

Dated

[INSERT DATE¹]

(1) The Secretary of State for Transport
(2) [INSERT NAME OF FRANCHISEE²]

ITT DRAFT WEST COAST PARTNERSHIP FRANCHISE AGREEMENT

ITT VERSION

VOLUME ONE

CLAUSES 1 TO 17

1 **Note to Bidders:** DfT to populate before contract signature.

2 **Note to Bidders:** Bidders to populate the name of the Franchisee.

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THIS AGREEMENT is dated

[INSERT DATE]

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
- (2) **[INSERT NAME OF FRANCHISEE]** (Company Number: [INSERT NUMBER]), whose registered office is at [INSERT REGISTERED ADDRESS] (the "**Franchisee**").

WHEREAS:

- (A) On [INSERT DATE] the Secretary of State invited prospective franchisees who are Passport Holders to submit proposals for the provision of railway services to the West Coast Partnership rail passenger franchise. On the basis of the Franchisee's response to the Invitation to Tender, the Secretary of State selected the Franchisee as its preferred service provider.
- (B) The Secretary of State wishes to appoint a franchisee to provide railway passenger services within the Franchise and to provide consulting, testing, mobilisation and shadow operator services in relation to the mobilisation and commencement of high speed railway passenger services on the HS2 Network and expects the Secretary of State's franchisee, on the terms of the Franchise Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from the Infrastructure Managers and its other suppliers and the successful mobilisation and commencement of high speed railway passenger services on the HS2 Network, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (C) The Franchisee wishes to be appointed as the Secretary of State's franchisee for the Franchise and intends, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from the Infrastructure Managers and its other suppliers and the successful mobilisation and commencement of high speed railway passenger services on the HS2 Network, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (D) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (B) and (C) inclusive.

1. INTERPRETATION

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

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

3 **Note to Bidders:** Bidders to populate the franchisee name, company number and registered number.

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

- (p) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (q) references to the Franchisee bidding for Train Slots or a Timetable shall mean the final action incumbent on the Franchisee under the Network Code to confirm to the Infrastructure Manager its interests in the Train Slots to which that confirmation relates, and **"bid"** shall be construed accordingly;
- (r) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger's Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;
- (s) references to **"railway passenger services"** are to be construed subject to section 40 of the Railways Act 2005;
- (t) references to the **"provision of railway passenger services"** include the organisation of the relevant train movements and making the necessary arrangements with the Infrastructure Manager or any other relevant Facility Owner;
- (u) references in lower case letters to terms defined in clause 3 (Definitions) shall be construed, where relevant, as being references to the terms defined as such in a franchise agreement or relevant agreement made under section 30 of the Act or section 6 of the Railways Act 2005 with any other Train Operator;
- (v) references to sums of money being expended by the Franchisee shall be to such sums exclusive of Value Added Tax;
- (w) the words **"shall not be liable"** are to be construed as meaning that no contravention of the Franchise Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;
- (x) references to a **"contravention of the Franchise Agreement"** or a **"contravention"** (and cognate expressions) are to be construed as meaning **a breach of the Franchise Agreement**;
- (y) wherever provision is made for the Franchisee to **"procure"** or **"ensure"** the delivery of an obligation under the Franchise Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the Franchisee to deliver that obligation;
- (z) references to **"profit"** shall be construed as meaning profit before corporation tax, determined in accordance with GAAP; and
- (aa) **references** to **"process"** or **"processing"** or **"processed"** are to be construed in accordance with the Data Protection Act for the purposes of Schedule 1.5 (*Information about Passengers*) and paragraph 2.1 of Schedule 14.4 (*Designation of Franchise Assets*).

1.2 Where there is a requirement on the Franchisee to **"fully and effectively co-operate"** with one (1) or more other parties with regard to an objective, that requirement relates to the quality of co-operation to be provided by the Franchisee taking into account and subject to the response of the other parties concerned. It does not indicate an obligation on the Franchisee beyond co-operation, relating to the funding of detailed design and development of an infrastructure project, actual delivery or subsequent operation (including in each case performance cost and revenue effects). It does indicate that the Franchisee shall participate actively in relation to the relevant objective including through the application of management time and internal resources,

correspondence and attendance at meetings, in each case as the Franchisee reasonably considers in all of the circumstances to be an appropriate use of its resources and effective to achieve the relevant objective.

- 1.3 In the Franchise Agreement, the Secretary of State is acting as part of the Crown.
- 1.4 For Schedules 1 to 17 (inclusive), there is an "A" Schedule and a "B" Schedule. Where any reference made in this Agreement to a Schedule (other than Schedule 9 (Changes and Variations)) identifies that Schedule by number (and/or name) but not by letter (for example, "Schedule 14 (Preservation of Assets)" rather than "Schedule 14B (Preservation of Assets)"), such reference shall be interpreted as follows:
- (a) where the reference is in clauses 1 to 17 (inclusive), including all references within a definition in clause 3 (Definitions), Schedule 18 (Shadow Operator), Schedule 19 (Readiness Review, Switch Review and High Speed Services Review) or Schedule 20 (IOC Confirmable Obligations):
 - (i) and the context relates to a time prior to the Integrated Operator Start Date, the reference shall be interpreted as a reference to the "A" Schedule with that number;
 - (ii) and the context relates to a time on or after the Integrated Operator Start Date, the reference shall be interpreted as a reference to the "B" Schedule with that number;
 - (b) where the reference is in an "A" Schedule the reference shall be interpreted as a reference to the "A" Schedule with that number, unless the context relates to a time on or after the Integrated Operator Start Date in which case it shall be interpreted as a reference to the "B" Schedule with that number;
 - (c) where the reference is in a "B" Schedule the reference shall be interpreted as a reference to the "B" Schedule with that number, unless the context relates to a time prior to the Integrated Operator Start Date in which case it shall be interpreted as a reference to the "A" Schedule with that number;
 - (d) where the context is unclear, the reference shall, in that instance only (and without prejudice to the interpretation of that reference in any subsequent instance), be interpreted in the manner determined by the Secretary of State.
- 1.5 Where any reference made in this Agreement to Schedule 9 (Changes and Variations) identifies that Schedule by number (and / or name) but not by letter, such reference shall be interpreted consistently with the nature of the Change.

2. AGREED DOCUMENTS

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

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

4AA	Alliance Agreement
5ABD	Actual Benchmark Data;
6BFS	Bid Fares Strategy
7BTPM	BTP Methodology;
8CFD	Commuter Fares Document;
9CSES	Customer & Stakeholder Engagement Strategy;
10DSMI	Data Site Monitor and Index;
11DL	Depot Lease;
12FF	Financial Formats;
13ICWCFM	ICWC Financial Model;
14ICWCOM	ICWC Operational Models;
15ICWCROA	ICWC Record of Assumptions;
16PAP	Proposed Accepted Programme
17PC	Passenger’s Charter;
18PCAS	Product Cost Assumption Statements;
19PCB	Proposed Cost Baseline;
20PFD	Protected Fares Document;

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- 4 **Note to Bidders:** To be supplied by the DfT.
 - 5 **Note to Bidders:** To be supplied by the DfT.
 - 6 **Note to Bidders:** To be supplied by Bidders as required by the ITT.
 - 7 **Note to Bidders:** To be supplied by the DfT.
 - 8 **Note to Bidders:** To be supplied by the DfT.
 - 9 **Note to Bidders:** To be supplied by Bidders as required by the ITT.
 - 10 **Note to Bidders:** To be supplied by the DfT.
 - 11 **Note to Bidders:** To be supplied by the DfT.
 - 12 **Note to Bidders:** To be provided to the winning Bidder only.
 - 13 **Note to Bidders:** To be supplied by Bidders as required by the ITT.
 - 14 **Note to Bidders:** To be supplied by Bidders as required by the ITT.
 - 15 **Note to Bidders:** To be supplied by Bidders as required by the ITT.
 - 16 **Note to Bidders:** To be supplied by Bidders as required by the ITT.
 - 17 **Note to Bidders:** To be supplied by Bidders as required by the ITT.
 - 18 **Note to Bidders:** To be supplied by Bidders as required by the ITT.
 - 19 **Note to Bidders:** To be supplied by Bidders as required by the ITT.
 - 20 **Note to Bidders:** Final version to be supplied by the DfT to the winning Bidder only.

21	POA	Power of Attorney;
22	PP	Partnership Protocol;
23	PRP	Proposed Resourcing Plan;
24	PSM	Passenger Survey Methodology;
25	RS	Resourcing Strategy;
26	SCDP	Station Social and Commercial Development Plan;
27	SL	Station Lease;
28	SOFMS	Shadow Operator Financial Management Strategy;
29	SO MA	Shadow Operator Section of the Management Accounts and Shadow Operator Section of the Annual Management Accounts;
30	SOPS	Shadow Operator Procurement Strategy;
31	TP	Train Plan;
32	TSR1	Train Service Requirement; and
33	TTSM	Ticketless Travel Survey Methodology.

3. DEFINITIONS

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

“2017 Nominal Ticket Sales”	has the meaning given to it in paragraph 3 of Schedule 5.4A (Regulation of Fares Basket Values);
“2017 Ticket Revenue”	has the meaning given to it in paragraph 4 of Schedule 5.4A (Regulation of Fares Basket Values);
“Accepted Programme”	means the programme for Accepted Programme Specific Requirements as agreed or determined in accordance with paragraph 1 of Schedule 18.1

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- 21 **Note to Bidders:** To be supplied by the DfT.
22 **Note to Bidders:** To be supplied by Bidders as required by the ITT.
23 **Note to Bidders:** To be supplied by Bidders as required by the ITT.
24 **Note to Bidders:** To be supplied by the DfT.
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30 **Note to Bidders:** To be supplied by Bidders as required by the ITT.
31 **Note to Bidders:** To be supplied by Bidders as required by the ITT.
32 **Note to Bidders:** To be supplied by the DfT.
33 **Note to Bidders:** To be supplied by the DfT.

(Shadow Operations) as may be amended in accordance with Schedule 9.1B (Financial and Other Consequences of Changes) and/or Schedule 18.4 (Shadow Operator Annual Review) in the form approved by the Secretary of State and Placed in Escrow;

“Accepted Programme Financial Model” means the financial model used to generate the Cost Baseline;

“Accepted Programme Modelling Suite” means the modelling suite which contains the:

- (a) Accepted Programme Financial Model;
- (b) operating manual;
- (c) Accepted Programme Operational Models;
- (d) Cost Baseline; and
- (e) Product Cost Assumption Statements;

“Accepted Programme Operational Models” means the operational models (if any) which feed into and support the cost and other figures in the Accepted Programme Financial Model;

“Accepted Programme Specific Requirement” means those Shadow Operator Services set out in Schedule 18.2 (Accepted Programme Specific Requirements);

“Access Agreement” has the meaning given to the term **“access agreement”** in section 83(1) of the Act;

“Accessibility Panel” means the accessibility panel to be introduced by the Franchisee in accordance with paragraph [•] of Schedule 6.2A (Committed Obligations);³⁴

“ACoRP” means the Association of Community Rail Partnerships whose principle place of business is The Old Water Tower, Huddersfield Railway Station, St Georges Square, Huddersfield, HD1 1JF or any successor body whose purpose is to support Community Rail Partnerships;

“Act” means the Railways Act 1993 (as modified, amended or replaced by the Transport Act 2000, the Railways Act 2005 and the Deregulation Act 2015) and any regulations or orders made thereunder;

34 **Note to Bidders:** Cross-reference to be updated by Department once Committed Obligations updated.

"Action Plan"	has the meaning given to it in paragraph 26.2(a) of Schedule 7.1A (Operational Performance);
"Actual All Cancellations Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (<i>Operational Performance</i>);
"Actual Benchmark Data" or "ABD"	means the document in the agreed terms marked ABD ;
"Actual Consist Data"	means information as to the type of individual vehicles of rolling stock in the Train Fleet which are actually used to form a train on any particular Passenger Service and the manner in which they are configured, which may or may not be the same as the Scheduled Consist Data for the same service;
"Actual Digital Railway Shadow Operator Costs"	means such of the Actual Shadow Operator Costs as arise out of or in connection with: (a) the preparation and submission of the Digital Railway Business Case; and/or (b) the deployment of any Digital Railway Option that the Franchisee is required by the terms of the Franchise Agreement to deploy;
"Actual IOC Costs"	means costs, expenses (including payments) and liabilities reasonably and properly incurred by the Franchisee arising out of or in connection with the operation of the Franchise in accordance with the Franchise Agreement during or in relation to the Integrated Operator Period and: (a) on the accruals accounting basis; (b) net of any future likely discounts, rebates or price reductions; and (c) calculated on a gross, actual basis (whether or not the Franchisee accounts on the agency basis), <u>but excluding:</u> (i) Franchise Payments; (ii) costs incurred or to be incurred by the Franchisee in relation to: (A) Shadow Operator Services (other than (for the avoidance of doubt) PMO Costs which relate to the Integrated Operator Period);

- (B) (for the avoidance of doubt) ICWC Services including any accounting transactions and/or reversals of accounting transactions relating to the same;
 - (C) any Remedial Plan (save to the extent expressly agreed by the Secretary of State);
 - (D) (save to the extent otherwise from time to time agreed in writing by the Parties or specified in writing by the Secretary of State) the removal of branding or Marks under paragraph 3.2 of Schedule 14.2B (Maintenance of Operating Assets);
 - (E) the audit costs referred to in paragraph 9.7(b) of Schedule 11.2B (Management Information); or
 - (F) compensating the Secretary of State pursuant to clause 14.7 (Enforcement Costs);
- (iii) corporation tax, deferred tax and any other accounting adjustments relating to Taxation;
- (iv) any cost that the Franchisee may incur as a result of it failing to comply with:
- (A) its obligations under or in connection with the Franchise Agreement (including the grant thereof); or
 - (B) any applicable Laws;
- (v) any Facilitation Fee or Administration Fee pursuant to clause 8 (Change of Control and Facilitation Fee);
- (vi) any costs incurred by the Franchisee arising out of or in connection with a demand by the Secretary of State under:
- (A) the Performance Bond pursuant to paragraph 4 of Schedule 12B (Financial Covenants and Bonds);
 - (B) the Season Ticket Bond pursuant to paragraph 5 of Schedule 12B (Financial Covenants and Bonds); or

- (C) the Bond (as defined in the Funding Deed);
- (vii) any payments to Affiliates of the Franchisee or other parties which are not on bona fide arm's length terms (save to the extent expressly agreed in writing by the Parties);
- (viii) any costs that were incurred otherwise than in accordance with the IOC Procurement Strategy (save to the extent expressly agreed in writing between the Parties);
- (ix) any accounting transaction included in the IOC Section of the Management Accounts, or the IOC Section of the Annual Management Accounts but which does not result in or require the Franchisee to make a cash payment (other than the agreed depreciation or amortisation for RV Assets);
- (x) 'arrangement fees' (or similar) paid or payable to Affiliates of the Franchisee for or in relation to availability of working capital or any other lending or financial support;
- (xi) interest paid or payable on PCS Advances and/or PCG Advances (each as defined in the Funding Deed) to the extent such Advances were made (or as would have been required to be made as at the Integrated Operator Start Date so as to satisfy the requirement for the ratio of Modified Revenue to Actual Operating Costs during the Preceding thirteen (13) Reporting Periods is not less than **1.070:1**));
- (xii) costs of developing and protecting any Intellectual Property Rights not owned by (or licensed exclusively to) the Secretary of State save to the extent required by the Secretary of State;
- (xiii) marketing or advertising costs incurred substantially to the benefit of any Affiliate of the Franchisee (being any such costs which are not primarily for the benefit of the Franchise Services);
- (xiv) fines or penalties imposed by government, regulatory or other bodies;
- (xv) interest paid or payable on negative cash balances;

