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The Secretary of State for Transport

Abellio East Midlands Limited

FRANCHISE AGREEMENT
relating to
EAST MIDLANDS

Withdrawn March 2023

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THIS AGREEMENT is dated

2019

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
- (2) **ABELLIO EAST MIDLANDS LIMITED** (Company Number: 09860485), whose registered office is at 2nd Floor St Andrew's House, 18-20 St Andrew Street, London, United Kingdom, EC4A 3AG (the "**Franchisee**").

WHEREAS:

- (A) On 7 June 2018 the Secretary of State invited prospective franchisees who are Passport Holders to submit proposals for the provision of railway services to the East Midlands rail passenger franchise. On the basis of the Franchisee's response to the Invitation to Tender, the Secretary of State selected the Franchisee as its preferred service provider.
- (B) The Secretary of State wishes to appoint a franchisee to provide railway passenger services within the Franchise and expects his franchisee, on the terms of the Franchise Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (C) The Franchisee wishes to be appointed as the Secretary of State's franchisee for the Franchise and intends, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (D) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (B) and (C) inclusive.

1. INTERPRETATION

1.1 In the Franchise Agreement, except to the extent the context otherwise requires:

- (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, "**railway**" shall not have the wider meaning attributed to it by section 81(2) of the Act;
- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in the Franchise Agreement;
- (c) references to "**Parties**" shall mean the Secretary of State and the Franchisee (and references to a "**Party**" shall mean the Secretary of State or the Franchisee 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 the Franchise Agreement as in section 1162 of the Companies Act 2006;

- (g) references in any of the agreements comprising the Franchise Agreement to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;
- (h) references in any Schedule in any of the agreements comprising the Franchise Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (I) headings and references to headings shall be disregarded in construing the Franchise Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which the Secretary of State reasonably considers have an equivalent effect or are intended to fulfil the same function;
- (m) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;
- (n) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (o) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words **"notify"**, **"endorse"**, **"consent"**, **"approve"**, **"waive"**, **"certify"** or **"determine"** and other cognate expressions shall be construed accordingly;
- (p) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (q) references to the Franchisee bidding for Train Slots or a Timetable shall mean the final action incumbent on the Franchisee under the Network Code to confirm to Network Rail its interests in the Train Slots to which that confirmation relates, and **"bid"** shall be construed accordingly;
- (r) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger's Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the

cancellation or delay of any of the railway passenger services for which such Fare is valid;

- (s) references to **“railway passenger services”** are to be construed subject to section 40 of the Railways Act 2005;
- (t) references to the **“provision of railway passenger services”** include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner;
- (u) references in lower case letters to terms defined in clause 3 (*Definitions*) shall be construed, where relevant, as being references to the terms defined as such in a franchise agreement or relevant agreement made under section 30 of the Act or section 6 of the Railways Act 2005 with any other Train Operator;
- (v) references to sums of money being expended by the Franchisee shall be to such sums exclusive of Value Added Tax;
- (w) the words **“shall not be liable”** are to be construed as meaning that no contravention of the Franchise Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;
- (x) references to a **“contravention of the Franchise Agreement”** or a **“contravention”** (and cognate expressions) are to be construed as meaning a **breach of the Franchise Agreement**;
- (y) wherever provision is made for the Franchisee to **“procure”** or **“ensure”** the delivery of an obligation under the Franchise Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the Franchisee to deliver that obligation;
- (z) references to **“profit”** shall be construed as meaning profit before corporation tax, determined in accordance with GAAP;
- (aa) references to **“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 (*Designation of Franchise Assets*), paragraph 9 of Schedule 13.1 (*Apprenticeships*), paragraph 14.2 of Schedule 13.3 (*Mobile Communications Service*), and paragraph 11 (*Data Protection*) of Schedule 17 (*Confidentiality, Freedom of Information and Data Protection*);
- (ab) ¹**a reference to a sum being calculated in accordance with Schedule 8.1 or Schedule 8.2 (including references to RPI having the meaning given in Schedule 8.1 or Schedule 8.2, or references to amounts or costs being varied or indexed as amounts or costs are indexed in Schedule 8.1 or Schedule 8.2) shall be interpreted as a reference to Schedule 8.1 and 8.2 in the form which applied immediately prior to the EMA Start Date; and**
- (ac) ²**the Parties acknowledge and agree that any reference to the “last twelve (12) or thirteen (13) months of the Franchise Period” or the “last twelve (12) months of the Franchise Period” shall be deemed to be replaced with a**

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

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

reference to the duration of the ERMA Term or, where applicable, the Extended Term.

1.2 Where there is a requirement on the Franchisee to **“fully and effectively co-operate”** with one (1) or more other parties with regard to an objective, that requirement relates to the quality of co-operation to be provided by the Franchisee taking into account and subject to the response of the other parties concerned. It does not indicate an obligation on the Franchisee 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 Franchisee 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 Franchisee reasonably considers in all of the circumstances to be an appropriate use of its resources and effective to achieve the relevant objective.

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

2. AGREED DOCUMENTS

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

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

AA	Alliance Agreement;
ABD	Actual Benchmark Data;
BFS	Bid Fares Strategy;
CFD	Commuter Fares Document;
CSES	Customer & Stakeholder Engagement Strategy;
DSMI	Data Site Monitor and Index;
DL	Depot Lease;
FF	Financial Formats;
FM	Financial Model;
IAD	Infrastructure Assumptions Document;
OM	Operational Model;
PC	Passenger’s Charter;
PCCL Code 1980	Payroll File Cost Centre Location Code 1980;
PFD	Protected Fares Document;
POA	Power of Attorney;
PSM	Passenger Survey Methodology;
ROA	Record of Assumptions;
SCDP	Station Social and Commercial Development Plan;

SL	Station Lease;
TSR	Train Service Requirement (TSR0, TSR1/TSR 2); and
TTSM	Ticketless Travel Survey Methodology.

3. DEFINITIONS

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

"2010 Nominal Ticket Sales"	has the meaning given to it in paragraph 3 of Schedule 5.4 (<i>Regulation of Fares Basket Values</i>);
"2010 Ticket Revenue"	has the meaning given to it in paragraph 4 of Schedule 5.4 (<i>Regulation of Fares Basket Values</i>);
"2015 Franchise Agreement"	means the franchise agreement dated 15 September 2015 and made between the Secretary of State and East Midlands Trains Limited (company number: 05340682) under which services equivalent to the Franchise Services (or a material proportion thereof) were provided by East Midlands Trains Limited;
"2019 Actuarial Valuation"	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
"2019 Actuarial Valuation Finalisation Date"	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
"2019 Deficit Contributions"	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
"2019 Deficit Contributions Payment Start Date"	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
"2019 Recovery Plan"	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
"2019 Schedule of Contributions"	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
"Access Agreement"	has the meaning given to the term "access agreement" in section 83(1) of the Act;
"Accessibility Panel"³	means the regular forum of disabled passengers, including users of assisted travel, which the Franchisee must operate and consult on accessibility issues by virtue of section B5 of the Accessible Travel Policy Guidance and which the Franchisee will establish by no later than 31 January 2021;

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

“Accessible Travel Policy Guidance”⁴	means the “Accessible Travel Policy: Guidance for Train and Station Operators”, published by the ORR in July 2019 as amended and/or replaced from time to time;
“Accessible Travel Policy” or “ATP”	means the Franchisee’s policy for the protection of persons with disabilities which the Franchisee is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations;
“Accrued Revenue Foregone”⁵	has the meaning given in paragraph 9.10 of Schedule 8.1A (Franchise Payments);
“ACoRP”	means the Association of Community Rail Partnerships whose principle 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;
“Action Plan”⁶	has the meaning given to it in paragraph 9.1(e) of Schedule 7.1 (Operational Performance);
“Actual All Cancellations Performance Level”⁷	means, in respect of a Reporting Period, All Cancellations as most recently published by Network Rail for that Reporting Period in relation to the Franchisee;
“Actual Benchmark Data” or “ABD”	means the document in the agreed terms marked “ABD”;
“Actual Capex”⁸	means the actual Capital Expenditure of the Franchisee in the relevant period;
“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”⁹	means the actual Costs of the Franchisee in the relevant period;

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

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

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

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

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

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

- “Actual Marketing Spend”** has the meaning given to it in paragraph 1.1 of Schedule 6.3 (*Contractual Incentive Mitigations*);
- “Actual Marketing Team Spend”** has the meaning given to it in paragraph 1.1 of Schedule 6.3 (*Contractual Incentive Mitigations*);
- “Actual Operating Costs”** means:
- (a) the Franchisee’s total operating expenses for the period being reviewed as stated in its profit and loss account, or in the case of (v) and (vi) below as derived from underlying accounting records supporting the profit and loss account, including any of the following operating expenses that are payable during that period:
- (i) amounts payable to the Secretary of State and Network Rail;
 - (ii) taxation;
 - (iii) shareholder distributions including dividends;
 - (iv) interest;
 - (v) capital expenditure (net of grants received);
 - (vi) cash lease payments in relation to on-balance sheet leased assets (and for the avoidance of doubt these lease payments include cash paid or payable, in relation to the period being reviewed, under any lease which has been accounted for in accordance with “IFRS 16 – Leases” or any equivalent element of GAAP); and
 - (vii) **NOT USED**,
- but excluding any of the following expenses that are payable in that period:
- (A) finance/interest costs solely relating to on-balance sheet leased assets;
 - (B) depreciation (including in relation to on-balance sheet leased assets);
 - (C) amortisation;
 - (D) bad debt provisions; and
 - (E) **NOT USED**;
- (b) either:
- (i) plus any reduction in the total amount owing by the Franchisee to creditors over that period; or

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

where creditors:

- (A) include any persons owed amounts by the Franchisee in respect of loans or funding agreements, operating expenses, including the types of expenses set out in paragraphs (a)(i) to (a)(v) above inclusive, provisions and deferred income balances; but
- (B) exclude persons owed amounts by the Franchisee in respect of season ticket liabilities, lease liabilities in relation to on-balance sheet leased assets and liabilities in relation to grants received for the purchase of fixed and non-current assets;
- (C) exclude any creditors or other liabilities relating to on-balance sheet leases;

“Actual Passenger Demand” has the meaning given to it in paragraph 1.1 of Schedule 1.5 (*Information about Passengers*);

“[REDACTED]¹⁰” **[REDACTED];**

“Actual Revenue”¹¹ **means the actual Revenue of the Franchisee in the relevant period;**

“Actual T-3 Performance Level”¹² **means, in respect of a Reporting Period, Time to 3 Minutes as most recently published by Network Rail for that Reporting Period in relation to the Franchisee;**

“Actual T-15 Performance Level”¹³ **means, in respect of a Reporting Period, Time to 15 Minutes as most recently published by Network Rail for that Reporting Period in relation to the Franchisee;**

“Actual Train Mileage” means the actual train mileage operated during each Reporting Period by each train used in the provision of the Passenger Services (excluding any actual train mileage operated as a result of positioning or other movements of rolling stock vehicles outside the Timetable) and **“Actual Train Miles”** shall be construed accordingly;

¹⁰ **25 October 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.**

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

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

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

“Actuarial Report”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
“Actuarial Valuation”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
“Additional Boxing Day Services”	has the meaning given to it in paragraph 2.1(b) of Part 2 of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
“Additional Expenditure” or “AD”	has the meaning given to it in paragraph 6.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“Administration Fee”	has the meaning given to it in clause 8.5 (<i>Change of Control and Facilitation Fee</i>);
“Advance Purchase Train-specific Fares”	has the meaning given to it under the Ticketing and Settlement Agreement;
“Affected Party”	has the meaning given to it in paragraph 6.3 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
“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> <p style="margin-left: 40px;">(i) any person which A Controls or which Controls A; or</p> <p style="margin-left: 40px;">(ii) any person which is Controlled by any other Affiliate of A; and</p> <p>(b) for the purposes of Schedule 8.2 (<i>Profit Share Mechanism</i>) only, any person which directly or indirectly (including as a shareholder in any immediate parent undertaking):</p> <p style="margin-left: 40px;">(i) holds any share capital in the Franchisee;</p> <p style="margin-left: 40px;">(ii) in the event of the winding-up or other analogous event in respect of the Franchisee would be entitled to any share or receive any assets of the Franchisee which are available for distribution; or</p> <p style="margin-left: 40px;">(iii) has any voting power in the Franchisee,</p> <p>and for the purpose of this definition Network Rail or NR shall not be construed as being an affiliate of the Secretary of State;</p>
“Aggregated Qualifying Change”	<p>means two (2) or more Changes which:</p> <p>(a) are notified or agreed (in the case of a Change which is a Variation pursuant to paragraph 1.1 of Schedule 9.3</p>

(*Variations to the Franchise Agreement and Incentivising Beneficial Changes*)); and/or

- (b) a Party has become aware of (in the case of any other kind of Change),

in a Franchisee Year (the **"Aggregation Year"**) which individually do not exceed the Threshold Amount for the Aggregation Year taken alone but do exceed it when taken together. For the avoidance of doubt, where the Changes arise in different Franchisee Years, for the purposes of determining whether in aggregate they exceed the Threshold Amount:

- (i) the net present value of the adjustment in Franchise Payments which would result from a Run of the Financial Model (where Schedule 9.1 (*Financial and Other Consequences of Change*) applies) in respect of each Change shall be calculated in accordance with the process described in the definition of Qualifying Change; and
- (ii) there will be an Aggregated Qualifying Change where the aggregate of the net present values of those Changes exceeds the Threshold Amount for the Aggregation Year;

"Agreement"	means clauses 1 to 17 and Schedules 1 to 17 including any Appendices and Annexes as varied from time to time;
"All Cancellation Figures"	means the moving annual average percentage published by Network Rail in respect of All Cancellation, rounded to one (1) decimal place;
"All Cancellations Performance Sum"	means an amount determined in accordance with paragraph 22.7C of Schedule 7.1 (<i>Operational Performance</i>) payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final Franchisee Year where the provisions of paragraph 29 shall apply) by the Franchisee (as the case may be);
"All Cancellations"	means the sum of Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations relating to the Franchise as produced and/or published by Network Rail;
"Alliance Agreement"	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 (<i>Customer Experience and Engagement</i>);
"Ancillary Service"	means any service specified in paragraph 4 of Part 1 (<i>Franchise Services</i>) of Schedule 1.1 (<i>Franchise 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 Payment Table”	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 Franchisee 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 Franchisee in accordance with paragraph 9.4(b) of Schedule 11.2 (<i>Management Information</i>) and certified by the Franchisee’s auditors as true and fair;
“Annual Benchmark”	means any of the Annual Cancellations Benchmark, the Annual TOC Minute Delay Benchmark or the Annual Short Formation Benchmark;
“Annual Breach Ticketless Travel Benchmark”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“Annual Business Plan”	means the plan to be provided by the Franchisee to the Secretary of State in accordance with paragraph 10.2 of Schedule 11.2 (<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 Cancellations Payment 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>);
“Annual Franchise Payment” or “AFP”	means, in relation to any Franchisee Year, the amount determined in accordance with Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>);
“Annual Franchise Payment Components”	means the values of FXD , VCRPI , VCAWE , PRPI , ORRPI and PRRPI specified for each Franchisee Year in the table set out in Appendix 2 (<i>Figures for Calculation of Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>);

“Annual Intermediate Performance Level”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Annual Management Accounts”	means the management accounts of the Franchisee which: <ul style="list-style-type: none"> (a) comply with paragraph 9.5(a) of Schedule 11.2 (<i>Management Information</i>); and (b) are delivered to the Secretary of State by the Franchisee 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 Short Formation Payment 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 Payment Table”	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 Payment Table”	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 Target Ticketless Travel Benchmark”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“Annual Ticketless Travel Benchmark”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</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 (*Operational Performance*);
- “Annual TOC Minute Delay Payment Table”** has the meaning given to it in paragraph 1.1 of Schedule 7.1 (*Operational Performance*);
- “Apprenticeship”** means (as the context requires) an individual apprenticeship pursuant to:
- (a) an apprenticeship programme operated by the Franchisee:
 - (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/frameworkslibrary/>); 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 Franchisee 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 Franchisee and included within the Skills and Leadership Strategy specifying in relation to each Franchisee Year the number of Apprenticeships to be commenced in such Franchisee Year, the number of such Apprenticeships at each of level 1 – 8, the role 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 9 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);
- “Apprenticeships Requirement”** has the meaning given to it in paragraph 9.4 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);
- “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*);

"Approved D&I Strategy"¹⁴	means such D&I Strategy as agreed by the Parties in accordance with paragraph 9.9.1(b) of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>) or as reasonably determined by the Secretary of State in accordance with paragraph 9.9.1(c) of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
"Audited Accounts Reconciliation"¹⁵	has the meaning given to that term in paragraph 9.4(b)(ii) (<i>Annual Financial Information</i>) of Schedule 11.2 (<i>Management Information</i>);
"Automatic Trigger Event"	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
"Average Weekly Earnings"	means the United Kingdom average weekly earnings measure excluding bonuses as published from time to time by the Office for National Statistics or, if such measure shall cease to be published or if, in the reasonable opinion of the Secretary of State, there is a material change in the basis of such measure, such other alternative index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;
"AWE"	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>);
"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;
"Benchmark"	means any of the Cancellations Benchmark, the TOC Minute Delay Benchmark or the Short Formation Benchmark (as the context may require);
"Bid Fares Strategy"	means the document in the agreed terms marked BFS as updated pursuant to paragraphs 10 and 11 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
"Bid Profit Stream"	means the estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to clause 8 (<i>Change of Control and Facilitation Fee</i>)) is to occur until the Expiry Date as shown in the profit and loss forecast in the Initial Business Plan (without taking into account any Annual Business Plan) calculated in real terms as at the date of the Change of Control and applying the prevailing discount rate per annum (in real terms) stated in

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

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

HM Treasury's "**Green Book Appraisal Guidelines**" (such rate being three point five per cent (3.5%) per annum (in real terms) as at the date of the Franchise Agreement);

"Bond Provider"

means any person or persons who may provide or be an obligor under a Performance Bond or Season Ticket Bond from time to time and who shall, unless the Secretary of State otherwise agrees, be:

- (a) a Bank; or
- (b) an insurance company,

in each case with the Relevant Credit Rating;

"Bond Year"

means the period beginning on the Start Date and ending on 31 March 2020 and any subsequent period of thirteen (13) Reporting Periods beginning on the day after the end of the preceding Bond Year provided that:

- (a) the Franchisee and the Secretary of State may agree to vary the Reporting Period in which a Bond Year ends from time to time; and
- (b) the last Bond Year shall expire on the expiry of the Franchise Period and may be a period of less than thirteen (13) Reporting Periods;

"Boxing Day Services"

has the meaning given to it in paragraph 2.1(a) of Part 2 of Schedule 6.1 (*Franchise Specific Obligations*);

"Brand Licence"

means any licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Franchisee in respect of any registered or unregistered trademarks which are listed in Appendix 1 (*List of Trade Marks*) of Schedule 14.2 (*Maintenance of Operating Assets and Branding*);

"Breach Performance Level"¹⁶

means, in relation to an Enforcement Benchmark for any Reporting Period, the number agreed or determined as such in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee);

"Breach Reporting Stage"

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

"Breach Ticketless Travel Benchmark"

has the meaning given to it in paragraph 1.1 of Schedule 6.3 (*Contractual Incentive Mitigations*);

"British Transport Police"

means the British Transport Police Authority and the British Transport Police Force created pursuant to section 18 and section

¹⁶

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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"¹⁷	has the meaning given to it in paragraph 1A (Definitions) of Schedule 8.1A (Franchise Payments);
"Budgeted Capex"¹⁸	means the Capital Expenditure budgeted to be incurred by the Franchisee in a Reporting Period and specified in the Budget, as such Budget may be updated and/or extended from time to time in accordance with paragraph 8 (Revisions to the Budget) of Schedule 8.1A (Franchise Payments);
"Budgeted Costs"¹⁹	means the Costs budgeted to be incurred by the Franchisee in each Reporting Period and specified in the Budget, as such Budget may be updated and/or extended from time to time in accordance with paragraph 8 (Revisions to the Budget) of Schedule 8.1A (Franchise Payments);
"Buildings Research Establishment Environmental Assessment Method" or "BREEAM"	means the internationally recognised environmental assessment method and rating system for buildings developed by Building Research Establishment Limited or any other standard which is generally recognised as having replaced it;
"Business Action Plan"	means an action plan produced by the Franchisee in relation to the delivery of any aspect of the Franchise Services (including in respect of any outcome anticipated by its Business Plan, in accordance with paragraph 10.2(c) of Schedule 11.2 (<i>Management Information</i>));
"Business Continuity Plan" or "BCP"	means a business continuity and disaster recovery plan (including a Force Majeure Events recovery plan) required to be produced, maintained and implemented by the Franchisee in accordance with the requirements of paragraph 4 of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>);
"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 (<i>Management Information</i>);
"Cancellation"²⁰	means a Passenger Service which is included in the Enforcement Plan of the Day and which:

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

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

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

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

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

“Cancellations Benchmark”

means any of the performance levels in respect of Cancellations and/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;

“Cancellations Performance Sum”

means an amount determined in accordance with paragraph 22.3 of Schedule 7.1 (*Operational Performance*) payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final Franchisee Year where the provisions of paragraph 29 of Schedule 7.1 (*Operational Performance*) shall apply) by the Franchisee (as the case may be);

“Capacity Mitigation Proposal”

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

“Capital Expenditure”²¹

means:

- (a) **the costs of creating non-current or fixed assets which are not Costs and which are properly accrued during the term of the ERMA and relating to the Franchisee’s performance of the Franchise Agreement; or**
- (b) **for the purposes of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*) only, the meaning given to it in paragraph 3.4 of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*);**

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

“Cascaded Rolling Stock”	has the meaning given to it in paragraph 3.1 of Schedule 2.2 (<i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i>);
“Cash Balance”²²	means in respect to any Weekday during the Franchise Term, the Franchisee’s actual cash balance excluding the value of Season Ticket Fare suspense liabilities as at the end of business hours on the previous Weekday;
“CCI Amount”	means the sum of [REDACTED²³] (indexed by the Retail Prices Index in the same way as variable costs are indexed in Schedule 8.2 (<i>Profit Share Mechanism</i>)) per Franchisee Year within a CCI Period (reduced pro-rata in respect of any Franchisee Year within a CCI Period of less than three hundred and sixty five (365) days) as adjusted in accordance with paragraph 11.8(a) of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“CCI Period”	means each of the following periods: <ul style="list-style-type: none"> (a) 1 April 2022 to 31 March 2024; (b) 1 April 2024 to 31 March 2026; and (c) 1 April 2026 to 31 March 2027;
“CCI Scheme”	has the meaning given to it in paragraph 11.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“CCI Scheme Cost”	means in respect of any CCI Scheme, the total cost to the Franchisee of developing and implementing that CCI Scheme;
“CCI Scheme Margin”	means five per cent (5%) of the applicable CCI Scheme Costs;
“CCI Scheme Revenue”	means in respect of any CCI Scheme, the revenue earned by the Franchisee 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 and the CCI Scheme Margin;
“CCI Scheme Underspend”	has the meaning given to it in paragraph 11.6 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“CCTV Guidance”	means the Rail Delivery Group’s “National Rail & Underground Closed Circuit Television (CCTV)” guidance and the British Transport Police’s “Output requirements from CCTV Systems” guidance, each as updated from time to time and any other guidance reasonably required by the Secretary of State;

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

²³ **25 October 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.**

- “C-DAS”** has the meaning given to it in paragraph 2.1 of Part 3 of Schedule 6.1 (*Franchise Specific Obligations*);
- CE(SQR)”²⁴** **means the element of the Performance Based Fee attributable to Customer Experience that is calculated in accordance with the SQR Methodology;**
- “Ceased Services”** has the meaning given to it in paragraph 2.1 of Schedule 7.3 (*Service Quality Regime*);
- “Central Government Body”²⁵** **means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:**
- (a) Government Department;**
 - (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);**
 - (c) Non-Ministerial Department;**
 - (d) Executive Agency; or**
 - (e) any other body that is a limited company and is controlled directly or indirectly by a Government Department;**
- “Certificate of Commencement”** means the certificate to be issued by the Secretary of State pursuant to the Conditions Precedent Agreement;
- “Certificate of Completion”** has the meaning given to it in paragraph 1.3 (b) of Schedule 14.6 (*Residual Value Mechanism*);
- “Change”** means if and whenever any of the following occurs:
- (a) an event set out in any Secretary of State Risk Assumptions specified in Schedule 9.4 (*Secretary of State Risk Assumptions*);
 - (b) a Charge Variation;
 - (c) a Change of Law (excluding any Change of Law to the extent that it results in an adjustment to the Franchise Payments pursuant to Schedule 8.3 (*Track Access Adjustments and Station Charge Adjustments*));
 - (d) a change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with paragraph 16.6 of

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

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

- Schedule 1.1 (*Franchise Services and Service Development*);
- (e) the Franchisee is required to take any action pursuant to paragraph 19.1(a) and/or paragraph 19.1(b) of Schedule 1.1 (*Franchise Services and Service Development*);
- (f) the Secretary of State effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of section 28 of the Act;
- (g) the Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 4.5 of Schedule 2.5 (*Transport, Travel and Other Schemes*) to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment;
- (h) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (*Accessibility and Inclusivity*), of any increased access charges in respect of EA Requirements at Franchisee Access Stations;
- (i) the Secretary of State exercises his power pursuant to paragraph 5 of Schedule 5.7 (*Changes to Fares and Fares Regulation*) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (*Fares and Smart Ticketing*);
- (j) the Franchisee is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Passenger Services;
- (k) the exercise by the Secretary of State of his rights pursuant to paragraph 1.11 (*Charging Review*) of Schedule 7.1 (*Operational Performance*);
- (l) the exercise by the Secretary of State of his rights pursuant to paragraph 15.1(c) (*Environmental Information Data Collection Plan*) of Schedule 11.2 (*Management Information*);
- (m) **NOT USED**;
- (n) **NOT USED**;
- (o) a Variation to the terms of the Franchise Agreement pursuant to paragraph 1.1 of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*);

- (p) the Start Date is a date that is later than 02:00 on 18 August 2019 for reasons solely attributable to any act or omission by the Secretary of State including the exercise of his right to amend the Start Date pursuant to clause 5.3 (*Amendment of Start Date/Expiry Date*) except where:
- (i) the Secretary of State exercises his rights pursuant to Clause 4.2 or 4.3 of the Conditions Precedent Agreement to alter such Start Date; or
 - (ii) the relevant acts or omissions of the Secretary of State arise as a result of or in connection with any failure by the Franchisee to satisfy any of the conditions precedent set out in the Conditions Precedent Agreement;
- (q) the Expiry Date is a date that is later than 01:59 on 22 August 2027 in consequence of the Secretary of State exercising his right to amend the Start Date pursuant to clause 5.3 (*Amendment of Start Date/Expiry Date*);
- (r) the circumstances set out in paragraph 3.2 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*) occur;
- (s) **NOT USED;**
- (t) **NOT USED;**
- (u) **NOT USED;**
- (v) (i) the Secretary of State issues a TDR Amendment pursuant to paragraph 12.8 (*TDR Amendments*) of Schedule 1.1 (*Franchise Services and Service Development*) in the circumstances described in paragraph 12.10(b) (there only being a Change if the Franchisee makes a saving as a consequence of a relevant TDR Amendment); or
- (ii) the circumstances contemplated in paragraph 12.11(b) of Schedule 1.1 (*Franchise Services and Service Development*) occur;
- (w) the exercise by the Secretary of State of his rights pursuant to paragraph 11.2 (*Changes to the Bid Fares Strategy*) of Schedule 6.3 (*Contractual Incentive Mitigations*);
- (x) the Secretary of State exercises his right to vary the provisions of Schedule 7.3 (*Service Quality Regime*) pursuant to paragraph 21.2 (*Variations to the Service Quality Regime*) of Schedule 7.3 (*Service Quality Regime*);
- (y) any of the events set out in paragraph 3 (as the case may be) of Schedule 9.5 (*Specified Complex Change*);
- (z) the Secretary of State issues a written notice pursuant to paragraph 9.5 of Part 3 of Schedule 6.1 (*Franchise Specific*

Obligations) requiring the Franchisee to continue to provide the Liverpool to Nottingham Passenger Services;

(za) **NOT USED**;

(zb) **NOT USED**; or

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

“Change of Control”

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

“Change of Law”

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

(a) Legislation; or

(b) any applicable judgment of a court of Law which changes a binding precedent,

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

(i) excluding any changes in Taxation;

(ii) excluding any changes which were foreseeable at the date of the Franchise Agreement, and for this purpose, but without limitation, there shall be regarded as foreseeable any Legislation which on the date of the Franchise Agreement has been published:

(A) in a draft parliamentary bill as part of a government departmental consultation paper;

(B) in a parliamentary bill;

(C) in a draft statutory instrument; or

(D) as a proposal in the Official Journal of the European Union except to the extent that such proposal is intended to apply solely within member states other than the United Kingdom,

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

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

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

"Charge Variation"

means a variation:

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

"Charging Review"

means:

- (a) the exercise by the ORR of its powers under:
 - (i) Part 7 of Schedule 7 of the Track Access Agreement to which the Franchisee is a Party on the Start Date or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that term;
 - (ii) Condition F11.4 (*Review of Long Term Charge*) of the Station Access Conditions in relation to any station which is not an Independent Station; or
 - (iii) Condition F12.4 (*Review of Access Generally*) of the Station Access Conditions in relation to any station which is not an Independent Station; or
 - (iv) Condition 42.4 (*Review of the Long Term Charge*) of the Independent Station Access Conditions in relation to any station which is an Independent Station or a Station;
- (b) the following by the ORR of the procedure in Schedule 4A of the Act;
- (c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in the Secretary of State's reasonable opinion:
 - (i) has an equivalent effect to; or
 - (ii) is intended to fulfil the same function as,

any of the powers referred to in paragraphs (a) or (b) in relation to any Relevant Agreement provided that, without limitation, the exercise by ORR of any of its approval rights

under Condition F12 of the Station Access Conditions shall not be considered to have an equivalent effect to or fulfil the same function as any of the powers referred to in paragraphs (a) or (b). For this purpose, Relevant Agreement includes any Relevant Agreement which is not the subject of any previous Charging Review; or

- (d) any amendment to a Relevant Agreement, or entry into a new Relevant Agreement which is approved by the ORR to the extent that it relates to an Incremental Output Statement Charge or a scheme to which that charge relates; or
- (e) the exercise by the Secretary of State or the Government's Representative (as defined in the HS1 Station Access Conditions) of any of its powers pursuant to Condition 105.2 (Modification of Long Term Charge) of the HS1 Station Access Conditions, provided that, for the avoidance of doubt, and without limitation, the exercise by the Secretary of State of the Government's Representative of any of its approval rights under Condition 105.3 (Review of the Long Term Charge) or Condition 105.4 (Interim Review) shall not be considered a Charging Review;

"Charter Service"

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

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

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

"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;

"Closed Scheme Employees"

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

“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;
“CIM Activation Date”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“CIM Deactivation”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“CIM Notification Date”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“CIM Performance Sum”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“CIM Period”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“CIM SQR Benchmark”	has the meaning given to it in paragraph 22 of Schedule 7.3 (<i>Service Quality Regime</i>);
“CMA”	has the meaning given to it in clause 15.1(a) (<i>Competition</i>);
“Code of Practice”	means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time (with the approval of the Disabled Persons Transport Advisory Committee) and published by the Secretary of State pursuant to section 71B of the Act and which is available at https://www.gov.uk/government/publications/accessible-railway-stations-design-standards (or such other applicable web address that is adopted by the Secretary of State from time to time);
“Collateral Agreement”	means an agreement which is required to be entered into by the Franchisee with Network Rail or any other franchisee as a condition to any Access Agreement of which the Franchisee is the beneficiary;
“Combined Ticket”	has the meaning given to it in paragraph 3.1 of Schedule 5.8 (<i>Fares Regulation Information and Monitoring</i>);
“Combined Ticket Notification”	has the meaning given to it in paragraph 3.2 of Schedule 5.8 (<i>Fares Regulation Information and Monitoring</i>);
“Commercial Return”	means where the CCI Scheme Revenue equals or exceeds the aggregate of the CCI Scheme Costs and the CCI Scheme Margin;
“Commitment”	has the meaning given to it in clause 15.1(b) (<i>Competition</i>);
“Committed Obligations” or “COs”	means any of the Franchisee’s obligations listed in Part 1 (<i>Committed Obligations</i>) of Schedule 6.2 (<i>Committed Obligations</i>) or any other obligation of the Franchisee expressed as a Committed Obligation under the Franchise 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 2.6 of Schedule 13.1 (*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 Strategy”** means the Community Rail Development Strategy (as may be updated from time to time) published in November 2004 and which provides a broad framework within which rural community routes can be put on an improved financial footing;
- “Commuter Fare”** means any:
- (a) Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket (and their equivalent products compliant with the ITSO Specification) between each London Station and any other such station or other Suburban Station; and
 - (b) unrestricted Single Fare and unrestricted Return Fare (and their equivalent products compliant with the ITSO Specification) between each London Station; and
 - (c) unrestricted Single Fare and unrestricted Return Fare (and their equivalent products compliant with the ITSO Specification) from each Suburban Station to each London Station (but not in the other direction); and
 - (d) equivalent products compliant with the ITSO Specification and the CPAY equivalent fares,
- for which the Franchisee is entitled to be allocated all or part of the revenue therefrom pursuant to the Ticketing and Settlement Agreement;
- “Commuter Fares Basket”** means the grouping of Commuter Fares:
- (a) determined by the Secretary of State pursuant to Schedule 5.3 (*Allocation of Fares to Fares Baskets*);
 - (b) for the purposes of regulating aggregate Prices, as the case may be, in accordance with Schedule 5.4 (*Regulation of Fares Basket Values*);
 - (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (*Changes to Fares and Fares Regulation*); and
 - (d) set out in the Commuter Fares Document;

"Commuter Fares Document or "CFD"	means the document in the agreed terms marked CFD as the same may be amended from time to time in accordance with Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>);
"COMPASS"	has the meaning given to it in paragraph 2.1 of Part 3 of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"Competition Authority"	has the meaning given to it in clause 15.1 (c) (<i>Competition</i>);
"Competition Event"	has the meaning given to it in clause 15.1 (d) (<i>Competition</i>);
"Competition Event Notice"	has the meaning given to it in clause 15.5 (<i>Competition</i>);
"Compulsory Inter-available Flow"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Computer System"	means computer hardware and computer software, including licensed third party software and data protocols;
"Conditions Precedent Agreement"	means the agreement between the Secretary of State and the Franchisee of even date herewith specifying certain conditions to be satisfied or waived by the Secretary of State prior to the issue of a Certificate of Commencement;
"Confidential Information"	has the meaning given to it in paragraph 1 of Schedule 17 (<i>Confidentiality, Freedom of Information and Data Protection</i>);
"Connection"	means a connection (however described) between any of the Passenger Services provided by the Franchisee and any other railway passenger service provided by the Franchisee 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 Franchisee is required to provide services for the carriage of passengers by railway which is entered into by the Franchisee in respect of some or all of the same Passenger Services by way of direct or indirect continuation of the arrangement currently in place under the Franchise Agreement;
"Contract Manager"	means a person appointed from time to time by the Franchisee to fulfil certain duties including to manage the Franchise Agreement on behalf of the Franchisee and to facilitate the performance by the Franchisee of its obligations under the Franchise Agreement;
"Contractual Incentive Mitigations"	means the additional and amended obligations imposed upon the Franchisee pursuant to the operation of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
"Contribution Calculation Period"	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);

“Control”

means, in respect of a person (“A”), that another person (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

- (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of:
 - (i) A;
 - (ii) any person who has equivalent rights over A; or
 - (iii) any person who A has equivalent rights over;
- (b) has the power to direct the affairs and policies of:
 - (i) A;
 - (ii) any person who has equivalent rights over A; or
 - (iii) any person who A has equivalent rights over;
- (c) is the parent undertaking of A or of any other person which is the parent undertaking of such person by virtue of section 1162(5) of the Companies Act 2006; or
- (d) possesses or is, or will be at a future date, entitled to acquire:
 - (i) twenty-five per cent (25%) or more of the share capital or issued share capital of, or of the voting power in;
 - (A) A;
 - (B) any person who has equivalent rights over A; or
 - (C) any person who A has equivalent rights over;
 - (ii) such part of the issued share capital of:
 - (A) A;
 - (B) any person who has equivalent rights over A; or
 - (C) any person who A has equivalent rights over,

as a result of which he would, if the whole of the income of such persons were distributed, be entitled to receive twenty-five per cent (25%) or more of the amount so distributed; or
 - (iii) such rights as would, in the event of the winding-up or other analogous event in respect of:

- (A) A;
- (B) any person who has equivalent rights over A; or
- (C) any person who A has equivalent rights over,

entitle him to receive twenty-five per cent (25%) or more of the assets of such person which would then be available for distribution,

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

"Control Centres"²⁶ means each integrated control centre, signalling centre, rail operating centre and other equivalent operational locations;

"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;

"Core Amount" has the meaning given to it in paragraph 6 of Schedule 7.2 (*Customer Experience and Engagement*);

"Costs"²⁷ means costs and expenses properly incurred during the term of the ERMA and relating to the Franchisee's performance of the Franchise Agreement and stated in the Franchisee's profit and loss account (including accruals and prepayments recognised in the Reporting Period in which the related costs are incurred) but excluding:

- (a) Franchise Payments (which shall include the value of any Fixed Fee and Performance Based Fee);
- (b) corporation tax and any deferred tax charge in the Franchisee's profit and loss account;
- (c) any accounting transaction which does not require the Franchisee to make a cash payment, including notional pensions accounting adjustments and the accounting impact of financial instrument revaluations, other than depreciation and amortisation; and
- (d) Capital Expenditure;

provided that:

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

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

- (i) if the Franchisee's relevant profit and loss account includes any cost(s) in respect of right of use assets treated in accordance with IFRS16 (the "IFRS16 Cost"), then, for the purpose of this definition, the amount for each IFRS16 Cost shall be deemed to be replaced (for the purposes of this definition and all related consequential purposes under this Agreement) with the amount which would have applied if the cost had been treated on a cash basis, as such cost is incurred in accordance with the relevant contractual arrangements, rather than in accordance with IFRS16; and
- (ii) any liability of the Franchisee to the Secretary of State arising under or in connection with the Franchise Agreement prior to 1 March 2020 shall not be treated as or give rise to a cost or expense for the purpose of the Franchisee's profit and loss account;

"Count Equipment"

means any load-weigh, infrared, CCTV or other type of equipment as may from time to time be installed on any train in the Train Fleet for the purposes of (amongst other things) passenger counting, including that specified in paragraph 3 of Schedule 1.5 (*Information about Passengers*);

"COVID-19"²⁸

means the coronavirus disease 2019;

"COVID-19 Guidance and Regulation"²⁹

means save as otherwise directed by the Secretary of State, the guidance and/or regulation relating to COVID-19 as from time to time issued by ORR, Public Health England or any other relevant government department, agencies or public bodies, including (as at the date of the EMA Review DoA) the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No 3) Regulations 2020, 1 June 2020;

"COVID-19 Restriction Period"³⁰

means, unless otherwise directed by the Secretary of State, the period during which the relevant COVID-19 Guidance and Regulation impacts on the Franchisee's ability to comply with the obligations in the Franchise Agreement;

"CPAY"

means an arrangement operated by TfL under which contactless payment cards can be used by passengers to obtain access to the public transport services in London without the requirement for purchase of a separate ticket or permission to travel;

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

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

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

“CPAY Agreement”	means an agreement dated 30 July 2014 between Transport Trading Limited and train operators operating in London relating to the acceptance of certain contactless payment cards for “pay as you go” journeys in London;
“Creating”	has the meaning given to it in the Ticketing and Settlement Agreement, 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 Franchisee 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.
“CRM Data Processor”	means any Processor who, from time to time, is processing or has processed CRM Data on behalf of the Franchisee;
“CRM Data Obligations”	has the meaning given to it in paragraph 4.4 of Schedule 1.5;
“CRM System”	means any system (whether a Computer System or otherwise) for the collection of CRM Data and/or onto which CRM Data is input, processed and/or held as such system may be amended or altered from time to time;
“Crossrail 2”	means the proposed new south west to north east cross London railway line including a new tunnel between Tottenham and Wimbledon;
“CRP Amount”	means the sum of £250,000 (indexed by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>)) per Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than three hundred and sixty five (365) days);
“Current Franchisee Year”	has the meaning given to it in paragraph 2.1 (<i>Additional Compensation or Settlement Payments</i>) of Schedule 8.2 (<i>Profit Share Mechanism</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 paragraphs 9.2 to 9.4 (<i>Customer and Stakeholder Engagement Strategy</i>) of Schedule 7.2 (<i>Customer Experience and Engagement</i>);

“Customer Experience Fee” or “CE”³¹	<p>means the element of the Performance Based Fee the purpose of which is to measure the Franchisee’s effectiveness in delivering:</p> <p>(a) high levels of satisfaction and positive sentiment amongst users of the Passenger Services; and/or</p> <p>(b) high-quality provision of facilities, services, customer care and other outputs that affect passengers’ satisfaction and sentiment;</p>
“Customer 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>);
“Customer Service Quality Inspection”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“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 Franchisee pursuant to paragraph 17 of Schedule 13.1 which contains (as a minimum) the information set out in paragraph 17 of Schedule 13.1;
“D&I Annual Report”³²	means a report produced by the Franchisee developed in accordance with paragraph 9.9.3(e) of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>) in respect of the previous twelve (12) months or, if shorter, the period since the ERMA Start Date.
“D&I Annual Reporting Date”³³	means the date on which the Franchisee must provide the D&I Annual Report to the Secretary of State as stated in the D&I Strategy, provided that if this date, in any Franchisee Year, occurs after the expiry of the term of the ERMA then the D&I Annual Reporting Date shall be one (1) month before the expiry of the term of the ERMA;
“D&I Champion”³⁴	means the director or senior executive that is accountable and responsible for implementing the D&I Strategy and ensuring that the Franchisee complies with its obligations relating to diversity and inclusion (excluding the obligations in paragraph 9.9.4 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>));

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

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

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

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

"D&I Characteristics KPIs"³⁵

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

"D&I Improvement Plan"³⁶

has the meaning given to it in paragraph 9.9.7 (*Improvement and Remedial Plans*) of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);

"D&I Initiatives KPIs"³⁷

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

- (a) the number of positive action initiatives implemented and maintained by the Franchisee;
- (b) the number of adverts in targeted publications;
- (c) membership of diversity and inclusion networks and forums;
- (d) the percentage of staff trained annually in diversity and inclusion;
- (e) the number of line managers completing diversity and inclusion training;
- (f) the number of members of the board of directors completing diversity and inclusion training; and
- (g) the number of diversity and inclusion training sessions.

"D&I Strategy"³⁸

means the Franchisee's diversity and inclusion strategy developed in accordance with paragraph 9.9.1 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*)(substantially in the form set out in Appendix 2 (*D&I Strategy*) to Schedule 13.1 (*Rail Industry Initiatives and Co-operation*)) and references to the D&I Strategy shall include the Approved D&I Strategy.

"Dataset"

means the data specified in Appendix 1 (*Environmental Information*) to Schedule 11.2 (*Management Information*) as the same may be amended from time to time by the Secretary of State (acting reasonably);

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

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

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

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

“Data Protection Act”	means the Data Protection Act 2018;
“Data Protection Legislation”¹	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 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>);
“Data Subject”	has the meaning given to it in the Data Protection Legislation;
“Default Performance Level”³⁹	means, in relation to an Enforcement Benchmark for any Reporting Period, the number agreed or determined pursuant to paragraph 4.5 of Schedule 8.1B (Performance Based Fee);
“Deficit Contributions”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
“Deficit Contribution Protection”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
“Deficit Contribution Return Amount”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
“Deficit Contribution Top-Up”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
⁴⁰ “Delay Attribution Principles and Rules”	means the version of the document known as the Delay Attribution Principles and Rules referenced in the Network Code;
“Delay Repay Compensation”	means compensation payable to a holder of a valid ticket when such ticket holder’s journey is delayed as more particularly described in the Passenger’s Charter;
“Delayed Cascade Mitigation Plan”	has the meaning given to it in paragraph 3.9 of Schedule 2.2 (<i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i>);

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

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

“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 Franchisee has entered into a Depot Lease;
“Depot Access Conditions”	has the meaning given to it in the relevant Access Agreement to which it relates;
“Depot Lease” or “DL”	means: <ul style="list-style-type: none"> (a) any lease of a depot to which the Franchisee is a party as at the Start Date; or (b) any other lease of a depot in relation to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;
“Derivative Output”	means Intellectual Property Rights that are derived from or generated by the RPC Database or the Preliminary Database when querying such database (which includes, but is not limited to, the format of all reports and analysis);
“Designated CO Primary Franchise Assets”	has the meaning given to it in paragraph 9.1 (<i>Designation of Assets comprised in COs as Primary Franchise Assets</i>) of Part 2 (<i>Special Terms related to the Committed Obligations</i>) to Schedule 6.2 (<i>Committed Obligations</i>);
“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>);
“Devolved Transport Body”⁴¹	means, any public sector body which has been given responsibility for public passenger transport in the United Kingdom including Transport for London, Transport for Wales, Transport Scotland, Transport for the North, any Passenger Transport Executive or Combined Authority and any other public body with relevant public passenger transport responsibilities;
“Direct Agreement”	means any agreement made, or to be made, from time to time between the Secretary of State and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Secretary of State under Schedule 14.3 (<i>Key Contracts</i>);
“Disabled Person”	is a reference to a person who has a disability as defined in the EA;

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

“Disabled Persons Transport Advisory Committee” or “DPTAC”	means the committee with that name established under section 125 of the Transport Act 1985 and its statutory successors;
“Disallowable Costs”⁴²	means any Costs or Capital Expenditure which are described within Appendix 1 (Disallowable Costs) to Schedule 8.1A (Franchise Payments) and may include amounts stated in the Budget, Financial Model and/or Record of Assumptions (as applicable) which have been Placed in Escrow;
“Discount Card”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Discount Fare Scheme”	has the meaning given to it in paragraph 3 of Appendix 1 (<i>List of Transport, Travel and Other Schemes</i>) to Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>);
“[REDACTED⁴³]”	[REDACTED];
“[REDACTED⁴⁴]”	[REDACTED];
“[REDACTED⁴⁵]”	[REDACTED];
“[REDACTED⁴⁶]”	[REDACTED];
“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:

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

⁴³ **25 October 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.**

⁴⁴ **25 October 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.**

⁴⁵ **25 October 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.**

⁴⁶ **25 October 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) 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 Franchisee pursuant to the Track Access Agreement;

“Disputed Partial Cancellation”

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

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

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

“DOTAS”

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

“Draft Marketing Plan”

has the meaning given to it in paragraph 1.1 of Schedule 6.3 (*Contractual Incentive Mitigations*);

“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;

“East Midlands Railway Brand”

has the meaning given to it in paragraph 4.1 of Schedule 14.2 (*Maintenance of Operating Assets and Branding*);

“East West Rail Scheme”

a scheme to re-establish a rail link between Cambridge and Oxford to improve connections between East Anglia and central, southern and western England;

“EEA state”

has the meaning given to it in clause 14.9 (*Non-Discrimination*);

“EMA”⁴⁷

means the Emergency Measures Agreement entered into by the Parties on or around 1 April 2020 to deal with the impacts of COVID-19;

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

“EMA FWCA”⁴⁸	has the meaning given to “FWCA” in schedule 8.A (<i>Franchise Payments</i>) to the Franchise Agreement as effected by the EMA, (and, for the purposes of this definition and the definition of “FWCA” in schedule 8.A (<i>Franchise Payments</i>) to the Franchise Agreement as effected by the EMA, “Final Working Capital Adjustment” shall have the meaning given to that term in paragraph 14 of schedule 8.A (<i>Franchise Payments</i>) to the Franchise Agreement as effected by the EMA and all definitions related to “Final Working Capital Adjustment” shall have the meanings given to them in schedule 8.A (<i>Franchise Payments</i>) to the Franchise Agreement as effected by the EMA);
“EMA Period”⁴⁹	means the period commencing on 1 April 2020 and ending upon the expiry of the “Term” or (as applicable) the expiry of any “Extended Term”, as such terms are defined in clauses 3.1 and 3.3, respectively, of the EMA;
“EMA Review”⁵⁰	has the meaning given to it in paragraph 1 (<i>Definitions</i>) of schedule 8.B (<i>Performance Payment</i>) to the Franchise Agreement as effected by the EMA;
“EMA Review DoA”⁵¹	means the amendment agreement to this Franchise Agreement entered into between the parties on or around 20th September 2020;
“EMA Review Scorecard”⁵²	has the meaning given to it in paragraph 1 (<i>Definitions</i>) of schedule 8.B (<i>Performance Payment</i>) to the Franchise Agreement as effected by the EMA;
“EMA Scorecard Criterion”⁵³	has the meaning given to “EMA Criterion” in paragraph 1A (<i>Definitions</i>) of schedule 8.A (<i>Franchise Payments</i>) to the Franchise Agreement as effected by the EMA;
“EMA SoS Claims”⁵⁴	has the meaning given to “SoS Claims” in paragraph 1A (<i>Definitions</i>) of schedule 8.A (<i>Franchise Payments</i>) to the Franchise Agreement as effected by the EMA;
“EMA Start Date”⁵⁵	means 1 April 2020;
“Emergency Events”	has the meaning given to it in paragraph 1(e) of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>);

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

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

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

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

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

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

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

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

“**[REDACTED]**⁵⁶”

[REDACTED];

“**EMV**”

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

“**Enforcement Benchmark**”⁵⁷

means the:

- (a) **Enforcement Cancellations Benchmark for each Reporting Period during a PBF Assessment Period;**
- (b) **Enforcement Short Formation Benchmark for each Reporting Period during a PBF Assessment Period; and**
- (c) **Enforcement TOC Minutes Delay Benchmark for each Reporting Period during a PBF Assessment Period;**

“**Enforcement Cancellations Benchmark**”⁵⁸

means the benchmark that applies to Cancellations in relation to a Reporting Period during the PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (*Performance Based Fee*);

“**Enforcement Plan of the Day**”

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
- (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 Franchisee in breach of its obligations in paragraph 4 of Schedule 1.2 (*Operating Obligations*); or
- (ii) as agreed by the Franchisee in breach of its obligations in paragraph 3 of Schedule 1.2 (*Operating Obligations*);

“**Enforcement Short Formation Benchmark**”⁵⁹

means the benchmark that applies to Short Formations in relation to a Reporting Period during the PBF Assessment

⁵⁶ **25 October 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.**

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

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

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

	Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (<i>Performance Based Fee</i>);
"Enforcement TOC Minutes Delay Benchmark"⁶⁰	means the benchmark that applies to TOC Minutes Delay in relation to a Reporting Period during the PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (<i>Performance Based Fee</i>);
"Enhanced Disability Awareness Training"⁶¹	means training compliant with the requirements set out in section 4, paragraph B6 of the Accessible Travel Policy Guidance;
"Environmental Data Collection Plan"	has the meaning given to it in paragraph 15.1(a)(iii) of Schedule 11.2 (<i>Management Information</i>);
"Environmental Impact Monitoring Audit"	has the meaning given to it in paragraph 15.2(b) of Schedule 11.2 (<i>Management Information</i>);
"Environmental Impact Monitoring Report"	has the meaning given to it in paragraph 15.2(a) of Schedule 11.2 (<i>Management Information</i>);
"Environmental Impact Targets"	has the meaning given to it in paragraph 16.1 of Schedule 11.2 (<i>Management Information</i>);
"Environmental Impact Targets Plan"	has the meaning given to it in paragraph 16.2(c) of Schedule 11.2 (<i>Management Information</i>);
"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 (<i>Changes to Fares and Fares Regulation</i>);
"Equivalent Flow"	has the meaning given to it in paragraph 6.1(b) of Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>);
"ERMA"⁶²	means the Emergency Recovery Measures Agreement entered into by the Parties on or around the ERMA Start Date to deal with the impacts of COVID-19;
"ERMA Start Date"⁶³	means 20 September 2020;
"ERMA Stub Reporting Period"⁶⁴	means the period comprising the Reporting Periods following the period covered by the most recently

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

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

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

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

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

delivered Annual Audited Accounts to the end of the ERMA Term or Extended Term, as applicable;

“ERMA Term”⁶⁵

has the meaning given to that term in the ERMA;

“Escrow Documents”

means those documents and other items referred to in paragraph 1.1 of Schedule 9.2 (*Identity of the Financial Model (Escrow Documents)*);

“Estimated Profit Stream”

means estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to clause 8 (*Change of Control and Facilitation Fee*)) is to occur until the Expiry Date as reasonably determined by the Secretary of State. In reasonably determining the Estimated Profit Stream the Secretary of State shall:

- (a) take into account all relevant circumstances and have due regard to the Financial Model, the profit and loss forecast in the Initial Business Plan and the most recent Annual Business Plan and the assumptions in the Record of Assumptions;
- (b) use the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model;
- (c) estimate profit:
 - (i) before taking into account:
 - (A) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits) and dividends and other distributions of profit;
 - (B) any taxation on profits including corporation tax;
 - (C) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;
 - (D) non cash entries in respect of the Franchise Section and any other pension schemes to the extent connected with the Franchise, excluding accruals or prepayments of any normal pension contributions due; and
 - (ii) after taking into account:
 - (A) Franchise Payments;

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

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

"Estimated Revenue" ⁶⁶	means the Revenue reasonably estimated by the Secretary of State using available resources as is practicable at the time of the estimation;
"Estimated Revisions"	has the meaning given to it in paragraph 10.3 of Schedule 9.1 (<i>Financial and Other Consequences of Change</i>);
"ETCS"	has the meaning given to it in paragraph 2.1 of Part 3 of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"EU Merger Regulation"	has the meaning given to it in clause 15.2 (a) (<i>Competition</i>);
"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 London St Pancras, Nottingham, Lincoln, Derby, Sheffield, Leicester, Norwich or Manchester in the Evening Peak;
"Event of Default"	means any of the events set out in paragraph 1 (<i>Definition of Events of Default</i>) of Schedule 10.2 (<i>Events of Default and Termination Events</i>);

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

- “Excluded Data”** has the meaning given to it in paragraph 15.1(a)(i) (*Environmental Information*) of Schedule 11.2 (*Management Information*);
- “Existing Expenditure”** has the meaning given to it in paragraph 6.2(a) (*Additional Expenditure*) of Schedule 7.2 (*Customer Experience and Engagement*);
- “Expiry Date”⁶⁷** means:
- (a) **01:59 on 1 April 2022 unless the Secretary of State exercises the Secretary of State’s right to terminate the ERMA pursuant to clause 3.2 of the ERMA, in which case the Expiry Date shall be 22 August 2027; or**
- (b) **any such later date to which the Franchise Agreement is continued in accordance with clause 3.3 of the ERMA;**
- “Extended Term”⁶⁸** has the meaning given to that term in the ERMA;
- “Facilitation Fee”** has the meaning given to it in clause 8.4 (*Change of Control and Facilitation Fee*);
- “Facility Owner”** has the meaning given to the term facility owner in section 17(6) of the Act;
- “Fare”** means:
- (a) the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person; and
- (b) for the purposes only of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) to Schedule 5.8 (*Fares Regulation Information and Monitoring*) (inclusive) and the definitions of Commuter Fare, Protected Fare, Return Fare, Single Fare, Protected Weekly Season Ticket, Protected Return Fare and paragraph (b) of the definition of Season Ticket Fare, a Fare as defined under paragraph (a) that is:
- (i) valid for a journey or journeys on the Passenger Services included in the Timetable or other railway passenger services which are required to be

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

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

included in another relevant Train Operator's passenger timetable by the Secretary of State;

- (ii) sold under the Travelcard Agreement; or
- (iii) a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement);

"Fare Year"	means the period from 1 January in any year to 31 December in the same year;
"Fares Basket"	means either the Commuter Fares Basket or the Protected Fares Basket;
"Fares Document"	means any of the Commuter Fares Document and/or the Protected Fares Document;
"Fares Setting Round"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Final Accounts"⁶⁹	means the set of financial statements prepared in accordance with GAAP and delivered to the Secretary of State in accordance with the requirements set out in paragraph 9.4A(m)) of Schedule 11.2 (<i>Management Information</i>) which comprise, as a minimum, a profit and loss account, balance sheet and a cashflow statement containing only transactions properly accounted for which relate to the ERMA Stub Reporting Periods, to a level of disaggregation which the Secretary of State may reasonably require;
"Final Adjustment"⁷⁰	has the meaning given to it in paragraph 1A (<i>Definitions</i>) of Schedule 8.1A (<i>Franchise Payments</i>);
"Final Franchisee Year"	means the Franchisee Year ending on the last day of the Franchise Period;
"Final Contribution Calculation Period"	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
"Final PBF Assessment Period"⁷¹	has the meaning given to it in paragraph 1 (<i>Definitions</i>) of Schedule 8.1B (<i>Performance Based Fee</i>);
"Final Working Capital Adjustment" or "FWCA"⁷²	means the adjustment determined in accordance with paragraph 14.3 of Schedule 8.1A (<i>Franchise Payments</i>);
"Financial Action Plan"	means any action plan produced by the Franchisee pursuant to paragraph 9.2(b)(vi) of Schedule 11.2 (<i>Management Information</i>), where the level of its financial performance

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

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

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

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

	specified in the Management Accounts is materially worse than forecast by the Franchisee in its current Business Plan;
“Financial Conduct Authority”	means the UK Financial Conduct Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS and with company registered number 01920623 or such other regulatory body which may succeed or replace it from time to time;
“Financial Formats” or “FF”	means the Franchisee’s financial formats in the agreed terms marked FF ;
“Financial Model” or “FM”	means the Franchisee’s financial model in the agreed terms marked FM deposited with the Secretary of State on the date of the Franchise Agreement in accordance with Schedule 9.2 (<i>Identity of the Financial Model (Escrow Documents)</i>), as may be subsequently revised in accordance with Schedule 9.2 (<i>Identity of the Financial Model (Escrow Documents)</i>);
“Financial Ratios”	means the financial ratios specified in paragraph 2 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
“First Additional Expenditure Year”	has the meaning given to it in paragraph 6.2 (a) of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“First Contribution Calculation Period”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
“First Profit Share Threshold” or “FPST”	has the meaning given to it in paragraph 1.1 of Schedule 8.2 (<i>Profit Share Mechanism</i>);
“Floor Cash Position”⁷³	means thirty-five million pounds sterling (£35,000,000) (excluding the value of Season Ticket Fare suspense liabilities) or such other value as the Secretary of State may determine in accordance with paragraph 12.8 of Schedule 8.1A (Franchise Payments);
“Flow”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Force Majeure Event”	means any of the events described as such in paragraph 1 of Schedule 10.3 (<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 Closing Cash Position”⁷⁴	means, with respect to a Reporting Period, the Franchisee’s forecast working capital position, excluding: (a) the Franchise Payment to be made in the following Reporting Period and

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

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

(b) the value of Season Ticket Fare suspense account liabilities,

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

"Forecast Modified Revenue"

means, in relation to any Reporting Period, the items specified in the definition of Modified Revenue, as most recently forecast for that Reporting Period pursuant to paragraphs 9.2(b) and 9.3(a) of Schedule 11.2 (*Management Information*);

"Forecast Operating Costs"

means, in relation to any Reporting Period, the items specified in the definition of Actual Operating Costs, as most recently forecast for that Reporting Period pursuant to paragraphs 9.2(b) and 9.3(a) of Schedule 11.2 (*Management Information*) adjusted for any movement in creditors arising from deemed PCS Facility borrowing pursuant to Clause 18 of the Funding Deed;

"Forecast Passenger Demand"

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

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

"Franchise"

means the rights tendered by the Secretary of State on 7 June 2018 to operate railway passenger services over the Routes prescribed in paragraph 6.1 (*Restrictions relating to Franchise Services*) of Part 1 (*Franchise Services*) of Schedule 1.1 (*Franchise Services and Service Development*);

"Franchise Agreement"

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

"Franchise Assets"

means the property, rights and liabilities designated as such pursuant to paragraph 1 of Schedule 14.4 (*Designation of Franchise Assets*) but excluding such property, rights or liabilities as shall, in accordance with the terms of the Franchise Agreement, cease to be so designated;

"Franchise 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:

- (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 Documents"⁷⁵

means:

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

"Franchise Employee"

means:

- (a) any employee of the Franchisee from time to time; and
- (b) any other person who is an employee of any of its Affiliates or is an employee of any party to whom the Franchise Services or services which are in support of or ancillary to

⁷⁵

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the Franchise Services have been subcontracted (at any tier) or delegated by the Franchisee; and

- (c) in the case of (a) or (b) whose contract of employment would (subject to the exercise of such person's right to object to the transfer) be transferred to a Successor Operator following the expiry of the Franchise Period by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred;

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

"Franchise Payment"⁷⁶ means, in relation to any Reporting Period, the amount determined in accordance with Schedule 8.1A (*Franchise Payments*);

"Franchise Payment Component"⁷⁷ means:

(a) each of the components of "FP" as described in paragraph 1.2 of Schedule 8.1A (*Franchise Payments*); and

(b) any component or element, described in the relevant provisions of Schedule 8.1A (*Franchise Payments*) and Schedule 8.1B (*Performance Based Fee*), as the case may be, which is used in determining or calculating the value of those components described in paragraph (a) above;

"Franchise Performance Meeting" means a meeting between the Secretary of State and the Franchisee to be held in accordance with paragraph 1 of Schedule 11.1 (*Franchise Performance Meetings*);

"Franchise Period" means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to Clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or Schedule 10 (*Remedies, Events of Default and Termination Events*);

"Franchise Sections" has the meaning given to it in paragraph 2 of Schedule 16.1 (*Railways Pension Scheme*);

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

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

“Franchise Section Rules”	has the meaning given to it in paragraph 4.2(a) of Schedule 16.1 (<i>Railways Pension Scheme</i>);
“Franchise Services”	means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Franchisee may provide or operate from time to time, including any of such services as the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;
“Franchise Term”	means the period commencing on the Start Date and expiring on the Expiry Date;
“Franchisee Access Station”	means any station at which the Passenger Services call (other than any Station);
“Franchisee Activation Date”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“Franchisee Owned RV Asset”	means each of the assets listed in Column 1 of the table set out in Appendix 1 (<i>List of the RV Assets</i>) to Schedule 14.6 (<i>Residual Value Mechanism</i>) which: <ul style="list-style-type: none"> (a) are not annotated in Column 4 of such table as Network Rail Fixture Assets; and (b) are designated as Primary Franchise Assets in accordance with paragraph 2.1(h) of Schedule 14.4 (<i>Designation of Franchise Assets</i>) such that they can be transferred to a Successor Operator at the applicable value specified in Column 2 of the table in Appendix 1 (<i>List of the RV Assets</i>) to Schedule 14.6 (<i>Residual Value Mechanism</i>) (as such value may be amended during the Franchise Term in accordance with the provisions of paragraphs 1.4 or 2.2 of Schedule 14.6 (<i>Residual Value Mechanism</i>));
“Franchisee Year”	means any period of twelve (12) months during the Franchise Period, beginning on 1 April and ending on 31 March, except that the first Franchisee Year and Final Franchisee Year may be for a period of less than twelve (12) months and the first Franchisee Year shall begin on the Start Date and the Final Franchisee Year shall end on the last day of the Franchise Period;
“Freedom of Information Act”	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to the Freedom of Information Act 2000;
“First FRM Franchisee Year”	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
“FRM Revenue”	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
“FRM Revenue Report”	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);

"FRM Review Procedures"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Funding Deed"	means the deed made between the Secretary of State, the Franchisee and the Guarantor dated on or about the date of the Franchise Agreement specifying arrangements relating to the funding for the Franchisee by the Guarantor and giving rights to the Secretary of State in relation to such funding;
"FXD"	has the meaning given to such term in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>);
"GAAP"	means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, ' <i>Financial Reporting Standards 100, 101 and 102</i> ', 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)
"General Anti-Abuse Rule"	has the meaning given to it in paragraph 6.3 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
"Geographical Area"	means that area of Great Britain bounded by a reasonably drawn line running through the railway stations at the following places: <ul style="list-style-type: none"> (a) London St Pancras International (b) Bedford Midland (c) Leicester (d) Burton-on-Trent (e) Uttoxeter (f) Stoke-on-Trent (g) Crewe (h) Kidsgrove (i) Matlock (j) Dore (k) Chinley (l) Stockport (m) Manchester Oxford Road (n) Warrington Central (o) Widnes (p) Liverpool South Parkway (q) Liverpool Lime Street (r) Manchester Piccadilly (s) Edale (t) Sheffield (u) Wakefield Westgate (v) Leeds (w) York (x) Scarborough (y) Doncaster (z) Gainsborough Lea Road (aa) Lincoln Central

- (bb) Barnetby
- (cc) Barton-on-Humber
- (dd) New Holland
- (ee) Cleethorpes
- (ff) Skegness
- (gg) Spalding
- (hh) March
- (ii) Norwich
- (jj) Ely
- (kk) Peterborough
- (ll) Corby
- (mm) Luton, or

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

“Good and Efficient Operator”⁷⁸

means in the context of all other relevant provisions of this Franchise Agreement, a notional train operator, having the same commercial, regulatory and operational arrangements as the Franchisee and being subject to the same operational circumstances (which shall recognise the extraordinary impact of COVID-19, the existence of the EMA and the ERMA and the requirement for operators to act in the national interest in response to COVID-19), which is a party to a franchise agreement on equivalent terms to the Franchise Agreement, with performance targets and standards equivalent to those set out in Schedule 8.1B (*Performance Based Fee*), which complies with its obligations under such franchise agreement and the Licences in a timely, efficient and economical manner and with the degree of skill, diligence, prudence and foresight which can be expected from a skilled and experienced train operator so that in this context costs and revenues are optimised in combination to the greatest extent reasonably practicable, adopting a reasonable balance in respect of short, medium and longer term consequences for the relevant franchise;

“Good Operator Standard”

means 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 Franchise and seeking to maximise its profit consistent with its other obligations under the a franchise agreement 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*);

“Grey Assets”

means any asset or structure on, within or close to the boundary of any Station in relation to which either the Franchisee or Network Rail consider that clarification is needed as to whether or

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

not such asset or structure should properly form part of a relevant Station Lease;

- “Gross Revenue”** means, in relation to any period and any Fare, the gross revenue to the Franchisee (or any relevant predecessor of the Franchisee) attributable to such Fare over the relevant period, excluding any applicable Value Added Tax, costs, commissions or other expenses which may be paid or incurred in connection with such Fare;
- “Guarantor”** has the meaning given to it under the Funding Deed;
- “Halifax Abuse Principle”** has the meaning given to it in paragraph 6.3 of Schedule 12 (*Financial Covenants and Bonds*);
- “Handover Package”** has the meaning giving to it in paragraph 1.1(a)(i) of Schedule 15.3 (*Handover Package*);
- “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 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);
- “IAD”** has the meaning given in paragraph 1.1 of Schedule 9.5 (*Specific Complex Changes*);
- “Improvement Plan Level”⁷⁹** **means:**
- (a) a NRPS Improvement Plan Level; and/or**
 - (b) an SQR Improvement Plan Level,**
- as applicable;**
- “Incident Response Plan”** means the plan created by the Franchisee pursuant to paragraph 16 of Schedule 13.1 (*Rail Industry Initiatives and Co-*

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

	<i>operation</i>) which contains (as a minimum) the information set out in paragraph 16.2 of Schedule 13.1;
“Incremental Output Statement Charge”	means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;
“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”	has the meaning given to it in paragraph 2.7 of Schedule 8.3 (<i>Track Access Adjustments and Station Charge Adjustments</i>);
“Independent Station Access Conditions”	has the meaning given to it in the Access Agreement to which it relates;
“Individual Station Charge Adjustment”	has the meaning given to it in paragraph 2.2 of Schedule 8.3 (<i>Track Access Adjustments and Station Charge Adjustments</i>);
“Industrial Action”	means any concerted action taken in connection with the employment of any employees of the Franchisee or of any of the employees of persons listed in paragraphs 1(f)(i) to 1(f)(iii) of Schedule 10.3 (<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 Franchisee being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the Secretary of State;
“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;
“Information Powers”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
“Infrastructure Project”	has the meaning given in paragraph 6.1 of Part 3 of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
“Initial Business Plan”	means the business plan to be provided by the Franchisee to the Secretary of State as described in paragraph 10.1 of Schedule 11.2 (<i>Management Information</i>);
“Initial Dataset”	has the meaning given in paragraph 15.1(b) of Schedule 11.2 (<i>Management Information</i>);
“Initial PBF Assessment Period”¹¹⁸⁰	has the meaning given to it in paragraph 1 (Definitions) of Schedule 8.1B (Performance Based Fee);

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

“Initial Performance Bond”	means the performance bond issued or to be issued on or prior to the date of this Agreement by a Bond Provider to the Secretary of State which complies with the requirements of paragraph 4.2 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
“Initial Period”	has the meaning given to it in paragraph 7.5 of Schedule 9.1 (<i>Financial and Other Consequences of Change</i>);
“Initial Permanent Fare”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Initial Reporting Stage”	means the first seven (7) Reporting Periods of the Franchise Term;
“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;
“Integrated Control Centres Implementation Plan”⁸¹	means a detailed plan jointly produced between the Franchisee, Network Rail and any other Train Operators setting out how and when they will implement the Integrated Control Centres Initiative;
“Integrated Control Centres Initiative”⁸²	means measures and initiatives to improve performance outcomes between Network Rail and the Franchisee through collaboration, co-location and unified policies such that an integrated and cost-efficient approach to operations is adopted at specified Control Centres;
“Intellectual Property Rights”	means all intellectual and industrial property rights of any kind including (without limitation) patents, supplementary protection certificates, rights in Know-How, registered 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 Franchisee, determine from time to time) during any

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

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

	period in which an amount payable under the Franchise 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>);
"International Organisation for Standardisation"	means the international standard setting body known as "ISO" or any such successor body;
"Intervention"	has the meaning given to it in clause 15.1 (e) (<i>Competition</i>);
"Investigation"	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
"Invitation to Tender" or "ITT"	means the Invitation to Tender issued by the Secretary of State on 7 June 2018 as part of the procurement process pursuant to which the Franchise Agreement was entered into;
"ISO14001:2015"	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;
"ISO50001:2011"	means the standard that is set by the International Organisation for Standardisation which specifies requirements for establishing, implementing, maintaining and improving an energy management system, whose purpose is to enable an organization to follow a systematic approach in achieving continual improvement of energy performance, including energy efficiency, energy use and consumption or any equivalent standard which is generally recognised as having replaced it;
"ISO50001 Energy Review"	means the Energy Review as defined in paragraph 4.4.3 of ISO50001:2011, or any same or similar review from an equivalent standard which is generally recognised as having replaced it;
"ISO55001:2014"	means the standard that is produced by the International Organisation for Standardisation which specifies requirements for an asset management system within the context of the organisation or any equivalent Standard which is generally recognised as having replaced it;
"ISO 22301"	means the standard that is set by the International Organisation for Standardisation which specifies requirements for the development, implementation, operation, monitoring, review and maintenance of a business continuity planning process, or any equivalent standard which is generally recognised as having replaced it;

“ITSO Ltd”	has the meaning given to it in paragraph 1.1 of Schedule 5.9 (<i>Smart Ticketing</i>);
“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 Specification”	means the common specification issued by ITSO Ltd and which enables the use of interoperable Smart Media in transport and other areas
“ITSO Operating Licence”	has the meaning given to it in paragraph 1.1 of Schedule 5.9 (<i>Smart Ticketing</i>);
“ITSO Smartmedia 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;
“Key Contacts List”	<p>means a list of the following Franchise Employees:</p> <ul style="list-style-type: none"> (a) all directors (statutory or otherwise); (b) all managers with responsibility for a department/function within the Franchisee’s business; (c) all managers in the operations, commercial, personnel and public affairs departments or in each case their nearest equivalents; and (d) all Key Personnel, <p>which contains the name, office address, office telephone number, business mobile telephone number and a brief description of the person’s role and responsibilities in the business;</p>
“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 the Franchise Agreement; and (b) any other agreement, contract, licence or other arrangement to which the Franchisee is a party or under which the Franchisee is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3 (<i>Key Contracts</i>), <p>but excluding any such agreement, contract, licence or other arrangement which ceases, in accordance with the terms of the Franchise Agreement, to be designated as a Key Contract;</p>

“Key Personnel”	means those persons identified by the Franchisee 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);
“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 Franchisee may be required from time to time to hold under the Act or under the Railway (Licensing of Railway Undertakings) Regulations 2005 in order to provide or operate the Franchise Services;
“Light Maintenance Service”	means any service specified in paragraph 3 of Part 1 (<i>Franchise Services</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>) which may be provided by the Franchisee at the Depots and Stations;
“Liverpool to Nottingham Passenger Services”	has the meaning given to such term in paragraph 9 of Part 3 of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
“LNPS Cessation Date”	has the meaning given to such term in paragraph 9 of Part 3 of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
“Local Authority”	means: <ul style="list-style-type: none"> (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of section 88 of the Transport Act 1985 or a local authority for the purposes of section 93 of the Transport Act 1985;

- (b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;
- (c) in Scotland, the Strathclyde Passenger Transport Executive, or a district council or a unitary authority which is established under the Local Government (Scotland) Act 1973 or the Local Government, etc. (Scotland) Act 1994;
- (d) in London, the Mayor of London and Transport for London established under the Greater London Authority Act 1999;
- (e) a combined authority created pursuant to the Local Democracy, Economic Development and Construction Act 2009;
- (f) any local enterprise partnership;
- (g) any other body or council replacing any of the above from time to time; and
- (h) any other body or instrument of local or regional government specified by the Secretary of State from time to time;

“Lock-up Period”	has the meaning given to it in paragraph 3.2 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
“London Station”	means any station served by the Railway Passenger Services in the Zones and any Zone to or from which a passenger may travel from or to such station;
“Long Term Charge”	has the meaning given to it in the Station Access Conditions;
“Lower Threshold Amount”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
“Maintenance Contract”	means any contract or arrangement to which the Franchisee is a party, which includes the carrying out for the Franchisee of any maintenance work (including Light Maintenance Services) or service provision in respect of rolling stock vehicles used by the Franchisee in the provision of the Passenger Services or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles;
“Major Flow Operator”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Managed Station”	means any station used in connection with the provision of the Franchise Services where Network Rail is the Facility Owner or becomes the Facility Owner during the Franchise Period;
“Managed Station Area”	means the premises comprising part or parts of a Managed Station to be occupied by the Franchisee on or after the Start Date and to be used for or in connection with the provision of the Franchise Services;

“Management Accounts”	means, in relation to any Reporting Period, the Franchisee’s management accounts which: <ul style="list-style-type: none"> (a) comply with paragraph 9.5(a) of Schedule 11.2 (<i>Management Information</i>); and (b) are required to be delivered to the Secretary of State by the Franchisee in accordance with paragraphs 9.2(a) and 9.2(b) of Schedule 11.2 (<i>Management Information</i>);
“Management Fee and Performance Payment” or “MFPP”⁸³	has the meaning given to that term in paragraph 1A (Definitions) of schedule 8.A (Franchise Payments) to the Franchise Agreement as effected by the EMA;
“Mandatory Modification”	means a modification or addition to any rolling stock vehicle which is required to be made under any applicable Law or any directive of the Rail Safety and Standards Board or any government authority;
“Marks”	means such trade marks as the Franchisee may apply to any Primary Franchise Asset or other asset used by it under a Key Contract, which are applied on the expiry of the Franchise Period and are not the subject of a Brand Licence;
“Marketing Plan”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“Marketing Team”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“Minimum Marketing Spend”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“Minimum Marketing Team Spend”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“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 (<i>Accessibility and Inclusivity</i>);
“Minor Works’ Budget”	means £300,000 (three hundred thousand pounds sterling) for each Franchisee Year allocated by the Franchisee for the purpose of facilitating Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, save that: <ul style="list-style-type: none"> (a) for any Franchisee Year which is shorter than twelve (12) months, the amount shall be reduced pro rata; and (b) for each Franchisee Year after the first Franchisee Year, the amount shall be subject to adjustment as follows:

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

Minor Works' Budget x RPI**where:**

- "Minor Works Programme"** **RPI** has the meaning given to it in Appendix 1 (*Annual Franchise Payments*) to Schedule 8.1 (*Franchise Payments*); means the Franchisee's programme of Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, developed prior to the start of each Franchisee Year pursuant to paragraph 2.7(b) of Schedule 4 (*Accessibility and Inclusivity*);
- "Minutes Delay"** means the minutes of delay to the Passenger Services that are attributed to the Franchisee or Network Rail (as the case may be) pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;
- "MML Key Output 1"** has the meaning given to it in the IAD;
- "MML Key Output 1(a)"** has the meaning given to it in the IAD;
- "Model Changes"** has the meaning given in paragraph 4.3 of Schedule 9.1 (*Financial and Other Consequences of Change*);
- "Modernising Retail"⁸⁴** **means the work in relation to modernising the retail of train tickets that is being developed pursuant to and in accordance with the 'Memorandum of Understanding for Modernising Retail' between the Secretary of State and the RDG dated 29 July 2020;**
- "Modified Revenue"** means:
- (a) the sum of:
- (i) the Franchisee's total revenue for the period being reviewed as stated in its profit and loss account:
- (A) including any amounts receivable from the Secretary of State, Network Rail and any interest; but
- (B) excluding the proportion of income recognised in the profit and loss account in relation to grants received in respect of capital expenditure; and
- (ii) the opening cash balance for the period being reviewed excluding:
- (A) any cash held for the exclusive purpose of the provision of the Performance Bond; and

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

- (B) the amount equivalent to:
 - (1) any cash that is held pursuant to any restrictive terms under any agreement and that, consequently, cannot be used for general operating purposes;
 - (2) any cash capable of being drawn down but not actually received,
 - including, in both cases, under any loan or funding agreement or arrangements (including the Funding Deed) entered into with an Affiliate of the Franchisee; and
- (C) the amount of the opening season ticket liabilities which relate to Passenger Services yet to be delivered; and

- (b) either:
 - (i) plus any reduction in total debtors over that period; or
 - (ii) less any increase in total debtors over that period,

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

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

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

“Morning Peak Service” means a Passenger Service which arrives at London St Pancras, Nottingham, Lincoln, Derby, Sheffield, Leicester, Norwich or Manchester in the Morning Peak;

“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” means the National Cyber Security Centre, which is a part of the 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;

“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 Franchise 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 Code”	means the document known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement applying to Network Rail or NR;
“Network Rail”	means in respect of: <ul style="list-style-type: none"> (a) the network or any relevant facility: <ul style="list-style-type: none"> (i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is 1 Eversholt Street, London NW1 2DN; and (ii) any successor in title to the network or any relevant railway facility; or (b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);
“Network Rail’s Traction Electricity Rules”	means the document entitled “ <i>Traction Electricity Rules</i> ” as published by the ORR;
“Network Rail Asset Management Policy”	means the policy set by Network Rail for a holistic asset management approach that includes asset capability, asset performance and reporting, sustainability, asset whole-life cost modelling, forecasting and reporting, cost efficient asset management, and asset management to meet customer service requirements;
“Network Rail 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 responsibility for the same is attributed to Network Rail pursuant to the Track Access Agreement;

“Network Rail Data”

means any information, data and materials that may be provided to the Secretary of State by NR that relates to the Franchisee and which the Secretary of State decides (in his absolute discretion) to add to the RPC Database;

“Network Rail Fixture Asset”

means a tangible asset annotated as such in Column 4 of the table in Appendix 1 (*List of the RV Assets*) to Schedule 14.6 (*Residual Value Mechanism*) which is:

- (a) funded by the Franchisee and affixed to a Station or Depot (as the case may be) such that it is regarded as a fixture to and part of such Station or Depot (as the case may be); and
- (b) designated as a Primary Franchise Assets in accordance with paragraph 2.1 of Schedule 14.4 (*Designation of Franchise Assets*) such that it can be transferred as the unencumbered property of the Franchisee to a Successor Operator at the applicable value specified in Column 2 of the table in Appendix 1 (*List of the RV Assets*) to Schedule 14.6 (*Residual Value Mechanism*) (as such value may be amended during the Franchise Term in accordance with the provisions of paragraphs 1.4 or 2.2 of Schedule 14.6 (*Residual Value Mechanism*));

“Network Rail Partial Cancellation”

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

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

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

“Net Revenue Share”

has the meaning given to it in paragraph 2.1 of Schedule 8.6 (*Forecast Revenue Mechanism*);

“Net Revenue Support”

has the meaning given to it in paragraph 2.1 of Schedule 8.6 (*Forecast Revenue Mechanism*);

“Neutral Branding”

has the meaning given to it in paragraph 4.1 of Schedule 14.2 (*Maintenance of Operating Assets and Branding*);

“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 Results”

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

- (a) the restated values of **FXD, VCRPI, VCAWE, PRPI, ORRPI and PRRPI** to be specified for each Franchisee Year in Appendix 2 (*Figures for Calculation of Annual Franchise Payments*) to Schedule 8.1 (*Franchise Payments*); and
- (b) the restated values of **FPST, SPST and TPST** to be specified for each Franchisee Year in paragraphs 1, 2 and 3 (respectively) of Appendix 1 (*Profit Share Thresholds*) to Schedule 8.2 (*Profit Share Mechanism*); and
- (c) the restated amounts of Target Revenue to be specified for each Franchisee Year in Appendix 1 (*Target Revenue*) to Schedule 8.6 (*Forecast Revenue Mechanism*);

“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 February 2003, but which has since that time been, or is subsequently, served by railway passenger services which have been, or are subsequently to be, included in the Timetable or in another relevant Train Operator’s timetable; and/or
- (b) if the Secretary of State requires, a station, other than a Station, at which, with the consent of the Secretary of State (whether by amendment to the Franchise Agreement or otherwise) railway passenger services operated by the Franchisee call;

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

“Non-Recoverable Costs”⁸⁵

means any costs and expenses incurred by the Franchisee during a Reporting Period (as stated in the Franchisee’s profit and loss account for that Reporting Period) which are inconsistent with the definitions of Costs, EMA Costs, Capital Expenditure and EMA Capital Expenditure;

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

“Notified Fault”	has the meaning given to it in paragraph 9.1 of Schedule 1.4 (<i>Passenger Facing Obligations</i>);
“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 Action Plan”	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“NRPS Benchmark”	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“NRPS Benchmark Table”	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“NRPS Improvement Plan Level”⁸⁶	means, in relation to a NRPS Measure applicable to a NRPS Service Group, the target (expressed as a specific value) which the Franchisee’s performance is expected to equal or exceed during each PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee) (and “NRPS Improvement Plan Levels” shall be construed accordingly);
“NRPS Measure”	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“NRPS Service Group”	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“NRPS Target”⁸⁷	has the meaning given to it in paragraph 1A (Definitions) of Schedule 8.1B (Performance Based Fee);
“Occasion of Tax Non-Compliance”	has the meaning given to it in paragraph 6.3 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
“Off-Peak Passenger Service”	means a Passenger Service that is not a Morning Peak Service or an Evening Peak Service;
“Old Results”	means in relation to any Change, the following as produced in accordance with Schedule 9.1 (<i>Financial and Other Consequences of Change</i>) by or following the Run of the Financial Model in respect of the immediately preceding Change or, in relation to the first Change only, the following as at the date hereof: (a) the values of FXD, VCRPI, VCAWE, PRPI, ORRPI and PRRPI specified for each Franchisee Year in Appendix 2

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

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

(Figures for Calculation of Annual Franchise Payments) to Schedule 8.1 (Franchise Payments); and

- (b) the values of **FPST**, **SPST** and **TPST** specified for each Franchisee Year in paragraphs 1, 2 and 3 of Appendix 1 (Profit Share Threshold) to Schedule 8.2 (Profit Share Mechanism); and
- (c) the amounts of Target Revenue to be specified for each Franchisee Year in Appendix 1 (Target Revenue) to Schedule 8.6 (Forecast Revenue Mechanism);

“On Time”

means the percentage of recorded station stops called at within 59 seconds of the planned time relating to the Franchise as produced and/or published by Network Rail;

“On Time Figures”

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

“OP Target”⁸⁸

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

“Operating Assets”

means all assets (including any Intellectual Property Rights or intangible assets) employed by the Franchisee in the performance of the Franchisee’s obligations under the Franchise Agreement;

“Operational Model” or “OM”

means the following models in the agreed terms marked **OM**:

- (a) revenue model;
- (b) the performance model;
- (c) all cost models; and
- (d) any other relevant models that have generated input to the Financial Model;

“Operational Performance Components”⁸⁹

means each of the matters in relation to which the Operational Performance Fee is assessed using the Quantified Target Methodology, being:

- (a) Cancellations;**
- (b) TOC Minutes Delay;**

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

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

- (c) **Short Formations;**
- (d) **T-3;**
- (e) **T-15; and**
- (f) **All Cancellations;**

“Operational Performance Fee” or “OP”⁹⁰

means the element of the Performance Based Fee, the purpose of which is to measure the Franchisee’s effectiveness in delivering punctual and reliable journeys and in providing an appropriate amount of passenger-carrying capacity

“Original Rolling Stock”

has the meaning given to it in paragraph 2.1(a) of Schedule 1.6 (*The Rolling Stock*);

“ORR”

means the Office of Rail and Road established by section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;

“ORRPI”

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

“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 Franchisee operates passenger services included in the National Rail Timetable;

“Outturn Cost” or “OTC”⁹¹

means, in relation to the relevant PBF Assessment Period, the aggregate of all Costs (excluding Disallowable Costs, Unreimbursed Disallowable Costs and Capital Expenditure) expressed as a positive number, as set out in the Audited Accounts Reconciliation provided pursuant to paragraph 9.4 (*Annual Financial Information*) of Schedule 11.2 (*Management Information*);

“Outturn Profit” or “OTP”⁹²

means, in relation to the relevant PBF Assessment Period, the aggregate of all Revenue (expressed as a positive number) and all Costs (excluding Disallowable Costs and Capital Expenditure and expressed as a negative number), as set out in the Audited Accounts Reconciliation provided pursuant to paragraph 9.4 (*Annual Financial Information*) of Schedule 11.2 (*Management Information*);

“Overall Customer Service Pass Rate”⁹³

has the meaning given to it in paragraph 3.6(b)(iii) of Appendix 5 (*Quantified Target Methodology*) of Schedule 8.1B (*Performance Based Fee*);

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

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

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

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

“Overall Pass Rate”⁹⁴

means the:

- (a) **Overall Station Pass Rate;**
- (b) **Overall Trains Pass Rate; and/or**
- (c) **Overall Customer Service Pass Rate;**

as applicable;

“Overall Performance Score”⁹⁵

means:

- (a) **in respect of an NRPS Measure (other than Dealing With Delays), the average of the scores achieved by the Franchisee (in each case as recorded in the relevant National Rail Passenger Survey(s)) in respect of that NRPS Measure across each of the NRPS Service Groups; and**
- (b) **in respect of the NRPS Measure for Dealing With Delays, the score achieved by the Franchisee (in each case as recorded in the relevant National Rail Passenger Survey) in respect of that NRPS Measure;**

“Overall Station Pass Rate”⁹⁶

has the meaning given to it in paragraph 3.6(b)(i) of Appendix 5 (*Quantified Target Methodology*) of Schedule 8.1B (*Performance Based Fee*);

“Overall Trains Pass Rate”⁹⁷

has the meaning given to it in paragraph 3.6(b)(ii) of Appendix 5 (*Quantified Target Methodology*) of Schedule 8.1B (*Performance Based Fee*);

“Parent”

means NS Groep N.V. a company incorporated in the Netherlands (Company No. 30124358) whose registered office is at Laan van Puntenburg 100, 3511 ER Utrecht;

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

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

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

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

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

“Pass Rate”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<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 Franchisee’s railway passenger services as specified in any Timetable and/or Plan of the Day including those railway passenger services which the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;
“Passenger Survey Methodology”	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 Franchisee’s service commitments to its passengers in the agreed terms marked PC , as amended or replaced from time to time with the prior written consent of the Secretary of State in accordance with paragraph 4 of Schedule 1.4 (<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;
“Passport”	means the confirmation awarded by the Secretary of State to a successful applicant that their application meets the requirements set out in the documentation relating to the OJEU Notice (reference no: 2015/S 189-34364);
“Passport Holder”	means, during the validity period of the relevant Passport, a successful applicant to whom a Passport has been awarded;
“Payment Date”	means the date for the payment of Franchise Payments in accordance with paragraph 2.3 of Schedule 8.1A (<i>Franchise Payments</i>);

"PBF Assessment Period"⁹⁸

means each of the following periods:

- (a) the Initial PBF Assessment Period;
- (b) the Final PBF Assessment Period; and
- (c) each period in the intervening period comprising:
 - (i) the first to the sixth Reporting Period (inclusive) to fall in the relevant Reporting Year; and/or
 - (ii) the seventh to the thirteenth Reporting Period (inclusive) to fall in the relevant Reporting Year,

as the case may be;

"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;

"Percentage Allocation"

has the meaning given to it in the Ticketing and Settlement Agreement (and references to **"Percentage Allocations"** shall be construed accordingly);

"Performance Based Fee"⁹⁹

means the performance-based element of the Franchise Payments as calculated pursuant to Schedule 8.1B (**Performance Based Fee**);

"Performance Bond"

means the Initial Performance Bond and any Replacement Performance Bond, which in each case, shall comply with the requirements of paragraph 4.2 of Schedule 12 (*Financial Covenants and Bonds*);

"Performance Calculation Year"

has the meaning given to it in paragraph 1.1 of Schedule 6.3 (*Contractual Incentive Mitigations*);

"Performance Strategy Plan"

means any joint plan, which the Franchisee 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);

"Performance Sum"

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

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

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

- “Permanent Fare”** has the meaning given to it in the Ticketing and Settlement Agreement;
- “Permitted Aggregate Increase” or “PAI”** has the meaning given to it in paragraph 4.2 of Schedule 5.4 (*Regulation of Fares Basket Values*);
- “Permitted Individual Increase” or “PII”** has the meaning given to it in paragraph 2.2 of Schedule 5.5 (*Regulation of Individual Fares*);
- “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;
- “Placed in Escrow”** means:
- (a) in respect of the Financial Model, delivery of the Financial Model:
 - (i) dated the date of the Franchise Agreement; and
 - (ii) adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (iii) where Schedule 9.1 (*Financial and Other Consequences of Change*) and Schedule 9.2 (*Identity of the Financial Model (Escrow Documents)*) apply, the inputs to the Financial Model derived therefrom following an audit of a Run of the Financial Model; and;
 - (b) in respect of the Operational Model, delivery of:
 - (i) the Operational Model dated the date of the Franchise Agreement;
 - (ii) the Operational Model adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (iii) where Schedule 9.1 (*Financial and Other Consequences of Change*) and Schedule 9.2 (*Identity of the Financial Model (Escrow Documents)*) apply, audited following a Run of the Financial Model and updated with any Revised Inputs; and
 - (c) **NOT USED**;
 - (d) in respect of the Record of Assumptions, delivery thereof, each in accordance with Schedule 9.2 (*Identity of the Financial Model (Escrow Documents)*);

“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 Franchise Term, the Passenger Services scheduled to be operated on that day through specification in the Timetable or as notified to the Franchisee by Network Rail from time to time prior to 2200 on the previous day;
“Planned Delivery Date”	has the meaning given to it in paragraph 1.4(a) of Schedule 14.6 (<i>Residual Value Mechanism</i>);
“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);
“Power of Attorney” or “POA”	means the power of attorney granted by the Franchisee in favour of the Secretary of State in the agreed terms marked POA ;
“Preceding thirteen (13) Reporting Periods”	has the meaning given to it in paragraph 2.1 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
“Preceding Schedule of Contributions”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
“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 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 Franchisee, as part of the development of the RPC Database;
“Previous Franchise Agreement”	means a franchise agreement dated 11 February 2019 under which services equivalent to the Franchise Services (or a material proportion thereof) were provided by East Midlands Trains Limited on or about the day prior to the Start Date;
“Previous Franchisee”	means East Midlands Trains Limited with company number: 05340682 of Prospect House, No.1 Prospect Place, Millennium Way, Derby, Derbyshire, England DE24 8HG;
“Previous Franchisee ITSO Smart Media Ticketing Scheme”	has the meaning given to it in paragraph 1.1 of Schedule 5.9 (<i>Smart Ticketing</i>);
“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;
	means:

- “Primary Franchise Assets”** (a) the property, rights and liabilities of the Franchisee listed in Appendix 1 (*List of Primary Franchise Assets*) to Schedule 14.4 (*Designation of Franchise Assets*); and
- (b) any other property, rights and liabilities of the Franchisee which is or are designated as such pursuant to Schedule 14.4 (*Designation of Franchise Assets*),
- but excluding such property, rights or liabilities as may, in accordance with the terms of the Franchise Agreement, cease to be so designated;
- “Principles of Inclusive Design”** means planning, designing, building and managing places, while having due regard and a proportionate response to stakeholder views obtained through consultation or otherwise, so that they work better for everybody and reflect the diversity of the people who use them as embodied in the document published by the Commission for Architecture and the Built Environment in 2006 with the title ***“The Principles of Inclusive Design”*** (as revised from time to time”);
- “Prior Train Operator”** has the meaning given to it in paragraph 3.1 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*);
- “Priority Station”** has the meaning given to it paragraph 6.3 of Schedule 1.7 (*Stations*);
- “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;
- “Profit Share Components”** has the meaning ascribed to it in paragraph 1.1(a) of Schedule 9.1 (*Financial and Other Consequences of Change*);
- “Projected Revenue”** means the revenue in any Fare Year which is projected to be attributable to any Fare, determined in accordance with paragraph 3 of Schedule 5.4 (*Regulation of Fares Basket Values*);
- “Property Lease”** means any Depot Lease, any lease in respect of a Managed Station Area, any lease in respect of Shared Facilities or any Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which the Franchisee may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Franchise Services;
- “Protected Fare”** means a Protected Return Fare or a Protected Weekly Season Ticket;

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

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

“Protected Weekly Season Ticket”

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

“PRPI”

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

“PRRPI”

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

“Proving Service”

has the meaning set out in paragraph 1.1 of Part 1 of Schedule 6.2 (*Committed Obligations*);

“Proving Service Rolling Stock”

has the meaning set out in paragraph 1.1 of Part 1 of Schedule 6.2 (*Committed Obligations*);

“Public Sector Operator”

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

“Qualifying Change”

means a Change which:

- (a) following a Run of the Financial Model (where Schedule 9.1 (*Financial and Other Consequences of Change*) applies) in accordance with Schedule 9 (*Changes and Variations*) results in adjustments in Franchise Payments over the remaining life of the Franchise Agreement that have a net present value as at the date of the Change in excess of the Threshold Amount for the Franchisee Year during which the relevant Change arises. For the purposes of ascertaining a net present value of the amount of any adjustment in any Franchise Payment, the amount of the adjustment shall be discounted at the prevailing discount rate per annum (in real terms) stated in HM Treasury’s **“Green Book Appraisal Guidelines”**, counting back from the date of receipt of that adjusted Franchise Payment to the date of the Change. As at the date of the Franchise Agreement that rate is three point five per cent (3.5%); or
- (b) the Franchise Agreement expressly provides shall be a Qualifying Change;

"Quantified Target Methodology"¹⁰⁰	means, in relation to a QTM PBF Component, the methodology set out in Appendix 5 (<i>Quantified Target Methodology</i>) of Schedule 8.1B (<i>Performance Based Fee</i>);
"Quarterly Forecast"¹⁰¹	has the meaning given to it in paragraph 9.3(a) of Schedule 11.2 (<i>Management Information</i>);
"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 2nd 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 Franchise"	has the meaning given to it in clause 15.1 (f) (<i>Competition</i>);
"Rail Products"	has the meaning given to it in the Ticketing and Settlement Agreement and references to "Rail Products" shall be construed accordingly;
"Rail Industry Sustainable Development Principles"	means the principles which were published by the Rail Safety and Standards Board in February 2009 as amended from time to time;
"Rail Safety and Standards Board" or "RSSB"	means Rail Safety and Standards Board Limited, a company registered in England with registered number 04655675 whose registered office is at The Helicon, 4th Floor, One South Place, London, EC2M 2RB;
"Rail Safety and Standards Board Sustainable Development Self-Assessment Framework"	means the online self-assessment framework against the Rail Industry Sustainable Development Principles published by the Rail Safety and Standards Board;
"Railway Group"	means the committee responsible for cross industry co-ordination in respect of rail safety legislation and 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

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

Settlement Agreement, or any part of it, and including the Franchisee and any other Train Operator from time to time;

“RDG guidance on Emergency Planning, Knowledge, Understanding and Responsibilities”

means the guidance that sets out industry best practice for planning for responses to major incidents and emergencies entitled *“Emergency Planning, Knowledge, Understanding and Responsibilities”* 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 Franchise Term;

“Reasonable Commercial Manner”

has the meaning given to it in paragraph 11 of Schedule 16.2 (*Deficit Contribution Risk Sharing*);

“Recognised Accreditation Scheme”¹⁰²

means any of the following diversity accreditation schemes:

- (a) Investors in Diversity;**
- (b) Clear Assured;**
- (c) National Equality Standards;**
- (d) Diversity Development Standard;**
- (e) Inclusive Employers; and/or**

such other scheme as the Secretary of State may designate as a Recognised Accreditation Scheme from time to time;

“Reconciliation Amount”

has the meaning given to it in paragraph 10.9 Schedule 9.1 (*Financial and Other Consequences of Change*);

“Record of Assumptions” or “ROA”

means a document in the agreed terms marked **ROA** prepared by the Franchisee (and/or, where Schedule 9.1 (*Financial and Other Consequences of Change*) applies) as may be revised in accordance with Schedule 9 (*Changes and Variations*) and Placed in Escrow providing:

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

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

“Recovery Plan”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
“Redactions”	has the meaning given to it in paragraph 10.1 of Schedule 17 (<i>Confidentiality, Freedom of Information and Data Protection</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 Commuter Fares or Protected Fares for the period of twelve (12) months which ended 31 March 2010 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 Franchisee 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 Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (<i>Regulation of Individual Fares</i>);
“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 (<i>Regulation of Fares Basket Values</i>);
“Regulations”	has the meaning given to it in paragraph 1.2 of Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>);
“Re-inspection Failure”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Relevant Agreement”	means any Property Lease or Access Agreement in relation to any stations or network which may be used from time to time by the Franchisee in connection with the Franchise Services, as replaced or amended from time to time. If and to the extent that: <ul style="list-style-type: none"> (a) following the effective date of any Charge Variation, the Franchisee enters into any Replacement Agreement; (b) the effect of that Charge Variation is reflected in the terms of the Replacement Agreement; and

(c) the Secretary of State has consented to such Replacement Agreement being entered into and constituting a Replacement Agreement for the purposes of this definition,

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

“Relevant Credit Rating” means a credit rating of:

(a) **A- (or better) (A minus or better)** by Standard and Poor’s Corporation or Fitch Ratings Limited in respect of long term senior debt; or

(b) **A3 (or better)** by Moody’s Investors Service Inc. in respect of long term senior debt; or

(c) if any credit rating specified in paragraph (a) or (b) ceases to be published or made available or there is a material change in the basis of any such credit rating, such other rating or standard as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;

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

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

“Relevant Profit Report” has the meaning given to it in paragraph 3.1 of Schedule 8.2 (*Profit Share Mechanism*);

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

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

“Relevant Successor Operator” has the meaning given to it in paragraph 2.2 of Schedule 14.6 (*Residual Value Mechanism*);

“Relevant Tax Authority” means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Affected Party is established;

“Relevant Term” has the meaning given to it in paragraph 3.1(a) of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*);

“Remedial Agreement” has the meaning given to it in paragraph 5.1 of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*);

- “Remedial Plan”** has the meaning given to it in paragraph 3.1(b) of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*);
- “Remedial Plan Notice”** has the meaning given to it in paragraph 2 of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*);
- “Replacement Agreement”** means an agreement entered into as a replacement for any Relevant Agreement;
- “Replacement Copy”** has the meaning given to it in paragraph 2.2(b) of Schedule 9.2 (*Identity of the Financial Model (Escrow Documents)*);
- “Replacement Performance Bond”** means any performance bond issued or to be issued following the issue of the Initial Performance Bond by a Bond Provider to the Secretary of State which complies with the requirements of paragraph 4.2 of Schedule 12 (*Financial Covenants and Bonds*);
- “Reporting Period”¹⁰³** means:
- (a) **for the purposes of the Season Ticket Bond, any consecutive seven (7) day period or any other period, each within a Reporting Period (as defined in paragraph (b)) agreed in accordance with paragraph 5.10 of Schedule 12 (*Financial Covenants and Bonds*); or**
 - (b) **for all other purposes, a period of twenty eight (28) days, provided that:**
 - (i) **the first such period during the Franchise Period shall exclude any days up to but not including the Start Date;**
 - (ii) **the first and last such period in any Reporting Year may be varied by up to seven (7) days by notice from the Secretary of State to the Franchisee;**
 - (iii) **each such period shall start on the day following the last day of the preceding such period; and**
 - (iv) **the last such period during the Franchise Period shall end at the end of the Franchise Period, except for the purpose of giving effect to any provision which survives the end of the Franchise Period including those provisions in Schedule 8.1A (*Franchise Payments*) which anticipate Franchise Payments being made after the end of the Franchise Period;**

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

“Reporting Year”	means a period normally commencing on 1 April in each calendar year, comprising thirteen (13) consecutive Reporting Periods;
“Request for Data”¹⁰⁴	has the meaning given to it in paragraph 12.4(a) of Schedule 11.2 (<i>Management Information</i>);
“Request for Information”	means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations;
“Requested Trigger Event”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
“Required Improvement”	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“Required Performance Improvement”¹⁰⁵	<p>means an improvement in the Franchisee’s performance against:</p> <ul style="list-style-type: none"> (a) the OP Target for Cancellations so that such performance is within or better than the OP Target for Cancellations; and/or (b) the OP Target for TOC Minutes Delay so that such performance is within or better than the OP Target for TOC Minutes Delay; and/or (c) the OP Target for T-3 so that such performance is within or better than the OP Target for T-3; and/or (d) the OP Target for T-15 so that such performance is within or better than the OP Target for T-15; and/or (e) the OP Target for All Cancellations so that such performance is within or better than the OP Target for All Cancellations; (f) the OP Target for Short Formations so that such performance is within or better than the OP Target for Short Formations.
“Revenue Foregone”¹⁰⁶	<p>means an amount equal to the amount of Revenue or other value which was not received or receivable by the Franchisee, including:</p> <ul style="list-style-type: none"> (a) the: <ul style="list-style-type: none"> (i) debts or other receivables waived, not collected or written off; and/or

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

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

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

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

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

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

- (i) incurring Disallowable Costs; and/or

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

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

"Revenue Share Adjustment"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Revenue Share Reconciliation Amount"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Revenue Share Reconciliation Date"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Revenue Support Adjustment"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Revenue Support Reconciliation Amount"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Revenue Support Reconciliation Date"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Review Procedures"	has the meaning given to it in paragraph 3.5 of Schedule 8.2 (<i>Profit Share Mechanism</i>);
"Revised Inputs"	has the meaning given to it in paragraph 4.2 of Schedule 9.1 (<i>Financial and Other Consequences of Change</i>);
"Revised RV Asset Transfer Values"	has the meaning given to it in paragraph 1.3 (c) of Schedule 14.6 (<i>Residual Value Mechanism</i>);
"Revised Proposal"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Return Fare"	means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, a journey in each direction in Standard Class

Accommodation between the stations and/or the zones for which such Fare is valid and which expires no earlier than 0200 hours on the day after the day of the outward journey or, if later, the time the relevant return journey may be completed if commenced before 0200 hours;

"Rolling Stock Lease"	means any agreement for the leasing of rolling stock vehicles to which the Franchisee is a party as at the Start Date and any agreement of a similar or equivalent nature (including, any agreement or arrangement for the subleasing, hiring, licensing or other use of rolling stock vehicles) to which the Franchisee is a party from time to time during the Franchise Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement;
"Rolling Stock Related Contract"	means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;
"Rolling Stock Units"	has the meaning given to it in paragraph 1(c) of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>);
"ROSCO"	means any company leasing rolling stock vehicles to the Franchisee under a Rolling Stock Lease;
"Route"	means any route specified in the Timetable over which the Franchisee has permission to operate the Passenger Services pursuant to any Track Access Agreement;
"Route 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 (<i>Passenger Facing Obligations</i>);
"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 (<i>Information about Passengers</i>) 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;
"RPI"	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>);
"Retail Prices Index"	means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics as "RPI" or, if such index shall cease to be published or there is, in the reasonable opinion of the Secretary of State, a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;
"RPIX"	has the meaning given to it in paragraph 6.2 (a) of Schedule 7.2 (<i>Customer Experience and Engagement</i>);

“RSP”	means Rail Settlement Plan Limited;
“RSPS3002”	has the meaning given to it in paragraph 1.1 of Schedule 5.9 (<i>Smart Ticketing</i>);
“Run of the Financial Model”	means a run of the Financial Model with the Revised Inputs which complies with the requirements of Schedule 9.1 (<i>Financial and Other Consequences of Change</i>);
“RV Asset”	(a) a Franchisee Owned RV Asset; and/or (b) a Network Rail Fixture Asset;
“RV Asset Transfer Values”	has the meaning given to it in paragraph 1.4(c) of Schedule 14.6 (<i>Residual Value Mechanism</i>);
“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;
“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, against which the Franchisee will be assessed (as amended or replaced from time to time);
“Safety Authorisation”	means the authorisation issued by the ORR under the Safety Regulations authorising the Franchisee’s safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Routes;
“Safety Certificate”	means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Franchisee’s safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe operation on the Routes;
“Safety Regulations”	means the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended pursuant to the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2006);
“Saver Return Fare”	means a Return Fare which is shown as a saver fare in the fares manuals and systems of the RSP as at the date of such manuals;
“Schedule of Contributions”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
“Scheduled Consist Data”	means information as to the type of individual vehicles of rolling stock that have been scheduled by the Franchisee to form a train in the Train Fleet for any particular Passenger Service and the manner in which they are scheduled to be configured;
“Season Ticket Bond”	means the season ticket bond to be provided to the Secretary of State in respect of the Franchisee’s liabilities under certain Fares and Season Ticket Fares in the form set out in Appendix 2

(*Template Form of Season Ticket Bond*) to Schedule 12 (*Financial Covenants and Bonds*) and such other bond as may replace it from time to time under Schedule 12 (*Financial Covenants and Bonds*);

“Season Ticket Fare”

means:

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

“Second Profit Share Threshold” or “SPST”

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

“Secretary of State Risk Assumptions”

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

“Secretary of the Access Disputes Committee”

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

“Secure Car Parks Accreditation”

has the meaning given to it in paragraph 6.7 of Schedule 1.7 (*Stations*);

“Secure Car Parks Scheme”

has the meaning given to it in paragraph 6.7 of Schedule 1.7 (*Stations*);

“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;

“Security in the Design of Stations Guidance”

means the “Security in Design of Stations (SIDOS)” Guidance published by the Secretary of State, the British Transport Police and the Centre for the Protection of National Infrastructure dated July 2012 as amended, updated or replaced from time to time, and/or any other relevant security guidance as reasonably directed by the Secretary of State;

“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 Quality Area”

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

“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 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 Franchisee:</p> <p>(a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best possible level of service given such disruption, including by:</p> <ul style="list-style-type: none"> (i) keeping service intervals to reasonable durations; (ii) keeping extended journey times to reasonable durations; and (iii) managing any resulting overcrowding; <p>(b) to:</p> <ul style="list-style-type: none"> (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and (ii) prior to the attainment of the level of service specified in paragraph (b)(i) operate any reduced level of service agreed with Network Rail for the purpose of minimising such disruption pursuant to paragraph (a); <p>(c) in accordance with the principles of service recovery set out in the “Approved Code of Practice: Contingency Planning for Train Service Recovery - Service</p>

Recovery 2013” or any document of a similar or equivalent nature; and

- (d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:
- (i) agreed at an initial and, where required, subsequent telephone conference between the Franchisee, Network Rail and any other affected Train Operator; and
 - (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of Network Rail,

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

“Settlement Proposal”	has the meaning given to it in paragraph 3.2 of Schedule 4 (<i>Accessibility and Inclusivity</i>);
“Shared Cost Percentage”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
“Shared Facilities”	means those facilities in respect of which the Franchisee and Network Rail carry out their respective activities concurrently;
“Short Formation Benchmark”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Short Formation Benchmark Table”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Short Formation Performance Sum”	means an amount determined in accordance with paragraph 22.5 of Schedule 7.1 (<i>Operational Performance</i>) which is payable by the Franchisee to the Secretary of State;
“Short Formation Figures”	means the number of Passenger Services in any Reporting Period formed with less than the required Passenger Carrying Capacity specified in the Train Plan;
“Short Formations”¹⁰⁷	means Passenger Services in any Reporting Period formed with less than the required Passenger Carrying Capacity specified in the Train Plan;
“Significant Alterations”	shall, in relation to any proposed new or amended Timetable, include alterations from the then current Timetable which result in, or are likely to result in: <ul style="list-style-type: none"> (a) the addition or removal of railway passenger services;

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

- (b) changes to stopping patterns or destinations or origin;
- (c) changes of timings 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 Franchisee 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;

“Skills Gap Analysis”

means an analysis of any skills gaps within the Franchisee’s organisation, carried out in accordance with the National Skills Academy for Rail’s ‘Skills Intelligence Model’;

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

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

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

The three categories are:

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

“Smart Media”

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

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

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

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

"SoS Activation Date" has the meaning given to such term in paragraph 1.1 of Schedule 6.3 (*Contractual Incentive Mitigations*);

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

"SoS Claim"¹⁰⁸ means all losses, liabilities, costs, damages and expenses that the Secretary of State does or will incur or suffer (including any such losses, liabilities, costs, damages and expenses that are unliquidated or which are contingent):

- (a) as a consequence of any breach, negligence or other default of the Franchisee under or in connection with the Franchise Agreement and/or any agreement ancillary to this Franchise Agreement, the ERMA and/or the EMA, including the Supplemental Agreement; and/or
- (b) in respect of any matter for which the Franchisee is to indemnify the Secretary of State pursuant to this Franchise Agreement, the ERMA and/or the EMA or any agreement ancillary to this Franchise Agreement, the ERMA and/or the EMA, including the Supplemental Agreement;

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

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

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

“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;
“Specifically Included Change of Law”	has the meaning given to it in the definition of Change of Law;
“Specified Additional Rolling Stock”	has the meaning given in paragraph 2.1(b) of Schedule 1.6 (<i>The Rolling Stock</i>);
“SQR Benchmark”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“SQR Component”¹⁰⁹	means each of: <ul style="list-style-type: none"> (a) the SQR Trains Component; (b) the SQR Stations Component; and (c) the SQR Customer Service Component;
“SQR Customer Service”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“SQR Customer Service Benchmark”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“SQR Customer Service Component”¹¹⁰	means those Service Quality Areas that relate to customer service, as more particularly described in paragraph 3.6 (Calculation of CE(SQR)) of Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee);
“SQR Improvement Plan Level”¹¹¹	means, in relation to a Service Quality Area, the target (expressed as a specific value) which the Franchisee’s performance is expected to equal or exceed during each Reporting Period that falls within the relevant PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee) (and “SQR Improvement Plan Levels” shall be construed accordingly);
“SQR Management System”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);

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

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

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

“SQR Methodology”¹¹²	means the methodology set out in paragraph 3.6 (Calculation of CE(SQR)) of Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee);
“SQR Register”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (Service Quality Regime);
“SQR Station”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (Service Quality Regime);
“SQR Station Benchmark”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (Service Quality Regime);
“SQR Stations Component”¹¹³	means those Service Quality Areas that relate to Stations, as more particularly described in paragraph 3.6 (Calculation of CE(SQR)) of Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee);
“SQR Target”¹¹⁴	means the target which applies to a SQR Component, expressed as a range within which the Franchisee’s performance is expected to fall, during the relevant PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee);
“SQR Train”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (Service Quality Regime);
“SQR Train Benchmark”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (Service Quality Regime);
“SQR Trains Component”¹¹⁵	means those Service Quality Areas that relate to trains engaged in the provision of Passenger Services as more particularly described in paragraph 3.6 (Calculation of CE(SQR)) of Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee);
“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

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

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

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

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

been reserved by such purchaser shall be deemed to have been made so available if, had it not been so reserved, it would have been available for use by such purchaser);

“Standard Contribution Calculation Period”

has the meaning given to it in paragraph 11 of Schedule 16.2 (*Deficit Contribution Risk Sharing*);

“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>;

“Start Date”

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

- (a) 02:00 on 18 August 2019; or
- (b) such time and date as may be notified to the Franchisee by the Secretary of State pursuant to:
 - (i) Clause 4.2 of the Conditions Precedent Agreement; or
 - (ii) Clause 4.3 of the Conditions Precedent Agreement; or
- (c) such time and date as may be notified to the Franchisee by the Secretary of State pursuant to clause 5.3 (a) (Amendment of Start Date/Expiry Date) of this Agreement;

“Start Date Transfer Scheme”

has the meaning given to it in Clause 6.1 of the Conditions Precedent Agreement;

“Station”

means:

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

“Station Access Conditions”

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

“Station Asset Management Plan”

means the plan created by the Franchisee pursuant to paragraph 1 of Schedule 1.7 (*Stations*) and as amended from time to time in accordance with the provisions of Schedule 1.7 (*Stations*);

“Station Asset Management Plan Accreditation”	means the certification of the Franchisee’s station asset management organisation and systems for Stations as complying with the requirements of ISO55001:2014 (or such other reasonably equivalent standard as may be approved in writing by the Secretary of State from time to time in place of ISO55001:2014);
“Station Asset Management Plan Accreditation Certificate”	has the meaning given to it in paragraph 1.11(b) of Schedule 1.7 (<i>Stations</i>);
“Station Change”	has the meaning given to the term “Proposal” under the Station Access Conditions;
“Station Charge Adjustment”	means any adjustment to payments under an Access Agreement determined in accordance with paragraph 2 of Schedule 8.3 (<i>Track Access Adjustments and Station Charge Adjustments</i>);
“Station Lease” or “SL”	means: <ul style="list-style-type: none"> (a) any lease of a station that the Franchisee is a party to as at the Start Date; or (b) a lease of any other station to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;
“Station Service”	means any service specified in paragraph 2 of Part 1 (<i>Franchise Services</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>) which may be provided by the Franchisee at the Stations;
“Station Service Quality Inspection”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Station Social and Commercial Development Plan” or “SCDP”	means the Franchisee’s station social and commercial development plan in the agreed terms marked SCDP , as such plan may be updated in accordance with the provisions of paragraph 3 of Schedule 1.7 (<i>Stations</i>);
“Station Sublease”	means a lease or sub lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator;
“STNR Data”	means all CRM Data, Yield Management Data and/or Actual Passenger Demand information processed or generated by the STNR System;
“STNR Project”	means the project for implementing and operating an interoperable smart ticketing solution on the National Rail Network allowing passengers to make complete journeys on the National Rail Network using a smartcard as a ticket. For the purpose of this definition “National Rail Network” has the meaning given to it in the National Conditions of Travel;

- “STNR Scope of Work”** means the scope of works, services and activities in respect of the STNR Project as set out in the document in agreed terms marked “STNRSOW” specified in the 2015 Franchise Agreement;
- “STNR System”** means collectively the IT systems (hardware and software) and collective functionality of the IT system to deliver the requirements set out and marked as a “yes” in column 5 in Annex A of the STNR Scope of Work required for a smart ticketing solution as detailed in Annex B and Annex C of the SNTR Scope of Work;
- “Stored Credit Balance”** means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium);
- “Subcontractor”** has the meaning given to it in paragraph 7.3 (b) of Schedule 1.5 (*Information about Passengers*);
- “Subsequent Reporting Stage”** has the meaning given to it in paragraph 1.1 of Schedule 7.1 (*Operational Performance*);
- “Suburban Station”** means any station which is not a London Station and which is listed below or is closer to London than (and on the same line as) the following stations:
- (a) Shoeburyness;
 - (b) Southend Victoria;
 - (c) Southminster;
 - (d) Marks Tey (excluding Sudbury branch);
 - (e) Audley End (but not including Stansted Airport);
 - (f) Ashwell & Morden;
 - (g) Arlesey;
 - (h) Harlington;
 - (i) Bletchley (excluding Bedford branch);
 - (j) Aylesbury;
 - (k) Haddenham & Thame Parkway;
 - (l) Twyford (including Henley branch);
 - (m) Windsor & Eton Riverside;
 - (n) Earley;
 - (o) Fleet;
 - (p) Alton;
 - (q) Witley;
 - (r) Christ’s Hospital,
 - (s) Brighton (excluding Coastway);
 - (t) East Grinstead;
 - (u) Crowborough;
 - (v) Wadhurst;
 - (w) Paddock Wood (including the line between Strood and Paddock Wood);
 - (x) Maidstone East;
 - (y) Canterbury East; and
 - (z) Margate;
- “Successor Operator”** means a Train Operator succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Franchisee by the Secretary of State) the Franchisee in the provision or operation of all or any of the Franchise Services

including, where the context so admits, the Franchisee where it is to continue to provide or operate the Franchise Services following termination of the Franchise Agreement;

“Successor Operator Timetable”

has the meaning given to it in paragraph 2.2(a) of Schedule 14.1 (*Maintenance of Franchise*);

“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);

“Supplemental Agreement”

means a supplemental agreement between the Franchisee and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of Appendix 2 (*Template Form of Supplemental Agreement*) to Schedule 15.4 (*Provisions applying on and after Termination*), but subject to such amendments as the Secretary of State may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such supplemental agreement between the date of the Franchise Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4 (*Provisions applying on and after Termination*);

“Sustainable Development Strategy” or “SDS”

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

“Target Cost” or “TC”¹¹⁶

means, in relation to:

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

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

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

“Target Cost Record of Assumptions”¹¹⁷

means a record of assumptions setting out:

- (a) the non-trivial assumptions, methodologies and data sources used to prepare the Target Cost Template in sufficient detail to document a line-by-line understanding of the contents of the Target Cost Template;
- (b) an explanation in relation to any deviations from preceding cost trends; and
- (c) any updates to the Budget Supporting Materials;

“Target Cost Template”¹¹⁸

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

“Target Passenger Demand”

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

“Target Performance Level”

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

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

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

¹¹⁹“Target Profit” or “TP” means, in relation to:

- (a) any PBF Assessment Period beginning on 1 April of any year, the aggregate of:
 - (i) all forecast items of Revenue falling within the relevant PBF Assessment Period set out in the profit and loss accounts included in the Annual Business Plan, expressed as a positive number; and
 - (ii) all forecast items of Cost falling within the relevant PBF Assessment Period (excluding any Capital Expenditure, forecast Non-Recoverable Costs or forecast Disallowable Costs) included in the Annual Business Plan, expressed as a negative number; and
- (b) any PBF Assessment Period beginning on any date other than 1 April of any year, the aggregate of:
 - (i) all forecast items of Revenue falling within the relevant PBF Assessment Period set out in the profit and loss accounts included in the Quarterly Financial Information, expressed as a positive number; and
 - (ii) all forecast items of Cost falling within the relevant PBF Assessment Period (excluding any Capital Expenditure, forecast Non-Recoverable Costs or forecast Disallowable Costs) included in the Quarterly Financial Information, expressed as a negative number;

“Target Profit Record of Assumptions”¹²⁰ means a record of assumptions setting out:

- (a) the non-trivial assumptions, methodologies and data sources used to prepare the Target Profit Template in sufficient detail to document a line-by-line understanding of the contents of the Target Profit Template;
- (b) an explanation in relation to any deviations from preceding cost and/or revenue trends; and
- (c) any updates to the Budget Supporting Materials;

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

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

“Target Profit Template”¹²¹	has the meaning given to it in paragraph 5.2(a) of Schedule 8.1B (Performance Based Fee);
“Target Revenue”	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
“Target Revenue Amounts”	means the amounts of Target Revenue for each Franchisee Year specified in the table set out in Appendix 1 (<i>Target Revenue</i>) to Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
“Target Ticketless Travel Benchmark”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“Taxation”	means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of the Franchise Agreement and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere;
“TDR Amendment”	has the meaning given to it in paragraph 12.8 of Part 2 (<i>Service Development</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>);
“Technical Support Contract”	means a contract for technical support to which the Franchisee is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;
“Tendering/Reletting Process”	means either of the processes described in paragraph 1.1 and 1.2 of Schedule 15.1 (<i>Reletting Provisions</i>);
“Termination Event”	has the meaning given to it in paragraph 2 of Schedule 10.2 (<i>Events of Default and Termination Events</i>);
“Termination Notice”	means a notice from the Secretary of State to the Franchisee terminating the Franchise Agreement following an Event of Default or a Termination Event in accordance with Schedule 10.2 (<i>Events of Default and Termination Events</i>);
“The Pensions Regulator”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</i>);
“Third Party Data”	means any information, data and materials that may be provided to the Secretary of State by any third party that relates to the Franchisee and which the Secretary of State decides (in his absolute discretion) to add to the RPC Database;
“Third Profit Share Threshold” or “TPST”	has the meaning given to it in paragraph 1.1(c) of Schedule 8.2 (<i>Profit Share Mechanism</i>);
“Threshold Amount”	has the meaning given to it in Appendix 1 (<i>Definition of Threshold Amount</i>) to Schedule 9.1 (<i>Financial and Other Consequences of Change</i>);

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

“Through Ticketing (Non-Travelcard) Agreement”	means the agreement of that name referred to in paragraph 4.1(e) of Appendix 1 (<i>List of Transport, Travel and Other Schemes</i>) to Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>);
“Ticketing and Settlement Agreement”	means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the Franchisee and the other Train Operators named therein, as amended from time to time with the approval of the Secretary of State;
“Ticketless Travel Benchmark”	has the meaning given to such term in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“Ticketless Travel Payment Adjustment”	has the meaning given to such term in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“Ticketless Travel Rate”¹²²	means, for any PBF Assessment Period, that proportion (expressed as a percentage to three decimal places) of revenue estimated by the Ticketless Travel Survey for that PBF Assessment Period to be associated with passengers travelling on the Passenger Services without a valid ticket or other valid permission to travel;
“Ticketless Travel Survey”	means: <ul style="list-style-type: none"> (a) for the purposes of paragraph 8 of Part 3 of Schedule 6.2 (<i>Franchise Specific Obligations</i>), the survey carried out by or on behalf of the Secretary of State in each Ticketless Travel Survey Period for the purposes of submitting to the Secretary of State the report required pursuant to paragraph 8.3 of Part 3 of Schedule 6.2 (<i>Franchise Specific Obligations</i>);,; and (b) for the purposes of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>), the survey carried out by or on behalf of the Secretary of State in each Ticketless Travel Survey Period for the purposes to determine the Ticketless Travel Rate for such period,
“Ticketless Travel Survey Methodology”	means the document in the agreed terms marked TISM ;
“Ticketless Travel Survey Period”	means such day or days as are determined by the Secretary of State falling within each of the following periods: <ul style="list-style-type: none"> (a) for the purposes of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>): <ul style="list-style-type: none"> (i) the first to the sixth Reporting Period (inclusive) to fall in any Performance Calculation Year; and

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

- (ii) the seventh to the thirteenth Reporting Period (Inclusive) to fall in any Performance Calculation Year; and
- (b) for the purposes of paragraph 8 (*Ticketless Travel Surveys*) of Part 3 of Schedule 6.1 (*Franchise Specific Obligations*):
- (i) the first to the sixth Reporting Period (inclusive) to fall in any Franchisee Year; and
- (ii) the seventh to the thirteenth Reporting Period (Inclusive) to fall in any Franchisee Year;
- “Ticketless Travel Rate”** has the meaning given to such term in paragraph 1.1 of Schedule 6.3 (*Contractual Incentive Mitigations*);
- “T-3 Performance Sum”** means an amount determined in accordance with paragraph 22.7A of Schedule 7.1 (*Operational Performance*) payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final Franchisee Year where the provisions of paragraph 29 shall apply) by the Franchisee (as the case may be);
- “T-15 Performance Sum”** means an amount determined in accordance with paragraph 22.7B of Schedule 7.1 (*Operational Performance*) payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final Franchisee Year where the provisions of paragraph 29 shall apply) by the Franchisee (as the case may be);
- “Timetable”** means the timetable which reflects the working timetable issued by Network Rail at the conclusion of its timetable development process, containing the departure and arrival times of:
- (a) all Passenger Services which call at Stations and/or Franchisee Access Stations; and
- (b) principal Connections at those stations and other stations;
- “Timetable Development Rights”** means all or any of the rights of the Franchisee under any Track Access Agreement to:
- (a) operate Passenger Services and ancillary movements by virtue of that Track Access Agreement;
- (b) deliver any required notification and/or declaration to Network Rail in respect of its intention to exercise any rights;
- (c) make or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Network Code;
- (d) surrender any Train Slots allocated to the Franchisee by Network Rail in accordance with the Network Code;

- (e) object to, make representations, appeal or withhold consent in respect of any actual or proposed act or omission by Network Rail; and
- (f) seek from Network Rail additional benefits as a condition to granting any consent to any actual or proposed act or omission by Network Rail;

“Timetable Planning Rules”	has the meaning given to it in the Network Code;
“Timetable Period”	has the meaning set out in paragraph 1.1 of Part 1 of Schedule 6.2 (<i>Committed Obligations</i>);
“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 (for example, the 11:30 service departing London St Pancras to Sheffield on a Sunday etc.);
“Timetabling and Train Planning Compliance Investigation”	has the meaning set out in paragraph 2.1 of Schedule 1.2 (<i>Operating Obligations</i>);
“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;
“TOC Minute Delay Benchmark”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“TOC Minute Delay Benchmark Table”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“TOC Minute Delay Performance Sum”	means an amount determined in accordance with paragraph 22.4 of Schedule 7.1 (<i>Operational Performance</i>) payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final Franchisee Year, where the provisions of paragraph 29 of Schedule 7.1 (<i>Operational Performance</i>) shall apply) by the Franchisee (as the case may be);

“TOC Minutes Delay”¹²³	means the minutes of delay to the Passenger Services that are attributed to the Franchisee pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;
“Total Actual Operating Costs”	means the sum of the Actual Operating Costs for the relevant Reporting Period and each of the twelve (12) preceding Reporting Periods during the Franchise Term (or the sum of the Actual Operating Costs for the relevant Reporting Period and all of the Reporting Periods that have elapsed since the Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made);
“Total Forecast Modified Revenue”	means the sum of the Forecast Modified Revenue for each of the thirteen (13) Reporting Periods following the relevant Reporting Period (or, where there are less than thirteen (13) Reporting Periods remaining in the Franchise Term, the remaining Reporting Periods);
“Total Forecast Operating Cost”	means the sum of the Forecast Operating Cost for each of the thirteen (13) Reporting Periods following the relevant Reporting Period (or, where there are less than thirteen (13) Reporting Periods remaining in the Franchise Term, the remaining Reporting Periods);
“Total Modified Revenue”	means the sum of the Modified Revenue for the relevant Reporting Period and each of the twelve (12) preceding Reporting Periods during the Franchise Term (or the sum of the Modified Revenue for the relevant Reporting Period and all of the Reporting Periods that have elapsed since the Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made);
“Track Access Adjustment”	means any adjustment to payments under a Track Access Agreement determined in accordance with paragraph 1 of Schedule 8.3 (<i>Track Access Adjustments and Station Charge Adjustments</i>);
“Track Access Agreement”	means each Access Agreement between Network Rail and the Franchisee which permits the Franchisee to provide the Passenger Services on track operated by Network Rail;
“Train Fleet”	means: <ul style="list-style-type: none"> (a) the rolling stock vehicles described in or required by Schedule 1.6 (<i>The Rolling Stock</i>); and (b) any other rolling stock vehicles the Secretary of State consents to in accordance with paragraph 3 of Schedule 1.6 (<i>The Rolling Stock</i>);

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

“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>Franchise 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>Franchise Services and Service Development</i>) as such train service requirement may subsequently be amended or replaced in accordance with Schedule 1.1 (<i>Franchise Services and Service Development</i>);
“Train Slots”	has the meaning given to it in the Network Code;
“Transaction”	has the meaning given to it in clause 15.1(g) (<i>Competition</i>);
“Transfer Scheme”	means a transfer scheme made by the Secretary of State under section 12 and Schedule 2 of the Railways Act 2005 (or equivalent statutory provision) pursuant to paragraph 3.1 of Schedule 15.4 (<i>Provisions applying on and after Termination</i>), being substantially in the form of Appendix 1 (<i>Template Form of Transfer Scheme</i>) to Schedule 15.4 (<i>Provisions applying on and after Termination</i>), but subject to such amendments as the Secretary of State may make thereto as a result of any change of Law affecting such transfer scheme or other change of circumstances between the date of the Franchise Agreement and the date on which such scheme is made;
“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 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);
“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;

“Trustee”	has the meaning given to it in paragraph 4.1 of Schedule 16.1 (<i>Railways Pension Scheme</i>);
“TRH Score”	has the meaning given to it in paragraph 6.7 of Schedule 1.7 (<i>Stations</i>);
“TSI”	means any Technical Standard for Interoperability with which the Franchisee is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;
“Turnaround Time”	means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles;
“Turnover”	means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchisee from the sale of Fares, other revenue and the receipt of Franchise Payments during such period;
“UK Data Protection Legislation”	means any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation;
“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>);
“Unreimbursed Disallowable Costs”¹²⁴	has the meaning given to it in paragraph 9.16 of Schedule 8.1A (<i>Franchise Payments</i>);
“Upper Threshold Amount”	has the meaning given to it in paragraph 11 of Schedule 16.2 (<i>Deficit Contribution Risk Sharing</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;

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

“Value Added Tax”	means value added tax as provided for in the Value Added Tax Act 1994;
“Variation”	means a variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 9.3 (<i>Variations to the Franchise Agreement and Incentivising Beneficial Changes</i>);
“VCAWE”	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>);
“VCRPI”	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>);
“Wavelength Survey”¹²⁵	means the weekly survey relating to the Passenger Services (in such form as may be agreed from time to time), which is undertaken as part of the Wavelength Programme to monitor, amongst other things, the Franchisee’s performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities;
“Weekday”	means any day other than a Saturday, a Sunday or a Bank Holiday;
“Weekly Season Ticket”	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls seven (7) days after such day;
“Workforce Diversity Data”¹²⁶	<p>means data on the diversity of the Franchisee’s workforce including statistics showing:</p> <ul style="list-style-type: none"> a) the gender, race, disability, sexual orientation and working pattern breakdown for specified jobs, categories and levels; b) religion and gender reassignment across the whole workforce; c) the promotion of the Franchisee’s workforce that fall into the following groups: marriage and civil partnership; pregnancy and maternity; social mobility; and parental leave and caring responsibilities; and d) such other data as the Secretary of State may notify the Franchisee in accordance with paragraph 9.9..6(b) of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);

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

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

- “Working Capital Payment”¹²⁷** means the Franchise Payment Component calculated in accordance with paragraph 12.3 of Schedule 8.1A (*Franchise Payments*);
- “Working Capital Repayment”¹²⁸** means the Franchise Payment Component calculated in accordance with paragraph 13.2 of Schedule 8.1A (*Franchise Payments*);
- “Yield Management Data”** means data collected by or on behalf of the Franchisee for the purpose of or in connection with managing or setting the prices at which any tickets for travel on the Passenger Services are sold and/or any quotas and/or restrictions applying to such tickets including:
- (a) the number of passengers travelling upon any particular Passenger Service;
 - (b) the ticket types held by such passengers;
 - (c) the prices paid by such passengers for such tickets; and
 - (d) the dates and/or times between which such tickets were made available to purchase at such prices;
- “Yield Management System”** means any system (whether a Computer System or otherwise) for the collection of Yield Management Data and/or onto which Yield Management Data is input, processed and/or held as such system may be amended or altered from time to time; and
- “Zone”** means a zone set out in the map in Schedule 2 of the Travelcard Agreement on the date such agreement came into effect or as amended by agreement with the Secretary of State.

4. COMMENCEMENT

- 4.1 All the clauses of this Agreement (save for clause 15 (*Competition*)) and the following Schedules of this Agreement shall take effect and be binding upon each of the Secretary of State and the Franchisee immediately upon signature of this Agreement:
- (a) paragraph 8 (Subcontracting any Passenger Services) of Schedule 1.1 (*Franchise Services and Service Development*);
 - (b) paragraph 9 (Train Service Requirement Purpose and Responsibility) of Schedule 1.1 (*Franchise Services and Service Development*);
 - (c) paragraph 10 (*Train Plan*) of Schedule 1.1 (*Franchise Services and Service Development*);
 - (d) paragraph 14.4 (*Finalising the Train Plan*) of Schedule 1.1 (*Franchise Services and Service Development*);

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

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

- (e) paragraph 4.3 (*Publishing the Passenger's Charter*) of Schedule 1.4 (*Passenger Facing Obligations*);
- (f) Schedule 2.1 (*Asset Vesting and Transfer*);
- (g) paragraph 2 (*Rolling Stock Related Contracts and Insurance Arrangements*) and paragraph 3 (*Cascaded Rolling Stock and Delayed Cascade Mitigation Plan*) of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*);
- (h) paragraph 1 (*Other Franchisees*) of Schedule 2.3 (*Other Franchisees*);
- (i) paragraph 4.3 (*Specific additional obligations relating to people with disabilities*) of Schedule 4 (*Accessibility and Inclusivity*);
- (j) Schedule 5.1 (*Purpose, Structure and Construction*);
- (k) Schedule 5.3 (*Allocation of Fares to Fares Baskets*);
- (l) Schedule 5.7 (*Changes to Fares and Fares Regulation*);
- (m) Schedule 5.9 (*Smart Ticketing*);
- (n) paragraphs 6.1(h) (*Community Rail Partnerships*), 13.6(a) (*Conduct of baseline condition survey*), 13.7(a)(iii) (*Rolling Stock Innovation Fund*), 15.1 (*New Five Car BMUs*), 21.1 (*Establishment of a New Trains Project Delivery Team*), 26.1 (*QlikView*), 27.1(a) (*Monitoring and Reporting Subthreshold Delays*), 29.2(a) (*Development of Marketing Partnerships*), 29.6 (*Special Events Marketing Fund*), 51.2 (*Station Facilities Management*);
- (o) Schedule 6.4 (*Alliances*);
- (p) paragraph 10 of Schedule 7.2 (*Customer Experience and Engagement*);
- (q) Schedule 9 (*Changes and Variations*);
- (r) Schedule 10 (*Remedies, Events of Default and Termination Events*);
- (s) paragraphs 1 (*Corporate Information*), 3 (*Identification of Key Personnel and Provision of Organisation Chart*), 5 (*Maintenance of Records*), 6 (*Right to inspect*) and 8 (*Periodic Update Reports*) of Schedule 11.2 (*Management Information*);
- (t) paragraph 4 (*Performance Bond*) of Schedule 12 (*Financial Covenants and Bonds*);
- (u) paragraph 2.8 (*Community Rail Partnerships*) of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);
- (v) Schedule 14.3 (*Key Contracts*);
- (w) Schedule 15.1 (*Reletting Provisions*);
- (x) paragraph 1.1 (*Handover Package Status*) of Schedule 15.3 (*Handover Package*); and
- (y) Schedule 17 (*Confidentiality, Freedom of Information and Data Protection*).

4.2 The other provisions of this Agreement (including clause 15 (*Competition*)) shall take effect and become binding upon the Parties on the Start Date as stated in the Certificate of Commencement issued pursuant to the Conditions Precedent Agreement.

5. DURATION OF THE FRANCHISE AGREEMENT

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

5.2 Additional Reporting Periods

(a) If the Secretary of State gives notice to the Franchisee by no later than 1 June 2027, the Franchise Agreement shall continue after such date on the terms set out in the Franchise Agreement for not less than one and (subject to sub-clause 5.2(b) below) not more than twenty six (26) Reporting Periods following the date set out in limb (a) of the definition of Expiry Date, as the Secretary of State may stipulate.

(b) Where the Secretary of State exercises his rights in accordance with clause 5.3 to amend the Expiry Date by a specified number of Reporting Periods then the maximum number of Reporting Periods by which the Franchise Term can be amended pursuant to clause 5.2(a) shall be reduced by the same number of Reporting Periods.

5.3 Amendment of Start Date/Expiry Date

(a) The Secretary of State shall have the right on or before 18 July 2019 to serve notice on the Franchisee that the Start Date shall be a date later than 0200 on 18 August 2019. Such amended Start Date shall be 0200 on the first day of a Reporting Period and the latest such date that the Start Date can be amended to is 0200 on 1 April 2020. The Secretary of State may in such notice also require that the Expiry Date is amended to a later date. Such amended Expiry Date shall be 0200 on the first day of a Reporting Period and the same number of Reporting Periods after the unamended Expiry Date as the number of Reporting Periods that the amended Start Date is after the unamended Start Date.

(b) Where the Secretary of State exercises his rights pursuant to clause 5.3(a) to amend the Start Date and/or the Expiry Date, he shall be entitled to make such other amendments to the terms of the Franchise Agreement as are reasonably consequential upon such amendments.

6. GENERAL OBLIGATIONS

6.1 The Franchisee shall perform its obligations under the Franchise Agreement in accordance with its terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the Franchise.

6.2 Any obligation on the part of the Franchisee to use "***all reasonable endeavours***" shall extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy.

6.3 The Franchisee shall co-operate with the Secretary of State and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to the Franchise Agreement.

6.4 The Secretary of State shall act reasonably and in good faith in and about the performance of his obligations and the exercise of his rights pursuant to the Franchise Agreement.

6.5 **NOT USED.**

7. **ASSIGNMENT**

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

8. **CHANGE OF CONTROL AND FACILITATION FEE**

8.1 A **"Change of Control"** is a change occurring in the identity of any one person, or two (2) or more persons acting by agreement, who may Control the Franchisee on and from the date of the Franchise Agreement and during the Franchise Term, which shall include a person, or two (2) or more persons acting by agreement, ceasing to Control the Franchisee at any time during the Franchise Term, whether or not any other person Controls the Franchisee at the same time and for the purposes of this clause 8, two (2) or more persons shall be deemed to be acting by agreement in relation to the Franchisee if, assuming the Franchisee was a target company as defined in the Companies Act 2006 such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

8.2 Otherwise than in accordance with the prior consent of the Secretary of State given pursuant to clause 8.3, a Change of Control shall constitute an Event of Default pursuant to paragraph 1.3 of Schedule 10.2 (*Events of Default and Termination Events*).

8.3 The Franchisee may, at any time, apply in writing to the Secretary of State for his consent to a Change of Control (as such term is defined pursuant to clause 8.1).

8.4 The Secretary of State may require the Franchisee to pay a fee in consideration of the grant of such consent (the **"Facilitation Fee"**).

8.5 The Secretary of State may require the Franchisee to pay an additional fee in respect of the staff, professional and other costs incurred by the Secretary of State in connection with the Franchisee's application (the **"Administration Fee"**). The Administration Fee shall be payable whether or not the Secretary of State consents to the proposed Change of Control.

