Secretary of State if it receives a termination notice from Network Rail relating to the Alliance Framework Agreement or if Network Rail takes any steps to terminate the Alliance Framework Agreement or warns the Service Provider in writing of termination.
Schedule 6.4 (Alliance Framework Agreement), paragraph 4 (Reporting on the Alliance Agreement)	Requirement to report in writing each quarter on activities undertaken pursuant to the Alliance Framework Agreement.
Schedule 7.1 (Operational Performance), paragraph 2 (Reporting Requirements)	Reporting requirements relating to the operational performance information set out in Appendix 2 (Operational Performance Information) of Schedule 11.2 (Management Information).
Schedule 7.1 (Operational Performance), paragraph 17 (Service Recovery Plans and Force Majeure)	Requirement to provide comprehensive records relating to the implementation of a Service Recovery Plan.
Schedule 7.2 (Customer Experience and Engagement), paragraph 2.3 (Conduct of National Rail Passenger Surveys)	Requirement to publish NRPS scores achieved by the Service Provider.
Schedule 7.2 (Customer Experience and Engagement), paragraph 3 (NRPS Improvement Proposal)	Requirement to produce an NRPS Improvement Proposal to secure any NRPS Improvement for submission to the Secretary of State.
Schedule 7.2 (Customer Experience and Engagement), paragraph 11.2 (Customer and Communities Investment Scheme)	Requirement to deliver to the Secretary of State proposals for CCI Schemes applicable to the relevant CCI Period.
Schedule 7.2 (Customer Experience and Engagement), paragraph 9.2(b) (Customer and Stakeholder Engagement Strategy)	Requirement to provide to the Secretary of State any proposed revisions to the Customer and Stakeholder Engagement Strategy.
Schedule 7.2 (Customer Experience and Engagement), paragraph 10 (Customer Report)	Requirement to produce and publish a Customer Report.
Schedule 10.3 (Force Majeure and Business Continuity), paragraph 4 (Business Continuity)	Requirement to provide a Business Continuity Plan.
Schedule 11.1 (Performance Meetings), paragraph 1.3 (Performance Meetings)	Requirement to prepare and present such reports to each Performance Meeting as the Secretary of State may reasonably requests.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 2.5 (Community Rail Partnerships)	Requirement to provide a Community Rail Report.

Reference	Summary of Obligation
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 8 (Small and Medium-sized Enterprises)	Requirement to provide breakdown of Small and Medium-sized Enterprises.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9 (Apprenticeships)	Requirement to provide the information relating to Apprenticeships as set out in paragraphs 9.1 and 9.2.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(h) (Sustainable Development Strategy)	Obligation to provide a report identifying progress in respect of delivering a sustainable franchise and revisions to the Sustainable Development Strategy.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(j) (Sustainable Development Strategy)	Requirement on the Service Provider to publish its Sustainable Development Strategy on the request of the Secretary of State.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.2 (Environmental Management and Sustainability Accreditation)	Requirement to provide copies of the certification audit reports and a copy of the ISO50001 Energy Review.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 14.1 (Suicide Prevention Strategy)	Requirement to develop a suicide prevention plan.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraphs 15.3 and 15.7 (Safeguarding Strategy)	Requirement to deliver a copy of the Safeguarding Strategy.
Schedule 14.5 (Dealing with Service Assets), paragraph 5 (Miscellaneous)	Obligation to provide such information as the Secretary of State requires in respect of security interests.
Schedule 15.1 (Reletting Provisions) paragraphs 2 (Preparation for Reletting) and 3 (Data Site Information)	Obligation to provide certain information to the Secretary of State in respect of a reletting of the Services.
Schedule 15.4 (Provisions applying on and after Termination), paragraph (Information about Passengers)	Requirement to provide passenger numbers information, CRM Data and Yield Management Data on expiry of the Service Period.
Schedule 16.1 (Railways Pension Schemes), paragraph 6 (Discharge of Obligations)	Obligation to provide a certificate signed by the Trustee in relation to the Franchise Sections stating that the Service Provider has fully complied with its obligations under the Railways Pensions Scheme.

Withdrawn

SCHEDULE 12

FINANCIAL COVENANTS

Schedule 12:	Financial Covenants
	Appendix 1: NOT USED
	Appendix 2: NOT USED

Withdrawn

Schedule 12.1

Financial Covenants

1. Obligations

Except to the extent that the Secretary of State may otherwise agree from time to time, the Service Provider shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the 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 Services; or
- (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.

- 2. **NOT USED**
- 3. **NOT USED**
- 4. **NOT USED**
- 5. **NOT USED**
- 6. **NOT USED**

Withdrawn

APPENDIX 1 TO SCHEDULE 12

NOT USED

Withdrawn

APPENDIX 2 TO SCHEDULE 12

NOT USED

Withdrawn

SCHEDULE 13

RAIL INDUSTRY INITIATIVES

Schedule 13.1:	Rail Industry Initiatives and Co-operation
	Appendix 1: Community Rail Partnerships
Schedule 13.2:	NOT USED
Schedule 13.3:	NOT USED

Withdrawn

Schedule 13.1

Rail Industry Initiatives and Co-operation

1. British Transport Police

- 1.1 The Service Provider 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 Service Provider under any contract or arrangement entered into between the British Transport Police and the Service Provider.
- 1.2 The Service Provider 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 Services generally;
 - (c) co-operate with the British Transport Police to provide it with access to records and/or systems maintained by the Service Provider 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 Service Commencement Date and in any event within five (5) Weekdays of the notification of a crime by the British Transport Police.
- 1.3 The Service Provider 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 Service Provider become a member of and shall continue to participate in the Community Rail Partnerships relevant to the Passenger Services, including but not limited to those Community Rail Partnerships (and any successor Community Rail Partnerships) set out in the Appendix to this Schedule 13.1. The Service Provider and Secretary of State agree that from the Barton-on-Humber Transfer Date, the Service Provider shall no longer be required to be a member of, and to participate in, the Community Rail Partnership relating to the Humber Region (as more particularly described in paragraph row (j) of the table set out in the Appendix to this Schedule 13.1) ("**Humber Region CRP**") and there shall be no consequential amendment to the CRP Amount payable by the Service Provider as required pursuant to paragraph 2.7 with the effect that the Service Provider shall be required to continue to make the relevant payments totalling the CRP Amounts to each of the other Community Rail Partnerships (that is, excluding the Humber Region CRP)) from the Barton-on-Humber Transfer Date.
- 2.2 The Service Provider 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 the Community Rail Partnerships;
- (b) co-operate with, establish and/or participate in any Community Rail Partnership; and
- (c) 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 Secretary of State may at any time, by proposing a variation pursuant to clause 17 (Variations in Writing), require the Service Provider to develop and/or implement any changes to the Services and/or the transfer of any Services to another Train Operator in order to deliver either of the initiatives that were examined pursuant to paragraph 2.2(d)
- 2.4 The Service Provider shall become (to the extent it is not already) and remain a member of and shall continue to participate in the Department for Transport's National Community Rail Steering Group, or any successor body.
- 2.5 On or before 31 March in each Service Year, the Service Provider shall provide to the Secretary of State a report (the "**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.
- 2.6 The Community Rail Report shall contain the following information:
- (a) a statement confirming that the Service Provider's distribution of funds to the Community Rail Partnerships takes account of the Secretary of State's then current published Community Rail Development Strategy;
 - (b) a statement confirming that the Service Provider has discussed the funding of the Community Rail Partnerships with ACoRP and has taken sufficient account of ACoRP's views;
 - (c) confirmation that the Service Provider 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 years (it being acknowledged that these amounts are likely to be different for each Community Rail Partnership); and
 - (e) such further information as the Secretary of State may from time to time request.
- 2.7 The Service Provider shall within 30 days of the commencement of each Service Year starting with the Service Year commencing 1 April 2020, make the relevant payments totalling the CRP Amount to each of the Community Rail Partnerships identified in the Community Rail Report for that year.

- 2.8 The Service Provider shall hold an annual full-day 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 12 months after the date of the last such conference held during the term of the Previous Franchise Agreement or, if there was no such conference within 12 months prior to the Service Commencement Date, shall be held within six months of the Service Commencement Date.
- 2.9 the Service Provider shall maintain in collaboration with the 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; and
 - (c) carrying out minor Station cleaning and maintenance tasks and the development and cultivation of station gardens.

the Service Provider shall take reasonable steps to promote the station adopters scheme and provide safety and other training and support to participants.

- 2.10 In collaboration with relevant Community Rail Partnerships and other Stakeholders the Service Provider shall use reasonable endeavours to identify sources of third party funding for the Community Rail Partnerships and encourage such third parties to make funding commitments.
- 2.11 **NOT USED.**
- 2.12 Without prejudice and in addition to its obligation in the preceding paragraphs, the Service Provider shall maintain and continue to chair and co-ordinate, the Northern Community Rail Executive Group ("**ComREG**") whose members shall be relevant Stakeholders including representatives from Community Rail Partnerships, Rail North Partnership, Transport for the North, the Secretary of State, Network Rail and ACoRP for purposes which include fostering collaboration between Community Rail Partnerships and the Service Provider and providing guidance to the Service Provider in respect of its policies plans for developing and furthering the success of Community Rail Partnerships (the "**CRP Policies and Plans**").
- 2.13 At least once in every two year period during the Service Term, the Service Provider shall, in consultation with ComREG, review the effectiveness of the CRP Policies and Plans and as a result of such consultation shall make reasonable changes to such CRP Policies and Plans to give effect to such consultation, as the Service Provider may reasonably determine. The first such review shall take place not more than two years after the last such review during the term of the Previous Franchise Agreement.
- 2.14 **NOT USED**
- 2.15 In addition to and without prejudice to the obligations under paragraph 2.7, the Service Provider shall incur expenditure of no less than **[REDACTED¹¹]** (the "**Additional CRP Amount**") in each Service Year (reduced pro-rata amount in respect of any Service Year of less than 365 days) in support of Community Rail Partnerships including:

¹¹ 31 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.

- (a) organising and holding an annual Community Rail Partnership conference and marketing support;
- (b) preparation and publication of the annual Community Rail report (including any required survey work);
- (c) provision of current funding to ACoRP;
- (d) provision of funding for an ACoRP communications and marketing resource;
- (e) provision of current funding to Community Rail Lancashire's education programme; and
- (f) other Community Rail schemes as agreed by the Secretary of State.