- (xvi) interest paid or payable at above the market rate that an Efficient Operator would pay;
- (xvii) transactions between business units within the Franchisee;
- (xviii) maintenance costs where the maintenance activity was scheduled to be undertaken during the ICWC Period or where (and to the extent that) it would have been reasonable and prudent for the maintenance to have been carried out during the ICWC Period;
- (xix) unless the Secretary of State otherwise agrees, costs of or relating to any contract or arrangement which was entered into without the prior agreement of the Secretary of State, where the contract or arrangement has a value in any IOC Year of more than one million pounds (£1,000,000) x RPI (where RPI is the quotient of the Retail Prices Index for the relevant IOC Year divided by the Retail Prices Index for January 2019);
- (xx) except with prior agreement of the Secretary of State, 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;
- (xxi) except with prior agreement from the Secretary of State, hedging costs, or losses from hedging activity;
- (xxii) except with prior agreement of the Secretary of State, losses on disposal of Fixed or Non-Current Assets; and
- (xxiii) any other costs incurred during or in relation to the Integrated Operator Period which this Franchise Agreement provides shall be at the Franchisee's cost;

“Actual IOC Revenue”

means the gross total revenue of the Franchisee received or receivable on the accruals accounting basis from the operation of the Franchise or otherwise during or in relation to the Integrated Operator Period, being:

- (a) all revenue whatsoever from any source obtained from or in any way in relation to any commercial or non-commercial activity or undertaking of the operation of the Franchise;

- (b) calculated on a gross basis and in particular with no deduction of:
 - (i) compensation (or equivalent) paid or payable by the Franchisee (whether pursuant to the Passenger's Charter (or otherwise)), (and for the avoidance of doubt, such compensation shall be classified as costs); or
 - (ii) retail or other commission, allowances or similar payments, paid or payable by the Franchisee (and for the avoidance of doubt, such commission, allowances or similar payments shall be classified as costs); and
- (c) calculated on a gross, actual basis (whether or not the Franchisee accounts on the agency basis),

and (for the avoidance of doubt) including:

- (i) any revenue received or receivable by the Franchisee under any Relevant Track Access Agreement or any other compensation;
- (ii) revenue earned without making any deduction or allowance for amounts lost or reduced as a result of the Franchisee's breach of its obligations under this Franchise Agreement or as a result of the fraud or dishonesty of any Franchise Employee;
- (iii) an amount equal to the amount of revenue which was not received or receivable by the Franchisee (including debts or other receivables waived, not collected or written off) but which the Secretary of State determines would have been received or receivable by an Efficient Operator;
- (iv) any credits shown in the profit and loss account in the IOC Section of the Management Accounts or the IOC Section of the Annual Management Accounts which arise from the reversal of amounts previously accrued, deferred or provided for which have subsequently been reversed. Examples may include (but not be restricted to) credits arising from the reversal of accrued Actual IOC Costs incurred in a previous Reporting Period and the reversal of any deferred Actual IOC Revenue transactions deferred in a previous Reporting Period;

- (v) cash or other consideration received or receivable on disposal of Fixed or Non-Current Assets where the purchase of those assets was an Actual IOC Cost;
- (vi) gains on disposal of any assets which were previously designated Primary Franchise Assets at any time but which were subsequently de-designated as Primary Franchise Assets;

but excluding

- (A) Franchise Payments;
- (B) revenue received or receivable in the course of carrying out the Shadow Operator Services;
- (C) any accounting transaction included in the IOC Section of the Management Accounts or the IOC Section of the Annual Management Accounts but which does not entitle the Franchisee to receive a cash payment. (Examples include notional pensions accounting adjustments, the accounting impact of financial instrument or other revaluations and (except with prior agreement from the Secretary of State) gains from hedging activity);
- (D) (for the avoidance of doubt) revenue received or receivable in relation to ICWC Services including any accounting transactions for and/or relating to the same;
- (E) any other transactions where as part of a revenue stream the Franchisee makes a payment, nets off a payment or otherwise foregoes revenue (which shall be classified as costs);
- (F) any RV Asset Transfer Value received or receivable from a Successor Operator; and
- (G) cash received or receivable from a Successor Operator on disposal of any Primary Franchise Assets where the purchase of that Primary Franchise Asset was not an Actual IOC Cost;

“Actual Marketing Spend”

has the meaning given to it in paragraph 5.7(b)(ii) of Schedule 6.3A (Contractual Incentive Mitigations);

**"Actual Marketing
Team Spend"**

has the meaning given to it in paragraph 5.7(b)(ii) of Schedule 6.3A (Contractual Incentive Mitigations);

**"Actual Operating
Costs"**

means:

(a) the Franchisee's total operating expenses (calculated on gross, actual basis (whether or not the Franchisee accounts on the agency basis)) for the period being reviewed as stated in its profit and loss account, or in the case of (v) and (vi) below as derived from underlying accounting records, including any of the following operating expenses that are payable during that period:

- (i) amounts payable to the Secretary of State and the Infrastructure Manager;
- (ii) taxation;
- (iii) shareholder distributions including dividends;
- (iv) interest;
- (v) capital expenditure (net of grants received);
- (vi) cash lease payments in relation to on-balance sheet leased assets (and for the avoidance of doubt these lease payments include cash paid or payable, in relation to the period being reviewed, under any lease which has been accounted for in accordance with "IFRS 16 – Leases" or any equivalent element of GAAP); and
- (vii) NOT USED,

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

- (A) finance/interest costs solely relating to on-balance sheet leased assets;
- (B) depreciation (including in relation to on-balance sheet leased assets);
- (C) amortisation;
- (D) bad debt provisions; and
- (E) NOT USED;

(F) during (or in relation to) the ICWC Term, costs incurred in relation to the activities comprised in the Shadow Operator Services (excluding the PMO Services);

(b) either:

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

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

where creditors:

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

(B) exclude persons owed amounts by the Franchisee in respect of season ticket liabilities, lease liabilities in relation to on balance sheet leased assets and liabilities in relation to grants received for the purchase of fixed assets;

(C) exclude any creditors or other liabilities relating to on-balance sheet leases;

(D) during (or in relation to) the ICWC Term, exclude any creditors or other liabilities relating to the activities comprised in the Shadow Operator Services (excluding the PMO Services);

“Actual Passenger Demand”

has the meaning given to it in paragraph 1.1 of Schedule 1.5 (Information about Passengers);

“Actual Shadow Operator Costs”

means costs, expenses (including payments) and liabilities reasonably and properly incurred by the Franchisee arising out of or in connection with the operation of the Franchise in accordance with the Franchise Agreement in relation to the Shadow Operator Services, and:

(a) on the accruals accounting basis;

- (b) net of any future likely discounts, rebates or price reductions; and
- (c) calculated on a gross, actual basis (whether or not the Franchisee accounts on the agency basis),

but excluding:

- (i) Franchise Payments;
- (ii) costs incurred or to be incurred by the Franchisee in relation to:
 - (A) PMO Services;
 - (B) (for the avoidance of doubt) the Franchise Services other than the Shadow Operator Services (including the ICWC Services and the Integrated Services and any accounting transactions and/or reversals of accounting transactions relating to the same);
 - (C) any Remedial Plan (save to the extent expressly agreed by the Secretary of State);
 - (D) (save to the extent otherwise from time to time agreed in writing by the Parties or specified in writing by the Secretary of State) the removal of branding or Marks under paragraph 3.2 of Schedule 14.2 (Maintenance of Operating Assets);
 - (E) the audit costs referred to in paragraph 9.7(b) of Schedule 11.2 (Management Information); or
 - (F) compensating the Secretary of State pursuant to clause 14.7 (Enforcement Costs);
- (iii) corporation tax, deferred tax and any other accounting adjustments relating to Taxation;
- (iv) any cost that the Franchisee may incur as a result of it failing to comply with:
 - (A) its obligations under or in connection with the Franchise Agreement (including the grant thereof); or

- (B) any applicable Laws;
- (v) any Facilitation Fee or Administration Fee pursuant to clause 8 (Change of Control and Facilitation Fee);
- (vi) any costs incurred by the Franchisee arising out of or in connection with a demand by the Secretary of State under:
 - (A) the Performance Bond pursuant to paragraph 4 of Schedule 12 (Financial Covenants and Bonds); or
 - (B) the Season Ticket Bond pursuant to paragraph 5 of Schedule 12 (Financial Covenants and Bonds); or
 - (C) the Agreed Funding Commitment (as defined in the Funding Deed);
 - (D) the Bond (as defined in the Funding Deed);
- (vii) any payments to Affiliates of the Franchisee or other parties which are not on bona fide arm's length terms (save to the extent expressly agreed in writing by the Parties);
- (viii) any costs that were incurred otherwise than in accordance with the Shadow Operator Procurement Strategy and the Shadow Operator Financial Management Plan (save to the extent expressly agreed in writing between the Parties);
- (ix) any accounting transaction included in the Shadow Operator Section of the Management Accounts or the Shadow Operator Section of the Annual Management Accounts but which does not result in or require the Franchisee to make a cash payment;
- (x) 'arrangement fees' (or similar) paid or payable to Affiliates of the Franchisee for or in relation to availability of working capital or any other lending or financial support;
- (xi) interest paid or payable;
- (xii) costs of developing and protecting any Intellectual Property Rights not owned by (or licensed exclusively to) the Secretary of State save to the extent required by the Secretary of State;

- (xiii) marketing or advertising costs incurred substantially to the benefit of any Affiliate of the Franchisee (being any such costs which are not primarily for the benefit of the Franchise Services);
- (xiv) fines or penalties imposed by government, regulatory or other bodies;
- (xv) transactions between business units within the Franchisee;
- (xvi) unless the Secretary of State otherwise agrees, costs of or relating to any contract or arrangement which was entered into without the prior agreement of the Secretary of State, where the contract or arrangement has a value in any Shadow Operator Performance Period of more than:
 - (A) in the case of any contract or arrangement relating to the performance of the Accepted Programme, two hundred thousand pounds multiplied by RPI (£200,000 x RPI); and
 - (B) in the case of any contract or arrangement relating to the performance of the Transitional Programme one million pounds multiplied by RPI (£1,000,000 x RPI),(where RPI is the quotient of the Retail Prices Index for the relevant Shadow Operator Performance Period divided by the Retail Prices Index for January 2019);
- (xvii) except with prior agreement of the Secretary of State, 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;
- (xviii) except with prior agreement from the Secretary of State, hedging costs, or losses from hedging activity;
- (xix) except with prior agreement of the Secretary of State, losses on disposal of Fixed or Non-Current Assets; and

- (xx) any other costs incurred which this Franchise Agreement provides shall be at the Franchisee's cost;

"Actual Shadow Operator Revenue"

means the gross total revenue of the Franchisee received or receivable on the accruals accounting basis from or in relation to the Shadow Operator Services, calculated on a gross, actual basis (whether or not the Franchisee accounts on the agency basis), and (for the avoidance of doubt) including:

- (a) revenue earned without making any deduction or allowance for amounts lost or reduced as a result of the Franchisee's breach of its obligations under this Franchise Agreement or as a result of the fraud or dishonesty of any Franchise Employee;
- (b) an amount equal to the amount of revenue which was not received or receivable by the Franchisee (including debts or other receivables waived, not collected or written off) but which the Secretary of State reasonably determines would have been received or receivable by an Efficient Operator;
- (c) any credits shown in the profit and loss account in the Shadow Operator Section of the Management Accounts or the Shadow Operator Section of the Annual Management Accounts which arise from the reversal of amounts previously accrued, deferred or provided for which have subsequently been reversed; and
- (d) cash or other consideration received or receivable on disposal of Fixed or Non-Current Assets where the purchase of those assets was an Actual Shadow Operator Cost;

but excluding:

- (i) Franchise Payments; and
- (ii) any accounting transaction included in the Shadow Operator Section of the Management Accounts or the Shadow Operator Section of the Annual Management Accounts but which does not entitle the Franchisee to receive a cash payment;

"Actual Train Mileage"

means the actual train mileage operated during each Reporting Period by each train used in the provision of the Passenger Services (excluding any actual train mileage operated as a result of positioning or other movements of rolling stock vehicles outside the

	Timetable) and “Actual Train Miles” shall be construed accordingly;
“Actual T-3 Performance Level”	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
“Actual T-15 Performance Level”	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
“Actuary”	has the meaning given to it in the Pension Trust;
“Additional Boxing Day Services”	has the meaning given to it in paragraph 2.1 (b) of Part 2 of Schedule 6.1A (Franchise Specific Obligations);
“Additional Expenditure” or “AD”	has the meaning given to it in paragraph 6.1 of Schedule 7.2A (Customer Experience and Engagement);
“Additional RV Asset”	means any Proposed RV Asset designated as an RV Asset by the Secretary of State in accordance with paragraph 3.5 of Schedule 14.6A (Residual Value Mechanism);
“Administration Fee”	has the meaning given to it in clause 8.5 (Change of Control and Facilitation Fee);
“Advance Purchase Train-specific Fares”	has the meaning given to it under the Ticketing and Settlement Agreement;
“Affected Party”	has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);
“Affected Service Quality Area”	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
“Affected Service Quality Indicator”	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
“Affiliate”	means, <ul style="list-style-type: none">(a) in respect of any person (“A”):<ul style="list-style-type: none">(i) any person which A Controls or which Controls A; or(ii) any person which is Controlled by any other Affiliate of A; and(b) for the purposes of Schedule 8.2A (Profit Share Mechanism) only, any person which directly or indirectly (including as a shareholder in any immediate parent undertaking):

- (i) holds any share capital in the Franchisee;
- (ii) in the event of the winding-up or other analogous event in respect of the Franchisee would be entitled to any share or receive any assets of the Franchisee which are available for distribution; or
- (iii) has any voting power in the Franchisee,

and for the purpose of this definition none of Network Rail, NR or HS2 Limited shall be construed as being an Affiliate of the Secretary of State;

“Aggregated Qualifying Change”

means two (2) or more ICWC Changes which:

- (a) are notified or agreed (in the case of an ICWC Change which is a Variation pursuant to paragraph 1.1 of Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes)); and/or
- (b) a Party has become aware of (in the case of any other kind of ICWC Change),

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

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

“Agreed Revisions”

has the meaning given to it in paragraph 5A of Schedule 9.1B (Financial and Other Consequences of Change);

"Agreement"	means clauses 1 to 17 and Schedules 1 to 20 including any Appendices and Annexes each as varied from time to time;
"All Cancellation Figures"	means the moving annual average percentage published by Network Rail in respect of All Cancellations, rounded to one (1) decimal place;
"All Cancellations"	means the sum of Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations relating to the Franchise as produced and/or published by Network Rail;
"All Cancellations Performance Sum"	means an amount determined in accordance with paragraph 22.7C of Schedule 7.1A (Operational Performance) payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final ICWC Franchisee Year where the provisions of paragraph 29 shall apply) by the Franchisee (as the case may be);
"Alliance Agreement"	means: <ul style="list-style-type: none">(a) where the context relates to a time prior to the Integrated Operator Start Date, the agreement in the agreed terms marked AA, as amended from time to time with the prior consent of the Secretary of State in accordance with paragraph 2.3 of Schedule 6.4A (<i>Alliances</i>); and(b) where the context relates to a time on or after the Integrated Operator Start Date, the agreement in the agreed terms marked AA, as amended from time to time with the prior consent of the Secretary of State in accordance with paragraph 2.2 of Schedule 6.4B (<i>Alliances</i>);
"Alternative Fare"	has the meaning given to it in paragraph 11.1(a)(ii) of Schedule 6.3A (Contractual Incentive Mitigations);
"Alternative NRPS"	has the meaning given to such term in paragraph 2.6 of Schedule 7.2A (Customer Experience and Engagement);
"Alternative Scheme"	means a Committed Obligation proposed by the Franchisee in place of a Specimen Scheme in accordance with paragraph 7 of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2A (Committed Obligations);
"Ancillary Maintenance Facilities"	means any depot, stabling site, station or other facility or facilities to be used in connection with the cleaning

and/or servicing of the High Speed Rolling Stock, but excluding the Home Depot;

"Ancillary Service"	means any service specified in paragraph 4 of Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development);
"Annual Adjustment" or "AADJ"	means the annual adjustment element of the Franchise Payment (if any) calculated in accordance with the provisions of paragraph 3 of Appendix 1 (Calculation of Periodic Franchise Payments (PFP)) to Schedule 8.1B (Franchise Payments);
"Annual All Cancellations Measure"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Annual All Cancellations Payment Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Annual All Cancellations Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Annual Audited Accounts"	means the accounts of the Franchisee which: <ul style="list-style-type: none">(a) comply with paragraph 9.5(b) of Schedule 11.2 (Management Information); and(b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 9.4(b) of Schedule 11.2 (Management Information) and certified by the Franchisee's auditors as true and fair;
"Annual Benchmark"	means any of the Annual Cancellations Benchmark or the Annual TOC Minute Delay Benchmark;
"Annual Breach Ticketless Travel Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);
"Annual Business Plan"	means the plan to be provided by the Franchisee to the Secretary of State in accordance with paragraph 10.2 of Schedule 11.2 (Management Information);
"Annual Cancellations Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Annual Cancellations Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Annual Cancellations Payment Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);

