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## Emergency Measures Agreement ("**EMA**")

The Secretary of State for Transport

and

First Greater Western Limited

Withdrawn

29 March 2020

**CONTENTS**

<b>CLAUSE</b>	<b>PAGE</b>
1. INTERPRETATION AND CONSTRUCTION.....	1
2. PURPOSE OF THIS EMA .....	2
3. COMMENCEMENT AND TERM .....	3
4. AMENDMENTS TO THE FRANCHISE AGREEMENT .....	3
5. COOPERATION.....	3
6. ADDITIONAL SERVICES .....	4
7. MEETINGS .....	4
8. REMEDIAL PLANS.....	4
9. FARES .....	4
10. NOT USED .....	4
11. FUNDING DEED .....	4
12. CHANGE .....	5
13. PERFORMANCE BENCHMARKS .....	5
14. OBLIGATIONS OF THE FRANCHISEE UNDER THE FRANCHISE AGREEMENT.....	6
14A. ACTIVATION OF PARAGRAPHS 6A AND 6 OF SCHEDULE 6.3 OF THE FRANCHISE AGREEMENT (TICKETLESS TRAVEL SURVEYS AND TICKETLESS TRAVEL PAYMENTS) .....	6
14B. ACTIVATION OF SCHEDULE 7.3 (SERVICE QUALITY REGIME) .....	7
14C. VALUE OF UNALLOCATED FINANCIAL MODEL COSTS AMOUNT .....	8
15. COVID-19 RELATED SUPPORT .....	9
16. STATE AID .....	9
17. NOT USED .....	10
18. WARRANTIES .....	10
19. ENTIRE AGREEMENT .....	10
20. COUNTERPARTS .....	10
21. COSTS.....	10
22. GOVERNING LAW.....	11
23. RIGHTS OF THIRD PARTIES .....	11
SCHEDULE 1 .....	13
Amendments to the Franchise Agreement.....	13

Withdrawn

**THIS AGREEMENT** is made the 29<sup>th</sup> March 2020

**BETWEEN:**

- (1) **Secretary of State for Transport**, whose principal place of business is at Great Minster House, 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
- (2) **First Greater Western Limited** (company number 05113733), whose registered office is at Milford House, 1 Milford Street, Swindon, Wiltshire, SN1 1HL (the "**Franchisee**"),

each a "**Party**" and together, the "**Parties**".

**RECITALS:**

- (A) The Secretary of State and the Franchisee entered into a franchise agreement dated \_\_\_ March 2020 in respect of certain railway passenger services designated by the Secretary of State as eligible for provision under franchise agreements (the "**Franchise Agreement**").
- (B) On 11 March 2020 the World Health Organisation declared the coronavirus disease 2019 ("**COVID-19**") a pandemic. It is anticipated that COVID-19 will have a significant impact on the operation of rail services in the United Kingdom.
- (C) The Secretary of State wishes to amend the Franchise Agreement to address the impact of the COVID-19 outbreak on Train Operators by suspending or amending the operation of specific provisions, and introducing additional requirements, under the terms of the Franchise Agreement for the duration of the Term in accordance with clause 3 of this EMA.
- (D) The Parties now wish to record their agreement regarding the amendments to the Franchise Agreement to address the impacts of COVID-19 by entering into this EMA.
- (E) The Franchisee acknowledges that this EMA is entered into pursuant to article 5(5) of Regulation (EC) 1370/2007.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION AND CONSTRUCTION**

1.1 **Interpretation**

In this EMA (unless the context otherwise requires):

- (a) words and expressions defined under the Franchise Agreement and the Act shall have the same meanings when used in this EMA;
- (b) words and expressions defined in the Interpretation Act 1978 shall have the same meanings when used in this EMA;

- (c) the words "including", "include" and "in particular" are to be construed without limitation;
- (d) references to a person include its successors, transferees and assignees;
- (e) references in this EMA to clauses and schedules are to clauses and schedules of this EMA unless expressly specified to the contrary;
- (f) headings and references to headings shall be disregarded in construing this EMA;
- (g) references to an agreement or other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated; and
- (h) words importing the masculine gender include the feminine gender and vice versa and words in singular include the plural and vice versa.

## 1.2 Construction

- (a) This EMA is supplemental to and shall be read and construed together with the Franchise Agreement and this EMA and the Franchise Agreement shall together constitute one and the same document.
- (b) In the event of conflict between the terms of this EMA and the terms of the Franchise Agreement, subject to clause 2.1(b), the terms of this EMA shall prevail.
- (c) Save as expressly provided for in this EMA the Franchise Agreement shall continue in full force and effect.
- (d) Any reference to the "term" or "duration" of the EMA shall mean the Term in accordance with clause 3 of this EMA.

## 2. PURPOSE OF THIS EMA

### 2.1 The Parties acknowledge that:

- (a) this EMA is based on the following overriding principles:
  - (i) the Parties recognising the exceptional circumstances presented by COVID-19;
  - (ii) the Parties seeking to ensure that, as far as possible, operational performance and the provision of Passenger Services is maintained;
  - (iii) the Parties seeking to ensure the Franchisee is insulated as far as is reasonable from the severe financial impacts of COVID-19 whilst not being overcompensated; and
  - (iv) the Parties cooperating with an overall goal of acting in the national interest;
- (b) this EMA has been prepared as an emergency measure in a circumstance of extreme emergency. To the extent that there are any anomalies or

inconsistencies within this EMA or with the terms of the Franchise Agreement as a result of the variations imposed by this EMA (including where any effect of this EMA is materially inconsistent with the overriding principles set out in clause 2.1(a) above), the Parties shall discuss such matters in good faith and work towards a practical and sensible solution, to further amend the Franchise Agreement to reflect the intention of this EMA.

### 3. **COMMENCEMENT AND TERM**

- 3.1 Subject to Clause 3.2, this EMA shall take effect from the Start Date and shall continue in accordance with the provisions of Schedule 9.8 (Emergency Measures) of the Franchise Agreement until the Emergency Measures End Date as it may be varied under Schedule 9.8 of the Franchise Agreement (the "**Term**").
- 3.2 The amendments to the Franchise Agreement pursuant to this EMA shall, unless otherwise required by the Secretary of State or pursuant to this EMA, cease to have effect on the Emergency Measures End Date.
- 3.3 On the Emergency Measures End Date the variations imposed on the Franchise Agreement by this EMA shall cease and the Franchise Agreement, with certain limited exceptions and in accordance with relevant provisions of Schedule 9.8 of the Franchise Agreement, shall continue on the Base Franchise Terms. Any provisions of this EMA which expressly or impliedly continue to have effect after the Emergency Measures End Date shall continue in full force and effect after the Emergency Measures End Date.

### 4. **AMENDMENTS TO THE FRANCHISE AGREEMENT**

Subject to clause 3 above, with effect from the Start Date until the Emergency Measures End Date, the Franchise Agreement shall be varied as set out in schedule 1 to this EMA and by clauses 5 to 18 below.

### 5. **COOPERATION**

- 5.1 The Franchisee agrees to coordinate and cooperate with other Train Operators, Network Rail and other rail industry bodies, to ensure the continuation of Passenger Services across the network in a coordinated manner, and in line with the priorities and directions as may be set out by the Secretary of State from time to time, including, but not limited to:
- (a) coordinating with other Train Operators to ensure consistency of coverage to all communities across the national network, including changes to Franchise Services to assist where other Train Operators are unable to operate their own Franchise Services;
  - (b) assisting altered or additional freight services to operate on the national rail network and, where appropriate, enabling certain essential goods (such as medical equipment or other urgent items) to be carried on Passenger Services; and
  - (c) continuing where possible and appropriate to enforce any agreements with third parties to deliver quality and value for money.

**6. ADDITIONAL SERVICES**

- 6.1 The Franchisee acknowledges that the Secretary of State may require special measures, in the form of increased cooperation or additional services, to be implemented while COVID-19 subsists and the Franchisee shall use its best endeavours to accommodate such requests and act in the national interests.
- 6.2 The Franchisee, if requested by the Secretary of State, shall use its best endeavours to provide additional services, such as enhanced cleaning regimes to a standard reasonably proposed by the Secretary of State.
- 6.3 The reasonable and proper costs incurred in carrying out such additional services shall be recoverable from the Secretary of State as part of the Actual Costs subject to the provisions of Schedule 8.A of the Franchise Agreement, as set out in Appendix 2 to schedule 1 to this EMA.

**7. MEETINGS**

- 7.1 Where the Franchise Agreement refers to a "meeting" of the Parties or the Parties and other third parties, such meetings may be conducted by conference call or other remote link as mutually agreed between the Parties.

**8. REMEDIAL PLANS**

- 8.1 Subject to the provisions of Schedule 10.1 of the Franchise Agreement, as amended by this EMA, the requirement to submit a Remedial Plan shall be suspended for the duration of the EMA.
- 8.2 NOT USED

**9. FARES**

- 9.1 The Franchisee shall remain responsible for the collection of fare revenue using the same degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator using all reasonable endeavours to maximise revenue, whilst giving consideration to appropriate customer service in light of the prevailing circumstances and any guidance from the Secretary of State, Public Health England or other relevant authority in relation to public interaction.
- 9.2 To the extent a ticket is sold which relates partially to the term of the EMA and partially to the period after the expiry of the EMA, this shall be accounted for using the same principles that apply on the transfer of a franchise.

**10. NOT USED****11. FUNDING DEED**

- 11.1 The Funding Deed shall remain in force and shall not be amended by this EMA.
- 11.2 The Franchisee will not pay any interest accruing in relation to any loans provided under the Funding Deed during the term of the EMA. Such interest shall remain due at the expiry of the EMA.

11.3 The Franchisee shall not during the term of the EMA repay any part of PCS Facility Loan (as defined in the Funding Deed) that has been advanced pursuant to the Funding Deed.

11.4 NOT USED

## 12. **CHANGE**

12.1 Save as specified in Schedule 1 to this EMA and in clause 12.5 below, the provisions of Schedule 9.1 (Financial and Other Consequences of Change) of the Franchise Agreement shall be suspended for the duration of the EMA.

12.2 Unless otherwise specifically agreed by the Secretary of State, the impacts of COVID-19 shall not be considered, and such impact shall be excluded, in relation to any of the limbs of the definition of "Change" for the duration of the EMA and the Franchisee shall not raise a claim for Change that arises from the impact of COVID-19 for the duration of the EMA.

12.3 Any Change event that arises before or during the EMA and does not relate to the impacts of COVID-19 during the EMA shall be evaluated in accordance with the provisions in Schedule 9 (Changes and Variations) of the Franchise Agreement after the expiry of the EMA.

12.4 NOT USED

12.5 The Parties acknowledge and agree that the Secretary of State Risk Assumption set out at paragraph 5 (*Class 802 capital lease costs*) of Schedule 9.4 of the Franchise Agreement shall, notwithstanding the terms of this EMA, be processed as a Change as though Schedule 9.1 (Financial and Other Consequences of Change) of the Franchise Agreement had not been suspended in accordance with clause 12.1 above.

## 13. **PERFORMANCE BENCHMARKS**

13.1 Where the Franchisee's performance in the Reporting Periods prior to the EMA results in a breach or is at "default level", this shall be disregarded for the duration of the EMA and the Secretary of State shall determine (acting in its absolute discretion) the course of action, after the expiry of the EMA.

13.2 Any course of action determined by the Secretary of State in accordance in clause 13.1 shall in no circumstances be more advantageous to the Secretary of State than the position that would have prevailed under the Agreement in the absence of the EMA.

## 13B. **CAPPING OF INCENTIVE REGIMES (PARAGRAPH 9 OF SCHEDULE 8.1)**

13B.1 The Parties acknowledge and agree that where the EMA period ends part way through a Franchisee Year pursuant to the terms of this EMA, for the purposes of calculating the Applicable Cap pursuant to paragraph 9 of Schedule 8.1 of the Franchise Agreement in respect of the period between the end of the EMA and the end of the relevant Franchisee Year the value of "P" in the formula set out in the definition of "Applicable Cap" shall be equal to the number of Reporting Periods from the end of the EMA to the end of the relevant Franchisee Year.

13B.2 References in clause 13B.1 to paragraph 9 of Schedule 8.1 of the Franchise Agreement shall be construed as references to that provision of the Franchise Agreement disregarding the terms of this EMA.

14. **OBLIGATIONS OF THE FRANCHISEE UNDER THE FRANCHISE AGREEMENT**

14.1 Following execution of this EMA, the Parties shall within thirty (30) Weekdays of the date of this EMA meet and consider, acting reasonably and in good faith, whether the completion of: (i) each obligation of the Franchisee under Schedule 6 of the Franchise Agreement; and (ii) each other obligation of the Franchisee as may be specified by either the Secretary of State or the Franchisee (in each case acting reasonably), will be:

- (a) continued "as is";
- (b) delayed;
- (c) suspended; or
- (d) reduced in scope or application.

14.2 In the event that the obligation of the Franchisee in question involves Capital Expenditure the default assumption will be that the obligation shall continue unaffected during the period of the EMA.

14.3 In the event the Parties are unable to agree the approach to completion of an obligation of the Franchisee within sixty (60) Weekdays of the date of this EMA, the Secretary of State shall reasonably determine the approach.

14.4 If a delay, suspension or reduction agreed or determined in accordance with this clause 14 is such that it is reasonably likely to have an impact on the Franchisee's financial position or performance of the relevant obligation following the end of the EMA, then the Parties will also agree (or if they are unable to agree, the Secretary of State will reasonably determine) how that impact will be addressed (whether by way of a Variation or some other mechanism).

14A. **ACTIVATION OF PARAGRAPHS 6A AND 6 OF SCHEDULE 6.3 OF THE FRANCHISE AGREEMENT (TICKETLESS TRAVEL SURVEYS AND TICKETLESS TRAVEL PAYMENTS)**

14A.1 For the purposes of this clause 14A, references to paragraphs 6A and 6 of Schedule 6.3 of the Franchise Agreement shall be construed as references to those provisions of the Franchise Agreement disregarding the terms of this EMA.

14A.2 The Parties shall from the commencement of the EMA fully and effectively cooperate in reviewing and considering the most appropriate timing for the provisions of paragraphs 6A and 6 of Schedule 6.3 of the Franchise Agreement (in particular the provisions relating to conduct of the baselining survey exercise described in paragraphs 6A.4 to 6A.9 (inclusive) of Schedule 6.3 of the Franchise Agreement) to cease to be disapplied pursuant to this EMA.

14A.3 If the Secretary of State (acting reasonably) considers that any part or parts of paragraphs 6A and/or 6 of Schedule 6.3 of the Franchise Agreement should cease



to be disapplied at any time following the commencement of the EMA then the Secretary of State shall confirm the same to the Franchisee and either:

- (a) the Parties shall agree the date from which such part or parts of paragraphs 6A and/or 6 of Schedule 6.3 of the Franchise Agreement shall cease to be disapplied; or
- (b) in the absence of such agreement, the Secretary of State shall reasonably determine the date from which such part or parts of paragraphs 6A and/or 6 of Schedule 6.3 of the Franchise Agreement shall cease to be disapplied,

in either case having regard to the objectives to:

- (i) conduct the baselining survey exercise described in paragraphs 6A.4 to 6A.9 (inclusive) of Schedule 6.3 of the Franchise Agreement as soon as is reasonably practicable once passenger numbers have returned to more normal levels and the Franchisee is able to conduct its usual revenue protection activities; and
- (ii) bring into full force and effect the entirety of paragraphs 6A and 6 of Schedule 6.3 of the Franchise Agreement and accordingly commence:
  - (A) conduct the programme of Ticketless Travel Surveys envisaged by paragraph 6A Schedule 6.3 of the Franchise Agreement; and
  - (B) the financial and enforcement regimes and associated provisions set out in paragraph 6 of Schedule 6.3 of the Franchise Agreement,

immediately following completion of the baselining survey exercise referred to in (i) above.

14A.4 The Parties shall (if applicable in the circumstances) agree (or in the absence of such agreement the Secretary of State shall reasonably determine) such variations to the financial regime and associated provisions set out in paragraph 6 of Schedule 6.3 of the Franchise Agreement as may be needed to accommodate the commencement of such arrangements pursuant to clause 14A.3 above part-way through a Franchisee Year.

#### 14B. **ACTIVATION OF SCHEDULE 7.3 (SERVICE QUALITY REGIME)**

14B.1 For the purposes of this clause 14B, references to Schedule 7.3 of the Franchise Agreement shall be construed as references to that schedule of the Franchise Agreement disregarding the terms of this EMA.

14B.2 The Parties shall from the commencement of the EMA fully and effectively co-operate in reviewing and considering the most appropriate timing for the provisions of Schedule 7.3 of the Franchise Agreement (in particular the provisions relating to conduct of the baselining survey exercise described in paragraph 3.1A and paragraph 10A of Schedule 7.3 of the Franchise Agreement) to cease to be disapplied pursuant to this EMA.

14B.3 If the Secretary of State (acting reasonably) considers that any part or parts of Schedule 7.3 of the Franchise Agreement should cease to be disapplied at any time following the commencement of the EMA then the Secretary of State shall confirm the same to the Franchisee and either:

- (a) the Parties shall agree the date from which such part or parts of Schedule 7.3 of the Franchise Agreement shall cease to be disapplied; or
- (b) in the absence of such agreement, the Secretary of State shall reasonably determine the date from which such part or parts of Schedule 7.3 of the Franchise Agreement shall cease to be disapplied,

in either case having regard to the objectives to:

- (i) conduct the baselining survey exercise described in paragraph 3.1A and paragraph 10A of Schedule 7.3 of the Franchise Agreement as soon as is reasonably practicable once passenger numbers have returned to more normal levels and the Franchisee's ability to maintain normal standards of 'service quality' has stabilised following the immediate onset of COVID-19 related impacts; and
- (ii) bring into full force and effect the entirety of Schedule 7.3 of the Franchise Agreement and accordingly commence:
  - (A) conduct the programme of Service Quality Inspections envisaged by Schedule 7.3 of the Franchise Agreement; and
  - (B) the financial and enforcement regimes and associated provisions set out in Schedule 7.3 of the Franchise Agreement, immediately following completion of the baselining survey exercise referred to in (i) above.

14B.4 The Parties shall (if applicable in the circumstances) agree (or in the absence of such agreement the Secretary of State shall reasonably determine) such variations to the financial regime and associated provisions set out in Schedule 7.3 of the Franchise Agreement as may be needed to accommodate the commencement of such arrangements pursuant to clause 14B.3 above part-way through a Franchisee Year.

#### 14C. **VALUE OF UNALLOCATED FINANCIAL MODEL COSTS AMOUNT**

14C.1 For the purposes of this clause 14C, references to paragraph 1B of Part 1 of Schedule 6.2 of the Franchise Agreement shall be construed as references to that paragraph of the Franchise Agreement disregarding the terms of this EMA.