For each Service Year after the first Service Year, the Additional CRP Amount shall be subject to adjustment as follows: Additional CRP Amount x RPI.

2.16 The Service Provider shall, continue to measure basis its performance against the service level commitments agreed during the Previous Franchise Agreement with each Community Rail Partnership identified in paragraph 2.1 and ACoRP (the "**Community Rail Service Level Commitments**"). The Community Rail Service Level Commitments measure on an annual basis (during each Service Year) the Service Provider's ability to meet its obligations with regards to the relevant Community Rail Partnership and/or ACoRP, including the following obligations:

- (a) a maximum response time of three Weekdays by the Service Provider to all enquiries from a Community Rail Partnership and/or ACoRP, and the escalation of any unresolved enquiries within that timescale to appropriate persons for urgent resolution;
- (b) a commitment by the Service Provider to share with each Community Rail Partnership and ACoRP passenger volume data for all journeys starting or ending along the relevant Community Rail Route (and in respect of ACoRP, all Community Rail Routes), identified by broad ticket category and origin/destination;
- (c) the meeting of planned delivery dates and key milestones as agreed by the Service Provider with ACoRP and/or the relevant Community Rail Partnership in relation to projects to be undertaken by the Service Provider on behalf of and/or in conjunction with any of ACoRP or a relevant Community Rail Partnership ("**Shared Projects**") and compensate each of the relevant Community Rail Partnerships and ACoRP by paying to each of them an amount equal to 1% of the total cost of such Shared Project for each week the applicable delivery date or key milestone is delayed by the Service Provider;
- (d) in each Service Year, provision by the Service Provider of at least 50% of the time of one of the Service Provider's timetable experts in supporting timetable developments on Community Rail Routes, including journey time improvements, adjusting timetables to meet local demand and developing any policies in relation to Connections;
- (e) attendance by:
 - (i) the Communities and Sustainability Director at least one meeting with each Community Rail Partnership and ACoRP in each Service Year;
 - (ii) each Regional Communities and Sustainability Managers at least 80% of all meetings with each relevant Community Rail Partnership and/or ACoRP; and
 - (iii) other specific Franchise Employees at meetings with each Community Rail Partnership and/or ACoRP as may be reasonably agreed by the Service Provider;

- (f) provision by the Service Provider of travel on the Passenger Services without charge to all representatives of the Community Rail Partnerships in connection with the attendance at meetings or training courses related to any Community Rail Route or Community Rail Partnership; and
- (g) a commitment by the Service Provider to ACoRP to provide three travel passes at no cost to ACoRP permitting travel by ACoRP representatives on the Passenger Services in connection with the attendance at meetings or training courses related to any Community Rail Routes or Community Rail Partnerships.

The Service Provider agrees that it shall seek a review by ComREG of the Community Rail Service Level Commitments at least once during the Service Term and shall comply with any amendments or alterations to commitments made by ComREG which result from that review.

2.17 The Service Provider shall, in collaboration and consultation with ComREG, Network Rail and Community Rail Partnerships, identify and pursue opportunities and implement new and innovative initiatives to maximise the benefits produced by Community Rail Partnerships in relation to the Franchise, including (i) improvements to the performance and/or frequency of Passenger Services and/or (ii) improvements to the customer experience of using the relevant Passenger Services. Such initiatives shall include:

- (a) the implementation of revised operating procedures where it is feasible to do so on Community Rail Routes; and
- (b) introducing a policy to delay the departure of certain low frequency Passenger Services from Stations where key Connections are delayed in arriving at that Station.

2.18 Without prejudice to the Service Provider's obligations pursuant to paragraph 2.5 and as part of the Community Rail Report, the Service Provider shall provide to the Secretary of State information setting out:

- (a) the initiatives the Service Provider has identified pursuant to paragraph 2.17 and will implement during the forthcoming Service Year; and
- (b) an update on progress of the implementation or delivery of such initiatives during the previous Service Year.

3. Development of Industry Systems

The Service Provider shall fully and effectively co-operate, in a manner consistent with it being a responsible Train Operator, with Network Rail, the Secretary of State, ORR, HS2 Limited 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 Service Provider 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 Services.

5. Co-operation with Local Authorities

5.1 General co-operation with Local Authority in respect of schemes

- (a) The Service Provider 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, contributing to feasibility schemes and project plans and liaising with relevant industry participants including Network Rail.
- (b) Paragraph 5.1 does not oblige the Service Provider to incur any cost in the actual provision of the revised Passenger Services.

5A Co-operation with Williams Rail Review

5A.1 In this paragraph 5A, unless the context requires otherwise, the following words and expressions have the following meanings:

- (a) **"Service Provider WRR Contact"** means a Franchise Employee with appropriate seniority to oversee and facilitate the Service Provider's compliance with its obligations pursuant to paragraph 5A2 below; and
- (b) **"Williams Rail Review"** means the root and branch review of Britain's railway, independently chaired by Keith Williams.

5A.2 The Parties acknowledge and agree that as at the date of this Agreement, the implications of the Williams Rail Review (including in respect of the franchise) are unknown.

5A.3 The Service Provider shall (at the request of the Secretary of State) fully and effectively co-operate with the Secretary of State in connection with matters associated with the conclusions of the Williams Rail Review (including the identification and consideration of options, the provision of relevant information, advice and/or analysis for the purposes of informing future decisions which the Secretary of State may make in respect of the Services).

5A.4 In consultation with the Secretary of State, the Service Provider shall assign a Service Provider WRR Contact and shall confirm the identity of such Service Provider WRR Contact to the Secretary of State by no later than the Service Commencement Date.

5A.5 The Service Provider WRR Contact will act as the Service Provider's primary point of contact with the Secretary of State in relation to all matters contemplated by this paragraph 5A.

5A.6 The Service Provider shall procure that the Service Provider WRR Contact shall be supported from time to time by such other Franchise Employees as shall be reasonably required to ensure the Service Provider's compliance with this paragraph 5A.

5A.6 The Service Provider's obligations pursuant to this paragraph 5A shall include:

- (a) upon reasonable notice, attending meetings with the Secretary of State to discuss and provide an opinion on any relevant issues;
- (b) providing information, data, reports, feasibility studies, business cases, comments, commentary and analysis reasonably required by the Secretary of State (the cost of any such externally commissioned documents to be agreed as between the Parties); and
- (c) (where applicable) reviewing and commenting on implementation timetables and programmes for changes proposed by the Secretary of State,

in each case as may be required as a result of or in connection with the conclusions of the Williams Rail Review.

6. **NOT USED**

7. **NOT USED**

8. **Small and Medium-sized Enterprises**

8.1 The Service Provider shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Services.

8.2 By no later than 31 January in each year (and within one (1) month of the end of the Service Period) the Service Provider shall deliver to the Secretary of State a breakdown of the number of SMEs used by the Service Provider in providing the Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Service Period (as applicable).

9. **Apprenticeships**

9.1 The Service Provider shall at all times keep accurate and complete records of the Apprenticeships (and the training provided to apprentices) offered by the Service Provider and (if applicable) its immediate UK based supply chain in delivering the Services on a basis which is at all times compliant with Data Protection Legislation. In particular, in relation to each Reporting Period the Service Provider shall record:

- (a) the number of new Apprenticeships created, continuing and concluding in that Reporting Period;
- (b) the date of commencement and conclusion of each Apprenticeship; and
- (c) in relation to each Franchise Employee that commences an Apprenticeship in such Reporting Period:
 - (i) the level of such Apprenticeship as described in the Regulated Qualifications Framework;
 - (ii) the skills category (as described in the Standard Occupational Classification Codes) within which Apprenticeship falls;
 - (iii) the month and year of birth of that Franchise Employee;
 - (iv) the current occupation of that Franchise Employee;
 - (v) the gender of that Franchise Employee (except in relation to those Franchise Employees who do not permit disclosure);
 - (vi) whether that Franchise Employee is of BAME origin (except in relation to those Franchise Employees who do not permit disclosure);
 - (vii) the postcode of the location at which that Franchise Employee is principally employed at (e.g. the relevant train crew depot of train crew); and
 - (viii) the first half of that Franchise Employee's residential postcode.

9.2 Subject to paragraph 9.2A, the Service Provider shall provide an Apprenticeships Data Collection Form to the Rail Delivery Group containing the information set out in paragraph 9.1 for the

purpose of enabling the Secretary of State to monitor the achievement of the apprenticeship targets set out in the Transport Infrastructure Skills Strategy and check for any duplication of records.

9.2A In respect of information relating to each Franchise Employee who commences an Apprenticeship and which is included in the Apprenticeships Data Collection Form:

(a) The Service Provider shall not cause or permit any Personal Data whatsoever which relates to any Franchise Employee who commences an Apprenticeship to be included in any Apprenticeships Data Collection Form or otherwise shared with the Secretary of State or the Rail Delivery Group (whether in written form, on the telephone, or otherwise) and, accordingly, the Service Provider shall convert into anonymised aggregated form all Personal Data that is in the first instance included in the Apprenticeships Data Collection Form prior to sharing the Apprenticeships Data Collection Form with the Rail Delivery Group for the purpose described in paragraph 9.2 (and the Service Provider hereby acknowledges and agrees that if it should be possible in any way to identify any Franchise Employee from the anonymised aggregated data there would be a disclosure of Personal Data by the Service Provider and, accordingly, the Service Provider would be in breach of this paragraph 9.2A(a) in that event); and

(b) the Parties acknowledge that, notwithstanding the requirements of paragraph 9.2A(a) including the absolute obligation that is imposed on the Service Provider to effect the anonymised aggregation of the Personal Data comprised in information relating to each Franchise Employee who commences an Apprenticeship, it may still be possible from time to time to identify the Franchise Employee from the Apprenticeships Data Collection Form and that there will be processing of Personal Data inherent in that circumstance, and accordingly, the Service Provider shall in preparation for that possibility ensure that:

(i) the Franchise Employee who commences an Apprenticeship is made aware that their Personal Data may be shared with the Rail Delivery Group (and onward to the Secretary of State) for the purpose described in paragraph 9.2;

(ii) the Personal Data is collected and processed by or on behalf of the Service Provider in accordance with the Data Protection Legislation;

(iii) the fairness principle of the Data Protection Legislation is satisfied including by issuing relevant privacy notices in relation to the collecting and processing of the Personal Data by the Service Provider, and for the disclosure to and subsequent processing by the Rail Delivery Group (and the Secretary of State) for the purpose described in paragraph 9.2;

(iv) there is a lawful basis for the collection and processing of the Personal Data by the Service Provider, and for the disclosure to and subsequent processing by the Rail Delivery Group (and the Secretary of State) for the purpose described in paragraph 9.2; and

(v) the Franchise Employee is made aware that their Personal Data shall be retained by the Secretary of State for a period of seven (7) years following its receipt of the same from the Rail Delivery Group.