8.6 On or after submitting such application to the Secretary of State, the Franchisee will provide, and will procure that the seller and the buyer provide, the Secretary of State with such documentation and information as the Secretary of State may require to assess such application and the amount of the Facilitation Fee. Without limiting clauses 8.11 or 8.12, it shall be deemed to be reasonable for the Secretary of State to delay or withhold consent to the Change of Control where any such documentation is not provided.

8.7 The Facilitation Fee shall be a sum equal to the greater of:

- (a) one million pounds (£1,000,000); or
- (b) where the Estimated Profit Stream is greater than the Bid Profit Stream five per cent (5%) of the difference between the Bid Profit Stream and the Estimated Profit Stream.

8.8 The Administration Fee shall be determined by the Secretary of State on the basis of:

- (a) the aggregate time spent by officials within the Secretary of State's Department on matters relating to such application;
- (b) the Secretary of State's hourly scale rates for such officials, as varied from time to time; and

- (c) the aggregate costs and disbursements, including where applicable VAT and professional costs, incurred by the Secretary of State in connection with such application.

8.9 Any determination by the Secretary of State for the purposes of clauses 8.7 or 8.8 shall in the absence of manifest error be final and binding as between the Secretary of State and the Franchisee (but without prejudice to the requirement of the Secretary of State to reasonably determine the Estimated Profit Stream).

8.10 Any consent by the Secretary of State to a Change of Control may be given subject to such conditions as the Secretary of State sees fit and the Franchisee shall, as applicable, comply with, and/or procure that the seller and/or the buyer comply with, any such conditions.

8.11 The Secretary of State shall have absolute discretion as to the grant of consent to any Change of Control and may accordingly refuse such consent for any reason he sees fit.

8.12 The Secretary of State shall have no liability whatever to the Franchisee in respect of any refusal of consent to a Change of Control, any delay in providing such consent, or any condition of such consent.

8.13 **NOT USED.**

9. **COMPLIANCE WITH LAWS**

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

10. **CUMULATIVE RIGHTS AND REMEDIES**

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

11. **DISPUTE RESOLUTION PROCEDURE**

11.1 **Disputes under the Franchise Agreement**

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

(b) Where either Party is entitled, pursuant to the terms of the Franchise Agreement, to refer a dispute arising out of or in connection with the Franchise Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the Parties otherwise agree and subject to any duty of the Secretary of State under section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.

(c) Where, in the absence of an express provision in the Franchise Agreement entitling it to do so, either Party wishes to refer a dispute arising out of or in connection with the

Franchise Agreement to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:

- (i) the Party seeking to refer to arbitration shall serve a written notice upon the other Party stating (i) the nature and circumstances of the dispute, (ii) the relief sought including, to the extent possible, an indication of any amount(s) claimed, and (iii) why it is considered that the dispute should be resolved by way of arbitration rather than litigation;
 - (ii) the other Party shall respond within twenty (20) Weekdays of service of the notice confirming whether or not referral of the dispute to arbitration is agreed. In the absence of any response, the referral to arbitration shall be deemed not to have been agreed;
 - (iii) in the event that the Parties agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with the Dispute Resolution Rules;
 - (iv) in the event that the Parties do not agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with clause 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 Franchisee or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any Party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

11.2 Disputes under other agreements

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

- (c) The Franchisee shall provide such further details of any dispute referred to in clause 11.1(d) (*Disputes under the Franchise Agreement*) as the Secretary of State may reasonably request from time to time.

11.3 ¹²⁹Disputes under Schedule 8 (*Payments*) of this Agreement

The Parties shall comply with the terms of paragraph 4 (*Disputes under Schedule 8*) of Schedule 8.1A (*Franchise Payments*) of this Agreement.

12. NOTICES

12.1 Notices

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

Name: The Department for Transport

Address: 33 Horseferry Road, London SW1P 4DR

Email: franchise.notices@dft.gov.uk

Attention: The Manager – East Midlands Franchise

Name: Abellio East Midlands Limited

Address: 2nd Floor St Andrew's House, 18-20 St Andrew Street,
London, United Kingdom, EC4A 3AG

Email: dominic.booth@abellio.com

Attention: Managing Director

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

(i) in accordance with clause 12.1(a); or

(ii) by electronic data transfer,

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

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

12.2 Deemed Receipt

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

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

13. SET-OFF

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

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

- (a) any amount or liability payable or due to him under or in relation to the Franchise Agreement (whether such amount or liability is present, contingent and/or future, liquidated or unliquidated); and
- (b) any monetary penalty payable under the Act.

13.3 Notwithstanding clause 13.1, the Secretary of State shall be entitled to set off any liability for payment under Schedule 7.1 (*Operational Performance*) against any sum owed to him by the Franchisee under Schedule 7.1 (*Operational Performance*).

14. MISCELLANEOUS PROVISIONS**14.1 Waivers**

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

14.2 Time Limits

Where in the Franchise Agreement any obligation of a Party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or reasonable

endeavours to secure a particular result within such time limit): (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 the Franchise Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of the Franchise Agreement but the legality, validity and enforceability of the remainder of the Franchise Agreement shall not be affected.

14.4 **Further Assurance**

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

14.5 **Rights of Third Parties**

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

14.6 **Secretary of State's Consent or Approval**

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

conditions as he considers appropriate, which may include the adjustment of any of the terms of the Franchise Agreement.

14.7 **Enforcement Costs**

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

14.8 **Arm's Length Dealings**

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

14.9 **Non-Discrimination**

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

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

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

14.10 **Statutory Director's Written Confirmation**

It shall be a contravention of the Franchise Agreement if any written confirmation from a statutory director (or otherwise) of the Franchisee, in the reasonable opinion of the Secretary of State, in any material respect, is untrue, inaccurate and/or misleading.

15. **COMPETITION**

15.1 For the purposes of this clause 15:

- (a) "**CMA**" means the Competition and Markets Authority;
- (b) "**Commitment**" means:
 - (i) where the Transaction is within the jurisdiction of the CMA undertakings in lieu of reference for a second phase investigation offered by any Parent, the Franchisee or any Affiliate that the CMA is able to accept pursuant to section 73(2) of the Enterprise Act 2002 in relation to the Transaction; or
 - (ii) where the Transaction is notified to the European Commission under Council Regulation (EC) 139/2004 concerning the control of concentrations between undertakings as amended from time to time the giving by any Parent, the Franchisee or any Affiliate to the European Commission of commitments to enable the European Commission to conclude that the concentration arising out of the Transaction would not impede effective competition in the common market or a substantial part of it and declare it compatible with the common market pursuant to Article 6(1)(b) of the EU Merger Regulation;

- (c) **"Competition Authority"** means the European Commission or the CMA;
- (d) **"Competition Event"** means an Intervention by a Competition Authority or any Commitment which could prejudice the ability of:
 - (i) the Franchisee to operate the Franchise in accordance with the Franchise Agreement; or
 - (ii) any Affiliate of the Franchisee to continue to operate any other Rail Franchise of which it is the franchisee;
- (e) **"Intervention"** means a determination following the completion of a second phase investigation that the merger resulting from the award of the Franchise to the Franchisee (i) in the case of the CMA has resulted or may be expected to result in a substantial lessening of competition in the UK market or (ii) in the case of the European Commission would significantly impede effective competition in the internal market and that in either case specified actions are required to be taken for the purposes of remedying those anticipated competition issues;
- (f) **"Rail Franchise"** means any passenger rail franchise awarded pursuant to the Act in respect of which a franchisee or its wholly owned subsidiary provides franchised services; and
- (g) **"Transaction"** means the entry into the Franchise Agreement by the Secretary of State and the Franchisee.

15.2 Without prejudice to the Secretary of State's rights under Clause 5.4 of the Conditions Precedent Agreement, in so far as the Transaction is:

- (a) notified to the European Commission under Council Regulation (EC) 139/2004 concerning the control of concentrations between undertakings as amended from time to time (the **"EU Merger Regulation"**); or
- (b) within the jurisdiction of the CMA in the United Kingdom (including as a result of a referral under Article 4(4) or Article 9 of the EU Merger Regulation),

and the Transaction remains under consideration by a Competition Authority at the Start Date the Franchisee shall use all reasonable endeavours expeditiously to progress the consideration of the Transaction by the relevant Competition Authority.

15.3 Without prejudice to the generality of clause 15.2, the Franchisee shall respond in a timely manner to all requests for information and/or documents made by the Competition Authority, respond to any issues letter, issues statement or statement of objections, provide comments on any working papers on which the Competition Authority invites comments, attend any meeting (including issues meetings, state of play meetings or hearings), respond to any provisional findings and notice of possible remedies, respond to any provisional decision on remedies and attend any remedies hearing.

15.4 The Franchisee shall report to the Secretary of State on at least a weekly basis or as frequently as the Secretary of State shall require on the progress of the consideration of the Transaction by the Competition Authority and immediately concerning any material developments in the case. The Franchisee shall promptly provide to the Secretary of State copies of all material communications with the Competition Authority, including but not limited to requests for information and/or documents made by the Competition Authority, submissions and responses with supporting evidence, as well as hearing transcripts (provided always that the Franchisee may redact from such copies information which is confidential to the Franchisee and which may if

disclosed to the Secretary of State prejudicially affect the Franchisee's legitimate business interests).

- 15.5 If at any time the Secretary of State (acting reasonably) determines that a Competition Event has arisen, the Secretary of State shall have the right to give written notice to the Franchisee informing it that such Competition Event has arisen ("**Competition Event Notice**") and the provisions of paragraph 2.5 of Schedule 10.2 (*Events of Default and Termination Events*) shall apply.

16. ENTIRE AGREEMENT

- 16.1 ¹³⁰**This Agreement, except as amended, and the Conditions Precedent Agreement contain the entire agreement between the Parties in relation to the subject matter of the Franchise Agreement and supersedes all prior agreements and arrangements between the Parties other than any confidentiality agreements or undertakings which the Franchisee may have entered into with the Secretary of State in connection with his proposal to secure the provision of the Passenger Services under the Franchise Agreement.**

- 16.2 The Franchisee hereby acknowledges that it is not entering into the Franchise Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such warranties, representations or undertakings are contained in the Franchise Agreement.

- 16.3 The Franchisee hereby acknowledges and agrees with the Secretary of State (for himself and as trustee for each of the other persons referred to therein) to the disclaimers of liability which are contained in Section 3.2 of the Invitation to Tender or in any document supplied by or on behalf of the Secretary of State in connection with the Franchise Agreement, the process leading to the entering into of the Franchise Agreement, or the Franchise Services (including any Invitation to Tender issued in connection therewith).

- 16.4 The Franchisee irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement and/or the Conditions Precedent Agreement on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement or the Conditions Precedent Agreement) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

17. GOVERNING LAW AND JURISDICTION

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

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

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)
ABELLIO EAST MIDLANDS LIMITED)
ACTING BY ONE DIRECTOR IN THE PRESENCE)
OF A WITNESS)

Director:

[REDACTED¹³¹]

[REDACTED]

[REDACTED¹³²]

[REDACTED]

Witness Address

¹³¹ 25 October 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.

¹³² 25 October 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 1**PASSENGER SERVICE OBLIGATIONS**

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

Schedule 1.1

Franchise Services and Service Development**Part 1 – Franchise Services****1. Franchise Services**

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

2. Station Services**2.1 The Station Services shall comprise:**

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

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

3. **Light Maintenance Services**

3.1 Light Maintenance Services shall comprise:

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

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

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

4. ¹³³**Ancillary Services**

4.1 **The Franchisee may carry out the following Ancillary Services:**

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

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

within paragraph ¹³⁴4.1(a) or which, if provided at a Station, would fall within paragraph 2 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;

- (c) NOT USED;
- (d) NOT USED;
- (e) NOT USED;
- (f) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchisee on or before the date of the Franchise Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
- (g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (i) travel on any other train or light rail service;
 - (ii) travel on any aircraft;
 - (iii) travel on any shipping or ferry service;
 - (iv) travel on any bus; or
 - (v) attend any event or attraction or enter any location;
- (h) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on any such operator's trains;
- (i) the provision of information relating to railway passenger services within Great Britain to passengers through telephone, internet, mobile data services or other appropriate means;
- (j) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (k) NOT USED.
- (l) the licensing or permitting of any other person (including an Affiliate of the Franchisee) to carry out any activity or business, in connection with the provision of the Franchise Services, or

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

otherwise, on any rolling stock vehicle operated by the Franchisee, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);

- (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with the Franchise Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (n) NOT USED.
- (o) the provision or operation of Charter Services, subject to the Planned Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent (2%) of the Planned Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;
- (p) the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services; and
- (q) any services or activity not falling within paragraphs 2, 3, and 4.1(a) to 4.1(p), subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding twenty five thousand pounds (£25,000) per annum in each Franchisee Year, per item and in aggregate, two hundred and fifty thousand pounds (£250,000) per annum in each Franchisee Year provided that in the second and each subsequent Franchisee Year, these amounts will be increased by RPI.

4.2 Subject to obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld or delayed) save in respect of paragraph 4.2(d), for which no such consent shall be required, the Franchisee may, and (to the extent required in order to best serve the needs of passengers on railway passenger services within Great Britain from time to time) shall use all reasonable endeavours to, carry out the following Ancillary Services:

- (a) in any Reporting Period, the subleasing, hiring or licensing of the rolling stock vehicles used in the provision of the Passenger Services;
- (b) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of Franchise Employees;
- (c) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the following Depot(s):
 - (i) Neville Hill; and
 - (ii) Etches Park; and

- (d) **the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Franchisee or the lending, hiring or contracting out of any employees of the Franchisee or the provision of any other services to Network Rail or any other Train Operator on an emergency basis.**

5. **Royal Train**

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

6. **Restrictions relating to Franchise Services**

- 6.1 The Franchisee shall not without the prior written consent of the Secretary of State operate Passenger Services other than on the following routes (and, in the event of disruption, any reasonable diversionary route):
- (a) London to Sheffield via Leicester and Derby;
 - (b) London to Nottingham via Leicester;
 - (c) London to Corby via Kettering;
 - (d) Corby to Melton Mowbray;
 - (e) Sheffield to Leeds via Doncaster or Moorthorpe and Wakefield Westgate;
 - (f) Nottingham to Norwich via Loughborough, Melton Mowbray, Peterborough and Ely;
 - (g) Nottingham to Norwich via Grantham, Peterborough and Ely;
 - (h) Peterborough to Thetford direct (via Ely West curve);
 - (i) Nottingham to Skegness via Grantham, Sleaford and Boston;
 - (j) Nottingham to Sheffield via Alfreton and Chesterfield;

- (k) Sheffield to Liverpool Lime Street via Stockport, Manchester Piccadilly and Warrington Central (from the Start Date and, subject to paragraph 9.5 of Schedule 6.1, until the Passenger Change Date occurring in December 2021);
 - (l) Nottingham to Worksop via Mansfield;
 - (m) Nottingham to Derby;
 - (n) Chesterfield to Grindleford direct;
 - (o) Derby to Matlock;
 - (p) Derby to Crewe via Uttoxeter;
 - (q) Lincoln to Peterborough via Ruskington and Spalding;
 - (r) Lincoln to Nottingham via Newark Castle;
 - (s) Newark North Gate to Cleethorpes via Lincoln and Grimsby Town;
 - (t) Cleethorpes to Barton-on-Humber;
 - (u) Lincoln to Scarborough via Doncaster and York;
 - (v) East Midlands Parkway to Ilkeston direct;
 - (w) Attenborough to Ilkeston direct; and
 - (x) Nottingham to Sleaford (via Bottesford to Ancaster direct line).
- 6.2 It is acknowledged that a Passenger Service to be operated by the Franchisee on the routes specified in paragraph 6.1 may be operated throughout the route, on part of the route or any combination of the whole or part of any two or more of the routes specified above.
- 6.3 The Secretary of State may impose such conditions to his consent as he considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the Franchise Term.
- 6.4 The Franchisee shall not during the Franchise Term, without the consent of the Secretary of State:
- (a) provide or operate any railway passenger services other than the Passenger Services or Charter Services;
 - (b) operate any stations or light maintenance depots other than the Stations and Depots; or
 - (c) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:
 - (i) Network Rail; or
 - (ii) owned directly or indirectly by another participant in the railway industry and the holding is incidental to the Franchisee's participation

in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

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

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

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

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

7.2 If any procedures are commenced under Part 4 of the Railways Act 2005 in relation to a Closure, the Franchisee shall, at its own cost and to the extent so requested by the Secretary of State, take such action as the Secretary of State may require in order to enable the Secretary of State to comply with any duty imposed on 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 Franchisee may not subcontract or delegate the provision of the Passenger Services without the prior written consent of the Secretary of State.

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

- (a) the Secretary of State receives prior written notice of any such subcontracting or delegation;
- (b) the Franchisee continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;
- (c) the Franchisee continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;
- (d) ¹³⁵ **the Planned Train Mileage of the Passenger Services so delegated or subcontracted does not exceed five per cent (5%) of the Planned Train Mileage of the Franchisee in any Reporting Period (provided that, if as a result of the impact of COVID-19 it is not reasonably practicable to obtain the prior written consent of the Secretary of**

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

State to a higher percentage of the Planned Train Mileage being delegated or subcontracted in advance of subcontracting or delegating the provision of such Passenger Services, the Franchisee may subcontract or delegate the provision of such Passenger Services provided that the Secretary of State receives notification of, and has not objected to, any such subcontracting or delegation);
and

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

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

Part 2 – Service Development

9. Train Service Requirement - Purpose and Responsibility

- 9.1 This Part 2 of Schedule 1.1 sets out the obligations of the Franchisee in relation to the acquisition of timetable development rights required for the purposes of securing a Timetable that complies with the Train Service Requirement and preparing a Train Plan consistent with the obligations of the Franchisee and the provision of appropriate levels of passenger carrying capacity. It also provides for alteration of the Train Service Requirement by the Secretary of State. The Train Service Requirement does not in any way limit the Franchisee's obligations pursuant to paragraph 14 of this Schedule 1.1.
- 9.2 The Train Service Requirement is the minimum specification of the Passenger Services and capacity to be provided by the Franchisee during the Franchise Term.
- 9.3 The Train Service Requirement as at the date of the Franchise Agreement is comprised in the following, all in the agreed terms marked as follows:
- (a) TSR0 being the Train Service Requirement applicable from the Start Date until the Passenger Change Date in December 2020;
 - (b) TSR1 being the Train Service Requirement applicable from the Passenger Change Date in December 2020 until the Passenger Change Date in December 2021; and
 - (c) TSR2 being the Train Service Requirement applicable from the Passenger Change Date in December 2021 until the end of the Franchise Term.
- 9.4 The Secretary of State and the Franchisee agree that:
- (a) the replacement of: TSR0 by TSR1 and TSR1 by TSR2 at the time and for the period specified in paragraph 9.3 shall not constitute a Change for the purposes of paragraph (d) of the definition of Change; and
 - (b) the Secretary of State shall issue a replacement Train Service Requirement if, in the reasonable opinion of the Secretary of State, the Timetable as inherited from the Train Operator under the Previous Franchise Agreement and to be operated by the Franchisee during the period from the Start Date until the Passenger Change Date in December 2020 is materially inconsistent with TSR0. Any such issue of a replacement Train Service Requirement by the Secretary of State pursuant to this paragraph 9.4(b) shall be a Change pursuant to Paragraph (d) of the definition of Change.
- 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.

9.7 ¹³⁶The Franchisee shall, for the duration of the ERMA, consult with passenger, user groups, Network Rail, other train operators licensed under the Act and who operate along the affected Routes and other relevant Stakeholders (each as applicable) in order to ensure the successful delivery of the TSR1. For the avoidance of doubt, the Franchisee shall also ensure that adequate contingency planning is put in place to cater for circumstances where it is no longer possible to deliver TSR1 as expected.

10. Train Plan

10.1 Subject to paragraph 10.2, for the purposes of this Agreement, the “**Train Plan**” shall be the plan (including sub-plans) prepared by the Franchisee for the operation of trains and train formations under the Timetable that best matches available capacity to Forecast Passenger Demand as amended from time to time during the Franchise Period in accordance with this Agreement.

10.2 For the purposes of Schedule 7 (*Performance Benchmarks*), references to “**Train Plan**” shall be construed as the latest version of the Train Plan which includes any amendments thereto pursuant to paragraphs 3, 4 and/or 5 of Schedule 1.2 (*Operating Obligations*):

(a) where such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement;

(b) where such amendments proposed by the Franchisee have prior approval from the Secretary of State; or

(c) where such amendments are requested by the Secretary of State.

10.3 The Franchisee shall submit to the Secretary of State a Train Plan in respect of each Timetable in accordance with this Schedule 1.1.

10.4 In preparing any Train Plan, the Franchisee shall do so by reference to the Timetable that it envisages operating in order to comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1.

10.5 Each Train Plan shall set out for each railway passenger service in the Timetable to which it relates:

(a) its start point and departure time;

(b) its terminating point and arrival time;

(c) the number and class of rolling stock vehicles allocated to each such railway passenger service;

(d) the Passenger Carrying Capacity that each such railway passenger service, as formed, is to have; and

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

- (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 At the Start Date, Network Rail will have issued the applicable working timetable on which the Timetable is to be based. Accordingly, the Franchisee shall confirm to the Secretary of State that it intends to adopt, from the Start Date until the next Passenger Change Date, the Train Plan prepared by the Train Operator under the Previous Franchise Agreement and such Train Plan shall be provided by the Franchisee to the Secretary of State by no later than the Start Date. It is acknowledged that such Train Plan shall be replaced from time to time during the Franchise Period in accordance with the provisions of paragraph 14.4.
- 11. Consultation on Significant Alterations to the Timetable**
- 11.1 Notwithstanding any consultation the Secretary of State might separately undertake in respect of any amended or new draft Train Service Requirement issued pursuant to paragraph 16, the Franchisee shall where:
- (a) it intends that any future Timetable will contain Significant Alterations compared to the Timetable then in force; and
- (b) such Significant Alterations are likely to have, in the reasonable opinion of the Franchisee, a materially adverse effect on:
- (i) the ability of passengers using any station served by the Passenger Services to make journeys relating to work or education at reasonably convenient times; and/or
- (ii) the trading prospects of commercial enterprises located in any community in which a station served by the Passenger Services is located in consequence of it being more difficult for customers or employees to access such commercial enterprises through travel on the Passenger Services,
- consult with Stakeholders who would reasonably be expected to be affected by any such Significant Alterations in relation to such proposed future Timetable.
- 11.2 The first Timetable to which these provisions apply is the Timetable with effect from the Passenger Change Date in December 2020.
- 11.3 Accordingly, the Franchisee shall where the circumstances described in paragraph 11.1 apply:
- (a) as soon as reasonably practicable provide to the Secretary of State and all Stakeholders a comprehensive summary of the proposed changes from the Timetable then in force specifying the proposed Timetable changes, the reasons for them and the likely impact on passengers;
- (b) carry out the consultation in relation to such proposed changes using a reasonable range of communication channels (taking into account the scale of the proposed changes) and in a manner that can be reasonably expected to encourage responses from a broad range of affected Stakeholders;

- (c) give consultees such time as is reasonable under all the circumstances to respond (it being agreed that it shall normally be reasonable to give at least twelve (12) weeks to respond in relation to major proposed Timetable changes);
- (d) take due account of the responses of consultees;
- (e) within six (6) weeks of the close of the consultation (or such longer period as the Secretary of State may agree, such agreement not to be unreasonably withheld or delayed) publish a report containing a summary of the main issues raised by respondents (including quantitative analysis of the responses received), the reasoned response of the Franchisee to them and notification of how the Franchisee 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 Franchisee shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and otherwise comply with its obligations under the Franchise Agreement (including under paragraph 14 of this Schedule 1.1).
- 12.2 Prior to exercising any Timetable Development Rights to secure a Timetable, the Franchisee shall make an informed estimate of Forecast Passenger Demand and in doing so shall make reasonable assumptions based on available evidence (making proper use of recognised railway industry systems and forecasting tools as these may develop over the Franchise Period) with the estimate being in such format and to such level of disaggregation as the Secretary of State may reasonably require.
- 12.3¹³⁷ Subject to the remaining provisions of this paragraph 12, the Franchisee shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1 in accordance with its obligations under paragraph 17 of this Schedule 1.1.
- 12.4 Where the Franchisee proposes to exercise its Timetable Development Rights so that the Timetable in force after the relevant Passenger Change Date contains Significant Alterations to that in force prior to such Passenger Change Date, the

¹³⁷ A derogation has been granted from the relevant obligation from 6th March 2020 ("Original Due Date") to 31st August 2020, the Franchisee shall continue to seek and implement where possible, changes to address the TSR1 non-compliance.

Franchisee shall (without prejudice to its obligation to consult pursuant to paragraph 11) act reasonably with the intention of obtaining a Timetable which enables:

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

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

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

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

12.6 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 12.5, he may require the Franchisee to exercise its rights in such manner as he 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 Franchisee complying with its obligations under paragraph 12.5 above, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1, to the extent that such failure is caused by:

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

12.8 TDR Amendments

- (a) If and to the extent that the Franchisee is not able to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement as a result of it not being able to obtain the Timetable Development Rights that it requires for that purpose, the Secretary of State shall (subject to paragraphs 12.8(b) and 12.8(c)) issue to the Franchisee amendments to the Train Service Requirement ("**TDR Amendment**"). The amendments to the Train Service Requirement contained in the TDR Amendment shall be those that the Secretary of State considers necessary for the purposes of enabling the Franchisee to secure a Timetable that is compliant with the Train Service Requirement by exercise of the Timetable Development Rights that the Franchisee does have.
- (b) The Secretary of State shall have an unfettered discretion as to whether or not to issue a TDR Amendment in circumstances where the Franchisee:
- (i) has failed to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.1; and
 - (ii) is not relieved by paragraph 12.7 from liability for such failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement.
- (c) The Franchisee shall not be relieved from its obligations to obtain a Timetable that enables the Franchisee to operate the Train Service Requirement by the issue of any TDR Amendment where the Secretary of State reasonably considers that such failure to secure a Timetable that enables the Franchisee to operate the Train Service Requirement is partly due to the default of the Franchisee in not properly complying with its obligations under the Franchise Agreement in relation to securing timetable development rights. Accordingly any TDR Amendment may be drafted so that it does not relieve the Franchisee of the obligation to comply with the Train Service Requirement to the extent that the Secretary of State determines that the failure is due to such default of the Franchisee and the Franchisee may therefore be in contravention of the Franchise Agreement.

12.9 Following issue of any TDR Amendment pursuant to paragraph 12.8 the Franchisee shall, unless otherwise agreed by the Secretary of State, continue to use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without such TDR Amendment.

12.10 Any TDR Amendment issued pursuant to paragraph 12.8 shall:

- (a) unless otherwise required by the Secretary of State, cease to have effect on the date (if any) on which the first Timetable comes into effect after the Franchisee has obtained the Timetable Development Rights to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without any such TDR Amendment; and
- (b) amount to a Change but only to the extent that the Franchisee makes a saving as a consequence of such TDR Amendment and provided that if such

TDR Amendment has been issued in consequence of Network Rail exercising the rights referred to in paragraphs 12.7(b) or 12.7(c) there shall be no Change.

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) where there has been a Change which is a Qualifying Change pursuant to paragraph 12.10(b) there shall be a further Change (which shall be deemed to be a Qualifying Change) to the extent necessary so as, with effect from such date, to disapply the effect of any such Qualifying Change pursuant to paragraph 12.10(b) to take into account the fact that the Franchisee will have ceased to make a saving.

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

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

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

13.3 The Franchisee shall:

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

14. **Planning to meet Target Passenger Demand**

14.1 **Capacity and Timetable Planning**

- (a) The Franchisee shall, in preparing its Timetable and Train Plan, unless the Secretary of State otherwise agrees, provide for at least the capacity specified in the Train Service Requirement.

- (b) The Franchisee shall use all reasonable endeavours to provide for Passenger Carrying Capacity on each Passenger Service that meets as a minimum the Target Passenger Demand for that Passenger Service.
- (c) The Franchisee shall use all reasonable endeavours to provide passengers with a reasonable expectation of a seat:
 - (i) on boarding any Off-Peak Passenger Service; and
 - (ii) twenty (20) minutes after boarding (or such other time period as the Secretary of State may stipulate) on any Peak Passenger Service.

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

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

- (a) minimising, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
- (b) ensuring, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
- (c) 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 Franchisee shall in preparing its Timetable and its Train Plan take full and proper account of its calculation of Forecast Passenger Demand and use all reasonable endeavours to ensure that the Train Fleet is deployed in an optimal manner for the purposes of complying with its obligations under paragraphs 14.1 and 14.2 above.
- (b) The Franchisee shall in preparing its Timetable and Train Plan deploy the entire Train Fleet (excluding reasonable planning requirements for the allocation of Hot Standbys or other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reason agreed with the Secretary of State (such agreement not to be unreasonably withheld or delayed)) in delivering the Passenger Services:
 - (i) during each Peak; and

- (ii) at such times outside the Peak where such deployment of the entire Train Fleet is reasonably required to meet the Franchisee's obligations pursuant to paragraphs 14.1 and 14.2 above.

14.4 Finalising the Train Plan

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

15. Capacity Mitigation Proposal

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

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

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

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

- 15.3 Where the Secretary of State reasonably believes that future circumstances may lead to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1 at any time within the next four (4) years (including after the end of the Franchise Term) the Secretary of State shall have the right to serve notice on the Franchisee specifying those future circumstances and the date that the Franchisee should assume that they will arise from and requiring it to produce a Capacity Mitigation Proposal to remedy or mitigate such future circumstances on the basis of assumptions provided by the Secretary of State.
- 15.4 The Capacity Mitigation Proposal shall (unless the Secretary of State specifies to the contrary) include the Franchisee's informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require. Without limitation such specification may require the Franchisee to present options to address relevant issues through:
- (a) alterations to the Train Service Requirement;
 - (b) modification of rolling stock or the acquisition of additional or replacement rolling stock;
 - (c) alterations to Fares; and/or
 - (d) alterations or enhancements to any track, signalling, station, depot or other relevant railway infrastructure.
- 15.5 The Capacity Mitigation Proposal shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (b) the implications (if any) for the Benchmarks and/or the Annual Benchmarks; and
 - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- 15.6 The Franchisee shall meet with the Secretary of State to discuss the Capacity Mitigation Proposal and provide such further information or analysis and further iterations of the Capacity Mitigation Proposal as the Secretary of State shall reasonably require. If the Secretary of State decides that he wishes to implement any Capacity Mitigation Proposal (or any part thereof) this shall be by way of a Variation.
- 16. New or amended Train Service Requirement by the Secretary of State and Franchisee Informed Opinion**
- 16.1 As and when required, whether for the purposes of considering alterations to the Train Service Requirement or otherwise, the Franchisee shall provide to the Secretary of State:
- (a) its informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require in order to assist the Secretary of State's decision making on future

train service requirements, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding;

- (b) its informed opinion as to any changes to the current Train Service Requirement which:
 - (i) should be made in order to deliver an optimal range of railway passenger services relative to Target Passenger Demand; and
 - (ii) could be implemented and operated without additional resources or an adjustment to the Franchise Payments;
 - (c) its informed opinion as to any changes to the current Train Service Requirement which:
 - (i) would deliver an optimal range of railway passenger services relative to Target Passenger Demand; and
 - (ii) could only be implemented and operated with additional resources and/or an adjustment to the Franchise Payments, together with an explanation as to:
 - (A) what additional resources and/or adjustments are necessary to make such changes; and
 - (B) why such additional resources and/or adjustments are necessary;
 - (d) a draft of the Train Plan that the Franchisee considers that each set of proposed changes would require.
- 16.2 Prior to issuing any amended or new Train Service Requirement the Secretary of State shall provide to the Franchisee his draft of any proposed amended or new Train Service Requirement stating the date upon which he 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 he 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 Franchisee shall provide to the Secretary of State (if so requested) its informed opinion:
- (a) with supporting reasons as to the impact of the proposed amended or new Train Service Requirement on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 14.1 of this Schedule;
 - (b) with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amended or new Train Service Requirement;
 - (c) with supporting reasons as to changes (if any) to the Benchmarks and/or the Annual Benchmarks;
 - (d) of the process to be required to implement the proposed amendment to the Train Service Requirement together with a plan for the implementation of

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

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

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

- 16.4 There may be iterations of drafts of the proposed amended or new Train Service Requirement and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 16 in respect of all such iterations.
- 16.5 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 Franchisee any amended or new Train Service Requirement that he requires the Franchisee to operate and notice of the amendments (if any) to the Benchmarks and/or Annual Benchmarks. Such amended or new Train Service Requirement will be issued prior to the commencement of the timetable development process of Network Rail for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Train Service Requirement.
- 16.7 In the absence of the Secretary of State issuing any amended or new Train Service Requirement the existing Train Service Requirement will remain in full force and effect. The degree of variation from any Train Service Requirement specified at the date of the Franchise Agreement was entered into in respect of any particular period and brought about by any amended or new Train Service Requirement issued pursuant to this paragraph 16 shall (where relevant) be of a magnitude no greater than that contemplated in the Invitation to Tender.
- 16.8 At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Train Service Requirement pursuant to paragraph 16.1, the Secretary of State shall also provide to the Franchisee his opinion of any amendments (if any) that are required to the Benchmarks and/or the Annual Benchmarks.
- 16.9 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purposes of considering the effects of his proposed amended or new Train Service Requirement.

17. **Procedural Arrangements and Timescales**

- 17.1 The Franchisee agrees that the effective operation of the provisions of this Schedule 1.1 (and of provisions addressing the same or similar matters in other franchise agreements) will require certain procedural arrangements and timescales to be followed to a common timescale by the Secretary of State, the Franchisee, Network Rail and others.

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

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

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

or any other franchise agreement, or for the better achievement by him of any of his duties, functions and powers in relation to railways, the Secretary of State may require the Franchisee:

- (a) to exercise or refrain from exercising any or all of its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Secretary of State may specify; and/or
- (b) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.

19.2 Except to the extent that the Secretary of State otherwise indicates from time to time, the Franchisee shall notify the Secretary of State of its intention to enter into or amend any Access Agreement:

- (a) where the approval of the ORR is required under the Act, not less than ten (10) Weekdays before the submission to the ORR; and
- (b) where no such approval is required, not less than ten (10) Weekdays prior to entering into such amendment or Access Agreement.

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

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

19.4 If and to the extent that:

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

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

20. **The Timetable and Network Rail's Working Timetable**

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

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

Schedule 1.2

Operating Obligations**1. Daily Operating Obligations**

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

2. Timetabling and Train Planning Compliance Investigation

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

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

- (a) provide such information as the Secretary of State may reasonably require for the purposes of determining if the Franchisee has complied with its obligations under paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (*Franchise Services and Service Development*) and/or paragraph 1 of this Schedule 1.2 including evidence of:
 - (i) the steps taken by the Franchisee to amend and/or enter into Access Agreements, exercise Timetable Development Rights and exercise its rights under the Track Access Agreement to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights;
 - (ii) the extent to which the Franchisee has operated on each day of the relevant Reporting Period each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service;
 - (iii) Forecast Passenger Demand and the way that it was calculated, including all evidence taken into account and assumptions used

- (including any divergences from then existing industry modelling standards and the reasons for such divergences); and
- (iv) any assumptions about the timetables likely to be operated by other Train Operators made by the Franchisee; and
 - (v) the alternative solutions considered by the Franchisee before finalising the Timetable and Train Plan and the reasons why any such alternative solutions were not adopted; and
- (b) permit the Secretary of State to carry out an audit of the extent to which the Timetable and Train Plan enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of Schedule 1.1 (*Franchise Services and Service Development*) and fully co-operate with and provide all information needed to facilitate such audit.

2.3 **Contravention of the Franchise Agreement**

- (a) The Franchisee shall be in contravention of the Franchise Agreement if following the completion by the Secretary of State of the Timetabling and Train Planning Compliance Investigation he concludes that the Franchisee breached any of its obligations under any of paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (*Franchise Services and Service Development*) and/or paragraph 1 of this Schedule 1.2, including where the Franchisee:
- (i) failed to act reasonably in calculating Forecast Passenger Demand because it unreasonably assumed that there would be differences between Forecast Passenger Demand and Actual Passenger Demand at the time that the Forecast Passenger Demand calculation was made; or
 - (ii) made unreasonable assumptions about the timetables likely to be operated by other Train Operators serving some or all of the same stations as the Franchisee.
- (b) Where the Secretary of State does conclude pursuant to paragraph 2.3(a) that the Franchisee has breached any relevant obligation the Franchisee shall pay to the Secretary of State the costs incurred by him in undertaking any Timetabling and Train Planning Compliance Investigation (including any audit pursuant to paragraph 2.2(b)).
- (c) The Secretary of State shall notify the Franchisee if he concludes pursuant to paragraph 2.3(a) that the Franchisee is in contravention of the Franchise Agreement and he may at his discretion, and entirely without prejudice to his other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 2 of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*).

3. Timetable changes proposed by Network Rail

- 3.1 The Franchisee shall notify the Secretary of State promptly after being notified by Network Rail that Network Rail has decided or proposes to:
- (a) omit from the Plan of the Day Passenger Services that are included in the Timetable; or
 - (b) reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable.
- 3.2 To the extent that any such decision or proposal may, in the reasonable opinion of the Franchisee, materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan the Franchisee shall explain in such notification the way in which, in its reasonable opinion, such omission or rescheduling may materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan.
- 3.3 The Franchisee agrees to supply to the Secretary of State from time to time, in the format required by the Secretary of State, such details of any actual or proposed omission or rescheduling of Passenger Services by Network Rail as the Secretary of State may reasonably require, including details of the steps which the Franchisee proposes to take pursuant to paragraph 3.4.
- 3.4 ¹³⁸**Where the actual or proposed omission or rescheduling of Passenger Services is one which may, in the reasonable opinion of the Secretary of State or the Franchisee, materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan, the Franchisee shall promptly notify the Secretary of State and the Franchisee agrees to co-operate with Network Rail in relation to such proposal, unless and until: (i) the Franchisee reasonably believes that such proposal is likely to be materially detrimental to the interests of passengers on railway passenger services in Great Britain; or (ii) the Secretary of State specifically instructs the Franchisee otherwise, in which case the Franchisee shall exercise its rights under the Track Access Agreement (including the Network Code) to:**
- (a) **object (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR);**
 - (b) **make representations; and**
 - (c) **withhold consent,**
- in respect of such actual or proposed omission or rescheduling of Passenger Services by Network Rail.**

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

- 3.5** ¹³⁹The provisions of this paragraph 3 shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than Network Rail ¹⁴⁰or the Secretary of State, as those provisions apply to Network Rail.
- 4.** ¹⁴¹Timetable changes proposed by the Franchisee
- 4.1** The Franchisee agrees, subject to paragraph 4.4, not to propose to Network Rail:
- (a) the addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;
 - (b) the omission from the Plan of the Day of any Passenger Services included in the Timetable; or
 - (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable,
- without the Secretary of State's prior consent.
- 4.2** The Franchisee shall submit to the Secretary of State an amended Train Plan in respect of each Timetable change proposal.
- 4.3** Not used.
- 4.4** Subject to paragraph 4.8, if, in the opinion of the Franchisee (acting reasonably), it would not be reasonably practicable to obtain the Secretary of State's consent prior to proposing any of the items referred to in paragraph 4.1(a), 4.1(b) or 4.1(c) to Network Rail, the Franchisee shall be entitled to propose such items to Network Rail without the Secretary of State's prior consent, provided that the Franchisee shall inform the Secretary of State of such proposals as soon as is reasonably practicable.
- 4.5** Subject to paragraph 4.8, the Franchisee shall ensure that any proposals to Network Rail submitted pursuant to paragraphs 4.1 or 4.4:
- (a) take full and proper account of the likely passenger demand (including a reasonable assessment of key workers) considering any known or anticipated impacts of COVID-19 (including without limitation any guidance published by Public Health England, and any Legislation, direction or instruction issued by any relevant local, governmental or other competent authority in the United Kingdom from time to time);

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

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

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

- (b) utilise an appropriate number of Franchise Employees to support the likely passenger demand (as determined having taken into consideration the matters referred to in paragraph 4.5(a)); and
 - (c) ensure that the Train Fleet is deployed in an optimal manner taking account of all relevant circumstances, including the latest available official guidance relating to social distancing.
- 4.6** The Franchisee shall use all reasonable endeavours to co-operate with other Train Operators in respect of the Franchisee's proposals to Network Rail pursuant to paragraphs 4.1 and 4.4 or any emergency timetables proposed by other Train Operators to ensure that a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated or first trains or last trains are involved, taking account of the likely fluctuations in passenger demand as a result of COVID-19 and the time needed to make any such Connection).
- 4.7** The Franchisee shall use reasonable endeavours to take into account the requirements of operators of rail freight services in respect of the Franchisee's proposals to Network Rail pursuant to paragraphs 4.1 and 4.4.
- 4.8** The Franchisee acknowledges and agrees that the Secretary of State may, at any time, direct that all or any part of paragraphs 4.4 and/or 4.5 shall cease to apply. Any such direction by the Secretary of State shall have effect from such date as may be reasonably specified by the Secretary of State and, in such circumstances, the relevant parts of paragraph 4.4 and/or 4.5 and, where applicable, any references to the provisions of those paragraphs shall be deemed to be deleted.
- 4A Special Events**
- 4A.1** ¹⁴²The Franchisee shall use all reasonable endeavours to operate adequate railway passenger services to or from any special events which are not already provided for in the Plan of the Day to meet the passenger demand that is reasonably likely to arise from such special events and to ensure that the railway passenger services provided have an appropriate amount of passenger carrying capacity. The Franchisee shall in meeting its obligations pursuant to this paragraph 4A.1:
- (a) consider amending the Plan of the Day through the omission, addition or rescheduling of Passenger Services; and
 - (b) seek to optimise the effective delivery of the Passenger Services as a whole with the provision of appropriate capacity in the context of the additional demand consequent upon a relevant special event.

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

5. **Timetable changes and Train Plan changes requested by the Secretary of State**

5.1 The Franchisee agrees, as and when requested by the Secretary of State, to use all reasonable endeavours to seek and to obtain:

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

5.2 The Secretary of State may reasonably request that the Franchisee shall submit to the Secretary of State an amendment to the Train Plan at any time.

6. **Obligations of the Franchisee in the event of disruption to railway passenger services**

6.1 In the event of any planned or unplanned disruption to railway passenger services operated on the Routes, or on other parts of the network which are reasonably local to the Routes, the Franchisee shall:

- (a) without prejudice to any other provision of this Schedule 1.2, notify the Secretary of State promptly where such disruption would materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable or deliver the Timetable in accordance with the Train Plan;
- (b) co-operate with Network Rail and other Train Operators to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:
 - (i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
 - (ii) is reasonably necessary as a result of the cause or the location of the disruption; and
- (c) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2.

6.2 The Franchisee shall use all reasonable endeavours to provide or secure the provision of alternative transport arrangements to enable passengers affected by any disruption referred to in paragraph 6.1 to complete their intended journeys in accordance with this paragraph 6.2. In particular, the Franchisee shall use all reasonable endeavours to:

- (a) ensure that such alternative transport arrangements are of reasonable quality, of a reasonably similar frequency to the Passenger Services included

in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;

- (b) transport passengers to, or as near as reasonably practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of any Disabled Persons and, where appropriate, making additional arrangements for such Disabled Persons to complete their intended journey;
- (c) provide adequate and prominent publicity of such alternative transport arrangements in advance, subject, in the case of unplanned disruption, to the Franchisee having sufficient notice of such disruption to enable it to provide such publicity;
- (d) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and
- (e) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

7. **Obligation to use all reasonable endeavours under this Schedule 1.2**

7.1 Any obligation in this Schedule 1.2 on the part of the Franchisee to use **“all reasonable endeavours”** shall (with the exception of paragraph 5 of this Schedule 1.2) include an obligation to:

- (a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in accordance with the Train Plan in ordinary operating conditions;
- (b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Franchise Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 7.2; and
- (c) actively manage the performance by Network Rail of its contractual relationship with the Franchisee (and provide appropriate management resources for this purpose) so as to secure the best performance reasonably obtainable from Network Rail by these means (including taking the steps referred to in paragraph 7.4), having regard to all the circumstances.

7.2 The matters to which the Franchisee is to have regard pursuant to paragraph 7.1(b) shall include:

- (a) variations in weather and operating conditions (including Network Rail's infrastructure not being available for any reason), which may in either case include seasonal variations;
- (b) default by, or restrictions imposed by, suppliers to the Franchisee;
- (c) shortages of appropriately skilled or qualified Franchise Employees;
- (d) disputes with Franchise Employees;

- (e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
- (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew and the servicing or cleaning of any rolling stock vehicles; and
- (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction); **and**
- (h) ¹⁴³ **the impact, and emerging projections relating to the likely or potential impact, from time to time, of COVID-19 on the Franchisee's ability to provide the Passenger Services and/or the level of passenger demand or reasonably expected passenger demand for the Passenger Services.**

7.3 For the purpose of taking measures in respect of any disruption to the Franchise Services in accordance with paragraph 7.1(b) and assessing the extent of any risk referred to in paragraph 7.1(b) and any such risk's reasonable foreseeability, regard shall be had both:

- (a) to the historical levels of incidence of disruption in the operation of:
 - (i) the Franchise Services;
 - (ii) similar services both by the Franchisee and/or its predecessors; and
 - (iii) other services of a type similar to the Franchise Services; and
- (b) to potential changes in circumstances which may affect those levels.

7.4 The steps to which paragraph 7.1(c) refers include:

- (a) co-operating with Network Rail in the development, agreement and implementation of:
 - (i) a five (5)-year (rolling) Performance Strategy Plan; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Performance Strategy Plan;
- (b) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and the Franchisee from time to time;
- (c) undertaking regular reviews of:
 - (i) the most common and most detrimental causes of delay to the Passenger Services; and

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

- (ii) the causes of the ten (10) delays to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 7.4(c) (i)),

which have occurred during a defined review period (e.g. weekly/four (4) weekly/quarterly) and which have been caused by the Franchisee, any other Train Operator, any other train operator licensed under the Act or Network Rail;

- (d) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 7.4(c)(i) and 7.4(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
- (e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the Parties;
- (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail in the Performance Strategy Plan and derived delivery plans and using reasonable endeavours to specify and develop such delivery plans;
- (g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains (and data collected from train systems), other facilities and/or information;
- (h) co-operating with Network Rail in other delay management initiatives and ongoing quarterly reviews of the Performance Strategy Plan;
- (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
- (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
- (k) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing the Franchisee's rights under such Track Access Agreement.
- 7.5 The Franchisee undertakes to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules.
- 7.6 To the extent not already provided for in the Franchise Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement, including, where appropriate or where requested by the Secretary of State, enforcing its rights against Network Rail under any such agreement.
- 7.7 When and to the extent reasonably requested by the Secretary of State, the Franchisee shall provide to the Secretary of State evidence of the steps taken by the Franchisee in order to comply with its obligations under this paragraph 7.

Schedule 1.3

NOT USED

Schedule 1.4

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

The Franchisee shall publish on the Start Date:

- (a) the Timetable:
 - (i) at each staffed Station, by making the relevant information available upon request and free of charge in one or more booklets or in other similar form;
 - (ii) at each Station, by displaying the relevant information on information displays;
 - (iii) ¹⁴⁴at each Franchisee Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraphs 1.1(a)(i) and 1.1(a)(ii); and
 - (iv) on the Franchisee's website; and
- (b) the timetables of other Train Operators at Stations, in accordance with paragraph 1.4.

1.2 Timetable Revisions and Alterations

¹⁴⁵Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall publish updates or replacements to the Timetable at the locations specified in paragraph 1.1 to the extent necessary to reflect any changes which come into effect on a Passenger Change Date:

- (a) in the case of booklets, at least four (4) weeks before the changes come into effect;
- (b) in the case of information displays, no later than the day before the changes come into effect;

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

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

- (c) in the case of information provided to the operators of Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limits provided for in this paragraph 1.2; and
- (d) in the case of the Franchisee's website, at least four (4) weeks before the changes come into effect.

1.3 ¹⁴⁶In addition, subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall:

- (a) subject to paragraph 1.4, display posters at each Station advising passengers of all Significant Alterations between any two Passenger Change Dates to railway passenger services calling at that Station, no later than four (4) weeks in advance of the date on which the alterations come into effect; and**
- (b) provide posters to the operators of Franchisee Access Stations, advising passengers of all Significant Alterations between any two (2) Passenger Change Dates to the Passenger Services which call at such Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limit provided for in paragraph (a).**

1.4 ¹⁴⁷Other Train Operators' Timetables

Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall also comply with the requirements of paragraphs 1.1 to 1.3 inclusive by making available booklets and displaying information in information displays and otherwise displaying posters in respect of any other Train Operator's timetable at each Station where the railway passenger services of such other Train Operator are scheduled to call or in respect of which Connections to such other Train Operators railway passenger services can be made from that Station:

- (a) within the time limits specified in paragraphs 1.2 and 1.3 where and to the extent that such other Train Operator delivers to the Franchisee the relevant information and materials in sufficient time for the Franchisee to so publish; and**
- (b) as soon as reasonably practicable thereafter where and to the extent that such other Train Operator delivers the relevant information and materials late to the Franchisee.**

1.5 National Rail Timetable and National Rail Enquiry Scheme

The Franchisee shall use all reasonable endeavours to procure (including by virtue of any arrangements made from time to time between Network Rail and RSP) that

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

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

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.

1.6 ¹⁴⁸ **Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall use all reasonable endeavours to procure that information in relation to:**

(a) **the Timetable; and**

(b) **any Significant Alterations, to the Timetable to take effect between any two (2) Passenger Change Dates,**

is available to passengers through the National Rail Enquiry Scheme (or any replacement) not less than four (4) weeks prior to coming into effect.

2. Communicating Late Timetable Changes

2.1 ¹⁴⁹ **Subject to paragraph 2A.2 of this Schedule 1.4, and save in respect of Significant Alterations, for which the provisions of paragraphs 1.3 and 1.6 shall apply, the Franchisee shall inform passengers, so far as possible on not less than seven (7) days' prior notice, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.**

2.2 Such information shall be provided by:

(a) revising or adding to the information displays referred to in paragraph 1.1;

(b) notifying the operators of the Franchisee Access Stations, as appropriate, including by providing such operators with revised posters; and

(c) updating the Franchisee's website.

2.3 The Franchisee shall revise or add to the information displays at the Stations promptly on receipt of any equivalent information relating to the railway passenger services of other Train Operators whose services call at the Stations.

2.4 Where the Franchisee is unable to provide the information specified in paragraph 2.1 because the relevant revisions are made on an emergency basis, the Franchisee shall notify passengers and publish the relevant revisions by way of the means contemplated by paragraph 2.2 as soon as reasonably practicable.

2.5 The Franchisee shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), passengers making enquiries regarding the Passenger Services are informed of the

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

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

revised Timetable and any revised travel arrangements of the Franchisee as far in advance as is reasonably practicable.

2A ¹⁵⁰Communicating Emergency Timetables

2A.1 Subject to paragraph 2A.3, the Franchisee shall publish:

- (a) any amendments to the Timetable made pursuant to paragraphs 3, 4, 5 or 6 of Schedule 1.2 as soon as reasonably practicable:**
 - (i) at each Station, by displaying the relevant information on information displays;**
 - (ii) at each Franchisee Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraph (i);**
 - (iii) on the Franchisee's website;**
 - (iv) via the Franchisee's social media accounts (through which the Franchisee shall in any event publish any such amendments to the Timetable no later than two (2) hours following agreement of such amendments); and**
 - (v) via any other direct means of communication with passengers available to the Franchisee, including but not limited to email and/or text messaging services; and**
- (b) as far and as soon as is reasonably practicable, any emergency timetables of other Train Operator's where the railway passenger services of such other Train Operator are scheduled to call or in respect of which Connections to such other Train Operators railway passenger services can be made from that Station:**
 - (i) at each Station, by displaying the relevant information on information displays; and**
 - (ii) on the Franchisee's website.**

2A.2 To the extent that this paragraph 2A requires the Franchisee to undertake activities that it would otherwise be obliged to perform pursuant to paragraphs 1.2, 1.3, 1.4, 1.6 and 2, and there are any discrepancies between the timescales or other requirements relating to such activities between this paragraph 2A and paragraphs 1.2, 1.3, 1.4, 1.6 or 2, the relevant requirements of this paragraph 2A shall take precedence over those in paragraph 1.2, 1.3, 1.4, 1.6 or 2 (as applicable).

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

2A.3 The Secretary of State may, at any time, direct that this paragraph 2A shall cease to apply and/or shall no longer take precedence over the timescales and/or the other requirements set out in paragraphs 1.2, 1.3, 1.4, 1.6 or 2 above. Any such direction shall have effect from such date as may be reasonably specified by the Secretary of State and, in such circumstances, the entirety of this paragraph 2A and any references to the provisions of this paragraph 2A shall be deemed to be deleted.

3. Fares Selling Restrictions

3.1 Restrictions on Sales

The Franchisee shall ensure that the purchaser of any Protected Fare or Commuter Fare:

- (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;
- (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the Price of such Protected Fare or Commuter Fare (as the case may be) and, in relation to the issue of a Season Ticket Fare, the completion of an identity card as the Franchisee may reasonably require; and
- (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Protected Fare or Commuter Fare (as the case may be) on a Passenger Service.

3.2 The Franchisee shall procure that for any:

- (a) Protected Return Fare, Single Fare which is a Commuter Fare or Return Fare which is a Commuter Fare, each such Fare shall be offered for sale wherever and whenever any other Fare (not being a Season Ticket Fare) for a journey between the same origin and destination stations is offered for sale; and
- (b) Protected Weekly Season Ticket or Season Ticket Fare which is a Commuter Fare, each such Fare shall be offered for sale at all staffed ticket offices at which Fares for a journey between the same origin and destination stations are sold and otherwise wherever and whenever any Season Ticket Fare is offered for sale,

in each case, either by the Franchisee or its agents (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement).

3.3 Where the Franchisee sets a limit on the number of Protected Fares or Commuter Fares that may be used on any particular train, such limit shall be the greater of:

- (a) the number of seats in Standard Class Accommodation on such train; and

- (b) the capacity of Standard Class Accommodation of the rolling stock vehicles comprising such train according to the tables set out in ¹⁵¹**APPENDIX 1** to Schedule 1.6 (*The Rolling Stock*).

3.4 The Franchisee 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 greater than fifty per cent (50%) of the Price of the relevant Fare;
- (b) any Fare or Discount Card which has a validity of thirteen (13) or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.

3.5 **Agents of the Franchisee**

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

- (a) 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 (*Franchisee'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

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

- (c) for all Fares:
 - (i) do not sell or offer to sell any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld); and
 - (ii) comply with the provisions of paragraph 5 of Schedule 15.2 (*Last Twelve (12) or Thirteen (13) Months of Franchise Period and Other Conduct of Business Provisions*) to the extent they apply to the selling of Fares by the Franchisee.

3.6 **Additional Ancillary Services**

The Franchisee shall, subject to this paragraph 3, be entitled to charge a purchaser of any Protected Fare or Commuter Fare for any additional services:

- (a) which are ancillary to the railway passenger service for which such Protected Fare or Commuter Fare (as the case may be) was purchased (including charges in respect of car parking or catering services); and
- (b) which such purchaser is not obliged to purchase.

3.7 **Sale of Fares for travel on Bank Holidays**

The Franchisee shall ensure that, for any Fare in respect of travel on a Bank Holiday, it only offers for sale (and shall procure that any person authorised to sell Fares on its behalf only offers for sale) such Fare that has the same rights and restrictions as a Fare which is valid for travel on a Saturday or a Sunday.

3.8 **NOT USED.**

4. **Passenger's Charter**

4.1 **Content**

The Franchisee shall:

- (a) publish its Passenger's Charter:
 - (i) in substantially the same form as the document in the agreed terms marked **PC**; and
 - (ii) in accordance with the requirements specified in paragraph 4.3;
- (b) review the need for changes to the Passenger's Charter at least every three (3) years, in consultation with the Passengers' Council, and shall submit a draft of any revisions to the Passenger's Charter that it wishes to propose, together with proof of such consultation, to the Secretary of State; and
- (c) state the date of publication clearly on the front cover of the Passenger's Charter.

4.2 The Franchisee may not change the Passenger's Charter without the Secretary of State's prior written consent (which is not to be unreasonably withheld).

4.3 **Publishing the Passenger's Charter**

The Franchisee shall publicise its Passenger's Charter by:

- (a) providing copies to the Secretary of State and the Passengers' Council at least seven (7) days before it comes into effect;
- (b) providing copies to passengers, free of charge, at each staffed Station and in the case of any revision thereto, providing such copies at least seven (7) days before such revision comes into effect;
- (c) sending a copy, free of charge, to any person who requests it; and
- (d) displaying it on its website at all times and, in the case of any revision thereto, at least seven (7) days before such revision comes into effect,

save in respect of the Passenger's Charter which is effective on the Start Date, in which case the Franchisee shall publicise such Passenger's Charter in the manner contemplated by this paragraph 4.3 on and from the Start Date.

4.4 The Franchisee shall also provide at each staffed Station the then current passenger's charter of any other Train Operator whose trains call there, subject to the provision of such passenger's charter to the Franchisee by such other Train Operator.

4.5 The Franchisee shall provide copies of its Passenger's Charter to the operators of Franchisee Access Stations to enable such operators to publish it.

4.6 **Passenger's Charter Payments and Other Obligations**

The Franchisee shall:

- (a) make all payments which passengers may reasonably expect to be made or provided from time to time under the terms of the Passenger's Charter (whether or not the Franchisee is legally obliged to do so);
- (b) use all reasonable endeavours to make passengers aware of their right to claim compensation pursuant to the Passenger's Charter, including by:
 - (i) displaying the relevant information on trains and at Stations;
 - (ii) making appropriate announcements to passengers on trains and at Stations when the circumstances giving rise to that right occur;
 - (iii) making compensation claim forms readily available to passengers at Stations and on the Franchisee's website; and
 - (iv) any other reasonable means to reflect future advancements in technology proposed in writing either by the Franchisee or the Secretary of State and agreed by both Parties (acting reasonably); and

- (c) use all reasonable endeavours:
- (i) to comply with any other obligations, statements and representations; and
 - (ii) to meet any other standards or targets of performance,
- as are comprised in its Passenger's Charter from time to time.

5. End to End Journeys and Cycles

The Franchisee shall have due regard to the desirability of acting in a manner which facilitates end to end journeys that involve travel by all transport modes (including cycles). The Franchisee shall permit the carriage of folding cycles on all Passenger Services and non-folding cycles wherever reasonably practicable.

6. Statutory Notices

If requested by the Secretary of State, the Franchisee shall publish and display at the Stations (and shall use all reasonable endeavours to procure the publication and display at Franchisee Access Stations of) such statutory notices as the Secretary of State may wish to publish from time to time in the exercise of his functions (including in relation to Closures or any enforcement or penalty orders).

7. Train and Station Cleaning

The Franchisee 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 Franchisee in the provision of the Passenger Services is expected to be kept reasonably clean, appropriately stocked with consumables and free from minor defects;
- 7.2 use all reasonable endeavours to ensure that a reasonable standard of train presentation is maintained at all times in respect of all rolling stock used by the Franchisee in the provision of the Passenger Services;
- 7.3 ensure that the nature and frequency of its planned and reactive programme for maintaining a reasonable standard of Station condition and passenger environment is such that all of the Stations are expected to be clean, free of litter and graffiti, painted to a reasonable standard and free from minor defects; and
- 7.4 use all reasonable endeavours to ensure that all Stations are clean, free of litter and graffiti, painted to a reasonable standard and free from minor defects throughout the Franchise Term.

8. ¹⁵²Publication of Performance Data

8.1 The Franchisee shall in accordance with paragraph 8.2 of this Schedule 1.4 (and in such format as the Secretary of State may reasonably require) publish on the Franchisee's website in relation to each Reporting Period during the Franchise Term the performance of the Franchisee by reference to:

- (a) Cancellations Figures;**
- (b) NOT USED;**
- (c) NOT USED;**
- (d) NOT USED;**
- (e) Short Formation Figures;**
- (f) Time to three (3) Minutes Figures;**
- (g) Time to fifteen (15) Minutes Figures;**
- (h) All Cancellations Figures; and**
- (i) On Time Figures.**

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

8.2 The Franchisee shall ensure that the data published by it pursuant to paragraph 8.1 shall in each case be shown:

- (a) in relation to all Passenger Services;**
- (b) disaggregated by reference to Service Groups;**
- (c) on a periodic and/or on an average basis (as applicable); and**
- (d) include details of:**
 - (i) the number of Passenger Services operated by the Franchisee during each relevant Reporting Period which are late in arriving at their final scheduled destination in the Plan of the Day:**
 - (A) by between thirty (30) minutes and fifty-nine (59) minutes;**

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

(B) by between sixty (60) minutes and one hundred and nineteen (119) minutes; and

(C) by one hundred and twenty (120) minutes or more,

and the percentage that each such category of delayed Passenger Services represents of the total number of Passenger Services scheduled to be provided in the Plan of the Day during such Reporting Period; and

(ii) the number of Passenger Services formed with less than the required Passenger Carrying Capacity specified in the Train Plan during such Reporting Period and the percentage that this represents of all Passenger Services scheduled in the Train Plan to be operated in that Reporting Period.

8.3 As part of each Customer Report (excluding the first (1st) Customer Report) to be provided by the Franchisee pursuant to paragraph 10.1 of Schedule 7.2 (*Customer Experience and Engagement*), the Franchisee shall publish (in such format as the Secretary of State may reasonably require):

(a) the mean average of each of the Cancellations Figures and the Short Formation Figures for the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report (or, in the case of the second (2nd) Customer Report, since the Start Date);

(b) the latest Time to three (3) Minutes Figures, Time to fifteen (15) Minutes Figures, All Cancellation Figures and On Time Figures for the last Reporting Period before publication of the relevant Customer Report;

(c) from the third (3rd) Customer Report onwards, a summary comparison of the statistics produced pursuant to paragraphs 8.3 (a) and 8.3 (b) as against the equivalent statistics provided for the same Reporting Period(s) in the previous Franchisee Year;

(d) an update on the key activities undertaken by the Franchisee to improve its performance in relation to the measures referred to in paragraphs 8.3 (a) and 8.3 (b); and

(e) a summary of the key activities planned to be undertaken by the Franchisee in the period in relation to which the next Customer Report will report to improve its performance in relation to the measures referred to in paragraphs 8.3 (a) and 8.3 (b).

9. Publication of Complaints and Faults Handling Data

9.1 As part of each Customer Report (excluding the first (1st) Customer Report) to be provided by the Franchisee pursuant to paragraph 10.1 of Schedule 7.2 (*Customer Experience and Engagement*), the Franchisee shall publish (in such format as the Secretary of State may reasonably require) 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 second (2nd) Customer Report, since the Start Date):

- (a) a summary of the data published by the ORR from time to time in relation to the handling of passenger complaints regarding the Franchisee's operation of the Passenger Services;
- (b) details of the number of faults notified to the Franchisee by passengers or station users through specified channels, including the website of the Franchisee (each a **"Notified Fault"**) in each case identifying the total numbers of Notified Faults (by reference to whether such Notified Faults relate to rolling stock or stations), with such numbers further disaggregated by Service Group and broken down into relevant sub-categories of Notified Fault;
- (c) the mean average time taken by the Franchisee:
 - (i) to resolve Notified Faults; and
 - (ii) where Notified Faults are not resolved within twenty (20) Weekdays, to provide feedback to applicable passengers 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 Franchisee;
 - (ii) the mean average time taken by the Franchisee to resolve Notified Faults; and
 - (iii) the mean average time taken by the Franchisee, where Notified Faults have not been resolved within twenty (20) Weekdays to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults,

in each case in comparison with the relevant equivalent mean average statistics provided for the same Reporting Periods in the previous Franchisee Year.

10. Route Maps

10.1 The Franchisee 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 Franchisee on a reasonable basis or, if so directed by the Secretary of State, specified by him in a notice to the Franchisee).

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 Franchisee; and
 - (ii) run on a more frequent basis (as stated in the National Rail Timetable) than the Passenger Services.

10.3 The Franchisee 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 Franchisee 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 Franchisee shall, as and when reasonably requested by the Secretary of State (and, for these purposes, it shall not be unreasonable to make such a request at least twice yearly), provide information to the Secretary of State on the extent of the use by passengers of the Passenger Services. Without limitation to the generality of the foregoing, in particular and when so requested, the Franchisee shall provide information relating to:

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

(the information referred to in the whole of **this** paragraph 1.1 being referred to together as "**Actual Passenger Demand**").

1.2 The Franchisee shall obtain and collate the information specified in paragraph 1.1 by using the technology specified in paragraph 3. The Franchisee shall ensure that any technology for determining the number of passengers travelling in each class of accommodation that is fitted on the Train Fleet remains operational and in good working order from the date that it is fitted throughout the Franchise Period. The Franchisee shall also ensure that, if such technology is not fitted to one hundred per cent (100%) of the Train Fleet, the individual rolling stock vehicles that have been fitted with such technology shall be rotated around the Routes as necessary to satisfy such request for data as is made by the Secretary of State pursuant to paragraph 1.1. The Secretary of State, acting reasonably, shall have the right to obtain such other information that the Franchisee has, ought properly to have or could reasonably obtain which may provide a more detailed or accurate view of the extent of use by passengers of the Passenger Services, including information about ingress and egress of passengers at ticket gates at Stations.

1.3 The Franchisee shall provide to the Secretary of State all of the information generated by the technology specified in paragraph 3 and/or by using manual counts pursuant to paragraph 2, including the information specified in paragraph 1.1:

- (a) promptly following its collation and in any case within the following timescales:
 - (i) in the case of data collected automatically by the Count Equipment and capable of being transmitted directly and automatically to the RPC

Database or the Preliminary Database (as appropriate), within forty-eight (48) hours of its collation;

- (ii) in the case of data collected automatically by the Count Equipment but not capable of direct and automatic transmission to the RPC Database or the Preliminary Database (as appropriate), within one (1) calendar month of its collation; and
 - (iii) in the case of data collected by manual count, within one (1) calendar month of its collation;
- (b) using such systems, in such a format and to such level of disaggregation as the Secretary of State may reasonably require, and in a format which is capable of being read by the RPC Database or the Preliminary Database (as appropriate) (which shall include providing data which is not encrypted);
 - (c) either by transmitting such data directly to the RPC Database or the Preliminary Database (as appropriate) or by ensuring that the database provider can pull and transmit such data to the RPC Database or the Preliminary Database (as appropriate), as appropriate according to the nature of the Franchisee's Count Equipment from time to time or by providing such data to the Secretary of State by such other means as the Secretary of State notifies to the Franchisee from time to time; and
 - (d) to the extent required by the Secretary of State, by providing the Secretary of State with direct remote access to the system used by the Franchisee to collect such information such that the Secretary of State is able to download such information,

and such information may be used by the Secretary of State for such purposes as he may reasonably require, including for the purposes of assisting his decision making on train service requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding.

- 1.4 The Franchisee shall use any flagging system contained within the RPC Database to highlight such events and occurrences as the Secretary of State may reasonably specify in writing from time to time.

2. **Manual Passenger Counts**

- 2.1 The Secretary of State shall have the right to require the Franchisee to carry out manual counts in relation to some or all of the Passenger Services at such times as may be required and in such manner (including as to levels of accuracy and the number of days) as may be specified from time to time by the Secretary of State, including if, exceptionally, the Franchisee is unable to comply with its obligations to provide data generated by the technology specified in paragraph 3.
- 2.2 The Secretary of State shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by 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 he considers appropriate, and in

these circumstances the Franchisee shall pay to the Secretary of State the costs of any such audits.

3. Technology for Obtaining the Information referred to in paragraph 1.2

3.1 The technology to be used for the purpose of paragraph 1.2 shall be sensors fitted above all external passenger doorways to determine the number boarding and alighting, and fitted at inter-car gangways to maintain a count per vehicle allowing, at each station stop, passenger count information to be recorded and uploaded over Ethernet, wi-fi or cellular, by route code, station, date and time.

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 1 January 2021, to every vehicle comprised within no less than thirty-five per cent (35%) of such rolling stock units included in the Train Fleet from time to time in aggregate.

3.3 Without limiting the Secretary of State's rights under paragraph 1.1 of this Schedule 1.5, the technology specified in paragraph 3.1 above shall be used to provide counts in respect of, in any period of not less than twelve (12) weeks, at least two (2) of each of the Timetabled Services, and each count shall be carried out on each rolling stock unit comprising a particular train. The Franchisee may only use a method of extrapolation and use extrapolated data to provide a reliable estimate of a full train's count with the Secretary of State's prior written approval of the use of extrapolated data and the method of extrapolation (such approval not to be unreasonably withheld or delayed). The Franchisee shall comply with its obligation under this paragraph 3 from the date(s) such rolling stock is incorporated into the Train Fleet.

3.4 The Parties acknowledge that the information supplied under paragraph 1.1, and any product of it created by the RPC Database or the Preliminary Database (as appropriate), may constitute Confidential Information to which Schedule 17 (*Confidentiality, Freedom of Information and Data Protection*) applies.

4. Client Relationship Management (CRM) Data

4.1 The Franchisee shall ensure that any CRM System is the property of the Franchisee or is licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and that any CRM Data obtained by or on behalf of the Franchisee shall be:

(a) obtained on terms such that the Franchisee shall be the Controller of such data; and

(b) the property of the Franchisee.

4.2 In relation to any CRM Data obtained by or on behalf of the Franchisee, the Franchisee shall:

- (a) ensure that the CRM Data is collected and processed by or on behalf of the Franchisee 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 Franchisee; 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 Franchisee 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 Franchisee.
- 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 the Data Protection Legislation:
- (a) the Franchisee to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and
 - (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 4.2.
- 4.4 The Franchisee shall:
- (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 the Franchise 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 Franchisee shall ensure that any Yield Management Data and Yield Management System are the property of the Franchisee or are licensed to the

Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).

5.2 **NOT USED.**

5.3 The Franchisee shall notify the Secretary of State in writing of the full names and registered office addresses of the entities which from time to time are hosting or storing any of the Yield Management Data, or which are otherwise holding within their possession or control any of the Yield Management Data, together with the location(s) in which the Yield Management Data is hosted, stored or otherwise held. In cases where the hosting, storage or holding of the Yield Management Data occurs in location(s) which are outside of the United Kingdom the notification shall include details of the relevant country(ies) or territory(ies).

5.4 The Franchisee hereby acknowledges that the Secretary of State legitimately wishes to have knowledge of the locations in which the Yield Management Data is hosted, stored or otherwise held from time to time (whether inside or outside of the United Kingdom) given that all such information would be relevant in the event of any transfer of the Franchise to a Successor Operator.

6. **NOT USED**

7. **Rail Passenger Counts Database**

7.1 Subject to compliance by the Franchisee with its obligations set out in this Schedule 1.5, the Secretary of State shall as soon as reasonably practicable following the Start Date:

- (a) use reasonable endeavours to set up and thereafter maintain the RPC Database;
- (b) use reasonable endeavours to populate the RPC Database with such Actual Passenger Demand information as the Franchisee shall provide pursuant to the Franchisee's obligations contained elsewhere in the Franchise Agreement and any other information that the Secretary of State shall desire; and
- (c) use reasonable endeavours to provide the Franchisee with log-in details to the RPC Database in order to allow the Franchisee to access Actual Passenger Demand information that has been provided by the Franchisee, any Network Rail Data, any Third Party Data and to generate reports from the RPC Database.

7.2 The RPC Database is not intended to be used as the sole basis for any business decision. The Secretary of State makes no representation as to the accuracy and/or completeness of:

- (a) any data or information contained in the RPC Database;
- (b) the raw Actual Passenger Demand information provided by the Franchisee or any Network Rail Data or any Third Party Data (as inputted to the RPC Database by whatever means); or

- (c) any product of that Actual Passenger Demand information, Network Rail Data and/or Third Party Data.

7.3

- (a) The Secretary of State is not liable for:
- (i) any inaccuracy, incompleteness or other error in Actual Passenger Demand information, Network Rail Data, Third Party Data or product of the above provided to the Secretary of State by the Franchisee, NR or a third party;
 - (ii) any failure of the RPC Database to achieve any particular business result for the Franchisee. For the avoidance of doubt, it is the responsibility of the Franchisee to decide the appropriateness of using the RPC Database to achieve its own business results;
 - (iii) any loss, destruction, corruption, degradation, inaccuracy or damage of or to the Actual Passenger Demand information following its submission to the RPC Database;
 - (iv) any loss or damage to the property or assets of the Franchisee (tangible or intangible) as a result of a contravention of paragraph 7.1 of this Schedule 1.5; or
 - (v) any indirect, special or consequential loss or damage.
- (b) The Secretary of State's total liability for the duration of the Franchise Agreement in respect of a contravention of its obligations under paragraph 7.1 of this Schedule 1.5 for all other heads of loss or damage which can lawfully be limited shall be limited to the extent to which the Secretary of State is successful in recovering the equivalent loss from such entity to whom the Secretary of State subcontracts its obligations under paragraph 7.1 of this Schedule 1.5 (the "**Subcontractor**"), subject to the following provisions:
- (i) if reasonably requested by the Franchisee within three (3) months of incurring such loss or damage, the Secretary of State shall use reasonable endeavours to recover the equivalent losses from the Subcontractor;
 - (ii) it shall not be reasonable for the Franchisee to make a request pursuant to paragraph 7.3(b)(i) if the value of the Franchisee's losses does not exceed ten thousand pounds sterling (**£10,000**) x RPI;
 - (iii) prior to accounting to the Franchisee for any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b), the Secretary of State shall be entitled to deduct and retain any reasonable costs and expenses incurred in pursuing such a claim which he 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 he 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 Franchisee shall use all reasonable endeavours to mitigate any losses incurred by the Franchisee as a result of a contravention by the Secretary of State of his 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 franchisees other than the Franchisee but a franchisee will have access only to information relating to its own franchise (in the case of the Franchisee, via the log on details provided pursuant to paragraph 7.1(c)). For the avoidance of doubt, the licence granted at paragraph 8.6 shall only permit the usage of the RPC Database, Derivative Output and Intellectual Property Rights related to the Actual Passenger Demand information supplied by the Franchisee.
- 7.5 Without prejudice to Schedule 14.4 (*Designation of Franchise Assets*), paragraphs 2.1 and 3 of Schedule 15.1 (*Reletting Provisions*), Schedule 15.4 (*Provisions applying on and after Termination*) or any other rights of the Secretary of State, the Franchisee agrees that, following the expiry or termination by whatever means of the Franchise Agreement and any Continuation Document, the Secretary of State shall be entitled to allow access to the Franchisee's Actual Passenger Demand information by way of granting access to that area of the RPC Database or otherwise to any future operator of the Passenger Services (whether or not in direct succession to the Franchisee) or to such part of the Actual Passenger Demand information as relates to the part of the franchise which is being taken over by such future operator.
- 8. Intellectual Property Rights and General Provisions**
- 8.1 All Intellectual Property Rights in the RPC Database and Derivative Output shall at all times remain owned by the Secretary of State and to the extent that any rights in the RPC Database vest in the Franchisee by operation of law, the Franchisee hereby assigns such rights to the Secretary of State.
- 8.2 Subject to Schedule 14.4 (*Designation of Franchise Assets*) and Schedule 15.4 (*Provisions applying on and after Termination*), all Intellectual Property Rights in the Actual Passenger Demand information will at all times remain owned by the Franchisee and (subject as previously stated) to the extent that any rights in the Actual Passenger Demand information vest in the Secretary of State by operation of law, the Secretary of State hereby assigns such rights to the Franchisee.
- 8.3 All Intellectual Property Rights in the Network Rail Data will at all times remain owned by the relevant NR entity and to the extent that any rights in the Network Rail Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the Franchisee (as applicable) will enter into a separate agreement with the relevant Network Rail entity to assign such rights to it.
- 8.4 All Intellectual Property Rights in the Third Party Data will at all times remain owned by the third party from whom they have been obtained and to the extent that any rights in the Third Party Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the Franchisee (as applicable) will

enter into a separate agreement with the relevant Third Party to assign such rights to it.

8.5 Subject to Schedule 14.4 (*Designation of Franchise Assets*) and Schedule 15.4 (*Provisions applying on and after Termination*), each Party:

- (a) acknowledges and agrees that it shall not acquire or claim any title to any of the other Party's Intellectual Property Rights (or those of the other Party's licensors) by virtue of the rights granted to it under this Agreement or through its use of such Intellectual Property Rights; and
- (b) agrees that it will not, at any time, do, or omit to do, anything which is likely to prejudice the other Party's ownership (or the other Party's licensors' ownership) of such Intellectual Property Rights.

8.6 The Secretary of State hereby grants, for the duration of the Franchise Period, the Franchisee a non-exclusive, non-transferable licence to use:

- (a) the RPC Database;
- (b) any Derivative Output; and
- (c) all Intellectual Property Rights in the same,

in the United Kingdom for the purposes of accessing the Actual Passenger Demand information by using the functionality of the RPC Database.

8.7 Without limiting any other rights the Secretary of State may have, the Franchisee hereby grants the Secretary of State a perpetual, non-terminable, non-exclusive licence (which is transferable and/or capable of being sub-licensed in the circumstances set out in this paragraph 8.7) to use the Actual Passenger Demand information and all Intellectual Property Rights in the same:

- (a) by including them in the RPC Database; and/or
- (b) by including them in the Preliminary Database; and/or
- (c) whether included in the RPC Database, the Preliminary Database or in any other format for such purposes as he may reasonably require, including for the purposes of assisting his decision making on train service requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding; and/or
- (d) to the extent permitted by the other provisions of the Franchise Agreement to share, disclose or publish the same and transfer and/or sub-licence and permit the use and sharing, disclosing or publishing for the purposes it is shared or disclosed; and/or
- (e) to allow a future operator of the Passenger Services (whether or not in direct succession to the Franchisee) to view and access such Actual Passenger Demand information (whether via the RPC Database or otherwise) as directly relates to the services that it will be running,

and such rights to use the Actual Passenger Demand information and all Intellectual Property Rights pursuant to this paragraph 8.7 shall continue following expiry or termination of this Agreement.

- 8.8 Paragraphs 7.2, 7.3, 8.1, 8.2 and 8.7 of this Schedule 1.5 shall continue in force after expiry or termination of the Franchise Agreement or any Continuation Document, together with any other provisions which expressly or impliedly continue in force after the expiry or termination of the Franchise Agreement or any Continuation Document.
- 8.9 The Parties intend that the provisions of The Contract (Rights of Third Parties) Act 1999 will apply to allow the relevant NR entity to rely on and enforce against a third party the provisions of paragraph 8.3 of this Schedule 1.5.

Schedule 1.6

The Rolling Stock**1. Purpose**

1.1 ¹⁵³**This Schedule 1.6 records the rolling stock vehicles which shall be comprised in the Train Fleet from the Start Date (Original Rolling Stock shown in Table 1) and further additional rolling stock that will become part of the Train Fleet during the Franchise Term (Specified Additional Rolling Stock shown in Table 2) and key information in relation to it. It includes other requirements in relation to the Train Fleet, including in relation to rolling stock testing and commissioning and compliance with the requirements of the Secretary of State in relation to the specification of the Train Fleet, including in relation to baby changing facilities and Controlled Emission Toilets.**

2. The Composition/Deployment of the Train Fleet

2.1 The Train Fleet consists of:

(a) from the Start Date until the lease expiry dates referred to in Column 6 of Table 1 in APPENDIX 1 to this Schedule 1.6 the rolling stock vehicles set out in Table 1 in APPENDIX 1 to this Schedule 1.6 ("**Original Rolling Stock**") with the Passenger Carrying Capacity per unit referred to in Column 3 and Column 4 of Table 1 in APPENDIX 1 to this Schedule 1.6; and

(b) from the dates set out in Column 6 of Table 2 in APPENDIX 1 to this Schedule 1.6, until the lease expiry dates referred to in Column 7 of Table 2 in APPENDIX 1 to this Schedule 1.6 the rolling stock vehicles, including new build or cascaded rolling stock ("**Specified Additional Rolling Stock**") set out in Table 2, in APPENDIX 1 to this Schedule 1.6 with the Passenger Carrying Capacity per unit referred to in Column 3 and Column 4 of Table 2.

(c) **NOT USED.**

(d) **NOT USED.**

2.2 **NOT USED.**

2.3 **NOT USED.**

2.4 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 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).

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

2.5 The Franchisee shall procure that the rolling stock vehicles described in the Tables 1 or 2 or 3 in APPENDIX 1 to this Schedule 1.6, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services to the extent required by the Timetable and Train Plan during the periods referred to therein.

3. Changes to the Train Fleet

3.1 The Franchisee shall maintain the composition of the Train Fleet during the Franchise Period, unless the Secretary of State otherwise agrees, such that there are no changes to the Train Fleet, including changes:

- (a) to the classes or types;
 - (b) to the interior configurations; or
 - (c) which may reduce the journey time capabilities,
- of any rolling stock vehicles specified in the Train Fleet.

3.2 NOT USED.

3.3 During the Franchise Period, the Franchisee shall advise the Secretary of State of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of three (3) consecutive Reporting Periods or more.

3.4 If any change is made to the Train Fleet in accordance with this Schedule 1.6, the Secretary of State may, after consulting the Franchisee, determine the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change. The Secretary of State shall notify the Franchisee of his determination of any such Passenger Carrying Capacity.

3.5 ¹⁵⁴The Secretary of State may request the Franchisee to:

- (a) **change the composition of the Train Fleet during the term of the ERMA;**
- (b) **sub-let some of its Train Fleet to another Train Operator or to sub-lease a Train Fleet from another Train Operator;**
- (c) **procure modifications to the Train Fleet and to manage any such modification programme, subject to payment of the Franchisee's reasonable costs by the Secretary of State or a relevant third party;**
- (d) **work in collaboration with the Secretary of State to identify and secure additional or replacement rolling stock vehicles during the term of the ERMA, in which case the Secretary of State may require**

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

the Franchisee to set the specification for such rolling stock vehicles, subject to the Secretary of State's prior written consent.

4. Rolling Stock Testing and Commissioning

- 4.1 The Franchisee shall, to the extent reasonably requested by the Secretary of State and subject to payment of the Franchisee's reasonable costs by the relevant third party, co-operate with any third party which the Secretary of State may specify (including a Successor Operator, a rolling stock vehicle manufacturer or Network Rail or the Secretary of State) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise).
- 4.2 The co-operation referred to in paragraph 4.1 shall not unreasonably disrupt the provision and operation of the Franchise Services and may include:
- (a) the movement of test trains within and around depots;
 - (b) making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;
 - (c) making Train Slots available for such purposes;
 - (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
 - (e) the delivery of rolling stock vehicles to specific locations.

5. Controlled Emission Toilets

- 5.1 ¹⁵⁵**The Franchisee 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 the Passenger Change Date in December 2020 so that for the remainder of the Franchise Term all rolling stock vehicles which have on board toilets are exclusively fitted with Controlled Emission Toilets. Any newly built rolling stock which becomes part of the Train Fleet prior to 1 January 2020 which have on board toilet facilities shall be fitted exclusively with Controlled Emission Toilets.**
- 5.2 The Franchisee shall ensure that the contents of the toilet retention tanks relating to each Controlled Emission Toilet fitted on rolling stock vehicles in accordance with the requirements of paragraph 5.1 are disposed of in a safe and hygienic manner at suitable facilities designed for these purposes including at Depots and stabling points.

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

- 5.3 Pending installation of the Controlled Emission Toilets, the Franchisee shall use reasonable endeavours to stop toilets fitted to existing rolling stock units emptying whilst the rolling stock unit is stationary within a station.
- 5.4 **NOT USED.**
6. **Baby Changing Facilities**
- 6.1 ¹⁵⁶**The Franchisee shall ensure that as soon as reasonably practicable but in any event by no later than the Passenger Change Date in December 2020 each train operated by the Franchisee 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 Franchisee shall ensure that all rolling stock units that form part of the Train Fleet are able to measure and monitor fuel use as soon as reasonably practicable, and in the case of electric traction, enable the Franchisee to be a **"Metered Train Operator"** as defined by Network Rail's Traction Electricity Rules.
- 7.2 The Franchisee shall become a Metered Train Operator as soon as reasonably practicable but in any event by no later than 31 December 2023.

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

APPENDIX 1 TO SCHEDULE 1.6
The Composition of the Train Fleet

1. Original Rolling Stock

Explanatory Note A: Where in Column 6 both a Scheduled Lease Expiry Date and an Early Redelivery Date are specified in relation to one or more specified units (each being a "**Specified Unit**") the Lease Expiry Date for the Specified Units shall be the Early Redelivery Date provided that where any unit shown in Table 2 or Table 3 below as replacing any Specified Unit from the Early Delivery Date is delivered after the Early Redelivery Date such Specified Unit shall remain in the Train Fleet until the relevant Scheduled Lease Expiry Date or such earlier date as the Secretary of State acting reasonably may agree.

Table 1 (Original Rolling Stock) ¹⁵⁷									
Column 1	Column 2	Column 3 ¹			Column 4 ²		Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease expiry date(s) (See Explanatory Note A above)	
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)
Class 153	6 (1 car)	72	1	30	-	-	Angel	Dec 2019	-
Class 153	4 (1 car)	72	1	30	-	-	Angel	Dec 2020	-
Class 153	4 (1 car)	72	1	30	-	-	Porterbrook	Dec 2019	-
Class 153	7 (1 car)	72	1	30			Porterbrook	Dec 2020	-

¹⁵⁷

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

Column 1	Column 2	Column 3 ¹			Column 4 ²		Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease expiry date(s) (See Explanatory Note A above)	
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)
Class 156	8 (2 car)	139	2	68	-	-	Angel	Dec 2021	-
Class 156	22 (2 car)	139	2	68	-	-	Porterbrook	Dec 2020	-
Class 158	32 (2 car)	151	2	66	-	-	Angel	Dec 2021	-
Class 158	20 (2 car)	151	2	66	-	-	Porterbrook	Dec 2021	-
Class 222	16 (4 car)	150	1	100	33	1	Eversholt	Dec 2022	-
Class 222 ³	16 (4 car)	171	1	118	22	1	Eversholt	Dec 2022	-
Class 222	85 (5 car)	196	1	129	49	1	Eversholt	Dec 2022	-
Class 222 ⁴	85 (5 car)	218	1	144	33	1	Eversholt	Dec 2022	-
Class 222	42 (7 car)	244	1	151	106	1	Eversholt	Dec 2022	-
Class 222 ⁵	42 (7 car)	330	1	217	50	1	Eversholt	Dec 2022	-
HST (2 Powercar + 6 Trailer)	6 (Powercars) 18 (Trailers)	234	0	112	70	1	Angel	Dec 2020	-

Table 1 (Original Rolling Stock) ¹⁵⁷									
Column 1	Column 2	Column 3 ¹			Column 4 ²		Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease expiry date(s) (See Explanatory Note A above)	
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)
HST (2 Powercar + 8 Trailer)	22 (Powercars) 76 (Trailers)	357	2	172	111	0	Porterbrook	Dec 2020	-

Notes

1. These are the capacities expected to apply from the Start Date. Where actual capacities at the Start Date are different, these will be subject to revision by the Secretary of State in accordance with paragraph 3.4 of this Schedule 1.6, in which case the capacity tables in the Train Service Requirement shall be subject to a corresponding updating to reflect the updated capacities.
2. These are the capacities expected to apply from the Start Date. Where actual capacities at the Start Date are different, these will be subject to revision by the Secretary of State in accordance with paragraph 3.4 of this Schedule 1.6, in which case the capacity tables in the Train Service Requirement shall be subject to a corresponding updating to reflect the updated capacities.
3. Class 222 after refurbishment.
4. Class 222 after refurbishment.
5. Class 222 after refurbishment.

2. Specified Additional Rolling Stock

Table 2 (Specified Additional Rolling Stock) ¹⁵⁸										
Column 1	Column 2	Column 3 ⁶			Column 4 ⁷		Column 5	Column 6	Column 7	Column 8
Class of vehicle /unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease start date(s)	Lease expiry date(s)	Identity of any unit in Table 1 (Original Rolling Stock) intended to be replaced by the Specified Additional Rolling Stock and the date of replacement
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair spaces				
Class 156 ⁸	18 (2 car)	146	2	72	-	-	Porterbrook	Dec 2019 -	Dec 2020	Class 153
New BMU	165 (5 car)	268	2	167	44	0	Rock	Phased to Dec 2022	Expiry Date	Class 222 & Class 180
Class 360	84 (4 car)	203	2	137	23	0	Angel	Dec 2020	Expiry Date	HST (2+8)
Class 180	20 (5 car)	228	2	154	42	1	Angel	May 2020	Dec 2022	HST (2+6)

¹⁵⁸

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

Table 2 (Specified Additional Rolling Stock) ¹⁵⁸										
Column 1	Column 2	Column 3 ⁶			Column 4 ⁷		Column 5	Column 6	Column 7	Column 8
Class of vehicle /unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease start date(s)	Lease expiry date(s)	Identity of any unit in Table 1 (Original Rolling Stock) intended to be replaced by the Specified Additional Rolling Stock and the date of replacement
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair spaces				
Class 170/2 ⁹	46 (2 car)	134	2	73	-	-	Porterbrook	Dec 2020	Expiry Date	cl. 156s Porterbrook and half cl. 158s Porterbrook
Class 170/3 ¹⁰	15 (3 car)	214	2	107	-	-	Eversholt	Aug 2019	Expiry Date	Class 153
Class 170/3 ¹¹	12 (3 car)	214	2	107	-	-	Eversholt	Sep 2021	Expiry Date	Remove all remaining cl. 15x
Class 171/2 ¹²	20 (2 car)	134	2	73	-	-	Porterbrook	Sep 2021	Expiry Date	Remove all remaining cl. 15x
Class 171/3 ¹³	6 (3 car)	214	2	107	-	-	Porterbrook	Sep 2021	Expiry Date	Remove all remaining cl. 15x
HST (2 Powercar + 8 Trailer) ¹⁴	15 (Powercars) 53 (Trailers)	355	2	172	112	1	Angel	Phased from Dec - 2019	Dec 2020 -	Replace EMRs HSTs

Table 2 (Specified Additional Rolling Stock) ¹⁵⁸										
Column 1	Column 2	Column 3 ⁶			Column 4 ⁷		Column 5	Column 6	Column 7	Column 8
Class of vehicle /unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease start date(s)	Lease expiry date(s)	Identity of any unit in Table 1 (Original Rolling Stock) intended to be replaced by the Specified Additional Rolling Stock and the date of replacement
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair spaces				
HST (2 Powercar + 8 Trailer) ¹⁴	8 (Powercars) 25(Trailers)	355	2	172	112	1	Porterbrook	Phased from Dec - 2019	Dec 2020 -	Replace EMRs HSTs

Notes

6. These are the capacities expected to apply from the Start Date. Where actual capacities at the Start Date are different, these will be subject to revision by the Secretary of State in accordance with paragraph 3.4 of this Schedule 1.6, in which case the capacity tables in the Train Service Requirement shall be subject to a corresponding updating to reflect the updated capacities.
7. These are the capacities expected to apply from the Start Date. Where actual capacities at the Start Date are different, these will be subject to revision by the Secretary of State in accordance with paragraph 3.4 of this Schedule 1.6, in which case the capacity tables in the Train Service Requirement shall be subject to a corresponding updating to reflect the updated capacities.
8. Fleet currently in use by the franchisee of the East Anglia franchise and must be free to incorporate into the franchise.
9. Fleet currently in use by the franchisee of the West Midlands franchise and must be free to incorporate into the franchise.
10. Fleet currently in use by the franchisee of the ScotRail franchise and must be free to incorporate into the franchise.
11. Fleet currently in use by the franchisee of the Thameslink, Southern and Great Northern franchise and must be free to incorporate into the franchise.

- 12. Fleet currently in use by the franchisee of the Thameslink, Southern and Great Northern franchise and must be free to incorporate into the franchise.
- 13. Fleet currently in use by the franchisee of the Thameslink, Southern and Great Northern franchise and must be free to incorporate into the franchise.
- 14. ¹⁵⁹**Fleet currently in use by the franchisee of the North Eastern Railway franchise and must be free to incorporate into the franchise.**

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

3. NOT USED

Schedule 1.7

Stations**1. Station Asset Management****1.1 NOT USED.**

1.2 By no later than the end of the first Franchisee Year (or such later date as the Secretary of State may reasonably determine), the Franchisee shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Station Asset Management Plan.

1.3 Where the Secretary of State does not approve the draft Station Asset Management Plan submitted to it, the Franchisee shall make:

- (a) such amendments to it as the Secretary of State shall reasonably direct; and
- (b) provide such additional information as the Secretary of State may reasonably require.

1.4 From the date of approval, the Franchisee shall implement and comply with the Station Asset Management Plan.

1.5 The Station Asset Management Plan shall:

- (a) include the information set out in paragraph 1.6; and
- (b) meet the requirements of paragraph 1.7,

and it shall be reasonable for the Secretary of State to not approve a plan which does not include such information or meet such requirements.

1.6 The Franchisee shall ensure that the Station Asset Management Plan in relation to each Station shall include the following:

- (a) the details of all maintenance, repair and renewal activity undertaken by the Franchisee since the Start Date;
- (b) the details of any maintenance, repair and renewal activity which the Franchisee has not completed or not completed within the specified time frame set out in any Station Asset Management Plan together with reasons;
- (c) the details of the maintenance, repair and renewal activity undertaken since the Start Date or planned by Network Rail, any Local Authority, any Community Rail Partnership and any other relevant stakeholder, which the Franchisee is aware of;
- (d) the assumptions that the Franchisee has made about the current state and future degradation of assets at the Station at the Start Date or, if an asset becomes an asset at the Station on a later date, the assumptions of the Franchisee about the current state and future degradation of each relevant asset on the date that it becomes such an asset at the Station;

- (e) the details of under and over provision of assets at the Station at the Start Date given current and projected future customer volumes and reasonable customer demands and planned enhancements or removals to accommodate changing customer volumes and reasonable customer demands;
- (f) the plans for improving the environmental performance of Stations, including where appropriate, plans for:
 - (i) energy metering and data management, including measurement and verification plans for measures adopted;
 - (ii) lighting and lighting controls;
 - (iii) heating and heating controls;
 - (iv) auxiliary power uses;
 - (v) other energy efficiency measures;
 - (vi) renewable energy generation;
 - (vii) water efficiency measures;
 - (viii) waste reduction;
 - (ix) identification of opportunities for recycling or reuse of assets; and
 - (x) identification of opportunities for local sourcing of assets and asset materials;
- (g) the plans to ensure that delivery of Station Services is resilient to periods of extreme weather and minimises disruption to passengers;
- (h) the plans to ensure that maintenance, repair, renewal, enhancement and other building works to be carried out at such Stations is consistent with the Principles of Inclusive Design and the Security in the Design of Stations Guidance; and
- (i) the plans to ensure that activity at such Stations is consistent with the Network Rail Asset Management Policy.

1.7 In addition, the Franchisee shall ensure that the Station Asset Management Plan:

- (a) shall cover a period of no less than forty (40) years from the date that it is created or revised and updated in accordance with this Schedule 1.7, as if the Franchisee was to operate each of the Stations for such forty (40)-year period;
- (b) is developed in accordance, and complies, with guidance and policies (including the guidance documents known as "*Subject Specific Guidelines*" published by the Institute of Asset Management (or such appropriate replacement guidance) which are commensurate with those that would be referred to by a competent, skilled and experienced train operator using an

asset management planning approach, in particular in respect of the balance of maintenance and renewal of each asset type.

1.8 Any amendments to the Station Asset Management Plan must be agreed by the Secretary of State (such consent not to be unreasonably withheld or delayed).

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

1.10 **Updating the Station Asset Management Plan**

(a) By the end of the second (2nd) Franchisee Year and on each subsequent anniversary of such date the Franchisee shall have reviewed the Station Asset Management Plan and shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) a draft updated version of the Station Asset Management Plan.

(b) The updated draft Station Asset Management Plan shall include and reflect the following:

(i) a schedule of any revisions to the current Station Asset Management Plan and a brief summary of the rationale supporting any change for review and approval by the Secretary of State;

(ii) any changed and developing circumstances and the requirements of the Station Asset Management Plan Accreditation;

(iii) where relevant, the outcomes of, and the Franchisee's responses to the stakeholder consultation process described in paragraph 4; and

(iv) the information required in accordance with paragraphs 1.6 and 1.7 of this Schedule 1.7 save that the reference to the "**Start Date**" in paragraph 1.6(a) shall be read as the date on which the Station Asset Management Plan is reviewed and updated by the Franchisee in accordance with this paragraph 1.10 of this Schedule 1.7.

(c) If:

(i) the Secretary of State approves an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.10 (a), such document shall become the then current Station Asset Management Plan; or

(ii) the Secretary of State does not approve an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.10 (a), then the Franchisee shall make:

(A) such amendments to it as the Secretary of State shall reasonably direct; and

- (B) provide such additional information as the Secretary of State may reasonably require.
- (d) The Franchisee shall put in place such arrangements as are necessary (to the reasonable satisfaction of the Secretary of State) to ensure that the Station Asset Management Plan is (and continues to be maintained) in a format acceptable to the Secretary of State which is capable of being transferred to a Successor Operator as part of the Handover Package so that the Successor Operator is able to access, use and amend the Station Asset Management Plan using the same format.

1.11 Station Asset Management Plan Accreditation Certificate

- (a) The Franchisee shall:
- (i) ensure that it applies for and obtains the Station Asset Management Plan Accreditation by no later than the end of the first (1st) Franchisee Year;
 - (ii) promptly upon receipt by the Franchisee, provide to the Secretary of State a certificate of accreditation issued by an organisation accredited by the United Kingdom Accreditation System (UKAS) which has been signed by a director of the Franchisee and which confirms that the Station Asset Management Plan Accreditation has been obtained (the "**Station Asset Management Plan Accreditation Certificate**"); and
 - (iii) maintain the Station Asset Management Plan Accreditation from the date that it is required to be achieved in accordance with paragraph 1.11 (a) (i) for the remainder of the Franchise Period.
- (b) If the Station Asset Management Plan Accreditation is at any time lost or the Franchisee fails to secure such then the Franchisee shall report that fact to the Secretary of State as soon as reasonably practicable and in any event within ten (10) Weekdays of the Franchisee becoming aware of such fact.
- (c) From the date upon which the Franchisee notified the Secretary of State pursuant to paragraph 1.11 (b) (or should have notified the Secretary of State having complied with the provisions of this Agreement), the Franchisee shall:
- (i) re-secure such accreditation as soon as reasonably practicable and in any case within three (3) months; and
 - (ii) report to the Secretary of State every Reporting Period on the measures it is proposing to take, and is taking, to achieve such restoration of the Station Asset Management Plan Accreditation.
- (d) Where the Franchisee fails to secure the Station Asset Management Plan Accreditation pursuant to paragraph 1.11 (c) within three (3) months of the date of such accreditation being lost or failed to be secured (as the case may be), such failure shall constitute a contravention of the Franchise Agreement and the Secretary of State may issue a Remedial Plan Notice pursuant to Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise*

Agreement) and the provisions of Schedule 10 (*Remedies, Events of Default and Termination Events*) shall apply.

2. Grey Assets

2.1

- (a) The Franchisee shall use all reasonable endeavours to agree a comprehensive list of all Grey Assets with Network Rail ¹⁶⁰by **31 March 2022**.
- (b) If at any time during the Franchise Period the Franchisee reasonably considers that an asset not included in the list prepared pursuant to paragraph 2.1(a) is a Grey Asset it shall notify Network Rail accordingly and use all reasonable endeavours to agree whether or not such asset should be considered to be a Grey Asset as soon as reasonably practicable.

2.2 If the Franchisee reaches agreement with Network Rail that any asset is a Grey Asset pursuant to paragraph 2.1, the Franchisee shall:

- (a) consult with Network Rail and, where reasonably necessary and agreed by Network Rail, carry out a joint inspection of each such Grey Asset; and
- (b) use all reasonable endeavours to agree with Network Rail the proper allocation of responsibility in relation to each such Grey Asset (including whether such Grey Asset falls within or outside the boundary of an area subject to a Station Lease) on a reasonable basis consistent with the document entitled "*The Secretary of State's baseline principles for establishing asset responsibilities at stations*" (as it may be updated from time to time). The Franchisee shall use all reasonable endeavours to reach such agreement as soon as reasonably practicable and in any event within:
 - (i) twenty four (24) months of the Start Date in the case of Grey Assets identified pursuant to paragraph 2.1(a); or
 - (ii) twenty four (24) months of any such asset being identified to Network Rail as a Grey Asset in the case of Grey Assets identified pursuant to paragraph 2.1(b).

2.3 Where the Franchisee is unable to agree with Network Rail the proper allocation of responsibility under the relevant Station Lease in relation to any Grey Asset pursuant to paragraph 2.2(b) (including whether such Grey Asset falls within or outside the boundary of an area subject to a Station Lease), the Franchisee shall refer such matter to the dispute resolution process under the terms of the relevant Station Lease.

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

- 2.4 The Franchisee shall ensure, that where the allocation of responsibility for a Grey Asset is agreed pursuant to paragraph 2.2 or determined pursuant to paragraph 2.3), such Grey Asset is:
- (a) to the extent that a Station Asset Management Plan has not been submitted to the Secretary of State as at the date of such agreement or determination (as the case may be), included in the Station Asset Management Plan to be submitted to the Secretary of State pursuant to paragraph 1.2; or
 - (b) to the extent that a Station Asset Management Plan has been submitted to the Secretary of State as at the date of such agreement or determination (as the case may be), is included in the next update to the Station Asset Management Plan to be submitted to the Secretary of State pursuant to paragraph 1.10 immediately after the date of such agreement or determination.
- 2.5 The Franchisee shall use all reasonable endeavours to ensure that the allocation of responsibility for each Grey Assets agreed pursuant to paragraph 2.2 or determined pursuant to paragraph 2.3 shall be recorded via an amendment to the Station Lease and, where applicable, by an amendment to the relevant Station Access Conditions as soon as reasonably practicable and in any event within thirty-six (36) months of the date upon which allocation of responsibility for each such Grey Asset is so agreed or determined. The Franchisee shall obtain the prior written consent of the Secretary of State to any such amendment to the Station Lease and/or Station Access Conditions.

3. Station Social and Commercial Development Plan

3.1 The Franchisee shall:

- (a) ensure that the Station Social and Commercial Development Plan includes the following initiatives which are to be delivered by the Franchisee in compliance with its obligations in paragraph 3.1(b):
 - (i) from the Start Date until the end of the Franchise Period invest no less than an additional [REDACTED¹⁶¹] on property estate management;
 - (ii) by no later than [REDACTED¹⁶²], undertake a space utilisation study at all Stations and in so doing shall incur expenditure of no less than [REDACTED¹⁶³];

¹⁶¹ 25 October 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.

¹⁶² 25 October 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.

¹⁶³ 25 October 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.

- (iii) by no later than [REDACTED¹⁶⁴] procure a minimum expenditure of [REDACTED¹⁶⁵] on the delivery of the commercial schemes listed in column 2 of the table in Appendix 3 to this Schedule 1.7 at the stations listed in column 1 of such table. The expenditure to be incurred in respect of each commercial schemes listed in column 2 of the table in Appendix 3 to this Schedule 1.7 shall be no less than the amounts specified in column 3 of such table;
- (iv) by no later than [REDACTED¹⁶⁶] invest no less than [REDACTED¹⁶⁷] on the delivery of retail schemes (such as improved quality vending machines, innovative working spaces, work pods, click and collect services) at such Stations to be identified by the Franchisee and notified to the Secretary of State in accordance with the requirements of paragraph 3.3;
- (v) by no later than [REDACTED¹⁶⁸] introduce the social and community use programme working in partnership with ACoRP and Community Rail Partnership; and
- (vi) from 30 April 2020 until the end of the Franchise Period invest no less than:
 - (A) [REDACTED¹⁶⁹] in the creation and implementation of a social fund at Stations;
 - (B) [REDACTED¹⁷⁰] on the promotional support initiatives targeted at Category 3 Stations to facilitate the refurbishment of unused or underused station buildings with the intention of returning them for commercial or social purposes; and

¹⁶⁴ 25 October 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.

¹⁶⁵ 25 October 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.

¹⁶⁶ 25 October 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.

¹⁶⁷ 25 October 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.

¹⁶⁸ 25 October 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.

¹⁶⁹ 25 October 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.

¹⁷⁰ 25 October 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.

- (C) **[REDACTED¹⁷¹]** on the introduction of a social enterprise programme to facilitate partnerships with no less than twenty-one (21) social enterprise organisations including mental health charities; and
- (b) 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 Franchisee shall revise the Station Social and Commercial Development Plan by no later than the end of the first Franchisee Year (and on each subsequent anniversary of this date) and shall submit it to the Secretary of State for review and approval. The Franchisee 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 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 Franchisee;
- (e) provide for the implementation of schemes specified pursuant to paragraph 3.3(a) 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.
- 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

¹⁷¹ **25 October 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.**

Development Plan compared to the previous version and a brief summary of the rationale supporting each such revision.

3.5 The Franchisee shall ensure that the Station Social and Commercial Development Plan shall be updated so that following each update it continues to cover at least a period of ten (10) years from the date of the update.

3.6 If:

(a) 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

(b) 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 Franchisee shall:

(i) make such amendments to it as the Secretary of State shall reasonably direct; and

(ii) provide such additional information as the Secretary of State may reasonably require,

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

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 Franchisee shall conduct consultations with relevant Stakeholders (including ACoRP, passengers, users of Stations, members of relevant local communities, Network Rail and the British Transport Police) in relation to the potential risks, opportunities and priorities for investment and operational efficiencies in relation to Stations. The Franchisee shall act reasonably in determining the scope of the specification of such consultations including the Stations to be considered.

5. **NOT USED.**

6. **Security at Stations**

6.1 The Franchisee shall maintain for the duration of the Franchise Period the Secure Stations Accreditation for the Stations already achieved by the Train Operator under the Previous Franchise Agreement as set out in Appendix 1 to this Schedule 1.7.

6.2 The Franchisee shall maintain for the duration of the Franchise Period the Secure Car Parks Accreditation for the Stations already achieved by the Train Operator under the Previous Franchise Agreement as set out in Appendix 1 to this Schedule 1.7.

- 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 Franchisee 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. The Franchisee shall notify the Secretary of State once such Secure Station Accreditation has been obtained and shall maintain the same through the Franchise Term; or
 - (b) in respect of a Station that already has Secure Station Accreditation (either pursuant to paragraph 6.1 above, or because the Franchisee has been required to obtain Secure Station Accreditation pursuant to paragraph 6.3(a)), notify the Secretary of State of such 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), the Secretary of State may, following consultation with the British Transport Police, revoke the Secure Station Accreditation for such Station. For the avoidance of doubt, revocation of Secure Station Accreditation pursuant to this paragraph 6.4 shall constitute a contravention of the Franchise Agreement by the Franchisee.
- 6.5 Where a Station loses its Secure Station Accreditation (whether pursuant to paragraph 6.4 or otherwise) the Franchisee shall:
- (a) obtain Secure Station Accreditation for such Station as soon as reasonably practicable, in any event no later than 12 months from and including the date of the loss of such Secure Station Accreditation, and notify the Secretary of State that such Secure Station Accreditation has been achieved; and
 - (b) maintain such Secure Station Accreditation once obtained for the duration of the Franchise Term.
- 6.6 British Transport Police record the level of crimes at stations on a calendar year basis by reference to the number of recorded crimes per 100,000 entries and exits. If in relation to any calendar year which ends during the Franchise Term the number of recorded crimes at any Station is equal to or greater than 4 crimes per 100,000 entries and exits the Franchisee shall, if such Station does not already have Secure Stations Accreditation, immediately designate such Station as a "*Priority Station*" and notify the Secretary of State of this. The Franchisee shall obtain Secure Stations Accreditation for each Priority Station as soon as is reasonably practicable and promptly notify the Secretary of State when this has been achieved.
- 6.7 In this paragraph 6:
- (a) "**BTP Methodology**" means the document in the agreed form marked BTP Methodology;
 - (b) "**Secure Car Parks Accreditation**" and means car parks at Stations which have achieved accreditation under the Secure Car Parks Scheme;
 - (c) "**Secure Car Parks Scheme**" means the certification scheme which is managed by the Department for Transport and British Transport Police and

sets car park design and management safety standards for crime reduction at railway station car parks;

- (d) **“Secure Stations Accreditation”** means Stations which have achieved accreditation under the Secure Stations Scheme;
- (e) **“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; and
- (f) **“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 Franchisee shall at all times during the Franchise Period maintain records in relation to the measures taken by it to improve the Station environment at each of the Stations, covering the areas and the information set out in Appendix 2 to this Schedule 1.7.
- 7.2 The Franchisee shall, subject to paragraph 7.3, provide to the Secretary of State the information set out in Appendix 2 to this Schedule 1.7 within one (1) Reporting Period of each anniversary of the Start Date during the Franchise Period.
- 7.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
 - (a) such level of disaggregation as is reasonably specified by the Secretary of State; and
 - (b) any particular Station as is reasonably specified by the Secretary of State.
- 7.4 The information to be provided by the Franchisee to the Secretary of State within the timescales stipulated are set out in Appendix 2 to this Schedule 1.7.

8. NOT USED

9. Station Investment

- 9.1 The Franchisee shall at all times during the Franchise Term, co-operate with the Secretary of State and any third party nominated by the Secretary of State and notified to the Franchisee in developing opportunities for financing investment at Stations and Franchisee 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 Franchisee shall:
 - (a) attend meetings with the Secretary of State and/or such third party to discuss such opportunities;

- (b) provide the Franchisee's opinion on those opportunities;
- (c) review and comment on implementation timetables and programmes for any such opportunities; and
- (d) where requested by the Secretary of State to do so use all reasonable endeavours to engage with Network Rail for the purposes of ascertaining the feasibility and costs of making amendments to any Station Leases in order to facilitate the implementation of those opportunities.

10. CCTV

- 10.1 The Franchisee shall ensure that any installation of, or upgrade to, CCTV at any Station shall be undertaken in accordance with the CCTV Guidance.

11. Station Toilet Access

- 11.1 The Franchisee shall ensure that access to toilet facilities at all Stations is provided free of charge.

APPENDIX 1 TO SCHEDULE 1.7**List of Stations and Car Parks with Secure Stations Accreditation and Secure Car Parks Accreditation****1. Secure Stations Accreditation**

1. Alfreton
2. Alsager
3. Ambergate
4. Attenborough
5. Barrow-on-Soar
6. Beeston
7. Belper
8. Blythe Bridge
9. Boston
10. Bottesford
11. Burton-on-Trent
12. Chesterfield
13. Collingham
14. Corby
15. Cromford
16. Derby
17. Duffield
18. East Midlands Parkway
19. Heckington
20. Hinckley
21. Hucknall
22. Kettering
23. Kirkby-in-Ashfield
24. Langley Mill
25. Leicester
26. Lincoln Central
27. Long Eaton
28. Longton
29. Loughborough
30. Lowdham
31. Mansfield Woodhouse

32. Mansfield
33. Market Harborough
34. Market Rasen
35. Matlock
36. Matlock Bath
37. Melton Mowbray
38. Metheringham
39. Narborough
40. Newark Castle
41. Nottingham
42. Oakham
43. Ruskington
44. Saxilby
45. Sheffield
46. Shirebrook
47. Sileby
48. Skegness
49. Sleaford
50. Spalding
51. Stamford
52. Sutton Parkway
53. Syston
54. Tutbury and Hatton
55. Uttoxeter
56. Wainfleet
57. Wellingborough
58. Whatstandwell

2. Secure Car Parks Accreditation

1. Ambergate
2. Beeston
3. Chesterfield
4. Collingham
5. Derby (North)
6. Derby (Pride Park)

7. Derby (South)
8. Duffield
9. East Midlands Parkway
10. Ilkeston (East)
11. Ilkeston (West)
12. Kettering (North)
13. Kettering (South)
14. Lincoln (St Marys Street)
15. Newark Castle
16. Nottingham (Queens Road)
17. Oakham
18. Spalding (Winsover Road)
19. Stamford
20. Wellingborough (North)
21. Wellingborough (South)
22. Whatsandwell

APPENDIX 2 TO SCHEDULE 1.7**Information about Station Improvement Measures**

Table A		
Column 1	Column 2	Column 3
Information to be provided	Information (format)	When information to be provided
Station enhancement schemes	Location of station and progress of works against agreed milestones	As per paragraph 7.2 but subject to paragraph 7.3.
Car park expansion / enhancement schemes	Location of station and progress of works against agreed milestones	
Social and commercial developments agreed to be taken forward at the stations, as provided for in the SCDP	Completion date of each development. Annual report following review by Franchisee in consultation with the Secretary of State.	
The increase in the number of disabled persons' parking spaces at station	Number and locations of spaces delivered	
The number of designated setting down points suitable for disabled people at Stations	Number and locations of setting down points	
The number of platforms which have unobstructed access for all users	Number and identity of platforms	
Complaints/praise received about station facilities and services	No of complaints / positive comments per station	

APPENDIX 3 TO SCHEDULE 1.7**Large Development Schemes**

Column 1	Column 2	Column 3
Stations	Development Scheme	[REDACTED ¹⁷²]
St Pancras	Improved lounge and adjoining café. New concourse customer waiting area	[REDACTED]
Sheffield	Improved shops, cafes and customer areas	[REDACTED]
Nottingham	Better weather-proofing, retail brands and customer areas	[REDACTED]
Leicester	Improved shops, café and customer areas. Third party scheme for new station entrance	[REDACTED]
Derby	Improved concourse, choice of shops and customer areas	[REDACTED]
Lincoln	Improved waiting area plus retailing on island platform	[REDACTED]
Chesterfield	Concourse and retail improvements on island platform	[REDACTED]
Loughborough	Improved retail units and customer area	[REDACTED]
Kettering	New cafes and customer waiting areas Third party west-side station entrance	[REDACTED]
Wellingborough	New retail & waiting areas	[REDACTED]
Market Harborough	New platform-based station buildings	[REDACTED]
Burton-on-Trent	Free-standing coffee kiosk & retail unit	[REDACTED]

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25 October 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.

East Midland Parkway	Improved café and waiting area	[REDACTED]
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APPENDIX 4 TO SCHEDULE 1.7

NOT USED

SCHEDULE 2**ASSETS, LEASES, OTHER FRANCHISEES 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 Franchisees
Schedule 2.4:	NOT USED
Schedule 2.5:	Transport, Travel and Other Schemes
	Appendix 1: List of Transport, Travel and Other Schemes

Schedule 2.1

Asset Vesting and Transfer

1. **Vesting of Property Leases at the Start Date**
 - 1.1 The Franchisee shall not without the prior written consent of the Secretary of State (such consent not to be unreasonably withheld), whether generally or on a case-by-case basis:
 - (a) enter into any new Property Lease; or
 - (b) effect any amendment to any Property Lease, except to the extent that the Franchisee is required to do so by virtue of any station or depot access conditions to which it is a party.
 - 1.2 In respect of any new Property Leases with Network Rail, the Franchisee shall enter into such Property Leases:
 - (a) with the intent that section 31 of the Act shall apply to such leases; and
 - (b) in the agreed terms marked **SL** and **DL** (as appropriate).
 - 1.3 In respect of any assignment or amendment of any Property Lease to which section 31 of the Act applied on its grant, each of the Secretary of State and the Franchisee 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 Franchisee shall use all reasonable endeavours to ensure that any Station Lease that it enters into accurately records all fixtures and fittings in relation to such Station Lease.

Schedule 2.2

Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases**1. Novation of Access Agreements during the Franchise Term**

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

- (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 he may direct.

1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

1.3 Such novation shall be on such terms as the Secretary of State may reasonably require, including:

- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither the Secretary of State nor his nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a contravention referred to in paragraph 1.3(a),

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

1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as he may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. **Rolling Stock Related Contracts and Insurance Arrangements**

2.1 The Franchisee shall not:

- (a) execute any Rolling Stock Related Contract;
- (b) exercise any option or other discretion in any Rolling Stock Related Contract that would result in any increased payment or delay in delivery being made by or to the Franchisee or the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of the Franchise Agreement; or
- (c) amend or waive the terms of any Rolling Stock Related Contract,

without, in each case, the prior written consent of the Secretary of State (not to be unreasonably withheld).

2.2 The Franchisee shall supply to the Secretary of State a copy of all draft Rolling Stock Related Contracts and, immediately following execution, all executed Rolling Stock Related Contracts (including any agreement amending any Rolling Stock Related Contract) together with:

- (a) such other information or documentation relating to such Rolling Stock Related Contract and/or the relevant rolling stock as the Secretary of State may request (which may include offer letters (original and final));
- (b) the terms proposed by any person providing finance in relation to the relevant rolling stock (including cash flows);
- (c) any agreement (in whatever form) to which the Franchisee (or an Affiliate of the Franchisee) is a party and which relates to the relevant rolling stock;
- (d) information relating to capital allowances, details of any changes in the terms (including rentals) on which the relevant rolling stock is proposed to be leased compared to the terms on which such rolling stock was previously leased; and
- (e) a detailed justification of the Franchisee's proposed maintenance strategy for the relevant rolling stock and/or the Franchisee's analysis of the whole life costs of the relevant rolling stock.

2.3 Where the information or documentation so requested by the Secretary of State is not held by the Franchisee, the Franchisee shall use reasonable endeavours to obtain the relevant information or documentation from a third party (including any person from whom the Franchisee leases rolling stock).

- 2.4 The Franchisee shall not, without the prior written consent of the Secretary of State:
- (a) amend the terms of any insurance arrangements which relate to rolling stock vehicles used by it in the provision of the Passenger Services to which it is a party on the Start Date; or
 - (b) enter into any new insurance arrangements after the Start Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services ("**New Insurance Arrangements**").
- 2.5 The Franchisee shall, in addition, if it enters into any New Insurance Arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Franchisee, whether on a reciprocal basis or otherwise.

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

- 3.1 For the purpose of this paragraph 3:

"Cascaded Rolling Stock" means rolling stock proposed to be used by the Franchisee in the provision of the Passenger Services the availability of which is, in the opinion of the Secretary of State, directly or indirectly dependent upon the successful introduction into service of any Relevant Rolling Stock by any other Train Operator;

"Prior Train Operator" means the Train Operator which used or is using the Cascaded Rolling Stock immediately prior to its proposed use by the Franchisee;

"Relevant Delay" means any delay to the successful introduction into service of any Relevant Rolling Stock; and

"Relevant Rolling Stock" means rolling stock to be acquired by another Train Operator which, when acquired, will initiate the **"cascade"** of rolling stock that directly or indirectly makes the Cascaded Rolling Stock available for use by the Franchisee.

- 3.2 ¹⁷³**Without limiting paragraph 2.1 (Rolling Stock Related Contracts and Insurance Arrangements):**

- (a) **each Rolling Stock Lease entered into on or after the ERMA Start Date must allow the Secretary of State to make a direction under paragraph 3.2(b) below, including allowing Cascaded Rolling Stock to be sub-leased to the Prior Train Operator; and**
- (b) **if a Relevant Delay occurs, the Secretary of State may in the Secretary of State's sole discretion direct the Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during such period as the Secretary of State may require,**

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

and the Franchisee shall comply with such direction. Any such direction may include the Secretary of State requiring the Franchisee to sublease the Cascaded Rolling Stock back to the Prior Train Operator and/or to delay the date on which the Cascaded Rolling Stock is required to be delivered to the Franchisee under such Rolling Stock Lease.

- 3.3 Where the Secretary of State exercises his right pursuant to paragraph 3.2 (b) to make Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period there shall be a Change and where this is a Qualifying Change, it shall be assumed that the period that the Prior Train Operator retains any Cascaded Rolling Stock shall not exceed ninety (90) days and the only Revised Inputs shall be in relation to the difference between each of the rolling stock lease costs and variable track usage charge for the Cascaded Rolling Stock and the rolling stock lease costs and variable track usage charge applicable in relation to whatever rolling stock is to be used by the Franchisee in place of the Cascaded Rolling Stock.
- 3.4 Where there is a Change pursuant to paragraph 3.3 and the period that the Prior Train Operator retains any Cascaded Rolling Stock is more than ninety (90) days there shall be a further Change. Where such Change is a Qualifying Change the modifications to the methodology for calculating Revised Inputs provided for in paragraph 3.2(a) shall not apply.
- 3.5 Where there is a Change pursuant to paragraphs 3.3 or 3.4 and any such Change is a Qualifying Change there shall be a further Change (which shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change) on the date that the last Cascaded Rolling Stock ceases to be retained by the Prior Train Operator.
- 3.6 **NOT USED.**
- 3.7 Where the Secretary of State exercises his right pursuant to paragraph 3.2(b) to require the Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period, the Franchisee shall not be liable for any failure to comply with its obligations under the Franchise Agreement to the extent that:
- (a) such failure to comply arises directly as a result of the Franchisee being unable to use the Cascaded Rolling Stock; and
 - (b) the Franchisee uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.
- 3.8 The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of any material risk that a Relevant Delay will occur. If a Relevant Delay does occur the Franchisee shall use all reasonable endeavours to mitigate the impact on the delivery of the Franchise Services of the unavailability of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.
- 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 he may serve a notice on the Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate the impact of the delayed availability of the Cascaded Rolling Stock ("**Delayed Cascade Mitigation Plan**"). Such specification may include measures to be implemented by the Franchisee to mitigate the direct

or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:

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

3.10 The Franchisee shall meet with the Secretary of State to discuss the Delayed Cascade Mitigation Plan and provide such further information or analysis and further iterations of the Delayed Cascade Mitigation Plan as the Secretary of State shall reasonably require.

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 Franchisee 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.

3A Train Maintenance

3A.1 The Franchisee shall procure that heavy maintenance of Train Fleet is undertaken in accordance with a standard expected of a competent, skilled and experienced train operator.

3A.2 The Franchisee 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 Franchisee including the reduction of any lease payments for the relevant Rolling Stock (such approval not to be unreasonably withheld or delayed).

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

- 4.1 The Franchisee shall (other than on termination of the Franchise Agreement, for which the provisions of paragraph 4.5 of Schedule 15.4 (*Provisions applying on and after Termination*) shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- 4.2 Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such 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 Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- 4.3 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.1 in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as he may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.2 shall apply to any such assignment.
- 4.4 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.
- 4A** ¹⁷⁴**Where the Department requires the Franchisee to sub-let some of its Train Fleet to another Train Operator under the terms of paragraph 3.5 of Schedule 1.6 (*The Rolling Stock*), then the Franchisee shall:**
- (a) provide the sub-lessee with access to any applicable maintenance and mileage records;**

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

- (b) **give the sub-lessee reasonable access to the relevant rolling stock vehicles prior to the handover of such rolling stock vehicles to assist with the relevant handover in relation to both operation and maintenance;**
- (c) **use reasonable endeavours to offer the sub-lessee “knowledge transfer” sessions (including technical and operation support) to enable recipient engineers and operational personnel to learn from informed peers;**
- (d) **provide the sub-lessee all relevant information in relation to property arrangements at any Depot relevant to the sub-leased rolling stock vehicles (a “Relevant Depot”), including any stabling arrangements; and**
- (e) **procure such access to each Relevant Depot as the sub-lessee may reasonably require.**

5. **Station and Depot Leases**

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

5.2 The Franchisee shall not:

- (a) terminate or agree to terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Station Lease or Depot Lease;
- (b) assign all or part of its interest under any Station Lease or Depot Lease; or
- (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease,

except to the extent that the Secretary of State may otherwise agree from time to time (such agreement not to be unreasonably withheld if the Franchisee has made arrangements, reasonably satisfactory to the Secretary of State, for the continued operation of such Station or Depot (as the case may be) for the remainder of the Franchise Term or if consent to the Closure of the relevant Station or Depot has been granted).

6. **Station Subleases**

6.1 Unless the Secretary of State agrees otherwise, the Franchisee shall not sublet to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:

- (a) (other than any subletting to an Affiliate which is a Train Operator) is terminable without compensation immediately upon the termination of the Franchise Agreement; and
- (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

6.2 If so requested by the Secretary of State, the Franchisee shall:

- (a) extend each Station Sublease on the same terms for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease); and
- (b) if such Station Sublease terminates (which for the purposes of this paragraph 6.2(b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sublease in respect of which the Franchisee was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease),

subject, where required, to the consent of Network Rail (and, if required, the relevant sub-lessee) and to the duration of the relevant Station Lease.

- 6.3 The Franchisee shall notify the Secretary of State immediately on it becoming aware of any event which might give the Franchisee a right to forfeit or terminate any Station Sublease. The Franchisee shall notify the Secretary of State if it wishes to forfeit or terminate any such Station Sublease but shall not (without the Secretary of State's prior written consent) effect such forfeiture or termination until the date which occurs three (3) months after the date of such notice.

Schedule 2.3

Other Franchisees**1. Other Franchisees**

- 1.1 If the franchise agreement of another franchisee terminates or a railway administration order is made in respect of another franchisee, the Franchisee shall co-operate with any reasonable request of the Secretary of State to ensure:
- (a) that the services provided or operated by such other franchisee may continue to be provided or operated by any successor Train Operator or the railway administrator; and
 - (b) that the benefit of any arrangements between the Franchisee and such other franchisee which were designated as a key contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.
- 1.2 The benefit of any arrangements of the type referred to in paragraph 1.1(b) shall be provided on substantially the same terms as previously obtained by the relevant franchisee, subject to clause 14.8 (*Arm's Length Dealings*) and paragraph 1.3 of this Schedule 2.3, provided that the Secretary of State may exclude or modify any terms agreed or amended by such franchisee in the twelve (12) months preceding the date on which such franchisee's franchise agreement was terminated or the date on which the relevant railway administration order was made which were, in the Secretary of State's reasonable opinion, to the material detriment of such franchisee's business. The benefit of such arrangements shall be provided for such period as the Secretary of State may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.
- 1.3 The Franchisee shall notify the Secretary of State of its intention to terminate any contract with any other Train Operator which is designated as a Key Contract under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.
- 1.4 If the franchise agreement of another franchisee terminates in contemplation of the entry into or entry into effect of a new franchise agreement with the same franchisee in respect of all or a material part of the relevant railway passenger services, the Franchisee shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.
- 1.5 References in this paragraph 1 to "**a franchisee**" include references to any franchise operator of that franchisee.

Schedule 2.4

NOT USED

Schedule 2.5

Transport, Travel and Other Schemes**1. Local Authority Concessionary Travel Schemes**

1.1 The Franchisee shall:

- (a) subject to paragraph 1.2, participate in and comply with its obligations under:
 - (i) the concessionary travel schemes listed in Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
 - (ii) any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 1.1(b); and
- (b) subject to paragraph 1.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:
 - (i) any concessionary travel scheme listed in the Franchise Agreement the terms of which have been amended since the date of the Franchise Agreement; and
 - (ii) such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in.

1.2 Subject to the terms of the relevant concessionary travel scheme, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 1.1(a) where, in the reasonable opinion of the Secretary of State:

- (a) the Franchisee's continuing participation in such scheme; and/or
- (b) the obligations assumed by the relevant Local Authority in connection therewith,

each pursuant to Part II of the Travel Concession Schemes Regulations 1986 (SI 1986/77) (the "**Regulations**"), would fail to leave the Franchisee financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) than it was immediately following the Start Date.

1.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 1.1(b) where the Secretary of State is reasonably satisfied that:

- (a) the reimbursement arrangements with respect to the Franchisee's participation in any such scheme; and/or
- (b) the obligations to be assumed by such Local Authority in connection therewith,

each pursuant to the Regulations would fail to leave the Franchisee financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a result of such participation.

- 1.4 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new concessionary travel scheme pursuant to paragraph 1.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to him with respect to any such participation.
- 1.5 The Franchisee shall supply to the Secretary of State, in respect of any concessionary travel schemes referred to in paragraph 1.1(b), such information within such period as the Secretary of State may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a consequence of its participation in any such scheme, and/or the obligations assumed by such Local Authority in connection therewith.
- 1.6 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations), the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

2. **Multi-modal Fares Schemes**

2.1 The Franchisee shall:

(a) subject to paragraph 2.2, participate in and comply with its obligations under:

- (i) the multi-modal fares schemes set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
- (ii) any other multi-modal fares scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2.1(b);

including by co-operating in the implementation of any Smart Media technology pursuant to any such multi-modal fares schemes; and

(b) subject to paragraph 2.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:

- (i) any multi-modal fares scheme set out in paragraph 2 of 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 Subject to the terms of the relevant multi-modal fares scheme, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 2.1(a) where, in the reasonable opinion of the Secretary of State:

(a) the Franchisee's continuing participation in such scheme; and/or

- (b) the obligations assumed by the relevant Local Authority in connection therewith,
- would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.
- 2.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 2.1(b) where the Secretary of State is reasonably satisfied that the Franchisee's participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith, would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.
- 2.4 In determining whether the Franchisee shall, pursuant to paragraph 2.2, continue to participate or, pursuant to paragraph 2.3, participate in any multi-modal fares scheme, the Secretary of State shall construe the term "**financially no worse off**" to mean:
- (a) in respect of any multi-modal fares scheme set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Start Date under that scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date;
- (b) in respect of any multi-modal fares scheme which replaces and (in the Secretary of State's reasonable opinion) is reasonably similar to any such scheme as may be set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Start Date under the replaced scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date; and
- (c) in respect of any multi-modal fares scheme which does not replace or which does replace but which is not (in the Secretary of State's reasonable opinion) reasonably similar to any such scheme or schemes as may be set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, such reimbursement arrangements as agreed by the relevant parties to such multi-modal fares schemes (or on failure to agree, as determined by the Secretary of State).
- 2.5 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new multi-modal fares scheme pursuant to paragraph 2.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such participation.
- 2.6 The Franchisee shall supply to the Secretary of State, in respect of any multi-modal fares schemes referred to in paragraph 2.1 such information within such period as the Secretary of State may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off as a consequence of its participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith.

2.7 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off, the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

3. **Discount Fare Schemes**

3.1 If the Secretary of State:

- (a) effects, or proposes to effect, an amendment to a Discount Fare Scheme;
- (b) introduces any new Discount Fare Scheme; or
- (c) ceases to approve a Discount Fare Scheme,

for the purposes of section 28 of the Act, such amendment, intended amendment, introduction or cessation of approval shall be a Change.

3.2 The Secretary of State shall provide a reasonable opportunity to the Franchisee to make representations to him before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 3.1.

3.3 The Franchisee shall supply to the Secretary of State, in respect of any Discount Fare Scheme referred to in paragraph 3.1, such information within such period as the Secretary of State may reasonably require for the purposes of determining the financial effect of any such amendment, intended amendment, introduction or cessation of approval.

4. **Inter-Operator Schemes**

4.1 The Franchisee shall participate in and comply with its obligations under the terms of each of the Inter-Operator Schemes.

4.2 Without limiting paragraphs 4.1 and 4.3, the Franchisee agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Secretary of State.

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

4.4 The Franchisee shall:

- (a) provide reasonable notice to the Secretary of State of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which, in its opinion, is reasonably likely to materially affect the provision of the Franchise Services; and
- (b) have regard to the Secretary of State's views in respect of any such proposal.

4.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Secretary of State in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

APPENDIX 1 TO SCHEDULE 2.5**¹⁷⁵ Transport, Travel and Other Schemes****1. Local Authority Concessionary Travel Schemes**

1.1 Each of the following schemes as at the Start 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 fares for elderly, disabled and young persons – free for under-fives and a 5-18 railcard).
- (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) Elderly and education season ticket schemes operated by Derbyshire County Council.
- (f) Concessionary schemes with North East Lincolnshire Country Council and North Lincolnshire Council (discounts for holders of Concessionary Travel Passes and free travel for holders of Disabled Persons Travel Passes).
- (g) Scholar Season Ticket schemes with the following authorities:
 - (i) West Yorkshire Combined Authority Getabout+; and
 - (ii) South Yorkshire SYConnect+.

1.2 Any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise 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 Start Date:

- (a) Derbyshire County Council:
 - (i) Derbyshire Wayfarer (bus and train).
- (b) Merseytravel:
 - (i) Saveaway (bus, train and ferry); and

¹⁷⁵ 9 May 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

- (ii) Trio (bus, train and ferry).
 - (c) Robin Hood Network (Nottinghamshire):
 - (i) Pay as you go cards (bus and NET tram); and
 - (ii) Season cards (bus, NET tram and train).
 - (d) Transport for Greater Manchester:
 - (i) System One Travelcards (bus, Metrolink and train);
 - (ii) Metrolink tickets (Metro and train);
 - (iii) Wayfarer tickets (bus, Metro and train);
 - (iv) DaySaver (Off peak Rover ticket with bus, train and tram combinations); and
 - (v) Rail Ranger (day ticket) and Traincard (Season).
 - (e) South Yorkshire TravelMaster:
 - (i) SYConnect+ (bus, tram and train).
 - (f) West Yorkshire Combined Authority:
 - (i) Metrocards/M-Cards (bus and train);
 - (ii) Metro DayRover and DaySaver tickets (daily off-peak, bus and train); and
 - (iii) 11-25 Student Photocards for Getabout+.
- 2.2 Any other multi-modal fares travel scheme which the Franchisee is required to participate in during the Franchise 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 Start 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) 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 Start Date which relate to arrangements between the Franchisee 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) the CPAY Agreement;
- (h) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Franchise Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; **[DELETED¹⁷⁶]**
- (i) ¹⁷⁷ any Discount Fare Scheme;
- (j) ¹⁷⁸ **and;**
- (k) ¹⁷⁹ ***the Veterans Railcard scheme introduced on or about 11 November 2020 between the participants named therein.***

¹⁷⁶ [9_ May 2019 \(Date of Contract Change Letter\) – Contract deletion agreed by the Secretary of State and Franchisee.](#)

¹⁷⁷ 9 May 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁷⁸ 9 May 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁷⁹ 9 May 2019 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 3

NOT USED

SCHEDULE 4**ACCESSIBILITY AND INCLUSIVITY**

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

Schedule 4

Accessibility and Inclusivity**1. Relationship with other obligations relating to persons with disabilities**

1.1 The Franchisee acknowledges that its obligations in this Schedule 4 are in addition to and do not limit its obligations to comply with:

- (a) the EA and any regulations imposed by it;
- (b) any applicable condition(s) in any of its Licences (including in respect of persons with disabilities); and
- (c) any other requirements of the Franchise Agreement.

1.2 This Schedule 4 sets out:

- (a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and
- (b) specific obligations of the Franchisee directed at meeting the needs of persons with disabilities.

1.3 ¹⁸⁰

- (a) **Subject to paragraph 1.3(c) below, it is acknowledged that the Franchisee is subject to obligations regarding accessibility under the terms of its Licences (including under the form of its Accessible Travel Policy as approved from time to time by the ORR in connection with the requirements of its Licences) (the "Licence Accessibility Obligations").**
- (b) **Where any matter included in this Schedule 4 is the subject of a Licence Accessibility Obligation, it is agreed that compliance with the Licence Accessibility Obligation shall take precedence over this Schedule 4 such that compliance with the Licence Accessibility Obligation shall be deemed to fulfil the obligation of the Franchisee in respect of that matter under this Schedule 4 and any failure by the Franchisee in respect of that matter shall be addressed under that Licence and not under this Franchise Agreement.**
- (c) **Paragraph 1.3(a) shall have no application to paragraph 3 (*Dealing with Claims relating to Stations*).**

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

2. **Physical Alterations and Accessibility of Stations**

2.1 In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by the Franchisee that:

- (a) there is limited funding available to the Secretary of State to assist franchisees and/or franchise operators with the carrying out of those works;
- (b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised with regard to where there is the greatest need and/or where physical alterations can have the greatest effect; and
- (c) the Secretary of State's national programme of works of physical alterations at stations addresses these issues in a structured way.

2.2 The Franchisee shall:

- (a) co-operate reasonably with and assist the Secretary of State in the development and furtherance by the Secretary of State of the programme described in paragraph 2.1(c) by providing to the Secretary of State:
 - (i) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and
 - (ii) advice as to the most economical way in which accessibility for Disabled Persons could, in the Franchisee's reasonable opinion, be improved at Stations;
- (b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and
- (c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through the Secretary of State pursuant to paragraph 2.5), including from Local Authorities, local development agencies and the National Lottery Commission. The Franchisee shall notify the Secretary of State of:
 - (i) any such additional funding which it secures; and
 - (ii) the terms on which such additional funding has been granted.

2.3 In participating in any multi-modal fares scheme, the Franchisee shall use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant station, including within and in the immediate proximity of such station.

2.4 If, during the Franchise Term:

- (a) the Franchisee has complied with its obligations in section 20(4) and section 20(9), as varied by paragraph 2(3) of Schedule 2 of the EA (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station accessible to a Disabled Person to avoid a Disabled Person being placed at a substantial disadvantage by a physical feature at a Station) and its obligations in paragraph 2.7 below concerning Minor Works; and
- (b) notwithstanding such compliance, the Franchisee reasonably considers it is still required to carry out or procure physical works of alteration at a Station in order to comply with the EA Requirements in respect of that Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,

the Franchisee may seek funding from the Secretary of State in respect of that expenditure.

2.5 If the Franchisee seeks funding from the Secretary of State under paragraph 2.4, and demonstrates to the Secretary of State's satisfaction that the criteria in paragraph 2.4 have been satisfied, then the Secretary of State may agree to adjust the amount of Franchise Payments in respect of some or all of the works and/or expenditure. In considering his response to any such request, the Secretary of State will have regard to the availability of funding and the priorities set out in the national programme described in paragraph 2.1(c), together with any other available sources of funding described in paragraph 2.2(c). If and to the extent the Secretary of State agrees to adjust Franchise Payments in accordance with this paragraph 2.5 in any Franchisee Year:

- (a) the Secretary of State shall make such adjustment to the Franchise Payments; and
- (b) the Franchisee shall spend such additional funds:
 - (i) in order to comply with the EA Requirements referred to in paragraph 2.4(b); and
 - (ii) in accordance with any conditions the Secretary of State may notify the Franchisee of.

2.6 If and to the extent the Franchisee is required to pay any increased access charges as a result of additional expenditure required to be incurred by another station Facility Owner for the purpose of complying with the EA Requirements in respect of a Franchisee Access Station, provided that the Franchisee:

- (a) notifies the Secretary of State within seven (7) days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and
- (b) complies with the Secretary of State's reasonable directions regarding the exercise of any rights the Franchisee may have in respect thereof,

the imposition of the increased access charges shall be a Change.