14C.2 The Parties acknowledge and agree that, upon the re-entry into force of paragraph 1B of Part 1 of Schedule 6.2 at any time pursuant to the terms of this EMA and Schedule 9.8 of the Franchise Agreement, the value of the Unallocated Financial Model Costs Amount to be treated as Underspend with effect from the Emergency Measures Expiry Date under paragraph 1B of Part 1 of Schedule 6.2 shall be calculated in accordance with paragraph 14C.2(a) or (b) (as the case may be):

- (a) if the EMA period lasts for fewer than thirteen (13) Reporting Periods:

$$UFMCA = [\text{REDACTED}^1] + \left([\text{REDACTED}] * \frac{13 - N}{13}\right) + \left([\text{REDACTED}] * \frac{13 - N}{13}\right)$$

(b) If the EMA period lasts for thirteen (13) or more Reporting Periods:

$$UFMCA = \left([\text{REDACTED}^2] * \frac{52 - N}{13}\right)$$

in each case where:

“N” is the number of Reporting Periods in the EMA term; and

“UFMCA” is the Unallocated Financial Model Costs Amount.

## 15. COVID-19 RELATED SUPPORT

15.1 The Franchisee shall use all reasonable endeavours to avail itself of, including applying for, any UK Government support that is offered in relation to the impact of COVID-19, including for example tax relief.

15.2 To the extent the Franchisee is successful in receiving such support, this shall be taken into account in relation to the application of the mechanisms in Schedule 8.A of the Franchise Agreement, as set out in Appendix 2 to schedule 1 to this EMA, such that the Franchisee does not benefit from double recovery.

## 16. STATE AID

16.1 The Franchisee acknowledges and agrees that the EMA must not result in any financial advantage being granted to the Franchisee that is incompatible with the EU rules on State aid and, in particular, Articles 107 and 108 of the Treaty on the Functioning of the European Union. In that regard, it is noted in particular that the replacement Schedule 8.A of the Franchise Agreement defines the parameters on the basis of which the compensation payment for discharging the public service obligations is to be calculated. In accordance with Articles 4(1) and 6(1) of Regulation (EC) N° 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road, these parameters have been determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the Train Operator and a reasonable profit. At the end of the EMA, the Secretary of State will carry out an ex-post check to ensure that there has been no overcompensation for the discharge of the public service obligations over the duration of the EMA. The Secretary of State will recover – in accordance with the EU State aid rules – any overcompensation in relation to the provision of the management role over the duration of the EMA or any other financial advantage that is identified as having been granted as a result of the EMA in violation of the EU State aid rules, whether such overcompensation or other advantage has been

<sup>1</sup> 3 June 2020 (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.

<sup>2</sup> 3 June 2020 (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.

identified by the Secretary of State or by the European Commission and the Franchisee agrees to repay such monies promptly.

17. **NOT USED**

18. **WARRANTIES**

18.1 The Franchisee shall, within ten (10) Weekdays of the execution of this EMA, provide a warranty in writing, from a statutory director of the Franchisee to the Secretary of State confirming that:

- (a) the Budget submitted in relation to Schedule 8.A of the Franchise Agreement, as set out in Appendix 2 to schedule 1 to this EMA, is a true and valid reflection of the budget for the period covered by the EMA assumed by the Franchisee at 1 March 2020; and
- (b) no measures have been undertaken or will be undertaken to:
  - (i) suppress revenue and/or increase costs during the term of the EMA;
  - (ii) reallocate costs to, or revenues from the period when the EMA is in place; or
  - (iii) act in a way that is contrary to the principles of the EMA by using the existence or cessation of the EMA to increase profitability.

19. **ENTIRE AGREEMENT**

19.1 This EMA contains all the terms which the Parties have agreed in relation to the subject matter of this EMA and supersedes any prior written or oral agreements, representations or understandings between the Parties in relation to such subject matter.

19.2 The Franchisee acknowledges that this EMA has not been entered into wholly or partly in reliance on, nor has the Franchisee been given any warranty, statement, promise or representation other than as expressly set out in this EMA. To the extent that any such warranties, statements, promises or representations have been given the Franchisee unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.

19.3 Nothing in this clause 19 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

20. **COUNTERPARTS**

This EMA may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

21. **COSTS**

Each Party shall bear its own legal, accountancy and other costs and expenses incurred in connection with the preparation, execution and implementation of this EMA and all documents ancillary to it.

**22. GOVERNING LAW**

This EMA (and any non-contractual obligations arising out of or in connection with it) shall be governed 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 EMA except as specified to the contrary.

**23. RIGHTS OF THIRD PARTIES**

No person who is not a Party to this EMA shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

Withdrawn

**IN WITNESS** whereof the parties hereto have executed this EMA the day and year first before written:

SIGNED FOR AND ON BEHALF OF  
**The Secretary of State for Transport**

)  
)  
)  
[REDACTED<sup>3</sup>]

Print Name of Authorised Signatory:  
Position:  
Date:

SIGNED FOR AND ON BEHALF OF  
**First Greater Western Limited**

)  
)  
)  
[REDACTED<sup>4</sup>]

Print Name of Authorised Signatory:  
Position:  
Date:

Withdrawn

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<sup>3</sup> 3 June 2020 (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.

<sup>4</sup> 3 June 2020 (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**

**Amendments to the Franchise Agreement**

Withdrawn

The Franchise Agreement shall be amended as set out in the table below.

For the avoidance of doubt:

- any reference to "N/A" in the table below shall mean that the existing Schedule remains unamended and continues to apply;
- any text that appears in blue and is underlined shall be added to existing clauses / paragraphs / Schedules; and
- any text that appears in blue and is struck-out shall be deleted from existing clauses / paragraphs / Schedules.

REFERENCE (CLAUSE / SCHEDULE)	AMENDMENT
<b>Main Body</b>	
3 – Definitions	<p>The following new definitions shall be inserted into clause 3.1:</p> <p><u>"ACAR Section"</u> <i>means the section of the Management Accounts of the Franchisee which report Actual Costs and Actual Revenues ;</i></p> <p><u>"COVID-19"</u> <i>means the coronavirus disease 2019;</i></p> <p><u>"Disallowable Section"</u> <i>means the section of the Management Accounts of the Franchisee which report debits and credits in relation to Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs and Accrued Revenue Foregone;</i></p> <p><u>"EMA"</u> <i>means the Emergency Measures Agreement entered into by the Parties</i></p>



	<p><i>on or around 26 March 2020 to deal with the impacts of COVID-19;</i></p> <p><b><u>"Management Accounts"</u></b></p> <p><i>means, in relation to any Reporting Period, the Franchisee's management accounts which must:</i></p> <p><i>(a) comply with paragraph 9.5 of Schedule 11.2 (Management Information);</i></p> <p><i>(b) be delivered to the Secretary of State in accordance with paragraphs 9.2(a) and para 9.2(b) of Schedule 11.2 (Management Information); and</i></p> <p><i>(c) consist of both an ACAR Section and a Disallowable Section</i></p>
<p>16 – Entire Agreement</p>	<p>Clause 16.1 shall be amended as follows:</p> <p><i>"This Agreement contains the entire agreement between the Parties, <u>except as amended</u>, in relation to the subject matter of the Franchise Agreement and supersede 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 the Secretary of State's proposal to secure the provision of the Passenger Services under the Franchise Agreement."</i></p>
<p><b>Schedule 1: Passenger Service Obligations</b></p>	
<p>1.1 – Franchisee Services and Service Development</p>	<p>The text in each of paragraphs 4.1(c), 4.1(d), 4.1(e) and 4.1(k) shall be deleted and replaced with "<u>not used</u>".</p> <p>A new paragraph 4.2 shall be inserted as follows:</p>

"4.2 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 reasonable endeavours to, carry out the following Ancillary Services:

(a) in any Reporting Period, the subleasing, hiring or licensing of up to ten per cent (10%) of the rolling stock vehicles used in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock vehicles are sub-let, hired or licensed and the aggregate period of time for which they are used in the provision of the Passenger Services);

(b) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:

(i) up to one per cent (1%) of the number of Franchise Employees as at the Start Date, for over ninety per cent (90%) of their normal working hours during such Reporting Period (including on a full-time basis); and

(ii) one per cent (1%) of any other Franchise Employees as at the Start Date,

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 4.1(a) to 4.1(b) inclusive, paragraphs 4.1(f)-(j) inclusive, 4.1(l)-(p) inclusive, paragraph 4.2(a) or paragraphs 4.2(c) to 4.2(e) inclusive, or engaged in any other activity which is permitted under this Schedule 1.1;

(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), subject to the number of persons engaged or employed in such activity not exceeding by more than ten per cent (10%) the number so engaged or employed on the Start Date:

(A) Bristol St. Philips Marsh;

	<p>(B) <u><a href="#">Plymouth Laira;</a></u>                  (C) <u><a href="#">Reading;</a></u>                  (D) <u><a href="#">Exeter Depot; and</a></u>                  (E) <u><a href="#">Penzance Long Rock;</a></u></p> <p>(d) <u><a href="#">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; and</a></u></p> <p>(e) <u><a href="#">assisting altered or additional freight services to operate on the national rail network and, where appropriate, enabling certain essential goods (such as medical equipment or other urgent items) to be carried on Passenger Services."</a></u></p> <p>Paragraph 8.2(d) shall be amended as follows:</p> <p><i>"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 <u><a href="#">(provided that, if as a result of the impact of COVID-19 it is not reasonably practicable to obtain the prior written consent of the Secretary of State to a higher percentage of the Planned Train Mileage being delegated or subcontracted in advance of subcontracting or delegating the provision of such Passenger Services, the Franchisee may subcontract or delegate the provision of such Passenger Services provided that the Secretary of State receives notification of any such subcontracting or delegation)</a></u>; and"</i></p>
<p>1.2 – Operating Obligations</p>	<p>Paragraph 3.4 shall be amended to read as follows:</p> <p><i>"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 <u><a href="#">shall promptly notify the Secretary of State and the Franchisee agrees to cooperate with Network Rail in relation to such proposal, unless and until: (i) the Franchisee reasonably believes that such proposal would be likely to be materially detrimental to the interests of</a></u></i></p>

passengers on railway passenger services in Great Britain; or (ii) agrees (unless the Secretary of State specifically agrees/instructs the Franchisee accordingly, in which case the Franchisee shall otherwise) to exercise its rights under the Track Access Agreement (including the Network Code) to:

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

in respect of ~~any~~ such actual or proposed omission or rescheduling of Passenger Services by Network Rail"

Paragraph 3.7 shall be amended to read:

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

Paragraph 4.3 shall be deleted and replaced with:

"4.3 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 paragraphs 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."

New paragraphs 4.3A, 4.3B and 4.3C shall be inserted as follows:

"4.3A The Franchisee shall ensure that any proposals to Network Rail submitted pursuant to paragraphs 4.1 or 4.3:

- (a) take full and proper account of the likely passenger demand (including a reasonable assessment of key workers) considering any known or anticipated impacts of COVID-19 (including without limitation any guidance published by Public Health England, and any Legislation, direction or instruction issued by any relevant local, governmental or other competent authority in the United Kingdom from time to time);
- (b) utilise an appropriate number of Franchise Employees to support the likely passenger demand (as determined having taken into consideration the matters referred to in paragraph 4.3A(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.

4.3B 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 4.3 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).

4.3C 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 4.3."

The word "and" shall be deleted at the end of existing paragraph 7.2(f), the full stop at the end of existing paragraph 7.2(g) shall be deleted and replaced with a semicolon and the word "and" shall be added the end of existing paragraph 7.2(g).

	<p>A new paragraph 7.2(h) shall be inserted as follows:</p> <p><u>"(h) 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."</u></p>
<p>1.3 – NOT USED</p>	
<p>1.4 – Passenger Facing Obligations</p>	<p>The words "<u>Subject to paragraph 2A.2 of this Schedule 1.4</u>" shall be added at the start of each of paragraphs 1.2, 1.3, 1.4, 1.6 and 2.</p> <p>A new paragraph 2A shall be inserted after paragraph 2.5 as follows:</p> <p><b><u>2A Communicating Emergency Timetables</u></b></p> <p><u>2A.1 The Franchisee shall publish:</u></p> <p><u>(a) any amendments to the Timetable made pursuant to paragraphs 4, 5 or 6 of Schedule 1.2 as soon as reasonably practicable:</u></p> <p><u>(i) at each Station, by displaying the relevant information on information displays;</u></p> <p><u>(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));</u></p> <p><u>(iii) on the Franchisee's website;</u></p>

	<p><u>(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</u></p> <p><u>(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</u></p> <p><u>(b) as far and as soon as is reasonably practicable, any emergency timetables of other Train Operators where the railway passenger services of such other Train Operators are scheduled to call or in respect of which Connections to such other Train Operators railway passenger services can be made from that Station:</u></p> <p><u>(i) at each Station, by displaying the relevant information on information displays; and</u></p> <p><u>(ii) on the Franchisee's website.</u></p> <p><u>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 paragraphs 1.2, 1.3, 1.4, 1.6 or 2 (as applicable)."</u></p>
1.5 – Information about Passengers	N/A
1.6 – The Rolling Stock	N/A
1.7 – Stations	N/A
<b>Schedule 2: Assets, Leases, Other Franchisees and Schemes</b>	
2.1 – Asset Vesting and Transfer	N/A

2.2 – Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases	N/A
2.3 – Other Franchisees	N/A
2.4 – Not Used	N/A
2.5 – Transport, Travel and Other Schemes	N/A
<b>Schedule 3: Not Used</b>	
-	N/A
<b>Schedule 4: Accessibility and Inclusivity</b>	
-	N/A
<b>Schedule 5: Fares and Smart Ticketing</b>	
5.1 – Purpose, Structure and Construction	N/A
5.2 – Franchisee's Obligations to Create Fares	N/A
5.3 – Allocation of Fares to Fares Baskets	N/A
5.4 – Regulation of Fares Basket Values	N/A
5.5 – Regulation of Individual Fares	N/A



5.6 – Exceeding the Regulated Value, Regulated Price or Regulated Child Price	Unless otherwise instructed by the Secretary of State, paragraphs 1.1(b), 1.2, 2.1(b) and 2.2 shall be deleted and replaced with " <u>not used</u> ".
5.7 – Changes to Fares and Fares Regulation	N/A
5.8 – Fares Regulation Information and Monitoring	N/A
5.9 – Smart Ticketing	N/A
5.10 – Fares, Ticketing and Retail Trials	N/A
<b>Schedule 6: Franchise Specific Obligations and Committed Obligations</b>	
6.1 – Franchise Specific Obligations	<p><u>Schedule 6.1 Part 1 paragraph 5 - Train Fleet Maintenance</u></p> <p>Paragraphs 5.7-5.10 (HMCRP Payments) of Part 1 of Schedule 6.1 shall not apply for the duration of the EMA period.</p> <p><u>Schedule 6.1 Part 1 paragraph 6 - Continuity Fund</u></p> <p>Paragraphs 6.5 and 6.6 of Part 1 of Schedule 6.1 shall not apply for the duration of the EMA period.</p> <p><u>Schedule 6.1 Part 4 paragraph 24 - Exeter Depot Funded Works Payments</u></p> <p>In relation to costs incurred during the period prior to the Emergency Measures End Date the obligation on the Secretary of State to make payments pursuant to paragraph 24 of Part 4 of Schedule 6.1 shall not apply. The Franchisee shall be required to account for all Exeter Depot Funded Works Costs in accordance with paragraph 24 of Part 4 of Schedule 6.1, and in aggregating the total of the Exeter Depot Funded Works Costs the Franchisee shall take account of any such costs incurred during or after the period in which the Emergency Measures Provisions are in force.</p>

	<p>It is acknowledged that (in accordance with paragraph 24.1B(b)(ii) of Part 4 of Schedule 6.1) as of the Start Date the franchisee continues to hold a sum in respect of the Exeter Depot Funded Works Initial Payment that was paid to the Franchisee under the Previous Franchise Agreement. Notwithstanding the operation of the EMA, paragraph 24.6 of Part 4 of Schedule 6.1 shall continue to apply including in particular the obligation on the Franchisee, when the works are complete or the Franchise expires or terminates (whichever is earlier), to repay to the Secretary of State a sum equal to such part of the Exeter Depot Funded Works Initial Payment that has not been drawn down by the Franchisee pursuant to paragraph 24.6(b) of Part 4 of Schedule 6.1 or utilised in funding Exeter Depot Funded Works Costs that have not been replaced by Franchise Payments.</p> <p><u>Schedule 6.1 Part 4 paragraph 25.4 - Class 769 Delayed Rolling Stock Franchise Payment Adjustment</u></p> <p>The calculation of the Delayed Rolling Stock Franchise Payment Adjustment will only take account of financial impacts (if any) that occur after the Emergency Measures End Date .</p>
<p>6.2 – Committed Obligations</p>	<p><u>Schedule 6.2 Part 1 paragraph 1B</u></p> <p>Unless otherwise instructed by the Secretary of State, and subject to clause 14C of this EMA, paragraph 1B of Part 1 of Schedule 6.2 shall <b>not</b> apply for the duration of the EMA.</p> <p><u>Schedule 6.2 part 2 paragraph 3 - Underspend</u></p> <p>In the event that the Franchise terminates on the Emergency Measures End Date the obligation to repay unallocated Underspend to the Secretary of State is disappplied.</p>
<p>6.3 – Contractual Incentive Mitigations</p>	<p>Unless otherwise instructed by the Secretary of State, and subject to clause 14A of this EMA, paragraphs 5 (<i>Marketing Plan</i>), 6A (<i>Ticketless Travel Surveys</i>), 6 (<i>Ticketless Travel Payments</i>), 7 (<i>Operational Performance</i>) and 8 (<i>Changes in Numbers and Total Cost of Employees</i>) shall be deleted and replaced with "<i>not used</i>".</p> <p><u>Schedule 6.3 paragraph 7 - Operational performance CIM</u></p>

	<p>The Parties shall agree or the Secretary of State shall reasonably determine such amendments as may be needed to the regime in the event that the Emergency Measures End Date occurs part-way through a Franchisee Year.</p>
<p>6.4 – Alliances</p>	<p>N/A</p>
<p>6.5 – Not Used</p>	<p>N/A</p>
<p>6.6 – Not Used</p>	<p>N/A</p>
<p>6.7 – The IEP Provisions</p>	<p>Paragraph 2.10 shall be deleted and replaced with:</p> <p><u>“2.10 The Parties acknowledge and agree that any Set Retention Amount(s) required to be paid by the Franchisee to the TSP during a Reporting Period in accordance with the TARA payment mechanisms set out in Schedule 6 of the TARA shall constitute Costs for the purposes of Schedule 8.A.”</u></p> <p>Paragraph 5.1 shall be deleted and replaced with:</p> <p><u>“5.1 The Parties acknowledge and agree that the amount of the Business Rates required to be paid by the Franchisee to the TSP during a Reporting Period pursuant to paragraph 3.1 of Part D (Reimbursable Charges) of Schedule 6 (Performance Regime) of the Train Availability and Reliability Agreement shall constitute Costs for the purposes of Schedule 8.A.”</u></p> <p>Paragraph 5.3 shall be deleted and replaced with "<u>not used</u>".</p> <p>Paragraph 8.1 shall be deleted and replaced with:</p> <p><u>“8.1 The Parties acknowledge and agree that the amount of the Shore Supply Electricity Charges required to be paid by the Franchisee to the TSP during a Reporting Period pursuant to paragraph 2.2 of Part D of Schedule 6 of the Train Availability and Reliability Agreement shall constitute Costs for the purposes of Schedule 8.A.”</u></p>