“Annual Cap Performance Level”	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
“Annual Digital Railway Account Contribution”	means [REDACTED] ³⁵ multiplied by RPI (where RPI has the relevant meaning given to it in paragraph 24 of Schedule 6.1A (Franchise Specific Obligations));
“Annual Floor Performance Level”	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
“Annual Franchise Payment” or “AFP”	means in relation to any Franchisee Year during the ICWC Period, the amount determined in accordance with Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments);
“Annual Franchise Payment Components”	means the values of FXD, VCRPI, VCAWE, PRPI, ORRPI, PRRPI _{GDP} , and ARPI as specified for each Franchisee Year in the table set out in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to Schedule 8.1A (Franchise Payments) as such table may be updated populating Franchisee Years 8 to 12 pursuant to the provisions of Schedule 8.7A (Resetting);
“Annual Management Accounts”	means the: (a) ICWC Section of the Annual Management Accounts, as applicable; (b) IOC Section of the Annual Management Accounts, as applicable; and (c) Shadow Operator Section of the Annual Management Accounts, as applicable;
“Annual Review”	means a Passenger Services Annual Review or a Shadow Operator Annual Review as applicable;
“Annual Season Ticket”	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day on which it first comes into effect until (but excluding) the day which falls twelve (12) months after such day;
“Annual T-3 Measure”	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
“Annual T-3 Payment Table”	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);

³⁵ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

"Annual T-3 Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Annual T-15 Measure"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Annual T-15 Payment Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Annual T-15 Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Annual Target Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Annual Target Ticketless Travel Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);
"Annual Ticketless Travel Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);
"Annual TOC Minute Delay Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Annual TOC Minute Delay Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Annual TOC Minute Delay Payment Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Anticipated High Speed Established Services Date"	means the Passenger Change Date in December 2027 or such later date as the Secretary of State may notify the Franchisee under paragraph 11.1 of Schedule 18.1 (Shadow Operations);
"Anticipated High Speed Start Date"	means the Passenger Change Date in December 2026 or such later date as the Secretary of State may notify the Franchisee under paragraph 11.1 of Schedule 18.1 (Shadow Operations);
"Anticipated Switch Review Date"	means 1 October 2025 or such later date as the Secretary of State may notify the Franchisee under paragraph 11.1 of Schedule 18.1 (Shadow Operations);
"Apprenticeship"	means (as the context requires) an individual apprenticeship pursuant to: <ul style="list-style-type: none"> (a) an apprenticeship programme operated by the Franchisee: <li style="margin-left: 40px;">(i) in connection with an apprenticeships framework listed on the Federation for Industry Sector Skills & Standards'

“Frameworks Library” (as located at the date of this Agreement at: <http://www.afo.sscalliance.org/frameworkslibrary/>); and

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

and references to **“Apprenticeships”** shall be construed accordingly;

“Apprenticeships Data Collection Form”

means the excel table provided by the Secretary of State and populated by the Franchisee and included within the Skills and Leadership Strategy specifying in relation to each Franchisee Year the number of Apprenticeships to be commenced in such Franchisee Year, the number of such Apprenticeships at each of level 1 – 8, the role and skills category within which each such Apprenticeship falls and other information as the table may be amended or replaced with the prior written consent of the Secretary of State following a review of the Skills and Leadership Strategy pursuant to paragraph 9 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);

“Apprenticeships Requirement”

has the meaning given to it in paragraph 9.4 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);

“Approved CCI Scheme”

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

“ARPI”

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

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

means the guidance that sets out industry best practice for planning for responses to major incidents and emergencies entitled “Emergency Planning, Knowledge, Understanding and Responsibilities” dated April 2015 and published by RDG, as amended or updated from time to time, or other relevant guidance

as reasonably specified by the Secretary of State during the Franchise Term;

"Average Weekly Earnings"

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

"AWE"

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

"BAME"

means Black, Asian and Minority Ethnic;

"Bank"

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

"Bank Holiday"

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

"Baseline TSS"

means the form of baseline train services specification to be provided by the Secretary of State to the Franchisee on or around the Shadow Operator Start Date;

"Benchmark"

means:

- (a) in relation to the ICWC Term; any of the Cancellations Benchmark or the TOC Minute Delay Benchmark (as the context may require); and
- (b) in relation to the Integrated Operator Term; the IOC Benchmarks;

"Bespoke Revenue Initiative Proposal"

has the meaning given to it in paragraph 4.1 of Schedule 6.3A (Contractual Incentive Mitigations);

"Bid Fares Strategy" or "BFS"

means the document in the agreed terms marked **BFS** as updated pursuant to paragraphs 10 and 11 of Schedule 6.3A (Contractual Incentive Mitigations);

"Bid Profit Stream"

means the estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to clause 8 (Change of Control and Facilitation Fee)) is to occur until 01 April 2026 as shown in the profit and loss forecast in the Initial

Business Plan (without taking into account any Annual Business Plan) calculated in real terms as at the date of the Change of Control and applying the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines" (such rate being [three point five per cent] ([3.5]%)^{B6} per annum (in real terms) as at the date of the Franchise Agreement);

"Birmingham Gateway"

means the project to redevelop and expand Birmingham New Street station;

"Bond Provider"

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

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

in each case with the Relevant Credit Rating;

"Bond Year"

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

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

"Boxing Day Services"

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

"Brand Licence"

means a licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Franchisee in respect of any registered or unregistered trade marks;

"Breach Performance Level"

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

"Breach Reporting Stage"

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

“Breach Ticketless Travel Benchmark”	has the meaning given to it in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);
“British Transport Police”	means the British Transport Police Authority and the British Transport Police Force created pursuant to section 18 and section 20 of the Railways and Transport Safety Act 2003 (or any successor or successors to its statutory policing functions);
“BTP Methodology” or “BTPM”	means the document in the agreed terms marked BTPM ;
“Buildings Research Establishment Environmental Assessment Method” or “BREEAM”	means the internationally recognised environmental assessment method and rating system for buildings developed by Building Research Establishment Limited or any other standard which is generally recognised as having replaced it;
“Business Action Plan”	means an action plan produced by the Franchisee in relation to the delivery of any aspect of the Franchise Services (excluding the Shadow Operator Services) including in respect of any outcome anticipated by its Business Plan, in accordance with paragraph 10.2 of Schedule 11.2 (Management Information);
“Business Continuity Plan” or “BCP”	means a business continuity and disaster recovery plan (including a Force Majeure Events recovery plan) required to be produced, maintained and implemented by the Franchisee in accordance with the requirements of paragraph 4 of Schedule 10.3 (Force Majeure and Business Continuity);
“Business Plan”	means: <ul style="list-style-type: none">(a) during the ICWC Term, the Initial Business Plan or any Annual Business Plan, as the context requires, to be delivered in accordance with paragraphs 10.1 and 10.2 of Schedule 11.2A (Management Information); and(b) during the Integrated Operator Term, the IOC Business Plan or any Annual Business Plan, as the context requires, to be delivered in accordance with paragraph 10.2 of Schedule 11.2B (Management Information);
“Cancellation”	means a Passenger Service: <ul style="list-style-type: none">(a) which is included in the Enforcement Plan of the Day and which is cancelled for reasons attributed to the Franchisee pursuant to the Relevant Track Access Agreement; or(b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed

in the Enforcement Plan of the Day) for reasons attributed to the Franchisee pursuant to the Relevant Track Access Agreement;

"Cancellations Benchmark"	means any of the performance levels in respect of Cancellations and/or Partial Cancellations set out in the Cancellations Benchmark Table;
"Cancellations Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Cancellations Figures"	<p>means the number of:</p> <p>(a) Cancellations and Partial Cancellations; and</p> <p>(b) Network Rail Cancellations and Network Rail Partial Cancellations,</p> <p>in each case, relating to the Passenger Services operated in each Reporting Period;</p>
"Cancellations Performance Sum"	means an amount determined in accordance with paragraph 22.3 of Schedule 7.1A (Operational Performance) and payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final ICWC Franchisee Year where the provisions of paragraph 29 of Schedule 7.1A (Operational Performance) shall apply) by the Franchisee (as the case may be);
"Capacity Mitigation Proposal"	has the meaning given to it in paragraph 15.1 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services and Service Development);
"Capital Expenditure"	has the meaning given to it in paragraph 3.4 of Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes);
"Cascaded Rolling Stock"	has the meaning given to it in paragraph 3.1 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"Category 1 Proposal"	means a "Category 1 Proposal" as defined in and for the purposes of the Collaboration Agreement;
"CCI Amount"	means the sum of one million one hundred thousand pounds (£1,100,000) (indexed by the Retail Prices Index in the same way as variable costs are indexed in Schedule 8.2A (Profit Share Mechanism)) per Franchisee Year within a CCI Period (reduced pro-rata in respect of any Franchisee Year within a CCI Period of less than three hundred and sixty five (365) days) as adjusted in accordance with paragraph 11.8(a) of

	Schedule 7.2A (Customer Experience and Engagement);
"CCI Period"	means each of the following periods: (a) 1 April 2021 to 31 March 2023; (b) 1 April 2023 to 31 March 2025; and (c) 1 April 2025 to 31 March 2026;
"CCI Scheme"	has the meaning given to it in paragraph 11.1 of Schedule 7.2A (Customer Experience and Engagement);
"CCI Scheme Cost"	means in respect of any CCI Scheme, the total cost to the Franchisee of developing and implementing that CCI Scheme;
"CCI Scheme Margin"	means five per cent (5%) of the applicable CCI Scheme Costs;
"CCI Scheme Revenue"	means in respect of any CCI Scheme, the revenue earned by the Franchisee from that CCI Scheme;
"CCI Scheme Shortfall"	means, in relation to a CCI Scheme, the amount (if any) by which the CCI Scheme Revenue is less than the aggregate of the CCI Scheme Costs and the CCI Scheme Margin;
"CCI Scheme Underspend"	has the meaning given to it in paragraph 11.6 of Schedule 7.2A (Customer Experience and Engagement);
"CCTV Guidance"	means the Rail Delivery Group's " <i>National Rail & Underground Closed Circuit Television (CCTV)</i> " guidance and the British Transport Police's " <i>Output requirements from CCTV Systems</i> " guidance, each as updated from time to time, and any other guidance reasonably required by the Secretary of State;
"C-DAS"	has the meaning given to it in paragraph 5.1 of Part 2 of Schedule 6.1A (Franchise Specific Obligations);
"Ceased Services"	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department;

- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

"Certificate of Commencement"

means the certificate to be issued by the Secretary of State pursuant to the Conditions Precedent Agreement;

"Certificate of Completion"

has the meaning given to it in paragraph 1.3(b) of Schedule 14.6A (Residual Value Mechanism);

"Change"

means:

- (a) during the ICWC Term:
 - (i) an ICWC Change;
 - (ii) a Shadow Operator Change; and/or
 - (iii) an IOC Confirmed Obligations Change; and
- (b) during the Integrated Operator Term:
 - (i) an IOC Change;
 - (ii) a Shadow Operator Change; and/or
 - (iii) an IOC Confirmed Obligations Change;

"Change Event"

means if and whenever any of the following occurs during or in relation to the period up to and including the ICWC Expiry Date:

- (a) an event set out in any Secretary of State Risk Assumptions specified in Schedule 9.4A (Secretary of State Risk Assumptions);
- (b) a Charge Variation;
- (c) a Change of Law (excluding any Change of Law to the extent that it results in an adjustment to the Franchise Payments pursuant to Schedule 8.3A (Track Access Adjustments and Station Charge Adjustments));

- (d) a change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with paragraph 16.6 of Schedule 1.1A (Franchise Services and Service Development);
- (e) the Franchisee is required to take any action pursuant to paragraph 19.1(a) and/or paragraph 19.1(b) of Schedule 1.1 (Franchise Services and Service Development);
- (f) the Secretary of State effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of section 28 of the Act;
- (g) the Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 4.5 of Schedule 2.5 (Transport, Travel and Other Schemes) to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment;
- (h) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (Accessibility and Inclusivity), of any increased access charges in respect of EA Requirements at Franchisee Access Stations;
- (i) the Secretary of State exercises the Secretary of State's power pursuant to paragraph 5 of Schedule 5.7A (Changes to Fares and Fares Regulation) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (Fares and Smart Ticketing);
- (j) the Franchisee is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Passenger Services;
- (k) the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 1.11 (Charging Review) of Schedule 7.1A (Operational Performance);
- (l) the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 15.1(c) (Environmental Information

Data Collection Plan) of Schedule 11.2 (Management Information);

- (m) NOT USED;
- (n) NOT USED;
- (o) a Variation to the terms of the Franchise Agreement pursuant to paragraph 1.1 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);
- (p) the Start Date is a date that is later than 02:00 on 15 September 2019 for reasons solely attributable to any act or omission by the Secretary of State including the exercise of the Secretary of State's right to amend the Start Date pursuant to clause 5.3 (Amendment of Start Date/Expiry Date) except where:
 - (i) the Secretary of State exercises the Secretary of State's rights pursuant to clause 4.2 or 4.3 of the Conditions Precedent Agreement to alter such Start Date; or
 - (ii) the relevant acts or omissions of the Secretary of State arise as a result of or in connection with any failure by the Franchisee to satisfy any of the conditions precedent set out in the Conditions Precedent Agreement;
- (q) the Expiry Date is a date that is later than 01:59 on 1 April 2031 in consequence of the Secretary of State exercising the Secretary of State's right to amend the Start Date pursuant to clause 5.3 (Amendment of Start Date/Expiry Date);
- (r) the circumstances set out in paragraph 3.2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases) occur;
- (s) NOT USED;
- (t) NOT USED;
- (u) NOT USED;
- (v)
 - (i) the Secretary of State issues a TDR Amendment pursuant to paragraph 12.8

of Schedule 1.1 (Franchise Services and Service Development) in the circumstances described in paragraph 12.10(b) (there only being a Change Event if the Franchisee makes a saving as a consequence of a relevant TDR Amendment); or

- (ii) the circumstances contemplated in paragraph 12.11(b) of Schedule 1.1A (Franchise Services and Service Development) occur;
- (w) the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 11.1 (Changes to the Bid Fares Strategy) of Schedule 6.3A (Contractual Incentive Mitigations);
- (x) the Secretary of State exercises the Secretary of State's right to vary the provisions of Schedule 7.3A (Service Quality Regime) pursuant to paragraph 21.2 (Variations to the Service Quality Regime) of Schedule 7.3A (Service Quality Regime);
- (y) NOT USED;
- (z) the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 3.5 (Change in requirement to debrand) of Schedule 14.2A (Maintenance of Operating Assets and Branding);
- (za) NOT USED;
- (aa) any two or more of the foregoing that the Secretary of State groups together in accordance with any procedures issued by the Secretary of State pursuant to paragraph 1.4 of Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes) occur,

but excluding the start of the Integrated Operator Term;

"Change of Control"

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

"Change of Law"

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

- (a) Legislation; or

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

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

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

to the extent that the same is subsequently enacted in substantially the same form as the form in which it was previously so published. In relation to the application of this sub paragraph (ii), each TSI shall be considered separately.