9.2B Nothing in paragraph 9.2A(b) is intended by the parties to absolve the Service Provider from its obligations under paragraph 9.2A(a)).

9.3 By no later than 31 January each year (and within one (1) month of the end of the Service Period) the Service Provider shall deliver to the Rail Delivery Group the breakdown of the information recorded pursuant to paragraph 9.1, and (subject to the requirements of paragraphs 9.2) it shall do this during the calendar year (or part thereof) which ended on the immediately preceding 31

December or at the end of the Service Period (as applicable), and that information is to be transmitted via the completed Apprenticeships Data Collection Form and submitted to the Rail Delivery Group for onward transmission to the Secretary of State on an annual basis or at such other time as the Secretary of State may specify.

9.4 **NOT USED**

9.5 **NOT USED**

9.6 **NOTE USED**

9.7 **NOT USED**

9.8 **NOT USED**

10. **Sustainability and other related initiatives**

10.1 **Sustainable Development Strategy**

(a) NOT USED

(b) NOT USED

(c) The Service Provider 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) NOT USED

(e) NOT USED

(f) NOT USED

(g) Within three (3) months of the Service Commencement Date deliver to the Secretary of State the Service Provider's 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). The Secretary of State shall be entitled to approve or otherwise determine the changes to the Sustainable Development Strategy before such amendments are adopted and the Sustainable Development Strategy is updated.

(h) The Service Provider shall within three (3) months following the end of each Service Year (other than the first Service 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 business; 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 Service Provider shall obtain the Secretary of State's consent to any amendments to the Sustainable Development Strategy proposed pursuant to paragraphs 10.1(h)(iii) before such amendments are adopted and the Sustainable Development Strategy is updated.

Withdrawn

- (j) On request by the Secretary of State, the Service Provider shall publish (in such form as the Secretary of State may reasonably determine):
 - (i) all or any part of its Sustainable Development Strategy;
 - (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) The Service Provider shall at the Service Commencement Date at all times thereafter, maintain certification pursuant to ISO14001:2015 and ISO50001:2011 or equivalent standards.
- (b) The Service Provider shall provide the Secretary of State with copies of the certification audit reports and a copy of their ISO50001 Energy Review within four (4) weeks of their certification and each subsequent recertification during the Service Period.

10.3 NOT USED

11. ERTMS Strategy

11.1

- (a) The Service Provider shall:
 - (i) co-operate in good faith with the relevant third parties involved in the implementation of the ERTMS Programme (including Network Rail and the relevant rolling stock providers) with the intention of ensuring its timely, efficient and cost effective implementation and, in particular assisting in the development and implementation of the programme for the design and fitment of the relevant ERTMS equipment on the first rolling stock unit of each class of rolling stock comprised in the Train Fleet for which the Service Provider is identified as the "Lead TOC" under the National Joint Rail CO First-In-Class Project (the "**First in Class Unit**") and the testing and commissioning of such equipment on each First in Class Unit. It is acknowledged by the Secretary of State and the Service Provider that Network Rail is responsible for the capital costs for the design and fitment of the relevant ERTMS equipment on each First in Class Unit;
 - (ii) prepare a plan and submit a plan to the Secretary of State within three months of the Service Commencement Date (and keep such plan under review and provide an updated plan to the Secretary of State on a quarterly basis) which addresses how it will deliver those activities for the implementation of the ERTMS Programme for which it is responsible including:
 - (A) the training of Franchise Employees who are drivers or rolling stock maintenance staff and other relevant Franchise Employees;
 - (B) the obtaining of such approvals and consents as may be required for the retro fitment of the relevant equipment to the other rolling stock units (other than the First In Class Units) comprised in the Train Fleet as are to be used for the operation of the Passenger Services on the ERTMS Enabled Network (the "**Affected Train Fleet**");
 - (C) the installation, testing and commissioning of the relevant ERTMS equipment on each unit comprised in the Affected Train Fleet; and

(D) the maintenance of any such ERTMS equipment fitted on the Affected Train Fleet and the First in Class Units,

(the “**Service Provider ERTMS Plan**”) and any Service Provider ERTMS Plan prepared by the Service Provider pursuant to this paragraph shall be prepared on the basis that is consistent with the Proposed ERTMS Implementation Plan;

- (iii) implement the Service Provider ERTMS Plan in accordance with its terms; and
- (iv) following the implementation of ERTMS on any part of the routes specified in the Proposed ERTMS Implementation Plan (the “**ERTMS Enabled Network**”) co-operate, in good faith, with Network Rail, the lessors of the Affected Train Fleet and the First in Class Units and other relevant third parties, with a view to ensuring the on-going efficient operation of the Passenger Services operated on the ERTMS Enabled Network including by working together with Network Rail, the lessors of the Affected Train Fleet and the other relevant third parties to resolve any compatibility issues that may arise between the train borne equipment and the trackside equipment.

(b) If at any time the Secretary of State (acting reasonably) is satisfied that the Service Provider has not complied or is not likely to comply with its obligations in this paragraph 11.1 the Secretary of State may at the Secretary of State’s discretion serve a Beach Notice pursuant to Clause 8.

11.2 The Service Provider shall at the request of the Secretary of State provide to him (as soon as reasonably practicable and in any event within five business days following the receipt by the Service Provider of any such request) such information (including progress reports and the latest the Service Provider ERTMS Plan as at the date of such request) as the Secretary of State may reasonably require in relation to the implementation of the ERTMS Programme including for the purposes of:

- (a) satisfying himself that:
 - (i) the Service Provider ERTMS Plan is robust and deliverable; and
 - (ii) the implementation of the ERTMS Programme is being undertaken in accordance with the Proposed ERTMS Implementation Plan; and
- (b) reporting on progress in relation to matters relating to the implementation of the ERTMS Programme (including progress on the implementation of the Service Provider ERTMS Plan).

The Service Provider shall, upon reasonable notice, attend any such meeting as the Secretary of State may reasonably require for the purposes of discussing and explaining the Service Provider ERTMS Plan (including progress on the implementation of such plan).

11.3 Within one year following the first implementation of ERTMS on the ERTMS Enabled Network, the Service Provider shall carry out a detailed review of (i) the performance of the relevant ERTMS equipment installed by the Service Provider on the Affected Train Fleet and the First in Class Units pursuant to this paragraph 3 following the implementation of ERTMS on the ERTMS Enabled Network by Network Rail and (ii) the extent to which the performance of the relevant ERTMS equipment installed by the Service Provider on the Affected Train Fleet and the First in Class Units pursuant to this paragraph 11 has been adversely impacted or otherwise affected by failures in the trackside ERTMS equipment installed by Network Rail on the ERTMS Enabled Network and submit a report to the Secretary of State documenting the outcomes of such review in such format (and in such detail) as the Secretary of State may (acting reasonably) specify.

- 11.4 The Service Provider shall use all reasonable endeavours to ensure that any Track Access Agreement that it enters into with Network Rail reflects the following principles:
- (a) there will be no right for the Service Provider 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 11.4(b) ("**Network Change Compensation Claims**"); and
 - (b) the Service Provider 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 Service Provider 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 Proposed ERTMS Implementation Plan except where such material change is wholly attributable to the actions or inactions of the Service Provider.
- 11.5 If and to the extent that the Track Access Agreement entered into by the Service Provider does not reflect any of the principles set out in paragraph 3.4 including as a result of:
- (a) the Service Provider not being able to obtain the ORR's approval to any such terms; or
 - (b) the Service Provider not complying with its obligations under paragraph 11.4 and entirely without prejudice to the other rights the Secretary of State may have under this Agreement consequent upon a contravention by the Service Provider of the provisions of paragraph 11.4,

then the Service Provider shall immediately pay to the Secretary of State (as a debt), an amount equal to any amounts received by the Service Provider from Network Rail in respect of any Network Change Compensation Claim(s). Any amounts payable by the Service Provider to the Secretary of State pursuant to this paragraph 11.5 shall be paid on the next Payment Date following receipt by the Service Provider of any such amounts from Network Rail or where no such Payment Date exists shall be paid within 30 days of receipt by the Service Provider of any such amounts from Network Rail.

12. **NOT USED**

13. **HS2 Project**

- 13.1 The Service Provider shall from the Service Commencement 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 Service Provider having rights under railway industry procedures including Network Change or Station Change the Service Provider shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of the HS2 Project and the Service Provider shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change. It is acknowledged that the Service Provider may make reasonable objections with a view to mitigating the impact of the HS2 Project and their implementation on passengers and the Services, while recognising the need for the HS2 Project to be able to be undertaken in a reasonable manner.
- 13.2 The Service Provider shall provide such information in respect of the HS2 Project as the Secretary of State may reasonably request from time to time.

14. Suicide Prevention Strategy

14.1

- (a) As soon as reasonably practicable after the Service Commencement Date the Service Provider shall, in consultation with the British Transport Police and the wider cross-industry suicide prevention group, develop a draft suicide prevention plan that fully delivers and complies with the Suicide Prevention Strategy and the Suicide Prevention Duty Holders' Group's 9 Point Plan and submit it to the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) for approval.
- (b) The Service Provider shall make such amendments to the draft suicide prevention plan as:
- (i) the British Transport Police shall require for the purposes of ensuring that it fully delivers and complies with the Suicide Prevention Strategy; and
 - (ii) the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) shall require for the purposes of ensuring that it fully delivers and complies with the Suicide Prevention Duty Holders' Group's 9 Point Plan.
- (c) The Service Provider shall submit a completed suicide prevention plan (the "**Plan**") to the Secretary of State together with written confirmation from the British Transport Police that the Plan complies with the requirements of the Suicide Prevention Strategy and from the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) that the Plan complies with the Suicide Prevention Duty Holders' Group's 9 Point Plan as reasonably practicable and in any event within twelve (12) months of the Service Commencement Date.
- (d) The Service Provider shall review and update the Plan:
- (i) at least every twelve (12) months; and
 - (ii) immediately following any amendment to, or replacement of, the Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan.