3. Dealing with Claims relating to Stations

- 3.1 If the Franchisee receives notification of a claim under the EA in respect of any alleged non-compliance with the EA Requirements or otherwise in respect of any Station (an "**EA Claim**") then the Franchisee shall:
- (a) notify the Secretary of State within seven (7) days of receiving notification of the EA Claim. The Franchisee shall at the same time notify the Secretary of State of any reasonable alternative methods of making services at the Station accessible to Disabled Persons that it has considered and/or put in place pursuant to section 20(4) and section 20(9), as varied by paragraph 2(3) of Schedule 2 of the EA;
 - (b) if required by the Secretary of State, defend the EA Claim or any aspect of the EA Claim (which may include appealing the judgment). The Secretary of State will, subject to paragraph 3.4, pay the Franchisee's reasonable costs of:
 - (i) any defence or appeal required by the Secretary of State; and/or
 - (ii) compliance with the Secretary of State's instructions in accordance with paragraph 3.1(c); and
 - (c) act in accordance with the reasonable instructions of the Secretary of State to defend the EA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of the Secretary of State) settle or enter into any compromise in relation to the EA Claim (or the relevant aspect of it), including by entering into mediation.
- 3.2 If, in the reasonable opinion of the Franchisee, it will be more cost effective to settle the EA Claim rather than act in accordance with the Secretary of State's requirement under paragraph 3.1, it shall produce for the Secretary of State's approval a settlement proposal, setting out the terms of the Franchisee's proposals to make an offer to the Disabled Person making the EA Claim and its reasons for making such offer (the "**Settlement Proposal**").
- 3.3 If the Secretary of State does not accept the Settlement Proposal and still requires the Franchisee to defend the EA Claim (or any aspect of it) then the Franchisee shall defend the EA Claim in accordance with paragraph 3.1.
- 3.4 If the Franchisee is required to defend an EA Claim where it has submitted a Settlement Proposal to the Secretary of State and an award is made in respect of the EA Claim in favour of the person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.5, the Secretary of State shall pay to the Franchisee:
- (a) the difference between such an award and the figure set out in the Settlement Proposal; and
 - (b) the further reasonable costs incurred or payable by the Franchisee in defending the EA Claim, to the extent that such costs have not already been paid by the Secretary of State under paragraph 3.1(b).
- 3.5 The Secretary of State shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, the Secretary

of State, in his reasonable opinion, considers that the Franchisee has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.

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 Franchisee shall:

- (a) establish and manage the Minor Works' Budget to fund the carrying out of Minor Works. The Minor Works:
 - (i) may, but shall not necessarily include, the Minor Works described in Appendix 1 (Minor Works) to this Schedule 4;
 - (ii) shall not include any works which Network Rail, the Franchisee or any other person has a separate obligation to carry out, except where:
 - (A) such obligation is an obligation of the Franchisee under the EA; or
 - (B) the inclusion of such works would lead to the acceleration of the timescale for their completion and the Secretary of State gives his consent pursuant to paragraph 3A.2(a)(iii);
 - (iii) shall only include works other than those permitted by paragraphs 3A.2(a)(i) and 3A.2(a)(ii) with the prior consent of the Secretary of State; and
 - (iv) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of the Secretary of State;
- (b) as soon as reasonably practicable (and in any event within four (4) months) after the Start Date and thereafter before the start of each Franchisee Year:
 - (i) ¹⁸¹**develop a Minor Works' Programme and consult with the Accessibility Panel and relevant Passengers' Council in relation thereto;**
 - (ii) in conjunction with its activities in paragraph 3A.2(b)(i), and, consistent with its obligations under paragraph 2.2(b), liaise with Network Rail and other Train Operators as necessary with regard to

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

the determination and implementation of each Minor Works' Programme; and

- (iii) following the consultation and liaison described in paragraphs 3A.2(b)(i) and 3A.2(b)(ii), obtain the Secretary of State's prior approval (such approval not to be unreasonably withheld) of each Minor Works' Programme;
- (c) carry out or procure the carrying out of the Minor Works' Programme in each Franchisee Year and in doing so, spend at least the amount of the Minor Works' Budget for the relevant Franchisee Year in such Franchisee Year (unless otherwise agreed by the Secretary of State);
- (d) report progress to the Secretary of State in determining and carrying out the Minor Works' Programme no less than once every three (3) Reporting Periods; and
- (e) co-operate, as the Secretary of State may reasonably require, with Network Rail or any other person seeking to carry out or procure Minor Works at the Stations or any other stations.

4. ¹⁸²**Specific Additional Obligations relating to Persons with Disabilities**

4.1 To the extent the Franchisee did so prior to the ERMA Start Date, it shall continue to implement procedures necessary to:

- (a) record the making of reservations for seating accommodation and for spaces for wheelchairs for and/or the provision of assistance to, persons with disabilities which are made through the Passenger Assistance (or whatever service may replace it from time to time for the purposes of ORR's most recent guidance on the Accessible Travel Policies);
- (b) record whether such seating accommodation and/or assistance is actually provided, whether there has been a delay in providing such assistance at either departing, arrival or any interchange stations, and whether the journeys planned using Passenger Assistance have been completed successfully (e.g. by surveying a representative sample of users); and
- (c) provide the results of such records to the Secretary of State, and publish a summary of the data in its Customer Report(s) and on the relevant section of the Franchisee's website.

4.2 By no later than 30 November 2020, the Franchisee **shall notify the Secretary of State of:**

- (a) **the extent to which it recorded the matters described in paragraphs 4.1(a) and 4.1(b) above (collectively referred to as the "Seating and Assistance Provisions"), as at the date of the notification; and**

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

- (b) if and to the extent to which it did not previously record the Seating and Assistance Provisions, its assessment of the costs, practicalities and timescales involved in putting in place the necessary systems and processes to enable them to do so.

4.3 Following the notifications referred to in paragraph 4.2:

- (a) if the Franchisee already records the Seating and Assistance Provisions, it shall continue to do so and shall provide the results of such records to the Secretary of State, and publish a summary of the data in its Customer Report(s) and on the relevant section of the Franchisee's website; and
- (b) if the Franchisee does not record the Seating and Assistance Provisions, then the Secretary of State may require them to establish and implement the necessary systems and processes by such date as the Secretary of State may reasonably specify (having regard to any assessment provided by the Franchisee pursuant to paragraph 4.1 above), and with effect from such date, it shall record Seating and Assistance Provisions and shall provide the results of such records to the Secretary of State and publish a summary of the data in its Customer Report(s) and on the relevant section of the Franchisee's website.

4.4 The Franchisee shall promptly send to the Secretary of State a copy of:

- (a) each set of results of the surveys of Passenger Assistance users that the Franchisee undertakes pursuant to its Accessible Travel Policy; and
- (b) any reports that the Franchisee submits to ORR in connection with the effectiveness of, and satisfaction with, the Passenger Assistance service.

4.5 The Franchisee shall comply with the requirements set out in Appendix 2 (*Accessible Transport Arrangements*) to this Schedule 4 in respect of the provision of accessible transport arrangements for persons with disabilities.

5. ¹⁸³Annual Accessibility Update

5.1 The Parties acknowledge that the Franchisee, pursuant to its Licence Accessibility Obligations, is required to submit reports from time to time to ORR in respect of accessibility matters, including, in relation to:

- (a) the activities undertaken by the Franchisee to improve accessibility to the Franchise Services; and
- (b) the approach that the Franchisee has taken to assessing the accessibility requirements of passengers pursuant to the

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

requirements of the EA for example when making decisions about operations, design and service improvements; and

- (c) the action(s) taken by the Franchisee to remedy any failure (whether identified by the Franchisee or ORR) to comply with the Franchisee's Accessible Travel Policy or any other accessibility related obligation arising by pursuant to its Licence Accessibility Obligations.

5.2 The Franchisee shall provide a copy of any report submitted to ORR pursuant to paragraph 5.1 to the Secretary of State within seven (7) days of it being submitted to ORR.

6. ¹⁸⁴Accessibility Director and Accessibility Manager

6.1 As soon as reasonably practicable and by no later than 31 January 2021, the Franchisee shall nominate (to the extent that the Franchisee has not already done so):

- (a) a director to the board of directors of the Franchisee; and
 (b) an operational manager,

each with specific responsibility of ensuring the Franchisee complies with its obligations in connection with accessibility, including pursuant to its Accessible Travel Policy requirements.

6.2 The Franchisee shall ensure that such roles referred to in paragraph 6.1 are filled as soon as reasonably practicable after such roles become vacant throughout the Franchise Term.

7. ¹⁸⁵Accessibility Panel

7.1 The Franchisee shall:

- (a) consult the Accessibility Panel on operational and policy decisions that may have an impact on the needs of passengers with accessibility requirements;
 (b) develop the design of the Enhanced Disability Awareness Training referred to in paragraph 9 below, and the co-design of physical assets, electronic services and applications, and other services and facilities relating to accessibility as appropriate, in each case,

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

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

actively engaging with the Accessibility Panel as may be appropriate; and

- (c) provide the Accessibility Panel the opportunity to report to the board of directors of the Franchisee on a quarterly basis.

8. ¹⁸⁶Enhanced Disability Awareness Training

8.1 By no later than 31 July 2021 (or such later date as may be agreed by the Secretary of State and the Franchisee), the Franchisee shall deliver Enhanced Disability Awareness Training to all Franchise Employees. The Franchisee shall also ensure it delivers the Enhanced Disability Awareness Training to any Franchise Employees appointed following 31 July 2021 (excluding Franchise Employees appointed less than two months prior to the Expiry Date (as extended pursuant to clause 3.3 of the ERMA, if applicable) if it is not reasonably practicable to deliver Enhanced Disability Awareness Training to such Franchise Employees) as soon as reasonably practicable after their appointment.

8.2 In developing the Enhanced Disability Awareness Training, the Franchisee shall:

- (a) take into account of a wide range of disabilities (including non-visible disabilities); and
- (b) ensure the content complies with the requirements of the ORR's Accessible Travel Policy guidance.

8.3 The Franchisee shall involve people with disabilities and/or groups representing people with disabilities (which may include the Accessibility Panel) in the delivery of the Enhanced Disability Awareness Training.

9. ¹⁸⁷Social Media Engagement with Passengers with Disabilities

9.1 By no later than 31 January 2021, the Franchisee shall develop and share with the Secretary of State a twelve (12) month plan describing how it shall increase its use of social media for the purpose of:

- (a) advising passengers with disabilities on matters, including:
- (i) planned and/or unplanned disruptions to Passenger Services;
- (ii) changes to Passenger Services in operation; and
- (iii) rail replacement bus services;

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

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

- (b) responding to queries and questions from passengers with disabilities and in a timely manner;
 - (c) receiving feedback and comments from passengers with disabilities; and
 - (d) promoting the Franchisee's additional services for passengers with disabilities, including Passenger Assistance.
- 9.2 Subject to the Secretary of State's consent to the plan shared pursuant to paragraph 9.1 (such consent not unreasonably withheld or delayed), the Franchisee shall implement this plan (the "Social Media Plan").
- 9.3 By no later than 31 January 2022, the Franchisee shall provide the Secretary of State with a report detailing the extent to which the Social Media Plan is achieving the purposes referred to in paragraph 9.1 and any proposed revisions to the Social Media Plan to help achieve those purposes.
- 9.4 Any revision to the Social Media Plan proposed by the Franchisee pursuant to paragraph 9.3 shall be subject to the consent of the Secretary of State before implementation (such consent not unreasonably withheld or delayed).
10. ¹⁸⁸ Accessible Formats of Passenger Facing Information
- 10.1 By no later than 31 January 2021, the Franchisee shall ensure (and continue to ensure throughout the Franchise Term) that, if and to the extent reasonably practicable, passenger facing information (in whatever form or media) is presented or made available in a range of accessible formats, taking into account the requirements of Disabled People in relation to communication (such as passengers who use British Sign Language or "easy read").
- 10.2 The Parties acknowledge that:
- (a) the ORR licensing regime requires the publication of certain documents (the "Relevant Documents") in accessible formats; and
 - (b) insofar as the obligation in paragraph 10.1 above applies to the Relevant Documents, enforcement action is within the remit of the ORR and accordingly a failure to comply with paragraph 10.1 in respect of the Relevant Documents shall not be treated as a contravention of the Franchise Agreement (but the Franchisee nevertheless acknowledges that it will remedy any such failure, as

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

soon as practicable and in accordance with any directions as may be given by the ORR).

11. ¹⁸⁹Diversity Impact Assessments

11.1 The Franchisee shall, from the ERMA Start Date and throughout the Franchise Term, ensure that it conducts a diversity impact assessment on all projects that will or may affect the interests of persons with protected characteristics (as defined under the Equalities Act 2010) carried out by the Franchisee (except where in the reasonable opinion of the Franchisee, the project is sufficiently completed such that a diversity impact assessment is not reasonably expected to materially influence the outcome of the project, in which case the requirement to conduct a diversity impact assessment in respect of that particular project shall not apply). The Franchisee shall take such steps as it considers appropriate (acting reasonably) in light of the conclusions of the diversity impact assessment to ensure that issues affecting people with protected characteristics (as defined under the Equalities Act 2010) are properly addressed in compliance with applicable Laws.

12. ¹⁹⁰The Franchisee shall comply with any reasonable request by the Secretary of State in connection with the development and implementation of a station accessibility data collection plan which may include (but shall not be limited to):

- (a) supporting the Secretary of State in developing and designing the methodology for data collection;**
- (b) completing questionnaires and/or using reasonable endeavours to procure that the relevant station Facility Owner completes the relevant questionnaire;**
- (c) providing information in relation to Station accessibility and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such information; and**
- (d) providing access to Stations to facilitate accessibility data collection and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such access,**

in each case, in a timely manner.

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

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

APPENDIX 1 TO SCHEDULE 4**Minor Works**

1. Providing additional signage, where it does not currently exist, to allow better way finding around the Station by Disabled Persons.
2. Removing:
 - 2.1 thresholds (above 15 millimetres) which do not comply with the Code of Practice; or
 - 2.2 fewer than three (3) steps,from the entrances to booking halls or platforms to enable those facilities to have step-free access.
3. Providing contrasting manifestations on glazed areas where contrasting manifestations do not currently exist.
4. Providing additional handrails around the Station where handrails do not currently exist and where the Franchisee reasonably believes they may be required by a Disabled Person.
5. Providing new accessible stair nosings where stair nosings do not currently exist.
6. Providing new tactile surfaces, including at the top and bottom of flights of steps (but excluding at platform edges) where tactile surfaces do not currently exist.
7. Providing additional seating that is accessible to Disabled Persons, but not replacing existing seating.
8. Providing induction loops for ticket office windows where induction loops do not currently exist.
9. Replacing non-standard fittings with fittings that are compliant with the Code of Practice in existing disabled toilets, which would include replacing non-standard fittings in respect of toilet bowls and sinks, but would not include making major changes to plumbing or to the dimensions of the toilet area.
10. Providing dropped kerbs at drop off/set down points or Station car parks to enable access/egress thereto where dropped kerbs do not currently exist.
11. Marking out existing car-parking bays for use by persons with disabilities which comply with the Code of Practice, where such car parking bays do not currently comply.

APPENDIX 2 TO SCHEDULE 4**Accessible Transport Arrangements**

1. References in this Appendix 2 to Schedule 4 (*Accessibility and Inclusivity*) to passengers are references to passengers with disabilities who are wheelchair users or otherwise severely mobility impaired.
2. Subject to paragraph 4, where:
 - 2.1 a passenger wants to travel on a Passenger Service; and
 - 2.2 the design of the station at which the passenger's journey on such Passenger Service is to start (the "**Departure Station**") or finish (the "**Destination Station**") prevents the passenger from using that station to access or disembark from that Passenger Service,

the Franchisee shall provide accessible transport arrangements for that passenger in accordance with paragraph 3.
3. The Franchisee shall provide accessible transport arrangements for the passenger referred to in paragraph 2:
 - 3.1 from the Departure Station to the next station at which the Passenger Service is scheduled to call and at which it is possible for the passenger to access that Passenger Service;
 - 3.2 to the Destination Station, from the station closest to such station at which the Passenger Service is scheduled to call and which it is possible for the passenger to use to disembark from that Passenger Service; and/or
 - 3.3 to or from such other station as the Franchisee may, having regard to the journey and the needs of the passenger, agree,

and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.
4. The Franchisee's obligations under this Appendix 2 to Schedule 4 (*Accessibility and Inclusivity*) are subject to:
 - 4.1 reasonable prior notice of the passenger's requirement for accessible transport arrangements; and
 - 4.2 the availability of suitable accessible transport arrangements (provided that the Franchisee has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such accessible transport arrangements).

SCHEDULE 5
FARES AND SMART TICKETING

Schedule 5.1:	Purpose, Structure and Construction
Schedule 5.2:	Franchisee's Obligation to Create Fares
Schedule 5.3:	Allocation of Fares to Fares Baskets
Schedule 5.4:	Regulation of Fares Basket Values
Schedule 5.5:	Regulation of Individual Fares
Schedule 5.6:	Exceeding the Regulated Value, Regulated Price or Regulated Child Price
Schedule 5.7:	Changes to Fares and Fares Regulation
Schedule 5.8:	Fares Regulation Information and Monitoring
Schedule 5.9:	Smart Ticketing
¹⁹¹ Schedule 5.10:	Fares, Ticketing and Retail Reform

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

Schedule 5.1

Purpose, Structure and Construction**1. Purpose of provisions relating to Creating Fares**

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

1.2 Purpose of Fares Regulation

(a) The purpose of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) to Schedule 5.8 (*Fares Regulation Information and Monitoring*) (inclusive) is to provide for the regulation of Fares by the Secretary of State pursuant to section 28 of the Act.

(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 one of the following Fares Baskets:

(i) the Commuter Fares Basket; or

(ii) the 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 a 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 a Fares Basket;

(B) the individual increase in the Price of each Fare in a 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 Fares Basket Values*) and Schedule 5.5 (*Regulation of Individual Fares*):

(i) the overall increase of the Prices of all Fares in a Fares Basket may not exceed the Retail Prices Index + k per cent per annum in respect of each Fare Year; and

(ii) the increase in the Price of any individual Fare in a Fares Basket may not exceed the Retail Prices Index + k per cent + f per cent per annum in respect of each Fare Year.

For the purposes of paragraph 1.2(d)(i), "**k**" shall have the meaning given to it in paragraph 4.2 of Schedule 5.4 (*Regulation of Fares Basket Values*) and for the purposes of paragraph 1.2(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 (*Franchisee's Obligation to Create Fares*) sets out or refers to the Franchisee's obligations to Create Fares.
- 2.2 Schedule 5.3 (*Allocation of Fares to Fares Baskets*) sets out the allocation of Fares to Fares Baskets.
- 2.3 Schedule 5.4 (*Regulation of Fares Basket Values*) sets out the limits applicable to the overall increase in Prices of all Fares in a Fares Basket.
- 2.4 Schedule 5.5 (*Regulation of Individual Fares*) sets out the limits applicable to the increase in the Price of any individual Fare in a 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 Franchisee exceeding:
- (a) the Regulated Value of any 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 (*Franchisee's Obligation to Create Fares*), Fare shall have the wide meaning given to it in paragraph (a) of that definition; and
 - (b) Schedule 5.3 (*Allocation of Fares to Fares Baskets*) to Schedule 5.8 (*Fares Regulation Information and Monitoring*) (inclusive), Fare shall have the narrow meaning given to it in paragraph (b) of that definition.
- 3.2 References in this Schedule 5 to a Fare shall, except to the extent the context otherwise requires, be construed as references to the Fare which is or can be Created by the Lead Operator for the Flow to which the Fare relates or, if such Flow is not a Compulsory Inter available Flow, any Fare which the Franchisee has Created or can Create in respect of that Flow as the Secretary of State may specify.

4. Fares Documents

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 2010 or the 2010 Nominal Ticket Sales:

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

the relevant Fares Document shall prevail.

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 2010 or the 2010 Nominal Ticket Sales:

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

this Schedule 5 shall prevail.

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 Franchisee Creating either:

- (a) a Fare which is only valid for use by persons under the age of 16; or
- (b) a Fare which is valid for use:
 - (i) by any person at a price; and
 - (ii) by persons under the age of 16 at a discounted price relative to the price set pursuant to paragraph 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) Fares Basket;
- (b) Commuter Fare; and
- (c) Protected Fare,

Fares to or from any New Station, on such basis as he may, after consultation with the Franchisee, reasonably determine and references in this Schedule 5 to Fares Basket, Commuter Fare, Protected Fare and Fares and other relevant definitions shall be construed accordingly.

Schedule 5.2

Franchisee's Obligation to Create Fares**1. Creation of Commuter Fares and Protected Fare**

The Franchisee shall ensure that each Commuter 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 Franchisee shall set the Child Price for any Fare that it Creates so that that Fare may be purchased by or for a person under the age of 16 for an amount which is no greater than fifty per cent (50%) of the Price of the relevant Fare.

2.2 The Franchisee shall not Create or agree to Create any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld).

Schedule 5.3

Allocation of Fares to Fares Baskets**1. Allocation of Fares to Fares Baskets**

1.1 On or prior to the Start Date the Secretary of State shall allocate each Commuter Fare and Protected Fare to the relevant Fares Basket in accordance with this Schedule 5.3.

1.2 Subject to paragraph 2, every Commuter Fare shall be allocated by the Secretary of State to the Commuter Fares Basket and every Protected Fare shall be allocated by the Secretary of State to the Protected Fares Basket.

2. Designation of Non Fares Basket Fares

2.1 On or prior to the Start Date, the Secretary of State shall:

(a) separately (or in aggregate with other Fares of the same type in the opposite direction or for similar journeys that have the same Price) rank, in descending order according to their Gross Revenue for the period of twelve (12) months which ended 31 March 2010:

(i) all Commuter Fares; and

(ii) all Protected Fares;

(b) aggregate, following such ranking:

(i) those Commuter Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent (5%) of the aggregate Reference Revenue of all Commuter Fares;

(ii) those Protected Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent (5%) of the aggregate Reference Revenue of all Protected Fares; and

(c) designate, following such aggregation:

(i) those Commuter Fares referred to in paragraph 2.1(b)(i) as Non Fares Basket Fares; and

(ii) those Protected Fares referred to in paragraph 2.1(b)(ii) as Non Fares Basket Fares.

2.2 Without prejudice to the Secretary of State's right to require the content of a Fares Basket to change at any time prior to the Start Date, or, thereafter, prior to the commencement of any Fares Setting Round, pursuant to paragraph 1 of Schedule 5.7 (*Changes to Fares and Fares Regulation*), any Commuter Fare or Protected Fare that is also designated as a Non Fares Basket Fare shall not be allocated to the relevant Fares Basket.

2.3 The Secretary of State may de-designate any Non Fares Basket Fare pursuant to paragraph 1.1(d) (iii) of Schedule 5.7 (*Changes to Fares and Fares Regulation*).

Schedule 5.4

Regulation of Fares Basket Values

1. **Value of Fares Basket not to exceed Regulated Value**

Subject to paragraph 1.3 of Schedule 5.6 (*Exceeding the Regulated Value, Regulated Price or Regulated Child Price*) the Franchisee shall procure that the Value of a Fares Basket at any time in any Fare Year does not exceed its Regulated Value for that Fare Year.

2. **Value**

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

3. **Projected Revenue**

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

P x 2010 Nominal Ticket Sales	
where:	
P	is the Price of that Fare at that time; and
2010 Nominal Ticket Sales	is the number of nominal ticket sales of that Fare for 2010, ascertained as follows:
	$\frac{A}{B}$
	where:
A	is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (<i>Allocation of Fares to Fares Baskets</i>) for the period of twelve (12) months which ended 31 March 2010; and
B	is the Price for that Fare recorded by RSP in February 2010.

4. **Regulated Value**

4.1 The Regulated Value of a Fares Basket for any Fare Year shall be an amount equal to:

2010 Ticket Revenue x PPAI	
where:	
2010 Ticket Revenue	is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in that Fares Basket for the period of twelve (12) months which ended 31 March 2010;
PPAI	is:
	where:

	(a)	in respect of the Fare Year commencing 1 January 2011, the Permitted Aggregate Increase for that Fare Year; and
	(b)	in respect of each Fare Year commencing on or after 1 January 2012, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1 January 2011 (inclusively).

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.	

Schedule 5.5

Regulation of Individual Fares**1. Price not to exceed Regulated Price or Regulated Child Price**

1.1 The Franchisee shall procure that the Price of:

- (a) each Commuter Fare included in the Commuter Fares Basket;
- (b) each Protected Fare included in the Protected Fares Basket,

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

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

1.3 The Franchisee 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 ¹⁹²The Regulated Price for any Fare in any Fare Year shall be an amount equal to the greater of:

(a) Preceding Year Ticket Price + £0.10p; and	
(b) ROUND (Preceding Year Ticket Price x PII)	
Where:	
Preceding Year Ticket Price	for the Fare Year commencing 1 January 2011, is the maximum Price for that Fare recorded by RSP in 2011 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.
ROUND	if (Preceding Year Ticket Price x PII) ends in £0.05 or more (\geq £0.05), then (Preceding Year Ticket Price x PII) shall be rounded up to the nearest £0.10; or if (Preceding Year Ticket Price x PII) ends in less than £0.05 ($<$ £0.05), then (Preceding Year Ticket Price x PII) shall be rounded down to the nearest £0.10.

¹⁹² 18 August 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

2.2 The Permitted Individual Increase in any Fare Year shall be an amount equal to:

PII =	$\frac{(100 \times RPI) + k + f}{100}$	
where:		
PII	is the Permitted Individual Increase in that Fare Year;	
RPI	is an amount equal to:	
	$\frac{RPI - 1}{RPI - 2}$	
	where:	
	RPI-1	is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and
	RPI-2	is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1 ;
k	is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter.	
f	is equal to zero (0).	

2.3 Where:

- (a) the Franchisee sets the Price of any Commuter Fare or Protected Fare in any Fare Year; and
- (b) the Secretary of State reasonably determines that the Price of such Commuter Fare or Protected Fare was set solely for the purpose of increasing the value of the Preceding Year Ticket Price in the next Fare Year,

the Preceding Year Ticket Price for the purposes of determining the Regulated Price 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. Compulsory Inter available Flows

3.1 Where the Franchisee:

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

the Franchisee shall not increase the Price of that Commuter Fare in the same Fares Setting Round without the consent of either the Secretary of State or each other Train Operator which provides Railway Passenger Services for such Flow.

Schedule 5.6

Exceeding the Regulated Value, Regulated Price or Regulated Child Price**1. Exceeding the Regulated Value**

- 1.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.4 (*Regulation of Fares Basket Values*) in respect of either the Commuter Fares Basket or the Protected Fares Basket:
- (a) it shall reduce the Price of Fares in the relevant Fares Basket at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.4 (*Regulation of Fares Basket Values*) from such date; and
 - (b) the Secretary of State may adjust Franchise Payments by an amount equivalent in his opinion to the sum of:
 - (i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the Value of any Fares Basket exceeding its Regulated Value permitted under Schedule 5.4 (*Regulation of Fares Basket Values*); and
 - (ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.
- 1.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 1.1:
- (a) shall not be treated as a Change; and
 - (b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.
- 1.3 It shall not be a contravention of paragraph 1 of Schedule 5.4 (*Regulation of Fares Basket Values*) if and to the extent that:
- (a) the Value of the Commuter Fares Basket exceeds its Regulated Value in any Fare Year;
 - (b) such excess is caused by the Price of any relevant Commuter Fare being set pursuant to the terms of the Ticketing and Settlement Agreement by another person (other than an Affiliate); and
 - (c) the Franchisee does not have a reasonable opportunity, under any procedure for consulting or notifying Train Operators of alterations to the Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other Commuter Fares in the Commuter Fares Basket so as to avoid the Value of the Commuter Fares Basket exceeding its Regulated Value.
- 1.4 If and to the extent that the circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not subsequently increase during that Fare Year, or any subsequent Fare Year, the Price of any Commuter Fare in the Commuter Fares Basket which it is entitled to set pursuant to the terms of the

Ticketing and Settlement Agreement, unless, following such increase, the Franchisee would, otherwise than under paragraph 1.3, comply with the provisions of paragraph 1 of Schedule 5.4 (*Regulation of Fares Basket Values*) in relation to the Commuter Fares Basket.

- 1.5 Where circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not be required to reduce the Price of any other Commuter 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 Franchisee 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 Franchise Payments by an amount equivalent in his opinion to the sum of:

(i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the sale of Fares at Prices and/or Child Prices in excess of the relevant amounts permitted under Schedule 5.5 (*Regulation of Individual Fares*); and

(ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.

- 2.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 2.1:

(a) shall not be a Change; and

(b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.

Schedule 5.7

Changes to Fares and Fares Regulation**1. Changes to Fares Baskets**

1.1 The Secretary of State may require the content of the Commuter Fares Basket or Protected Fares Basket (as the case may be) to change in accordance with the following:

- (a) where the Secretary of State is not satisfied that the Price 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 relevant Fares Basket,the Secretary of State may de-designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the relevant Fares Basket;
- (b) where any Commuter Fare for a Flow has been included in the Commuter Fares Basket, the Secretary of State may require the inclusion in the Commuter Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2010;
- (c) where any Protected Fare for a Flow has been included in the Protected Fares Basket, the Secretary of State may require the inclusion in the Protected Fares Basket of any Protected Return Fare or Protected Weekly Season Ticket that existed on that Flow in February 2003; and/or
- (d) where the Secretary of State changes the Reference Revenue and/or the Gross Revenue of any Fare pursuant to paragraphs 3.1(a) and/or 3.1(b) then, in relation to the Fares Basket in which such Fare is or would be included, and without limiting paragraphs 1.1(a) to (c) inclusive, the Secretary of State may also:
 - (i) make any of the changes to such Fares Basket contemplated by this paragraph 1.1;
 - (ii) designate any Fare as a Non Fares Basket Fare in accordance with the provisions (other than the requirement that such designation occurs on or prior to the Start Date) of paragraph 2 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*); and/or
 - (iii) de-designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the relevant Fares Basket.

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

- (a) at any time prior to the Start Date; and
- (b) thereafter, no later than the commencement of any Fares Setting Round,

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

2. **Changes to the 2010 Nominal Ticket Sales**

2.1 The Franchisee may, in the event of any significant change to the pattern of travel on the Passenger Services during the Franchise Term, apply to the Secretary of State for the **value of factors A and/or B** in the formula for determining 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (*Regulation of Fares Basket Values*) to be adjusted to take account of such changes, such that:

- (a) the **value of factor A** is re calculated by using the Gross Revenue in respect of the sales of the relevant Fares for the most recently completed period of twelve (12) months ending 31 March 2010; 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 relevant Fares Basket.

3. **Changes to the Reference Revenue, Gross Revenue, 2010 Nominal Ticket Sales and/or 2010 Ticket Revenue**

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

- (a) the Reference Revenue of any Fares Basket to be calculated by reference to a different reference period for the purpose of paragraph 2 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) than the period of twelve (12) months ended 31 March 2010; and/or
- (b) the Gross Revenue of all Commuter Fares and Protected Fares to be recalculated for the purpose of paragraph 2 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) by reference to a different reference period than the period of twelve (12) months ended 31 March 2010 and/or
- (c) **the value of factor A** in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (*Regulation of 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 2010; and/or
- (d) **the value of factor B** in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (*Regulation of Fares Basket Values*) to be re calculated in respect of any Fare by reference to a different reference date other than February 2010; and/or
- (e) the 2010 Ticket Revenue in respect of any Fares Basket to be re calculated for the purpose of paragraph 4 of Schedule 5.4 (*Regulation of Fares Basket Values*) by reference to a different reference period than the period of twelve (12) months ended 31 March 2010.

- 3.2 Where, in accordance with paragraph 3.1(e), the 2010 Ticket Revenue in respect of any Fares Basket is re calculated by reference to a different reference period, the value of **"PPAI"** in paragraph 4 of Schedule 5.4 (*Regulation of Fares Basket Values*) shall be determined solely by reference to the product of the Permitted Aggregate Increase for each Fare Year beginning after the end of such reference period.
- 3.3 Any revision pursuant to paragraph 3.1 or 3.2 shall take effect upon commencement of the next Fare Year to commence after the Fares Setting Round referred to in paragraph 3.1.

4. **Changes to Prices**

The Franchisee may request permission from the Secretary of State from time to time to increase any Prices beyond the levels permitted under Schedule 5.4 (*Regulation of Fares Basket Values*) and Schedule 5.5 (*Regulation of Individual Fares*) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Secretary of State shall act reasonably in relation to any such request but shall not under any circumstances be obliged to accept any such request in whole or in part.

5. **Changes to Fares Regulation**

The Parties agree that the Secretary of State shall have the power at any time and on more than one occasion during the Franchise Term to alter the obligations of, and restrictions on, the Franchisee under Schedule 5.1 (*Purpose, Structure and Construction*) to Schedule 5.8 (*Fares Regulation Information and Monitoring*) inclusive for any Fare Year, or part thereof (including alteration of the **value of "k"** under paragraph 4.2 of Schedule 5.4 (*Regulation of Fares Basket Values*) and/or paragraph 2.2 of Schedule 5.5 (*Regulation of Individual Fares*) and/or alteration of the **value of "f"** under paragraph 2.2 of Schedule 5.5 (*Regulation of Individual Fares*)). The exercise by the Secretary of State of his powers under this paragraph 5 shall be a Change.

6. **Changes to Compulsory Inter available Flows**

6.1 Where:

- (a) pursuant to Clauses 4 to 7 of the Ticketing and Settlement Agreement, the consent of the Secretary of State is requested for the abolition of a Compulsory Inter available Flow (the **"Reference Flow"**) in respect of which any Fare Created would be a Commuter Fare or a Protected Fare (the **"Reference Fare"**); and
- (b) a Flow exists, which, in the Secretary of State's opinion, is substantially similar to the Reference Flow (the **"Equivalent Flow"**),

the Secretary of State may, as a condition of granting his consent to the abolition of the Reference Flow, by written notice to the Franchisee, require any Fare Created in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in a Fares Basket (**"Equivalent Fare"**).

- 6.2 The Secretary of State shall not issue any such notice in respect of an Equivalent Fare unless the provisions of such notice have first been approved by the Ticketing and Settlement Scheme Council (as defined in the Ticketing and Settlement Agreement) or a delegate of such council.

6.3 The Price 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 Franchisee shall not without the Secretary of State's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.

7.2 The Franchisee shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Franchisee becoming the Lead Operator in respect of any Flow, the Secretary of State may without limiting paragraph 3, exercise his rights pursuant to paragraph 3 in relation to the relevant Fares Basket.

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

8. Changes to Fares Documents

8.1 Following:

(a) any allocation of Fares to any Fares Basket pursuant to Schedule 5.3 (*Allocation of Fares to Fares Baskets*); or

(b) any subsequent adjustment thereof pursuant to this Schedule 5.7,

the Secretary of State shall set out in the Commuter Fares Document and/or Protected Fares Document (as the case may be) all Fares then included in the relevant Fares Basket and, as soon as reasonably practicable thereafter, the Secretary of State shall issue or reissue (as the case may be) such Fares Document(s) to the Franchisee.

Schedule 5.8

Fares Regulation Information and Monitoring**1. Information**

- 1.1 The Franchisee shall provide to the Secretary of State by no later than week twelve (12) of each Fares Setting Round, a summary (to such level of detail or generality as the Secretary of State may reasonably require) of the Prices of the Commuter Fares or Protected Fares it is intending to set.
- 1.2 The Franchisee shall notify, or procure the notification to, the Secretary of State of any proposed increase to the Price of any Commuter 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 Franchisee shall make available, or procure that RSP makes available, to the Secretary of State, for any Fares Setting Round during the Franchise Term, such details (including the proposed Prices) of the Initial Permanent Fare of any Commuter Fare or Protected Fare for each such Fares Setting Round as the Secretary of State may reasonably request from time to time.

2. Monitoring

- 2.1 The Franchisee shall provide to the Secretary of State:
 - (a) such access as the Secretary of State may require to information pertaining to the Prices of Commuter Fares and Protected Fares from time to time; and
 - (b) such further information as the Secretary of State may require for the purpose of determining the Gross Revenue of the Franchisee in relation to any particular Fare or Fares or any particular period.
- 2.2 By no later than week seventeen (17) of each Fares Setting Round, the Franchisee will provide to the Secretary of State written confirmation from a statutory director of the Franchisee of whether the Franchisee has complied with its obligations under this Schedule 5 (*Fares and Smart Ticketing*) during each such Fares Setting Round.
- 2.3 The Franchisee shall take such action as the Secretary of State may require following receipt of any details from the Franchisee pursuant to paragraph 1 in order to ensure that the Franchisee will comply with the provisions of Schedule 5.2 (*Franchisee's Obligation to Create Fares*) to this Schedule 5.8 (inclusive).

3. Car Park Revenue

- 3.1 Where the Franchisee sells Fares that incorporate car park tickets in the purchase price (each a "**Combined Ticket**"), the Franchisee shall ensure that the revenue received from such sales is apportioned between passenger revenue (for the purposes of this paragraph 3 of Schedule 5.8, as that term is defined in limb (a) of the definition of FRM 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 Franchisee 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, he may amend such apportionment accordingly.
- 3.5 Within thirty (30) days of any request by the Secretary of State, the Franchisee 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.

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 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 Start Date;

"RSPS3002" means the RSP document with reference RSPS3002, version 3 (03-00)0 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 or system 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;

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

“Smart Media Target”

means targets proposed by the Franchisee or required by the Secretary of State for channel shift from magstripe tickets (orange paper tickets with a magnetic strip on the back) and journeys made on Passenger Services within the geographic boundary of the Franchise using Smart Media and contracted as a Committed Obligation in Schedule 6.2 (*Committed Obligations*).

2 Smart Ticketing

2.1 The Franchisee shall:

- (a) join and comply with any RDG approved Smart Ticketing Schemes relevant to some or all of the Passenger Services unless otherwise determined by the Secretary of State;
- (b) fully and effectively co-operate with Network Rail, TfL, other Train Operators, Transport for the North and relevant Local Authorities, including in relation to the provision of any required equipment, to implement and operate Smart Ticketing Schemes; and
- (c) fully and effectively co-operate with TfL, other Train Operators, Transport for the North 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 Franchise 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 Start Date and level of migration from magstripe tickets and increased take-up and journeys made using Smart Ticketing Schemes, as a minimum disaggregated between types of fares (Season Fares, Single Fares and Saver 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 Franchise Term;
- (ii) the Franchisee’s performance against Smart Media Targets as set out in Schedule 6.2 (*Committed Obligations*); and
- (iii) the steps that the Franchisee is taking, including other Train Operators, Network Rail, Transport for the North, Local Authorities or other organisations that it will be working with, to increase channel shift to Smart Ticketing Schemes operated by the

Franchisee, or enabled by the Franchisee for other Smart Ticketing Schemes, and increase usage of Smart Ticketing Schemes by users of the Passenger Services,

and the Franchisee shall present the report at the Franchise Performance Meeting.

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

- (a) it continues to provide, make available and promote (and where applicable effectively maintain) such ITSO Smart Media Ticketing Scheme (including any associated infrastructure);
- (b) all components of the ITSO Smart Media Ticketing Scheme (and any amendment, extension or replacement thereof) inherited, used or introduced by the Franchisee (whether on a permanent or a trial basis) are at all times compliant with:
 - (i) version 2.1.4 of ITSO Specification;
 - (ii) the ITSO Operating Licence; and
 - (iii) RSPS3002,
 or such subsequent versions as the Franchisee and the Secretary of State may agree;
- (c) any ITSO Certified Smart Media readers introduced by the Franchisee (whether on a permanent or temporary basis) shall conform to EMV level 1 certification (hardware) and be capable of being upgraded whilst in operation to EMV level 2 (application);
- (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 Franchisee 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.

The Franchisee shall by the end of the first Franchisee Year have undertaken a feasibility study with respect to the upgrade of the contactless payment scheme to EMV level 3 (end to end certification) and shall deliver a report on the outcome and

the results of the feasibility study to the Secretary of State within three (3) Reporting Periods of the commencement of the second Franchisee Year.

- 2.3 Where the Previous Franchisee was a participant in any RDG approved Smart Ticketing Scheme pursuant to the Previous Franchise Agreement, the Franchisee shall take such action as may be required to ensure that there is an orderly handover process so that the Franchisee continues to participate in such Smart Ticketing Scheme from the Start Date without any disruption to the continuity of service received by passengers unless otherwise determined by the Secretary of State.
- 2.4 Without prejudice to its other obligations pursuant to this Schedule 5.9, the Franchisee 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
- 2.7 ¹⁹³**The Franchisee shall ensure that all Weekly Season Tickets, Monthly Season Tickets and Annual Season Tickets which are ordered through the Franchisee's online retail channels or at ticket offices are, as the default option, offered to the customer on Smart Media.**
3. [REDACTED¹⁹⁴]
- 3.1 [REDACTED¹⁹⁵]:
- (a) [REDACTED¹⁹⁶]
- (b) [REDACTED¹⁹⁷]

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

¹⁹⁴ **25 October 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.**

¹⁹⁵ **25 October 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.**

¹⁹⁶ **25 October 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.**

¹⁹⁷ **25 October 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.**

¹⁹⁸Schedule 5.10**Fares, Ticketing and Retail Reform****1. Fares, Ticketing and Retail Reform****1.1 The Franchisee shall:**

- (a) co-operate with the Secretary of State as may be required from time to time in respect of the planning and/or development (as applicable) of industry reform with respect to Fares, ticketing and the retailing of tickets, including:**
 - (i) co-operating and collaborating with other Train Operators and rail industry parties and other organisations in respect of such reforms; and**
 - (ii) developing pilot schemes in respect of such reforms, in each case, as directed by the Secretary of State; and**
- (b) co-operate and collaborate with the RDG, other Train Operators and other organisations as directed by the Secretary of State to develop Modernising Retail proposals to accelerate and facilitate a transition to online and pay-as-you-go retailing of tickets and the changes to industry retail operations enabled by such changes, including the ultimate withdrawal of "magstripe" paper tickets; and**
- (c) as directed by the Secretary of State, co-operate with the RDG to develop proposals for all commuters to have access to a flexible commuting product that the Secretary of State reasonably determines will (when calculated on a daily basis) offer better value and convenience to commuters than purchasing anytime day return tickets (and no worse value than purchasing a Weekly Season Ticket) for the relevant flow, and which shall be available on Smart Media by no later than 31 December 2020 or such other date as may be agreed between the Franchisee and the Secretary of State,**

each a "FTR Co-operation Requirement".

1.2 If requested by the Secretary of State, the Franchisee shall also bring forward specific and suitable proposals to implement any plans and/or proposals developed pursuant to a FTR Co-operation Requirement (a "Proposed Reform Activity") which may be contracted pursuant to and in accordance with Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Change*).

1.3 When requested by the Secretary of State, the Franchisee shall provide the Secretary of State its assessment of:

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

- (a) any capital investment required to implement a Proposed Reform Activity;
- (b) the cost of implementing a Proposed Reform Activity;
- (c) any revenue impact associated with or caused by implementing a Proposed Reform Activity;
- (d) estimates of significant change to passenger demand and/or patterns of travel that could be caused by a Proposed Reform Activity; and
- (e) any material change to the Franchisee's assessment of any of the matters outlined in paragraphs (a) to (d) above,

in each case promptly and in any event within seven (7) Weekdays of having calculated the same (unless the Secretary of State directs otherwise) and accompanied by all supporting evidence to substantiate each such calculation or change.

1.4 The Franchisee shall:

- (a) continue undertaking any reform work related to a FTR Co-operation Requirement or other reform work requested or directed by the Secretary of State prior to the ERMA Start Date in accordance with any programme schedule agreed between the Franchisee and the Secretary of State (or in the absence of any such schedule, within such timescales as the Secretary of State may direct); and
- (b) commence undertaking and continue to undertake any FTR Co-operation Requirement requested or directed by the Secretary of State after the ERMA Start Date promptly and in any event in accordance with any schedule agreed between the Franchisee and the Secretary of State (or in the absence of any such schedule, within such timescales as the Secretary of State may direct).

1.5 The Franchisee shall use all reasonable endeavours to:

- (a) bring forward new proposals for implementing; and/or
- (b) introduce and implement,

such amendments to the Ticketing and Settlement Agreement, the Pay As You Go Agreement, the CPAY Agreement and any other applicable industry agreements (including any successor arrangements or any other agreement between the Franchisee and one or more other Train Operators, rail industry parties and other relevant organisations (including Transport for London) relating to ticketing, fares, fares settlement, the operation of discount schemes or any related matter) as may be directed by the Secretary of State from time to time.

1.6 During the term of the ERMA, the Franchisee shall not enter into any new arrangements or material amendments to existing arrangements for the delivery of Fares, ticketing or the retailing of tickets without the prior written consent of the Secretary of State.

- 1.7 The Franchisee shall promptly (and in any event within any timeframes specified by the Secretary of State) provide to the Secretary of State such information and data in relation to Fares, ticketing and the retail of tickets as the Secretary of State may require from time to time.**

SCHEDULE 6**FRANCHISE SPECIFIC OBLIGATIONS AND COMMITTED OBLIGATIONS**

Schedule 6.1:	Franchise Specific Obligations
	Part 1: NOT USED
	Part 2: Mandatory Franchise Specific Obligations
	Part 3: Franchise Specific Obligations
Schedule 6.2:	Committed Obligations
	Part 1: List of Committed Obligations
	Part 2: Special Terms related to the Committed Obligations
Schedule 6.3:	Contractual Incentive Mitigations
Schedule 6.4:	Alliances
Schedule 6.5:	NOT USED
Schedule 6.6:	NOT USED
¹⁹⁹ Schedule 6.7:	ERMA Specific Obligations

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

Schedule 6.1

Franchise Specific Obligations

PART 1 - NOT USED

PART 2 – MANDATORY FRANCHISE SPECIFIC OBLIGATIONS1. **NOT USED.**2. **Boxing Day Services**

2.1 At least six (6) months prior to each of the Passenger Change Dates occurring in December 2020 and December 2021 the Franchisee shall:

(a) consult with passengers, user groups, Network Rail, other train operators licensed under the Act and who operate along the affected Routes and other relevant Stakeholders on the potential demand for passenger services on 26 December in each Franchisee Year ("**Boxing Day Services**"); and

(b) prepare and submit a report to the Secretary of State which sets out its proposals for operating Boxing Day Services which are additional to those Passenger Services to be operated by the Franchisee on 26 December in each Franchisee Year pursuant to the relevant Train Service Requirement (the "**Additional Boxing Day Services**"). Such report shall include:

(i) the Franchisee's view on whether or not the operation of the Additional Boxing Day Services will be commercially viable;

(ii) the impact on Franchise Payments (if any) if the Secretary of State (at his sole discretion) elects to vary the Train Service Requirement to require the provision of the Additional Boxing Day Services thereby triggering a Change pursuant to paragraph (d) (*change to the Train Service Requirement in accordance with paragraph 16.6 of Schedule 1.1*) of the definition of Change.

2.2 Following the submission of the report required pursuant to paragraph 2.1(b) the Franchisee 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.

2.3 The Franchisee shall have due regard to the outcomes and findings of the consultation referred to in paragraph 2.1(a) in proposing on which Routes Additional Boxing Day Services should operate if the Secretary of State (at his sole discretion) elects to vary the Train Service Requirement to require the provision of the Additional Boxing Day Services.

PART 3 – FRANCHISE SPECIFIC OBLIGATIONS**1. NOT USED****2. Digital Railway Programme**

2.1 The Franchisee shall co-operate in good faith with Network Rail, any relevant ROSCO and any other relevant third party in connection with the development by Network Rail of a plan for the implementation and operational introduction on the routes of:

- (a) the Connected Driver Advisory System ("**C-DAS**");
- (b) the Combined Performance and Safety System ("**COMPASS**");
- (c) such similar system(s) which may be developed to succeed C-DAS or COMPASS; or
- (d) the Defect Reporting Analysis and Correctional Action System for ETCS ("**DRACAS**"), including but not limited to sharing of relevant defect corrective and preventative action data; and
- (e) any system which is intended to provide interconnectivity between the European Train Control System ("**ETCS**"), C-DAS and COMPASS for the purposes of improving capacity management, performance, and safety.

2.2 In respect of any plan developed by Network Rail pursuant to paragraph 2.1 above, the Franchisee shall:

- (a) use all reasonable endeavours to provide assistance to Network Rail, any relevant ROSCO and any other relevant third party in connection with the development of the elements of the plan relating to:
 - (i) C-DAS;
 - (ii) COMPASS; and/or
 - (iii) DRACAS; and/or
 - (iv) such similar system(s) which may be developed to succeed C-DAS, COMPASS or DRACAS; and
- (b) use reasonable endeavours to provide assistance to Network Rail, any relevant ROSCO and any other relevant third party in connection with the development of the elements of the plan relating to any system which is intended to provide interconnectivity between ETCS, C-DAS and COMPASS for the purposes of improving capacity management, performance, and safety.

3. CROSSRAIL 2

3.1 The Franchisee shall fully and effectively co-operate with the Secretary of State, Transport for London, any corporate entity established to develop and promote Crossrail 2, ORR and other relevant stakeholders notified to the Franchisee by the Secretary of State and engage constructively and collaboratively with them in connection with the development of Crossrail 2.

4. **Co-operation with HS1 Ltd.**

- 4.1 The Franchisee shall to the extent reasonably required by HS1 Limited (Company Number: 03539665) fully and effectively co-operate with HS1 Ltd in relation to interfaces with HS1 Ltd's operations at London St Pancras, such co-operation to include participation in a positive and constructive manner in relation to any initiative by HS1 Limited to undertake investments at London St Pancras.

5. **Extension of the Robin Hood Line**

- 5.1 Within twelve (12) months of the Start Date, the Franchisee shall prepare at its own cost and submit to the Secretary of State a business case, in such form as may be requested by the Secretary of State, in relation to the re-opening of the Robin Hood line to enable the provision of railway passenger services between Shirebrook and Ollerton (the "**Robin Hood Line Extension**").

- 5.2 Any business case to be provided by the Franchisee to the Secretary of State pursuant to paragraph 5.1 shall, as a minimum:

- (a) comply with the HM Treasury guidance on how to appraise and evaluate projects and shall consider the strategic case, economic case, commercial case and financial case for the reopening of the Robin Hood Line Extension and the implementation and operation of railway passenger services on the Robin Hood Line Extension;
- (b) include details of the forecast demand and anticipated passenger revenue arising from the provision of railway passenger services on the Robin Hood Line Extension;
- (c) provide a reasonable estimate of the costs to be incurred by the Franchisee in the implementation and operation of the railway passenger services on the Robin Hood Line Extension;
- (d) where requested by the Secretary of State, include a statement of the steps which it is reasonably estimated by the Franchisee will be necessary in order to implement and operate the railway passenger services on the Robin Hood Line Extension including proposed Timetable and Train Plans, details of the amendments that may be required to any Access Agreement, Rolling Stock Lease or other relevant agreement to which the Franchisee is a party and any other agreements or consents that may be required;
- (e) provide a reasonable estimate of the time within which the operation of the railway passenger service can commence following the reopening of the Robin Hood Line Extension; and
- (f) the expected operational performance impacts (if any) that the introduction of railway passenger services on the Robin Hood Line Extension will have on operational performance by reference to the Benchmarks, the Annual Benchmarks, the Annual All Cancellations Measure, the Annual T-3 Measure and the Annual T-15 Measure;
- (g) the expected operational performance impacts (if any) that the introduction of railway passenger services on the Robin Hood Line Extension will have on Train Operators and freight operators whose railway passenger services or freight services (as the case may be) may be directly or indirectly affected by the introduction of such railway passenger services.

- 5.3 As part of the process of preparing the business case the Franchisee shall:
- (a) consult reasonably and appropriately with Network Rail and Train Operators and freight operators and any other stakeholders who might be directly or indirectly affected by the Robin Hood Line Extension, with a view to identifying ways of minimising operating costs and maximising revenue and the wider economic benefits arising in relation to the Robin Hood Line Extension; and
 - (b) take account of the potential for local community involvement to reduce the cost and/or increase the revenue growth associated with Robin Hood Line Extension,
- responses to such consultations and information in relation to potential for local community involvement shall be annexed to the business case.
- 5.4 Following receipt of the business case prepared and submitted to the Secretary of State by the Franchisee pursuant to paragraph 5.1 the Franchisee shall:
- (a) promptly respond to the Secretary of State's reasonable queries in relation to such business case (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 business case); 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 any such report.
- 5.5 It is agreed by the Secretary of State and the Franchisee that the Secretary of State may require the Franchisee to implement the business case as submitted by the Franchisee to the Secretary of State pursuant to paragraph 5.1 and any such requirement by the Secretary of State shall be a Change.

6. Infrastructure Projects

6.1 ²⁰⁰For the purposes of this paragraph 6:

- (a) "Infrastructure Project" shall mean any of them:
- (i) MML Key Output 1;
 - (ii) MML Key Output 1(a); and

such other projects as the Secretary of State may designate as an Infrastructure Project from time to time.

- 6.2 The Franchisee shall from the Start Date until completion of each Infrastructure Project engage constructively with all relevant parties responsible for the delivery of such Infrastructure Project with the intention of assisting its timely, efficient and effective completion.

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

- 6.3 To the extent that any Infrastructure Project leads to the Franchisee having rights under railway industry procedures (including Network Change and Station Change) the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of such Infrastructure Project and the Franchisee shall not unreasonably raise any objection under any railway industry procedure (including Network Change or Station Change) and any reasonable objections shall be raised by the Franchisee in accordance with the relevant railway industry procedures. It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of the Infrastructure Projects and their implementation on passengers and the Franchise Services, while recognising the need for the Infrastructure Projects to be able to be undertaken in a reasonable manner.
- 6.4 The Franchisee shall throughout the Franchise Term allocate such appropriate Franchise Employees and other relevant resource as is reasonably required for the purposes of complying with its obligations in relation to all of the Infrastructure Projects pursuant to both the Franchise Agreement and the Access Agreements to which it is a party.
- 6.5 The Franchisee shall provide within ten (10) Weekdays of the end of each Reporting Period a detailed report complying with the reasonable requirements of the Secretary of State describing progress in relation to matters relating to each Infrastructure Project and identifying and quantifying so far as the Franchisee is reasonably able the emerging risk position in relation to each such Infrastructure Project as it affects passengers and the Franchise Services. The Franchisee shall provide such additional information as the Secretary of State shall reasonably request and if requested by the Secretary of State it shall develop such alternative and contingency plans as the Secretary of State may reasonably require for the purpose of mitigating relevant risk and ensuring that the adverse impacts on passengers and the Franchise Services of any relevant risk arising is mitigated to the greatest extent reasonably practicable.

7. **Railway Heritage**

- 7.1 The Franchisee shall:
- (a) engage constructively with the Railway Heritage Trust in order to maintain a register of listed buildings, those in conservation areas, and a list of designated artefacts and records (to ensure compliance with the Railway Heritage Act 1996);
 - (b) engage constructively with the Railway Heritage Trust, Network Rail, and other relevant organisations to ensure that historic buildings and structures are conserved and promoted; and
 - (c) maintain close and purposeful contact with heritage railway lines within the area of the Franchise, to identify and execute initiatives which will increase their usage and provide benefit to Passengers and the community.

8. ²⁰¹ **NOT USED.**

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

9. **Transfer of the Liverpool to Nottingham Passenger Services**

- 9.1 Subject to paragraph 9.4, it is acknowledged that the Secretary of State's intention is that the Franchisee will from the Passenger Change Date occurring in December 2021 cease to operate the Passenger Services from Liverpool to Nottingham as particularly described in TSR1 tables NOT 3A and NOT 3B (the "**Liverpool to Nottingham Passenger Services**") with such Liverpool to Nottingham Passenger Services being transferred to, and operated by, such Train Operator as may be notified by the Secretary of State to the Franchisee prior to the Passenger Change Date occurring in December 2021 (the "**LNPS Cessation Date**").
- 9.2 The Franchisee shall take all such necessary actions as are required, on its part, to give effect to the transfer of Liverpool to Nottingham Passenger Services to such Train Operator as may be nominated by the Secretary of State such that by the LNPS Cessation Date the Franchisee shall cease to provide the Liverpool to Nottingham Passenger Services and the Train Operator nominated by the Secretary of State can commence the operation of the Liverpool to Nottingham Passenger Services from the LNPS Cessation Date.
- 9.3 It is agreed by the Franchisee that the financial consequences of the transfer of the Liverpool to Nottingham Passenger Services as contemplated in this paragraph 9 has been accounted for in the Financial Model and the Record of Assumptions applicable as at the date of the Franchise Agreement and, except as specified in paragraph 9.4, the transfer of the Liverpool to Nottingham Passenger Services to such other Train Operator as may be nominated by the Secretary of State and notified to the Franchisee shall not be a Change.
- 9.4 The Secretary of State shall pursuant to paragraph 1.1(a) of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*) propose such Variations to the Franchise Agreement solely for the purposes of making the consequential changes that are reasonably determined by the Secretary of State as being required to reflect the fact that the Franchisee shall, subject to paragraph 9.5, cease to operate the Liverpool to Nottingham Services on the LNPS Cessation Date. Any such Variation shall not be a Change.
- 9.5 The Secretary of State may by written notice to the Franchisee on or before the date that is twelve (12) months before the LNPS Cessation Date require the Franchisee to continue to operate the Liverpool to Nottingham Passenger Services. The issue of any such written notice by the Secretary of State to the Franchisee shall be a Change pursuant to paragraph (z) of the definition of Change.

10. **Co-operation with East West Rail Scheme**

- 10.1 The Franchisee shall from the Start Date until the completion of the East West Rail Scheme fully and effectively co-operate and engage constructively with all relevant parties responsible for the delivery of the East West Rail Scheme with the intention of assisting in the timely, efficient and cost effective implementation and delivery of the East West Rail Scheme in a manner which provides the best overall solution for the network. To the extent that the East West Rail Scheme leads to the Franchisee having rights under railway industry procedures including Network Change or Station Change the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of the East West Rail Scheme and the Franchisee shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change. It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of the East West Rail Scheme and their implementation on

passengers and the Franchise Services, while recognising the need for the East West Rail Scheme to be able to be undertaken in a reasonable manner.

- 10.2 The Franchisee shall provide such information in respect of the East West Rail Scheme as the Secretary of State may reasonably request from time to time.
11. [REDACTED²⁰²]
- 11.1 [REDACTED²⁰³]
- 1.2 [REDACTED²⁰⁴]:
- (a) [REDACTED²⁰⁵]
- (b) [REDACTED²⁰⁶]
- (c) [REDACTED²⁰⁷]
- [REDACTED²⁰⁸]
- 1.3 [REDACTED²⁰⁹]
- 1.4 [REDACTED²¹⁰]

²⁰² 25 October 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.

²⁰³ 25 October 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.

²⁰⁴ 25 October 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.

²⁰⁵ 25 October 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.

²⁰⁶ 25 October 2021 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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²⁰⁹ 25 October 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.

²¹⁰ 25 October 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 6.2

Committed Obligations**PART 1 – COMMITTED OBLIGATIONS****1. Definitions**

1.1 For the purposes of this Part 1 of Schedule 6.2, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

- “Academic Year”** means a period of twelve (12) months commencing on 1 September and ending on 31 August in the following year provided that:
- (a) the first such period shall commence on 1 September falling immediately after the Start Date; and
 - (b) the last such period shall expire on 1 August immediately preceding the Expiry Date;
- “Account Based Ticketing”** a cloud based pre or post-pay ticketing scheme which can be used by customers who travel within the area covered by and who have registered to use that scheme in order to purchase tickets on account and such tickets are then paid on a weekly basis with the account holder receiving either an itemised bill or a statement (as the case may be) providing details of the journeys made and the cost of those journeys;
- “Angel HST Sets”** means the three (3) sets of HST rolling stock vehicles leased to the Franchisee by Angel Trains Limited (company number 02912655) and comprising in each case:
- (a) two (2) Class 43 HST power cars;
 - (b) five (5) HST Mark III trailer cars; and
 - (c) one (1) HST buffet car,
- as referred to in row 13 of the table at paragraph 1 (*Original Rolling Stock*) of Appendix 1 to Schedule 1.6 (*The Rolling Stock*);

[DELETED²¹¹]

“APOD Fares”	means an Advance Purchase Train-Specific Fare for travel on the Passenger Services only that can be purchased on the day of travel, up to ten (10) minutes prior to the scheduled departure of the relevant Passenger Service from the relevant station;
“Baseline Condition Issues”	has the meaning given to it in paragraph 13.6(a)(ii);
“BlueAssist Scheme”	means the system, promoted by BlueAssist UK Limited (a company limited by guarantee with company registration number 08782560 and registered office at 55 Kingfisher Drive, Chatham, Kent, England, ME5 7NY), 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;
“Business Disability Forum”	means the company limited by guarantee with charitable objects known as the “Business Disability Forum” with charity registration number 1018463 and company registration number 2603700 and registered office address at Nutmeg House, 60 Gainsford Street, London SE1 2NY;
“Carriage Washing Machine”	means a washing unit which is designed for, and used to deliver, the efficient external washing of train carriages;
“Cascaded Class 156 Vehicles”	has the meaning given to it in paragraph 12.1(a);
“Category 1 Stations”	means each of the Stations at Alfreton, Beeston, Burton-on-Trent, Chesterfield, Corby, Derby, East Midlands Parkway, Kettering, Hinckley, Leicester, Lincoln, Long Eaton, Loughborough, Mansfield Town, Market Harborough, Melton Mowbray,

²¹¹ 9 May 2019 (Date of Contract Change Letter) – Contract deletion agreed by the Secretary of State and Franchisee.

Narborough, Newark Castle, Nottingham, Sheffield, Skegness, Sleaford, Stamford and Wellingborough;

“Category 2 Stations”

means each of the Stations at Alsager, Attenborough, Belper, Boston, Collingham, Gainsborough Lea Road, Hykeham, Hucknall, Ilkeston, Kidsgrove, Kirby in Ashfield, Langley Mill, Mansfield Woodhouse, Matlock, Oakham, Spalding, Sutton Parkway, Sileby, Syston and Uttoxeter;

“Category 3 Stations”

means each of the Stations that are not Category 1 Stations or Category 2 Stations;

“Changing Places Accessible Toilet”

means a toilet with enhanced accessibility, compliant with the specifications set out on the website of the Changing Places consortium;

“Class 170 Fleet”

means the ninety nine (99) Class 170 rolling stock vehicles formed into:

- (a) thirty three (33) two car units; and
- (b) eleven (11) three car units,

as referred to in rows 5, 6, 7, 8 and 9 of the table at paragraph 2 (*Specified Additional Rolling Stock*) of Appendix 1 to Schedule 1.6 (*The Rolling Stock*));

“Class 360 Fleet”

means the eighty four (84) Class 360 rolling stock vehicles formed into twenty one (21) four car units (as referred to in row 3 of the table at paragraph 2 (*Specified Additional Rolling Stock*) of Appendix 1 to Schedule 1.6 (*The Rolling Stock*));

“Cubic Trial”

means the temporary introduction of the ‘fast track gateline’ ticket gate solution (supplied by Cubic Corporation) on a trial basis, such solution utilising people tracking technology in order to identify customers who have validated their tickets and are then tracked to the ticket gates for automatic exit;

“DARWIN”

means the train running information system known by that name in Great Britain;

“DAS”

means a driver advisory system;

“Delayed Rolling Stock Franchise Payment Adjustment”	has the meaning given to it in paragraph 16.3;
“Engineering Director”	means the director of the Franchisee having the title “Engineering Director”;
“Equipment Condition Data”	has the meaning given to it in paragraph 13.2(b)(i);
“Equivalent Market Value”	<p>means the mean average value of similar advertising space (as the case may be):</p> <p>(a) at the relevant Station calculated using the contractual values for such advertising space at that Station; or</p> <p>(b) on the Train Fleet calculated using the contractual values for such advertising space on the Train Fleet,</p> <p>which, in both cases, the Franchisee has agreed at the relevant time with third parties provided that such value is negotiated at arm’s length;</p>
“Existing Ticket Vending Machines”	<p>means all 109 (one-hundred and nine) ticket vending machines manufactured by Scheidt & Bachman, which:</p> <p>(a) are in existence at the Start Date; and</p> <p>(b) the Franchisee is responsible for maintaining as at the Start Date;</p>
“Franchise & Transition/ Projects Director”	means the director of the Franchisee having the title “Franchise & Transition/ Projects Director”;
“Franchisee TVMs”	means those ticket vending machines which the Franchisee is responsible for maintaining;
“Hand Luggage”	means luggage having up to the following dimensions: 56cm x 45cm x 25cm;
“Hydrogen Fuel Cell Traction Trial”	has the meaning given to it in paragraph 23.1;
“Installed Automatic Train Scanning Equipment”	has the meaning given to it in paragraph 20.4(c);
“Institute of Customer Service”	means the professional membership organisation known as the ‘Institute of Customer Service’ with registered company

number 03316394 and with registered office at 3rd Floor, Mill House, Mill Street, London, England SE1 2BA;

“ISO 44001:2017”

means the standard that is set by the International Organisation for Standardisation which specifies requirements for the effective identification, development and management of collaborative business relationships within or between organisations, whose purpose is to underpin development of partnership working or any equivalent standard which is generally recognised as having replaced it;

“ISO 50015:2014”

means the standard that is set by the International Organisation for Standardisation which specifies requirements for the process of measurement and verification of energy performance of an organisation or its components, or any equivalent standard which is generally recognised as having replaced it;

“ISO 20400:2017”

means the standard that is set by the International Organisation for Standardisation which specifies requirements for integrating sustainability within procurement or any equivalent standard which is generally recognised as having replaced it;

“Local Services”

means the Passenger Services categorised as the **“Local services” in the definition of NRPS Service Group in Schedule 7.2 (Customer Experience and Engagement)**;

“Marketing Spend”

has the meaning given to it in paragraph 29.1(b);

“MML Passenger Services”

means the Passenger Services categorised as the **“Midland Main Line services” in the definition of NRPS Service Group in Schedule 7.2 (Customer Experience and Engagement)**;

“Modified BMU”

has the meaning given to it in paragraph 23.1;

“National Autistic Society”

means the company limited by guarantee with charitable objects known as the **“National Autistic Society”** with charity registration number 269425 and company

registration number 1205298 and registered office at 393 City Road, London EC1V 1NG;

“New Five Car BMUs”

means one hundred and sixty five (165) new bi-mode vehicles formed into thirty three (33) five car units (as referred to in row 2 of the table at paragraph 2 (*Specified Additional Rolling Stock*) of Appendix 1 to Schedule 1.6 (*The Rolling Stock*)) and references to a **“New Five Car BMU”** shall be construed accordingly;

“New Trains Project Delivery Team”

has the meaning given to it in paragraph 21.1;

“New Trains Project Delivery Team Staff Member”

has the meaning given to it in paragraph 21.1;

“Non-London Flow”

means any Flow on the Routes which does not involve travel to, from or via London;

“Notification Period”

means the period when the Franchisee is required pursuant to paragraph 2.3.1 of Condition D of the Network Code to notify Network Rail of any significant changes it is seeking to make to the Passenger Services (D-55 being the latest date);

“Off-Peak Flexipass”

means a flexible ‘Off-Peak Return’ Fare carnet for departures during Off-Peak which:

- (a) allows customers to purchase:
- i) ten (10) return journeys in any month; or
 - ii) twenty (20) return journeys in a period of three consecutive months

for any Passenger Services:

- i) which are operated on commuter Flows including those commuter Flows to and from Derby, Leicester and Nottingham;
- ii) where either the station of departure or arrival has ticket gates installed;

	iii)	which relate to Flows that are priced by the Franchisee; and
	iv)	where an 'Off-Peak Day Return' Fare is available;
	(b)	which are discounted by not less than five per cent (5%) of the aggregate price of the equivalent 'Off-Peak Day Return' Fares between the same stations on the day of purchase;
"[REDACTED²¹²]"		[REDACTED];
"Passenger Information System"		has the meaning given to it in paragraph 13.1;
"Period of Disruption"		means a period of disruption to the Passenger Services arising from an event, or a series of related events;
"Phase 1 Nottingham Area"		means the area bounded by (and including) the Stations at Beeston, Bulwell, Carlton and Netherfield;
"Phase 2 Nottingham Area"		means the area bounded by (and including) the Stations at Alfreton, Derby, Grantham, Leicester, Mansfield, Matlock and Newark Castle;
"Priority Date"		has the meaning given to such term in the Network Code;
"Proving Service"		means a proving service operated as either a Passenger Service or an empty coaching stock movement demonstrating whether or not the Proving Service Rolling Stock and the infrastructure on the relevant Routes are being maintained to a standard that allows the scheduled journey times specified in paragraph 18.1 (<i>Proving Service</i>) of this Part 1 of Schedule 6.2 (<i>Committed Obligations</i>) to be achieved;
"Proving Service Rolling Stock"		means the class 222 rolling stock within the Train Fleet or the New Five Car BMUs;

²¹² **25 October 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.**

“Qlik”	means QlikTech UK Limited (company number 05292408) or any Affiliate of that company which is able to offer for sale the ‘QlikView’ product;
“QlikView”	means the software based product known as QlikView and supplied by Qlik;
“Qualifying Diversity Groups”	has the meaning given to it in paragraph 4.1;
“Qualifying Fare”	means any: <ul style="list-style-type: none"> (a) Season Ticket Fare; (b) ‘Off-Peak’ Fare; or (c) ‘Anytime’ Fare, <p>whether sold as a paper or electronic ticket or as a ticket on any other media which is valid for travel on the Passenger Services but excludes any:</p> <ul style="list-style-type: none"> (d) Advance Purchase Train-specific Fares; (e) temporary or promotional fares or packages; (f) Smart Media only Fares; and (g) combination of separate Fares in respect of a journey between origin and destination stations (including Fares to and from stations other than the origin and destination stations);
“Real 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, and which is, at the Start Date, £9.00 (pounds sterling nine) in the UK (excluding London) and £10.55 (pounds sterling ten and fifty-five pence) in London;
“[REDACTED²¹³]”	[REDACTED];

²¹³ **25 October 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.**

“Rolling Stock Innovation Fund”	has the meaning given to it in paragraph 13.7;
“Rolling Stock Innovation Fund Period”	means the period from 1 April 2023 to 31 March 2026;
“Rolling Stock Innovation Scheme”	has the meaning given to it in paragraph 13.7(b);
“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;
“Smart TVM Kiosk”	<p>means a smart ticket vending machine to include the additional following functionality:</p> <ul style="list-style-type: none"> (a) simplified customer interface to allow customers to readily identify the most suitable ticket for that customer’s journey; and (b) provision of journey planning and customer guidance regarding ticket and fare selection; (c) displays results in the same way as the Franchisee’s website interface; and (d) retails APOD Fares;
“Specified Routes”	<p>means each of the following routes:</p> <ul style="list-style-type: none"> (a) Birmingham to Leicester to Lincoln; (b) Birmingham to Nottingham to Norwich and Cambridge; (c) Birmingham to Skegness service (weekend service); (d) Colchester to Peterborough to Lincoln and Doncaster; and (e) Colchester to Peterborough to Nottingham to Crewe;
“St Pancras / Corby Passenger Services”	means (as the case may be) any Passenger Services which either:

- (a) originate at St Pancras station and terminate at Corby Station; or
- (b) originate at Corby Station and terminate at St Pancras station;
- “Start Date Class 153 Fleet”** means each and every Class 153 rolling stock vehicle which is comprised in the Train Fleet as at the Start Date;
- “Start Date HST Fleet”** means (together):
- (a) the Angel HST Sets; and
- (b) any other Class 43 HST power cars and HST Mark III trailer cars comprised in the Train Fleet as at the Start Date;
- “Start Date Porterbrook Class 156 Vehicles”** means the twenty two (22) Class 156 rolling stock vehicles formed into eleven (11) 2 car units (as referred to in row 4 of the table at paragraph 1 (*Original Rolling Stock*) of Appendix 1 to Schedule 1.6 (*The Rolling Stock*));
- “Start Date Train Fleet”** has the meaning given to it in paragraph (c)(A);
- “Station Travel Plans”** means a management tool for improving access to and from a station and mitigating local transport and parking problems, supporting sustainable growth in rail patronage and the strategic objectives of the rail industry;
- “Third Party Matched Funding”** has the meaning given to it in paragraph 13.7(a)(iii);
- “Timetable Period”** means the period commencing either:
- (a) on the Passenger Change Date in May and expiring on the next following Passenger Change Date in December; or
- (b) on the Passenger Change Date in December and expiring on the next following Passenger Change Date in May,
- as the case may be.

“Timetable Planning Rules”	has the meaning given to it in the Network Code;
“Timetable Publication Date”	means the date that Network Rail publishes the New Working Timetable (as such term is defined in the Network Code);
“Touchbyte Trial”	means the temporary introduction of the ‘TouchByte’ ticket gate solution (supplied by Touchbyte Limited) on a trial basis, such solution utilising facial recognition technology to recognise customers who have purchased a valid ticket by way of a photograph taken at the point of sale of the relevant Fare;
“Trial Steering Group”	has the meaning given to it in paragraph 23.1;
“Unattended Geometrical Monitoring System”	has the meaning given to it in paragraph 13.2;
“Unrestricted Passenger Carrying Service”	means the operation of the New Five Car BMUs in Passenger Service on the relevant Routes in each case without any restriction; and
“WAN”	means a wide area network.

2. Employment Standards

2.1 Membership of the Ethical Trade Initiative Code

The Franchisee shall by no later than ²¹⁴**15 January 2021**, become a member of the organisation known as Ethical Trading Initiative and shall remain a member throughout the Franchise Term. As a member of the Ethical Trading Initiative the Franchisee shall commit to the “ETI Base Code” as published from time to time by the Ethical Trading Initiative.

2.2 ²¹⁵**Zero Hour Contracts and Living Wage Accreditation**

The Franchisee shall:

- (a) by no later than ²¹⁶**30 July 2022** achieve and thereafter for the remainder of the Franchise Term maintain the “Living Wage Accreditation” offered by the Living Wage Foundation;

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

²¹⁵ 8 April 2021 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

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

- (b) ensure that from the Start Date and throughout the Franchise Term all Franchise Employees are paid at least the relevant Real Living Wage; and
- (c) not at any time during the Franchise Period enter into a contract of employment with any person who is to become a Franchise Employee whereby the terms and conditions of such contract of employment include no obligation on the Franchisee to offer minimum working hours to such a person or no obligation on such a person to accept any work offered by the Franchisee.
- (d) **ensure that all Kickstart Scheme Employees are paid the relevant national minimum wage in accordance with the Kickstart Scheme until June 2022.**

2.3 Investors in People Accreditation

The Franchisee shall, by no later than:

- (a) ²¹⁷**30 April 2021** achieve, and thereafter for the remainder of the Franchise Term maintain, Investors in People Accreditation;
- (b) the end of the fifth (5th) Franchisee Year have achieved the Investors in People Accreditation 'Gold Award'; and
- (c) 18 August 2026 have achieved the Investors in People Accreditation 'Platinum Award'.

3. Resource and Upskilling Initiatives

3.1 Employability Masterclasses

- (a) The Franchisee shall:
 - (i) work with the charitable organisation known as Young Enterprise to develop a bespoke employability programme (the "**YE Programme**"); and
 - (ii) ²¹⁸**subject to paragraph 68**, in each Academic Year deliver the YE Programme as follows:
 - (A) deliver twenty-five (25) employability masterclasses at schools in the geographical area where the Passenger Services operate, such employability masterclasses to be designed to promote career opportunities available in the transport sector in

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

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

general and specifically the opportunities (including pre-apprenticeships) offered by the Franchisee; and

- (B) sponsor and co-ordinate an enterprise competition in which five (5) groups of twenty-five (25) students shall be invited to participate. Each group shall come from a school selected by the Franchisee from each of Derbyshire, Leicestershire, Lincolnshire, Northamptonshire and Nottinghamshire and within the geographical area where the Passenger Services operate. The Franchisee shall procure the availability of Franchise Employees (at executive and senior manager level) to support the competition, including through providing mentorship and advice to the participating students.
- (b) In delivering the obligation set out in paragraph 3.1(a) the Franchisee shall use all reasonable endeavours to ensure that no less than two thousand five hundred (2500) students in the geographical area where the Passenger Services operate benefit from the YE Programme in each Academic Year. The Franchisee shall, in selecting students for the YE Programme, give priority to students from schools that are located in areas of high deprivation.

3.2 Pre-Apprenticeships

²¹⁹ **Subject to paragraph 68**, the Franchisee shall:

- (a) in each Franchisee Year advertise for applications from young persons who are unemployed and have a permanent address within the geographical area where the Passenger Services operate to participate in the Franchisee's pre-apprenticeship work experience programme; and
- (b) accept no less than thirty (30) applicants on to each work experience programme. Each such programme shall have a duration of eight (8) weeks and shall consist of:
- (i) two (2) weeks of training focusing on work-life skills (including CV writing and interview techniques);
 - (ii) two (2) weeks of work shadowing various roles across the Franchisee's back-office functions;
 - (iii) two (2) weeks of training leading to the award of a Level Two Diploma in Customer Services; and
 - (iv) two (2) weeks of supervised work experience in customer services and other front-line roles.

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

4. Diversity Initiatives

4.1 Advertising Space for Qualifying Diversity Groups

- (a) The Franchisee shall:
- (i) make marketing and advertising space available without charge at Stations and on its Train Fleet to groups promoting gender and minority group diversity including Women in Rail, Business in the Community and Investors in Diversity (the "**Qualifying Diversity Groups**") in order to promote and advertise the work of such Qualifying Diversity Groups; and
 - (ii) ensure that for the duration of the Franchise Period such advertising space made available in accordance with requirements of paragraph 4.1(a)(i) has (in aggregate over the Franchise Period) an Equivalent Market Value (calculated by reference to the Equivalent Market Value at the time at which the advertising space is made available to the Qualifying Diversity Group) of **[REDACTED²²⁰]**.
- (b) Within ten (10) Weekdays of the end of each Franchisee Year the Franchisee shall deliver to the Secretary of State a statement setting out:
- (i) the Equivalent Market Value of advertising space across all Stations and its Train Fleet that the Franchisee has made available to Qualifying Diversity Groups in accordance with paragraph 4.1(a) in that Franchisee Year and details of the Qualifying Diversity Groups who have utilised that space;
 - (ii) an explanation of the Franchisee's calculation of the Equivalent Market Value referred to in its statement pursuant to paragraph 4.1(b)(i); and
 - (iii) the aggregate Equivalent Market Value of marketing space made available by the Franchisee in accordance with paragraph 4.1(a) since the Start Date.
- (c) The statement referred to in paragraph 4.1(b) shall be signed by a statutory director of the Franchisee certifying that the data contained within the statement is true, accurate and not misleading.

²²⁰

25 October 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.

4.2 Investors in Diversity

The Franchisee shall by no later than ²²¹**30 October 2020** achieve and thereafter for the remainder of the Franchise Term maintain the '**Inclusive Employers Standard**' accreditation awarded by **Inclusive Employers**.

5. Sustainable Development Training

5.1 The Franchisee shall ensure that:

- (a) within one (1) year of the Start Date all Franchise Employees of manager grade and above have completed an appropriate training course to increase their understanding of and capability in respect of sustainable development; and
- (b) every two (2) years thereafter that Franchise Employees of manager grade and above participate in refresher training courses.

6. Community Rail Partnerships

6.1 In addition to and without prejudice to the provisions of paragraph 2 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*) the Franchisee shall:

- (a) effectively promote each Community Rail Route to increase the use of the Passenger Services through:
 - (i) working with each Community Rail Partnership to collaborate with tourism venues and heritage railways and develop local tourism and promote their use by local residents;
 - (ii) the provision of support to Community Rail Partnerships in in web design; and
 - (iii) the provision of advice and guidance on marketing including assistance in reviewing draft marketing materials, advising on special events, provision of funding for campaigns and publicity for local Community Rail Partnership festivals and events;
- (b) invest no less than:
 - (i) **[REDACTED²²²]** in the first Franchise Year;

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

²²² **25 October 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) ²²³subject to paragraph 6.2, [REDACTED²²⁴] in the second Franchisee Year;
- (iii) [REDACTED²²⁵] in the third Franchisee Year; and
- (iv) in each Franchisee Year thereafter, [REDACTED²²⁶],

in the establishment of a community development fund to be made available to Community Rail Partnerships who apply for access to such funds through the submission of an application to the Franchisee (“Community Development Fund”). The Franchisee shall ensure that amounts invested in the Community Development Fund are made available to Community Rail Partnerships whose business cases provide, in the reasonable opinion of the Franchisee, the greatest benefit to customers and communities;

- (c) invest no less than:
 - (i) [REDACTED²²⁷] in the first Franchisee Year;
 - (ii) ²²⁸subject to paragraph 6.2, [REDACTED²²⁹] £60,000 (pounds sterling sixty thousand) in the second Franchisee Year;
 - (iii) [REDACTED²³⁰] in the third Franchisee Year; and
 - (iv) in each Franchisee Year thereafter, [REDACTED²³¹],

in the establishment of a fund to be made available to Community Rail Partnerships who apply for access to such funds through the submission

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

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²²⁵ 25 October 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.

²²⁶ 25 October 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.

²²⁷ 25 October 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.

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

²²⁹ 25 October 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.

²³⁰ 25 October 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.

²³¹ 25 October 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.

of an application to the Franchisee, such funds to be used by such Community Rail Partnerships to undertake improvements at Stations (“**CRP Stations Improvement Fund**”). The Franchisee shall ensure that amounts invested in the CRP Stations Improvement Fund are made available to Community Rail Partnerships whose business cases provide, in the reasonable opinion of the Franchisee, the greatest benefit to customers and communities;

- (d) invest any monies not fully expended in a particular Franchisee Year in accordance with the requirements of each of paragraphs 6.1(b) and 6.1(c) (respectively) in the following Franchisee Year and any outstanding un-invested sums at the end of the Franchise Period shall be repaid to the Secretary of State by no later than the date that is thirty (30) days after the Franchise Period;
- (e) by no later than the fifth anniversary of the Start Date, devise and implement “**station adopters schemes**” which meet the requirements of paragraph 2.10 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*) at all Stations.
- (f) provide free travel on the Passenger Services to the members of the Community Rail Partnerships listed in the Appendix to Schedule 13.1 (*Rail Industry Initiatives and Co-operation*) to attend business development training organised by ACoRP;
- (g) recruit and train a minimum of two (2) community rail apprentices (the “**Community Rail Apprentices**”). The Community Rail Apprentices shall split their working hours between the Franchise and their respective Community Rail Partnership with the objective to appoint them on a permanent basis as a Franchise Employee within the Franchisee’s Stations team at the end of the apprenticeship. The provisions of paragraph 9 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*) shall apply in relation to the Community Rail Apprentices (in particular the reporting requirements in paragraph 9.1(b) of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*)); and
- (h) within twenty eight (28) days of the date of this Agreement write to each Community Rail Partnership to inform them of the amount of funding (including the proportion of the CRP Amount) that is available to them in each Franchisee Year. The Franchisee shall at the end of each Franchisee Year confirm the annual funding package that is available to each Community Rail Partnership in the subsequent Franchisee Year.

²³² **6.2 The Franchisee shall not make any investment pursuant to paragraph 6.1(b)(ii) or paragraph 6.1(c)(ii) unless the Franchisee has first provided to the Secretary of State a business case for the relevant investment proposed by the Franchisee (detailing the amount to be invested, the recipient of the investment and the commercial benefits of that investment) and the Secretary of State has approved (in the Secretary of State’s absolute discretion) such business case. If any such business case is approved, the Franchisee shall only make investments in accordance**

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

with the approved business case and for no other purpose (unless otherwise agreed by the Secretary of State (in the Secretary of State's absolute discretion)).

7. Stakeholder Engagement

7.1 The Franchisee shall:

- (a) devise and implement a structured programme of engagement with Stakeholders and shall ensure that by no later than 1 April 2021 it achieves (and maintains for the duration of the Franchise Period) the accreditation for collaborative business relationships ISO 44001:2017;
- (b) establish a stakeholder advisory board and organise an annual stakeholder conference with the first such annual stakeholder conference being held by no later than **31 March 2021**; and
- (c) establish a portal on its website which will be utilised for the purposes of collating suggestions and concerns (and if appropriate acting on any such suggestions and concerns) and responding to questions, raised by Stakeholders using the portal.

7.2 Annual Stakeholder Survey

The Franchisee shall:

- (a) in each Franchisee Year conduct a survey of Stakeholders to track such Stakeholders' perception of the Franchisee (the "**Annual Stakeholder Survey**");
- (b) within one (1) month following the completion of an Annual Stakeholder Survey report to the Secretary of State on the results and findings of such Annual Stakeholder Survey. Any such report shall include an action plan setting out the Franchisee's proposals to improve the Stakeholders' perception of the Franchisee. Any such action plan shall be implemented by the Franchisee in accordance with its terms; and
- (c) shall publicise the results and findings of the Annual Stakeholder Survey by displaying such information at least on its website and within its Customer Report and other channels as may be agreed with the Secretary of State.

8. Report on optimisation of passenger services on the Specified Routes

- 8.1 The Franchisee shall by no later than ²³³**31 August 2021** submit to the Secretary of State a report setting out a proposal as to how the provision of passenger services operated by both the Franchisee and other Affiliates who are Train Operators can be optimised on each of the Specified Routes to improve Connections on the Specified Routes.

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

- 8.2 The report referred to in paragraph 8.1 above shall:
- (a) also comment on how such improved Connections on the Specified Routes can be most effectively implemented identifying relevant costs and risks and how they might be minimised or mitigated; and
 - (b) prior to the date upon which the Train Service Requirement in the agreed terms marked "TSR 2" ("**TSR 2**") is to apply, be updated to include proposals on how the passenger services operated by both the Franchisee and other Affiliates who are Train Operators can be optimised on each of the new Routes introduced to the Timetable as a consequence of the implementation of TSR 2 (the "**New Routes**").
- 8.3 The Secretary of State shall have the right to require the Franchisee to produce revised and updated reports in relation to any of the Specified Routes and/or the New Routes (as the case may be) to a specification provided by him on reasonable notice.
- 8.4 As required by the Secretary of State the Franchisee shall meet with the Secretary of State to discuss the contents of any report provided to the Secretary of State pursuant to this paragraph and provide such further information and analysis as he may reasonably require.
9. [REDACTED²³⁴]
- 9.1 [REDACTED²³⁵]
- 9.2 [REDACTED²³⁶]
- 9.3 [REDACTED²³⁷]:
- (a) [REDACTED²³⁸];
 - (b) [REDACTED²³⁹];

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²³⁵ 25 October 2021 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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²³⁹ 25 October 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.

- (c) [REDACTED²⁴⁰];
- (d) [REDACTED²⁴¹];
- (e) [REDACTED²⁴²].

10. [REDACTED²⁴³]

10.1 [REDACTED²⁴⁴] :

- (a) [REDACTED²⁴⁵] ;
- (b) [REDACTED²⁴⁶];
- (c) [REDACTED²⁴⁷].

11. Secondments of Timetable Planners

11.1 Prior to the commencement of each of the Timetable periods commencing on the Passenger Change Date in December 2020 and December 2021 (respectively), the Franchisee shall:

- (a) for the duration of the period from the Notification Period until the Priority Date for the relevant Timetable, second at least two (2) timetable planners, on a part time basis, to Network Rail's timetable planning team in Milton Keynes; and
- (b) for the duration of the period from the Priority Date until the Timetable Publication Date for the relevant Timetable, second at least two (2)

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timetable planners, on a full time basis, to the Network Rail's timetable planning team based in Milton Keynes,

in each case, for the purposes of:

- (i) engaging with other Train Operators and freight operators on the Route to explain the Franchisee's proposed timetable changes and to develop an understanding of the timetable changes proposed by such other Train Operators and freight operators; and
- (ii) working in an effective manner with Network Rail to quickly resolve timetable conflicts.

11.2 The Franchisee may, subject to the prior written approval of the Secretary of State, deploy the timetable planners referred to in paragraph 11.1(a) and/or paragraph 11.1(b) in other secondment arrangements in substitution to secondment arrangements provided for in the applicable paragraph.

12. Changes to the Train Fleet

12.1 ²⁴⁸Replacement of the Start Date Class 153 Fleet

- (a) The Franchisee shall ensure that, in accordance with the tables at paragraphs 1 (*Original Rolling Stock*) and 2 (*Specified Additional Rolling Stock*) of Appendix 1 to Schedule 1.6 (*The Rolling Stock*), by no later than December 2020 Timetable change date the Start Date Class 153 Fleet is released from the Train Fleet and replaced by not less than nine (9) two car units of Class 156 rolling stock vehicles which are compliant with paragraph 12.1(b) (the "**Cascaded Class 156 Vehicles**").
- (b) The Franchisee shall ensure that all of the Cascaded Class 156 Vehicles will be fully compliant with all minimum standards for accessibility specified in the PRM TSI at the point in time at which such Cascaded Class 156 Vehicles become part of the Train Fleet and for the duration of the period such rolling stock vehicles are deployed for the purposes of delivering the Passenger Services.

12.2 Replacement of the Cascaded Class 156 Vehicles and Start Date Porterbrook Class 156 Vehicles

The Franchisee shall ensure that, in accordance with the tables at paragraphs 1 (*Original Rolling Stock*) and 2 (*Specified Additional Rolling Stock*) of Appendix 1 to Schedule 1.6 (*The Rolling Stock*), by no later than 31 December 2020:

- (a) the Cascaded Class 156 Vehicles; and
- (b) the Start Date Porterbrook Class 156 Vehicles,

²⁴⁸ 11 November 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

are released from the Train Fleet and replaced by not less than:

- (i) twenty three (23) two car units; and
 - (ii) five (5) three car units,
- of Class 170 rolling stock vehicles.

12.3 **Rolling stock units used to operate the St Pancras / Corby Passenger Services**

The Franchisee shall ensure that, in accordance with the tables at paragraphs 1 (*Original Rolling Stock*) and 2 (*Specified Additional Rolling Stock*) of Appendix 1 to Schedule 1.6 (*The Rolling Stock*), by no later than the Passenger Change Date occurring in December 2020 it operates all St Pancras / Corby Passenger Services using only Class 360 rolling stock vehicles which are capable of operating at 110mph.

12.4 **Release of the Start Date HST Fleet**

The Franchisee shall ensure that, in accordance with the tables at paragraphs 1 (*Original Rolling Stock*) and 2 (*Specified Additional Rolling Stock*) of Appendix 1 to Schedule 1.6 (*The Rolling Stock*):

- (a) by no later than the Passenger Change Date occurring in December 2020 the Angel HST Sets are released from the Train Fleet and replaced by not less than four (4) 5 car units of Class 180 rolling stock vehicles; and
- (b) from and including the Passenger Change Date occurring in December 2020 it does not use all or any part of the Start Date HST Fleet in the provision of the Passenger Services.

13. **Upgrade, enhancement and/or refurbishment to rolling stock comprised in the Train Fleet**

13.1 **Passenger information system**

- (a) The Franchisee shall, by no later than 31 December 2022, install a commissioned and operational real-time passenger information system which complies with the minimum specification set out in paragraph 13.1(b) ("**Passenger Information System**") in all rolling stock vehicles comprised in the Train Fleet.
- (b) The Passenger Information System shall be compliant with the following specification:
 - (i) capable of exchanging information with other rail industry information platforms including, as a minimum, DARWIN;
 - (ii) capable of acquiring and displaying (in a user-friendly format) real-time travel and delay information, including information which allows passengers to make informed decisions with regard to interchange opportunities (including services operated by other transport operators (such as trams, underground, buses and passenger services operated by other Train Operators); and

- (iii) configured to display relevant information to passengers including customer facing route maps, on-train loadings and news and weather feeds.

13.2 Unattended Geometrical Monitoring System

- (a) The Franchisee shall, by no later than 31 December 2022, install a commissioned and operational 'unattended geometrical monitoring system' which complies with the minimum specification set out in paragraph 13.2(b) ("**Unattended Geometrical Monitoring System**") on not less than 10% (ten per cent) of the rolling stock vehicles comprised in each of:
 - (i) the Class 170 Fleet;
 - (ii) the Class 360 Fleet; and
 - (iii) the fleet of New Five Car BMUs.
- (b) The Unattended Geometrical Monitoring System shall be capable of:
 - (i) capturing data in respect of track, sleeper, clip and (in respect of electrical multiple units and New Five Car BMUs only) overhead line equipment condition (including through the use of pantograph cameras) ("**Equipment Condition Data**"); and
 - (ii) providing and/or transmitting Equipment Condition Data to the Franchisee to enable appropriate corrective action to be taken in respect of issues identified,

in each case for the purposes of:

- (Not Defined) improving the performance of rolling stock comprised in the Train Fleet; and
- (Not Defined) providing, including pursuant to the Alliance Agreement, an additional means of monitoring of the condition of Network Rail assets.

13.3 Automatic passenger counting equipment

The Franchisee shall ensure that, by no later than 31 December 2022, all rolling stock vehicles comprised in the Train Fleet have been fitted with commissioned and operational automatic passenger counting equipment which:

- (a) counts the number of passengers boarding and alighting at each doorway and passing between vehicles (but not units), and provides an accurate record of the number of passengers in each vehicle; and
- (b) is capable of transmitting data directly and automatically to the RPC Database and/or the Preliminary Database (as appropriate) in accordance with paragraph 1.5 of Schedule 1.5 (*Information About Passengers*).

13.4 Refurbishments to the Class 170 Fleet

The Franchisee shall:

- (a) ensure that by no later than [REDACTED²⁴⁹], it has completed the following refurbishments to all of the rolling stock vehicles comprised in the Class 170 Fleet:
- (i) refurbishment of seating in a '2+2' layout throughout the Standard Class Accommodation;
 - (ii) the installation of tables (either fixed or folding) at all seats;
 - (iii) the interior repainting and refinishing of all grab poles;
 - (iv) (in addition to paragraph 13.4(a)(ix)) a full refresh of all on-board toilets;
 - (v) an increase in capacity for storage of luggage, such that each rolling stock vehicle shall be fitted with:
 - (A) not less than two (2) luggage stacks; and
 - (B) overhead racks to accommodate Hand Luggage;
 - (vi) the installation of commissioned and operational low energy LED lighting;
 - (vii) the installation of commissioned and operational Selective Door Opening;
 - (viii) the installation of a commissioned and operational cradle and charging point in each driver's cab for a tablet or other device forming the in-cab element of DAS; and
 - (ix) the installation of a vinyl wrap of all on-board toilets (which shall be re-applied at intervals of no more than two (2) years throughout the Franchise Period);
- (b) ensure that by no later than [REDACTED²⁵⁰], it has completed the following additional refurbishments to all of the rolling stock vehicles comprised in the Class 170 Fleet:
- (i) the installation of commissioned and operational at-seat power sockets at each pair of transverse seats (which shall in each case

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comprise a 240v 3-pin socket and a separate USB outlet which can be used simultaneously);

- (ii) the installation of commissioned and operational air conditioning in all passenger areas; and
 - (iii) the installation of a commissioned and operational CCTV system, including forward facing cameras, the output of which is capable of being downloaded remotely by authorised parties (for example, the British Transport Police), which is in compliance with the CCTV Guidance; and
- (c) **[REDACTED²⁵¹]** in complying with its obligations in this clause 0.

13.5 Refurbishments to the Class 360 Fleet

The Franchisee shall ensure that:

- (a) by no later than **[REDACTED²⁵²]**, it has completed the following refurbishments to all of the rolling stock vehicles comprised in the Class 360 Fleet:
 - (i) the installation of new seating:
 - (A) in a '2+2' layout throughout the Standard Class Accommodation; and
 - (B) in a '2+1' layout throughout the first class accommodation;
 - (ii) the installation of tables (either fixed or folding) at all seats;
 - (iii) the interior repainting and refinishing of all grab poles;
 - (iv) (in addition to paragraph 13.5(a)(ix)) a full refresh of all on-board toilets;
 - (v) an increase in capacity for storage of luggage, such that each rolling stock vehicle shall be fitted with:
 - (A) not less than one (1) luggage stack; and
 - (B) overhead racks to accommodate Hand Luggage;
 - (vi) the installation of commissioned and operational low energy LED lighting;

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- (vii) the installation of commissioned and operational Selective Door Opening;
 - (viii) the installation of a commissioned and operational cradle and charging point in each driver's cab for a tablet or other device forming the in-cab element of DAS; and
 - (ix) the installation of a vinyl wrap of all on-board toilets (which shall be re-applied at intervals of no more than two (2) years, throughout the Franchise Period); and
- (b) by no later than **[REDACTED²⁵³]** it has completed the following additional refurbishments to all of the rolling stock vehicles comprised in the Class 360 Fleet:
- (i) the installation of commissioned and operational at-seat power sockets:
 - (A) between each pair of seats in the Standard Class Accommodation;
 - (B) at each seat in the first class accommodation,
 which shall, in each case, comprise a 240v 3-pin socket and a separate USB outlet which can be used simultaneously;
 - (ii) the installation of commissioned and operational air conditioning in all passenger areas;
 - (iii) the installation of a commissioned and operational CCTV system, including forward facing cameras, the output of which is capable of being downloaded remotely by authorised parties (for example, the British Transport Police), which is in compliance with the CCTV Guidance; and
 - (iv) procuring that there are not less than two (2) designated cycle spaces on each of the Class 360 rolling stock vehicles comprised within the Class 360 Fleet.

13.6 Improvements to rolling stock reliability

(a) Conduct of baseline condition survey

- (i) The Franchisee shall, by no later than 15 Weekdays after the date upon which the Franchisee and the lessors of the rolling stock vehicles comprised in the Start Date Train Fleet have undertaken a delivery condition survey of the rolling stock vehicles comprised in the Start Date Train Fleet, produce a report setting out the

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baseline condition of such rolling stock vehicles comprised in the Start Date Train Fleet.

- (ii) The Franchisee shall as soon as reasonably practicable following production of the baseline condition survey referred to in paragraph 13.6(a)(i) produce a further report identifying any dilapidations or other issues regarding the condition of the rolling stock vehicles comprised in the Start Date Train Fleet which:
 - (A) the lessor of the applicable rolling stock is not responsible for rectifying pursuant to the applicable Rolling Stock Lease; and
 - (B) if, rectified, would give rise to an improvement in the performance of the relevant rolling stock vehicles (including reducing the frequency of incidents occurring in respect of such rolling stock),

the **"Baseline Condition Issues"**.

(b) **Start Date Train Fleet**

- (i) The Franchisee shall:
 - (A) fully and effectively co-operate with the owners of all rolling stock vehicles comprised in the Train Fleet as at the Start Date (the "Start Date Train Fleet"); and
 - (B) implement best practice from other Train Operators which are Affiliates of the Franchisee,

for the purposes of maximising the reliability of the Start Date Train Fleet.

- (ii) The Franchisee shall from the Start Date until the end of the third Franchisee Year implement and complete a programme of technical modifications, process improvements and staff training relating to the Start Date Train Fleet (which, for the avoidance of doubt, shall be in addition to (and separate from) any of the initiatives contemplated by paragraph 13.1 to 13.5 (inclusive) and paragraph 13.6(b)(i)). In incurring expenditure (as specified in paragraph 13.6(d)) pursuant to this paragraph the Franchisee shall:
 - (A) take account of the Baseline Condition Issues; and
 - (B) target such investment at areas which the Franchisee reasonably expects will deliver the greatest benefits for passengers.
- (iii) The Franchisee shall provide such information as the Secretary of State may require from time to time in respect of the actions taken by the Franchisee in complying with its obligations under this paragraph 13.6(b).

(c) Class 170 Fleet and Class 360 Fleet

- (i) The Franchisee shall:
- (A) fully and effectively co-operate with the owners of the rolling stock vehicles comprised in each of the Class 170 Fleet and the Class 360 Fleet; and
- (B) implement best practice from other Train Operators which are Affiliates of the Franchisee,
- for the purposes of maximising the reliability of the Class 170 Fleet and the Class 360 Fleet.
- (ii) The Franchisee shall from the Start Date until the end of the second Franchisee Year implement and complete a programme of technical modifications, process improvements and staff training relating to both the Class 170 Fleet and the Class 360 Fleet (which, for the avoidance of doubt, shall be in addition to (and separate from) any of the initiatives contemplated by paragraphs 13.1 to 13.5 (inclusive) and paragraph 13.6(c)(i)). In incurring expenditure (as specified in paragraph 13.6(d)) pursuant to this paragraph the Franchisee shall target such investment at areas which the Franchisee reasonably expects will deliver the greatest benefits for passengers.
- (iii) The Franchisee shall provide such information as the Secretary of State may require from time to time in respect of the actions taken by the Franchisee in complying with its obligations under this paragraph 13.6(c).

(d) Reliability Improvements Expenditure

The Franchisee shall incur expenditure of not less than [REDACTED²⁵⁴] (in the aggregate) in complying with its obligations in paragraphs 13.6(b)(ii) and 13.6(c)(ii) during the periods specified in those paragraphs for the delivery of such obligations.

13.7 Rolling Stock Innovation Fund

- (a) The Franchisee shall:
- (i) establish a rolling stock innovation fund in accordance with and for the purposes specified in paragraph 13.7(b) and 13.7(c) (the "**Rolling Stock Innovation Fund**"); and

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- (ii) during the Rolling Stock Innovation Fund Period, invest no less than [REDACTED²⁵⁵] in the Rolling Stock Innovation Fund; and
- (iii) by no later than the Start Date secure matched grant funding of:
 - (A) [REDACTED²⁵⁶]; and
 - (B) [REDACTED²⁵⁷] from Bombardier Transportation UK Limited (company number 02235994),

in each case to be invested in the Rolling Stock Innovation Fund (the "**Third Party Matched Funding**"). It is agreed that the Third Party Matched Funding could be cash contribution or the provision of resources and/or services at the time of implementation of the Rolling Stock Innovation Scheme. The Franchisee shall keep a record of the Third Party Matched Funding and shall, as part of the review of compliance with Committed Obligations as required pursuant to paragraph 5 of Part 2 of this Schedule 6.2, provide to the Secretary of State, on an "open book" basis, such information as he may reasonably require in relation to the nature and value of the resources and/or services that are comprised in the Third Party Matched Funding.

13.7(a)A ²⁵⁸ **The Parties acknowledge that the Franchisee has procured Third Party Matched Funding from Hitachi Rail Limited and Porterbrook Leasing Company Limited. Without prejudice to any rights of the Secretary of State to require the transfer of such Third Party Matched Funding to a Successor Operator, the Franchisee shall use all reasonable endeavours to procure that, following the termination or expiry of this Agreement, any unexpended funds that formed part of the Third Party Matched Funding shall be transferred to a Successor Operator.**

- (b) The amounts invested in the Rolling Stock Innovation Fund as required by paragraph 13.7(a) shall be expended in full by the Franchisee by no later than 18 August 2026:
 - (i) in accordance with the provisions of paragraph 13.7(c); and
 - (ii) in the implementation of innovation schemes relating to the following classes of rolling stock comprised in the Train Fleet

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

(including, where applicable, the trial of new technology in respect of the same):

- (A) Class 170 Fleet;
- (B) Class 360 Fleet; and
- (C) New Five Car BMUs.

(the “**Rolling Stock Innovation Scheme**”)

(c) **Administration of the Rolling Stock Innovation Funds**

- (i) The Franchisee shall not implement any Rolling Stock Innovation Scheme unless:
 - (A) the Franchisee has notified such proposed Rolling Stock Innovation Scheme to the Secretary of State in writing setting out its specification and cost, risks to delivery (including dependencies on third parties and requisite approvals and consents), the outputs it is expected to deliver and a reasonable timetable for delivery;
 - (B) the Franchisee has provided such further information as the Secretary of State may reasonably require in relation to such proposed Rolling Stock Innovation Scheme; and
 - (C) the Secretary of State has provided his written approval to such proposed Rolling Stock Innovation Scheme in a reasonable timeframe to enable the proposed delivery timetable issued by the Franchisee pursuant to paragraph 13.7(c)(i)(A) to be achieved.
- (ii) Where the Franchisee believes that it is reasonably likely that the delivery of any approved Rolling Stock Innovation Scheme will be delayed or delivered on a basis inconsistent with its specification, it shall notify the Secretary of State as soon as reasonably practicable and keep him appropriately updated.
- (iii) The Franchisee shall notify the Secretary of State of the completion of each approved Rolling Stock Innovation Scheme as soon as reasonably practicable. Such notification shall confirm that the Rolling Stock Innovation Scheme has been completed in accordance with its specification and certify the expenditure that has been incurred with reasonable supporting evidence.
- (iv) Any outstanding un-invested sums remaining in the Rolling Stock Innovation Fund at the date that is the earlier of 18 August 2026 or the expiry of the Franchise Period shall be repaid to the Secretary of State within thirty (30) days of such date.

14. **Installation of DAS and C-DAS**

- 14.1 Without prejudice and in addition to the Franchisee’s obligations under paragraph 2 of Part 3 to Schedule 6.1 (*Franchise Specific Obligations*), the Franchisee shall by

no later than 1 December 2022, have installed an operational DAS on all rolling stock units in the Class 170 Fleet and Class 360 Fleet which shall instruct train drivers when to accelerate and coast whilst ensuring compliance with the timetable in the most energy efficient manner.

14.2 Without prejudice and in addition to the Franchisee's obligations under paragraph 2 of Part 3 to Schedule 6.1 (*Franchise Specific Obligations*), the Franchisee shall by no later than 1 December 2022, have installed an operational C-DAS on all rolling stock units in the fleet of New Five Car BMUs. Such C-DAS shall have the following functionality:

- (a) instruct train drivers when to accelerate and coast whilst ensuring compliance with the timetable in the most energy efficient manner;
- (b) have global positioning system functionality to enable per second tracking of each train;
- (c) have the capability to interface with Network Rail's traffic management system deployed on the Routes and future capability to interface with other Network Rail signalling and safety systems including COMPASS; and
- (d) be compliant with the specifications and requirements set out in the documents titled:
 - (i) "Interim System Requirements Specification for Connected Driver Advisory System (C-DAS)"; and
 - (ii) "Interim Railway Undertaking (RU) Subsystem Requirements Specification for Connected Driver Advisory System (C-DAS)",

both as published by Network Rail.

14.3 From the date on which the DAS or C-DAS (as the case may be) is installed by the Franchisee on the first rolling stock unit in accordance with paragraph 14.1 or paragraph 14.2 and until the end of the Franchise Term, the Franchisee shall spend not less than [REDACTED²⁵⁹] in aggregate in maintaining the DAS and C-DAS installed on the relevant rolling stock units.

15. New Five Car BMUs

15.1 The Franchisee shall by no later than the [REDACTED²⁶⁰] enter into one (1) or more Rolling Stock Lease(s) in respect of the New Five Car BMUs.

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15.2 The Franchisee shall:

- (a) ensure that it has commenced on-track testing of one (1) New Five Car BMU by no later than [REDACTED²⁶¹]; and
- (b) introduce into Unrestricted Passenger Carrying Service:
 - (i) one (1) New Five Car BMU by no later than [REDACTED²⁶²]; and
 - (ii) each New Five Car BMU (other than the New Five Car BMU referred to in paragraph 15.2(b)(i)) by no later than [REDACTED²⁶³].

15.3 The New Five Car BMUs shall be compliant with the following specification:

- (a) fitted with a real-time passenger information system, which shall be capable of exchanging information with other rail industry information platforms including (as a minimum) DARWIN (and which otherwise complies with the requirements of paragraph 13.1 above);
- (b) fitted with Wi-Fi equipment which meets the minimum specifications set out in Schedule 13.3 (*Mobile Communications Service*);
- (c) fitted with commissioned and operational at-seat power sockets at:
 - (i) each pair of transverse seats;
 - (ii) each single position seat,
 which shall, in each case, comprise a 240v 3-pin socket and a separate USB outlet which can be used simultaneously;
- (d) fully air conditioned in all passenger areas;
- (e) fitted with a CCTV system with high definition coloured and forward facing cameras, the output of which is capable of being downloaded remotely by authorised parties (for example, the British Transport Police);
- (f) not less than 10% (ten per cent) of the fleet of New Five Car BMUs will be fitted with an unattended geometrical monitoring system which complies with the requirements of paragraph 13.2 above;

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- (g) configured with a minimum provision of two (2) designated cycle spaces per each New Five Car BMU;
- (h) fitted with automatic passenger counting equipment;
- (i) fitted with tables (either fixed or folding) at all seats;
- (j) fitted with a cradle and charging point in each driver's cab for a tablet or other device forming the in-cab element of C-DAS;
- (k) fitted with vinyl wrap of all toilets (which shall be re-applied at intervals of no more than two (2) years throughout the Franchise Period); and
- (l) fitted with:
 - (i) overhead luggage racks above transverse seating which are capable of accommodating Hand Luggage; and
 - (ii) a wheelchair position,
in each vehicle in each New Five Car BMU;
- (m) capable of operating at 125mph under both diesel and electric traction power;
- (n) fitted with seating which is configured in:
 - (i) 2 + 2 transverse layout throughout the Standard Class Accommodation; and
 - (ii) 2 + 1 transverse layout throughout the first class accommodation; and
(fitted with sufficient luggage stacks which:
 - (i) are located at floor level to enable stowage of larger suitcases and holdalls and a separate shelf for smaller items; and
 - (ii) are positioned (where possible) close to entrance doorways to facilitate rapid passenger transfer and improve dwell times.

16. **Delayed Rolling Stock Franchise Payment Adjustment**

- 16.1 If (i) one (1) New Five Car BMU has not been introduced into Unrestricted Passenger Carrying Service by the date specified in paragraph 15.2(b)(i); and/or (ii) each New Five Car BMU (other than the New Five Car BMU referred to in limb (i)) has not been introduced in Unrestricted Passenger Carrying Service by the date specified in paragraph 15.2(b)(ii), then, in either case (without prejudice to any other remedies that might be available to the Secretary of State), the net financial effect of the delay to the Franchisee shall be agreed by the Secretary of State and the Franchisee or, in default of agreement within a timescale regarded as reasonable by the Secretary of State, the Secretary of State shall reasonably determine such net financial effect. The Franchisee shall provide all information that the Secretary

of State shall reasonably require for the purposes of identifying such net financial effect. The assessment of such net financial effect shall take into account:

- (a) any liquidated damages payable to the Franchisee in relation to any such delay;
 - (b) the lease, maintenance and other operating costs avoided or deferred by the Franchisee in consequence of the delay (including costs relating to the provision of depot facilities in relation to the new rolling stock);
 - (c) any additional lease, maintenance and other operating costs reasonably incurred by the Franchisee as a result of extending the leases on other rolling stock within the Train Fleet beyond the lease expiry dates specified in Schedule 1.6 (*The Rolling Stock*) of the Franchise Agreement or the leasing or hiring of other rolling stock vehicles to substitute for delayed new vehicles;
 - (d) any reasonably anticipated loss of revenue suffered by the Franchisee as a consequence of delay (such loss being calculated consistently with the most appropriate industry standard revenue forecasting guidance and practices); and
 - (e) any other cost savings made by the Franchisee as a consequence of the delay.
- 16.2 No account shall be taken of any impacts of the delay to the delivery of new rolling stock on amounts to be incurred by the Franchisee under Schedule 7.1 (*Operational Performance*) and Schedule 7.2 (*Customer Experience and Engagement*) or amounts payable by the Franchisee under Schedule 7.3 (*Service Quality Regime*). The Franchisee shall use all reasonable endeavours to minimise increased costs incurred and revenue foregone as a result of the delay to the new rolling stock and, if the Secretary of State reasonably determines it has not done so, the Secretary of State shall be entitled to substitute a lower cost and/or a higher revenue based on his reasonable determination of what the cost incurred and/or revenue foregone by the Franchisee should have been if it had exercised all reasonable endeavours.
- 16.3 If it is agreed or reasonably determined that the net financial effect of the delay to any new rolling stock is a positive one for the Franchisee, so that it is financially better off than it would have been had such delay not occurred, then an amount shall be payable by the Franchisee to the Secretary of State of the amount required to pass such financial benefit of the delay to the Secretary of State (a "**Delayed Rolling Stock Franchise Payment Adjustment**"). The Delayed Rolling Stock Franchise Payment Adjustment shall be calculated and paid on a Reporting Period by Reporting Period basis as reasonably determined by the Secretary of State and paid by way of adjustment to Franchise Payments. The first such amount shall be payable on the first Payment Date falling no less than seven (7) days after such determination. If the net financial effect of the delay to any new rolling stock is a negative one for the Franchisee, so that it is financially worse off than it would have been had such delay not occurred, no adjustment shall be made to Franchise Payments.

17. Improvements to Journey Times

17.1 The Franchisee shall:

- (a) ensure that its fleet of electric multiple units receives all necessary authorisations, approvals and consents required to permit it to operate at a maximum speed of 110 miles per hour where the track and overhead line equipment infrastructure permits such speed prior to the Passenger Change Date occurring in [REDACTED²⁶⁴]; and
- (b) use all reasonable endeavours to obtain reasonably appropriate consequential reductions in the timetabled journey times of Passenger Services operating on the Midland Main Line between London St Pancras and Bedford operated by its fleet of electric multiple units with effect from the Passenger Change Date occurring in [REDACTED²⁶⁵] or, if later, the first Passenger Change Date to occur following the completion of MML Key Output 1(a) provided that the Franchisee shall not be obliged to comply with the obligation specified in this paragraph 17.1 where MML Key Output 1(a) does not upgrade the overhead line equipment to permit the operation of electrically powered rolling stock at speeds of up to 110 miles per hour.

18. Proving Services

18.1 The Franchisee shall operate Proving Services which:

- (a) depart from London St Pancras and arrive at Nottingham with a scheduled journey time of no more than 1 hour 35 minutes with at least four stops at Stations;
- (b) depart from Nottingham and arrive at London St Pancras with a scheduled journey time of no more than 1 hour 35 minutes with at least four stops at Stations;
- (c) depart from London St Pancras and arrive at Sheffield with a scheduled journey time of no more than 1 hour 59 minutes with at least four stops at Stations; and
- (d) depart from Sheffield and arrive at London St Pancras with a scheduled journey time of no more than 1 hour 59 minutes with at least four stops at Stations.

18.2 The Franchisee shall operate each such Proving Service specified in 18.1 (a) to (d) at least once in each Timetable Period that occurs from the

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Passenger Change Date in ²⁶⁶May 2021 until the end of the Franchise Period.

- 18.3 Any Proving Service which is operated by the Franchisee but which fails to achieve a scheduled journey time specified within paragraph 18.1 shall not constitute a contravention of this Franchise Agreement.
- 18.4 Within 20 Weekdays following the operation of all of the Proving Services to be operated in each Timetable Period pursuant to paragraph 18.1, the Franchisee shall deliver to the Secretary of State a report which shall:
- (a) provide evidence as to whether or not the Proving Services operated in that Timetable Period achieved the scheduled journey time specified in paragraph 18.1 for the relevant Proving Service; and
 - (b) if a Proving Service has not achieved the relevant scheduled journey time, provide an explanation as to why the scheduled journey time was not, in the Franchisee's reasonable opinion, achieved (the Franchisee having undertaken reasonable investigations, including co-operating with and conducting any joint-investigation with Network Rail, where applicable).
- 18.5 By no later than 20 Weekdays following the delivery of the report to the Secretary of State referred to in paragraph 18.3, the Franchisee and the Secretary of State shall agree (and in the absence of any such agreement the Secretary of State shall reasonably determine) a plan setting out:
- (a) the actions that the Franchisee shall undertake in to order to resolve those issues which were identified in the report as preventing any Proving Service from achieving a scheduled journey time; and
 - (b) the timescales in which the Franchisee shall be obliged to have implemented and completed those actions referred to in paragraph 18.4(a),
- provided that the Franchisee shall only be obliged to undertake remedial actions which are consistent with the scope of its obligations under this Franchise Agreement. The Franchisee shall comply with the terms of any such plan from the date on which its terms are agreed or determined by the Secretary of State.
19. **[REDACTED²⁶⁷]**
- 19.1 **[REDACTED²⁶⁸]**.

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

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19.2 [REDACTED²⁶⁹].

19.3 [REDACTED²⁷⁰]:

(a) [REDACTED²⁷¹];

(b) [REDACTED²⁷²]

[REDACTED²⁷³].

20. Enhancement of existing depot operations and facilities

20.1 Derby Etches Park Depot

(a) The Franchisee shall procure by no later than 31 December 2022 the implementation and commissioning into full operational use of the following enhancements and/or upgrades to Derby Etches Park Depot (and shall thereafter maintain such enhancements and/or upgrades for the remainder of the Franchise Period):

- (i) the extension of the depot headshunt to 245 metres in length (so as to accommodate New Five Car BMUs coupled together in 10-car formation);
- (ii) the installation of a commissioned and operational new Carriage Washing Machine in an operationally efficient location (it being acknowledged and agreed that such Carriage Washing Machine shall also incorporate an underframe washing facility);
- (iii) the extension of the maintenance shed to at least 245 metres in length (so as to accommodate New Five Car BMUs coupled together in 10-car formation);
- (iv) the installation of commissioned and operational 25kV pantograph and train systems testing equipment in two (2) operationally

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efficient locations to allow full maintenance of the fleet of New Five Car BMUs; and

- (v) the installation of additional commissioned and operational shore supplies at operationally optimum locations to minimise the need to run diesel engines whilst trains are stabled and cleaned,

and in so doing shall procure a minimum expenditure of [REDACTED²⁷⁴].

- (b) The Franchisee shall procure the installation of commissioned and operational automatic train scanning equipment (either the equipment known as "Bombardier AVIS" or an alternative with equivalent performance) at Derby Etches Park Depot by no later than 31 December 2022, and in so doing shall procure a minimum expenditure of [REDACTED²⁷⁵].

- (c) ⁱ The Franchisee shall by no later than 31 March 2020 implement and commission into full operational use appropriate upgrades to the existing staff facilities at Derby Etches Park Depot and in so doing shall incur expenditure of not less than [REDACTED²⁷⁶].

20.2 Nottingham Eastcroft Depot

The Franchisee shall:

- (a) by no later than the Passenger Change Date occurring in December 2020, procure the upgrade of existing fuel point and Controlled Emission Toilet extract facilities at Nottingham Eastcroft Depot so as to enable and/or accommodate the use of such facilities by Class 170 rolling stock vehicles formed in 3-car units;
- (b) by no later than 31 December 2021 procure upgrades to the existing Carriage Washing Machine at Nottingham Eastcroft Depot to improve the working efficiency of such Carriage Washing Machine, including the introduction of speed control and replacement of each existing nozzle with a new re-designed nozzle; and
- (c) by no later than 31 December 2021 implement and commission into full operational use appropriate upgrades to the existing staff facilities at

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Nottingham Eastcroft Depot and in so doing shall incur expenditure of not less than [REDACTED²⁷⁷].

20.3 Bedford Cauldwell depot

- (a) The Franchisee shall procure:
- (i) the implementation and commissioning into full operational use of appropriate and sufficient upgrade works to Bedford Cauldwell depot so as to enable the conduct of all required light maintenance (other than wheel re-profiling) of the Class 360 Fleet at Bedford Cauldwell depot by no later than the Passenger Change Date in [REDACTED²⁷⁸]; and
 - (ii) the installation of a commissioned and operational Carriage Washing Machine at Bedford Cauldwell depot by no later than [REDACTED²⁷⁹].
- (b) The Franchisee shall fully and effectively co-operate with Network Rail and the Depot Facility Owner of Bedford Cauldwell depot in respect of the implementation and installation of the works and equipment referred to in paragraph 20.3(a).

20.4 Installation of automatic train scanning equipment at Cricklewood sidings

- (a) The Franchisee shall procure the installation of commissioned and operational automatic train scanning equipment (either the equipment known as "Bombardier AVIS" or an alternative with equivalent performance) at Cricklewood sidings by no later than 31 December 2022.
- (b) The Franchisee shall fully and effectively co-operate with Network Rail and the Facility Owner of Cricklewood sidings in respect of the installation of the automatic train scanning equipment referred to in paragraph 20.4(a).
- (c) The Franchisee shall fully and effectively co-operate with the supplier of the train scanning equipment to be installed by the Franchisee at Derby Etches Park Depot and Cricklewood sidings pursuant to paragraphs 20.1(b) and this paragraph 20.4 (the "**Installed Automatic Train Scanning Equipment**") with a view to maximising its reliability (having particular regard to the effects of adverse weather).
- (d) The Franchisee shall implement robust contingency plans to ensure the continued delivery of rolling stock fleet maintenance at Derby Etches Park

²⁷⁷ 25 October 2021 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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²⁷⁹ 25 October 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.

Depot and Cricklewood sidings in the event that output data from the Installed Automatic Train Scanning Equipment is or becomes unavailable for any reason.

20.5 Installation of an additional Carriage Washing Machine at either Kettering or Cricklewood sidings

- (a) The Franchisee shall procure the installation of a commissioned and operational new Carriage Washing Machine at either Kettering or Cricklewood sidings by no later than 31 December 2021.
- (b) The Franchisee shall fully and effectively co-operate with Network Rail and the Facility Owner of Kettering or Cricklewood sidings (as the case may be) in respect of the installation of the new Carriage Washing Machine referred to in paragraph 20.5(a).

20.6 Installation of compactors at Depot waste recycling points

The Franchisee shall by no later than the second Franchisee Year procure the installation of commissioned and operational compactors at waste recycling points at Depots and in so doing shall incur expenditure of not less than [REDACTED²⁸⁰].

20.7 Procurement of portable Controlled Emission Toilet emptying equipment

The Franchisee shall procure commissioned and operational portable Controlled Emission Toilet emptying equipment to support the hygienic operation of the Class 360 Fleet following the Passenger Change Date occurring in December 2020 and in so doing shall incur expenditure of not less than [REDACTED²⁸¹].

20.8 Investment in depot IT systems

The Franchisee shall incur expenditure of not less than [REDACTED²⁸²] during the Franchise Period by investing in depot IT systems which are capable of sending and receiving data from on-board and trackside remote condition monitoring systems, which will form an integral part of the planning and delivery of fleet maintenance.

²⁸⁰ 25 October 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.

²⁸¹ 25 October 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.

²⁸² 25 October 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.

20.9 ²⁸³ **Establishment of new depot facilities at Kettering**

- (a) ²⁸⁴ By no later than 1 December 2020, the Franchisee shall procure the establishment and commissioning into full operational use of of a new driver and train crew depot at Kettering."
- (b) The Franchisee shall ensure that it sets depot staff establishment levels appropriately so as at all times to ensure the robust and efficient operation of each Timetable that includes the enhanced Corby Passenger Services as described in the applicable Train Service Requirement.

21. **Establishment of a New Trains Project Delivery Team**

21.1 By no later than the Start Date, the Franchisee shall establish (and thereafter until at least the end of the third Franchisee Year continue to resource and maintain) a project delivery team staffed by Franchise Employees (each a **"New Trains Project Delivery Team Staff Member"**), which will be responsible within the Franchisee's business for the Franchisee's compliance with:

- (a) paragraph 15 (*New Five Car BMUs*); and
- (b) the Franchisee's obligations under paragraph 20 (*Enhancement of existing depot operations and facilities*) which relate to or are connected with the introduction of the New Five Car BMUs,

the **"New Trains Project Delivery Team"**. Following expiry of the third Franchisee Year the Franchisee shall procure that the functions of the New Trains Project Delivery Team will be fulfilled by the Engineering Director.

21.2 The Franchisee shall ensure that the New Trains Project Delivery Team reports to the Franchise & Transition/ Projects Director.

22. **Depot staff training**

22.1 The Franchisee shall implement a programme of training for not less than fifty-nine (59) Franchise Employees to provide such Franchise Employees with the level of technical competence necessary to enable them to carry out physical maintenance work on the Class 170 Fleet and to support the Franchisee's achievement of the levels of safety, availability and reliability required of the Class 170 Fleet.

22.2 The Franchisee shall ensure that the programme of training referred to in paragraph 22.1 is completed by no later than 31 December 2021.

23. **Trial of hydrogen fuel cell traction technology**

23.1 The Franchisee shall undertake, in accordance with the requirements of paragraph 23.2, a trial of hydrogen fuel cell traction technology by installing relevant commissioned and operational hydrogen fuel cell traction technology in one vehicle

²⁸³ 11 March 2020 (Date of Contract Change Letter)- Contract variation agreed by the Secretary of State and Franchisee

²⁸⁴ 11 March 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

comprised in a New Five Car BMU (the "**Modified BMU**") in the delivery by the Modified BMU of Passenger Services (the "**Hydrogen Fuel Cell Traction Trial**").

23.2 The Franchisee shall ensure that:

- (a) the Hydrogen Fuel Cell Traction Trial:
 - (i) commences by no later than 30 June 2026; and
 - (ii) is of not less than three (3) and not more than six (6) months' duration; and
- (b) appropriate logistical, technical and maintenance support is provided to facilitate the deployment of the Modified BMU in the delivery of Passenger Services as part of the Hydrogen Fuel Cell Traction Trial so as to mitigate against any adverse impact on the Franchisee's ability to deliver the Passenger Services in accordance with the Train Service Requirement and this Agreement.

23.3 By no later than 31 December 2020, the Franchisee shall establish a cross-industry project steering group (which shall include, as a minimum, representatives of Network Rail, the Department for Transport and the ORR) to oversee the conduct of the Hydrogen Fuel Cell Traction Trial (the "**Trial Steering Group**"). The Franchisee shall regularly report to the Trial Steering Group on the status of the Hydrogen Fuel Cell Traction Trial and the Franchisee's preparations for it.

23.4 By no later than 31 December 2026 the Franchisee shall convene and actively participate in, together with the Trial Steering Group, a review of the Hydrogen Fuel Cell Traction Trial to cover (as a minimum):

- (a) areas of success and/or failure of the Hydrogen Fuel Cell Traction Trial;
- (b) lessons learnt; and
- (c) proposed next steps for the implementation of hydrogen fuel cell traction technology in the rail sector.

23.5 The Franchisee shall provide a report to the Secretary of State setting out the outcomes of the review referred to in paragraph 23.4 as soon as reasonably practicable following completion of the review, together with such additional information as the Secretary of State may reasonably require in such regard.

24. **Business Continuity**

24.1 The Franchisee shall appoint an independent third party expert or experts who shall:

- (a) regularly during the first Franchisee Year; and
- (b) upon the commencement of each subsequent Franchisee Year,

undertake an assessment of the robustness of the Business Continuity Plan and propose any improvements or modifications to the Business Continuity Plan (including improvements or modifications to minimise disruption to customers) that are recommended by the independent third party expert (the "**BCP**

Recommendations). The Franchisee shall include within the periodic report referred to in paragraph 8.2 of Schedule 11.2 (*Management Information*) an update as to the progress of the independent reviews undertaken pursuant to paragraph 24.1(a).

24.2 To the extent that the Franchisee considers (acting reasonably) the BCP Recommendations to be reasonable, the Franchisee shall amend the Business Continuity Plan in accordance with such BCP Recommendations and shall deliver its revised Business Continuity Plan to the Secretary of State:

- (a) within four (4) weeks of receiving the relevant BCP Recommendations, where the Business Continuity Plan is revised during the first Franchisee Year; and
- (b) by no later than the end of the first Reporting Period in each Franchisee Year following the first Franchisee Year.

24.3 The Franchisee shall incur:

- (a) by no later than the end of the first Franchisee Year, [REDACTED²⁸⁵] in complying with its obligation in paragraph 24.1 (a); and
- (b) following the first Franchisee Year and before the end of the Franchise Term, [REDACTED²⁸⁶] (plus any of the amount specified in paragraph 24.3 (a) not expended by the Franchisee pursuant to paragraph 24.1 (a) by the end of the first Franchisee Year) in complying with its obligations in paragraph 24.1 (b).

25. Joint Working

25.1 Trespass and Fatalities Prevention Interventions

Without prejudice and in addition to the Franchisee's obligations in paragraph 14 (*Suicide Prevention Strategy*) of Schedule 13.1 (*Rail Industry Initiatives and Co-Operation*), the Franchisee shall by no later than 18 August 2026 invest not less than [REDACTED²⁸⁷] on implementing measures and interventions agreed with Network Rail which shall mitigate the risk of trespass on to the railway and fatalities at Stations.

²⁸⁵ 25 October 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.

²⁸⁶ 25 October 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.

²⁸⁷ 25 October 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.

25.2 Customer and Operations Information Technology System

By no later 1 April 2021 the Franchisee shall:

- (a) have introduced an information technology system which will ensure the consistent dissemination of service information to customers and Franchise Employees (the "COITS") with the following functionality:
 - (i) the provision of accurate, consistent and real time service information (including passenger counting data, subject to paragraph 13.3) on-board Passenger Services, at Stations and on the Franchisee's website and app;
 - (ii) provision of new social media software to provide customers with targeted messages related to service performance and updates; and
 - (iii) interfaces and links with DARWIN; and
- (b) have procured that all Franchisee Employees who are responsible for the control of the Passenger Services shall be trained on using the COITS.

26. Right Time Railway

26.1 QlikView

- (a) Prior to the Start Date, the Franchisee shall have acquired rights to use QlikView.
- (b) From the Start Date, the Franchisee shall create dashboards to be used by the Franchisee to review and analyse data relating to the Franchise, including:
 - (i) performance KPI data;
 - (ii) real-time rolling stock information, including in relation to late presentations, cancellations, delay minutes and short formations,
 - (iii) traincrew data; and
 - (iv) station data including delays and weather alerts,
- (b) in each case in order to aid and create efficiencies in the Franchisee's decision-making processes and ensure clarity of reporting.

26.2 Compliance with the Timetable Planning Rules

The Franchisee shall in developing each Timetable pursuant to this Agreement record the number of non-compliances with the Timetable Planning Rules occurring in each Timetable and report the number of such non-compliances to the Secretary of State within two (2) Reporting Periods of the relevant working timetable being issued by Network Rail.

26.3 Performance Improvement Initiatives

The Franchisee shall, during the Franchise Term, expend not less than [REDACTED²⁸⁸] on performance improvement and 'right time' initiatives.

26.4 Smartwatch Solution

- (a) By no later than 31 May 2020 the Franchisee shall have issued smart-watches to all Franchise Employees and Network Rail employees with responsibility for the dispatch of trains used in the delivery of the Passenger Services, such smart-watches to display the following information and provide the user with the following functionality with respect to every Passenger Service:
- (i) the platform number on which the relevant service is to arrive/ depart;
 - (ii) the expected arrival time;
 - (iii) the timetabled arrival and departure time;
 - (iv) the head code;
 - (v) a visual display as to whether the service is on time or delayed; and
 - (vi) audible countdowns and alerts to ensure that key actions are taken by the user at the precise second,
- in order to support achievement of target dwell times and the right-time dispatch of trains from stations.
- (b) In complying with its obligation in paragraph 26.4(a), the Franchisee shall incur:
- (i) operational expenditure of no less than [REDACTED²⁸⁹] in the first Franchisee Year and in each Franchisee Year thereafter no less than [REDACTED²⁹⁰];and

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- (ii) capital expenditure of no less than [REDACTED²⁹¹] in each of the first and second Franchisee Years.

27. Working with Network Rail

27.1 Monitoring and Reporting Subthreshold Delays

- (a) Prior to the Start Date, the Franchisee shall develop and agree with Network Rail key performance indicators which will measure sub-threshold delay, at such local level as may be reasonably agreed by the Franchisee and Network Rail (the "**Subthreshold KPIs**"). Prior to each Franchisee Year, the Franchisee and Network Rail shall agree the target performance level in respect of each Subthreshold KPI.
- (b) The Franchisee shall in cooperation with Network Rail continually monitor its performance against the Subthreshold KPIs across the Franchise and the Franchisee shall procure that delays (as measured by the Subthreshold KPIs) will be recorded and analysed by the Franchisee on a daily, weekly, per Reporting Period and quarterly basis using a specific QlikView dashboard in order to:
 - (i) identify where future performance improvement will need to be deployed;
 - (ii) understand the causes of the delays; and
 - (iii) develop initiatives to reduce delays.
- (c) Within fifteen (15) days of the end of each six (6) month period during the Franchise Term, the Franchisee shall publish data reporting for each Subthreshold KPI the Franchisee's actual performance during that six (6) month period against the applicable target set by the Franchisee and Network Rail. The published data referred to in this paragraph 27.1(c) shall be:
 - (i) delivered to the Secretary of State; and
 - (ii) disseminated at the relevant disaggregated level within the Franchisee's organisation,as monitored and recorded by the Franchisee and Network Rail in accordance with paragraphs 27.1(a) and 27.1(b).

27.2 Joint operation and performance

- (a) By 29 February 2020 the Franchisee shall establish and thereafter maintain throughout the Franchise Term a joint performance team with Network Rail in accordance with the Alliance Agreement and shall invest a minimum of

²⁹¹ **25 October 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.**

[REDACTED²⁹²] during the Franchise Term to support the training and development of the members of the joint performance team.

- (b) By 1 December 2021 the Franchisee shall establish a joint operations control team in collaboration with Network Rail and shall ensure that the team is supported with regular training during the Franchise Term to continually develop joint working behaviours and team effectiveness.

28. Implementation and Delivery of new Franchisee Branding

The Franchisee shall:

- 28.1 by no later than 18 November 2019 create a branding strategy and plan which complies with the requirements of paragraphs 3 and 4 of Schedule 14.2 (*Maintenance of Operating Assets and Branding*) (the "**Branding Strategy and Plan**"). The Branding Strategy and Plan shall as a minimum include the following requirements:

- (a) the creation of 'neutral' brands for different types of Passenger Services to be applied on assets (including uniforms and name badges, trains, platforms at Stations, maps and timetable information) used in the provision of Passenger Services being:
- (i) the 'EMR InterCity' brand for Passenger Services on the Routes between St Pancras and Leicester, Derby, Nottingham and Sheffield;
 - (ii) the 'EMR Regional' brand for Passenger Services on the Routes between:
 - (A) Derby and Crewe;
 - (B) Norwich and Liverpool [REDACTED²⁹³];
 - (C) Leicester and Newark;
 - (D) Matlock and Nottingham [REDACTED²⁹⁴];
 - (E) Nottingham and Worksop;

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²⁹⁴ 25 October 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.

- (F) Cleethorpes and Nottingham;
 - (G) Nottingham and Skegness; and
 - (H) Peterborough and Doncaster;
- (iii) the 'EMR Electrics' brand for Passenger Services on the Routes between St Pancras and Luton Airport Parkway, Luton, Bedford, Wellingborough, Kettering and Corby;
 - (iv) the 'Luton Airport Express' brand (a sub-brand of the 'EMR Electrics' brand) for Passenger Services to and from Luton Airport Parkway. The Franchisee shall also ensure that the 'Luton Airport Express' brand is also displayed at [REDACTED²⁹⁵]; and
- (b) a programme specifying the timescales for the implementation of each of the activities specified in the Brand Strategy and Plan including a requirement to complete the re-branding of all Stations by no later than [REDACTED²⁹⁶]; and
- 28.2 implement all of the activities specified in the Brand Strategy and Plan by the dates specified therein and ensure that all activities are completed by no later than 31 December 2022. The Franchisee shall incur expenditure of not less than [REDACTED²⁹⁷] in the implementation of the Brand Strategy and Plan.

29. Marketing Initiatives

29.1 Marketing Plan

The Franchisee shall:

- (a) in each Franchisee Year develop and implement a marketing plan which sets out the marketing initiatives to be implemented by the Franchisee in that Franchisee Year (the "**Marketing Plan**") and which deliver the following objectives:
 - (i) to deliver profitable, sustained growth and strategies that will build market share across the business, leisure, commuter and other key market segments in the geographical areas where the Passenger Services operate;

²⁹⁵ 25 October 2021 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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²⁹⁷ 25 October 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) to implement strategies to market the Franchisee's investment in the Franchise such as better service train patterns, rolling stock quality, improved customer service and refurbished Stations;
 - (iii) to strengthen the Franchisee's marketing team; and
 - (iv) to improve communication with customers and potential customers through the implementation of various communication initiatives such as supporting the uptake of smart ticketing, the development of a personalised customer relationship management, communicating timetable changes to customers (including short-term changes), providing clear fares information to customers, making better use of capacity across the day, promoting delay repay and making the most of major and special events across the geographical area where the Passenger Services operate;
- (b) in each Franchisee Year during the Franchise Period:
- (i) spend no less than the amount specified in column 2 of Table 1 below for that Franchisee Year (the "**Marketing Spend**"):
 - (A) in delivering the marketing activities specified in the Marketing Plan for that Franchisee Year; and
 - (B) in complying in its obligations in paragraphs 30.1, 30.2, 30.4 and 30.5 of this Part 1 of Schedule 6.2; and
 - (ii) spend no less than [REDACTED²⁹⁸] of the Marketing Spend allocated for each such Franchisee Year on marketing initiatives that are targeted at maximising the amount of revenue that is derived from the operation of the Local Services. If the Franchisee ceases to operate the Liverpool to Nottingham Passenger Services as contemplated in paragraph 9.1 of Part 3 of Schedule 6.1 (*Franchise Specific Obligations*) the Secretary of State and Franchisee shall, immediately following the LNPS Cessation Date, agree (or on failure to agree the Secretary of State shall reasonably determine) the revised percentage of Marketing Spend for the Local Services (the "**Revised Percentage**"). The Revised Percentage shall:
 - (A) be agreed by the parties (or on failure to agree shall be reasonably determined by the Secretary of State) by reference to the ratio of the revenue attributed to the Local Services and the remainder of the Passenger Services as at the LNPS Cessation Date; and

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(B) from the date it is agreed or reasonably determined and for the purposes of compliance with paragraph 29.1(b)(ii), replace the [REDACTED²⁹⁹] referred to in this paragraph 29.1b(ii).

The Marketing Spend shall be in addition to any marketing expenditure that the Franchisee is required to incur pursuant to paragraph 5 of Schedule 6.3 (*Contractual Incentive Mitigations*);

- (c) within ten (10) days of the end of each Franchisee Year provide to the Secretary of State a certificate signed by a statutory director of the Franchisee:
- (i) certifying compliance with the requirements of paragraph 29.1(b)(ii) and the amount of the marketing expenditure actually incurred by the Franchisee in respect of that Franchisee Year; and
 - (ii) confirming that the Marketing Spend has been reasonably and properly incurred in the implementation of the marketing activities specified in the applicable Marketing Plan for the relevant Franchisee Year.

The Franchisee shall provide such information as the Secretary of State shall reasonably require for the purposes of verifying the information contained in the certificate provided in accordance with the requirements of this paragraph 29.1(c); and

- (d) be permitted to carry marketing expenditure required for a later Franchisee Year to be carried over to an earlier Franchisee Year (or vice versa), in which case the Marketing Spend for that Franchisee Year shall be reduced or increased (as applicable) by a corresponding amount.

Table 1

COLUMN 1	COLUMN 2
Franchisee Year	Marketing Spend
Franchisee Year 1 (2019/20)	[REDACTED ³⁰⁰]
Franchisee Year 2 (2020/21)	[REDACTED]
Franchisee Year 3 (2021/22)	[REDACTED]
Franchisee Year 4 (2022/23)	[REDACTED]

²⁹⁹ 25 October 2021 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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COLUMN 1	COLUMN 2
Franchisee Year	Marketing Spend
Franchisee Year 5 (2023/24)	[REDACTED]
Franchisee Year 6 (2024/25)	[REDACTED]
Franchisee Year 7 (2025/26)	[REDACTED]
Franchisee Year 8 (2026/27)	[REDACTED]
Franchisee Year 9 (2027/28)	[REDACTED]

30. Development of Marketing Partnerships

30.1 The Franchisee shall:

- (a) by no later than 30 June 2019 develop a marketing partnership plan which will set out a series of joint marketing initiatives to be implemented by the Franchisee in conjunction with stakeholders such as tourism bodies and companies who are in charge of major attractions located in the geographical area where the Passenger Services operate, Community Rail Partnerships, special event partners and Heritage Railways (the **"Marketing Partnership Plan"**);
- (b) ensure that the joint initiatives to be included in the Marketing Partnership Plan are those which promote the growth of passenger journeys. The Franchisee shall review and update Marketing Partnership Plan at the end of each Franchisee Year; and
- (c) implement the Marketing Partnership Plan in accordance with its terms. The Franchisee shall ensure that, as part of the Marketing Spend, it incurs no less than [REDACTED³⁰¹] by no later than 18 August 2026 in the implementation of the Marketing Partnership Plan.