	Paragraph 8.3 shall be deleted and replaced with " <a href="#"><i>not used</i></a> ".
<b>Schedule 7: Performance Benchmarks</b>	
7.1 – Operational Performance	The text in paragraph 18 shall be deleted and replaced with " <a href="#"><i>not used</i></a> ".  The text in paragraphs 26, 27, 28 and 29 shall be deleted and replaced with " <a href="#"><i>not used</i></a> ".
7.2 – Customer Experience and Engagement	Schedule 7.2 shall <b>not</b> apply for the duration of the EMA.
7.3 – Service Quality Regime	Subject to clause 14B of this EMA, Schedule 7.3 shall <b>not</b> apply for the duration of the EMA.
<b>Schedule 8: Payments</b>	
8.1 – Franchise Payments	Schedule 8.1 shall be replaced with (together):  (i) the new Schedule 8.A attached at Appendix 2; and  (ii) the new Schedule 8.B attached at Appendix 3.
8.2 – Profit Share Mechanism	Schedule 8.2 shall <b>not</b> apply for the duration of the EMA.
8.3 – Track Access Adjustments and Station Charge Adjustments	Schedule 8.3 shall <b>not</b> apply for the duration of the EMA.
8.4 – Not Used	Schedule 8.4 shall <b>not</b> apply for the duration of the EMA.
8.5 – Not Used	Schedule 8.5 shall <b>not</b> apply for the duration of the EMA.
8.6 – Forecast Revenue Mechanism	Schedule 8.6 shall <b>not</b> apply for the duration of the EMA.
<b>Schedule 9: Changes and Variations</b>	

9.1 – Financial and Other Consequences of Change	Subject to clause 12.5 of this EMA, Schedule 9.1 shall <b>not</b> apply for the duration of the EMA.
9.2 – Identity of the Financial Model (Escrow Documents)	N/A
9.3 – Variations to the Franchise Agreement and Incentivising Beneficial Changes	N/A
9.4 – Secretary of State Risk Assumptions	N/A
9.5 – Infrastructure and Rolling Stock Related Change	N/A
9.6 - Franchising of the Heathrow Express Services	N/A
9.7 - Split Ticketing Impact Model Adjustment Mechanism and Mitigations	N/A
9.8 – Emergency Measures	N/A
<b>Schedule 10: Remedies, Events of Default and Termination Events</b>	
10.1 – Procedure for Remedying a Contravention of the Franchise Agreement	<p>Paragraph 2 shall be deleted and replaced with the following new paragraph:</p> <p><u>"If:</u></p> <p><u>(a) the Secretary of State is satisfied that the Franchisee is operating at a level that would, or would likely, be scored "1"; or</u></p> <p><u>(b) the Franchisee has received a score of "1",</u></p>

	<p><u>in relation to any of the EMA Criteria, for a particular EMA Performance Period, in accordance with the EMA Review process set out in Schedule 8.B, the Secretary of State may serve a notice on the Franchisee requiring it to 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 EMA Criterion (a "Remedial Plan Notice")."</u></p> <p>Paragraph 3.1(a) shall be deleted and replaced with the following new paragraph:</p> <p><u>(a) the specific EMA Criterion under the EMA Review Scorecard that the Secretary of State is satisfied that the Franchisee is likely to score, or has scored, "1" in ("Relevant Term"); and</u></p> <p>Paragraph 4.2(b) shall be amended as follows:</p> <p><b>"4.2 Each Remedial Plan shall set out:</b></p> <p>(a) <i>the Relevant Term which has caused such Remedial Plan to be required;</i></p> <p>(b) <i>an explanation of the reasons for the <u>Franchisee receiving, or being likely to receive, a score of "1" with respect to <del>contravention or likely contravention</del> of the Relevant Term;</u></i></p> <p>(c) <i>the steps proposed for the purposes of <u>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 Term <del>securing or facilitating compliance with the Relevant Term;</del></u> and</i></p> <p>(d) <i>the time period within which the Franchisee proposes to implement those steps."</i></p>
<p>10.2 – Events of Default and Termination Events</p>	<p>The text in paragraph 1.6 shall be deleted and replaced with "<u>not used</u>".</p> <p>The text in paragraph 1.8 shall be deleted and replaced with "<u>not used</u>".</p> <p>A new paragraph 1.17 shall be inserted as follows:</p>

	<p><b><u>1.17</u>      <u>Disallowable Costs</u></b></p> <p><i><u>The Franchisee's Disallowable Costs exceed the maximum value for Aggregated Costs and Revenues Liabilities as specified in paragraph 5.8A of Schedule 8.A. to this Agreement.</u></i></p>
<p>10.3 – Force Majeure and Business Continuity</p>	<p>Paragraph 1(e)(iii) shall be amended by replacing the word "and" with "or".</p> <p>Paragraph 1(e) shall be amended by inserting a new paragraph as follows:</p> <p><i><u>"(iv) for the duration of the EMA, the occurrence and impact, whether direct or indirect, of COVID-19; and"</u></i></p> <p>Paragraph 1 shall be amended by inserting the following text at the end of the paragraph:</p> <p><i><u>"The definition of "Force Majeure Event" shall for the duration of the EMA exclude the occurrence and impact, whether direct or indirect, of COVID-19."</u></i></p> <p>Paragraph 3 shall be amended by inserting the following new paragraph :</p> <p><i><u>"3.3 Notwithstanding any other provision of this Agreement, the Franchisee agrees that it shall not for the duration of the EMA 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."</u></i></p>
<p>10.4 – Liability</p>	<p>N/A</p>
<p><b>Schedule 11: Franchise Performance Meetings and Management Information</b></p>	
<p>11.1 – Franchise Performance Meetings</p>	<p>N/A</p>
<p>11.2 – Management Information</p>	<p>Schedule 11.2 shall be replaced with the new Schedule 11.2 attached at Appendix 4.</p>
<p><b>Schedule 12: Financial Covenants and Bonds</b></p>	

<p>Financial Covenants and Bonds</p>	<p>Paragraph 1 shall be amended by:</p> <p>amending subparagraph (d) as follows:</p> <p>"(d) <i>create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank</i>; <u>or</u>"</p> <p>inserting a new subparagraph (e) shall be inserted as follows:</p> <p><u>"(e) borrow any sum, or enter into any loan or lending agreement for the purpose of borrowing from any person."</u></p> <p>The text in paragraph 2 shall be deleted and replaced with "<u>not used</u>".</p> <p>Paragraph 3 shall be amended as follows:</p> <p>"3. <u><b>Lock-up Period</b></u><del><b>Breach of Financial Ratios</b></del></p> <p>3.1 <u>Subject to paragraph 3.1A, the Franchisee shall not during any Lock-up Period, do any of the following without the Secretary of State's consent:</u></p> <p>(a) <i>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;</i></p> <p>(b) <i>pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan; or</i></p> <p>(c) <i>make payment under any intra-group borrowings during the EMA only as explicitly permitted by Clause 10 of the EMA.</i></p> <p><u>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</u></p>
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	<p><del>case relating to the Agreed Funding Commitment in accordance with the AFC Plan (each as defined in the Funding Deed):"</del></p> <p><u>3.1A Provided that the Secretary of State has received:</u></p> <p>(a) <u>the Franchisee's Annual Audited Accounts the for the year ended 31 March 2020 (and the Secretary of State has confirmed in writing to the Franchisee that such Audited Annual Accounts are reasonably acceptable to the Secretary of State); and</u></p> <p>(b) <u>an unqualified audit opinion (provided as part of the auditor's report(s) supplied to the Secretary of State together with the Franchisee's Annual Audited Accounts pursuant to paragraphs 3.8 and 3.10 of Schedule 13 of the Previous Franchise Agreement).</u></p> <p><u>then the Franchisee shall be permitted to pay a dividend (equity or preference) to any of its Affiliates of an amount which is no more than:</u></p> <p>(i) <u>the profits available for distribution (as defined by GAAP) shown in the Annual Audited Accounts for the year ended 31 March 2020;</u>  <u>Less</u></p> <p>(ii) <u>the value of any contingent liabilities (as defined by GAAP) shown within the Annual Audited Accounts for the year ended 31 March 2020;</u>  <u>Less</u></p> <p>(iii) <u>any profits available for distribution (as defined by GAAP) which result from the existence or the operation of any funds held by the Franchisee as at 31 March 2020, including: (A) Underspend; (B) CCIF Underspend; (C) CI Underspend; and (D) 'Heavy Maintenance Fund' underspend or unspent amounts arising under paragraph 7 of Part 1 of Schedule 6.1 of the Previous Franchise Agreement (and for the avoidance of doubt</u></p>
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the Franchisee anticipates that the value of these funds will be accounted for (under GAAP) as a liability in the Annual Audited Accounts and so the value of profits available for distribution (as defined by GAAP) which result from the existence or the operation of the funds is anticipated to be zero);

**Less**

(iv) the net amounts of Working Capital Payments (if any) forecast by the Franchisee as being payable by the Secretary of State to the Franchisee in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate (it being acknowledged, for the avoidance of doubt, that if: (A) no such Working Capital Payments are forecast in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate; or (B) the amount of such forecast Working Capital Payments is negative (meaning that the resulting payment is to be made by the Franchisee to the Secretary of State) then no such deduction shall arise pursuant to this paragraph (iv));

**Less**

(v) any previous dividend (equity or preference) paid (or other distribution made) by the Franchisee to any of its Affiliates since 1 April 2020.

If the Emergency Measures End Date is extended under Schedule 9.8 of the Franchise Agreement to a date later than 31st March 2021, the Secretary of State shall cooperate with the Franchisee's reasonable request from time to time for the Secretary of State to consent to the distribution of distributable profits by the Franchisee in addition to those permitted pursuant to paragraph 3.1A of this Schedule 12, subject to those distributions in aggregate in relation to any Franchisee Year not exceeding the aggregate amount of Management Fee payable in relation to that Franchisee Year and subject to such distribution not leading to a Working Capital Payment or Emergency Working Capital Payment being required pursuant to paragraph 9 of Schedule 8.A.

In this paragraph 3.1A, "Annual Audited Accounts", "Underspend", "CCIF Underspend" and "CI Underspend" shall have the meanings given to them in the Previous Franchise Agreement.

Paragraph 3.2 shall be replaced with the following:

"3.2 "Lock-up Period" means the period commencing on the date of this EMA 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.A (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.A"

Paragraph 3.3 shall be deleted and replaced with "not used".

A new paragraph 3A shall be added as follows:

"3A. 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."

Paragraph 4.3(c) shall be amended by inserting the following text at the end of the subparagraph:

"The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.A (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).*"

Paragraph 4.5(a)(i)(A) shall be amended as follows:

*"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.A (Franchise Payments)); and/or"*

The subparagraphs in paragraph 4.5(b) shall be amended as follows:

*"(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;*

*(iii) without prejudice to the generality of paragraph 4.5(b)(i), any of the following amounts which (a) in respect of any Performance Year, the Secretary of State has not offset against MFPP in accordance with paragraph 11 of Schedule 8.A (Franchise Payments); or (b) which are not taken into account in any payment received by the Secretary of State pursuant to the Funding Deed:*

*(A) SoS Claims; and*

*(B) any other sums which the Secretary of State has the right in accordance with Schedule 8.A (Franchise Payments) to offset against MFPP; and/or*

	<p><u>(iv) any amount of the Final Working Capital Adjustment not paid to the Secretary of State in accordance with paragraph 10.4 of Schedule 8.A (Franchise Payments).</u>"</p> <p>Paragraph 4.5(e) shall be deleted and replaced with:</p> <p><u>"(e) The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.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."</u></p> <p>A new paragraph 7 shall be inserted as follows:</p> <p><u>"7. <b>Survival</b></u></p> <p><u>For the avoidance of doubt this Schedule 12 and any other provisions of the Franchise Agreement reasonably required for the purpose of giving this Schedule 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."</u></p>
<p><b>Schedule 13: Rail Industry Initiatives and Innovation Obligations</b></p>	
<p>13.1 – Rail Industry Initiatives and Co-operation</p>	<p>N/A</p>
<p>13.2 – Not Used</p>	<p>N/A</p>
<p>13.3 – Not Used</p>	<p>N/A</p>
<p><b>Schedule 14: Preservation of Assets</b></p>	

14.1 – Maintenance of Franchise	N/A
14.2 – Maintenance of Operating Assets and Branding	N/A
14.3 – Key Contracts	N/A
14.4 – Designation of Franchise Assets	N/A
14.5 – Dealing with Franchise Assets	N/A
14.6 – Not Used	N/A
14.7 – Not Used	N/A
<b>Schedule 15: Obligations Associated with Termination</b>	
15.1 – Reletting Provisions	N/A
15.2 – Last 12 or 13 months of Franchise Period and Other Conduct of Business Provisions	<p>A new paragraph 1.3 shall be inserted as follows:</p> <p><u>"1.3 EMA Period</u></p> <p><u>Notwithstanding paragraphs 1.1 and 1.2 above, the Parties agree that paragraphs 2 to 7 of this Schedule 15.2 shall apply for the duration of the EMA."</u></p> <p>Paragraph 2.1(a) shall be amended as follows:</p> <p>"(a) <u>takes effect at any time during the Franchise Period in the last twelve (12) months of the Franchise Period</u> unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the following formula:"</p>

	<p>Paragraph 2.1(b) shall be amended as follows:</p> <p>"(b) wholly or partly first takes effect after the <del>end of the Franchise Period</del><u>Emergency Measures End Date;</u>"</p> <p>Paragraph 2.1(c) shall be amended as follows:</p> <p>"(c) results in any such employment not being terminable by the Franchisee or other relevant employer within six (6) months of the <del>expiry of the Franchise Period</del><u>Emergency Measures End Date;</u>"</p> <p>Paragraph 2.1(e) shall be amended as follows:</p> <p>"(e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the <del>expiry of the Franchise Period</del><u>Emergency Measures End Date;</u>"</p> <p>The last paragraph in 2.1 shall be amended as follows:</p> <p><i>"It is agreed that the Franchisee shall be permitted to make a decrease in the remuneration of any Franchise Employee without first obtaining the consent of the Secretary of State in circumstances where such decrease is in the ordinary course of business and when aggregated with any other variation which takes effect during such period, represents a decrease in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the formula contained in paragraph 2.1(a) where a calculation pursuant to such formula gives rise to a negative percentage. In any other circumstances the prior consent of the Secretary of State shall be required to any decrease in the remuneration of a Franchise Employee <u>at any time during the Franchise Period</u><del>in the last twelve (12) months of the Franchise Period.</del>"</i></p> <p>Paragraph 4.1 shall be amended as follows:</p>
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	<p><i>"Subject to and excluding any increase in the remuneration of Franchise Employees permitted under paragraph 2.1, the Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State (which shall not be unreasonably withheld) increase or decrease <u>at any time during the Franchise Period</u><del>in the last twelve (12) months of the Franchise Period</del> the number of Franchise Employees such that:</i></p> <p>(a) <i>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</i></p> <p>(b) <i>the total number of Franchise Employees is decreased,</i></p> <p><i>in each case, by more than five per cent (5%) during such <u>term of the EMA or</u> 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."</i></p> <p>Paragraph 5.1(a) shall be amended as follows:</p> <p>"(a) <i>During <u>the term of the EMA or</u> 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 <u>term of the EMA or the</u> Franchise Period (<u>as applicable</u>) for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement of <u>the term of the EMA or</u> such thirteen (13) month period (<u>as applicable</u>) or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period."</i></p>
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	<p>Paragraph 5.1(b)(i) shall be amended as follows:</p> <p><i>"(i) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the commencement of <a href="#">the term of the EMA or</a> such thirteen (13) month period and to which the purchaser would have been entitled before the commencement of such period;"</i></p> <p>Paragraph 5.2(a) and (b) shall be amended by inserting the words "<a href="#">during the term of the EMA or</a>." before the words "in the last thirteen (13) Reporting Periods".</p> <p>Paragraph 6.1 shall be amended by inserting the words "<a href="#">during the term of the EMA or</a>" before the words "during the last twelve (12) months".</p>
15.3 – Handover Package	N/A
15.4 – Provisions Applying on and After Termination	N/A
<b>Schedule 16: Pensions</b>	
16.1 – Railways Pension Scheme	N/A
16.2 – Deficit Contribution Risk Sharing	Other than paragraphs 5 and 6 of Part 1 to Schedule 16.2 (which shall remain in full force and effect), Schedule 16.2 shall not apply for the duration of the EMA.
<b>Schedule 17: Confidentiality, Freedom of Information and Data Protection</b>	
-	N/A

**Appendix 1 to Schedule 1**

**NOT USED**

Withdrawn

## Appendix 2 to Schedule 1

### Schedule 8.A (Franchise Payments)

#### 1. Definitions

For the purposes of this Schedule 8.A (Franchise Payments) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

<b>"Accrued Disallowable Costs"</b>	has the meaning given in paragraph 5.7 of Schedule 8.A (Franchise Payments);
<b>"Accrued Revenue Foregone"</b>	has the meaning given in paragraph 5.7 of Schedule 8.A (Franchise Payments);
<b>"Actual Capex"</b>	means the actual Capital Expenditure of the Franchisee as shown in the ACAR Section of the Management Accounts in the relevant period;
<b>"Actual Costs"</b>	means the actual Costs of the Franchisee as shown in the ACAR Section of the Management Accounts in the relevant period;
<b>"Actual Revenue"</b>	means the actual Revenue of the Franchisee as shown in the ACAR Section of the Management Accounts in the relevant period;
<b>"Aggregated Costs and Revenues Liabilities"</b>	has the meaning given in paragraph 5.8 of Schedule 8.A (Franchise Payments);
<b>"Base Cash Position"</b>	means <b>[REDACTED<sup>5</sup>]</b> or such other value as the Secretary of State may determine in accordance with paragraph 9.8 of Schedule 8.A (Franchise Payments);
<b>"Budget"</b>	means together: <ol style="list-style-type: none"> <li>(a) the periodic cost and revenues budget; and</li> <li>(b) the periodic capex budget,</li> </ol> <p>as such budget may be updated from time to time in accordance with paragraph 4 of Schedule 8.A (Franchise Payments);</p>
<b>"Budgeted Capex"</b>	means the Capital Expenditure budgeted to be incurred by the Franchisee in a Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 4 of this Schedule 8.A (Franchise Payments);
<b>"Budgeted Costs"</b>	means the Costs budgeted to be incurred by the Franchisee in each Reporting Period and specified in the then current

<sup>5</sup> 3 June 2020 (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.