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

"Charge Variation"

means a variation:

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

“Charging Review” means:

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

any of the powers referred to in paragraphs (a) or (b) in relation to any Relevant Agreement provided that, without limitation, the exercise by ORR of any of its approval rights under Condition F12 of the Station Access Conditions shall not be considered to have an equivalent effect to or fulfil the same function as any of the powers referred to in paragraphs (a) or (b). For this purpose, Relevant Agreement includes

any Relevant Agreement which is not the subject of any previous Charging Review; or

- (d) any amendment to a Relevant Agreement, or entry into a new Relevant Agreement which is approved by the ORR to the extent that it relates to an Incremental Output Statement Charge or a scheme to which that charge relates;

“Charter Service”

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

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

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

“Child Price”

means, in relation to any Fare, the amount charged or chargeable to a person under the age of 16 in respect of such Fare;

“CIM Activation Date”

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

“CIM Deactivation”

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

“CIM Notification Date”

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

“CIM NRPS Performance Sum”

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

"CIM Performance Sum"	has the meaning given to it in paragraph 1.1 of Schedule 6.3A (<i>Contractual Incentive Mitigations</i>);
"CIM Period"	has the meaning given to it in paragraph 1.1 of Schedule 6.3A (<i>Contractual Incentive Mitigations</i>);
"Closed Scheme Employees"	has the meaning given to it in paragraph 3.2 of Schedule 16 (Pensions);
"Closure"	means a discontinuance or closure under Part 4 of the Railways Act 2005 of any of the Passenger Services or of any network on which the Passenger Services may be operated or of any of the Stations or of any part of such network or Station;
"CMA"	has the meaning given to it in clause 15.1(a) (Competition);
"Code of Practice"	means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time (with the approval of the Disabled Persons Transport Advisory Committee) and published by the Secretary of State pursuant to section 71B of the Act and which is available at https://www.gov.uk/government/publications/accessible-railway-stations-design-standards (or such other applicable web address that is adopted by the Secretary of State from time to time);
"Collaboration Agreement"	means the statement agreed among the Franchisee, the Secretary of State and HS2 Limited, setting out the manner in which the parties thereto will collaborate for, among other reasons, delivery of responsibilities under this Agreement;
"Collaboration Agreement Change"	means a "Change" as defined in and for the purposes of the Collaboration Agreement;
"Collateral Agreement"	means an agreement which is required to be entered into by the Franchisee with Network Rail, HS2 Limited or any other franchisee as a condition to any Access Agreement of which the Franchisee is the beneficiary;
"Combined Ticket"	has the meaning given to it in paragraph 3.1 of Schedule 5.8A (Fares Regulation Information and Monitoring);
"Combined Ticket Notification"	has the meaning given to it in paragraph 3.2 of Schedule 5.8A (Fares Regulation Information and Monitoring);
"Commercial Return"	means where the CCI Scheme Revenue equals or exceeds the aggregate of the CCI Scheme Costs and the CCI Scheme Margin;

"Commitment"	has the meaning given to it in clause 15.1(b) (Competition);
"Committed Obligations" or "COs"	means any of the Franchisee's obligations listed in Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligations) or any other obligation of the Franchisee expressed as a Committed Obligation under the Franchise Agreement;
"Community Rail Partnership"	means any not for profit organisation of the same name that has an interest in the development of responsive and good quality railway passenger services;
"Community Rail Report"	has the meaning given to it in paragraph 2.6 of Schedule 13.1 (Rail Industry Initiatives and Co-operation);
"Community Rail Route"	means any Route in respect of which the Secretary of State determines that any relevant Community Rail Partnership has an interest;
"Community Rail Strategy"	means the Community Rail Development Strategy (as may be updated from time to time) published in November 2004 and which provides a broad framework within which rural community routes can be put on an improved financial footing;
"Commuter Fare"	means any: <ul style="list-style-type: none">(a) Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket (and their equivalent ITSO products) between each London Station and any other such station or other Suburban Station; and(b) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) between each London Station; and(c) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) from each Suburban Station to each London Station (but not in the other direction); and(d) PAYG Peak Fare or PAYG Off-Peak Fare (and their equivalent ITSO products) between each London Station and any other such station (and the CPAY equivalent fares), for which the Franchisee is entitled to be allocated all or part of the revenue therefrom pursuant to the Ticketing and Settlement Agreement;

"Commuter Fares Basket"	means the grouping of Commuter Fares: (a) determined by the Secretary of State pursuant to Schedule 5.3A (Allocation of Fares to Fares Baskets); (b) for the purposes of regulating aggregate Prices, as the case may be, in accordance with Schedule 5.4A (Regulation of Fares Basket Values); (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7A (Changes to Fares and Fares Regulation); and (d) set out in the Commuter Fares Document;
"Commuter Fares Document" or "CFD"	means the document in the agreed terms marked CFD as the same may be amended from time to time in accordance with Schedule 5.7A (Changes to Fares and Fares Regulation);
"COMPASS"	has the meaning given to it in paragraph 5.1 of Part 3 of Schedule 6.1A (Franchise Specific Obligations);
"Competition Authority"	has the meaning given to it in clause 15.1(c) (Competition);
"Competition Event"	has the meaning given to it in clause 15.1(d) (Competition);
"Competition Event Notice"	has the meaning given to it in clause 15.5 (Competition);
"Compulsory Inter-available Flow"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Computer System"	means computer hardware and computer software, including licensed third party software and data protocols;
"Conditions Precedent Agreement"	means the agreement between the Secretary of State and the Franchisee of even date herewith specifying certain conditions to be satisfied or waived by the Secretary of State prior to the issue of a Certificate of Commencement;
"Confidential Information"	has the meaning given to it in paragraph 1 of Schedule 17 (Confidentiality and Freedom of Information);
"Connection"	means a connection (however described) between any of the Passenger Services provided by the Franchisee and any other railway passenger service provided by the Franchisee or any other Train Operator or any bus,

ferry or shipping service and cognate phrases shall be construed accordingly;

"Connection Agreement" means any agreement entered into by the Franchisee and Network Rail on or before the Start Date relating to the connection of a Depot to the relevant part of the network;

"Contingency Plan" has the meaning given to it in paragraph 1(a)(iv) of Schedule 10.3 (Force Majeure and Business Continuity);

"Continuation Document" means any franchise agreement, direct award, interim franchise agreement or other arrangement pursuant to which the Franchisee is required to provide services for the carriage of passengers by railway which is entered into by the Franchisee in respect of some or all of the same Passenger Services by way of direct or indirect continuation of the arrangement currently in place under the Franchise Agreement;

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

"Contractual Incentive Mitigations" means the additional and amended obligations imposed upon the Franchisee pursuant to the operation of Schedule 6.3A (Contractual Incentive Mitigations);

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

- (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of:
 - (i) A;
 - (ii) any person who has equivalent rights over A; or
 - (iii) any person who A has equivalent rights over;
- (b) has the power to direct the affairs and policies of:
 - (i) A;
 - (ii) any person who has equivalent rights over A; or

- (iii) any person who A has equivalent rights over;
- (c) is the parent undertaking of A or of any other person which is the parent undertaking of such person by virtue of section 1162(5) of the Companies Act 2006; or
- (d) possesses or is, or will be at a future date, entitled to acquire:
 - (i) twenty-five per cent (25%) or more of the share capital or issued share capital of, or of the voting power in;
 - (A) A;
 - (B) any person who has equivalent rights over A; or
 - (C) any person who A has equivalent rights over;
 - (ii) such part of the issued share capital of:
 - (A) A;
 - (B) any person who has equivalent rights over A; or
 - (C) any person who A has equivalent rights over,
as a result of which he or she would, if the whole of the income of such persons were distributed, be entitled to receive twenty-five per cent (25%) or more of the amount so distributed; or
 - (iii) such rights as would, in the event of the winding-up or other analogous event in respect of:
 - (A) A;
 - (B) any person who has equivalent rights over A; or
 - (C) any person who A has equivalent rights over,
entitle him or her to receive twenty-five per cent (25%) or more of the assets of such person which would then be available for distribution,

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

"Controlled Emission Toilet" or "CET"

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

"Conventional Rail Network"	means the network in respect of which Network Rail is the Facility Owner and which is situated in England, Wales and Scotland;
"Conventional Rail Network (High Speed Services)"	means those parts of the Conventional Rail Network over which High Speed Services are intended to operate, as the same are to be set out in the High Speed Rolling Stock MSA;
"Conventional Rolling Stock"	means any rolling stock intended to be used by the Franchisee during the Integrated Operator Term excluding the High Speed Rolling Stock;
"Conventional Rolling Stock and Depot Strategy"	means a strategy for the proposed use and deployment of the Conventional Rolling Stock following the High Speed Start Date, to be developed and presented by the Franchisee pursuant to paragraph 37 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Conventional Services"	means the Passenger Services on and after the Integrated Operator Start Date, excluding the High Speed Services;
"Conventional Station Charge Adjustment"	means any adjustment to payments under an Access Agreement in relation to the Conventional Rail Network determined in accordance with paragraph 2 of Schedule 8.3A (Track Access Adjustments and Station Charge Adjustments);
"Core Amount"	has the meaning given to it in Appendix 2 to Schedule 7.2A (Customer Experience and Engagement);
"Cost Baseline"	means the cost budget (expressed in nominal prices) for the delivery of the Accepted Programme generated by the Accepted Programme Financial Model as agreed or determined in accordance with Schedule 18.1 (Shadow Operations) and as updated from time to time in accordance with Schedule 18.4 (Shadow Operator Annual Review) and/or Schedule 9.1B (Financial and Other Consequences of Change) and Placed in Escrow;
"Count Equipment"	means any load-weigh, infrared, CCTV or other type of equipment as may from time to time be installed on any train in the Train Fleet for the purposes of (amongst other things) passenger counting, including that specified in paragraph 3 of Schedule 1.5A (Information about Passengers);
"CPAY"	means an arrangement operated by TfL under which contactless payment cards can be used by passengers to obtain access to the public transport services in London without the requirement for purchase of a separate ticket or permission to travel;

"CPAY Agreement"	means an agreement dated 30 July 2014 between Transport Trading Limited and train operators operating in London relating to the acceptance of certain contactless payment cards for "pay as you go" journeys in London;
"Creating"	has the meaning given to it in the Ticketing and Settlement Agreement, cognate expressions and references to "Create" shall be construed accordingly;
"Critical Friend"	means the Franchisee acting in its capacity as future operator of the High Speed Services, providing advice to HS2 Limited on the delivery of the HS2 Project where it considers the overall operational outcomes and customer experience could be improved, in accordance with the Franchisee's obligations set out in paragraph 24 of Schedule 18.2 (Accepted Programme Specific Requirements);
"CRM Data"	means Personal Data (including any or all of name, address, e-mail address and ticket purchasing history, credit and debit card details) collected by or on behalf of the Franchisee relating to: (a) persons travelling on or purchasing tickets for travel on the Passenger Services or other services for the carriage of passengers by railway; or (b) the use of any mobile data service by the persons referred to in limb (a) above;
"CRM Data Processor"	means any Data Processor who, from time to time, is processing or has processed CRM Data on behalf of the Franchisee;
"CRM Obligations"	has the meaning given to it in paragraph 4.4 of Schedule 1.5 (Information about Passengers);
"CRM System"	means any system (whether a Computer System or otherwise) for the collection of CRM Data and/or onto which CRM Data is input, processed and/or held as such system may be amended or altered from time to time;
"Crossrail 2"	means the proposed new south west to north east cross London railway line including a new tunnel between Tottenham and Wimbledon;
"CRP Amount"	means the sum of one hundred and ninety thousand pounds (£190,000) (indexed by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments)) per Franchisee Year (reduced pro-rata in respect of any Franchisee

Year of less than three hundred and sixty five (365) days);

"CRP Project Sum"	means the sum of one hundred and ninety thousand pounds (£190,000) (indexed by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments)) per Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than three hundred and sixty five (365) days);
"Current Franchisee Year"	has the meaning given to it in paragraph 2.1 (Additional Compensation or Settlement Payments) of Schedule 8.2A (Profit Share Mechanism);
"Customer and Stakeholder Engagement Strategy" or "CSES"	means the Customer and Stakeholder Engagement Strategy in the agreed terms marked CSES and any replacement Customer and Stakeholder Engagement Strategy revised in accordance with paragraph 9.3 of Schedule 7.2A (Customer Experience and Engagement);
"Customer Report"	means a report in the format and providing the information specified in the Customer and Stakeholder Engagement Strategy published in accordance with paragraph 10.1 of Schedule 7.2A (Customer Experience and Engagement);
"Customer Service Quality Inspection"	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
"Cyber Information Sharing Platform"	means the government and industry partnership operated by the National Cyber Security Centre to facilitate the sharing of information and intelligence in relation to cyber security threats;
"Cyber Security Information Sharing Strategy" or "CSISS"	means the strategy created by the Franchisee pursuant to paragraph 21 of Schedule 6.1A (Franchise Specific Obligations) which contains (as a minimum) the information set out in paragraph 21 of Part 2 of Schedule 6.1A and which is required to be updated in accordance with paragraph 21.5 of Schedule 6.1A and paragraph 9.2 of Schedule 6.1B;
"Data Controller"	has the same meaning as in the Data Protection Act;
"Data Processor"	has the same meaning as in the Data Protection Act;
"Data Protection Act"	means the Data Protection Act 1998 and any guidance issued from time to time by the Information Commissioner's Office or a relevant Central Government Body in relation to the Data Protection Act 1998;

"Data Site Information"	has the meaning given to it in paragraph 3.1 of Schedule 15.1 (Reletting Provisions);
"Data Site Monitor and Index" or "DSMI"	has the meaning given to it in paragraph 3.1 of Schedule 15.1 (Reletting Provisions);
"Data Subject"	has the same meaning as in the Data Protection Act;
"Dataset"	means the data specified in Appendix 1 (Environmental Information) to Schedule 11.2 (Management Information) as the same may be amended from time to time by the Secretary of State (acting reasonably);
"Default Performance Level"	means, in relation to a Benchmark for any Reporting Period, (a) during the ICWC Term, the number set out in the relevant Column of the Cancellation Benchmark Table or the TOC Minute Delay Benchmark Table to Schedule 7.1A (<i>Operational Performance</i>) and in the row of that table for that Reporting Period; and (b) during the Integrated Operator Term, the number set out in the relevant column of the tables set out in Schedule 7B as agreed or determined in accordance with paragraph 9 of Schedule 18.1 (Shadow Operations);
"Delayed Cascade Mitigation Plan"	has the meaning given to it in paragraph 3.9 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"Department"	means the government department in respect of which the Secretary of State is the secretary of state;
"Departure Station"	has the meaning given to it in paragraph 2.2 of Appendix 2 (Accessible Transport Arrangements) to Schedule 4 (Accessibility and Inclusivity);
"Depot"	means a depot in respect of which the Franchisee has entered into a Depot Lease;
"Depot Access Conditions"	has the meaning given to it in the relevant Access Agreement to which it relates;
"Depot and Stabling Strategy"	means the depot and stabling strategy prepared by HS2 Limited in respect of the High Speed Rolling Stock as updated from time to time;
"Depot Lease" or "DL"	means: (a) any lease of a depot to which the Franchisee is a party as at the Start Date; and

(b) any other lease of a depot in relation to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;

"Depot Proposal for Change"

has the meaning given to the term "Proposal for Change" under the Depot Access Conditions or any proposal or arrangement which, in the reasonable opinion of the Secretary of State, has a similar effect;

"Depot Relocation Option"

means the option included in the High Speed Rolling Stock TSA for the potential relocation of maintenance services in respect of the High Speed Rolling Stock from the Home Depot to an alternative maintenance facility;

"Derivative Output"

means Intellectual Property Rights that are derived from or generated by the RPC Database or the Preliminary Database when querying such database (which includes, but is not limited to, the format of all reports and analysis);

"Designated CO Primary Franchise Assets"

has the meaning given to it in paragraph 9.1 of Part 2 (Special Terms) to Schedule 6.2 (Committed Obligations);

"Designated Employer"

has the meaning given to it in the Pension Trust;

"Destination Station"

has the meaning given to it in paragraph 2.2 of Appendix 2 (Accessible Transport Arrangements) to Schedule 4 (Accessibility and Inclusivity);

"Development Agreement"

means the development agreement dated 8 December 2014 between HS2 Limited and the Secretary of State as amended or replaced from time to time;

"Digital Railway"

means a range of digital technologies, including signalling and train control technology, designed to increase capacity, reduce delays and enhance the safety of the GB Railway;

"Digital Railway Account"

means an account with an institution with a Relevant Credit Rating, in the name of the Franchisee and charged in favour of the Secretary of State, as more particularly defined in the Digital Railway Account Charge;

"Digital Railway Account Balance"

means the total of all amounts (including interest) credited to the Digital Railway Account (or, if higher, the total of all amounts (including interest) which the Secretary of State (acting reasonably) determines would have been credited to the Digital Railway Account had the Franchisee complied with its obligations under this Franchise Agreement) minus:

- (a) the total of all withdrawals permitted pursuant to the provisions of paragraph 3.1 of Schedule 18.5 (Shadow Operator Payments); and
- (b) the amount of any payment requested by the Secretary of State pursuant to paragraph 24.3 or 24.4 of Schedule 6.1A (Franchise Specific Obligations) or paragraph 13.2 or 13.3 of Schedule 6.1B (Franchise Specific Obligations);

“Digital Railway Account Charge”

means the charge granted by the Franchisee in favour of the Secretary of State in respect of the Digital Railway Account and in the agreed terms marked **DAC**;

“Digital Railway Assets”

means any asset (including any property, right or liability) procured by the Franchisee for the purpose of deploying any Digital Railway Option that the Franchisee is required by the terms of the Franchise Agreement to deploy;

“Digital Railway Business Case”

has the meaning given to it in paragraph 55.1 of Schedule 18.2 (Shadow Operator Accepted Programme);

“Digital Railway Business Option”

means any option for the deployment of Digital Rail which is included in the Digital Railway Business Case;

“Digital Railway Adjustment” or “DR_{ADJ}”

means for any Reporting Period the amount (if any) determined in accordance with the provisions of Appendix 1 (Shadow Operator Cost Reimbursement) to Schedule 18.5 (Shadow Operator Payments);

“Direct Agreement”

means any agreement made, or to be made, from time to time between the Secretary of State and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Secretary of State under Schedule 14.3 (Key Contracts);

“Disabled People’s Protection Policy”

means the Franchisee’s policy for the protection of persons with disabilities which the Franchisee is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations;

“Disabled Person”

is a reference to a person who has a disability as defined in the EA;

“Disabled Persons Transport Advisory Committee” or “DPTAC”

means the committee with that name established under section 125 of the Transport Act 1985 and its statutory successors;

"Discount Card"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Discount Fare Scheme"	has the meaning given to it in paragraph 3 of Appendix 1 (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes);
"Dispute Resolution Rules"	means the procedures for the resolution of disputes known as "The Railway Industry Dispute Resolution Rules" , as amended from time to time in accordance with the terms thereof. The rules are available at http://accessdisputesrail.org/RIDR/RIDR_Rules.pdf (or such other applicable web address that is adopted from time to time);
"Disputed Cancellation"	means a Passenger Service: (a) which is included in the Enforcement Plan of the Day and which is cancelled; or (b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day), in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Franchisee pursuant to the Network Rail Track Access Agreement;
"Disputed Partial Cancellation"	means a Passenger Service which is included in the Enforcement Plan of the Day and which: (a) misses a stop; or (b) completes fifty per cent (50%) or more, but less than one hundred per cent (100%) of its scheduled mileage as prescribed in the Enforcement Plan of the Day, in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Franchisee pursuant to the Network Rail Track Access Agreement;
"DOTAS"	has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);
"Draft Marketing Plan"	has the meaning given to it in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);

"Draft Passenger Proposition"	has the meaning given to it in paragraph 49.3 of Schedule 18.2 (Accepted Programme Specific Requirements);
"EA"	means the Equality Act 2010;
"EA Claim"	has the meaning given to it in paragraph 3.1 of Schedule 4 (Accessibility and Inclusivity);
"EA Requirements"	means the duties of a provider of services under sections 20(3), 20(5) and sections 20(9)(a) and 20(9)(b) in relation to section 20(4), of the EA;
"Earliest Readiness Review Date"	means 1 June 2024;
"EEA state"	has the meaning given to it in clause 14.9 (Non-Discrimination);
"Efficient Operator"	means a skilled and experienced Train Operator, appointed by the Secretary of State as franchisee of a franchise of a type, size and complexity similar to the Franchise under a franchise agreement in terms similar to the Franchise Agreement, which complies with its obligations under such agreement 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 under the same or similar circumstances;
"Emergency Events"	has the meaning given to it in paragraph 1(e) of Schedule 10.3 (Force Majeure and Business Continuity);
"EMV"	has the meaning given to it in paragraph 1 of Schedule 5.9A (Smart Ticketing);
"Enforcement Plan of the Day"	means the Plan of the Day except for any: <ul style="list-style-type: none">(a) additions to such Plan of the Day of any railway passenger services which are not included in the Timetable;(b) omissions from such Plan of the Day of any Passenger Services included in the Timetable; and/or(c) rescheduling in such Plan of the Day of any Passenger Services from their scheduling in the Timetable, in each case: <ul style="list-style-type: none">(i) as proposed by the Franchisee in breach of its obligations in paragraph 4 of

Schedule 1.2 (Operating Obligations);
or

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

“Environmental Data Collection Plan”	has the meaning given to it in paragraph 15.1(a)(iii) of Schedule 11.2 (Management Information);
“Environmental Impact Monitoring Audit”	has the meaning given to it in paragraph 15.2(b) of Schedule 11.2 (Management Information);
“Environmental Impact Monitoring Report”	has the meaning given to it in paragraph 15.2(a) of Schedule 11.2 (Management Information);
“Environmental Impact Targets”	has the meaning given to it in paragraph 16.1 of Schedule 11.2 (Management Information);
“Environmental Impact Targets Plan”	has the meaning given to it in paragraph 16.2(c) of Schedule 11.2 (Management Information);
“Environmental Information Plan”	has the meaning given to it in paragraph 47.4 of Schedule 18.2 (Accepted Programme Specific Requirements);
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Regulations;
“Equivalent Fare”	has the meaning given to it in paragraph 6.1 of Schedule 5.7A (Changes to Fares and Fares Regulation);
“Equivalent Flow”	has the meaning given to it in paragraph 6.1(b) of Schedule 5.7A (Changes to Fares and Fares Regulation);
“ERTMS”	means the European Rail Traffic Management System;
“ERTMS Programme”	means the Network Rail cross rail industry programme for delivering the national implementation of ERTMS;
“Escrow Documents”	means (as the case may be): <ul style="list-style-type: none"> (a) the ICWC escrow documents and other items referred to in paragraph 1.1 of Schedule 9.2A (Identity of the ICWC Financial Model (Escrow Documents));

- (b) the Shadow Operator Escrow Documents;
and/or
- (c) the IOC Escrow Documents;

**“Established
Integrated Services
TSR”**

means the Train Service Requirement which requires the operation of High Speed Services over HS2 Phase One and HS2 Phase 2a and which is intended to be applicable from the High Speed Established Services Date to the Expiry Date, as developed by the Secretary of State and provided to the Franchisee in accordance with paragraph 42.1 of Schedule 18.2 (Accepted Programme Specific Requirements);

**“Established
Integrated Services
Timetable”**

means the timetable intended to be applicable from the High Speed Established Services Date to the Expiry Date, which reflects the working timetable issued by Network Rail at the conclusion of the relevant timetable development process (as set out in paragraphs 8 to 15 of Schedule 18.3 (Transitional Programme Specific Requirements)), containing the departure and arrival times of:

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

**“Estimated Profit
Stream”**

means estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to clause 8 (Change of Control and Facilitation Fee)) is to occur until 01 April 2026 as reasonably determined by the Secretary of State. In reasonably determining the Estimated Profit Stream the Secretary of State shall:

- (a) take into account all relevant circumstances and have due regard to the ICWC Financial Model, the profit and loss forecast in the Initial Business Plan and the most recent Annual Business Plan and the assumptions in the ICWC Record of Assumptions;
- (b) use the accounting policies and standards set out in the ICWC Record of Assumptions and applied through the ICWC Financial Model;
- (c) estimate profit:
 - (i) before taking into account:
 - (A) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits)

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

point five per cent] ([3.5]%) per annum (in real terms))³⁷;

"Estimated Revisions"	has:
	(a) in relation to any ICWC Change, the meaning given to it in paragraph 10.3 of Schedule 9.1A (Financial and Other Consequences of Change);
	(b) in relation to any IOC Change or Shadow Operator Change, the meaning given to it in paragraph 5.3 of Schedule 9.1B (Financial and Other Consequences of Change);
"ETCS"	has the meaning given to it in paragraph 5.1 of Part 3 of Schedule 6.1A (Franchise Specific Obligations);
"ETCS Decision Date"	means [◆]; ³⁸
"ETCS Fitment"	means the fitment of ETCS systems which meet the ETCS Guidance to all rolling stock vehicles forming the Train Fleet;
"ETCS Fitment Plan"	means the plan set out in Appendix 1 to Schedule 6.1A;
"ETCS Guidance"	means the most recent industry guidance and/or specification for ETCS as published by RSSB from time to time and/or such other guidance as the Secretary of State may reasonably specify from time to time;
"EU Merger Regulation"	has the meaning given to it in clause 15.2 (a) (Competition);
"Evening Peak"	means, in relation to any Passenger Service, the period between 1600 and 1859 (inclusive) during a Weekday or such other continuous three hour period between 1200 and 2359 (inclusive) as the Secretary of State may specify from time to time;
"Evening Peak Service"	means a Passenger Service which departs from origin in the Evening Peak;
"Event of Default"	means any of the events set out in paragraph 1 (Definition of Events of Default) of Schedule 10.2 (Events of Default and Termination Events);

37 **Note to Bidders:** To be confirmed at the signature date of the Franchise Agreement by the DfT.
38 **Note to Bidders:** Bidders to populate with the date before the day on which any costs relating to the ETCS Fitment would have to be incurred and/or committed in order to ensure that ETCS Fitment was complete by no later than 1 April 2025.

- “Excluded Data”** has the meaning given to it in paragraph 15.1(a) of Schedule 11.2 (Management Information);
- “Existing Expenditure”** has the meaning given to it in paragraph 6.2(a) of Schedule 7.2A (Customer Experience and Engagement);
- “Expiry Date”** means the later of:
- (a) 01:59 on 1 April 2031; or
 - (b) any such later date that is specified by the Secretary of State pursuant to clause 5.3 (Amendment of Start Date/Expiry Date); or
 - (c) any such later date to which the Franchise Agreement is continued in accordance with clause 5.2 (Duration of the Franchise Agreement);
- “Facilitation Fee”** has the meaning given to it in clause 8.4 (Change of Control and Facilitation Fee);
- “Facility Owner”** has the meaning given to the term facility owner in section 17(6) of the Act;
- “Fare”** means:
- (a) the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person; and
 - (b) for the purposes only of Schedule 5.3A (Allocation of Fares to Fares Baskets) to Schedule 5.8A (Fares Regulation Information and Monitoring) (inclusive) and the definitions of Commuter Fare, Protected Fare, Return Fare, Single Fare, Protected Weekly Season Ticket, Protected Return Fare and paragraph (b) of the definition of Season Ticket Fare, a Fare as defined under paragraph (a) that is:
 - (i) valid for a journey or journeys on the Passenger Services included in the Timetable or other railway passenger services which are required to be included in another relevant Train

Operator's passenger timetable by the Secretary of State;

- (ii) sold under the Travelcard Agreement; or
- (iii) a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement); or
- (iv) sold under the Pay As You Go Agreement utilising TTL smart media as defined in such agreement;

"Fare Year"	means the period from 1 January in any year to 31 December in the same year;
"Fares Basket"	means either the Commuter Fares Basket or the Protected Fares Basket;
"Fares Delivery Plan"	has the meaning given to it in paragraph 51.3 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Fares Document"	means any of the Commuter Fares Document or the Protected Fares Document;
"Fares Options Analysis"	has the meaning given to it in paragraph 51.1 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Fares Setting Round"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Final Franchisee Year"	means the Franchisee Year ending on the last day of the Franchise Period;
"Final HS2 Output Report"	means any written report developed from the applicable HS2 Output or HS2 Output Report and produced in accordance with paragraph 5.3 of Schedule 18.2 (Accepted Programme Specific Requirements) and submitted by the Franchisee to the Secretary of State;
"Final ICWC Franchisee Year"	means the Franchisee Year ending on the last day of the ICWC Period;
"Final Output Report"	means any written report produced in accordance with paragraph 2 of Schedule 18.2 (Accepted Programme Specific Requirements) and submitted by the Franchisee to the Secretary of State;
"Financial Action Plan"	means any action plan produced by the Franchisee pursuant to paragraph 9.2(b)(vi) of Schedule 11.2A (Management Information), where the level of its financial performance specified in the ICWC Section of

	the Management Accounts is materially worse than forecast by the Franchisee in its current Business Plan;
"Financial Conduct Authority"	means the UK Financial Conduct Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS and with company registered number 01920623 or such other regulatory body which may succeed or replace it from time to time;
"Financial Formats" or "FF"	means the Franchisee's financial formats in the agreed terms marked FF ;
"Financial Ratios"	means the financial ratios specified in paragraph 2 of Schedule 12 (Financial Covenants and Bonds);
"First Additional Expenditure Year"	has the meaning given to it in paragraph 6.2 (a) of Schedule 7.2A (Customer Experience and Engagement);
"First Extension Period"	has the meaning given to it in clause 5.2(a);
"First FRM Franchisee Year"	has the meaning given to it in paragraph 2.1 of Schedule 8.6A (Forecast Revenue Mechanism);
"First IOC Year"	means the period commencing on the Integrated Operator Start Date and ending at the start of the next Franchisee Year;
"First Profit Share Threshold" or "FPST"	has the meaning given to it in paragraph 1.1 of Schedule 8.2A (Profit Share Mechanism);
"Fixed or Non-Current Asset"	means any asset which is a fixed or non-current asset in accordance with GAAP;
"Flow"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Force Majeure Event"	means any of the events described as such in paragraph 1 of Schedule 10.3 (Force Majeure and Business Continuity) where the conditions specified in paragraph 2 of Schedule 10.3 (Force Majeure and Business Continuity) are satisfied;
"Forecast IOC Revenue"	means in respect of the First IOC Year, the forecast (expressed in nominal prices) of Actual IOC Revenue as agreed or determined pursuant to the provisions of paragraph 10 of Schedule 18.1 (Shadow Operations) and in respect of each subsequent Franchisee Year, the forecast of Actual IOC Revenue (expressed in nominal prices) as agreed or determined pursuant to the provisions of paragraph 3 of Schedule 8.1B (Franchise Payments);

"Forecast Modified Revenue"	means, in relation to any Reporting Period, the items specified in the definition of Modified Revenue, as most recently forecast for that Reporting Period pursuant to paragraph 9.2 of Schedule 11.2A (Management Information);
"Forecast Operating Costs"	means, in relation to any Reporting Period, the items specified in the definition of Actual Operating Costs, as most recently forecast for that Reporting Period pursuant to paragraph 9.2 of Schedule 11.2 (Management Information) adjusted for any movement in creditors arising from deemed PCS Facility borrowing pursuant to clauses 18.2 and 18.3 of the Funding Deed;
"Forecast Passenger Demand"	<p>means the forecast prepared by the Franchisee pursuant to paragraph 12.2 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services and Service Development) in respect of:</p> <ul style="list-style-type: none">(a) the number of passengers travelling in each class of accommodation:<ul style="list-style-type: none">(i) on each Passenger Service;(ii) on each Route; and/or(iii) at any station or between any stations; and(b) the times of day, week or year at which passengers travel, <p>for the period in respect of which the next Timetable is to apply;</p>
"Franchise"	<p>means the rights tendered by the Secretary of State in the Invitation to Tender to:</p> <ul style="list-style-type: none">(a) operate railway passenger services over the Routes prescribed in paragraph 6.1 of Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development);(b) provide the Shadow Operator Services in accordance with Schedule 18 (Shadow Operator);
"Franchise Agreement"	means this Agreement and the Conditions Precedent Agreement which together constitute a single agreement and which is a "franchise agreement" for the purposes of the Act;
"Franchise Assets"	means the property, rights and liabilities designated as such pursuant to paragraph 1 of Schedule 14.4 (Designation of Franchise Assets) but excluding such

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

"Franchise Documents"

means:

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

"Franchise Employee"

means:

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

"Franchise Manager"

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

"Franchise Payment"

means:

- (a) in relation to any Reporting Period during the ICWC Period, the amount determined in

accordance with the provisions of paragraph 1.1 of Schedule 8.1A (Franchise Payments); and

- (b) in relation to any Reporting Period during the Integrated Operator Period, the amount determined in accordance with paragraph 1.1 of Schedule 8.1B (Franchise Payments);