Such review and any updating shall be by reference to changing circumstances, new relevant information and any amended or replaced Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan with the intention that it is kept as up to date and effective as reasonably possible. The Service Provider shall consult with the British Transport Police and wider cross-industry suicide prevention group (as appropriate) in relation to any such review and update of the Plan. The Service Provider shall deliver a copy of any revised and/or updated Plan to the Secretary of State as soon as is reasonably practicable together with written confirmation from the British Transport Police that the Plan complies with the requirements of the Suicide Prevention Strategy and the Suicide Prevention Duty Holders' Group's 9 Point Plan and accordingly remains approved by it.

- 14.2 The Service Provider shall implement the Plan as it may be revised and/or updated pursuant to paragraph 14.1 in accordance with its then prevailing provisions.

15. Safeguarding Strategy

- 15.1 As soon as reasonably practicable after the Service Commencement Date, the Service Provider shall, in consultation with the British Transport Police and such other relevant groups as the

Service Provider and/or the British Transport Police consider appropriate, develop a draft safeguarding strategy.

15.2 The draft safeguarding strategy shall be submitted to the British Transport Police for its approval that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit and the Service Provider shall take into account any comments or amendments proposed by:

- (a) the British Transport Police; and
- (b) such other relevant groups as the Service Provider and/or the British Transport Police consider appropriate,

as are required to ensure that such draft safeguarding strategy complies with the Safeguarding on Rail Audit.

15.3 The Service Provider shall deliver a copy of the Safeguarding Strategy to the Secretary of State together with written confirmation of the approval issued by the British Transport Police that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit as soon as reasonably practicable following such approval and in any event within twelve (12) months of the Service Commencement Date.

15.4 The Service Provider shall review and, as necessary, update the Safeguarding Strategy:

- (a) at least every (twelve) 12 months; and
- (b) within one (1) month following the publication of an amendment to, or replacement of the Safeguarding on Rail Audit.

15.5 Any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 15.4 shall take into account any changes to, or replacement of the Safeguarding on Rail Audit and any other relevant circumstances that could reasonably be considered to impact the objectives contained in the Safeguarding on Rail Audit and shall ensure that the Safeguarding Strategy remains up-to-date and appropriate for delivering the objectives contained in the Safeguarding on Rail Audit.

15.6 The Service Provider shall undertake any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 15.4 in consultation with the British Transport Police and such other relevant groups as the Service Provider and/or the British Transport Police consider appropriate. The Service Provider shall submit such updated Safeguarding Strategy to the British Transport Police within one (1) month of such review for its approval that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit and the Service Provider shall take into account any comments or amendments proposed by:

- (a) the British Transport Police; and
- (b) such other relevant groups as the Service Provider and/or the British Transport Police consider appropriate,

as are required to ensure that the Safeguarding Strategy remains up-to-date and appropriate for delivering the objectives contained in the Safeguarding on Rail Audit.

15.7 The Service Provider shall deliver a copy of any updated Safeguarding Strategy to the Secretary of State together with written confirmation of the approval issued by the British Transport Police as soon as reasonably practicable following such approval.

15.8 The Service Provider shall implement the approved Safeguarding Strategy as it may be revised and/or updated pursuant to this paragraph 15 from time to time.

16. Incident Response Plan

16.1 For the purposes of this paragraph 16, the following definitions shall the following meanings unless the context requires otherwise:

<p>“Incident Response Plan”</p>	<p>means the plan created by the Service Provider pursuant to this paragraph 16 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>) which contains (as a minimum) the information set out in paragraph 16.3 of Schedule 13.1;</p>
<p>“RDG Guidance on Emergency Planning, Knowledge, Understanding and Responsibilities”</p>	<p>means the guidance that sets out industry best practice for planning for responses to major incidents and emergencies entitled "<i>Emergency Planning Knowledge, Understanding and Responsibilities</i>" dated April 2015 and published by RDG, as amended or updated from time to time, or other relevant guidance as reasonably specified by the Secretary of State during the Service Term.</p>

16.2 By no later than six (6) months following the Service Commencement Date the Service Provider shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Incident Response Plan.

16.3 The Incident Response Plan shall:

- (a) detail how the Service Provider would respond to an incident or emergency (including cyber security incidents); and
- (b) reflect the RDG Guidance on Emergency Planning, Knowledge, Understanding and Responsibilities, 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.

16.4 Where the Secretary of State does not approve the draft Incident Response Plan submitted to it, the Service Provider 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.

16.5 From the date of approval, the Service Provider shall implement and comply with the Incident Response Plan.

16.6 The Incident Response Plan shall be updated by the Service Provider on an annual basis and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).

16.7 Each updated version of the Incident Response Plan shall incorporate a schedule of revisions to the Incident Response Plan compared to the previous version and a brief summary of the rationale supporting each such revision.

16.8 If:

- (a) the Secretary of State approves an updated draft Incident Response Plan submitted to it pursuant to paragraph 16.6, such document shall become the then current Incident Response Plan; or

- (b) the Secretary of State does not approve an updated draft Incident Response Plan submitted to it pursuant to paragraph 16.6, the provisions of paragraph 16.4 shall apply.

17. Cyber Security Information Sharing Strategy

17.1 For the purposes of this paragraph 17, the following definitions shall the following meanings unless the context requires otherwise:

"Cyber Information Sharing Platform"	means the government and industry partnership operated by the National Cyber Security Centre to facilitate the sharing of information and intelligence in relation to cyber security threats;
"Cyber Security Information Sharing Strategy" or "CSISS"	means the strategy created by the Service Provider pursuant to this paragraph 17 of Schedule 13.1 which contains (as a minimum) the information set out in paragraph 17.3 of Schedule 13.1;
"National Cyber Security Centre"	means the National Cyber Security Centre, which is a part of Government Communications Headquarters established to protect UK critical services from cyber attacks, manage major incidents and improve the underlying security of the UK Internet through technological improvement and advice to citizens and organisations.

17.2 By no later than six (6) months following the Service Commencement Date the Service Provider shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Cyber Security Information Sharing Strategy.

17.3 The Cyber Security Information Sharing Strategy shall:

- (a) detail how the Service Provider shall share information regarding cyber security threats and incidents with the Department for Transport, British Transport Police, Police Scotland (where relevant), the National Cyber Security Centre and other industry partners; and
- (b) reflect the latest Secretary of State's cyber incident reporting guidance including detailing how the Service Provider shall use the Cyber Information Sharing Platform,

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.

17.4 Where the Secretary of State does not approve the draft Cyber Security Information Sharing Strategy submitted to it, the Service Provider 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.

17.5 From the date of approval, the Service Provider shall implement and comply with the Cyber Security Information Sharing Strategy.

17.6 The Cyber Security Information Sharing Strategy shall be updated by the Service Provider on an annual basis and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).

- 17.7 Each updated version of the Cyber Security Information Sharing Strategy shall incorporate a schedule of revisions to the Cyber Security Information Sharing Strategy compared to the previous version and a brief summary of the rationale supporting each such revision.
- 17.8 If:
 - (a) the Secretary of State approves an updated draft Cyber Security Information Sharing Strategy submitted to it pursuant to paragraph 17.6, such document shall become the then current Cyber Security Information Sharing Strategy; or
 - (b) the Secretary of State does not approve an updated draft Cyber Security Information Sharing Strategy submitted to it pursuant to paragraph 17.6, the provisions of paragraph 17.4 shall apply.

18. **CCTV**

- 18.1 The Service Provider shall ensure that any installation of, or upgrade to CCTV at any Station shall be undertaken in accordance with the CCTV Guidance.
- 18.2 The Service Provider shall ensure that any installation of, or upgrade to, CCTV in the areas accessible by passengers of any vehicle that is operated as part of the Train Fleet shall be undertaken in accordance with the CCTV Guidance.

Withdrawn

APPENDIX 1 TO SCHEDULE 13.1

Community Rail Partnerships

	Community Rail Partnership	Line / Services forming Partnership
(a)	Bentham Line	Leeds – Lancaster – Morecombe
(b)	Bishop Line	Darlington – Bishop Auckland
(c)	Clitheroe Line	Clitheroe – Manchester Victoria
(d)	Crewe – Manchester	Crewe – Manchester
(e)	Cumbrian Coast	Carlisle – Barrow
(f)	East Lancashire	Colne – Preston
(g)	Esk Valley Railway Development Company	Middlesbrough – Whitby
(h)	Furness Line	Lancaster – Barrow-in-Furness
(i)	Hope Valley & High Peak	Manchester – Sheffield / Buxton / Glossop
(j)	Humber Region	Cleethorpes – Barton-on-Umber
(k)	Lakes Line	Oxenholme – Windermere
(l)	Mid Cheshire	Manchester – Northwich – Chester
(m)	North Cheshire	Chester – Macclesfield
(n)	Penistone Line	Huddersfield – Sheffield
(o)	Settle Carlisle Railway Development Company	Leeds – Carlisle
(p)	South Fylde	Preston – Blackpool South
(q)	Tyne Valley	Newcastle – Carlisle
(r)	West Lancashire	Wigan – Southport and Preston – Ormskirk
(s)	Yorkshire Coast	Hull – Scarborough

Schedule 13.2

NOT USED

Withdrawn

Schedule 13.3

NOT USED

Withdrawn

SCHEDULE 14

PRESERVATION OF ASSETS

Schedule 14.1:	Maintenance as a going concern
Schedule 14.2	Maintenance of Operating Assets and Branding
	Appendix 1: List of Trade Marks
Schedule 14.3	Key Contracts
	Appendix 1: List of Key Contracts
Schedule 14.4:	Service Assets
	Appendix 1: List of Service Assets
Schedule 14.5:	Dealing with Service Assets
Schedule 14.6:	NOT USED
	NOT USED
Schedule 14.7:	NOT USED

Withdrawn

Schedule 14.1**Maintenance as a going concern****1. Maintenance as a going concern**

- 1.1 The Service Provider shall maintain and manage the business of providing the Services so that, to the greatest extent possible and practicable:
- (a) the Service Provider is able to perform its obligations under this Agreement; and
 - (b) a Successor Operator would be able to take over the business of providing the Services immediately at any time.
- 1.2 The Service Provider's obligation under paragraph 1.1 shall include an obligation to ensure that any computer and information technology systems of the Service Provider 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 this 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 Service Provider to obtain consent to such arrangements relating to sharing computer and information technology systems from the Secretary of State).
- 1.3 The Service Provider shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Service Assets for such purpose.
- 1.4 The Service Provider shall maintain and manage the business of providing the Services on the basis that such business will be transferred, in the manner contemplated under this Agreement, as a going concern at the end of the Service Period to, and continued immediately thereafter by, a Successor Operator.
- 1.5 The Service Provider shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skill, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Service Period and in so doing shall plan for the recruitment and training of Franchise Employees to continue up until the end of the Service Term.
- 1.6 The Service Provider 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 Service Term.