Budget as agreed or determined pursuant to paragraph 4 of this Schedule 8.A (Franchise Payments);

**“Capital Expenditure”**

means costs of creating non-current or fixed assets which are not Costs (as defined in this Schedule 8.A) and which are properly accrued:

- (a) including, for the avoidance of doubt, in relation to the provision of HEx Services; and
- (b) in relation to the term of the EMA, during such term EMA and relating to the Franchisee's Performance of the EMA;

**“Ceiling Cash Position”**

means [REDACTED<sup>6</sup>] or such other value as the Secretary of State may determine in accordance with paragraph 9.8 of Schedule 8.A (Franchise Payments);

**“Costs”**

means costs and expenses properly accrued:

- (a) including, for the avoidance of doubt, in relation to the provision of HEx Services; and
- (b) in relation to the term of the EMA, during such term and relating to the Franchisee's Performance of the EMA;

and stated in the Franchisee's profit and loss account in the ACAR Section of the Management Accounts but excluding:-

- (a) Franchise Payments (which shall include (for the avoidance of doubt) the value of any Management Fee and Performance Payment);
- (b) corporation tax and 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 where that depreciation is not a Disallowable Cost;
- (d) Capital Expenditure; and
- (e) costs of delivering Continuity Fund Schemes;

provided that:

- (i) if the Franchisee's profit and loss account includes any cost(s) in respect of right of use assets treated in accordance with IFRS16 (the “**IFRS16 Cost**”), then for the purpose of this definition the amount for each

<sup>6</sup> 3 June 2020 (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.

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) for the avoidance of doubt, any liability of the Franchisee to the Secretary of State arising under or in connection with the Franchise Agreement prior to the EMA Start Date shall not be treated as or give rise to a cost or expense for the purpose of the Franchisee's profit and loss account;

<b>"Disallowable Costs"</b>	means any Costs or Capital Expenditure which are described within Appendix 1 (Disallowable Costs) to this Schedule 8.A (Franchise Payments);
<b>"EMA Start Date"</b>	means 1 April 2020;
<b>"EMA Term"</b>	has the meaning given to "Term" in clause 3.3 of the EMA;
<b>"Emergency Working Capital Payment"</b>	has the meaning given in paragraph 9.5 of Schedule 8.A (Franchise Payments);
<b>"Estimated Revenue"</b>	means the Revenue reasonably determined by the Secretary of State using available resources as is practicable at the time of the determination;
<b>"Extended Performance Period"</b>	means, in the event that the EMA Term is extended in accordance with Schedule 9.8 of this Agreement, each further period following the end of the preceding Performance Period, comprising six (6) additional Reporting Periods (or less in the event that the EMA is terminated prior to the expiry of the relevant Extended Performance Period);
<b>"Final Reviewed Accounts"</b>	means the accounts provided pursuant to paragraph 16 of Schedule 8.A (Franchise Payments);
<b>"Floor Cash Position"</b>	means [REDACTED <sup>7</sup> ] or such other value as the Secretary of State may determine in accordance with paragraph 9.8 of Schedule 8.A (Franchise Payments);
<b>"Forecast Closing Cash Position"</b>	means, with respect to a Reporting Period, the Franchisee's forecast amount of cash and cash equivalents (as defined by GAAP) as at the last day of that Reporting Period, including amounts held in relation to Season Tickets, <i>minus</i> the value of Estimated Revenue for that Reporting Period, <i>plus</i> the

<sup>7</sup> 3 June 2020 (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.

value of PADJ in relation to the next payment date, and taking into account the Franchisee's latest Management Accounts;

**"Franchise Payment Component"**

means:

- (a) each of the components of "FP" as described in paragraph 2.1 of this Schedule 8.A (Franchise Payments); and
- (b) any component or element, described in the relevant provisions of this Schedule 8.A (Franchise Payments) and Schedule 8.B (Performance Payment), as the case may be, which is used in determining or calculating the value of those components described in paragraph (a) above;

**"Good and Efficient Operator"**

means in the context of all other relevant provisions of this 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, for the avoidance of doubt, shall recognise the extraordinary impact of COVID-19, the existence of the EMA and the requirement for operators to act in the national interest in response to COVID-19), which is a party to a franchise agreement in equivalent terms to the Franchise Agreement, with performance targets and standards equivalent to those set out in Schedule 8.B (Performance Payment) of the Franchise Agreement, 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;

**"Initial Budget"**

means the Budget as at the EMA Start Date;

**"Management Fee and Performance Payment" or "MFPP"**

means the Franchise Payment Component calculated in accordance with paragraph 11 of this Schedule 8.A (Franchise Payments);

**"Performance Period"**

means each of:

- (a) the period commencing on the EMA Start Date and ending at 1.59 a.m. on 20 September 2020, or such earlier date of termination of the EMA; and
- (b) where the EMA Term is extended in accordance with Schedule 9.8 of this Agreement, each Extended Performance Period;

**"Periodic Adjustment"**

has the meaning given in paragraph 6.2 of Schedule 8.A (Franchise Payments);

- “Periodic Budgeted Capex Payment” or “PBCP”** means the Franchise Payment Component calculated in accordance with paragraph 2.1 of this Schedule 8.A (Franchise Payments);
- “Periodic Franchise Payment” or “PFP”** means the Franchise Payment Component calculated in accordance with paragraph 2.1 of this Schedule 8.A (Franchise Payments);
- “Periodic Finance Review Meeting”** has the meaning given in paragraph 5.1 of Schedule 8.A (Franchise Payments);
- “Revenue”** means the gross total revenue of the Franchisee received or receivable and properly accrued:
- (a) including, for the avoidance of doubt, in relation to the provision of HEx Services; and
  - (b) in relation to the term of the EMA, during such term and relating to the Franchisee's performance of the EMA;
- as stated in the Franchisee's profit and loss account in the ACAR Section of the Management Accounts but excluding:
- (a) Franchise Payments (which shall include (for the avoidance of doubt) the value of any Performance Payment and/or Management Fees (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 3.8 (No Double Recovery) of Schedule 8.A (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 (a) and (b) above, such revenue 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 Agreement, 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 Agreement or any agreement ancillary to this Agreement, including the Supplemental Agreement

**“Supporting Materials”**

means any materials explaining or supporting the Budget which have been produced by the Franchisee and serve as a Supporting Materials;

**“Working Capital Payment”**

means the Franchise Payment Component calculated in accordance with paragraph 9.3 of this Schedule 8.A (Franchise Payments); and

**“Working Capital Repayment”**

means the Franchise Payment Component calculated in accordance with paragraph 10.2 of this Schedule 8.A (Franchise Payments).



2. **Franchise Payments**

2.1A The Parties acknowledge and agree that the provisions of Schedule 8.1 of the Franchisee Agreement shall be suspended during the term of the EMA. The Franchise Payment for any Reporting Period during the term of the EMA shall be an amount equal to:

<b>£FP =</b>	$PFP + PBCP + PADJ + WCP - WCR + FADJ + MFPP - FWCA$
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where:

<b>PFP</b>  (Periodic Franchise Payment)	means an amount equal to:	
	$PFP_n = BC_n - ER_{n-1}$	
	Where:	
	<b>BC<sub>n</sub></b>	means the Budgeted Costs for the current Reporting Period (if any). BC <sub>n</sub> may only be a positive number.
	<b>ER<sub>n-1</sub></b>	means the Estimated Revenue for Reporting Period <sub>(n-1)</sub> (if any) provided such Reporting Period occurs after the EMA Start Date. ER <sub>n-1</sub> may only be a positive number.
PFP may be a positive or negative number.		
<b>PBCP</b>  (Periodic Budgeted Capex Payment)	means an amount equal to the Budgeted Capex for the current Reporting Period (if any). PBCP may only be a positive number.	
<b>PADJ</b>	means any Periodic Adjustment, determined in accordance with paragraph 6 of Schedule 8.A (Franchise Payments), to be made on that Reporting Period's Payment Date. PADJ may be a positive or negative number.	
<b>WCP</b>	means any Working Capital Payment to be made on that Reporting Period's Payment Date. WCP may only be a positive number.	
<b>WCR</b>	means any Working Capital Repayment to be made on that Reporting Period's Payment Date. WCR may only be a positive number.	
<b>FADJ</b>	means any Final Adjustment, determined in accordance with paragraph 7 of Schedule 8.A (Franchise Payments), to be made on that Reporting Period's Payment Date. FADJ may be a positive or negative number.	
<b>MFPP</b>	means the Management Fee and Performance Payment for the term of the EMA, determined and payable in accordance with paragraph 11.1 of Schedule 8.A (Franchise Payments). MFPP may only be a positive number.	

<b>FWCA</b>	means the Final Working Capital Adjustment, determined in accordance with paragraph 10.3 of Schedule 8.A (Franchise Payments), to be made on that Reporting Period's Payment Date. FWCA may be a positive or negative number.
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- 2.1 Not Used.
- 2.2 Not Used.
- 2.3 The Parties agree that:
- (a) where **£FP is a positive number**, the Secretary of State shall pay that amount to the Franchisee on the Payment Date for that Reporting Period;
  - (b) where **£FP 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.
3. **Payment of Franchise Payments**
- 3.1 The Secretary of State shall notify the Franchisee, no less than seven (7) days prior to the start of each Reporting Period (or, in the case of the first Reporting Period following the EMA Start Date, as soon as reasonably practicable), of the amount of the Franchise Payment payable in respect of that Reporting Period.
- 3.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.
- 3.3 The Payment Date for a Reporting Period shall be the first Weekday of that Reporting Period.
- 3.4 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 3.1 on the Payment Date of the Reporting Period to which it relates.
- 3.5 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.

### **Interest**

- 3.6 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.

### Disputes under Schedule 8

- 3.7 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.A.

### No Double Recovery

- 3.8 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, no amount shall be categorised as both Capital Expenditure and as a Cost for the purpose of this Schedule 8.A, or inconsistently with the accounting treatment assumed for the same capital expenditure in calculating the Franchise Payments under the Franchise Agreement prior to the implementation of the EMA.
- 3.8A In the event that the Franchisee is successful in obtaining any UK Government support that is offered in relation to the impact of COVID-19, this shall be taken into account in relation to the relevant payment and adjustments in this Schedule 8A such that the Franchisee does not benefit from double recovery or double counting.

### Force Majeure and Payments

- 3.9 Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue to be calculated in accordance with this Schedule 8.A (Franchise Payments) and the payment of such Franchise Payments shall continue unaffected.

### 4. Revisions to the Budget

- 4.1 Without limiting the requirement for any other meeting, the Parties shall, subject to paragraph 5.10, hold a forecast Budget review meeting in each Reporting Period (a "**Reporting Period 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 4.2. The purpose of the meeting shall be to review and seek to agree:

- (a) revisions (if any) to the then current Budget for the remaining Reporting Periods of the Budget;
- (b) the content of any necessary or desirable corresponding addendum to the Supporting Materials; and
- (c) any new contracts which the Franchisee proposes to enter into with an Affiliate.

The Franchisee shall ensure that the representatives of the Franchisee at the Reporting Period 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.

- 4.2 The Franchisee shall, prior to the date of each Reporting Period Budget Forecast Review Meeting have provided to the Secretary of State the relevant information required pursuant to paragraph 9.2 of Schedule 11.2 in relation to the previous Reporting Period together with a draft periodic budget prepared using the cost and revenue categories within P&L2 of the Financial Model, updated to reflect Actual Costs and Actual Revenues as reflected in the ACAR Section of the latest Management Accounts and revised Budgeted Costs for the remainder of the term of the EMA, 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 4, within such time as the Secretary of State may

reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which the Secretary of State may make is not limited).

- 4.3 If the Parties fail to agree the matters referred to in paragraphs 4.1(a) to 4.1(c) the relevant Reporting Period Budget Forecast Review Meeting, the Secretary of State shall reasonably determine such matters.
- 4.4 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 Reporting Period 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.
- 4.5 Each revision to the Budget and/or addendum to the Supporting Materials shall (unless the Parties otherwise agree):
- (a) adopt the same format and structure as the original version in agreed terms (or where the preceding version has included any changes from that format and structure expressly agreed by the Parties for this purpose) from the preceding version;
  - (b) make no assumptions or include any costs, revenue or other adjustments which are not consistent with the definitions of Costs, Capital Expenditure and Revenue or which represent Disallowable Costs or Revenue Foregone or liabilities in respect of SoS Claims (except as may be otherwise expressly agreed by the Parties for that purpose);
  - (c) adopt the same accounting principles and standards as the original version (as these may be expressly varied by agreement between the Parties for this purpose or, in the case of accounting standards, as these may be reasonably revised by the Secretary of State to take account of changes to GAAP in the United Kingdom); and
  - (d) otherwise facilitate easy comparison with the definitions of Costs, Capital Expenditure, Revenue, Disallowable Costs and Revenue Foregone and with the information reported in the Management Accounts, Annual Management Accounts and the Audited Annual Accounts.
- 4.6 Each time it is agreed or determined that the Budget is to be revised and/or an addendum is to be added to the Supporting Materials, the Secretary of State shall be entitled to:-
- (a) make the agreed or determined revisions to the Budget and/or Supporting Materials himself (or procure this is done on his behalf) and provide copies of those revised documents to the Franchisee; or
  - (b) require the Franchisee to provide the agreed or determined revisions to the Budget and/or Supporting Materials for approval by the Secretary of State, which the Franchisee shall do and provide revised versions to the Secretary of State within such time as the Secretary of State shall specify for this purpose.
- 4.7 The Franchisee shall not enter into any contract with an Affiliate unless the Secretary of State has, in his absolute 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, whether at or following a Reporting Period Budget Forecast Review Meeting (where such contract forms part of the agenda for that meeting) or otherwise.
- 4.8 For the purpose of this paragraph 4, 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 4. 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.

4.9 Subject to the Secretary of State's rights set out in paragraph 4.7, 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.

## 5. **Review of Franchisee's performance against Budget**

### **Finance Review Meeting**

5.1 Without limiting the requirement for any other meeting, the Parties shall, subject to paragraph 5.10, 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 provision of the information referred to in paragraph 5.2 and:

- (a) the purpose of the Periodic Finance Review Meeting shall be to review the financial performance of the Franchisee. This shall include:
  - (i) a review and discussion of variances arising in the preceding Reporting Period between Actual Costs, Actual Capex and Actual Revenue and Budgeted Costs, Budgeted Capex and Estimated Revenue respectively 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;
  - (ii) a review and discussion regarding any Actual Costs with respect to payments made by the Franchisee under contracts with Affiliates which exceed either the Budgeted Costs stated in the then current Budget or the level of payments made under the contracts with Affiliates for equivalent periods prior to the EMA Start Date;
  - (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 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, Revenue Foregone and SoS Claims (and/or in accordance with paragraph 5.9, relevant Initial SoS Claim Amounts, as applicable) which have been identified pursuant to (vi) above in previous Report Period Finance Review Meetings.

- (b) the Franchisee shall ensure that the representatives of the Franchisee at the meeting shall include the Finance Director of the Franchisee or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Secretary of State; and
- (c) the Secretary of State shall ensure that the representatives of the Secretary of State shall include a senior civil servant where the confirmation and valuation of any Disallowable Costs, Revenue Foregone and/or SoS Claims (and/or in accordance with paragraph 5.9, relevant Initial SoS Claim Amounts, as applicable) are to be considered as part of any Reporting Period Finance Review Meeting,

and, for the avoidance of doubt, the purpose of the Periodic Finance Review Meeting held in the first Reporting Period of the term of the EMA shall be to discuss the financial performance of the Franchisee during the final Reporting Period (as such term is defined in the Previous Franchise Agreement) of the Previous Franchise Agreement to assist the Secretary of State in considering the position as regards the Continuity Fund and matters in relation to the Previous Franchise Agreement.

5.2 The Franchisee shall, prior to the date of each Periodic Financial Review Meeting have provided to the Secretary of State the relevant information required pursuant to paragraph 9.2 of Schedule 11.2 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 5.1, within such time as the Secretary of State may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which the Secretary of State may make is not limited).

5.3 [Not used]

5.4 The Secretary of State shall be entitled to consider any information provided to him 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 5. The Franchisee shall provide the information within such time as the Secretary of State may reasonably specify for the purpose (and this paragraph shall continue to apply such that the number of requests which the Secretary of State may make is not limited).

5.4A If, within 10 Weekdays following the relevant Reporting Period Finance Review Meeting:

- (a) the Parties have failed to agree the matters referred to in paragraph 5.1(a)(vii); and
- (b) such matters either individually or in the aggregate exceed **[REDACTED<sup>8</sup>]**; then

each Party will respectively procure that such matter or matters (as the case may be) will 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 will meet at the earliest convenient time and in any event within 20 Weekdays of the date of the relevant Reporting Period Finance Review Meeting and negotiate in good faith and attempt to agree the relevant matters.

5.5 If:

<sup>8</sup> 3 June 2020 (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) the Parties fail to agree the matters referred to in paragraph 5.1(a) at the relevant Reporting Period Finance Review Meeting, in circumstances where paragraph 5.4A does not apply;
- (b) the representatives of the Parties fail to agree the matters referred to in paragraph 5.1(a)(vii) within 10 Weekdays of first meeting to agree such matters in accordance with paragraph 5.4A, in circumstances where that paragraph applies; or
- (c) the Franchisee fails to provide the relevant information required pursuant to Schedule 11.2 (Management Information), in accordance with the timescales set out therein, or otherwise in accordance with this paragraph 5,

the Secretary of State shall (without prejudice to his other rights) be entitled (but not obliged) to determine the relevant matters in accordance with this paragraph 5 and all other applicable provisions of this Schedule 8.A 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 Accrued SoS Claims**

5.6 Without prejudice to paragraphs 5.4 to 5.5, if subsequent to any Reporting Period Finance Review Meeting the Secretary of State later identifies any item (applicable to that period to which the relevant Reporting Period 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 or Final Reviewed Accounts or otherwise) the Secretary of State shall within 28 days of identifying such item be entitled to:-

- (a) notify the Franchisee in writing, identifying the item concerned; and
- (b) request further information from the Franchisee in connection with the item for the purposes of the operation of this paragraph 5.4 and paragraphs 5.6A to 5.6C. The Franchisee shall provide the information within such time as the Secretary of State may reasonably specify for the purpose.

5.6A 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 5.9, relevant Initial SoS Claim Amounts, as applicable) identified by the Secretary of State pursuant to paragraph 5.6 within 20 Weekdays of the later of the Secretary of State's notice referred to in paragraph 5.6(a) and the date specified by the Secretary of State for the delivery of further information in accordance with paragraph 5.6(b) (the "**Escalation Trigger Date**").

5.6B If:

- (a) the parties fail to agree the matters referred to in paragraph 5.6A; and
- (b) such matters either individually or in the aggregate exceed [REDACTED<sup>9</sup>]; then

each Party will respectively procure that such matter or matters (as the case may be) will 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 will meet at the earliest convenient time and in any event within 20 Weekdays of the Escalation Trigger Date and negotiate in good faith and attempt to agree the relevant matters.

<sup>9</sup> 3 June 2020 (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.

5.6C If:

- (c) the Parties fail to agree the matters referred to in paragraph 5.6A in circumstances where paragraph 5.6B does not apply;
- (d) the representatives of the Parties fail to agree the matters referred to in paragraph 5.6A within 10 Weekdays of first meeting to agree such matters in accordance with paragraph 5.6B, in circumstances where that paragraph applies; or
- (e) the Franchisee fails to provide the relevant information required pursuant to paragraph 5.6(b) in accordance with the specified timescales, then

the Secretary of State shall reasonably determine the value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 5.9, relevant Initial SoS Claim Amounts, as applicable).