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

“Franchise Period” means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to Clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or Schedule 10 (Remedies, Events of Default and Termination Events) or Schedule 19.1 (Readiness Review);

“Franchise Section Rules” has the meaning given to it in paragraph 4.2(a) of Schedule 16 (Pensions);

“Franchise Sections” has the meaning given to it in paragraph 2 of Schedule 16 (Pensions);

“Franchise Services” means such of the Passenger Services, the Integrated Services, the Shadow Operator Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Franchisee may provide or operate from time to time, including any of such services as the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;

“Franchise Term” means the period commencing on the Start Date and expiring on the Expiry Date;

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

“Franchisee Activation Date” has the meaning given to it in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);

“Franchisee Background Material” means any Material licensed to or created by, for or on behalf of the Franchisee (or any of the Franchisee’s subcontractors) otherwise than in anticipation of, in connection with or in the course of the performance or receipt of any of the Franchise Services which is provided to the Secretary of State in connection with the performance or receipt of the Shadow Operator Services;

- “Franchisee Material”** means the Franchisee New Material and the Franchisee Background Material;
- “Franchisee New Material”** means any Material which is created for, by or on behalf of the Secretary of State by the Franchisee (or any of the Franchisee’s subcontractors) in anticipation of, in connection with and/or in the course of the performance or receipt of any of the Shadow Operator Services and any Franchisee Background Material which is incorporated into any Franchisee New Material;
- “Franchisee Owned RV Asset”** means each of the assets listed in Column 1 of the table set out in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) which:
- (a) are not annotated in Column 4 of such table as Infrastructure Manager Fixture Assets; and
 - (b) are designated as Primary Franchise Assets in accordance with paragraph 2.1(h) of Schedule 14.4 (Designation of Franchise Assets) and paragraph 2.1(n) of Schedule 14.4B (Designation of Franchise Assets) such that they can be transferred to a Successor Operator at the applicable value specified in Column 2 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) (as such value may be amended during the Franchise Term in accordance with the provisions of paragraphs 1.4 or 2.2 of Schedule 14.6 (Residual Value Mechanism));
- “Franchisee Preferred TSS Option”** has the meaning given to it in paragraph 39.2(d) of Schedule 18.2 (Accepted Programme Specific Requirements);
- “Franchisee Testing and Commissioning Report”** has the meaning given to it in paragraph 43.2 of Schedule 18.2 (Accepted Programme Specific Requirements);
- “Franchisee Year”** means any period of twelve (12) months during the Franchise Period, beginning on 1 April and ending on 31 March, except that:
- (a) the first and last Franchisee Years may be for a period of less than twelve (12) months and the first Franchisee Year shall begin on the Start Date and the last Franchisee Year shall end on the last day of the Franchise Period;
 - (b) the last Franchisee Year in the ICWC Period may be for a period of less than twelve (12) months and shall end at 01:59 on the date of

the Integrated Operator Start Date (or the last day of the Franchise Period if earlier);

- (c) the first Franchisee Year in the Integrated Operator Period may be for a period of less than twelve (12) months and shall begin on the Integrated Operator Start Date and shall end on the next 31 March; and
- (d) for the avoidance of doubt, the last Franchisee Year in the ICWC Period and the first Franchisee Year in the Integrated Operator Period shall constitute two (2) separate Franchisee Years;

“Franchisee’s HS2 Input” has the meaning given to it in paragraph 4.1 of Schedule 18.2 (Accepted Programme Specific Requirements);

“Freedom of Information Act” means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to the Freedom of Information Act 2000;

“FRMGDP Adjustment Payment” has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);

“FRMGDP Payment” has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);

“FRMGDPREC Payment” has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);

“FRM Revenue” has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);

“FRM Revenue Report” has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);

“FRM Review Procedures” has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);

“Functional Aspect” means all of the following:

- (a) Passenger Proposition Aspects;
- (b) Rolling Stock Functional Aspects;

“Functional Requirement Acceptance Criteria” has the meaning given to it in paragraph 7.1(d) of Schedule 18.2 (Accepted Programme Specific Requirements);

“Functional Requirement Asset” means any asset (including any property, right or liability) relating to any Functional Requirement or Functional Requirements;

"Functional Requirements"	means the functionality and the capability, notified to the Secretary of State in accordance with paragraph 6.2 of Schedule 18.2 (Accepted Programme Specific Requirements) or determined by the Secretary of State in accordance with paragraph 6.3 of Schedule 18.2 (Accepted Programme Specific Requirements), which the Franchisee requires that HS2 Limited will procure for each separate Functional Aspect, including the acceptance methodology and rationale;
"Funding Deed"	means the deed made between the Secretary of State, the Franchisee and the Guarantor dated on or about the date of the Franchise Agreement specifying arrangements relating to the funding for the Franchisee by the Guarantor and giving rights to the Secretary of State in relation to such funding;
"FXD"	has the meaning given to such term in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments);
"GAAP"	means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, 'Financial Reporting Standards 100, 101 and 102', abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Conduct Authority, in each case, as amended from time to time;
"GB Railway"	means the entire rail transport system which operates across the HS2 Network and the Conventional Rail Network, including infrastructure, rolling stock, all railway systems, operations and maintenance facilities;
"General Anti-Abuse Rule"	has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);
"Geographical Area"	means that area of Great Britain bounded by a reasonably drawn line running through the railway stations at the following places: (a) London Euston; (b) Milton Keynes; (c) Birmingham New Street; (d) Shrewsbury; (e) Crewe;

- (f) Stoke-on-Trent
- (g) Manchester Piccadilly;
- (h) Chester;
- (i) Wrexham General;
- (j) Holyhead;
- (k) Liverpool Lime Street;
- (l) Blackpool North;
- (m) Preston;
- (n) Glasgow Central; and
- (o) Edinburgh;

as redefined from time to time by agreement with the Secretary of State, or in the absence of such agreement, as determined by the Secretary of State;

“Good Industry Practice”

means all relevant practices and professional standards that would be expected of a well-managed expert service provider performing services substantially similar to the Shadow Operator Services;

“Grey Assets”

means any asset or structure on, within or close to the boundary of any Station in relation to which either the Franchisee or the Infrastructure Manager consider that clarification is needed as to whether or not such asset or structure should properly form part of a relevant Station Lease;

“Gross Revenue”

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

“Guarantor”

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

“Halifax Abuse Principles”

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

“Handover Package”

means the package which contains the information specified in Appendix 1 (Form of Handover Package) to Schedule 15.3 (Handover Package) and such other information as the Secretary of State may reasonably specify from time to time;

“High Speed Business Unit”	has the meaning given to that term in paragraph 1.2 of part 1(b) of Schedule 6.2B;
“High Speed Established Services Date”	means the date on which the Passenger Services commence operation in accordance with the Established Integrated Services TSR, as the same may have been amended by any Integrated Services TDR Amendment issued in accordance with paragraph 8.6(a) of Schedule 18.3 (Transitional Programme Specific Requirements);
“High Speed Lead Stations”	means those stations where the majority of the Passenger Services are intended to be High Speed Services as at the High Speed Established Services Date, excluding High Speed Managed Stations;
“High Speed Managed Stations”	means those stations which are intended to be managed by HS2 Limited as at the High Speed Established Services Date, including Birmingham Curzon Street, Birmingham Interchange, Old Oak Common and the high speed station at Euston;
“High Speed Operational Performance Criteria”	means the performance criteria which will apply to the operation of High Speed Services;
“High Speed Operational Performance Criteria Plan”	has the meaning given to it in paragraph 46.5 of Schedule 18.2 (Accepted Programme Specific Requirements);
“High Speed Operational Performance Regime”	means the regime of performance measurement, management and incentives for whole system performance of the HS2 Network to be developed by HS2 Limited with the collaboration of the Franchisee in accordance with paragraph 46 of Schedule 18.2 (Accepted Programme Specific Requirements);
“High Speed Operational Performance Regime Proposal”	has the meaning given to it in 46.1 of Schedule 18.2 (Accepted Programme Specific Requirements);
“High Speed Rolling Stock”	means the conventional-compatible high speed rolling stock which is to be procured by or on behalf of HS2 Limited, and manufactured and supplied by the TMM pursuant to the High Speed Rolling Stock MSA;
“High Speed Rolling Stock Acceptance”	means, in respect of any item of High Speed Rolling Stock, the provisional acceptance or (if earlier) qualified provisional acceptance (as the applicable terms may be defined in the High Speed Rolling Stock MSA) of that item of High Speed Rolling Stock, pursuant to the High Speed Rolling Stock MSA;

“High Speed Rolling Stock Contracts (Franchisee)”

means, as the case may be, either:

- (a) a High Speed Rolling Stock Lease and High Speed Rolling Stock TSA Novation; or
- (b) a High Speed Rolling Stock Train Service Provision Agreement,

and/or, in either case (as applicable), any relevant Private Finance Option Agreements or other agreements relating to the arrangements by which the High Speed Rolling Stock shall be made available to the Franchisee, as prescribed under paragraph 38.1 of Schedule 18.2 (Accepted Programme Specific Requirements) and/or 6.1 of Schedule 18.3 (Transitional Programme Specific Requirements);

“High Speed Rolling Stock Functional Requirements”

means the Functional Requirements in respect of the High Speed Rolling Stock which the Franchisee is required to provide, as set out in paragraph 27.1 of Schedule 18.2 (Accepted Programme Specific Requirements);

“High Speed Rolling Stock Functional Requirements Plan”

means the plan of dates by when the Franchisee shall provide the High Speed Rolling Stock Functional Requirements in accordance with paragraph 27.4 of Schedule 18.2 (Accepted Programme Specific Requirements);

“High Speed Rolling Stock Lease”

means any operating lease agreement in respect of the High Speed Rolling Stock which may be entered into between: (1) the Franchisee, as lessee; and (2) either HS2 Limited or (if the Private Finance Option has been exercised) the relevant Private Finance Owner, as lessor;

“High Speed Rolling Stock MSA”

means the manufacture and supply agreement to be entered into between HS2 Limited and the TMM in respect of the High Speed Rolling Stock;

“High Speed Rolling Stock Testing and Commissioning Plan”

means the plan to be prepared by HS2 Limited in respect of the testing and commissioning of the High Speed Rolling Stock on the HS2 Network and the Conventional Rail Network;

“High Speed Rolling Stock Train Service Provision Agreement”

means any train service provision agreement in respect of the High Speed Rolling Stock which may be entered into between: (1) the Franchisee; and (2) a Private Finance Owner;

“High Speed Rolling Stock TSA”

means the train services agreement to be entered into initially by HS2 Limited with the TMM, in relation to the maintenance of the High Speed Rolling Stock;

“High Speed Rolling Stock TSA Novation”	means any deed of novation in relation to the High Speed Rolling Stock TSA which the Franchisee may, in accordance with the provisions of paragraph 6.1 of Schedule 18.3 (Transitional Programme Specific Requirements), be required to enter into, and under which the Franchisee would receive a transfer of the rights and obligations of HS2 Limited under the High Speed Rolling Stock TSA;
“High Speed Services”	means the Passenger Services which use the HS2 Network for some part of their route and are operated by the High Speed Rolling Stock;
“High Speed Services Preparation Obligations”	means the obligations set out in paragraph 1.1 of Schedule 19.4 (High Speed Services Review), and “High Speed Services Preparation Obligation” means any one of them;
“High Speed Start Date”	means the date on which the Passenger Services commence operation in accordance with the Integrated Services TSR, as the same may have been amended by any Integrated Services TDR Amendment issued in accordance with paragraph 8.6(a) of Schedule 18.3 (Transitional Programme Specific Requirements);
“High Speed Stations”	means the High Speed Managed Stations and the High Speed Lead Stations;
“Home Depot”	means a new depot to be constructed at Washwood Heath in Birmingham, to be procured by HS2 Limited for the purposes of maintaining, servicing and stabling the High Speed Rolling Stock and any further or successor fleets of rolling stock operating on the HS2 Network;
“Home Depot Functional Requirements”	means the Functional Requirements in respect of the Home Depot which the Franchisee is required to provide, as set out in paragraph 29.1 of Schedule 18.2 (Accepted Programme Specific Requirements);
“Home Depot Functional Requirements Plan”	means the plan of dates by when the Franchisee shall provide HS2 Limited with the Home Depot Functional Requirements in accordance with paragraph 29.3 of Schedule 18.2 (Accepted Programme Specific Requirements);
“Hot Standby”	means any rolling stock vehicle specified in the Train Plan which: (a) is operationally ready to provide the Passenger Services in the Timetable; (b) is not already assigned to the delivery of any Passenger Service in the Timetable; and

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

“HS Lock-up Period” has the meaning given to it in paragraph 3.4 of Schedule 12B (Financial Covenants and Bonds);

“HS2 Customer Community” means the “Passenger Panel” (or equivalent panel) established under the HS2 Customer Community Contract or other arrangements put in place by the Franchisee under paragraph 49.1(b) of Schedule 18.2 (Accepted Programme Specific Requirements);

“HS2 Customer Community Contract” means the joint project agreement dated 14 March 2016 between Transport Focus and HS2 Limited relating to the HS2 “Passenger Panel”;

“HS2 Design Group” means the design group set up by HS2 Limited, as notified by the Secretary of State in writing to the Franchisee from time to time;

“HS2 Eastern Leg” means (subject to a post-consultation route decision) the connection to the HS2 Network at Marston that continues to Leeds, with new stations at Leeds and the East Midlands Hub, a spur from the HS2 Network onto the Conventional Rail Network to Sheffield Midland, and a connection onto the Conventional Rail Network at Church Fenton;

“HS2 Independent Design Panel” means the independent design panel set up by HS2 Limited, as notified by the Secretary of State in writing to the Franchisee from time to time;

“HS2 Limited” means High Speed Two (HS2) Limited, a company registered in England with registered number 06791686 whose registered office is at 2 Snowhill, Queensway, Birmingham, B4 6GA or such other entity as may be appointed infrastructure manager in relation to the HS2 Network from time to time;

“HS2 Limited TUPE Employees” means all persons employed in the performance of the Shadow Operator Services immediately before the Shadow Operator Commencement Date (whether employed by HS2 Limited or otherwise) whose contract of employment has been or is to be transferred to the Franchisee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the performance of the Shadow Operator Services in respect of whom

liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

- “HS2 Limited Material”** means any Material licensed to or created by, for or on behalf of HS2 Limited which is provided (including where such Material is provided by the Secretary of State to the Franchisee on HS2 Limited’s behalf) to the Franchisee in connection with the performance or receipt of the Shadow Operator Services;
- “HS2 Network”** means the network in respect of which HS2 Limited is the Facility Owner;
- “HS2 Network Testing and Commissioning Requirements”** means HS2 Limited’s testing and commissioning requirements for the Franchisee;
- “HS2 Operational Concept”** means the blueprint of how the HS2 Network is to be configured, operated and maintained, designed by HS2 Limited to be formed from a series of sub-concepts covering specific areas that, combined, are intended to deliver the operational railway;
- “HS2 Output”** has the meaning given to it in paragraph 4.1 of Schedule 18.2 (Accepted Programme Specific Requirements);
- “HS2 Output Report”** has the meaning given to it in paragraph 4.5 of Schedule 18.2 (Accepted Programme Specific Requirements);
- “HS2 Phase 2a”** means the phase of the HS2 Project in respect of the HS2 Network which provides high speed rail provision between (a) Phase One, from a point near Fradley Wood in Staffordshire, and (b) a junction with the Conventional Rail Network near Crewe in Cheshire;
- “HS2 Phase 2b”** means the phase of the HS2 Project comprising the HS2 Western Leg and the HS2 Eastern Leg;
- “HS2 Phase One”** has the meaning given to it in the High Speed Rail (London to West Midlands) Act 2017;
- “HS2 Phase One Environmental Minimum Requirements”** means the requirements listed at <https://www.gov.uk/government/publications/environmental-minimum-requirements> or such other requirements as may be notified to the Franchisee by the Secretary of State from time to time;
- “HS2 Phase One Undertakings and Assurances Register”** means the register located at <https://www.gov.uk/government/publications/high-speed-rail-london-west-midlands-bill-register-of-undertakings-and-assurances> or such other register as

may be notified to the Franchisee by the Secretary of State from time to time;