30.2 Marketing Management Resources

The Franchisee shall:

- (a) in each Franchisee Year during the Franchise Period spend (as part of the Marketing Spend) no less than the amount specified in column 2 of Table 2 below for that Franchisee Year on marketing management resources to facilitate the effective management and implementation of the Franchisee's plans for growth in each Franchisee Year:

³⁰¹ **25 October 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.**

Table 2

COLUMN 1	COLUMN 2
Franchisee Year	Marketing Spend
Franchisee Year 1 (2019/20)	[REDACTED ³⁰²]
Franchisee Year 2 (2020/21)	[REDACTED]
Franchisee Year 3 (2021/22)	[REDACTED]
Franchisee Year 4 (2022/23)	[REDACTED]
Franchisee Year 5 (2023/24)	[REDACTED]
Franchisee Year 6 (2024/25)	[REDACTED]
Franchisee Year 7 (2025/26)	[REDACTED]
Franchisee Year 8 (2026/27)	[REDACTED]
Franchisee Year 9 (2027/28)	[REDACTED]

- (b) within one (1) month of the end of each Franchisee Year deliver to the Secretary of State a report setting out:
- (i) a detailed breakdown of the expenditure incurred by the Franchisee under paragraph 30.2(a) in that Franchisee Year; and
 - (ii) any other relevant information as the Secretary of State may reasonably require.

30.3 Promotion of Investment Benefits

The Franchisee shall from the Start Date until the end of the sixth Franchisee Year incur expenditure of no less than [REDACTED³⁰³] on a series of marketing campaigns designed to promote the launch of the Franchisee's brand and promote the investments to be delivered by the Franchisee such as the introduction of the new rolling stock specified in the Train Fleet Table and refurbishment of the Class 170 trains and the introduction of timetable improvements (including faster journey times and the new passengers services). It is agreed that the expenditure referred

³⁰² 25 October 2021 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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to in this paragraph 30.3 shall be financed from the amounts within the Marketing Spend for the relevant Franchisee Years.

30.4 The Franchisee ensure that a proportion of the Marketing Spend for each Franchisee Year is incurred as specified below in supporting Community Rail Partnerships to undertake publicity campaigns to encourage increased use of the Passenger Services:

- (a) [REDACTED³⁰⁴] in the first Franchisee Year;
- (b) [REDACTED³⁰⁵] in the second Franchisee Year;
- (c) [REDACTED³⁰⁶] in the third Franchisee Year; and
- (d) in each Franchisee Year thereafter, [REDACTED³⁰⁷]

30.5 Special Events Marketing Fund

- (a) The Franchisee shall:
- (b) by no later than 18 August 2019 introduce (and maintain for the duration of the Franchise Period) a fund of no less than [REDACTED³⁰⁸] in each Franchisee Year. Such fund shall be financed from the amounts within the Marketing Spend for the relevant Franchisee Year and shall be utilised for the purposes of marketing and promoting travel options for special events taking place in the geographical area where the Passenger Services operate such as:
 - (i) Lincoln Christmas market;
 - (ii) Uttoxeter races;
 - (iii) Matlock illuminations; and
 - (iv) Nottingham Goose Fair; and
- (c) invest any monies not fully expended under paragraph 30.5(b) in a particular Franchisee Year in the following Franchisee Year and any outstanding un-invested sums at the end of the Franchise Period shall be

304 **25 October 2021 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

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306 **25 October 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.**

307 **25 October 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.**

308 **25 October 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.**

repaid to the Secretary of State by no later than the date that is thirty (30) days after the expiry of the Franchise Period.

31. **Supporting Heritage Rail**

The Franchisee shall from the Start Date and in conjunction with the Heritage Railway Association provide on the Franchisee's website a dedicated space for the purposes of promoting and supporting all heritage railways operating in the geographical area where the Passenger Services operate. Such dedicated online space will include maps and clear links to the relevant website for each heritage railway.

32. **Fares**

32.1 **Off-peak Day Return Ticketing on Non-London Flows**

- (a) The Franchisee shall, with effect from the Fares Setting Round commencing in May ³⁰⁹2021, standardise all 'Off-peak Day Return' Fares on Non-London Flows as being valid for travel on all Non-London Flows after 09:30 on Weekdays.
- (b) The Franchisee shall, no later than six (6) weeks prior to the Fares Setting Round in May ³¹⁰2021 implement an internal and external communication strategy to ensure that relevant Franchise Employees and customers are made aware of the simplification and changes to 'Off-Peak Day Return' restrictions as provided for in paragraph 32.1(a).

32.2 **Price Promise**

- (a) The Franchisee shall from the Start Date and throughout the Franchise Term:
 - (i) guarantee to all customers who purchase any Qualifying Fare through the Franchisee's retail channels that they will get the cheapest price for that Qualifying Fare through the Franchisee's retail channels (the "**Price Guarantee**") such that if a customer, who has purchased a Qualifying Fare through the Franchisee's retail channels, is able to find the same Qualifying Fare through any other retail channel for less than the price paid through the Franchisee's retail channels, then the Franchisee shall refund the difference in price to the customer (the "**Price Guarantee Refund**"); and
 - (ii) include within its Passenger's Charter a plain English and customer-friendly explanation of the Price Guarantee and the right for any customer to a Price Guarantee Refund where the customer demonstrates that it could have purchased the same Qualifying Fare for less through alternative retail channels.

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

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

- (b) The Franchisee shall implement an internal and external communication strategy to ensure that relevant Franchise Employees and customers are made aware of the Franchisee's Price Guarantee and its obligation to pay Price Guarantee Refunds.

32.3 Flexipass

- (a) The Franchisee shall, with effect from the Fares Setting Round commencing in May 2020 make available for sale and sell Anytime Flexipasses and Off-Peak Flexipasses.
- (b) The Franchisee shall for a trial period of not less than twelve (12) months commencing on the date on which the Franchisee makes available the Off-Peak Flexipass in accordance with paragraph 32.3(a), permit the use of Off-Peak Flexipasses on the Passenger Services thirty (30) minutes before the expiry of the Morning Peak (the "**Off-Peak Flexipass Trial**").
- (c) The Franchisee shall within three (3) months of the end of the Off-Peak Flexipass Trial, prepare and deliver to the Secretary of State a report setting out the results and outcomes of the Off-Peak Flexipass Trial. The report shall provide details of the baseline data collated prior to the commencement of the Off-Peak Flexipass Trial against which the data collated during the trial has been compared in order to determine the results and outcomes of the Off-Peak Flexipass Trial, as set out in the report, such baseline data shall include data related to revenue and passenger benefits.
- (d) If the Franchisee reasonably determines, in consultation with the Secretary of State, that the Off-Peak Flexipass Trial has delivered revenue and passenger benefits, the Franchisee shall as soon as reasonably practicably thereafter accept the use of Off-Peak Flexipasses on the relevant Passenger Services thirty (30) minutes before the expiry of the Morning Peak for the duration of the Franchise Term.

32.4 Direct Debit Payments

The Franchisee shall, from the Start Date, offer to customers the ability to pay for Annual Season Tickets by way of a direct debit in twelve equal instalments during the annual period to which that customer's Annual Season Ticket relates.

32.5 Account Based Ticketing

- (a) The Franchisee shall:
 - (i) from the Start Date co-operate with RDG to facilitate the integration of the Franchisee's technology, to be used to support Account Based Ticketing, with RDG operated central back office;
 - (ii) by no later than 30 April 2021 have commenced a trial of Account Based Ticketing within the Phase 1 Nottingham Area (the "**Phase 1 ABT Trial**");
 - (iii) by no later than 1 July 2021, have prepared and delivered to the Secretary of State a report setting out the results and outcomes of the Phase 1 ABT Trial;

- (iv) from no later than 1 January 2022 and for the remainder of the Franchise Period have made Account Based Ticketing available to customers travelling within the Phase 2 Nottingham Area; and
- (v) use reasonable endeavours to work with relevant Stakeholders (including Nottingham City Council and other applicable councils within the East Midlands region, Midlands Connect and Transport for the North):
 - (A) to develop plans to integrate the Franchisee's Account Based Ticketing solution into a wider multi-operator multi-modal Account Based Ticketing solution for the Midlands and the north of England; and
 - (B) to agree arrangements to cap daily fares (to the cheapest available daily fare) and weekly fares (to the cheapest available weekly fare) with respect to journeys undertaken within the area where any multi-operator multi-model Account Based Ticketing Scheme, referred to in paragraph 32.5(a)(v)(A), comes to operate.
- (b) The Franchisee shall ensure that customers who utilise Account Based Ticketing shall be charged the cheaper of:
 - (i) on a daily basis, the cheapest available Fare on that day taking into account all journeys undertaken by the customer during that day and within the Phase 1 Nottingham Area and Phase 2 Nottingham Area (from the date on which Account Based Ticketing is introduced into those areas); or
 - (ii) on a weekly basis, the applicable Weekly Season Ticket Fare with reference to all journeys undertaken by the customer during that week and within the Phase 1 Nottingham Area and Phase 2 Nottingham Area (from the date on which Account Based Ticketing is introduced into those areas) where such Weekly Season Ticket Fare is cheaper than the aggregate of daily Fares incurred by the customer (to which paragraph 32.5(b) applies) during that week.

32.6 Purchase of on the day Advance Fares

- (a) The Franchisee shall, with effect from the Fares Setting Round commencing in May 2020, offer for sale and sell to customers APOD Fares on those Flows where Advance Purchase Train-Specific Fares are available for purchase.
- (b) By no later than 31 December 2019 the Franchisee shall provide to the Secretary of State, for his approval, a mitigation plan (together with a policy to be published by the Franchisee to customers at least on its website and within its Customer Report) which limits the incidence of a passenger being required to vacate their seat on the Passenger Service partway through their journey for a passenger who has purchased an APOD Fare after they have boarded such Passenger Service.
- (c) The Franchisee shall implement the mitigation plan as approved by the Secretary of State pursuant to paragraph 32.6(b).

33. Smart Ticketing

33.1 Smart Media Targets

- (a) For the purposes of Schedule 5.9 (*Smart Ticketing*) the Smart Media Target shall, for each Franchisee Year (as set out in column 1 of Table 3 below), be the target set out in column 2 of Table 3 below:

Table 3

Column 1	Column 2
Franchisee Year	Smart Media Target (for percentage of journeys)
Franchisee Year 1 (2019/2020)	9.9%
Franchisee Year 2 (2020/2021)	36.5%
Franchisee Year 3 (2021/2022)	55.2%
Franchisee Year 4 (2022/2023)	67.7%
Franchisee Year 5 (2023/2024)	76.5%
Franchisee Year 6 (2024/2025)	88.1%

- (b) The Franchisee shall in each Franchisee Year specified in column 1 of Table 3 achieve the Smart Media Target as specified in column 2 of Table 3.

33.2 Smart Media Default for Season Ticket Fares

By no later than 1 May 2020, the Franchisee shall ensure that all Season Ticket Fares which are purchased through the Franchisee's online retail channels are, as a default option, automatically issued to the customer on Smart Media.

34. Ticket Gates and Ticket Validator Machines

- 34.1 By no later than 1 ³¹¹June 2021, the Franchisee shall have installed a total of **[REDACTED³¹²]** ticket validator machines at those Stations which as at the Start Date do not have existing ticket validator machines or ticket gates, such that at least (1) ticket validator machine will be installed at each relevant Station. The ticket validator machines installed by the Franchisee pursuant to this paragraph 34.1 shall validate Smart Media and comply with the requirements of paragraph 2.2 of Schedule 5.9 (*Smart Ticketing*).

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

³¹² **25 October 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.**

34.2 By no later than 30 ³¹³October 2021, the Franchisee shall install new ticket gate barriers at each of the Stations at [REDACTED³¹⁴] such that any customer accessing the platforms at those Stations will have to pass through a ticket gate. The Franchisee shall ensure that each of the ticket gates installed pursuant to this paragraph 34.2 are equipped to read magstripe tickets and Smart Media.

35. Ticket Vending Machines

35.1 The Franchisee shall:

- (a) by no later than 1 December 2019, have upgraded Existing Ticket Vending Machines with improved graphic user interfaces which support all Smart Media and allow customers to easily identify the most convenient route and the cheapest appropriate fare for the customer's chosen journey;
- (b) by no later than 30 November 2019 have integrated the Existing Ticket Vending Machines with GoldStar; and
- (c) by no later than 1 April 2020, have upgraded all Existing Ticket Vending Machines with the following functionality:
 - (i) audio assistance to allow customers to speak through the ticket vending machine directly to a Franchisee Employee within the Franchisee's customer contact centre in order to gain assistance and guidance;
 - (ii) integration with 'Blackbox' technology to provide a real-time information feed to customers regarding the Passenger Services; and
 - (iii) extend the use and functionality of Goldstar to allow customers:
 - (A) registered with GoldStar to migrate from a paper magstripe tickets to Smart Media;
 - (B) the flexibility to choose the start date and class of monthly Season Ticket Fares;
 - (C) to purchase Season Ticket Fares through the 'addressing function' in GoldStar; and
 - (D) to record the purchase of Weekly Season Tickets.

35.2 The Franchisee shall:

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

³¹⁴ **25 October 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) by no later than 1³¹⁵ **October** 2021, have undertaken and completed a trial of enhanced journey planning functionality on all Franchisee TVMs;
- (b) promptly following completion of the trial referred to in paragraph 35.2(a), deliver to the Secretary of State a report detailing the outcomes and conclusions from the trial; and
- (c) by no later than 1³¹⁶ **December** 2021, introduce on all Franchisee TVMs enhanced journey planning functionality with such modifications and additional enhancements as are identified through the trial referred to in paragraph 35.2(a).
- 35.3 The Franchisee shall by no later than 1³¹⁷ **November** 2021 have installed at least the number of Smart TVM Kiosks as specified in the table in Appendix 1 of this Part 1 of Schedule 6.2 at each of the forty (40) Stations (excluding Stations on the Barton-on-Humber to Cleethorpes line) which as at the Start Date do not have a ticket vending machine.
- 35.4 The Franchisee shall by no later than 1³¹⁸ **November** 2021 have installed at least the number of Smart TVM Kiosks as specified in the table in Appendix 1 of this Part 1 of Schedule 6.2 at each of the twelve (12) Stations on the Barton-on-Humber to Cleethorpes line which as at the Start Date do not have a ticket vending machine.
- 35.5 In complying with its obligations under paragraphs 35.3 and 35.4, the Franchisee shall spend no less than [REDACTED³¹⁹], in accordance with Table 4 of this Schedule.
- 35.6 All initiatives, enhancements, upgrades and functionalities with respect to ticket vending machines and Smart TVM Kiosks in paragraphs 35.1, 35.2, 35.3 and 35.4 shall comply with "Ticket Vending Machine: Design Guidelines" as published by RDG from time to time.
- 36. Ticket Gate Technology Trials**
- 36.1 The Franchisee shall:
- (a) by no later than 1 January 2021 have concluded its consultation with all relevant Stakeholders (including the Secretary of State and (as applicable) Network Rail and HS1 Limited) regarding the implementation of the TouchByte Trial at East Midlands Parkway Station and the Cubic Trial at St Pancras station;

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

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

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

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

³¹⁹ **25 October 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) use its best endeavours to commence the Cubic Trial at St Pancras station by no later than 1 July 2021 and that trial shall have a minimum duration of six (6) months;
- (c) commence the TouchByte Trial at East Midlands Parkway Station by no later than 1 July 2021 and that trial shall have a minimum duration of six (6) months;
- (d) by no later than twelve (12) weeks prior to the commencement of the Cubic Trial and the TouchByte Trial and throughout the period of the trials, conduct an advertising and publicity campaign on its website, on the Passenger Services and at stations at which the Passenger Services call in order to inform customers travelling to and from St Pancras and/or East Midlands Parkway of the trials being undertaken at those stations and key information about the technology being trialled; and
- (e) from 1 January 2022, conduct a review and evaluation of the results and outcomes of the TouchByte Trial and Cubic Trial which shall include consultation with relevant Stakeholders (including the Secretary of State and (as applicable) HS1 Limited and Network Rail). The Franchisee shall provide the detailed results of the trial and the outcome and recommendations of the review of the trials to the Secretary of State by no later than 1 April 2022. If the Franchisee reasonably determines, in consultation with the Secretary of State, that technologies trialled through the Cubic Trial and/or the TouchByte Trial has delivered revenue and passenger benefits the Franchisee shall consider the permanent introduction of one (1) or both of the technologies so trialled at other Stations.

37. Website

37.1 From the Start Date, the Franchisee shall implement a new Franchise desktop website, mobile website and mobile application (supported by both iOS and Android devices) for customers which shall have the following functionality:

- (a) allow customers to purchase tickets through a 'guest check-out' function removing the need for customers to register as a user of the website in order to pay for purchases;
- (b) allow customers to purchase tickets using Paypal;
- (c) the capability to fulfil single Fares, return Fares, Season Ticket Fares and, subject to paragraph 32.3(a), Anytime Flexipasses and Off-Peak Flexipasses to a smartphone where this functionality has been enabled for sale to this media by the user;
- (d) highlight the cheapest ticket available to travel on each Passenger Service selected by the customer;
- (e) information as to the number of seats which are available;
- (f) real time information and service updates regarding the status of the railway network;
- (g) information as to which platform Passenger Services are to arrive and depart;

- (h) delay information in relation to each Passenger Service; and
- (i) allow customers to set up personal accounts through a customer platform which will notify customers of their entitlement to Delay Repay Compensation.

38. Support for Disabled Persons

38.1 Membership of Business Disability Forum

By the Start Date the Franchisee shall become a member of the Business Disability Forum and shall retain such membership for the remainder of the Franchise Period.

38.2 Passenger Assistance

The Franchisee shall:

- (a) reduce the recommended window for booking Passenger Assistance for journeys undertaken wholly within the geographical area of the Franchise from:
 - (i) twelve (12) hours to six (6) hours from 1 January 2021 until 31 December 2022 (both dates inclusive); and
 - (ii) six (6) hours to four (4) hours from 1 January 2023 until the end of the Franchise Period; and
- (b) measure its performance with regards to its compliance with the obligation specified in paragraph 38.2(a) each Reporting Period and publish its performance ratings by displaying such information at least on its website and within its Customer Report and other channels as may be agreed with the Secretary of State.

38.3 Assisted Travel Survey

The Franchisee shall:

- (a) by no later than 31 July 2020 and thereafter at least once in each consecutive period of twelve (12) months during the Franchise Period, undertake a qualitative survey of not less than two hundred (200) users of Passenger Assistance (the "**Assisted Travel Survey**"). Any Assisted Travel Survey shall complement the ORR's national survey of passenger assist users and shall as far as possible adopt a methodology that is similar to that used by the ORR for its survey;
- (b) within one (1) month following the completion of an Assisted Travel Survey, report to the Secretary of State on the results and findings of such Assisted Travel Survey. Any such report shall include an action plan setting out how the Franchisee proposes to improve users' experience of Passenger Assistance. The Franchisee shall implement such action plan in accordance with its terms; and

- (c) publicise the results and findings of each Assisted Travel Survey by displaying such information at least on its website and within its Customer Report and other channels as may be agreed with the Secretary of State.

38.4 Passenger Assistance Platform

- (a) By no later than 30 April 2020, the Franchisee shall commence the introduction and shall, by no later than 31 December 2020, have fully implemented a new Passenger Assistance platform accessible through a downloadable application onto smart phones and tablets to be used by:
 - (i) customers for the booking of passenger assist services; and
 - (ii) Franchise Employees to facilitate the efficient delivery of on call assistance across the network upon which the Passenger Services operate,(the "**Passenger Assist Platform**").
- (b) The Passenger Assist Platform shall include, as a minimum, the following functionality:
 - (i) interactive station maps;
 - (ii) instant messaging between customers and relevant Franchise Employees;
 - (iii) management functionalities such as resource allocation and information dashboards; and
 - (iv) location tracking and sharing.

38.5 Charity Incentive Fund

- (a) In each Franchisee Year (other than the first and second Franchisee Years) the Franchisee shall donate not less than [REDACTED³²⁰] (the "Charity Incentive Fund") to local charities and disabled people's organisations nominated by the Franchisee.
- (b) The Franchisee shall invest any monies not fully expended in a particular Franchisee Year in accordance with the requirements of paragraph 38.5(a) in the following Franchisee Year and any outstanding un-invested sums at the end of the Franchise Period shall be repaid to the Secretary of State by no later than the date that is thirty (30) days after the Franchise Period.

³²⁰

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38.6 ³²¹Sunflower Lanyards and Just a Minute Cards

The Franchisee shall:

- (a) from 31 August 2020 and for the remainder of the Franchise Term, introduce and implement³²² the Sunflower Lanyards and Just a Minute Cards (the "Schemes") and shall from the date of implementation of the **[DELETED³²³]** Schemes, publicise the **[DELETED³²⁴]** Schemes as appropriate so as to ensure that customers are aware of the benefits of the **[DELETED³²⁵]** Schemes;
- (b) by no later than the end of the second Franchisee Year, ensure that all Franchise Employees in customer facing roles are trained on the operation of the **[DELETED³²⁶]** Scheme including training on how the scheme operates and how Franchise Employees should manage situations involving customers with visible and non-visible disabilities. The Franchisee shall also ensure that refresher training is provided to Franchise Employees in customer facing roles throughout the duration of the Franchise Period; and
- (c) by no later than 31 March 2021 achieve, and thereafter for the remainder of the Franchise Period maintain, the accreditation offered by ³²⁷the Schemes.

38.7 **Empowerment Fund**

38.8 In each Franchisee Year from 1 September 2020, the Franchisee shall ensure that at least **[REDACTED³²⁸]** is made available to empower Franchise Employees in

³²¹ 30 March 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

³²² 30 June 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

³²³ 30 June 2020(Date of Contract Change Letter) – Contract deletion agreed by the Secretary of State and Franchisee.

³²⁴ 30 June 2020(Date of Contract Change Letter) – Contract deletion agreed by the Secretary of State and Franchisee.

³²⁵ 30 June 2020(Date of Contract Change Letter) – Contract deletion agreed by the Secretary of State and Franchisee.

³²⁶ 30 June 2020(Date of Contract Change Letter) – Contract deletion agreed by the Secretary of State and Franchisee.

³²⁷ 30 June 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

³²⁸ **25 October 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.**

customer facing roles to resolve complaints by providing customers with appropriate customer rewards.

38.9 The Franchisee shall invest any monies not fully expended in a particular Franchisee Year in accordance with the requirements of paragraph 38.9 in the following Franchisee Year and any outstanding un-invested sums at the end of the Franchise Period shall be repaid to the Secretary of State by no later than the date that is thirty (30) days after the Franchise Period.

39. **Memberships and Accreditations – Customer Service and Disability**

39.1 The Franchisee shall:

- (a) by no later than 31 March 2022 obtain, and thereafter for the remainder of the Franchise Period maintain, the "Autism Friendly Award" as issued by the National Autistic Society;
- (b) by no later than 31 March 2022 obtain, and thereafter for the remainder of the Franchise Period maintain, the "TrainingMark" accreditation issued by the Institute of Customer Service; and
- (c) by no later than 31 December 2022 obtain, and thereafter for the remainder of the Franchise Period maintain, the ServiceMark accreditation issued by the Institute of Customer Service.

40. **Trust Surveys**

40.1 From 18 August 2021 and in each Franchisee Year thereafter, the Franchisee shall conduct a survey of customers and Stakeholders (the "Trust Surveys"). A Trust Survey shall measure the customer and Stakeholders level of trust in the delivery of the Franchise Services and their perception of the improvements to the customer services engagement initiatives that have been introduced by the Franchisee from the Start Date.

40.2 The Franchisee shall within one (1) month following the completion of a Trust Survey report to the Secretary of State on the results and findings of such Trust Survey. Any such report shall include an action plan setting out how the Franchisee proposes to improve the delivery of Franchise Services and build trust with its customers and Stakeholders. The Franchisee shall implement such action plan in accordance with its terms.

40.3 The Franchisee shall publicise the results and findings of the Trust Survey by displaying such information at least on its website and within its Customer Report and other channels as may be agreed with the Secretary of State.

40.4 The Franchisee shall incur expenditure of not less [REDACTED³²⁹] in carrying out the programme of Trust Surveys as required by this paragraph 40

³²⁹ **25 October 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.**

41. Customer Engagement Tools**41.1** The Franchisee shall:

- (a) by no later than 30 April 2020 enhance the programme known as the “Voice of the Customer” (and used by the Previous Franchisee as a means of engaging with its customers and addressing their concerns and issues) so that such programme includes the functionality that can be utilised by the Franchisee (and Franchise Employees) to:
 - (i) close out customer issues and respond quickly to faults and feedback;
 - (ii) proactively engage with customers to generate high volumes of actionable feedback on how customers feel about their journey experience, such feedback to be utilised to drive strategic decisions and operational activities designed to improve customer satisfaction and the customer journey experience;
 - (iii) allow the Franchisee to capture multiple aspects of the customer’s journey experience and automatically provide line managers with segmented dashboards to be utilised by such line managers to identify areas of improvement and take action to improve such areas; and
 - (iv) include a fault reporting platform, accessible through a downloadable application, that will make it easy for customers (and Franchisee Employees) to report faults that affect the customer experience and be notified once the fault has been rectified;
- (b) by no later than 30 September 2019 develop, introduce and operate an online customer community (such online customer community to consist of no fewer than 100 members by 1 April 2020) for the purpose of:
 - (i) testing customer opinion on new initiatives and proposals; and
 - (ii) obtaining feedback from the on-line customer community on the Franchise Services;
- (c) by no later than 30 November 2019, develop, introduce and operate two (2) customer panels (one for the MML Passenger Services and the other for the Local Services) for the purpose of:
 - (i) providing a two way communication channel with customers to allow the Franchisee to gather feedback on the Franchise Services; and
 - (ii) generating ideas, testing new initiatives and listening to suggestions from customers on how to improve the customer journey experience.

Each customer panel shall, ³³⁰subject to paragraph 68, meet quarterly from the date it is introduced and shall be attended by managers of the Franchisee and Network Rail who can provide an overview of key issues relating to the provision of the MML Passenger Services and the Local Services (as the case may be).

42. Inclusivity Forum

42.1 The Franchisee shall:

- (a) by no later than 30 April 2020 introduce and maintain for the duration of the Franchise Period an inclusivity forum consisting of a wide range of participants such as people with mental health issues, physical, sensory or cognitive impairments, including non-visible disabilities, elderly persons, parents with infants, young persons and representatives from recognised organisations for minority ethnic groups and LGBT+ (the "**Inclusivity Forum**");
- (b) ³³¹subject to paragraph 68, hold a meeting with members of the Inclusivity Forum at least every three (3) months commencing from the date of formation of the Inclusivity Forum; and
- (c) invest no less than [REDACTED³³²] every Franchisee Year on matters concerning the Inclusivity Forum. The Franchisee shall invest any monies not fully expended in a particular Franchisee Year in the following Franchisee Year and any outstanding un-invested sums at the end of the Franchise Period shall be repaid to the Secretary of State by no later than the date that is thirty (30) days after the Franchise Period.

43. Lost Property

By no later than 1 June 2020 the Franchisee shall introduce a lost and found platform, accessible free of charge, through the Franchisee's website and a downloadable application and through which customers can identify lost property and arrange for such property to be delivered to a notified address (such delivery to be at the cost of the customer). The Franchisee shall incur expenditure of not less than [REDACTED³³³] in the delivery of the obligation under this paragraph 43.

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

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

³³² **25 October 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.**

³³³ **25 October 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.**

44. **Community Ambassadors**

44.1 The Franchisee shall, by no later than 29 February 2020 appoint (and maintain those positions for the duration of the Franchise Period) a minimum of ³³⁴**two (2) full time** (community ambassadors whose role shall involve:

- (a) working in local communities (including schools and colleges) to attract onto the Passenger Services those persons who find it challenging to access the Passenger Services or who will not usually travel on the Passenger Services;
- (b) engaging communities to promote awareness, information and support in order to break barriers to travelling by rail; and
- (c) supporting community stakeholders and station adopters to obtain feedback which will be communicated back to the Franchisee.

45. **Customer Experience Fund**

The Franchisee shall in each of the third ³³⁵**and fourth** Franchisee Years invest no less than **[REDACTED³³⁶]** (the "Customer Experience Fund") on the implementation of schemes that improve customer experience in line with community aspirations.

46. **Disruption Survey**

46.1 Immediately following the occurrence of a Period of Disruption which causes an aggregate delay to the Passenger Services in excess of one thousand (1000) Minutes Delay the Franchisee shall undertake a survey of passengers whose journeys on the Passenger Services have been delayed for the purposes of providing qualitative feedback from such passengers on how the Franchisee dealt with such unplanned and/or planned disruption to Passenger Services (the "Disruption Survey").

46.2 The Franchisee shall within one (1) month following the completion of a Disruption Survey report to the Secretary of State on the results and findings of such Disruption Survey. Any such report shall include an action plan setting out how the Franchisee proposes to improve how it deals with impacts on passengers of unplanned and planned disruptions to Passenger Services. The Franchisee shall implement any such action plan in accordance with its terms.

47. **Staff Training**

47.1 ³³⁷**Subject to paragraph 68, the** Franchisee shall in conjunction with the National Skills Academy for Rail (NSAR) conduct in each Franchisee Year an annual skills review of Franchise Employees against a skills map to be determined by the

³³⁴ 28 February 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

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

³³⁶ **25 October 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.**

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

Franchisee in conjunction with NSAR and use the findings and the results of such skills review to create an annual training and development plan for Franchise Employees (the "Annual Training and Development Plan").

- 47.2 ³³⁸ **Subject to paragraph 68**, the Franchisee shall ensure that in each Franchisee Year it establishes and implements a training programme for Franchisee Employees that is consistent with the training needs established in the Annual Training and Development Plan and for that Franchisee Year.
- 47.3 The Franchisee shall establish and implement a customer service training programme for its Franchise Employees in customer facing roles and in so doing shall incur expenditure of not less than [REDACTED³³⁹] over the duration of the Franchise Term.
- 47.4 The Franchisee shall ensure that:
- (a) having assessed the training needs of each Franchise Employee on an annual basis, each Franchisee Employee shall undergo regular training on accessibility and inclusion which shall include the training of all Franchisee Employees who are train crew staff and Stations staff in assisting customers on and off trains, in the recognition of visible and non-visible disabilities and in the use of the Passenger Assist Platform;
 - (b) it introduces the "Autism Champions" training package so to enable the Franchisee "in house" trainers to deliver autism awareness training to Franchise Employees in customer facing roles.
- 47.5 The Franchisee shall work with the Samaritans to train Franchise Employees in customer facing roles to recognise and assist customers who are suspected of attempting suicide.
48. **CAVE Virtual Reality Training**
- By no later than 31 ³⁴⁰ **December** 2020, the Franchisee shall develop, introduce and commission a virtual training tool known as 'CAVE' to provide interactive and virtual customer service training and techniques to Franchise Employees. The Franchisee shall incur expenditure of no less than [REDACTED³⁴¹] in the delivery of its obligation under this paragraph 48.

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

³³⁹ **25 October 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.**

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

³⁴¹ **25 October 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.**

49. Multimodal Journey Planning Platform

49.1 The Franchisee shall, by no later than 31 March 2020, deploy a multimodal journey planning platform accessible through a downloadable application onto smart phones and tablets (the "Multimodal Journey Planning Platform") for use by customers and which shall have the following functionality:

- (a) the provision of real time integrated journey planning including on services offered by other Train Operators and on other transport modes;
- (b) the ability to re-plan journeys in real time to take account of planned and unplanned disruption to Passenger Services; and
- (c) the recording of user preferences, tickets and account information to give personalised journey options to customers.

49.2 The Franchisee shall ensure that the Multimodal Journey Planning Platform is reviewed and updated at least once in each Franchisee Year following the deployment of the Multimodal Journey Planning Platform.

50. Improved and Consistent Catering Service

50.1 As specified in its response to the Invitation to Tender, the Franchisee shall, from the Passenger Change Date occurring in or around December 2020:

- (a) provide a complimentary at seat catering service to all passengers travelling in First Class Accommodation; and
- (b) offer catering services to all passengers travelling in Standard Class Accommodation via an at-seat trolley service or from the on-board café,

on all MML Passenger Services (except services from Corby to St Pancras) and on all Passenger Services operated on the Liverpool/Nottingham to Norwich Route.

50.2 By no later than ten (10) Business Days prior to:

- (a) the Passenger Change Date in or around December 2020; and thereafter
- (b) the first day of each Reporting Period,

the Franchisee shall publicise the Passenger Services on which it will, during that Reporting Period, be providing catering services in accordance with paragraph 50.1, by displaying such information at least on its website and other channels as may be agreed with the Secretary of State.

50.3 Within ten (10) Business Days following the end of each Reporting Period following the Passenger Change Date in December 2020, the Franchisee shall publicise the number of Passenger Services on which, during that Reporting Period, catering services were not provided by the Franchisee in accordance with paragraph 50.1 (including as a percentage of the number of Passenger Services on which catering services should have been provided in accordance with paragraph 50.1), by displaying such information at least on its website and other channels as may be agreed with the Secretary of State.

51. Staffing at Stations

- 51.1 From [REDACTED³⁴²] the Franchisee shall ensure that, in respect of the Stations listed in paragraph 51.2, at least [REDACTED³⁴³] Franchise Employee shall, between the hours of [REDACTED³⁴⁴] each day and, [REDACTED³⁴⁵], be present at such Station performing customer service related activities and being visible to customers.
- 51.2 Each of the Stations to be staffed by the Franchisee in accordance with paragraph 51.1 are as follows:
- (a) [REDACTED³⁴⁶];
 - (b) [REDACTED³⁴⁷]
 - (c) [REDACTED³⁴⁸];
 - (d) [REDACTED³⁴⁹];
 - (e) [REDACTED³⁵⁰];
 - (f) [REDACTED³⁵¹];

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343 25 October 2021 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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351 25 October 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.

- (g) [REDACTED³⁵²];
- (h) [REDACTED³⁵³];
- (i) [REDACTED³⁵⁴].

51.3 By no later than 1 April 2020 the Franchisee shall ensure that each of the ticket gate barriers at the stations at Derby, Leicester, Lincoln Central, Loughborough, Nottingham and St Pancras are staffed by at least one (1) Franchise Employee on each day:

- (a) from a reasonable time prior to the earlier of:
 - (i) the first Passenger Service scheduled to arrive at that station; and
 - (ii) the first Passenger Service scheduled to depart from that station;
 in order to assist passengers passing through the ticket gate barriers; and
- (b) until a reasonable time after the later of:
 - (i) the last Passenger Service scheduled to arrive at that station; and
 - (ii) the last Passenger Service scheduled to depart from that station.
 in order to assist passengers passing through the ticket gate barriers.

52. Station Facilities Management

52.1 The Franchisee shall:

- (a) undertake a deep clean of each Station within one hundred (100) days of the Start Date; and
- (b) maintain the condition of each Station following the completion of the deep clean of such Station as referred to in paragraph 52.1(a).

52.2 By no later than the Start Date, the Franchisee shall in conjunction with Network Rail and the Franchisee's facilities management partner (the "**FM Partner**") implement a business continuity plan to maintain standards at Stations, such business continuity plan to consist of at least the following:

³⁵² 25 October 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.

³⁵³ 25 October 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.

³⁵⁴ 25 October 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) a winter management plan which will, as a minimum:
 - (i) identify key areas to be prioritised for cleaning and maintenance (such as main access and egress points to be free of snow and ice) during adverse weather conditions; and
 - (ii) include the cleaning and maintenance strategy for the expected days when exceptional numbers of customers travel;
- (b) a seasonal management plan (including a litter clearance strategy) with Network Rail and the FM Partner to be implemented during periods of Christmas market events, summer events and other periods when the Franchisee expects a higher than average number of customers to travel; and
- (c) a comprehensive station disruption plan and ensure that such plan is implemented during periods of planned and unplanned service disruptions.

52.3 The Franchisee shall:

- (a) every ³⁵⁵**October** during the Franchise Period review the winter management plan referred to in paragraph 52.2(a) and for each Station agree with Network Rail and the FM Partner:
 - (i) the strategy for snow and ice clearance, hot spots for leaf fall and vegetation clearance;
 - (ii) emergency procedures and relevant contact details; and
 - (iii) relevant material stock levels, storage strategy including location of grit bins and preferred chemicals; and
- (b) ³⁵⁶**one month following the end** of each Franchisee Year review and update such winter management plan referred to in paragraph 52.2(a) based on data from the preceding Franchisee Year

53. Station Improvement Fund

- 53.1 By no later than 31 March 2021 the Franchisee shall install platform canopies on both of the new platforms to be provided at the Station at Market Harborough and in so doing shall incur capital expenditure of not less than **[REDACTED³⁵⁷]**. Such platform canopies shall be sufficient to provide shelter along the length of a five (5) car train.

³⁵⁵ 10 November 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

³⁵⁶ 10 November 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

³⁵⁷ **25 October 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.**

53.2 By no later than 31 March 2022 the Franchisee shall install:

- (a) the facilities specified in column 1 of Table 4 at the stations listed in Appendix 1; and
- (b) in so doing shall:
 - (i) incur capital expenditure of not less than [REDACTED³⁵⁸]; and
 - (ii) procure a further minimum capital expenditure of [REDACTED³⁵⁹]

such total capital expenditure to be no less than [REDACTED³⁶⁰] with the amount to be spent on each facility at each of the Category 1 Stations, Category 2 Stations and Category 3 Stations listed in Appendix 1, being no less than the amount as specified in the corresponding row in column 2 of Table 4 below.

³⁵⁸ 25 October 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.

³⁵⁹ 25 October 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.

³⁶⁰ 25 October 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.

Table 4

Column 1	Column 2		
Facility	Minimum Capital Expenditure to be incurred at Category 1 Stations, Category 2 Stations and Category 3 Stations		
	Category Stations 3	Category Stations 2	Category Stations 1
New waiting shelters	[REDACTED ³⁶¹]	[REDACTED ³⁶²]	[REDACTED ³⁶³]
New seating	[REDACTED]	[REDACTED]	[REDACTED]
New accessible waiting rooms	-[REDACTED]	[REDACTED]	[REDACTED]
Waiting room improvements/ refurbishments	[REDACTED]	[REDACTED]	[REDACTED]
Installation of LED lighting	[REDACTED]	[REDACTED]	[REDACTED]
Installation of help points	[REDACTED]	[REDACTED]	[REDACTED]
Improved signage for accessible routes	[REDACTED]	[REDACTED]	[REDACTED]
Customer Information Screens	[REDACTED]	[REDACTED]	[REDACTED]
Passenger Announcement Systems	[REDACTED]	[REDACTED]	[REDACTED]
Multi modal Customer Information Screens	[REDACTED]	[REDACTED]	[REDACTED]
Interchange enhancements	[REDACTED]	[REDACTED]	[REDACTED]
Smart TVM Kiosks	[REDACTED]	[REDACTED]	[REDACTED]
Water Fountains	[REDACTED]	[REDACTED]	[REDACTED]

³⁶¹ 25 October 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.

³⁶² 25 October 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.

³⁶³ 25 October 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.

Column 1	Column 2		
Facility	Minimum Capital Expenditure to be incurred at Category 1 Stations, Category 2 Stations and Category 3 Stations		
	Category Stations 3	Category Stations 2	Category Stations 1
Zero Carbon Stations	[REDACTED]	[REDACTED]	[REDACTED]
'Living Rooms' customer lounge with catering	[REDACTED]	[REDACTED]	[REDACTED]
New accessible toilets	[REDACTED]	[REDACTED]	[REDACTED]
Toilet improvements/ refurbishments	[REDACTED]	[REDACTED]	[REDACTED]
Changing Places Accessible Toilet	[REDACTED]	[REDACTED]	[REDACTED]
Station WiFi	[REDACTED]	[REDACTED]	[REDACTED]
New staff facilities (Modular Buildings)	[REDACTED]	[REDACTED]	[REDACTED]
New staff facilities (Station Building Refurbishments)	[REDACTED]	[REDACTED]	[REDACTED]

53.3 The Franchisee shall:

- (a) by no later than 18 February 2020 provide to the Secretary of State a delivery plan which sets out as a minimum:
 - (i) where relevant, the number of each new facility as specified in Table 4 above to be provided at each of the relevant Category 1 Stations, Category 2 Stations and Category 3 Stations;
 - (ii) a description of the actual works to be undertaken and the facilities and equipment comprised in the facility described in Table 4 as "New Modular Buildings", "Station Building Refurbishments", "Toilet improvements", "Living rooms" and "waiting room improvements"; and
 - (iii) the dates by which each facility or equipment will be completed and/or installed at each of the relevant Category 1 Stations, Category 2 Stations and Category 3 Stations; and
- (b) implement such delivery plan referred to in paragraph 53.3(a) in accordance with its terms.

53.4 The table in Appendix 1 to this Part 1 of Schedule 6.2 sets out the specific list of Stations at which the facilities listed in Table 4 above will be installed.

53.5 By no later than 31 March 2025 the Franchisee shall install:

- (a) the enhancement specified in column 2 of Table 5 below at the Stations listed in the corresponding row in column 1 of Table 5; and
- (b) in so doing shall incur total capital expenditure of not less than **[REDACTED³⁶⁴]** with the amount to be spent on each enhancement at each station being no less than the amount specified in the corresponding row in column 3 of Table 5 below.

Table 5

Column 1	Column 2	Column 3	
Station	Enhancement	Minimum Expenditure	
		Digital Customer Information System ("DCIS")	Total (inclusive of DCIS)
Beeston	Improved wayfinding signage to trams	[REDACTED]	[REDACTED]
Chesterfield	Real-time bus digital customer information system ("DCIS"), raised curbs and marking of stops	[REDACTED]	[REDACTED]
Corby	Real-time bus DCIS	[REDACTED]	[REDACTED]
Derby	Enhanced real-time air/bus DCIS & signage	[REDACTED]	[REDACTED]
East Midlands Parkway	Live departure/arrival information at station & airport; bus-link curbs, shelter, DCIS & signage	[REDACTED]	[REDACTED]
Kettering	Improved layout & bus interchange (Council scheme) & wayfinding	[REDACTED]	[REDACTED]

³⁶⁴

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Column 1	Column 2	Column 3	
Station	Enhancement	Minimum Expenditure	
		Digital Customer Information System ("DCIS")	Total (inclusive of DCIS)
Leicester	New bus interchange by car park; better signage for local stops and signs to distant bus station; enhanced real-time DCIS	[REDACTED]	[REDACTED]
Long Eaton	New bus shelter, real-time DCIS, curbs/markings	[REDACTED]	[REDACTED]
Luton Airport	Enhanced real-time DCIS at station and airport	[REDACTED]	[REDACTED]
Market Harborough	Re-sited bus stops on existing/ new forecourt	[REDACTED]	[REDACTED]
Newark Castle	Improve signage to buses over level-crossing	[REDACTED]	[REDACTED]
Nottingham	Raised curbs, better wayfinding, improved signage, DCIS for bus and tram	[REDACTED]	[REDACTED]
St Pancras	Better DCIS re Luton Airport departures; signage & information	[REDACTED]	[REDACTED]
Sheffield	Raised curbs, better wayfinding, signage, DCIS	[REDACTED]	[REDACTED]
Skegness	Improve wayfinding and paving (Bus)	[REDACTED]	[REDACTED]
Sleaford	Improve shelter	[REDACTED]	[REDACTED]

53.6 The Franchisee shall:

- (a) by no later 28 February 2021 provide to the Secretary of State a delivery plan which sets out as a minimum:

- (i) how the enhancements set out in Table 5 above will be delivered;
 - (ii) a description of the actual works to be undertaken and the facilities and equipment to be provided as part of the enhancements described in column 2 of Table 5 above; and
 - (iii) the dates by which the enhancement will be delivered at each of the stations specified in column 1 of Table 5 above; and
- (b) implement such delivery plan in accordance with its terms.
- 53.7 The Franchisee shall, from the fifth Franchisee Year until the end of the Franchise Period, incur additional capital expenditure of not less than [REDACTED³⁶⁵], such capital expenditure to be utilised in refreshing the facilities introduced at stations as specified in this paragraph 53 and, in the case of passenger announcement systems and the multi modal customer information systems, upgrading such systems as determined by the Franchisee to take account of improving technology.

54. Platform Extension Projects

54.1 In this paragraph 54:

"PEP Criteria" means, in respect of a Platform Extension Project, that the delivery of such Platform Extension Project

- (a) is reasonably necessary:
 - (i) to enable the Franchisee to deliver the Timetable in accordance with the Train Service Requirement or otherwise comply with its obligations under this Agreement; and/or
 - (ii) for the purposes of making provision for additional demand for rail capacity which is reasonably expected to arise in respect of routes served by the Passenger Services including through the operation of longer trains without the need for Selective Door Operating and automatic Selective Door Operating; and/or
 - (iii) in order to achieve compliance with NR Group Standard GI/RT7016; and
- (b) is reasonably necessary for and would result in the extension or addition of platforms as station(s) at which the landlord is Network Rail or such other person as the Secretary of State may (in his absolute discretion) agree;

"Platform Extension Fund" means the amount of [REDACTED³⁶⁶] to be expended in the delivery of platform extensions at stations which meet the PEP Criteria and

³⁶⁵ 25 October 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.

³⁶⁶ 25 October 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.

such stations being as identified and notified to the Secretary of State pursuant to paragraph 54.2; and

“Platform Extension Project” the platform extensions which meet the PEP Criteria and which are to be implemented by the Franchisee in accordance with the Platform Extension Implementation Programme.

54.2 **By no later than ³⁶⁷ 1 August 2021 the Franchisee shall have undertaken detailed feasibility study to identify the stations that meet the PEP Criteria and upon which platform extensions shall be implemented by the Franchisee utilising the Platform Extension Fund. Within one (1) month of the date of completion of such detailed feasibility study the Franchisee shall provide to the Secretary of State a copy of such feasibility study together with a programme setting out:**

- (a) the stations which meet the PEP Criteria and upon which the platform extensions will be implemented and the reason why such stations have been chosen by the Franchisee (the **“PEP Stations”**);
- (b) **the dates upon which each of the platform extensions would be undertaken at each of the PEP Stations with all such platform extensions being completed at all PEP Stations by no later than the Passenger Change Date occurring in or around ³⁶⁸ May 2022;**
- (c) a description of the actual works to be undertaken at each of the PEP Stations (including any adjustment to railway structures such as moving signals or level crossings);
- (d) the amount of expenditure to be incurred by the Franchisee in undertaking the platform extensions at each of the PEP Stations; and
- (e) a letter of support from the landlord of each PEP Station confirming that:
 - (i) it supports the construction of the platform extension at each of the PEP Stations to the specification outlined by the Franchisee; and
 - (ii) it will take the required steps (including those set out in the Stations Access Conditions) as appropriate to facilitate the implementation of the platform extensions at each of the PEP Stations,

(the **“Platform Extension Implementation Programme”**).

54.3 **The Franchisee shall implement the Platform Extension Implementation Programme in accordance with its terms and shall complete all platform extensions at PEP Stations by no later ³⁶⁹ Passenger Change Date taking place in May ³⁶⁹ 2022. The Franchisee shall incur expenditure that is no less than**

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

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

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

the Platform Extension Fund in delivering its obligations under this paragraph 54.

55. CO2e Emission-Free Stations

55.1 The Franchisee shall:

- (a) ensure that within two (2) years of the Start Date each Station at Aslockton, Beeston, Boston, Bottesford, Newark Castle and Oakham (or such equivalent Stations as may be agreed by the Secretary of State) (the "**Emission-Free Stations**") has zero operational CO2e emissions (to exclude green energy tariffs or carbon offsetting initiatives) through the installation of carbon-free electricity generating technologies including photovoltaic canopies, biofuel generators and energy storage solutions;
- (b) throughout the Franchise Term monitor and measure CO2e of each Emission-Free Station in accordance with ISO 50015:2014; and
- (c) within one (1) month of the end of each Franchisee Year deliver to the Secretary of State a report setting out:
 - (i) the energy performance and CO2e values for each Emission-Free Station;
 - (ii) a detailed breakdown of the investment and management costs incurred by the Franchisee with respect to the zero carbon technology installed at each Emission-Free Station; and
 - (iii) any other relevant information as the Secretary of State may reasonably require.

56. Air Quality Monitoring

56.1 The Franchisee shall:

- (a) by no later than 31 December 2019, install appropriate air pollution and quality monitors (the specification of such monitors to be agreed with the Secretary of State) ("**AQ Monitors**") at each of the stations at Derby, East Midlands Parkway, Kettering, Leicester, St Pancras, Nottingham and Sheffield and at all Depots. The AQ Monitors shall be used to monitor and record the air quality and levels of PM10 and PM2.5 particles and nitrogen dioxide emitted from diesel engines at the relevant locations.
- (b) by no later than 31 January 2020 and 31 January in each year thereafter:
 - (i) provide an air quality report relating to the immediately preceding year (which shall include reference to any benchmarks against ISO 20400:2017 which the Franchisee has set to improve air quality) to the Secretary of State; and
 - (ii) publicise the results and findings of each air quality report referred to in paragraph 56.1(b)(i) by displaying such information at least on its website and within its Customer

Report and other channels as may be agreed with the Secretary of State.

57. Station WAN

57.1 The Franchisee shall appoint a third party expert who shall:

- (a) monitor the relevant bandwidth of all WANs existing at Stations at the Start Date (the "Existing Bandwidth"); and
- (b) record the Existing Bandwidth for each such Station in a report, and

the Franchisee shall deliver the third party expert's report to the Secretary of State by no later than the first day of the third Reporting Period following the Start Date.

57.2 In order to enhance customers' experience of Smart Media, the Franchisee shall, by no later than 1³⁷⁰ **October** 2021:

- (a) with respect to Stations which have a WAN as at the Start Date:
 - (i) have upgraded the bandwidth of the WAN at 67% of such Stations to at least four times the Existing Bandwidth of the WAN at that Station; and
 - (b) have upgraded the bandwidth of the WAN at all other such Stations to at least twice the Existing Bandwidth of the WAN at that Station; and
 - (c) have installed WAN at any Stations which at the Start Date do not have a WAN and the bandwidth of the WAN installed at each such Station shall be no less than the bandwidth available at Stations referred to in paragraph 57.2(a), once upgraded.

58. Station Travel Plans

58.1 The Franchisee shall:

- (a) from no later than 1 April 2020:
 - (i) develop and commence the implementation of Station Travel Plans at each of the Stations located at Alfreton, Barton-on-Humber, Belper, Boston, Chesterfield, Corby, Derby, East Midlands Parkway, Gainsborough, Kettering, Leicester, Lincoln Central, Long Eaton, Loughborough, Mansfield Town, Market Harborough, Market Rasen, Matlock, Newark Castle, Nottingham, Saxilby, Sheffield, Skegness, Sleaford and Spalding; and
 - (ii) participate with the relevant Facility Owners in the development and implementation of Station Travel Plans at each of the stations located at Barnetby, Bedford, Cleethorpes, Crewe, Doncaster, Ely,

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

Grantham, Grimsby, Luton, Luton Airport Parkway, Peterborough, Newark Northgate, Norwich and Stoke on Trent,

- (b) by no later than 31 December 2023 have completed the implementation of the Station Travel Plans developed pursuant to paragraph 58.1(a);
- (c) in complying with its obligations in paragraph 58.1(a) and 58.1(b), incur expenditure of no less than [REDACTED³⁷¹]; and
- (d) in the development and implementation of the Station Travel Plans as required pursuant to this paragraph 58 have regard to the requirements specified in the guidance published by Rail Delivery Group from time to time and which as at the date of the Agreement is published on the Rail Delivery Group website.

59. **Pre Bookable Taxi Services**

By no later than 30 April 2020 the Franchisee shall introduce an online pre bookable taxi and private hire service allowing customers to book taxi and private hire services to customers from all taxi and private hire accessible Stations to the customers' final destination. The Franchisee shall incur expenditure of no less than [REDACTED³⁷²] in the delivery of its obligation under this paragraph 59.

60. **Car Parking Spaces**

60.1 By no later than 31 March 2027, the Franchisee shall provide the number of additional car parking spaces specified in column 2 of Table 6 below at the Stations specified in the corresponding row in column 1 of Table 6 below. The description of the works to be undertaken by the Franchisee in order to provide the additional car parking spaces as required in this paragraph 60 are as specified in the corresponding row in column 3 of Table 6 below.

Table 6

Column 1	Column 2	Column 3
Station	Number of additional car parking spaces	Details of Scheme
Burton-on-Trent	[REDACTED ³⁷³]	[REDACTED ³⁷⁴]

³⁷¹ 25 October 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.

³⁷² 25 October 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.

³⁷³ 25 October 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.

³⁷⁴ 25 October 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.

Column 1	Column 2	Column 3
Station	Number of additional car parking spaces	Details of Scheme
Chesterfield	[REDACTED]	[REDACTED]
Collingham	[REDACTED]	[REDACTED]
Derby	[REDACTED]	[REDACTED]
Kettering	[REDACTED]	[REDACTED]
Leicester	[REDACTED]	[REDACTED]
Lincoln	[REDACTED]	[REDACTED]
Newark Castle	[REDACTED]	[REDACTED]
Wellingborough	[REDACTED]	[REDACTED]

60.2 The Franchisee shall:

- (a) procure a minimum expenditure of [REDACTED³⁷⁵] in delivering the obligation specified in paragraph 60.1;
- (b) by no later 18 February 2020 provide to the Secretary of State a delivery plan which sets out as a minimum the dates by which each of the additional car parking spaces will be delivered at each of the Stations specified in column 3 of Table 6 above; and
- (c) implement the delivery plan referred to in paragraph 60.2(b) in accordance with its terms.

61. Automatic Number Plate Recognition Car Park Technology

61.1 As specified in the response to the Invitation to Tender the Franchisee shall, by no later than 31 March 2022:

- (a) introduce automatic number plate recognition technology and cashless payment terminals (supported by ticket vending machines) at each of the car parks at the Stations specified below:

Alfreton, Ambergate, Burton-on-Trent, Chesterfield, Collingham, Derby, East Midlands Parkway, Hinckley, Ilkeston, Kettering, Kidsgrove, Leicester, Lincoln, Loughborough, Market Harborough, Melton Mowbray, Newark Castle, Nottingham, Spalding, Stamford, Uttoxeter and Wellingborough; and

- (b) introduce new payment terminals with vehicle registration number technology at each of the car parks at the Stations specified below:

³⁷⁵ **25 October 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.**

Alsager, Beeston, Blythe Bridge, Cromford, Duffield, Longton, Matlock, Syston, Whatstandwell, Oakham and Metheringham,

in each case, so as to enable simplified car parking payment methods. The Franchisee shall procure a minimum expenditure of [REDACTED³⁷⁶] in the delivery of its obligations under this paragraph 61.

62. Promotion of Sustainable Car Usage

62.1 The Franchisee shall:

- (a) by no later than 31 March 2023 install the number of electric vehicle bays equipped with electric charging points (the **"EV Charging Points"**) specified in column 2 of Table 7 below at the Stations specified in the corresponding row of column 1 of the Table 7 below. The Franchisee shall incur expenditure of no less than [REDACTED³⁷⁷] in the delivery of its obligations under this paragraph 62.1(a). The EV Charging Points shall be made available to customers free of charge.

Table 7

Column 1	Column 2
Stations	Number of EV Charging Points
Burton-on-Trent	[REDACTED ³⁷⁸]
Chesterfield	[REDACTED]
Derby	[REDACTED]
Duffield	[REDACTED]
East Midlands Parkway	[REDACTED]
Lincoln	[REDACTED]
Loughborough	[REDACTED]
Market Harborough	[REDACTED]
Melton Mowbray	[REDACTED]
Newark Castle	[REDACTED]
Hinckley	[REDACTED]

³⁷⁶ 25 October 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.

³⁷⁷ 25 October 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.

³⁷⁸ 25 October 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.

Column 1	Column 2
Stations	Number of EV Charging Points
Ilkeston	[REDACTED]
Kettering	[REDACTED]
Leicester	[REDACTED]
Nottingham	[REDACTED]
Oakham	[REDACTED]
Stamford	[REDACTED]
Wellingborough	[REDACTED]

- (b) promote the use of low emission vehicles and electric vehicles by offering parking privileges to customers using low emission vehicles and electric vehicles, such privileges to be determined by the Franchisee and notified to the Secretary of State at the Franchise Performance Meeting held in the sixth Reporting Period following the Start Date; and
- (c) from the fourth Franchisee Year review the electric vehicle charging requirements and technology (including the surface mounted charging plates which require no plugging in, and facilities which enable the recycling of stored car energy back to the National Grid) and consider as part of that review the availability of third party funding. The Franchisee shall update the Secretary of State on the outcome of each review at each Franchise Performance Meeting and shall use all reasonable endeavours to secure sources of grant funding for the purposes of implementing any initiatives that the Franchisee reasonably considers should be implemented following a review carried out pursuant to this paragraph 62.1(c).

63. Transport Integration Forum

63.1 The Franchisee shall:

- (a) by no later than 30 April 2020 , establish a transport integration forum for the purposes of promoting greater co-operation with other providers of transport services in the geographical area where the Passenger Services operate and to facilitate the implementation of development schemes for improvements in intermodal infrastructure and funding (the "**Transport Integration Forum**"); and
- (b) invest no less than [REDACTED³⁷⁹] every Franchisee Year on matters concerning the Transport Integration Forum. The Franchisee shall invest any monies not fully expended in a particular Franchisee Year in the following Franchisee Year and any outstanding un-invested sums at the end of the

³⁷⁹ **25 October 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.**

Franchise Period shall be repaid to the Secretary of State by no later than the date that is thirty (30) days after the Franchise Period.

64. **Greater Transport Planning/Co-ordination**

- 64.1 By no later than 31 January 2020 the Franchisee shall establish a special events planning group to ensure that a holistic approach is adopted in the planning and management of special events with the intention of ensuring that the impacts of such special events on the delivery of the Franchise Services are effectively managed and/or minimised.
- 64.2 The special events planning group to be established by the Franchisee pursuant to paragraph 64.1 shall:
- (a) be a multi-agency forum comprised of other transport providers and other relevant Stakeholders;
 - (b) ³⁸⁰**subject to paragraph 68**, hold meetings at least every quarter with such meetings to be attended by the Franchisee's Head of Station Estates and the Transport Integration Manager (or in their absence an authorised representative); and
 - (c) ³⁸¹**subject to paragraph 68**, be supported by a special events working group with meetings held every four weeks and attended by the Transport Integration Manager (or in his absence an authorised representative).

65. **Cycling Spaces**

- 65.1 From 30 April 2020, the Franchisee shall install no less than **[REDACTED³⁸²]new** secure cycle parking spaces at Stations to be determined by the Franchisee but which must:
- (a) include the installation of the number of new cycle spaces as indicated in column 2 of Table 8 below at the Stations specified in the corresponding row in column 1 of Table 8 below; and
 - (b) be installed in the numbers specified in column 2 of Table 9 below for each Franchisee Year in the corresponding row in column 1 of Table 9 below.
- 65.2 The Franchisee shall incur expenditure of no less than **[REDACTED³⁸³]in** the delivery of its obligations under this paragraph 65.

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

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

³⁸² **25 October 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.**

³⁸³ **25 October 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.**

Table 8

Column 1	Column 2
Stations	Number of new secure cycle parking spaces to be installed
Alsager	10
Belper	10
Beeston	10
Chesterfield	40
Cleethorpes	20
Collingham	10
Corby	20
Derby	85
Fiskerton	10
Gainsborough Lea Road	10
Hucknall	10
Hykeham	10
Kettering	60
Kirby in Ashfield	10
Langley Mill	10
Leicester	85
Loughborough	70
Mansfield Town	20
Mansfield Woodhouse	10
Market Harborough	100
Newark Castle	20
Nottingham	70
Oakham	10

Column 1	Column 2
Stations	Number of new secure cycle parking spaces to be installed
Sileby	10
Skegness	20
Sheffield	100
Sleaford	20
Spalding	10
Stamford	20
Wellingborough	40
Bingham, Bleasby, Burton Joyce, Carlton, Duffield, Elton & Orston, Havenhouse, Hubberts Bridge, Langwith-Whaley Thorns, Lowdham, Matlock Bath, Netherfield, Newstead, Peartree, Radcliffe-on-Trent, Rauceby, Rolleston, South Wigston, Swineshead, Thorpe Culvert, Thurgarton, Great Coates, Ulceby, Thornton Abbey, Barrow Haven	100
Unallocated	20

Table 9

COLUMN 1	COLUMN 2
Franchisee Year	Number of new secure cycle parking spaces to be installed
Franchisee Year 1 (2019/20)	-
Franchisee Year 2 (2020/21)	250
Franchisee Year 3 (2021/22)	200
Franchisee Year 4 (2022/23)	150
Franchisee Year 5 (2023/24)	150

COLUMN 1	COLUMN 2
Franchisee Year 6 (2024/25)	100
Franchisee Year 7 (2025/26)	100
Franchisee Year 8 (2026/27)	50
Franchisee Year 9 (2027/28)	50

³⁸⁴ **66.**

³⁸⁵ **67.**

³⁸⁶ **68. Unless otherwise instructed by the Secretary of State, the following provisions will be waived:**

68.1 for the EMA Period:

- (i) Paragraph 3.2 (Pre-Apprenticeships);**
- (ii) Paragraph 41.1(c) (Customer Engagement Tools);**
- (iii) Paragraph 42.1(b) (Inclusivity Forum);**
- (iv) Paragraphs 47.1 and 47.2 (Staff Training); and**
- (v) Paragraph 64.2(b) and (c) (Greater Transport Planning/ Co-ordination); and**

68.2 for the Academic Year commencing on 1 September 2019 and ending August 2020:

- (i) Paragraph 3.1 (Employability Masterclass).**

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

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

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

Appendix 1 to Part 1 of Schedule 6.2 – Improved Station Facilities

List of Stations where the facilities listed in the table in paragraph 53 of this Part 1 of Schedule 6.2 are to be installed, as specified in the table below:

Improved Sustainable Platform Shelters
Alsager, Ancaster, Barrow Haven, Barrow-Upon-Soar, Barton-On-Humber, Bleasby, Burton Joyce, Elton & Orston, Fiskerton, Goxhill, Great Coates, Harborough, Havenhouse, Healing, Hubberts Bridge, Long Eaton, Market Rasen, Narborough, New Clee, New Holland, Peartree, Rauceby, Rolleston, Saxilby, Stallingborough, Swinderby, Swineshead, Thornton Abbey, Thorpe Culvert, Thurgarton, Willington
New Accessible Waiting Rooms
Belper, Gainsborough Lea Road, Hucknall, Kirkby in Ashfield, Mansfield Woodhouse, Matlock, Sutton Parkway, Syston, Uttoxeter
Refurbished Waiting Rooms
Alfreton, Aslockton, Beeston, Boston, Burton-On-Trent, Corby, Havenhouse, Hinckley, Kidsgrove, Long Eaton, Mansfield Town, Melton Mowbray, Narborough, Newark Castle, Oakham, Skegness, Sleaford, Spalding, Stamford, Swinderby, Thorpe Culvert
Installation of LED Lighting
All Stations
Installation of Help Points
All Stations
Improved Signage for accessible routes
Beeston, Belper, Bulwell, Cresswell (Derbyshire), Hinckley, Langwith, Longport, Mansfield Woodhouse, Newark Castle, Shirebrook (Derbyshire), Sutton Parkway
Customer Information Screens
Ambergate, Ancaster, Aslockton, Attenborough, Barrow Haven, Barrow-Upon-Soar, Barton-On-Humber, Bleasby, Bottesford, Burton Joyce, Carlton, Cromford, Duffield, Elton & Orston, Fiskerton, Gainsborough Lea Road, Goxhill, Great Coates, Grimsby Docks, Havenhouse, Hubberts Bridge, Langley Mill, Lowdham, Netherfield, New Clee, New Holland, Peartree, Radcliffe (Nottinghamshire), Rolleston, Sileby, South Wigston, Spondon, Swinderby, Swineshead, Thornton Abbey, Thorpe Culvert, Thurgarton, Ulceby, Whatstandwell
Upgraded Customer Information Screens
Collingham, Market Rasen, Metheringham, Rauceby, Ruskington, Saxilby

Passenger Announcement Systems
Alsager, Ancaster, Attenborough, Barrow Haven, Barton-On-Humber, Bleasby, Blythe Bridge, Boston, Bottesford, Bulwell, Burton Joyce, Collingham, Elton & Orston, Gainsborough Lea Road, Goxhill, Harborough, Healing, Heckington, Hucknall, Hykeham, Fiskerton, Great Coates, Grimsby Docks, Havenhouse, Hubberts Bridge, Lowdham, Longport, Metheringham, New Clee, New Holland, Peartree, Rauceby, Rolleston, Ruskington, Saxilby, Stallingborough, Swinderby, Swineshead, Thornton Abbey, Thorpe Culvert, Thurgarton, Ulceby, Wainfleet
Multi Modal Customer Information System
Chesterfield, Corby, Derby, East Midlands Parkway, Kettering, Leicester, Long Eaton, Luton Airport, Market Harborough, Nottingham, St Pancras (which for these purposes shall be deemed to be a Category 1 Station), Sheffield
Interchange enhancements
Beeston, Chesterfield, Corby, Derby, East Midlands Parkway, Kettering, Leicester, Long Eaton, Luton Airport, Market Harborough, Newark Castle, Nottingham, St Pancras (which for these purposes shall be deemed to be a Category 1 Station), Sheffield, Skegness, Sleaford
Smart TVM Kiosks
Alsager, Aslockton, Ancaster, Barrow Haven, Barton-On-Humber, Bingham, Bleasby, Blythe Bridge, Bottesford, Burton Joyce, Carlton, Collingham, Elton & Orston, Fiskerton, Gainsborough Lea Road, Goxhill, Great Coates, Grimsby Docks, Harbrough, Havenhouse, Healing, Heckington, Hubberts Bridge, Hykeham, Langley Mill, Longport, Longton, Lowdham, Market Rasen, Metheringham, Netherfield, New Holland, New Clee, Peartree, Radcliffe (Nottinghamshire), Rauceby, Rolleston, Ruskington, Saxilby, South Wigston, Spondon, Stallingborough, Swinderby, Swineshead, Thornton Abbey, Thorpe Culvert, Thurgarton, Tutbury & Hatton, Ulceby, Uttoxeter, Wainfleet, Willington
Water Fountains
Alfreton, Beeston, Burton-on-Trent, Chesterfield, Corby, Derby, East Midlands Parkway, Kettering, Hinckley, Leicester, Lincoln, Long Eaton, Loughborough, Mansfield Town, Market Harborough, Melton Mowbray, Narborough, Newark Castle, Nottingham, Sheffield, Skegness, Sleaford, Stamford, Wellingborough,
Zero Carbon Stations
The Emission-Free Stations as defined pursuant to paragraph 55.155.1(a)
'Living Room' customer lounges with catering
Chesterfield, Derby, East Midlands Parkway, Kettering, Leicester, Loughborough, Lincoln, Market Harborough, Nottingham, Sheffield, St Pancras (which for these purposes shall be deemed to be a Category 1 Station), Wellingborough
New accessible toilets
Belper, Gainsborough Lea Road, Hucknall, Kirkby in Ashfield, Mansfield Woodhouse, Oakham, Sutton Parkway, Syston, Uttoxeter

Refurbished Toilets
Alfreton, Beeston, Boston, Burton-On-Trent, Chesterfield, Corby, Derby, East Midlands Parkway, Hinckley, Kettering, Kidsgrove, Leicester, Lincoln Central, Long Eaton, Loughborough, Mansfield Town, Market Harborough, Matlock, Melton Mowbray, Newark Castle, Narborough, Nottingham, Oakham, Sheffield, Skegness, Sleaford, Spalding, Stamford, Wellingborough
Changing Places Accessible Toilet
Derby, Leicester, Sheffield
Station Wi-Fi
All Stations
New Staff Facilities (Modular Buildings)
Belper, Hucknall, Kirkby in Ashfield, Mansfield Woodhouse, Sutton Parkway, Syston, Uttoxeter,
New Staff Facilities (Station Building Refurbishments Buildings)
Gainsborough Lea Road, Matlock

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 the Franchise 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 Franchise Agreement.

1. Continuation of Availability

1.1 Where the Franchisee is obliged under this Schedule 6.2 to provide, implement or install something (whether a service, facility or otherwise) the Franchisee 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 Franchise 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 Franchisee 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 Franchisee is required to make and maintain, the obligation of the Franchisee shall not be regarded as being contravened by:

(i) temporary absences (for example for sickness or holiday); or

(ii) temporary non-fulfilment of a relevant post whilst the Franchisee is recruiting for that post,

providing always that the Franchisee 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 Franchisee, that amount:

(a) is assessed net of Value Added Tax; and

(b) is the amount required to be expended by the Franchisee itself or procured by the Franchisee to be expended.

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 Franchisee,

shall be indexed by the Retail Prices Index (in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments)).

2.3 Expenditure by Network Rail

All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 1 to Schedule 6.2 (*Committed Obligations*) to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

3 ³⁸⁷Underspent Amounts

- (a) The Franchisee shall notify the Secretary of State in accordance with paragraph 7A of Schedule 11.2 (*Management Information*) where, in relation to any Committed Obligation or Franchise Specific Obligation (as applicable) that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, the Franchisee is able to achieve that stated objective without incurring the full amount referred to in that Committed Obligation, whether because of cost savings or otherwise (an "Underspend").
- (b) Having due regard to the statement provided by the Franchisee pursuant to paragraph 7A of Schedule 11.2 (*Management Information*), and where applicable, the findings of any audit conducted pursuant to paragraph 9.9 of Schedule 11.2 (*Management Information*) together with any other **relevant information available to the Secretary of State, the Secretary of State shall determine, for the period up to 1 March 2020, in relation to each Committed Obligation or Franchise Specific Obligation (as applicable) any Underspend and/or any other expenditure the Franchisee was obliged or otherwise projected to incur but which was not so incurred by the Franchisee, provided that the following amounts shall be excluded:**
- (i) **any expenditure incurred by the Franchisee which was inconsistent with acting in accordance with its obligations under the terms of the Franchise Agreement (as in effect at the time the relevant expenditure was incurred); and**
- (ii) **where a Termination Sum is payable by the Franchisee pursuant to paragraph 3 of schedule 2 (*Termination of the Franchise Agreement*) to the ERMA, any Underspend which has been assumed to be incurred as a cost for the purposes of the Non-COVID Trajectory Model,**
- (the "Underspent Amount").**

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

- (c) For the purposes of this paragraph 3, references to amounts the Franchisee was projected to incur in delivery of any Committed Obligations or Franchise Specific Obligations shall be determined by assuming that the amount the Franchisee was budgeted to spend in each Reporting Year in accordance with the Record of Assumptions and, where applicable, the Financial Model is incurred in equal amounts across each of the thirteen (13) Reporting Periods, unless otherwise determined by the Secretary of State, in the Secretary of State's sole discretion, based on information available to it, including pursuant to any audit conducted pursuant to paragraph 9.9 of Schedule 11.2 (*Management Information*).
- (d) In respect of any Underspent Amount, which has not been directed to be repaid by the Franchisee to the Secretary of State or otherwise agreed to be applied towards an additional scheme as at the date of this ERMA), the Secretary of State may, in the Secretary of State's sole discretion:
- (i) seek to agree with the Franchisee, an additional scheme or schemes which shall be funded (in whole or in part) using the Underspent Amount and, once agreed, the Franchisee shall apply such relevant Underspent Amount in the delivery of the agreed scheme(s);
 - (ii) require the Franchisee to undertake an additional scheme or schemes (chosen in the Secretary of State's sole discretion), which shall be funded (in whole or in part) using any Underspent Amount(s) and the Franchisee shall apply such relevant Underspent Amount(s) in the delivery of the required scheme(s); and/or
 - (iii) require the Franchisee to repay the aggregate amount of any Underspent Amount which has not been applied to an additional scheme in accordance with paragraph (e)(i) or (ii) to the Secretary of State, as soon as reasonably practicable. The Secretary of State shall have the right to implement such payment, without any double counting, by way of an adjustment to Franchise Payments and any such repayment shall not constitute Costs or Capital Expenditure.

³⁸⁸ 3A. Pre-EMA Period Underspend

- (a) The parties acknowledge and agree that paragraph 3A(b) (or, as the case may be, paragraph 3A(c)) shall apply in respect of any:
- (i) Underspend which arises in respect of the period prior to commencement of the EMA Period; and
 - (ii) amounts which the Franchisee was obliged to spend prior to the commencement of the EMA Period under the provisions of

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

the Franchise Agreement but which it had not, for whatever reason, spent,

together being "Pre-EMA Period Underspend".

- (b) Unless the Secretary of State (in Secretary of State's unfettered discretion) directs that paragraph 3A(c) shall apply, the Franchisee shall pay the Pre-EMA Period Underspend to the Secretary of State by such date as the Secretary of State may reasonably specify and the Secretary of State shall have the right to implement such payment by way of an adjustment to Franchise Payments. If the date for repayment specified by the Secretary of State falls within the EMA Period, the repayment of the Pre-EMA Period Underspend shall not in any circumstances constitute Costs or Capital Expenditure for the purposes of Schedule 8.A (Franchise Payments).
- (c) If this paragraph 3A(c) applies:
- (i) ³⁸⁹the parties shall, acting reasonably, seek to agree an alternative scheme or schemes which would give rise to benefits to passengers using the Passenger Services to be funded using the **Pre-EMA Period Underspend** and, once agreed, the Franchisee shall apply such **Pre-EMA Period Underspend** in the delivery of the agreed scheme(s), **provided that:**
- (A) if it is agreed that any part of the Pre-EMA Period Underspend is to be used to fund alternative schemes during the EMA Period then the costs and expenditure of delivering such alternative schemes shall be funded entirely by the application of the Pre-EMA Period Underspend and accordingly no such costs or expenditure of delivery shall in any circumstances constitute Costs or Capital Expenditure (as such terms are defined in Schedule 8.A (Franchise Payments)) for the purposes of Schedule 8.A (Franchise Payments); and
- (B) if the Franchise Period ends at or before the end of the EMA Period an amount equal to the then-current unexpended balance of Pre-EMA Period Underspend shall be payable by the Franchisee to the Secretary of State and such amount shall not in any circumstances constitute Costs or Capital Expenditure (as such term is defined in Schedule 8.A (Franchise Payments)) for the purposes of Schedule 8.A (Franchise Payments);
- ³⁹⁰(ii) in circumstances only where **by the date falling three (3) months after the end of the EMA Period (or such earlier date after the end of the EMA Period as the Secretary of State may (at the**

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

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

Secretary of State's discretion) specify), despite having used reasonable endeavours the **parties** fail to agree an **alternative** scheme in relation to which **the Pre-EMA Period Underspend** will be applied, **such Pre-EMA Period Underspend** shall be repaid to the Secretary of State as soon as reasonably practicable **thereafter (and the Secretary of State shall have the right to implement such payment by way of an adjustment to Franchise Payments),** provided that if the Franchise Period ends at or before the end of the EMA Period the Pre-EMA Period Underspend shall be payable by the Franchisee to the Secretary of State and such amount shall not in any circumstances constitute Costs or Capital Expenditure (as such term is defined in Schedule 8.A (Franchise Payments)) for the purposes of Schedule 8.A (Franchise Payments);

- (iii) if the Franchisee fails to deliver an alternative scheme agreed by the parties pursuant to paragraph 3A(c)(i) or delivers the alternative scheme at a cost which is lower than the amount of the Pre-EMA Period Underspend allocated to that alternative scheme, then (as the case may be):
 - (A) the amount of the Pre-EMA Period Underspend allocated to such alternative scheme; or
 - (B) the difference between the amount of the Pre-EMA Period Underspend allocated to that alternative scheme and the amount of expenditure actually incurred by the Franchisee in delivering the alternative scheme,

shall be paid to the Secretary of State by such date as the Secretary of State may reasonably specify and the Secretary of State shall have the right to implement such payment by way of an adjustment to Franchise Payments, provided that if the date for repayment specified by the Secretary of State falls within the EMA Period then the amount to be repaid shall not in any circumstances constitute Costs or Capital Expenditure (as such term is defined in Schedule 8.A (Franchise Payments)) for the purposes of Schedule 8.A (Franchise Payments).

4. Nature of Commitment

- 4.1 Any commitment in terms of Part 1 to Schedule 6.2 (*Committed Obligations*) shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Schedule 6.2 (*Committed Obligations*) shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.
- 4.2 Save as expressly provided in Part 1 to Schedule 6.2 (*Committed Obligations*), each Committed Obligation is a separate obligation from any other Committed Obligation and satisfaction of or steps taken towards the satisfaction of one Committed Obligation will not amount to or contribute towards satisfaction of any other Committed Obligation.
- 4.3 Where in Part 1 to Schedule 6.2 (*Committed Obligations*), references are made to particular:

- (a) manufacturers or suppliers of equipment or services, the Franchisee may fulfil its relevant commitment by using reasonable equivalents; or
- (b) stakeholders, the Franchisee may fulfil its relevant commitment with reference to reasonable successor bodies to the relevant stakeholder.

5. **Review of Compliance**

- 5.1 Progress with Committed Obligations shall be considered and discussed at Franchise Performance Meetings.
- 5.2 In addition to its obligation under paragraph 5.1, the Franchisee shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as the Secretary of State may reasonably request.

6. **Consequences of Late Completion or Non-Delivery of Committed Obligations**

If the Franchisee fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in Schedule 6.2 (*Committed Obligations*), such late, partial or non-delivery shall constitute a contravention of the Franchise Agreement.

7. **Specimen Schemes**

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 Franchisee is not able to satisfy such Pre-condition within such timescales (if any) as are required to enable the Franchisee to deliver such Committed Obligation in accordance with its terms then the Secretary of State and the Franchisee 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 Franchisee to deliver a scheme which would give rise to benefits to passengers using the Passenger Services similar to (but not necessarily the same as) those benefits which would have arisen if the Franchisee had delivered such Committed Obligation.
- 8.2 If the Franchisee 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 Franchisee 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 Franchisee shall not be in breach of the Franchise Agreement.

9. **Designation of Assets comprised in COs as Primary Franchise Assets**

- 9.1 The Secretary of State may at any time designate as a Primary Franchise Asset any asset (other than those designated as RV Assets) introduced by the Franchisee by way of a Committed **Obligation or a Franchise Specific** Obligation (the

“Designated CO Primary Franchise Assets”). Such designation shall take effect from the date on which the Secretary of State delivers to the Franchisee a notice designating the relevant asset as a Designated CO Primary Franchise Asset.

9.2 ³⁹¹**The transfer value in relation to any Designated CO Primary Franchise Asset, which at the end of the Franchise Period is:**

- (a) **not de-designated as a Primary Franchise Asset pursuant to paragraph 10 of Schedule 14.4 (*Designation of Primary Franchise Assets*); and**
- (b) **transferred to a Successor Operator (whether pursuant to the Transfer Scheme or otherwise),**

shall (unless otherwise agreed by the Secretary of State) be equivalent to the capital cost of the asset included in the Financial Model and Record of Assumptions after deducting the aggregate funding of such asset by way of Franchise Payments included in the Financial Model and Record of Assumptions during the Franchise Period immediately prior to the date of termination of the Franchise Agreement, except where the Franchise Agreement terminates following service of a Termination Notice by the Secretary of State pursuant to Schedule 10.2 (*Events of Default and Termination Events*), in which case the transfer value shall (unless otherwise agreed by the Secretary of State) be nil.

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 Franchisee 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 Franchisee 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.

³⁹²11. **Expenditure relating to obligations suspended during the EMA Period**

11.1 The parties acknowledge and agree that where, under the provisions of the EMA Review DoA, an obligation of the Franchisee under the Franchise Agreement is suspended, disappplied or waived by the Secretary of State (a “Suspended Obligation”) for the EMA Period (or some other specified period of time) (“Suspension Period”) then, save as otherwise instructed by the Secretary of State the Franchisee shall not incur any costs or expenditure in respect of that Suspended Obligation during the relevant Suspension Period.

11.2 The parties further acknowledge and agree that if a Suspended Obligation:

- (a) **contains or comprises an obligation on the Franchisee to incur a specified amount of costs and/or expenditure:**

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

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

- (i) over a period of time within which the EMA Period falls; and
 - (ii) otherwise than on a recurring per annum or per Franchisee Year basis; and
- (b) such obligation has not been fully complied with by the Franchisee as at the start of the EMA Period,

then the Franchisee shall following expiry of the EMA Period incur such further expenditure as is necessary to ensure that the amount of expenditure specified in the applicable Suspended Obligation is incurred by the Franchisee in accordance with the terms of such Suspended Obligation. If the Franchise Period ends at or before the end of the EMA Period an amount equivalent to that which the Franchisee would have been required to incur under this paragraph 11.2 shall be payable by the Franchisee to the Secretary of State and such amount shall not in any circumstances constitute Costs or Capital Expenditure (as such term is defined in Schedule 8.A (Franchise Payments)) for the purposes of Schedule 8.A (Franchise Payments).

³⁹³ 12.

³⁹⁴ 13. EMA Stub Year

13.1 The parties acknowledge and agree that where any of the Franchisee's obligations under the Franchise Agreement include:

- (a) a specified number of items or actions that are to be effected in a Franchisee Year or calendar year; and/or
- (b) a specified amount of committed expenditure to be spent in any Franchisee Year or calendar year,

and if the EMA Period does not end on a 31 March (or a 31 December, as applicable) then, in relation to the period from the end of the EMA Period until the next 31 March (or 31 December, as applicable), the Secretary of State may reasonably determine the treatment of the obligation and or associated financial requirement.

³⁹⁵ 14. Application

The provisions of paragraphs 3A, 11, 12 and 13 of Part 2 of Schedule 6.2 (Committed Obligations) shall apply in respect of the relevant obligations of the Franchisee under the Franchise Agreement.

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

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

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

Schedule 6.3

³⁹⁶**NOT USED**

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

Appendix 1
Minimum Marketing Spend

[DELETED³⁹⁷]

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

Appendix 2
Ticketless Travel Payments
Part 1 – Ticketless Travel Benchmark

[DELETED³⁹⁸]

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

Appendix 2

Part 2 – Annual Ticketless Travel Benchmark

[DELETED³⁹⁹]

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

Appendix 3
CIM Performance Sum tables
[DELETED⁴⁰⁰]

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

Schedule 6.4

Alliances

1. Co-operation with Network Rail

1.1 General Co-operation

The Franchisee shall use all reasonable endeavours to work with Network Rail to identify ways in which co-operation between the Franchisee and Network Rail can be enhanced, costs can be reduced and closer working and alignment of incentives can improve value for money within the parameters of this Agreement.

1.2 Sharing of information with Network Rail

The Franchisee shall to the extent reasonably requested by Network Rail share with Network Rail all relevant data including GPS data and data derived from geometry measurement systems, forward facing CCTV, driver advisory systems, and train condition monitoring systems fitted to any rolling stock within the Train Fleet. Any such data provided to Network Rail shall be provided in such format as Network Rail may reasonably request without charge.

2. Compliance with the Alliance Agreement

2.1 The Franchisee 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 Start Date.

2.2 The Franchisee 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 Franchise Period, save where the Alliance Agreement is terminated by Network Rail or by the Franchisee in accordance with the provisions of this Schedule 6.4.

2.3 The Franchisee 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 Franchisee shall not terminate the Alliance Agreement without the consent of the Secretary of State (such approval not to be unreasonably withheld).

3.2 The Franchisee 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 Franchisee 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 Franchisee 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 Franchisee 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.

Schedule 6.5

NOT USED

Schedule 6.6

NOT USED

⁴⁰¹ Schedule 6.7**ERMA Specific Obligations**

Part 1 (Cooperation)	Paragraph 1: Development, Design and Implementation of Future Initiatives
	Paragraph 2: Incentive Regimes
	Paragraph 3: Improvement Initiatives
	Paragraph 4: One Team Stations Initiative
	Paragraph 5: Integrated Control Centres Initiative
	Paragraph 5A: Operational Performance
	Paragraph 6: Co-operation
	Paragraph 7: Operational Planning
	Paragraph 8: Infrastructure Projects
	Paragraph 9: Sharing Data with Network Rail
	Paragraph 10: Sharing on-train data with Network Rail
	Paragraph 11: Station Accessibility Data Collection
	Paragraph 12: Compensation
Paragraph 13: TD Academy	
Part 2 (Pay and Industrial Relations and Dispute Handling)	Paragraph 1: Notification of the Secretary of State
	Paragraph 2: Reward and People Principles
	Paragraph 3: Terms of Employment
	Paragraph 4: In-Scope Matters
	Paragraph 5: Industrial Action
	Paragraph 6: Reform
	Paragraph 7: Duties of the Franchisee
	Paragraph 8: Cooperation
	Paragraph 9: Disallowable Costs
	Paragraph 10: Workers

PART 1 – CO-OPERATION**1. Development, Design and Implementation of Future Initiatives****1.1 The Franchisee shall, at the request of the Secretary of State, fully and**⁴⁰¹ 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

effectively co-operate with the Secretary of State in connection with the development, design, and implementation of future initiatives which, in the opinion of the Secretary of State (acting reasonably) are likely to:

- (a) improve outcomes for passengers on any or all parts of the railway network;
- (b) improve cost-efficiency and/or reduce costs in relation to any or all parts of the railway network;
- (c) generate additional revenue for all or part of the railway network; or
- (d) deliver any other benefits or support any government policy objective,

(each a "Future Initiative").

1.2 The Secretary of State may from time to time (and at all times acting reasonably) issue a notice to the Franchisee specifying any assistance that the Secretary of State requires from the Franchisee in relation to the development, design and/or implementation of a Future Initiative and the date by when any deliverable required pursuant to this paragraph 1.2 must be undertaken or delivered (a "Future Initiative Notice" or "FIN"). Without limiting the foregoing, a Future Initiative Notice may, but shall not be required to, request the Franchisee to, among other things:

- (a) prepare and submit to the Secretary of State a proposal or proposals in relation to achieving any of the outcomes described in paragraphs 1.1(a) to 1.1(d) of this part 1 of this Schedule 6.7;
- (b) prepare and submit to the Secretary of State an implementation plan and cost and revenue forecasts in relation to the relevant Future Initiative;
- (c) prepare and submit to the Secretary of State any relevant data, reports, feasibility studies, business cases or other information that is held by the Franchisee or which the Franchisee can reasonably be expected to obtain (including any such documents or information prepared or procured pursuant to paragraph (d) of this part 1 of this Schedule 6.7);
- (d) identify, develop, design, assess and/or advise on options or proposals for delivering specified outputs or outcomes in connection with a Future Initiative, including undertaking or commissioning feasibility studies; developing implementation plans; analysing financial, operational, practical and other impacts and risks; developing business cases; reviewing and commenting on documents; and participating in meetings or other discussions; and
- (e) collaborate and co-operate with the Secretary of State, Network Rail, other Train Operators, industry bodies and other relevant third

parties to undertake any of the above activities jointly.

1.3 The Secretary of State may (acting reasonably) issue to the Franchisee:

- (a) any number of FINs in relation to a Future Initiative; and**
- (b) FINs in relation of any number of Future Initiatives at any given time.**

1.4 The Secretary of State may at any time, by proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*), require the Franchisee to develop, design and/or implement any changes to the Franchise Services or any provision of the Franchise Agreement in connection with a Future Initiative.

1.5 In consultation with the Secretary of State, the Franchisee shall assign a Franchise Employee with appropriate seniority to oversee and facilitate the Franchisee's compliance with its obligations pursuant to this paragraph 1 (a "Franchisee FI Contact"). The Franchisee shall confirm the identity of such Franchisee FI Contact to the Secretary of State by no later than as soon as reasonably practicable after the ERMA Start Date, and in any event by 16 October 2020.

1.6 The Franchisee FI Contact shall act as the Franchisee's primary point of contact with the Secretary of State in relation to all matters contemplated by this paragraph 1.

1.7 The Franchisee shall procure that the Franchisee FI Contact shall be supported from time to time by such other Franchisee Employees as shall be reasonably required to ensure the Franchisee's compliance with this paragraph 1.

1.8 This paragraph 1 is subject to the Secretary of State's rights pursuant to clause 7 (*Additional Services*) of the ERMA.

2. Incentive Regimes

2.1 The Franchisee shall, as required by the Secretary of State, fully and effectively co-operate with the Secretary of State to design, develop and (as applicable) implement and provide to the Secretary of State such data as the Secretary of State may require in relation to potential new incentive regimes (which may be used in future contracts with Train Operators and/or may be introduced into the Franchise Agreement by means of a Variation, provided that no such new incentive regime may be introduced into the calculation of the Performance Based Fee pursuant to Schedule 8.1B (*Performance Based Fee*) without the prior written agreement of the Parties), including designing:

- (a) new models for assessing customer satisfaction and sentiment;**
- (b) new measures of Operational Performance;**
- (c) alternative cost or other financial incentive mechanisms;**

- (d) a new regime for assessing service quality standards delivered by the Franchisee; and/or
- (e) a new regime for assessing the Franchisee's performance in relation to deterring and preventing ticketless travel.

2.2 The Franchisee's obligations pursuant to paragraph above may include:

- (a) developing, reviewing and/or commenting on proposals in relation to such new incentive regimes;
- (b) providing advice on the feasibility, costs and other implications of any such proposals made by the Secretary of State;
- (c) attending meetings to discuss such proposals and any related matters; and
- (d) supporting the Secretary of State in preparing to implement such new incentive mechanisms, including by collecting and providing relevant data to the Secretary of State in accordance with any requirements specified by the Secretary of State from time to time.

3. Improvement Initiatives

3.1 In this paragraph 3:

"Franchisee Initiatives" means any Improvement Initiatives which are identified by the Franchisee and which relate specifically to the Franchise Services.

"Further Industry Initiatives" means any Improvement Initiatives (other than Specified Industry Initiatives) which are intended to secure improvements on a railway industry wide basis.

"Improvement Initiatives" means any measures or initiatives which may apply to any aspect of the railway industry which are intended to secure improvements in relation to passenger outcomes, cost-efficiency and/or environmental outcomes or otherwise support the achievement of government policy objectives, including any Franchisee Initiatives, Specified Industry Initiatives and Further Industry Initiatives.

"Specified Industry Initiatives" means such Improvement Initiatives which are intended to secure improvements on a railway industry wide basis as the Secretary of State and/ or Network Rail may, from time to time, notify the Franchisee, which may include (but shall not be limited to) measures or initiatives in relation to:

- (a) improving level crossing safety and risk mitigation;
- (b) prevention of suicide, trespass and vandalism on the railway;
- (c) improving track worker safety;
- (d) promoting decarbonisation and other environmental improvements;
- (e) improving passenger information including during perturbation;

- (f) **the reopening of disused or freight-only railway routes to passenger services;**
- (g) **Network Rail's long-term strategy and planning activities;**
- (h) **reforming the manner in which train service requirements are specified by funders and procurers; and**
- (i) **the Nottingham Improvement plan.**

3.2 Subject to paragraph 3.4, the Franchisee shall:

- (a) **proactively identify, develop, assess the business case for and implement Franchisee Initiatives.**
- (b) **co-operate and collaborate with, any or all of, the Secretary of State, Network Rail, Train Operators, freight operators, railway industry bodies and any other relevant third parties (as may be applicable), to jointly plan, develop and fully participate in the implementation of Specified Industry Initiatives; and**
- (c) **proactively co-operate and collaborate with, any or all of, the Secretary of State, Network Rail, Train Operators, freight operators, railway industry bodies and any other relevant third parties (as may be applicable), to jointly identify, plan, develop and fully participate in the implementation of Further Industry Initiatives.**

3.3 For the purposes of paragraphs 3.2(b) and 3.2(c), the Franchisee's obligation to co-operate and collaborate may require the Franchisee to use all reasonable endeavours to support the planning, development and implementation of the relevant Improvement Initiative in a manner satisfactory to the Secretary of State. In particular, this may require the Franchisee to:

- (a) **provide advice to, or otherwise share its expertise with, the Secretary of State or Network Rail, including inputting into the business case for the relevant Improvement Initiative;**
- (b) **collect, analyse, share and/or report on certain information and data as may be necessary to inform the relevant Improvement Initiative;**
- (c) **attend and participate in relevant meetings or workshops in relation to the relevant Improvement Initiative;**
- (d) **implement such actions as may be agreed with relevant stakeholders in respect of the relevant Improvement Initiative, unless such actions cannot reasonably be expected to be implemented by the Franchisee taking account of the resources available to it and what could reasonably be expected of a competent and efficient operator; and**
- (e) **collaborate with, and respond to requests from, relevant stakeholders in respect of the relevant Improvement Initiative, unless such collaboration or responses (as the case may be) cannot reasonably be expected of the Franchisee taking account of the**

resources available to it and what could reasonably be expected of a competent and efficient operator.

3.4 Notwithstanding any other provision of this paragraph 3, if the Franchisee reasonably considers that pursuing the implementation of any Improvement Initiative or otherwise actioning any requests in connection with the planning, development or implementation of any Improvement Initiative would, or is reasonably likely to, result in:

- (a) it incurring additional costs, over and above those a Good and Efficient Operator would incur; or**
- (b) in the case of Specified Industry Initiatives or Further Industry Initiatives, it being required to increase its staffing resources,**

it shall notify the Secretary of State of the same and shall not proceed unless (i) the Secretary of State so directs or gives consent for it to do so or (ii) such additional staffing resources or costs were contemplated when the Secretary of State agreed or reasonably determined the Franchisee's most recent business plan and cost budget in accordance with the terms of Schedule 8.1A, and Schedule 11.2. If the Secretary of State directs or gives consent in relation to an Improvement Initiative pursuant to this paragraph 3.4, the Franchisee shall plan, develop or implement (as applicable) such Improvement Initiative in accordance with the Secretary of State's instructions.

3.5 Any notice issued pursuant to paragraph 3.4 shall include:

- (a) details of the proposed Improvement Initiative;**
- (b) the Franchisee's assessment of the wider benefits for passengers, the wider economy, the environment and others;**
- (c) the Franchisee's assessment of any financial or other benefits to Network Rail or other industry parties; and**
- (d) the Franchisee's reasonable estimate of the associated cost or staffing requirements (as applicable).**

4. One Team Stations Initiative

4.1 In this paragraph 4:

"NR Managed Stations" means each station which is served by Passenger Services and where Network Rail is the Station Facility Owner.

"One Team Stations Implementation Plan" means a detailed plan jointly produced between Network Rail and the Franchisee setting out how and when they will implement the One Team Stations Initiative.

"One Team Stations Initiative" means measures and initiatives to promote a 'one team' culture and approach between Network Rail and the Franchisee through collaborative working, unified policies and organisational delivery models such that customers are not able to distinguish between Network Rail and Franchisee employees at NR

Managed Stations, resulting in improved passenger and cost efficiency outcomes.

- 4.2 During the Franchise Term, the Franchisee shall, including as may be requested by the Secretary of State or Network Rail, consult, co-ordinate and co-operate with Network Rail and other Train Operators (as applicable) in respect of the planning, development and implementation of the One Team Stations Initiative.**
- 4.3 Subject always to paragraph 4.7, the Franchisee shall use all reasonable endeavours to agree a One Team Stations Implementation Plan with Network Rail by 28 February 2021 and shall update this as necessary for consistency with the One Team Stations Initiative from time to time.**
- 4.4 If the Franchisee and Network Rail fail to agree a One Team Stations Implementation Plan in accordance with paragraph 4.3, the Franchisee shall promptly notify the Secretary of State and the Franchisee agrees that it shall accept such One Team Stations Implementation Plan as the Secretary of State may specify (acting reasonably and having due regard to the information provided by the Franchisee in its notice). In any notice issued to the Secretary of State pursuant to this paragraph 4.4, the Franchisee shall include reasonable details of the points of difference between the Franchisee and Network Rail, together with its reasons for not accepting any proposal made by Network Rail.**
- 4.5 In developing the One Team Stations Initiative pursuant to paragraph 4.2, the Franchisee shall collaborate and cooperate with Network Rail and, where applicable, any other Train Operators to identify and assess the business case for any alternative operational delivery models, including joint management structures designed to improve customer service, operations and cost efficiency.**
- 4.6 As soon as practicable following agreement of any One Team Stations Implementation Plan under paragraph 4.3 or otherwise following any instructions from the Secretary of State in accordance with paragraph 4.4, the Franchisee shall take such action as may be necessary to discharge its obligations under this plan and shall promptly notify the Secretary of State of any material failure to discharge such obligations.**
- 4.7 If the Franchisee reasonably considers that any provision of this paragraph 4 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).**

5. Integrated Control Centres Initiative

- 5.1 During the Franchise Term, the Franchisee shall, where required to do so in accordance with this Franchise Agreement or where requested to do so by the Secretary of State or Network Rail, consult, co-ordinate and co-operate with Network Rail and other Train Operators (as applicable) in respect of the planning, development and/or implementation (as**

- applicable) of the Integrated Control Centres Initiative at such Control Centres as the Secretary of State or Network Rail may specify.
- 5.2** If required to do so in accordance with paragraph 5.1, and subject always to paragraph 5.6, the Franchisee shall use all reasonable endeavours to agree an Integrated Control Centres Implementation Plan with Network Rail within such timescale as the Secretary of State or Network Rail may reasonably specify and shall update this as necessary for consistency with the Integrated Control Centres Initiative from time to time.
- 5.3** If the Franchisee and Network Rail fail to agree an Integrated Control Centres Implementation Plan in accordance with paragraph 5.2, the Franchisee shall promptly notify the Secretary of State and the Franchisee agrees that it shall accept such Integrated Control Centres Implementation Plan as the Secretary of State may specify (acting reasonably and having due regard to the information provided by the Franchisee in its notice). In any notice issued to the Secretary of State pursuant to this paragraph 5.3, the Franchisee shall include reasonable details of the points of difference between the Franchisee and Network Rail, together with its reasons for not accepting any proposal made by Network Rail.
- 5.4** If required to do so in accordance with paragraph 5.1, the Franchisee shall collaborate and cooperate with Network Rail and, where applicable, any other Train Operators to:
- (a)** identify any alternative operational delivery models which could be developed and implemented to promote an integrated approach to joint control at any Control Centres; and
 - (b)** assess the business case for the industry (as a whole) for implementing any such proposals.
- 5.5** As soon as practicable following agreement of any Integrated Control Centres Implementation Plan under paragraph 5.2 or otherwise following any instructions from the Secretary of State in accordance with paragraph 5.3, the Franchisee shall take such action as may be necessary to discharge its obligations under this plan and shall promptly notify the Secretary of State of any material failure to discharge such obligations.
- 5.6** If the Franchisee reasonably considers that any provision of this paragraph 5 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).
- 5.7** Not used
- 5.8** Not used

5A Not used

6. Co-operation

6.1 In this paragraph 6:

“Delay Attribution Principles and Rules” means the version of the document known as the Delay Attribution Principles and Rules referenced in the Network Code;

“Performance Improvement Management System” means the rail industry framework for the management of performance risks;

“Reactionary Minutes Delay” means the minutes of delay to the Passenger Services that are attributed as ‘Reactionary Delay’ in accordance with the Delay Attribution Principles and Rules, disregarding any minutes of delay that are imputed to Passenger Services that were cancelled; and

“RM3P” means the ‘Risk Management Maturity Model for Performance’ system to monitor and manage operational performance within the rail industry.

6.2 The Franchisee shall work fully and effectively with Network Rail as required to:

(a) analyse Reactionary Minutes Delay and develop and deliver performance improvement plans to address areas of underperformance, focusing on improving Timetable robustness and contingency planning;

(b) record, monitor and reduce sub-threshold delay;

(c) implement industry best practice approaches to improving performance, including, if requested by the Secretary of State, the deployment of the RM3P and the Performance Improvement Management System; and

(d) review ‘TRUST Delay Codes’ (as set out in the Delay Attribution Principles and Rules) and identify opportunities to improve the delay attribution process set out in the Delay Attribution Principles and Rules.

7. Operational Planning

7.1 In this paragraph 7:

“Event Steering Groups” has the meaning given to it in the Network Code.

“Required Establishment” means the number of train crew required in order to operate the Passenger Services, which in the case of drivers shall be calculated in accordance with the Rail Delivery Group’s “Guidance Note on Driver Establishment Calculation (December 2013)” and otherwise in accordance with an equivalent methodology.

“Train Crew Numbers Data” has the meaning given to it in paragraph 7.3.

7.2 The Franchisee shall consult, co-ordinate and co-operate with Network Rail and any relevant Train Operators in respect of the planning, development and implementation of proposals to support the continuous improvement of train timetabling and train planning functions. Amongst other things, this shall include developing improvements to:

- (a) the quality of the Franchisee’s and Network Rail’s timetable planning activities, through, amongst other things:**
 - (i) adequate resourcing of train planning and diagramming activities for both rolling stock and traincrew;**
 - (ii) collaborative working between the Franchisee’s and Network Rail or other Train Operators’ planning teams;**
 - (iii) the timely sharing of plans for rolling stock and traincrew, including ancillary moves;**
 - (iv) timely sharing of rolling stock characteristics required to support timetable simulation and performance modelling; and**
 - (v) an increased focus on the advance development of major timetable changes, including through Event Steering Groups;**
- (b) the robustness and resilience of the Franchisee’s and Network Rail’s train plans through collaborative working, to ensure jointly developed train regulation policies, contingency and service recovery plans including but not limited to data in relation to, and plans for:**
 - (i) diversionary route availability (including traincrew knowledge and rolling stock clearance); and**
 - (ii) traincrew flexibility (including route and traction knowledge, and spare cover).**

7.3 The Franchisee shall, as soon as reasonably practicable following any request, provide Network Rail with such information as it may reasonably request, including:

- (a) information in relation to current and projected future numbers of train crew employed, in aggregate and in respect of each individual train crew depot or link, and distinguishing in each case between different types of train crew and between fully qualified individuals and trainee (the “Train Crew Numbers Data”); and**
- (b) a comparison of the Train Crew Numbers Data against the Franchisee’s most recent assessment of the current and expected future Required Establishment in each case.**

8. Infrastructure Projects

The Franchisee shall, throughout the Franchise Term, consult, co-ordinate and co-operate with Network Rail and any relevant Train Operators in respect of the planning, development and/or implementation (as applicable) of such renewals, enhancements and associated possessions as Network Rail may notify to the Franchisee. In particular, the parties shall work collaboratively to:

- (a) identify opportunities to coordinate and combine the delivery of infrastructure enhancements and planned renewals; and
- (b) plan possessions,

in each case, in such manner as achieves the optimum compromise between outcomes for passengers and cost-efficiency for the railway industry as a whole.

9. Sharing Data with Network Rail

9.1 In this paragraph 9:

“Financial and Commercial Data” means financial and commercial data and information in respect of:

- (a) the number of passengers using the Passenger Services, including as may be sourced from MOIRA, Lennon, passenger counts, yield management data and gate line data; and
- (b) operating costs.

“NR Data Sharing Objectives” means the aims and objectives of data sharing as may be agreed between the Franchisee and Network Rail and documented in the NR Data Sharing Strategy, including for the purposes of improving the planning and delivery of the day to day operational activities, supporting business planning, supporting train planning, informing service change and timetabling proposals, planning access and possessions, assessing the railway industry business case for specified proposals and to support strategic planning.

“NR Data Sharing Strategy” means the data sharing strategy to be developed in accordance with paragraph 9.2, as may be updated from time to time.

“Operational Data” means data and information in relation to the day to day operation of the passenger services including in relation to traincrew diversionary route and traction knowledge, Train Plan, rolling stock configuration, stock and crew diagrams and fleet reliability data.

9.2 By no later than 31 January 2021, the Franchisee shall, jointly with Network Rail, develop and use all reasonable endeavours to agree a strategy, which sets out the basis on which the Franchisee will, subject to any guidance or instructions that the Secretary of State may provide or issue from time to time, share specified operational, financial and

commercial data and information with Network Rail. As a minimum, the strategy will include:

- (a) the agreed NR Data Sharing Objectives;**
- (b) the types of data to be shared by the Franchisee and Network Rail (including Operational Data and Financial and Commercial Data);**
- (c) the format and frequency of the data sharing;**
- (d) how the Franchisee and Network Rail intend to receive, use and safely store the data;**
- (e) approach to cost-sharing and apportionment in respect of the data sharing; and**
- (f) approach to overcoming any confidentiality or other restrictions in respect of data sharing or storage which may arise (including as matter of law).**

9.3 If the Franchisee:

- (a) is unable to agree the NR Data Sharing Strategy with Network Rail by 31 January 2021 or**
- (b) reasonably considers that any proposal pursuant to this paragraph 9 requires, or is likely to require, it to do anything inconsistent with acting as a Good and Efficient Operator,**

it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with such guidance or directions as the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).

9.4 The Franchisee shall use all reasonable endeavours to implement the NR Data Sharing Strategy in accordance with its terms, and shall continue to consult, collaborate and co-operate with Network Rail to agree any reasonable amendments or updates to the NR Data Sharing Strategy from time to time.

9.5 The Franchisee shall propose and use all reasonable endeavours to agree with Network Rail suitable amendments to the NR Data Sharing Strategy to ensure compliance with any guidance or instructions issued or provided by the Secretary of State from time to time.

9.6 The Franchisee shall not unreasonably withhold or delay its consent to any amendments which Network Rail may reasonably propose to the NR Data Sharing Strategy, provided that the Franchisee shall not agree to any amendments which would not be in compliance with any guidance the Secretary of State may provide or issue from time to time.

9.7 Notwithstanding any other term of this paragraph 9, the Franchisee shall not be required to do anything which would put it in breach of any

obligation on the Franchisee arising under applicable Law or the terms of its Licences.

10. Sharing on-train data with Network Rail

10.1 The Franchisee shall, to the extent reasonably requested by Network Rail, share with Network Rail all relevant data including GPS data and data derived from geometry measurement systems, forward facing CCTV, driver advisory systems and train condition monitoring systems fitted to any rolling stock within the Train Fleet. Any such data provided to Network Rail shall be provided in such format as Network Rail may reasonably request without charge.

10.2 The Franchisee shall, if so requested by Network Rail, provide advice to Network Rail on the feasibility, costs and associated practicalities of providing Network Rail with access to real-time (or near-real-time) footage from on-train forward-facing CCTV systems.

11. Station Accessibility Data Collection

The Franchisee shall comply with any reasonable request by the Secretary of State in connection with the development and implementation of a station accessibility data collection which may include (but shall not be limited to):

- (a) supporting the Secretary of State in developing and designing the methodology for data collection;
- (b) completing questionnaires and/or using reasonable endeavours to procure that the relevant station Facility Owner completes the relevant questionnaire;
- (c) providing information in relation to Station accessibility and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such information; and
- (d) providing access to Stations to facilitate accessibility data collection and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such access,

in each case, in a timely manner.

12. Compensation

Save with the prior written consent (such consent not to be unreasonably withheld or delayed) of the Secretary of State, the Franchisee shall not:

- (a) enter into any new agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers' compensation claims;
- (b) materially amend, vary or waive the terms of any existing agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers'

compensation claims;

- (c) extend the term of any agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers' compensation claims; or
- (d) make any material change to the Franchisee's system(s) relating to the receipt or processing of passengers' compensation claims.

13. TD Academy

13.1 In this paragraph 13 of part 1 of Schedule 6.7:

"TD Academy Board" means the board of the TD Academy.

"TD Academy Objectives" means:

- (i) improving the consistency and quality of driver training;
- (ii) improving and increasing driver training throughout with the objective of eliminating the shortage of drivers;
- (iii) improving driver skills and qualifications, including through increased uptake of the Train Driver Apprenticeship (Level 3) (as supported by the Institute for Apprenticeships and Technical Education);
- (iv) improving, increasing and promoting diversity of drivers in the industry in accordance with the Approved D&I Strategy;
- (v) providing information to the TD Academy Board for assurance on training quality to stakeholders; and
- (vi) promoting synergies, efficiencies and consistency through collaboration between TD Academy Stakeholders on driver training programmes and initiatives,

(each, a "TD Academy Objective").

"TD Academy Plan" has the meaning given to it in paragraph 13.3(b), including as updated from time to time.

"TD Academy Stakeholders" means the Franchisee, the Secretary of State, Train Operators, the RDG, any other relevant rail industry bodies and any other stakeholders which the Secretary of State may notify the Franchisee of from time to time.

"Train Driver Academy" or "TD Academy" means the scheme to promote driver training programmes (including through online learning platforms) which was originally established by the RDG in 2019, including as it may be amended, supplemented or replaced from time to time."

13.2 During the term of the ERMA, the Franchisee shall consult, co-ordinate and co-operate with the TD Academy Stakeholders as appropriate (or as may be required by the Secretary of State) from time to time in respect of the

planning, development and/or implementation (as applicable) of the Train Driver Academy and/or in connection with promoting the TD Academy Objectives.

13.3 By no later than 30 November 2020, the Franchisee shall provide the Secretary of State with a report:

- (a) setting out how it is currently engaging with the TD Academy and/or promoting the TD Academy Objectives; and
- (b) how it intends to engage with the TD Academy and/or promote the TD Academy Objectives during the term of the ERMA, including its proposed timing for achieving any key milestones (the "TD Academy Plan"), together with an assessment of the costs and practicalities involved in implementing the TD Academy Plan.

13.4 Following the report referred to in paragraph 13.2, the Franchisee shall implement its TD Academy Plan and shall promptly notify the Secretary of State of any material departures or failure to do so.

13.5 The Secretary of State may, from time to time:

- (a) recommend specified changes to the Franchisee's TD Academy Plan as it considers reasonable to promote the achievement of the TD Academy Objectives; and
- (b) direct the Franchisee to comply with and or implement instructions which the Secretary of State considers necessary to promote the achievement of the TD Academy Objectives.

13.6 The Franchisee shall:

- (a) take account of, and update its TD Academy Plan in respect of, any Secretary of State recommendations pursuant to paragraph 13.5(a) and implement its TD Academy Plan (as amended); and
- (b) implement and or comply with any Secretary of State instructions pursuant to paragraph 13.5(b) and update its TD Academy Plan accordingly.

13.7 During the term of the ERMA, the Franchisee shall not enter into any new contracts or other arrangements which may materially adversely affect the Franchisee's ability to comply with this paragraph 13, without the prior written consent of the Secretary of State.

402 PART 2 - PAY AND INDUSTRIAL RELATIONS AND DISPUTE HANDLING**1. Notification of the Secretary of State****1.1 In this part 2 of Schedule 6.7:**

“Collective Agreement” has the meaning given to it in the Trade Union and Labour Relations (Consolidation) Act 1992.

“Dispute Handling Policy” means the policy issued by the Secretary of State with the same name on or about the ERMA Start Date, as may be amended, supplemented or replaced from time to time.

“Employment Agreement” means the terms and conditions of employment of any Franchise Employee whether contained in or otherwise incorporated or implied, including by way of custom or practice, into any Collective Agreement, individual contract of employment, employee handbook or otherwise, in each case whether or not in writing.

“Employment Policy Framework” has the meaning given to it in paragraph 2.1 of this part 2 of Schedule 6.7.

“In-Scope Matters” means any of the following matters in relation to any Franchise Employees:

- (i) pay negotiation strategies;**
- (ii) changes to any remuneration, strategy, pension arrangements or staff benefits;**
- (iii) any proposed restructuring or redundancy plans;**
- (iv) any proposed changes affecting Franchise Employees (including proposed changes to the terms of any Employment Agreement, any proposed changes to working practices or procedures, howsoever these are recorded or have become established, and whether these apply nationally or locally) which either party reasonably believes (a) is likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or (b) could have a material negative impact on productivity; and/or (c) would not be in train passengers’ interests;**
- (v) any other matter notified to the Franchisee by the Secretary of State from time to time; and/or**
- (vi) any negotiation or consultation strategies regarding any of the matters at (i) to (v) above,**

(each, an “In-Scope Matter”).

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

“Mandate” means in relation to any In-Scope Matter any mandate formally agreed from time to time in writing (other than through email or other informal correspondence unless the email in question includes express confirmation from the Secretary of State that its content (or stipulated part of it) is to form a Mandate) between the Franchisee and the Secretary of State regarding: (i) the objective or objectives of negotiations or consultation; (ii) any parameters or constraints on such objective(s), or the substance of such negotiations or consultation; and/or (iii) how such negotiations or consultation are to be approached, structured or handled.

“Relevant Employer” means any of the Franchisee’s Affiliates to whom the Franchise Services or services which are in support of or ancillary to the Franchise Services have been subcontracted (at any tier) or delegated by the Franchisee, which employs Franchise Employees performing or in support of or ancillary to the Franchise Services.

“Reward and People Principles” means any policy or policies, high level objectives, principles, instructions or guidance issued to the Franchisee or any Relevant Employer by the Secretary of State (a) with the title “Reward and People Policy”, “Reward Policy” and/or “People Policy”; and/or (b) which relates to remuneration, pensions, benefits, working arrangements, working practices or terms and conditions of employment in respect of any Franchise Employee, in each case (a) and (b) as may be amended, supplemented or replaced by the Secretary of State from time to time.

“Trade Union” means any trade union(s) recognised by the Franchisee or any Relevant Employer in respect of Franchise Employees.

“Unrepresented Employees” has the meaning given to it in paragraph 1.7(a).

“Workers” has the meaning given to it in paragraph 10.

1.2 The Franchisee shall, and shall procure that each other Relevant Employer, shall:

- (a) as soon as reasonably practicable prior to engaging with any Trade Union or other employee representative body in relation to any In-Scope Matter; or
- (b) promptly and in any event three (3) Weekdays following any communication from any Trade Union or other employee representative body to the Franchisee (or the Relevant Employer, as applicable) in relation to any potential In-Scope Matter which is not covered by an existing Mandate,

and where reasonably practicable in each case in good time to allow for proper engagement with the Secretary of State, inform the Secretary of State of all relevant information relating to any such matters and any other information the Secretary of State may request from time to time in relation to such matters. Where there is any doubt as to whether a matter requires notification in accordance with this paragraph 1.2, the Franchisee shall, and shall procure that each other Relevant Employer shall, make a notification in any event. In determining whether to make a notification and/or what information must be provided to the Secretary of State by the

Franchisee, the Franchisee shall have regard to its obligations under paragraph 7.1 of this Part 2 of Schedule 6.7.

1.3 Following notification to the Secretary of State pursuant to paragraph 1.2 above, the Franchisee shall, and shall procure that each Relevant Employer shall, prior to any further communication with any Trade Union or other employee representative body in relation to the applicable In-Scope Matter, consult with the Secretary of State with a view to reaching agreement with the Secretary of State on a Mandate.

1.4 If:

- (a) a Mandate cannot be agreed and the Franchisee or a Relevant Employer acts or omits to act in respect of a relevant In-Scope Matter without a Mandate;**
- (b) the Secretary of State determines that the Franchisee or Relevant Employer has incorrectly treated a matter as not being an In-Scope Matter and the Franchisee or Relevant Employer acts or omits to act in respect of that matter without a Mandate; or**
- (c) the Franchisee or Relevant Employer breaches a Mandate or acts outside the scope of a Mandate in relation to the relevant In-Scope Matter,**

and, in any such case, in doing so incurs costs, or loses revenue, then the Secretary of State may in the Secretary of State's sole discretion direct that:

- (i) any loss of revenue shall be treated as Revenue Foregone; and**
- (ii) any increase in costs shall be treated as a Disallowable Cost,**

in each case where the Secretary of State in the Secretary of State's sole discretion determines that such loss of revenue or increased costs (as the case may be) arises in connection with actions taken (or omitted to be taken) by the Franchisee or Relevant Employer in relation to the relevant In-Scope Matter.

1.5 Once a Mandate has been agreed, the Franchisee shall and shall procure that each Relevant Employer shall:

- (a) act in accordance with the Mandate; and**
- (b) act in accordance with paragraph 2 below,**

in relation to the In-Scope Matter to which that Mandate relates.

1.6 For the purposes of this paragraph 1, communications shall include any verbal discussions or written communications, in each case of a formal or informal nature.

1.7 Where any Franchise Employees are not subject to collective representation (whether by a Trade Union or any other employee representative body):

- (a) any issue which would require notification in paragraphs 1.2(a) and 1.2(b) in relation to an In-Scope Matter shall require notification if the issue arises in respect of any group of more than one such unrepresented Franchise Employees ("Unrepresented Employees"); and**
- (b) when paragraph 1.7(a) applies, once a Mandate is required, the provisions of this part 2 of Schedule 6.7 shall apply in full in respect of the relevant Unrepresented Employees.**

2. Reward and People Principles

2.1 In relation to any In-Scope Matter (and whether or not a Mandate has been agreed in respect of that matter) the applicable principles for reward and working arrangements will be set out in Reward and People Principles and the Parties intend that these shall take precedence over other arrangements between the Secretary of State and the Franchisee which are in place immediately prior to the ERMA Start Date, subject to the remainder of this paragraph 2.1. Specifically:

- (a) the Franchisee agrees that the Reward and People Principles and any other policies, high level instructions or guidance that the Secretary of State may reasonably introduce or direct from time to time (including in accordance with the provisions of paragraph 6 below) (together, the "Employment Policy Framework"), shall, in the case of any conflict or inconsistency, take precedence over any arrangements which form the substance of an In-Scope Matter between the Secretary of State and the Franchisee which are in place immediately prior to the ERMA Start Date, including:**
 - (i) any multi-year pay awards;**
 - (ii) staffing budgets (whether pre-approved or otherwise, and including where any assumptions relating to pay growth may have been made); and**
 - (iii) any other agreement or arrangement relating to any In-Scope Matters,**

in each case which may take effect following the ERMA Start Date; however

- (b) without prejudice to paragraph 6.7, the Employment Policy Framework shall not take precedence over any such In-Scope Matters which, prior to the ERMA Start Date, have become legally binding on the Franchisee or Relevant Employer (whether by reason of individual contract of employment, collective agreement or by custom and practice) and, for the avoidance of doubt, including agreements made which have not yet taken effect at the ERMA Start Date or any changes which the Franchisee or Relevant Employer is required to make by law.**

- 2.2** Nothing in this part 2 of Schedule 6.7 shall prevent the Franchisee or Relevant Employer from seeking to reach agreement with any Trade Union, other employee representative body or Relevant Employees or taking such other steps as are appropriate or necessary regarding new or revised terms and conditions of employment in order to implement the Employment Policy Framework or any Mandate.
- 2.3** The Franchisee shall, and shall procure that each Relevant Employer shall, unless otherwise directed by the Secretary of State, conduct any negotiations or consultation with any Trade Union, other employee representative body or group of employees (within paragraph 1.7(a)) regarding the subject of a Mandate in accordance with the Employment Policy Framework.
- 2.4** Subject to paragraph 2.3, the Franchisee shall, or shall procure that the Relevant Employer shall, lead and have full day to day conduct of the relevant negotiations or consultation and implementation of any Mandate.
- 3. Terms of Employment**
- 3.1** In addition to the obligations set out in paragraph 1 above but subject to the provisions of paragraph 3.2 below, the Franchisee shall not, and shall procure that each other Relevant Employer shall not, without the Secretary of State's consent (which shall not be unreasonably withheld) effect, or purport or promise to effect, or otherwise implement any In-Scope Matter other than in accordance with the relevant Mandate.
- 3.2** Without limiting paragraph 3.1, subject to paragraph 3.4, the Franchisee shall not, and shall procure that each Relevant Employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld or delayed), vary, or purport or promise to vary the terms or conditions of employment with any Franchise Employee (in particular, the Franchisee shall not, and shall procure that each Relevant Employer shall not, promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where the revised terms of employment of any existing Franchise Employee may take effect on or after the ERMA Start Date if and to the extent that such terms or conditions are more favourable than the standard terms or conditions of employment of the equivalent or nearest equivalent Franchise Employee role at the date on which such revised terms and conditions are scheduled to take effect.
- 3.3** Without limiting paragraph 3.1, subject to paragraph 3.4, the Franchisee shall not, and shall procure that each other Relevant Employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld or delayed), create or grant, or promise to create or grant, terms or conditions of employment for any prospective Franchise Employee where the employment of such prospective Franchise Employee by the Franchisee or such other Relevant Employer may commence on or after the ERMA Start Date if and to the extent that:
- (a) such terms or conditions are more favourable than the standard terms or conditions of employment of the equivalent or nearest equivalent Franchise Employee role at the date on which such employment is scheduled to commence; and

- (b) if such terms or conditions were granted to such equivalent Franchise Employee already employed by the Franchisee by way of variation to their terms or conditions of employment, the Franchisee would be in contravention of paragraph 3.2.
- 3.4 For the purposes of matters falling within paragraphs 3.2 and 3.3, no consent will be required from the Secretary of State in respect of any changes or proposed changes made or proposed in the ordinary course of business in accordance with human resources policies (in relation to the day to day management of the Franchisee's or Relevant Employer's business) which exist prior to the ERMA Start Date which: (a) are not likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or (b) will not have a material negative impact on productivity; and/or (c) are not contrary to train passengers' interests..
4. In-Scope Matters
- 4.1 The Secretary of State may at any time, in the Secretary of State's sole discretion, determine that a matter is, or is not, an In-Scope Matter. Save where either paragraph 4.4 or 4.5 applies, a determination that a matter is an In-Scope Matter will be final and conclusive but will not prevent the Parties agreeing that a matter is no longer an In-Scope Matter.
- 4.2 Without prejudice to paragraphs 3.2 and 3.3, if a matter is not an In-Scope Matter, no Mandate is required. For these purposes, matters in respect of which a Mandate is not required will include changes to working practices made in the ordinary course of business in accordance with human resources policies (in relation to the day to day management of the Franchisee's or Relevant Employer's business) which exist prior to the ERMA Start Date which: (a) are not likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or (b) will not have a material negative impact on productivity; and/or (c) are not contrary to train passengers' interests.
- 4.3 Where a Franchisee (or a Relevant Employer) is in any doubt as to whether any matter is an In-Scope Matter requiring a Mandate, it must, or must procure that the Relevant Employer shall, inform the Secretary of State in good time prior to steps being taken to implement such matter or change and the Franchisee must, or must procure that the Relevant Employer shall, if requested by the Secretary of State, provide an explanation of why it believes the proposed matter or change is not an In-Scope Matter requiring a Mandate. Thereafter, the Secretary of State may make a determination in accordance with paragraph 4.1. Provided the Secretary of State, acting reasonably, is satisfied that the Franchisee complied with its obligations under this paragraph 4.3 and paragraph 7.1, the Secretary of State's determination shall, subject to paragraph 4.5, be final and conclusive. Where the Secretary of State has determined that a matter is an In-Scope Matter, nothing will prevent the Parties subsequently agreeing that the matter is no longer an In-Scope Matter.
- 4.4 Where a matter is not an In-Scope Matter, the Parties acknowledge and agree that further developments in relation to, and/or escalation of, that matter may be such that it could result in (a) material industrial relations risks (including a risk of Industrial Action); and/or (b) a material negative impact on productivity; and/or (c) be contrary to train passengers' interests. In any such event, the Franchisee will make a notification to the

Secretary of State in accordance with paragraph 4.3 with a view to seeking a determination from the Secretary of State as to whether the matter has become an In-Scope Matter.

4.5 Any determination by the Secretary of State that any matter is an In-Scope Matter is conditional on the Secretary of State, acting reasonably, being and remaining satisfied that the Franchisee and, where relevant, the Relevant Employer have disclosed all relevant information relating to such matter and complying and continuing to comply with the duty in paragraph 7.1. If, in the Secretary of State's opinion, acting reasonably, there is or has been any material non-disclosure of relevant information or a material breach of paragraph 7.1 by the Franchisee or Relevant Employer, the Secretary of State may determine that the Mandate is void in which case for the purposes of this part 2 of Schedule 6.7 costs, losses and revenues shall be treated as if that Mandate had never been agreed and paragraph 1.4(a) of this part 2 of Schedule 6.7 shall apply in respect of any acts or omissions of the Franchisee, or the Relevant Employer, in relation to that matter. The Parties acknowledge and agree that where this paragraph 4.5 applies, the Secretary of State may take such action and/or instruct such changes as it considers reasonably necessary to correct the apportionment of costs, losses and revenues between the Parties.

5. Industrial Action

5.1 The Franchisee shall, and shall procure that each Relevant Employer shall, comply with the Dispute Handling Policy. Without prejudice to any obligations under the Dispute Handling Policy, to the extent the Franchisee, acting reasonably, believes that Industrial Action is likely to occur as a result of its (or any Relevant Employer's) compliance with any aspect of this part 2 of Schedule 6.7 (including any Mandate agreed pursuant to it), or for any other reason, it shall promptly notify the Secretary of State of its reason for that belief and the effect, or the anticipated effect, of such event on the performance of the Franchise Services and provide the Secretary of State with such further information as the Secretary of State may request.

5.2 As soon as reasonably practicable following a notification set out in paragraph 5.1 above, and in any event within three (3) Weekdays following such notification, the Franchisee shall propose a process it intends to adopt to deal with the relevant Industrial Action in accordance with and subject to the Dispute Handling Policy. The Franchisee and the Secretary of State shall use reasonable endeavours to agree how the relevant Industrial Action shall be handled, bearing in mind the Dispute Handling Policy, provided however that the Franchisee's handling of such Industrial Action will be subject always to the Secretary of State's direction, such agreement and/or direction being the "Dispute Handling Plan". The Franchisee shall, and shall procure that each Relevant Employer shall, act in accordance with the Dispute Handling Plan.

5.3 If:

(a) agreement is not reached regarding how relevant Industrial Action is to be handled; or

- (b) in the event that Industrial Action occurs which the Secretary of State determines (at the Secretary of State's sole discretion, acting reasonably), has arisen as a result of the Franchisee or any Relevant Employer not complying with its or their obligations under this part 2 of Schedule 6.7 (including any Mandate agreed pursuant to it, any failure to act in accordance with the Dispute Handling Plan, to make a notification required by paragraph 1.2 or to provide all relevant information in relation to such notification and/or to comply with paragraphs 7.1 and 7.3,

either of which has resulted in a loss of revenue, an increase or decrease in costs, or a combination of the foregoing, as a consequence (direct or otherwise) of the disruption to Passenger Services (however so related), the Secretary of State may in the Secretary of State's sole discretion:

- (c) if the Cost Target Methodology or the Profit Target Methodology applies in relation to the Financial Performance Fee during the PBF Assessment Period in which such event occurs, designate such event as a Category A Target Amendment Trigger Event;
- (d) direct that any such increase in costs shall be treated as Disallowable Costs and the Franchisee shall not, in any circumstances, be entitled to claim back such costs from the Secretary of State whether pursuant to Schedule 8.1A (*Franchise Payments*) or otherwise; and/or
- (e) direct that any such lost revenue shall be treated as Revenue Foregone.

5.4 To the extent that the Franchisee:

- (a) has complied with this part 2 of Schedule 6.7 (including any applicable Mandate); and

- (b) has complied with the Dispute Handling Plan,

then

- (c) the Secretary of State, will not treat any increase in costs or loss of revenue of the Franchisee arising from the relevant Industrial Action (however caused and of whatever nature) as a Disallowable Cost or Revenue Foregone (respectively); and
- (d) if the Cost Target Methodology or the Profit Target Methodology applies in relation to the Financial Performance Fee during the PBF Assessment Period in which relevant Industrial Action occurs, the occurrence of such Industrial Action shall constitute a Category A Target Amendment Trigger Event,

in circumstances where the Secretary of State is satisfied that the Franchisee has acted reasonably in taking all reasonable steps (and procuring that any Relevant Employer has taken all reasonable steps) to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, the Franchisee has taken all reasonable steps (and has procured that any Relevant Employer has taken all reasonable steps) to mitigate its effects.

6. Reform**6.1 The Franchisee shall, and shall procure that each Relevant Employer shall:**

- (a) co-operate with the Secretary of State as may be required by the Secretary of State from time to time in respect of the planning, development and/or implementation (as applicable) of industry reform with respect to the Employment Policy Framework and the Dispute Handling Policy, including co-operating and collaborating with other Train Operators and other organisations in respect of planning, developing and implementing such reforms to the extent permitted by applicable laws; and**
- (b) provide to the Secretary of State, such information and data in relation to the Employment Policy Framework and/or the Dispute Handling Policy (or any aspect of it/them) as the Secretary of State may require from time to time.**

6.2 The Franchisee shall, and shall procure that each Relevant Employer shall, use all reasonable endeavours to introduce, implement and comply with such amendments to the Dispute Handling Policy, the Employment Policy Framework generally and any other applicable industry agreements (including any successor arrangements or any other agreement between the Franchisee and one or more third parties relating to the sustainability of the Franchisee's staffing model, people practices, engagement with related industry stakeholders or any related matter) as may be directed by the Secretary of State from time to time.

6.3 During the term of this ERMA, the Franchisee shall not, and shall procure that each Relevant Employer shall not, enter into any new Employment Agreements otherwise than in accordance with the terms of this part 2 of Schedule 6.7 (including any applicable Mandate) and the Employment Policy Framework without the prior written consent of the Secretary of State.

7. Duties of the Franchisee

7.1 In relation to any matters dealt with in this part 2 of Schedule 6.7, the Franchisee shall, and shall procure that each Relevant Employer shall, deal with the Secretary of State in an open and cooperative way, and must disclose to the Secretary of State on an ongoing basis anything relating to the Franchise Employees (and any Trade Union or other employee representative body representing any such employees) of which the Secretary of State would reasonably expect notice in respect of anything which might reasonably be expected to be relevant to an In-Scope Matter.

7.2 The Franchisee shall (and shall procure that each Relevant Employer shall) act within the spirit of this part 2 of Schedule 6.7 in its communications and dealings with any Trade Union, employee representative body or any Franchise Employee, both locally and nationally.

7.3 The Franchisee's duty to act as a Good and Efficient Operator shall apply to the discharge of its obligations under this part 2 of Schedule 6.7.

8. Co-operation

Where the Franchisee or Relevant Employer reasonably considers that complying with any aspect of this Schedule, including any aspect of the Employment Policy Framework or any Mandate, will cause it to breach any legal obligation of the Franchisee or Relevant Employer in their capacity as employer (whether arising under legislation or at common law) including breaches of legislation relating to unlawful discrimination or equal pay, the Secretary of State and Franchisee shall work in cooperation (and/or, as appropriate, the Secretary of State shall, and the Franchisee shall use reasonable endeavours to procure that the Relevant Employer shall, work in cooperation) with a view to agreeing an approach to, as the case may be, compliance with such obligations under this part 2 of Schedule 6.7 or avoidance or mitigation of the risk of such breach by the Franchisee or Relevant Employer. Once such an approach is agreed, the Franchisee shall, and will procure that the Relevant Employer shall, implement it on its terms.

9. Disallowable Costs

Save as provided in this part 2 of Schedule 6.7 or as expressly agreed with the Secretary of State, any losses and liabilities (including costs, charges, penalties, compensation or similar payments) incurred as result of termination of a contract of employment of, or reaching any settlement or compromise with, a Franchisee Employee shall be Disallowable Costs.

10. Workers

To the extent that the Franchisee or any Relevant Employer engages individuals to work on the Franchise Services as workers (howsoever "workers" is defined in relevant English employment legislation from time to time, but excluding "agency workers" as defined in the Agency Worker Regulations 2010, as amended from time to time) ("Workers") rather than employees, the provisions in this part 2 of Schedule 6.7 shall be deemed to cover such Workers. In such circumstances, the engaging party shall be the Franchisee or the Relevant Employer, as applicable, and references to terms and conditions of employment shall be construed as references to terms and conditions of engagement and references to Franchise Employees shall include such workers.

SCHEDULE 7
PERFORMANCE BENCHMARKS

Schedule 7.1:	Operational Performance
Schedule 7.2:	Customer Experience and Engagement
	Appendix 1: NRPS Benchmark Table
	Appendix 2: Calculation of Additional Expenditure
Schedule 7.3:	Service Quality Regime
	Appendix 1: Service Quality Schedules
	Appendix 2: Service Quality Areas/SQR Benchmarks/Service Quality Indicators/Weightings
	Appendix 3: CIM Service Quality Areas/CIM SQR Benchmarks/CIM Service Quality Indicators/Weightings

⁴⁰³SCHEDULE 7.1

OPERATIONAL PERFORMANCE

1. Definitions and Track Access Agreement

- 1.1 For the purposes of this Schedule 7.1 only, the following words and expressions shall have the following meanings unless otherwise set out in Clause 3 (*Definitions*):

"Cancellations Re-Calculation"	has the meaning given to it in paragraph 3.1(b) of this Schedule 7.1;
"Draft Action Plan"	has the meaning given to it in paragraph 9.1(b)(i) of this Schedule 7.1;
"Initial Cancellations Calculation"	has the meaning given to it in paragraph 3.1(a) of this Schedule 7.1;
"Initial TOC Minutes Delay Calculation"	has the meaning given to it in paragraph 4.1(a) of this Schedule 7.1;
"Route-Specific Required Performance Improvement"	has the meaning given to it in paragraph 9.1(a)(ix) of this Schedule 7.1;
"TOC Minutes Delay Re-Calculation"	has the meaning given to it in paragraph 4.1(b) of this Schedule 7.1;
"Undisputed Cancellation"	means a Cancellation that is not a Disputed Cancellation;
"Undisputed Network Rail Cancellation"	means a Network Rail Cancellation that is not a Disputed Cancellation;
"Undisputed Network Rail Partial Cancellation"	means a Network Rail Partial Cancellation that is not a Disputed Partial Cancellation; and
"Undisputed Partial Cancellation"	means a Partial Cancellation that is not a Disputed Partial Cancellation.

1.2 NOT USED.

1.3 NOT USED.

1.4 NOT USED.

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

1.5 NOT USED.

1.6 NOT USED.

1.7 NOT USED.

1.8 NOT USED.

1.9 NOT USED.

1.10 NOT USED.

1.11 NOT USED.

1.12 Track Access Agreement

The Franchisee agrees with the Secretary of State to comply with the requirements of the Track Access Agreement in respect of cancellations attribution (Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations) and Minutes Delay attribution.

1.13 NOT USED.

1.14 Notice of Performance Results

As soon as reasonably practicable after the end of each Reporting Period and each PBF Assessment Period, the Secretary of State shall notify the Franchisee of the results of the calculations performed pursuant to this Schedule 7.1.

2. Reporting Requirements

The Franchisee shall at the end of each Reporting Period and in accordance with the relevant requirements of Appendix 2 (*Operational Performance Information*) of Schedule 11.2 (*Management Information*) report to the Secretary of State the operational information as specified in Appendix 2 (*Operational Performance Information*) of Schedule 11.2 (*Management Information*) and such further information as may be required for the purposes of the Secretary of State undertaking any of the calculations required to be performed by the Secretary of State pursuant to this Schedule 7.1.

3. Cancellation Calculation

3.1 For each Reporting Period during the term of the ERMA the Secretary of State shall:

(a) calculate the Franchisee's performance in respect of Cancellations (and, if applicable, calculate the Franchisee's performance in respect of Cancellations against the OP Target for Cancellations) in accordance with the formula set out in Table 1 below (each an "Initial Cancellations Calculation"); and

- (b) other than for the first and second Reporting Periods following the ERMA Start Date, re-calculate the Franchisee's performance in respect of Cancellations (and, if applicable, re-calculate the Franchisee's performance in respect of Cancellations against the OP Target for Cancellations) for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 1 below (each a "Cancellations Re-Calculation").
- 3.2 In the event that a Cancellations Re-Calculation demonstrates that the Initial Cancellations Calculation or an earlier Cancellations Re-Calculation was incorrect, the Initial Cancellations Calculation and/or the relevant earlier Cancellations Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest Cancellations Re-Calculation.
- 3.3 If the Performance Based Fee attributable to the Cancellations Operational Performance Component for the relevant PBF Assessment Period is calculated using the Quantified Target Methodology, the Franchisee shall not be entitled to receive payment of such element of the Performance Based Fee for the relevant PBF Assessment Period until the Secretary of State has undertaken all Cancellations Re-Calculations in relation to that PBF Assessment Period.

Table 1		
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> <p>(a) a Cancellation shall count as one (1);</p> <p>(b) a Partial Cancellation shall count as zero point five (0.5); and</p> <p>(c) any Cancellations or Partial Cancellations during that Reporting Period which were caused by:</p> <p style="padding-left: 40px;">(i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or</p> <p style="padding-left: 40px;">(ii) the occurrence or continuing effect of a Force Majeure Event,</p> <p>shall, if the Franchisee has complied with paragraph 17.1 of this Schedule 7.1, be disregarded in determining such total number of Cancellations and Partial Cancellations;</p>	
C	is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, disregarding, if the Franchisee has complied with paragraph 17.1 of	

Table 1	
	<p>this Schedule 7.1, any Cancellations or Partial Cancellations during that Reporting Period which were caused by:</p> <p>(a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or</p> <p>(b) the occurrence or continuing effect of a Force Majeure Event.</p>

4. TOC Minutes Delay Calculations

4.1 For each Reporting Period during the term of the ERMA the Secretary of State shall:

- (a) calculate the Franchisee's performance in respect of TOC Minutes Delay (and, if applicable, calculate the Franchisee's performance in respect of TOC Minutes Delay against the OP Target for TOC Minutes Delay) in accordance with the formula set out in Table 2 below (each an "Initial TOC Minutes Delay Calculation"); and**
- (b) other than for the first and second Reporting Periods following the ERMA Start Date, re-calculate the Franchisee's performance in respect of TOC Minutes Delay (and, if applicable, re-calculate the Franchisee's performance in respect of TOC Minutes Delay against the OP Target for TOC Minutes Delay) for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 2 below (each a "TOC Minutes Delay Re-Calculation").**

4.2 In the event that a TOC Minutes Delay Re-Calculation demonstrates that the Initial TOC Minutes Delay Calculation or an earlier TOC Minutes Delay Re-Calculation was incorrect, the Initial TOC Minutes Delay Calculation and/or the relevant earlier TOC Minutes Delay Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest TOC Minutes Delay Re-Calculation.

4.3 If the Performance Based Fee attributable to the TOC Minutes Delay Operational Performance Component for the relevant PBF Assessment Period is calculated using the Quantified Target Methodology, the Franchisee shall not be entitled to receive payment of such element of the Performance Based Fee for the relevant PBF Assessment Period until the Secretary of State has undertaken all TOC Minutes Delay Re-Calculations in relation to that PBF Assessment Period.

Table 2	
$\frac{MD_{SRP}}{H_{SRP}}$	
where:	
MD_{SRP}	is the sum of Minutes Delay that are attributable to the Franchisee in that Reporting Period.
H_{SRP}	is ascertained as follows:
	$\frac{V}{1000}$
	where:
V	is the sum of Actual Train Mileage in that Reporting Period.