5.7 The value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 5.9, relevant Initial SoS Claim Amounts as applicable) as agreed or determined whether pursuant to paragraph 5.4A, paragraph 5.5, paragraph 5.6A, paragraph 5.6B, paragraph 5.6C or paragraph 5.9 shall be referred to as "**Accrued Disallowable Costs**" and "**Accrued Revenue Foregone**" and "**Accrued Claims**" (as applicable).

5.8 Subject to paragraph 5.8A, the value of any Accrued Disallowable Costs and/or Accrued Revenue Foregone and/or Accrued Claims on each occasion accumulated pursuant to paragraph 5.7 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**".

5.8A The value of all Aggregated Costs and Revenues Liabilities which have previously been shown as transactions within Costs or Revenue or Capital Expenditure in the ACAR Section of the Management Accounts (and so have previously been included in PFP) shall be limited to:

- (a) in the event that there has been no extension to the term of EMA, the maximum potential Management Fee and Performance Payments payable for the term of the EMA (which, for the avoidance of doubt, shall take account of any early expiry or termination of the EMA) calculated pursuant to paragraph 11.1; or
- (b) in the event that there has been an extension to the term of the EMA, the maximum potential Management Fee and Performance Payments payable for the term of the EMA (which, for the avoidance of doubt, shall take account of any early expiry or termination of the EMA) calculated pursuant to paragraph 11.1.

5.9 To the extent that any SoS Claim is a contingent or unliquidated claim (a "**Contingent SoS Claim**"), the parties shall, pursuant to paragraph 5.4A, paragraph 5.6A or paragraph 5.6B (as applicable) seek to agree (or in the absence of agreement, the Secretary of State may for the purposes of paragraph 5.5 and shall for the purposes of paragraph 5.6C, 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 5.7. If the value of Contingent SoS Claim once fully liquidated (that is, being agreed or determined through dispute resolution) is:

- (a) in excess of the Initial SoS Claim Amount the Secretary of State shall be entitled to claim such amount in excess of the Initial SoS Claim Amount from the Franchisee:
  - (i) as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of MFPP, 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 EMA;
  - (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 this Franchise Agreement; or
- (b) is less than the Initial SoS Claim Amount the Secretary of State shall repay to the Franchisee the difference between the actual liquidated value of the relevant SoS Claim and the Initial SoS Claim Amount either:
- (i) as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of MFPP, 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.

5.10 The Secretary of State shall have the discretion (acting reasonably) to decrease (and subsequently increase) the required frequency of the Reporting Period Budget Forecast Review Meetings and/or the Periodic Finance Review Meetings, provided they shall be no more frequent than once a Reporting Period.

5.11 Any Reporting Period Budget Forecast Review Meeting or Period Finance Review Meeting (or part thereof) may be held remotely with the prior agreement of the Parties.

6. **Periodic Adjustments**

6.1 The value of PADJ for the current Reporting Period (n) shall be equal to the following

<b>PADJ for Reporting Period(n) =</b>	$(ACRP_{n-2} - BCRP_{n-2}) + (ACAP_{n-2} - BCAP_{n-2}) - (ARRP_{n-2} - ERRP_{n-2})$
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**Where:**

<b>ACRP<sub>n-2</sub></b>	means the total Actual Costs in the second preceding Reporting Period (n-2) as set out in the ACAR Section of the Management Accounts for that preceding Reporting Period, provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. ACRP <sub>n-2</sub> may only be a positive number.
<b>BCRP<sub>n-2</sub></b>	means the total Budgeted Costs in respect of the second preceding Reporting Period (n-2) 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-2), provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. BCRP <sub>n-2</sub> may only be a positive number.
<b>ACAP<sub>n-2</sub></b>	means the total Actual Capex for the second preceding Reporting Period (n-2), provided that any Reporting Periods

	prior to the EMA Start Date shall be disregarded. ACAP <sub>n-2</sub> may only be a positive number
<b>BCAP<sub>n-2</sub></b>	means the Budgeted Capex in respect of the second preceding Reporting Period (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-2)), provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. BCAP <sub>n-2</sub> may only be a positive number
<b>ARRP<sub>n-2</sub></b>	means the total Actual Revenue for the second preceding Reporting Period (n-2), provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. ARRP may only be a positive number.
<b>ERRP<sub>n-2</sub></b>	means the total Estimated Revenue in respect of the second preceding Reporting Period (n-2), provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. ERRP may only be a positive number.

6.2 The value of PADJ in respect of a Reporting Period shall be made as an adjustment to the next Franchise Payment payable after that calculation of PADJ is determined ("**Periodic Adjustment**"). For the avoidance of doubt a Periodic Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3.6 of this Schedule 8.A.

6.3 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 will provide the Franchisee with the value of PADJ in sufficient time for the Periodic Adjustment to be included in the Franchise Payment for the Reporting Period immediately following the Reporting Period to which the Periodic Adjustment relates.

6.4 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 his other rights) be entitled (but not obliged) to determine the amount of any Periodic Adjustment in accordance with this paragraph 6 but by reference to the relevant information available to the Secretary of State at the time of such determination.

7. **Final Adjustments**

7.1 FADJ shall be equal to the following:

<b>FADJ for the EMA =</b>	$(TotalAC - TotalAR) + TotalACAP - (TotalPFP + TotalPBCP) - TotalPADJ$
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**Where:**

<b>TotalAC</b>	means the total Actual Costs of the Franchisee for the term of the EMA as set out in the Final Reviewed Accounts for the term of the EMA. TotalAC may only be a positive number.
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<b>TotalAR</b>	means the total Actual Revenue for the term of the EMA as set out in the Final Reviewed Accounts for the term of the EMA. TotalAR may only be a positive number.
<b>TotalACAP</b>	means the total Actual Capex for the term of the EMA as set out in the Final Reviewed Accounts for the term of the EMA. TotalACAP may only be a positive number.
<b>TotalPFP</b>	means the aggregate value of all of the Periodic Franchise Payments paid to the Franchisee during the term of the EMA. TotalPFP may be positive or negative.
<b>TotalPBCP</b>	means the aggregate value of all of the Periodic Budgeted Capex Payments paid to the Franchisee during the term of the EMA. TotalPBCP may only be a positive number.
<b>TotalPADJ</b>	means the total net value of PADJ paid in respect of each Reporting Period during the term of the EMA. TotalPADJ may be positive or negative.

7.2 The value of FADJ in respect of the term of the EMA (whether negative or positive) shall be made as an adjustment to the next Franchise Payment payable after the calculation of FADJ is determined (the "**Final Adjustment**") and the Parties acknowledge this will be payable as part of the Franchise Payments following the completion of the term of the EMA. For the avoidance of doubt the Final Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3.6 of this Schedule 8.A.

7.3 If the Franchisee fails to provide the information required by paragraph 9.4(b) and 9.4(c) of Schedule 11.2 (Management Information) including Annual Audited Accounts, Final Reviewed Accounts and a reconciliation to the Management Accounts by the date specified in that paragraph the Secretary of State shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of any Final Adjustment in accordance with this paragraph 7 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.

8. **NOT USED**

9. **Working Capital Payments**

9.1 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 9.3.

9.2 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 5.2.

9.3 The Working Capital Payment, if payable in any Reporting Period, shall be equal to the following:

<b>WCP =</b>	BCP – FCCP
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**Where:**

<b>BCP</b>	the Base Cash Position.
<b>FCCP</b>	the Forecast Closing Cash Position applicable to the preceding Reporting Period.

9.4 If during a Reporting Period, the Franchisee becomes aware that in its reasonable opinion 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 meets its liabilities that will fall due prior to the payment of the Franchise Payment applicable to that Reporting Period (the “**Working Capital Shortfall**”), the Franchisee shall immediately:

- (a) notify the Secretary of State that a Working Capital Shortfall is likely to occur during that Reporting Period; and
- (b) provide in or with that notice supporting information (including relevant accounts and calculations) evidencing the likely Working Capital Shortfall and the amount of additional working capital that the Franchisee considers it will require to ensure that the Working Capital Shortfall is remedied; and
- (c) provide such further supporting information as the Secretary of State shall reasonably require.

9.5 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.

9.6 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 9.5.

9.7 If the Franchisee fails to provide any information required by this paragraph 9, 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 9 but by reference to the relevant information available to the Secretary of State at the time of such determination.

9.8 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.

**10. Working Capital Repayment**

10.1 Subject to paragraph 10.4, 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 10.2.

10.2 A Working Capital Repayment, if payable in any Reporting Period, shall be equal to the following:

<b>WCR =</b>	FCCP – BCP
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**Where:**

<b>FCCP</b>	the Forecast Closing Cash Position applicable to the preceding Reporting Period.
<b>BCP</b>	the Base Cash Position.

**Final Working Capital Adjustment**

10.3 The value of FWCA shall equal:

<b>FWCA =</b>	TotalWCP - TotalWCR
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**Where:**

<b>TotalWCP</b>	the aggregate of all Working Capital Payments and all Emergency Working Capital Payments paid to the Franchisee during the term of the EMA
<b>TotalWCR</b>	the aggregate of all Working Capital Repayments paid by the Franchisee during the term of the EMA

10.4 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 EMA.

10.5 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 or the Final Working Capital Adjustment the Secretary of State shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of WCR or FWCA (as the case may be) 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. Management Fee and Performance Payment**

11.1 Subject to paragraphs 11.2 to 11.5 (inclusive), the value of MFPP shall equal:

<b>MFPP =</b>	<b>MF+PP - PPADC</b>
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**Where:**

<b>MF</b>	means the Management Fee for the term of the EMA which shall (as the case may be) equal:  (a) <b>[REDACTED<sup>10</sup>]</b> (in all circumstances other than where (b) below applies); and
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<sup>10</sup> 3 June 2020 (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.

	<p>(b) in respect of the payment dates which fall no fewer than five (5) Weekdays after receipt by the Secretary of State of the Management Accounts in relation to the sixth (6<sup>th</sup>) and thirteenth (13<sup>th</sup>) Reporting Periods of Franchisee Year(s) in respect of which this Schedule 8.A applies (or applied), the amount which is derived by the application of the following formula:</p> <p><b>[REDACTED<sup>11</sup>]</b> x SRP</p> <p>where:</p> <p>SRP means the sum of the number of Reporting Periods which have elapsed since:</p> <ul style="list-style-type: none"> <li>(i) the Reporting Period in relation to which a payment of MF has previously been made pursuant to this Schedule 8.A; or</li> <li>(ii) in respect of the first payment of MF to be made pursuant to this Schedule 8.A, the Start Date.</li> </ul>
<p><b>PP</b></p>	<p>means the sum of all of the Performance Payments for the term of the EMA calculated in accordance with Schedule 8.B (Performance Payment) and paid in accordance with paragraph 11.3 of this Schedule 8A (Franchise Payments). PP may only be a positive number.</p>
<p><b>PPADC</b></p>	<p>means the sum of the total value of the Aggregated Costs and Revenues Liabilities:</p> <ul style="list-style-type: none"> <li>(a) calculated on the basis of the Franchisee’s Final Reviewed Accounts;</li> <li>(b) as agreed or reasonably determined (in accordance with paragraphs 5.4 to 5.6 and 5.8A of this Schedule 8.A (Franchise Payments)) and paid in accordance with paragraph 11.3 of this Schedule 8A (Franchise Payments); and</li> <li>(c) as referred to in paragraph 5.8A of Schedule 8.A (Franchise Payments), limited to Aggregated Costs and Revenues Liabilities which have previously been shown as transactions within Costs or Revenue or Capital Expenditure in the ACAR Section of the Management Accounts (and so have previously been included in PFP).</li> </ul> <p>Without limiting paragraph 11.2 of Schedule 8.A (Franchise Payments), PPADC may only be a positive number.</p>

<sup>11</sup> 3 June 2020 (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.

- 11.2 If the value of MFPP is a negative amount:
- (a) for the purposes of paragraph 2.1, MFPP shall be deemed to equal zero; and
  - (b) the Secretary of State shall be entitled to claim the value of MFPP (expressed as a positive value) from the Franchisee as an adjustment to the Franchise Payments in the period following expiry of the Performance Period.
- 11.3 Subject to paragraph 11.4, the value of MFPP shall be made as an adjustment to the next Franchise Payment payable after:
- (a) in relation to a payment of the MF component, no fewer than five (5) Weekdays after receipt of the Management Accounts in relation to the sixth (6<sup>th</sup>) and thirteenth (13<sup>th</sup>) Reporting Periods of Franchisee Year(s) in respect of which this Schedule 8A applies (or applied);
  - (b) in relation to the payment of the PP component (if any), no fewer than five (5) Weekdays after the value of the Performance Payment has been finally calculated pursuant to Schedule 8.B (Performance Payment); and
  - (c) in relation to the payment of the PPADC component (if any), the value of the Aggregate Costs and Revenue Liabilities in relation to the term of the EMA have been agreed or determined for the purposes of this paragraph 11.

For the avoidance of doubt MFPP shall be calculated on the basis that no interest is due pursuant to paragraph 3.6 of this Schedule 8.A.

The Parties acknowledge that certain adjustments referred to in 11.3 will occur following the expiry of the Performance Period and any Extended Performance Period(s) and may occur after the expiry of the EMA.

- 11.4 Nothing in this paragraph 11 shall limit the rights and remedies of the Secretary of State in respect of any Disallowable Costs, Revenue Foregone and/or SoS Claims not taken into account in the calculation of PPADC.

## 12. **Further Secretary of State's rights in relation to accounting matters**

- 12.1 Where the Secretary of State reasonably considers that in calculating any matter which impacts 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.
- 12.2 Where the Final Reviewed Accounts are subject to adjustment or restatement the Secretary of State shall have a discretion to require the recalculation of any affected Franchise Payment Component for the relevant Franchisee Year and to require that the Franchisee shall pay to the Secretary of State the amount which is the difference between:
- (a) any amount actually paid to the Secretary of State or adjusted in favour of the Secretary of State and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally calculated on the basis that such adjustment or revision was included in the Final Reviewed Accounts; and/or

- (b) any amount actually paid by the Secretary of State or adjusted in favour of the Franchisee and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally calculated on the basis that such adjustment or revision was included in the Final Reviewed Accounts.

12.3 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.

### 13. **Indexation**

For the avoidance of doubt, it is agreed 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 13 is without prejudice to the adjustment of the Budget in accordance with paragraph 4 and/or the adjustment of the Franchise Payments in accordance with paragraphs 6 and 7 of this Schedule 8.A.

### 14. **Further obligations of the Franchisee**

14.1 Except to the extent otherwise agreed by the Secretary of State, the Franchisee will act as a Good and Efficient Operator in all respects in connection with the operation of this Schedule 8.A (Franchise Payments) and shall not act in a way that is contrary to the principles of the EMA by using the existence or cessation of the EMA to increase the profitability of the Franchisee.

14.2 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 Franchisee confirming that the Franchisee is not party to any arrangement of any kind whatsoever under which:

- (a) any amounts which the Franchisee might otherwise have received from a third party are reduced, waived or otherwise suppressed; and/or
- (b) any amounts which the Franchisee might otherwise be properly obliged to pay or be liable are increased; and/or
- (c) any amounts required to be paid or accounted for by the Franchisee become or are recorded as paid or accounted for during the term of the EMA, which might otherwise be paid or accounted for in the periods preceding or following the term of the EMA;
- (d) any amounts which the Franchisee might otherwise have received from a third party during the term of the EMA are recovered or accounted for in the periods preceding or following the term of the EMA; and/or
- (e) Revenue is accounted for in the periods preceding or following the term of the EMA which should have been accounted for during the term of the EMA.

14.3 Without limiting any other constraints which operate by virtue of any other part of the Franchise Agreement or otherwise, no application shall be made or other step taken by or on behalf of the Franchisee in respect of the winding up or striking off of the Franchisee (or any similar or analogous process) and nor shall the Franchisee permit or facilitate the same:

- (a) until all the adjustments and payments for which this Schedule 8.A provides have been made and discharged in full; and/or
- (b) without the prior written consent of the Secretary of State.



14.4 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.

#### 15. **Survival**

For the avoidance of doubt this Schedule 8.A (Franchise Payments) and Schedule 8.B (Performance Payment) and any other provisions of the Franchise Agreement reasonably required for the purpose of giving such Schedules full effect shall survive the termination or expiry of the EMA and the Franchise Term (however arising) and continue in full force and effect in accordance with their terms.

#### 16. **Review and Audit**

The "**Final Reviewed Accounts**" are a set of financial statements prepared in accordance with GAAP and delivered to the Secretary of State in accordance with the requirements in paragraph 9.4(c) of Schedule 11.2A 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 term of the EMA, to a level of disaggregation which the Secretary of State may reasonably require.

Following the expiry of the term of the EMA, the Franchisee will commission an exercise to review the Final Reviewed Accounts, to a standard equivalent to a statutory audit to the extent that statutory audit procedures would reasonably be applied to a profit and loss account, balance sheet and cash flow statement, and will:

- (a) if required by the Secretary of State, use an external auditor;
- (b) if required by the Secretary of State, allow full access by their officials and/or representatives on an "open book" basis; and
- (c) if required by the Secretary of State, allow full access by the National Audit Office or other equivalent body on an "open book" basis.

#### 17. **Fixed Track Charge Wash-Up**

17.1 The Franchisee shall promptly inform the Secretary of State of any notification of the Fixed Track Charge Wash-Up (if any) applicable to any Franchisee Year pursuant to the Track Access Agreement, together with details or copies of such further records, information and/or documents as the Secretary of State may reasonably request.

17.2 The Franchisee shall take all such steps as a competent and efficient Train Operator would take (and acting at all times in a manner consistent with the Franchisee's obligations under clause 6 of this Agreement), to:

- (a) minimise any Fixed Track Charge Wash-Up payable by the Franchisee to Network Rail in a Franchisee Year. The Franchisee's obligation under this paragraph 17.2(a) shall include the Franchisee:
  - (i) using all reasonable endeavours to verify that any Fixed Track Charge Wash-Up charged to the Franchisee by Network Rail pursuant to the Track Access Agreement is not overstated; and

- (ii) challenging any Fixed Track Charge Wash-Up charged by Network Rail pursuant to the Track Access Agreement which the Franchisee (acting reasonably) considers to be overstated;
- (b) maximise any Fixed Track Charge Wash-Up payable by Network Rail to the Franchisee in a Franchisee Year. The Franchisee's obligation under this paragraph 17.2(b) shall include the Franchisee:
  - (i) using all reasonable endeavours to verify that any Fixed Track Charge Wash-Up payable to the Franchisee by Network Rail pursuant to the Track Access Agreement is not understated; and
  - (ii) challenging any Fixed Track Charge Wash-Up payable by Network Rail pursuant to the Track Access Agreement which the Franchisee (acting reasonably) considers to be understated.
- (c) In this paragraph 17, "**Fixed Track Charge Wash-Up**" shall have the same meaning as in the Track Access Agreement.