2. Post-Franchise Timetables

- 2.1 Both prior to and following the selection of a Successor Operator (whether a the Service Provider or otherwise and whether or not subject to the satisfaction of any conditions), the Service Provider 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 the Services.
- 2.2 The steps that the Secretary of State may reasonably request the Service Provider to take pursuant to paragraph 2.1 include:

- (a) participating in any timetable development process that takes place during the Service Period, but which relates to any timetable period applying wholly or partly after the expiry of the Service 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 Service 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 Service Provider 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 the Secretary of State will include that Access Agreement in any Transfer Agreement pursuant to clause 10 (Transfer of Property rights and liabilities on Expiry) of this Agreement.

2.3 In addition to its obligation in paragraph 2.1(c) the Service Provider shall undertake such planning, preparation and organisation to ensure the successful operation of the Successor Operator Timetable from the Passenger Change Dates in May 2022 and December 2022 as if the Service Provider were to be operating the same from that date.

Withdrawn

Schedule 14.2

Maintenance of Operating Assets and Branding

1. Operating Assets

- 1.1 The Service Provider shall maintain, protect and preserve the Operating Assets in good standing or good working order, subject to fair wear and tear.
- 1.2 The Service Provider shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Service Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Services.
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Service Provider shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Service Provider 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 this Agreement.
- 1.4 The Secretary of State may at any time require the Service Provider to provide to the Secretary of State a schedule specifying the condition of any asset or class of assets that the Secretary of State 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 to resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Service Provider shall comply with the Secretary of State's requirements in respect of such schedule of condition.

2. Spares

The obligation of the Service Provider to maintain, preserve and protect the Operating Assets under this Schedule 14.2 shall, in respect of Spares, include the obligation to replace any Spare which is a Service Asset and which, as a result of it being a Service Asset ceases to be part of the stock of Spares available to the Service Provider for use in the provision of the Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

3. Brand Licence and Branding

3.1 Brand Licences

The Service Provider shall comply with its obligations under the Brand Licence.

3.2 Branding

Subject to any applicable obligations or restrictions on the Service Provider (including the terms of the Rolling Stock Leases), the Service Provider shall apply the registered or unregistered trade marks specified in the Brand Licence(s) and as listed in Appendix 1 (*List of Trade Marks*) of this Schedule 14.2 to all those assets owned or used by the Service Provider in the operation and provision of the Services, including but not limited to:

- (a) the Train Fleet;
- (b) the Stations;
- (c) staff uniforms;

- (d) marketing materials;
- (e) publications;
- (f) ticket sales channels; and
- (g) visual display screens.

3.3 NOT USED

4. Branding Requirements

4.1 The following words and expressions shall have following meanings unless otherwise set out in clause 3 (Definitions):

"Northern Brand"	<p>means a brand (which may include sub-brands for specific Routes or types of Passenger Services) which is either:</p> <ul style="list-style-type: none"> (a) created by the Service Provider; or (b) acquired by the Service Provider from the Previous Franchisee or otherwise.
-------------------------	--

4.2 The Service Provider shall implement and maintain the Northern Brand throughout the Service Term.

4.3 The Service Provider shall use and apply the Northern Brand in relation to the Train Fleet (subject to the terms of the Rolling Stock Leases) and all Stations, staff uniforms, marketing materials, publications, ticket sales channels and visual display screens used by the Service Provider (and any other assets owned or used by the Service Provider in the operation and provision of the Services which the Service Provider uses branding on) throughout the Service Term and in connection with the provision of the Services.

4.4 NOT USED.

4.5 The Service Provider shall ensure that all rights in the Northern Brand (as may be modified from time to time) are capable of being designated as Service Assets and accordingly capable of being transferred to the Successor Operator.





5. NOT USED

Withdrawn

APPENDIX 1 TO SCHEDULE 14.2

List of Trade Marks

1. Registered Trade Marks

Trade Mark	Registration No	Classes	Date of Filing
Double Arrows Symbol 	2107832	16,35, 37, 39, 41, 42	16 August 1996
Sprinter 	1275685	39	1 October 1986
Pacer	1276981	39	1 October 1986
Sprinter	1276982	39	1 October 1986
Viaduct Symbol 	1541196	39	9 July 1993
Welcome Aboard 	2053995	16	26 January 1996

Withdrawn

2. Unregistered Trade Marks

None.

Schedule 14.3**Key Contracts****1. Key Contracts**

1.1 This Schedule sets out the rights of the Secretary of State to:

- (a) designate certain contracts or categories of contracts as Key Contracts where the Secretary of State considers that such contracts or categories of contract are necessary for the purposes of securing continuity of the Services by a Successor Operator on expiry of the Service Period; and
- (b) in accordance with paragraph 5, require the Service Provider to procure that a counterparty to a Key Contract enters into a Direct Agreement with the Secretary of State.

This Schedule 14.3 shall apply to all contracts designated as Key Contracts from time to time.

1.2

- (a) The Key Contracts as at the date of this Agreement are set out in Appendix 1 (List of Key Contracts) to this Schedule 14.3.
- (b) The Service Provider shall enter into any and all Key Contracts which are necessary for this Agreement to continue in accordance with clause 5 (Term and Termination).
- (c) Where at any time after the date of this Agreement the Service Provider proposes to enter into any agreement, contract, licence or other arrangement which falls within one of the categories listed in Appendix 1 (List of Key Contracts) to this Schedule 14.3 the Service Provider shall:
 - (i) 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
 - (ii) comply with the provisions of paragraph 5.1 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, Appendix 1 (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 Service Provider 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.

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 Services or the provision of services similar to the Services by a Successor Operator in accordance with this Agreement, the Secretary of State may make a designation pursuant to paragraph 2.2.
- 2.2 The Secretary of State may at any time, by serving notice on the Service Provider, 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 Service Provider 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 Service Provider 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 Service Provider, 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 Service Provider, 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 Service Provider shall not enter into any 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 this Agreement; or
 - (iii) the making of a railway administration order in respect of the Services.
- 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 Service Provider is already a party; or

- (b) any category of agreement, contract, licence or other arrangement where the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider as a result of, or in connection with:

- (a) any breach by the Service Provider of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the Service Provider against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. Emergencies

6.1 Where any emergency may arise in connection with the provision and operation of the Services, the Service Provider:

- (a) 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;
- (b) 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;
- (c) shall promptly inform the Secretary of State of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- (d) 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 Service Provider 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 Service Provider 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 Service Provider shall, to the extent so requested by the Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.

APPENDIX 1 TO SCHEDULE 14.3

List of Key Contracts

Subject to any de-designations by the Secretary of State under paragraph 3 of Schedule 14.3 (Key Contracts), the following items have as at the date of this Agreement been agreed between the Parties to be Key Contracts:

1. any Access Agreement to which the Service Provider 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 (Original Rolling Stock) and Table 2 (Specified Rolling Stock);
4. **NOT USED;**
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 Service Provider 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 8 (*Subcontracting any Passenger Services*) of Schedule 14.3 (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 Service Provider 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 care 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 Service Provider;
12. any contract or arrangement relating to the operation of smart ticketing;
13. any licence of any CRM System or Yield Management System;
14. any contract or arrangement for the provision or lending of Computer Systems (other than the CRM System and Yield Management System) that the Secretary of State reasonably considers is essential for the delivery of the Services; and
15. any contract for the maintenance and renewal works at Stations including any framework delivery contracts for the provision of building and civil engineering works, mechanical and electrical works at Stations.

Schedule 14.4

Service Assets

1. Service Assets

1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Service Provider from time to time during the Service Period shall be Service Assets and the provisions of paragraph 4 of Schedule 14.5 (dealing with Service Assets) shall apply to all Service Assets.

1.2 The rights and liabilities of the Service Provider in respect of the following items shall not be Service Assets and the provisions of paragraph 4 of Schedule 14.5 (dealing with Service Assets) shall not apply to such rights and liabilities:

- (a) any contracts of employment;
- (b) this Agreement and any Transfer Agreement;
- (c) the Ticketing and Settlement Agreement;
- (d) any sums placed on deposit with a bank or other financial institution;
- (e) any Rolling Stock Leases; and
- (f) such other property, rights and liabilities as the Secretary of State may specify from time to time.

1.3 **NOT USED.**

2. **NOT USED**

3. **NOT USED**

4. **NOT USED**

5. **NOT USED**

6. **NOT USED**

7. **NOT USED**

8. **NOT USED**

9. **NOT USED**

10. **NOT USED**

11. **NOT USED**

Withdrawn

APPENDIX 1 TO SCHEDULE 14.4

NOT USED

Withdrawn

Schedule 14.5

Dealing with Service Assets

1. **NOT USED**

2. **NOT USED**

3. **NOT USED**

4. **Prohibition on Other Security Interests**

4.1 Except with the prior written consent of the Secretary of State, the Service Provider:

- (a) shall not transfer or agree to transfer, create or agree to create a Security Interest over, any Service Asset (or any interest in or rights over any Service Assets; or
- (b) shall not create or extinguish or agree to create or extinguish any interest in, or rights over, any Service Asset; or
- (c) if and to the extent that the Service Assets are liabilities, shall not enter into any agreement under which any such liability is released or discharged or transferred to some other person.

5. **Miscellaneous**

The Service Provider 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 the Secretary of State may reasonably require.

Withdrawn

Schedule 14.6

NOT USED

Withdrawn

APPENDIX 1 TO SCHEDULE 14.6

NOT USED

Withdrawn

Schedule 14.7

NOT USED

Withdrawn

SCHEDULE 15

OBLIGATIONS ASSOCIATED WITH TERMINATION

Schedule 15.1:	Reletting Provisions
Schedule 15.2:	NOT USED
Schedule 15.3:	NOT USED
Schedule 15.4:	Provisions applying on and after Termination
	Appendix 1: Form of Transfer Agreement

Withdrawn

Schedule 15.1

Reletting Provisions

1. Reletting of Franchise

1.1 The Service Provider acknowledges that the Secretary of State may wish, at or before the expiry of the Service 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 Service Provider 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 this Agreement. The Service Provider accordingly accepts and agrees to the restrictions and obligations imposed on it under Part 1 (Services) of Schedule 1.1 (Services and Service Development), Schedule 14 (Preservation of Assets) and this Schedule 15 (Obligations Associated with Termination).