5. Short Formations

5.1 Short Formation Calculation

For each Reporting Period during the Franchise Term the Secretary of State shall calculate the Franchisee's performance in respect of Short Formations (and, if applicable, calculate the Franchisee's performance in respect of Short Formations against the OP Target for Short Formations) in accordance with the following formula:

Table 3	
A^{SF}	= $\frac{B_{SF}}{C_{SF}} \times 100$
where:	
B_{SF}	is the total number of 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 Franchisee has complied with paragraph 7.1 of this Schedule 7.1, any such Passenger Services which were operated in that way as a result of:
	<ul style="list-style-type: none"> (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event; and
C_{SF}	is the total number of Passenger Services scheduled to be operated in that Reporting Period disregarding, if the Franchisee has

	<p>complied with paragraph 7.1 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:</p> <p>(a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or</p> <p>(b) the occurrence or continuing effect of a Force Majeure Event.</p>
--	--

5.2 For the purposes of the calculation to be undertaken by the Secretary of State pursuant to paragraph 5.1 above:

- (a) if and to the extent that any 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.

6. Calculations

The Secretary of State shall perform the calculations referred to in paragraphs 3.1, 4.1 and 5.1 of this Schedule 7.1 rounded to two (2) decimal places with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

7. Service Recovery Plans and Force Majeure

7.1 The Franchisee shall, within eight (8) weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such 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.

7.2 In performing the calculations pursuant to paragraph 4.1 of this Schedule 7.1 the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

8. Consequences for Poor Performance – Benchmarks

8.1 The Franchisee shall ensure that its performance in each Reporting Period as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, is not equal to or worse than each Breach Performance Level in respect of the relevant PBF Assessment Period.

8.2 Without limiting the provisions of paragraph 8.4 below, if in any Reporting Period the Franchisee's performance, as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, is equal to

or worse than any Breach Performance Level relating to an Enforcement Benchmark in respect of the relevant Reporting Period, then a contravention of the Franchise Agreement shall occur and the Secretary of State may serve a Remedial Plan Notice in accordance with the provisions of paragraph 2 (*Remedies for Contraventions of the Franchise Agreement*) of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*).

- 8.3** For the purposes of paragraph 4.2(c) (*Remedial Plans*) of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*) the steps to be proposed by the Franchisee pursuant to that paragraph are those which ensure that the Franchisee's performance against the relevant Enforcement Benchmark will be better than the Breach Performance Level relating to such Enforcement Benchmark.
- 8.4** Certain consequences of the Franchisee's performance being equal to or worse than the Breach Performance Levels and Default Performance Levels relating to each Enforcement Benchmark are set out in Schedule 10 (*Remedies, Events of Default and Termination Events*).
- 8.5** This paragraph 8 shall only apply if the Parties have agreed (or the Secretary of State has determined, if applicable) that the Quantified Target Methodology shall apply to the Operational Performance Fee pursuant to paragraph 4 (*Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period*) of Schedule 8.1B (*Performance Based Fee*).

9. Consequences for Poor Performance

9.1 Action Plans

(a) If in any three (3) consecutive Reporting Periods the:

- (i) Franchisee's performance against the OP Target for Cancellations is worse than the OP Target for Cancellations; and/or**
- (ii) Franchisee's performance against the OP Target for TOC Minutes Delay is worse than the OP Target for TOC Minutes Delay; and/or**
- (iii) Franchisee's performance against the OP Target for Short Formations is worse than the OP Target for that Short Formations; and/or**
- (iv) Actual T-3 Performance Level is worse than the OP Target for T-3; and/or**
- (v) Actual T-15 Performance Level is worse than the OP Target for T-15;**
- (vi) Actual All Cancellations Performance Level is worse than the OP Target for All Cancellations; and/or**

- (vii) **Secretary of State considers the Franchisee's performance on a Route or group of Routes (as applicable) to be unacceptably poor notwithstanding the fact that the Franchisee's overall performance in respect of any applicable target or level measured pursuant to this Schedule 7.1 meets the relevant target or threshold,**

then the Secretary of State shall be entitled to request from the Franchisee, a plan in order to secure:

- (viii) **in respect of paragraphs 9.1(a)(i) to (vi) above, a Required Performance Improvement; and**
 - (ix) **in respect of paragraph 9.1(a)(vii) above, an improvement of the Franchisee's performance level on a Route or group of Routes (as applicable) to the satisfaction of the Secretary of State (acting reasonably) (a "Route-Specific Required Performance Improvement").**
- (b) **Within one (1) month of the Secretary of State's request pursuant to paragraph 9.1(a) above, the Franchisee shall:**
- (i) **produce, at its own cost (which cost shall be a Disallowable Cost pursuant to Appendix 1 (*Disallowable Costs*) to Schedule 8.1A (*Franchise Payments*)), and deliver to the Secretary of State its draft plan for securing a Required Performance Improvement and/or Route-Specific Required Performance Improvement (as applicable) (the "Draft Action Plan"); and**
 - (ii) **subject to paragraph 9.1(d)(iv) below:**
 - (A) **obtain the Secretary of State's approval of the Draft Action Plan in accordance with paragraph 9.1(d) below; and**
 - (B) **commence the implementation of a resulting Action Plan.**
- (c) **The Draft Action Plan shall contain specific tangible action points and indicate in the case of each action point:**
- (i) **how that action will contribute to achieving the Required Performance Improvement and/or Route-Specific Required Performance Improvement (as applicable);**
 - (ii) **where the action is to be implemented;**
 - (iii) **when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the Draft Action Plan shall include specific review dates;**
 - (iv) **how performance of the action is to be measured; and**

- (v) set out the additional expenditure associated with each action.
 - (d) The Secretary of State shall be entitled to:
 - (i) request further information from the Franchisee with respect to its Draft Action Plan and the Franchisee shall submit such further information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or
 - (ii) propose amendments to the Draft Action Plan and the Parties shall agree and, in the absence of agreement, the Secretary of State shall reasonably determine the amendments to the Draft Action Plan, in which case paragraph 9.1(e) below shall apply; or
 - (iii) accept the Draft Action Plan, in which case paragraph 9.1(e) below shall apply; or
 - (iv) not accept the Draft Action Plan, in which case the Franchisee shall not be obliged to undertake any further action with respect to its Draft Action Plan.
 - (e) The Draft Action Plan as agreed, determined or accepted by the Secretary of State (as the case may be) in accordance with paragraph 9.1(d) above, shall be referred to as the "Action Plan". The Franchisee shall implement the Action Plan in accordance with its terms.
 - (f) The Franchisee acknowledges and agrees that the approval or lack of approval by the Secretary of State of each Draft Action Plan as contemplated in this paragraph 9.1 shall not relieve the Franchisee of its obligations under this Schedule 7.1 or any other provisions of the Franchise Agreement.
- 9.2 Except where an Action Plan is required and implemented pursuant to paragraph 9.1(a)(vii), this paragraph 9 shall only apply if the Parties have agreed (or the Secretary of State has determined, if applicable) that the Quantified Target Methodology shall apply to the Operational Performance Fee pursuant to paragraph 4 (*Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period*) of Schedule 8.1B (*Performance Based Fee*).
10. Allocation of Disputed Cancellations/Disputed Partial Cancellations
- 10.1 For the purpose of performing the calculations referred to in paragraph 3.1 of this Schedule 7.1 and/or paragraph 2 (*Operational Performance*) of Appendix 5 (*Quantified Target Methodology*) of Schedule 8.1B (*Performance Based Fee*) the Secretary of State shall allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the

Franchisee and Network Rail at the end of a Reporting Period in the following ratio of:

Table 4	
F : G	
where:	
F	is the total number of Undisputed Cancellations and/or Undisputed Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Franchisee) during such twelve (12) preceding Reporting Periods; and
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.

10.2 NOT USED.

11. Allocation of Disputed Minutes Delay

11.1 Where the attribution of any Minutes Delay is in dispute between Network Rail and the Franchisee at the end of a Reporting Period the Secretary of State shall for the purpose of performing the calculations referred to in paragraph 4.1 of this Schedule 7.1 and/or paragraph 2 (*Operational Performance*) of Appendix 5 (*Quantified Target Methodology*) of Schedule 8.1B (*Performance Based Fee*), allocate any disputed Minutes Delay between the Franchisee and Network Rail in the ratio of:

Table 5	
FF : GG	
where:	
FF	is the total number of undisputed Minutes Delay, in each case, from the twelve (12) preceding Reporting Periods that are attributable to the Franchisee including any disputed attributions which were resolved or determined (and attributed to the Franchisee) during such twelve (12) preceding Reporting Periods; and
GG	is the total number of undisputed Minutes Delay, in each case from the twelve (12) preceding Reporting Periods that are attributable to Network Rail including any disputed attributions which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.

11.2 NOT USED.

Appendix 1 to Schedule 7.1

[DELETED⁴⁰⁴]

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

Appendix 2 to Schedule 7.1

[DELETED⁴⁰⁵]

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

Appendix 3 to Schedule 7.1

[DELETED⁴⁰⁶]

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

Appendix 4 to Schedule 7.1

[DELETED⁴⁰⁷]

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

Appendix 5 to Schedule 7.1

[DELETED⁴⁰⁸]

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

Appendix 6 to Schedule 7.1

[DELETED⁴⁰⁹]

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

Appendix 7 to Schedule 7.1

[DELETED⁴¹⁰]

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

Appendix 8 to Schedule 7.1

[DELETED⁴¹¹]

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

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*):

"Additional Expenditure" or **"AD"** has the meaning given to it in paragraph 6.1 of this Schedule 7.2 (*Customer Experience and Engagement*);

"Alternative NRPS" has the meaning given to it in paragraph 2.6 of this Schedule 7.2 (*Customer Experience and Engagement*);

"Existing Expenditure" has the meaning given to it in paragraph 6.2 (a) of this Schedule 7.2 (*Customer Experience and Engagement*);

"First Additional Expenditure Year" has the meaning given to it in paragraph 6.2 (a) of this Schedule 7.2 (*Customer Experience and Engagement*);

"NRPS Action Plan" has the meaning given to it in paragraph 5.1 of this Schedule 7.2 (*Customer Experience and Engagement*);

"NRPS Benchmark" means, in respect of a relevant Franchisee Year:

- (a) the benchmark for each NRPS Measure relating to "Stations (S)", "Trains (T)", and "Customer Service (C)" and for each NRPS Service Group; and
- (b) the benchmark for the NRPS Measure relating to "Dealing With Delays (D)",

in each case as set out in the NRPS Benchmark Table;

"NRPS Benchmark Table" means:

- (a) in respect of the NRPS Service Group referred to in paragraph (a) of the definition of NRPS Service Group each of tables 1, 2 and 3 as set out in Part 1 of Appendix 1 of this Schedule 7.2 (*Customer Experience and Engagement*);
- (b) in respect of the NRPS Service Group referred to in paragraph (b) of the definition of NRPS Service Group each of tables 1 and 2 as set out in Part 2 of Appendix 1 of this Schedule 7.2 (*Customer Experience and Engagement*); and
- (c) in respect of the NRPS Measure relating to "Dealing with Delays (D)" table 1 as set out in Part 3 of Appendix 1 of this Schedule 7.2 (*Customer Experience and Engagement*);

"NRPS Measure" means each of the factors more particularly described in the Passenger Survey Methodology and grouped as "Stations (S)", "Trains (T)", "Customer Service (C)" and "Dealing With Delays (D)";

“NRPS Service Group” means:

- (a) for the period from the Start Date until the Passenger Change Date occurring in December 2021, each of the service groups set out in the Passenger Survey Methodology and more particularly described as:
 - (i) Midland Main Line (MML) services;
 - (ii) Inter-urban (Liverpool – Norwich) services; and
 - (iii) the Local services; and
- (b) for the period from the Passenger Change Date occurring in December 2021 until the end of the Franchise Period each of the service groups set out in the Passenger Survey Methodology and more particularly described as:
 - (i) Midland Main Line (MML) services; and
 - (ii) the Local services,

provided that where the Secretary of State serves the Franchisee with written notice requiring the Franchisee to continue to operate the Liverpool to Nottingham Passenger Services in exercise of his rights pursuant to paragraph 9.5 of Part 3 of Schedule 6.1 (*Franchise Specific Obligations*) then NRPS Service Group shall have the meaning set out in paragraph (a) of this definition;

“Required 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 equal to or higher than the related NRPS Benchmark; and

“RPIX” has the meaning given to it in paragraph 6.2(a) of this Schedule 7.2 (*Customer Experience and Engagement*).

2. Conduct of National Rail Passenger Surveys

2.1 The Franchisee agrees with the Secretary of State that:

- (a) the Passengers’ Council may measure the level of passenger satisfaction with the Franchise Services through National Rail Passenger Surveys;
- (b) the Passengers’ Council shall determine how, when (normally twice per annum) and where National Rail Passenger Surveys are to be carried out;
- (c) the Franchisee shall grant access on trains or at stations to the Passengers’ Council (or its representatives and agents) to carry out National Rail Passenger Surveys;
- (d) the Franchisee shall co-operate with the Passengers’ Council (in such manner as the Passengers’ Council may reasonably request or as the Secretary of State may reasonably direct) in order to enable the Passengers’ Council to carry out National Rail Passenger Surveys; and
- (e) the Passengers’ Council and/or the Secretary of State may, from time to time, publish the results of each National Rail Passenger Survey.

- 2.2 The Secretary of State shall ensure or shall procure that:
- (a) the findings of any National Rail Passenger Survey are made available by the Passengers' Council to the Franchisee within a reasonable period of time after the completion of each such survey and shall use all reasonable endeavours to procure that those findings are made available in a timely manner to enable the Franchisee to comply with its obligations under paragraph 2.3; and
 - (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

2.3 ⁴¹²NOT USED.

- 2.4 It is agreed by the Franchisee that, subject to paragraph 2.5, the methodology to be adopted by the Passengers' Council in conducting any such National Rail Passenger Survey shall be as described in the document in the agreed terms marked **PSM** (the "**Passenger Survey Methodology**");

2.5 ⁴¹³NOT USED.

- 2.6 ⁴¹⁴**If the Passengers' Council ceases to undertake National Rail Passenger Surveys then the relevant National Rail Passenger Survey for the purposes of this Schedule 7.2 and Schedule 8.1B (*Performance Based Fee*) shall be such other passenger survey as the Secretary of State may, after consultation with the Franchisee, reasonably determine to be appropriate in the circumstances (the "Alternative NRPS"). The provisions of this Schedule 7.2 and Schedule 8.1B (*Performance Based Fee*) shall apply in respect of any Alternative NRPS and for these purposes the Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NRPS.**

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

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

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

3. ⁴¹⁵**NOT USED.**
4. ⁴¹⁶**NOT USED.**
5. ⁴¹⁷**NOT USED.**
6. ⁴¹⁸**NOT USED.**
7. ⁴¹⁹**NOT USED.**
8. ⁴²⁰**Consultations**

The Franchisee shall undertake consultations from time to time as required with:

- (a) **passengers, potential passengers, Stakeholders and other users of the rail network; and**
- (b) **persons who are covered by an Accessible Travel Policy; and**
- (c) **persons with other protected characteristics within the meaning of the EA,**

for the purposes of the Customer and Stakeholder Engagement Strategy, the Customer Report and the CCI Scheme.

9. **Customer and Stakeholder Engagement Strategy**

- 9.1 The Franchisee shall comply with the Customer and Stakeholder Engagement Strategy from the Start Date.
- 9.2 The Franchisee shall:
 - (a) undertake and complete a review of the Customer and Stakeholder Engagement Strategy during each of the fourth (4th) and seventh (7th) Franchisee Years; and
 - (b) provide the Secretary of State with any proposed revisions to the Customer and Stakeholder Engagement Strategy arising out of such review by no later than the end of each such Franchisee Year.

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

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

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

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

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

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

9.3 The aim of the review referred to in paragraph 9.2 shall be to update the Customer and Stakeholder Engagement Strategy to reflect lessons learned in the period since the Start Date or the previous review of the Customer and Stakeholder Engagement Strategy (as applicable) and to ensure that the Customer and Stakeholder Engagement Strategy achieves effective passenger engagement.

9.4 Any revisions to the Customer and Stakeholder Engagement Strategy shall require the consent of the Secretary of State (such consent not to be unreasonably withheld or delayed).

10. ⁴²¹**Customer Report**

10.1 Subject to paragraph 10.4, the Franchisee shall, in accordance with the requirements of paragraph 10.2 and paragraph 10.3 below, publish a Customer Report in such readily accessible formats as the Secretary of State may reasonably require (including in booklet or other similar hard copy formats (if and to the extent that the Secretary of State instructs the Franchisee to re-commence the publication of hard copy formats during the term of the ERMA), in electronic formats (such as on the Franchisee's website, through social media channels and by email)), in each case in accordance with the Customer and Stakeholder Engagement Strategy and the provisions of paragraph 8 (*Publication of Performance Data*) and paragraph 9 (*Publication of Complaints and Faults Handling Data*) of Schedule 1.4 (*Passenger Facing Obligations*) and paragraph 16 of Schedule 11.2 (*Management Information*).

10.2 The Franchisee shall publish a Customer Report as follows:

(a) in respect of the first (1st) Franchisee Year:

(i) where such Franchisee Year is less than seven (7) Reporting Periods, the Franchisee shall only be required to publish a Customer Report for that Franchisee Year by no later than the Start Date; or

(ii) where such Franchisee Year is less than thirteen (13) Reporting Periods but equal to or more than seven (7) Reporting Periods, the Franchisee shall be required to publish two (2) Customer Reports in that Franchisee Year, the first Customer Report to be published by no later than the Start Date and the second Customer Report to be published before the end of that first Franchisee Year; and

(b) subject to paragraph 10.4, in respect of each subsequent Franchisee Year, the Franchisee shall be required to publish a Customer Report at least twice in that Franchisee Year provided that where any such subsequent Franchisee Year is less than thirteen (13) Reporting Periods the Franchisee shall be required to publish a Customer Report only once in respect of that Franchisee Year.

10.3 Without prejudice to the obligations of the Franchisee as specified in each of paragraphs 12.1 and 12.3 of this Schedule 7.2, paragraphs 8.3 and 9 of Schedule 1.4 (*Passenger Facing Obligations*) and paragraph 16 of

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

Schedule 11.2 (*Management Information*), the Secretary of State and the Franchisee acknowledge and agree that in respect of each Franchisee Year to which the provisions of paragraph 10.2(b) apply, the first Customer Report to be published for that Franchisee Year shall be prepared in respect of the first six (6) Reporting Periods of that Franchisee Year and the second Customer Report to be published for that Franchisee Year shall be prepared in respect of the last seven (7) Reporting Periods of that Franchisee Year.

10.4 During the EMA Period, the Franchisee shall, to the extent that COVID-19 Guidance and Regulation deem it necessary, only be required to publish the Customer Report electronically.

11. Customer and Communities Investment Scheme

11.1 No later than three (3) months prior to the start of each CCI Period the Franchisee shall provide to the Secretary of State details of those initiatives, works or proposals (each a "**CCI Scheme**") which the Franchisee proposes to undertake in that CCI Period in order to resolve or mitigate issues raised with the Franchisee through the consultations as carried out pursuant to paragraph 8 (*Consultations*). The Franchisee shall use all reasonable endeavours to propose, in respect of each CCI Period, CCI Schemes with an aggregate projected CCI Scheme Shortfall of not less than the aggregate of the CCI Amount for each Franchisee Year in the relevant CCI Period.

11.2 In relation to each CCI Scheme proposed by the Franchisee pursuant to paragraph 11.1 the Franchisee 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 Franchisee shall provide the Secretary of State with such further information in relation to any CCI Scheme proposed by the Franchisee pursuant to paragraph 11.1 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 this paragraph 11.4. Without limitation, the Secretary of State may withhold his approval to any proposed CCI Scheme which:

- (a) has not been identified and/or developed in accordance with the Customer and Stakeholder Engagement Strategy;
- (b) is not designed to resolve or mitigate issues raised with the Franchisee through the consultations referred to in paragraph 8;

- (c) has a completion date falling later than the end of the relevant CCI Period;
 - (d) is projected to generate a Commercial Return or in relation to which the Secretary of State considers the CCI Scheme Costs (or any part of them) to be too high or disproportionate to the benefits accruing from the CCI Scheme;
 - (e) the Franchisee is otherwise funded to undertake; or
 - (f) in the opinion of the Secretary of State, amounts to actions or steps which the Franchisee is otherwise obliged to take or which any competent train operator should be taking in relation to the operation of the Franchise.
- 11.5 Approved CCI Schemes shall be deemed to be, and treated for the purposes of this Agreement as, Committed Obligations and the provisions of Part 2 of Schedule 6.2 (*Committed Obligations*) shall apply.
- 11.6 Paragraph 11.8 will apply if:
- (a) the aggregate projected CCI Scheme Shortfall in respect of all Approved CCI Schemes for any CCI Period is less than the aggregate of the CCI Amount for each Franchisee Year in that CCI Period; or
 - (b) subject to paragraph 11.7 in any CCI Period, in the Secretary of State's reasonable opinion, the aggregate of the actual CCI Scheme Shortfall incurred by the Franchisee during that CCI Period upon Approved CCI Schemes is less than the aggregate of the CCI Amount for each Franchisee Year in that CCI Period,
- in each case the underspend against the aggregate CCI Amount being the "**CCI Scheme Underspend**".
- 11.7 If:
- (a) the amount of the CCI Scheme Costs actually incurred by the Franchisee in relation to any Approved CCI Scheme exceed the projected CCI Scheme Costs notified to the Secretary of State pursuant to paragraph 11.2 for such Approved CCI Scheme, then the amount of the excess shall not amount to CCI Scheme Cost; or
 - (b) in the Secretary of State's reasonable opinion, the amount of the CCI Scheme Revenue actually earned by the Franchisee in relation to any Approved CCI Scheme is less than the projected CCI Scheme Revenue notified to the Secretary of State pursuant to paragraph 11.2 for such Approved CCI Scheme then, for the purposes of paragraph 11.6(b) the actual CCI Scheme Revenue shall be deemed to be the projected CCI Scheme Revenue.
- 11.8 Where this paragraph 11.8 applies the Secretary of State may require:
- (a) all or part of the CCI Scheme Underspend to be added to the CCI Amount for the first Franchisee Year in the subsequent CCI Period;
 - (b) the Franchisee to propose further CCI Schemes using all or part of the CCI Scheme Underspend by such new deadline as the Secretary of State may specify;

- (c) the Franchisee to spend all or part of the CCI Scheme Underspend in such manner as the Secretary of State may direct; and/or
- (d) the Franchisee to pay all or part of the CCI Scheme Underspend to the Secretary of State,

provided that paragraph 11.8(d) shall automatically apply in respect of the last CCI Period unless the Secretary of State specifies otherwise.

- 11.9 Any Franchise Asset arising as a result of an Approved CCI Scheme shall be designated as a Primary Franchise Asset and shall not be de-designated as such. Any such Primary Franchise Asset which falls to be valued in accordance with the Supplemental Agreement shall be valued at nil.

12. Customer Service and Satisfaction Data

- 12.1 ⁴²² **Subject to paragraph 12.1A, as part of each Customer Report (excluding the first (1st) Customer Report) to be provided by the Franchisee pursuant to paragraph 10.1 of this Schedule 7.2, the Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of the Franchisee's:**

- (a) **level of adherence to scheduled ticket office opening hours at Stations (so that the Customer Report shows, as a percentage, the proportion of scheduled ticket office opening hours not delivered aggregated across all ticket offices at all Stations); and**
- (b) **performance by reference to such benchmarks as may be agreed between the Franchisee and the ORR as part of an Accessible Travel Policy in respect of the Passenger Assistance service operated by the Franchisee,**

in each case in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the second (2nd) Customer Report, since the Start Date, along with (from the third (3rd) Customer Report onwards) a comparison with the relevant statistics or results (as applicable) provided for the same Reporting Periods in the previous Franchisee Year.

- 12.1A ⁴²³ During the EMA Period, the Franchisee shall, to the extent that COVID-19 Guidance and Regulation deem it necessary, only be required to publish the details outlined in paragraph 12.1 electronically.**

- 12.2 The Franchisee shall publish on its website (in such format as the Secretary of State may reasonably require):

- (a) within twenty (20) Weekdays of the publication of each National Rail Passenger Survey carried out by the Passengers' Council during the Franchise Term, details of the scores achieved by the Franchisee in such

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

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

National Rail Passenger Survey, including the scores achieved in respect of passengers' 'overall satisfaction'; and

(b) ⁴²⁴**NOT USED.**

12.3 ⁴²⁵**NOT USED.**

12.4 ⁴²⁶**If the Secretary of State instructs the Franchisee to re-commence the publication of Customer Reports in hard copy formats during the term of the ERMA, the Franchisee shall ensure that a summary of the then current Customer Report is made available at all staffed Stations (in such format as the Secretary of State may reasonably require) and that such summary includes instructions to enable passengers to locate and obtain a full copy of the applicable Customer Report.**

13. ⁴²⁷**Wavelength**

13.1 **For the purpose of this paragraph 13, "Wavelength Programme" means the programme of work being developed by the rail industry which involves collecting a wide range of information about the customer experience by tracking, amongst other things, the Franchisee's performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities.**

13.2 **Unless otherwise directed by the Secretary of State, the Franchisee shall:**

- (a) **fully and effectively engage with the Wavelength Programme;**
- (b) **subject to the relevant information being made available to the Franchisee via the Wavelength portal, provide to the Secretary of State by no later than seven (7) Weekdays following the end of each Reporting Period, a report setting out the results of the Wavelength Survey undertaken during that Reporting Period, such results to be presented in such aggregated or disaggregated format as the Secretary of State may specify from time to time; and**
- (c) **subject to the relevant information being made available to the Franchisee via the Wavelength portal, provide to the Secretary of State by no later than fourteen (14) Weekdays following the end of each quarter, a report detailing:**
 - (i) **how the Franchisee has used the full range of Wavelength Programme insights (including the analysis of data**

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

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

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

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

received through the Wavelength Survey) to implement and/or invest in:

- (A) customer-focused initiatives; and/or
 - (B) tangible benefits or improvements for customers; and
- (ii) whether such initiatives, benefits or improvements referred to in paragraph 13.2(c)(i) of this Schedule 7.2 have:
- (C) resulted in any improvement in the Wavelength Survey scores collected to date; and/or
 - (D) any other improvements or benefits to the Franchisee.

**APPENDIX 1 TO SCHEDULE 7.2
NRPS Benchmark Table**

Part 1 – NRPS (With Liverpool to Nottingham Passenger Services)

Table 1					
NRPS SERVICE GROUP – MIDLAND MAIN LINE					
Year		Franchisee Year	NRPS BENCHMARKS		
From	To		NRPS MEASURE STATION (S) (%)	NRPS MEASURE TRAINS (T) (%)	NRPS MEASURE CUSTOMER SERVICES (C) (%)
2019	2020	Year 1	78.9	76.2	75.4
2020	2021	Year 2	79.4	77.1	76.4
2021	2022	Year 3	79.8	77.9	77.5
2022	2023	Year 4	80.2	78.7	78.5
2023	2024	Year 5	80.6	79.6	79.5
2024	2025	Year 6	81.1	80.4	80.6
2025	2026	Year 7	81.4	81.2	81.6
2026	2027	Year 8	81.6	82.1	82.7
2027	2028	Year 9	81.8	82.9	83.7
2028	2029	Year 10	82.0	83.7	84.4

Table 2					
NRPS SERVICE GROUP – LIVERPOOL- NORWICH					
Year		Franchisee Year	NRPS BENCHMARKS		
From	To		NRPS MEASURE STATION (S) (%)	NRPS MEASURE TRAINS (T) (%)	NRPS MEASURE CUSTOMER SERVICES (C) (%)
2019	2020	Year 1	77.0	72.5	72.6

Table 2					
NRPS SERVICE GROUP – LIVERPOOL- NORWICH					
Year		Franchisee Year	NRPS BENCHMARKS		
From	To		NRPS MEASURE STATION (S) (%)	NRPS MEASURE TRAINS (T) (%)	NRPS MEASURE CUSTOMER SERVICES (C) (%)
2020	2021	Year 2	77.6	73.5	74.0
2021	2022	Year 3	78.2	74.6	75.3
2022	2023	Year 4	78.8	75.7	76.7
2023	2024	Year 5	79.4	76.8	78.1
2024	2025	Year 6	80.0	77.9	79.4
2025	2026	Year 7	80.5	79.0	80.7
2026	2027	Year 8	81.0	80.0	82.0
2027	2028	Year 9	81.4	80.9	83.3
2028	2029	Year 10	81.7	81.7	83.9

Table 3					
NRPS SERVICE GROUP – LOCAL SERVICES					
Year		Franchisee Year	NRPS BENCHMARKS		
From	To		NRPS MEASURE STATION (S) (%)	NRPS MEASURE TRAINS (T) (%)	NRPS MEASURE CUSTOMER SERVICES (C) (%)
2019	2020	Year 1	72.4	73.4	72.7
2020	2021	Year 2	73.1	74.1	73.7
2021	2022	Year 3	73.7	74.8	74.6
2022	2023	Year 4	74.3	75.6	75.6
2023	2024	Year 5	75.0	76.3	76.6
2024	2025	Year 6	75.6	77.0	77.5
2025	2026	Year 7	76.1	77.7	78.5

Table 3					
NRPS SERVICE GROUP – LOCAL SERVICES					
Year		Franchisee Year	NRPS BENCHMARKS		
From	To		NRPS MEASURE STATION (S) (%)	NRPS MEASURE TRAINS (T) (%)	NRPS MEASURE CUSTOMER SERVICES (C) (%)
2026	2027		Year 8	76.7	78.4
2027	2028	Year 9	77.2	79.0	80.4
2028	2029	Year 10	77.7	79.5	81.3

Part 2 – NRPS (Without Liverpool to Nottingham Passenger Services)

Table 1					
NRPS SERVICE GROUP – MIDLAND MAIN LINE					
Year		Franchisee Year	NRPS BENCHMARKS		
From	To		NRPS MEASURE STATION (S) (%)	NRPS MEASURE TRAINS (T) (%)	NRPS MEASURE CUSTOMER SERVICES (C) (%)
2022	2023	Year 4	80.2	78.7	78.5
2023	2024	Year 5	80.6	79.6	79.5
2024	2025	Year 6	81.1	80.4	80.6
2025	2026	Year 7	81.4	81.2	81.6
2026	2027	Year 8	81.6	82.1	82.7
2027	2028	Year 9	81.8	82.9	83.7
2028	2029	Year 10	82.0	83.7	84.4

Table 2					
NRPS SERVICE GROUP – LOCAL SERVICES					
Year		Franchisee Year	NRPS BENCHMARKS		
From	To		NRPS MEASURE STATION (S) (%)	NRPS MEASURE TRAINS (T) (%)	NRPS MEASURE CUSTOMER SERVICES (C) (%)
2022	2023	Year 4	76.0	75.5	75.6
2023	2024	Year 5	76.4	76.3	76.7
2024	2025	Year 6	76.9	77.2	77.7
2025	2026	Year 7	77.3	78.0	78.7
2026	2027	Year 8	77.7	78.9	78.7
2027	2028	Year 9	78.0	79.5	80.7
2028	2029	Year 10	78.3	80.1	81.2

Part 3 – “Dealing With Delays (D)” (Whole Franchise)

Table 1					
DEALING WITH DELAYS (%) – NRPS BENCHMARK					
Year		Franchisee Year			
From	To				
2019	2020	Year 1	54.6		
2020	2021	Year 2	56.1		
2021	2022	Year 3	57.7		
2022	2023	Year 4	59.3		
2023	2024	Year 5	60.9		
2024	2025	Year 6	62.4		
2025	2026	Year 7	64.0		
2026	2027	Year 8	65.6		
2027	2028	Year 9	67.2		
2028	2029	Year 10	68.7		

APPENDIX 2 TO SCHEDULE 7.2
Calculation of the Additional Expenditure

The Additional Expenditure shall be calculated in accordance with this Appendix 2:

1. Core Amount

- (i) The Core Amount in respect of a single NRPS Measure relating to "Stations (S)", "Trains (T)", "Customer Service (C)" and in relation to each NRPS Service Group shall be as specified in Table 1 in paragraph 2 of this Appendix; and
- (ii) The Core Amount in respect of the NRPS Measure relating to "Dealing with Delays (D)" shall be as specified in Table 2 in paragraph 3 of this Appendix.
- (iii) Each of Core Amounts referred to in paragraphs (i) and (ii) above shall be adjusted at the beginning of each Franchisee Year in accordance with the following formula:

Core Amount x RPI	
where:	
Core Amount	has the meaning given to it in this Appendix 2; and
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (<i>Franchise Payments</i>).

- (iii) For any Franchisee Year which is shorter than thirteen (13) Reporting Periods, Additional Expenditure for that Franchisee Year shall be reduced pro rata.

2. Table 1 - NRPS Measure – Stations, Trains and Customer Service

"Core Amount" means:

- (a) for the period from the Start Date until the Passenger Change Date occurring in [REDACTED⁴²⁸]; and
- (b) for the period from the Passenger Change Date occurring in [REDACTED⁴²⁹] until the end of the Franchise Period, [REDACTED⁴³⁰],

⁴²⁸ 25 October 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.

⁴²⁹ 25 October 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.

⁴³⁰ 25 October 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.

[REDACTED⁴³¹] then Core Amount shall have the meaning set out in paragraph (a) of this definition;

Column A	Column B
Percentage points below NRPS Benchmark in relation to each NRPS Measure and each NRPS Service Group (except for the NRPS Measure relating to "Dealing With Delays (D)")	Additional Expenditure
0 to 0.9	Core Amount x 1
1.0 to 1.9	Core Amount x 2
2.0 to 2.9	Core Amount x 3
3.0 or more	Core Amount x 4

3. **Table 2 – NRPS Measure "Dealing with Delays (D)"**

"Core Amount" means [REDACTED⁴³²]

Column A	Column B
Percentage points below NRPS Benchmark in relation to the NRPS Measure relating to "Dealing With Delays (D)"	Additional Expenditure
0 to 1.9	Core Amount x 1
2.0 to 3.9	Core Amount x 2
4.0 to 5.9	Core Amount x 3
6.0 or more	Core Amount x 4

⁴³¹ 25 October 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.

⁴³² 25 October 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 7.3

⁴³³**NOT USED**

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

Appendix 1 to Schedule 7.3
[DELETED⁴³⁴]

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

SCHEDULE 8

PAYMENTS

Schedule 8.1:	Franchise Payments
	Schedule 8.1A (Franchise Payments)
	Schedule 8.1B (Performance Based Fee)
Schedule 8.2:	Profit Share Mechanism
	Appendix 1: Profit Share Thresholds
	Appendix 2: Components of AFA and DFR
Schedule 8.3:	Track Access Adjustments and Station Charge Adjustments
Schedule 8.4:	NOT USED
Schedule 8.5:	NOT USED
Schedule 8.6:	Forecast Revenue Mechanism
	Appendix 1: Target Revenue

⁴³⁵Schedule 8.1A**Franchise Payments****1A. Definitions**

For the purposes of this Schedule 8.1A, the following words and expressions shall have the following meanings unless otherwise set out in Clause 3 (*Definitions*):

"Accrued Claims"	has the meaning given in paragraph 9.10 of this Schedule 8.1A;
"Accrued Disallowable Costs"	has the meaning given in paragraph 9.10 of this Schedule 8.1A;
"Accrued Revenue Foregone"	has the meaning given in paragraph 9.10 of this Schedule 8.1A;
"Actual EMA Capex"	has the meaning given to "Actual Capex" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Actual Capex" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Capital Expenditure" shall have the meaning given to that term in schedule 8.A (<i>Franchise Payments</i>) of the EMA);
"Actual EMA Costs"	has the meaning given to "Actual Costs" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Actual Costs" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Costs" shall have the meaning given to that term in schedule 8.A (<i>Franchise Payments</i>) of the EMA);
"Actual EMA Revenue"	has the meaning given to "Actual Revenue" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Actual Revenue" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Revenue" shall have the meaning given to that term in schedule 8.A (<i>Franchise Payments</i>) of the EMA);
"Aggregated Costs and Revenues Liabilities"	has the meaning given in paragraph 9.11 of this Schedule 8.1A;
"Annual Adjustment" or "AADJ"	means an adjustment determined in accordance with paragraph 11 (<i>Annual Adjustments</i>) of this Schedule 8.1A;

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

“Base Cash Position”	means fifty million pounds sterling (£50,000,000) (excluding the value of Season Ticket Fare suspense liabilities) or such other value as the Secretary of State may determine in accordance with paragraph 12.8 of this Schedule 8.1A;
“Budget”	means together: <ul style="list-style-type: none"> (a) the periodic cost and revenues budget; and (b) the periodic capex budget, <p>in relation to the period from the beginning of the seventh Reporting Period during Franchisee Year 2020/21 to the end of the thirteenth Reporting Period during Franchisee Year 2021/22 or the end of the Extended Term (if applicable), as agreed between the Secretary of State and the Franchisee on or around the ERMA Start Date or (if the Parties have not been able to agree the Budget by the ERMA Start Date) as reasonably determined by the Secretary of State, as such Budget may be updated and/or extended from time to time in accordance with paragraph 8 (<i>Revisions to the Budget</i>) of this Schedule 8.1A;</p>
“Budgeted EMA Capex”	has the meaning given to “Budgeted Capex” in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of “Budgeted Capex” in schedule 8.A (<i>Franchise Payments</i>) of the EMA, “Capital Expenditure” and “Budget” shall have the meaning given to those terms in schedule 8.A (<i>Franchise Payments</i>) of the EMA);
“Budgeted EMA Costs”	has the meaning given to “Budgeted Costs” in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of “Budgeted Costs” in schedule 8.A (<i>Franchise Payments</i>) of the EMA, “Costs” and “Budget” shall have the meaning given to those terms in schedule 8.A (<i>Franchise Payments</i>) of the EMA);
“Ceiling Cash Position”	means sixty million pounds sterling (£60,000,000) (excluding the value of Season Ticket Fare suspense liabilities) or such other value as the Secretary of State may determine in accordance with paragraph 12.8 of this Schedule 8.1A;
“EMA Budget”	has the meaning given to the term “Budget” in schedule 8.A (<i>Franchise Payments</i>) of the EMA;

"EMA Disallowable Costs"	has the meaning given to the term "Disallowable Costs" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, and for the purposes of this definition and the definition of term "Disallowable Costs" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Costs" and "Capital Expenditure" shall have the meanings given to those terms in schedule 8.A (<i>Franchise Payments</i>) of the EMA);
"EMA Emergency Working Capital Payments"	has the meaning given to the term "Emergency Working Capital Payments" in schedule 8.A (<i>Franchise Payments</i>) of the EMA;
"EMA Estimated Revenue" or "EER"	has the meaning given to the term "Estimated Revenue" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Estimated Revenue" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Revenue" shall have the meaning given to that term in schedule 8.A (<i>Franchise Payments</i>) of the EMA);
"EMA Final Adjustment"	has the meaning given to the term "Final Adjustment" in schedule 8.A (<i>Franchise Payments</i>) of the EMA;
"EMA Final Reviewed Accounts"	has the meaning given to the term "Final Reviewed Accounts" in schedule 8.A (<i>Franchise Payments</i>) of the EMA;
"EMA Periodic Adjustment Payment"	means, in relation to the Franchise Payment payable in respect of the second and third Reporting Periods during the term of the ERMA, a sum calculated in accordance with Appendix 2 (<i>EMA Periodic Adjustment Payment</i>) payable to either the Secretary of State or the Franchisee, as applicable;
"EMA Revenue Foregone"	has the meaning given to "Revenue Foregone" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Revenue Foregone" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Revenue" and "Good and Efficient Operator" shall have the meanings given to those terms in schedule 8.A (<i>Franchise Payments</i>) of the EMA);
"EMA Working Capital Payments"	has the meaning given to the term "Working Capital Payments" in schedule 8.A (<i>Franchise Payments</i>) of the EMA and, for the purposes of this definition and the definition of "Working Capital Repayment" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Franchise Payment Component" and any related definitions shall

	each have the meanings given to those terms in in schedule 8.A (<i>Franchise Payments</i>) of the EMA;
“EMA Working Capital Repayments”	has the meaning given to the term “Working Capital Repayment” in schedule 8.A (<i>Franchise Payments</i>) of the EMA and, for the purposes of this definition and the definition of “Working Capital Repayment” in schedule 8.A (<i>Franchise Payments</i>) of the EMA, “Franchise Payment Component” and any related definitions shall each have the meanings given to those terms in in schedule 8.A (<i>Franchise Payments</i>) of the EMA;
“Emergency Working Capital Payment”	has the meaning given to it in paragraph 12.5 of this Schedule 8.1A;
“Estimated Capital Expenditure”	means the Capital Expenditure estimated by the Secretary of State using available resources as is practicable at the time of the estimation;
“Estimated Costs”	means the Costs reasonably estimated by the Secretary of State using available resources as is practicable at the time of the estimation;
“EWCR”	has the meaning given to “WCR” in schedule 8.A (<i>Franchise Payments</i>) of the EMA;
“Final Working Capital Adjustment” or “FWCA”	means the adjustment determined in accordance with paragraph 14.1 of this Schedule 8.1A;
“First Franchise Payment” or “FFP”	has the meaning given to that term in paragraph 1.2 of this Schedule 8.1A;
“First Reporting Period”	means the first Reporting Period during the term of the ERMA;
“Fixed Fee”	means one hundred and seventy one thousand pounds sterling (£171,000) exclusive of VAT in respect of each Reporting Period in the relevant period;
“Fixed Fee and Performance Based Fee” or “FFPBF”	means the Franchise Payment Component calculated in accordance with paragraph 15 (<i>Fixed Fee and Performance Based Fee</i>) of this Schedule 8.1A;
“Franchise Payment Component”	means: <ul style="list-style-type: none"> (a) each of the components of “£FFP” as described in paragraph 1.2 of this Schedule 8.1A;

- (b) each of the components of "£FP" as described in paragraph 1.3 of this Schedule 8.1A; and
- (c) any component or element, described in the relevant provisions of this Schedule 8.1A and Schedule 8.1B (*Performance Based Fee*), as the case may be, which is used in determining or calculating the value of those components described in paragraph (a) above;

"Periodic Adjustment"	has the meaning given in paragraph 10.2 of this Schedule 8.1A;
"Periodic Budgeted Capex Payment" or "PBCP"	means the Franchise Payment Component calculated in accordance with paragraph 1.3 of this Schedule 8.1A;
"Periodic Franchise Payment" or "PFP"	means the Franchise Payment Component calculated in accordance with paragraph 1.3 of this Schedule 8.1A;
"Periodic Finance Review Meeting"	has the meaning given in paragraph 9.1 of this Schedule 8.1A;
"Quarter"	means: <ul style="list-style-type: none"> (a) a period of three consecutive Reporting Periods, in each case ending at the end of the third, sixth and ninth Reporting Periods in a Franchisee Year; or (b) a period of four consecutive Reporting Periods ending at the end of the 13th Reporting Period of a Franchisee Year, <p>(and "Quarterly" shall be construed accordingly);</p>
"Quarterly Budget Forecast Review Meeting"	has the meaning given in paragraph 8.1 of this Schedule 8.1A;
"Reporting Period 13"	means 1 March 2020 to 31 March 2020 (inclusive);
"Residual Components"	means the net value of the components of the Franchise Payments under Schedule 8.1 (<i>Franchise Payments</i>) which: <ul style="list-style-type: none"> (a) relate to any periods prior to Reporting Period 13; and (b) become payable during the relevant Reporting Period.

For the purposes of this Schedule 8.1A (*Franchise Payments*), such net value shall be:

- (a) if payable by the Secretary of the State to the Franchisee, a positive number; or**
- (b) if payable by the Franchisee to the Secretary of State, a negative number;**

“Revenue”

means the gross total revenue of the Franchisee received or receivable and properly accrued during the term of the ERMA and relating to the Franchisee's performance of the Franchise Agreement as stated in the Franchisee's profit and loss account but excluding:

- (a) Franchise Payments (which shall include the value of any Performance Based Fee and/or Fixed Fee (if applicable)); and**
- (b) any accounting transaction included in the Management Accounts, Annual Management Accounts or Annual Audited Accounts but which does not result in the Franchisee receiving a cash payment, including notional pensions accounting adjustments and the accounting impact of financial instruments revaluations;**

“Revenue Foregone”

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

- (a) the:**
 - (i) debts or other receivables waived, not collected or written off; and/or**
 - (ii) value of any other asset not realised in whole or in part,**

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

- (b) subject always to paragraph 6.1 (*No Double Recovery*) of this Schedule 8.1A, the amount by which the Purchase Price (as defined in clause 2.1 of the Supplemental Agreement) receivable by the Franchisee is lower than it would have been but for the Franchisee:**
 - (i) incurring Disallowable Costs; and/or**

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

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

“SoS Claim”

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

- (a) as a consequence of any breach, negligence or other default of the Franchisee under or in connection with the Franchise Agreement and/or any agreement ancillary to this Franchise Agreement, the ERMA and/or the EMA, including the Supplemental Agreement; and/or
- (b) in respect of any matter for which the Franchisee is to indemnify the Secretary of State pursuant to this Franchise Agreement, the ERMA and/or the EMA or any agreement ancillary to this Franchise Agreement, the ERMA and/or the EMA, including the Supplemental Agreement;

“Supporting Materials”

means any materials explaining or supporting the Budget which have been produced by the Franchisee;

“Working Capital Payment”

means the Franchise Payment Component calculated in accordance with paragraph 12.3 of this Schedule 8.1A; and

“Working Capital Repayment”

means the Franchise Payment Component calculated in accordance with paragraph 13.2 of this Schedule 8.1A.

1. Franchise Payments

1.1 The Parties acknowledge and agree that:

1.1.1 the provisions of schedule 8.1 (*Franchise Payments*) of the Franchise Agreement were suspended during the term of the EMA and shall continue to be suspended during the term of the ERMA;

1.1.2 the EMA FWCA shall not be payable at any time;

1.1.3 any Residual Components shall be addressed in accordance with paragraphs 1.2 and 1.3 of this Schedule 8.1A;

1.1.4 for the purposes of paragraph 1.3 of this Schedule 8.1A and paragraph 11 of Schedule 8.A of the EMA, limb (a) of the PPADC element of the EMA MFPP in paragraph 11.1 of Schedule 8.A of the EMA shall be calculated on the basis of the relevant Audited Accounts Reconciliation and other relevant financial information provided to the Secretary of State, including in accordance with paragraph 9.4 of Schedule 11.2 in relation to the period from 1 March 2020 to the end of the EMA Term or otherwise, rather than the EMA Final Reviewed Accounts; and

1.1.5 the EMA MFPP shall be payable following:

- (i) the receipt by the Secretary of State of the Audited Accounts Reconciliation and other relevant financial information provided to the Secretary of State in accordance with paragraph 9.4 of Schedule 11.2 in relation to the period from 1 March 2020 to the end of the EMA Term; and**
- (ii) the determination of the Management Fee and Performance Payment in accordance with Paragraph 11 of Schedule 8.A (*Franchise Payments*) of the EMA.**

1.2 The Franchise Payment for the First Reporting Period (the “First Franchise Payment”) shall be an amount equal to:

£FFP =	FPFP + FPBCP + FWCP + RCP
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where:

FPFP (First Periodic Franchise Payment)	<p>means an amount equal to:</p> <p>FPFP = BC – EER</p> <p>where:</p>	
	BC	<p>means the Budgeted Costs for the First Reporting Period. BC may only be a positive number; and</p>
	EER	<p>means an amount equal to the EMA Estimated Revenue for the Reporting Period that ends on the day immediately before the ERMA Start Date.</p> <p>EER may only be a positive number.</p>
FPBCP	<p>means an amount equal to the Budgeted Capex for the First Reporting Period.</p> <p>FPBCP may only be a positive number.</p>	

FWCP	means an amount equal to:	
	FWCP = BCP – FCCP (and FWCP may be a positive or negative number)	
	where:	
	BCP	means an amount equal to the Base Cash Position; and
	FCCP	means an amount equal to the Forecast Closing Cash Position for the final Reporting Period of the term of the EMA.
RCP	means an amount equal to the Residual Components for the Reporting Period that ends on the day immediately before the ERMA Start Date. RCP may be a positive or negative number.	

1.3 The Franchise Payment for any Reporting Period in relation to the term of the ERMA other than the First Reporting Period shall be an amount equal to:

£FP =	PFP + PBCP + PADJ + WCP – WCR + AADJ + FFPBF – FWCA + RCP + EMA MFPP
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where:

PFP	means an amount equal to:	
	PFP_n = BC_n – ER_{n-1}	
	Where:	
	PFP_n	means the Periodic Franchise Payment for the current Reporting Period.
	BC_n	means the Budgeted Costs for the current Reporting Period (if any). BC_n may only be a positive number.
	ER_{n-1}	means the Estimated Revenue for the preceding Reporting Period (“_{n-1}”) (if any), provided such Reporting Period occurs after the ERMA Start Date. ER_{n-1} may only be a positive number.
PFP may be a positive or negative number.		
PBCP	means an amount equal to the Budgeted Capex for the current Reporting Period (if any). PBCP may only be a positive number.	

PADJ	<p>means:</p> <p>(a) in relation to the second and third Reporting Periods during the term of the ERMA, an EMA Periodic Adjustment Payment; or</p> <p>(b) in relation to all other Reporting Periods during the term of the ERMA, any Periodic Adjustment,</p> <p>to be made on that Reporting Period's Payment Date. PADJ may be a positive or negative number.</p>
WCP	<p>means any Working Capital Payment to be made on that Reporting Period's Payment Date. WCP may only be a positive number.</p>
WCR	<p>means any Working Capital Repayment to be made on that Reporting Period's Payment Date. WCR may only be a positive number.</p>
AADJ	<p>means any Annual Adjustment to be made on that Reporting Period's Payment Date. AADJ may be a positive or negative number.</p>
FFPBF	<p>means:</p> <p>(a) the Fixed Fee for the first Franchisee Year during the term of the ERMA, determined in accordance with paragraph 15.1 of this Schedule 8.1A and the Performance Based Fee for the relevant Franchisee Year calculated in accordance with Schedule 8.1B (<i>Performance Based Fee</i>) to be paid on the first Payment Date following the determination of the Fixed Fee and Performance Based Fee in accordance with paragraph 15 (<i>Fixed Fee and Performance Based Fee</i>) of this Schedule 8.1A;</p> <p>(b) the Fixed Fee for the second Franchisee Year during the term of the ERMA, determined in accordance with paragraph 15.1 of this Schedule 8.1A and the Performance Based Fee for the relevant Franchisee Year calculated in accordance with Schedule 8.1B (<i>Performance Based Fee</i>) to be paid on the first Payment Date following the determination of the Fixed Fee and Performance Based Fee in accordance with paragraph 15 (<i>Fixed Fee and Performance Based Fee</i>) of this Schedule 8.1A which the Parties acknowledge shall be no earlier than the release of the Annual Audited Accounts for Franchisee Year 2021-2022 and may be after the expiry of the term of the ERMA; and</p> <p>(c) the Fixed Fee for the relevant Extended Term determined in accordance with paragraph 15.1 of this Schedule 8.1A and the Performance Based Fee for the relevant Franchisee Year calculated in accordance with Schedule 8.1B (<i>Performance Based Fee</i>) to be paid on the first Payment Date following the determination of the Fixed Fee for the</p>

	<p>Extended Term and the Performance Based Fee for the relevant Franchisee Year in accordance with paragraph 15 (<i>Fixed Fee and Performance Based Fee</i>) of this Schedule 8.1A, which the Parties acknowledge shall be no earlier than the release of the Annual Audited Accounts for Franchisee Year 2022-2023 unless the Secretary of State decides (in the Secretary of State's sole discretion) that Final Accounts shall also be used for the determination, and in each instance, may be after the expiry of the term of the ERMA; or</p> <p>(d) in relation to any other Payment Date, zero.</p> <p>Subject to paragraph 15.2 of this Schedule 8.1A, for the purposes of paragraph (a) above FFPBF may only be a positive number.</p>
FWCA	means the Final Working Capital Adjustment to be made in the Reporting Period immediately following the expiry of the term of the ERMA. FWCA may be a positive or negative number.
RCP	means an amount equal to the Residual Components for the preceding Reporting Period. RCP may be a positive or negative number.
EMA MFPP	<p>means:</p> <p>(a) in relation to the first Payment Date following:</p> <p>(i) the receipt by the Secretary of State of the relevant Audited Accounts Reconciliation and other relevant financial information provided in accordance with paragraph 9.4 of Schedule 11.2 covering the period 1 March 2020 to the end of the EMA Term; and</p> <p>(ii) the determination of the Management Fee and Performance Payment in accordance with Paragraph 11 of Schedule 8.A (<i>Franchise Payments</i>),</p> <p>the Management Fee and Performance Payment, determined in accordance with paragraph 11.1 of Schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, subject to paragraph 11.2 of schedule 8.A of the EMA, EMA MFPP may only be a positive number); or</p> <p>(b) in relation to any other Payment Date, zero.</p>

1.4 The Parties agree that:

1.4.1 where £FP or £FFP is a positive number, the Secretary of State shall pay that amount to the Franchisee on the Payment Date for that Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable);

1.4.2 where £FP or £FFP is a negative number, the Franchisee shall pay the corresponding positive amount to the Secretary of State on the

Payment Date for that Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable); and

1.4.3 where £FP or £FFP is zero, neither Party shall make a payment to the other Party on the Payment Date for that Reporting Period.

2. Payment of Franchise Payments

2.1 The Secretary of State shall notify the Franchisee, no less than seven days prior to the start of each Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable), of the amount of the Franchise Payment payable in respect of that Reporting Period.

2.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.

2.3 The Payment Date for a Reporting Period shall be the first Weekday of that Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable).

2.4 Each Franchise Payment shall be payable by the Franchisee or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 2.1 of this Schedule 8.1A on the Payment Date of the Reporting Period to which it relates (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable).

2.5 Each Franchise Payment shall be made:

(a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and

(b) so that cleared funds are received in that account on or before the due date for payment.

3. Interest

If:

(a) the Franchisee fails to pay any amount to the Secretary of State on its due date; or

(b) the Secretary of State fails to pay to the Franchisee the Franchise Payment on its due date,

that Party which has failed to pay shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.

4. Disputes under Schedule 8

If either the Franchisee or the Secretary of State disputes the amount of a Franchise Payment, the dispute shall, unless the Franchisee and the

Secretary of State otherwise agree, be resolved in accordance with the provisions of Clause 17 (*Governing Law and Jurisdiction*) of the Franchise Agreement. Any such dispute shall not affect the obligation of either Party to pay a Franchise Payment notified in accordance with this Schedule 8.1A.

5. **NOT USED.**

6. **No Double Recovery**

6.1 **Neither Party shall be entitled to recover (by way of an adjustment to Franchise Payments or otherwise) more than once in respect of the same amount. In particular:**

6.1.1 **no amount shall be categorised as both Capital Expenditure and as a Cost for the purpose of this Schedule 8.1A, or inconsistently with the accounting treatment assumed for the same capital expenditure in calculating the Franchise Payments under the Franchise Agreement prior to and after the implementation of the EMA and the ERMA; and**

6.1.2 **neither Party shall be entitled to recover pursuant to the terms of the ERMA a sum that has already been recovered pursuant to the terms of the EMA and *vice versa*.**

6.2 **In the event that the Franchisee is successful in obtaining any governmental support or support from any local authority or other such body that is offered in relation to the impact of and/or recovery from the impacts of COVID-19, this shall be taken into account in relation to the relevant payment and adjustments in this Schedule 8.1A such that the Franchisee does not benefit from double recovery or double counting.**

7. **Force Majeure and Payments**

Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue to be calculated in accordance with this Schedule 8.1A and the payment of such Franchise Payments shall continue unaffected.

8. **Revisions to the Budget**

8.1 **Without limiting the requirement for any other meeting, the Parties shall, subject to paragraph 9.14 of this Schedule 8.1A, hold a forecast Budget review meeting at least once in each Quarter (a "Quarterly Budget Forecast Review Meeting") at a time and location notified to the Franchisee by the Secretary of State following provision of the information referred to in paragraph 8.2 of this Schedule 8.1A. The purpose of the meeting shall be to review and seek to agree:**

(a) **revisions (if any) to the Budget for the remaining Reporting Periods of the Budget, including inserting such additional information as may be required in relation to the period of any possible Extended Term;**

(b) **the content of any necessary or desirable corresponding addendum to the Supporting Materials;**

- (c) whether and (if applicable) the extent to which the provisions of Schedule 9.1 (*Consequences of Change and Other Adjustments*) apply to any such revisions agreed in accordance with this paragraph 8.1 of this Schedule 8.1A;
- (d) any new contracts with an Affiliate which the Franchisee proposes to enter into or renew, any existing contracts with an Affiliate which the Franchisee proposes to amend or extend and details of any contract procurement process (pursuant to which the Franchisee proposes to enter into a contract with the successful bidder) in which the Franchisee reasonably expects an Affiliate to participate; and
- (e) whether any adjustment to the value(s) of Base Cash Position, Ceiling Cash Position and/or Floor Cash Position is necessary.

The Franchisee shall ensure that the representatives of the Franchisee at the Quarterly Budget Forecast Review Meeting shall include the Finance Director of the Franchisee or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Secretary of State.

- 8.2** The Franchisee shall, prior to the date of each Quarterly Budget Forecast Review Meeting provide to the Secretary of State the relevant information required pursuant to paragraph 9.3 (*Quarterly Financial Information*) of Schedule 11.2 (*Management Information*), together with a draft periodic budget prepared using the cost and revenue categories within (and to the same level of disaggregation at) the "P&L2" tab of the Financial Model, updated to reflect Actual Costs, Actual Capex and Actual Revenues as reflected in the latest Management Accounts and revised Budgeted Costs and Budgeted Capex and Estimated Revenue (or EMA Estimated Revenue, as applicable) for the period to which such forecast relates, in accordance with the timescales set out therein, and shall provide the Secretary of State with all further information as the Secretary of State may request from time to time for the purposes of the operation of this paragraph 8.2, within such time as the Secretary of State may reasonably specify for that purpose (and this paragraph 8 shall continue to apply such that the number of requests which the Secretary of State may make is not limited).
- 8.3** If the Parties fail to agree the matters referred to in paragraphs 8.1(a) to 8.1(e) of this Schedule 8.1A at the relevant Quarterly Budget Forecast Review Meeting, the Secretary of State shall reasonably determine such matters.
- 8.4** Such revisions to the Budget and addenda to the Supporting Materials as agreed or determined shall take effect from the first day of the Reporting Period immediately following the date on which the Quarterly Budget Forecast Review Meeting (at which such matters were discussed) took place, provided that, if such revisions or addenda are not agreed by the first day of that Reporting Period, the relevant revisions and addenda shall take effect from the first day of the Reporting Period which falls at least 10 Weekdays after those revisions and addenda are agreed or determined.
- 8.5** Each revision to the Budget and/or addendum to the Supporting Materials shall (unless the Parties otherwise agree):

- 8.5.1** 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;
- 8.5.2** make no assumptions or include any costs, revenue or other adjustments which are not consistent with the definitions of Costs, Capital Expenditure and Revenue or which represent Disallowable Costs or Revenue Foregone or liabilities in respect of SoS Claims (except as may be otherwise expressly agreed by the Parties for that purpose);
- 8.5.3** 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
- 8.5.4** otherwise facilitate easy comparison with the definitions of Costs, Capital Expenditure, Revenue, Disallowable Costs and Revenue Foregone and with the information reported in the Management Accounts, Annual Management Accounts, the Annual Audited Accounts and the Final Accounts.
- 8.6** Each time it is agreed or determined that the Budget is to be revised and/or an addendum is to be added to the Supporting Materials, the Secretary of State shall be entitled to:
- 8.6.1** make the agreed or determined revisions to the Budget and/or Supporting Materials (or procure this is done on the Secretary of State's behalf) and provide copies of those revised documents to the Franchisee; or
- 8.6.2** require the Franchisee to provide the agreed or determined revisions to the Budget and/or Supporting Materials for approval by the Secretary of State, which the Franchisee shall do and provide revised versions to the Secretary of State within such time as the Secretary of State shall specify for this purpose.
- 8.7** The Franchisee shall not enter into any contract or arrangement with an Affiliate (including entering into a new contract or arrangement and/or renewing or amending an existing contract or arrangement) unless:
- 8.7.1** the Secretary of State has, in the Secretary of State's sole discretion (and for this purpose Clause 6.4 of the Franchise Agreement shall not apply) first consented to the terms of such contract and to it being entered into on those terms (which shall be at least as favourable to the Franchisee as terms on an arm's length basis), whether at or following a Quarterly Budget Forecast Review Meeting (where such contract forms part of the agenda for that meeting) or otherwise; and
- 8.7.2** the Franchisee has procured that any such contract or arrangement which has a term that is longer than seven Reporting Periods and/or which may extend beyond the ERMA Term or Extended Term is capable of being terminated in accordance with its terms upon the

expiry of the ERMA Term or Extended Term such that the Franchisee shall not incur any liability or be required to make any termination payment to the relevant Affiliate if the Franchisee elects or is directed by the Secretary of State to exercise any such termination right in accordance with the terms of the relevant contract.

8.8 The Secretary of State may direct the Franchisee to re-procure (in accordance with the terms of such contract or arrangement) any:

8.8.1 contract or arrangement with an Affiliate that was entered into on or after the ERMA Start Date that has been entered into in breach of paragraph 8.7 above of this Schedule 8.1A;

8.8.2 contract or arrangement with an Affiliate that was entered into on or after the ERMA Start Date where the Secretary of State has directed the Franchisee to exercise the termination right outlined in paragraph 8.7.2 above of this Schedule 8.1A; or

8.8.3 contract or arrangement with an Affiliate that was entered into prior to the ERMA Start Date which has a remaining term that is longer than seven Reporting Periods as at the ERMA Start Date and/or which may extend beyond the ERMA Term or Extended Term, provided that the relevant contract is capable of being terminated by the Franchisee in accordance with its terms to allow the Franchisee to undertake such re-procurement without the Franchisee being in breach of the terms of such contract or incurring any liability or being required to make any termination payment to the relevant Affiliate.

8.9 For the purpose of this paragraph 8, the Secretary of State shall be entitled to consider any information provided to the Secretary of State by the Franchisee and any other sources of information which the Secretary of State considers to be relevant and the Secretary of State shall be entitled to request such information from the Franchisee as the Secretary of State requires in connection with the matters referred to in this paragraph 8. Without prejudice to the generality of the foregoing, in considering any revisions to the Budget, regard shall be had to the definitions of Costs, Revenue, Capital Expenditure, Good and Efficient Operator, Disallowable Costs and Revenue Foregone, so as to ensure that the revisions to the Budget are consistent with those definitions.

8.10 Subject to the Secretary of State's rights set out in paragraph 8.7 of this Schedule 8.1A, the Parties shall at all times act in good faith, reasonably and in a timely manner in the interpretation and application of the provisions for agreeing revisions to the Budget and any addendum to the Supporting Materials.

9. Review of Franchisee's performance against Budget

Finance Review Meeting

9.1 Without limiting the requirement for any other meeting, the Parties shall, subject to paragraph 9.14 of this Schedule 8.1A, hold a finance review meeting in every Reporting Period ("Periodic Finance Review Meeting") at such time(s) and location(s) notified to the Franchisee by the Secretary of

State following the provision of the information referred to in paragraph 9.2 of this Schedule 8.1A and:

9.1.1 the purpose of the Periodic Finance Review Meeting shall be to review the financial performance of the Franchisee. This shall include:

- (i) a review and discussion of variances arising in the preceding Reporting Period between Actual Costs, Actual Capex and Actual Revenue, and Budgeted Costs, Budgeted Capex and Estimated Revenue respectively, Actual Revenues to be received by the Franchisee and potential Revenue Foregone, and confirmation of the value of the Periodic Adjustment to be applied to the Franchise Payment to be paid in the Reporting Period following the Reporting Period in which the Periodic Finance Review Meeting is taking place (or, in relation to the second and third Reporting Periods during the term of the ERMA, the EMA Periodic Adjustment Payment);
- (ii) a review and discussion regarding any Actual Costs with respect to all payments made by the Franchisee under contracts or other arrangements with Affiliates (and any payments, costs or liabilities in connection with such contracts or arrangements which are not consistent with the Franchisee acting as a Good and Efficient Operator shall be Disallowable Costs);
- (iii) a review of fees and payments (including bonuses) actually paid by the Franchisee to its directors and officers during the preceding Reporting Period as against the Budgeted Costs for such fees and payments as stated in the then current Budget;
- (iv) a review and discussion of the Franchisee's management of its working capital and the Franchisee's Forecast Closing Cash Position for that Reporting Period in which the Periodic Finance Review Meeting is taking place and any Working Capital Payment or Working Capital Repayment to be applied to the Franchise Payment to be paid in the Reporting Period following the Reporting Period in which the Periodic Finance Review Meeting is taking place;
- (v) actions to be taken in respect of the Franchisee's financial performance;
- (vi) identification of any potential Non-Recoverable Costs, Disallowable Costs, Unreimbursed Disallowable Costs, Revenue Foregone and SoS Claims that may have been incurred within the preceding or current Reporting Period; and
- (vii) confirmation and valuation of any Disallowable Costs, Unreimbursed Disallowable Costs, Revenue Foregone and SoS Claims (and/or in accordance with paragraph 9.13 of this Schedule 8.1A, relevant Initial SoS Claim Amounts, as applicable) which have been identified pursuant to subparagraph (vi) above in previous Periodic Finance Review Meetings;

9.1.2 the Franchisee shall ensure that the representatives of the Franchisee at the meeting shall include the Finance Director of the Franchisee or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Secretary of State; and

9.1.3 the Secretary of State shall ensure that the representatives of the Secretary of State shall include a senior civil servant where the confirmation and valuation of any Disallowable Costs, Unreimbursed Disallowable Costs, Revenue Foregone and/or SoS Claims (and/or in accordance with paragraph 9.13 of this Schedule 8.1A, relevant Initial SoS Claim Amounts, as applicable) are to be considered as part of any Periodic Finance Review Meeting,

and the purpose of the Periodic Finance Review Meeting held in the first Reporting Period of the term of the ERMA (the "EMA Finance Review Meeting") shall be to discuss the financial performance of the Franchisee during the final Reporting Period during the term of the EMA and for the purposes of the EMA Finance Review Meeting, references in paragraph 9.1.1 to "Actual Costs", "Actual Capex", "Actual Revenue", "Budgeted Costs", "Budgeted Capex", "Estimated Revenue", "Disallowable Costs", "Revenue Foregone" and "SoS Claims" shall be construed to be references to Actual EMA Costs, Actual EMA Capex, Actual EMA Revenue, Budgeted EMA Costs, Budgeted EMA Capex, EMA Estimated Revenue, EMA Disallowable Costs, EMA Revenue Foregone and EMA SoS Claims (respectively).

9.2 The Franchisee shall, prior to the date of each Periodic Finance Review Meeting, provide to the Secretary of State the relevant information required pursuant to paragraph 9.2 of Schedule 11.2 (*Management Information*) (or, in relation to the EMA Finance Review Meeting, the relevant information required pursuant to paragraph 9.2 of schedule 11.2 (*Management Information*) of the EMA) in relation to the previous Reporting Period together with a statement of the Franchisee's Forecast Closing Cash Position applicable to that Reporting Period, in accordance with the timescales set out therein, and shall provide the Secretary of State with all further information as the Secretary of State may request from time to time for the purposes of the operation of paragraph 9.1 of this Schedule 8.1A, within such time as the Secretary of State may reasonably specify for that purpose (and this paragraph 9 shall continue to apply such that the number of requests which the Secretary of State may make is not limited).

9.3 The Secretary of State shall be entitled to consider any information provided to the Secretary of State by the Franchisee and any other sources of information which the Secretary of State considers to be relevant and the Secretary of State shall be entitled to request such information from the Franchisee as the Secretary of State requires for the purposes of the operation of this paragraph 9. The Franchisee shall provide the information within such time as the Secretary of State may reasonably specify for the purpose (and this paragraph 9 shall continue to apply such that the number of requests which the Secretary of State may make is not limited).

9.4 If, within 10 Weekdays following the relevant Periodic Finance Review Meeting:

9.4.1 the Parties have failed to agree the matters referred to in paragraph 9.1.1(vii) of this Schedule 8.1A; and

9.4.2 such matters either individually or in the aggregate exceed two hundred thousand pounds sterling (£200,000),

then each Party shall respectively procure that such matter or matters (as the case may be) shall be escalated to any senior civil servant within the Department for Transport's Rail Group (excluding the Passenger Services Group) on behalf of the Secretary of State and any statutory director of any Affiliate of the Franchisee on behalf of the Franchisee. Those representatives shall meet at the earliest convenient time and in any event within 20 Weekdays of the date of the relevant Periodic Finance Review Meeting and negotiate in good faith and attempt to agree the relevant matters.

9.5 If:

9.5.1 the Parties fail to agree the matters referred to in paragraph 9.1.1 of this Schedule 8.1A at the relevant Periodic Finance Review Meeting, in circumstances where paragraph 9.4 of this Schedule 8.1A does not apply;

9.5.2 the representatives of the Parties fail to agree the matters referred to in paragraph 9.1.1(vii) of this Schedule 8.1A within 10 Weekdays of first meeting to agree such matters in accordance with paragraph 9.4 of this Schedule 8.1A, in circumstances where that paragraph applies; or

9.5.3 the Franchisee fails to provide the relevant information required pursuant to Schedule 11.2 (*Management Information*) (or, in relation to the EMA Finance Review Meeting, the relevant information required pursuant to paragraph 9.2 of schedule 11.2 (*Management Information*) of the EMA), in accordance with the timescales set out therein, or otherwise in accordance with this paragraph 9,

the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the relevant matters in accordance with this paragraph 9 and all other applicable provisions of this Schedule 8.1A but by reference to the relevant information available to the Secretary of State at the time of such determination.

Accrued Disallowable Costs, Accrued Revenue Foregone and SoS Claims

9.6 Without prejudice to paragraphs 9.3 to 9.5 of this Schedule 8.1A, if subsequent to any Periodic Finance Review Meeting, the Secretary of State later identifies any item (applicable to that period to which the relevant Periodic Finance Review Meeting relates) which the Secretary of State considers is or may be a Disallowable Cost or an instance of Revenue Foregone or any SoS Claims (whether following a review of the Franchisee's Annual Audited Accounts, Final Accounts or otherwise) the Secretary of State shall within 28 days of identifying such item be entitled to:

- 9.6.1** notify the Franchisee in writing, identifying the item concerned; and
- 9.6.2** request further information from the Franchisee in connection with the item for the purposes of the operation of this paragraph 9.6 and paragraphs 9.7 to 9.9 of this Schedule 8.1A. The Franchisee shall provide the information within such time as the Secretary of State may reasonably specify for the purpose.
- 9.7** The Parties shall seek to agree the value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 9.13 of this Schedule 8.1A, relevant Initial SoS Claim Amounts, as applicable) identified by the Secretary of State pursuant to paragraph 9.6 of this Schedule 8.1A within 20 Weekdays of the later of the Secretary of State's notice referred to in paragraph 9.6.1 of this Schedule 8.1A and the date specified by the Secretary of State for the delivery of further information in accordance with paragraph 9.6.2 (the "Escalation Trigger Date").
- 9.8** If:
- 9.8.1** the Parties fail to agree the matters referred to in paragraph 9.7 of this Schedule 8.1A; and
- 9.8.2** such matters either individually or in the aggregate exceed five hundred thousand pounds sterling (£500,000); then
- each Party shall respectively procure that such matter or matters (as the case may be) shall be escalated to any senior civil servant within the Department for Transport's Rail Group (excluding the Passenger Services Group) on behalf of the Secretary of State and any statutory director of any Affiliate of the Franchisee on behalf of the Franchisee. Those representatives shall meet at the earliest convenient time and in any event within 20 Weekdays of the Escalation Trigger Date, negotiate in good faith and attempt to agree the relevant matters.
- 9.9** If:
- 9.9.1** the Parties fail to agree the matters referred to in paragraph 9.7 in circumstances where paragraph 9.8 does not apply;
- 9.9.2** the representatives of the Parties fail to agree the matters referred to in paragraph 9.7 within 10 Weekdays of first meeting to agree such matters in accordance with paragraph 9.8 or the Parties fail to meet to attempt to agree the relevant matters, in circumstances where that paragraph applies; or
- 9.9.3** the Franchisee fails to provide the relevant information required pursuant to paragraph 9.6.2 in accordance with the specified timescales, then
- the Secretary of State shall reasonably determine the value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 9.13, relevant Initial SoS Claim Amounts, as applicable).

- 9.10** The value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 9.13, relevant Initial SoS Claim Amounts as applicable) as agreed or determined whether pursuant to paragraph 9.4, paragraph 9.5, paragraph 9.8, paragraph 9.9 or paragraph 9.13 shall be referred to as "Accrued Disallowable Costs" and "Accrued Revenue Foregone" and "Accrued Claims" (as applicable).
- 9.11** Subject to paragraph 9.12, the value of any Accrued Disallowable Costs and/or Accrued Revenue Foregone and/or Accrued Claims on each occasion accumulated pursuant to paragraph 9.10 shall be aggregated with the total of all Disallowable Costs, Revenue Foregone and SoS Claims which have been previously accumulated, such aggregated value from time to time being the "Aggregated Costs and Revenues Liabilities".
- 9.12** The value of the Aggregated Costs and Revenues Liabilities shall be limited to:
- 9.12.1** in the event that there has been no extension to the term of the ERMA, the sum of:
- (i) the Fixed Fee payable for the Reporting Periods in that Franchisee Year (which shall take account of any early expiry or termination of the ERMA) calculated pursuant to paragraph 15.1;
 - (ii) the maximum potential Performance Based Fees for the PBF Assessment Periods in that Franchise Year calculated in accordance with Schedule 8.1B (*Performance Based Fee*); and
 - (iii) any remaining amounts as a debt from the Franchisee which the Secretary of State shall be entitled to claim in accordance with the Funding Deed or the Performance Bond on expiry or termination of this Franchise Agreement; or
- 9.12.2** in the event that there has been an extension to the term of the ERMA, the sum of:
- (i) the Fixed Fee payable for the Reporting Periods in that Franchisee Year calculated pursuant to paragraph 15.1;
 - (ii) the maximum potential Performance Based Fees for the PBF Assessment Periods in that Franchise Year calculated in accordance with Schedule 8.1B (*Performance Based Fee*); and
 - (iii) any remaining amounts as a debt from the Franchisee which the Secretary of State shall be entitled to claim in accordance with the Funding Deed or the Performance Bond on expiry or termination of this Franchise Agreement.
- 9.13** If any SoS Claim is a contingent or unliquidated claim (a "Contingent SoS Claim"), the Parties shall, pursuant to paragraph 9.4, paragraph 9.7 or paragraph 9.8 (as applicable) seek to agree (or in the absence of agreement, the Secretary of State may for the purposes of paragraph 9.5

and shall for the purposes of paragraph 9.9, reasonably determine) an initial value for such Contingent SoS Claim (the "Initial SoS Claim Amount") and the Initial SoS Claim Amount shall be deemed to be an Accrued Claim for the purposes of paragraph 9.10. If the value of Contingent SoS Claim once fully liquidated (that is, being agreed or determined through dispute resolution) is:

9.13.1 in excess of the Initial SoS Claim Amount, the Secretary of State shall be entitled to claim such amount in excess of the Initial SoS Claim Amount from the Franchisee:

- (i) as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of FFPBF, where Franchise Payments in favour of the Secretary of State remain to be paid after the date on which the Contingent SoS Claim has become fully liquidated; and/or
- (ii) as an adjustment to the Franchise Payment payable after the expiry of the term of the ERMA; and/or
- (iii) as a debt from the Franchisee which the Secretary of State shall be entitled to claim in accordance with the Funding Deed or from the Performance Bond on expiry or termination of the Franchise Agreement; or

9.13.2 is less than the Initial SoS Claim Amount, the Secretary of State shall repay to the Franchisee the difference between the actual liquidated value of the relevant SoS Claim and the Initial SoS Claim Amount either:

- (i) as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of FFPBF, where Franchise Payments remain to be paid after the date on which the Contingent SoS Claim has become fully liquidated; or
- (ii) where no Franchise Payment is payable after the date on which the Contingent SoS Claim becomes fully liquidated as a payment to the Franchisee.

9.14 The Secretary of State shall have the sole discretion (acting reasonably) to decrease (and subsequently increase) the required frequency of the Quarterly Budget Forecast Review Meetings and/or the Periodic Finance Review Meetings, provided they shall be no more frequent than once a Reporting Period.

9.15 Any Quarterly Budget Forecast Review Meeting or Period Finance Review Meeting (or part thereof) may be held remotely with the prior agreement of the Parties.

Unreimbursed Disallowable Costs

9.16 If the value of any Disallowable Cost is agreed or determined pursuant to this paragraph 9, the Franchisee may (subject to the prior written consent of the Secretary of State) request that the Guarantor pay to the Franchisee within 10 Weekdays of receipt of such request a sum equal to the value as

such Disallowable Cost (such sum, once paid to the Franchisee in accordance with this paragraph 9.16, being an “Unreimbursed Disallowable Cost”).

9.17 Paragraph 9.16 shall not apply in relation to Disallowable Costs specified in paragraph (e) or paragraph (k) of Appendix 1 (*Disallowable Costs*) to this Schedule 8.1A.

9.18 Any Unreimbursed Disallowable Costs shall be disregarded for the purposes of:

9.18.1 paragraph 1.17 (*Disallowable Costs*) of Schedule 10.2 (*Events of Default and Termination Events*); and

9.18.2 calculating any Costs for the purposes of any Franchise Payment.

10. Periodic Adjustments

10.1 The value of PADJ for the current Reporting Period (“n”) (other than the second and third Reporting Periods during the term of the ERMA) shall be equal to the following

PADJ for Reporting Period(n) =	$(ACRP_{n-3} - BCRP_{n-3}) + (ACAP_{n-3} - BCAP_{n-3}) - (ARRP_{n-3} - ERRP_{n-3})$
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Where:

ACRP _{n-3}	means the total Actual Costs in the third preceding Reporting Period (“n-3”) as set out in the Management Accounts for that preceding Reporting Period, provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ACRP _{n-3} may only be a positive number.
BCRP _{n-3}	means the total Budgeted Costs in respect of the third preceding Reporting Period (“n-3”) (based on the version of the Budget which applied for the purpose of the calculation of the Franchise Payment for that preceding Reporting Period (n-3)), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. BCRP _{n-3} may only be a positive number.
ACAP _{n-3}	means the total Actual Capex for the third preceding Reporting Period (“n-3”), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ACAP _{n-3} may only be a positive number.
BCAP _{n-3}	means the Budgeted Capex in respect of the third preceding Reporting Period (“n-3”) (based on the version of the Budget which applied for the purpose of the calculation of the Franchise Payment for that preceding Reporting Period (n-3)), provided that any Reporting

	Periods prior to the ERMA Start Date shall be disregarded. BCAP_{n-3} may only be a positive number.
ARRP_{n-3}	means the total Actual Revenue for the third preceding Reporting Period (“_{n-3}”), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ARR_P may only be a positive number.
ERRP_{n-3}	means the total Estimated Revenue in respect of the third preceding Reporting Period (_{n-3}), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ERR_P may only be a positive number.

10.2 The value of PADJ in respect of a Reporting Period (other than the second and third Reporting Periods during the term of the ERMA) shall be made as an adjustment to the second Franchise Payment payable after that calculation of PADJ is determined, provided that no such adjustment shall apply in respect of the first Reporting Period during the term of the ERMA (a “Periodic Adjustment”). A Periodic Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3.1 of this Schedule 8.1A.

10.3 The Secretary of State agrees that, provided the Management Accounts (in a form consistent with the obligations of the Franchisee under Schedule 11.2 (*Management Information*)) are received from the Franchisee within the timescale specified in paragraph 9.2(a) of Schedule 11.2 (*Management Information*), the Secretary of State shall provide the Franchisee with the value of PADJ in sufficient time for the Periodic Adjustment to be included in the relevant Franchise Payment in accordance with paragraph 10.2 of this Schedule 8.1A above.

10.4 If the Franchisee fails to provide the Management Accounts in accordance with its obligations under Schedule 11.2 (*Management Information*), the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the amount of any Periodic Adjustment in accordance with this paragraph 10 but by reference to the relevant information available to the Secretary of State at the time of such determination.

11. Annual Adjustments

11.1 AADJ shall be equal to the following:

AADJ =	(TotalAC – TotalAR) + TotalACAP – (TotalPFP + TotalPBCP) – TotalPADJ
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Where, subject to paragraph 11.5 below:

TotalAC	means the total Actual Costs of the Franchisee for the relevant Franchisee Year as set out in the Annual Audited Accounts for the relevant Franchisee Year. TotalAC may only be a positive number.
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TotalAR	means the total Actual Revenue for the relevant Franchisee Year as set out in the Annual Audited Accounts for the relevant Franchisee Year. TotalAR may only be a positive number.
TotalACAP	means the total Actual Capex for the relevant Franchisee Year as set out in the Annual Audited Accounts for the relevant Franchisee Year. TotalACAP may only be a positive number.
TotalPFP	means the total net value of the First Franchise Payment and all of the Periodic Franchise Payments paid to the Franchisee during the relevant Franchisee Year. TotalPFP may be positive or negative.
TotalPBCP	means the total net value of all of the FPBCP and the Periodic Budgeted Capex Payments paid to the Franchisee during the relevant Franchisee Year. TotalPBCP may only be a positive number.
TotalPADJ	means the total net value of PADJ paid in respect of each Reporting Period during the relevant Franchisee Year. TotalPADJ may be positive or negative.

- 11.2** The value of AADJ in respect of the relevant Franchisee Year (whether negative or positive) shall be made as an adjustment to the next Franchise Payment payable after the calculation of AADJ is determined (the "Annual Adjustment") and the Parties acknowledge this may be payable as part of the Franchise Payments following the completion of the term of the ERMA. The Annual Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3.1 of this Schedule 8.1A.
- 11.3** If the Franchisee fails to provide the information required by paragraphs 9.4(b), 9.4A(c) and 9.4A(m) of Schedule 11.2 (*Management Information*), including Annual Audited Accounts, Final Accounts and the Audited Accounts Reconciliation by the date specified pursuant to that paragraph the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the amount of any Annual Adjustment in accordance with this paragraph 11 but by reference to the relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year to date Management Accounts or in the Annual Management Accounts.
- 11.4** The Parties agree that notwithstanding the provisions of the EMA, no EMA Final Adjustment shall be payable in respect of the term of the EMA and (unless otherwise so requested by the Secretary of State) the Franchisee shall not be required to provide the EMA Final Reviewed Accounts.
- 11.5** The Secretary of State may, in the Secretary of State's sole discretion, determine that the relevant information set out in the Final Accounts, as well as the Annual Audited Accounts, shall be used for the purposes of calculating the components of AADJ, as set out in this paragraph 11.

12. Working Capital Payments

12.1 A Working Capital Payment shall become payable to the Franchisee as part of a Reporting Period’s Franchise Payment where the Forecast Closing Cash Position for the preceding Reporting Period is less than the Floor Cash Position. The value of the Working Capital Payment shall be calculated in accordance with paragraph 12.3.

12.2 The Franchisee shall provide the Secretary of State with a statement of the Franchisee’s Forecast Closing Cash Position prior to each Periodic Finance Review Meeting in accordance with paragraph 9.2.

12.3 The Working Capital Payment, if payable in any Reporting Period, shall be equal to the following:

WCP =	BCP – FCCP
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Where:

BCP	the Base Cash Position.
FCCP	the Forecast Closing Cash Position applicable to the preceding Reporting Period.

12.4 If, during a Reporting Period, the Franchisee becomes aware that in its opinion (acting reasonably), prior to the payment of the Franchise Payment in respect of the following Reporting Period, the Franchisee’s available Cash Balance will be insufficient to meet its liabilities that will fall due prior to the payment of the Franchise Payment applicable to that Reporting Period (the “Working Capital Shortfall”), the Franchisee shall immediately:

12.4.1 notify the Secretary of State that a Working Capital Shortfall is likely to occur during that Reporting Period;

12.4.2 provide, in or with that notice, supporting information (including relevant accounts and calculations) evidencing the likely Working Capital Shortfall and the amount of additional working capital that the Franchisee considers it will require to ensure that the Working Capital Shortfall is remedied; and

12.4.3 provide such further supporting information as the Secretary of State shall reasonably require.

12.5 The Parties shall agree or (where the Parties fail to agree) the Secretary of State shall reasonably determine the amount required to remedy the Working Capital Shortfall (an “Emergency Working Capital Payment”) and when such Emergency Working Capital Payments are required to be paid for that purpose.

12.6 The Secretary of State shall pay to the Franchisee any Emergency Working Capital Payment in accordance with the timescales agreed or determined in accordance with paragraph 12.5 of this Schedule 8.1A.

12.7 If the Franchisee fails to provide any information required by this paragraph 12, or any information in accordance with its obligations in Schedule 11.2 (*Management Information*) to enable the Secretary of State to calculate the amount of any Working Capital Payment or Emergency Working Capital Payment, the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the amount of WCP in accordance with this paragraph 12 but by reference to the relevant information available to the Secretary of State at the time of such determination.

12.8 The Secretary of State shall at any time on reasonable prior notice to the Franchisee be entitled to adjust the value of the Ceiling Cash Position, the Base Cash Position and/or the Floor Cash Position provided that the Secretary of State shall have first consulted the Franchisee as to any such adjustments as the Secretary of State is considering making.

13. Working Capital Repayment

13.1 A Working Capital Repayment shall become payable by the Franchisee as part of a Reporting Period's Franchise Payment where the Franchisee's Forecast Closing Cash Position in the preceding Reporting Period is greater than the Ceiling Cash Position. The value of the Working Capital Repayment shall be calculated in accordance with paragraph 13.2 of this Schedule 8.1A.

13.2 A Working Capital Repayment, if payable in any Reporting Period, shall be equal to the following:

WCR =	FCCP – BCP
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Where:

FCCP	means the Forecast Closing Cash Position applicable to the preceding Reporting Period.
BCP	means the Base Cash Position.

14. Final Working Capital Adjustment

14.1 The value of FWCA shall equal:

FWCA =	(TotalWCP – TotalWCR) + FWCP
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Where:

FWCP	means an amount equal to the FWCP that was paid in the First Franchise Payment in accordance with paragraph 1.2 above.
TotalWCP	means the aggregate of all Working Capital Payments, EMA Working Capital Payments, Emergency Working Capital Payments and EMA Emergency Working Capital Payments paid

	to the Franchisee during the term of the ERMA and the EMA (as applicable).
TotalWCR	means the aggregate of all Working Capital Repayments and EMA Working Capital Repayments paid by the Franchisee during the term of the ERMA and the EMA (as applicable).

14.2 The value of FWCA shall be payable as an adjustment to the Franchise Payment payable in the Reporting Period immediately following the expiry of the term of the ERMA. FWCA may be positive or negative.

14.3 If the Franchisee fails to provide any information in accordance with its obligations in Schedule 11.2 (*Management Information*) to enable the Secretary of State to calculate any Working Capital Repayment, EMA Working Capital Repayment or the Final Working Capital Adjustment, the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the amount of WCR, EWCR or FWCA (as the case may be) in accordance with this paragraph 14 but by reference to the relevant information available to the Secretary of State at the time of such determination.

15. Fixed Fee and Performance Based Fee

15.1 Subject to paragraphs 15.2 to 15.4 (inclusive), the value of FFPBF shall equal:

FFPBF =	(FF+PBF) – ACRL
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Where, subject to paragraph 15.5 below:

FF	means the Fixed Fee.
PBF	means the sum of all the Performance Based Fee for the PBF Assessment Periods in the relevant Franchisee Year calculated in accordance with Schedule 8.1B (<i>Performance Based Fee</i>). PBF may only be a positive number.
ACRL	<p>Means, for the purposes of this paragraph 15, the sum of the total value of the Aggregated Costs and Revenues Liabilities in the relevant Franchisee Year:</p> <p>(a) calculated on the basis of the Franchisee's Audited Accounts Reconciliation and/or the Final Accounts, at the Secretary of State's sole discretion; and</p> <p>(b) as agreed or reasonably determined (in accordance with paragraphs 9.4 and 9.5 of this Schedule 8.1A) at the Payment Date for FFPBF pursuant to paragraph 15.3 of this Schedule 8.1A.</p> <p>ACRL may only be a positive number.</p>

15.2 If the value of FFPBF is a negative amount:

- 15.2.1** for the purposes of paragraph 1.2 of this Schedule 8.1A, FFPBF shall be deemed to equal zero; and
- 15.2.2** the Secretary of State shall be entitled to claim the value of FFPBF (expressed as a positive value) from the Franchisee as an adjustment to the Franchise Payment following determination of the amount of the relevant Franchise Payment.
- 15.3** Subject to paragraph 15.4 of this Schedule 8.1A, the value of FFPBF may be made as an adjustment to the next Franchise Payment payable after:
- 15.3.1** the value of the Performance Based Fee in relation to all PBF Assessment Periods in that Franchisee Year has been finally calculated pursuant to Schedule 8.1B (*Performance Based Fee*); and
- 15.3.2** the value of the Aggregate Costs and Revenue Liabilities have been agreed or determined for the purposes of this paragraph 15.
- FFPBF shall be calculated on the basis that no interest is due pursuant to paragraph 3 of this Schedule 8.1A.
- The Parties acknowledge that the adjustment referred to in this paragraph 15.3 may occur after the expiry of the term of the ERMA.
- 15.4** Nothing in this paragraph 15 shall limit the rights and remedies of the Secretary of State in respect of any Disallowable Costs, Non-Recoverable Costs, Revenue Foregone and/or SoS Claims not taken into account in the calculation of ACRL. The Secretary of State's rights and remedies in respect of any Disallowable Costs, Non-Recoverable Costs, Revenue Foregone and/or SoS Claims not taken into account in the calculation of ACRL shall include claims pursuant to and in accordance with the Funding Deed and/or Performance Bond.
- 15.5** The Secretary of State may, in the Secretary of State's sole discretion, determine that the relevant information set out in the Final Accounts, as well as the Annual Audited Accounts or Audited Accounts Reconciliation, shall be used for the purposes of calculating the components of FFPBF, as set out in this paragraph 15.
- 16.** Further Secretary of State's rights in relation to accounting matters
- 16.1** Where the Secretary of State reasonably considers that in calculating any matter which has an impact on the calculation of a Franchise Payment Component, any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance of the item or transaction) and having regard to all circumstances, including GAAP (as may be amended from time to time), the Secretary of State shall be entitled to require it to be accounted for on such other basis as the Secretary of State may reasonably determine and notify to the Franchisee provided that the Secretary of State shall not be entitled pursuant to this paragraph to alter the accounting policies of the Franchisee from those set out in the Supporting Materials and applied through the Financial Model.

16.2 Where the Annual Audited Accounts or Final Accounts are subject to adjustment or restatement, the Secretary of State shall have the sole discretion to require the recalculation of any affected Franchise Payment Component for the relevant Franchisee Year and to require that the Franchisee shall pay to the Secretary of State the amount which is the difference between:

16.2.1 any amount actually paid to the Secretary of State or adjusted in favour of the Secretary of State and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts or Final Accounts; and/or

16.2.2 any amount actually paid by the Secretary of State or adjusted in favour of the Franchisee and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts or Final Accounts.

16.3 Any payment due to the Secretary of State shall be paid by the Franchisee within thirty (30) days of the Secretary of State notifying the Franchisee that the Secretary of State requires a payment to be made pursuant to this paragraph 16.

17. Indexation

The Parties agree that the Franchise Payments and any sum shown in any Budget for any given Franchisee Year (or other period) shall not be subject to automatic indexation or adjustment to take into account the effect of inflation provided that this paragraph 17 is without prejudice to the adjustment of the Budget in accordance with paragraph 8 (*Revisions to the Budget*) of this Schedule 8.1A and/or the adjustment of the Franchise Payments in accordance with paragraph 10 (*Periodic Adjustments*) and paragraph 11 (*Annual Adjustments*) of this Schedule 8.1A.

18. Further obligations of the Franchisee

18.1 Except to the extent otherwise agreed by the Secretary of State, the Franchisee shall act as a Good and Efficient Operator in all respects in connection with the operation of this Schedule 8.1A and shall not act in a way that is contrary to the principles of the ERMA or the Franchise Agreement by using the existence or cessation of the ERMA to increase the profitability of the Franchisee.

18.2 The Franchisee warrants on a continuing basis and shall, if requested at any time by the Secretary of State, provide written confirmation from a statutory director of the Franchise confirming that the Franchisee is not (and, during the term of the EMA, was not) party to any arrangement of any kind whatsoever (except if the Secretary of State provided prior written consent to such arrangement) under which:

18.2.1 any amounts which the Franchisee might otherwise have received from a third party are reduced, waived or otherwise suppressed; and/or

- 18.2.2** any amounts which the Franchisee might otherwise be properly obliged to pay or be liable are increased; and/or
- 18.2.3** any amounts required to be paid or accounted for by the Franchisee become or are recorded as paid or accounted for during the term of the:
- (i) ERMA, which might otherwise be paid or accounted for in the periods preceding or following the term of the ERMA; and/or
 - (ii) EMA, which might otherwise be paid or accounted for in the periods preceding or following the term of the EMA; and/or
- 18.2.4** any amounts which the Franchisee might otherwise have received from a third party during the term of the:
- (i) ERMA are recovered or accounted for in the periods preceding or following the term of the ERMA; and/or
 - (ii) EMA are recovered or accounted for in the periods preceding or following the term of the EMA; and/or
- 18.2.5** Revenue and/or EMA Revenue is accounted for in the periods preceding or following the term of the:
- (i) ERMA which should have been accounted for during the term of the ERMA; and/or
 - (ii) EMA which should have been accounted for during the term of the EMA.
- 18.3** Without limiting any other constraints which operate by virtue of any other part of the Franchise Agreement or otherwise, no application shall be made or other step taken by or on behalf of the Franchisee in respect of the winding up or striking off of the Franchisee (or any similar or analogous process) and nor shall the Franchisee permit or facilitate the same:
- 18.3.1** until all the adjustments and payments for which this Schedule 8.1A provides have been made and discharged in full; and/or
- 18.3.2** without the prior written consent of the Secretary of State.
- 18.4** The Secretary of State shall be entitled to notify the Franchisee of any future initiatives or proposals that the Secretary of State considers may have the potential to reduce certain Actual Costs below the applicable Budgeted Costs and the Franchisee shall, acting reasonably and in good faith, discuss with the Secretary of State all such matters as are relevant to the possible implementation of such initiatives.
- 18.5** The Franchisee shall:
- 18.5.1** upon the Secretary of State's direction maintain an amount equal to the Season Ticket Fare suspense liabilities in a separate bank account as the Secretary of State may nominate from time to time and the Franchisee shall secure the proceeds of any such account as

chargor for the benefit of the Secretary of State as chargee under a relevant security agreement, as the Secretary of State may direct and to the Secretary of State's satisfaction; and

18.5.2 within 10 Weekdays of the start of each Reporting Period provide to the Secretary of State a written warranty from a Director that the value of the cash held in the account (if applicable) is equal to or more than the value of the Season Ticket Fare suspense liabilities, as reported to the Secretary of State in the previous Reporting Period.

19. Capex review

19.1 The Parties acknowledge and agree that:

19.1.1 the provisions of paragraph 17 (*Capex Review*) of schedule 8.A (*Franchise Payments*) of the EMA shall not apply; and

19.1.2 at the end of the term of the ERMA, the Secretary of State shall review the funding of capital expenditure assumed for the calculation of the contracted Annual Franchise Payments in the Financial Model that is Placed in Escrow. If the funding of such assumed capital expenditure through the Franchise Payments under Schedule 8.1 has been distorted by the implementation of the EMA and/or the ERMA, including by the implementation of the EMA and/or the ERMA in a part of a Franchisee Year in which the term of the EMA and/or the ERMA comes to an end, the Parties shall seek to agree an appropriate compensating amount. This amount may be payable either by the Secretary of State or by the Franchisee. In the event that this amount cannot be agreed, the Secretary of State shall reasonably determine the amount and direction of this payment.

⁴³⁶ APPENDIX 1 TO SCHEDULE 8.1A**DISALLOWABLE COSTS**

Any references in this Appendix 1 to Schedule 8.1A to costs, payments, expenses, fees, liabilities or other amounts shall be deemed to refer to Costs and/or Capital Expenditure as the context may require.

- (a) Any costs that were incurred otherwise than in accordance with those expected to be incurred by a Good and Efficient Operator. Variations between Actual Costs and Budgeted Costs and/or Actual Capex and Budgeted Capex (as the case may be) likely to be considered to be inconsistent with those expected of a Good and Efficient Operator include but are not limited to:**
- (i) staff, director or officer costs in excess of the Budget (except where evidenced by the Franchisee as appropriate for delivery of the Franchise or of reasonable scale given the requirement for delivery of the Franchise, provided that any costs referred in to in paragraph (b) or paragraph (c) of this Appendix shall not in any circumstance be considered appropriate for the delivery of the Franchise or of a reasonable scale given the requirement for delivery of the Franchise);**
 - (ii) costs that do not reflect the contracted position under existing contracts as at the EMA Start Date unless such change has been agreed by the Secretary of State (such agreement not to be unreasonably withheld or delayed);**
 - (iii) new contracts entered in to by the Franchisee which have not been procured in compliance with the Franchisee's usual procurement procedures;**
 - (iv) variations to existing contracts which have not been made in accordance with the Franchisee's usual procurement procedures; or**
 - (v) any Costs or Capital Expenditure where the Franchisee has been unable to provide evidence to the satisfaction of the Secretary of State that such costs or expenditure have been properly incurred and are consistent with the Franchisee acting as a Good and Efficient Operator.**
- (b) Any bonuses, rewards or discretionary benefits paid to any staff, directors or officers under any schemes which have not previously been approved by the Secretary of State (in the Secretary of State's sole discretion) in writing.**
- (c) Any expenses, disbursements or equivalent costs (to which the Franchisee's expenses policy would apply) which are incurred other than in compliance with the Franchisee's expenses policy.**

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

(d) Costs incurred or to be incurred by the Franchisee:**(i) in relation to:**

- A. developing any Remedial Plan put in place in respect of breaches which occurred on or after the EMA Start Date; or**
- B. implementing any Remedial Plan put in place in respect of breaches which occurred on or after the EMA Start Date that:**
 - I. a Good and Efficient Operator would not have incurred; or**
 - II. are greater than the costs that the Franchisee would have incurred in connection with complying with the obligation to which the Remedial Plan relates had it acted as a Good and Efficient Operator prior to the implementation of the relevant Remedial Plan;**

(ii) in relation to Remedial Plans in respect of breaches which occurred prior to the EMA Start Date, cost in respect of implementing any such Remedial Plan unless such costs are specifically approved in writing by the Secretary of State; or

(iii) other costs in relation to Remedial Plans or agreements unless such costs are specifically approved in writing by the Secretary of State;

(iv) in removing branding or Marks under paragraph 3.2 (Branding) of Schedule 14.2 (*Maintenance of Operating Assets*) except for branding or Marks whose removal from particular assets the Secretary of State has explicitly agreed for the purpose of this provision should be an allowable cost;

(v) in relation to the inspection costs referred to in paragraph 6.4 of Schedule 11.2 (*Management Information*);

(vi) in meeting Abellio Group's audit requirements to the extent these are additional to audit costs which would otherwise be incurred by the Franchisee; and/or

(vii) in relation to any reasonable enforcement costs incurred by the Secretary of State pursuant to Clause 14.7 (*Miscellaneous Provisions*).

(e) Any cost that the Franchisee may incur as a result of:

(i) it failing to comply with its obligations under or in connection with the Franchise Agreement (including the grant thereof) save in respect of any failures which result from the Franchisee acting as a Good and Efficient Operator;

(ii) it failing to comply with its obligations under or in connection with any agreements which are ancillary to the Franchise Agreement save in respect of any failures which result from the Franchisee acting as a Good and Efficient Operator;

- (iii) **it failing to comply with any applicable Laws, if this gives rise to a criminal liability. Paragraph (a) above shall apply in respect of any other consequence of a failure by the Franchisee to comply with any applicable Laws; or**
 - (iv) **indemnifying the Secretary of State for any matter which the Franchisee is obliged to indemnify the Secretary of State pursuant to the Franchise Agreement or any agreements which are ancillary to the Franchise Agreement.**
- (f) **Any Facilitation Fee or Administration Fee pursuant to Clause 8 (*Change of Control and Facilitation Fee*).**
- (g) **Any costs incurred by the Franchisee arising out of or in connection with a lawful demand by the Secretary of State under the Performance Bond or Season Ticket Bond or under the Funding Deed or under the PCS Bond (as defined in the Funding Deed).**
- (h) **Any payments, costs or other liabilities owed to Affiliates save in respect of such payments costs or other liabilities which have been incurred by the Franchisee acting as a Good and Efficient Operator.**
- (i) **Costs of developing and protecting any intellectual property rights which are not owned by the Secretary of State or the Franchisee or are so owned, but where the costs are not ancillary to an activity included in the Budget.**
- (j) **Marketing or advertising costs incurred substantially to the benefit of wider group products or group brand recognition and which are not primarily for the benefit of Franchise Services.**
- (k) **Fines from government or regulatory bodies.**
- (l) **Costs of financial hedging, or gains/losses from hedging activity except with prior agreement from the Secretary of State or where such costs or gains/losses arise from the Franchisee's participation in an industry recognised hedging scheme or activity which has been agreed by the Secretary of State or which the Secretary of State reasonably considers have been made in good faith on an arm's length basis to any Affiliate in connection with fuel hedging instruments to help manage the exposure of the Franchisee to diesel fuel costs.**
- (m) **The amount by which the Purchase Price payable by the Franchisee to the successor operator under the Supplemental Agreement at the end of the Franchise Period is higher than it would have been but for the Franchisee:**
 - (i) **incurring Disallowable Costs; or**
 - (ii) **otherwise acting other than as Good and Efficient Operator.**
- (n) **Third party costs in relation to the development and preparation of any Remedial Plan, Action Plan or NRPS Action Plan required by this Agreement, excluding such costs as approved by the Secretary of State, in the Secretary of State's sole discretion, prior to such costs being incurred by the Franchisee.**

- (o) **The amount of any interest payable by the Franchisee to the Secretary of State in accordance with paragraph 3 of this Schedule 8.1A.**
- (p) **Any costs incurred by the Franchisee in pursuing or defending any claim against the Secretary of State in respect of or in connection with the Franchise Agreement or otherwise.**
- (q) **Any costs incurred in relation to the period prior to the EMA Start Date which a Good and Efficient Operator would usually have discharged in the period prior to the EMA Start Date.**
- (r) **Any costs incurred in relation to the period prior to the expiry of the term of the ERMA which a Good and Efficient Operator would usually have discharged in the period following the expiry of the term of the ERMA.**
- (s) **Any costs incurred in relation to the discharge or carrying out of Committed Obligations which are in excess of the amounts a Good and Efficient Operator would ordinarily have expended on discharging the Committed Obligation in accordance with the contractual programme and to minimum specification contractually required.**
- (t) **Where costs are incurred during the term of the ERMA as the result of an obligation to incur expenditure from a fund required to be maintained pursuant to the Franchise Agreement (including, but not limited to, Minor Works and the CCI Amount), such expenditure shall be a Disallowable Cost except and to the extent that it relates to expenditure required to be incurred in relation to Franchisee Years beginning after 31 March 2020.**

After the expiry of the ERMA, the Parties shall agree or the Secretary of State shall determine the remaining amounts in such funds with reference to the amounts available to be expended in the funds and the aggregate amount of expenditure incurred since the ERMA Start Date in relation to obligations related to those funds.
- (u) **Interest paid or payable on PCS Advances (as defined in the Funding Deed).**
- (v) **Except with the prior agreement of the Secretary of State (not to be unreasonably withheld), any costs, charges, penalties, compensation or similar payments that the Franchisee may incur as a result of the termination of any contract or other arrangement.**
- (w) **Except with the prior agreement of the Secretary of State, losses on disposals of fixed or non-current assets.**
- (x) **Maintenance costs where the maintenance activity was previously scheduled to be undertaken prior to or after the term of the ERMA or where (and to the extent that) it would have been reasonable and/or prudent for the maintenance to have been carried out prior to or after the term of the ERMA.**
- (y) **Depreciation or Capital Expenditure to the extent that the capital cost of acquisition of the relevant assets was (or was assumed in the Financial Model) to be funded by a third party.**

- (z) Costs of any audit pursuant to paragraph 9.7(b) or paragraph 9.9 of Schedule 11.2 (*Management Information*).**
- (aa) Legal, accountancy and other costs and expenses incurred in connection with the preparation and implementation of the ERMA (and any associated budgets, principles documents and other documents) and the EMA (and its associated heads of terms).**
- (bb) Additional costs or expenses incurred by the Franchisee in procuring any new Performance Bond where required to do so pursuant to paragraph 4.3(c) (*Provision of Replacement Performance Bond*) of Schedule 12.1 (*Financial Covenants and Bonds*).**
- (cc) Costs incurred in relation to preparing and negotiating the direct award of a new contract to the Franchisee in relation to the Franchise.**
- (dd) Compensating the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out enhanced monitoring of the Franchisee's performance of any relevant obligations pursuant to paragraph 7.1 of Schedule 10.1 (*Procedure for Remediating a Contravention of the Franchise Agreement*).**
- (ee) Any costs incurred in connection with or otherwise attributable to discharging its obligations pursuant to Schedule 14 (*Preservation of Assets*) insofar as they relate to supporting the transfer of the franchise to a Successor Operator at the end of the Franchise Period.**
- (ff) Any costs incurred in connection with discharging its obligations following termination in accordance with Schedule 15 (*Obligations Associated with Termination*).**
- (gg) Any costs incurred in connection with conducting, or otherwise procuring, any surveys or statement of condition of leased property as may be required at the end of the Franchise Period in accordance with the terms of the relevant Property Lease and/or to otherwise establish the condition of any other asset at the end of the Franchise Period.**
- (hh) Unless otherwise agreed by the Secretary of State, any costs incurred in connection with maintenance of the Franchisee's leased property and/or other assets (other than any lifecycle maintenance costs) if and to the extent that the aggregate of such costs exceeds one hundred and fifty per cent (150%) of maintenance costs incurred by the Franchisee in relation to such leased property and/or other assets (other than any lifecycle maintenance costs) in the last seven (7) Reporting Periods of the Franchisee Year ending on 31 March 2020, adjusted pro rata to reflect thirteen (13) Reporting Periods.**
- (ii) Any lifecycle maintenance costs in respect of any leased property or other assets which the Secretary of State reasonably considers should have been incurred in the period prior to 1 March 2020.**
- (jj) Any sums payable by the Franchisee to the Lessor (as defined in schedule 2 (*Termination of the Franchise Agreement*) to the ERMA) in respect of any Rolling Stock Dilapidations Liability (as defined in schedule 2 (*Termination of the Franchise Agreement*) to the ERMA).**

- (kk) **Any legal, accountancy and other costs and expenses incurred in connection with determining or agreeing the Termination Sum, the Interim Net Assets Payment Amount, the Updated Net Assets Amount and/or the Net Assets Reconciliation Amount, as applicable (and any associated models and other documents).**
- (ll) **Any costs incurred in relation to preparing, determining or agreeing any statements or amounts in connection with schedule 3 (*Early ERMA Termination*) to the ERMA.**

⁴³⁷ APPENDIX 2 TO SCHEDULE 8.1A**EMA PERIODIC ADJUSTMENT PAYMENT**

The EMA Periodic Adjustment Payment shall be calculated in accordance with the following formula.

EMAPADJ for Reporting Period(n) =	$(AECRP_{n-3} - BECRP_{n-3}) + (AECAP_{n-3} - BECAP_{n-3}) - (AERRP_{n-3} - EERRP_{n-3})$
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Where:

AECRP_{n-3}	means the total Actual EMA Costs in the third preceding Reporting Period (n-3) as set out in the Management Accounts for that preceding Reporting Period. ACRP_{n-3} may only be a positive number.
BECRP_{n-3}	means the total Budgeted EMA Costs in respect of the third preceding Reporting Period (n-3) based on the version of the EMA Budget which applied for the purpose of the calculation of the Franchise Payment for that preceding Reporting Period. BCRP_{n-3} may only be a positive number.
AECAP_{n-3}	means the total Actual EMA Capex for the third preceding Reporting Period (n-3). ACAP_{n-3} may only be a positive number.
BECAP_{n-3}	means the Budgeted EMA Capex in respect of the third preceding Reporting Period (n-3) based on the version of the EMA Budget which applied for the purpose of the calculation of the Franchise Payment for that Reporting Period. BCAP_{n-3} may only be a positive number.
AERRP_{n-3}	means the total Actual EMA Revenue for the third preceding Reporting Period (n-3). ARRP may only be a positive number.
EERRP_{n-3}	means the total Estimated EMA Revenue in respect of the third preceding Reporting Period (n-3). ERRP may only be a positive number.

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

⁴³⁸Schedule 8.1B**PERFORMANCE BASED FEE****1. Definitions**

For the purposes of this Schedule 8.1B only, the following words and expressions shall have the following meanings unless otherwise specified:

"Amendable Financial Target"	<p>means a:</p> <ul style="list-style-type: none"> (a) Target Cost; (b) Target Cost Cap; (c) Target Cost Floor; (d) Target Profit; (e) Target Profit Cap; and/or (f) Target Profit Floor, <p>as the case may be;</p>
"Assumed Schedule of Contributions"	<p>means the schedule of contributions for a Franchise Section which as at the date of agreement or determination of the Target Cost Template or Target Profit Template (as applicable) applies for the relevant PBF Assessment Period;</p>
"Audited Accounts Reconciliation"	<p>has the meaning given to that term in paragraph 9.4(b)(ii) of Schedule 11.2 (<i>Management Information</i>);</p>
"Budget Supporting Materials"	<p>means the supporting materials that were provided to the Secretary of State by the Franchisee in August and September 2020 in response to the Secretary of State's request for a budget forecast;</p>
"Category A Target Amendment Trigger Event"	<p>means:</p> <ul style="list-style-type: none"> (a) in relation to a Target Cost, Target Cost Cap or Target Cost Floor an event listed in paragraph 1 (<i>Target Cost Target Amendment Trigger Events</i>) of Appendix 6 (<i>Category A Target Amendment Trigger Events</i>) of this Schedule 8.1B; and

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

	(b) in relation to a Target Profit, Target Profit Cap or Target Profit Floor an event listed in paragraph 2 (<i>Target Profit Target Amendment Trigger Events</i>) of Appendix 6 (<i>Category A Target Amendment Trigger Events</i>) of this Schedule 8.1B;
“Category B Target Amendment Trigger Event”	has the meaning given to that term in paragraph 6.1(b) of this Schedule 8.1B;
“Category C Target Amendment Trigger Event”	has the meaning given to that term in paragraph 6.1(c) of this Schedule 8.1B;
“CB Components”	means: <ul style="list-style-type: none"> (a) Network Rail Collaboration; (b) SoS Collaboration; and (c) Other Collaboration;
“CE(NRPS)”	means the element of the Customer Experience Fee that is calculated in accordance with the NRPS Methodology;
“CE(SC)”	means the element of the Customer Experience Fee that is calculated in accordance with the Scorecard Methodology;
“Collaborative Behaviour Fee” or “CB”	means the element of the Performance Based Fee attributable to the sum of: <ul style="list-style-type: none"> (a) Network Rail Collaboration; (b) SoS Collaboration; and (c) Other Collaboration;
“Combined Scorecard/SQR Methodology”	means, in relation to the Customer Experience Fee, a combination of the Scorecard Methodology and the SQR Methodology;
“Combined SQR/NRPS Methodology”	means, in relation to the Customer Experience Fee, a combination of the SQR Methodology and the NRPS Methodology;
“Cost Target Methodology”	means the methodology set out in paragraph 4.3 (<i>Calculation of FIN(CC)</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 8.1B;
“COVID-19 Guidance and Regulation”	means guidance and/or regulation relating to COVID-19 as from time to time issued by the ORR, Public Health England or any other relevant

	government department, agencies or public bodies;
“Customer Experience Component”	means the NRPS Measures and/or the SQR Components;
“ERMA Evidence Report”	has the meaning given to it in paragraph 2.1 of Appendix 1 (<i>PBF Assessment Period Review</i>) of this Schedule 8.1B (and “ERMA Evidence Reports” shall be construed accordingly);
“Exceptional Event”	means an event, the effect of which, in the opinion of the Secretary of State (acting reasonably), is that: <ul style="list-style-type: none"> (a) it would no longer be reasonably practicable to collect the data required to assess the Franchisee's performance against one or more of the QTM Targets in respect of a PBF Assessment Period; or (b) the degree of challenge involved in meeting any one or more of the QTM Targets is likely to be increased or decreased to such a significant extent that it would no longer be appropriate to assess the Franchisee's performance against such QTM Targets;
“Final PBF Assessment Period”	means the final PBF Assessment Period to occur during the term of the ERMA, being (subject to paragraph 7 (<i>Effect of Extended Term and amendments to the PBF Assessment Period</i>) of this Schedule 8.1B) the PBF Assessment Period commencing on 19 September 2021 and ending on 31 March 2022;
“Financial Performance Fee” or “FIN”	means the element of the Performance Based Fee, the purpose of which is to measure the Franchisee's effectiveness in controlling costs, driving revenue growth (subject to the constraints of the Government's public health requirements) and deterring ticketless travel;
“Financial Targets”	means, as the case may be: <ul style="list-style-type: none"> (a) the Target Cost; and/or (b) the Target Profit; and/or (c) the TT Target;

“Initial PBF Assessment Period”	means the PBF Assessment Period commencing on the ERMA Start Date and ending at 01:59 on 1 April 2021;
“Maximum Performance Based Fee” or “MPBF”	has the meaning given to that term in paragraph 2.1 of this Schedule 8.1B;
“Network Rail Collaboration” or “NRC”	means the element of the Performance Based Fee that relates to collaboration with Network Rail, other Train Operators, suppliers and industry bodies;
“Notifying Party”	means: <ul style="list-style-type: none"> (a) in relation to a Category A Target Amendment Trigger Event, either the Secretary of State or the Franchisee, as the case may be; (b) in relation to a Category B Target Amendment Trigger Event, the Franchisee; and (c) in relation to a Category C Target Amendment Trigger Event, the Secretary of State;
“NRPS Methodology”	means the methodology set out in paragraph 3.5 (<i>Calculation of CE(NRPS)</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 8.1B;
“NRPS Target”	means the target, expressed as a range within which the Franchisee's performance is expected to fall, which applies to a NRPS Measure during the relevant PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of this Schedule 8.1B;
“Other Collaboration” or “OC”	means the element of the Performance Based Fee attributable to collaboration with applicable stakeholders, including those specified in paragraph 6.2 (<i>Two (2): Acceptable</i>) of Appendix 3 (<i>Scorecard Criteria</i>) of this Schedule 8.1B;
“PBF Assessment Period Review”	means a review carried out (or to be carried out) with respect to a PBF Assessment Period in accordance with Appendix 1 (<i>PBF Assessment Period Review</i>) of this Schedule 8.1B;
“PBF Assessment Period Review Checklist”	means, in respect of a PBF Assessment Period Review, a checklist completed (or, as the case may be, to be completed) substantially in the form of that set out in Appendix 2 (<i>PBF</i>

Assessment Period Review Checklist) of this Schedule 8.1B;

“PBF Assessment Period Review Meeting”	means, in respect of a PBF Assessment Period Review, a meeting held between the Parties to discuss the performance of the Franchisee during the relevant PBF Assessment Period;
“PBF Assessment Period Scorecard”	means, in respect of a PBF Assessment Period, a scorecard completed (or, as the case may be, to be completed) by the Secretary of State in accordance with paragraph 6 (<i>PBF Assessment Period Review Scoring</i>) of Appendix 1 (<i>PBF Assessment Period Review</i>) of this Schedule 8.1B;
“PBF Component”	<p>means each of the following components which shall be individually assessed to calculate the corresponding element of the PBF:</p> <ul style="list-style-type: none"> (a) Operational Performance Fee; (b) Customer Experience Fee; (c) Financial Performance Fee; (d) Collaborative Behaviour Fee; and (e) any additional component to be implemented from time to time pursuant to paragraph 4.4(f) of this Schedule 8.1B;
“Primary Delay”	means a delay that is attributed as “Primary Delay” in accordance with the Delay Attribution Principles and Rules;
“Profit Target Methodology”	means the methodology set out in paragraph 4.4 (<i>Calculation of FIN(P)</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 8.1B;
“QTM Matters”	has the meaning given to it in paragraph 4.5(a) of this Schedule 8.1B;
“QTM PBF Components”	<p>means each of the:</p> <ul style="list-style-type: none"> (a) Operational Performance Fee; (b) Customer Experience Fee; and (c) Financial Performance Fee;
“QTM Targets”	<p>means any:</p> <ul style="list-style-type: none"> (a) OP Targets;

	(b) NRPS Targets;
	(c) SQR Targets; and/or
	(d) Financial Targets,
	as applicable;
“Quarterly Financial Information”	means the financial information provided by the Franchisee to the Secretary of State pursuant to paragraph 9.3 (<i>Quarterly Financial Information</i>) of Schedule 11.2 (<i>Management Information</i>);
“Reactionary Delay”	means a delay that is attributed as “Reactionary Delay” in accordance with the Delay Attribution Principles and Rules;
“Relevant Threshold Amount”	means: <ul style="list-style-type: none"> (a) in relation to a Target Cost, the applicable non-indexed Threshold Amount multiplied by two; and (b) in relation to a Target Profit, an amount reasonably determined by the Secretary of State prior to the relevant PBF Assessment Period.
“Revenue”	has the meaning given to that term in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
“Scorecard Criterion”	means each criterion set out in Appendix 3 (Scorecard Criteria) of this Schedule 8.1B, in respect of which the Franchisee’s performance is measured (in whole or in part) in relation to a PBF Assessment Period and for which a score shall be awarded in the PBF Assessment Period Scorecard (and “Scorecard Criteria” means the plural of Scorecard Criterion);
“Scorecard Methodology”	means, in relation to a PBF Component, the methodology set out in Appendix 4 (<i>Scorecard Methodology</i>) of this Schedule 8.1B;
“SoS Collaboration” or “SC”	means the element of the Performance Based Fee attributable to collaboration with the Secretary of State;
“Subsequent CE Methodologies”	means, in relation to the Customer Experience Fee: <ul style="list-style-type: none"> (a) the Scorecard Methodology only; (b) Not used;

	(c) the Combined Scorecard/SQR Methodology; or
	(d) the Combined SQR/NRPS Methodology;
“Subsequent FP Methodologies”	means, in relation to the Financial Performance Fee:
	(a) the Scorecard Methodology as applied in whole or in part; and/or
	(b) the Cost Target Methodology; and/or
	(c) the Ticketless Travel Methodology; and/or
	(d) the Profit Target Methodology,
	and “Subsequent FP Methodology” shall be construed accordingly;
“Subsequent PBF Assessment Period”	means each PBF Assessment Period that falls after the end of the Initial PBF Assessment Period;
“Target Amendment Trigger Event”	means a:
	(a) Category A Target Amendment Trigger Event;
	(b) Category B Target Amendment Trigger Event; or
	(c) Category C Target Amendment Trigger Event,
	as the case may be;
“Target Cost Cap” or “TCC”	means the value in relation to the Target Cost agreed or determined (as applicable) pursuant to paragraph 5.1 (<i>Target Cost</i>) of this Schedule 8.1B;
“Target Cost Floor” or “TCF”	means the value in relation to the Target Cost agreed or determined (as applicable) pursuant to paragraph 5.1 (<i>Target Cost</i>) of this Schedule 8.1B;
“Target Profit Cap” or “TPC”	means the value in relation to the Target Profit agreed or determined (as applicable) pursuant to paragraph 5.2 (<i>Target Profit</i>) of this Schedule 8.1B;
“Target Profit Floor” or “TPF”	means the value in relation to the Target Profit agreed or determined (as applicable) pursuant to

	paragraph 5.2 (<i>Target Profit</i>) of this Schedule 8.1B;
"Ticketless Travel Methodology"	means the methodology set out in paragraph 4.5 (<i>Calculation of FIN(TTR)</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 8.1B;
"Ticketless Travel Rate" or "TTR"	has the meaning given to that term in Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
"TT Breach Level"	means the value in relation to the Ticketless Travel Rate agreed or determined in accordance with paragraph 4.5(a)(iii) of this Schedule 8.1B;
"TT Cap" or "TTC"	means the value in relation to the Ticketless Travel Rate agreed or determined in accordance with paragraph 4.5(a)(iii) of this Schedule 8.1B;
"TT Floor" or "TTF"	means the value in relation to the Ticketless Travel Rate agreed or determined in accordance with paragraph 4.5(a)(iii) of this Schedule 8.1B;
"TT Target"	means the target in relation to the Ticketless Travel Rate agreed or determined in accordance with paragraph 4.5(a)(iii) of this Schedule 8.1B;
"W_{CB}"	means twenty-two point five per cent (22.5%), or such alternative percentage as may be agreed or determined pursuant to paragraph 4.4(h) of this Schedule 8.1B;
"W_{CC}"	means the weighting applied to the Cost Target Methodology pursuant to and in accordance with paragraph 4.4(d) of this Schedule 8.1B;
"W_{CE}"	means twenty-two point five per cent (22.5%), or such alternative percentage as may be agreed or determined pursuant to paragraph 4.4(h) of this Schedule 8.1B;
"W_{CESC}"	(a) in relation to the Initial PBF Assessment Period means one hundred per cent (100%); and (b) in relation to each Subsequent PBF Assessment Period, has the meaning given to that term in paragraph 3.3(a) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 8.1B;
"W_{FIN}"	means thirty per cent (30%), or such alternative percentage as may be agreed or determined pursuant to paragraph 4.4(h) of this Schedule 8.1B;

"W_{NRPS}"	has the meaning given to that term in paragraph 3.3(c) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 8.1B;
"W_{OP}"	means twenty-five per cent (25%), or such alternative percentage as may be agreed or determined pursuant to paragraph 4.4(h) of this Schedule 8.1B;
"W_P"	means the weighting applied to the Profit Target Methodology pursuant to and in accordance with paragraph 4.4(d) of this Schedule 8.1B;
"W_{SQR}"	has the meaning given to that term in paragraph 3.3(b) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 8.1B;
"W_{TT}"	means the weighting applied to the Ticketless Travel Methodology pursuant to and in accordance with paragraph 4.4(d) of this Schedule 8.1B.

2. Maximum Fee

The Performance Based Fee attributable to any given PBF Assessment Period shall not exceed £M*N (the "Maximum Performance Based Fee" or "MPBF"), where:

M	means £343,000 exclusive of VAT; and
N	means the number of Reporting Periods that fall within the relevant PBF Assessment Period.

3. Calculation of the Performance Based Fee for the Initial PBF Assessment Period

3.1 The Performance Based Fee in relation to the Initial PBF Assessment Period shall be calculated in accordance with this paragraph 3.

3.2 The Performance Based Fee for the Initial PBF Assessment Period shall be calculated as the sum of the individual PBF Components calculated and weighted in accordance with the Scorecard Methodology in accordance with the following formula:

£PBF =	OP + CE + FIN + CB
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where:

£PBF	shall have a value between zero and the Maximum Performance Based Fee in relation to the Initial PBF Assessment Period;
OP	means the sum (in pounds sterling) that is zero or a positive number in relation to the Operational

	Performance Fee calculated in accordance with the Scorecard Methodology;
CE	means the sum (in pounds sterling) that is zero or a positive number in relation to the Customer Experience Fee calculated in accordance with the Scorecard Methodology;
FIN	means the sum (in pounds sterling) that is zero or a positive number in relation to the Financial Performance Fee calculated in accordance with the Scorecard Methodology; and
CB	means the sum (in pounds sterling) that is zero or a positive number in relation to the Collaborative Behaviour Fee calculated in accordance with the Scorecard Methodology.

4. Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period

- 4.1 Subject to the inclusion of any additional PBF Component(s) pursuant to paragraph 4.4(f) below, the Performance Based Fee for each Subsequent PBF Assessment Period shall be calculated as the sum of the individual PBF Components for that period assessed using the Quantified Target Methodology and/or the Scorecard Methodology (as applicable) in accordance with the following formula:**

£PBF =	OP + CE + FIN + CB
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where:

£PBF	shall have a value between zero and the Maximum Performance Based Fee in relation to the relevant PBF Assessment Period;
OP	means the sum in pounds sterling calculated in relation to the Operational Performance Fee in accordance with the Scorecard Methodology or the Quantified Target Methodology (as applicable during that PBF Assessment Period);
CE	means the sum in pounds sterling calculated in relation to the Customer Experience Fee in accordance with the Scorecard Methodology or the Quantified Target Methodology (as applicable during that PBF Assessment Period);
FIN	means the sum in pounds sterling calculated in relation to the Financial Performance Fee in accordance with the Scorecard Methodology or the Quantified Target Methodology (as applicable during that PBF Assessment Period); and
CB	means the sum in pounds sterling calculated in relation to the Collaborative Behaviour Fee in accordance with the Scorecard Methodology.

4.2 In relation to each Subsequent PBF Assessment Period:

- (a) **two months prior to the relevant PBF Assessment Period, the Secretary of State may notify the Franchisee whether:**
- (i) **the Scorecard Methodology shall apply in relation to all of the PBF Components; or**
 - (ii) **the Secretary of State is minded to apply the Quantified Target Methodology to one or more of the QTM PBF Components during that PBF Assessment Period,**

and set out the information that the Secretary of State requires the Franchisee to provide (and the date by when the Secretary of State requires the Franchisee to provide such information) to enable the Parties to agree (or the Secretary of State to determine, as the case may be) the applicable matters set out in paragraph 4.4 below (a "Subsequent PBF Assessment Period Notification");

- (b) **after the Secretary of State issues a Subsequent PBF Assessment Period Notification to the Franchisee, the Parties shall seek to agree the applicable matters set out in paragraph 4.4 below, each acting reasonably and in a timely manner. If, by the date falling ten (10) Weekdays prior to the commencement of the relevant PBF Assessment Period, the Parties have not agreed the matters set out in paragraph 4.4 below, the Secretary of State may:**
- (i) **reasonably determine such matters and notify the Franchisee accordingly prior to the commencement of the relevant PBF Assessment Period; or**
 - (ii) **in the Secretary of State's sole discretion, notify the Franchisee that the Scorecard Methodology will continue to apply to any or all of the QTM PBF Components; and**
- (c) **the Collaborative Behaviour Fee shall be assessed in accordance with the Scorecard Methodology.**

4.3 If:

- (a) **the Secretary of State does not issue a Subsequent PBF Assessment Period Notification to the Franchisee pursuant to and in accordance with paragraph 4.2(a) above (and paragraph 7.4 below, if applicable), the Scorecard Methodology shall apply to each of the PBF Components during the relevant Subsequent PBF Assessment Period; and**
- (b) **the Secretary of State issues a Subsequent PBF Assessment Period Notification to the Franchisee which proposes that the Quantified Target Methodology shall apply to some (but not all) of the QTM PBF Components, the Scorecard Methodology shall continue to apply to each of the QTM PBF Components in relation to which the Secretary of State has not proposed to apply the Quantified Target Methodology.**

- 4.4 Not later than ten (10) Weekdays before the commencement of a Subsequent PBF Assessment Period in relation to which the Secretary of State has issued a Subsequent PBF Assessment Period Notification to the Franchisee pursuant to and in accordance with paragraph 4.2(a) above, the Parties shall seek to agree (each acting reasonably and in a timely manner) as applicable:**
- (a) whether the Quantified Target Methodology shall be applied to any or all of the QTM PBF Components;**
 - (b) in accordance with the provisions set out in paragraph 4.5 below, the OP Targets, Breach Performance Levels and Default Performance Levels in respect of Cancellations, TOC Minutes Delay and Short Formations, NRPS Targets, SQR Targets, Improvement Plan Levels and/or the TT Target, TT Cap, TT Floor and TT Breach Levels (as applicable) that shall apply during the relevant PBF Assessment Period;**
 - (c) which, if any, of the:**
 - (i) Subsequent CE Methodologies shall apply to the Customer Experience Fee during the relevant PBF Assessment Period; and**
 - (ii) Subsequent FP Methodologies shall apply to the Financial Performance Fee during the relevant PBF Assessment Period;**
 - (d) if more than one Subsequent FP Methodology applies to the Financial Performance Fee pursuant to paragraph 4.4(c)(ii) above, the weighting to be applied to each Subsequent FP Methodology, provided that the sum of such weightings shall equal one hundred per cent (100%);**
 - (e) any amendments to the Scorecard Criteria, which such amendments may amend, insert or remove requirements but shall not materially:**
 - (i) change the overall purpose of the relevant Scorecard Criterion; and/or**
 - (ii) improve or impede the ability of the Franchisee (acting as a Good and Efficient Operator) to achieve any particular score in accordance with the Scorecard Criteria;**
 - (f) whether any additional PBF Components shall apply for the purposes of calculating the Performance Based Fee for that PBF Assessment Period, provided that the aggregate weighting to be applied to such additional PBF Component(s) ("WADD") shall not exceed fifteen per cent (15%), the aggregate weighting to be applied to the PBF Components shall equal one hundred per cent (100%) and the calculation of any additional PBF Component (or PBF Components) shall provide the Franchisee with an opportunity to earn an amount of Performance Based Fee in respect of such additional component (or such additional components in aggregate) in the relevant PBF Assessment Period of up to $WADD * MPBF$;**

- (g) any changes to the weightings W_{NR} , W_{SOS} and/or W_{OTH} , provided that the sum of such weightings shall equal one hundred per cent (100%); and
- (h) any changes to the weightings W_{OP} , W_{CE} , W_{FIN} and/or W_{CB} , provided that such weightings shall not fall below the minimum value or exceed the maximum value specified in the table below.

PBF Component	Weighting	Minimum Weighting	Maximum Weighting
Operational Performance Fee	W_{OP}	17.5%	32.5%
Customer Experience Fee	W_{CE}	15%	30%
Financial Performance Fee	W_{FIN}	25%	40%
Collaborative Behaviour Fee	W_{CB}	15%	30%

4.5 If the Quantified Target Methodology applies to any of the QTM PBF Components during the relevant PBF Assessment Period:

- (a) the Parties shall seek to agree:
- (i) the OP Targets that shall apply with respect to each Operational Performance Component and the Breach Performance Levels and the Default Performance Levels that shall apply with respect to Cancellations, TOC Minutes Delay and Short Formations, during each Reporting Period which falls during the relevant PBF Assessment Period; and/or
 - (ii) the NRPS Targets, SQR Targets that shall apply with respect to each Customer Experience Component, and the Improvement Plan Levels that shall apply for each NRPS Measure in each NRPS Service Group and for each Service Quality Area during the relevant PBF Assessment Period; and/or
 - (iii) the TT Target, TT Breach Level, TT Cap and TT Floor that shall apply during the relevant PBF Assessment Period,
- (the "QTM Matters") as applicable (each acting reasonably and in a timely manner, and by no later than the date falling ten (10) Weekdays before the commencement of the relevant PBF Assessment Period);
- (b) each OP Target, NRPS Target and/or SQR Target (as applicable) shall be expressed as a range within which the Franchisee's performance is expected to fall and shall be expressed substantively in the format set out in Appendix 7 to this Schedule 8.1B (Pro Forma Target Tables);
- (c) each Breach Performance Level, Default Performance Level and TT Breach Level shall be expressed as a number beneath which the Franchisee's performance is not expected to fall and shall be

expressed substantively in the format set out in Appendix 7 to this Schedule 8.1B (Pro Forma Target Tables);

- (d) if the Parties have agreed any of the QTM Matters in accordance with paragraph 4.5(a) above, prior to the date falling ten (10) Weekdays before the commencement of the relevant PBF Assessment Period, then such agreed QTM Matters shall apply during the relevant PBF Assessment Period;
- (e) if the Parties have not agreed any of the QTM Matters in accordance with paragraph 4.5(a) above prior to the date falling ten (10) Weekdays before the commencement of the relevant PBF Assessment Period, then the Secretary of State shall:
 - (i) either:
 - (A) reasonably determine the relevant QTM Matters (if such QTM Matters have not been agreed by the Parties pursuant to paragraph 4.5(c) above) that shall apply during the relevant PBF Assessment Period; and/or
 - (B) in the Secretary of State's sole discretion, notify the Franchisee that the Scorecard Methodology will continue to apply to any or all of the QTM PBF Components; and
 - (ii) notify the Franchisee of such decision not later than the commencement of the relevant PBF Assessment Period, in which case (unless the Secretary of State has notified the Franchisee that the Scorecard Methodology will continue to apply to the QTM PBF Components pursuant to sub-paragraph (i)(B) above) the QTM Matters determined by the Secretary of State in accordance with this paragraph 4.5(e) shall apply during the relevant PBF Assessment Period;
- (f) the range for each OP Target, NRPS Target and/or SQR Target and/or the value of the TT Target (in each case, as applicable), agreed or determined in accordance with this paragraph 4.5 shall comprise a range or value (as applicable) that:
 - (i) a competent Train Operator, acting efficiently, can reasonably be expected to achieve in the circumstances that are prevailing for the relevant PBF Assessment Period (and in relation to each OP Target, having regard to normal seasonal variability of operating performance); and
 - (ii) a high-performing Train Operator could have a realistic prospect of exceeding and would therefore attain the maximum possible amount of Performance Based Fee attributable to the relevant QTM PBF Component during the relevant PBF Assessment Period; and
- (g) the value of each:
 - (i) Breach Performance Level and TT Breach Level agreed or determined in accordance with this paragraph 4.5 shall be set

at a level that a competent Train Operator, acting efficiently, can reasonably be expected not to fall below (and in relation to each OP Target, having regard to normal seasonal variability of operating performance); and

- (ii) Default Performance Level agreed or determined in accordance with this paragraph 4.5 shall be set at a level that affords a reasonable opportunity for a competent Train Operator, having performed worse than the Breach Performance Level, to implement any necessary remedial actions to avoid performance deteriorating to that Default Performance Level (in relation to each OP Target, having regard to normal seasonal variability of operating performance).

5. Financial Targets

5.1 Target Cost

- (a) If the Secretary of State notifies the Franchisee that the Secretary of State is minded to apply the Cost Target Methodology in relation to the Financial Performance Fee pursuant to paragraph 4.2(a) of this Schedule 8.1B, no later than five (5) Weekdays following receipt of the relevant Subsequent PBF Assessment Period Notification the Franchisee shall deliver to the Secretary of State a spreadsheet setting out the Franchisee's proposed Target Cost, with lines of forecast expenditure for each Reporting Period of the relevant PBF Assessment Period, in at least the level of disaggregation of the most disaggregated of:

- (i) the Financial Formats;
- (ii) the "P&L2" tab of the Financial Model;
- (iii) any set of Management Accounts for any period of the EMA or the ERMA; or
- (iv) any previous Audited Accounts Reconciliation,

(the "Target Cost Template"). The Target Cost Template shall allocate forecast expenditure consistently with the most disaggregated of the items listed in paragraphs (i) to (iv) above with no netting off between lines. Unless otherwise directed by the Secretary of State the Target Cost Template shall assume that employer pension contributions payable to each Franchise Section are at the rate(s) and/or amount(s) set out in the Assumed Schedule of Contributions for that Franchise Section for the relevant period.

- (b) Within five (5) Weekdays of delivering the Target Cost Template to the Secretary of State, the Franchisee shall deliver to the Secretary of State a Target Cost Record of Assumptions which shall include the Franchisee's proposed Target Cost Cap and Target Cost Floor based on benchmarking evidence gathered by the Franchisee consistent with the principles set out in paragraphs 5.1(d)(ii) and 5.1(e)(ii) below.

- (c) The Parties shall seek to agree (each acting reasonably, in a timely manner and through sufficiently senior representatives) the Target Cost, Target Cost Cap and Target Cost Floor for the relevant PBF Assessment Period.
- (d) The Target Cost Cap shall be set at a value:
- (i) lower than the value of the Target Cost; and
 - (ii) that the Parties agree (or, if the Parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Secretary of State may reasonably determine) that a highly efficient Train Operator would have a realistic prospect of achieving.
- (e) The Target Cost Floor shall be set at a value:
- (i) greater than the value of the Target Cost; and
 - (ii) that the Parties agree (or, if the Parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Secretary of State may reasonably determine) that a broadly competent Train Operator would be likely to achieve or exceed.
- (f) Within five (5) Weekdays of the Target Cost Cap and the Target Cost Floor being agreed or determined in accordance with this paragraph 5, the Franchisee shall apply the Target Cost Cap and the Target Cost Floor to the Target Cost Template which shall then be Placed in Escrow.

5.2 Target Profit

- (a) If the Secretary of State notifies the Franchisee that the Secretary of State is minded to apply the Profit Target Methodology in relation to the Financial Performance Fee pursuant to paragraph 4.2(a) of this Schedule 8.1B, no later than five (5) Weekdays following receipt of the relevant Subsequent PBF Assessment Period Notification the Franchisee shall deliver to the Secretary of State a spreadsheet setting out the Franchisee's proposed Target Profit, with lines of forecast revenue and expenditure for each Reporting Period of the relevant PBF Assessment Period, in at least the level of disaggregation of the most disaggregated of:
- (i) the Financial Formats;
 - (ii) the "P&L2" tab of the Financial Model;
 - (iii) any set of Management Accounts for any period of the EMA or ERMA; or
 - (iv) any previous Audited Accounts Reconciliation,
- (the "Target Profit Template"). The Target Profit Template shall allocate forecast revenue and expenditure consistently with the most disaggregated of the items listed in paragraphs (i) to (iv)

above with no netting off between lines. Unless otherwise directed by the Secretary of State the Target Profit Template shall assume that employer pension contributions payable to each Franchise Section are at the rate(s) and/or amount(s) set out in the Assumed Schedule of Contributions for that Franchise Section for the relevant period.

- (b) Within five (5) Weekdays of delivering the Target Profit Template to the Secretary of State, the Franchisee shall deliver to the Secretary of State a Target Profit Record of Assumptions which shall include the Franchisee's proposed Target Profit Cap and Target Profit Floor based on benchmarking evidence gathered by the Franchisee consistent with the principles set out in paragraphs 5.2(d)(ii) and 5.2(e)(ii) below.
- (c) The Parties shall seek to agree (each acting reasonably, in a timely manner and through sufficiently senior representatives) the Target Profit, Target Profit Cap and Target Profit Floor for the relevant PBF Assessment Period.
- (d) The Target Profit Cap shall be set at a value:
 - (i) greater than the value of the Target Profit; and
 - (ii) that the Parties agree (or, if the Parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Secretary of State may reasonably determine) that a highly efficient Train Operator maximising its financial return would have a realistic prospect of achieving.
- (e) The Target Profit Floor shall be set at a value:
 - (i) lower than the value of the Target Profit; and
 - (ii) that the Parties agree (or, if the Parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Secretary of State may reasonably determine) that a broadly competent Train Operator would be likely to improve upon.
- (f) Within five (5) Weekdays of the Target Profit Cap and the Target Profit Floor being agreed or determined in accordance with this paragraph 5, the Franchisee shall apply the Target Profit Cap and the Target Profit Floor to the Target Profit Template which shall then be Placed in Escrow.