## 18. HEx-related costs and revenues

18.1 The Parties acknowledge and agree (for the avoidance of any doubt) that any and all:

- (a) costs incurred by the Franchisee in the delivery of the HEx Services Agreement which are recorded in the ACAR Section of the Management Accounts shall be treated as Costs for the purposes of this Schedule 8.A; and
- (b) income received by the Franchisee:
  - (i) in the delivery of the HEx Services Agreement in the form of Service Payments (including the Management Fee, any Quality Percentage Performance Bonus, any Timetable Score Percentage Bonus and any amount payable to the Franchisee pursuant to clause 23.1 of the HEx Services Agreement),
  - (ii) from the Secretary of State in relation to the HEx Services Agreement, the entry into service of the Class 769 Units or any other matter connected with the operation of the HEx Services (other than Franchise Payments pursuant to this EMA); or
  - (iii) from any other source whatsoever in connection with the operation of the HEx Services,

shall be treated as revenue falling within the meaning of the definition of "Revenue" in this Schedule 8.1A.

## 19. WECA Funding Agreement income

The Parties acknowledge and agree (for the avoidance of any doubt) that any and all income received by the Franchisee and deriving from the WECA Funding Agreement shall be treated as revenue falling within the meaning of the definition of "Revenue" in this Schedule 8.1A.

**APPENDIX 1 TO SCHEDULE 8.A****Disallowable Costs**

Any references in this Appendix 1 to Schedule 8.A 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 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 into by the Franchisee which have not been procured in compliance with the Franchisee's usual procurement procedures; or
  - (iv) variations to existing contracts which have not been made in accordance with the Franchisee's usual procurement procedures;
- (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 his absolute 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;
- (d) Costs incurred or to be incurred by the Franchisee:
- (i) in relation to any Remedial Plan or other improvement or action plan unless specifically permitted in writing by the Secretary of State;
  - (ii) in removing branding or Marks under paragraph 2.2 of Schedule 14.2 (Maintenance of Operating Assets) except for branding or Marks whose removal from particular assets the Secretary of State has explicitly agreed for the purpose of this provision should be an allowable cost;
  - (iii) in relation to the inspection costs referred to in paragraph 6.4 of Schedule 11.2 (Management Information);

- (iv) in meeting First Rail Holdings Limited or FirstGroup plc audit requirements to the extent these are additional to audit costs which would otherwise be incurred by the Franchisee;
- (v) in relation to any reasonable enforcement costs incurred by the Secretary of State pursuant to clause 14.7;
- (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, to the extent 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 new 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) Any third party costs incurred by the Franchisee which are associated with the development and preparation of plans to remedy performance shortfalls, including preparing and developing any remedial, improvement or action plans required by this Agreement;
  - (o) The amount of any interest payable by the Franchisee to the Secretary of State in accordance with paragraph 3.6 of Schedule 8.A (Franchise Payments);
  - (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 expiry of the term of the EMA which a Good and Efficient Operator would usually have discharged in the period following the expiry of the term of the EMA;
  - (s) Any costs incurred in relation to the discharge 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) Interest paid or payable on PCS Advances (as defined in the Funding Deed);
  - (u) 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;
  - (v) Except with the prior agreement of the Secretary of State, losses on disposals of Fixed or Non-Current Assets;
  - (w) Maintenance costs where the maintenance activity was previously scheduled to be undertaken prior to or after the term of the EMA 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 EMA;
  - (x) 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;

- (y) Costs of any audit pursuant to paragraph 9.7(c)(ii) of Schedule 11.2 (Management Information);
- (z) Legal, accountancy and other costs and expenses incurred in connection with the preparation and implementation of the EMA and its associated heads of terms;
- (aa) Additional costs or expenses incurred by the Franchisee in procuring any new Performance Bond where required to do so pursuant to paragraph 4.3(c) of Schedule 12.1 (Financial Covenants and Bonds); and
- (bb) Any amounts paid to the Secretary of State pursuant to paragraph 2.3(b) of Schedule 1.2.

Withdrawn

**APPENDIX 2 TO SCHEDULE 8.A**

**NOT USED**

Withdrawn

## APPENDIX 3 TO SCHEDULE 1

### SCHEDULE 8.B

#### PERFORMANCE PAYMENT

#### 1. DEFINITIONS

For the purposes of this Schedule 8.B (Performance Payment) only, the following words and expressions shall have the following meanings unless otherwise specified:

<b>"EMA Criterion"</b>	means each of the criteria set out in Appendix 3 of this Schedule 8.B, in respect of which the Franchisee's performance shall be measured in an EMA Review and for which a score shall be awarded in the EMA Review Scorecard (and <b>"EMA Criteria"</b> means the plural of EMA Criterion);
<b>"EMA Performance Period"</b>	means: <ol style="list-style-type: none"> <li>(a) the period commencing on the date of the EMA and ending at 1.59 a.m. on 20 September 2020, or such earlier date of termination of the EMA; and</li> <li>(b) where the term of the EMA is extended in accordance with Schedule 9.8 of this Agreement, each Extended EMA Performance Period;</li> </ol>
<b>"EMA Review"</b>	means a review carried out (or to be carried out) in accordance with Appendix 1 of this Schedule 8.B;
<b>"EMA Review Checklist"</b>	means, in respect of an EMA Review, a checklist completed (or, as the case may be, to be completed) substantially in the form of that set out in Appendix 2 of this Schedule 8.B;
<b>"EMA Review Meeting"</b>	means, in respect of the EMA Review, a meeting held between the Parties to discuss the performance of the Franchisee during the relevant EMA Performance Period;
<b>"EMA Review Scorecard"</b>	means, in respect of an EMA Review, a scorecard completed (or, as the case may be, to be completed) by the Secretary of State in accordance with paragraph 5 of this Schedule 8.B;
<b>"Extended EMA Performance Period"</b>	means, in the event that the term of the EMA is extended in accordance with Schedule 9.8 of this Agreement, each further period following the end of the preceding EMA Performance Period, comprising



six (6) additional Reporting Periods (or less in the event that the EMA is terminated prior to the expiry of the relevant Extended EMA Performance Period).

## 2. CALCULATION OF THE PERFORMANCE PAYMENT (PP)

The Performance Payment (PP) in relation to an EMA Performance Period shall be calculated based on the number of Reporting Periods within that EMA Performance Period. The amount of PP in relation to each Reporting Period comprised in an EMA Performance Period will be the sum of the three (3) amounts corresponding to the Franchisee's EMA Review score for the EMA Criteria as set out below:

EMA Criterion	EMA Review Scorecard score for relevant EMA Criterion	PP per Reporting Period £
Operational performance	3	[REDACTED <sup>12</sup> ]
	2	[REDACTED]
	1	[REDACTED]
Customer experience	3	[REDACTED]
	2	[REDACTED]
	1	[REDACTED]
Acting as a Good and Efficient Operator	3	[REDACTED]
	2	[REDACTED]
	1	[REDACTED]

2.1 Indexation shall not apply to the figures stated in this Schedule 8.B.

<sup>12</sup> 3 June 2020 (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 1 TO SCHEDULE 8.B****EMA Review****1. PURPOSE OF THE EMA REVIEW**

- 1.1 The purpose of an EMA 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 EMA Performance Period.
- 1.2 The Parties agree that more than one EMA Review may be undertaken by the Secretary of State where the variations to the Franchise Agreement imposed pursuant to the EMA are extended in accordance with Schedule 9.8 of this Agreement.
- 1.3 The Secretary of State will carry out an EMA Review with respect to each EMA Performance Period.
- 1.4 At each periodic Franchise Performance Meeting, progress against the three EMA Criteria shall be discussed and reviewed by the Parties.
- 1.5 Each EMA Review shall be carried out in accordance with the process set out in this Schedule 8.B.

**2. NOTICE OF EMA REVIEW MEETING**

- 2.1 The Secretary of State shall notify the Franchisee of the date, time and location for the relevant EMA Review Meeting by no later than the end of the relevant EMA Performance Period, provided always that the EMA Review Meeting shall take place no earlier than the last day in the relevant EMA Performance Period and no later than 60 days after the end of the relevant EMA Performance Period.
- 2.2 For the avoidance of doubt, nothing in this Schedule 8.B shall prevent the Parties from discussing any matter relevant to an EMA Review outside of the relevant EMA Review Meeting.

**3. EMA REVIEW CHECKLIST**

- 3.1 Not less than 30 days prior to the end of the relevant EMA Performance Period, the Secretary of State, acting reasonably, shall notify the Franchisee in writing of any additional information that the Franchisee shall be required to submit at the same time as the completed EMA Review Checklist.
- 3.2 Not less than fifteen (15) days prior to end of the EMA Performance Period, the Franchisee shall notify the Secretary of State in writing of any matters in addition to those set out in the EMA Review Checklist or the information notified to the Franchisee by the Secretary of State in accordance with paragraph 3.1 of this Schedule 8.B, which the Franchisee considers to be relevant for the EMA 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 EMA Review.
- 3.3 As soon as reasonably practicable after the end of an EMA Performance Period, and in any event no later than 10 days after the end of an EMA Performance Period,

the Franchisee shall deliver to the Secretary of State a duly completed copy of the EMA Review Checklist in respect of the EMA Performance Period.

- 3.4 The EMA Review Checklist delivered by the Franchisee in accordance with paragraph 3.3 of this Schedule 8.B shall include written commentary from the Franchisee in respect of the EMA Performance Period covering:
- (a) each of the matters listed in the EMA Review Checklist;
  - (b) any other such matter notified by the Secretary of State to the Franchisee in accordance with paragraph 3.1 of this Schedule 8.B; and
  - (c) any other matter which the Secretary of State has confirmed as relevant for the EMA Review in accordance with paragraph 3.2 of this Schedule 8.B.
- 3.5 The Secretary of State shall provide the Franchisee with:
- (a) written commentary on the completed EMA Review Checklist (including any commentary provided by the Franchisee under paragraph 3.4 of this Schedule 8.B); and
  - (b) any information additional to that contained in the EMA Review Checklist 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 EMA Review Meeting.

#### 4. **EMA REVIEW MEETING**

- 4.1 The EMA Review Meeting shall take place at the date, time and location notified by the Secretary of State in accordance with paragraph 2.1 of this Schedule 8.B 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 EMA 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 EMA Review Meeting the Parties shall discuss the Franchisee's performance by reference to the EMA Review Checklist, together with any supporting commentary, documents or evidence submitted by the Franchisee to the Secretary of State in accordance with paragraphs 3.3 and 3.4 of this Schedule 8.B and any commentary and/or information provided by the Secretary of State to the Franchisee in accordance with paragraph 3.5 of this Schedule 8.B.

#### 5. **EMA REVIEW SCORING**

- 5.1 The Secretary of State shall provide to the Franchisee, no later than ten (10) days following the EMA Review Meeting, a duly completed EMA Review Scorecard setting

out the Franchisee's performance in each of the EMA Criteria for the EMA Performance Period.

- 5.2 The Franchisee shall be scored 3, 2 or 1 in relation to each EMA Criterion.
- 5.3 The EMA Review shall be complete once the Secretary of State has sent a duly completed EMA Review Scorecard to the Franchisee in accordance with paragraph 5.1 of this Schedule 8.B.
- 5.4 Scores in the EMA Review Scorecard shall be awarded by the Secretary of State having regard to the matters set out in the EMA Review Scorecard. One single, integer, overall score shall be awarded in relation to each EMA Criterion based on the Secretary of State's assessment of the Franchisee's performance in respect of that EMA Criterion against the EMA Review Scorecard and taking into account:
- (a) the EMA Review Checklist provided to the Secretary of State by the Franchisee in accordance with paragraphs 3.3 and 3.4 of this Schedule 8.B;
  - (b) any commentary provided to the Franchisee by the Secretary of State in accordance with paragraph 3.5 of this Schedule 8.B; and
  - (c) any discussions between the Franchisee and the Secretary of State at the EMA Review Meeting.
- 5.5 The Franchisee shall receive a Performance Payment, in accordance with Schedule 8.A (Franchise Payments), if the Franchisee scores 2 or above with respect to one or more of the EMA Criteria.
- 5.6 The Franchisee shall not receive a Performance Payment if the Franchisee scores 1 in relation to all three of the EMA Criteria.
- 5.7 If the Franchisee:
- (a) is operating at a level that would, or would likely, be scored "1"; or
  - (b) has received a score of "1",

in relation to any of the EMA Criteria during an EMA Performance Period, then the Secretary of State may require a Remedial Plan and the provisions of Schedule 10.1 of the Franchise Agreement shall apply.

**APPENDIX 2 TO SCHEDULE 8.B****EMA Review Checklist****1. OPERATIONAL PERFORMANCE**

A report on the Franchisee's operational performance, by reference to the Plan of the Day, including:

- (a) the level of performance achieved against the Plan of the Day, and an explanation of the level of performance achieved relative to the Plan of the Day;
- (b) an explanatory note setting out, if relevant, any act, omission or failure of a third party which has impacted performance and the extent of that impact, along with supporting evidence (except for where the impact exclusively relates to COVID-19); and
- (c) details and supporting evidence of any actions undertaken to mitigate any impacts on performance, including work with Network Rail regarding infrastructure.

**2. CUSTOMER EXPERIENCE**

A report on the customer experience delivered by the Franchisee, including:

- (a) evidence of train and Station cleaning schedules;
- (b) details of complaints received relating to quality of service including cleanliness and upkeep of Stations and the trains, staff presence/helpfulness, accessibility and information provision; and
- (c) details of staff presence, including evidence of staffing rosters having been adhered to as far as possible.

**3. GOOD AND EFFICIENT OPERATOR**

A report detailing the extent to which the Franchisee has acted as a Good and Efficient Operator, including:

- (a) evidence of any ways in which the Franchisee has sought to identify ways to run the Franchise more efficiently and avoid nugatory costs, acting as a Good and Efficient Operator, including details of the level of supporting evidence to those proposals;
- (b) evidence of appropriate revenue protection being applied in the interests of the taxpayer and/or otherwise evidence that the Franchisee has followed government guidance prevailing at the time regarding revenue collection; and
- (c) evidence of plans in place to return the operations and business to pre-COVID-19 levels of operation, including encouraging the public to travel on public transport where appropriate.

Appendix 3 TO schedule 8.b

**EMA Review Scorecard**

	<b>Operational Performance</b>	<b>Customer Experience</b>	<b>Good and Efficient Operator</b>
3: Good	<p>The Franchisee has delivered the Passenger Services in accordance with the applicable Plan of the Day (with minor exceptions only).</p>	<p>The Franchisee has provided high levels of cleanliness at Stations and on trains.</p> <p>The Franchisee has ensured that all Stations and trains have been staffed as required to enable service to continue at a good or very good standard.</p> <p>Trains and Stations have been maintained as appropriate.</p> <p>The Franchisee has provided a high quality journey experience for all passengers including providing information at all Stations and trains at all times, where possible.</p>	<p>The Franchisee has continued to make every effort to grow the business, offering incentives for appropriate travel (for example, ensuring those who have a legitimate need to travel are encouraged to use the train where it is appropriate to do so).</p> <p>The Franchisee has worked collaboratively with other Train Operators and/other rail industry bodies (including Network Rail) to provide an appropriate service to passengers, ensuring that passengers have as much choice as desirable, whilst taking into account demand.</p> <p>The Franchisee has proactively made suggestions and developed plans for restoring service, operations and business to pre-COVID-19 levels as soon as possible after the expiry of the EMA.</p>

			The Franchisee has been responsive to the Secretary of State's requests and fully cooperated in dealing with national emergencies.
2: Acceptable	The Franchisee has delivered the Passenger Services in accordance with the applicable Plan of the Day (with some exceptions).	<p>The Franchisee has ensured that trains and Stations have continued to be cleaned to an acceptable standard.</p> <p>The Franchisee has deployed staff on the same or similar basis as usual, with an emphasis on provision of customer service throughout the period.</p> <p>Trains and Stations have been maintained to an acceptable level.</p> <p>The Franchisee has provided an acceptable level of journey experience for passengers including providing information at Stations and trains at all times, where possible.</p>	The Franchisee has sought to operate the Franchise as far as possible as if they were still on revenue/cost risk, avoiding nugatory costs including ensuring revenue is protected throughout the duration of the EMA in accordance with the prevailing advice from the Secretary of State.
1: Below acceptable standard	The Franchisee has materially failed to deliver the Passenger Services in accordance with the applicable Plan of the Day.	<p>The Franchisee has failed to maintain cleanliness of trains and Stations to an acceptable level.</p> <p>The Franchisee has failed to deploy staff</p>	The Franchisee has failed to mitigate nugatory costs or manage revenue loss throughout the term of the EMA in accordance with the prevailing advice

		<p>in a way to enable Stations and services to be maintained for passengers.</p> <p>The Franchisee has failed to maintain the trains and Stations at an acceptable level.</p> <p>The Franchisee has failed to provide an acceptable level of journey experience for passengers and/or has failed to provide information at Stations and trains.</p>	<p>from the Secretary of State.</p> <p>The Franchisee has failed to respond to the Secretary of State's requests and/or failed to cooperate in dealing with national emergencies.</p>
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Withdrawn



**Appendix 4 to Schedule 1  
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**

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; and
  - (ii) all operating manuals (including any safety related regulations); and
  - (iii) all permits, licences, certificates or other documents required to operate such asset; and

- (iv) a printed or electronic list of all assets owned by the Franchisee from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items); and
  - (b) each capital asset acquired by the Franchisee during the term of the EMA with a value of over £50,000, including the Franchisee's source of funding for such asset.
- 3. **Identification of Key Personnel and Provision of Organisation Chart**
- 3.1 The Franchisee shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Franchisee in the performance of the Franchise Agreement. This shall include but not be limited to the following persons:
  - (a) a managing director whose role will include the overall management of the operation of the Franchise Services;
  - (b) 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 Final Reviewed 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 discretion, a board level director of the Parent or any appropriate Affiliate) within fourteen (14) Weekdays of the date of this Agreement. Such board level director's responsibilities shall 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 relevant instructions issued by the Secretary of State under section 119 of the Act from time to time. Such board level 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 the Franchise Agreement including in relation to maintenance of the Franchise as a going concern in accordance with paragraph 1 of Schedule 14.1 (*Maintenance of Franchise*).

5.2A The Franchisee shall maintain true, up to date and complete records of all of the information required to be provided by the Franchisee under the HEx Services Agreement.

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. 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 or Schedule 8.A and the Secretary of State may verify any such records; and/or
- (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and

any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services and/or the HEx Outsourced 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 to Schedule 8.A.

## 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.

## 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.

## 9. **Financial 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. In particular, the Franchisee shall ensure that such accounting records are produced and maintained in a form which distinguishes between transactions which reasonably and properly relate, on the accruals basis, to the period during which the EMA is in force, and those which do not.