2. Preparation for Reletting

2.1 The Service Provider shall, if so requested by the Secretary of State provide the Secretary of State and the Secretary of State's representatives and advisers with access to officers, Franchise Employees and all books, records and other materials kept by or on behalf of the Service Provider in connection with the Services (including electronic or magnetic records, any CRM System and any Yield Management System) for the purpose of assisting such representatives and advisers:

- (a) 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 Services;
- (b) to prepare invitations to other potential the Service Providers to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
- (c) to enter into any franchise agreement or other agreement (including any agreement entered into by the Secretary of State in fulfilment of the Secretary of State's duties under section 30 of the Act relating to the services equivalent to the Services (or any part thereof), without undergoing a tendering process,

provided that the exercise of such access rights by the Secretary of State and the Secretary of State's representatives and advisers shall not unduly interfere with the continuing provision and operation of the Services by the Service Provider.

3. Data Site Information

3.1 the Service Provider shall, at the request of the Secretary of State, make available to the Secretary of State and the Secretary of State's representatives and advisers:

- (a) the information relating to the Services as specified in the document in the agreed terms marked **DSMI** (the "**Data Site Monitor and Index**"); and
- (b) such other information as they shall reasonably require in connection with the matters referred to in paragraph 2.1,

in each case, by no later than three (3) months after the date of any such request. For the purposes of this paragraph 3 the information referred to in paragraphs 3.1(a) and 3.1(b) shall be the "Data Site Information".

- 3.2 The Data Site Monitor and Index shall be amended and updated by the Secretary of State from time to time. Such amended and updated Data Site Monitor and Index shall, from the date that the Service Provider receives notification from the Secretary of State of any such amendment or update, be the applicable Data Site Monitor and Index for the purposes of this paragraph 3.
- 3.3 The Service Provider shall prepare and present the Data Site Information in such manner and in such format (including in disaggregated form) as the Secretary of State may specify in the Data Site Monitor and Index or otherwise require, and shall provide such assistance as the Secretary of State may require in connection with the verification and the updating of such Data Site Information.
- 3.4 The Service Provider 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 3.5,

in each case, as the Secretary of State shall require from time to time.

- 3.5 The Service Provider shall upload the Data Site Information to such electronic data site as the Secretary of State may specify and shall make a sufficient number of appropriate staff available for that purpose. The Service Provider 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).
- 3.6 The Service Provider shall:
 - (a) comply with its obligations under paragraph 2.1 and this paragraph 3 promptly and in any case in accordance with any reasonable timetable with which the Secretary of State requires the Service Provider by notice in writing to comply;
 - (b) where the Secretary of State raises with the Service Provider 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 Service Provider shall notify the Secretary of State (the Secretary of State's 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 Services (whether or not together with other railway passenger services) at or following the end of the Service Period, the Service Provider agrees and acknowledges that the Secretary of State may require:

- (a) that the Service Provider 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 Service Provider 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 Service Provider reorganises the business of providing services equivalent to the Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the 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 Services within that Service Group; and
- (c) that the Service Provider 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 Service Provider 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 this Agreement or otherwise) in respect of any contravention by the Service Provider of its obligations under this paragraph 3, if the Secretary of State is of the reasonable opinion that the Service Provider does not have sufficient resources to enable its compliance with its obligations under this paragraph 3 the Secretary of State may:

- (a) require the Service Provider to employ; or
- (b) after notification to the Service Provider, employ,

such suitable additional resource as may be required to ensure that the Service Provider can comply with its obligations under this paragraph 3. The Service Provider shall reimburse to the Secretary of State, by way of adjustment to Fixed Service Payments, any proper costs (including staff costs) incurred by the Secretary of State 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 Service Provider a reasonable opportunity to make representations to the Secretary of State concerning the exercise by the Secretary of State of the Secretary of State's 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 Service Provider 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 Services at the end of the Service Period to a Successor Operator; or
 - (b) to avoid, frustrate or circumvent any provision of this 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 this Agreement, the Service Provider may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

5. **Inspection Rights during the Tendering/Reletting Process**

5.1 Without limiting any other rights of the Secretary of State under this Agreement and subject to paragraph 5.3, the Service Provider shall permit the undertaking of inspections (including the taking of inventories) or surveys of:

- (a) trains;
- (b) Stations;
- (c) Depots;
- (d) sidings; and/or
- (e) other premises owned or occupied by the Service Provider or any of its Affiliates or used in connection with the provision of the Services by the Service Provider or any of its Affiliates,

("Inspections") by the Secretary of State (or the Secretary of State's 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 Services, and who carry suitable identification and evidence of authorisation ("Nominee")) as the Secretary of State may reasonably require in connection with any Tendering/Reletting Process.

5.2 The Service Provider shall provide a travel permit(s) which will allow the Secretary of State or a Nominee to travel free of charge on the Routes in order to carry out the Inspections.

5.3 The Secretary of State shall use reasonable endeavours to ensure that any Inspections shall be undertaken so as not to unduly interfere with the continuing provision and operation of the Services by the Service Provider.

Schedule 15.2

NOT USED

Withdrawn

Schedule 15.3

NOT USED

Withdrawn

Appendix 1 to SCHEDULE 15.3

NOT USED

Withdrawn

Schedule 15.4**Provisions applying on and after Termination****1. Novation of Access Agreements on Termination of this Agreement**

1.1 The Service Provider shall, to the extent so requested by the Secretary of State on termination of this 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 the Secretary of State 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 Service Provider 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 the Secretary of State's 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 the Secretary of State's nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach of the relevant agreement referred to in paragraph 1.3(a),

but shall not, unless the Service Provider otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Service Provider arising prior to the date of such novation.

1.4 The Service Provider 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 Service Provider 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 the Secretary of State 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 Service Provider 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 Service Provider 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 Services, the Service Provider shall co-operate with:

(a) where a Successor Operator has been appointed, such Successor Operator; or

(b) the Secretary of State, or

(c) any relevant Train Operator

and shall take such steps as may be reasonably requested by the Secretary of State in connection therewith.

- 2.2 In satisfaction of its obligations under paragraph 2.1, the Service Provider shall make appropriately skilled and qualified Franchise Employees reasonably available to attend such meetings with the Secretary of State, the Successor Operator, Network Rail, ORR, HS2 Limited, any relevant Train Operator, any rolling stock lessor and/or and 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. NOT USED

4. Associated Obligations on Termination

4.1 Assistance in Securing Continuity

- (a) In order to facilitate the continuity of the Services on expiry of the Service Period, the Service Provider shall take such steps both before and after the expiry of the Service Period, as the Secretary of State may reasonably require, to assist and advise any Successor Operator in providing and operating the Services.
- (b) In particular, the Service Provider shall provide any Successor Operator with such records and information relating to or connected with the 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

On the expiry of the Service Period, the Service Provider shall grant the Secretary of State and the Secretary of State's representatives such access as the Secretary of State may reasonably request to any property owned, leased or operated by the Service Provider at such time, for the purpose of facilitating the continued provision of the Services.

4.3 Key Contracts

- (a) The Service Provider 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 Service Provider 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 Service Provider

to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Service Period.

4.4 Change of Name

The Service Provider shall cease to use any trademarks which are licensed to the Service Provider under any of the Brand Licences forthwith upon expiry of the Service 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 Service Provider shall, on the expiry of the Service Period, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as the Secretary of State 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 Service Provider 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 at the date of, any such assignment (except to the extent that the Secretary of State or the Secretary of State's 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 the Secretary of State's 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 Service Provider shall indemnify the Secretary of State or the Secretary of State's 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 Service Provider 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 Service Provider 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 the Secretary of State may direct, subject, where applicable, to the consent of the Network Rail. The provisions of paragraph 4.5(b) shall apply to any such assignment.
- (d) The Service Provider 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 Service Provider 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 Service Provider shall immediately on the expiry of the Service 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 Service Provider 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 Service Provider agrees that the Secretary of State or the Secretary of State's agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as the Secretary of State sees fit (for the purposes of continuing the operation of the Services).

6. Maintenance Records

6.1 The Service Provider shall immediately on expiry of the Service Period provide to the Secretary of State:

- (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

7.1 The Service Provider shall provide immediately on expiry of the Service 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.

8. The Service Provider's Intellectual Property

8.1 On the expiry of the Service Period, the Service Provider will grant to any Successor Operator licences of any Intellectual Property Rights which:

- (a) are owned by or licensed to the Service Provider;
- (b) were not owned by or licensed to it immediately prior to the Service Commencement Date;
- (c) **NOT USED;**
- (d) do not represent or constitute a Mark; and

- (e) may, in the reasonable opinion of the Secretary of State, be necessary for any Successor Operator to operate the Services on an efficient and economic basis after the expiry of the Service Period.
- 8.2 When agreeing the terms on which Intellectual Property Rights are to be licensed to it, the Service Provider 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 Service Provider 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).
- 8.3 Any licence of any Intellectual Property Rights 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 Services. Such licence shall be free of charge and royalty-free for a minimum of three (3) months.
- 8.4 If the licence of any Intellectual Property Rights is for a period in excess of three (3) months, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Service 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 Service Provider and the relevant Successor Operator are unable to agree such royalty, the Service Provider shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.
- 8.5 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 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 Service Provider 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 them and the licensing of such Intellectual Property Rights 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 Service Provider provided that it shall not be reasonable for the Service Provider to require any such trade mark to be used in a manner materially different from its use during the Service Period.

9. Information about Passengers

- 9.1 The Service Provider shall immediately on the expiry of the Service Period make available to the Secretary of State and/or the Secretary of State's 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; and
 - (b) the CRM Data; and
 - (c) the Yield Management Data.