“HS2 Plans”

means any of the following as notified by the Secretary of State to the Franchisee:

- (a) a plan;
- (b) a programme plan; or
- (c) one or more other documents,

prepared by HS2 Limited:

- (i) in its role as infrastructure manager of the HS2 Network;
- (ii) in relation to the design and construction of the HS2 Project;
- (iii) in relation to the proposed operation of High Speed Services on the Conventional Rail Network, including but not limited to On Network Works to facilitate such operation;
- (iv) in its role as the procurer of High Speed Rolling Stock;
- (v) in its role as Systems Integrator;
- (vi) in its role as the provider of the depots for the High Speed Rolling Stock; or
- (vii) in relation to the identification of stabling for the High Speed Rolling Stock;

“HS2 Project”

means the project for the construction and development of a high speed railway from London to Birmingham, Manchester and Leeds known as “HS2” or “High Speed 2” and all related infrastructure works including but not limited to enabling works at London Euston Station;

“HS2 Recommended Option”

has the meaning given to it in paragraph 4.6(a) of Schedule 18.2 (Accepted Programme Specific Requirements);

“HS2 Security Plan”

means the security plan setting out operational security standards for the HS2 Network to be prepared by HS2 Limited with the collaboration of the Franchisee in accordance with paragraph 44.3 of Schedule 18.2 (Accepted Programme Specific Requirements);

"HS2 Strategic Goals"	means the set of goals and objectives for the HS2 Project as set out in Annex 8 (Strategic Goals and Objectives) of the Development Agreement;
"HS2 Systems"	means: <ul style="list-style-type: none">(a) track;(b) overhead electrification;(c) high voltage distribution and traction power substations;(d) tunnel mechanical and electrical systems;(e) tunnel ventilation systems;(f) lineside mechanical and electrical systems;(g) communications (safety-critical, operational, and passenger) systems;(h) command, control, and signalling systems; and/or(i) railway traffic management systems, each as procured (or intended to be procured) by or on behalf of HS2 Limited for use on the HS2 Network;
"HS2 Testing and Commissioning Plan"	means HS2 Limited's testing and commissioning plans for the HS2 Network and Conventional Rail Network which will include the HS2 Network Testing and Commissioning Requirements;
"HS2 Track Access Agreement"	means each Access Agreement between HS2 Limited and the Franchisee which permits the Franchisee to provide the Passenger Services on the HS2 Network;
"HS2 Western Leg"	means (subject to a post-consultation route decision) the connection to the HS2 Network south of Crewe which continues to Manchester with new stations at Manchester Piccadilly and Manchester Airport and a connection to the Conventional Rail Network at Golborne;
"ICWC Annual Review"	means an annual review carried out (or to be carried out) in accordance with Schedule 11.3A (ICWC Annual Review);
"ICWC Annual Review Checklist"	means, in respect of an ICWC Annual Review, a checklist in the form set out in Appendix 1 to Schedule 11.3A (ICWC Annual Review), or in such other form as the Secretary of State may reasonably determine, completed (or, as the case may be, to be completed)

by the Franchisee in accordance with paragraph 3.5 of Schedule 11.3A (ICWC Annual Review);

"ICWC Annual Review Meeting"

means, in respect of each ICWC Annual Review, a meeting or meetings held between the Parties to discuss the behaviours of the Franchisee, as measured by the ICWC Criterion in the relevant ICWC Measurement Period;

"ICWC Annual Review Scorecard"

means, in respect of an ICWC Annual Review, a scorecard completed (or, as the case may be, to be completed) by the Secretary of State in accordance with paragraph 5.1 of Schedule 11.3A (ICWC Annual Review);

"ICWC Change"

means if and whenever any Change Event occurs during the period up to and including the ICWC Expiry Date with the exception of:

- (a) any Shadow Operator Change; and
- (b) any IOC Confirmed Obligations Change;

"ICWC Criterion"

means each of the criteria set out in Part B of Appendix 2 of Schedule 11.3A (ICWC Annual Review), in respect of which the Franchisee's behaviours shall be measured at each ICWC Annual Review and for which a score shall be awarded in each ICWC Annual Review Scorecard;

"ICWC Delivery Failure"

means:

- (a) an Event of Default has occurred and is continuing as at the date of completion of the Readiness Review; or
- (b) any of the following has occurred during the ICWC Delivery Failure Period:
 - (i) the Franchisee's performance against the Cancellations Benchmark in any four (4) Reporting Periods, as calculated by the Secretary of State in accordance with Part A (Non-Financial Regime) of Schedule 7.1A (Operational Performance), has been equal to or worse than the Breach Performance Level in respect of each such Reporting Period (as described in paragraph 18 in Part A of Schedule 7.1A);
 - (ii) the Franchisee's performance against the TOC Minute Delay Benchmark in any four (4) Reporting Periods, as calculated by the Secretary of State in accordance with Part A (Non-Financial Regime) of

Schedule 7.1A (Operational Performance), has been equal to or worse than the Breach Performance Level in respect of each such Reporting Period (as described in paragraph 18 in Part A of Schedule 7.1A);

(iii) where Schedule 6.3A (Contractual Incentive Mitigations) applies (or has applied), for any Ticketless Travel Survey Period the TT Deemed as calculated pursuant to paragraph 6.1 of Schedule 6.3A (Contractual Incentive Mitigations) has been more than (that is, is equal to or worse than) the relevant Breach Ticketless Travel Benchmark (as described in paragraph 6.2 of Schedule 6.3A) for either (or both) of the Franchisee Years;

(iv) where Schedule 7.3A (Service Quality Regime) applies (or has applied), there has been a contravention of the Franchise Agreement in the manner described in paragraph 20.5 in Part E of Schedule 7.3A (Service Quality Regime);

“ICWC Delivery Failure Period” means the two (2) most recently completed full Franchisee Years preceding the Readiness Review plus the period between the end of the most recent of those two (2) Franchisee Years and the date of completion of the Readiness Review;

“ICWC Expiry Date” means 01:59 on the day on which the Integrated Operator Start Date occurs or, if earlier, on the Expiry Date;

“ICWC Financial Model” or “ICWCFM” means the Franchisee’s financial model in the agreed terms marked **ICWCFM** deposited with the Secretary of State on the date of the Franchise Agreement in accordance with Schedule 9.2A (Identity of the ICWC Financial Model (Escrow Documents)), as may be subsequently revised in accordance with Schedule 9.1A (Financial and Other Consequences of Change);

“ICWC Measurement Period” means each Franchisee Year, provided that:

- (a) the first ICWC Measurement Period will commence on the Start Date;
- (b) the final ICWC Measurement Period will end on the ICWC Expiry Date or such earlier date of termination of the Franchise Agreement; and

- (c) no ICWC Measurement Period will be a period of less than six (6) months or more than eighteen (18) months;

"ICWC Operational Models" or "ICWCOM"

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

- (a) ICWC Revenue Model;
- (b) fares model (which may be included in the ICWC Revenue Model);
- (c) crowding model;
- (d) operating cost model (which may be included in the ICWC Financial Model);
- (e) performance model;
- (f) capital expenditure model (which may be included in the ICWC Financial Model or the ICWC Operating Cost Model);
- (g) any other relevant models that have generated input to the ICWC Financial Model;

"ICWC Performance Period"

means each Franchisee Year, provided that:

- (a) the first ICWC Performance Period will commence on the Start Date;
- (b) the final ICWC Performance Period will end on the ICWC Expiry Date or such earlier date of termination of the Franchise Agreement; and
- (c) no ICWC Performance Period will be a period of less than six (6) months or more than eighteen (18) months;

"ICWC Period"

means the period commencing on the Start Date and ending on the ICWC Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or Schedule 10 (Remedies, Events of Default and Termination Events) or Schedule 19.1 (Readiness Review);

"ICWC Readiness Review Scores"

has the meaning given in paragraph 3.1(b) of Schedule 19.1 (Readiness Review);

"ICWC Record of Assumptions" or "ICWC ROA"

means a document in the agreed terms marked **ICWCROA** prepared by the Franchisee (and/or, where Schedule 9.1A (Financial and Other Consequences of Change) applies) as may be revised in accordance with

Schedule 9A (Changes and Variations) and Placed in Escrow providing:

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

"ICWC Revenue Model"

means the ICWC Operational Model relating to the calculation of forecast passenger demand and passenger fares revenue, for use in the ICWC Financial Model and other ICWC Operational Models as required (each as most recently Placed in Escrow);

"ICWC Scoring Card"

means each standard set out with respect to each ICWC Criterion as set out in Part B of Appendix 2 to Schedule 11.3A (ICWC Annual Review);

"ICWC Section of the Annual Management Accounts"

means the annual management accounts of the Franchisee which:

- (a) comply with paragraph 9.5(a) of Schedule 11.2A (Management Information); and
- (b) are required to be delivered to the Secretary of State by the Franchisee in accordance with paragraph 9.4(a) of Schedule 11.2A (Management Information);

"ICWC Section of the Management Accounts"

means the management accounts of the Franchisee which:

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

"ICWC Services"

means the Franchise Services to be provided by the Franchisee in the period prior to the Integrated Operator Start Date (other than the Shadow Operator Services but including the PMO Services prior to the Integrated Operator Start Date);

"ICWC Stakeholder Report"	means a report to be completed in respect of each ICWC Stakeholder Survey, to be included in the ICWC Annual Review Checklist to meet the requirements set out in paragraph 3.3 of Schedule 11.3A (ICWC Annual Review);
"ICWC Stakeholder Survey"	means a stakeholder survey in the form designed in accordance with the provisions of paragraph 6 of Schedule 11.3A (ICWC Annual Review);
"ICWC Term"	means the period commencing on the Start Date and expiring on the ICWC Expiry Date;
"Identified Station"	means; (a) where the context relates to a time prior to the Integrated Operator Start Date, the meaning given to it in paragraph 4.1 (a) of Part 2 of Schedule 6.1A (Franchise Specific Obligations); (b) where the context relates to a time on or after the Integrated Operator Start Date, the meaning given to it in paragraph 2.1(a) of Part 2 of Schedule 6.1B (Franchise Specific Obligations);
"Incident Response Plan"	means the plan created by the Franchisee pursuant to paragraph 20 of Schedule 6.1A (Franchise Specific Obligations) which contains (as a minimum) the information set out in paragraph 20.2 of Part 2 of Schedule 6.1A, as updated in accordance with paragraph 20.7(a) of Schedule 6.1A and (from the Integrated Operator Start Date) in accordance with paragraph 8.4(a) of Schedule 6.1;
"Incremental Output Statement Charge"	means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;
"Independent Service Quality Audits"	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
"Independent Station"	has the meaning given to it in paragraph 2.7 of Schedule 8.3A (Track Access Adjustments and Station Charge Adjustments);
"Independent Station Access Conditions"	has the meaning given to it in the Access Agreement to which it relates;
"Individual Station Charge Adjustment"	has the meaning given to it in paragraph 2.2 of Schedule 8.3A (Track Access Adjustments and Station Charge Adjustments);
"Industrial Action"	means any concerted action taken in connection with the employment of any employees of the Franchisee or of any of the employees of persons listed in

paragraphs 1(f)(i) to 1(f)(iii) of Schedule 10.3 (Force Majeure and Business Continuity) (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial industrial action, to the Franchisee being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the Secretary of State;

"Industry Remapping Proposals"

means any proposal to vary the requirement for delivery of passenger services incorporated into, or the responsibility for station operations under, any Rail Franchise (including the Franchise) by removing and adding those passenger services and/or station operations to another Rail Franchise (including the Franchise);

"Industry Schemes"

has the meaning given to it in paragraph 4 of Schedule 13.1 (Rail Industry Initiatives and Co-operation);

"Information Commissioner"

has the meaning given to it in section 6 of the Data Protection Act;

"Infrastructure Management Strategy"

means the infrastructure management strategy relating to the HS2 Network produced by HS2 Limited as updated from time to time;

"Infrastructure Manager"

means:

- (a) Network Rail in relation to the Conventional Rail Network; and
- (b) HS2 Limited in relation to the HS2 Network;

"Infrastructure Manager Data"

means any information, data and materials that may be provided to the Secretary of State by HS2 Limited or NR that relates to the Franchisee and which the Secretary of State decides (in the Secretary of State's absolute discretion) to add to the RPC Database;

"Infrastructure Manager Fixture Asset"

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

- (a) funded by the Franchisee and affixed to a Station or Depot (as the case may be) such that it is regarded as a fixture to and part of such Station or Depot (as the case may be); and
- (b) designated as a Primary Franchise Assets in accordance with paragraph 2.1 of Schedule

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

“Infrastructure Project”

means:

- (a) where the context relates to a time prior to the Integrated Operator Start Date, the meaning given in paragraph 9.1 of Part 3 of Schedule 6.1A (Franchise Specific Obligations);
- (b) where the context relates to a time on or after the Integrated Operator Start Date, the meaning given to it in paragraph 3.1 of Schedule 6.1B (Franchise Specific Obligations);

“Infringement Claim”

has the meaning given to it in paragraph 22.8 of Part 2 of Schedule 6.1A;

“Initial Business Plan”

means the business plan to be provided by the Franchisee to the Secretary of State as described in paragraph 10.1 of Schedule 11.2A (Management Information);

“Initial Dataset”

has the meaning given in paragraph 15.1(b) of Schedule 11.2A (Management Information);

“Initial Integrated Services Mobilisation Plan”

has the meaning given to it in paragraph 13.1 of Schedule 18.2 (Accepted Programme Specific Requirements);

“Initial Output Report”

means any initial written report produced in accordance with paragraph 1 of Schedule 18.2 (Accepted Programme Specific Requirements) and submitted by the Franchisee to the Secretary of State;

“Initial Performance Bond”

means the performance bond issued or to be issued on or prior to the date of this Agreement by a Bond Provider to the Secretary of State which complies with the requirements of paragraph 4.2 of Schedule 12A (Financial Covenants and Bonds);

“Initial Period”

has the meaning given to it in paragraph 7.5 of Schedule 9.1A (Financial and Other Consequences of Change);

“Initial Permanent Fare”

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

"Initial Reporting Stage"	means the Reporting Periods falling within the period from the first Reporting Period to the seventh Reporting Period of the first Franchisee Year; ³⁹
"Inspections"	has the meaning given to it in paragraph 5.1 of Schedule 15.1 (Reletting Provisions);
"Institute of Asset Management"	means The Institute of Asset Management, a company limited by guarantee, registered with company number 05056259 with registered office Woodlands Grange, Woodlands Lane, Bradley Stoke, Bristol, BS32 4JY or its successors;
"Integrated Operator Business Plan"	has the meaning given to it in paragraph 12.1 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Integrated Operator Business Report"	has the meaning given to it in paragraph 9.1 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Integrated Operator Period"	means the period commencing on the Integrated Operator Start Date and expiring on the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to Schedule 10 (Remedies, Events of Default and Termination Events) or Schedule 19.1 (Readiness Review);
"Integrated Operator Procurement Strategy"	has the meaning given to it in paragraph 12.2(j) of Schedule 18.2 (Accepted Programme Specific Requirements);
"Integrated Operator Provisions"	means Schedules 1B, 2B, 4B to 8B (inclusive) and 10B to 17B (inclusive) of the Franchise Agreement;
"Integrated Operator Start Date"	means 02:00 on the date that the Secretary of State notifies to the Franchisee under paragraph 3.1(a) of Schedule 19.2 (Switch Review) as being the date on and from which the Parties are to comply with the Integrated Operator Provisions;
"Integrated Operator Term"	means the period commencing on the Integrated Operator Start Date and expiring on the Expiry Date;
"Integrated Services"	means the High Speed Services and the Conventional Services on and from the High Speed Start Date;
"Integrated Services Forecast Passenger Demand"	means the forecast prepared by the Franchisee as part of the TSS Options Report in respect of:

39 **Note to Bidders:** The Initial Reporting Stage will be 7 Reporting Periods and the above definition is based on a Start Date of 15 September 2019.