## 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 and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date together with a statement, in a format to be agreed with the Secretary of State, identifying in respect of the HEx Outsourced Services the Service Payments receivable (identifying the Management Fee element) and any Service Payment Adjustment or IR Excluded Event Refunds for the period (provided that where details of Service Payment Adjustments or IR Excluded Event Refunds are not then available, they shall be reported once the relevant details become available) ensuring that:
    - (A) the profit and loss account shall adopt the same format and structure as the Financial Formats except to the extent expressly agreed otherwise by the Secretary of State from time to time for this purpose; and
    - (B) in particular, Costs, Capital Expenditure and Revenues shall be allocated consistently to the level of disaggregation required by the Financial Formats and there shall be no netting off between those disaggregated areas;
  - (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) NOT USED.
- (b) The Management Accounts shall also set out:
- (i) the Franchisee's available cash balance on the final day of the Reporting Period to which the Management Accounts relate;
  - (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 of Schedule 8A in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate; and
  - (C) payments to and from Affiliates of the Franchisee;
- (iii)
- (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;
  - (B) a comparison on a line by line basis of Actual Costs and Actual Revenue of the Franchisee compared to the Budgeted Costs and forecasted 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)(C);
- (iv) a comparison of the Franchisee's cumulative financial performance during the Franchisee Year in which such period occurs against the forecast referred to in paragraph 9.2(b)(iv);
- (v) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Management Accounts and the forecast referred to in paragraph 9.2(b)(iii) and a detailed explanation of the variances between Actual Costs and Budgeted Costs and Actual Revenues and forecasted 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 forecasted Revenue shortfall and/or (2) which could otherwise be taken for that purpose;
- (vi) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Secretary of State, materially worse than forecast by the Franchisee in its current Business Plan, 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;
- (vii) a detailed statement and explanation of any PCS Advances (as defined in the Funding Deed) provided during such Reporting Period

and any repayments made during such Reporting Period in respect of PCS Advances; and

- (viii) separate identification of payments to or from any Affiliate of the Franchisee;
  - (ix) **NOT USED**;
- (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 8.1 (*Franchise Payments*)) and the Franchisee shall promptly provide such further information or analysis.

### 9.3 Quarterly Financial Information

- (a) No later than twenty (20) Weekdays prior to the end of the third (3<sup>rd</sup>), sixth (6<sup>th</sup>) and ninth (9<sup>th</sup>) Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (i) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with the Initial Budget together with a detailed and comprehensive written explanation as to any changes in such forecast from the previous forecast provided pursuant to the provisions of this Schedule 11.2, for each of the following thirteen (13) Reporting Periods; and
  - (ii) **NOT USED**.
- (b) Where any Reporting Period falls partly within one 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.

### 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 its Annual Management Accounts for that Franchisee Year, divided between Reporting Periods within the term of the EMA and Reporting Periods not within the term of the EMA. For Reporting Periods within the term of the EMA, line items should be disaggregated between a section in relation to Actual Costs and Actual Revenues, and a section in relation to Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs and Accrued Revenue Foregone;
- (b) Within four (4) Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (i) 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;

- (ii) a detailed reconciliation, disaggregating Actual Costs and Actual Revenues, and Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs and Accrued Revenue Foregone, in the Annual Audited Accounts, reconciled to; (1) each of the periodic Management Accounts within the term of the EMA within that Franchisee Year; (2) periodic Management Accounts in relation to all other Reporting Periods within that Franchisee Year (if any); (3) Annual Management Accounts in relation to the term of the EMA within that Franchisee Year; and (4) Annual Management Accounts in relation to all other Reporting Periods within that Franchisee Year (if any), all in a format to be from time to time reasonably specified by the Secretary of State (the "**Audited Accounts Reconciliation**"). The Audited Accounts Reconciliation shall:
    - (A) disaggregate the costs and revenues in the Annual Audited Accounts so as to report against (and show in a format consistent with that used in) the Management Accounts and Annual Management Accounts; and
    - (B) facilitate the identification of Actual Costs and Actual Revenues as reported in the Management Accounts and easy comparison of Actual Costs with the Budget;
  - (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 disaggregation required by the Audited Accounts Reconciliation in accordance with paragraph 9.4(b)(ii) 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; and
  - (vii) a statement, in a format to be agreed with the Secretary of State, identifying, in respect of the HEx Outsourced Services, Service Payments receivable (identifying the Management Fee element) and any Service Payment Adjustment and IR Excluded Event Refunds for the period.
- (c) Within four (4) Reporting Periods after the end of the last EMA Performance Period, the Franchisee shall deliver to the Secretary of State the following information:
- (i) certified true copies of its Final Reviewed Accounts for the EMA Performance Periods in aggregate, together with copies of all related reports provided by auditors or other reviewers (if any) pursuant to paragraph 16 of Schedule 8.A;
  - (ii) a detailed reconciliation disaggregating Actual Costs and Actual Revenue, and Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs and Accrued Revenue Foregone of the Final Reviewed Accounts reconciled to the Management Accounts in



relation to the period of the term of the EMA, in a format to be from time to time reasonably specified by the Secretary of State (the "**Final Reviewed Accounts Reconciliation**"). The Final Reviewed Accounts Reconciliation shall:

- (A) disaggregate the costs and revenues in the Final Reviewed Accounts so as to report against (and show in a format consistent with that used in) the Management Accounts within the EMA Performance Period(s); and
  - (B) facilitate the identification of Actual Costs and Actual Revenues as reported in the Management Accounts within the EMA Performance Period(s) and easy comparison of Actual Costs with the Budget;
- (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 disaggregation required by the Final Reviewed Accounts Reconciliation in accordance with paragraph 9.4(c)(ii) has been undertaken accurately; and
- (iv) a statement from the Franchisee's finance director confirming that GAAP has been applied in a fair and consistent manner.

#### 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) identify to the reasonable satisfaction of the Secretary of State, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cashflow projection and the balance sheet used for the purposes of preparing the Budget and including any forecast of Revenue. .
- (b) The Annual Audited Accounts shall:
- (i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
  - (ii) give a true and fair view of:
    - (A) the state of affairs, profits and financial condition of the Franchisee for the period covered by such accounts;

- (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 revenue; and
  - (iv) other income; and
- (C) NOT USED.

#### 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 Reviewed Accounts.

#### 9.6 **Parent and Guarantor Accounts**

The Franchisee shall, upon the request of the Secretary of State, promptly deliver to, or procure delivery to, the Secretary of State, certified true copies of the annual reports and audited accounts of the Parent, 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.

#### 9.7 **Secretary of State Audit**

- (a) Without prejudice 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 in so far as they relate to:
  - (i) the Franchisee's obligations under paragraph 2 of Schedule 12 (Financial Covenants and Bonds);
  - (ii) the calculation of the Franchise Payment (and each component thereto) in accordance with Schedule 8.1A (*Franchise Payments*) and/or Schedule 8.1B (*Performance 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).

- (c) 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, the Annual Management Accounts and/or the Annual Audited Accounts then:
  - (i) the Secretary of State may exercise the Secretary of State's rights as described in 12.1 or 12.2 of Schedule 8A (Franchise Payments); 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*) which shall, for the avoidance of doubt, be treated as Disallowable Costs pursuant to Appendix 1 to Schedule 8.A.

## 9.8 Adjustment and Restatement of the Annual Audited 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 Final Reviewed Accounts and shall deliver to the Secretary of State any such adjusted or restated Annual Audited Accounts or Final Reviewed Accounts as soon as such accounts are available.

## 10. Business Plans

### 10.1 NOT USED.

### 10.2 Annual Business Plans

- (a) Within twenty (20) Weekdays of the start of the first Reporting Period in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the Franchisee's business plan for the forthcoming Franchisee Year (the "**Annual Business Plan**"). The Annual Business Plan shall be a detailed and comprehensive description of the Franchisee's planned activities for such Franchisee Year and the manner in which the Franchisee shall meet its obligations under the Franchise Agreement in respect of that Franchisee Year and include:
  - (i) a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the thirteen (13) Reporting Periods in the relevant Franchisee Year during the Franchise Term;
  - (ii)
    - (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 or 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.
- (b) 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 and shall explain to the Secretary of State how (if at all) such further plan alters, amends or otherwise varies or impacts on the applicable Annual Business Plan or Initial Budget. The Secretary of State shall be entitled to copies of such further plans as the Secretary of State shall reasonably determine.

### 10.3 Business Action Plan

- (a) The Secretary of State may at any time require the 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 the Secretary of State may impose.

## 11. **Safety Information**

### 11.1 **Safety**

- (a) The Franchisee shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.
- (b) The Franchisee shall notify the Secretary of State as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from the ORR (including in respect of the HEx Outsourced Services). Immediately upon receipt of such notification or notice, the Franchisee shall provide the Secretary of State with a copy of such notification or notice.
- (c) The Franchisee shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

## 12. **Further Information**

### 12.1 The Franchisee shall:

- (a) deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may reasonably require and which relate to or are connected with the 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 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; or
  - (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.
- 12.3 The Secretary of State may require the 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 discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise; and
  - (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time.

### 13. **Information from Third Parties**

- 13.1 The Franchisee shall, if the Secretary of State so requests, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the 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 the Secretary of State has received the relevant information directly from any other person (including the Infrastructure Manager or RSP). The 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 its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the Franchisee, materially affect the continuity of any of the records that are provided pursuant to this Schedule 11.2. Any such advice shall include an assessment of the materiality of the relevant change.

### 14. **Compatibility of Information**

- 14.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under 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

### 15.1 Environmental Information Data Collection Plan

- (a) The Franchisee shall, by no later than three (3) months prior to the Start Date (or, if this Agreement is not signed by the Parties by the date falling three (3) months prior to the Start Date, as soon as reasonably practicable following 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 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 shall use reasonable endeavours to do so in a manner which would enable the Franchisee to provide any relevant item of Excluded Data (and any item of Excluded Data which the Franchisee becomes able to provide as a result will, with effect from the date on which the Franchisee becomes able to provide the same, form part of the Initial Dataset).

- (e) With effect from the Start Date, the Franchisee shall measure and collect 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 shall co-operate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.
- (g) The 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.

#### 15.2 **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
  - (iv) where the independent body has identified as part of its audit any errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, whether these are, in the reasonable opinion of the independent body undertaking the audit material or minor errors, discrepancies or concerns.
- (d) The Franchisee shall submit a copy of the Environmental Impact Monitoring Audit to the Secretary of State at the same time as the Environmental Impact Monitoring Report is submitted in accordance with paragraph 15.2(a) above.
- (e) Where the Environmental Impact Monitoring Audit highlights errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, the 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, following the date of the submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question;
  - (ii) **in the case of material errors, discrepancies or concerns which are capable of rectification** - rectify such material errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays, following the date of the submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question; and
  - (iii) **in the case of concerns in relation to the 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.

## 16. Environmental Impact Targets

### 16.1 Environmental Impact Targets set by the Secretary of State

The Secretary of State sets out in paragraph 2 of Appendix 1 (Environmental Information) of this Schedule 11.2 the targets for improving the environmental performance of the Franchise (the "**Environmental Impact Targets**"), and the Franchisee shall meet such Environmental Impact Targets during the Franchise Period.

## 16.2 Performance against the Environmental Impact Targets

- (a) For each Franchisee Year the Secretary of State shall determine the Franchisee's performance against each Environmental Impact Target on an annual basis (within two (2) Reporting Periods of receipt of the Environmental Impact Monitoring Report) by comparing:
- (i) **for traction carbon emissions:** the Franchisee's performance set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Target for the relevant Franchisee Year, in accordance with the annual trajectory specified in the Sustainable Development Strategy;
  - (ii) **for non-traction energy use:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;
  - (iii) **for waste:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;
  - (iv) **for mains water:** 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 (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 in order to achieve the Environmental Impact Targets.
- (e) **NOT USED.**

## 16.3 Remedial Actions

- (a) In the event that an Environmental Impact Target is not met in any 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.

(c) **NOT USED.**

#### 16.4 **Publication**

The Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of its performance against the Environmental Impact Targets in widely accessible forms including, as a minimum, publishing them on its website and in each Customer Report (excluding the first (1st) Customer Report).

#### 17. **Mobile Connectivity Reporting Requirements**

17.1 The Franchisee shall monitor the performance of the Mobile Connectivity Service during the first Franchisee Year for the purposes of providing to the Secretary of State a report on the performance of such Mobile Connectivity Service in relation to the first Franchisee Year. Such report shall be submitted to the Secretary of State one (1) month after the end of the first Franchisee Year and without prejudice to the ability of the Parties to agree more frequent reporting (the "**Mobile Connectivity Service Report**").

17.2 The Mobile Connectivity Service Report shall include information on the:

- (a) delivery of the Mobile Connectivity Service during the first Franchisee Year;
- (a) progress against delivery milestones (such as, but not limited to, the fitment of trains with the appropriate equipment to deliver the Mobile Connectivity Service and/or progress on the delivery of external connectivity to trains);
- (c) availability of the Mobile Connectivity Service and associated equipment, including the duration of any significant periods of time during which the Mobile Connectivity Service and/or associated equipment were not available, the reason for such unavailability and the action taken by the Franchisee in respect of such unavailability; and
- (d) actual average demand by Reporting Period using customer usage statistics to demonstrate:
  - (i) the number of passengers using the Mobile Connectivity Service;
  - (ii) the average duration (in minutes and seconds) of connections to the Mobile Connectivity Service;
  - (iii) the average data (in MBytes) received and transmitted by the Mobile Connectivity Service;
  - (iv) information on the average internet speed (in Mbps) provided by the Mobile Connectivity Service; and
  - (v) information on the average latency figures (in milliseconds) experienced by passengers.

- 17.3 The Franchisee shall also undertake a signal-strength and capacity survey of its Routes ("**Route Signal and Capacity Survey**") to determine the Mobile Connectivity Service 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; and
  - (b) the number of connected passengers that can be supported by the Mobile Connectivity Service.
- 17.4 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.
- 17.5 The Route Signal and Capacity Survey shall be:
- (a) undertaken as part of the activities associated with the provision of the Mobile Connectivity Service Report; and
  - (b) NOT USED.
- 17.6 The Mobile Connectivity 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.
- 17.7 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 Connectivity 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.
- 17.8 Without prejudice to any other obligations of the Franchisee including pursuant to Schedule 15.1 (Reletting Provisions) the Franchisee shall make the Mobile Connectivity Service Report and the Route Signal Strength and Capacity Survey available to potential Successor Operators (including any operator which has expressed an interest in tendering for the right and obligation to operate any or all of the Franchise Services) in connection with any Tendering/Reletting Process.

## APPENDIX 1 TO SCHEDULE 11.2

## Environmental Information

## 1. Environmental Impact Monitoring Dataset

<b>Table 1</b>			
<b>Subject</b>	<b>Unit</b>	<b>Granularity</b>	<b>Regularity</b>
<b>TRACTION</b>	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
<b>NONTRACTION</b>	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
<b>CARBON</b>	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 (Rail Industry Initiatives and Co-operation)	Total	Per project
<b>WATER</b>	Mains Water consumption (m <sup>3</sup> )	Total	Annual
	Water recycling initiatives	Narrative	Annual
<b>WASTE</b>	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

<b>Table 1</b>			
<b>Subject</b>	<b>Unit</b>	<b>Granularity</b>	<b>Regularity</b>
<b>ENVIRONMENTAL MANAGEMENT SYSTEM (EMS)</b>	Enforcement/information Notices	Total	Annual
	Environmental fines or prosecutions	Total	Annual
	Environmental incidents reported through the EMS	Total	Annual
	Environmental training records % personnel briefed/trained	Total	Annual

Withdrawn

2. Environmental Impact Targets

<b>Table 2</b>			
<b>Traction Carbon Emissions</b>	<b>Non-Traction Energy Use</b>	<b>Waste</b>	<b>Mains Water</b>
<p>A reduction of:</p> <p>(i) 48% in kg CO2E per vehicle km against the baseline figure of 1.61 CO2E per vehicle km during the first Franchisee Year;</p> <p>(ii) 49% in kg CO2E per vehicle km against the baseline figure of 1.61 CO2E per vehicle km during the second Franchisee Year;</p> <p>(iii) 50% in kg CO2E per vehicle km against the baseline figure of 1.61 CO2E per vehicle km during the third Franchisee Year</p> <p>(iv) (if the Secretary of State exercises his right under clause 5.2 to extend the Franchise Agreement beyond 01:59 on 1 April 2023) 51% in kg CO2E per vehicle km against the baseline figure of 1.61 CO2E per vehicle km during the fourth Franchisee Year; and</p> <p>in each case 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 (Rail</p>	<p>A reduction in non-traction energy use by the Franchisee of:</p> <p>(i) 2.5% in kilowatt hours (kWh) against the Baseline kWh Amount during the first Franchisee Year;</p> <p>(ii) 5% in kilowatt hours (kWh) against the Baseline kWh Amount during the second Franchisee Year;</p> <p>(iii) 7.5% in kilowatt hours (kWh) against the Baseline kWh Amount during the third Franchisee Year; and</p> <p>(iv) (if the Secretary of State exercises his right under clause 5.2 to extend the Franchise Agreement beyond 01:59 on 1 April 2023) 10% in kilowatt hours (kWh) against the Baseline kWh Amount during the fourth Franchisee Year.</p> <p>For the purposes of this Part 2 of Appendix 1, "<b>Baseline kWh Amount</b>" shall mean the non-traction energy</p>	<p>The Franchisee must send zero non-hazardous waste direct to landfill.</p> <p>The Franchisee must recycle or prepare for re-use 78% of waste (by weight) during the first Franchisee Year (the "<b>Year 1 Recycling/Re-use Level</b>").</p> <p>The Franchisee must increase (on a year-on-year basis) the percentage of waste (by weight) which is recycled or prepared for re-use in the second and every subsequent Franchisee Year by reference to the Year 1 Recycling/Re-use Level.</p>	<p>A reduction of:</p> <p>(i) 4% in mains water consumption against the Baseline Mains Water Amount during the first Franchisee Year;</p> <p>(ii) 8% in mains water consumption against the Baseline Mains Water Amount during the second Franchisee Year;</p> <p>(iii) 10% in mains water consumption against the Baseline Mains Water Amount during the third Franchisee Year; and</p> <p>(iv) (if the Secretary of State exercises his right under clause 5.2 to extend the Franchise Agreement beyond 01:59 on 1 April 2023) 12% in mains water consumption against the Baseline Mains Water Amount during the fourth Franchisee Year.</p> <p>For the purposes of this Part 2 of Appendix 1, "<b>Baseline Mains Water Amount</b>" shall mean the mains water consumed by the Franchisee during the period commencing on 1 April 2019 and ending</p>

<b>Table 2</b>			
<b>Traction Carbon Emissions</b>	<b>Non-Traction Energy Use</b>	<b>Waste</b>	<b>Mains Water</b>
Industry Initiatives and Co-operation), which will contain a target for each Franchisee Year for this purpose.	used by the Franchisee during the period commencing on 1 April 2019 and ending on 31 March 2020, being the aggregate of the periodic amounts for that period reported by the Franchisee to the Secretary of State pursuant to Appendix 1 of Schedule 13 of the Previous Franchise Agreement.		on 31 March 2020, being the aggregate of the periodic amounts for that period reported by the Franchisee to the Secretary of State pursuant to Appendix 1 of Schedule 13 of the Previous Franchise Agreement.