APPENDIX 1 TO SCHEDULE 15.4

Form of Transfer Agreement

Dated [INSERT DATE]

[Northern Trains Limited]

and

[INSERT NAME OF SUCCESSOR OPERATOR]

TRANSFER AGREEMENT

in respect of
certain property, rights and liabilities
of [Northern Trains Limited]

Withdrawn

THIS TRANSFER AGREEMENT is made on [_____] 20[•]

BETWEEN

- (1) **[Northern Trains Limited]** (Company no: [INSERT]), whose registered office is at [INSERT] (the *Transferor*); and
- (2) **[SUCCESSOR OPERATOR]** (Company no: []), whose registered office is at [*registered office*] (the *Transferee*).

Whereas

- (A) The Transferor has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots (the "**services**") pursuant to an agreement dated [INSERT DATE] and entered into between the Secretary of State for Transport (the "**Secretary of State**") and the Transferor (the "**Services Agreement**").
- (B) The Transferee has been selected by the Secretary of State to continue the provision of all or part of such services pursuant to a franchise agreement with the Secretary of State dated [INSERT DATE].
- (C) The Secretary of State has requested the Transferor, and the Transferor has agreed, to transfer to the Transferee certain property, rights and liabilities of the Transferor.
- (D) This Agreement sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities

IT IS AGREED THAT:

1. **Definitions and Interpretation**

- 1.1 The following words and expressions shall have the following meaning:

Act means the Railways Act 1993 as amended from time to time (including by the Transport Act 2000 and the Railways Act 2005);

Assets and Liabilities Letter means the letter dated on or about the Transfer Date to be issued by the Secretary of State to the Transferor and Transferee confirming the property, rights and liabilities of the Transferor that will transfer from the Transferor to the Transferee in accordance with the terms of this Agreement;

Business means such of the undertaking or part of the undertaking of the Transferor that consists of the provision of the Services and which is continued by the Transferee after the Transfer Date;

Completion Payment has the meaning given to that term in clause 2.5

Credit has the meaning given to that term under the Ticketing and Settlement Agreement;

Debit has the meaning given to that term under the Ticketing and Settlement Agreement;

Interest Rate means a rate equivalent to two per cent. 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 Transferor and Transferee, determine from time to time);

Law means any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including (without limitation) 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);

Net Asset Statement means the statement to be drawn up pursuant to clause 2.6;

Net Asset Value means the aggregate of the amounts of the Relevant Assets, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement;

Purchase Price means an amount equal to the Net Asset Value;

Relevant Assets means the property, rights and liabilities of the Transferor which are or are to be transferred to the Transferee, as listed in the Assets and Liabilities Letter;

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 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);

Reporting Accountants means such firm of accountants as may be selected by agreement between the parties within four weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State;

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;

Security Interests 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;

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 [●];

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(a);

Reporting Accountants means such firm of accountants as may be selected by agreement between the parties within four weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State;

Undisclosed Employee has the meaning assigned to that term in clause 7.1(d).

Construction and Interpretation

1.2 In this Agreement:

- (a) terms and expressions defined under the Terms shall have the same meaning where used in this Agreement unless the context otherwise implies;
- (b) the terms "contract of employment", "collective agreement", "employee representatives" and "trade union" shall have the same meanings respectively as in the Transfer Regulations;
- (c) 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;
- (d) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement;
- (e) the words "include", "including" and "in particular" are to be construed without limitation;
- (f) references to any person include its successors, transferees or assignees;
- (g) headings and references to headings shall be disregarded in construing this Agreement;
- (h) 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; and
- (i) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa.

2. Agreement to Transfer and Transfer Price

Agreement to Transfer

2.1 As of and with effect from the Transfer Date and to the extent not transferring by virtue of the operation of Law (including the Transfer Regulations):

- (a) the Transferor transfers, assigns and conveys to the Transferee each of:
 - (i) the Relevant Assets;
 - (ii) the Relevant Debts and Credits; and
 - (iii) the Relevant Employee Liabilities,

(together, the **Transferring Assets and Liabilities**); and

- 2.2 the Transferee accepts such assets and assumes such rights, liabilities and obligations, in each case, on the terms set out in this Agreement.
- 2.3 Each of the Transferor and the Transferee agrees that the Secretary of State will issue the Assets and Liabilities Letter to the Transferor and the Transferee which will set out the list of the Transferor's property, rights and liabilities that will:
- (a) subject to clause 2.4, transfer to the Transferee under this Agreement; and
 - (b) not transfer to the Transferee under this Agreement.
- 2.4 The Transferor and the Transferee agree to:
- (a) enter into, execute and deliver, and procure that any third party enters into, executes and delivers, in each case with effect from the Transfer Date, such further instruments (including, without limitation, any novation agreements); and
 - (b) obtain, on or before the Transfer Date, such third party consents, agreements and approvals,

in each case, as shall be necessary or expedient to give effect to the transfer referred to in clause 2.1. Nothing in this clause 2.4 shall require the Transferor to assume any additional liabilities.

Amount and Payment

- 2.5 The price for the transfer of the Transferring Assets and Liabilities shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value of which the sum of £[amount], as determined by the Secretary of State (the **Completion Payment**) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor on the Transfer Date and the balance (if any) shall be paid in accordance with clause 2.9.

Net Asset Statement

- 2.6 The Transferee shall procure that, as soon as practicable and in any event not later than two 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.
- 2.7 The Net Asset Statement shall be:
- (a) drawn up in the manner described in Schedule 2 (*Net Asset Statement*);
 - (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 Schedule 1; and
 - (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.
- 2.8 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four 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.

Adjustment of Price

2.9 If the Purchase Price exceeds or is less than the 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 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 Reporting Accountants

3.1 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 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; and
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any error discovered within 14 days of the issue of their decision) be conclusive and binding and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise.

4. Warranty

The Transferor warrants and represents to the Transferee that the Relevant 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 Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities are 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 Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five 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 Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee 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 of such direction may be chargeable on the transfer of the Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities, the Transferee may, within 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. 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 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 allow the Transferee to take copies of such records.

7. **Employees****Transfer Regulations**

- 7.1 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 of 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 Clause 25.2 of this Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee ("**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; and
 - (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(ii) and 7.1(iii) above; 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.

Transferee's Indemnity

- 7.2 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 this 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;
 - (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 the authority of 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; or
 - (e) any breach of Clause 7.5.

Details of Relevant Employees

- 7.3 Without prejudice to the Transferor's duties under the Transfer Regulations to provide Employee Liability Information, the Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Clause 25.2 of this 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 12 months of 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 12 months of the Transfer Date including the Transfer Date.

7.4 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).

Transferor's Indemnity

7.5 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 Regulations 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

Pensions

7.6 The Transferee shall comply with the Pensions Regulations in respect of the Relevant Employees.

8. Miscellaneous Provisions

Variations in Writing

8.1 No variation of the Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties and the Secretary of State.

Partial Invalidity

8.2 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.

Further Assurance

8.3 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.

Notices

8.4 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 London North Eastern Railway Limited at:

[address]

[fax]

Attention: [name]

(b) in the case of the Transferee to [name of Transferee] at:

[address]

[fax]

Attention: [name]

8.5 Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax 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 business days from the time of posting.

Counterparts

8.6 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.

Third Parties

8.7 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement except to the extent set out in clause 8.8.

8.8 The Secretary of State may, to the same extent as if the Secretary of State were a party, enforce and rely on any provision of this Agreement where the Secretary of State is expressed to have a right in respect of any such provision.

Governing Law

8.9 This Agreement 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
[Northern Trains Limited]

}

DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF THE
[**TRANSFeree**]

DIRECTOR:

}

DIRECTOR/SECRETARY:

Withdrawn

SCHEDULE TO THE TRANSFER SCHEME

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 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

Withdrawn

	Ticketing and Settlement Agreement) in respect of the Fare);
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$\frac{A}{B}$ 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	<p>equals, if $\frac{A}{B}$ is greater than zero:</p> <p>the amount of any discount to which it can be reasonably be 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,</p>
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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 Service Commencement 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 of 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

Rights and Liabilities	Value
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
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 Service Provider at the Transfer Date shall be valued at the monetary amount so held.
8. Any DfT Funded Assets shall be valued at nil.
9. Any equipment compliant with the ITSO Specification (including Smart Media and ITSO Certified Smart Media readers) and any databases and any Intellectual Property Rights associated with this equipment transferred from the Transferor to the Transferee pursuant to the Transfer Scheme shall be valued at nil.
10. 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.

APPENDIX 2 TO SCHEDULE 15.4

NOT USED

Withdrawn

SCHEDULE 16

PENSIONS

Schedule 16.1:	Railways Pension Scheme
	Appendix 1: List of Shared Costs Sections
Schedule 16.2	NOT USED

Withdrawn

Schedule 16.1

Railways Pension Scheme

1. Definitions

Unless otherwise defined in this Agreement, terms used in this Schedule 16 shall have the meanings given to them in the Railways Pension Scheme.

2. Franchise Sections

The Service Provider shall participate in and become the Designated Employer in relation to the Shared Cost Sections of the Railway Pension Scheme as specified in Appendix 1 to this Schedule 16 (together the "**Franchise Sections**") in respect of the Services. Subject to paragraphs 3 and 4.2(d) membership of a Franchise Section will be offered to each employee of a the Service Provider only.

3. Closed Schemes

3.1 Subject to any requirements of Her Majesty's Revenue and Customs, the Service Provider 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 Service Period.

3.2 For the purposes of this paragraph 3, "Closed Scheme Employees" means such of the employees of the Service Provider who were, immediately prior to the commencement of their employment with the Service Provider, 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 the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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, 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 Service Provider shall not under this Schedule 16 be obliged for the purposes of this 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 Service Provider 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;
 - (g) take (or omit to take) any action which would result in any Franchise Section being wound up, in whole or in part.
- 4.3 The Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Term subject to the provisions of paragraph 5.2 below.
- 5.2 Where, during the Service Term, 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 Service Provider 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 Service Provider 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.

6. Discharge of Obligations

6.1 The Secretary of State may at any time during the Service Term seek information from the Trustee with a view to satisfying himself that the Service Provider 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 Service Provider 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 Service Provider shall, in respect of the Service Term, use all reasonable endeavours to provide to the Secretary of State:

(a) within one (1) month of the expiry of each Service 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 Service Provider 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 Service 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 If the Trustee does not certify under paragraph 6.3 in relation to the Franchise Sections that the Service Provider has fully complied with its obligations under the Railways Pension Scheme or if the Secretary of State otherwise reasonably considers that the Service Provider has not complied with such obligations, the Secretary of State may adjust Fixed Service Payments payable under Schedule 8 (Payments) by an amount which is, in Secretary of State's opinion, no greater than the amount of any contribution that the Service Provider has thereby failed to make or avoided making.