5.3 Continued application of Scorecard Methodology

If the Parties have not agreed (or, if applicable, the Secretary of State has not determined) any or all of the Target Cost, Target Cost Cap, Target Cost Floor, Target Profit, Target Profit Cap and/or Target Profit Floor in accordance with paragraph 5.1 (*Target Cost*) or 5.2 (*Target Profit*), as applicable, then the Secretary of State may notify the Franchisee that the Scorecard Methodology shall continue to apply unaltered in relation to the Financial Performance Fee.

6. Target Amendments

6.1 The Secretary of State may amend any Amendable Financial Target (in each case a "Performance Fee Target Amendment") during the relevant PBF Assessment Period following the occurrence of:

(a) a Category A Target Amendment Trigger Event which one Party has notified to the other;

(b) an event that:

(i) is outside the control of the Franchisee and its Affiliates;

(ii) the Franchisee has notified to the Secretary of State; and

(iii) the Secretary of State has agreed (acting reasonably) on the basis of evidence provided to the Secretary of State by the Franchisee has caused the applicable Amendable Financial Target to require amendment to ensure that the Franchisee is no more and no less likely to achieve the Amendable Financial Target than if such event had not occurred,

(a "Category B Target Amendment Trigger Event"); or

(c) an event that:

(i) was caused by the Secretary of State; or

(ii) is outside the control of the Franchisee and its Affiliates; and

(iii) in either case:

(A) the Secretary of State has notified to the Franchisee; and

(B) in the opinion of the Secretary of State, acting reasonably, has caused the applicable Amendable Financial Target to require amendment to ensure that the Franchisee is no more and no less likely to achieve the Amendable Financial Target than if such event had not occurred,

(a "Category C Target Amendment Trigger Event"),

which either the Parties have agreed or the Secretary of State has reasonably determined pursuant to paragraphs 6.4 to 6.6 below has caused one or more of the Amendable Financial Targets to require amendment by a net financial value (an "Amendment Amount") that is equal to or greater than the Relevant Threshold Amount.

6.2 The Notifying Party may notify the other Party of the occurrence of a Target Amendment Trigger Event (and, if the Notifying Party is the Franchisee, shall provide sufficient evidence to enable the Secretary of State to calculate the impact of the Target Amendment Trigger Event on the Amendable Financial Target(s)) at any time between the date falling twenty (20) Weekdays prior to the commencement of a PBF Assessment

Period and the date falling twenty (20) Weekdays following the end of a PBF Assessment Period, provided that the Notifying Party shall notify the other Party no later than ten (10) Weekdays following the day on which:

- (a) the Target Amendment Trigger Event occurs; or**
- (b) the Franchisee ought reasonably to have become aware of the occurrence of such Target Amendment Trigger Event.**

6.3 Within ten (10) Weekdays of the Secretary of State receiving a notice pursuant to paragraph 6.2 above, the Secretary of State shall issue a provisional notice to the Franchisee confirming whether in the opinion of the Secretary of State (acting reasonably) a Target Amendment Trigger Event has occurred.

6.4 Within twenty (20) Weekdays of receipt of:

- (a) a notice from the Secretary of State pursuant to paragraph 6.2 above; or**
- (b) a provisional notice from the Secretary of State pursuant to paragraph 6.3 above,**

the Parties shall seek to agree (each acting reasonably and in a timely manner) whether a Target Amendment Trigger Event has occurred and the value of the relevant Performance Fee Target Amendment, if any. If the Franchisee does not respond to the relevant notice within five (5) Weekdays of receipt, then the Franchisee shall be deemed to have accepted the conclusions set out in the relevant notice and any Performance Fee Target Amendment proposed by the Secretary of State shall apply in accordance with paragraph 6.7 below.

6.5 If the Parties have agreed whether a Target Amendment Trigger Event has occurred and the value of the associated Performance Fee Target Amendment, if any, within twenty (20) Weekdays, then the Performance Fee Target Amendment (if any) agreed between the Parties shall apply in accordance with paragraph 6.7 below.

6.6 If the Parties have not agreed whether a Target Amendment Trigger Event has occurred and/or the value of the associated Performance Fee Target Amendment, if any, within twenty (20) Weekdays of receipt by the Franchisee of the provisional notice pursuant to paragraph 6.3 above, then the Secretary of State:

- (a) shall reasonably determine whether a Target Amendment Trigger Event has occurred and the value of the associated Performance Fee Target Amendment, if any; and**
- (b) shall promptly notify the Franchisee of such decision, in which case the Performance Fee Target Amendment, if any, determined by the Secretary of State in accordance with this paragraph 6.6 shall apply in accordance with paragraph 6.7 below.**

6.7 A Performance Fee Target Amendment shall apply retrospectively from the date on which the Target Amendment Trigger Event occurred and shall continue to apply until the end of the relevant PBF Assessment Period.

6.8 A Target Amendment Trigger Event may trigger a Performance Fee Target Amendment in relation to two PBF Assessment Periods, if:

- (a) the aggregate Amendment Amount across both relevant PBF Assessment Periods is greater than the Relevant Threshold Amount; and**
- (b) the Target for the later of the two PBF Assessment Periods has already been agreed or determined on the date on which the Target Amendment Trigger Event occurred,**

in which case the Amendable Financial Target for each relevant PBF Assessment Period shall be amended accordingly.

6.9 Within five (5) Weekdays of:

- (a) the Parties agreeing (or the Franchisee being deemed to have agreed) a Performance Fee Target Amendment pursuant to paragraph 6.4 above; or**
- (b) the Secretary of State notifying the Franchisee of a Performance Fee Target Amendment pursuant to paragraph 6.6 above,**

the Franchisee shall apply the Performance Fee Target Amendment to the Target Cost Template or Target Profit Template (as applicable) then Placed in Escrow in accordance with paragraph 10.1(d) of Schedule 11.2 (*Management Information*) and submit such amended Target Cost Template and/or Target Profit Template to the Secretary of State along with any applicable information in relation to the impact of such amendment(s) on the Financial Targets and an updated version of the Target Cost Record of Assumptions or the Target Profit Record of Assumptions (as applicable).

6.10 Within ten (10) Weekdays of receipt of the amended Target Cost Template and/or Target Profit Template (as applicable) pursuant to paragraph 6.9 above, the Secretary of State shall either:

- (a) agree the amended Financial Targets; or**
- (b) reasonably determine any necessary amendments to the Target Cost Template and/or Target Profit Template (as appropriate) and associated Financial Targets to ensure the proper application of the Performance Fee Target Amendment,**

and within five (5) Weekdays of such agreement or determination the updated Target Cost Template and/or Target Profit Template (as appropriate) shall be Placed in Escrow in accordance with paragraph 10.1(d) of Schedule 11.2 (*Management Information*).

6.11 Nothing in this paragraph 6 shall automatically result in an amendment to any then-current Budget, Annual Business Plan or Quarterly Budget.

- 7. Effect of Extended Term and amendments to the PBF Assessment Period**
- 7.1 If the Secretary of State elects to extend the term of the ERMA pursuant to clause 3.3 of the ERMA, the Secretary of State shall promptly notify the Franchisee whether:**
- (a) the duration of the originally scheduled Final PBF Assessment Period shall be extended; or**
 - (b) an additional PBF Assessment Period shall apply, which shall be deemed to be the Final PBF Assessment Period.**
- 7.2 Following an amendment to the duration of a PBF Assessment Period for any reason, the Parties shall seek to agree (each acting reasonably, in a timely manner and through sufficiently senior representatives):**
- (a) any necessary amendments to the applicable Amendable Financial Targets in respect of the relevant PBF Assessment Period; and**
 - (b) the OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) for the relevant PBF Assessment Period in respect of each of the additional Reporting Periods,**
- taking into consideration the amendment to the duration of the relevant PBF Assessment Period. If the Parties have agreed any amendment(s) to the applicable Amendable Financial Targets and/or the applicable OP Targets, Breach Performance Levels and/or Default Performance Levels within twenty (20) Weekdays of the amendment to the duration of the relevant PBF Assessment Period, then such agreed matters shall apply in accordance with paragraph 7.4 below.**
- 7.3 If the Parties have not agreed any necessary amendments to the applicable Amendable Financial Targets and/or the applicable OP Targets, Breach Performance Levels and/or Default Performance Levels for the relevant PBF Assessment Period within twenty (20) Weekdays of the amendment to the duration of the relevant PBF Assessment Period, then the Secretary of State:**
- (a) may reasonably determine any necessary amendments to the applicable Amendable Financial Targets for the relevant PBF Assessment Period;**
 - (b) may reasonably determine the OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) for the relevant PBF Assessment Period; and**
 - (c) shall promptly notify the Franchisee of such decision, in which case the amendment(s) to the applicable Amendable Financial Targets (if any) and the OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) determined by the Secretary of State in accordance with this paragraph 7.3 shall apply in accordance with paragraph 7.4 below.**
- 7.4 Any amendment(s) to the applicable Amendable Financial Targets (if any) and any new OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) shall apply retrospectively from the**

date on which the amendment to the duration of a PBF Assessment Period occurred and shall continue to apply until the end of the relevant PBF Assessment Period.

7.5 If the Secretary of State:

- (a) elects to extend the term of the ERMA pursuant to clause 3.3 of the ERMA; and
- (b) intends to notify the Franchisee that an additional PBF Assessment Period shall apply pursuant to paragraph 7.1(b) above,

the Secretary of State may (notwithstanding the requirement to issue a Subsequent PBF Assessment Period Notification two months prior to the relevant PBF Assessment Period pursuant to paragraph 4.2(a) above) issue a Subsequent PBF Assessment Period Notification no later than the Weekday following the date of the notice issued to the Franchisee pursuant to paragraph 7.1(b) above, in which case the provisions of paragraph 4 (*Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period*) shall apply.

8. Exceptional Events

Following the occurrence of an Exceptional Event, the Secretary of State may, acting reasonably:

- (a) if the Quantified Target Methodology applies to any QTM PBF Component pursuant to and in accordance with paragraph 4 (*Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period*) of this Schedule 8.1B, notify the Franchisee that from the date of such notification (or such alternative date as may be specified in the notification) the Scorecard Methodology shall apply in lieu of the Quantified Target Methodology in relation to any or all of the QTM PBF Components during the relevant PBF Assessment Period;
- (b) suspend any applicable Amendable Financial Target, NRPS Target, OP Target, SQR Target and/or TT Target and apply the Scorecard Methodology in a manner which, as far as is reasonably practicable, aligns with any suspended target which has already been set for that PBF Assessment Period; and/ or
- (c) for the relevant PBF Assessment Period, calculate the Performance Based Fee attributable to each QTM PBF Component on a pro-rata basis according to the duration of the period for which each of the Quantified Target Methodology and the Scorecard Methodology applied to such QTM PBF Component.

⁴³⁹ **Appendix 1 to Schedule 8.1B****PBF ASSESSMENT PERIOD REVIEW**

- 1. Purpose of the PBF Assessment Period Review**
 - 1.1 The purpose of a PBF Assessment Period Review is for the Secretary of State to undertake a review of the Franchisee's performance in relation to the Franchise Services over the course of the relevant PBF Assessment Period.**
 - 1.2 The Secretary of State shall carry out a PBF Assessment Period Review with respect to each PBF Assessment Period.**
 - 1.3 At each periodic Franchise Performance Meeting, the Parties shall discuss and review:**
 - (a) without prejudice to the Secretary of State's right to determine each score that the Franchisee will achieve in accordance with Appendix 3 (*Scorecard Criteria*), the Franchisee's progress against the Scorecard Criteria and any other assessment criteria implemented pursuant to this Schedule 8.1B; and**
 - (b) the evidence to be included within an ERMA Evidence Report for the Reporting Period to which that Franchisee Performance Meeting relates and/or for any other Reporting Period.**
 - 1.4 Each PBF Assessment Period Review shall be carried out in accordance with the process set out in this Appendix 1 to Schedule 8.1B.**
- 1. ERMA Evidence Report**
 - 1.1 In advance of each Franchise Performance Meeting, the Secretary of State shall provide the Franchisee with a report detailing the information and evidence that the Secretary of State considers to be relevant to the PBF Assessment Period Review and the assessment of the Franchisee's performance against the Scorecard Criteria (each, an "ERMA Evidence Report"). Each ERMA Evidence Report shall contain only new information and evidence and shall not repeat the information and evidence that was included in a previous ERMA Evidence Report, except if that information and evidence has changed.**
 - 1.2 The Franchisee shall, following receipt of an ERMA Evidence Report, notify the Secretary of State of any information or evidence, in addition to that set out in the ERMA Evidence Report, which the Franchisee considers to be relevant to the PBF Assessment Period Review and the assessment of the Franchisee's performance against the Scorecard Criteria.**
 - 1.3 The Secretary of State shall, following receipt of a notice pursuant to paragraph 2.2 of this Appendix 1 to Schedule 8.1B, provide written confirmation to the Franchisee of whether the Secretary of State considers such information or evidence to be relevant to the PBF Assessment Period**

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

Review and, where the Secretary of State considers such information or evidence to be relevant, the Secretary of State shall either amend the relevant ERMA Evidence Report to include such information or evidence or include the information or evidence in the next, or any subsequent, ERMA Evidence Report.

- 1.4** The Parties acknowledge and agree that the ERMA Evidence Report is not intended to be the final record of all information or evidence in respect of the Reporting Period to which the Franchise Performance Meeting relates and the Parties shall be entitled to agree, at or in advance of any subsequent Franchise Performance Meeting, that additional evidence relating to such Reporting Period may be added to that, or any subsequent, ERMA Evidence Report.
- 2. Notice of PBF Assessment Period Review Meeting**
- 2.1** ⁴⁴⁰The Secretary of State shall notify the Franchisee of the date, time and location for the relevant PBF Assessment Period Review Meeting (or, where the Secretary of State considers that more than one PBF Assessment Period Review Meeting is necessary, each PBF Assessment Period Review Meeting) by no later than the end of the relevant PBF Assessment Period, provided always that any PBF Assessment Period Review Meeting shall take place no earlier than the last day in the relevant PBF Assessment Period and no later than forty seven (47) weekdays after the end of the relevant PBF Assessment Period.
- 2.2** Nothing in this Schedule 8.1B shall prevent the Parties from discussing any matter relevant to a PBF Assessment Period Review outside of any PBF Assessment Period Review Meeting.
- 3. PBF Assessment Period Review Checklist**
- 3.1** Not less than thirty (30) days prior to the end of the relevant PBF Assessment Period, the Secretary of State, acting reasonably, shall notify the Franchisee in writing of any additional evidence or information that the Franchisee is required to submit at the same time as the completed PBF Assessment Period Review Checklist.
- 3.2** Not less than fifteen (15) days prior to the end of each PBF Assessment Period, the Franchisee shall notify the Secretary of State in writing of any evidence or information in addition to that set out in the PBF Assessment Period Review Checklist, each ERMA Evidence Report or the information notified to the Franchisee by the Secretary of State in accordance with paragraph 4.1 of this Appendix 1 to Schedule 8.1B, which the Franchisee considers to be relevant for the PBF Assessment Period Review. The Secretary of State shall, within ten (10) days of receiving such notice, provide written confirmation to the Franchisee of whether the Secretary of State considers such matters to be relevant to the PBF Assessment Period Review.

⁴⁴⁰ 19 March 2021 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

3.3 ⁴⁴¹As soon as reasonably practicable after the end of each PBF Assessment Period, and in any event no later than twelve (12) weekdays after the end of the relevant PBF Assessment Period, the Franchisee shall deliver to the Secretary of State a duly completed copy of the PBF Assessment Period Review Checklist in respect of that PBF Assessment Period.

3.4 The PBF Assessment Period Review Checklist delivered by the Franchisee pursuant to paragraph 4.3 of this Appendix 1 to Schedule 8.1B shall include written commentary from the Franchisee in respect of the PBF Assessment Period covering:

- (a) each of the matters listed in the PBF Assessment Period Review Checklist;
- (b) the evidence and information included in the ERMA Evidence Reports;
- (c) any other matter notified by the Secretary of State to the Franchisee pursuant to paragraph 4.1 of this Appendix 1 to Schedule 8.1B; and
- (d) any other matter which the Secretary of State has confirmed as relevant for the PBF Assessment Period Review in accordance with paragraph 4.2 of this Appendix 1 to Schedule 8.1B.

3.5 The Secretary of State shall provide the Franchisee with:

- (a) a written commentary on the completed PBF Assessment Period Review Checklist and the evidence and information included in the ERMA Evidence Reports (including any commentary provided by the Franchisee under paragraph 4.4 of this Appendix 1 to Schedule 8.1B); and
- (b) any evidence or information additional to that:
 - (i) contained in the ERMA Evidence Reports; or
 - (ii) contained in or submitted by the Franchisee at the same time as the PBF Assessment Period Review Checklist (in accordance with paragraph 4.1 of this Appendix 1 to Schedule 8.1B),

which the Secretary of State has used or intends to use to assess the Franchisee's performance,

in each case, no later than ten (10) days prior to the relevant PBF Assessment Period Review Meeting.

4. PBF Assessment Period Review Meeting

4.1 The PBF Assessment Period Review Meeting shall take place at the date, time and location notified by the Secretary of State to the Franchisee in

⁴⁴¹ 19 March 2021 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

accordance with paragraph 3.1 of this Appendix 1 to Schedule 8.1B and shall be attended by representatives of each of the Secretary of State and the Franchisee.

4.2 The Franchisee shall ensure that the representatives of the Franchisee at the PBF Assessment Period Review Meeting include such:

- (a) appropriate and qualified personnel of the Franchisee;**
- (b) directors and/or senior managers of the Franchisee; and**
- (c) directors and/or senior managers of the Parent,**

as the Secretary of State may reasonably require.

4.3 At the PBF Assessment Period Review Meeting, the Parties shall discuss the Franchisee's performance by reference to the PBF Assessment Period Review Checklist and each ERMA Evidence Report, together with any supporting commentary, documents or evidence submitted by the Franchisee to the Secretary of State pursuant to paragraphs 4.3 and 4.4 of this Appendix 1 to Schedule 8.1B and any commentary and/or information provided by the Secretary of State to the Franchisee in accordance with paragraph 4.5 of this Appendix 1 to Schedule 8.1B.

5. PBF Assessment Period Review Scoring

5.1 The Secretary of State may take such steps as the Secretary of State considers (acting reasonably) to be necessary or appropriate to take into consideration any representations or evidence provided by Network Rail and/or any other relevant third party to the extent relevant to the Scorecard Criteria, including:

- (a) procuring views or evidence from Network Rail and/or other relevant stakeholders;**
- (b) directing the Franchisee to procure such views or evidence, which shall be submitted with the Franchisee's own information and evidence pursuant to paragraph 2 (*ERMA Evidence Report*) of this Appendix 1 to Schedule 8.1B; and/or**
- (c) subject to any requirements in relation to confidentiality, sharing extracts (on an anonymised or redacted basis, if required) of evidence supplied by the Franchisee with Network Rail and/or other relevant stakeholders.**

5.2 ⁴⁴²The Secretary of State shall provide to the Franchisee, no later than fifty eight (58) weekdays after the end of the relevant PBF Assessment Period, a duly completed PBF Assessment Period Scorecard setting out the Franchisee's performance in each of the Scorecard Criteria and any other

⁴⁴² 19 March 2021 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

assessment criteria implemented pursuant to this Schedule 8.1B for the PBF Assessment Period.

- 5.3 The Franchisee shall be scored three (3), two (2) or one (1) in relation to each Scorecard Criterion and, in relation to any other assessment criteria implemented pursuant to this Schedule 8.1B, shall be assessed or scored (as applicable) in accordance with such assessment criteria.**
- 5.4 Scores in the PBF Assessment Period Scorecard shall be awarded by the Secretary of State having regard to the matters set out in the PBF Assessment Period Scorecard. One single, integer, overall score shall be awarded in relation to each Scorecard Criterion based on the Secretary of State's assessment of the Franchisee's performance in respect of that Scorecard Criterion and taking into account:**
- (a) each ERMA Evidence Report;**
 - (b) the PBF Assessment Period Review Checklist provided to the Secretary of State by the Franchisee in accordance with paragraphs 4.3 and 4.4 of this Appendix 1 to Schedule 8.1B;**
 - (c) any commentary provided to the Franchisee by the Secretary of State in accordance with paragraph 4.5 of this Appendix 1 to Schedule 8.1B;**
 - (d) any discussions between the Franchisee and the Secretary of State at the PBF Assessment Period Review Meeting(s); and**
 - (e) any representations or evidence provided by Network Rail and/or any other relevant third party pursuant to paragraph 6.1 of this Appendix 1 to Schedule 8.1B.**
- 5.5 The PBF Assessment Period Review shall be complete once the Secretary of State has sent a duly completed PBF Assessment Period Scorecard to the Franchisee in accordance with paragraph 6.2 of this Appendix 1 to Schedule 8.1B.**
- 5.6 If the Franchisee:**
- (a) is operating at a level that would, or would likely, be scored "one (1)"; or**
 - (b) has received a score of "one (1)",**
- in relation to any of the Scorecard Criteria during a PBF Assessment Period, then the Secretary of State may require a Remedial Plan and the provisions of Schedule 10.1 (*Procedure for Remedying a Contravention of the Franchise Agreement*) of the Franchise Agreement shall apply.**

⁴⁴³ **Appendix 2 to Schedule 8.1B****PBF ASSESSMENT PERIOD REVIEW CHECKLIST****1. Operational Performance**

A report on the Franchisee's operational performance, including:

- (a) an explanation of the level of performance achieved during the PBF Assessment Period and the underlying drivers of that performance, including evidence of the impacts of any significant actions the Franchisee has undertaken during the PBF Assessment Period to improve performance or to reduce the impacts of incidents;**
- (b) in respect of significant or repeated failures to deliver the Enforcement Plan of the Day, an explanation of the underlying causes of those failures setting out (if relevant) any act, omission or failure of a third party which has impacted performance and the extent of that impact;**
- (c) a summary of the Franchisee's approaches to service recovery, Depot and Train Fleet management and train crew management during the PBF Assessment Period, including any significant actions take to improve those approaches, supported by evidence of their effectiveness; and**
- (d) evidence of how the ratio of Reactionary Delay to Primary Delay, and incidences of delay attributable to Depot, Train Fleet and train crew related causes, compare with historic trends.**

2. Customer Experience

A report on the customer experience delivered by the Franchisee, including:

- (a) tables, charts and other data (as appropriate) showing, for the PBF Assessment Period:**
 - (i) delivery of Station and train cleans against the planned programme;**
 - (ii) level of adherence to staffing rosters;**
 - (iii) a summary of the availability of key assets such as Station and train toilets and ticket vending machines, and the length of time taken to remedy any faults; and**
 - (iv) a summary of how the Franchisee has provided consistently accurate, timely and relevant information to customers at stations, on rolling stock used to deliver the Passenger Services and online;**

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

- (b) an explanation of the level of performance achieved during the PBF Assessment Period in respect of each of the above and the underlying drivers of that performance, including evidence of the impacts of any significant actions the Franchisee has undertaken during the PBF Assessment Period to improve performance;
- (c) a summary of customer feedback obtained during the PBF Assessment Period, including insights gathered through complaints, surveys where relevant (including Wavelength and National Rail Passenger Survey, if available), social media and any other relevant sources;
- (d) a summary of how the Franchisee has used these customer insights to identify and address customer needs; and
- (e) the results of any research or assessments undertaken by Transport Focus, the ORR or any other independent bodies which demonstrate the Franchisee's compliance with any of the Scorecard Criteria.

3. Financial Performance

A report detailing the extent to which the Franchisee has acted as a Good and Efficient Operator, including evidence of:

- (a) the actions which the Franchisee has taken to drive the recovery of revenue and demand, and the effect those actions have had on revenue and demand;
- (b) the actions the Franchisee has taken to reduce costs and improve efficiency, and the effect those actions have had on costs;
- (c) the approach the Franchisee has taken to balancing the short, medium and long term financial interest of the franchise (both within and beyond the Franchise Term); and
- (d) appropriate revenue protection being applied to reduce ticketless travel or travel with invalid tickets to the greatest extent reasonably practicable with the intention of maximising revenue while also treating passengers fairly and reasonably (and/or otherwise evidence that the Franchisee has followed government guidance prevailing at the time regarding revenue collection).

4. Collaborative Behaviour

4.1 Collaboration with Network Rail, other Train Operators, suppliers and industry bodies

A report detailing the Franchisee's collaboration with Network Rail, other Train Operators, suppliers and industry bodies, including evidence of:

- (a) the actions taken by the Franchisee to comply with the obligations in part 1 (*Co-operation*) of Schedule 6.7 (*ERMA Specific Obligations*) of the Franchise Agreement insofar as they relate to collaboration with those persons;

- (b) the actions taken by the Franchisee to collaborate with those parties in each of the areas identified in paragraph 4.2(b) of Appendix 3 (*Scorecard Criteria*) to Schedule 8.1B;
- (c) how those collaborative actions have demonstrably resulted in improved passenger outcomes and/or whole-industry financial efficiency or can reasonably be expected to result in such improvements (either during the Franchise Term or in the long term);
- (d) how the Franchisee has monitored the quality of its collaboration with those parties, any shortcomings identified and the remedial actions taken.

4.2 SoS Collaboration

A report detailing the Franchisee's collaboration with the Secretary of State, including evidence of:

- (a) the actions taken by the Franchisee to support the development, design and (where appropriate) implementation of initiatives to improve the long term financial performance of the Franchise, outcomes for passengers and/or other public policy objectives;
- (b) the actions taken by the Franchisee to share data with the Secretary of State, and to facilitate the sharing of data held by third parties on the Franchisee's behalf, pursuant to paragraphs 12 (*Further Information*) and 13 (*Information from Third Parties*) of Schedule 11.2 (*Management Information*);
- (c) the Franchisee having complied with the reporting requirements set out in the Franchise Agreement, and provided supporting commentary, analysis and (when requested) additional information to help the Secretary of State to assess and understand the drivers of the performance of the delivery of the Franchise Services;
- (d) how the Franchisee has managed its requests for guidance, consents, directions, derogations and other decisions so as to ensure they are accompanied by sufficient high-quality supporting evidence and allow sufficient time for due consideration by the Secretary of State;
- (e) the Franchisee's approach to collaborating with the Secretary of State in respect of business planning, budget setting and (where applicable) seeking to agree the matters described in paragraph 4.4 of Schedule 8.1B, the Target Cost, the Target Profit and/or any Performance Fee Target Amendment, and in particular how its approach has enabled the Secretary of State to agree such matters without the need for substantial amendment; and
- (f) how the Franchisee has monitored the quality of its collaboration with the Secretary of State, any shortcomings identified and the remedial actions taken.

4.3 Other Collaboration

A report detailing the Franchisee's collaboration with stakeholders specified in paragraph 6.2(a) of Appendix 3 (*Scorecard Criteria*) to Schedule 8.1B, including evidence of:

- (a) the collaborative actions the Franchisee has taken in each of the areas in paragraph 6.2(b) of Appendix 3 (*Scorecard Criteria*) to Schedule 8.1B, how those collaborative actions have directly improved outcomes for passengers and/or other stakeholders, and whether (and, if so, how) those actions have helped to leverage in third party funding for improvements to the railway infrastructure or to the Passenger Services;**
- (b) how the Franchisee has collaborated with persons with disabilities and their representative bodies in particular, and how this collaboration has directly improved outcomes for such passengers.**
- (c) the processes the Franchisee has put in place to monitor stakeholders' satisfaction with the quality of their collaboration and engagement, the results of that monitoring, any shortcomings identified and the actions taken to remedy them.**

⁴⁴⁴Appendix 3 to Schedule 8.1B**SCORECARD CRITERIA****1. Operational Performance****1.1 One (1): Below acceptable standard**

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a 'two (2)'.

1.2 Two (2): Acceptable

(a) The Franchisee has generally delivered the Passenger Services in accordance with the applicable Enforcement Plan of the Day, such that where there have been significant or repeated failures to deliver the applicable Enforcement Plan of the Day:

(i) these have typically been due to external factors and/or incidents beyond the reasonable control of the Franchisee;

(ii) the Franchisee has taken reasonable steps to recover the Passenger Services as quickly as possible so as to minimise passenger inconvenience and delay, regardless of whether or not the root cause was within the Franchisee's reasonable control; and

(iii) the Franchisee has undertaken reviews of the root cause(s) of such failure(s) to deliver the applicable Enforcement Plan of the Day and the effectiveness of the Franchisee's actions to deal with the incident and recover the Passenger Services.

(b) The Franchisee has in place and has implemented appropriate Depot and Train Fleet management plans that have been generally effective in minimising the number of instances of insufficient rolling stock vehicles being available to resource the applicable Enforcement Plan of the Day.

(c) The Franchisee has in place and has implemented appropriate plans for train crew management (including to mitigate risks relating to COVID-19), recruitment, training, succession and contingency management that have generally been effective in minimising the number of instances of insufficient train crew being available to resource the applicable Enforcement Plan of the Day.

1.3 Three (3): Good

(a) The Franchisee has fully met the criteria for a "two (2)" and in addition:

(i) there have been very few, if any, significant or repeated failures to deliver the applicable Enforcement Plan of the Day

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

that have been due to factors and/or incidents within the reasonable control of the Franchisee;

- (ii) the Franchisee's approach to service recovery has been particularly robust and, as a result, the ratio of Reactionary Delay to Primary Delay in respect of the Passenger Services has been low by historical standards (taking account of all Primary Delay, whether attributed to the Franchisee or not);
- (iii) the reviews referred to in paragraph 1.2(a)(iii) of this Appendix 3 to Schedule 8.1B have been particularly thorough and, as a result of those reviews, the Franchisee has identified and implemented significant actions that have minimised (or will minimise) the likelihood and the impacts on passengers of similar incidents occurring in future; or
- (iv) the Franchisee's Depot, Train Fleet and train crew management has been particularly robust and, as a result, the number of instances of insufficient rolling stock or train crew being available to deliver the Enforcement Plan of the Day have been low by historical standards.

2. Customer Experience

2.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

2.2 Two (2): Acceptable

- (a) The Franchisee has taken a proactive approach to managing customer experience for all customers, with appropriate plans and processes in place that have been generally effective in:
 - (i) providing information on rolling stock used to deliver the Passenger Services (where appropriate), online and at stations at which the Passenger Services call that is accurate, timely and easy for customers to understand, taking account of the needs of different customers and which covers (but is not limited to):
 - (A) the timetable being operated;
 - (B) planned and unplanned disruption;
 - (C) fares and ticketing;
 - (D) passenger rights (including compensation and redress);
 - (E) the availability of station and train facilities; and
 - (F) (when appropriate) COVID-19 Guidance and Regulation;

- (ii) ensuring that all customer contact surfaces are cleaned regularly and keeping Stations and rolling stock used to deliver the Passenger Services free from litter, dirt and other unhygienic substances;
 - (iii) ensuring that all Stations, rolling stock used to deliver the Passenger Services and online services have been staffed as required to provide a visible, helpful and proactive customer-facing service; and
 - (iv) maintaining all Station and train facilities so that they are fully functional, available for use and presented in good condition, with any non-availability of facilities for repair or maintenance being kept to the minimum necessary.
- (b) The Franchisee has regularly and at an appropriate frequency monitored compliance with those plans and processes and has taken prompt remedial action when they have been found not to be working.
- (c) The Franchisee has used some survey results and other relevant data and information to review customer needs and the extent to which they are being met (including, but not limited to, Wavelength and National Rail Passenger Survey data, where available). Where needs are not being met, the Franchisee has (where consistent with the requirement to act as a Good and Efficient Operator, or where the Secretary of State has otherwise consented) taken action to address them, and these actions have demonstrably resulted in meaningful improvements in outcomes for customers (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term).

2.3 Three (3): Good

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) the Franchisee's plans and processes described in paragraph 2.2(a) of this Appendix 3 to Schedule 8.1B have been particularly robust, such that there have been very few, if any, repeated or systemic failures to:
- (i) provide timely, accurate and relevant information in the manner described in paragraph 2.2(a)(i) of this Appendix 3 to Schedule 8.1B;
 - (ii) undertake cleaning activities and maintain high levels of cleanliness at Stations and on rolling stock used to deliver the Passenger Services;
 - (iii) staff Stations, rolling stock used to deliver the Passenger Services and online services to provide a proactive customer-facing service; and
 - (iv) maintain Station and train facilities so that they are fully functional and well-presented,

that have been due to factors and/or incidents within the reasonable control of the Franchisee.

- (b) The Franchisee's plans and processes for managing customer experience have been particularly thorough and, as a result, any potential issues have consistently been identified and resolved in a swift and effective manner. Any actual issues have also been few in number and low in impact, and the Franchisee has taken prompt and effective remedial action when they have occurred.
- (c) The Franchisee has regularly used a range of different survey results and other relevant data and information (when possible) to review customer needs and the extent to which they are being met (including Wavelength and National Rail Passenger Survey data, where available), and the prompt actions taken to address those needs have demonstrably resulted in substantial improvements in outcomes for customers.

3. Financial Performance

3.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

3.2 Two (2): Acceptable

- (a) The Franchisee has consistently acted as a Good and Efficient Operator and has been effective in optimising the financial prospects of its business over the short, medium and long term by:
 - (i) driving the recovery of passenger demand and revenue; and
 - (ii) robustly controlling the Franchisee's costs.
- (b) In driving the recovery of passenger demand and revenue, the Franchisee has taken effective action (in each case within the limits arising from COVID-19 Guidance and Regulation) to:
 - (i) promote rail as a safe mode of transport and to raise public awareness of the steps taken by the Franchisee and the wider rail industry to minimise public health risks;
 - (ii) monitor and deter ticketless travel; and
 - (iii) implement such further actions as may have been directed by the Secretary of State with a view to promoting demand and revenue growth.
- (c) In robustly controlling the Franchisee's costs, the Franchisee has:
 - (i) put in place internal processes which are comparable to (or better than) those adopted by the Franchisee prior to the EMA Start Date and which have been effective in managing the Franchisee's expenditure across all areas of the business, so

as to improve efficiency and guard against unnecessary or excessive spend; and

- (ii) implemented such further actions as may have been directed by the Secretary of State with a view to controlling costs,

while also continuing to incur such expenditure as is reasonably necessary to meet the Franchisee's obligations under this Agreement and to protect the long-term financial interests of the franchise (both during the Franchise Term and in the longer term).

- (d) If and to the extent that there are any specific instances where the Franchisee has not fully complied with the requirements described above, such instances have been few in number and limited in impact, and the Franchisee has taken prompt and effective remedial action following any such instances.

3.3 Three (3): Good

The Franchisee has fully met the criteria for a "two (2)" and in addition on its own initiative, has developed and implemented (subject to the Secretary of State's consent where required pursuant to the Franchise Agreement) significant initiatives, the effect of which has been (or, in the Secretary of State's opinion (acting reasonably), will be):

- (a) to substantially accelerate the recovery of passenger demand and revenue (while avoiding material increases in costs, either during the Franchise Term or thereafter); and/or
- (b) to substantially reduce the costs of operating the franchise and/or improve its cost efficiency (while avoiding material adverse impacts on passenger outcomes or revenues).

4. Collaborative behaviours (collaboration with Network Rail, other Train Operators, suppliers and industry bodies)

4.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

4.2 Two (2): Acceptable

- (a) The Franchisee has complied with its relevant obligations set out part 1 (Co-operation) of Schedule 6.7 (*ERMA Specific Obligations*) of the Franchise Agreement insofar as they relate to collaboration with Network Rail, other Train Operators, suppliers and industry bodies;
- (b) In complying with those obligations, the Franchisee has demonstrated good collaborative behaviours in working with Network Rail, other Train Operators, suppliers and relevant industry bodies (as applicable) in each of the following areas:
 - (i) improving operational performance, which shall include (in particular) reducing Reactionary Delay, improving service

recovery and investigating and addressing the root causes of sub-threshold delay;

- (ii) improving the efficiency and effectiveness of the timetable development process, with the result that timetables better meet the needs of passengers while also being operationally robust and delivering high levels of performance;
 - (iii) optimising the planning of access and possessions, so as to achieve an appropriate balance between protecting journey opportunities for passengers and minimising the cost of carrying out necessary works;
 - (iv) identifying and implementing opportunities to deliver whole-industry cost efficiencies, including by sharing resources, establishing joint teams and/or eliminating duplication of activities across multiple organisations at Stations, control centres and elsewhere;
 - (v) delivering major projects (including infrastructure upgrades, introduction of new or cascaded rolling stock fleets) efficiently, successfully and in a way that minimises any adverse passenger impacts; and
 - (vi) openly and proactively sharing data with Network Rail, in accordance with paragraph 9 (*Sharing Data and Network Rail*) of part 1 (*Co-operation*) of Schedule 6.7 (*ERMA Specific Obligations*) of the Franchise Agreement, as necessary to maximise the effectiveness of collaboration in each of the areas listed above.
- (c) The Franchisee's collaborative actions in some of the areas listed in paragraph 4.2(b) of this Appendix 3 to Schedule 8.1B have demonstrably resulted in meaningful improvements in passenger outcomes and/or meaningful whole-industry financial efficiencies (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term).
- (d) If and to the extent that there are any specific instances where the Franchisee has not demonstrated good collaborative behaviours, these have been few in number and of minor impact and the Franchisee has taken prompt and effective remedial action where the Franchisee has become aware (or should reasonably have become aware) of any such instances.

4.3 Three (3): Good

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) the Franchisee's collaborative actions in most or all of the areas listed in paragraph 4.2(b) of this Appendix 3 to Schedule 8.1B have demonstrably resulted in meaningful improvements in passenger outcomes and/or meaningful whole-industry financial efficiencies (or, in the opinion of the Secretary of State (acting reasonably), will

result in such improvements, either during the Franchise Term or in the long term); or

- (b) the Franchisee's collaborative actions in some of the areas listed in paragraph 4.2(b) of this Appendix 3 to Schedule 8.1B have demonstrably resulted in very substantial improvements in passenger outcomes and/or very substantial whole-industry financial efficiencies (or, in the reasonable opinion of the Secretary of State, will result in such improvements, either during the Franchise Term or in the long term).

5. Collaborative behaviours (collaboration with the Secretary of State)

5.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

5.2 Two (2): Acceptable

- (a) The Franchisee has co-operated with the Secretary of State in the development, design and (where applicable) implementation of initiatives to improve the long-term financial performance of the Franchise, outcomes for passengers and/or other public policy objectives (including Future Initiatives and Franchisee Initiatives pursuant to and in accordance with part 1 (*Co-operation*) of Schedule 6.7 (*ERMA Specific Obligations*) of the Franchise Agreement that relate to co-operation with the Secretary of State and prospective Fares, ticketing and ticket retailing reform pursuant to and in accordance with paragraph 1.1 of Schedule 5.11 (*Fares, Ticketing and Retail Reform*)).
- (b) The Franchisee has shared data fully and openly with the Secretary of State, and has taken reasonable steps to facilitate the sharing of data held by third parties on the Franchisee's behalf, in accordance with paragraphs 12 (*Further Information*) and 13 (*Information from Third Parties*) of Schedule 11.2 (*Management Information*);
- (c) The Franchisee has provided periodic reporting packs on time and to a good standard, including all data required by the Franchise Agreement with commentary and analysis to allow the Secretary of State to assess the performance of the Franchise Services and to understand the underlying drivers. Appropriate representatives of the Franchisee have attended each Franchise Performance Meeting. The Franchisee has responded to requests for additional information positively and within agreed timescales.
- (d) Requests for the Secretary of State to provide guidance, consents, directions, derogations and other decisions have been made in sufficient time to allow for due consideration by the Secretary of State. Such requests having been supported by appropriate supporting evidence and analysis to enable the Secretary of State to make an informed decision. Unnecessary or spurious requests have been avoided.

- (e) The Franchisee has worked constructively with the Secretary of State to agree appropriate business plans, budgets and (where applicable) the matters described in paragraph 4.4 of Schedule 8.1B, the Target Cost, the Target Profit and/or any Performance Fee Target Amendment, in each case in a timely manner. In particular, the Franchisee's proposals in respect of these matters have been provided in accordance with required timescales, underpinned by sound assumptions and good supporting evidence, enabling the Secretary of State to accept them without the need for substantial amendment.
- (f) If and to the extent that there are any specific instances where the Franchisee has not demonstrated good collaborative behaviours, these have been few in number and of minor impact and the Franchisee has taken prompt and effective remedial action where the Franchisee has become aware (or should reasonably have become aware) of any such instances.

5.3 Three (3): Good

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) both proactively and in response to any specific requests by the Secretary of State, the Franchisee has developed and presented to the Secretary of State a variety of high-quality, credible reform initiatives to materially strengthen the long-term financial sustainability of the franchise, improve passenger outcomes and support other public policy objectives;
- (b) such proposals have been accompanied by credible delivery plans and clear, robust analysis of the financial and practical consequences, associated risks and other implications; and
- (c) when such proposals have been consistent with what a Good and Efficient Operator would do, or have otherwise been approved by the Secretary of State, the Franchisee has implemented those proposals in accordance with their terms (or, where applicable, the Franchisee's actions during the PBF Assessment Period have given the Secretary of State good confidence that the Franchisee will do so).

6. Collaborative behaviours (collaboration with other stakeholders)

6.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

6.2 Two (2): Acceptable

- (a) The Franchisee has demonstrated good collaborative behaviours in working with stakeholders, including:
 - (i) passengers (including, and in particular, passengers with disabilities) and their representative bodies;

- (ii) devolved administrations (where applicable);
- (iii) local authorities;
- (iv) community rail partnerships;
- (v) local enterprise partnerships and other representatives of the business community; and
- (vi) other transport operators,

but excluding the Secretary of State, Network Rail and other industry parties as identified in paragraph 4 (*Collaborative behaviours (Collaboration with Network Rail, other Train Operators, suppliers and industry bodies)*) of this Appendix 3 to Schedule 8.1B.

(b) In particular, the Franchisee has:

- (i) sought feedback from such stakeholders about the Franchise Services;
- (ii) consulted with such stakeholders and involved them in significant decisions that affect them, such that they have had a meaningful opportunity to influence those decisions;
- (iii) provided feedback to those stakeholders on significant decisions that affect them and the reasons for those decisions;
- (iv) routinely and actively involved passengers with disabilities and their representatives in designing and developing the facilities and Passenger Services provided by the Franchisee, and in other decisions that may have a particular impact on passengers with disabilities; and
- (v) provided support to prospective third party promoters and funders of improvements to the railway when requested to do so by the Secretary of State or the third party concerned.

(c) The Franchisee's collaborative actions in the areas identified in this paragraph 6.2 have resulted in some improvements in outcomes for passengers and other stakeholders served by the Franchisee, including in particular for passengers with disabilities (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term).

6.3 Three (3): Good

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) the Franchisee has in place and has implemented effective processes to monitor stakeholder satisfaction with the quality of the Franchisee's collaboration and engagement with them, and the

results of this monitoring show consistently excellent levels of stakeholder satisfaction during the PBF Assessment Period; and

- (b) regular, open collaboration, proactively initiated by the Franchisee, has demonstrably resulted in (or, in the opinion of the Secretary of State (acting reasonably) will, either during the Franchise Term or in the longer term, result in):**
 - (i) substantial improvements in outcomes for passengers and/or other stakeholders (including in particular passengers with disabilities); and/or**
 - (ii) third party investment or other funding contributions to significantly improve the Passenger Services and/or the railway infrastructure.**

445 APPENDIX 4 TO SCHEDULE 8.1B

Scorecard Methodology**7. Application of the Scorecard Criteria and calculation of Performance Based Fee**

Each PBF Component to be calculated in accordance with the Scorecard Methodology shall be assessed with respect to the Franchisee's PBF Assessment Period Review score for the relevant PBF Assessment Period by reference to the Scorecard Criteria, then the score shall be used to calculate the value of the Performance Based Fee attributable to that PBF Component, as applicable, as set out below:

PBF Component	PBF Assessment Period Scorecard score for relevant Scorecard Criterion	PBF £
Operational Performance Fee	Three (3)	£ MPBF * W_{OP}
	Two (2)	£ MPBF * W_{OP} * Seventy-five per cent (75%)
	One (1)	Zero pound (£0)
Customer Experience Fee	Three (3)	£ MPBF * W_{CE} * W_{CESC}
	Two (2)	£ MPBF * W_{CE} * W_{CESC} * Seventy-five per cent (75%)
	One (1)	Zero pound (£0)
Financial Performance Fee	Three (3)	£ MPBF * W_{FIN} * W_{FINSC}
	Two (2)	£ MPBF * W_{FIN} * W_{FINSC} * Fifty per cent (50%)

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

PBF Component	PBF Assessment Period Scorecard score for relevant Scorecard Criterion	PBF £
	One (1)	Zero pound (£0)
Network Rail Collaboration	Three (3)	£ MPBF * W_{CB} * W_{NR}
	Two (2)	£ MPBF * W_{CB} * W_{NR} * Seventy-five per cent (75%)
	One (1)	Zero pound (£0)
SoS Collaboration	Three (3)	£ MPBF * W_{CB} * W_{SOS} *
	Two (2)	£ MPBF * W_{CB} * W_{SOS} * Seventy-five per cent (75%)
	One (1)	Zero pound (£0)
Other Collaboration	Three (3)	£ MPBF * W_{CB} * W_{OTH}
	Two (2)	£ MPBF * W_{CB} * W_{OTH} * Seventy-five per cent (75%)
	Three (1)	Zero pound (£0)

where:

"W_{FINSC}"	<p>means:</p> <p>(a) if the Financial Performance Fee for that PBF Assessment Period is to be assessed solely in accordance with the Scorecard Methodology, the weighting to be applied to the Scorecard Methodology for that PBF Assessment Period, being one hundred per cent (100%); and</p>
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	<p>(b) if the Financial Performance Fee is to be assessed in accordance with one or more of the Subsequent FP Methodologies for that PBF Assessment Period, the weighting to be applied to the Scorecard Methodology with respect to the Financial Performance Fee for that PBF Assessment Period, being the value agreed or determined in accordance with paragraph 4.4(d) of Schedule 8.1B,</p> <p>provided that no calculation using the Scorecard Methodology shall be required in relation to the Financial Performance Fee if the value of W_{FINSC} is zero;</p>
"W_{NR}"	means the weighting to be applied to Network Rail Collaboration when calculating the amount of the Collaborative Behaviour Fee for that PBF Assessment Period, being forty per cent (40%) or such alternative as may be agreed or determined pursuant to paragraph 4.4(g) of Schedule 8.1B;
"W_{SOS}"	means the weighting to be applied to SoS Collaboration when calculating the amount of the Collaborative Behaviour Fee for that PBF Assessment Period, being forty per cent (40%) or such alternative as may be agreed or determined pursuant to paragraph 4.4(g) of Schedule 8.1B;
"W_{OTH}"	means the weighting to be applied to Other Collaboration when calculating the amount of the Collaborative Behaviour Fee for that PBF Assessment Period, being twenty per cent (20%) or such alternative as may be agreed or determined pursuant to paragraph 4.4(g) of Schedule 8.1B.

⁴⁴⁶ APPENDIX 5 TO SCHEDULE 8.1B**Quantified Target Methodology****1. Application of the Quantified Target Methodology****1.1 The Performance Based Fee in relation to each Subsequent PBF Assessment Period shall be either:**

(a) the sum of the amounts corresponding to each of the PBF Components calculated in accordance with paragraph 1 (*Application of the Scorecard Criteria and calculation of Performance Based Fee*) of Appendix 4 (*Scorecard Methodology*) to Schedule 8.1B; or

(b) the sum of:

(i) the amounts corresponding to each of the QTM PBF Components (if any) which, pursuant to paragraph 4.2(a) of this Schedule 8.1B, are to be calculated in accordance with paragraph 1 (*Application of the Scorecard Criteria and calculation of Performance Based Fee*) of Appendix 4 (*Scorecard Methodology*) to Schedule 8.1B; and

(ii) the amounts corresponding to each of the QTM PBF Components (if any) which, pursuant to paragraph 4.2(a) of this Schedule 8.1B, are to be calculated in accordance with this Appendix 5 to Schedule 8.1B; and

(iii) the amount of the Collaborative Behaviour Fee calculated in accordance with paragraph 1 (*Application of the Scorecard Criteria and calculation of Performance Based Fee*) of Appendix 4 (*Scorecard Methodology*) to this Schedule 8.1B.

1.2 If it has been agreed or determined pursuant to paragraph 4.2(a) of Schedule 8.1B that the Operational Performance Fee shall be calculated by reference to the Quantified Target Methodology, paragraph 2 (*Operational Performance*) of this Appendix 5 to Schedule 8.1B shall apply in respect of the value of the Performance Based Fee attributable to the Operational Performance Fee.

1.3 If it has been agreed or determined pursuant to paragraph 4.2(a) of Schedule 8.1B that the Customer Experience Fee shall be calculated by reference to the Quantified Target Methodology, paragraph 3 (*Customer Experience*) of this Appendix 5 to Schedule 8.1B shall apply in respect of the value of the Performance Based Fee attributable to the Customer Experience Fee.

1.4 If it has been agreed or determined pursuant to paragraph 4.2(a) of Schedule 8.1B that the Financial Performance Fee shall be calculated by reference to the Quantified Target Methodology, paragraph 4 (*Financial Performance*) of this Appendix 5 to Schedule 8.1B shall apply in respect of

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

the value of the Performance Based Fee attributable to the Financial Performance Fee.

2. Operational Performance

2.1 The OP Targets agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B shall apply to each Reporting Period during the relevant PBF Assessment Period.

2.2 For each Reporting Period within the relevant PBF Assessment Period, the Secretary of State shall calculate a financial sum in respect of each Operational Performance Component in accordance with the applicable formula set out below based on whether:

- (a) the Franchisee's Actual All Cancellations Performance Level, Actual T-3 Performance Level and Actual T-15 Performance Level; and
- (b) the Franchisee's actual performance in relation to Cancellations, TOC Minutes Delay and Short Formations as determined in accordance with Schedule 7.1 (*Operational Performance*):

are worse than, within or better than the expected range, in each case specified as the OP Target for the applicable Operational Performance Component in the relevant Reporting Period:

Operational Performance Component	Worse than the expected range	Within the expected range	Better than the expected range
Cancellations	Zero (£0)	Twenty-two point five per cent (22.5%) * MPBF * W _{OP/N}	Thirty per cent (30%) * MPBF * W _{OP/N}
TOC Minutes Delay	Zero (£0)	Fifteen per cent (15%) * MPBF * W _{OP/N}	Twenty per cent (20%) * MPBF * W _{OP/N}
Short Formations	Zero (£0)	Seven point five per cent (7.5%) * MPBF * W _{OP/N}	Ten per cent (10%) * MPBF * W _{OP/N}
T-3	Zero (£0)	Seven point five per cent (7.5%) * MPBF * W _{OP/N}	Ten per cent (10%) * MPBF * W _{OP/N}
T-15	Zero (£0)	Seven point five per cent (7.5%) * MPBF * W _{OP/N}	Ten per cent (10%) * MPBF * W _{OP/N}
All Cancellations	Zero (£0)	Fifteen per cent (15%) * MPBF * W _{OP/N}	Twenty per cent (20%) * MPBF * W _{OP/N}

where:

N	means the number of Reporting Periods that fall within the relevant PBF Assessment Period.
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2.3 The value of OP for the purposes of the formula set out in paragraph 4.1 of Schedule 8.1B shall be calculated as the sum of each of the calculations performed pursuant to paragraph 2.2 of this Appendix 5 to Schedule 8.1B in respect of each OP Component in each Reporting Period during the relevant PBF Assessment Period.

3. Customer Experience

3.1 For each relevant PBF Assessment Period, the Secretary of State shall calculate the element of the Performance Based Fee attributable to the Customer Experience Fee in accordance with the formula set out below.

£CE =	CE(SC) + CE(SQR) + CE(NRPS)
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3.2 If the weighting of any of CE(SC), CE(SQR) and/or CE(NRPS) is zero in accordance with paragraph 3.3 of this Appendix 5 to Schedule 8.1B then the value attributable to each such component shall be zero and such component shall be removed from the formula set out in paragraph 3.1 of this Appendix 5 to Schedule 8.1B for the purpose of calculating the value of the Performance Based Fee attributable to the Customer Experience Fee.

3.3 If the Customer Experience Fee for the relevant PBF Assessment Period is to be assessed in accordance with one or more of the Subsequent CE Methodologies, the weighting to be applied to:

- (a) the Scorecard Methodology (“ W_{CESC} ”); and/or
- (b) the SQR Methodology (“ W_{SQR} ”); and/or
- (c) the NRPS Methodology (“ W_{NRPS} ”),

shall be the weighting specified in this paragraph 3.3.

Methodology to be applied	W_{CESC}	W_{SQR}	W_{NRPS}
Scorecard Methodology only	One hundred per cent (100%)	Zero per cent (0%)	Zero per cent (0%)
Combined Scorecard/SQR Methodology	Thirty-five per cent (35%)	Sixty-five per cent (65%)	Zero per cent (0%)
Combined SQR/NRPS Methodology	Zero per cent (0%)	Sixty-five per cent (65%)	Thirty-five per cent (35%)

3.4 If:

- (a) W_{NRPS} is not zero in accordance with paragraph 3.3 above, the value attributable to CE(NRPS) shall be calculated in accordance with paragraph 3.5 (*Calculation of CE(NRPS)*) below;

- (b) W_{SQR} is not zero, the value attributable to CE(SQR) shall be calculated in accordance with paragraph 3.6 (*Calculation of CE(SQR)*) below;
- (c) W_{CESC} is not zero, the value of CE(SC) shall be calculated in accordance with the Scorecard Methodology as it relates to the Customer Experience Fee.

3.5 Calculation of CE(NRPS)

- (a) The NRPS Targets agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B shall apply during the relevant PBF Assessment Period.
- (b) If:
 - (i) no findings of the National Rail Passenger Survey are published during the relevant PBF Assessment Period; or
 - (ii) in the opinion of the Secretary of State (acting reasonably) the findings of the National Rail Passenger Survey are not sufficiently robust to support the calculation of CE(NRPS),

the Customer Experience Fee for the relevant PBF Assessment Period shall be assessed using the Combined Scorecard/SQR Methodology, the weightings specified in paragraph 3.3 above in relation to such methodology shall apply, and the Secretary of State may reasonably determine such amendments to the Scorecard Methodology as may be reasonably appropriate in consequence of the unavailability or unsuitability of the National Rail Passenger Survey findings.

- (c) For each relevant PBF Assessment Period, the Secretary of State shall calculate the Franchisee's performance against each of the NRPS Targets in accordance with the applicable formula set out below based on whether the Franchisee's applicable Overall Performance Score in respect of the applicable NRPS Target is:
 - (i) worse than the expected range;
 - (ii) within the expected range; or
 - (iii) better than the expected range,

in each case specified as the NRPS Target for the applicable NRPS Measure:

NRPS Measure	Worse than the expected range	Within the expected range	Better than the expected range
Stations	Zero pound (£0)	Eighteen point seven five per cent (18.75%) * $MPBF * W_{CE} * W_{NRPS}$	Twenty-five per cent (25%) * $MPBF * W_{CE} * W_{NRPS}$
Trains	Zero pound (£0)	Eighteen point seven five per	Twenty-five per cent (25%) *

		cent (18.75%) * MPBF * W _{CE} * W _{NRPS}	MPBF * W _{CE} * W _{NRPS}
Customer Service	Zero pound (£0)	Eighteen point seven five per cent (18.75%) * MPBF * W _{CE} * W _{NRPS}	Twenty-five per cent (25%) * MPBF * W _{CE} * W _{NRPS}
Dealing with Delays	Zero pound (£0)	Eighteen point seven five per cent (18.75%) * MPBF * W _{CE} * W _{NRPS}	Twenty-five per cent (25%) * MPBF * W _{CE} * W _{NRPS}

- (d) For each relevant PBF Assessment Period, the Secretary of State shall calculate the value of the Performance Based Fee attributable to CE(NRPS) in accordance with the formula set out below.

£CE(NRPS) =	S + T + C + D
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where:

S	means the value attributable to the Stations NRPS Measure calculated in accordance with paragraph 3.5(c) above;
T	means the value attributable to the Trains NRPS Measure calculated in accordance with paragraph 3.5(c) above;
C	means the value attributable to the Customer Service NRPS Measure calculated in accordance with paragraph 3.5(c) above; and
D	means the value attributable to the Dealing with Delays NRPS Measure calculated in accordance with paragraph 3.5(c) above.

3.6 Calculation of CE(SQR)

- (a) The SQR Targets agreed or determined in accordance with paragraph 4.4(b) of Schedule 8.1B shall apply during the relevant PBF Assessment Period.
- (b) Within ten (10) Weekdays after the end of each Subsequent PBF Assessment Period, the Franchisee shall provide to the Secretary of State its calculation of:
- (i) the mean average of the four Pass Rates calculated pursuant to paragraph 10 (*Calculation of Pass Rates*) of Schedule 7.3 (*Service Quality Regime*) in relation to the SQR Stations Component (the "Overall Station Pass Rate"), being:

- (A) **Ambience and Assets;**
- (B) **Cleanliness;**
- (C) **Information; and**
- (D) **Ticketing & Staffing;**
- (ii) **the mean average of the three Pass Rates calculated pursuant to paragraph 10 (*Calculation of Pass Rates*) of Schedule 7.3 (*Service Quality Regime*) in relation to the SQR Trains Component (the "Overall Trains Pass Rate"), being:**
- (E) **Ambience and Assets;**
- (F) **Cleanliness; and**
- (G) **Information; and**
- (iii) **the Pass Rate calculated pursuant to paragraph 10 (*Calculation of Pass Rates*) of Schedule 7.3 (*Service Quality Regime*) in relation to the SQR Customer Service Component, being Information & Contact (the "Overall Customer Service Pass Rate").**
- (c) **Subject to paragraph 18.2 of Schedule 7.3 (*Service Quality Regime*), within twenty eight (28) days following receipt of the calculations from the Franchisee pursuant to paragraph 3.6(b) above and the findings of the Independent Service Quality Audit pursuant to paragraph 7 (*Independent Service Quality Audit*) of Schedule 7.3 (*Service Quality Regime*), the Secretary of State shall calculate the Franchisee's performance against each of the SQR Targets pursuant to and in accordance with the applicable formula set out below based on whether the Franchisee's performance against the applicable SQR Target is:**
- (i) **worse than the expected range;**
- (ii) **within the expected range; or**
- (iii) **better than the expected range,**

in each case specified as the SQR Target for the applicable SQR Component:

Overall Pass Rate	Worse than the expected range	Within the expected range	Better than the expected range
Overall Station Pass Rate	Zero pound (£0)	Twenty-five (25%) * MPBF * W_{CE} * W_{SQR}	One-third (1/3) * MPBF * W_{CE} * W_{SQR}

Overall Trains Pass Rate	Zero pound (£0)	Twenty-five (25%) * MPBF * W_{CE} * W_{SQR}	One-third (1/3) * MPBF * W_{CE} * W_{SQR}
Overall Customer Service Pass Rate	Zero pound (£0)	Twenty-five (25%) * MPBF * W_{CE} * W_{SQR}	One-third (1/3) * MPBF * W_{CE} * W_{SQR}

- (d) For each relevant PBF Assessment Period the Secretary of State shall calculate the value of the Performance Based Fee attributable to CE(SQR) in accordance with the formula set out below.

£CE(SQR) =	S + T + C
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where:

S	means the value attributable to the Stations SQR Component calculated in accordance with paragraph 3.6(c) above;
T	means the value attributable to the Trains SQR Component calculated in accordance with paragraph 3.6(c) above; and
C	means the value attributable to the Customer Service SQR Component calculated in accordance with paragraph 3.6(c) above.

4. Financial Performance

- 4.1 For each relevant PBF Assessment Period the Secretary of State shall calculate the value of the Performance Based Fee attributable to the Financial Performance Fee in accordance with the formula set out below.

£FIN =	FIN(CC) + FIN(P) + FIN(TTR) + FIN(SC)
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- 4.2 If the weighting of any of FIN(CC), FIN(P), FIN(TTR) and/or FIN(SC) is zero in accordance with paragraph 4.4(d) of Schedule 8.1B, then the value attributable to each such component shall be zero and such component shall be removed from the formula set out in paragraph 4.1 above for the purpose of calculating the value of the Performance Based Fee attributable to the Financial Performance Fee.

4.3 Calculation of FIN(CC)

- (a) Subject to paragraph 6 (*Target Amendments*), the Target Cost agreed or determined in accordance with paragraph 5.1 (*Target Cost*) shall apply to the relevant PBF Assessment Period.

- (b) The Franchisee shall provide to the Secretary of State all financial information required for the purposes of making each of the calculations required pursuant to this paragraph 4.3 in accordance with paragraph 9.1 (*Accounting Records*) to paragraph 9.4 (*Annual Financial Information*) of Schedule 11.2 (*Management Information*).
- (c) Within twenty eight (28) days of receipt of all financial information required for the purposes of making the relevant calculations, the Secretary of State shall calculate the value of the Performance Based Fee attributable to FIN(CC) in accordance with the applicable formula set out below based on whether the Outturn Cost is:
- (i) greater than the Target Cost Floor;
 - (ii) greater than the Target Cost but less than or equal to the Target Cost Floor;
 - (iii) less than or equal to the Target Cost but greater than the Target Cost Cap; or
 - (iv) less than or equal to the Target Cost Cap.

Outturn Cost	£FIN(CC)
Greater than TCF	Zero (£0)
Greater than Target Cost, less than or equal to TCF	$[(TCF - OTC)/(TCF - TC)] * W_{FIN} * W_{CC} * MPBF * \text{Fifty per cent (50\%)}]$
Less than or equal to Target Cost, greater than TCC	$[W_{FIN} * W_{CC} * MPBF] - \{[(OTC - TCC)/(TC - TCC)] * W_{FIN} * W_{CC} * MPBF * \text{Fifty per cent (50\%)}\}$
Less than or equal to TCC	$W_{FIN} * W_{CC} * MPBF$

4.4 Calculation of FIN(P)

- (a) Subject to paragraph 6 (*Target Amendments*) of Schedule 8.1B, the Target Profit agreed or determined in accordance with paragraph 5.2 (*Target Profit*) shall apply to the relevant PBF Assessment Period.
- (b) The Franchisee shall provide to the Secretary of State all financial information required for the purposes of making each of the calculations required pursuant to this paragraph 4.4 in accordance with paragraph 9.1 (*Accounting Records*) to paragraph 9.4 (*Annual Financial Information*) of Schedule 11.2 (*Management Information*).
- (c) Within twenty eight (28) days of receipt of all financial information required for the purposes of making the relevant calculations, the Secretary of State shall calculate the value of the Performance

Based Fee attributable to FIN(P) in accordance with the applicable formula set out below based on whether the Outturn Profit is:

- (i) greater than the Target Profit Cap;
- (ii) greater than the Target Profit but less than or equal to the Target Profit Cap;
- (iii) less than or equal to the Target Profit but greater than the Target Profit Floor; or
- (iv) less than or equal to the Target Profit Floor:

Outturn Profit	£FIN(P)
Greater than TPC	$W_{FIN} * W_P * MPBF$
Greater than Target Profit, less than or equal to TPC	$[W_{FIN} * W_P * MPBF] - \{[(TPC - OTP)/(TPC - TP)] * W_{FIN} * W_P * MPBF * \text{Fifty per cent (50\%)}\}$
Less than or equal to Target Profit, greater than TPF	$[(OTP - TPF)/(TP - TPF)] * W_{FIN} * W_P * MPBF * \text{Fifty per cent (50\%)}$
Less than or equal to TPF	Zero (£0)

4.5 Calculation of FIN(TTR)

- (a) The TT Target, TT Cap and TT Floor agreed or determined in accordance with paragraph 4.4(b) of Schedule 8.1B shall apply to the relevant PBF Assessment Period.
- (b) The Secretary of State shall undertake any calculations required to be performed pursuant to this paragraph 4.5 by reference to the Ticketless Travel Rate identified by the Ticketless Travel Survey undertaken during the relevant PBF Assessment Period in accordance with Schedule 6.3 (*Contractual Incentive Mitigations*).
- (c) If the duration of the relevant PBF Assessment Period spans two Ticketless Travel Survey Periods, the Ticketless Travel Rate shall be calculated as the weighted average of the Ticketless Travel Rates applicable to the two applicable Ticketless Travel Survey Periods in accordance with the formula below.

TTR =	$TTR_A * [N_A / (N_A + N_B)] + TTR_B * [N_B / (N_A + N_B)]$
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where:

N_A	means the number of Reporting Periods during Period A which also fall during the relevant PBF Assessment Period;
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N_B	means the number of Reporting Periods during Period B which also fall during the relevant PBF Assessment Period;
Period A	means the first of the two applicable Ticketless Travel Survey Periods;
Period B	means the second of the two applicable Ticketless Travel Survey Periods;
TTR_A	Means the Ticketless Travel Rate during Period A; and
TTR_B	Means the Ticketless Travel Rate during Period B.

- (d) The Franchisee shall provide to the Secretary of State all financial information required for the purposes of making each of the calculations required pursuant to this paragraph 4.5 in accordance with paragraph 9.1 (*Accounting Records*) to paragraph 9.4 (*Annual Financial Information*) of Schedule 11.2 (*Management Information*).
- (e) Within twenty eight (28) days of receipt of all financial information required for the purposes of making the relevant calculations, the Secretary of State shall calculate the value of the Performance Based Fee attributable to FIN(TTR) in accordance with the applicable formula set out below based on whether the Ticketless Travel Rate is:
- (i) greater than the TT Floor;
 - (ii) greater than the TT Target but less than or equal to the TT Floor;
 - (iii) greater than the TT Cap but less than or equal to the TT Target; or
 - (iv) less than or equal to the TT Cap:

Ticketless Travel Rate	£FIN(TTR)
Greater than TTF	Zero pound (£0)
Greater than TT Target, less than or equal to TTF	$[(TTF - TTR) / (TTF - TTC)] * W_{FIN} * W_{TT} * MPBF * \text{fifty per cent (50\%)}$
Greater than TTC, less than or equal to TT Target	$(W_{FIN} * W_{TT} * MPBF) - \{[(TTR - TTC) / (TT \text{ Target} - TTC)] * W_{FIN} * W_{TT} * MPBF * \text{Fifty per cent (50\%)}\}$
Less than or equal to TTC	$W_{FIN} * W_{TT} * MPBF$

4.6 Calculation of FIN(SC)

- (a) **FIN(SC) shall be calculated using the Scorecard Methodology as it applies to the Financial Performance Fee.**

⁴⁴⁷ APPENDIX 6 TO SCHEDULE 8.1B**Category A Target Amendment Trigger Events**

- 1. Target Cost Target Amendment Trigger Events**
 - 1.1 Any variation in the rate of employer pension contributions (or, to the extent applicable, the amount of any lump sum employer deficit contributions) payable to a Franchise Section from the rate (or amount) set out in the Assumed Schedule of Contributions applicable to that Franchise Section which is not already provided for in the Target Cost Template provided that, to the extent the Franchisee's consent or permission was required for that variation, the Franchisee has complied with its obligations pursuant to Schedule 16.1, including the obligations to:**
 - (a) obtain the Secretary of State's prior written consent in respect of any such variation; and**
 - (b) act in a Reasonable Commercial Manner.**
 - 1.2 For reasons related to COVID-19 or otherwise in the national interest, the Secretary of State or Network Rail requires the Franchisee to operate the Passenger Services to a specification that is materially reduced compared to the specification that was assumed when the Target Cost was established.**
 - 1.3 Either:**
 - (a) the Secretary of State designates the occurrence of Industrial Action as a Category A Target Amendment Trigger Event pursuant to paragraph 5.3 of part 2 (*Industrial Relations and Dispute Handling*) of Schedule 6.7 (*ERMA Specific Obligations*); or**
 - (b) the occurrence of Industrial Action, in the circumstances set out in paragraph 5.4 of part 2 (*Industrial Relations and Dispute Handling*) of Schedule 6.7 (*ERMA Specific Obligations*).**
 - 1.4 A Variation which either results in the Franchisee incurring additional expenditure or would reasonably result in the Franchisee incurring lower expenditure than if the Variation had not been implemented.**
 - 1.5 An event set out in any Secretary of State Risk Assumptions specified in Schedule 9.4 (*Secretary of State Risk Assumptions*).**
 - 1.6 A Charge Variation.**
 - 1.7 A Change of Law.**
 - 1.8 A change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance**

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

- with paragraph 16.6 of Schedule 1.1 (*Franchise Services and Service Development*).
- 1.9 The Franchisee being required to take any action pursuant to paragraph 19.1(a) and/or paragraph 19.1(b) of Schedule 1.1 (*Franchise Services*).
- 1.10 The imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (*Accessibility and Inclusivity*), of any increased access charges in respect of EA Requirements at Franchisee Access Stations.
- 1.11 The exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 15.1(c) (*Environmental Information Data Collection Plan*) of Schedule 11.2 (*Management Information*).
- 1.12 The circumstances set out in paragraph 3.2 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*) occur.
- 1.13 The Secretary of State issues a TDR Amendment pursuant to paragraph 12.8 (*TDR Amendments*) of Schedule 1.1 (*Franchise Services and Service Development*) in the circumstances described in paragraph 12.10(b) of Schedule 1.1 (*Franchise Services and Service Development*).
- 1.14 The circumstances contemplated in paragraph 12.11(b) of Schedule 1.1 (*Franchise Services and Service Development*) occur.
- 1.15 The delay of an item of expenditure or a group of items of similar expenditure where the timing of expenditure is materially different from that included in the Target Cost.
- 1.16 The Secretary of State issuing any other guidance or instruction which could reasonably be expected to have a material impact on the Franchisee's ability to achieve, exceed or fail to achieve the relevant Target Cost.
- 1.17 Any of the events set out in paragraph 3 (as the case may be) of Schedule 9.5 (*Specified Complex Change*) occur.
- 1.18 The Secretary of State issues a written notice pursuant to paragraph 9.5 of Part 3 of Schedule 6.1 (*Franchise Specific Obligations*) requiring the Franchisee to continue to provide the Liverpool to Nottingham Passenger Services.
2. Target Profit Target Amendment Trigger Events
- 2.1 Any variation in the rate of employer pension contributions (or, to the extent applicable, the amount of any lump sum employer deficit contributions) payable to a Franchise Section from the rate (or amount) set out in the Assumed Schedule of Contributions applicable to that Franchise Section which is not already provided for in the Target Profit Template provided that, to the extent the Franchisee's consent or permission was required for that variation, the Franchisee has complied with its obligations pursuant to Schedule 16.1 (*Railways Pension Scheme*), including the obligations to:

- (a) obtain the Secretary of State's prior written consent in respect of any such variation; and
 - (b) act in a Reasonable Commercial Manner.
- 2.2 For reasons related to COVID-19 or otherwise in the national interest, the Secretary of State or Network Rail requires the Franchisee to operate the Passenger Services to a specification that is materially reduced compared to the specification that was assumed when the Target Profit was established.
- 2.3 Either:
 - (a) the Secretary of State designates the occurrence of Industrial Action as a Category A Target Amendment Trigger Event pursuant to paragraph 5.3 of part 2 (*Industrial Relations and Dispute Handling*) of Schedule 6.7 (*ERMA Specific Obligations*); or
 - (b) the occurrence of Industrial Action in the circumstances set out in paragraph 5.4 of part 2 (*Industrial Relations and Dispute Handling*) of Schedule 6.7 (*ERMA Specific Obligations*).
- 2.4 A Variation which:
 - (a) results in the Franchisee incurring additional expenditure;
 - (b) would reasonably result in the Franchisee incurring lower expenditure;
 - (c) results in the Franchisee earning less revenue; or
 - (d) would reasonably result in the Franchisee earning greater revenue, than if the Variation had not been implemented.
- 2.5 An event set out in any Secretary of State Risk Assumptions specified in Schedule 9.4 (*Secretary of State Risk Assumptions*).
- 2.6 A Charge Variation.
- 2.7 A Change of Law.
- 2.8 A change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with paragraph 16.6 of Schedule 1.1 (*Franchise Services and Service Development*).
- 2.9 The Franchisee being required to take any action pursuant to paragraph 19.1(a) and/or paragraph 19.1(b) of Schedule 1.1 (*Franchise Services*).
- 2.10 The Secretary of State effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of section 28 of the Act.
- 2.11 The Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 4.5 of Schedule

- 2.5 (*Transport, Travel and Other Schemes*) if the Franchisee makes a saving as a consequence of such amendment or proposed amendment.**
- 2.12 The imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (*Accessibility and Inclusivity*), of any increased access charges in respect of EA Requirements at Franchisee Access Stations.**
- 2.13 The Secretary of State exercises the Secretary of State's power pursuant to paragraph 5 (*Changes to Fares Regulation*) of Schedule 5.7 (*Changes to Fares and Fares Regulation*) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (*Fares and Smart Ticketing*).**
- 2.14 The Franchisee is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment.**
- 2.15 The exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 15.1(c) (*Environmental Information Data Collection Plan*) of Schedule 11.2 (*Management Information*).**
- 2.16 The circumstances set out in paragraph 3.2 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*) occur.**
- 2.17 The Secretary of State issues a TDR Amendment pursuant to paragraph 12.8 (*TDR Amendments*) of Schedule 1.1 (*Franchise Services and Service Development*) in the circumstances described in paragraph 12.10(b) of Schedule 1.1 (*Franchise Services and Service Development*).**
- 2.18 The circumstances contemplated in paragraph 12.11(b) of Schedule 1.1 (*Franchise Services and Service Development*) occur.**
- 2.19 The delay of an item of expenditure or a group of items of similar expenditure where the timing of expenditure is materially different from that included in the Target Profit.**
- 2.20 The Secretary of State issuing any other guidance or instruction which could reasonably be expected to have a material impact on the Franchisee's ability to achieve, exceed or fail to achieve the relevant Target Profit.**
- 2.21 Any of the events set out in paragraph 3 (as the case may be) of Schedule 9.5 (*Specified Complex Change*) occur.**
- 2.22 The Secretary of State issues a written notice pursuant to paragraph 9.5 of Part 3 of Schedule 6.1 (*Franchise Specific Obligations*) requiring the Franchisee to continue to provide the Liverpool to Nottingham Passenger Services.**

448 APPENDIX 7 TO SCHEDULE 8.1B

Pro Forma Target Tables

1. **Table 1: Required when the Operational Performance Fee is assessed using the Quantified Target Methodology. Each item marked with ✓ is to be agreed or reasonably determined in respect of each Reporting Period within the relevant PBF Assessment Period pursuant to paragraph 4.5 of Schedule 8.1B.**

Indicator	Default Performance Level	Breach Performance Level	Range within which the Franchisee's performance is expected to fall	
			From	To
Cancellations	✓	✓	✓	✓
TOC Minutes Delay	✓	✓	✓	✓
Short Formations	✓	✓	✓	✓
T-3	n/a		✓	✓
T-15			✓	✓
All Cancellations			✓	✓

2. **Table 2: Required when the Customer Experience Fee is assessed (wholly or in part) using the NRPS Methodology. Each ✓ indicates a single figure to be agreed or reasonably determined for the whole PBF Assessment Period.**

Indicator	NRPS Improvement Plan Level	Range within which the Franchisee's performance is expected to fall	
		From	To
NRPS Trains		✓	✓
NRPS Stations		✓	✓
NRPS Customer Service		✓	✓
NRPS Dealing with Delays	✓	✓	✓

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Indicator	NRPS Improvement Plan Level	Range within which the Franchisee's performance is expected to fall	
		From	To
NRPS Trains – NRPS Service Group 1 (Midland Mainline (MML) services)	✓		
NRPS Trains -NRPS Service Group 2 (Inter-urban (Liverpool – Norwich) services)	✓		
NRPS Trains – NRPS Service Group 3 (the Local services)	✓		
NRPS Stations – NRPS Service Group 1 (Midland Mainline (MML) services)	✓		
NRPS Stations – NRPS Service Group 2 (Midland Mainline (MML) services)	✓		
NRPS Stations – NRPS Service Group 3 (NRPS Service Group 3 (the Local services)	✓		
NRPS Customer Service – NRPS Service Group 1 (Midland Mainline (MML) services)	✓		
NRPS Customer Service – NRPS Service Group 2 (Midland Mainline (MML) services)	✓		
NRPS Customer Service – NRPS Service Group 3 (the Local services)	✓		

3. **Table 3A: Required when the Customer Experience Fee is assessed (wholly or in part) using the SQR Methodology. Each ✓ indicates a single figure to be agreed or reasonably determined for the whole PBF Assessment Period.**

Service Quality Area	SQR Improvement Plan Level
Stations: Ambience and Assets	✓

Stations: Cleanliness	✓
Stations: Information	✓
Stations: Ticketing & Staffing	✓
Trains: Ambience and Assets	✓
Trains: Cleanliness	✓
Trains: Information	✓
Customer Service: Information & Contact	✓

Table 3B: Required when the Customer Experience Fee is assessed (wholly or in part) using the SQR Methodology. Each ✓ indicates a single figure to be agreed or reasonably determined for the whole PBF Assessment Period.

SQR Component	SQR Improvement Plan Level	Range within which the Franchisee's performance is expected to fall	
		From	To
SQR Stations Component	✓	✓	✓
SQR Trains Component	✓	✓	✓
SQR Customer Service Component	✓	✓	✓

4. Table 4: Required when the Ticketless Travel Rate is assessed using the Ticketless Travel Methodology.

TT Target	TT Floor	TT Cap	TT Breach Level
✓	✓	✓	✓

Schedule 8.2

⁴⁴⁹**NOT USED**

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

Schedule 8.3

⁴⁵⁰**NOT USED**

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

Schedule 8.4

NOT USED

Schedule 8.5

NOT USED

Schedule 8.6

⁴⁵¹**NOT USED**

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

APPENDIX 1 TO SCHEDULE 8.6

SCHEDULE 9
CHANGES AND VARIATIONS

Schedule 9.1:	Financial and Other Consequences of Change
	Appendix 1: Definition of Threshold Amount
	Appendix 2: Agreement or Determination of Revised Inputs
Schedule 9.1A:	NOT USED
Schedule 9.2:	Identity of the Financial Model (Escrow Documents)
Schedule 9.3:	Variations to the Franchise Agreement and Incentivising Beneficial Changes
Schedule 9.4:	Secretary of State Risk Assumptions
Schedule 9.5:	NOT USED

Schedule 9.1

⁴⁵²**NOT USED**

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

APPENDIX 1 TO SCHEDULE 9.1

[DELETED⁴⁵³]

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

APPENDIX 2 TO SCHEDULE 9.1

[DELETED⁴⁵⁴]

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

Schedule 9.1A

NOT USED

Schedule 9.2

Identity of the Financial Model (Escrow Documents)**1. Franchisee's Obligations**

- 1.1 The Franchisee shall deliver two (2) copies of each of the Financial Model, the Operational Model and the Record of Assumptions (each such copy in electronic format on non-rewritable password protected CD-ROM or other appropriate electronic medium) together with hard format copies of the output template of the Financial Model in the format set out in the document in the agreed terms marked **FF** (the "**Escrow Documents**") to the Secretary of State in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow.
- 1.2 The Franchisee shall deliver the Escrow Documents to the Secretary of State in accordance with paragraph 1.1:
- (a) on the date of the Franchise Agreement;
 - (b) within seven (7) days of the Start Date, but updated only as strictly necessary for any elapsed time between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (c) within seven (7) days of any approval or audit of a Run of the Financial Model as provided for in paragraph 7 of Schedule 9.1 (*Financial and Other Consequences of Change*), but updated with the Revised Inputs and any Model Changes together with an updated Record of Assumptions and copies of both the modified and unmodified Financial Model.
- 1.3 The Franchisee shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:
- (a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
 - (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and
 - (c) if required by the Secretary of State, a certificate from independent auditors approved by the Secretary of State, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.1 or (as the case may be) is in accordance with paragraphs 1.2(a), 1.2 (b) or 1.2(c).

2. Secretary of State's Obligations

- 2.1 The Secretary of State shall:
- (a) within three (3) days following receipt, acknowledge receipt to the Franchisee of any version of the Escrow Documents delivered to him for the purposes of being Placed in Escrow;
 - (b) save as provided under paragraph 2.1(c), store each copy of the Escrow Documents in a different physical location from any other copy of each such

document and use all reasonable endeavours to ensure that each copy of the Escrow Documents is at all times kept in a safe and secure environment. In so doing the Secretary of State shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of the Franchise Agreement;

- (c) notify the Franchisee if he becomes aware at any time during the term of the Franchise Agreement that any copy of the Escrow Documents or part thereof stored in a particular location has been lost, damaged or destroyed. In such an event, the Secretary of State shall be permitted to create a new copy of the Escrow Documents or part thereof from the other copy Placed in Escrow and shall within seven (7) days notify the Franchisee accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a "complete and accurate" copy has been made. Following the making of such a new copy of the Escrow Documents, the Secretary of State shall retain all copies of the Escrow Documents in accordance with paragraph 2.1(b);
- (d) within seven (7) days of receipt of a notice from the Franchisee stating that the Escrow Documents are required for the purposes of a Run of the Financial Model in relation to any Change, or should the Secretary of State himself so decide that the Escrow Documents are required by the Franchisee or by the Secretary of State for such purposes release one copy of the Escrow Documents accordingly and retain one copy of the Escrow Documents in escrow in accordance with paragraph 2.1(b);
- (e) maintain a record of any release of any copy of any version of the Escrow Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Escrow Documents are released;
- (f) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Escrow Documents; and
- (g) not be liable for any loss, damage or destruction caused to the Franchisee arising from any loss of, damage to or destruction of the Escrow Documents.

2.2 If the Franchisee fails to perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (*Financial and Other Consequences of Change*) or fails to return the copy of the Escrow Documents released pursuant to paragraph 2.1(d):

- (a) such failure to perform or to return the released copy to the Secretary of State shall be a contravention of the Franchise Agreement;
- (b) the Secretary of State may release the other copy of the Escrow Documents Placed in Escrow and take a copy thereof (the "**Replacement Copy**") in order that the Secretary of State may perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (*Financial and Other Consequences of Change*);
- (c) once copied, the second copy of the Escrow Documents released pursuant to this paragraph 2.2 shall be Placed in Escrow; and
- (d) once the Run of the Financial Model has been approved or audited as provided for in paragraph 7 of Schedule 9.1 (*Financial and Other*

Consequences of Change), two copies of the Replacement Copy shall also be Placed in Escrow.

- 2.3 Nothing in this Schedule 9.2 shall prevent the Secretary of State or the Franchisee each retaining for their working use one or more copies of any of the Escrow Documents Placed in Escrow provided that no such working copy shall (unless otherwise explicitly agreed by the Parties) be regarded as a copy released from Escrow for the purposes of this Schedule 9.2 or any Run of the Financial Model.

3. Errors in Escrow Documents

- 3.1 Any feature of the Escrow Documents which is in the reasonable opinion of the Secretary of State an error will be addressed as follows:

- (a) if rectification of such an error would (as the case may be) over the Franchise Term result in a net increase in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net decrease in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified provided that there shall not be a restatement of the values of the Annual Franchise Payment Components and the Profit Share Components and the Target Revenue Amounts;
- (b) if rectification of such an error would (as the case may be) over the Franchise Term result in a net decrease in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net increase in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified and the values of the Annual Franchise Payment Components and the Profit Share Components and the Target Revenue Amounts shall be restated where appropriate;
- (c) a record of the error shall be noted in the Record of Assumptions and, if applicable, the Financial Model; and

as soon as reasonably practicable after the date of the rectification of the error, the Franchisee shall (unless otherwise agreed by the Secretary of State) deliver to the Secretary of State a certificate from independent auditors approved by the Secretary of State confirming that the error has been rectified as required by this paragraph 3 and is now in the agreed form in accordance with paragraphs 1.1, 1.2(a), 1.2(b) or 1.2(c) as the case may be.

Schedule 9.3

Variations to the Franchise Agreement and Incentivising Beneficial Changes**1. Variations**

1.1 ⁴⁵⁵ **The terms of the Franchise Agreement may be varied as follows but not otherwise:**

(a) by the Secretary of State in relation to:

(i) any aspect of the Franchise Services; and/or

(ii) any provision of the Franchise Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the Franchisee referring to this paragraph 1.1(a) and setting out the variation to the terms of the Franchise Agreement; and

(b) in relation to any other provision of the Franchise Agreement, by agreement in writing between the Parties to that effect,

(each a "Variation").

1.2 Without prejudice to the Secretary of State's rights under paragraph 1.1(a), the terms of each of:

(a) clauses 5 (*Duration of the Franchise Agreement*), 7 (*Assignment*), 10 (*Cumulative Rights and Remedies*), 11 (*Dispute Resolution*), 12 (*Notices*), 13 (*Set-Off*) and 14 (*Miscellaneous Provisions*) of this Agreement;

(b) Schedules 8 (*Payments*), 9 (*Changes and Variations*), 10 (*Remedies, Events of Default and Termination Events*), 12 (*Financial Covenants and Bonds*) and 14 (*Preservation of Assets*) of this Agreement; and

(c) the definitions set out at clause 3 (*Definitions*) of this Agreement insofar as such affect the respective rights and obligations of the Secretary of State and the Franchisee pursuant to the provisions referred to at (a) and (b) above,

shall not be varied at any time other than in accordance with the terms of the Franchise Agreement or with the agreement of the Parties.

1.3 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.

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

- 1.4 The Secretary of State may:
- (a) issue, revise and withdraw from time to time procedures that he requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and
 - (b) require the Franchisee to provide any information that the Secretary of State reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).
- 1.5 Procedures issued pursuant to paragraph 1.4 may provide for indicative iterations of Runs of the Financial Model in relation to one or more Changes that the Secretary of State is considering and may also provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the Financial Model.
- 1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the Parties in accordance with their terms.
- 1.7 The Franchisee may notify the Secretary of State of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:
- (a) the timescale for doing so;
 - (b) the effect (if any) on the timing of the performance of its other obligations under the Franchise Agreement;
 - (c) the impact of effecting the proposed Variation on the provision of the Franchise Services and the Franchisee's proposals as to how to minimise such impact; and
 - (d) the financial consequences of implementing the Variation proposed by the Franchisee in terms of the Revised Inputs that the Franchisee considers the Variation would require.

2. ⁴⁵⁶ **NOT USED.**

3. **Capital Expenditure**

3.1 **Capital Expenditure Threshold**

The Franchisee shall notify the Secretary of State promptly if it reasonably expects that a Change to which paragraph 1 or 2 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of one per cent (1%) of its annual Turnover as disclosed by its latest available Annual Audited Accounts and, when so notified, the Secretary of State shall either:

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

- (a) withdraw (or direct the Franchisee to withdraw) the Change;
- (b) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (c) direct the Franchisee to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in the Franchisee failing to comply with the financial covenants contained in Schedule 12 (*Financial Covenants and Bonds*).

3.2 Franchisee to Seek Finance

If the Secretary of State elects to require the Franchisee to use all reasonable endeavours as described in paragraph 3.1(c) then the Franchisee shall:

- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to the Franchisee, the Guarantor and the Parent or any other Affiliate;
- (b) if it is unable to raise funding, provide the Secretary of State with all information the Secretary of State may reasonably require in relation to the efforts made by the Franchisee and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), the Franchisee shall provide to the Secretary of State letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if the Secretary of State so requires, arrange and attend meetings with them for the Secretary of State to discuss those reasons; and
- (d) if funding is not available, or is not available on terms that the Secretary of State considers to be commercial terms or at rates which are consistent with market conditions at that time the Secretary of State may:
 - (i) withdraw the Change; or
 - (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

3.3 Treatment of Borrowings in Revised Inputs

In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 3, the Franchisee shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

3.4 Meaning of Capital Expenditure

The expression “**Capital Expenditure**” when used in this Schedule 9.3 refers to the nature of the expenditure incurred by the Franchisee and, accordingly, does not include expenditure incurred under operating leases.

Schedule 9.4

Secretary of State Risk Assumptions**1. Definitions**

- 1.1 For the purposes of this Schedule 9.4 only, the following words and expressions shall have the following meanings unless otherwise set out in Clause 3 (**Definitions**) or the context otherwise implies:

“Competent Authority”	has the meaning given to such term in the RI Regulations;
“Dispensation Application”	an application pursuant to section 46 of the RI Regulations requesting dispensation for the Mark III Train Sets from the PRM TSI;
“Mark III HST Train Sets”	means the semi fixed formation train sets formed of Mark III coaches and comprised in the Train Fleet as at the Start Date;
“PRM TSI Modification Works”	means the modification works necessary to make the Mark III HST Train Sets compliant with the RI Regulations with regard to the PRM TSI;
“RI Regulations”	means the Railways (Interoperability) Regulations 2011;
“TSI”	has the meaning given to such term in the RI Regulations; and
“PRM TSI SoSRA Longstop Date”	means the later to occur of the Passenger Change Date in December 2020 and the date on which the Passenger Services between London St Pancras and Corby are capable of being operated by electric rolling stock;

2. PRM TSI Compliance in relation to the Mark III HST Train Sets

- 2.1 It is acknowledged by the Secretary of State and the Franchisee that it is likely that the Mark III HST Train Sets may not have achieved PRM TSI compliance by 1 January 2020 and as a consequence the Franchisee may, to the extent that such application has not yet been made by any owner of any Mark III HST Train Sets or the Previous Franchisee by the date of this Agreement, submit a Dispensation Application to the Competent Authority. From the date of this Agreement, the Franchisee shall co-operate with:
- (a) the Competent Authority with respect to its assessment of any Dispensation Application; and
 - (b) the Secretary of State in order to mitigate, as far as reasonably practicable, the impact of the relevant dispensation not being approved or granted by 1 January 2020 on the Franchise Services and

Passenger Carrying Capacity requirements set out in the terms of the Franchise Agreement.

2.2 A Change shall occur, which shall be deemed to be a Qualifying Change, if on any date in the period between 1 January 2020 and the PRM TSI SoSRA Longstop Date:

- (a) there is an insufficient number of Mark III HST Train Sets which are compliant with the PRM TSI such that the Franchisee is unable to operate the Passenger Services in accordance with a Timetable that complies with the TSR; and
- (b) no dispensation (pursuant to section 46 of the RI Regulations) from the requirement that the Mark III HST Train Sets are to be compliant with the PRM TSI, is in effect,

provided that the Change shall only occur if:

- (x) the Franchisee has submitted a Dispensation Application to the Competent Authority by no later than twenty (20) Weekdays from the date of this Agreement; or
- (y) either the owner of the Mark III HST Train Sets or the Previous Franchisee has submitted a Dispensation Application to the Competent Authority and the Franchisee has co-operated with and, if relevant, is continuing to co-operate with the Competent Authority with respect to its consideration of that application.

2.3 With respect to the Qualifying Change referred to in paragraph 2.2, in agreeing or reasonably determining the Revised Inputs in respect of such Qualifying Change and, for the purposes of paragraph 2 of Appendix 2 to Schedule 9.1 (*Financial Consequences and Other Changes*), the Secretary of State shall be entitled to assume that the Franchisee has complied with its obligations in paragraph 2.6 regardless of whether or not the Franchisee has in fact complied with such obligations.

2.4 On the occurrence of a Qualifying Change pursuant to paragraph 2.2 the Secretary of State and the Franchisee shall use reasonable endeavours to agree a Variation to the Franchise Agreement pursuant to paragraph 1 of the Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*) to:

- (a) implement any consequential changes (including such changes as are necessary to give effect to the contingency plans to be developed and implemented by the Franchisee as required pursuant to paragraph 2.6) to the Franchise Services reasonably required for the purposes of ensuring that the Franchisee can continue to provide the Franchise Services in a manner which ensures the least disruption to passengers; and
- (b) any other consequential amendments to the terms of the Franchise Agreement as are reasonably necessary to take account of the occurrence of such Qualifying Change.

- 2.5 In the event that the Secretary of State and the Franchisee fail to agree any of the matters pursuant to paragraph 2.4, the Secretary of State shall reasonably determine the matter. Following any agreement or reasonable determination by the Secretary of State, variations to this Agreement shall be made, at the option of the Secretary of State, by the service of a notice pursuant to paragraph 1.1(a) of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*) or through the entering into of a deed of amendment to the Franchise Agreement pursuant to paragraph 1.1(b) of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*). The expectation of the parties is that any such Variations shall, except where reasonably determined by the Secretary of State to the contrary, cease to apply from the date of any Qualifying Change pursuant to paragraph 2.7.
- 2.6 On the occurrence of a Qualifying Change pursuant to paragraph 2.2 the Franchisee shall:
- (a) take all reasonable steps to mitigate the impacts of the circumstances giving rise to the Change as are reasonably practicable including by developing and implementing such contingency plans reasonably required to ensure that, so far as reasonably practicable, the Franchisee can continue to provide the Passenger Services and Passenger Carrying Capacity requirements in accordance with the terms of the Franchise Agreement; and
 - (b) undertake the PRM TSI Modification Works prior to the PRM TSI SoSRA Longstop Date in circumstances where the Franchisee intends to continue to operate the Mark III HST Train Sets in the delivery of the Passenger Services following the PRM TSI SoSRA Longstop Date and the adverse cost and revenue implications of undertaking the PRM TSI Modification Works shall be borne by the Franchisee and the Qualifying Change referred to in paragraph 2.2 shall not take account of such adverse cost and revenue implications.
- 2.7 If a Qualifying Change is deemed to occur pursuant to paragraph 2.2 there shall be a further Change, which shall also be deemed to be a Qualifying Change, on the earlier of:
- (a) the date on which sufficient number of Mark III HST Train Sets are capable of re-entering passenger revenue earning service following the granting of a dispensation under section 46 of the RI Regulations to enable the Franchisee to operate the Passenger Services in accordance with a Timetable that complies with the TSR;
 - (b) the date on which sufficient number of rolling stock vehicles which are fully compliant with PRM TSI standards are capable of being introduced into passenger revenue earning service to enable the Franchisee to operate the Passenger Services in accordance with a Timetable that complies with the TSR; and
 - (c) the PRM TSI SoSRA Longstop Date,

for the purposes of disapplying the effect of the Qualifying Change pursuant to paragraph 2.2.

Schedule 9.5

Specified Complex Change**1. Definitions**

1.1 In this Schedule 9.5 unless the context otherwise requires, the following words and expressions have the following meanings:

“Base Assumption” means as the context requires an assumption specified in Part A of the IAD;

“Bidder Assumption” means as the context requires an assumption specified in Part C of the IAD;

“Infrastructure Issues Action Programme” has the meaning given to it in paragraph 4.4(b) of this Schedule 9.4;

“IAD” means the document in agreed terms marked “IAD” as it may subsequently be amended or restated in accordance with paragraphs 4.4(a) or 4.5 of this Schedule 9.5. Each amendment and restatement of the document shall be updated as necessary to state:

(a) in Part A the then applicable Base Assumptions as any of them may be amended following any Change pursuant to paragraph 4.9 of this Schedule 9.5;

(b) in Part B the then applicable Working Assumptions; and

(c) in Part C the then applicable Bidder Assumptions;

“IAD Review” has the meaning given to it in paragraph 4.1 of this Schedule 9.4;

“Infrastructure Review Date” means the date falling six months after the Start Date and every six months thereafter together with any additional interim dates as may be agreed between the parties; and

“Working Assumption” means as the context requires an assumption specified in Part B of the IAD.

2. Background and commercial principles

2.1 The Secretary of State and the Franchisee acknowledge and agree that:

(a) one (1) or more of the Working Assumptions or Bidder Assumptions may cease to be correct in circumstances which involve complex and interrelated infrastructure and rolling stock change, the consequences

of which may require mitigating action to be taken during the Franchise Term;

- (b) one (1) of the reasons that the Franchisee has been appointed by the Secretary of State to operate the Franchise Services is that it is a skilled and experienced train operator with the ability to manage these circumstances in a way that is, so far as is reasonably practicable, consistent with the efficient and effective delivery of railway infrastructure and rolling stock projects in accordance with planned timescales and budgets;
- (c) there are risk areas that are within the control of the Franchisee but it is also the case that successful delivery of infrastructure projects is materially dependent on third parties (including Network Rail) and other external factors which the Franchisee has limited or no ability to control;
- (d) accordingly in this Schedule 9.5 and the relevant provisions of Schedule 6.2 (*Franchise Specific Provisions*) the parties have sought to allocate risk between them and establish a process for mitigating risks that materialise or are likely to materialise on a reasonable and good faith basis in accordance with the following general principles:
 - (i) regular and effective reporting by the Franchisee;
 - (ii) regular and effective discussion and engagement between the parties leading to appropriate decision making;
 - (iii) effective risk management and the taking of appropriate risk mitigation actions on a timely basis;
 - (iv) review of, and where appropriate adjustment to, agreed risk mitigation actions in response to developing circumstances; and
 - (v) the use of rail industry regulated compensation mechanisms under Access Agreements and the Network Code in appropriate circumstances and the provision of appropriate Change adjustments under the Franchise Agreement whilst at the same time avoiding any multiple compensation to the Franchisee in relation to the same losses or excessive compensation including where applicable by way of retrospective adjustment through Franchise Payments or otherwise where it subsequently becomes apparent that the Franchisee has received multiple compensation in relation to the same loss or excessive compensation.

3. **Change to Base Assumptions**

- 3.1 Subject to paragraph 3.2 below it shall be a Change if any infrastructure output that is the subject of a Base Assumption first becomes available for use in delivering the Passenger Services on a date that is later than the date specified in that Base Assumption or to a lesser specification in a way that materially adversely affects the Passenger Services are not available on the specified date and this materially adversely affects the Passenger Services.

- 3.2 If there is a Change pursuant to paragraph 3.1 and the Secretary of State reasonably determines that this is caused by any unreasonable action or inaction of the Franchisee or the Franchisee not acting in accordance with its obligations pursuant to clause 6.1 of the Franchise Agreement the Secretary of State shall have the right to require that:
- (a) where the Franchisee is wholly and exclusively responsible for such circumstances arising there shall be no Change; or
 - (b) where the Franchisee is partly responsible for such circumstances arising if there is a Qualifying Change then the impacts of relevant actions or inactions of the Franchisee, or its not acting in accordance with its obligations pursuant to clause 6.1 of the Franchise Agreement, shall not be taken into account in such Qualifying Change to the extent that to do so would be to compensate the Franchisee in relation to adverse impacts for which it was responsible.
 - (c) where the Secretary of State acting reasonably concludes that the Franchisee failed to fully and effectively co-operate with the reasonable requirements of Network Rail to secure relevant authorisations including, for example, making available relevant electric multiple units and electric locomotives with crews for reasonable testing purposes then the Secretary of State shall have the right to require that there shall be no Change or that any Qualifying Change shall not compensate the Franchisee to the extent that any delay to any of the projects referred to in paragraph 3.1 can be considered to be a consequence of the Franchisee failing to so fully and effectively co-operate with Network Rail.
- 3.3 Where there is a Change pursuant to paragraph 3.1 there will be a further Change when the relevant infrastructure output is available for use in delivering the Passenger Services.
- 3.4 It is agreed by the parties that where there is one or more Qualifying Changes pursuant to paragraph 3.1, 3.3 and/or 4.9 and there is an interrelationship between that Qualifying Change and any other such Qualifying Change then:
- (a) Model Changes and Revised Inputs shall be established and applied to the Financial Model, Runs of the Financial Model shall be performed and any Estimated Revisions shall be made in an appropriately co-ordinated way to take proper account of such interrelationships; and
 - (b) the Franchisee shall not be entitled to recover more than once in relation to the same loss suffered by it.
- 3.5 In assessing whether any matters under this Schedule 9.5 give rise to a Change which is a Qualifying Change it shall be permissible in relation to any Base Assumption to take into account all actions in an Infrastructure Issues Action Programme relating to such Base Assumption, triggers of such Base Assumption and amendments to such Base Assumption.
- 4. Infrastructure Issues Reviews**
- 4.1 Not less than three (3) nor more than six (6) weeks prior to each Infrastructure Issues Review Date (and otherwise in accordance with such

timescales as the parties may agree in relation to any interim Infrastructure Issues Review Date) the Franchisee shall deliver to the Secretary of State a written review of each of the Working Assumptions in Part B of the IAD and the Bidder Assumptions in Part C of the IAD including its latest forecast for achievement of the Working Assumptions and or Bidder Assumptions based on the reasonable knowledge of the Franchisee with appropriate supporting information (the "**IAD Review**"). The IAD Review shall identify in relation to each Working Assumption in Part B of the IAD and Bidder Assumption in Part C of the IAD:

- (a) whether the Franchisee remains reasonably confident that the Working Assumption or Bidder Assumption will be met; and
- (b) if the Franchisee does not remain reasonably confident that the Working Assumption or Bidder Assumption will be met:
 - (i) whether there are any steps which may be taken by the Franchisee to increase to a reasonable level its confidence that the Working Assumption or Bidder Assumption will be met, with an assessment of the relevant implications of such steps;
 - (ii) where it is reasonably able to provide the same, its forecast for when the Working Assumption is likely to be met, identifying any material concerns or conditions and any changes from any forecast previously provided;
 - (iii) what a revised Working Assumption should reasonably be in order for the Franchisee to be reasonably confident that it will be met, with reasons and supporting information (to the extent reasonably available to the Franchisee) including (where in relation to a Working Assumption only an amendment to the relevant existing Base Assumption or Working Assumption is proposed) an estimate by the Franchisee of the nature and extent of any Change which would be involved in amending and restating the relevant Base Assumption to reflect such revised Working Assumption; and
 - (iv) how likely it is that any such forecast or revised Working Assumption or Bidder Assumption will require further revision in future and what the probable parameters of such further revision are expected to be with reasons and supporting information (taking into account the information reasonably available to the Franchisee at the time),

it being acknowledged that the Franchisee shall be permitted to weight its review towards Working Assumptions and/or Bidder Assumption which are falling due first or in respect of which there are material concerns or which in its reasonable opinion require attention or which the Secretary of State otherwise requests are given priority attention in the relevant IAD Review, as the case may be.

The IAD Review shall also include:

- (c) a report on progress against any Infrastructure Issues Action Programme already established under paragraph 4.4 and not then completed;
 - (d) identification (taking into account the information reasonably available to the Franchisee at the time) of any changes or anticipated changes to the forecasts or assumptions on which actions in the Infrastructure Issues Action Programme have been based or other developments which it considers should be taken into account; and
 - (e) any proposals for an Infrastructure Issues Action Programme to be established or (where one already exists) revised, together with an estimate by the Franchisee of the nature and extent of any Change which would be involved in amending and restating the Infrastructure Issues Action Programme.
- 4.2 Where in the context of carrying out any IAD Review from time to time the Franchisee believes that any matter relevant to a Working Assumption or Bidder Assumption will be delayed beyond the end of the Franchise Term (as it may be extended pursuant to clause 5.2 (Additional Reporting Periods)) the Franchisee shall provide its reasonable and informed view (based on the information reasonably available to it) of the likely implications of this for the Successor Operator and the Secretary of State. The Franchisee shall actively engage with Network Rail and other relevant parties for the purpose of ensuring each IAD Review is as accurate as reasonably practicable under the circumstances.
- 4.3 The Franchisee shall:
- (a) provide such additional information as the Secretary of State shall reasonably request in relation to the contents of each IAD Review; and
 - (b) meet with the Secretary of State to discuss the contents of each IAD Review.
- 4.4 The Secretary of State and the Franchisee shall use reasonable endeavours to agree within two (2) months of an Infrastructure Issues Review Date (or by such other date as the parties may agree):
- (a) an amended and restated IAD including updating, as appropriate, each of the Working Assumptions and Bidder Assumption by reference to the then prevailing circumstances and taking proper account of the interrelationships between them;
 - (b) as appropriate, a programme of actions ("**Infrastructure Issues Action Programme**") intended to mitigate the impacts of any forecasts for or material changes to any of the Working Assumptions taking into account the interrelationships between them, the importance attached to ensuring that relevant outputs are delivered in accordance with relevant programmes and the overriding duties of the Secretary of State in relation to the proper expenditure of public monies. The Infrastructure Issues Action Programme shall record any material forecasts or assumptions on which proposed mitigations are based in order to help identify aspects of the mitigation which may require review if those forecasts or assumptions prove incorrect or are otherwise subject to change.

- 4.5 Following each Infrastructure Issues Review Date after the first Infrastructure Issues Review Date any then existing Infrastructure Issues Action Programme shall be amended and restated to take account of any latest or updated forecasts, changes to Working Assumptions and the latest programme with effect from the date that a further Infrastructure Issues Action Programme is agreed or reasonably determined by the Secretary of State.
- 4.6 In the event that the Secretary of State and the Franchisee fail to agree an amended or restated IAD or Infrastructure Issues Action Programme the Secretary of State shall have the right to reasonably determine them (or to determine that no amendments shall be made, or no Infrastructure Issues Action Programme shall be put in place as the case may be). Where the Secretary of State declines to include within an Infrastructure Issues Action Programme any action proposed by the Franchisee, the failure of the Franchisee to take that action shall not be regarded as a failure on the part of the Franchisee to act reasonably to mitigate any Qualifying Change pursuant to paragraph 3.1.
- 4.7 It shall be a term of the Franchise Agreement that the Franchisee shall use all reasonable endeavours to comply with any Infrastructure Issues Action Programme.
- 4.8 In connection with the establishment of any amended and restated IAD and/or any Infrastructure Issues Action Programme the Franchisee and the Secretary of State acting reasonably shall consider and to the extent possible reach agreement upon the likelihood that any Change will occur pursuant to paragraph 3.1.
- 4.9 Following consideration by him pursuant to paragraph 4.8 and discussion with the Franchisee (and without prejudice to the occurrence of a Change at the latest when the relevant facts are not in accordance with the relevant Base Assumption) the Secretary of State shall have the right (but not the obligation) to require that a Change shall have occurred in consequence of any Base Assumption being different to any revised Working Assumption in relation to the corresponding infrastructure output contained in Part B of the amended and restated IAD.

In such circumstances:

- (a) the Secretary of State and the Franchisee shall agree or (in the absence of agreement) the Secretary of State shall reasonably determine an adjusted Base Assumption to be included in the amended and restated IAD;
- (b) the difference between the relevant Base Assumption as it existed before the amended and restated IAD and the relevant adjusted Base Assumption included in the amended and restated IAD shall be a Change;
- (c) the Change provisions of paragraph 3.1 shall remain in force on the basis that (subject to any further application of this paragraph 4.9) any Change pursuant to paragraph 3.1 shall be assessed when the relevant actual position is known by reference to the adjusted Base Assumptions included in Part A of the amended and restated IAD; and

- (d) this process may be repeated on subsequent IAD Reviews.
- 4.10 Where the Franchisee is required to implement an Infrastructure Issues Action Programme or any revised Infrastructure Issues Action Programme and the relevant impacts of such implementation are not addressed in any Change pursuant to paragraphs 3.1 and 4.9 or otherwise then the requirement for the Franchisee to implement an Infrastructure Issues Action Programme (or the revision to that programme) shall be a Change and the provisions of paragraph 10 "Estimated Revisions" of Schedule 9.1 (*Financial and Other Consequences of Change*) shall apply where appropriate. If the implementation of an Infrastructure Issues Action Programme gives rise to any other Change (for example in consequence of a change to the Train Service Requirement) leading to there being more than one (1) Qualifying Change it is agreed that Model Changes and Revised Inputs shall be established and applied to the Financial Model and Runs of the Financial Model shall be performed in a co-ordinated way to take proper account of relevant interdependencies.
- 4.11 Where the Secretary of State reasonably determines that the requirement to implement an Infrastructure Issues Action Programme is caused by any unreasonable action or inaction of the Franchisee or the Franchisee not acting in accordance with its obligations pursuant to clause 6.1 of the Franchise Agreement the Secretary of State shall have the right to require that:
- (a) where the Franchisee is wholly and exclusively responsible for such circumstances arising there is no Change; or
- (b) where the Franchisee is partly responsible for such circumstances arising, then if there is any Qualifying Change the impacts of relevant actions or inactions of the Franchisee, or its not acting in accordance with its obligations pursuant to clause 6.1 of the Franchise Agreement, shall not be taken into account in such Qualifying Change to the extent that to do so would be to compensate the Franchisee in relation to adverse impacts that it was responsible for.
- 4.12 The Franchisee and the Secretary of State acknowledge and agree that any revised Working Assumptions or Bidder Assumptions in an amended and restated IAD may include dates that fall outside of the Franchise Term or only fall within the Franchise Term if the Secretary of State exercises his rights pursuant to clause 5.2 (Additional Reporting Periods) to extend the Franchise Term by up to 26 Reporting Periods. It is acknowledged that this will not lead to the Franchisee acquiring any liability arising after the end of the Franchise Term.
- 4.13 It is acknowledged that circumstances may arise on short notice with a short term impact between Infrastructure Review Dates which increase the likelihood of a Change occurring pursuant to paragraph 3.1 or which are otherwise related to the Working Assumptions and may lead to adverse impacts on the delivery of the Franchise Services. In such cases the parties will expeditiously discuss such circumstances and possible mitigations. The Secretary of State and the Franchisee may following such discussions agree mitigating actions and, where appropriate, related financial adjustments. Proper account shall be taken of any such mitigating actions and related financial adjustments in subsequent Infrastructure Issues Action

Programmes and Changes pursuant to paragraphs 3.1, 4.9 or 4.10 but (unless the Secretary of State agrees to the contrary) no mitigating actions or related financial adjustments shall be taken into account in relation to Bidder Assumptions.

5. Use of rail industry compensation mechanisms and rights of the Secretary of State in relation to multiple or excessive compensation in relation to relevant losses

- 5.1 The Secretary of State and the Franchisee acknowledge that railway industry procedures including Station Change and Network Change are designed to compensate train operators fairly in relation to rail infrastructure disruption and changes and agree that the Franchisee should pursue any relevant rights to obtain compensation in a reasonable way so that, where relevant, any Qualifying Change pursuant to this Schedule 9.5 shall assume that the Franchisee has been or will be paid such compensation.
- 5.2 The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of circumstances which mean that it has been, may have been or is likely to be compensated more than once or excessively in relation to the same adverse financial impact in connection with any matter pertaining to a Working Assumption or Bidder Assumption. For these purposes a compensation claim properly made under railway industry procedures including Station Change and Network Change shall not be regarded as excessive but without prejudice to the rights of the Secretary of State if the Franchisee has in consequence of such a claim received multiple compensation with regard to the same loss. Such notification shall identify the relevant circumstances and quantify the potential excess compensation. If requested by the Secretary of State the Franchisee shall provide such further information in relation to relevant circumstances as the Secretary of State may reasonably require.
- 5.3 Where the Secretary of State believes that the Franchisee has been or may be compensated more than once or excessively in relation to the same adverse financial impact in respect of any matter pertaining to any Working Assumption or Bidder Assumption the Secretary of State shall, except where the circumstances have been notified to the Secretary of State by the Franchisee pursuant to paragraph 5.2 above, identify the relevant circumstances and quantify the potential excess compensation. Where the circumstances have been notified to the Secretary of State by the Franchisee pursuant to paragraph 5.2 above, the Secretary of State shall confirm that he agrees with the Franchisee's view of the circumstances and the amount of the potential excess compensation or notify the Franchisee of any different view that he may have and his reasons for having such a different view.
- 5.4 The Franchisee shall be entitled to make representations to the Secretary of State in relation to any Secretary of State notification pursuant to paragraph 5.3 above. The parties shall discuss any representations made in good faith with the intention of agreeing whether or not there has been any excess compensation of the Franchisee and, if so, how much the relevant amount is. In the event that agreement cannot be reached within twenty (20) Weekdays the Secretary of State shall have the right to reasonably determine whether there has been excess compensation and, if so, the amount of such excess compensation.

- 5.5 Where the amount of any excess compensation of the Franchisee is agreed or reasonably determined there shall be an adjustment to the Franchise Payment due in relation to the Reporting Period after that in which relevant agreement was reached or the Secretary of State made his determination or, where agreement or determination occurs after the end of the Franchise Period, by way of a direct payment from the Franchisee to the Secretary of State. Such adjustment shall be of an amount equal to the amount of excess compensation received by the Franchisee as agreed or reasonably determined by the Secretary of State and not otherwise repaid by the Franchisee.

SCHEDULE 10**REMEDIES, EVENTS OF DEFAULT AND TERMINATION EVENTS**

Schedule 10.1:	Procedure for remedying a Contravention of the Franchise Agreement
Schedule 10.2:	Events of Default and Termination Events
Schedule 10.3:	Force Majeure and Business Continuity
Schedule 10.4:	Liability

Schedule 10.1

Procedure for remedying a Contravention of the Franchise Agreement**1. Contraventions of the Franchise Agreement**

- 1.1 The Franchisee shall notify the Secretary of State, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Franchisee of any provision of the Franchise Agreement. This includes where the Franchisee is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.
- 1.2 The Franchisee shall deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, the Franchise Agreement.

2. ⁴⁵⁷ Remedies for Contraventions of the Franchise Agreement**If:**

(a) the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene any term of the Franchise Agreement; and/or

(b) the:

(i) Secretary of State is satisfied that the Franchisee is operating at a level that would, or would likely, be scored "1"; or

(ii) Franchisee has received a score of "1",

in relation to any of the Scorecard Criteria for a particular PBF Assessment Period, in accordance with the PBF Assessment Period Review process set out in Schedule 8.1B (*Performance Based Fee*); and or

(c) the Franchisee has received a score of "1" in relation to any EMA Scorecard Criterion in accordance with the EMA Review process set out in appendix 1 (EMA Review) of Schedule 8.B (*Performance Payment*) of the Franchise Agreement as amended by the EMA:

he may serve a notice on the Franchisee requiring it to:

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

- (d) propose such steps as the Franchisee considers appropriate for the purpose of securing or facilitating compliance with the term in question; and/or
- (e) address and overcome the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion or EMA Scorecard Criterion (as applicable),

as applicable, (each a "Remedial Plan Notice").

3. ⁴⁵⁸Remedial Plan Notices

3.1 Each Remedial Plan Notice shall specify the following:

- (a) the:
 - (i) term or terms of the Franchise Agreement that the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene (each a "Relevant Term"); and/or
 - (ii) specific Scorecard Criterion under the PBF Assessment Period Scorecard that the Secretary of State is satisfied that the Franchisee is likely to score, or has scored, "1" in; and/or
 - (iii) specific EMA Scorecard Criterion under the EMA Review Scorecard in respect of which the Franchisee has scored "1",

as applicable; and,

- (b) the time period ("Remedial Plan Period") within which the Secretary of State requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with such Relevant Term and/or addressing and overcoming the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion or EMA Scorecard Criterion, as applicable (a "Remedial Plan").

4. Remedial Plans

- 4.1 If the Secretary of State issues a Remedial Plan Notice, the Franchisee shall (at its own cost) submit a Remedial Plan to the Secretary of State within the Remedial Plan Period.

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

4.2 ⁴⁵⁹Each Remedial Plan shall set out:

(a) the:

- (i) Relevant Term which has caused such Remedial Plan to be required; and/or
- (ii) the Scorecard Criterion in respect of which the Franchisee has received, or is likely to receive, a score of "1"; and/or
- (iii) the EMA Scorecard Criterion in respect of which the Franchisee has received a score of "1",

as applicable;

(b) an explanation of the reasons for:

- (i) the contravention or likely contravention of the Relevant Term; and/or
- (ii) the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion; and/or
- (iii) the Franchisee receiving a score of "1" with respect to the relevant EMA Scorecard Criterion,

as applicable;

(c) the steps proposed for the purposes of:

- (i) securing or facilitating compliance with the Relevant Term; and/or
- (ii) addressing and overcoming the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion and/or EMA Criterion (as applicable),

as applicable; and

(d) the time period within which the Franchisee proposes to implement those steps.

5. Remedial Agreements

5.1 If the Secretary of State is satisfied that the matters within such Remedial Plan referred to in paragraphs 4.2(c) and (d) are appropriate (with or without further modification as the Parties may agree) he may require the Franchisee to enter into a supplemental agreement (the "**Remedial Agreement**") with the Secretary of State to implement those matters.

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

5.2 It is a term of the Franchise Agreement that the Franchisee (at its own cost) complies with each Remedial Agreement in accordance with its terms.

6. **Effect of Force Majeure Event on a Remedial Agreement**

6.1 Without prejudice to the operation of paragraph 2.1 of Schedule 10.2 (*Events of Default and Termination Events*), the following provisions shall apply in relation to Force Majeure Events affecting the Franchisee's performance of their obligations pursuant to a Remedial Agreement:

- (a) the Franchisee shall give written notice to the Secretary of State promptly after the Franchisee becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchisee's ability to comply with a Remedial Agreement within the period specified therein;
- (b) each notice submitted in accordance with paragraph 6.1(a) shall state the extent or likely extent of the relevant Force Majeure Event and in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Franchisee considers it likely to occur;
- (c) the Franchisee shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
- (d) subject to the Franchisee having complied with its obligations under paragraphs 6.1(a) to 6.1(c) (inclusive) the Franchisee shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with that Remedial Agreement.

7. **Enhanced Monitoring by the Secretary of State**

7.1 ⁴⁶⁰

- (i) **Following the occurrence of a contravention of the Franchise Agreement; and/or**
- (ii) **where the Secretary of State is satisfied that the Franchisee is operating at a level that would, or would likely, be scored "1" or the Franchisee has received a score of "1" in relation to any of the Scorecard Criteria for a particular PBF Assessment Period, in accordance with the PBF Assessment Period Review process set out in Schedule 8.1B (*Performance Based Fee*); and/or**
- (iii) **where the Franchisee has received a score of "1" in relation to any of the EMA Scorecard Criteria in accordance with the EMA Review process set out in appendix 1 (*EMA Review*) of Schedule 8.B**

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

(Performance Payment) of the Franchise Agreement as amended by the EMA,

the Secretary of State may at his option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Franchisee's performance of any relevant obligations until such time as the Franchisee demonstrates, to the Secretary of State's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the Franchise Agreement.

- 7.2 The Franchisee shall co-operate fully with the Secretary of State in relation to the monitoring referred to in paragraph 7.1.
- 7.3 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11.1 (*Franchise Performance Meetings*).
- 7.4 ⁴⁶¹**The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out such monitoring. Any such compensation shall be a Disallowable Cost pursuant to Appendix 1 (*Disallowable Costs*) to Schedule 8.1A (*Franchise Payments*).**

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

Schedule 10.2

Events of Default and Termination Events**1. Definition of Events of Default**

Each of the following is an **"Event of Default"**:

1.1 Insolvency

- (a) **Administration:** Any step being taken by any person with a view to the appointment of an administrator to the Franchisee, the Parent, any Bond Provider or the Guarantor;
- (b) **Insolvency:** Any of the Franchisee, the Parent, any Bond Provider or the Guarantor stopping or suspending or threatening to stop or suspend payment of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph the words "it is proved to the satisfaction of the court that" in sub-section (1)(e) and sub-section (2) of section 123 shall be deemed to be deleted;
- (c) **Arrangements with Creditors:** The directors of the Franchisee, the Parent, any Bond Provider or the Guarantor making any proposal under section 1 of the Insolvency Act 1986, or any of the Franchisee, the Parent, any Bond Provider or the Guarantor proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** Any expropriation, attachment, sequestration, execution or other enforcement action or other similar process affecting any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent, any Bond Provider or the Guarantor, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Franchisee, the Parent, any Bond Provider or Guarantor with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee, the Parent, any Bond Provider or Guarantor ceasing or threatening to cease to carry on all or, in the reasonable opinion of the Secretary of State, a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Secretary of State before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Franchisee under sections 60 to 62 of the Act; and

- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 1.1,

subject, in the case of any relevant event occurring in relation to a Bond Provider where no such other Event of Default has occurred and is unremedied or continuing at such time, to a period of twenty (20) Weekdays having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

1.2 **Non-payment**

The Franchisee failing to pay to the Secretary of State any amount due under the Franchise Agreement within twenty eight (28) days of the due date for such payment.

1.3 **Change of Control**

A Change of Control other than in accordance with the prior consent of the Secretary of State pursuant to clause 8 (Change of Control and Facilitation Fee).

1.4 **Revocation of Licence**

Revocation of any Licence required to be held by the Franchisee in order to comply with its obligations under the Franchise Agreement.

1.5 **Safety Certificate and Safety Authorisation**

The Safety Certificate and/or Safety Authorisation of the Franchisee being withdrawn or terminated.

1.6 ⁴⁶²**NOT USED.**

1.7 **Non-compliance with Remedial Agreements and Orders under the Act**

- (a) Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is reasonably considered by the Secretary of State to be material.
- (b) Non-compliance by the Franchisee with:
- (i) a provisional order;
 - (ii) a final order;
 - (iii) a penalty; or
 - (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in section 55 of the Act) or another order,

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

in each case made by the Secretary of State under the Act.

(c) Non-compliance by the Franchisee with any enforcement notice issued to it by the Secretary of State pursuant to section 120 of the Act.

(d) **NOT USED.**

1.8 ⁴⁶³**NOT USED.**

1.9 Breach of Law

(a) It becoming unlawful for the Franchisee to provide all or, in the reasonable opinion of the Secretary of State, a material part of the Passenger Services or to operate all or, in the reasonable opinion of the Secretary of State, a material number of the Stations or Depots (except to the extent not required under the Franchise Agreement);

(b) The Franchisee or any of the directors or senior managers of the Franchisee being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Franchise Services; or

(c) The Franchisee being, in the reasonable opinion of the Secretary of State, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the Franchisee makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 1.9(c) until such appeal has been determined to be unsuccessful.

1.10 Contravention of Other Obligations

The occurrence of the following:

(a) the Franchisee contravening to an extent which is reasonably considered by the Secretary of State to be material any one or more of its obligations under the Franchise Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.2 other than this paragraph 1.10);

(b) the service by the Secretary of State on the Franchisee of a written notice specifying:

(i) such contravention; and

(ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Franchisee is required to so remedy; and

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

- (c) the Franchisee:
 - (i) contravening such obligation or obligations again to an extent which is reasonably considered by the Secretary of State to be material; or
 - (ii) permitting the contravention to continue; or
 - (iii) if the contravention is capable of remedy, failing to remedy such contravention within such period as the Secretary of State has specified in the notice served pursuant to paragraph 1.10(b)(ii).

1.11 **Non-membership of Inter-Operator Schemes**

The Franchisee ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

1.12 **Bonds**

- (a) Any Performance Bond or Season Ticket Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for such Bond Provider to perform its obligations thereunder;
- (b) A failure by the Franchisee to procure the provision to the Secretary of State of a Performance Bond (or Performance Bonds) required to be provided pursuant to paragraph 4 of Schedule 12 (*Financial Covenants and Bonds*) which individually or in aggregate fulfil the requirements of Schedule 12 (*Financial Covenants and Bonds*); or
- (c) A failure by the Franchisee to procure the provision to the Secretary of State of a Season Ticket Bond (or Season Ticket Bonds) required to be provided pursuant to paragraph 5 of Schedule 12 (*Financial Covenants and Bonds*) which individually or in aggregate fulfil the requirements of Schedule 12 (*Financial Covenants and Bonds*).

1.13 **Key Contracts**

Termination of any Key Contract, or the failure by the Franchisee to take all reasonable steps to enter into an appropriate replacement contract prior to the scheduled expiry date of any Key Contract, except where requested by the Secretary of State or to the extent that the Franchisee has demonstrated to the reasonable satisfaction of the Secretary of State that for the duration of the Franchise Term:

- (a) it is no longer necessary for it to be party to such Key Contract; or
- (b) it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

1.14 **Funding Deed**

A failure by the Franchisee or the Guarantor to comply with their respective obligations under the Funding Deed.

1.15 Not Used**1.16 Other Events of Default**

Any other failure, or act or omission of the Franchisee, or other circumstances, explicitly stated in the Franchise Agreement to be an Event of Default.

1.17 ⁴⁶⁴Aggregated Costs and Revenues Liabilities

The Franchisee's Aggregated Costs and Revenues Liabilities exceed the maximum value for Aggregated Costs and Revenues Liabilities as specified in paragraph 9.12 of Schedule 8.1A (*Franchise Payments*) to this Agreement.

2. Definition of Termination Events

Each of the following is a "**Termination Event**":

- 2.1 any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months; or
- 2.2 the warranty given by the Franchisee pursuant to paragraph 6.1 (Tax Compliance) of Schedule 12 (*Financial Covenants and Bonds*) is materially untrue; or
- 2.3 the Franchisee commits a material breach of its obligation to notify the Secretary of State of any Occasion of Tax Non-Compliance in respect of any Affected Party (as defined in paragraph 6.3 of Schedule 12 (*Financial Covenants and Bonds*)) as required by paragraph 6.2(a) of Schedule 12 (*Financial Covenants and Bonds*); or
- 2.4 the Franchisee fails to provide details of proposed mitigating factors as required by paragraph 6.2(b) of Schedule 12 (*Financial Covenants and Bonds*) which in the reasonable opinion of the Secretary of State, are acceptable; or
- 2.5 the Secretary of State serves a Competition Event Notice on the Franchisee pursuant to clause 15.5 (*Competition*).

3. Consequences of Events of Default

The occurrence of an Event of Default shall constitute a contravention of the Franchise Agreement by the Franchisee. On the occurrence of an Event of Default, the provisions of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*) shall apply.

4. Notification of Event of Default

The Franchisee shall notify the Secretary of State as soon as reasonably practicable on, and in any event within twenty four (24) hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Franchisee shall take such action or steps

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

as the Secretary of State may require to remedy any Event of Default or potential Event of Default.

5. Termination Notices

5.1 The Secretary of State may, on and at any time after the occurrence of:

- (a) (subject to paragraphs 5.2 and 5.3) an Event of Default which:
 - (i) is unremedied or continuing; and
 - (ii) the Secretary of State considers to be material; or
- (b) a Termination Event specified in paragraph 2.1 of this Schedule 10.2 which is unremedied or continuing; or
- (c) a Termination Event specified in paragraphs 2.2, 2.3, 2.4 and 2.5 of this Schedule 10.2,

terminate the Franchise Agreement by serving a Termination Notice on the Franchisee. The Franchise Agreement shall terminate with effect from the date specified in any such Termination Notice.

5.2 The Secretary of State may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the Remedial Plan Period has expired.

5.3 The Secretary of State may not serve a Termination Notice in respect of an Event of Default for which the Franchisee is implementing a Remedial Agreement in accordance with its terms.

6. Consequences of Termination or Expiry

6.1 Upon termination of the Franchise Agreement (whether through default or effluxion of time or otherwise) the obligations of the Parties shall cease except for:

- (a) any obligations arising as a result of any antecedent contravention of the Franchise Agreement;
- (b) any obligations which are expressed to continue in accordance with the terms of the Franchise Agreement; and
- (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

6.2 Nothing in this paragraph 6 shall prevent the Secretary of State from bringing an action against the Franchisee in connection with the termination of the Franchise Agreement prior to the expiry of the Franchise Term.

Schedule 10.3

Force Majeure and Business Continuity**1. Definition of Force Majeure Events**

The following events shall constitute **"Force Majeure Events"**, subject to the conditions specified in paragraph 2 being satisfied:

- (a) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:
 - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Franchisee is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1(a)(i) and 1 (a) (ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
 - (iv) **"Contingency Plan"** means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of Network Rail, or such other contingency or recovery plan as the Secretary of State may agree from time to time;
- (b) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail or any Facility Owner (other than a Facility Owner which is an Affiliate of the Franchisee) from entering or leaving:
 - (i) any station or part thereof (excluding any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
- (c) any of the following events occurs:
 - (i) a programme of Mandatory Modifications commences;

- (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
- (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,

and, in each case, the greater of two (2) Rolling Stock Units and ten (10) per cent of all rolling stock vehicles used by the Franchisee in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event. 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 Franchisee in the provision of the Passenger Services;

- (d) the Franchisee prevents or restricts the operation of any train on safety grounds provided that:
 - (i) the Franchisee has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
 - (ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;
- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion (together **"Emergency Events"**) or the act of any government instrumentality (including the ORR but excluding the Secretary of State) in so far as the act of government instrumentality directly relates to any of the Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1(e) by reason of:
 - (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
 - (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
 - (iii) an act of God which results in the Franchisee or its agents or subcontractors being prevented or restricted by Network Rail from gaining access to any relevant section or part of track; or

(iv) ⁴⁶⁵ **for the duration of the ERMA, the occurrence and impact, whether direct or indirect, of COVID-19; and**

(f) any strike or other Industrial Action by any or all of the employees of the Franchisee or any or all of the employees of:

(i) Network Rail;

(ii) the operator of any other railway facility; or

(iii) any person with whom the Franchisee has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Franchisee in the provision of the Franchise Services,

or of the agents or sub-contractors of any such person listed in paragraphs 1(f)(i) to 1(f)(iii).

⁴⁶⁶ **The definition of "Force Majeure Event" shall for the duration of the ERMA exclude the occurrence and impact, whether direct or indirect, of COVID-19.**

2. Conditions to Force Majeure Events

2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

(a) in relation to an event occurring under paragraph 1 (a), that event has continued for more than twelve (12) consecutive hours;

(b) the Franchisee notifies the Secretary of State within two (2) Weekdays of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:

(i) the occurrence or likely occurrence of the relevant event; and

(ii) the effect or the anticipated effect of such event on the Franchisee's performance of the Passenger Services;

(c) at the same time as the Franchisee serves notification on the Secretary of State under paragraph 2.1(b), it informs the Secretary of State of the steps taken and/or proposed to be taken by the Franchisee to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;

(d) the relevant event did not occur as a result of:

(i) any act or omission to act by the Franchisee or its agents or subcontractors, save that in respect of the occurrence of Industrial

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

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

Action in accordance with paragraph 1(f), the provisions of paragraph 2.2 apply; or

- (ii) the Franchisee's own contravention of, or default under, the Franchise Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) the Franchisee used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event; and
- (f) the Franchisee shall, to the extent reasonably so requested by the Secretary of State, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1(f) occurs as a result of an act or omission to act by the Franchisee or its agents or subcontractors;
 - (b) the Secretary of State reasonably believes that it was reasonable for the Franchisee, its agents or subcontractors (as the case may be) so to act or omit to act; and
 - (c) the other conditions specified in paragraph 2.1 have been satisfied,
- such occurrence shall be a Force Majeure Event.

3. Consequences of Force Majeure Events

- 3.1 The Franchisee shall not be responsible for any failure to perform any of its obligations under the Franchise Agreement, nor shall there be any contravention of the Franchise Agreement if and to the extent that such failure is caused by any Force Majeure Event.
- 3.2 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months, it shall be a Termination Event in accordance with paragraph 2.1 (*Definition of Termination Events*) of Schedule 10.2 (*Events of Default and Termination Events*).
- 3.3 ⁴⁶⁷ **Notwithstanding any other provision of this Agreement, and without prejudice to the Parties' positions as to whether the Force Majeure provisions would otherwise be engaged, the Franchisee agrees that it shall not for the duration of the ERMA be entitled to further relief from obligations pursuant to the Force Majeure provisions under this Schedule 10.3 as a direct or indirect impact of COVID-19.**

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

4. Business Continuity**4.1 Obligation to Produce a BCP**

- (a) Within one (1) month following the Start Date the Franchisee shall produce and provide to the Secretary of State a written Business Continuity Plan in respect of the Franchise Services and the people, facilities and assets used to provide them which is consistent with the requirements of ISO 22301.
- (b) Within one (1) month of the end of each Franchisee Year the Franchisee shall provide to the Secretary of State a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that the Business Continuity Plan is consistent with the requirements of the ISO 22301.

4.2 No Relief under Force Majeure

- (a) Nothing in paragraph 3 (Consequences of Force Majeure Events) will relieve the Franchisee from its obligations under the Franchise Agreement to create, implement and operate the Business Continuity Plan.
- (b) If a Force Majeure Event affecting the Franchisee occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, then paragraph 3.1 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if:
 - (i) the Franchisee had complied with this paragraph 4; and
 - (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

Liability**1. Exclusion of Liability****1.1 Liability with respect to Passengers and Third Parties**

- (a) The Franchisee hereby acknowledges that the Secretary of State will not be responsible for the actions of the Franchisee or any Affiliate of the Franchisee and that, except as expressly provided in the Franchise Agreement, the Franchisee shall provide and operate the Franchise Services at its own cost and risk without recourse to the Secretary of State or government funds or guarantees.
- (b) The Franchisee, on demand, shall hold the Secretary of State fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Secretary of State in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the Franchise Services which is caused or contributed to by the Franchisee, any Affiliate of the Franchisee, or any employee, agent, contractor or sub-contractor of the Franchisee or of any Affiliate of the Franchisee.

1.2 Liability of the Secretary of State

Neither the Secretary of State nor any of his officers, agents or employees shall in any circumstances be liable to the Franchisee for any loss or damage caused by the negligent exercise of any powers reserved to the Secretary of State under the Franchise Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Secretary of State under the Franchise Agreement. The Franchisee may not recover from the Secretary of State or any of his officers, agents, or employees any amount in respect of loss of profit or consequential loss.

2. Review or Monitoring by the Secretary of State

- 2.1 The Secretary of State may for his own purposes (whether under the Franchise Agreement or under any other arrangement or otherwise and whether before or after the date of the Franchise Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchisee under the Franchise Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Secretary of State during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either Party from or reduce or otherwise affect the obligations of such Party under the Franchise Agreement.
- 2.2 The exercise by or on behalf of the Secretary of State of (or, as the case may be, any failure to exercise) any of his functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on the Secretary of State to any other Party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Secretary of State of an express provision of the Franchise Agreement and the Secretary of State does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project

will enable either Party to comply with its obligations under the Franchise Agreement.

SCHEDULE 11**FRANCHISE PERFORMANCE MEETINGS AND MANAGEMENT INFORMATION**

Schedule 11.1:	Franchise Performance Meetings
Schedule 11.2:	Management Information
	Appendix 1: Environmental Information
	Appendix 2: Operational Information
	Appendix 3: Summary of Reporting and Other Requirements

Schedule 11.1

Franchise Performance Meetings**1. Franchise Performance Meetings**

- 1.1 The Parties shall hold a Franchise Performance Meeting at least once in every Reporting Period (or such other interval as the Secretary of State may notify to the Franchisee in writing) at a time and location notified to the Franchisee by the Secretary of State.
- 1.2 The Franchisee shall ensure that:
- (a) the representatives of the Franchisee at a Franchise Performance Meeting shall include such directors and/or senior managers of the Franchisee 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 Franchise Performance Meeting at least once every quarter.
- 1.3 The Franchisee shall prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably request. The Franchisee's obligations under this paragraph 1.3 are subject to the Franchisee 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 Franchise Performance Meeting will relieve a party of its obligations, constitute a waiver of an obligation or otherwise vary the terms of the Franchise Agreement. The terms of the Franchise Agreement shall only be capable of waiver or variation in writing in accordance with clause 14.1 (Waivers) and paragraph 1 of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*) (respectively).

Schedule 11.2

Management Information**1. Corporate Information**

1.1 The Franchisee shall provide the following information to the Secretary of State on the Start Date and shall notify the Secretary of State of any change to such information within twenty one (21) days of such change:

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names; and
- (f) to the best of the Franchisee's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than twenty per cent (20%) of the votes at general meetings of the Franchisee.

1.2 The Franchisee shall inform the Secretary of State of any:

- (a) material change or proposed material change in its business;
- (b) material change in or restructuring of the capitalisation or financing of the Franchisee, the Parent or the Guarantor; and
- (c) litigation or other dispute which may have a material effect on its business.

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

2.1 The Franchisee shall at all times during the Franchise Term maintain (and shall provide copies to the Secretary of State when requested to do so from time to time) records covering the following information:

- (a) for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:
 - (i) the progress and completion of all work described in the maintenance schedules and manuals;
 - (ii) all operating manuals (including any safety related regulations); 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 Franchisee from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items); and
- (b) ⁴⁶⁸ **each capital asset acquired by the Franchisee during the term of the EMA and the ERMA with a value of over £50,000, including the Franchisee's source of funding for such asset, the depreciation policy for such asset, the assumed asset life on bringing such asset into use and the remaining asset life of such asset as at the date of any request from the Secretary of State for this information.**
- 2.2 ⁴⁶⁹ **As soon as practicable and, in any event, no later than 27 November 2020, the Franchisee shall identify and provide to the Secretary of State a list and reasonable details of all contracts it has entered into with third parties (including Affiliates) which the Franchisee would not be entitled to terminate on expiry of the Franchise Term without incurring liability in relation to the termination of such contract on that date.**
3. ⁴⁷⁰ **Identification of Key Personnel and Provision of Organisation Chart**
- 3.1 **The Franchisee shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Franchisee in the performance of the Franchise Agreement. This shall include but not be limited to the following persons:**
- (a) **a managing director whose role will include the overall management of the operation of the Franchise Services;**
- (b) **a train service delivery director, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1 (Operational Performance);**
- (c) **a safety director, whose role will include responsibility for ensuring that the Franchisee complies with its legal obligations in relation to the Franchise Services including the Safety Certificate; and**
- (d) **a finance director, whose role will include responsibility in relation to the Budget, the Annual Audited Accounts, the Final Accounts and the provision of other financial data to the Secretary of State.**
- 3.2 **The Franchisee shall nominate a board level director of the Franchisee (or at the Secretary of State's sole discretion, a director of the Parent or any appropriate Affiliate) within fourteen (14) Weekdays of the date of this Agreement. Such director's responsibilities include overseeing, at a strategic level, the Franchisee's interface with the Secretary of State in relation to sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of the Franchisee in connection with the Franchisee's compliance with**

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

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

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

relevant instructions issued by the Secretary of State under section 119 of the Act from time to time. Such director shall be identified by job title in the organisation chart referred to in paragraph 3.3 and shall be deemed part of the Key Personnel.

3.3 On or before the Start Date the Franchisee shall provide to the Secretary of State the schedule of Key Personnel and the organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update such schedule and organisation chart (and provide copies to the Secretary of State promptly thereafter) as and when any changes occur.

4. Operational Performance Information

4.1 The Franchisee 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 Franchisee shall at all times create and maintain true, up to date and complete records, books and other materials relating to the:

- (a) operation and maintenance of Franchise Assets;
- (b) operation of the Franchise Services; and
- (c) financial performance of the Franchise.

in each case, in exercising that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would reasonably be expected from a prudent and leading Train Operator and in order to fulfil the requirements of this Franchise Agreement including in relation to maintenance of the Franchise as a going concern in accordance with paragraph 1 of Schedule 14.1 (*Maintenance of Franchise*).

5.2 Unless otherwise agreed by the Secretary of State, all records, books and materials required to be maintained by the Franchisee in accordance with this Schedule 11.2 shall be held in a form that is capable of audit for a period of not less than six (6) years following the Expiry Date or the date of any earlier termination of this Agreement.

5.3 References to records, books and materials in this Schedule 11.2 shall include records, books and materials maintained under any Previous Franchise Agreement to the extent that such records relate to services equivalent to the Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure). Notwithstanding the requirements of paragraphs 5.2 and 5.4, the Franchisee shall only be required to hold such records, books and materials created under any Previous Franchise Agreement for a period of six (6) years following the date of this Agreement.