Withdrawn



**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:

<b>A =</b>	Information to be provided on or before any Passenger Change Date;
<b>B =</b>	Information to be provided for every Reporting Period within ten (10) Weekdays of the last day of each Reporting Period; and
<b>C =</b>	Information to be provided annually within ten (10) Weekdays of the last day of each Franchisee Year.

- 1.5 This Appendix 2 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

<b>Table 1 - Operational Performance Information</b>		
<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</b>
<b>Number of Passenger Services</b>		
Number of Passenger Services in the Timetable	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day	[number]	B
<b>Number of Cancellations and Partial Cancellations</b>		
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

<b>Table 1 - Operational Performance Information</b>		
<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</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
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

<b>Table 1 - Operational Performance Information</b>		
<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</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
<b>Number of Short Formations</b>		
<b>All Day</b>		
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of 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 Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services scheduled (excluding Cancellations or Partial Cancellations)	[number]	B
<b>Number of Short Formations</b>		
<b>Peak Only</b>		
Number of Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of 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 Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Peak Passenger Services scheduled (excluding Cancellations or Partial Cancellations)	[number]	B
<b>Minutes Delay</b>		
Number of Minutes Delay attributable to the Franchisee	[number]	B
Number of Minutes Delay attributable to Network Rail;	[number]	B
Number of Minutes Delay attributable to any other Train Operator	[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

<b>Table 1 - Operational Performance Information</b>		
<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</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
<b>T-3, T-15 and On Time</b>		
Time to 3 Minutes percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
Time to 15 Minutes percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
On Time percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
<b>Train Mileage</b>		
Planned Train Mileage	[mileage]	A
Actual Train Mileage	[mileage]	B

Withdrawn

**APPENDIX 3 TO SCHEDULE 11.2****Summary of Reporting and Other Requirements**

This Appendix contains a non-exhaustive summary of the obligations on the 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 (Franchise Services and Service Development), paragraph 11.2(a) (Consultation on Significant Alterations to the Timetable)	Requirement for Franchisee to provide a comprehensive summary of the proposed changes from the Timetable then in force.
Schedule 1.1 (Franchise Services and Service Development), paragraphs 11.3(e) and 11.3(f) (Consultation on Significant Alterations to the Timetable)	Requirement for Franchisee to publish a report containing a summary of the main issues raised by respondents to the consultation.
Schedule 1.1 (Franchise Services and Service Development), paragraph 13.1 (Certification and Notification by Franchisee of Exercising Timetable Development Rights)	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 (Franchise Services and Service Development), paragraph 13.3(a) (Certification and Notification by Franchisee of Exercising Timetable Development Rights)	Requirement for Franchisee to provide copies to the Secretary of State of correspondence in respect of discussions with Network Rail.
Schedule 1.1 (Franchise Services and Service Development), paragraph 14.4 (Finalising the Train Plan)	Requirement for Franchisee to provide the Train Plan certified as true and accurate by a statutory director.
Schedule 1.1 (Franchise Services and Service Development), paragraph 15.1 (Capacity Mitigation Proposal)	Requirement for Franchisee to provide a Capacity Mitigation Proposal if required by the Secretary of State.
Schedule 1.1 (Franchise Services and Service Development), paragraph 16.1 (New or amended Train Service Requirement by Secretary of State and Franchisee's Informed Opinion)	Requirement for Franchisee to provide informed opinion in respect of a new or amended Train Service Requirement.
Schedule 1.2 (Operating Obligations), paragraph 7.7	Provide evidence to the Secretary of State of the steps taken under Paragraph 7 (Obligation to use all reasonable endeavours under this Schedule 1.2).
Schedule 1.4 (Passenger Facing Obligations), paragraph 4.12 (vi) (reporting of relevant analysis of transfers)	Requirement to provide Secretary of State information to inform transfer decisions.

Reference	Summary of Obligation
Schedule 1.4 (Passenger Facing Obligations), paragraph 8 (Publication of Performance Data)	Requirements to publish performance data.
Schedule 1.4 (Passenger Facing Obligations), paragraph 9 (Publication of Complaints and Faults Handling Data)	Requirements to publish complaints and fault handling data.
Schedule 1.5 (Information about Passengers), paragraph 1 (Passenger Numbers Information)	Requirement to provide Secretary of State information about the use by passengers of the Passenger Services.
Schedule 1.5 (Information about Passengers) Paragraph 5.3 (Yield Management Data)	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 1.6 (The Rolling Stock), paragraph 4 (Rolling Stock Testing and Commissioning)	Requirement to provide information on the Routes for the testing and commissioning of new rolling stock vehicles and new equipment.
Schedule 1.7 (Stations), paragraph 1.11 (Information about Station Asset Management Plan Accreditation)	Where a Station Asset Management Plan Accreditation is lost, the Franchisee will inform the Secretary of State of this fact and the measures it is taking to restore this.
Schedule 1.7 (Stations), paragraph 6.5 (Security at Stations)	Requirement to provide notification that Secure Station Accreditation has been achieved.
Schedule 1.7 (Stations), paragraph 7 (Information about Station Improvement Measures)	Requirement to maintain and provide records regarding Station improvement measures and measures taken to improve Station environments.
Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases), paragraph 2.2 (Rolling Stock Related Contracts and Insurance Arrangements)	Obligation to provide a copy of all draft Rolling Stock Related Contracts and all executed Rolling Stock Related Contracts and any agreements amending the Rolling Stock Related Contracts including such other information as required by the Secretary of State together with a justification of the Franchisee's proposed

Reference	Summary of Obligation
	rolling stock maintenance strategy and provision of analysis of whole life costs.
Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases), paragraph 3.9(b) (Cascaded Rolling Stock and Delayed Cascade Mitigation Plan)	Requirement to produce a Delayed Cascade Mitigation Plan.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 1.5 (Local Authority Concessionary Travel Schemes)	Requirement to provide information about Local Authority Concessionary Travel Schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 2.6 (Multi-Modal Fares Schemes)	Requirement to provide information about multi-modal fares schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 3.3 (Discount Fares Schemes)	Requirement to provide information about Discount Fares Schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 4.4 (Inter-Operator Schemes)	Requirement to provide information about Inter-Operator Schemes.
Schedule 4 (Accessibility and Inclusivity), paragraph 2.7 (obligations for physical alterations at stations relating to persons with disabilities)	Reporting on the progress of accessibility improvements to the Secretary of State.
Schedule 4 (Accessibility and Inclusivity), paragraph 4 (Specific additional obligations relating to persons with disabilities)	Recording of obligations relating to persons with disabilities.
Schedule 4 (Accessibility and Inclusivity), paragraph 5 (Accessibility updates to the ORR)	Provide the Secretary of State with copies of any reports made to the ORR in respect of accessibility matters.
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 1 (Information)	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 (Fares Regulation Information and Monitoring), paragraph 2.1 (Monitoring)	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 any particular Fare or Fares or any particular period.

Reference	Summary of Obligation
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 2.2 (Monitoring)	Requirement to provide written confirmation to the Secretary of State from a statutory director whether the Franchisee has complied with the obligations under Schedule 5 (Fares and Smart Ticketing) during each Fares Setting Round.
Schedule 5.9 (Smart Ticketing), paragraph 2.1 (Smart Ticketing)	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 (Franchise Specific Obligations), Part 1, paragraph 5.4 and 5.6 (reporting by the Franchisee)	Reporting on the progress of any heavy maintenance exams and other maintenance activities.
Schedule 6.1 (Franchise Specific Obligations), Part 1, paragraph 6.1 (DA2 CO Underspend and DA2 CI Underspend statements)	Requirement to provide a statement outlining any DA2 CO Underspend or DA2 CI Underspend.
Schedule 6.1 (Franchise Specific Obligations), Part 1, paragraph 6.4 (Continuity Fund Scheme)	Requirement to report on the progress of delivery of each Continuity Fund Scheme
Schedule 6.1 (Franchise Specific Obligations), Part 2, paragraph 2.1 (Boxing Day Services)	Requirement to provide reports setting out proposals for operation of Additional Boxing Day Services.
Schedule 6.1 (Franchise Specific Obligations), Part 3, paragraph 1.3 and 1.4 (cooperation with Crossrail Services)	Where requested provide information to the Secretary of State evidencing the cooperation with Crossrail Services.
Schedule 6.1 (Franchise Specific Obligations), Part 3, paragraph 18 (East West Rail Scheme)	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 6.1 (Franchise Specific Obligations), Part 3, paragraph 23.8 (approved SIF Scheme reporting)	Requirement to provide regular progress reports in respect of the implementation of Approved SIF Scheme.
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 1.4 (Rail Development Partnership)	Quarterly reporting on the Rail Development Partnership
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 4 (Future Train Service Enhancement studies)	Requirement to provide a feasibility study on the Future Train Service Enhancements



Reference	Summary of Obligation
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 5 (Committed Schemes)	Requirement to provide detailed reports relation to any Committed Scheme
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 15.4 (Periodic Required Establishment Report)	Requirement to provide a report prior to each Franchise Performance Meeting
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 17 (Identified Rolling Stock Options and Agreed Rolling Stock Options Appraisals)	Requirement to provide a report summarising any Identified Rolling Stock Options and following an assessment of each option, providing regular progress reports on the Agreed Rolling Stock Options before providing the finalised Rolling Stock Review Report.
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 21 (Preparation for Potential Outcomes of the Williams Rail Review)	Requirement for Franchisee to provide information, data, reports, feasibility studies, business cases, comments, commentary and analysis reasonably required by the Secretary of State (the cost of any such externally commissioned documents to be agreed as between the Parties).
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 24 (Exeter Depot Funded Works)	Requirement to report on the progress of the Exeter Depot Funded Works
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 26 (GWR Performance Report and Plan)	Requirement to provide the Secretary of State with the updated GWR Performance Report and Plan every two weeks.
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 28 (Disability Impact Assessments and Accessibility Audits)	Requirement to provide details of accessibility audits and its results to the Secretary of State.
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 36 (Disabled passenger mystery shopping surveys)	Requirement to report on the mystery shopping surveys undertaken in each Reporting Period.
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 49 (Chiltern HyDrive Trials )	Requirement to report on the outcomes of the Chiltern Hydrive Trial undertaken and whether the Franchisee is the proceed with the HyDrive Conversion.

Reference	Summary of Obligation
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 50 (Studies into the longer term traction options for haulage of Sleeper Services)	Requirement to provide the outcomes of studies conducted into longer term options for locomotive haulage of Sleeper Services.
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 56 (C-DAS optimiser)	Requirement to report on the benefits on the implementation of C-DAS functionality for rolling stock vehicles within the Train Fleet, contained within the C-DAS Optimisation Report.
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 62 (Flexi Season Ticket Scheme)	Requirement to report to the Secretary of State on the options and assessments of the introduction of the Flexi Season Ticket Scheme.
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 89 (Wavelength Programme)	Requirement to report to the Secretary of State the results of the Wavelength Surveys undertaken in each Reporting Period.
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 92 (Additional Car Parking Spaces)	Requirement to provide progress reports on the additional car parking spaces being provided at Stations.
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 97 (CI Report data)	Requirement to provide a CI Report identifying the Committed Investments which the Franchisee has invested in.
Part 2 to Schedule 6.2 (Special Terms related to the Committed Obligations), paragraph 5 (Review of Compliance)	Requirement to provide such evidence of compliance with Committed Obligations as the Secretary of State may request.
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 5.3 (Marketing Plan)	Requirement to provide a Draft Marketing Plan.
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 5.5 (Marketing Plan)	Requirement to provide the Marketing Plan.
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 5.10 (Marketing Plan)	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.
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 5.15 (Marketing Plan)	Requirement to report on the effectiveness of the expenditure and activities undertaken as part of the Marketing Plan.

Reference	Summary of Obligation
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 6A (Ticketless Travel Surveys)	Requirement to provide a report setting out the results of any Ticketless Travel Surveys and how such surveys were conducted. This is subsequently reported on in the TT Benchmarking Report reflecting the Franchisee's performance in relation to ticketless travel.
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 8 (Changes in numbers and total cost of Employees)	Requirement to provide a report on the number of Employees engaged in employment during each Reporting Period and the Franchisee's plans for recruitment.
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 11 (Changes to the Bid Fares Strategy)	Requirement to provide details, information and supporting documentation relating to changes to the Bid Fares Strategy.
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 14 (Additions to Annual Business Plan)	Requirement to provide proposals to maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than the Franchisee had forecast.
Schedule 6.4 (Alliances), paragraph 3 (Alliance Agreement with Network Rail)	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 (Alliances), paragraph 4 (Reporting on the Alliance Agreement)	Requirement to report in writing each quarter on activities undertaken pursuant to the Alliance Agreement.
Schedule 6.7 (The IEP Provisions), paragraph 2 (Co-operation with Future Changes to the Sets)	Requirement to provide information as requested by the Secretary of State in order to implement any changes to the Sets, including the provision of copies of Performance Reports and other information received from the TSP.
Schedule 7.1 (Operational Performance), paragraph 2 (Reporting Requirements)	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 (Operational Performance), paragraph 17 (Service Recovery Plans and Force Majeure)	Requirement to provide comprehensive records relating to the implementation of a Service Recovery Plan.

Reference	Summary of Obligation
Schedule 7.1 (Operational Performance), paragraph 26.2 (Action Plans)	Requirement to produce an Action Plan to secure a Required Performance Improvement.
Schedule 7.2 (Customer Experience and Engagement), paragraph 5 (Required Improvement and NRPS Action Plans)	Requirement to produce a NRPS Action Plan to secure any Required Improvement for submission to the Secretary of State.
Schedule 7.2 (Customer Experience and Engagement), paragraph 9 (Customer and Stakeholder Engagement Strategy)	Requirement to provide to the Secretary of State any proposed revisions to the Customer and Stakeholder Engagement Strategy.
Schedule 7.2 (Customer Experience and Engagement), paragraph 10 (Customer Report)	Requirement to produce and publish a Customer Report.
Schedule 7.2 (Customer Experience and Engagement), paragraph 11 (CCI Scheme)	Requirement to provide details of any CCI Scheme proposed by the Franchisee.
Schedule 7.2 (Customer Experience and Engagement), paragraph 12.1 (Customer Service and Satisfaction Data)	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.
Schedule 7.2 (Customer Experience and Engagement), paragraphs 12.2 and 12.3 (Customer Service and Satisfaction Data)	Requirement to publish NRPS scores achieved by the Franchisee.
Schedule 7.3 (Service Quality Regime) paragraph 7.8 (Independent Service Quality Audit)	Requirement to provide a report together with data produced as a consequence of any Independent Service Quality Audit.
Schedule 7.3 (Service Quality Regime) paragraph 10A (Calibration of SQR Station Benchmark, SQR Train Benchmark and SQR Customer Service Benchmark)	Requirement to provide a statement setting out the data from the Service Quality Inspections and reports provided following such inspections outlining the results, known as the SQR Benchmarking Report.
Schedule 7.3 (Service Quality Regime) paragraph 14 (Reporting Requirements)	Requirement to provide a statement for the information set out in paragraph 14.
Schedule 7.3 (Service Quality Regime) paragraph 15 (Additional Information Requirements)	Requirement to provide a list of each facility or service or train comprised in a SQR Train and SQR Station, London Paddington station or Guildford station (on a Station by Station basis) against which a "fail" was recorded at the end of each Reporting Period.
Schedule 7.3 (Service Quality Regime) paragraph 16 (Maintenance of Records)	Requirement to maintain true, up to date and complete records of the results of each Service Quality Inspections.

Reference	Summary of Obligation
Schedule 7.3 (Service Quality Regime) paragraph 17 (Consequences of a Failed Audit)	Requirement to provide a report of the Pass Rates following the Service Quality Inspections in accordance with the audit reports.
Schedule 7.3 (Service Quality Regime) paragraph 20.2 (Consequences of Performance falling below the SQR Benchmark)	Requirement to submit proposals if requested by the Secretary of State within twenty-eight (28) days.
Schedule 8.1 (Franchise Payments) paragraph 9.2 (Net Performance calculations)	Requirement to submit a report setting out the calculations of the Net Performance Sum, the Applicable Cap, the Scaling Factor and each of the Rescaled Liabilities.
Schedule 8.2 (Profit Share Mechanism), paragraph 2 (Relevant Profit Report)	Reporting requirements relating to Relevant Profit Reports.
Schedule 8.6 (Forecast Revenue Mechanism), paragraph 9.1 (FRM Revenue Report)	Reporting requirements relating to FRM Revenue Report.
Schedule 9.1 (Financial and Other Consequences of Change), paragraph 11 (Information)	Requirement to provide information in respect of obligations under Schedule 9.1 as the Secretary of State may request.
Schedule 9.2 (Identity of the Financial Model (Escrow Documents)), paragraph 1 (Franchisee's Obligations)	Requirement to provide the Financial Model and the Escrow Documents.
Schedule 9.4 (Secretary of State Risk Assumptions), paragraph 3.4 (Franchise Performance Meetings)	Requirement to provide a report where requested by the Secretary of State in relation to the implementation of SDWR Driver Contracts for use during the Franchise Performance Meetings.
Schedule 9.7, paragraph 1.3 (Split Ticketing)	Requirement to provide a report of split ticketing enablement figures for the Franchisee Year.
Schedule 9.7, paragraph 1.9 (Verification of STIM Data)	Requirement to report the STIM Verification results.
Schedule 9.7, paragraph 2 (Split Ticketing Plan)	Requirement to report on the Split Ticketing Plan as part of the Franchise Performance Meetings.
Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement), paragraphs 3 (Remedial Plan Notices) and 4 (Remedial Plans)	Obligation to provide certain information in a Remedial Plan Notices/Remedial Plans.

Reference	Summary of Obligation
Schedule 10.3 (Force Majeure and Business Continuity), paragraph 4 (Business Continuity)	Requirement to provide a Business Continuity Plan.
Schedule 11.1 (Franchise Performance Meetings), paragraph 1.3 (Franchise Performance Meetings)	Requirement to prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably requests.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 2 (Community Rail Partnerships)	Requirement to provide a Community Rail Report.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 8 (Small and Medium-sized Enterprises)	Requirement to provide breakdown of Small and Medium-sized Enterprises.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9 (Apprenticeships)	Requirement to provide the information relating to Apprenticeships as set out in paragraphs 9.1 and 9.2.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraphs 9.2/9.3 (Apprenticeships)	Requirement to submit the Apprenticeships Data Collection Form to the Rail Delivery Group.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(h)	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)	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	Requirement to provide copies of the certification audit reports and a copy of the ISO50001 Energy Review.
Schedule 13.1, 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, paragraph 16 (Incident Response Plan)	By no later than six months following the Start Date the Franchisee shall prepare and provide to the Secretary of State for approval the Incident Response Plan.

Reference	Summary of Obligation
Schedule 13.1 – 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 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 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.
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 (Statutory Director's Certificate)	Requirement to provide a statutory 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 (Template 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 16.1 (Railways Pension Scheme), paragraph 6 (Discharge of Obligations)	Obligation to provide a certificate signed by the Trustee in relation to the Franchise Sections stating that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme.
Schedule 17 (Confidentiality, Freedom of Information and Data Protection), 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.

Reference	Summary of Obligation
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 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).

Withdrawal