6.5 The Secretary of State may, under paragraph 6.4, continue to make such adjustments to Fixed Service Payments payable under Schedule 8 (Payments) until such time as the Secretary of State reasonably determines that the relevant contributions have been made in full by the Service Provider. Following that determination, any amounts so withheld by the Secretary of State shall become payable (without interest) on the next day on which a Fixed Service Payment becomes payable under Schedule 8.1 (Fixed Service Payments), being a day which falls no less than seven (7) days after such determination or, if there is no such day, fourteen (14) days after the date of such determination. To the extent that the Secretary of State has not so determined within four (4) weeks after the expiry of the Service Period, the Service Provider's right to receive the amount so withheld under this Agreement shall lapse and the Secretary of State shall not be obliged to pay such amount.

7. Termination of Franchise

The Secretary of State shall at the end of the Service Period ensure that the Service Provider has no liability for any deficit in the Franchise Sections (other than for contributions due and payable by the Service Provider to the Franchise Sections for any period prior to the end of the Service 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 Services are either aggregated or disaggregated (for example, as a result of remapping).

8. Service Provider obligations to participate in any Investigation and reform

8.1 In this paragraph 8:

- (a) **"Investigation"** means an investigation by the Pensions Regulator into the possible use of its powers under Section 231 of the Pensions Act 2004 in relation to a section of the Railways Pension Scheme which has as its designated employer the Service Provider or another Train Operator;
- (b) **"Reasonable Commercial Manner"** means acting in the long-term interests of the Northern franchise taking into account the long-term affordability, sustainability and financial robustness of the Franchise Section(s) as if the Service Provider 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 Service Provider and the Secretary of State in this Agreement.

8.2 The Service Provider shall:

- (a) act in good faith and in a Reasonable Commercial Manner at all times; and
- (b) engage appropriately with the Trustee, the RDG, the Pensions Regulator and the relevant trade unions,

in discharging its obligations under paragraph 8.3 of this Schedule 16.1.

8.3 The Service Provider shall take all reasonable steps to participate in:

- (a) the development and implementation of the RDG's response to the current Investigation and the associated concerns raised by the Pensions Regulator regarding those sections of the 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 Service Provider shall use all reasonable endeavours to achieve an outcome from that Investigation which a reasonable franchisee, who was in the position of the Service Provider 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. Information Powers

9.1 Where required by the Secretary of State, the Service Provider agrees to allow the Secretary of State or the Secretary of State's representatives to attend any meeting between the Service Provider and the Trustee and/or the RDG and/or the Pensions Regulator where the meeting in whole or part relates to matters to which paragraph 8 of this Schedule 16.1 applies.

APPENDIX 1 TO SCHEDULE 16.1

List of Shared Costs Sections

Shared Costs Sections
Northern (ex North East) Section
Northern (ex North West) Section

Withdrawn

Schedule 16.2

NOT USED

Withdrawn

SCHEDULE 17

Confidentiality and Data Protection

1. Confidentiality

Subject to the provisions of the Act, 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 inclusive of this Schedule 17, each Party shall hold in confidence 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 this 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 this 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 this 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 this Agreement or information relating to a dispute arising under this Agreement without the prior written consent of the other Parties 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 above;
- (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 above;
- (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 above;
- (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 accordance with this 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 above;
- (f) to any director, employee or officer of such Party, to the extent necessary to enable such Party to perform its obligations under this Agreement or to protect or enforce its rights under this Agreement; or
- (g) by the Service Provider, to the ORR, the Passengers' Council or a Local Authority; or
- (h) by the Secretary of State (with the consent of the the Service Provider (such consent not to be unreasonably withheld or delayed)) to Transport for the North and its consultants and advisers, upon obtaining from Transport for the North or its relevant consultant or

advisor (as the case may be) an undertaking of confidentiality equivalent to that contained in paragraph 1 above.

- 2.2 The Secretary of State may disclose the Confidential Information of the Service Provider:
- (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 Services;
 - (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 Services; or
 - (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,

2.3 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. **NOT USED.**

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, HS2 Limited, 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 to the development of the Train Service Requirement in accordance with Schedule 1.1 (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 the Secretary of State's functions.

6. Provision of Information to the ORR

The Service Provider 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 Service Provider under this 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 the Secretary of State has obtained pursuant to those Acts and which a Party to this 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 this Agreement, irrespective of the reason for termination.

9. NOT USED

10. NOT USED

11. Data Protection

11.1 In respect of any Personal Data processed by the Service Provider, including CRM Data and Personal Data relating to Franchise Employees, the Service Provider agrees that it shall:

- (a) comply with the Data Protection Legislation; and
- (b) procure that its agents and sub-contractors, including the Franchise Data Processors, shall comply with the Data Protection Legislation.

11.2 The Service Provider shall promptly:

- (a) notify the Secretary of State of any Franchise Data Breach, upon the Service Provider's awareness of the same, including all relevant details, whether the Franchise Data Breach is by itself or by a Franchise Data Processor;
- (b) provide the Secretary of State on request with all reasonable information, assistance and co-operation in relation to its processing of the CRM Data and the Personal Data relating to Franchise Employees, and procure that any Franchise Data Processor which it appoints shall provide the Service Provider with all reasonable information, assistance and co-operation in relation to the processing of the CRM Data and the Personal Data relating to Franchise Employees by the Franchise Data Processor, in each case in order to permit the Secretary of State to make an accurate and complete assessment of compliance by the Service Provider with this paragraph 11; and

- (c) provide the Secretary of State on request with all reasonable information, assistance and co-operation in relation to any audit of the Service Provider in relation to its processing of the CRM Data and the Personal Data relating to Franchise Employees, and procure that any Franchise Data Processor which it appoints shall submit itself to audits by the Service Provider of the Franchise Data Processor (whether those audits are by the Service Provider or by any person appointed on its behalf), in each case in order to permit the Secretary of State to make an accurate and complete assessment of compliance by the Service Provider with this paragraph 11.

11.3 The Service Provider shall and shall procure that any Franchise Data Processor which it appoints shall:

- (a) notify (in the case of the Service Provider) the Secretary of State and (in the case of any Franchise Data Processor) the Service Provider in writing of the full names and registered office addresses of the entities which are from time to time carrying out any storage, hosting and/or other processing of the CRM Data and/or the Personal Data relating to Franchise Employees, together with the storage, hosting and/or other processing location(s);
- (b) ensure that in cases where the storage, hosting and/or other processing location(s) are outside of the United Kingdom the notification shall include details of the relevant country(ies) or territory(ies); and
- (c) ensure that in cases where the storage, hosting and/or other processing locations(s) are in a third country (which has the meaning given in the Data Protection Legislation) the notification shall include a description of the appropriate safeguards which are in place under the Data Protection Legislation in respect of the same including that there is in force a European Commission decision that the country or territory to which the transfer is made ensures an adequate level of protection for processing of Personal Data, that there is in place the standard contractual clauses approved by the European Commission decision for the transfer of personal data to processors established in third countries, or that the transfer is to the United States of America and there exists a current and appropriate certification under the EU-US Privacy Shield framework (or such other framework as may replace the EU-US Privacy Shield framework during the Service Term) in each case in relation to the transfer.

11.4 With reference to paragraphs 11.1 to 11.3 inclusive, the Service Provider hereby acknowledges that whilst the Secretary of State is not the Controller in respect of the CRM Data or Personal Data relating to Franchise Employees, the Secretary of State's legitimate interests given its duties under the Act, and its reputation, may be adversely affected in the event of any unlawful processing of CRM Data and/or Personal Data relating to Franchise Employees, or in the event of any Franchise Data Breach. In addition, the Service Provider hereby acknowledges that the Secretary of State legitimately wishes to have knowledge of the locations in which the CRM Data and the Personal Data relating to Franchise Employees is stored, hosted or otherwise processed 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 Service Provider to a Successor Operator.

DEROGATION

i 23 July 2020 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 2.1(k) of Schedule 6.2 (Performance Review Provisions). The derogation is sought because NTL's 100-Day Plan will be presented in the form of a 'Prospectus for Growth' document.

Original Due Date: 08/06/2020

Revised Due Date: 24/07/2020

ii 03 July 2020 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 21 of Schedule 6.2 (Wheel Lathe at Newton Heath). The derogation is sought because the wheel lathe installation at Newton Heath is part of a wider programme of depot improvements that began in the previous franchise.

Original Due Date: 30/07/2020

Revised Due Date: 30/11/2020

iii 11 June 2020 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 22(a) of Schedule 6.2 (Roof Access). The derogation is sought due to the impacts of the COVID-19 Pandemic.

Original Due Date: 28/05/2020

Revised Due Date: 30/09/2020

iv 11 June 2020 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 22(b) of Schedule 6.2 (Roof Access). The derogation is sought due to the impacts of the COVID-19 Pandemic.

Original Due Date: 31/08/2020

Revised Due Date: 30/09/2020

v 17 June 2020 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 23.1 of Schedule 6.2 (Newton Heath Depot). The derogation is sought due to the impact of the COVID-19 pandemic.

Original Due Date: 31/08/2020

Revised Due Date: 30/09/2020

vi 24 July 2020 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 24 of Schedule 6.2 (Additional CET Systems). The derogation is sought because completing the CET system upgrades across Carlisle, Darlington and Buxton have been impacted by the COVID-19 pandemic.

Original Due Date: 31/03/2020

Revised Due Date: 30/09/2020

vii 05 October 2020 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a second derogation against the requirements of Paragraph 24 of Schedule 6.2 (Additional CET Systems). The derogation is sought because obtaining landlord consent for the mobile battery powered extraction units at some of the locations Carlisle (24.1(a) and Darlington 24.1(b) has proven more challenging.

Original Due Date: 31/03/2020

Revised Due Date: 30/09/2020

2nd Revised Due Date: 31/12/2020

viii 09 June 2020 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 37 of Schedule 6.2 (Service Mark Accreditation) due to the transfer of ownership of NTL and the impact of the COVID-19 pandemic.

Original Due Date: 01/07/2020

Revised Due Date: 01/07/2021

ix 01 October 2020 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 15.2(a) of Schedule 11.2 (Environmental Monitoring Impact Report).

Original Due Date: 30/06/2020

Revised Due Date: 30/11/2020

Withdrawn