5.4 The Franchisee shall not be responsible for any records, books or materials maintained under any Previous Franchise Agreement, as referred to in paragraph 5.3, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records, books or materials are not true, complete and up to date, the Franchisee shall take all reasonable steps to

remedy any such deficiency, and shall thereafter maintain such records, books or materials in accordance with paragraph 5.1.

6. ⁴⁷¹**Right to Inspect**

6.1 **The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and the Secretary of State's representatives and advisers:**

(a) **to inspect and copy any records referred to in this Schedule 11.2, Schedule 8.1A (*Franchise Payments*) or Schedule 8.1B (*Performance Based Fee*) and the Secretary of State may verify any such records; and**

(b) **to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services.**

6.2 **The Franchisee shall make available to the Secretary of State, the Secretary of State's representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, the Secretary of State's representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 6.2 shall include an obligation on the Franchisee to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 6.1 is kept by or on behalf of the Franchisee.**

6.3 **The Secretary of State, the Secretary of State's representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.**

6.4 **If any inspection reveals that information previously supplied to the Secretary of State was, in the reasonable opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchisee's obligations under the Franchise Agreement which the Secretary of State considers to be material, the costs of any such inspection shall be borne by the Franchisee and which, for the avoidance of doubt, shall be Disallowable Costs pursuant to Appendix 1 (*Disallowable Costs*) to Schedule 8.1A.**

7. **Information to the Passengers' Council and Local Authorities**

The Franchisee shall comply with any reasonable requests and guidance issued by the Secretary of State from time to time in respect of the provision of information to and co-operation and consultation with the Passengers' Council and Local Authorities.

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

7A ⁴⁷²**Information relating to Committed Obligations and Franchise Specific Obligations**

7A.1 As soon as practicable and, in any event no later than 27 November 2020, the Franchisee shall deliver to the Secretary of State a statement in respect of the status of each Franchise Specific Obligation and Committed Obligation as at 1 March 2020 including:

- (a)** a breakdown of Franchise Specific Obligations and Committed Obligations setting out those which:
 - (i)** were completed in full and in respect of which the Franchisee has no further obligations;
 - (ii)** were fully implemented but where the Franchisee retained ongoing obligations in relation to the continued discharge of the relevant Franchise Specific Obligation and/or Committed Obligation (as applicable);
 - (iii)** were partially implemented and in respect of which the Franchisee retained ongoing obligations; and
 - (iv)** the Franchisee had not yet commenced implementing.
- (b)** in respect of each of the Franchise Specific Obligations and Committed Obligations identified in paragraph 7A.1(a)(ii)-(iii) above, details of:
 - (i)** the progress of implementation of the relevant Franchise Specific Obligation or Committed Obligation (as applicable) and any Franchisee obligations which remain outstanding or are continuing;
 - (ii)** where applicable, the reason(s) for any delay in implementing the relevant Franchise Specific Obligation or Committed Obligation (as applicable), together with any supporting evidence; and
 - (iii)** the Franchisee's actual expenditure together with a reconciliation against the amount it was obliged or otherwise projected to spend up to 1 March 2020 in respect of the implementation and continued discharge (as applicable) of the relevant Franchise Specific Obligation or Committed Obligation (as applicable).

7A.2 Without prejudice to the Secretary of State's rights pursuant to paragraph 7A.3 below, the Secretary of State may exercise the Secretary of State's rights under paragraph 9.9 of this Schedule 11.2 to audit or otherwise investigate any of the matters described in paragraph 7A.1.

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

7A.3 Without prejudice to the Franchisee's obligations under paragraph 7A.1 above, the Secretary of State reserves the right to determine, in the Secretary of State's sole discretion, the position in respect of the matters described in paragraph 7A.1 by reference to all the information available to the Secretary of State.

8. Periodic Update Reports

8.1 The Franchisee shall prepare and submit to the Secretary of State a periodic report in each Reporting Period which shall:

- (a) contain updates on the Franchisee's progress in complying with its Committed Obligations together with any other information as the Secretary of State may specify from time to time;
- (b) relate to the period preceding the date of the report, unless another period is reasonably required by the Secretary of State; and
- (c) be disaggregated to the extent required by the Secretary of State.

8.2 Where, as part of the periodic report referred to in paragraph 8.1, the Secretary of State requires the Franchisee to provide information and/or details in addition to those required pursuant to paragraph 8.1, the Franchisee shall ensure that the periodic report includes such additional information and/or details, subject to the Franchisee having received at least twenty eight (28) days' notice of the additional information and/or details required by the Secretary of State.

8.3 ⁴⁷³Without prejudice to any other reporting obligations of the Franchisee, the Franchisee shall, at the end of each Reporting Period, provide a separate and standalone progress update to the Secretary of State in respect of:

- (a) **the matters included in schedule 2 (Termination of the Franchise Agreement) to the ERMA and the matters referenced in paragraphs 2.2 and 7A of this Schedule 11.2; and**
- (b) **such other related information as the Secretary of State may request.**

9. ⁴⁷⁴Financial Information

9.1 Accounting Records

The Franchisee shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period of the Franchisee Year. In particular, the Franchisee shall ensure that such

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

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

accounting records are produced and maintained in a form which distinguishes between transactions which reasonably and properly relate, on the accruals basis, to:

- (a) the period prior to 1 March 2020;
- (b) the period from 1 March 2020 to the EMA Start Date;
- (c) the term of the EMA;
- (d) the term of the ERMA; and
- (e) the period after the term of the ERMA (if any).

9.2 Reporting Period Financial Information

- (a) The Franchisee shall deliver to the Secretary of State, within ten (10) Weekdays of the end of each Reporting Period:
 - (i) Management Accounts for such Reporting Period, setting out a cash flow statement, profit and loss account, balance sheet, KPIs and Affiliate trading for that Reporting Period and cumulatively for the Franchisee Year to date ensuring that:
 - (A) the profit and loss account shall adopt the same format and structure as either (a) the Financial Formats; or (b) the "P&L2" tab of the Financial Model (whichever format and structure has the more detailed breakdown of costs and revenues) except to the extent expressly agreed otherwise by the Secretary of State from time to time for this purpose;
 - (B) in particular, Costs and Revenues shall be allocated consistently to the level of disaggregation required by the Financial Formats or the "P&L2" tab of the Financial Model (whichever format and structure has the more detailed breakdown of costs and revenues) and there shall be no netting off between those disaggregated areas; and
 - (C) the cashflow statement shall clearly state the gross amount of Capital Expenditure incurred by the Franchisee (separately identifying and excluding any amounts funded by third parties) for that Reporting Period and cumulatively for the Franchisee Year to date;
 - (ii) written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the Franchisee, contain a true and accurate reflection of the current revenues, costs, assets and liabilities of the Franchisee (including contingent assets or liabilities and known business risks and opportunities) and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further

information that the Secretary of State shall reasonably require in relation; and

- (iii) in circumstances where the Franchisee was in a Lock-up Period during such Reporting Period, written confirmation from a statutory director of the Franchisee that the Franchisee has complied with the restrictions applicable during a Lock-up Period pursuant to paragraph 3 of Schedule 12 (*Financial Covenants and Bonds*);
 - (iv) Not used.
- (b) The Management Accounts shall also set out:
- (i) sufficient information to enable the Secretary of State to calculate with reasonable accuracy the Forecast Closing Cash Position as at the end of the following three (3) Reporting Periods;
 - (ii) the Franchisee's forecast of:
 - (A) the Franchisee's daily Cash Balance for the period of thirteen (13) weeks following the Reporting Period to which the Management Accounts relate;
 - (B) the amount of Working Capital Payment (if any) that the Franchisee forecasts that it will require pursuant to paragraph 9 (*Review of Franchisee's performance against Budget*) of Schedule 8.1A in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate, which forecasts shall provide an explanation in relation to any material differences between the actual and forecast payments to and from Affiliates as referred to in paragraph 9.2(b)(iv)(C) below; and
 - (C) payments to and from Affiliates of the Franchisee, disaggregated between each individual Affiliate entity, in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate;
 - (iii) a detailed statement of the Franchisee's actual payments to and from Affiliates of the Franchisee and the net balance of such payments, disaggregated between each individual Affiliate entity in respect of the Reporting Period to which the Management Accounts relate, setting out the details of the specific company or legal entity the transactions were with and the nature of the goods or services exchanged in respect of the Reporting Period to which the Management Accounts relate, which shall provide separate identification of:
 - (A) the Affiliate to or from whom each such payment was made; and

- (B) a description of the nature of the services rendered in relation to each such payment; and
- (iv)
- (A) a comparison of the Franchisee's financial performance during such period against the forecast provided by the Franchisee in the then current Business Plan ⁴⁷⁵ and Quarterly Forecast;
- (B) a comparison on a line by line basis of Actual Costs, Actual Capex and Actual Revenue of the Franchisee compared to the Budgeted Costs, Budgeted Capex and Estimated Revenue for that Reporting Period; and
- (C) a detailed statement and a detailed and comprehensive written explanation of any material differences between the actual payments to and from Affiliates of the Franchisee and the forecast of such payments as referred to in paragraph 9.2(b)(ii) above as set out in the Management Accounts in relation to the preceding Reporting Period;
- (v) a comparison of the Franchisee's cumulative financial performance during the Franchisee Year in which such period occurs against the then current Business Plan and Quarterly Forecast and in particular of cumulative Actual Costs, Actual Capex and Actual Revenue of the Franchisee compared to cumulative forecasts of the same in the then current Business Plan and Quarterly Forecast;
- (vi) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Management Accounts and the forecasts referred to in paragraph 9.2(b)(ii) above as set out in the Management Accounts in relation to the preceding Reporting Period and a detailed and comprehensive explanation of the variances between Actual Costs and Budgeted Costs, Actual Capex and Budgeted Capex, and Actual Revenues and Estimated Revenue and a description of (1) the steps which have been taken by the Franchisee to address and mitigate any Costs in excess of Budgeted Costs and/or Capex variances to Budgeted Capex and/or Estimated Revenue shortfall and/or (2) which could otherwise be taken for that purpose;
- (vii) where:
- (A) the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Secretary of State, materially worse than forecast

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

by the Franchisee in its then current Business Plan or Quarterly Forecast (whichever is more recent); and

- (B) the Franchisee's Outturn Cost and/or Outturn Profit (as applicable) in relation to the preceding PBF Assessment Period was worse than the applicable Target Cost or Target Profit pursuant to Schedule 8.1B (*Performance Based Fee*); or
- (C) the Secretary of State considers (acting reasonably) that it is likely that the Franchisee's Outturn Cost and/or Outturn Profit (as applicable) in relation to the current PBF Assessment Period or the preceding PBF Assessment Period (if the Outturn Cost and/or Outturn Profit has not yet been calculated),

the Secretary of State may require the Franchisee to prepare and submit to the Secretary of State, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan;

- (viii) if applicable, a detailed statement and explanation of any Agreed Funding Commitment and PCS Advances (each as defined in the Funding Deed) provided during such Reporting Period and any repayments made during such Reporting Period in respect of (i) previously provided Agreed Funding Commitments as against the AFC Plan (as defined in the Funding Deed) and (ii) PCS Advances;
- (ix) a detailed statement and a detailed and comprehensive written explanation of any material differences between such payments to and from Affiliates and the forecast referred to in paragraph 9.2(b)(ii)(C); and
- (x) sufficient information to enable the Secretary of State to calculate the Performance Based Fee, including (where applicable) a clear and detailed comparison of the:
 - (A) cumulative Actual Costs less any cumulative Disallowable Costs in relation to the PBF Assessment Period to date, as compared with the cumulative forecast Costs set out in the Target Cost Template as Placed in Escrow; and
 - (B) cumulative Actual Costs less any cumulative Disallowable Costs and cumulative Actual Revenue plus cumulative Revenue Foregone in relation to the PBF Assessment Period to date, as compared with the cumulative forecast Costs and Revenues set out in the Target Profit Template as Placed in Escrow,

and any other information which the Secretary of State may request (acting reasonably).

- (c) **Within five (5) Weekdays after receipt of the Management Accounts for each Reporting Period in accordance with paragraphs (a) and (b) above, the Secretary of State shall notify the Franchisee of any further information, explanation or analysis which the Secretary of State requires in relation to the Management Accounts (including information in relation to the calculation of the Franchise Payment under the provisions of Schedule 8.1A (*Franchise Payments*)) and the Franchisee shall promptly provide such further information or analysis.**

9.3 Quarterly Financial Information

- (a) **Within twenty (20) weekdays after the end of the 3rd, 6th and 9th Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information (a "Quarterly Forecast"):**
- (i) **a comprehensive updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided as part of either the current Annual Business Plan in accordance with paragraph 10.2 (*Annual Business Plans*) of this Schedule 11.2 or the then-current Quarterly Forecast (whichever is more recent) together with a detailed and comprehensive written explanation as to any changes in such forecast from the previous forecast provided pursuant to the provisions of this Schedule 11.2, for each of the following thirteen (13) Reporting Periods or for each of the Reporting Periods to 31 March 2022, whichever is greater;**
- (ii)
- (A) **a copy of each new contract with an Affiliate which the Franchisee proposes to enter into or renew in the next 6 months;**
- (B) **a copy of each existing contract with an Affiliate which the Franchisee proposes to amend in the next 6 months; and**
- (C) **details of any potential contract procurement process (pursuant to which the Franchisee proposes to enter into a contract with the successful bidder) in which the Franchisee reasonably expects an Affiliate to participate in the next 6 months,**
- in each case following the end of the relevant Quarter; and**
- (iii) **a statement from a statutory director of the Franchisee confirming that the profit and loss forecast delivered pursuant to paragraph 9.3(a)(i) has been prepared in accordance with the requirements of the Franchise Agreement.**
- (b) **Where any Reporting Period falls partly within one (1) Franchisee Year and partly within another, the results for each section of such Reporting Period falling either side of such Franchisee Year end**

shall be prepared on an accruals basis for each such section of such Reporting Period.

- (c) The Franchisee shall, promptly and in any event within twenty-five (25) Weekdays of a request from the Secretary of State (acting reasonably), deliver to the Secretary of State an updated forecast in relation to the information required to be delivered pursuant to paragraphs 9.3(a) and 9.3(b) in the same level of detail as is required pursuant to paragraphs 9.3(a) and 9.3(b).
- (d) If:
- (i) the Secretary of State has issued a notice to the Franchisee pursuant to paragraph 4.2(a) of Schedule 8.1B (*Performance Based Fee*) in relation to a PBF Assessment Period commencing on any date other than 1 April in any Franchisee Year; and
 - (ii) the Franchisee has not delivered a Quarterly Forecast to the Secretary of State in accordance with this paragraph 9.3 for the most recent Quarter,

the Secretary of State may reasonably determine the contents of the Quarterly Forecast for the purposes of setting the Target Cost and/or the Target Profit (as applicable).

9.4 Annual Financial Information

- (a) Within fifteen (15) Weekdays of the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State:
- (i) its Annual Management Accounts for that Franchisee Year, divided between Reporting Periods:
 - (A) prior to 1 March 2020;
 - (B) during the period from 1 March 2020 to the EMA Start Date;
 - (C) during the term of the EMA;
 - (D) during the term of the ERMA; and
 - (E) following the term of the ERMA (if any);

For all Reporting Periods, line items should be disaggregated between sections in relation to Actual Costs, Actual Revenues, Actual Capex, Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs, Accrued Revenue Foregone, accrued SoS Claims, Non-Recoverable Costs and Unreimbursed Disallowable Costs; and

- (ii) a supplementary explanation setting out details of any Non-Recoverable Costs and Disallowable Costs that have not been reimbursed for that Franchisee Year.

In the event that the Franchisee makes any material adjustments and/or retrospective prior periods adjustments, this shall be promptly notified to the Secretary of State and the Franchisee shall provide detailed explanations of the same to the Secretary of State. The Secretary of State shall be entitled to request, at its discretion, relevant documentary evidence relating to any adjustment or restatement.

- (b) ⁱⁱWithin four (4) Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (i) certified true copies of its annual report and Annual Audited Accounts for that Franchisee Year, together with copies of all related directors' and auditors' reports. Additionally, the auditors shall certify that the accounting for and reporting of any annual related bonuses paid to the directors and managers is reasonably consistent with GAAP;
- (ii) a detailed and comprehensive reconciliation between the Annual Audited Accounts and the Management Accounts for the Franchisee Year (the "Audited Accounts Reconciliation"). The Audited Accounts Reconciliation shall:
- (A) include a detailed reconciliation, disaggregating Actual Costs, Actual Revenues, Actual Capex, Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs, Accrued Revenue Foregone, accrued SoS Claims, Non-Recoverable Costs and Unreimbursed Disallowable Costs in the Annual Audited Accounts to: (1) each of the periodic Management Accounts within that Franchisee Year and (2) the Annual Management Accounts in relation to that Franchisee Year, all in a format to be from time to time reasonably specified by the Secretary of State. This reconciliation shall:
- (I) disaggregate the Actual Costs, Actual Capex and Actual Revenues in the Annual Audited Accounts so as to report against (and show in a format consistent with that used in) the Budget and, where relevant, the Target Cost Template and/or the Target Profit Template held in Escrow in relation to any PBF Assessment Periods within that Franchisee Year; and
- (II) facilitate the identification of Actual Costs, Actual Capex and Actual Revenues as reported in the Annual Audited Accounts;
- (B) ⁱⁱⁱinclude a statement of the Franchisee's balance sheet included within the Annual Audited Accounts in relation to the previous Franchisee Year (the "Opening Balance Sheet"), disaggregated between balances payable to or receivable from the Secretary

of State and the aggregate amount of all other balances (such aggregated other balances being the "Opening Operational Balances");

- (C) include a statement of the Franchisee's audited balance sheet included within the Annual Audited Accounts as at the end of the Franchisee Year (the "Closing Balance Sheet"), disaggregated between balances payable to or receivable from the Secretary of State and the aggregate amount of all other balances (such aggregated other balances being the "Closing Operational Balances");
 - (D) include a statement identifying and explaining the differences between the Opening Operational Balances and the Closing Operational Balances (such differences comprising the "Operational Delta") in sufficient detail to allow the Secretary of State to obtain a full understanding of the reasons for the Operational Delta;
 - (E) clearly identify and distinguish between transactions within the Operational Delta which reasonably and properly relate, on the accruals basis to each of that Franchisee Year, any other Reporting Periods during the term of the EMA or the ERMA, and any Reporting Periods prior to 1 March 2020, sufficient to allow identification of transactions and accounting adjustments which do not relate to the term of the EMA or the ERMA;
 - (F) identify the total Actual Costs and total Actual Revenue that are included within the Operational Delta; and
 - (G) identify any and all Accrued Disallowable Costs or Accrued Revenue Foregone which are in the Opening Balance Sheet or Closing Balance Sheet, and any Accrued Revenue Foregone which is not included in the Closing Balance Sheet but which existed at 19 September 2020;
- (iii) a statement from the Franchisee's auditors (in a format to be reasonably specified by the Secretary of State from time to time, on the basis of providing the Secretary of State with reasonable assurance) that the Audited Accounts Reconciliation has been undertaken accurately;
 - (iv) [Not used];
 - (v) a statement from the Franchisee's auditors confirming that GAAP has been applied in a fair and consistent manner;
 - (vi) [Not used];
 - (vii) [Not used]; and

- (viii) **sufficient information for the Secretary of State to calculate the Final Adjustments, the Final Working Capital Adjustment and the Performance Based Fee.**

9.4A Additional Financial Information

- (a) **By no later than the end of the first Reporting Period following the date of the ERMA, the Franchisee shall deliver to the Secretary of State:**
- (i) **a draft of the Franchisee's balance sheet as at 1 March 2020, prepared in accordance with GAAP, on the accruals basis and on the basis of all knowledge and information available to the Franchisee at the time of preparation, such balance sheet being disaggregated between balances payable to or receivable from the Secretary of State (such balances in aggregate being the "Restated P2012 SoS Balances") and all other balances (such other balances in aggregate being the "Restated P2012 Operational Balances"), both provided in a level of detail to be specified from time to time by the Secretary of State (the "Restated P2012 Balance Sheet"); and**
 - (ii) **a reconciliation to the Restated P2012 Balance Sheet within the Annual Audited Accounts provided by the Franchisee for the Franchisee Year ending on the date that is closest to 1 March 2020.**
- (b) **Within 10 Weekdays following the date on which the Restated P2012 Balance Sheet is agreed or determined by the Secretary of State in accordance with paragraphs 9.4A(i) or 9.4A(j) (as applicable) below, the Franchisee shall deliver to the Secretary of State:**
- (i) **a draft of the Franchisee's balance sheet as at 20 September 2020 prepared in accordance with GAAP, on the accruals basis and on the basis of all knowledge and information available to the Franchisee at the time of preparation, such balance sheet being disaggregated between balances payable to or receivable from the Secretary of State (such balances in aggregate being the "Restated P2106 SoS Balances") and all other balances (such other balances in aggregate being the "Restated P2106 Operational Balances") both provided in a level of detail to be specified from time to time by the Secretary of State (the "Restated P2106 Balance Sheet"); and**
 - (ii) **a reconciliation between the Restated P2012 SoS Balances and the Restated P2106 SoS Balances, and between the Restated P2012 Operational Balances and the Restated P2106 Operational Balances.**

- (c) **As soon as practicable and in any event by no later than two (2) months following the term of the ERMA, the Franchisee shall deliver to the Secretary of State:**
- (i) **a draft of the Franchisee's balance sheet as at the date of the end of the ERMA term, prepared in accordance with GAAP, on the accruals basis and on the basis of all knowledge and information available to the Franchisee at the time of preparation, such balance sheet being disaggregated between balances payable to or receivable from the Secretary of State (such balances in aggregate being the "Final ERMA SoS Balances") and all other balances (such other balances in aggregate being the "Final ERMA Operational Balances") both provided in a level of detail to be specified from time to time by the Secretary of State (the "Final ERMA Balance Sheet"); and**
 - (ii) **a reconciliation between the Restated P2012 SoS Balances and the Final ERMA SoS Balances, and between the Restated P2012 Operational Balances and the Final Operational Balances,**
- with such Final ERMA Balance Sheet being a Closing Balance Sheet as at the date of the end of the ERMA term and, where such date is also the Expiry Date, shall include and be reconciled to the Net Asset Statement (as defined in Appendix 2 (*Template Form of Supplemental Agreement*) to Schedule 15.4 (*Provisions applying on and after Termination*)) of the Franchisee.**
- (d) **The Franchisee shall ensure that each of the schedule of Restated P2012 Operational Balances, schedule of Restated P2106 Operational Balances and schedule of Final ERMA Operational Balances in each Balance Sheet (as defined below) shall clearly identify the assets and liabilities to the account of the Franchisee (being balance sheet items of the Franchisee), properly prepared on an accruals basis for, and disaggregated between, all relevant items including:**
- (i) **reserves, equity or any other balance sheet items in relation to any Performance Based Fee, Fixed Fee or Management Fee and Performance Payment (as such term is defined in schedule 8.A (*Franchise Payments*) of the ERMA);**
 - (ii) **if applicable, any PCS Advances, Outstanding AFC (each as defined in the Funding Deed), and any interest payable on such amounts, in accordance with the terms of the ERMA;**
 - (iii) **fixed assets designated as Primary Franchise Assets and/or Residual Value Assets (as applicable); and**
 - (iv) **fixed assets that have been funded by the Secretary of State in accordance with the terms of the ERMA.**
- (e) **The Franchisee shall ensure that each of the schedule of Restated P2012 SoS Balances, schedule of Restated P2106 SoS Balances and schedule of Final ERMA SoS Balances in each Balance Sheet (as**

defined below) shall clearly identify the assets and liabilities to the account of the Franchisee (being balance sheet items of the Franchisee), properly prepared on the accruals basis for, and disaggregated between, all relevant items including but not being limited to:

- (i) any Accrued Disallowable Costs, Accrued Revenue Foregone and accrued SoS Claims;
 - (ii) the Working Capital Payment or Working Capital Repayment (if any) pursuant to Schedule 8.1A (*Franchise Payments*);
 - (iii) accruals in relation to any Franchise Payment;
 - (iv) deferred or accrued Franchise Payments relating to the period prior to 1 March 2020;
 - (v) deferred or accrued Franchise Payments relating to the period from 1 March 2020 onwards; and
 - (vi) accruals or provisions for claims between the Franchisee and the Secretary of State relating to Change or SOSRA.
- (f) The Franchisee shall ensure that each of Restated P2012 Balance Sheet, Restated P2106 Balance Sheet and Final ERMA Balance Sheet shall clearly identify:
- (i) where provisions or accruals have been created for the period following 1 March 2020, a clear evidence base for how these provisions or accruals have been valued by the Franchisee; and
 - (ii) where provisions or accruals exist as at the date of any Balance Sheet and such provisions or accruals relate to the period prior to 1 March 2020:
 - (A) a summary of these items;
 - (B) where such items are included with the relevant Balance Sheet(s); and
 - (C) the Franchisee's proposed approach to winding down these items over the term of the ERMA.
- (g) Each of the Restated P2012 Balance Sheet, the Restated P2106 Balance Sheet and the Final ERMA Balance Sheet (together, the "Balance Sheets") shall be accompanied by a statement from a director of the Franchisee confirming that such Balance Sheet gives a true and fair view of the assets, liabilities, equity and reserves of the Franchisee as at the relevant dates in accordance with GAAP consistently applied and on the basis of all knowledge and information available to the Franchisee on the date of provision to the Secretary of State in each case.
- (h) The Franchisee shall promptly supply, or procure prompt supply of, all supporting information on an open book basis the Secretary of

State may reasonably require in relation to each delivery of any Balance Sheet. If requested by the Secretary of State to do so, the Franchisee shall procure a statement from the Franchisee's auditor confirming that GAAP has been applied in a fair and consistent manner in any such Balance Sheet, including any version of such Balance Sheet after any amendments have been made. As requested by the Secretary of State, the Franchisee shall promptly provide updated versions of any such Balance Sheet to reflect amendments prior to final agreement or determination in accordance with paragraphs 9.4A(i) or 9.4A(j) (as applicable) below.

- (i) After receipt of each Balance Sheet by the Secretary of State in accordance with this paragraph 9.4A, the Franchisee and the Secretary of State shall seek to promptly agree any amendments required to the Balance Sheets in order to give a true and fair view of the assets, liabilities, equity and reserves of the Franchisee as at the relevant dates in accordance with GAAP consistently applied and on the basis of all knowledge and information available to the Franchisee and the Secretary of State at the time of consideration. The Franchisee and the Secretary of State recognise and agree that this will require the most recent revaluation of assets and liabilities of the Franchisee as at the dates of each Balance Sheet, and that such revaluation shall be included in place of any earlier valuation provided in the balance sheets included in any Management Accounts, Annual Management Accounts or Annual Audited Accounts
- (j) Subject to paragraph 9.4A(k) below, in the event that the Franchisee and the Secretary of State cannot agree final versions of any Balance Sheets which, in the Secretary of State's opinion (acting reasonably), give a true and fair view on the basis of the evidence available to the Secretary of State, the Secretary of State may reasonably determine any values within any such Balance Sheets.
- (k) The Secretary of State shall not be entitled to reasonably determine any Final ERMA Balance Sheet values in accordance with paragraph 9.4A(j) above until the later of:
 - (i) seven (7) Reporting Periods following the termination of the EMA; or
 - (ii) the date upon which the Annual Audited Accounts and Annual Accounts Reconciliation for the Franchisee Year in which the ERMA ends are due to be provided.

Where the value of any assets or liabilities within the Final ERMA Balance Sheet have previously been determined by the Reporting Accountants pursuant to Appendix 2 (*Template Form of Supplemental Agreement*) to Schedule 15.4 (*Provisions applying on and after Termination*), the Secretary of State shall only be entitled to reasonably determine a different value in the case of manifest error being discovered in the valuation previously determined by the Reporting Accountants.

- (l) The Franchisee shall unwind the Final ERMA Balance Sheet promptly following the date on which the Final ERMA Balance Sheet is agreed or determined by the Secretary of State, acting as a Good and Efficient Operator.
- (m) The Franchisee shall, if requested to do so by the Secretary of State and in the Secretary of State's sole discretion, within two (2) Reporting Periods following the final Reporting Period of the ERMA Term or the Extended Term (as applicable) deliver to the Secretary of State:
- (i) certified true copies of its Final Accounts for the ERMA Stub Reporting Periods in aggregate, together with copies of all related directors' and auditors' reports;
 - (ii) a detailed and comprehensive reconciliation between the Final Accounts and the Management Accounts for the ERMA Stub Reporting Periods (the "Final Audited Accounts Reconciliation"). The Final Audited Accounts Reconciliation shall:
 - (A) include a detailed reconciliation, disaggregating Actual Costs, Actual Revenues, Actual Capex, Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs, Accrued Revenue Foregone, accrued SoS Claims, Non-Recoverable Costs and Unreimbursed Disallowable Costs in the Final Accounts to: (1) each of the periodic Management Accounts within the ERMA Stub Reporting Periods and (2) the Annual Management Accounts in relation to that Franchisee Year, all in a format to be from time to time reasonably specified by the Secretary of State. This reconciliation shall:
 - (I) disaggregate the Actual Costs, Actual Capex and Actual Revenues in the Final Accounts so as to report against (and show in a format consistent with that used in) the Budget and, where relevant, the Target Cost Template and/or the Target Profit Template held in Escrow in relation to the ERMA Stub Reporting Periods; and
 - (II) facilitate the identification of Actual Costs, Actual Capex and Actual Revenues as reported in the Final Accounts;
 - (B) ^{iv}include a statement of the Franchisee's balance sheet included within the Final Accounts in relation to the ERMA Stub Reporting Periods (the "Final Opening Balance Sheet"), disaggregated between balances payable to or receivable from the Secretary of State and the aggregate amount of all other balances (such aggregated other balances being the "Final Opening Operational Balances");

- (C) include a statement of the Franchisee's audited balance sheet included within the Final Accounts as at the expiry of the ERMA Term or the Extended Term (as applicable) (the "Final Closing Balance Sheet"), disaggregated between balances payable to or receivable from the Secretary of State and the aggregate amount of all other balances (such aggregated other balances being the "Final Closing Operational Balances");
 - (D) include a statement identifying and explaining the differences between the Final Opening Operational Balances and the Final Closing Operational Balances (such differences comprising the "Final Operational Delta") in sufficient detail to allow the Secretary of State to obtain a full understanding of the reasons for the Final Operational Delta;
 - (E) clearly identify and distinguish between transactions within the Final Operational Delta which reasonably and properly relate, on the accruals basis to each of the ERMA Stub Reporting Periods, any other Reporting Periods during the term of the EMA or the ERMA, and any Reporting Periods prior to 1 March 2020, sufficient to allow identification of transactions and accounting adjustments which do not relate to the term of the EMA or the ERMA;
 - (F) identify the total Actual Costs and total Actual Revenue that are included within the Final Operational Delta;
 - (G) identify any and all Accrued Disallowable Costs or Accrued Revenue Foregone which are in the Final Opening Balance Sheet or Final Closing Balance Sheet, and any Accrued Revenue Foregone which is not included in the Final Closing Balance Sheet but which existed at the expiry of the ERMA Term or the Extended Term (as applicable);
- (iii) a statement from the Franchisee's auditors (in a format to be reasonably specified by the Secretary of State from time to time, on the basis of providing the Secretary of State with reasonable assurance) that the Final Audited Accounts Reconciliation has been undertaken accurately; and
 - (iv) a statement from the Franchisee's auditors confirming that GAAP has been applied in a fair and consistent manner.
- (n) Notwithstanding the foregoing, the Franchisee shall at all times continue to collect and review evidence regarding the true and fair valuation of any assets or liabilities in any Balance Sheet and shall notify the Secretary of State promptly if such evidence indicates that the Balance Sheets previously submitted no longer give a true and fair view of any such assets or liabilities. The Secretary of State is

entitled to take this information into consideration in the exercise of any further rights or obligations in this paragraph 9.4A.

9.5 Accounting Standards and Practices

- (a) Each set of Management Accounts and Annual Management Accounts shall:
- (i) be in the format as the Secretary of State may reasonably specify from time to time;
 - (ii) be prepared:
 - (A) in accordance with the Franchisee's obligations in Clause 6.1 (*General Obligations*); and
 - (B) consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
 - (iii) not include any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cash flow projection and the balance sheet contained in the last Quarterly Forecast provided pursuant to paragraph 9.3 (*Quarterly Financial Information*) without the prior approval of the Secretary of State.
- (b) The Annual Audited Accounts and Final Accounts shall:
- (i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
 - (ii) give a true and fair view of:
 - (A) the state of affairs, profits and financial condition of the Franchisee for the period covered by such accounts; and
 - (B) the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee, such revenue to be disaggregated by reference to revenue derived by the Franchisee from:
 - (i) the sale of tickets;
 - (ii) income received from Network Rail pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement;
 - (iii) car park income; and
 - (iv) other income.

9.5A Changes to Accounting Policies

The Franchisee shall not, without the express written consent of the Secretary of State, make any alteration to its accounting policies or basis of preparation in relation to its Management Accounts, Annual Management Accounts, Annual Audited Accounts or Final Accounts.

9.6 Parent and Guarantor Accounts

- (a) The Franchisee shall, upon the request of the Secretary of State, promptly deliver to, or procure delivery to, the Secretary of State:
- (i) certified true copies of the annual reports and audited accounts of the Parent, the Guarantor and any Affiliate, together with copies of all related directors' and auditors' reports. If any of the Parent, the Guarantor or the Affiliate is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the Parent, the Guarantor or the Affiliate (as applicable) shall be delivered to the Secretary of State;
 - (ii) certified true copies of and/or details of (as instructed by the Secretary of State) any contracts or non-contractual arrangements with any Affiliate, including those which give rise to payments from an Affiliate to the Franchisee or payments from the Franchisee to an Affiliate (including payments or charges in relation to management services);
 - (iii) procurement policies in relation to contracts and non-contractual arrangements with Affiliates, including policies in relation to Affiliates procuring services from third parties on behalf of the Franchisee; and
 - (iv) evidence that all services provided by Affiliates (including management services) have been procured competitively and on an arm's length basis, have a sound business case, comply with of the Franchise Agreement and are in all ways appropriate.
- (b) The Franchisee shall procure that any new contract entered into between the Franchisee and any of its Affiliates is capable of being terminated in accordance with its terms after a period of seven (7) Reporting Periods and that the Franchisee shall not incur any penalty or be required to make any termination payment to the relevant Affiliate if the Franchisee elects to exercise any such termination right.

9.7 Secretary of State Audit of Calculations provided pursuant to paragraphs 9.2, 9.3 and 9.4

- (a) Without prejudice to paragraph 2.2 of Schedule 12 (*Financial Covenants and Bonds*) or to any other rights of the Secretary of State under the Franchise Agreement, the Secretary of State and the Secretary of State's representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item

contained in or relating to the Management Accounts, the Annual Audited Accounts, the Audited Accounts Reconciliation, the Final Accounts and any information held or provided in connection with the Franchisee's obligations under paragraph 2 of Schedule 12 (*Financial Covenants and Bonds*) or Schedule 8.1A (*Franchise Payments*).

- (b) The Franchisee shall make available to the Secretary of State and the Secretary of State's representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 9.7(a). If any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts, then:
- (i) the Secretary of State may:
- (A) reasonably determine any item contained in or relating to the Management Accounts; or
- (B) require any item contained in or relating to the Management Accounts to be adjusted in a manner which is fair and reasonable and, so far as reasonably determinable, on the basis on which such particular item contained in or relating to the Management Accounts should have been accounted for by the Franchisee as reasonably determined by the Secretary of State,
- in either case to the extent that the Secretary of State considers appropriate in the circumstances for the purpose of making any such reasonable determination; and
- (ii) the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 7.4 of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*) The Franchisee shall not in any circumstances be entitled to claim back any such costs from the Secretary of State whether pursuant to Schedule 8.1A (*Franchise Payments*) or otherwise.
- (c) Without prejudice to paragraph 9 (*Review of Franchisee's performance against Budget*), 10 (*Periodic Adjustments*), 11 (*Final Adjustments*) or 17 (*Indexation*) of Schedule 8.1A (*Franchise Payments*), if any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Annual Audited Accounts, the Final Accounts and/or the contents or form of the Audited Accounts Reconciliation then the Secretary of State shall have the right to reasonably determine the Opening Operational Balance, the Closing Operational Balance and/or any Franchise Payment Components for the purposes of correcting the effect of such material inaccuracy.

9.8 Adjustment and Restatement of the Annual Audited Accounts or Final Accounts

The Franchisee shall promptly notify the Secretary of State as soon as it becomes aware of any requirement to adjust or restate the Annual Audited Accounts or the Final Accounts and shall deliver to the Secretary of State any such adjusted or restated Annual Audited Accounts or Final Accounts as soon as such accounts are available. The Franchisee shall provide the Secretary of State (with a copy also being provided to the Franchisee's Auditors) with a clear written commentary prepared by its finance director, giving reasons for the adjustment or restatement and, the Franchisee shall promptly update any calculations made pursuant to this Schedule 11.2 which are affected by the adjustment or restatement. The Franchisee shall, as applicable, provide the Secretary of State with a nil financial settlement return as evidence that any financial claims previously settled remain unimpacted by the adjustment or restatement.

9.9 Access to financial information

The Secretary of State, the Secretary of State's representatives and/or advisors shall be permitted to inspect at any time the books, records and other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the financial information provided pursuant to paragraph 8 (*Periodic Update Reports*) and this paragraph 9 or paragraph 7A of this Schedule 11.2 and paragraph 2 of schedule 3 (*Early Termination*) to the ERMA, and to request further information or review of this information, including:

- (a) the use of an external auditor;
- (b) provision of full access to this information by the Secretary of State's officials, representatives and/or advisors on an "open book" basis; and
- (c) provision of full access to this information by the National Audit Office or other equivalent body on an "open book" basis.

10. Business Plans

10.1 ⁴⁷⁶Annual Business Plans

- (a) By no later than the day falling 33 Weekdays prior to start of the first Reporting Period in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the Franchisee's business plan for the forthcoming Franchisee Year (the "Annual Business Plan"). The Annual Business Plan shall be a detailed and comprehensive description of the Franchisee's planned activities for such Franchisee Year and the manner in which the Franchisee shall meet

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its obligations under the Franchise Agreement in respect of that Franchisee Year and include:

- (i) a revised profit and loss forecast (prepared in accordance with the accounting standards and practices set out in paragraph 9.5 (*Accounting Standards and Practices*) and GAAP), which shall include a forecast of Costs, Revenue, Capital Expenditure and any forecast Disallowable Costs, Non-recoverable Costs and Revenue Foregone, in the same format and structure, and using the allocation of Costs and Revenues to individual lines, as either (a) the Financial Formats; or (b) the "P&L2" tab of the Financial Model (whichever format and structure has the more detailed breakdown of costs and revenues), a revised cash flow forecast which clearly states the gross amount of Capital Expenditure forecast to be incurred by the Franchisee (separately identifying any amounts funded by third parties) and a revised forecast balance sheet for each of the thirteen (13) Reporting Periods in the relevant Franchisee Year and each subsequent Franchisee Year of the Franchise Period;**
- (ii) a statement from a statutory director of the Franchisee confirming that the profit and loss forecast delivered pursuant to paragraph 10.1(a)(i) has been prepared in accordance with the requirements of the Franchise Agreement;**
- (iii)**
 - (A) a forecast of the Franchisee's Forecast Closing Cash Position for the last day of each of the following thirteen (13) Reporting Periods; and**
 - (B) a statement demonstrating how the Franchisee intends to ensure that at the end of each of the following thirteen (13) Reporting Periods it will have an available Forecast Closing Cash Position which is not less than the Floor Cash Position;**
- (iv) an annual improvement plan providing:**
 - (A) details of any new technologies, processes, developments and/or proposals which could improve the provision of the Franchise Services, reduce the cost of providing the Franchise Services or enable the Franchise Services to be provided more efficiently;**
 - (B) an analysis of the impact of any technologies, processes, developments and/or proposals that are proposed in relation to the Franchise Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of the Franchise Services;**

- (C) details of those technologies, processes, developments and/or proposals which the Franchisee proposes to implement during the relevant Franchisee Year; and
 - (D) an analysis of the technologies, processes, developments and/or proposals which the Franchisee implemented in the previous Franchisee Year including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for that previous Franchisee Year;
- (v) a statement from each of, a statutory director of the Franchisee and, a statutory director of the Parent confirming that the Annual Business Plan has been provided to, considered and endorsed by the board of directors of the Parent and that the board of directors of the Parent is not aware of any other plan which may alter, vary of impact on the Business Plan and shall at any time during the following twelve (12) months notify the Secretary of State should any of them become aware of any such plan; and
- (vi) information in relation to arrangements with Affiliates, including:
- (A) a forecast of payments to or from any Affiliate;
 - (B) a forecast of fees, remuneration, pension contributions or any other payment to or in respect of any director or officer of the Franchisee; and
 - (C) evidence that all such payments are on arms' length commercial terms in the ordinary course of business and are otherwise compliant with the terms of the Franchise Agreement.
- (b) If:
- (i) the Secretary of State has issued a notice to the Franchisee pursuant to paragraph 4.2(a) of Schedule 8.1B (*Performance Based Fee*) in relation to a PBF Assessment Period commencing on 1 April in any Franchisee Year; and
 - (ii) the Franchisee has not delivered the Annual Business Plan to the Secretary of State in accordance with paragraph 10.2(a),

the Secretary of State may reasonably determine the contents of the Annual Business Plan for the purposes of setting the Target Cost and/or the Target Profit (as applicable and in each case as defined in Schedule 8.1B (*Performance Based Fee*)).

- (c) If the Secretary of State has not issued a notice to the Franchisee pursuant to paragraph 4.2(a) of Schedule 8.1B (*Performance Based Fee*) in relation to a PBF Assessment Period commencing on 1 April of any Franchisee Year, the Franchisee may elect to deliver to the

Secretary of State an updated Annual Business Plan within twenty (20) Weekdays of the start of that Franchisee Year.

- (d) If the Parties have agreed or the Secretary of State has reasonably determined the value of the Target Cost and/or the Target Profit pursuant to paragraphs 5.1 and 5.2 of Schedule 8.1B (*Performance Based Fee*), the Franchisee shall:
- (i) update the Annual Business Plan to reflect the Target Cost as agreed or determined (as applicable) pursuant to paragraph 5.1 of Schedule 8.1B (*Performance Based Fee*);
 - (ii) update the Target Cost Template, the Target Cost Record of Assumptions, the Target Profit Template and/or the Target Profit Record of Assumptions (in each case, as applicable) to reflect the:
 - (A) Target Cost, Target Cost Cap and Target Cost Floor; and/or
 - (B) Target Profit, Target Profit Cap and Target Profit Floor, (as applicable) as agreed or determined pursuant to paragraphs 5.1 and 5.2 of Schedule 8.1B (*Performance Based Fee*); and
 - (iii) deliver the updated Annual Business Plan, Target Cost Template, Target Cost Record of Assumptions, Target Profit Template and/or Target Profit Record of Assumptions (as applicable) to the Secretary of State by no later than 1 April 2021, and the Target Cost Spreadsheet, Target Cost Record of Assumptions, Target Profit Template and/or Target Profit Record of Assumptions (as applicable) shall be Placed in Escrow once the Secretary of State is satisfied that such documents accurately reflect the:
 - (iv) Target Cost, Target Cost Cap and Target Cost Floor; and/or
 - (v) Target Profit, Target Profit Cap and Target Profit Floor, (as applicable) as agreed or determined pursuant to paragraphs 5.1 and 5.2 of Schedule 8.1B (*Performance Based Fee*).
- (e) If at any time during a Franchisee Year the Franchisee produces any other annual business plan or periodic plan which is delivered to its Parent it shall at the same time as delivering such plan to its Parent notify the Secretary of State of all such plans. The Secretary of State shall be entitled to copies of such further plans as he shall reasonably determine.

10.2 Business Action Plan

- (a) The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
 - (i) timetable and service pattern development;
 - (ii) Station facility improvement;
 - (iii) performance management improvement;
 - (iv) customer service improvement; and
 - (v) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- (b) The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.
- (c) 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 he may impose.

11. Safety Information

11.1 Safety

- (a) The Franchisee shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.
- (b) The Franchisee shall notify the Secretary of State as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from the ORR. Immediately upon receipt of such notification or notice, the Franchisee shall provide the Secretary of State with a copy of such notification or notice.
- (c) The Franchisee shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

12. ⁴⁷⁷Further Information

12.1 The Franchisee shall:

- (a) **deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such data, information, records or documents as he may request within such period as he may reasonably require**

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and which relate to or are connected with the Franchisee's performance of the Franchise Agreement; and

- (b) procure that each Affiliate of the Franchisee complies with paragraph 12.1(a) in respect of any data, information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of its obligations under the Franchise Agreement.

12.2 The information referred to in paragraph 12.1 shall include:

- (a) any agreement, contract or arrangement to which the Franchisee is a party in connection with any rolling stock vehicles used in the operation of Passenger Services;
- (b) in so far as the Franchisee 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 vehicles;
- (c) any agreement for or any documents associated with the manufacture or supply of any rolling stock vehicles; and
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

12.3 The Secretary of State may require the Franchisee to provide:

- (a) the information required to be provided under this Schedule 11.2 more frequently than set out in this Schedule 11.2;
- (b) the information required to be provided under this Schedule 11.2, or, in the Secretary of State's sole discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise;
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time;
- (d) research or survey datasets which relate to or are connected with the Franchisee's performance of the Franchise Agreement;
- (e) any data or information which supports operational and business functions; and
- (f) information about any agreement, contract or arrangement to which the Franchisee is a party and which relate to or are connected with the Franchisee's performance of the Franchise Agreement.

12.4 Request for Data

- (a) If the Secretary of State requires any further information, data, records or documents during the Franchise Term which the Franchisee is not otherwise required to provide pursuant to this

Franchise Agreement (the "Relevant Data"), the Secretary of State may issue a request to the Franchisee specifying:

- (i) the Relevant Data the Franchisee is to provide to the Secretary of State;**
- (ii) any requirements in relation to timeliness, format and method of delivery of such Relevant Data; and**
- (iii) where such Relevant Data is required to be provided on an ongoing basis, may include the frequency with which such Relevant Data shall be required to be delivered,**

(each a "Request for Data").

- (b) The Franchisee acknowledges and agrees that any Relevant Data provided by the Franchisee pursuant to a Request for Data may be shared with other persons who are acting on the Secretary of State's behalf or such other persons as the Secretary of State may notify, in each case, in accordance with Schedule 17 (*Confidentiality, Freedom of Information and Data Protection*).**
- (c) Within fourteen (14) days of the date of issuance of a Request for Data by the Secretary of State or such other timeframe as may be specified in the relevant Request for Data, the Franchisee shall:**
 - (i) provide to the Secretary of State all Relevant Data specified in the Request for Data as it is reasonably able to provide or procure within such period; and**
 - (ii) if the Franchisee has not provided all the Relevant Data specified in the Request for Data, it shall provide the Secretary of State with:**
 - (A) details of any further action that would be required to enable it to provide such Relevant Data, including the rationale for requiring such further action together with relevant supporting evidence;**
 - (B) the Franchisee's proposed timescales for taking such action in timely manner and the rationale for arriving at such timeframe; and**
 - (C) where applicable, an estimate (including a breakdown of the individual cost components) of any additional costs the Franchisee expects to incur (acting reasonably) in order to provide such Relevant Data together with relevant supporting evidence.**
- (d) The Secretary of State may, following review of the Franchisee's response pursuant to paragraph 12.4(c)(ii), require the Franchisee to take such further action as the Secretary of State may specify (acting reasonably), including providing part or all of the Relevant Data which remains outstanding or taking any steps to mitigate the amount of any costs that the Franchisee may incur in order to comply with the Request for Data.**

- 12.5** The Franchisee shall provide an audit of data sources and information that are used by the Franchisee's business, as requested by the Secretary of State (acting reasonably) from time to time. The Secretary of State may also request information and guidance from the Franchisee about its data sources, including the purpose for collecting such data, any risks associated with handling or sharing such data, and any third party contracts or agreements used to collect and process the data.
- 12.6** Nothing in paragraphs 12 or 13 shall require the Franchisee to provide any Relevant Data or any other data, information, records or documents which would, or is reasonably likely to:
- (a) require it to incur additional costs, over and above those a Good and Efficient Operator would incur, unless the Secretary of State otherwise directs or gives consent or such additional costs were contemplated when the Secretary of State agreed or reasonably determined the Franchisee's most recent business plan and cost budget in accordance with the terms of Schedule 8.1A, and Schedule 11.2; or
 - (b) put it in breach of any applicable law or regulation.
- 12.7** If the Franchisee reasonably considers that any provision of paragraphs 12 and 13 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Secretary of State may reasonably provide or direct.
- 13.** ⁴⁷⁸**Information from Third Parties**
- 13.1** The Franchisee shall, if the Secretary of State so requests, through a Request for Data or otherwise, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Franchisee which is or are maintained by third parties and to which the Secretary of State is entitled to have access, or of which the Secretary of State is entitled to receive a copy under the Franchise Agreement.
- 13.2** The Franchisee shall, if the Secretary of State so requests, procure the provision by RSP to the Secretary of State of such information, data and records as the Franchisee is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.
- 13.3** The obligations of the Franchisee under this Schedule 11.2 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that he has received the relevant information directly from any other person (including Network Rail or RSP). The

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Franchisee 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 Franchisee shall promptly advise the Secretary of State of any changes that are to be made to the databases, systems or processes which are owned, operated or otherwise used by the Franchisee which may have an impact on the Franchisee's ability to meet its data sharing obligations pursuant to the Franchisee Agreement or any Request for Data issued by the Secretary of State or will, in the reasonable opinion of the Franchisee, materially affect the continuity of any supply of information or data that the Franchisee is required to provide to the Secretary of State pursuant to this Schedule 11.2. Any such advice shall include an assessment of the materiality of the relevant change.

13.5 To the extent that collection or supply of any data, information, records or documents is managed by a third party on the Franchisee's behalf:

(a) the Franchisee shall use all reasonable endeavours to ensure that all relevant third party service providers permit the sharing with the Secretary of State of all data, information, records or documents which such third party service provider shall be required to provide or may provide on request to the Franchisee; or

(b) where the Franchisee is unable to procure access pursuant to paragraph 13.5(a), it shall use all reasonable endeavours to agree a variation or amendment to any contract or other arrangement in place between the Franchisee and the relevant third party as may be required to comply with paragraph 13.5(a).

13.6 During the Franchise Term, the Franchisee shall:

(a) not enter into any new contracts or other arrangements which may materially adversely affect the Franchisee's ability to comply with paragraphs 12 and 13 of this Schedule 11.2, without the prior written consent of the Secretary of State; and

(b) to the extent it is entering into any material amendments to any existing contracts or arrangements with third parties, use all reasonable endeavours to ensure that the contract or arrangement (as amended) does not materially adversely affect the Franchisee's ability to comply with its requirements pursuant to paragraphs 12 and 13.

14. Compatibility of Information

14.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under the Franchise Agreement shall be provided, if so requested by the Secretary of State, in a form compatible with the Secretary of State's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraph 3 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*).

14.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under the Franchise Agreement will not result in any infringement of any third party

Intellectual Property Rights to which its systems or such information, data or records may be subject.

15. Environmental Information

15.1A ⁴⁷⁹Data Sharing

- (a) **The Franchisee shall share all available environmental data with the Secretary of State and RSSB as requested from time to time by the Secretary of State and/or RSSB, each acting reasonably, including in relation to:**
- (i) **air pollution emissions referenced in the Clean Air Strategy 2019 (including nitrogen oxides and particulate matter);**
 - (ii) **emissions of Greenhouse Gases (as defined in the Kyoto Protocol to the United Nations Framework Convention on Climate Change); and**
 - (iii) **energy usage.**
- (b) **The Secretary of State and/or (with the prior approval of the Secretary of State) RSSB, each acting reasonably, may instruct the Franchisee to collect and share with the Secretary of State and/or RSSB (as applicable) such additional environmental data as the Secretary of State and/or RSSB (as applicable) may require from time to time.**

15.1 Environmental Information Data Collection Plan

- (a) The Franchisee shall, by no later than three (3) months after the Start Date, provide a report to the Secretary of State setting out:
- (i) which measures included in the Dataset the Franchisee is unable to provide, despite using reasonable endeavours to do so ("**Excluded Data**");
 - (ii) for each item of Excluded Data, the technical, operational or commercial reason why the Franchisee is unable to provide the Excluded Data; and
 - (iii) a plan ("**Environmental Data Collection Plan**") detailing, in relation to each item of Excluded Data, the actions which the Franchisee would need to take in order to be able to provide such Excluded Data, the Franchisee's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Franchisee would be able to begin providing such Excluded Data to the Secretary of State.
- (b) The Dataset, excluding any measures which the Secretary of State agrees, acting reasonably, that the Franchisee is, despite using reasonable

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endeavours, unable to provide, shall be referred to as the **“Initial Dataset”**.

- (c) The Secretary of State may require:
- (i) the Franchisee to implement the Environmental Data Collection Plan in whole or in part; and/or
 - (ii) the Franchisee to take such other actions as, in the reasonable opinion of the Secretary of State, would enable the Franchisee to provide any item of Excluded Data,

following which the relevant item of Excluded Data will form part of the Initial Dataset.

- (d) Where the Franchisee is:
- (i) undertaking works, whether at a Station or Depot or in respect of rolling stock;
 - (ii) procuring rolling stock; or
 - (iii) taking any other action which could enable the Franchisee to provide any items of Excluded Data in a cost effective manner,

the Franchisee will use reasonable endeavours to do so in a manner which would enable the Franchisee to provide any relevant item of Excluded Data (and any item of Excluded Data which the Franchisee becomes able to provide as a result will, with effect from the date on which the Franchisee becomes able to provide the same, form part of the Initial Dataset).

- (e) With effect from the date that is 3 months after the Start Date, the Franchisee 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 Franchisee to understand the current environmental performance of the Franchise and any potential for improvement in terms of environmental impact.
- (f) The Franchisee may, in its discretion, measure and collect additional data provided that the minimum required under the Initial Dataset is adhered to and the Franchisee will co-operate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.
- (g) The Franchisee shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated periodic or annual usage figure to the Secretary of State as specified for each measure in paragraph 1 of Appendix 1 (Environmental Information) to this Schedule 11.2.
- (h) ⁴⁸⁰ **In addition to paragraph (g) above, the Franchisee shall deliver the information required to be delivered pursuant to and in**

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

accordance with paragraph 1 (*Environmental Impact Monitoring Dataset*) of Appendix 1 (*Environmental Information*) to this Schedule 11.2 through the RSSB's online "Environmental Reporting Tool".

15.2 ⁴⁸¹**Environmental Impact Monitoring Report and Environmental Impact Monitoring Audit**

- (a) The Franchisee shall submit to the Secretary of State a report setting out the result of the data collection of the Initial Dataset required by this paragraph 15 in accordance with the applicable granularity and regularity specified in paragraph 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 Franchisee Year.
- (b) The Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an annual independent written audit of the data provided in the Environmental Impact Monitoring Report and the collection methodology of the Initial Dataset in respect of each Franchisee Year (the "Environmental Impact Monitoring Audit").
- (c) The Franchisee shall procure that the independent body appointed pursuant to paragraph 15.2(b) includes in the Environmental Impact Monitoring Audit:
- (i) a retrospective assessment (covering the Franchisee Year to which the audit relates) of the Franchisee's data collection methodology and level of data granularity carried out in accordance with this paragraph 15.2 and any recommendations by the independent body in respect of such methodology;
 - (ii) a verification of the accuracy of past data submissions made in respect of the Initial Dataset and as summarised in the Environmental Impact Monitoring Report; and
 - (iii) an assessment of the Franchisee's proposed data collection methodology and level of data granularity for the following Franchisee Year's data collection, and

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.

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

- (d) The Franchisee shall submit a copy of the Environmental Impact Monitoring Audit to the Secretary of State at the same time as Environmental Impact Monitoring Report is submitted in accordance with paragraph 15.2(a) above.
- (e) Where the Environmental Impact Monitoring Audit highlights errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, the Franchisee shall:
- (i) in the case of minor errors, discrepancies or concerns which are capable of rectification without material additional expenditure, rectify such minor errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays of the date of the submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question;
 - (ii) in the case of material errors, discrepancies or concerns which are capable of rectification, rectify such material errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays, following the date of submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question; and
 - (iii) in the case of concerns in relation to the Franchisee's data collection methodology and level of data granularity for the forthcoming Franchisee Year's data collection, make such amendments to such methodology as recommended in the Environmental Impact Monitoring Audit so as to address those concerns.

15.3 ⁴⁸² Air Quality Monitoring and Improvement

- (a) The Franchisee shall for the purposes of air quality monitoring at Stations under its control:
- (i) provide to the Secretary of State all existing data in relation to air quality and measures that the Franchisee is implementing to improve air quality at Stations under its control;
 - (ii) provide to the Secretary of State, RSSB, or any person whom the Secretary of State might reasonably specify, access to any sites, power supplies and telemetry under its control as

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- requested by the Secretary of State or RSSB from time to time, including for the purpose of installing air quality monitors; and
- (iii) assist the Secretary of State, RSSB or any person whom the Secretary of State might reasonably specify in the placement, replacement and dispatch of diffusion tubes.
- (b) The Franchisee shall for the purposes of air quality monitoring on rolling stock vehicles:
- (i) provide to the Secretary of State, RSSB or any person whom the Secretary of State might reasonably specify during the Franchise Term, free-of-charge access to rolling stock vehicles whilst in or out of service;
- (ii) consent for equipment to be installed on rolling stock vehicles for the purposes of air quality monitoring;
- (iii) provide available on-train air quality data as the Secretary of State may require from time to time; and
- (iv) consider cost-effective opportunities to improve air quality on rolling stock vehicles through operational or maintenance changes and, where reasonable and with the agreement or direction of the Secretary of State, make changes to rolling stock vehicles to improve on-board air quality.
- (c) The Franchisee shall for the purposes of monitoring and reducing emissions from traction:
- (i) through an RSSB-led industry working group, support the development and delivery of a policy in relation to the maximum time for which a train's engine may be kept idling while stationary;
- (ii) use all reasonable endeavours to work with the fleet owner to develop an emissions reduction pathway for all diesel rolling stock vehicles;
- (iii) consider cost-effective opportunities to reduce emissions through operational or maintenance changes and, where reasonable and with the agreement or direction of the Secretary of State, make changes to rolling stock vehicles to reduce their air pollution impact;
- (iv) provide to the Secretary of State, RSSB or any person whom the Secretary of State might reasonably specify free-of-charge access to rolling stock vehicles and infrastructure for emissions testing as requested by the Secretary of State from time to time; and
- (v) provide to the Secretary of State such information and/or data in relation to exhaust emissions from rolling stock vehicles comprised within the Train Fleet as the Secretary of State may reasonably require from time to time for the

purposes of data collection and analysing the consequent impact of such emissions on air quality in Depots and Stations and along the Routes on which such rolling stock vehicles are deployed.

- (d) The Franchisee shall for the purposes of supporting wider industry approaches to emissions reduction:**
- (i) consider the impact of any rolling stock vehicle, operational or infrastructure changes on emissions; and**
 - (ii) provide to the Secretary of State and RSSB a named contact as a point of enquiry in relation to air quality.**

16. ⁴⁸³Environmental Impact Targets

16.1 Environmental Impact Targets set by the Secretary of State

The Secretary of State sets out in paragraph 2 of Appendix 1 (Environmental Information) of this Schedule 11.2 the targets for improving the environmental performance of the Franchise (the "Environmental Impact Targets"), and the Franchisee shall meet such Environmental Impact Targets during the Franchise Period.

16.2 Performance against the Environmental Impact Targets

- (a) For each Franchisee Year the Secretary of State shall determine the Franchisee's performance against each Environmental Impact Target on an annual basis (within two (2) Reporting Periods of receipt of the Environmental Impact Monitoring Report) by comparing:**
- (i) for traction carbon emissions: the Franchisee's performance set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Target for the relevant Franchisee Year, in accordance with the annual trajectory specified in the Sustainable Development Strategy;**
 - (ii) for non-traction energy use: the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;**
 - (iii) for waste: the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;**

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- (iv) **for mains water: for the second (2nd) Franchisee Year, the number of automatic water meters installed against the total number of water meters. These details shall be reported by the Franchisee within three (3) months of the end of the second (2nd) Franchisee Year. For subsequent Franchisee Years, the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets.**
- (b) **For the purposes of undertaking the comparison pursuant to paragraph 16.2(a), the results referred to in paragraphs 16.2(a)(i) to (iii) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).**
- (c) **As soon as reasonably practicable following the Start Date and in any event within six (6) months of the Start Date, the Franchisee shall produce and provide to the Secretary of State for approval an implementation plan for the duration of the Franchise Period which is capable of achieving each of the Environmental Impact Targets each Franchisee Year (as such implementation plan may be revised in accordance with paragraph 16.3 (*Remedial Actions*) below (the "Environmental Impact Targets Plan")).**
- (d) **Following the Secretary of State's approval, the Franchisee shall use all reasonable endeavours to implement the Environmental Impact Targets Plan (including any such plan which is revised in accordance with paragraph 16.2(e)) in order to achieve the Environmental Impact Targets.**
- (e) **Notwithstanding the requirements of this paragraph 16.2, the Franchisee shall review its then current Environmental Impact Targets Plan and revise such plan as necessary by the end of the fifth (5th) Franchisee Year to ensure that such plan, in the reasonable opinion of the Secretary of State, is capable of achieving each Environmental Impact Target in each Franchisee Year.**

16.3 Remedial Actions

- (a) **In the event that an Environmental Impact Target is not met in any Franchisee Year, the Franchisee shall as soon as reasonably practicable produce and provide to the Secretary of State a revised Environmental Impact Targets Plan which, in the reasonable opinion of the Secretary of State, is capable of achieving the Environmental Impact Targets.**
- (b) **The Franchisee shall use all reasonable endeavours to implement the revised Environmental Impact Targets Plan, which shall be the Environmental Impact Targets Plan for the purposes of the Franchise Agreement.**

16.4 Publication

- (a) **The Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of its performance against the**

Environmental Impact Targets ⁴⁸⁴(the "Performance Information") in widely accessible forms, including, as a minimum, publishing them on its website and in each Customer Report (excluding the first (1st) Customer Report).

(b) The Franchisee:

- (i) agrees that the Secretary of State shall be permitted to publish the Performance Information from time to time in such format and through such media as the Secretary of State may elect; and**
- (ii) shall co-operate with any programme or other initiative mandated or undertaken by the Secretary of State to publish the Performance Information.**

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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 13.1 (<i>Rail Industry Initiatives and Co-operation</i>)	Total	Per project
WATER	Mains Water consumption (m ³)	Total	Annual
	Water recycling initiatives	Narrative	Annual
WASTE	Waste generated (tonnes)	Total	Annual
	Waste recycled (tonnes)	Total	Annual
	Waste subject to other recovery (tonnes)	Total	Annual
	Waste to landfill (tonnes)	Total	Annual
	Hazardous waste	Total	Annual
	Enforcement/information Notices	Total	Annual

Subject	Unit	Granularity	Regularity
ENVIRONMENTAL MANAGEMENT SYSTEM (EMS)	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
<p>A reduction of 54% in kg CO2E per vehicle km against the 1.452 grams CO2E per vehicle km over the Franchise Term, such reduction to be achieved in accordance with the Sustainable Development Strategy referred to in paragraph 10.2 (Sustainable Development Strategy) of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>), which will contain a target for each Franchisee Year for this purpose.</p>	<p>1. By the Expiry Date, an overall reduction in kilowatt hours (kWh) of an amount expressed as a percentage equal to (A) + (B) + (C) (calculated in accordance with paragraph 2 below), against the average of 2014/2015 and 2015/2016 baseline figure of 29,943,722kWh (the "Overall kWh Reduction").</p> <p>2. For the purposes of paragraph 1 of Table 2, the references to (A), (B) and (C) shall have the meanings given to them below:</p> <p>(A) means an amount equal to the product of:</p> <p>(i) the total number of Franchisee Years comprised in the Franchise Term which are of thirteen (13) Reporting Periods in duration; and</p> <p>(ii) two point five per cent (2.5%);</p> <p>(B) means, if the first Franchisee Year is of less than thirteen (13) Reporting Periods in duration, an amount expressed as a percentage in relation to that Franchisee Year which is derived by the application of the following formula:</p> <p>2.5 x (FY/13)</p> <p>where:</p> <p>FY means the number of Reporting Periods in the first Franchisee Year during the Franchise Term; and</p> <p>(C) means, if the Final Franchisee Year is of less than thirteen (13) Reporting Periods in duration, an amount expressed as a percentage in relation to that Franchisee Year which is derived by the</p>	<p>From the end of the second (2nd) Franchisee Year, the Franchisee must send zero waste to landfill and must recycle or prepare for re-use, ninety per cent (90%) of waste (by weight) per Franchisee Year.</p>	<p>By the end of the second (2nd) Franchisee Year, the Franchisee must install automatic meter readings (AMR) for all water meters, where practicable. The Franchisee shall determine a baseline of water consumption by the end of the third (3rd) Franchisee Year, such baseline to be agreed with the Secretary of State. The Franchisee shall develop a target to reduce water consumption against the agreed baseline referred to above by the end of the fourth (4th) Franchisee Year, such target to be agreed with the Secretary of State.</p>

Traction Carbon Emissions	Non-Traction Energy Use	Waste	Mains Water
	<p>application of the following formula:</p> <p>2.5 x (FY/13)</p> <p>where:</p> <p>FY means the number of Reporting Periods in the Final Franchisee Year during the Franchise Term.</p> <p>3. By 20 August 2023, a reduction in kWh of an amount equal to not less than fifty per cent (50%) of the Overall kWh Reduction.</p> <p>4. By 17 August 2025, a reduction in kWh of an amount equal to not less than seventy five per cent (75%) of the Overall kWh Reduction.</p>		

APPENDIX 2 TO SCHEDULE 11.2

Operational Performance Information

1. Information about the operational performance of the Franchisee

- 1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under the Franchise Agreement, covering the areas and the information described in this Appendix 2. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee’s opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
- 1.2 The Franchisee shall, subject to paragraph 1.3, provide to the Secretary of State the information set out in the following tables at the frequency specified in the Column of each such table headed **“When information to be provided”**.
- 1.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
 - (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 is 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 Franchisee Year.

1.5 ⁴⁸⁵For the purposes of this Schedule 11.2, the following words and expressions shall have the following meanings:

Number of Primary Minutes Delay attributable to any other Train Operator	<p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(a) attributed as a "Primary Delay" in accordance with</p>
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	<p>the Delay Attribution Principles and Rules; and</p> <p>(b) attributable to any other Train Operator;</p>
Number of Primary Minutes Delay attributable to Network Rail	<p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(a) attributed as a "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(b) attributable to Network Rail;</p>
Number of Primary Minutes Delay attributable to the Franchisee	<p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(a) attributed as a "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(b) attributable to the Franchisee;</p>
Number of Primary Minutes Delay on other Operators attributable to the Franchisee	<p>means the number of minutes of delay to passenger services operated by any other Train Operator or services operated by freight operators that are attributed:</p> <p>(a) as "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(b) to the Franchisee pursuant to the Track Access Agreement,</p> <p>disregarding any minutes of delay that are imputed to other Train Operators' passenger services that were cancelled.</p>
Number of Reactionary Minutes Delay attributable to any other Train Operator	<p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(a) attributed as a "Reactionary Delay" in accordance with</p>

	<p>the Delay Attribution Principles and Rules; and</p> <p>(b) attributable to any other Train Operator;</p>
<p>Number of Reactionary Minutes Delay attributable to Network Rail</p>	<p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(a) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(b) attributable to Network Rail;</p>
<p>Number of Reactionary Minutes Delay attributable to the Franchisee</p>	<p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(a) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(b) attributable to the Franchisee; and</p>
<p>Number of Reactionary Minutes Delay on other Operators attributable to the Franchisee</p>	<p>means the number of minutes of delay to passenger services operated by any other Train Operator or services operated by freight operators that are attributed:</p> <p>(a) as "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(b) to the Franchisee pursuant to the Track Access Agreement,</p> <p>disregarding any minutes of delay that are imputed to other Train Operators' passenger services that were cancelled.</p>

1.6 This Appendix 2 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

⁴⁸⁶ Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day	[number]	B
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee	[number]	B

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⁴⁸⁶ Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Where there is a difference between the Timetable and the Plan of the Day on any day the following: (a) the fact of such difference; and (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day	[number]	B
Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day: (a) the fact of such difference; (b) the number of: (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		
Simple Short Formations		
All day and Peak		
Number of All day and Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of All day and Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of All day and 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

⁴⁸⁶ Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of All day and Peak Passenger Services scheduled (excluding Cancellations or Partial Cancellations) All day Short Formations for weekends will be recorded for reporting purposes only.	[number]	B
Minutes Delay		
Number of Minutes Delay attributable to the Franchisee	[number]	B
Number of Primary Minutes Delay attributable to the Franchisee	[number]	B
Number of Reactionary Minutes Delay attributable to the Franchisee	[number]	B
Number of Minutes Delay attributable to Network Rail	[number]	B
Number of Primary Minutes Delay attributable to Network Rail	[number]	B
Number of Reactionary Minutes Delay attributable to Network Rail	[number]	B
Number of Minutes Delay attributable to any other Train Operator	[number]	B
Number of Primary Minutes Delay attributable to any other Train Operator	[number]	B
Number of Reactionary Minutes Delay attributable to any other Train Operator	[number]	B
Number of Primary Minutes Delay on other Operators attributable to the Franchisee	[number]	B
Number of Reactionary Minutes Delay on other Operators attributable to the Franchisee	[number]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee	[number]	B
Number of Minutes Delay for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[number]	B
Number of Minutes Delay from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination	[number]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[number]	B
T-3, T-15, On Time and All Cancellations		
Time to 3 Minutes percentage published by Network Rail, rounded to two (2) decimal places	[number]	B

⁴⁸⁶ Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Time to 15 Minutes percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
On Time percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
All Cancellations percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
Train Mileage		
Planned Train Mileage	[mileage]	A
Actual Train Mileage	[mileage]	B

APPENDIX 3 TO SCHEDULE 11.2**Summary of Reporting and Other Requirements**

This Appendix contains a non-exhaustive summary of the obligations on the Franchisee throughout this Agreement in respect of the provision of information to the Secretary of State which are not set out in this Schedule 11.2. This summary is for guidance only. If there are any inconsistencies with the other contents of the Schedules mentioned below (including any Appendix), those other contents shall apply.

Reference	Summary of Obligation
Schedule 1.1 (<i>Franchise Services and Service Development</i>), paragraph 11.3(a) (<i>Consultation on Significant Alterations to the Timetable</i>)	Requirement for Franchisee to provide a comprehensive summary of the proposed changes from the Timetable then in force.
Schedule 1.1 (<i>Franchise Services and Service Development</i>), paragraphs 11.3(e) and 11.3(f) (<i>Consultation on Significant Alterations to the Timetable</i>)	Requirement for Franchisee to publish a report containing a summary of the main issues raised by respondents to the consultation.
Schedule 1.1 (<i>Franchise Services and Service Development</i>), paragraph 13.1 (<i>Certification and Notification by Franchisee of Exercising Timetable Development Rights</i>)	Requirement for Franchisee 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 (<i>Franchise Services and Service Development</i>), paragraph 13.3(a) (<i>Certification and Notification by Franchisee of Exercising Timetable Development Rights</i>)	Requirement for Franchisee to provide copies to the Secretary of State of correspondence in respect of discussions with Network Rail.
Schedule 1.1 (<i>Franchise Services and Service Development</i>), paragraph 14.4 (<i>Finalising the Train Plan</i>)	Requirement for Franchisee to provide the Train Plan certified as true and accurate by a statutory director.
Schedule 1.1 (<i>Franchise Services and Service Development</i>), paragraph 15.1 (<i>Capacity Mitigation Proposal</i>)	Requirement for Franchisee to provide a Capacity Mitigation Proposal if required by the Secretary of State.
Schedule 1.1 (<i>Franchise Services and Service Development</i>), paragraph 16.1 (<i>New or amended Train Service Requirement by Secretary of State and Franchisee's Informed Opinion</i>)	Requirement for Franchisee to provide informed opinion in respect of a new or amended Train Service Requirement.
Schedule 1.2 (<i>Operating Obligations</i>), paragraph 7.7 (<i>Obligations to use all reasonable endeavours under this Schedule 1.2</i>)	Provide evidence to the Secretary of State of the steps taken under Paragraph 7 (<i>Obligation</i>) to use all reasonable endeavours under this Schedule 1.2 (<i>Operating Obligations</i>).

Reference	Summary of Obligation
Schedule 1.4 (<i>Passenger Facing Obligations</i>), paragraph 8 (<i>Publication of Performance Data</i>)	Requirements to publish performance data.
Schedule 1.4 (<i>Passenger Facing Obligations</i>), paragraph 9 (<i>Publication of Complaints and Faults Handling Data</i>)	Requirements to publish complaints and fault handling data.
Schedule 1.5 (<i>Information about Passengers</i>), paragraph 1 (<i>Passenger Numbers Information</i>)	Requirement to provide Secretary of State information about the use by passengers of the Passenger Services.
Schedule 1.5 (<i>Information about Passengers</i>) Paragraph 5.3 (<i>Yield Management Data</i>)	Requirement to notify the Secretary of State in writing of the full names and registered office addresses of the entities which from to time are hosting or storing 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 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).
Schedule 1.7 (<i>Stations</i>), paragraph 6.3 (<i>Security at Stations</i>)	Requirement to notify the Secretary of State of a 5% increase in a TRH Score for a Station that does or does not have Secure Station Accreditation. To obtain Secure Station Accreditation for such Station and to notify the Secretary of State once such Secure Station Accreditation has been obtained.
Schedule 1.7 (<i>Stations</i>), paragraph 6.5 (<i>Security at Stations</i>)	Requirement on the Franchisee to obtain Secure Station Accreditation for a Station that loses its Secure Station Accreditation and notify the Secretary of State that such Secure Station Accreditation has been achieved.
Schedule 1.7 (<i>Stations</i>), paragraph 7 (<i>Information about Station Improvement Measures</i>)	Requirement to maintain and provide records regarding Station improvement measures and measures taken to improve Station environments.
Schedule 2.2 (<i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i>), paragraph 2.2 (<i>Rolling Stock Related Contracts and Insurance Arrangements</i>)	Obligation to provide a copy of all draft Rolling Stock Related Contracts and all executed Rolling Stock Related Contracts and any agreements amending the Rolling Stock Related Contracts including such other information as required by the Secretary of State together with a

Reference	Summary of Obligation
	justification of the Franchisee's proposed rolling stock maintenance strategy and provision of analysis of whole life costs.
Schedule 2.2 (<i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i>), paragraph 3A.2 (<i>Train Maintenance</i>)	Requirement to 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 Franchisee.
Schedule 2.2 (<i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i>), paragraph 3.9 (<i>Cascaded Rolling Stock and Delayed Cascade Mitigation Plan</i>)	Requirement to produce a Delayed Cascade Mitigation Plan.
Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>), paragraph 1.5 (<i>Local Authority Concessionary Travel Schemes</i>)	Requirement to provide information about Local Authority Concessionary Travel Schemes.
Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>), paragraph 2.6 (<i>Multi-Modal Fares Schemes</i>)	Requirement to provide information about multi-modal fares schemes.
Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>), paragraph 3.3 (<i>Discount Fares Schemes</i>)	Requirement to provide information about Discount Fares Schemes.
Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>), paragraph 4.4 (<i>Inter-Operator Schemes</i>)	Requirement to provide information about Inter-Operator Schemes.
Schedule 4 (<i>Accessibility and Inclusivity</i>), paragraph 3A (<i>Minor Works</i>)	Requirement to obtain the Secretary of State's prior approval of each Minor Works' Programme and report progress to the Secretary of State.
Schedule 4 (<i>Accessibility and Inclusivity</i>), paragraph 4 (<i>Specific additional obligations relating to persons with disabilities</i>)	Recording of obligations relating to persons with disabilities.
Schedule 5.8 (<i>Fares Regulation Information and Monitoring</i>), paragraph 1 (<i>Information</i>)	Requirement to provide a summary of the Prices of Commuter Fares and Protected Fares to the Secretary of State no later than week twelve (12) of each Fares Setting Round.
Schedule 5.8 (<i>Fares Regulation Information and Monitoring</i>), paragraph 2.1 (<i>Monitoring</i>)	Requirement to provide information relating to the Prices of Commuter Fares and Protected Fares to the Secretary of State and information relating to the Gross Revenue of the Franchisee in relation to the

Reference	Summary of Obligation
	any particular Fare or Fares or any particular period.
Schedule 5.8 (<i>Fares Regulation Information and Monitoring</i>), paragraph 2.2 (<i>Monitoring</i>)	Requirement to provide written confirmation to the Secretary of State from a statutory director whether the Franchisee has complied with the obligations under Schedule 5 (<i>Fares and Smart Ticketing</i>) during each Fares Setting Round.
Schedule 5.8 (<i>Fares Regulation Information and Monitoring</i>), paragraph 3 (<i>Car Park Revenue</i>)	Requirement on the Franchisee to notify the Secretary of State of any proposals to introduce new Combined Tickets and/or change the apportionment of revenue received from Combined Tickets between passenger revenue and car park revenue.
Schedule 5.9 (<i>Smart Ticketing</i>), paragraph 2.1 (<i>Smart Ticketing</i>)	Prepare and submit a report to the Secretary of State in advance of each Franchise Performance Meeting (in such form as the Secretary of State may reasonably require).
Schedule 6.1 (<i>Franchise Specific Obligations</i>), paragraph 2.1 (<i>Boxing Day Services</i>) part 2	Requirement to provide reports setting out proposals for operation of Additional Boxing Day Services.
Schedule 6.1 (<i>Franchise Specific Obligations</i>), paragraph 6.5 (<i>Infrastructure Projects</i>)	Requirement to provide reports describing progress in relation to matters relating to each Infrastructure Project.
Schedule 6.1 (<i>Franchise Specific Obligations</i>), paragraph 5 (<i>Robin Hood Line Extension</i>)	Requirement to provide a business case study.
Schedule 6.1 (<i>Franchise Specific Obligations</i>), paragraph 8.3 (<i>Ticketless Travel Surveys</i>)	Requirement to provide a report setting out the results of the Ticketless Travel Surveys.
Schedule 6.1 (<i>Franchise Specific Obligations</i>), paragraph 10.2 (<i>Co-operation with East West Rail Scheme</i>)	Requirement to provide such information in respect of the East West Rail Scheme as the Secretary of State may reasonably request from time to time.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 4.1(b) (<i>Advertising Space for Qualifying Diversity Groups</i>)	Requirement to provide a statement setting out the Equivalent Market Value of relevant advertising space and details of the Qualifying Diversity Groups who have utilised that space.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 6.1(g) (<i>Community Rail Partnerships</i>)	Requirement to provide the information relating to Apprenticeships as set out in Schedule 13.1 paragraph 9.1(b).

Reference	Summary of Obligation
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 7.2(b) (<i>Annual Stakeholder Survey</i>)	Requirement to report on the results and findings of the Annual Stakeholder Survey, including an action plan setting out proposals to improve the Stakeholders' perception of the Franchisee.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 7.2(c) (<i>Annual Stakeholder Survey</i>)	Requirement to publish the results and findings of the Annual Stakeholder Survey.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 8.1 (<i>Report on optimisation of passenger services on the Specified Routes</i>)	Requirement to submit a report setting out a proposal as to how the provision of passenger services can be optimised in order to improve Connections on the Specified Routes.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 9.1 (<i>Rest Day Working and Overtime</i>)	Requirement provide to provide a plan which sets out how the Franchisee will achieve the targets to minimise reliance on Rest Day Working and Over Time Working.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 9.3 (<i>Rest Day Working and Overtime</i>)	Requirement to prepare a report on progress towards minimising reliance on Rest Day Working and Over Time Working.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 13.6(b)(iii) (<i>Improvements to rolling stock reliability</i>)	Requirement to provide information in respect of the actions taken by the Franchisee in complying with its obligations under paragraph 13.6(b) of Schedule 6.2.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 13.6(c)(iii) (<i>Improvements to rolling stock reliability</i>)	Requirement to provide information in respect of the actions taken by the Franchisee in complying with its obligations under paragraph 13.6(c) of Schedule 6.2.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 13.7(c) (<i>Administration of the Rolling Stock Innovation Funds</i>)	Requirement to provide specified details of any proposed Rolling Stock Innovation Scheme.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 18.4 (<i>Proving Service</i>)	Requirement to provide a report as to the outcomes of any Proving Service.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 23.5 (<i>Trial of hydrogen fuel cell traction technology</i>)	Requirement to provide a report on the outcomes of the review of the Hydrogen Fuel Cell Traction Trial.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 26.2 (<i>Compliance with the Timetable Planning Rules</i>)	Requirement to report the number of non-compliances with the Timetable Planning Rules.

Reference	Summary of Obligation
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 27.1(c) (<i>Monitoring and Reporting Subthreshold Delays</i>)	Requirement to deliver data with respect to performance against Subthreshold KPIs.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 29.1(c) (<i>Marketing Plan</i>)	Requirement to provide to a certificate certifying the amount of the marketing expenditure incurred.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 30.2 (<i>Marketing Management Resources</i>)	Requirement to provide a detailed breakdown of the expenditure incurred on marketing management resources.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 32.3(c) (<i>Flexipass</i>)	Requirement to provide a report on the outcomes of the Off-Peak Flexipass Trial.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 35.2 (<i>Ticket Vending Machines</i>)	Requirement to deliver a report on the outcomes from the trial of enhanced journey planning functionality on Franchisee TVMs.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 36.1 (<i>Ticket Gate Technology Trials</i>)	Requirement to provide results of the TouchByte Trial and Cubic Trial.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 38.2(b) (<i>Passenger Assistance</i>)	Requirement to publish the Franchisee's performance ratings on reducing the recommended window for booking Passenger Assistance.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 38.3 (<i>Assisted Travel Survey</i>)	Requirement to publish the results and findings of each Assisted Travel Survey.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 40.2 and 40.3 (<i>Trust Surveys</i>)	Requirement to publish the results of each Trust Survey and additionally provide to the Secretary of State an action plan with proposals to build trust with customers and stakeholders.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 46.2 (<i>Disruption Survey</i>)	Requirement to report on the results and findings of each Disruption Survey together with an action plan setting out proposals to improve planned and unplanned disruptions to Passenger Services.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 50.3 (<i>Improved and Consistent Catering Service</i>)	Requirement to publicise the number of Passenger Services on which catering services were not provided in accordance with paragraph 49.1 of Schedule 6.2.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 53.3 (<i>Station Improvement Fund</i>)	Requirement to provide to a delivery plan with respect to the specified station improvements.

Reference	Summary of Obligation
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 53.6 (<i>Station Improvement fund</i>)	Requirement to provide a delivery plan with respect to the delivery of the specified station enhancements.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 54.2 (<i>Platform Extension Projects</i>)	Requirement to provide each feasibility study and Platform Extension Implementation Programme.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 55.1(c) (<i>CO2e Emission-Free Stations</i>)	Requirement to deliver a report setting out details of the performance and investment made at each Emission-Free Station.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 56.1(b) (<i>Air Quality Monitoring</i>)	Requirement to provide and publish an air quality report.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 57.1 (<i>Station WAN</i>)	Requirement to deliver the third party expert's report in respect of Existing Bandwidth.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 60.2 (<i>Car Parking Spaces</i>)	Requirement to deliver a plan which sets out as a minimum the dates by which each additional car parking space will be delivered at each of the Stations specified in Table 6 of paragraph 59 of Schedule 6.2.
Schedule 6.2 (<i>Committed Obligations</i>), paragraph 62.1(c) (<i>Promotion of Sustainable Car Usage</i>)	Requirement to update the Secretary of State on the outcome of each review at each Franchise Performance Meeting.
Part 2 to Schedule 6.2 (<i>Special Terms related to the Committed Obligations</i>), paragraph 5 (<i>Review of Compliance</i>)	Requirement to provide such evidence of compliance with Committed Obligations as the Secretary of State may request.
Schedule 6.3 (<i>Contractual Incentive Mitigations</i>), paragraph 5.2A (<i>Marketing Plan</i>)	Requirement to provide an updated Draft Marketing Plan.
Schedule 6.3 (<i>Contractual Incentive Mitigations</i>), paragraph 5.3 (<i>Marketing Plan</i>)	Requirement to provide a Draft Marketing Plan.
Schedule 6.3 (<i>Contractual Incentive Mitigations</i>), paragraph 5.5 (<i>Marketing Plan</i>)	Requirement to provide the Marketing Plan.
Schedule 6.3 (<i>Contractual Incentive Mitigations</i>), paragraph 5.10 (<i>Marketing Plan</i>)	Requirement to produce evidence setting out the expenditure incurred and showing that the activities shown in the Marketing Plan for the period under review have been carried out. Reporting requirements and requirement to confirm how further improvements could be made.

Reference	Summary of Obligation
Schedule 6.3 (<i>Contractual Incentive Mitigations</i>), paragraph 11 (<i>Changes to the Bid Fares Strategy</i>)	Requirement to provide details, information and supporting documentation relating to changes to the Bid Fares Strategy.
Schedule 6.4 (<i>Alliances</i>), paragraph 3.2 (<i>Termination of the Alliance Agreement</i>)	Requirement to notify the Secretary of State if it receives a termination notice from Network Rail relating to the Alliance Agreement or if Network Rail takes any steps to terminate the Alliance Agreement or warns the Franchisee in writing of termination.
Schedule 6.4 (<i>Alliances</i>), paragraph 4 (<i>Reporting on the Alliance Agreement</i>)	Requirement to report in writing each quarter on activities undertaken pursuant to the Alliance Agreement.
Schedule 7.1 (<i>Operational Performance</i>), paragraph 2 (<i>Reporting Requirements</i>)	Reporting requirements relating to the operational performance information set out in Appendix 2 (<i>Operational Performance Information</i>) of Schedule 11.2 (<i>Management Information</i>).
Schedule 7.1 (<i>Operational Performance</i>), paragraph 17 (<i>Service Recovery Plans and Force Majeure</i>)	Requirement to provide comprehensive records relating to the implementation of a Service Recovery Plan.
Schedule 7.1 (<i>Operational Performance</i>), paragraph 26.2 (<i>Action Plans</i>)	Requirement to produce an Action Plan to secure a Required Performance Improvement.
Schedule 7.2 (<i>Customer Experience and Engagement</i>), paragraph 5 (<i>Required Improvement and NRPS Action Plans</i>)	Requirement to produce a NRPS Action Plan to secure any Required Improvement for submission to the Secretary of State.
Schedule 7.2 (<i>Customer Experience and Engagement</i>), paragraph 9 (<i>Customer and Stakeholder Engagement Strategy</i>)	Requirement to provide to the Secretary of State any proposed revisions to the Customer and Stakeholder Engagement Strategy.
Schedule 7.2 (<i>Customer Experience and Engagement</i>), paragraph 10 (<i>Customer Report</i>)	Requirement to produce and publish a Customer Report.
Schedule 7.2 (<i>Customer Experience and Engagement</i>), paragraph 11 (<i>CCI Scheme</i>)	Requirement to provide details of any CCI Scheme proposed by the Franchisee.
Schedule 7.2 (<i>Customer Experience and Engagement</i>), paragraph 12.1 (<i>Customer Service and Satisfaction Data</i>)	Requirement to publish details of the Franchisee's level of adherence to scheduled ticket office opening hours and performance in respect of Passenger Assistance service.

Reference	Summary of Obligation
Schedule 7.2 (<i>Customer Experience and Engagement</i>), paragraphs 12.2 and 12.3 (<i>Customer Service and Satisfaction Data</i>)	Requirement to publish NRPS scores achieved by the Franchisee.
Schedule 7.3 (<i>Service Quality Regime</i>) paragraph 7.8 (<i>Independent Service Quality Audit</i>)	Requirement to provide a report together with data produced as a consequence of any Independent Service Quality Audit.
Schedule 7.3 (<i>Service Quality Regime</i>) paragraph 14 (<i>Reporting Requirements</i>)	Requirement to provide a statement for the information set out in paragraph 14.
Schedule 7.3 (<i>Service Quality Regime</i>) paragraph 15 (<i>Additional Information Requirements for Service Quality Re-Inspections</i>)	Requirement to provide 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 at the end of each Reporting Period.
Schedule 7.3 (<i>Service Quality Regime</i>) paragraph 16 (<i>Maintenance of Records</i>)	Requirement to maintain true, up to date and complete records of the results of each Service Quality Inspections.
Schedule 7.3 (<i>Service Quality Regime</i>) paragraph 20.1 (<i>Consequences of Performance falling below the SQR Benchmark</i>)	Requirement to submit proposals if requested by the Secretary of State within twenty-eight (28) days.
Schedule 7.3 (<i>Service Quality Regime</i>), paragraph 22.7 (<i>Update of the SQR Register</i>)	The Secretary of State may, at the Secretary of State's sole discretion and by written notice to the Franchisee, require the Franchisee, at any time prior to, or following, the commencement of a CIM Relevant Reporting Period, to update the SQR Register and SQR Management System.
Schedule 8.2 (<i>Profit Share Mechanism</i>), paragraph 3 (<i>Relevant Profit Report</i>)	Reporting requirements relating to Relevant Profit Reports.
Schedule 8.6 (<i>Forecast Revenue Mechanism</i>), paragraph 9.1 (<i>FRM Revenue Report</i>)	Reporting requirements relating to FRM Revenue Report.
Schedule 9.1 (<i>Financial and Other Consequences of Change</i>), paragraph 11 (<i>Information</i>)	Requirement to provide information in respect of obligations under Schedule 9.1 (Financial and Other Consequences of Change) as the Secretary of State may request.
Schedule 9.2 (<i>Identity of the Financial Model (Escrow Documents)</i>), paragraph 1 (<i>Franchisee's Obligations</i>)	Requirement to provide the Financial Model and the Escrow Documents.

Reference	Summary of Obligation
Schedule 9.5 (<i>Specified Complex Change</i>), paragraph 4 (<i>Infrastructure Issues Reviews</i>)	Requirement to deliver to the Secretary of State a written IAD review.
Schedule 9.5 (<i>Specified Complex Change</i>), paragraph 5 (<i>Use of rail industry compensation mechanisms and rights of the Secretary of State in relation to multiple or excessive compensation in relation to relevant losses</i>)	Requirement to notify the Secretary of State as soon as reasonably practicable if it becomes aware of circumstances which mean that it has been, may have been or is likely to be compensated more than once or excessively in relation to the same adverse financial impact in connection with any matter pertaining to a Working Assumption or Bidder Assumption.
Schedule 10.1 (<i>Procedure for remedying a Contravention of the Franchise Agreement</i>), paragraphs 3 (<i>Remedial Plan Notices</i>) and 4 (<i>Remedial Plans</i>)	Obligation to provide certain information in a Remedial Plan Notices/Remedial Plans.
Schedule 10.3 (<i>Force Majeure and Business Continuity</i>), paragraph 4 (<i>Business Continuity</i>)	Requirement to provide a Business Continuity Plan.
Schedule 11.1 (<i>Franchise Performance Meetings</i>), paragraph 1.3 (<i>Franchise Performance Meetings</i>)	Requirement to prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably requests.
Schedule 11.2 (<i>Management Information</i>), paragraph 9.4 (<i>Annual Financial Information</i>)	Requirement to deliver to the Secretary of State the Franchisees Annual Management Accounts and other documentation as set out in paragraph 9.4.
Schedule 11.2 (<i>Management Information</i>), paragraph 10.2 (<i>Annual Business Plans</i>)	Requirement to deliver to the Secretary of State the Franchisee's business plan for the forthcoming Franchisee Year
Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>), paragraph 2 (<i>Community Rail Partnerships</i>)	Requirement to provide a Community Rail Report.
Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>), paragraph 8 (<i>Small and Medium-sized Enterprises</i>)	Requirement to provide breakdown of Small and Medium-sized Enterprises.
Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>), paragraph 9 (<i>Apprenticeships</i>)	Requirement to provide the information relating to Apprenticeships as set out in paragraphs 9.1 and 9.2.
Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>), paragraphs 9.2/9.3 (<i>Apprenticeships</i>)	Requirement to submit the Apprenticeships Data Collection Form to the Rail Delivery Group.

Reference	Summary of Obligation
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9.5 (Apprenticeships)	Requirement to submit a draft Skills and Leadership Strategy to the Secretary of State by no later than three months after the Start Date. Requirement to meet with the Secretary of State to discuss the draft Skills and Leadership Strategy.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9.6 (Apprenticeships)	Requirement to provide the Secretary of State with any proposed revisions to the Skills and Leadership Strategy and the Apprenticeships Data Collection Form by no later than the end of each such Franchisee Year.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(d) (Sustainable Development Strategy)	Requirement to submit a copy of the assessment report produced by an independent body in respect of performance against the Rail Safety and Standard's Board's Sustainable Development Self-Assessment Framework.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(f) (Sustainable Development Strategy)	Obligation to produce an improvement plan in respect of the targets against the Sustainable Development Strategy.
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 Franchisee 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 15 (Safeguarding Strategy)	The Franchisee shall submit a completed safeguarding strategy and plan to the Secretary of State together with written confirmation from the British Transport Police that the safeguarding strategy and plan comply with the requirements of the Safeguarding on Rail Audit as soon as reasonably practicable following such approval and in any event within twelve months of the Start Date.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 16 (Incident Response Plan)	By no later than six months following the Start Date the Franchisee shall prepare and

Reference	Summary of Obligation
	provide to the Secretary of State for approval the Incident Response Plan.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 17 (Cyber Security Information Sharing Strategy)	By no later than six months following the Start Date the Franchisee shall prepare and provide to the Secretary of State for approval the Cyber Security Information Sharing Strategy.
Schedule 13.2 (Innovation Obligations), paragraph 1 (Innovation Strategy)	Requirement to submit the Innovation Strategy to the Secretary of State for approval.
Schedule 13.2 (Innovation Obligations), paragraph 2.2 (Innovation Grant Fund (Committed Obligation))	Requirement to notify the proposed Innovation Scheme to the Secretary of State in writing and in accordance with paragraph 2.2(a).
Schedule 13.2 (Innovation Obligations), paragraph 2.3 (Innovation Grant Fund (Committed Obligation))	Requirement to notify the Secretary of State as soon as reasonably practicable if the Franchisee believes that it is reasonably likely that the delivery of any approved Innovation Scheme will be delayed or delivered on a basis inconsistent with its specification.
Schedule 13.2 (Innovation Obligations), paragraph 2.4 (Innovation Grant Fund (Committed Obligation))	Requirement to notify the Secretary of State of the completion of each approved Innovation Scheme as soon as reasonably practicable.
Schedule 14.4 (Designation of Franchise Assets), paragraph 9 (Provision of Information to the Secretary of State)	Obligation to provide such information as the Secretary of State requires in respect of Primary Franchise Assets including details of Security Interests.
Schedule 14.5 (Dealing with Franchise Assets), paragraph 5 (Miscellaneous)	Obligation to provide such information as the Secretary of State requires in respect of Security Interests.
Schedule 14.6 (Residual Value Mechanism), paragraph 1.3 (Process for issue of a Certificate of Completion for RV Assets)	Obligation to provide such information as the Secretary of State requires in respect of RV Assets.
Schedule 14.6 (Residual Value Mechanism), paragraph 2 (Maintenance Requirements for RV Assets)	Obligation to provide a schedule of condition in respect of RV Assets.
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 Franchise.

Reference	Summary of Obligation
Schedule 15.3 (Handover Package), paragraph 1 (Handover Package Status)	Requirement to produce and maintain the Handover Package.
Schedule 15.3 (Handover Package), paragraph 2 (Director's Certificate)	Requirement to provide a director's certificate in each Franchisee Year.
Schedule 15.3 (Handover Pack) paragraph 3 (Key Contacts List)	Requirement to provide to the Secretary of State the Key Contacts List in accordance with the guidance issued to the Franchisee.
Schedule 15.4 (Provisions applying on and after Termination), paragraph 9 (Information about Passengers)	Requirement to provide passenger numbers information, CRM Data and Yield Management Data on expiry of the Franchise Period.
Appendix 2 (Form of Supplemental Agreement) to Schedule 15.4 (Provisions applying on and after Termination), paragraph 2.2 (Net Asset Statement)	Obligation to prepare and provide a net asset statement under the supplemental agreement.
Schedule 16.2 (Deficit Contribution Risk Sharing), paragraph 6.2 (Information Powers)	Requirement to notify the Secretary of State if, in respect of a Franchise Section, the Franchisee becomes aware that a funding shortfall has (or is reasonably expected to) come into existence or there has been (or there is reasonably expected to be) an increase or decrease in an existing funding shortfall.
Appendix 1 to Schedule 16 (Deficit Contribution Risk Sharing), paragraph 9 (Deficit Contribution Return Amounts)	Requirement to pay a Deficit Contribution Return Amount to the Secretary of State.
Schedule 17 (<i>Confidentiality, Freedom of Information and Data Protection</i>), paragraph 10 (Redactions)	Obligation to provide details of provisions of the Franchise Documents or any such variations which the Franchisee believes are exempt from the Freedom of Information Act, Environmental Information Regulations or the Act.
Schedule 17 (Confidentiality, Freedom of Information and Data Protection) paragraph 11.2 (Data Protection)	Requirement to notify the Secretary of State of any Franchise Data Breach upon the Franchisee's awareness of the same, including all relevant details, whether the Franchise Data Breach is by itself or by a Franchise Data Processor.
Schedule 17 (Confidentiality, Freedom of Information and Data Protection) paragraph 11.3 (Data Protection)	Requirement to notify (in the case of Franchisee) the Secretary of State and (in the case of any Franchise Data Processor) the Franchisee in writing of the full names and registered office addresses of the

Reference	Summary of Obligation
	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); and 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).

SCHEDULE 12**FINANCIAL COVENANTS AND BONDS**

Schedule 12:	Financial Covenants and Bonds
	Appendix 1: Template Form of Performance Bond
	Appendix 2: Template Form of Season Ticket Bond

Schedule 12

Financial Covenants and Bonds**1. Obligations**

Except to the extent that the Secretary of State may otherwise agree from time to time, the Franchisee shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;
- (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph (d) or to an employee in the ordinary course of its business);
- (c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Franchise Services;
- (d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank; or
- (e) ⁴⁸⁷ **borrow any sum, or enter into any loan or lending agreement for the purpose of borrowing from any person.**

2. ⁴⁸⁸ NOT USED.**3. ⁴⁸⁹ Breach of Financial Ratios****3.1 The Franchisee shall not during any Lock-up Period, do any of the following without the Secretary of State's consent:**

- (a) **declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchisee, without the prior written consent of the Secretary of State (in relation to a Permitted Dividend, such consent not to be unreasonably withheld or delayed and subject to paragraph 3.4);**

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

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

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

- (b) pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan ⁴⁹⁰ without the prior written consent of the Secretary of State; or
- (c) make payment under any intra-group borrowings,

provided that, during the Lock-up Period, the Franchisee may repay any borrowing and/or make any payment in respect of interest accrued on such borrowing, in each case relating to the Agreed Funding Commitment in accordance with the AFC Plan (each as defined in the Funding Deed).

3.2 "Lock-up Period" means ⁴⁹¹the period commencing on the ERMA Start Date and expiring on the date which the Secretary of State confirms by notice in writing to the Franchisee that:

- (a) the Secretary of State considers that all the obligations of the Parties to account to each other pursuant to Schedule 8.1A (Franchise Payments) have been fully performed and discharged (such confirmation not to be unreasonably withheld or delayed); and
- (b) by virtue of such notice, the Lock-Up Period has expired.

No such notice shall constitute a waiver of any rights which the Secretary of State may have under or in respect of Schedule 8.1A (*Franchise Payments*).

3.3 NOT USED.

3.4 Subject to the Franchisee fully performing and discharging all its obligations under Schedule 8.1A (*Franchise Payments*) and paragraph 9 (*Financial Information*) of Schedule 11.2 (*Management Information*) in relation to that Franchisee Year to the satisfaction of the Secretary of State, the consent of the Secretary of State pursuant to paragraph 3.1(a) and/or 3.1(b) may be sought annually or, in relation to a Franchisee Year of less than 13 Reporting Periods, on the expiry or termination of the relevant Franchisee Year. Any such consent shall be subject to the Parent or such other person acceptable to the Secretary of State entering into an agreement (in form and substance acceptable to the Secretary of State) to pay to the Franchisee, at the Secretary of State's request, the amount (if any) recoverable by the Secretary of State in respect of:

- (a) a fully liquidated Contingent SoS Claim; and/or
- (b) in respect of an adjustment to the Performance Based Fee and/or the Fixed Fee in accordance with paragraphs 9.13.1 and 15 (*Fixed Fee and Performance Based Fee*) of Schedule 8.1A (*Franchise Payments*),

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

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

provided in each case that such amount to be paid to the Franchisee by the Parent or other person acceptable to the Secretary of State shall be reduced by a percentage equivalent to the percentage rate of NTR which applied to the corresponding Permitted Dividend payment made in respect of the Performance Based Fee and/or the Fixed Fee.

3.5 For the purposes of this paragraph 3, "Permitted Dividend" means:

- (a) in relation to the Franchisee Year ending on 31 March 2021:
- (i) in respect of the period from 1 April 2020 to 01:59 on 20 September 2020, an amount in respect of any Management Fee and Performance Payment paid to the Franchisee pursuant to schedule 8.A (*Franchise Payments*) to the Franchise Agreement as such schedule 8.A (*Franchise Payments*) applied during the term of the EMA pursuant to the terms of the EMA; and
 - (ii) in respect of the period from the ERMA Start Date to 31 March 2021, an amount in respect of the Fixed Fee and/or a Performance Based Fee (if and to the extent that a Performance Based Fee has been included in a Franchise Payment paid in accordance with Schedule 8.1A (*Franchise Payments*)); and
- (b) in relation to any subsequent Franchisee Year, an amount in respect of the Fixed Fee and/or a Performance Based Fee (if and to the extent that a Performance Based Fee has been included in a Franchise Payment paid in accordance with Schedule 8.1A (*Franchise Payments*)),

in each case calculated in accordance with the following formula:

£PD =	FFPBF – (FFPBF x NTR)
where:	
£PD	means the Permitted Dividend;
FFPBF	means for the purposes of this paragraph 3.5 only:
	<p>(a) in relation to the Franchisee Year ending on 31 March 2021, an amount equal to the sum of:</p> <ul style="list-style-type: none"> (i) the aggregate of any Management Fee and Performance Payment paid to the Franchisee pursuant to schedule 8.A (<i>Franchise Payments</i>) to the Franchise Agreement as such schedule 8.A (<i>Franchise Payments</i>) applied during the term of the EMA pursuant to the terms of the EMA; and (ii) in respect of the period from the ERMA Start Date to 31 March 2021, the aggregate amount of the Fixed Fee and the Performance Based Fee (if any) that has been included in any

	<p style="text-align: center;">Franchise Payment(s) paid in accordance with Schedule 8.1A (<i>Franchise Payments</i>); and</p> <p>(b) in relation to any subsequent Franchisee Year, the aggregate amount of the Fixed Fee and the Performance Based Fee (if any) that has been included in any Franchise Payment(s) paid in accordance with Schedule 8.1A (<i>Franchise Payments</i>)</p>
NTR	<p>means the rate of corporation tax (expressed as a percentage) applicable at the time at which the Secretary of State determines the value of the applicable Performance Based Fee (if any) and the Fixed Fee in accordance with Schedule 8.1A (<i>Franchise Payments</i>), provided that:</p> <p>(a) NTR shall not be adjusted, revalued or otherwise affected by the application of tax losses or any other reliefs to which the Franchisee may be entitled; and</p> <p>(b) if a Permitted Dividend has been made in accordance with this paragraph 3 and there is a subsequent variation in the rate of corporation tax in the relevant tax year, the Permitted Dividend shall not be recalculated to take account of such variation.</p>

3A ⁴⁹²**The Franchisee shall use reasonable endeavours to plan its business activities and working capital position such that the Forecast Closing Cash Position does not fall below the Floor Cash Position.**

4. Performance Bond

4.1 The Franchisee shall procure that there shall be a valid and effective Performance Bond in place with effect from the date of the Franchise Agreement, and the Franchisee shall procure that there shall be a valid and effective Performance Bond in place:

- (a) throughout the Franchise Period; and
- (b) for a further period that is the later of the date:
 - (i) falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under the Supplemental Agreement; and
 - (ii) that is seven (7) Reporting Periods after the end of the Franchise Period.

The provisions of this paragraph 4.1 shall survive the termination of the Franchise Agreement.

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

4.2 Each Performance Bond shall:

- (a) be substantially in the form of Appendix 1 (*Template Form of Performance Bond*) to this Schedule 12;
- (b) be issued by a Bond Provider;
- (c) in the case of the Initial Performance Bond, have a value of [REDACTED⁴⁹³], and in the case of any Replacement Performance Bond, have a value equal to the amount determined under paragraph 4.4; and
- (d) have a minimum duration of three (3) years.

4.3 ⁴⁹⁴**Provision of Replacement Performance Bond**

- (a) **The Franchisee may replace the then current Performance Bond at any time.**
- (b) **The Franchisee shall replace each Performance Bond at least six (6) months prior to its scheduled expiry with a Replacement Performance Bond.**
- (c) **If at any time the Secretary of State reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Secretary of State may require the Franchisee within twenty (20) Weekdays to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State. ⁴⁹⁵The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.1A (*Franchise Payments*) or otherwise, in respect of any additional costs or expenses incurred by the Franchisee in procuring any new Performance Bond where required to do so pursuant to this paragraph 4.3(c)**

4.4 **Amount of Replacement Performance Bond**

The value of any Replacement Performance Bond shall be as follows:

- (a) in relation to the first (1st) Replacement Performance Bond, an amount which is [REDACTED⁴⁹⁶] x RPI; and

⁴⁹³ **25 October 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.**

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

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

⁴⁹⁶ **25 October 2021 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

- (b) in relation to each subsequent Replacement Performance Bond an amount which is the amount of the Replacement Performance Bond that it is replacing x RPI,

and, for the purpose of this paragraph 4.4, **RPI** shall be the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined on the date on which the Franchisee is to replace the Performance Bond divided by the Retail Prices Index for the month in which the Performance Bond that is being replaced was required to be delivered to the Secretary of State.

4.5 ⁴⁹⁷Demands under the Performance Bond

- (a) **The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:**

- (i) **that the Franchise Agreement has:**

(A) **either terminated or expired and, in either case, in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State, including where the Franchise Period has terminated or expired but provisions of the Franchise Agreement remain in operation and effect (including Schedule 8.1A (*Franchise Payments*)); and/or**

(B) **terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (*Events of Default and Termination Events*) or pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the Franchise;**

- (ii) **that a railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Act;**

- (iii) **the occurrence of an Event of Default:**

(A) **under paragraph 1.12(a) of Schedule 10.2 (*Events of Default and Termination Events*) in relation to the Performance Bond; or**

(B) **under paragraph 1.12(b) of Schedule 10.2 (*Events of Default and Termination Events*),**

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

whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;

- (iv) that the Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement;
 - (v) that the Franchisee has failed to provide a Replacement Performance Bond complying with this paragraph 4 at least six (6) months prior to the scheduled expiry of the existing Performance Bond; or
 - (vi) that the Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c).
- (b) If the Secretary of State makes a demand under the Performance Bond, he shall, within a reasonable period, account to the Franchisee for the proceeds of such Performance Bond *less* the amount of the losses, liabilities costs or expenses which, in the reasonable opinion of the Secretary of State, the Secretary of State or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer including as a result of:
- (i) early termination of the Franchise Agreement; and/or
 - (ii) any failure by the Franchisee to perform or comply with any of its obligations to the Secretary of State under the Franchise Agreement or to a Successor Operator under the Supplemental Agreement,
- and which are not otherwise recovered by the Secretary of State; and/or
- (iii) without prejudice to the generality of paragraph 4.5(b)(i), any of the following amounts which (a) in respect of any Performance Period (as defined in paragraph 1A (*Definitions*) of schedule 8.A (*Franchise Payments*)) to the Franchise Agreement as amended by the EMA), the Secretary of State has not offset against MFPP in accordance with paragraph 11 (*Management Fee and Performance Payment*) of schedule 8.A (*Franchise Payments*) to the Franchise Agreement as amended by the EMA, (b) in respect of any Franchisee Year, the Secretary of State has not offset against FFPBF in accordance with paragraph 15 (*Fixed Fee and Performance Based Fee*) of Schedule 8.1A (*Franchise Payments*); or (c) are not taken into account in any payment received by the Secretary of State pursuant to the Funding Deed:
 - (A) EMA SoS Claims, SoS Claims, Disallowable Costs, Non-Recoverable Costs and Revenue Foregone;
 - (B) PPADC (as defined in paragraph 11.1 of schedule 8.A (*Franchise Payments*)) to the Franchise Agreement as amended by the EMA); and

- (C) any other sums which the Secretary of State has the right in accordance with Schedule 8.1A (*Franchise Payments*) to offset against FFPBF; and/or
 - (D) any amount of the Final Working Capital Adjustment not paid to the Secretary of State in accordance with paragraph 10.4 of Schedule 8.1A (*Franchise Payments*).
- (c) It is agreed that for the purposes of paragraph 4.5(b) losses, liabilities, costs or expenses which the Secretary of State or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer shall include any losses, liabilities costs or expenses consequent upon the fact that the Successor Operator and any Train Operators that might succeed the Franchisee in providing all or any of the Franchise Services during the remainder of the Franchise Term may do so on a different financial basis with regard to amounts equivalent to the Franchise Payments and/or other amounts payable pursuant to Schedule 8.1A of the Franchise Agreement than the financial basis on which the Franchisee provided the Franchise Services pursuant to the Franchise Agreement.
- (d) Nothing in paragraphs 4.5(b) and 4.5(c) shall oblige the Secretary of State to account to the Franchisee for any proceeds of such Performance Bond in the circumstances described in paragraphs 4.5(a)(iii), 4.5(a)(v) or 4.5(a)(vi) until such time as the Franchisee has procured a Replacement Performance Bond which complies with the requirements of paragraph 4.
- (e) The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.1(A) (*Franchise Payments*) or otherwise, of any losses, liabilities, costs or expenses incurred by the Franchisee arising out of or in connection with any lawful demand made by the Secretary of State under the Performance Bond pursuant to this paragraph 4.

4.6 Characteristics of Performance Bond Provider

- (a) In determining whether a Bond Provider under any Replacement Performance Bond is acceptable, the Secretary of State may exercise his discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.
- (b) The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.

4.7 Provision of more than one Performance Bond

The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Performance Bond by providing up to three (3) valid and effective Performance Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 4.4. With the exception of the value of each individual Performance Bond the provisions of the Franchise

Agreement in relation to the Performance Bond shall be deemed to apply separately in relation to each such Performance Bond. Where more than one (1) Performance Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under one or more of such Performance Bonds and the extent to which he accounts to the Franchisee the proceeds of each such Performance Bond in accordance with the provisions of paragraph 4.5(b).

5. Season Ticket Bond

5.1 Provision of Season Ticket Bond

The Franchisee shall procure that, for each Franchisee Year throughout the Franchise Term and during the relevant call period specified in Clauses 4 and 5 of the Season Ticket Bond, there shall be in place a valid and effective Season Ticket Bond substantially in the form of Appendix 2 (*Template Form of Season Ticket Bond*) to this Schedule 12.

5.2 Provision of Replacement Season Ticket Bond

No later than one (1) Reporting Period before the expiry of each Bond Year, the Franchisee shall provide to the Secretary of State (or procure that the Secretary of State receives) a Season Ticket Bond for the following Bond Year:

- (a) substantially in the form of Appendix 2 (*Template Form of Season Ticket Bond*) to this Schedule 12 (or in any other form acceptable to the Secretary of State in his discretion);
- (b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and
- (c) in an amount determined in accordance with paragraph 5.3.

5.3 Amount of Season Ticket Bond

The amount of any Season Ticket Bond shall vary for each Reporting Period during the Bond Year to which the Season Ticket Bond relates in accordance with the following formula:

$$STBA = STL \times \frac{((RPI \times 100) + k)}{100} \times Z$$

where:

STBA equals the amount of the Season Ticket Bond in the relevant Reporting Period;

STL equals in respect of such Reporting Period:

- (a) the maximum amount which would be payable by the Franchisee in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and paragraph 3.3 of Schedule 15.4 (Provisions applying on and after Termination) and the rights and liabilities of the Franchisee relating to an obligation of carriage under the terms of any Season Ticket Fares which were transferred under a Transfer Scheme relating to that Supplemental Agreement to a Successor Operator at that time; and

(b) the Stored Credit Balance which would be held by the Franchisee, if the Franchise Agreement were to terminate on any day during the Reporting Period (the "**Relevant Reporting Period**") falling thirteen (13) Reporting Periods before such Reporting Period,

provided that for these purposes only:

- (i) Season Ticket Fares shall mean any Season Ticket Fare which expires more than seven (7) days after it first comes into effect;
- (ii) the Start Date shall be assumed, where relevant, to have occurred before the commencement of the Relevant Reporting Period; and
- (iii) if STL cannot reasonably be determined at the time at which the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond (including because the Relevant Reporting Period has not yet occurred), the Relevant Reporting Period shall be the Reporting Period falling twenty six (26) Reporting Periods before the Reporting Period in the relevant Bond Year;

RPI equals the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined at the time the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond divided by the Retail Prices Index for the month falling twelve (12) months before such month;

k has the value attributed to it in Schedule 5 (Fares and Smart Ticketing) for the Fare Year in which the Reporting Period in the relevant Bond Year falls; and

Z equals **+1** or, if the Relevant Reporting Period falls twenty six (26) Reporting Periods before such Reporting Period, an amount equal to:

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

where **RPI** and **k** are determined for the twelve (12) months and the Fare Year preceding the twelve (12) months and the Fare Year for which **RPI** and **k** are respectively determined above.

- 5.4 The Franchisee shall supply to the Secretary of State, not later than three (3) Reporting Periods before the end of each Bond Year, its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the Secretary of State may request in connection therewith.
- 5.5 The Franchisee and the Secretary of State shall endeavour to agree the amount of such Season Ticket Bond by no later than two (2) Reporting Periods before the end of each Bond Year. If the Parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond Year, the matter shall be resolved in accordance with the Dispute Resolution Rules.
- 5.6 If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year has not been agreed two (2) Reporting Periods before the end of the preceding

Bond Year, then, until the amount is agreed or determined in accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the Secretary of State.

- 5.7 ⁴⁹⁸**The Secretary of State and the Franchisee may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time, and the Secretary of State may direct the Franchisee to amend the amount covered or required to be covered under a Season Ticket Bond when, in the Secretary of State's sole discretion, the STBA calculated pursuant to paragraph 5.3 above may not accurately represent the value of the Season Ticket suspense liabilities held by the Franchisee.**

5.8 Demands under the Season Ticket Bond

- (a) The Season Ticket Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
- (i) that the Franchise Agreement has terminated or expired;
 - (ii) that a railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Act; or
 - (iii) that an Event of Default:
 - (A) under paragraph 1.12(a) of Schedule 10.2 (*Events of Default and Termination Events*) in relation to the Season Ticket Bond; or
 - (B) under paragraph 1.12(c) of Schedule 10.2 (*Events of Default and Termination Events*),

has occurred (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).
- (b) If the Secretary of State makes a demand under the Season Ticket Bond, he shall account to the Franchisee for the proceeds of such Season Ticket Bond remaining following settlement of all liabilities or obligations of the Franchisee in respect of any Season Ticket Fares and/or Stored Credit Balance that may be transferred or is transferred whether under a Transfer Scheme (or otherwise) to a Successor Operator.
- (c) **NOT USED.**

5.9 Characteristics of Season Ticket Bond Provider

- (a) In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Secretary of State may exercise his discretion

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

and shall not be obliged to accept a Bond Provider accepted under any previous Season Ticket Bond.

- (b) The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.
- (c) The Secretary of State agrees that, subject to receipt of a Season Ticket Bond in an amount determined in accordance with paragraph 5.3 in respect of any Bond Year, he shall release the relevant Bond Provider from any liability under the Season Ticket Bond provided in relation to the preceding Bond Year on the expiry of such Bond Year, provided that no Event of Default has occurred and is unremedied or continuing.

5.9A **Provision of more than one Season Ticket Bond**

The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Season Ticket Bond by providing up to three (3) valid and effective Season Ticket Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 5.3. With the exception of the value of each individual Season Ticket Bond the provisions of the Franchise Agreement in relation to the Season Ticket Bond shall be deemed to apply separately in relation to each such Season Ticket Bond. Where more than one (1) Season Ticket Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under one or more of such Season Ticket Bonds and the extent to which he accounts to the Franchisee for the proceeds of each such Season Ticket Bond in accordance with the provisions of paragraph 5.8(b).

5.10 **Meaning of "Reporting Period"**

References in this paragraph 5 to a **"Reporting Period"** shall be construed, where the Franchisee so requests and the Secretary of State consents (such consent not to be unreasonably withheld), to be references to each consecutive seven (7) day period (or such other period as may be agreed) during such Reporting Period. The Franchisee may only make such a request in respect of a maximum of two (2) Reporting Periods in each Bond Year and only where the amount of the Season Ticket Bond over any such period would, in the reasonable opinion of the Franchisee, differ materially if determined by reference to such seven (7) day periods.

6. **Tax Compliance**

- 6.1 The Franchisee represents and warrants that as at the Start Date, it has notified the Secretary of State in writing of any Occasions of Tax Non-Compliance where the Franchisee (including where the Franchisee is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) is the Affected Party (as defined in paragraph 6.3 below) or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance where the Franchisee (including where the Franchisee is a joint venture or consortium, the members of that joint venture or consortium) is the Affected Party.

- 6.2 If, at any point during the Franchise Term, an Occasion of Tax Non-Compliance occurs in relation to any Affected Party, the Franchisee shall:
- (a) notify the Secretary of State in writing of such fact within five (5) Weekdays of its occurrence; and
 - (b) promptly provide to the Secretary of State:
 - (i) details of the steps which the Affected Party is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Secretary of State may reasonably require.

6.3 For the purposes of this paragraph 6, the following defined terms shall have the following meanings:

"Affected Party"	has the meaning given to it in the definition of Occasion of Tax Non Compliance;
"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
"General Anti-Abuse Rule"	means: <ul style="list-style-type: none"> (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"Halifax Abuse Principles"	means the principle explained in the CJEU Case C-255/02 Halifax and others; and
"Occasion of Tax Non-Compliance"	means, in respect of the Franchisee (including where Franchisee is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) or the Franchisee (such party being the "Affected Party"): <ul style="list-style-type: none"> (a) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 is found to be incorrect as a result of:

- (i) a Relevant Tax Authority successfully challenging the Affected Party under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Affected Party was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion.

7. ⁴⁹⁹**Survival**

This Schedule 12 and any other provisions of the Franchise Agreement reasonably required for the purpose of giving this Schedule 12 full effect shall survive the termination or expiry of the Franchise Term (however arising) and continue in full force and effect in accordance with its terms.

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

APPENDIX 1 TO SCHEDULE 12
Template Form of Performance Bond

[DOCUMENT "PB" - PERFORMANCE BOND]

Dated [INSERT DATE]

[INSERT NAME OF BOND PROVIDER]

[Template] Performance Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(The Secretary of State)

Whereas:

We are informed that you have entered into a franchise agreement dated [INSERT DATE] (the "**Franchise Agreement**") with [INSERT NAME OF FRANCHISEE] (the "**Franchisee**"). Pursuant to the Franchise Agreement the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed performance bond in the amount of [£INSERT AMOUNT] (the "**Bond Value**") to secure the performance by the Franchisee of and its compliance with their respective obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in Clause 2 hereof) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:

- (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond; and
- (b) notwithstanding anything contained herein, our liability hereunder shall expire on the earliest of:
 - (i) the date falling six (6) months after the date on which any railway administration order is made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993; and
 - (ii) the latest of:

- (A) the date falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under each relevant Supplemental Agreement; and
 - (B) the date falling seven (7) Reporting Periods after the end of the Franchise Period; and
 - (C) the end of the Franchise Term; and
- (iii) [INSERT DATE],

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value or less, after which date this undertaking shall be void whether returned to us or not.

2. **“Call Event”** means, in this Bond, any of:

- (a) the termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- (b) the termination of the Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (*Events of Default and Termination Events*) or pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the East Midlands franchise;
- (c) the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993;
- (d) the occurrence of an Event of Default under the Franchise Agreement in respect of:
 - (i) paragraph 1.12(a) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement in relation to the Performance Bond; or
 - (ii) paragraph 1.12(b) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement,
 whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;
- (e) the failure by the Franchisee to perform or comply with its obligations under any Supplemental Agreement;
- (f) the failure by the Franchisee to provide the Secretary of State with a Replacement Performance Bond which complies with paragraph 4 of Schedule 12 (*Financial Covenants and Bonds*) of the Franchise Agreement at least six (6) months prior the scheduled expiry of the existing Performance Bond; or

- (g) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (*Financial Covenants and Bonds*) of the Franchise Agreement.
3. This undertaking is made to you, your successors and your assigns.
 4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
 5. You may make demand or give notice to us under this Bond in writing by hand or via email transmission to us as follows:

Address: [INSERT BOND PROVIDER'S ADDRESS]

Email Address: [INSERT BOND PROVIDER'S EMAIL ADDRESS]
 6. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and any Supplemental Agreement as amended from time to time.
 7. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.
 8. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [INSERT DAY AND MONTH] of [INSERT YEAR].

SCHEDULE TO THE PERFORMANCE BOND**SPECIMEN DEMAND NOTICE**

To: [INSERT NAME AND ADDRESS OF BOND PROVIDER]

[INSERT DATE OF DEMAND NOTICE]

We refer to the performance bond issued by you on [INSERT DATE OF BOND] (the "**Performance Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and [INSERT NAME OF FRANCHISEE] (the "**Franchisee**") on [INSERT FRANCHISE AGREEMENT SIGNATURE DATE].

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [INSERT DATE OF OCCURRENCE OF CALL EVENT]: **[DRAFTING NOTE: DELETE AS APPROPRIATE]**

- [The Franchise Agreement has **[terminated/expired]** on [INSERT DATE OF TERMINATION/EXPIRY] in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State.]
- The Franchise Agreement has terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (Events of Default and Termination Events) on [INSERT DATE OF TERMINATION] in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the East Midlands franchise.
- [A railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993.]
- [That an Event of Default under the Franchise Agreement has occurred under:
 - [(a) paragraph 1.12(a) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement in relation to the Performance Bond; or]
 - [(b) paragraph 1.12(b) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement.]]
- The Franchise Agreement has terminated pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the East Midlands franchise.
- [The Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement.]
- [The Franchisee has failed to provide a Replacement Performance Bond (as described in the Franchise Agreement) complying with paragraph 4 of Schedule 12 (*Financial Covenants and Bonds*) of the Franchise Agreement at least six (6) months prior to the scheduled expiry of the existing Performance Bond.]
- [The Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when

required to do so in accordance with paragraph 4.3(c) of Schedule 12 (*Financial Covenants and Bonds*) of the Franchise Agreement.]

We hereby demand immediate payment from you of [SPECIFY ALTERNATIVE AMOUNT IF NOT BOND VALUE] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[INSERT ACCOUNT DETAILS TO WHICH BOND MONIES TO BE PAID INTO]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of **Secretary of State for Transport**

.....

APPENDIX 2 TO SCHEDULE 12
Template Form of Season Ticket Bond

DOCUMENT "STB" - SEASON TICKET BOND

Dated [INSERT DATE]

[INSERT NAME OF BOND PROVIDER]

[Template] Season Ticket Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(The "**Secretary of State**")

Whereas:

We are informed that you have entered into a franchise agreement dated [INSERT DATE] (the "**Franchise Agreement**") with [INSERT NAME OF FRANCHISEE] (the "**Franchisee**") under which the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed season ticket bond to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in Schedule 1 (Specimen Demand Notice) and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in Clause 2) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value (as defined in Clause 3). All sums payable hereunder shall be paid free and clear of any restriction or condition and free and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:
 - (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value on the date of occurrence of the Call Event stated in your written demand on us; and
 - (b) you may only call on us (whether on one or more occasions) in relation to one Call Event, such Call Event to be determined by reference to the first written demand which is received by us in the form set out in Schedule 1 (Specimen Demand Notice).
2. "**Call Event**" means, in this Bond, any of:
 - (a) the termination or expiry of the Franchise Agreement;
 - (b) the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993; or
 - (c) the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (*Events of*

Default and Termination Events) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).

3. Bond Value shall mean, in respect of any date, the amount specified in Schedule 2 (Bond Value) as being the value of this Bond for such date (provided that for these purposes the date of occurrence of the Call Event specified in Clause 2(c) shall be deemed to be the last date for which a Bond Value is assigned under Schedule 2 (Bond Value) of this Bond).
4. Notwithstanding anything contained herein, but subject to Clause 5, our liability hereunder in respect of any Call Event shall expire no later than the end of the Franchise Term and:
 - 4.1 in relation to a Call Event specified in Clauses 2(a) and 2(b), at noon (London time) on the date falling three (3) business days after the date of occurrence of such Call Event (business day being a day on which banks are open for business in the City of London); and
 - 4.2 in relation to any other Call Event, on the day falling one (1) month after the last date for which a Bond Value is assigned under Schedule 2 of this Bond unless you notify us in writing prior to the relevant expiry time that the relevant Call Event has occurred (whether or not you call on us at the same time under this Bond).
5. If you do notify us under Clause 4 our liability shall expire on:
 - 5.1 if the Call Event in respect of which you may call on us under this Bond is the termination of the Franchise Agreement, the date falling one (1) month after the determination of the Purchase Price (as defined in the Supplemental Agreement) under each relevant Supplemental Agreement;
 - 5.2 if the Call Event in respect of which you may call on us under this Bond is the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993, the date falling three (3) months after the making of such railway administration order; or
 - 5.3 if the Call Event in respect of which you may call on us under this Bond is the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof), the date falling one (1) month after your notification to us under Clause 4,

except, in each case, in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before the relevant date, after which date this undertaking shall be void whether returned to us or not.
6. This undertaking is made to you, your successors and your assigns.
7. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.

8. You may make demand or give notice to us under this Bond in writing by hand or via email transmission to us as follows:

Address: [INSERT BOND PROVIDER'S ADDRESS]

Email Address: [INSERT BOND PROVIDER'S EMAIL ADDRESS]

9. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and the Supplemental Agreement as amended from time to time and terms defined therein shall have the same meaning in this Bond.
10. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.
11. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [INSERT DAY AND MONTH] of [INSERT YEAR].

SCHEDULE 1 TO THE SEASON TICKET BOND

SPECIMEN DEMAND NOTICE

To: [INSERT NAME AND ADDRESS OF BOND PROVIDER]

[INSERT DATE OF DEMAND NOTICE]

We refer to the season ticket bond issued by you on [INSERT DATE OF BOND] (the "Season Ticket Bond") in connection with the franchise agreement (the "Franchise Agreement") entered into between the Secretary of State for Transport (the "Secretary of State") and [INSERT NAME OF FRANCHISEE] (the "Franchisee") on [INSERT FRANCHISE AGREEMENT SIGNATURE DATE].

We hereby notify you that the following Call Event (as defined in the Season Ticket Bond) occurred on [INSERT DATE OF OCCURRENCE OF CALL EVENT]: **[DRAFTING NOTE: DELETE AS APPROPRIATE]**

- [The Franchise Agreement **[terminated/expired]** on [INSERT DATE OF [TERMINATION/EXPIRY]].
- [A railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993.]
- [An Event of Default occurred under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement.]

We hereby demand immediate payment from you of [SPECIFY ALTERNATIVE AMOUNT IF NOT BOND VALUE] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[INSERT ACCOUNT DETAILS TO WHICH BOND MONIES TO BE PAID INTO]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of **Secretary of State for Transport**

.....

SCHEDULE 2 TO THE SEASON TICKET BOND

Bond Value

Call Event occurring in Reporting Period	Bond Value £
1	[INSERT AMOUNT]
2	[INSERT AMOUNT]
3	[INSERT AMOUNT]
4	[INSERT AMOUNT]
5	[INSERT AMOUNT]
6	[INSERT AMOUNT]
7	[INSERT AMOUNT]
8	[INSERT AMOUNT]
9	[INSERT AMOUNT]
10	[INSERT AMOUNT]
11	[INSERT AMOUNT]
12	[INSERT AMOUNT]
13	[INSERT AMOUNT]

SCHEDULE 13**RAIL INDUSTRY INITIATIVES AND INNOVATION OBLIGATIONS**

Schedule 13.1:	Rail Industry Initiatives and Co-operation
	Appendix 1: Community Rail Partnerships
	Appendix 2: D&I Strategy
Schedule 13.2:	Innovation Obligations
	Appendix 1: NOT USED
Schedule 13.3:	Mobile Communications Service

Schedule 13.1

Rail Industry Initiatives and Co-operation**1. British Transport Police**

1.1 The Franchisee shall give due consideration to any request by the British Transport Police to provide suitable accommodation (including additional or alternative accommodation) or facilities at Stations to enable the British Transport Police to effectively perform the services owed to the Franchisee under any contract or arrangement entered into between the British Transport Police and the Franchisee.

1.2 The Franchisee shall:

(a) work with the British Transport Police to:

- (i) reduce crime and anti-social behaviour on the railway;
- (ii) reduce minutes lost to police-related disruption;
- (iii) increase passenger confidence with personal security on train and on station;

(b) work in partnership with the British Transport Police and conduct an annual assessment of the security and crime risk at all Stations and across the Franchise generally;

(c) co-operate with the British Transport Police to provide it with access to records and/or systems maintained by the Franchisee which relate to lost property to enable the British Transport Police to have access to such information when dealing with items reported to them as lost; and

(d) consult with the British Transport Police as to its requirements in relation to records and/or systems and shall ensure that the British Transport Police has access to such records and/or systems within fifteen (15) Weekdays of the Start Date and in any event within five (5) Weekdays of the notification of a crime by the British Transport Police.

1.3 The Franchisee shall consult with the British Transport Police in relation to plans to develop any part of the land within a Property Lease which could affect staff or customers and give the British Transport Police an opportunity to advise on and/or provide comments on any opportunities for the enhancement of safety and reduction in crime.

2. Community Rail Partnerships

2.1 The Franchisee shall become a member of and shall continue to participate in the Community Rail Partnerships relevant to the Passenger Services, including but not limited to the Community Rail Partnerships listed in the table in Appendix 1 to this Schedule 13.1 (and any successor Community Rail Partnerships). As part of such participation the Franchisee shall identify a senior Franchise Employee whose duties shall include:

(a) supporting the Community Rail Partnerships;

- (b) ensuring managerial focus within the Franchisee’s organisation to enable the Franchisee to meet its Community Rail Partnership obligations; and
 - (c) leading on the Franchisee’s development of community rail projects.
- 2.2 The Franchisee shall, at the request of the Secretary of State:
- (a) co-operate with the Secretary of State, Network Rail, ACoRP, local transport authorities and/or any other person as the Secretary of State may nominate for the purposes of developing and furthering the success of the Community Rail Partnerships;
 - (b) co-operate with, establish and/or participate in any Community Rail Partnership;
 - (c) provide technical support in respect of timetable specification for the Community Rail Partnerships, including providing appropriate journey and revenue data; and
 - (d) co-operate in the development of the Secretary of State’s initiatives to examine:
 - (i) options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route (such options to include changes in working practices of the relevant Franchise Employees, reducing rolling stock lease costs and maximising opportunities for obtaining local funding of development at relevant stations and developing new ways of maintaining and renewing relevant railway infrastructure); and
 - (ii) the actual costs incurred in operating, maintaining and renewing the infrastructure relevant for such Community Rail Route.
- 2.3 The Franchisee shall use reasonable endeavours to develop and implement the Community Rail Partnership’s initiatives in order to increase the use of the Passenger Services by non-users of the Passenger Services and tourists including, where appropriate, the development of and implementation of marketing strategies.
- 2.4 The Secretary of State may at any time, by proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*), require the Franchisee to develop and/or implement any changes to the Franchise Services and/or the transfer of any Franchise Services to another Train Operator in order to deliver either of the initiatives that were examined pursuant to paragraph 2.2(d).
- 2.5 The Franchisee shall become a member and shall continue to participate in the National Community Rail Steering Group.
- 2.6 Within three (3) months of the Start Date in respect of the first Franchisee Year and no later than three (3) months before the start of each subsequent Franchisee Year, the Franchisee shall provide to the Secretary of State a report (“**Community Rail Report**”) setting out the distribution of the CRP Amount in full amongst the Community Rail Partnerships identified in paragraphs 2.1 and 2.2.

- 2.7 The Community Rail Report shall contain the following information:
- (a) a statement confirming that the Franchisee's distribution of funds to the Community Rail Partnerships takes account of the Secretary of State's then current published Community Rail Strategy;
 - (b) a statement confirming that the Franchisee has discussed the funding of the Community Rail Partnerships with ACoRP and has taken sufficient account of ACoRP's views;
 - (c) confirmation that the Franchisee has discussed with all Community Rail Partnerships the aims and needs of such partnerships and the funding required to achieve these;
 - (d) a table setting out the relevant portions of the CRP Amount which are to be paid to each Community Rail Partnership (on a non-indexed basis) over the next three (3) years (it being acknowledged that these amounts are likely to be different for each Community Rail Partnership);
 - (e) the activities undertaken by the Franchise pursuant to paragraph 2.3 of this Schedule 13; and
 - (f) such further information as the Secretary of State may from time to time request.
- 2.8 Within twenty-eight (28) days of the signature date of this Agreement, the Franchisee shall notify the Community Rail Partnerships of the CRP Amount which shall be distributed to such partnerships during the Franchise Term. The Franchisee shall within thirty (30) days of the commencement of each Franchisee Year, make the relevant payments totalling the CRP Amount to each of the Community Rail Partnerships identified in the Community Rail Report for that year.
- 2.9 The Franchisee shall hold an annual conference for the Community Rail Partnerships' officers and station adopters in conjunction with ACoRP to encourage the spread of best practice and to communicate plans for franchise development. The first such conference shall be held within six (6) months of the Start Date.
- 2.10 The Franchisee shall devise and implement, in collaboration with the relevant Community Rail Partnership, a **"station adopters scheme"** under which members of the local community can **"adopt"** a local Station and engage in activities such as:
- (a) promotion of the Passengers Services calling at the Station;
 - (b) monitoring and reporting faults, damage and anti-social and criminal behaviour;
 - (c) carrying out minor Station cleaning and maintenance tasks and the development and cultivation of station gardens.
- 2.11 The Franchisee shall take reasonable steps to promote the station adopters scheme and provide safety and other training and support to participants.
- 2.12 In collaboration with the relevant Community Rail Partnership and other Stakeholders the Franchisee 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.

3. **Development of Industry Systems**

The Franchisee shall fully and effectively co-operate, in a manner consistent with it being a responsible Train Operator of the Franchise, with Network Rail, the Secretary of State, ORR and all other relevant railway industry bodies and organisations in relation to the development of anything that can reasonably be considered to be a railway industry system including systems in relation to the attribution of train delay, the allocation of revenue and the collection and dissemination of industry wide information.

4. **Co-operation with Industry Schemes**

The Franchisee shall co-operate (in good faith) with the Secretary of State, the relevant Local Authority and/or any other affected railway industry parties in the development and the implementation of initiatives relating to its participation in multi-modal fares schemes and Traveline (the "**Industry Schemes**"), where such Industry Schemes relate to the Franchise.

5. **Co-operation with Local Authorities**

5.1 **General co-operation with Local Authority in respect of schemes**

(a) The Franchisee shall co-operate in good faith with any Local Authority that seeks to promote a scheme for the provision of additional or varied Passenger Services including by attending meetings, contributing to feasibility schemes and project plans and liaising with relevant industry participants including Network Rail.

(b) Paragraph 5.1 does not oblige the Franchisee to incur any cost in the actual provision of the revised Passenger Services.

6. **NOT USED**

7. **NOT USED**

8. **Small and Medium-sized Enterprises**

8.1 The Franchisee shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Franchise Services.

8.2 By no later than 31 January in each year (and within one (1) month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of SMEs used by the Franchisee in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

9. **Apprenticeships**

9.1 The Franchisee shall at all times keep accurate and complete records of the Apprenticeships (and the training provided to apprentices) offered by the Franchisee and (if applicable) its immediate UK based supply chain in delivering the

Franchise Services. In particular, in relation to each Reporting Period the Franchisee 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 Franchisee shall provide an Apprenticeships Data Collection Form to the Rail Delivery Group containing the information set out in paragraph 9.1 for the 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 Franchisee Employee who commences an Apprenticeship and which is included in the Apprenticeships Data Collection Form:
- (a) the Franchisee shall not cause or permit any Personal Data whatsoever which relates to any Franchisee 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 Franchisee 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 Franchisee 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*

Franchisee and, accordingly, the Franchisee would be in contravention 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 Franchisee to effect the anonymised aggregation of the Personal Data comprised in information relating to each Franchisee 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 Franchisee 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 Franchisee in accordance with the Data Protection Legislation;
 - (iii) the fairness principle of the Data Protection Legislation is satisfied including by issuing all relevant privacy notices in relation to the collecting and processing of the Personal Data by the Franchisee, 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 Franchisee, 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 Franchisee 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 Franchise Period) the Franchisee 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 Franchise 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.

9.3 By no later than 31 January in each year (and within one (1) month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the information recorded pursuant to paragraph 9.1 of this Schedule 13.1 during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

- 9.4 The Franchisee shall ensure that the number of Franchise Employees who begin an Apprenticeship in any Franchisee Year shall constitute 2.5% of the total number of Franchise Employees (the "**Apprenticeships Requirement**"), provided that:
- (a) the Apprenticeships Requirement shall be subject to a pro rata reduction in relation to the first Franchisee Year, it being acknowledged that for such purposes the first Franchisee Year shall be treated as commencing on the date on which the Skills and Leadership Strategy is adopted by the Franchisee pursuant to paragraph 9.5 of this Schedule 13.1; and
 - (b) the Apprenticeships Requirement shall be subject to a pro rata reduction in respect of the Final Franchisee Year in the event that the Final Franchisee Year consists of less than thirteen (13) Reporting Periods,

and the Franchisee shall provide evidence of the satisfaction of the Apprenticeships Requirement to the Secretary of State within ten (10) days of the end of each Franchisee Year.

- 9.5 The Franchisee shall submit a draft Skills and Leadership Strategy to the Secretary of State by no later than three (3) months after the Start Date. Such draft Skills and Leadership Strategy shall set out the comprehensive, robust and deliverable strategy of the Franchisee for providing an appropriately skilled and trained workforce of Franchise Employees based on a Skills Gap Analysis including through the delivery of the Apprenticeships specified in the Apprenticeships Data Collection Form. The draft Skills and Leadership Strategy shall take into account the likely short, medium and long term requirements of the Franchisee and any Successor Operator including in the context of expected change to the Franchise Services (including as a result of technological change) and the age profile of the Franchise Employees. The draft Skills and Leadership Strategy shall include:
- (a) a management/leadership maturity model to help target and improve investment in developing leadership and management; and
 - (b) details of a leadership development programme which shall be introduced by the Franchisee on the adoption of the Skills and Leadership Strategy, in order to address business improvement and individual leader development and which will be based around the RSSB's 'Rail Sustainable Development Principles'.

The Franchisee shall meet with the Secretary of State to discuss the draft Skills and Leadership Strategy and shall have due regard to the opinions of the Secretary of State. The Skills and Leadership Strategy shall be finalised and adopted by the Franchisee within six (6) months of the Start Date and the Franchisee shall implement it in accordance with its terms from the date that it is adopted.

- 9.6 The Franchisee shall:
- (a) undertake and complete:
 - (i) a Skills Gap Analysis during each Franchisee Year; and
 - (ii) a review of its Skills and Leadership Strategy and compliance with the Apprenticeships Data Collection during each of the second and fourth Franchisee Years; and

- (b) provide the Secretary of State with any proposed revisions to the Skills and Leadership Strategy and the Apprenticeships Data Collection Form arising out of such review by no later than the end of each such Franchisee Year.

9.7 The aim of such review shall be to update the Skills and Leadership Strategy by reference to the updated Skills Gap Analysis and to ensure that the Skills and Leadership Strategy continues to effectively achieve its purposes to the greatest extent reasonably practicable. The review shall check compliance with the targets contained in the Apprenticeships Data Collection Form and if they have not been met shall propose robust and effective strategies and methodologies to be contained in the revised Skills and Leadership Strategy to ensure delivery in future. The review may propose amendments to the Apprenticeships Data Collection Form that are consistent with any proposed revisions to the Skills and Leadership Strategy. Any revisions to the Skills and Leadership Strategy (including the Apprenticeships Data Collection Form) shall require the consent of the Secretary of State (such consent not to be unreasonably withheld or delayed). The Franchisee shall implement any revised Skills and Leadership Strategy in accordance with its terms from the date that the Secretary of State consents to the relevant revisions.

9.8 **NOT USED.**

9.9 ⁵⁰⁰**Diversity and Inclusion**

9.9.1 Diversity and Inclusion Strategy

- (a) **Within 12 weeks after the ERMA Start Date, the Franchisee shall prepare a draft of its D&I Strategy and submit it to the Secretary of State. The draft shall include details of:**
- (i) **the diversity and inclusion principles that the Franchisee maintains and/or will establish within its organisation, including but not limited to, in relation to recruitment practices, working environments and procedures**
 - (ii) **the activities, policies and procedures that the Franchisee will employ (for example, including in relation to targeted recruitment policies, promotion of flexible working, mentoring programmes, school visits and annual staff diversity and inclusion surveys) that will demonstrate that it is an inclusive employer;**
 - (iii) **how the Franchisee will evidence compliance with its diversity principles, policies and procedures against the Diversity KPIs (as defined in paragraph 9.9.3);**
 - (iv) **how it will achieve and/or maintain diversity accreditation in accordance with a Recognised Accreditation Scheme in accordance with paragraph 9.9.2; and**

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

- (v) how the Franchisee will comply with its Recruitment Objectives.
- (b) The Secretary of State may provide comments on the draft D&I strategy to the Franchisee and the Parties shall use all reasonable endeavours to agree the form of D&I Strategy within four (4) months of the date on which it was provided to the Secretary of State pursuant to paragraph 9.9.1(a).
- (c) If the Parties are unable to agree a D&I Strategy within the period set out in paragraph 9.9.1(b) the Secretary of State may reasonably determine the D&I Strategy.
- (d) The Secretary of State may, from time to time, recommend such changes to the Approved D&I Strategy as it considers reasonable.
- (e) The Franchisee shall use all reasonable endeavours to implement and comply with the Approved D&I Strategy.
- (f) In respect of any new contract or arrangements it enters into with third parties during the Franchise Term, the Franchisee shall use all reasonable endeavours to ensure it obliges its counterparty to comply with and implement suitable diversity and inclusion policies.
- (g) To the extent the Franchisee is entering into any material amendments to any existing contracts or arrangements with third parties, it shall use all reasonable endeavours to ensure that the contract or arrangement (as amended) does not materially adversely affect the Franchisee's ability to comply with its D&I Strategy.

9.9.2 Diversity Accreditation

The Franchisee shall use all reasonable endeavours to attain and/or maintain at least one diversity accreditation from a Recognised Accreditation Scheme within such timeframe as may be set out in its D&I Strategy which shall comply with the timescales set by the relevant Recognised Accreditation Scheme or as otherwise agreed between the Parties.

⁵⁰¹9.9.3 Performance reporting

- (a) The Franchisee shall develop D&I Initiatives KPIs and D&I Characteristics KPIs (together, the "Diversity KPIs").
- (b) The Franchisee shall design its Diversity KPIs with a focus on such areas as the Secretary of State may notify to it and in

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

accordance with any guidance as the Secretary of State may provide.

- (c) **The Franchisee shall collect suitable data to evidence its performance against the Diversity KPIs of which it shall:**
 - (i) **provide details on as part of the D&I Annual Report; and**
 - (ii) **make available, in an orderly fashion, to any Successor Operator.**
- (d) **The Franchisee shall submit a D&I Annual Report to the Secretary of State on the D&I Annual Reporting Date.**
- (e) **The Parties acknowledge and agree that the Franchisee's D&I Annual Report shall be provided substantially in the same form as the Secretary of State may request and shall include:**
 - (i) **evidence of the Franchisee's performance against, and impact of implementing, its D&I Strategy;**
 - (ii) **evidence of the Franchisee's performance against the Diversity KPIs;**
 - (iii) **evidence of the Franchisee working towards achieving and maintaining diversity accreditation in accordance with paragraph 9.9.2;**
 - (iv) **evidence of the Franchisee establishing diversity in its procurement process and using a diverse supply chain;**
 - (v) **evidence of the Franchisee's performance against its Recruitment Objectives;**
 - (vi) **a record of any other diversity data collected by the Franchisee in respect of its workforce; and**
 - (vii) **such other information and data as the Secretary of State may reasonably request at least three (3) months prior to the D&I Annual Reporting Date.**

9.9.4 Diversity and Inclusion Champion

- (a) **As soon as reasonably practicable and by no later than 31 October 2020, the Franchisee shall (to the extent that the Franchisee has not already done so) nominate a board director of the Franchisee or a member of the senior executive team of the Franchisee to act as D&I Champion.**
- (b) **The Franchisee shall ensure that the D&I Champion role is filled as soon as reasonably practicable after such role becomes vacant throughout the term of this Franchise Agreement.**

9.9.5 Recruitment Targets and Objectives

- (a) **The Franchisee shall set out suitable recruitment targets and associated timeframes from time to time in respect of all new recruits across all grades, jobs, positions and roles (the "Recruitment Targets") in its D&I Strategy which, amongst other things, shall include:**
- (i) **gender equality targets, including a target of 50% female new recruits across all grades, jobs, positions and roles; and**
 - (ii) **targets specifying the percentage of new recruits across all grades, jobs, positions and roles which will be ethnic minorities.**
- (b) **The Secretary of State shall consider the proportionality of the Recruitment Targets by reference to:**
- (i) **the demographics of the workforce in each region as indicated by the most recent Labour Force Survey produced by the Office for National Statistics;**
 - (ii) **the individual circumstances of the Franchisee; and**
 - (iii) **any other information the Secretary of State reasonably determines to be relevant.**
- (c) **The Franchisee shall provide to the Secretary of State all evidence to allow the Secretary of State to reasonably determine whether any Recruitment Target is proportionate, as reasonably requested by the Secretary of State.**
- (d) **The Franchisee shall use all reasonable and lawful endeavours to:**
- (i) **be objective, transparent and fair in its recruitment processes;**
 - (ii) **meet Recruitment Targets; and**
 - (iii) **improve retention rates of underrepresented groups**
- (together, the "Recruitment Objectives").**
- (e) **The Franchisee shall report on its performance against its Recruitment Objectives as part of its D&I Annual Report, together with relevant supporting evidence. Such supporting evidence may include details of Franchisee policies and procedures such as: advertising across a variety of channels to reach a broad range of candidates; blind sifting applications; engaging in CV blind interviewing; engaging in outreach programmes; establishing a returners policy; and/or establishing mentoring schemes.**

- (f) **The Secretary of State shall review the Franchisee's performance against the Franchisee's Recruitment Objectives as part of the Franchisee's D&I Annual Report.**
- (g) **The Secretary of State shall keep the Recruitment Targets under review and may adjust and/or suspend any Recruitment Target the Secretary of State reasonably determines to no longer be proportionate.**
- (h) **Nothing in this paragraph 9.9.5 or this Schedule 13.1 is intended to impose or require any quota.**

9.9.6 Data – collecting, monitoring and reporting

- (a) **During the Franchise Term, the Franchisee shall monitor the diversity profile of its workforce and collect Workforce Diversity Data.**
- (b) **Within 6 weeks of the date of the ERMA, the Secretary of State may notify the Franchisee of any further data requirements it may have, including:**
 - (i) **any additions to the scope of the Workforce Diversity Data the Franchisee is required to monitor and collect;**
 - (ii) **the frequency in which it shall be measured or collected; and**
 - (iii) **the form in which the Franchisee is required to deliver this to the Secretary of State via such data hub as the Secretary of State may direct.**
- (c) **The Franchisee shall use reasonable endeavours to collect and submit this data in accordance with the Secretary of State's data requirements.**
- (d) **The Franchisee acknowledges and agrees that the Secretary of State may use any data provided to it by the Franchisee pursuant to this Schedule 13 for analytical and policy development purposes.**
- (e) **The Franchisee shall provide a summary report to the Secretary of State of its Workforce Diversity Data by no later than the date which is six (6) months after date of the ERMA.**
- (f) **The Franchisee shall provide a detailed report to the Secretary of State of its Workforce Diversity Data by no later than the date which is twelve (12) months after the date of this ERMA and on each anniversary of this date thereafter.**
- (g) **The Franchisee shall organise the detailed report in accordance with the characteristics listed in the definition of Workforce Diversity Data.**

9.9.7 Improvement and Remedial Plans

- (a) **If and to the extent that the Secretary of State considers that the Franchisee has not adequately:**
- (i) **delivered its D&I Strategy;**
 - (ii) **achieved accreditation in accordance with its D&I Strategy or has otherwise lost its accreditation;**
 - (iii) **used all reasonable and lawful endeavours to deliver against its Recruitment Objectives; or**
 - (iv) **collected, monitored and reported on data pursuant to paragraph 9.9.6,**

it may notify the Franchisee that it requires it to deliver a plan for how it will improve its performance in the relevant area (a "D&I Improvement Plan") for its approval. The D&I Improvement Plan shall include the Franchisee's proposed timeline for implementing any changes or actions.

- (b) **If the Parties cannot agree the D&I Improvement Plan within 20 Weekdays from the Secretary of State's notification pursuant to paragraph 9.9.7(a), the Secretary of State may impose such D&I Improvement Plan as it considers reasonable.**
- (c) **If the Franchisee fails to implement the D&I Improvement Plan, then the Secretary of State may serve a Remedial Plan Notice on the Franchisee in accordance with paragraph 2 of Schedule 10.1.**

10. Sustainability and other related initiatives

10.1 Sustainable Development Strategy

- (a) By no later than six (6) months following the Start Date, the Franchisee shall consult with the RSSB and such other Stakeholders as agreed between the Secretary of State and the Franchisee (or, in the absence of agreement, such Stakeholders as the Secretary of State shall determine) in order to agree:
- (i) key priority sustainable development areas;
 - (ii) the outcomes associated with such key priority and sustainable development areas;
 - (iii) the annual traction carbon trajectory (CO₂E/vehicle km) for the duration of the Franchise Term; and
 - (iv) target levels according to the Rail Safety and Standards Board Sustainable Development Self-Assessment Framework that will be reached by the end of the third (3rd), sixth (6th) and eighth (8th) Franchisee Years.

- (b) The Franchisee shall develop the Sustainable Development Strategy to reflect such consultation and the Franchisee shall propose and agree a final version of the Sustainable Development Strategy with the RSSB and the Secretary of State by no later than twelve (12) months after the Start Date for the purposes of the Franchise Agreement. Such agreed strategy shall be the Sustainable Development Strategy for the purposes of the Franchise Agreement, provided that in the absence of agreement between the Parties of the Sustainable Development Strategy shall be the strategy determined by the Secretary of State (acting reasonably).
- (c) The Franchisee shall at all times comply with the Sustainable Development Strategy. Any amendments to the Sustainable Development Strategy must be agreed by the Secretary of State.
- (d) By no later than three (3) months following the end of the third (3rd), sixth (6th) and eighth (8th) Franchisee Years, the Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an assessment of performance against the Rail Safety and Standards Board's Sustainable Development Self-Assessment Framework and produce a report in respect of such assessment, such assessment to review performance against the targets set out in the Sustainable Development Strategy.
- (e) The Franchisee shall submit a copy of the assessment report produced by the independent body pursuant to paragraph 10.1(d) to the Secretary of State within six (6) months following the end of the third (3rd), sixth (6th) and eighth (8th) Franchisee Years.
- (f) Where the assessment report identifies a significant shortfall against the targets set out in the Sustainable Development Strategy, the Franchisee must as soon as reasonably practicable and in any event within two (2) months, produce an improvement plan which, in the reasonable opinion of the Secretary of State, is capable of achieving the targets set out within the Sustainable Development Strategy.
- (g) The Franchisee shall use all reasonable endeavours to implement the improvement plan referred to in paragraph 10.1(f) and improve its performance against the targets set out in the Sustainable Development Strategy against the agreed timeframes for performance as set out in the revised Sustainable Development Strategy.
- (h) The Franchisee shall, within three (3) months following the end of each Franchisee Year, provide to the Secretary of State a report showing:
- (i) progress against the outcomes in key priority sustainable development areas;
 - (ii) progress on development of Franchise Employees to ensure they have the skills and knowledge required to deliver a sustainable franchise; and
 - (iii) proposed revisions to the Sustainable Development Strategy (such revisions to include those revisions reflecting feedback and advice from Stakeholders, and which have been consulted on with RSSB).

- (i) The Franchisee shall obtain the Secretary of State's consent to any amendments to the Sustainable Development Strategy proposed pursuant to paragraph 10.1(h) (iii) before such amendments are adopted and the Sustainable Development Strategy updated.
- (j) On request by the Secretary of State, the Franchisee shall publish (in such form as the Secretary of State may reasonably determine):
 - (i) all or any part of its Sustainable Development Strategy; and/or
 - (ii) all or any of the information described in paragraphs 10.1(h)(i) to (h)(iii).

10.2 Environmental Management and Sustainability Accreditation

- (a) The Franchisee shall, by no later than the date which is eighteen (18) months after the Start Date, attain and, at all times thereafter, maintain certification pursuant to ISO14001:2015 and ISO50001:2011 or equivalent standards.
- (b) The Franchisee shall provide the Secretary of State with copies of the certification audit reports and a copy of their ISO50001 Energy Review within four (4) weeks of their certification and each subsequent recertification during the Franchise Period.

10.3 Sustainable Construction

For construction projects (including building refurbishment or fit out):

- (a) which are either being funded by the Franchisee or in respect of which the Franchisee has design responsibility; and
- (b) in respect of which the total capital cost exceeds £1,000,000 (pounds sterling one million) (indexed by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments)),

the Franchisee shall use reasonable endeavours to achieve at least an **"excellent"** rating from an accredited assessor using BREEAM (or a rating equivalent to **"excellent"** in an equivalent recognised standard such as the SKA Rating Standard as appropriate) at both the design stage and the post-construction stage unless the Secretary of State (acting reasonably) agrees that the relevant project is not of a suitable scale or type to be so assessed and the Franchisee shall provide to the Secretary of State such information in relation to any construction project as the Secretary of State may reasonably request.

11. NOT USED

12. NOT USED

13. HS2 Project

- 13.1 The Franchisee shall from the Start Date until the completion of the HS2 Project fully and effectively co-operate and engage constructively with all relevant parties responsible for the delivery of the HS2 Project with the intention of assisting in the timely, efficient and cost effective implementation and delivery of the HS2 Project

in a manner which provides the best overall solution for the network. To the extent that the HS2 Project leads to the Franchisee having rights under railway industry procedures including Network Change or Station Change the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of the HS2 Project and the Franchisee shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change. It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of the HS2 Project and their implementation on passengers and the Franchise Services, while recognising the need for the HS2 Project to be able to be undertaken in a reasonable manner.

13.2 The Franchisee shall provide such information in respect of the HS2 Project as the Secretary of State may reasonably request from time to time.

14. **Suicide Prevention Strategy**

14.1

- (a) As soon as reasonably practicable after the Start Date the Franchisee 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 Franchisee 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 Franchisee 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 Start Date.
- (d) The Franchisee 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 Franchisee 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 Franchisee 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 Franchisee 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 Start Date, the Franchisee shall, in consultation with the British Transport Police and such other relevant groups as the Franchisee 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 Franchisee shall take into account any comments or amendments proposed by:

- (a) the British Transport Police; and
- (b) such other relevant groups as the Franchisee 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 Franchisee 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 by ⁵⁰²**18 May 2021**.

15.4 The Franchisee 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 any amendment to, or replacement of the Safeguarding on Rail Audit.

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

- 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 would 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 Franchisee 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 Franchisee and/or the British Transport Police consider appropriate. The Franchisee 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 Franchisee shall take into account any comments or amendments proposed by:
- (a) the British Transport Police; and
 - (b) such other relevant groups as the Franchisee 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 Franchisee 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 Franchisee 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 By no later than six (6) months following the Start Date the Franchisee shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Incident Response Plan.
- 16.2 The Incident Response Plan shall:
- (a) detail how the Franchisee 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.
- 16.3 Where the Secretary of State does not approve the draft Incident Response Plan submitted to it, the Franchisee shall make:
- (a) such amendments to it as the Secretary of State shall reasonably direct; and

- (b) provide such additional information as the Secretary of State may reasonably require.
- 16.4 From the date of approval, the Franchisee shall implement and comply with the Incident Response Plan.
- 16.5 The Incident Response Plan shall be updated by the Franchisee on an annual basis and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).
- 16.6 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.
- 16.7 If:
- (a) the Secretary of State approves an updated draft Incident Response Plan submitted to it pursuant to paragraph 16.5, 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 16.5, the provisions of paragraph 16.3 shall apply.

17. Cyber Security Information Sharing Strategy

- 17.1 By no later than six (6) months following the Start Date the Franchisee 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.
- 17.2 The Cyber Security Information Sharing Strategy shall:
- (a) detail how the Franchisee will 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 Franchisee will 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.
- 17.3 Where the Secretary of State does not approve the draft Cyber Security Information Sharing Strategy submitted to it, the Franchisee shall make:
- (a) such amendments to it as the Secretary of State shall reasonably direct; and
 - (b) provide such additional information as the Secretary of State may reasonably require.
- 17.4 From the date of approval, the Franchisee shall implement and comply with the Cyber Security Information Sharing Strategy.

- 17.5 The Cyber Security Information Sharing Strategy shall be updated by the Franchisee on an annual basis and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).
- 17.6 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.
- 17.7 If:
- (a) the Secretary of State approves an updated draft Cyber Security Information Sharing Strategy submitted to it pursuant to paragraph 17.5, 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 17.5, the provisions of paragraph 17.3 shall apply.
- 18.1** ⁵⁰³**The Franchisee shall co-operate in good faith acting reasonably and with each of the Department for Transport, Network Rail, any relevant ROSCO and any other third party in connection with the development, implementation and operational introduction on the routes of any system which is intended to provide European Train Control System (“ETCS”).**
- 18.2** ⁵⁰⁴**In accordance with paragraph 18.1, the Franchisee shall provide reasonable assistance to the Secretary of State, Network Rail, any relevant ROSCO and any other relevant third party, which may, amongst other things, include:**
- (i) providing advice to the Secretary of State in respect of any ETCS proposals and plans;**
 - (ii) supporting planning activities alongside other key stakeholders;**
 - (iii) ensuring that suitable equipment is fitted to rolling stock;**
 - (iv) developing driver training programmes and procuring that drivers are suitably trained; and**
 - (v) other associated amendments or variations.**

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

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

APPENDIX 1 TO SCHEDULE 13.1**Community Rail Partnerships**

	Community Rail Partnership	Community Rail Route
1.	Barton to Cleethorpes CRP	Barton Line between Barton-on-Humber and Cleethorpes
2.	Derwent Valley Line CRP	Derwent Valley Line between Derby and Matlock
3.	Hereward CRP	Hereward Line between Peterborough and Ely
4.	Nottingham to Skegness CRP	Poacher Line between Nottingham and Skegness;
5.	North Notts and Lincs CRP	Lincoln to Barnetby; Lincoln to Shireoaks; Lincoln to Doncaster; Shireoaks to Barnetby
6.	North Staffordshire CRP	North Staffordshire Line, between Crewe and Derby;
7.	Hope Valley & High Peak CRP	Sheffield to Manchester
8.	Marston Vale CRP	Bedford to Bletchley
9.	Penistone Line Partnership	Sheffield to Huddersfield
(and any successor Community Rail Partnerships)		

505 APPENDIX 2 TO SCHEDULE 13.1**D&I Strategy****Diversity and Inclusion Strategy Framework**

The Department requires a train operator who will develop and implement a tailored Diversity and Inclusion Strategy, the goal of which is to deliver a more diverse workforce, reflective of the communities that it serves, by increasing representation of under-represented groups at all levels and grades.

Requirement from the Franchisee

The train operator shall prepare and submit a Diversity & Inclusion Strategy in accordance with the guidance and templates contained in this framework. However, it should be noted that this is not a comprehensive framework and should only be used as a guide.

The train operator shall submit a strategic Diversity & Inclusion action plan including the steps that they will take to ensure a more diverse workforce. The train operator shall also set out the methods they propose to monitor and report on the implementation of the policy and its effectiveness.

Strategic Diversity and Inclusion Action Plan

The Diversity & Inclusion Strategy shall include the following:

- Plans to implement a range of recruitment and retention policies and procedures to ensure they recruit and retain a diverse group of candidates.**
- A set of recruitment targets which is 50% female with BAME composition reflective of the local area.**
- Plans to address gaps in representation in all job types and levels to meet recruitment targets on gender and BAME.**
- A list of specific KPIs to measure progress/success of implementing diversity action plan.**
- Plans for achieving, maintaining and progressing within a specific diversity accreditation scheme.**
- Plans to collect, monitor and report diversity data of its workforce.**

505 19 September 2020 (Date of ERMA) – Contract insertion agreed by the Secretary of State and Franchisee.

Plans to implement recruitment and retention policies and procedures

This is an example below of what a general diversity plan might look like.

Goal	Objective	Current position/ baseline	Actions	Accountability	By when	Measure of success
Increase workforce diversity	Recruit from a diverse group of candidates	Some advertisement in different publications	Work with local employment agencies and JCP	HR	Q4	Workforce is increasingly reflective Internal targets
Retain a diverse workforce	Create an inclusive culture that encourages collaboration and increases retention	Employee engagement survey	Inclusive leadership training for managers	HR	Q3	All leaders to have D&I training Engagement results should increase
Monitoring diversity data	Monitor diversity data to implement a range of recruitment policies	Data is collected on gender and age but there is no action Data is not collected on other protected characteristics	Collect diversity data on all groups Monitor data every 6 months	HR	Q2	Recruitment policies are reviewed and updated

The Strategy should also cover most of the protected characteristics, as well as looking at caring responsibilities, social mobility and issues affecting parents returning to work. Below are some examples of what this could look like depending at what point of the journey the train operator is at.

Goal	Objective	Actions	Measure of success
BAME	<p>Improve representation of people from a BAME background in leadership and across the business.</p> <p>Seek to undertake and publish ethnicity pay gap report and activities.</p>	Programme of mentoring and activities	<p>Increase in BAME representation in leadership/ across organisation</p> <p>10% employees from BAME</p> <p>Reduction in pay gap</p>
Disability	Develop appropriate environment for people.	Train managers to deliver reasonable adjustment	<p>Increase number of disabled employees</p> <p>Disability Confident Leader</p>
Gender	Improve gender diversity across workforce and in leadership positions.	<p>Set targets</p> <p>Programme of activities</p>	<p>25% of employees to be women</p> <p>Reduction in gender pay gap</p>
LGBT+	Be an inclusive employer of LGBT+ employees	Provide specific LGBT+ awareness/ confidence training for managers	Stonewall Inclusive Employers
Carers	Support carers in the workplace	<p>Review family-friendly policies to support carers</p> <p>Increase awareness amongst managers of carers' needs</p>	<p>Level 1 Carer Confident Benchmark</p> <p>Carer Positive award</p>

Goal	Objective	Actions	Measure of success
Faith and belief	Be an employer where people of different faiths and beliefs feel equally valued and respected	Provide series of briefings for employees Faith spaces for employees	Inclusive Employer status
Age	Transfer skills between generations	Develop inter-generational mentoring between older and younger employees	Recognised as an employer for all ages
Social mobility	Make sure everyone can succeed and make the most of their talents, whatever the circumstances	Promote work with ex-offenders and lone parents Collect data on social mobility	The Social Mobility Employer Index

KPIs Example

The plan should be supported by an appropriate set of key performance indicators to measure progress. For example, this could include:

- **Number of positive action initiatives in employment.**
- **Number of adverts in targeted publications to reach BAME and women.**
- **Membership of networks and forums.**

Schedule 13.2

Innovation Obligations**1. Innovation Strategy**

- 1.1 By the first anniversary of the Start Date, the Franchisee shall submit its Innovation Strategy to the Secretary of State for approval (such approval not to be unreasonably withheld).
- 1.2 Thereafter every one (1) year, the Franchisee shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld) a revised Innovation Strategy updated in accordance with the requirements of paragraph 1.3.
- 1.3 Each Innovation Strategy submitted in accordance with this paragraph 1 must have regard to the following core requirements:
- (a) how the Franchisee has developed, and proposes to develop during the Franchise Term, its innovation capability, including leadership, employees, systems and processes, and how progress is measured;
 - (b) how the Franchisee has utilised, and proposes to utilise during the Franchise Term, effective techniques for capturing ideas from employees, passengers, the community, industry partners and the supply chain;
 - (c) how, during the Franchise Term, the Franchisee will partner and collaborate with other organisations and seek third party funding (where appropriate) in order to assist bringing new technologies, processes, business models and products to the rail market, that are viable for implementation during the Franchise Term;
 - (d) include a commitment on the Franchisee to achieve "Level 4" on the Innovation and Capability Maturity Matrix as published from time to time by the Rail Safety and Standards Board and describe the initiatives that will be implemented by the Franchisee during the Franchise Term for the purposes of achieving "Level 4" on the Innovation and Capability Maturity Matrix. The obligation in this paragraph 1.3(d) is a Committed Obligation in respect of which the provisions of Part 2 of Schedule 6.2 (*Committed Obligations*) shall apply as appropriate.
- 1.4 The Franchisee shall at all times comply with its Innovation Strategy.

2. Innovation Grant Fund (Committed Obligation).

- 2.1 The Franchisee shall from the second Franchisee Year and in each Franchisee Year thereafter invest a minimum of [REDACTED⁵⁰⁶] per Franchisee Year into a grant fund (the "**Innovation Grant Fund**") which shall be expended by the Franchisee in the implementation of innovation schemes (including those schemes nominated by

⁵⁰⁶ **25 October 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.**

users of the innovation tool "Idea Spotlight" to be established by the Franchisee), each scheme being an **"Innovation Scheme"**.

- 2.2 The Franchisee shall not implement any Innovation Scheme referred to in paragraph 2.1 unless:
- (a) the Franchisee has notified such proposed Innovation Scheme to the Secretary of State in writing setting out its specification and cost, risks to delivery (including dependencies on third parties and requisite approvals and consents), the outputs it is expected to deliver and a reasonable timetable for delivery;
 - (b) the Franchisee has provided such further information as the Secretary of State may reasonably require in relation to such proposed Innovation Scheme; and
 - (c) the Secretary of State has provided his written approval to such proposed Innovation Scheme in a reasonable timeframe to enable the proposed delivery timetable issued by the Franchisee pursuant to paragraph 2.2(a) to be achieved.
- 2.3 Where the Franchisee believes that it is reasonably likely that the delivery of any approved Innovation Scheme will be delayed or delivered on a basis inconsistent with its specification, it shall notify the Secretary of State as soon as reasonably practicable and keep him appropriately updated.
- 2.4 The Franchisee shall notify the Secretary of State of the completion of each approved Innovation Scheme as soon as reasonably practicable. Such notification shall confirm that the Innovation Scheme has been completed in accordance with its specification and certify the expenditure that has been incurred with reasonable supporting evidence.
- 2.5 The Franchisee shall invest any monies in the Innovation Grant Fund not fully expended in a particular Franchisee Year in the following Franchisee Year and any outstanding un-invested sums remaining in the Innovation Grant Fund at the end of the Franchise Period shall be repaid to the Secretary of State by no later than the date that is thirty (30) days after the expiry of the Franchise Period.

3. **Innovation Competition (Committed Obligation).**

- 3.1 The Franchisee shall:
- (a) in each Franchisee Year, organise and run an innovation competition open to all residents of the geographical area where the Passenger Services operate pursuant to which participants will propose their innovative ideas and solutions to improve the railway (the **"Innovation Competition"**). The topic or theme for each innovation competition shall be agreed in advance by the Franchisee and the Secretary of State (or if the parties fail to agree, reasonably determined by the Secretary of State); and

- (b) be responsible for judging the competition and shall award a cash prize of **[REDACTED⁵⁰⁷]** to each winner of an Innovation Competition. If, for any reason in any Franchisee Year, the cash prize for the Innovation Competition is not awarded, then such unpaid cash prize shall be deemed to be an Underspend and the provisions of paragraph 2.4 of Part 2 (Special Terms Related to Committed Obligations) of Schedule 6.2 (Committed Obligations) shall apply to the Underspend.

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APPENDIX 1 TO SCHEDULE 13.2

NOT USED

Schedule 13.3

Mobile Communications Service**1. Purpose**

This Schedule sets out the Franchisee's requirements in respect of providing on train Wi-Fi to passengers from the Start Date and its subsequent requirement to improve and increase the provision of mobile connectivity to passengers on trains.

2. Definitions and Interpretations

2.1 For the purposes of this Schedule 13.3 only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

"Active User" means a MCS Connected Passenger that is actively transmitting and/or receiving data by use of the Mobile Communications Service at the relevant time;

"Activity Ratio" has the meaning given to it in paragraph 6.3 (b) of this Schedule 13.3;

"Applicable Portion" has the meaning given to it in paragraph 6.4 of this Schedule 13.3;

"Average Passenger Volume" means, with respect to a specific route section, the average number of passengers per train travelling in the main flow direction during the MCS Morning Peak Hour or the MCS Evening Peak Hour, whichever has the highest average;

"Bespoke Trackside Provision" means the provision of MCS External Connectivity to trains by use of additional infrastructure installed, whether by the Franchisee or the Franchisee's mobile operator partner, for the purpose of providing MCS External Connectivity on the Core Connectivity Routes;

"Core Connectivity Routes" means the routes identified in blue (and defined as 'MML' in the key) on the route plan set out in Appendix 1 to this Schedule 13.3;

"Data Allowance Per Minute" or **"DAPM"** has the meaning given in paragraph 7.3 of this Schedule 13.3;

"Delivery Timescales" has the meaning given in paragraph 9.1 of this Schedule 13.3;

"Ethernet" means a system for connecting a number of computer systems to form a local area network, with protocols to control the passing of information and to avoid simultaneous transmission by two or more systems, in accordance with the IEEE 802.3 standard;

"Ethernet Backbone" shall mean a continuous Ethernet connection spanning all permanently or semi-permanently connected vehicles that form a unit or other fixed or semi fixed formation train set;

"First Franchisee Year" means the Franchisee Year commencing on Start Date;

"Free of Charge" shall mean:

- (a) the passenger does not have to pay to use the Mobile Communications Service provided in accordance with the MCS Service Level or in accordance with paragraph 4, whether on an ad-hoc or on-going basis; and

- (b) the use of the Mobile Communications Service by the passenger is independent of any Wi-Fi or cellular minutes or Wi-Fi or cellular data allowances (such as 3G or 4G mobile broadband) the individual passenger may have through any subscription with one or more telecommunication internet service providers or mobile network operators;

“[REDACTED⁵⁰⁸]”;

“**Mbps**” means 1,000,000 bits per second;

“**MByte**” means 1,000,000 bytes of data (where a byte is 8 bits of information);

“**MCS Adjustment**” has the meaning given to it in paragraph 19.2 of this Schedule 13.3;

“**MCS Backstop Date**” means 31 December 2022;

“**MCS Connected Passenger**” means a passenger who is connected to the Mobile Communications Service provided by the Franchisee in accordance with this Schedule 13.3;

“**MCS Connected Passenger Threshold**” means with respect to a specific route section, a figure equivalent to [REDACTED⁵⁰⁹] of the Average Passenger Volume for that route section;

“**MCS Connectivity Routes**” means all Core Connectivity Routes and Secondary Connectivity Routes;

“**MCS Emergency Protocol**” has the meaning given to it in paragraph 17.1 (a) of this Schedule 13.3;

“**MCS Equipment**” means the equipment fitted to rolling stock vehicles in relation to delivery of a Mobile Communications Service including the [REDACTED⁵¹⁰] and all other hardware, data communications cabling (including the Ethernet Backbone), power, equipment racks, internal Wi-Fi wireless access points and antennas, external aerials and cabling necessary to provide the Mobile Communications Services;

“**MCS Evening Peak Hour**” means the single busiest hour, by volume of passengers, during the Evening Peak as nominated by the Franchisee acting reasonably (it being acknowledged that it may be reasonable to adjust such nomination to take into account seasonal factors);

“**MCS External Connectivity**” means the provision of connectivity services to a train providing connectivity between the MCS Equipment and the internet, whether provided by means of a Public Communications Service Provider or Bespoke Trackside Provision or a combination of both and with the capacity and capability to provide the MCS Service Level as applicable;

“**MCS Further Initiatives**” has the meaning given in paragraph 11.2 of this Schedule 13.3;

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510 25 October 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.

"MCS Morning Peak Hour" means the single busiest hour, by volume of passengers, during the Morning Peak as nominated by the Franchisee acting reasonably (it being acknowledged that it may be reasonable to adjust such nomination to take into account seasonal factors);

"MCS Route Coverage" has the meaning given to it in paragraph 6.6 of this Schedule 13.3;

"MCS Saving" has the meaning given to it in paragraph 19.1 of this Schedule 13.3;

"MCS Service Level" or **"MSL"** means a level of service delivered by the Mobile Communications Service which is compliant with:

- (a) all of paragraphs 4 (Continuation of Mobile Communications Service provided by the Previous Franchisee), 6 (Required Outputs One and Two – Minimum Data Speed and MCS Route Coverage), 7 (Required Output Three – Minimum Data Allowance), and 9 (Required Output Five - Delivery Timescales); and
- (b) the Mobile Communications Service availability related measure within the NRPS Measure "Customer Services";

"Minimum Data Allowance" or **"MDA"** has the meaning given to it in paragraph 7.1 of this Schedule 13.3;

"Minimum Data Speed" or **"MDS"** has the meaning given to it in paragraph 6.1 of this Schedule 13.3;

"Mobile Communications Service" or **"MCS"** means a mobile connectivity service provided via MCS External Connectivity that allows passengers, at a minimum, to send and receive email electronically, browse web pages on the internet, use social media and make and receive voice over internet calls including using mobile network operators' 'Wi-Fi Calling' services, through any Wi-Fi connected mobile, tablet or computer device that they may use for this purpose;

"Mobile Communications Service Report" has the meaning given to it in paragraph 12.1 of this Schedule 13.3;

"Public Communication Service Provider" means a third-party provider of mobile communication services to consumers and/or businesses;

"Rolling Stock Class" means each class of passenger carrying rolling stock comprised within the Train Fleet as specified in column 1 of the table in Appendix 2 to this Schedule 13.3;

"Rolling Stock Fitment Date" means the date set out in column 2 of the table in Appendix 2 to this Schedule 13.3;

"Route Signal and Capacity Survey" has the meaning given to it in paragraph 12.3 of this Schedule 13.3; and

"Secondary Connectivity Routes" means the routes identified in green (and defined as 'Local' in the key) on the route plan set out in Appendix 1 to this Schedule 13.3.

2.2 Other Obligations

- (a) The provisions of Part 2 (*Special Terms related to the Committed Obligations*) of Schedule 6.2 (*Committed Obligations*) shall apply in respect of the obligations of the Franchisee specified in this Schedule 13.3, provided that references to a 'Committed Obligation' in Part 2 (*Special Terms related to the Committed Obligations*) of

Schedule 6.2 (*Committed Obligations*) shall be construed as references to the Franchisee's obligations under this Schedule 13.3.

- (b) For the purposes of the reference to paragraph 8 (*Third Party Consents, Agreement and Conditions*) of Part 2 (*Special Terms related to the Committed Obligations*) of Schedule 6.2 (*Committed Obligations*) in paragraph 2.2(a):
- (i) the expression, "**consent**" shall mean those approvals, authorisations, consents, derogations, exemptions, licences, permissions, and registrations which are required by Law or any contract to which the Franchisee is a party, to be obtained by the Franchisee in connection with the delivery of its obligations pursuant to this Schedule 13.3;
 - (ii) where the Franchisee is required to obtain one or more consents in order to satisfy its obligations pursuant to this Schedule 13.3, the Franchisee shall use all reasonable endeavours to obtain such consents;
 - (iii) if the Franchisee is unable to obtain the relevant consent or the proposed terms upon which the relevant consent would be granted would, in the reasonable opinion of the Franchisee, be likely to prejudice the financial and/or commercial viability of delivering the relevant obligation pursuant to this Schedule 13.3, the Franchisee may apply to the Secretary of State for approval (not to be unreasonably withheld) for the Franchisee to modify the relevant obligation under this Schedule 13.3 so as to deliver a scheme which would give rise to benefits to passengers using the Passenger Services similar to (but not necessarily the same as) those benefits which would have arisen if the Franchisee delivered the relevant obligation under this Schedule 13.3;
 - (iv) any modifications to the relevant provisions of this Schedule 13.3 shall be agreed between the Franchisee and the Secretary of State or failing such agreement shall be reasonably determined by the Secretary of State; and
 - (v) if the Secretary of State gives his approval pursuant to paragraph 2.2 (b) (iv) in respect of an obligation under this Schedule 13.3, then to the extent that the Franchisee delivers the modified obligation as agreed between the Franchisee and the Secretary of State and by the date agreed between the Franchisee and the Secretary of State (or failing such agreement by the date reasonably determined by the Secretary of State), the Franchisee shall not be in contravention of the Franchise Agreement.

3. **Mobile Communications Service**

- 3.1 Subject to paragraphs 4, 5.3 and 9 below, the Franchisee shall from the Start Date provide the Mobile Communications Service in accordance with the provisions of this Schedule 13.3 to all passengers using the Passenger Services on the MCS Connectivity Routes.

4. **Continuation of Mobile Communications Service provided by the Previous Franchisee**

- 4.1 Without prejudice to the requirements relating to the introduction of the MCS Service Level pursuant to paragraph 9.1, the Franchisee shall:
- (a) from the Start Date provide a better level of Mobile Communications Service as that delivered by the Previous Franchisee prior to the Start Date to all passengers using the Passenger Services on the Core Connectivity Routes. For the purposes of this paragraph 4.1 "a better level of Mobile Communications Service" shall mean the provision of a data allowance that:

- (i) is higher than that delivered by the Previous Franchisee immediately prior to the Start Date; and
 - (ii) is in accordance with the Minimum Data Allowance; and
- (b) by no **later than 31 December 2021, and for the remainder of the Franchise Period, provide the Mobile Communications Service described in paragraph 4.1(a) to all passengers using the Passenger Services on the Secondary Connectivity Routes.**

4.2 The MCS referred to in paragraph 4.1 shall be provided Free of Charge.

5. Train Fitment

5.1 The Franchisee shall ensure that all passenger carrying rolling stock vehicles in each Rolling Stock Class are fitted with MCS Equipment sufficient to enable all vehicles in that Rolling Stock Class to deliver the Mobile Communications Service in accordance with the requirements of this Schedule 13.3 (including to the MCS Service Level on MCS Connectivity Routes) by no later than the Rolling Stock Fitment Date applicable to that Rolling Stock Class and the Franchisee shall maintain such MCS Equipment in good repair and working order for the remainder of the Franchise Period.

5.2 Any MCS Equipment procured by the Franchisee in accordance with paragraph 5.1 shall include inter-carriage Ethernet Backbone connectivity capable of one (1) gigabit transmission speeds.

5.3 The Franchisee shall incur expenditure of no less than [REDACTED⁵¹¹] in complying with its obligation in paragraphs 5.1 and 5.2.

6. Required Outputs One and Two – Minimum Data Speed and MCS Route Coverage

6.1 For the purposes of this Schedule 13.3, the **“Minimum Data Speed”** shall be 1Mbps per MCS Connected Passenger.

6.2 Subject to paragraph 6.3, but without prejudice to paragraph 6.6, and the Delivery Timescales, the Franchisee shall procure and maintain sufficient MCS External Connectivity on all MCS Connectivity Routes, such that the download speed achievable by MCS Connected Passengers on each train service whilst on the Applicable Portion of each MCS Connectivity Route shall aim to meet the Minimum Data Speed in accordance with the MCS Route Coverage requirements and reflective of providing MCS External Connectivity of up to 100Mbps per MCS Equipment.

6.3 In complying with its obligation at paragraph 6.2, the Franchisee may assume that:

- (a) the maximum number of MCS Connected Passengers at any one time on a particular train will not exceed the applicable MCS Connected Passenger Threshold; and
- (b) where the number of MCS Connected Passengers on a particular train is at or below the MCS Connected Passenger Threshold, the percentage of Active Users on that train (as a proportion of total MCS Connected Passengers on that train) will not exceed twenty five per cent (25%) (**“Activity Ratio”**),

⁵¹¹ **25 October 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.**

providing that, in all cases, the Franchisee shall ensure that the Mobile Communications Service shall be designed, installed and provided in all respects such that it will remain available to passengers where the number of MCS Connected Passengers exceeds the MCS Connected Passenger Threshold albeit with a proportionate reduction in the Minimum Data Speed available to each MCS Connected Passenger (providing that any such reduction in the Minimum Data Speed must not affect MCS Connected Passengers on more than five per cent (5%) of the average weekday Passenger Services on any given Applicable Portion).

- 6.4 Each MCS Connectivity Route comprises a number of **"Applicable Portions"**, being individual Routes within each MCS Connectivity Route and served by the Passenger Services which are designated for the purposes of calculating the Average Passenger Volume and hence the MCS External Connectivity requirements, as specified for the purpose of this Agreement.
- 6.5 Subject to paragraph 9, the Franchisee shall ensure that the MCS External Connectivity shall be available over at least ninety five per cent (95%) of the entire length of each Applicable Portion comprised within the MCS Connectivity Routes (**"MCS Route Coverage"**).
- 6.6 In all cases, the Franchisee shall ensure that the upload speed achievable by MCS Connected Passengers is appropriate given, in particular:
- (a) the intended use of the Mobile Communications Service (as referenced in the definition of that term);
 - (b) the download speed achievable at each point on the MCS Connectivity Routes; and
 - (c) the need to mitigate any latency experienced by MCS Connected Passengers whilst using the Mobile Communications Service.

7. **Required Output Three – Minimum Data Allowance**

- 7.1 Subject to paragraph 9, the Franchisee shall ensure that each MCS Connected Passenger travelling over any MCS Connectivity Route is given a minimum data allowance per journey (**"Minimum Data Allowance"**) dependent on the applicable Service Group.
- 7.2 For the purposes of this Schedule 13.3, the Minimum Data Allowance shall be calculated by multiplying the average journey time in minutes (for the applicable Service Group) by the Data Allowance Per Minute (as defined at paragraph 7.3 below), provided that the Minimum Data Allowance shall never fall below thirty (30) MBytes per MCS Connected Passenger per individual journey.
- 7.3 For the purposes of paragraph 7.2, the applicable **"Data Allowance Per Minute"** means:
- (a) in respect of the Core Connectivity Routes, for the period from 31 December 2020 until the end of the Franchise Period; and
 - (b) in respect of the Secondary Connectivity Routes, for the period from 31 December 2021 until the end of the Franchise Period,
- one (1) MByte per minute.

8. **Required Output Four – Passenger Satisfaction as measured by National Rail Passenger Surveys**

- 8.1 Passenger satisfaction in respect of the delivery of the Mobile Communications Service in accordance with this Schedule 13.3 shall be measured for each NRPS Service Group in

accordance with the requirements of Schedule 7.2 (*Customer Experience and Engagement*) and as set out in the Passenger Survey Methodology.

9. **Required Output Five – Delivery Timescales**

9.1 The Franchisee shall deliver the Mobile Communications Service with respect to each MCS Connectivity Route in accordance with the MCS Service Level with respect to all vehicles in each Rolling Stock Class operated on that MCS Connectivity Route, by no later than the applicable Rolling Stock Fitment Date for that Rolling Stock Class.

9.2 The Franchisee shall make the Mobile Communications Service available to Passengers on each MCS Connectivity Route as soon as reasonably practicable after MCS External Connectivity is available addressing a reasonable number of Passenger Services and/or Applicable Portions but, in any event not later than the MCS Backstop Date.

10. **Fair Usage Policies**

10.1 To ensure a non-discriminatory service is offered to passengers, the Franchisee shall be permitted to:

(a) dynamically manage the available bandwidth to MCS Connected Passengers in accordance with a reasonable fair-usage policy to be published by the Franchisee subject to compliance with the applicable MCS Service Level requirements and ensuring:

(i) that any bandwidth throttling applied to a particular MCS Connected Passenger shall be set to no lower than twice the current Minimum Data Speed until the Minimum Data Allowance of that MCS Connected Passenger has been fully consumed; and

(ii) once the Minimum Data Allowance has been consumed by a particular MCS Connected Passenger, any throttling applied to such MCS Connected Passenger connection is applied fairly and in accordance with the determined policy for MCS Connected Passengers consuming additional data outside of their Minimum Data Allowance; and

(b) filter the type of services which may be accessed by a passenger using the Mobile Communications Service, including by restricting passenger access to video and audio streaming services, peer-to-peer file sharing and inappropriate content.

11. **Ability to offer MCS Further Initiatives**

11.1 The Franchisee may introduce additional initiatives and services ("**MCS Further Initiatives**") which use the MCS Equipment for the purpose of generating additional income such as advertising and sponsorship on the MCS host website and/or reducing the costs of providing the Mobile Communications Service which may include offering passengers access to on-train infotainment services.

12. **Reporting Requirements**

12.1 The Franchisee shall monitor the performance of the Mobile Communications Service for the purposes of providing to the Secretary of State a report on the performance of the Mobile Communications Service in accordance with the requirements of this Schedule 13.3 in relation to each Franchisee Year (provided that no such report will be required to be produced in relation to the Final Franchisee Year if it is of less than six (6) months in duration). Such report shall be submitted to the Secretary of State one (1) month after the end of the Franchisee Year and without prejudice to the ability of the Parties to agree more frequent reporting (the "**Mobile Communications Service Report**").

- 12.2 The Mobile Communications Service Report shall include information on the:
- (a) delivery of the Mobile Communications Service;
 - (i) progress against delivery milestones (such as, but not limited to, the fitment of trains with the appropriate equipment to deliver the Mobile Communications Service, and / or progress on the delivery of external connectivity to trains); and
 - (ii) availability of the equipment and Mobile Communications Service once deployed, including the duration of any significant periods of time during which the equipment and/or Mobile Communications Service were not available, the reason for such unavailability and the action taken by the Franchisee in respect of such unavailability;
 - (b) actual average demand by calendar month using customer usage statistics to demonstrate:
 - (i) the number of passengers using the Mobile Communications Service;
 - (ii) the average duration (in minutes and seconds) of connections to the Mobile Communications Service;
 - (iii) the average data (in MBytes) received and transmitted by the Mobile Communications Service;
 - (iv) information on the average internet speed (in Mbps) provided by the Mobile Communications Service; and
 - (v) information on the average latency figures (in milliseconds) experienced by passengers.
- 12.3 The Franchisee shall also undertake a signal-strength and capacity survey of its Routes ("**Route Signal and Capacity Survey**") to determine the Mobile Communications Services coverage, bandwidth and availability of data services to trains on each Route to establish a non-binding baseline for determining the likely:
- (a) per passenger data connection speeds;
 - (b) number of connected passengers that can be supported by the Mobile Communications Service.
- 12.4 The Route Signal and Capacity Survey shall record the time, date, latitude and longitude information of each measurement point to permit the signal-strength and capacity information of Routes.
- 12.5 The Route Signal and Capacity Survey shall be:
- (a) undertaken as part of the initial planning and design activities associated with the implementation of the Mobile Communications Service; and
 - (b) repeated thereafter annually in association with the Mobile Communications Service Report.
- 12.6 The Mobile Communications Service Report and the Route Signal Strength and Capacity Survey including any associated data or information shall be shared with the Secretary of State by the Franchisee in an appropriate format that will not require the Secretary of State to acquire any specialist software to access or interpret the information.
- 12.7 The Franchisee shall grant to the Secretary of State a perpetual, non-exclusive, irrevocable, world-wide, paid-up, royalty-free licence to use, copy, modify, transmit, distribute and publish

the Mobile Communications Service Report and the Route Signal Strength and Capacity Survey for any purpose, and such licence shall be transferrable and/or capable of being sub-licensed.

12.8 Without prejudice to any other obligations of the Franchisee including pursuant to Schedule 15.1 (Reletting Provisions) the Franchisee shall make the Mobile Communications Service Report and the Route Signal Strength and Capacity Survey available to the Successor Operator.

13. **NOT USED**

14. **Marketing and Terms and Conditions**

14.1 The Franchisee shall market the availability of the Mobile Communications Service to passengers by way of:

- (a) the Franchisee's public webpage, together with terms and conditions, a fair-usage policy and "how to use the service" guides; and
- (b) on-board physical or electronic notices, for example, a notice which reads: "*Wi-Fi Available Here*".

14.2 The Franchisee shall:

- (a) not cause or permit the Personal Data of any users of the Mobile Communications Service and MCS Equipment to be used for any direct marketing purpose except where such use is in accordance with the Data Protection Legislation;
- (b) ensure that users of the Mobile Communications Service and MCS Equipment are provided with access to terms and conditions that govern its use by them and that they are provided with privacy notices which are compliant with the fairness principle of the Data Protection Legislation in respect of the processing of Personal Data which is inherent in the same
- (c) process the Personal Data of all users of the Mobile Communications Service and MCS Equipment in accordance with the Data Protection Legislation;
- (d) ensure that the Mobile Communications Service is provided on an "as is" and "as available" basis with no guarantee and that the Franchisee's liability in respect of a user's use of the Mobile Communications Service will not exclude liability for death or personal injury; and
- (e) ensure that the terms and conditions referred to in paragraph 14.2(b) include all provisions that the Franchisee is required by Laws to include within those terms and conditions.

15. **NOT USED**

16. **Co-operation with Other Train Operators**

16.1 Where the Franchise shares a MCS Connectivity Route with one or more other Train Operators, the Franchisee shall use all reasonable endeavours to explore means of sharing on a fair and reasonable basis access to any MCS External Connectivity which enables the Mobile Communications Service of any such other Train Operator and applicable costs.

16.2 Where the Franchisee identifies an opportunity of the type referred to in paragraph 16.1 above it shall not implement it without the consent of the Secretary of State (which shall not be unreasonably withheld). It is agreed that it will be reasonable for the Secretary of State to withhold his consent unless arrangements are made for him to obtain a reasonably appropriate share of any financial gain made by the Franchisee.

17. Security Requirements

17.1 The Franchisee shall:

- (a) ensure that, in relation to the Mobile Communications Service (including, for these purposes, any enhanced service provided in accordance with paragraph 11) it implements and follows at all times a protocol which enables the emergency switch-off and reinstatement of the Mobile Communications Service in the event of counter terrorist, security concern or other incident or response as directed by the British Transport Police (the "**MCS Emergency Protocol**");
- (b) provide to the Secretary of State not less often than once in each Franchisee Year a copy of the MCS Emergency Protocol and make such amendments to the MCS Emergency Protocol as the Secretary of State may require;
- (c) undertake a security risk assessment of the Mobile Communications Service and MCS Equipment using the assessment methodology of ISO27001 or ISO/EC27002:2013 (or equivalent) to determine the impact of providing the Mobile Communications Service and MCS Equipment and the process to be followed prior to installing the MCS Equipment during the Franchise Period;
- (d) provide the Secretary of State promptly following the assessment referred to at paragraph 17.1(c) with a written report setting out the details of the assessment and its conclusions; and
- (e) ensure that no train control systems or safety critical systems are connected to the MCS Equipment-related Ethernet Backbone train communications infrastructure or any element of the MCS Equipment and shall ensure that a physical 'air' gap exists and is maintained between: (i) any train control systems or safety critical systems; and (ii) the train communications infrastructure or any element of the MCS Equipment.

18. Bespoke Trackside Provision

18.1 The Franchisee shall incur a minimum capital expenditure of [REDACTED⁵¹²] in delivering the Bespoke Trackside Provision sufficient to enable the Franchisee to provide the Mobile Communications Service in respect of the same by no later than the MCS Backstop Date and to maintain such provision for the remainder of the Franchise Period.

19. Operating Costs

19.1 The Franchisee shall incur operating expenditure of no less than [REDACTED⁵¹³] during the Franchise Term in delivering the Mobile Communications Service on the MSC Connectivity Routes.

19.2 In the event that the operating costs incurred by the Franchisee in its delivery of the Mobile Communications Service on the MCS Connectivity Routes are less than the amount set out in

⁵¹² 25 October 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.

⁵¹³ 25 October 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.

paragraph 19.1, the Secretary of State shall make an adjustment to Franchise Payments in accordance with paragraph 19.3 to reflect such saving (the "**MCS Saving**").

19.3 The Secretary of State shall determine the MCS Saving acting reasonably and the Secretary of State shall be entitled to make an adjustment to the Franchise Payments to reflect the MCS Saving as:

- (a) a lump sum adjustment to the Franchise Payment;
- (b) an adjustment to the Franchise Payment on a per Reporting Period basis; or
- (c) a mixture of the above options,

the ("**MCS Adjustment**"), which shall be expressed as a negative number.

Appendix 1 – MCS Connectivity Routes

[REDACTED⁵¹⁴]

⁵¹⁴ 25 October 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.

Appendix 2 – Rolling Stock Fitment

Column 1	Column 2
Rolling Stock Class	Rolling Stock Fitment Date
Class 153	Not applicable
Class 156 (Angel - specified as Original Rolling Stock)	Not applicable
Class 156 (Porterbrook - specified as Original Rolling Stock)	Not applicable
Class 158	Not applicable
Class 222	Start Date
HSTs	Not applicable
Class 156 (Porterbrook – specified as Specified Additional Rolling Stock)	The lease start date specified for that fleet (as specified in column 6 of Table 2 (<i>Specified Additional Rolling Stock</i>) of Appendix 1 to Schedule 1.6
Class 170 (each as specified in Table 2 (<i>Specified Additional Rolling Stock</i>) of Appendix 1 to Schedule 1)	
Class 171/1	
Class 171/2	
Class 180	
Class 360	
New BMU	

SCHEDULE 14
PRESERVATION OF ASSETS

Schedule 14.1:	Maintenance of Franchise
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:	Designation of Franchise Assets
	Appendix 1: List of Primary Franchise Assets
Schedule 14.5:	Dealing with Franchise Assets
Schedule 14.6:	Residual Value Mechanism
	Appendix 1: List of the RV Assets
Schedule 14.7:	Incentivising Long-Term Investment

Schedule 14.1

Maintenance of Franchise**1. Maintenance as a going concern**

- 1.1 The Franchisee shall maintain and manage the business of providing the Franchise Services so that, to the greatest extent possible and practicable:
- (a) the Franchisee is able to perform its obligations under the Franchise Agreement; and
 - (b) a Successor Operator would be able to take over the business of providing the Franchise Services immediately at any time.
- 1.2 The Franchisee's obligation under paragraph 1.1 shall include an obligation to ensure that any computer and information technology systems of the Franchisee shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a stand alone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of the Franchise Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for the Franchisee to obtain consent to such arrangements relating to sharing computer and information technology systems from the Secretary of State).
- 1.3 The Franchisee shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Primary Franchise Assets for such purpose.
- 1.4 The Franchisee shall maintain and manage the business of providing the Franchise Services on the basis that such business will be transferred, in the manner contemplated under the Franchise Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator.
- 1.5 The Franchisee shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period and in so doing shall plan for the recruitment and training of Franchise Employees to continue up until the end of the Franchise Term.
- 1.6 The Franchisee shall comply with all reasonable requirements of the Secretary of State to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Term.

2. Post-Franchise Timetables

- 2.1 Both prior to and following the selection of a Successor Operator (whether a franchisee or otherwise and whether or not subject to the satisfaction of any conditions), the Franchisee shall:
- (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State; and

- (b) take such steps as may reasonably be requested by the Secretary of State, so as to ensure the continuity of, and orderly handover of control over of the Franchise Services.
- 2.2 The steps that the Secretary of State may reasonably request the Franchisee to take pursuant to paragraph 2.1 include:
- (a) participating in any timetable development process that takes place during the Franchise Period, but which relates to any timetable period applying wholly or partly after the expiry of the Franchise Term ("**Successor Operator Timetable**"), including bidding for and securing any Successor Operator Timetable, whether or not:
- (i) the Successor Operator has been identified; or
- (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
- (b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Franchise Period;
- (c) assisting the Secretary of State or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or
- (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Franchisee shall not be required to enter into any such Access Agreement unless the Secretary of State has first provided to it confirmation in writing that he will include that Access Agreement in any Transfer Scheme pursuant to paragraph 3.1 of Schedule 15.4 (*Provisions applying on and after Termination*).

Schedule 14.2

Maintenance of Operating Assets and Branding**1. Operating Assets**

- 1.1 The Franchisee shall maintain, protect and preserve the Operating Assets in good standing or good working order, subject to fair wear and tear.
- 1.2 The Franchisee shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Franchise Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Franchise Services.
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Franchisee shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Franchisee shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under the Franchise Agreement.
- 1.4 The Secretary of State may at any time require the Franchisee to provide to the Secretary of State a schedule specifying the condition of any asset or class of assets that he specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Secretary of State may reasonably require. If the Parties are unable to agree the content of such schedule of condition, either Party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Franchisee shall comply with the Secretary of State's requirements in respect of such schedule of condition.

2. Spares

The obligation of the Franchisee 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 has been designated as a Primary Franchise Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchisee for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

3. Brand Licence and Branding**3.1 Brand Licences**

The Franchisee shall comply with its obligations under the Brand Licence.

3.2 Branding

Subject to any applicable obligations or restrictions on the Franchisee (including the terms of the Rolling Stock Leases), the Franchisee 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 Franchisee in the operation and provision of the Franchise 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*):

"Neutral Branding"	means branding which shall not:
	(a) bear any brand image or symbol;
	(b) display any distinctive trademarks;
	(c) make any reference to the name of the company or entity which owns the branding, the Franchisee or an Affiliate; or
	(d) use any colour combinations, livery or other elements,
	that are specific to the Franchisee, an Affiliate or any other company and shall incorporate no other visual link to the Franchisee, an Affiliate or any other company;
"East Midlands Railway Brand"	means a brand (which may include sub-brands for specific Routes or types of Passenger Services) which is either: <ul style="list-style-type: none"> (a) created by the Franchisee; or (b) acquired by the Franchisee from the Previous Franchisee or otherwise, provided always that such brand constitutes Neutral Branding;

- 4.2 The Franchisee shall implement and maintain the Neutral Branding and the East Midlands Railway Brand throughout the Franchise Term.

- 4.3 The Franchisee shall use and apply the East Midlands Railway 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 Franchisee (and any other assets owned or used by the Franchisee in the operation and provision of the Franchise Services which the Franchisee uses branding on) throughout the Franchise Term and in connection with the provision of the Franchise Services.
- 4.4 **NOT USED.**
- 4.5 The Franchisee shall ensure that all rights in the East Midlands Railway Brand (as may be modified from time to time) is capable of being designated as Primary Franchise Assets and accordingly transferred to the Successor Operator and, if the Secretary of State so designates rights in relation to the East Midlands Railway Brand and does not de-designate it pursuant to paragraph 10 (*De-Designation of Franchise Assets and Primary Franchise Assets*) of Schedule 14.4 (*Designation of Franchise Assets*), the transfer value shall (unless otherwise agreed by the Secretary of State) be nil.

Appendix 1**List of Trade Marks****1. Registered Trade Marks**

Trade Mark	Registration No	Classes	Date of Filing
Double Arrow Symbol	2107832	16, 35, 37, 39, 41, 42	16 August 1996
Intercity (1) INTERCITY	1277000	39, 43	1 October 1986
Intercity (2) INTERCITY	1518859	16	14 November 1992
Intercity (3) INTERCITY	1537905	28	9 June 1993
The Master Cutler THE MASTER CUTLER	1275692	39	1 October 1986
The Robin Hood THE ROBIN HOOD	1488384	39	21 January 1992
Business Direct BUSINESS DIRECT	1532967	39	16 April 1993
Midland Main line MIDLAND MAIN LINE and Midland Mainline MIDLAND MAINLINE	3162772	37,39 & 43	4 May 2016
Sprinter SPRINTER	1276982	39	1 October 1986

2. Unregistered Trade Marks

Trade Mark			
The South Yorkshireman THE SOUTH YORKSHIREMAN			
The Sheffield Continental THE SHEFFIELD CONTINENTAL			

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 Franchise Services by a Successor Operator on expiry of the Franchise Period; and
- (b) in accordance with paragraph 5, require the Franchisee 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 the Franchise Agreement are set out in Appendix 1 (List of Key Contracts) to this Schedule 14.3.
- (b) The Franchisee shall enter into any and all Key Contracts which are necessary for the Franchise Agreement to continue in accordance with clause 5 (Duration of the Franchise Agreement).
- (c) Where at any time after the date of this Franchise Agreement the Franchisee 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 Franchisee 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 Franchisee is (or may become) a party or a beneficiary pursuant to paragraph 2 of this Schedule 14.3; or
- (b) de-designation by the Secretary of State of any Key Contract pursuant to paragraph 3 of this Schedule 14.3; or

- (c) re-designation by the Secretary of State pursuant to paragraph 4 of this Schedule 14.3.

2. **Designation of Key Contracts**

- 2.1 Where the Secretary of State considers that it is reasonably necessary for securing the continued provision of the Franchise Services or the provision of services similar to the Franchise Services by a Successor Operator in accordance with the Franchise Agreement, he may make a designation pursuant to paragraph 2.2.
- 2.2 The Secretary of State may at any time, by serving notice on the Franchisee, designate as a Key Contract:
 - (a) any actual or prospective agreement, contract, licence or other arrangement; and/or
 - (b) any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary, with effect from the date specified in such notice.
- 2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Franchisee or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

3. **De-designation of Key Contracts**

The Secretary of State may at any time, by serving a notice on the Franchisee, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. **Re-designation of Key Contracts**

The Secretary of State may at any time, by serving notice on the Franchisee, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

5. **Direct Agreements**

- 5.1 Unless the Secretary of State otherwise agrees, or unless directed to do so by the ORR, the Franchisee shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:
 - (a) is a Train Operator; or
 - (b) has entered into a Direct Agreement with the Secretary of State in respect of that prospective Key Contract, providing on a basis acceptable to the Secretary of State, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;

- (ii) termination or expiry of the Franchise Agreement; or
- (iii) the making of a railway administration order in respect of the Franchisee.

5.2 Where the Secretary of State designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Franchisee is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Franchisee is already a party to a contract, licence or other arrangement which, by virtue of the Secretary of State's designation or re-designation, is classified in such category,

the Franchisee shall use all reasonable endeavours to assist the Secretary of State in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

5.3 The Franchisee shall pay to the Secretary of State an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Secretary of State under the provisions of any Direct Agreement and which may be notified to the Franchisee as a result of, or in connection with:

- (a) any breach by the Franchisee of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the Franchisee against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. **Emergencies**

6.1 Where any emergency may arise in connection with the provision and operation of the Franchise Services, the Franchisee:

- (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 Franchisee shall not without the prior consent of the Secretary of State (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

8. Replacement of Key Contracts

The Franchisee shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter into an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Secretary of State in relation to such replacement contract.

9. Termination of Key Contracts

The Franchisee shall, to the extent so requested by the Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.

APPENDIX 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 the Franchise Agreement been agreed between the Parties to be Key Contracts:

1. any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner;
2. any Property Lease and all side agreements relating to such relevant Property Lease;
3. any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 (*Original Rolling Stock*) and Table 2 (*Specified Rolling Stock*) of Appendix 1 (*The Composition of the Train Fleet*) to Schedule 1.6 (*The 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 Franchisee in the provision of the Passenger Services;
6. any contract or arrangement for the subcontracting or delegation to another Train Operator or other third party of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 8 (*Subcontracting any Passenger Services*) of Schedule 1.1 (Franchise Services and Service Development));
7. any contract or arrangement with a Train Operator or other third party (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
8. any contract or arrangement with a Train Operator or other third party for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services;
9. any contract or arrangement for the supply of spare parts or Spares;
10. any contract or arrangement for the maintenance of track and other related infrastructure;
11. any licences of Marks to the Franchisee;
12. any contract or arrangement for the procurement, implementation, processing and/or operation of the STNR System (including Intellectual Property Rights (or licence to use the same) relating to the STNR System;
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 Franchise Services;
15. any contract or arrangement for the procurement, implementation, processing and/or operation of Delay Repay Compensation (including Intellectual Property Rights (or licence to use the same) relating to Delay Repay Compensation); and
16. any lease entered into with Network Rail relating to land at Burton-on-Trent station pursuant to paragraph 59.1 (Car Parking Spaces) of Part 1 of Schedule 6.2 (Committed Obligations).

Schedule 14.4

Designation of Franchise Assets**1. Franchise Assets**

1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Franchisee from time to time during the Franchise Period shall be designated as Franchise Assets and shall constitute Franchise Assets for the purposes of section 27(11) of the Act.

1.2 The rights and liabilities of the Franchisee in respect of the following items shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of section 27(11) of the Act:

- (a) any contracts of employment;
- (b) the Franchise Agreement and any Transfer Scheme or Supplemental Agreement;
- (c) the Ticketing and Settlement Agreement;
- (d) any sums placed on deposit with a bank or other financial institution;
- (e) such other property, rights and liabilities as the Franchisee and the Secretary of State may agree from time to time or as the Secretary of State may de-designate as Franchise Assets under paragraph 10.2; and
- (f) any Rolling Stock Leases.

1.3 The Franchisee shall keep vested in it at all times during the Franchise Period all Franchise Assets designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets) as it may require in order to comply with:

- (a) the Licences;
- (b) any contracts of employment with Franchise Employees;
- (c) any relevant Fares;
- (d) any Key Contracts; and
- (e) any applicable safety legislation regulations or safety standards and the Safety Certificate,

in order to ensure that the Secretary of State may designate such assets as Primary Franchise Assets.

2. Primary Franchise Assets

2.1 The following property, rights and liabilities shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the following dates:

- (a) the property, rights and liabilities listed as such in the table in Appendix 1 (List of Primary Franchise Assets) to this Schedule 14.4 (which constitute

Primary Franchise Assets agreed between the Parties as at the date of the Franchise Agreement), on the Start Date;

- (b) any additional property, rights and liabilities designated under paragraph 3 during the Franchise Period, on the date of such designation;
- (c) any property or right which is vested in the Franchisee and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- (d) the rights and liabilities of the Franchisee under any Key Contract designated under paragraph 5, on the date of such designation;
- (e) the rights and liabilities of the Franchisee in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation;
- (f) any CRM Data and/or Yield Management Data and, to the extent that any CRM System and/or Yield Management System is the property of the Franchisee, such CRM System and/or Yield Management System on the later of the Start Date and:
 - (i) in relation to CRM Data or Yield Management Data, the date on which such CRM Data or Yield Management Data (as applicable) is collected; or
 - (ii) in relation to any such CRM System or Yield Management System, the date on which such CRM System or Yield Management System is created,

save, in relation to CRM Data and Yield Management Data, any data in respect of which the Data Subject has not consented to such data being disclosed and processed by any Successor Operator and/or the Secretary of State;
- (g) any licence of any CRM System and/or Yield Management System, on the date of such licence;
- (h) a RV Asset on the date in which such RV Asset is brought into operational use as specified in the applicable Certification of Completion;
- (i) Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same), on the date such information is supplied to the Secretary of State pursuant to paragraph 1.1 of Schedule 1.5 (Information about Passengers) and
- (j) any property and rights comprised in Committed Obligations and designated by the Secretary of State as Primary Franchise Assets pursuant to paragraph 9 (*Designation of Assets comprised in COs as Primary Franchise Assets*) of Schedule 6.2 (*Special Term Related to the Committed Obligations*), on the date of such designation.

2.2 NOT USED.**3. Designation of Additional Primary Franchise Assets**

3.1 The Secretary of State may at any time and from time to time, by serving notice on the Franchisee, designate any or all of the Franchise Assets as Primary Franchise Assets.

3.2 Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.

3.3 On or before designation of any Franchise Asset as a Primary Franchise Asset, the Secretary of State may agree not to subsequently de-designate such Primary Franchise Asset without the prior written consent of the Franchisee. If the Secretary of State so agrees, the notice designating the relevant Franchise Asset as a Primary Franchise Asset shall state the commitment not to de-designate.

4. Designation during last twelve (12) months of Franchise Period

4.1 If the Secretary of State designates a Franchise Asset as a Primary Franchise Asset under paragraph 3 at any time during the last twelve (12) months of the Franchise Period then, within twenty eight (28) days of such designation, the Secretary of State may, subject to paragraph 4.2, de-designate such Primary Franchise Asset by serving notice on the Franchisee. Such de-designation shall take effect upon delivery of such notice.

4.2 Where, the Secretary of State has given a commitment not to de-designate a Primary Franchise Asset pursuant to paragraph 3.3, he shall not de-designate such Primary Franchise Asset pursuant to paragraph 4.1 without first obtaining the prior written consent of the Franchisee.

5. Designation of Key Contracts as Primary Franchise Assets

The Secretary of State shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Franchise Asset at any time during the Franchise Period by serving notice on the Franchisee. Such designation shall take effect from delivery of such notice.

6. Designation of Fares and Discount Cards

The Secretary of State may designate any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchisee. Such designation shall take effect from delivery of such notice.

7. Rights and Liabilities

The Secretary of State, in designating the rights and liabilities of the Franchisee (whether under a particular contract or other arrangement) as a Primary Franchise Asset may, in his discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

8. Disputes over Designation

- 8.1 The Franchisee may object in writing to the Secretary of State to any designation pursuant to paragraph 3 or 4.
- 8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Franchisee's opinion, reasonably necessary to secure the continued provision of the Franchise Services by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or to facilitate the transfer to such Successor Operator of the provision of the Franchise Services at such time.
- 8.3 Any such objection may only be made within twenty eight (28) days of a designation made more than twelve (12) months prior to the end of the Franchise Period or fourteen (14) days of a designation made during the last twelve (12) months of the Franchise Period.
- 8.4 The Secretary of State shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Franchisee regarding the use of the relevant Primary Franchise Asset otherwise than in the provision and operation of the Franchise Services.
- 8.5 If the Franchisee's objection cannot be resolved by agreement within a period of fourteen (14) days from the date of submission of that objection, the Franchisee may refer the dispute for resolution in accordance with the Dispute Resolution Rules.
- 8.6 Any body duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or otherwise facilitating the transfer of the provision of the Franchise Services at such time, and accordingly whether or not they should cease to be so designated.
- 8.7 If any dispute as to any designation pursuant to paragraph 3 remains outstanding on the expiry of the Franchise Period, then such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant Franchise Assets shall continue to be designated as Primary Franchise Assets on and after the expiry of the Franchise Period.

9. Provision of Information to the Secretary of State

- 9.1 The Franchisee shall provide such information as the Secretary of State may reasonably require in order to satisfy the Secretary of State that any Franchise Assets which are to be designated as Primary Franchise Assets after the Start Date under this Schedule 14.4 will at the time of such designation be vested in the Franchisee. Such information may include details of any Security Interests over such property, rights and liabilities.
- 9.2 The Franchisee shall further provide such information as to the property, rights and liabilities of the Franchisee as the Secretary of State may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Secretary of State within such timescale as the Secretary of State may reasonably require.

10. De-Designation of Franchise Assets and Primary Franchise Assets

10.1 The Secretary of State and the Franchisee may agree in writing at any time that a:

- (a) Franchise Asset shall cease to be designated as a Franchise Asset; or
- (b) Primary Franchise Asset shall cease to be designated as a Primary Franchise Asset,

and the relevant Franchise Asset or Primary Franchise Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.

10.2 The Secretary of State may, in addition at any time during the Franchise Period, by serving notice on the Franchisee:

- (a) cause a Franchise Asset which is not a Primary Franchise Asset to cease to be designated as a Franchise Asset. Such Franchise Asset shall cease to be designated on the date specified in such notice; or
- (b) subject to paragraph 10.3, cause a particular Primary Franchise Asset to cease to be designated as such. Such Primary Franchise Asset shall cease to be designated on the date specified in such notice.

10.3 Where, the Secretary of State has given a commitment not to de-designate a Primary Franchise Asset pursuant to paragraph 3.3 or pursuant to any provision of the Franchise Agreement giving that commitment, the Secretary of State shall not de-designate such Primary Franchise Asset pursuant to paragraph 10.2(b) without first obtaining the prior written consent of the Franchisee.

10.4 The Secretary of State's rights pursuant to paragraph 10.2(b) may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Asset, no later than one (1) year prior to the expiry of the Franchise Term.

11. Amendment of the List of Primary Franchise Assets

The table in Appendix 1 (List of Primary Franchise Assets) to this Schedule 14.4 shall be amended as the Secretary of State considers necessary or desirable from time to time to take account of designation and de-designation of Primary Franchise Assets pursuant to this Schedule 14.4.

⁵¹⁵ **APPENDIX 1 TO SCHEDULE 14.4****List of Primary Franchise Assets**

Description of Primary Franchise Asset*	Commitment not to de-designate	To Transfer to Successor Operator at Nil Value
(i) those parts of the STNR System that were funded by the Secretary of State under the 2015 Franchise Agreement and the Previous Franchise Agreement and which are transferred to the Franchisee pursuant to the Start Date Transfer Scheme; (ii) any Intellectual Property Rights vested in the Franchisee (or licensed to the Franchisee to use the same) associated with those parts of the STNR System; and (iii) all STNR Data processed or generated by the STNR System.	Yes	Yes
Any land at Burton-on-Trent station acquired by the Franchisee pursuant to paragraph 59.1 of Part 1 to Schedule 6.2.	No	Yes
Collingham: Wood clad Cycle Shelter Two tier cycle racking - 34 cycle rack spaces 2 x LED linear vapour proof luminaire (covered by existing CCTV)	No	Yes
Kettering: Purpose built cycle facility (capable of storing 170 Cycles) Two tier cycle racking -170 cycle rack spaces 6 x LED linear vapour proof luminaires 1x Exit Luminaire 1x Emergency Luminaire 1x Cycle Charge point capable of charging two cycles 2x CCTV Cameras (connected to station system) 1x External feed pillar housing DB and Access control board Access control reader (for secure access) 1x Cycle Fingertip maintenance tool	No	Yes
Market Harborough: Secure covered cycle store with two tier cycle stands for 140 bicycles. Associated CCTV, lighting and Access Control systems.	No	Yes

⁵¹⁵ 26 May 2021 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

Oakham: Steel Cycle Shelter 5X Sheffield hoops (providing 10 Cycle Parking Spaces)	No	Yes
Spalding: Wood cladded Cycle Shelter Two tier cycle racking - 30 cycle rack spaces 2 x LED linear vapour proof luminaires 1 x CCTV Camera (connected to station system)	No	Yes

Schedule 14.5

Dealing with Franchise Assets**1. Assets not Designated as Primary Franchise Assets**

- 1.1 This paragraph 1 relates to any Franchise Assets that are property or rights and are not designated as Primary Franchise Assets.
- 1.2 For the purposes of section 27(3) of the Act, the Secretary of State consents to the Franchisee:
- (a) transferring or agreeing to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets; and
 - (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Franchise Assets.

2. Liabilities not Designated as Primary Franchise Assets

- 2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Franchise Assets.
- 2.2 For the purposes of section 27(3) of the Act, the Secretary of State consents to the Franchisee entering into any agreement under which any such liability is released or discharged, or transferred to another person.

3. Franchise Assets and Primary Franchise Assets

- 3.1 This paragraph 3 relates to Franchise Assets (whether or not designated as Primary Franchise Assets) which are property or rights.
- 3.2 The Secretary of State hereby consents to the installation of Spares which have been designated as Primary Franchise Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.
- 3.3 For the purposes of section 27(3) of the Act, the Secretary of State hereby consents to the Franchisee creating or agreeing to create any Security Interest over any of these Franchise Assets to the extent that the terms of any such Security Interest provided that:
- (a) if the relevant Franchise Asset becomes the subject of a transfer scheme made under section 12 and Schedule 2 of the Railways Act 2005, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;
 - (b) if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with the Franchise Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
 - (c) such Security Interest shall not be enforced or enforceable until the date on which such Franchise Asset ceases to be designated as a Franchise Asset.

4. Prohibition on Other Security Interests

The Franchisee shall not create or agree to create a Security Interest over any Franchise Asset except on the terms permitted under paragraph 3.3.

5. Miscellaneous

The Franchisee shall promptly inform the Secretary of State of any Security Interest arising at any time over any of its property or rights and shall provide the Secretary of State with such information in relation thereto as he may reasonably require.

Schedule 14.6 **NOT USED**⁵¹⁶

Residual Value Mechanism

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

Schedule 14.7

Incentivising Long Term Investment

This Schedule 14.7 sets out the Secretary of State's guidance on how the Secretary of State approaches incentivising long term investment.

1. The Secretary of State wishes to encourage the Franchisee to:
 - (a) improve the efficiency;
 - (b) reduce the cost; and
 - (c) enhance the revenue earning potential of the delivery of services to passengers,from the commencement of the Franchise, through the Franchise Term and into the successor franchises.
2. It is recognised however that the Franchise Term may be perceived to be a barrier to undertaking investment or change programmes where:
 - (a) the time scale for implementation limits the benefit to the Franchisee; or
 - (b) the business case for such investment or change has a payback period longer than the Franchise Term.
3. In this context investment or change may be considered to encompass:
 - (a) capital investments undertaken solely by the Franchisee;
 - (b) capital investments undertaken by the Franchisee in association with others;
 - (c) total or partial substitution of certain train services by bus services where an enhanced service level could be provided for reduced cost or where the provision of bus services improves the overall capacity of the network or delivers other benefits;
 - (d) changes in working practices of the Franchisee's employees;
 - (e) changes in the contracted roles and responsibilities between the Franchisee and its major suppliers; and
 - (f) operational changes.
4. Accordingly, the Franchisee is encouraged to propose schemes that seek to achieve the objectives set out in paragraph 1 for consideration by the Secretary of State during the Franchise Term.
5. In considering the Franchisee's proposals for any investment or change proposed to be undertaken, the Secretary of State will recognise:
 - (a) the capital cost and proposed payment profile;

- (b) legitimate costs of the Franchisee in developing, procuring, delivering and project managing the project;
 - (c) the life of any capital assets and the duration of the benefits stream arising;
 - (d) the remaining Franchise Term and the projected payback period;
 - (e) the benefits associated with undertaking the investment early rather than waiting until the Franchise is re-let;
 - (f) the risks of cost overrun or under performance of the projected benefits;
 - (g) a profit element for undertaking the project commensurate with the risks of the proposed project; and
 - (h) alternative benefit sharing arrangements which could be based on:
 - (i) a capital lump sum when the expenditure is incurred;
 - (ii) an enhanced Franchise Payment over the Franchise Term;
 - (iii) a balloon payment on expiry of the Franchise which allocates a proportion of future benefits to the Franchisee;
 - (iv) an ongoing payment if the benefits materialise after the Franchise Term; and/or
 - (v) any combination of any of paragraphs 5(h)(i) to 5(h)(iv) inclusive.
6. In evaluating the Franchisee's proposals for any investment or change proposed to be undertaken and to enable best value for money to be obtained from third party financiers, the Secretary of State shall also give consideration to the appropriateness of the provision, by the Secretary of State, of an undertaking (or other form of comfort) pursuant to section 54 of the Act.

SCHEDULE 15**OBLIGATIONS ASSOCIATED WITH TERMINATION**

Schedule 15.1:	Reletting Provisions
Schedule 15.2:	Last Twelve (12) or Thirteen (13) months of Franchise Period and other conduct of business provisions
Schedule 15.3:	Handover Package
	Appendix 1: Form of Handover Package
Schedule 15.4:	Provisions applying on and after Termination
	Appendix 1: Template Form of Transfer Scheme
	Appendix 2: Template Form of Supplemental Agreement

Schedule 15.1

Reletting Provisions**1. Reletting of Franchise**

- 1.1 The Franchisee acknowledges that the Secretary of State may wish, at or before the expiry of the Franchise Period, either to invite persons to tender for the right to provide all or some of the Passenger Services under a franchise agreement or alternatively to enter into a franchise agreement in respect of all or some of the Passenger Services without having gone through a tendering process.
- 1.2 The Franchisee further acknowledges that the Secretary of State has in certain circumstances a duty under section 30 of the Act to secure the continued provision of services equivalent to the Passenger Services on expiry or termination of the Franchise Agreement. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development), Schedule 14 (Preservation of Assets) and this Schedule 15 (Obligations Associated with Termination).

2. Preparation for Reletting

- 2.1 The Franchisee shall, if so requested by the Secretary of State provide the Secretary of State and his representatives and advisers with access to officers, the Franchise Employees and all books, records and other materials kept by or on behalf of the Franchisee in connection with the Franchise Services (including electronic or magnetic records, any CRM System and any Yield Management System) for the purpose of assisting such representatives and advisers:
- (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 Franchise Services;
 - (b) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
 - (c) to enter into any franchise agreement or other agreement (including any agreement entered into by the Secretary of State in fulfilment of his duties under section 30 of the Act) relating to the services equivalent to the Franchise Services, without undergoing a tendering process,

provided that the exercise of such access rights by the Secretary of State and his representatives and advisers shall not unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

3. Data Site Information

- 3.1 The Franchisee shall, at the request of the Secretary of State, make available to the Secretary of State and his representatives and advisers:
- (a) the information relating to the Franchise 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 Franchisee 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.

- 3.3 The Franchisee 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 Franchisee shall provide such confirmation in relation to the accuracy of:

- (a) the contents of the documents referred to in paragraph 2.1; and
(b) any Data Site Information uploaded to such electronic data site as the Secretary of State may require pursuant to paragraph 3.5,

in each case, as the Secretary of State shall require from time to time.

- 3.5 The Franchisee 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 Franchisee shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Secretary of State).

- 3.6 The Franchisee 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 Franchisee by notice in writing to comply;
- (b) where the Secretary of State raises with the Franchisee any query in relation to any Data Site Information, make a full and substantive response to such query within five (5) Weekdays. Such response shall include any further information requested by the Secretary of State in relation to such query; and
- (c) nominate a person to whom:
- (i) all queries or requests for information pursuant to paragraph 3.6(b);
- (ii) requests for access to premises pursuant to paragraph 5; and
- (iii) requests for access to employees,

shall be addressed and who shall be responsible for complying with any such queries or requests for information and such requests for access to employees and premises. The Franchisee shall notify the Secretary of State (his representatives and advisers) of the name and contact details of such person.

- 3.7 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of services equivalent to the Franchise Services (whether or not together with other railway passenger services) at or following the end of the Franchise Period, the Franchisee agrees and acknowledges that the Secretary of State may require:
- (a) that the Franchisee provides the Secretary of State with additional information and reports and analysis in respect of such Service Groups as the Secretary of State may specify. This may include:
 - (i) information relating to the operational and financial performance of the Franchisee in relation to such Service Groups; and
 - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
 - (b) subject to paragraph 3.8, that the Franchisee reorganises the business of providing services equivalent to the Franchise Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Franchise Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:
 - (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or
 - (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Franchise Services within that Service Group; and
 - (c) that the Franchisee uploads Data Site Information to more than one data site.
- 3.8 Subject to paragraph 3.9, the Secretary of State shall reimburse any reasonable out of pocket expenses that the Franchisee may incur in complying with its obligations under this paragraph 3.
- 3.9 Without prejudice to any other rights the Secretary of State may have (under the Franchise Agreement or otherwise) in respect of any contravention by the Franchisee of its obligations under this paragraph 3, if the Secretary of State is of the reasonable opinion that the Franchisee does not have sufficient resources to enable its compliance with its obligations under this paragraph 3 he may:

- (a) require the Franchisee (at its own cost) to employ; or
- (b) after notification to the Franchisee, employ,

such suitable additional resource as may be required to ensure that the Franchisee can comply with its obligations under this paragraph 3. The Franchisee shall reimburse to the Secretary of State, by way of adjustment to Franchise Payments, any proper costs (including staff costs) incurred by him in the employment of any such additional resource pursuant to paragraph 3.9(b).

- 3.10 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 3.9, the Secretary of State shall allow the Franchisee a reasonable opportunity to make representations to him concerning the exercise by the Secretary of State of his rights under paragraph 3.9 but the Secretary of State shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 3.9.

4. **Non-Frustration of Transfer to Successor Operator**

- 4.1 The Franchisee shall take no action or steps which is or are designed, directly or indirectly:

- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Franchise Services at the end of the Franchise Period to a Successor Operator; or
- (b) to avoid, frustrate or circumvent any provision of the Franchise Agreement (including in particular the provisions of Schedule 14 (Preservation of Assets) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

- 4.2 Subject to the restrictions set out in paragraph 4.1 and the other provisions of the Franchise Agreement, the Franchisee may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

5. **Inspection Rights during the Tendering/Reletting Process**

- 5.1 Without limiting any other rights of the Secretary of State under the Franchise Agreement and subject to paragraph 5.3, the Franchisee 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 Franchisee or any of its Affiliates or used in connection with the provision of the Franchise Services by the Franchisee or any of its Affiliates,

("Inspections") by the Secretary of State (or his nominee, which for these purposes shall include potential Successor Operators including potential bidders who have expressed an interest in tendering for the right and obligation to operate any or all of the Franchise Services, 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 Franchisee 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 Franchise Services by the Franchisee.

Schedule 15.2

Last Twelve (12) or Thirteen (13) Months of Franchise Period and Other Conduct of Business Provisions

1. **Last Twelve (12) or Thirteen (13) Month Period**
 - 1.1 Where reference is made in the Franchise Agreement to the last twelve (12) or thirteen (13) months of the Franchise Period, such period shall be deemed to commence on the earliest of the following dates:
 - (a) the date which is twelve (12) or thirteen (13) months, as the case may be, prior to the Expiry Date or if the actual date of expiry of the Franchise Period is known the date which is twelve (12) or thirteen (13) months prior to that date;
 - (b) the date on which the Secretary of State notifies the Franchisee that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Secretary of State reasonably considers that an Event of Default may occur within the following twelve (12) months; or
 - (c) the date on which the Secretary of State notifies the Franchisee that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Secretary of State considers it reasonably likely that the Franchise Agreement will be terminated by agreement between the Parties within such period.
 - 1.2 Any such period (which may be longer or shorter than twelve (12) or thirteen (13) months, as the case may be) shall expire on the Expiry Date or, if earlier:
 - (a) in the case of periods commencing under paragraph 1.1(b) or 1.1(c), the date falling twelve (12) or thirteen (13) months after the date of any notice under paragraph 1.1(b) or 1.1(c); or
 - (b) such earlier date as the Secretary of State may determine.
2. ⁵¹⁷ **NOT USED.**
3. ⁵¹⁸ **NOT USED.**
4. ⁵¹⁹ **Changes in Numbers and Total Cost of Employees**
 - 4.1 ⁵²⁰ **Subject to and excluding any increase in the remuneration of Franchise Employees permitted under paragraph 2.1, the Franchisee shall not, and**

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

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

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

⁵²⁰ 8 April 2021 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State (which shall not be unreasonably withheld) increase or decrease during the ERMA Term the number of Franchise Employees such that:

- (a) the total number of Franchise Employees or the total cost per annum to the Franchisee and each other relevant employer of employing all Franchise Employees is increased; or
- (b) the total number of Franchise Employees is decreased, in each case, by more than five per cent (5%) compared to the previous period of twelve (12) months provided that where the last twelve (12) or thirteen (13) months of the Franchise Period has been deemed to have commenced under paragraph 1.1 and the period of the restriction contemplated by this paragraph 4 lasts longer than twelve (12) months such restriction shall apply in respect of the longer period.

4.2 ⁵²¹For the avoidance of doubt, in the event that the Franchisee participates in the Kickstart Scheme, the Kickstart Scheme Employees shall be excluded from the total number of Franchise Employees for the purposes of paragraph 4.1.

5. Fares

5.1 ⁵²²Reduction in Prices of Fares

- (a) During the term of the ERMA or the last thirteen (13) months of the Franchise Period the Franchisee shall not, without the prior written consent of the Secretary of State (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the term of the ERMA or the Franchise Period (as applicable) for an amount which is less than the Price or the Child Price of that Fare immediately before the ERMA Start Date or commencement of such thirteen (13) month period (as applicable) or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.
- (b) Paragraph 5.1(a) shall not prevent the Franchisee from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:

⁵²¹ 8 April 2021 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

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

- (i) **presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the ERMA Start Date or commencement of such thirteen (13) month period and to which the purchaser would have been entitled before the commencement of such period;**
 - (ii) **presenting a Discount Card issued by another train operator;**
 - (iii) **the Passenger's Charter or the passenger's charter of any other train operator; or**
 - (iv) **any relevant conditions of carriage.**
- (c) **The Franchisee shall procure that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with the provisions of paragraph 5.1(a) to the extent that such provisions apply to the selling of Fares by the Franchisee.**

5.2 ⁵²³Percentage Allocations

- (a) **Except to the extent that the Secretary of State may consent from time to time (such consent not to be unreasonably withheld), the Franchisee shall not, during the term of the ERMA or, in the last thirteen (13) Reporting Periods (whichever is the longer) of the Franchise Period, take any action or step which may result in its Percentage Allocation (as defined in the Ticketing and Settlement Agreement) in respect of any Rail Product (as defined in the Ticketing and Settlement Agreement) being reduced.**
- (b) **The Franchisee shall notify the Secretary of State before taking any such action or step during the term of the ERMA or, in the last thirteen (13) Reporting Periods (whichever is the longer) of the Franchise Period and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take such action as the Secretary of State may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.**

5.3 Restrictions in respect of Sale of Advance Purchase Train-specific Fares

- (a) It is acknowledged that the Franchisee will make available for sale prior to the end of the Franchise Period Advance Purchase Train-specific Fares which are valid for travel after the end of the Franchise Period.
- (b) In making such Advance Purchase Train-specific Fares available for purchase the Franchisee shall not change its commercial practice in terms

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

of the number of such Advance Purchase Train-specific Fares made available or the Passenger Services on which they are valid for use when compared with its previous commercial practice in respect of Advance Purchase Train-specific Fares valid for travel prior to the end of the Franchise Period.

- (c) The Franchisee will be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of the Franchisee's practice in addressing such seasonal factors in the corresponding period in the previous year.

6. ⁵²⁴**Voting on Scheme Councils**

6.1 During the term of the ERMA, the Franchisee shall give the Secretary of State reasonable notice of:

(a) any meeting of:

(i) a scheme council of an Inter-Operator Scheme on which the Franchisee is represented; or

(ii) a scheme management group of any Inter-Operator Scheme:

(A) in which the Franchisee has a permanent position; or

(B) where the Franchisee employs a member of such group;

(b) the resolutions to be voted upon at any such meeting; and

(c) the Franchisee's voting recommendations, together with its reasons.

6.2 The Franchisee shall:

(a) vote at any such meeting in the manner required by the Secretary of State; and

(b) present any documents or other information which the Secretary of State may request at any such meeting.

7. ⁵²⁵**NOT USED.**

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

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

Schedule 15.3

Handover Package**1. Handover Package Status**

1.1 The Franchisee shall:

- (a) on or before the Start Date, provide to the Secretary of State:
 - (i) the package which contains the information specified in Appendix 1 (Form of Handover Package) to this Schedule 15.3 and such other information as the Secretary of State may reasonably specify from time to time (the "**Handover Package**"); and
 - (ii) a letter in a form approved by and addressed to the Secretary of State confirming the details of any insurer providing insurance to the Franchisee and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Secretary of State, a Successor Operator or its agent on demand;
- (b) maintain the Handover Package and update it at least every three (3) Reporting Periods; and
- (c) in respect of the information required pursuant to paragraph 1.1(a)(ii), supply revised information and/or letters to the Secretary of State as and when required in order to ensure that such information and letters remain accurate and up to date.

1.2 The Franchisee shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Franchise Period.

1.3 **NOT USED.**

1.4 From the date that the Station Asset Management Plan or the Station Social and Commercial Development Plan is created pursuant to Schedule 1.7 (Stations) the Franchisee shall update the Handover Package to include the Station Asset Management Plan and the Station Social and Commercial Development Plan and shall update the Station Asset Management Plan and the Station Social and Commercial Development Plan included in the Handover Package pursuant to this paragraph 1.4 whenever such plans are updated in accordance with Schedule 1.7 (Stations).

2. Director's Certificate

2.1 At the same time as the Franchisee is required to provide the Annual Business Plan to the Secretary of State as required by paragraph 10.2 of Schedule 11.2 (Management Information), the Franchisee shall provide to the Secretary of State the latest version of the Handover Package (updated as required pursuant to paragraph 1.1(b) of this Schedule 15.3 together with:

- (a) a certificate signed by a statutory director of the Franchisee, addressed to the Secretary of State, which confirms that:

- (i) the Handover Package contains the information specified in Appendix 1 (Form of Handover Package) to this Schedule 15.3 (and such other information specified from time to time by the Secretary of State); and
- (ii) such information is accurate as at the date of the certificate; and
- (c) a document setting out all the changes that have been made to the Handover Package since the last version of the Handover Package provided to the Secretary of State pursuant to this paragraph 2.1.

3. **Key Contacts List**

- 3.1 The Franchisee shall on or before the Start Date, provide to the Secretary of State the Key Contacts List by following the guidance issued by the Secretary of State from time to time. The Key Contacts List shall be stored in an encrypted server with password protected access.
- 3.2 The Franchisee shall ensure that the Key Contacts List is maintained in an accurate and up to date form. In the event of any change(s) to the Key Contacts List the Franchisee shall supply the revised Key Contacts List to the Secretary of State pursuant to the guidance mentioned in paragraph 3.1 above and as soon as reasonably practicable (and in any event within the timeframes set out in paragraph 3.4) after the change(s) is/are made.
- 3.3 The Franchisee shall make the relevant Franchise Employee listed in the Key Contacts List aware that their Personal Data shall be shared with:
- (a) the Secretary of State and retained by the Secretary of State during the Franchise Term (until such time as the Personal Data is replaced in the Key Contacts List by way of the change(s) described in paragraph 3.2) and for a period of twelve (12) months after the Expiry Date; and
 - (b) the Successor Operator during the mobilisation period,
- including by ensuring that the fairness principle of the Data Protection Legislation is satisfied in respect of the same by issuing all relevant privacy notices.
- 3.4 The Franchisee shall be responsible for informing the Secretary of State if details in the Key Contacts List are incorrect or need to be deleted by the Secretary of State within five (5) Weekdays of notice from the relevant Franchise Employee. The Secretary of State shall delete or amend the details within five (5) Weekdays of notice from the Franchisee.
- 3.5 The Franchisee shall also ensure that the Key Contacts List is provided to the Secretary of State within twenty four (24) hours of the receipt of any Termination Notice.

APPENDIX 1 TO SCHEDULE 15.3**Form of Handover Package**

1. All information in the Handover Package must be provided electronically in a form that is acceptable to the Secretary of State.

2. **Property**

A list of all property owned, leased, operated or occupied by the Franchisee which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

2. **Contracts**

A list of all contracts (sales, purchases or otherwise including leases and licences) between the Franchisee and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of the Franchisee and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Secretary of State.

3. **Systems**

A list of the electronic systems in use by the Franchisee, together with the name, office address and telephone number of the Franchisee's Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.

4. **Asset Register**

A list of all assets owned or operated by the Franchisee, together with their location.

5. **Insurance**

A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Franchisee, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

6. **Safety Certificate**

A complete copy of the Safety Certificate, an electronic copy of the Franchisee's application for the Safety Certificate and full details of the Franchisee's safety management system in place to support the Safety Certificate.

7. **NOT USED.**

Schedule 15.4

Provisions applying on and after Termination**1. Novation of Access Agreements on Termination of the Franchise Agreement**

1.1 The Franchisee shall, to the extent so requested by the Secretary of State on termination of the Franchise Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as he may direct.

1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

1.3 Such novation shall be on such terms as the Secretary of State may reasonably require, including:

(a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and

(b) that neither the Secretary of State nor his nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach of the relevant agreement referred to in paragraph 1.3(a),

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

1.4 The Franchisee shall, on the occurrence of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as he may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. Co-operation with Successor Operator

2.1 In order to ensure the continuity of, and an orderly handover of control over, the Franchise Services, the Franchisee shall co-operate with:

- (a) where a Successor Operator has been appointed, such Successor Operator;
or
- (b) where a Successor Operator has not been so appointed, the Secretary of State,

and shall take such steps as may be reasonably requested by the Secretary of State in connection therewith.

2.2 ⁵²⁶**In satisfaction of its obligations under paragraph 2.1, the Franchisee shall make appropriately skilled and qualified Franchise Employees reasonably available to attend such meetings with the Secretary of State, the Successor Operator, Network Rail, any rolling stock lessor or sub-lessee and/or any and/or other relevant third party as are reasonably required in order to determine:**

- (a) **those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:**
 - (i) **Access Agreements;**
 - (ii) **Property Leases;**
 - (iii) **agreements in relation to Shared Facilities;**
 - (iv) **Rolling Stock Leases;**
 - (v) **Rolling Stock Related Contracts;**
 - (vi) **any other Key Contract; and**
- (b) **without prejudice to the Secretary of State's rights under this Schedule 15.4, those rights and liabilities as may be specified in any Transfer Scheme.**

3. Transfer of Primary Franchise Assets

3.1 Option Arrangements

- (a) The Secretary of State hereby grants to the Franchisee the right to require the Secretary of State to make, and the Franchisee hereby grants to the Secretary of State the right to make, a Transfer Scheme in accordance with section 12 and Schedule 2 of the Railways Act 2005 for the transfer of any or all Primary Franchise Assets on the expiry of the Franchise Period.

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

- (b) On or within fourteen (14) days before the expiry of the Franchise Period:
 - (i) either Party may serve notice on the other Party specifying the Primary Franchise Assets to be transferred; and
 - (ii) the other Party may (within such timescale) serve a subsequent notice specifying any additional Primary Franchise Assets to be transferred.
- (c) The Secretary of State may (and shall if required by the Franchisee) make one or more such Transfer Schemes for the transfer of the Primary Franchise Assets specified in any such notice within fourteen (14) days after service of such notice (except in relation to any such Primary Franchise Assets which are, in accordance with Schedule 14.4 (Designation of Franchise Assets), de-designated as such prior to the end of the Franchise Period).
- (d) Any Franchise Assets or Primary Franchise Assets which are not so transferred shall cease to be designated as such fourteen (14) days after service of such notice.

3.2 Supplemental Agreement

Without prejudice to the duties, powers, rights and obligations of the Secretary of State under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on the Franchisee and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. The Franchisee shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

3.3 Payment of Estimated Transfer Price

- (a) The Secretary of State may require the Franchisee to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to the Franchisee, on the day on which the Transfer Scheme comes into force such sum as the Secretary of State may determine should be so paid having regard to:
 - (i) his estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise Assets being transferred under the relevant Transfer Scheme;
 - (ii) his estimate of any other sums likely to be paid thereunder;
 - (iii) the financial condition of the Franchisee and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
 - (iv) such other matters as the Secretary of State may consider appropriate.
- (b) The Franchisee shall pay to any such transferee the sum determined by the Secretary of State in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

3.4 Possession of Franchise Assets

On the coming into force of a Transfer Scheme, the Franchisee shall deliver up to the Secretary of State (or his nominee) possession of the Primary Franchise Assets transferred under such Transfer Scheme.

4. Associated Obligations on Termination

4.1 Assistance in Securing Continuity

- (a) In order to facilitate the continuity of the Franchise Services on expiry of the Franchise Period, the Franchisee shall take such steps, both before and after the expiry of the Franchise Period, as the Secretary of State may reasonably require, to assist and advise any Successor Operator in providing and operating the Franchise Services.
- (b) In particular, the Franchisee shall provide any Successor Operator with such records and information relating to or connected with the Franchise Services as the Secretary of State may reasonably require (other than confidential financial information but including all records relating to the Franchise Employees).

4.2 ⁵²⁷ Access

On the expiry of the Franchise Period, the Franchisee shall grant (or, in relation to the rolling stock vehicles, use all reasonable endeavours to procure that any sub-lessee shall provide) the Secretary of State and his representatives such access as the Secretary of State may reasonably request to any property owned, leased or operated by the Franchisee at such time, for the purpose of facilitating the continued provision of the Franchise Services.

4.3 Key Contracts

- (a) The Franchisee shall provide such assistance to any Successor Operator as the Secretary of State may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).
- (b) In satisfaction of its obligations under paragraph 4.3(a), the Franchisee shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Franchisee to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Franchise Period.

4.4 Change of Name

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

The Franchisee shall cease to use any trademarks which are licensed to the Franchisee under any of the Brand Licences forthwith upon expiry of the Franchise Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

4.5 **Property Leases**

- (a) The Franchisee shall, on the expiry of the Franchise Period, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- (b) Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
 - (i) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (ii) that neither the Secretary of State nor his nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.5(b)(i), and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- (c) The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.5(a) in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as he may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.5(b) shall apply to any such assignment.
- (d) The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. **Actions required immediately on Handover**

- 5.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State:
 - (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent

that the Franchisee is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and

- (b) information concerning any contract necessary for the continued operation of the Franchise where a procurement or bidding process has been initiated.

5.2 The Franchisee agrees that the Secretary of State or his agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as he sees fit (for the purposes of continuing the operation of the Franchise Services).

6. Maintenance Records

6.1⁵²⁸ **The Franchisee shall immediately on expiry of the Franchise Period provide to the Secretary of State (or, in relation to rolling stock vehicles, use all reasonable endeavours to) procure that any sub-lessee shall provide:**

- (a) **records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;**
- (b) **records of the status of the maintenance of any lifting equipment;**
- (c) **a list of any deferred maintenance; and**
- (d) **records of the status of the maintenance of any depot or station which is a Franchise Asset,**

including the extent of completion of examinations and the modification status of each such rolling stock vehicle

7. Ticketing Arrangements

7.1 The Franchisee shall provide immediately on expiry of the Franchise Period a statement certifying:

- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
- (b) the extent of any outstanding claims with ticketing settlement agencies;
- (c) refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
- (d) commissions owed and/or due.

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

8. Franchisee's Intellectual Property

- 8.1 On the expiry of the Franchise Period, the Franchisee will grant to any Successor Operator licences of any Intellectual Property Rights which:
- (a) are owned by or licensed to the Franchisee;
 - (b) were not owned by or licensed to it immediately prior to the Start Date;
 - (c) have not been designated as a Primary Franchise Asset;
 - (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 Franchise Services on an efficient and economic basis after the expiry of the Franchise Period.
- 8.2 When agreeing the terms on which Intellectual Property Rights are to be licensed to it, the Franchisee shall use all reasonable endeavours to ensure that such terms include the right to sub-license such Intellectual Property Rights in accordance with this paragraph 8. The Franchisee shall not enter into a licence that does not include such a provision without first obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld).
- 8.3 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 Franchise 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 Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such Intellectual Property Rights. If the Franchisee and the relevant Successor Operator are unable to agree such royalty, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.
- 8.5 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 Franchise Services and will not provide for any right to use such Intellectual Property Rights for any other purpose (including its marketing or exploitation for any other purpose);
 - (b) be terminable on material breach by the Successor Operator;
 - (c) contain an indemnity from the Franchisee to the effect that to the best of its knowledge and belief it owns the relevant Intellectual Property Rights or has the right to license 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 Franchisee provided that it shall not be reasonable for the Franchisee to require any such trade mark to be used in a manner materially different from its use during the Franchise Period.

9. Information about Passengers

- 9.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State and/or his nominee:
- (a) passenger numbers information specified in paragraph 1 of Schedule 1.5 (Information about Passengers), in such format and to such level of disaggregation as the Secretary of State and/or his nominee may reasonably require; and
 - (b) the CRM Data and Yield Management Data.

APPENDIX 1 TO SCHEDULE 15.4
Template Form of Transfer Scheme

Dated [INSERT DATE]

[Template] TRANSFER SCHEME
OF
THE SECRETARY OF STATE FOR TRANSPORT
MADE PURSUANT TO SCHEDULE 2 OF THE RAILWAYS ACT 2005

IN FAVOUR OF
[INSERT NAME OF SUCCESSOR OPERATOR]

IN RESPECT OF
CERTAIN PROPERTY, RIGHTS AND LIABILITIES
OF
[INSERT NAME OF FRANCHISEE]

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

TRANSFER SCHEME

Whereas:

- (A) [INSERT NAME OF FRANCHISEE] (the “**Transferor**”) has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the “**Secretary of State**”) dated [INSERT DATE] (the “**Franchise Agreement**”).
- (B) The Franchise Agreement terminated or is to terminate on [INSERT DATE] and [INSERT NAME OF SUCCESSOR OPERATOR] (the “**Transferee**”) is to continue the provision of all or part of such services or the operation of all or some of such stations and light maintenance depots under a new franchise agreement or in connection with the performance or exercise of the duties and powers of the Secretary of State to secure the provision of such services or the operation of such stations or light maintenance depots.
- (C) Certain property, rights and liabilities of the Transferor which were designated as franchise assets for the purpose of the Franchise Agreement are to be transferred to the Transferee under a transfer scheme made by the Secretary of State under section 12 and Schedule 2 of the Railways Act 2005.

The Secretary of State, in exercise of the powers conferred on him by Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. **Definitions and Interpretation**

In this Transfer Scheme functions has the meaning ascribed to it in the Railways Act 2005 and relevant enactment has the meaning ascribed to it in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. **Transfer of Property, Rights and Liabilities**

With effect from [INSERT DATE] the property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. **Statutory Functions**

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the functions of the Transferor under any relevant enactments if and to the extent that any such relevant enactment:

- (a) relates to any property which is to be transferred by this Transfer Scheme;
or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

4. **Supplemental Agreement**

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Franchise Agreement) on the coming into force of this Transfer Scheme.

This Transfer Scheme is made by the Secretary of State on [INSERT DATE].

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**

SCHEDULE TO THE TRANSFER SCHEME

[LIST RELEVANT FRANCHISE ASSETS TO BE TRANSFERRED TO SUCCESSOR OPERATOR]

APPENDIX 2 TO SCHEDULE 15.4
Template Form of Supplemental Agreement

Dated [INSERT DATE]

[INSERT NAME OF OUTGOING FRANCHISEE]

- and -

[INSERT NAME OF SUCCESSOR OPERATOR]

[Template] SUPPLEMENTAL AGREEMENT

to the transfer scheme dated [INSERT DATE] made
by the Secretary of State for Transport in respect of
certain property rights and liabilities of
[INSERT NAME OF OUTGOING FRANCHISEE]

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

THIS SUPPLEMENTAL AGREEMENT is made on [INSERT DAY] [INSERT YEAR]

BETWEEN:

- (1) [INSERT NAME OF OUTGOING FRANCHISEE] whose registered office is at [INSERT ADDRESS OF REGISTERED OFFICE] (the "Transferor"); and
- (2) [INSERT NAME OF SUCCESSOR OPERATOR] whose registered office is at [INSERT ADDRESS OF REGISTERED OFFICE] (the "Transferee").

WHEREAS

- (A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "Secretary of State") dated [INSERT DATE] (the "Franchise Agreement").
- (B) The Franchise Agreement terminated or is to terminate on [INSERT DATE] and the Transferee has been selected by the Secretary of State to continue the provision of all or part of such services pursuant either to a franchise agreement with the Secretary of State or arrangements made with the Secretary of State in connection with the Secretary of State's duties and powers.
- (C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Secretary of State on [INSERT DATE] under section 12 and Schedule 2 of the Railways Act 2005 (the "Transfer Scheme").
- (D) This Agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

IT IS AGREED THAT:

1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 The following words and expressions shall have the following meaning:

"Business" means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

"Credit" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"Debit" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"DfT Funded Assets" means those property, rights and liabilities (including for the purposes of the STNR Project, any STNR Data processed or generated by the STNR System) that are legally or beneficially owned by the Franchisee and which are funded through the following schemes, funds or budgets:

- (a) the STNR Project;
- (b) the Minor Works' Budget;
- (c) an Approved CCI Scheme; and
- (d) the Platform Extension Fund.

"Estimated Completion Payment" has the meaning ascribed to that term in Clause 2.1;

"Net Asset Statement" means the statement to be drawn up pursuant to Clause 2.2;

"Net Asset Value" means the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement agreed or determined pursuant to Clause 2.2;

"Purchase Price" has the meaning ascribed to that term in Clause 2.1;

"Relevant Contract Liabilities" means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 15.4 (Provisions applying on and after Termination) of the Franchise Agreement;

"Relevant Debits and Credits" means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of Clause 11-33 of the Ticketing and Settlement Agreement;

"Relevant Employee Liabilities" means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Employees" means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Franchise Assets" means such of the property, rights and liabilities that are legally or beneficially owned by the Transferor and which are or are to be transferred to the Transferee under the Transfer Scheme;

"Reporting Accountants" means such firm of accountants as may be selected by agreement between the Parties within four (4) weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State upon the request of either party;

"Season Ticket Fare" means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

"Stored Credit Balance" means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (stored in any medium);

"Taxation" comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

"TOGC" has the meaning assigned to that term in Clause 6.2;

"Transfer Date" means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

"Transferring Assets and Liabilities" has the meaning assigned to that term in Clause 2.1; and

"Undisclosed Employee" has the meaning assigned to that term in Clause 7.1(d).

Construction and Interpretation

1.2 In this Agreement terms and expressions defined in the Franchise Agreement shall have the same meaning and the terms **"contract of employment"**, **"collective agreement"**, **"employee representatives"** and **"trade union"** shall have the same meanings respectively as in the Transfer Regulations.

2. **TRANSFER PRICE**

2.1 **Amount and Payment**

The price for the transfer of:

- (a) the Relevant Franchise Assets;
- (b) the Relevant Contract Liabilities;
- (c) the Relevant Debits and Credits; and
- (d) the Relevant Employee Liabilities,

(together the **"Transferring Assets and Liabilities"**) shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value (the **"Purchase Price"**). The sum of [£INSERT AMOUNT], as determined under paragraph 3.3 of Schedule 15.4 (Provisions applying on and after Termination) of the Franchise Agreement (the **"Estimated Completion Payment"**) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under

paragraph 3.3 of Schedule 15.4 (Provisions applying on and after Termination) of the Franchise Agreement, on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be) in accordance with Clause 2.1.

2.2 **Net Asset Statement**

The Transferee shall procure that, as soon as practicable and in any event not later than two (2) months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

2.3 The Net Asset Statement shall be:

- (a) drawn up in the manner described in the Schedule;
- (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the schedule; and
- (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.

2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four (4) weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

2.5 **Adjustment of Price**

If the Purchase Price exceeds or is less than the Estimated Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within fourteen (14) days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. **REFERENCES TO THE REPORTING ACCOUNTANTS**

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed, provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within fourteen (14) days of their appointment having been determined (or such longer period as the Parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable

expenses under Clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;

- (b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the Parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference;
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any manifest error discovered within fourteen (14) days of the issue of their decision) be conclusive and binding (and in accordance with Clause 3(g) below) and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise; and
- (g) without prejudice to Clauses 3(a) to 3(f) above, either party may, prior to or during the course of the reference to the Reporting Accountants, seek a declaration from the court on a relevant point of law, including but not limited to a point of legal interpretation. Upon such application for a declaration being issued and served all applicable time limits relative to the reference to the Reporting Accountant shall be stayed pending the outcome of such application (including any appeal). The Reporting Accountants are bound to make their determination in a manner consistent with the findings of the Court.

4. **WARRANTY**

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

5. **INTEREST**

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. VALUE ADDED TAX

- 6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern ("**TOGC**") and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.
- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five (5) days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in Clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under Clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within thirty (30) days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.
- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, Clauses 6.3 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.
- 6.8 All of the records referred to in section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- (a) preserve those records in such manner and for such periods as may be required by law; and

- (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. EMPLOYEES

7.1 Transfer Regulations

The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- (a) the contract of employment of each of the Relevant Employees (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the **"time of transfer"** under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
- (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;
- (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:
 - (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or

- (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in Clause 7.4;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Secretary of State under Schedule 15.3 (Handover Package) of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the "**Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
 - (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
 - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his employment following the Transfer Date; and
 - (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of Clauses 7.1(b) and 7.1(c); and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

7.2 **Transferee's Indemnities**

The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- (a) any substantial change in the working conditions of the Relevant Employees to his or her detriment or any of them occurring on or after the Transfer Date;

- (b) the change of employer occurring by virtue of the Transfer Regulations and/or the Franchise Agreement being significant and detrimental to any of the Relevant Employees;
- (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
- (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

7.4 **Details of Relevant Employees**

Without prejudice to the Transferor's duties under the Transfer Regulations, the Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Schedule 15.4 (Provisions applying on and after Termination) of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- (b) terms and conditions of employment of each such person;
- (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
- (d) dismissals of Relevant Employees or termination of employment effected within twelve (12) months prior to the Transfer Date including the Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
- (f) all strikes or other Industrial Action taken by any Relevant Employee within twelve (12) months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

8. MISCELLANEOUS PROVISIONS

8.1 Variations in Writing

No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

8.2 Partial Invalidity

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

8.3 Further Assurance

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

8.4 Notices

Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

(a) in the case of the Transferor to [INSERT NAME OF TRANSFEROR] at:

Address: [INSERT ADDRESS]

Email Address: [INSERT EMAIL ADDRESS]

Attention: [INSERT NAME]

(b) in the case of the Transferee to [INSERT NAME OF TRANSFeree] at:

Address: [INSERT ADDRESS]

Email Address: [INSERT EMAIL ADDRESS]

Attention: [INSERT NAME]

Any such notice or other communication shall be delivered by email transmission, by hand or sent by courier or prepaid first class post. If sent by courier such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two (2) Weekdays from the time of posting.

8.5 Counterparts

This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

8.6 Third Parties

This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

8.7 Governing Law and Jurisdiction

This Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

SIGNED FOR AND ON
BEHALF OF THE **[INSERT
NAME OF TRANSFEROR]:** }

DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF THE **[INSERT
NAME OF TRANSFEREE]:** }

DIRECTOR:

DIRECTOR/SECRETARY:

SCHEDULE TO THE SUPPLEMENTAL AGREEMENT**Net Asset Statement**

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B} + E$$

where:

C	equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:
	(a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;
	(b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
	(c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
	(d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);
D	equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of

	such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);
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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 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 Start Date, zero,
and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).	

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) relate to a period after the Transfer Date.
5. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand Column of the following table, which shall be valued on the basis specified in the right hand Column of the following table:

Rights and Liabilities	Value
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability

6. CRM Data, Yield Management Data and Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same) shall be valued at nil.
7. The Stored Credit Balance held by the Franchisee at the Transfer Date shall be valued at the monetary amount so held.
8. Any 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 RV Asset shall be valued at an amount that is equivalent to the RV Asset Transfer Value of such RV Asset as specified in Column 2 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) of the Franchise Agreement, as such RV Asset Transfer Value may be adjusted or deemed to have been adjusted pursuant to paragraphs 1.4 or 2.2 of Schedule 14.6 (Residual Value Mechanism) of the Franchise Agreement.
11. The following assets shall be valued at nil:
 - (a) Any assets funded by the Franchisee using the Stations Improvement Fund (as such term is defined in the Invitation to Tender);
 - (b) any land at Burton-on-Trent station acquired by the Franchisee pursuant to paragraph 59.1 of Part 1 to Schedule 6.2 (Committed Obligations);
 - (c) [INSERT DETAILS].
12. [DFT TO INSERT DETAILS TO REFLECT OTHER RELEVANT/SPECIFIC ASSETS.]
13. **NOT USED.**
14. **NOT USED.**
15. 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.

SCHEDULE 16**PENSIONS**

Schedule 16.1	Railways Pension Scheme
	Appendix 1: List of Shared Costs Sections
Schedule 16.2	Deficit Contribution Risk Sharing

Schedule 16.1

Railways Pensions Scheme**1. Definitions**

Unless otherwise defined in the Franchise Agreement, terms used in this Schedule 16.1 shall have the meanings given to them in the Railways Pension Scheme.

2. Franchise Sections

The Franchisee shall participate in and become the Designated Employer in relation to the Shared Cost Sections of the Railway Pension Scheme as specified in Appendix 1 to this Schedule 16.1 (together the **"Franchise Sections"**) in respect of the Franchise Services. Subject to paragraphs 3 and 4.2(d) membership of a Franchise Section will be offered to each employee of a Franchisee only.

3. Closed Schemes

3.1 Subject to any requirements of Her Majesty's Revenue and Customs, the Franchisee shall take any necessary steps (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the British Railways Superannuation Fund or the BR (1974) Pension Fund in accordance with their terms during the Franchise Period.

3.2 For the purposes of this paragraph 3, **"Closed Scheme Employees"** means such of the employees of the Franchisee who were, immediately prior to the commencement of their employment with the Franchisee, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

4. Variations in benefits, contributions and investment

4.1 If a Franchisee is considering making a proposal that falls within the scope of paragraphs 4.2(a) to 4.2(g) inclusive, it shall promptly consult with the Secretary of State in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Franchise Section, the Trustee of the Railways Pension Scheme (the **"Trustee"**), or to any trade union. The Franchisee must otherwise consult in good time with the Secretary of State in relation to any proposal falling within the scope of paragraphs 4.2(a) to 4.2(g) inclusive.

4.2 Separately and in addition to complying with its obligations under paragraph 4.1, the Franchisee shall not, without the prior written consent of the Secretary of State (which may be given on such terms and subject to such conditions as the Secretary of State thinks fit):

(a) restructure or change the composition of the earnings of employees of the Franchisee in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the rules of the Railways Pension Scheme applicable to any Franchise Section (the **"Franchise Section Rules"**) or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any Franchise Section, including varying or providing different or additional benefits under that Franchise Section or promising to do so, unless this change:

(i) is required by Law; or

- (ii) only affects benefits payable in respect of past service of members of that Franchise Section and on or prior to the effective date of the change the Franchisee pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on that Franchise Section; or
 - (iii) would not lead to substantial changes in the funding of any Franchise Section and is the result of the normal application of the Franchise Section Rules in the ordinary day to day running of the business of the Franchise, for example, where individual employees are, from time to time promoted or transferred to higher paid or different employment which has a different composition of earnings;
- (b) make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the Franchise Sections unless the change is required by Law;
 - (c) provide retirement, death or life assurance benefits in respect of any of its employees other than under any Franchise Section or as provided in paragraph 3;
 - (d) omit to provide the above-mentioned benefits in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the Franchisee shall not under this Schedule 16.1 be obliged for the purposes of the Franchise Agreement to offer such benefits to any employee employed on a fixed term contract of twelve (12) months or less;
 - (e) take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under any Franchise Section, including exercising any discretion allowed to the Franchisee as Designated Employer arising out of any actuarial valuation of a Franchise Section, and varying or providing different or additional benefits under the Franchise Sections in respect of future service, unless such action is required by Law;
 - (f) close a Franchise Section to new members; or
 - (g) take (or omit to take) any action which could result in any Franchise Section being wound up, in whole or in part.
- 4.3 The Franchisee shall consult with the Secretary of State on:
- (a) any proposal made by the Trustee to change the statement of investment principles applicable to any Franchise Section; and
 - (b) any proposal to alter the rate of contributions payable by the Franchisee or its employees under a new schedule of contributions for the Franchise Section.
- 4.4 With respect to any proposal falling within the scope of paragraph 4.3(a) or 4.3(b), the Franchisee shall also consult with the Trustee on the basis of any response it receives from the Secretary of State in relation to any such proposal.

5. Funding Liabilities

- 5.1 The Franchisee shall pay the employer contributions required under the schedule of contributions applicable to each Franchise Section (or either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates) in respect of the Franchise Term subject to the provisions of paragraph 5.2 below.
- 5.2 Where, during the Franchise Term, Franchise Services are aggregated or disaggregated by the Secretary of State (for example, as a result of remapping) and, as a consequence, a Franchise Section of which the Franchisee is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Secretary of State shall ensure that the Franchisee has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise Sections' technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under Article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above the Secretary of State shall have no liability for any future deterioration in the funding levels of the Franchise Section linked to such transfer in or out of members.

6. Discharge of Obligations

- 6.1 The Secretary of State may at any time during the Franchise Term seek information from the Trustee with a view to satisfying himself that the Franchisee and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to any Franchise Section.
- 6.2 The Franchisee shall, at its expense, promptly provide such information in relation to any Franchise Section, including actuarial advice and information, as the Secretary of State may from time to time request and shall authorise and consent to the Trustee doing so.
- 6.3 The Franchisee shall, in respect of the Franchise Term, use all reasonable endeavours to provide to the Secretary of State:
- (a) within one (1) month of the expiry of each Franchisee Year; and
 - (b) at other times as soon as practicable following a request by the Secretary of State,

a certificate signed by the Trustee in relation to the Franchise Sections stating either that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme, including its obligation to contribute to the Franchise Sections or, if it has not so complied, stating the extent to which it has not done so. Where the certificate is given pursuant to paragraph 6.3(a), it shall cover the relevant Franchisee Year. Where the certificate has been given pursuant to paragraph 6.3(b), it shall cover such period as the Secretary of State shall specify.

6.4 ⁵²⁹**If the Trustee does not certify under paragraph 6.3 in relation to the Franchise Sections that the Franchisee has fully complied with its obligations under the Railways Pension Scheme or if the Secretary of State otherwise reasonably considers that the Franchisee has not complied with such obligations then, without prejudice to the other duties and obligations of the Franchisee and to any other rights the Secretary of State may have, it is acknowledged that the provisions in Schedule 8.1A (Franchise Payments) will operate to adjust the Franchise Payments payable under Schedule 8.1A (Franchise Payments) to take account of any contribution or payment that the Franchisee has failed to make or avoided making.**

6.5 ⁵³⁰**NOT USED.**

7. **Termination of Franchise**

The Secretary of State shall at the end of the Franchise Period ensure that the Franchisee has no liability for any deficit in the Franchise Sections (other than for contributions due and payable by the Franchisee to the Franchise Sections for any period prior to the end of the Franchise Term) and shall have no right to benefit from any surplus which may exist in the Franchise Sections. For the avoidance of doubt, this paragraph 7 shall apply where the Franchise Services are either aggregated or disaggregated (for example, as a result of remapping).

8. ⁵³¹**Franchisee obligations to participate in any Investigation and reform**

8.1 **In this Schedule:**

(a) **"Investigation" means any investigation, threatened use, or use of any statutory powers by the Pensions Regulator in relation to a section of the Railways Pension Scheme which has or had as its designated employer the Franchisee or another Train Operator (including a Successor Operator). For the avoidance of doubt, this includes any powers under section 231 of the Pensions Act 2004 or any other power which could affect the contributions payable by the employer or the liabilities of any other person in respect of that section; and**

(b) **"Reasonable Commercial Manner" means:**

(i) **acting in the long-term interests of the Franchise taking into account the long-term affordability, sustainability and financial robustness of the Franchise Section(s) as if the Franchisee and its employees (as appropriate) were solely responsible for the funding of the Franchise Section(s) and, at all times, disregarding the actual allocation of cost risk**

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

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

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

as between the Franchisee and the Secretary of State in this Franchise Agreement;

- (ii) or (at the option of the Secretary of State) acting in such other manner as the Secretary of State directs.

8.2 The Franchisee shall:

- (a) act in good faith and in a Reasonable Commercial Manner at all times; and
- (b) engage appropriately with the RDG, the Pensions Regulator and the relevant trade unions,

in discharging its obligations under paragraph 8.3 of this Schedule 16.

8.3 The Franchisee shall take all reasonable steps to participate in:

- (a) the development and implementation of the RDG's response to the current and any future Investigation and the associated concerns raised by the Pensions Regulator regarding those sections of the Railways Pension Scheme for which a Train Operator is the designated employer;
- (b) any Investigation concerning one or more of the Franchise Sections, in which case the Franchisee shall use all reasonable endeavours to achieve an outcome from that Investigation with which a reasonable franchisee, who was in the position of the Franchisee and acting in a Reasonable Commercial Manner, would be satisfied; and
- (c) any industry wide efforts to reform the pension arrangements or benefits payable under the Railways Pension Scheme or offered to employees of Train Operators, recognising the need for the British passenger rail industry to be affordable and offer value for money in the interests of relevant stakeholders including taxpayers.

9. ⁵³²Information Powers

Where required by the Secretary of State, the Franchisee agrees to allow the Secretary of State or the Secretary of State's representatives to attend any meeting between the Franchisee and the Trustee and/or the Pensions Regulator where the meeting in whole or part relates to matters to which paragraph 8 or 10 of this Schedule 16 applies.

10. ⁵³³Pension Directions by the Secretary of State

10.1 The Secretary of State may, at any time, by written notice to the Franchisee, direct that the Franchisee take such action in relation to pensions for employees and workers of the Franchisee as the Secretary of

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

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

State may in the Secretary of State's sole discretion determine. The Secretary of State may consult with the Franchisee before issuing any such direction under this paragraph. The Secretary of State may issue more than one direction to the Franchisee under this paragraph.

10.2 Without limiting the generality of paragraph 10.1, such directions may include:

- (a) directing the Franchisee to propose a schedule of contributions or recovery plan to the Trustee of the Railways Pension Scheme incorporating such employer and employee contributions and over such period as the Secretary of State may determine;**
- (b) directing the Franchisee to offer such alternative pension arrangements to employees or workers of the Franchisee as the Secretary of State may determine; and**
- (c) directing the Franchisee to make proposals to the Trustee of the Railways Pension Scheme in relation to benefits, contributions or investments.**

10.3 Where the Franchisee receives a direction under paragraph 10.1, the Franchisee will use all reasonable endeavours to implement the direction and to work in good faith and act in a Reasonable Commercial Manner with other parties to give effect to the direction.

10.4 To the extent that the terms of any direction given under paragraph 10.1 conflict with any of the other terms of this Schedule 16.1, the terms of the direction shall prevail to the extent of that inconsistency.

10.5 The Franchisee will provide the Secretary of State with any documents or information which it may reasonably request in connection with any matter which is relevant to the subject of any direction given under paragraph 10.1 or its implementation.

10.6 Nothing in this paragraph 10 shall require the Franchisee to breach any legal obligation to which it is subject. Where the Franchisee reasonably considers that the implementation of any aspect of the direction will cause it to breach any legal obligation of the Franchisee the Secretary of State shall work in co-operation with the Franchisee with a view to agreeing an approach to discuss changes to avoid or otherwise mitigate the risk of such breach.

APPENDIX 1 TO SCHEDULE 16.1**List of Shared Costs Sections**

Shared Costs Sections	
Section	Employer
East Midlands Shared Cost Section	Abellio East Midlands Limited

Schedule 16.2

⁵³⁴**NOT USED**

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

APPENDIX 1 TO SCHEDULE 16.2

[DELETED⁵³⁵]

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

SCHEDULE 17

CONFIDENTIALITY, FREEDOM OF INFORMATION AND DATA PROTECTION

Schedule 17:	Confidentiality, Freedom of Information and Data Protection
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Schedule 17

Confidentiality, Freedom of Information and Data Protection

1. ⁵³⁶Confidentiality

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 8 and 10 inclusive of this Schedule 17, each Party shall hold in confidence the Franchise Documents and all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement) (all together the "Confidential Information") and shall not, except with the other Party's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in the Franchise Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the Franchise Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. Disclosure of Confidential Information

2.1 Each Party may disclose any data or information acquired by it under or pursuant to the Franchise Agreement or information relating to a dispute arising under the Franchise Agreement without the prior written consent of the other Party if such disclosure is made in good faith:

- (a) to any Affiliate of such Party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1 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

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

any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;

- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1 above;
- (f) to any director, employee or officer of such Party, to the extent necessary to enable such Party to perform its obligations under the Franchise Agreement or to protect or enforce its rights under the Franchise Agreement;
- (g) by the Franchisee, to the ORR, the Passengers' Council or a Local Authority; or
- (h) **NOT USED.**

2.2 The Secretary of State may disclose the Confidential Information of the Franchisee:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Secretary of State or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Secretary of State (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in paragraph 2.2(a) of this Schedule 17 (including any benchmarking organisation) for any purpose relating to or connected with the Franchise;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including but not limited to its right of audit, assessment or inspection pursuant to paragraph 6 of Schedule 11.2 (*Management Information*) and its rights pursuant to Schedule 15.1 (*Reletting Provisions*);
- (f) on a confidential basis to a Local Authority or other relevant Stakeholder to the extent that the Secretary of State (acting reasonably) deems such disclosure necessary or appropriate for the purposes of the development and/or implementation of any proposal promoted by (or on behalf of) such Local Authority or other relevant Stakeholder in relation to the provision of additional, varied and/or extended Passenger Services, introduction of new stations or enhancements to Stations or other infrastructure schemes which impact on the Franchise;
- (g) on a confidential basis to a proposed successor, transferee or assignee of the Secretary of State in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement; or

- (h) ⁵³⁷ on a confidential basis to any Devolved Transport Body for any proper purpose of the Secretary of State or of the relevant Devolved Transport Body,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Secretary of State under this paragraph 2.2 of this Schedule 17.

3. Publication of Certain Information

- 3.1 ⁵³⁸ Notwithstanding the provisions of paragraph 1, the Secretary of State may publish (for purposes including section 73 of the Act and whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as he sees fit, the following (irrespective of whether the same was provided to the Secretary of State by the Franchisee or a third party):

- (a) any or all of the Franchise Documents provided that the Secretary of State will, prior to publishing the same, redact from any Franchise Document any information contained therein which the Secretary of State and the Franchisee agree or failing which the Secretary of State determines, in his absolute discretion, is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations;
- (b) the amount of any Franchise Payments payable under the Franchise Agreement and the aggregate amount of Franchise Payments paid in each year under the Franchise Agreement;
- (c) such information as the Secretary of State may consider reasonably necessary to publish in connection with the performance of his functions in relation to any Closure or proposed Closure;
- (d) the amount of any payments by the Franchisee under the Passenger's Charter;
- (e) such information (including CRM Data and Yield Management Data) as may reasonably be required in connection with any Tendering/Reletting Process or the retendering or reletting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (f) any reports and accounts delivered to him under Schedule 13 (*Rail Industry Initiatives and Innovation Obligations*) including any

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

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

analyses, statistics and other information derived from such reports and accounts;

- (g) the results of any monitoring or measurement of the performance of the Franchisee in the provision of the Franchise Services (including any information provided under Schedule 11 (*Franchise Performance Meetings and Management Information*));**
 - (h) the results, on a Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (*Information about Passengers*);**
 - (i) the results of any survey under Schedule 7.2 (*Customer Experience and Engagement*);**
 - (j) the results of any assessment or inspection under Schedule 11.2 (*Management Information*);**
 - (k) details of the Franchisee's plans and performance in respect of safety;**
 - (l) such information as the Secretary of State may reasonably require to include in his annual report in respect of the Franchisee provided that, in preparing that report, the Secretary of State shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Secretary of State; and**
 - (m) such information as the Secretary of State may reasonably require to publish at or around the expiry or possible termination of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services.**
 - (n) any information provided to the Secretary of State pursuant to any provision of the Franchise Agreement including pursuant to a Request for Data where in the opinion of the Secretary of State publication is appropriate for the purposes of properly carrying out its duties.**
- 3.2 Without prejudice to any other provision of this Schedule 17, the Secretary of State may publish any other information relating to the Franchisee if he has previously notified the Franchisee and the Franchisee does not demonstrate to the reasonable satisfaction of the Secretary of State within fourteen (14) days of such notification that the publication of such information would, in the reasonable opinion of the Franchisee, have a material adverse effect on its business. If the Franchisee attempts so to demonstrate to the Secretary of State but he is not so satisfied, the Secretary of State shall allow seven (7) more days before publishing the relevant information.

4. Service Development Information

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render either Party liable for, the disclosure by either Party to Network Rail, the

ORR, HS1 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 (*Franchise Services and Service Development*).

5. Publication by Secretary of State

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Secretary of State liable for, the disclosure of any information by the Secretary of State to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of his functions.

6. Provision of Information to the ORR

The Franchisee hereby authorises the Secretary of State to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Secretary of State in relation to the Franchisee under the Franchise Agreement.

7. Disclosure by Comptroller and Auditor General

The Parties recognise that the Comptroller and Auditor General may, in pursuance of his functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those Acts and which a Party to the Franchise Agreement would not be able to disclose otherwise than under this Schedule 17.

8. Continuing Obligation

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of the Franchise Agreement, irrespective of the reason for termination.

9. Freedom of Information - General Provisions

9.1 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that the Secretary of State is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly the Franchisee shall (and shall procure that its agents and subcontractors shall) assist and co-operate with the Secretary of State to enable the Secretary of State to comply with his information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations.

9.2 Notwithstanding paragraph 10 (*Redactions*), the Franchisee shall (and shall procure that its agents and subcontractors shall):

- (a) transfer to the Secretary of State any Requests for Information received by the Franchisee (or its agents or subcontractors) as soon as practicable and in any event within two (2) Weekdays of receiving any such Request for Information;

- (b) provide the Secretary of State with a copy of all information in its (or their) possession or power in the form that the Secretary of State requires within five (5) Weekdays of the Secretary of State's request (or within such other period as he may specify); and
 - (c) provide all necessary assistance as reasonably requested by the Secretary of State to enable him to respond to any Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations as applicable.
- 9.3 The Secretary of State shall be responsible for determining in his absolute discretion, and notwithstanding any other provision in the Franchise Agreement or any other agreement, whether Confidential Information (as such term is defined in paragraph 1 of this Schedule 17) and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.
- 9.4 The Franchisee shall not (and shall procure that its agents and subcontractors shall not) respond directly to any Request for Information unless expressly authorised to do so by the Secretary of State.
- 9.5 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in the Franchise Agreement the Secretary of State may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning the Franchisee and/or its agents and subcontractors:
- (a) in certain circumstances without consulting the Franchisee (or its agents and/or subcontractors where applicable); or
 - (b) following consultation with the Franchisee and having taken its views into account (and the views of its agents and/or subcontractors where applicable),
- provided always that where applicable the Secretary of State shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give the Franchisee advance notice or failing that to draw the disclosure to the Franchisee's attention after any such disclosure.
10. **Redactions**
- 10.1 Subject to paragraph 9 (*Freedom of Information - General Provisions*), by no later than the date which is:
- (a) thirty (30) Weekdays after the date of this Agreement (in respect of the Franchise Documents referred to in paragraph (a) of the definition thereof);
 - (b) thirty (30) Weekdays after the date of notification by the Secretary of State to the Franchisee of another agreement that is required for publication (in respect of the Franchise Documents referred to in paragraph (e) of the definition thereof; and

- (c) thirty (30) Weekdays after the date of any document varying the terms of any Franchise Document,

the Franchisee will provide to the Secretary of State details of any provisions of the Franchise Documents or any such variation which the Franchisee believes are exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the Environmental Information Regulations and/or section 73(3) of the Act (the "**Redactions**").

10.2 For each such Redaction the Franchisee should specify:

- (a) the exact text of the Franchise Document or variation that the Franchisee proposes is redacted;
- (b) whether the Franchisee proposes that the Redaction applies in relation to the publication of the relevant Franchise Document or variation on the website of the Department for Transport, on the register required to be maintained by the Secretary of State pursuant to section 73 of the Act or on both such website and such register; and
- (c) the reasons why the Franchisee believes that the proposed Redaction is justified in accordance with the Freedom of Information Act, the Environmental Information Regulations and/or section 73(3) of the Act.

10.3 The Secretary of State shall consult with the Franchisee in relation to the Franchisee's proposed Redactions (provided that the same are provided to the Secretary of State in accordance with paragraph 10.1). If the Secretary of State and the Franchisee are unable to agree upon any proposed Redaction, the Secretary of State shall be entitled to determine, in his absolute discretion, whether or not to make such proposed Redaction. If the Franchisee does not provide its proposed Redactions to the Secretary of State in accordance with paragraph 10.1, the Franchisee shall be deemed to have consented to publication of the relevant document without any Redactions.

11. **Data Protection**

11.1 In respect of any Personal Data processed by the Franchisee, including CRM Data and Personal Data relating to Franchise Employees, the Franchisee 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 Franchisee shall at its own cost:

- (a) promptly notify the Secretary of State of any Franchise Data Breach, upon the Franchisee's awareness of the same, including all relevant details, whether the Franchise Data Breach is by itself or by a Franchise Data Processor;
- (b) promptly 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 Franchisee 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 Franchisee with this paragraph 11; and

- (c) promptly provide the Secretary of State on request with all reasonable information, assistance and co-operation in relation to any audit of the Franchisee 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 Franchisee of the Franchise Data Processor (whether those audits are by the Franchisee 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 Franchisee with this paragraph 11.

11.3 The Franchisee shall and shall procure that any Franchise Data Processor which it appoints shall:

- (a) notify (in the case of Franchisee) the Secretary of State and (in the case of any Franchise Data Processor) the Franchisee 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 Franchise Term) in each case in relation to the transfer.

11.4 With reference to paragraphs 11.1 to 11.3 inclusive, the Franchisee 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 Franchisee 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 Franchise to a Successor Operator.

DEROGATIONS/WAIVERS - POST CONTRACT SIGNATURE DATE

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i 30 March 2020(Date of Derogation Letter) -The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 20.1(c) in Part 1 of Schedule 6.2 of the Franchise Agreement. (pounds sterling eighty thousand)
Original Due Date: 31/03/2020
Revised Due Date: 31/03/2021

ii 23 February 2021(Date of Derogation Letter) -The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 9.4(b) of Schedule 11.2 of the Franchise Agreement. (Annual Financial Information)
Original Due Date: 19/09/2020
Revised Due Date: 31/03/2021

iii 3 June 2020(Date of Derogation Letter) -The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 9.4 B of Schedule 11.2 of the Franchise Agreement. (Annual Financial Information)
Original Due Date: 25/07/2020
Revised Due Date: 17/10/2020

iv 23 February 2021(Date of Derogation Letter) -The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 9.4(b) of Schedule 11.2 of the Franchise Agreement. (Annual Financial Information)
Original Due Date: 19/09/2020
Revised Due Date: 31/03/2021