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

for the period on and from the High Speed Start Date to the Expiry Date;

“Integrated Services Marketing Plan” has the meaning given to it in paragraph 52.1 of Schedule 18.2 (Accepted Programme Specific Requirements);

“Integrated Services Mobilisation Communications Plan” has the meaning given to it in paragraph 17.1 of Schedule 18.2 (Accepted Programme Specific Requirements);

“Integrated Services Mobilisation Communications Strategy” has the meaning given to that term in paragraph 16.1 of Schedule 18.2 (Accepted Programme Specific Requirements);

“Integrated Services Mobilisation Plan” means the plan for mobilising the Integrated Services to be submitted to the Secretary of State in accordance with paragraph 13 of Schedule 18.2 (Accepted Programme Specific Requirements);

“Integrated Services Security Plan” has the meaning given to it in paragraph 44.1 of Schedule 18.2 (Accepted Programme Specific Requirements);

“Integrated Services Staffing Plan” has the meaning given to that term in paragraph 18.1 of Schedule 18.2 (Accepted Programme Specific Requirements);

“Integrated Services Sustainability Review” has the meaning given to it in paragraph 47.2 of Schedule 18.2 (Accepted Programme Specific Requirements);

“Integrated Services Sustainability Strategy” has the meaning given to it in paragraph 47.4 of Schedule 18.2 (Accepted Programme Specific Requirements);

“Integrated Services Timetable” means the timetable intended to be applicable from the High Speed Start Date to the High Speed Established Services Date, which reflects the working timetable issued by Network Rail at the conclusion of the relevant timetable development process (as set out in paragraphs 8 to 15 of Schedule 18.3

(Transitional Programme Specific Requirements), containing the departure and arrival times of:

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

“Integrated Services TSR”

means the Train Service Requirement which requires the operation of High Speed Services over HS2 Phase One (but not HS2 Phase 2a) and which is intended to be applicable from the High Speed Start Date to the High Speed Established Services Date, as developed by the Secretary of State and provided to the Franchisee in accordance with paragraph 42.1 of Schedule 18.2 (Accepted Programme Specific Requirements);

“Intellectual Property Rights”

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

“Interest Rate”

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

“Interim Integrated Operator Business Plan”

has the meaning given to it in paragraph 12.4 of Schedule 18.2 (Accepted Programme Specific Requirements);

“Interim Integrated Services Marketing Plan”

has the meaning given to it in paragraph 52.4 of Schedule 18.2 (Accepted Programme Specific Requirements);

“Inter-Operator Schemes”

means the list of schemes in paragraph 4 of Appendix 1 (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes);

“International Organisation for Standardisation”	means the international standard setting body known as “ISO” or any such successor body;
“Intervention”	has the meaning given to it in clause 15.1 (e) (Competition);
“Invitation to Tender”	means the Invitation to Tender issued by the Secretary of State on [INSERT DATE] as part of the procurement process pursuant to which the Franchise Agreement was entered into;
“IOC Annual Review”	means an annual review carried out (or to be carried out) in accordance with Schedule 11.3B (Integrated Operator Annual Review);
“IOC Annual Review Checklist”	means, in respect of an IOC Annual Review, a checklist completed (or, as the case may be, to be completed) substantially in the form of that set out in Appendix 1 to Schedule 11.3B (IOC Annual Review), as updated from time to time in accordance with paragraph 6 of Schedule 11.3B (IOC Annual Review);
“IOC Annual Review Meeting”	means, in respect of each IOC Annual Review, a meeting or meetings held between the Parties to discuss the performance of the Franchisee in the relevant IOC Performance Period;
“IOC Annual Review Scorecard”	means, in respect of an IOC Annual Review, a scorecard completed (or, as the case may be, to be completed) by the Secretary of State in accordance with paragraph 5.1 of Schedule 11.3B (Integrated Operator Annual Review);
“IOC Base Fee” or “IOCBF”	means the amount determined in accordance with the provisions of paragraph 2 of Appendix 2 (IOC Fee) to Schedule 8.1B (Franchise Payments);
“IOC Baseline Comparator”	means a version of the IOC Modelling Suite to be used for comparison purposes as developed by the Franchisee in accordance with paragraph 22 of Schedule 18.2 (Accepted Programme Specific Requirements);
“IOC Benchmarks”	means the benchmarks set out (or to be set out) in Schedule 7B (Performance Benchmarks) relating to operational performance, customer experience and engagement and/or any other aspect of the IOC Performance Regime;
“IOC Budget Setting Process”	means the process for the determination of the IOC Cost Budget, the Forecast IOC Revenue and the IOC Record of Assumptions in respect of each Franchisee Year following the First IOC Year as specified in paragraph 3 of Schedule 8.1B (Franchise Payments);

"IOC Change"	means any change to the IOC Cost Budget and/or (at the points in time set out paragraph 1.1(b) of Schedule 9.2B (IOC Escrow Documents and Shadow Operator Escrow Documents)) to the IOC Modelling Suite; as such change is from time to time agreed or determined pursuant to the provisions of paragraph 2.3 of Schedule 9.1B (Financial and other Consequences of Change);
"IOC Confirmable Obligations"	means those aspects of the Integrated Operator Provisions that, as at the date of the Franchise Agreement, remain to be confirmed, as set out in Appendix 1 to Schedule 20 (IOC Confirmable Obligations);
"IOC Confirmed Obligations"	means such IOC Confirmable Obligations as have from time to time been agreed by the Parties, or determined by the Secretary of State, and confirmed and incorporated into this Agreement through the process described in paragraph 8 of Schedule 18.1 (Shadow Operations);
"IOC Confirmed Obligations Change"	means any change to the IOC Confirmed Obligations (occurring on or before the Integrated Operator Start Date) as such change is from time to time agreed or determined pursuant to the provisions of paragraph 2.3 of Schedule 9.1B (Financial and other Consequences of Change);
"IOC Cost Budget"	means in respect of the First IOC Year, the periodic cost budget (expressed in nominal prices) as agreed or determined pursuant to the provisions of paragraph 10 of Schedule 18.1 (Shadow Operations) and in respect of each subsequent Franchisee Year, the periodic cost budget (expressed in nominal prices) as agreed or determined in accordance with the IOC Budget Setting Process (in each case as such budget may from time to time be amended by an IOC Change) and as deposited with the Secretary of State in accordance with Schedule 9.2B (IOC Escrow Documents and Shadow Operator Escrow Documents);
"IOC Criterion"	means each of the criteria set out in Part A or Part B of Appendix 2 of Schedule 11.3B (Integrated Operator Annual Review), in respect of which the Franchisee's performance shall be measured at each IOC Annual Review and for which a score shall be awarded in each IOC Annual Review Scorecard (and "IOC Criteria" means the plural of IOC Criterion);
"IOC Escrow Documents"	means the IOC Cost Budget, the Forecast IOC Revenue and the IOC Modelling Suite;
"IOC Fee" or "IOCF"	means the IOC Base Fee plus any IOC Performance Fee in relation to any Reporting Period each as

determined in accordance with the provisions of Appendix 2 (IOC Fee) of Schedule 8.1B (Franchise Payments);

"IOC Financial Model"	means the financial model within the IOC Modelling Suite used to generate the IOC Cost Budget and Forecast IOC Revenue;
"IOC Management Action Plan"	means such document or documents prepared by the Franchisee in accordance with Appendix 3 to Schedule 11.3B (IOC Annual Review);
"IOC Management Action Plan Notice"	has the meaning given to that term in paragraph 1.1 of Appendix 3 to Schedule 11.3B (IOC Annual Review);
"IOC Management Action Point"	has the meaning given to that term in paragraph 2.1(b) of Appendix 3 to Schedule 11.3B (IOC Annual Review);
"IOC Management Objectives"	has the meaning given to that term in paragraph 1.1(a) of Appendix 3 to Schedule 11.3B (IOC Annual Review);
"IOC MAP Costs"	has the meaning given to that term in paragraph 2.1(a) of Appendix 3 to Schedule 11.3B (IOC Annual Review);
"IOC Modelling Suite"	means the IOC modelling suite (including the IOC Financial Model and IOC Operational Models) as agreed or determined pursuant to the provisions of Schedule 20 as may be revised in accordance with Schedule 9.2B (IOC Escrow Documents and Shadow Operator Escrow Documents);
"IOC Operational Models"	means the operational models which feed into and support the cost, revenue and other figures in the IOC Financial Model;
"IOC Performance Fee" or "IOCPF"	the amount determined in accordance with the provisions of paragraph 3 of Appendix 2 (IOC Fee) to Schedule 8.1B (Franchise Payments);
"IOC Performance Period"	means each Franchisee Year, provided that: <ul style="list-style-type: none">(a) the first IOC Performance Period will commence on the Integrated Operator Start Date;(b) the final IOC Performance Period will end on the Expiry Date or such earlier date of termination of the Franchise Agreement; and(c) no IOC Performance Period will be a period of less than six (6) months or more than eighteen (18) months;

"IOC Performance Regime"	means a regime in respect of reporting and monitoring of the Franchisee's delivery of the Franchise Services during the Integrated Operator Period, including operational performance, customer experience and engagement and any other aspect to be included in Schedule 7B (IOC Performance Regime) following agreement or determination under Schedule 20 (IOC Confirmable Obligations);
"IOC Readiness Review Scores"	has the meaning given in paragraph 3.1(c) of Schedule 19.1 (Readiness Review);
"IOC Record of Assumptions" or "IOC ROA"	means in respect of the First IOC Year, the IOC record of assumptions agreed or determined pursuant to the provisions of Schedule 18.1 (Shadow Operations) and in respect of each subsequent Franchisee Year, the IOC record of assumptions agreed or determined in respect of that Franchisee Year in accordance the IOC Budget Setting Process; in each case as may be revised in accordance with Schedule 9B (Changes and Variations) and Placed in Escrow;
"IOC Scoring Standard"	means each standard set out with respect to each IOC Criterion as set out in Part A or Part B of Appendix 2 to Schedule 11.3B (Integrated Operator Annual Review);
"IOC Section of the Annual Management Accounts"	means the annual management accounts of the Franchisee which: <ul style="list-style-type: none">(a) comply with paragraph 9.5(a) of Schedule 11.2B (Management Information); and(b) are required to be delivered to the Secretary of State by the Franchisee in accordance with paragraph 9.4(a) of Schedule 11.2B (Management Information);
"IOC Section of the Management Accounts"	means, the management accounts of the Franchisee which: <ul style="list-style-type: none">(a) comply with paragraph 9.5(a) of Schedule 11.2B (Management Information); and(b) are required to be delivered to the Secretary of State by the Franchisee in accordance with paragraphs 9.2(a) and 9.2(b) of Schedule 11.2B (Management Information);
"IOC Stakeholder Report"	means a report to be completed in respect of each IOC Stakeholder Survey, to be included in the IOC Annual Review Checklist and to meet the requirements set out in paragraph 3.3 of Schedule 11.3B (Integrated Operator Annual Review);

"IOC Stakeholder Survey"	means a stakeholder survey in the form designed in accordance with the provisions of paragraph 7 of Schedule 11.3B (Integrated Operator Annual Review);
"ISO14001:2015"	means the standard that is set by the International Organisation for Standardisation which specifies requirements for an environmental management system to enable an organization to develop and implement a policy and objectives which takes into account legal requirements and other requirements to which the organization subscribes, and information about significant environmental aspects or any equivalent standard which is generally recognised as having replaced it;
"ISO50001:2011"	means the standard that is set by the International Organisation for Standardisation which specifies requirements for establishing, implementing, maintaining and improving an energy management system, whose purpose is to enable an organization to follow a systematic approach in achieving continual improvement of energy performance, including energy efficiency, energy use and consumption or any equivalent standard which is generally recognised as having replaced it;
"ISO50001 Energy Review"	means the Energy Review as defined in paragraph 4.4.3 of ISO50001:2011, or any same or similar review from an equivalent standard which is generally recognised as having replaced it;
"ISO55001:2014"	means the standard that is produced by the International Organisation for Standardisation which specifies requirements for an asset management system within the context of the organisation or any equivalent Standard which is generally recognised as having replaced it;
"ISO 22301"	means the standard that is set by the International Organisation for Standardisation which specifies requirements for the development, implementation, operation, monitoring, review and maintenance of a business continuity planning process, or any equivalent standard which is generally recognised as having replaced it;
"ITSO"	has the meaning given to it in paragraph 1.1 of Schedule 5.9A (Smart Ticketing);
"ITSO Certified Smartmedia"	has the meaning given to it in paragraph 1.1 of Schedule 5.9A (Smart Ticketing);
"ITSO Operating Licence"	has the meaning given to it in paragraph 1.1 of Schedule 5.9A (Smart Ticketing);

"ITSO Smartmedia Ticketing Scheme"	has the meaning given to it in paragraph 1.1 of Schedule 5.9A (Smart Ticketing);
"Joint Task"	shall have the meaning given to such term in the Alliance Agreement;
"Joint Task Agreement"	shall have the meaning given to such term in the Alliance Agreement;
"Key Contacts List"	means the list which contains the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business in respect of: <ul style="list-style-type: none">(a) all directors (statutory or otherwise);(b) all managers with responsibility for a department/function within the Franchisee's business;(c) all managers in the operations, commercial, personnel and public affairs departments or in each case their nearest equivalents;
"Key Contract"	means: <ul style="list-style-type: none">(a) each agreement and contract listed in Appendix 1 (List of Key Contracts) to Schedule 14.3 (Key Contracts) as at the date of the Franchise Agreement; and(b) any other agreement, contract, licence or other arrangement to which the Franchisee is a party or under which the Franchisee is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3 (Key Contracts) or Schedule 18 (Shadow Operator), <p>but excluding any such agreement, contract, licence or other arrangement which ceases, in accordance with the terms of the Franchise Agreement, to be designated as a Key Contract;</p>
"Key Personnel"	means those persons identified by the Franchisee in accordance with paragraph 3.1 of Schedule 11.2 (Management Information);
"Key Shadow Operator Personnel"	means those personnel identified as such in the schedule provided by the Franchisee to the Secretary of State in accordance with paragraph 4.1 of Schedule 18.1 (Shadow Operations) as updated from time to time in accordance with paragraph 4.2 of Schedule 18.1 (Shadow Operations);

“Key Shadow Operator Roles”	means each of the following technical and leadership roles relating to the Franchisee’s role as Shadow Operator: (a) [insert details] ⁴⁰
“Know-How”	means formulae, methods, plans, inventions, discoveries, improvements, processes, performance methodologies, techniques, specifications, technical information, tests, results, reports, component lists, manuals and instructions;
“Latest Passenger Services Annual Review”	means the Passenger Services Annual Review relating to the Performance Period in which the Readiness Review Notification is given by the Secretary of State;
“Latest Passenger Services Annual Review Scores”	has the meaning given to it in paragraph 3.1(e) of Schedule 19.1 (Readiness Review);
“Latest Shadow Operator Annual Review”	means the Shadow Operator Annual Review relating to the Performance Period in which the Readiness Review Notification is given by the Secretary of State;
“Latest Shadow Operator Annual Review Scores”	has the meaning given to it in paragraph 3.1(d) of Schedule 19.1 (Readiness Review);
“Law”	includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including those of the European Community, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act, the Transport Act, the Transport Safety Act 2003 and the Railways Act 2005);
“Lead Operator”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Legislation”	means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Community, which has, in each case, the force of Law in the United Kingdom or any part of it, but excluding any order under section 1 of the Transport and Works Act 1992;
“Licences”	means such licences and/or statements of national regulatory provisions granted or to be granted under applicable law as the Franchisee may be required from time to time to hold under the Act or under the Railway

40 **Note to Bidders:** List of roles to be included prior to contract signature.

(Licensing of Railway Undertakings) Regulations 2005 in order to provide or operate the Franchise Services;

“Light Maintenance Service”

means any service specified in paragraph 3 of Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development) which may be provided by the Franchisee at the Depots and Stations;

“Local Authority”

means:

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

“Lock-up Period”

has the meaning given to it in paragraph 3.2 of Schedule 12 (Financial Covenants and Bonds);

"London Station"	means any station served by the Railway Passenger Services in the Zones and any Zone to or from which a passenger may travel from or to such station;
"London Travelwatch"	means the independent, statutory watchdog for transport users in and around London established in July 2000, officially known as London Transport Users Committee;
"Long Term Charge"	shall have the meaning given to it in the Station Access Conditions;
"Maintenance Contract"	means any contract or arrangement to which the Franchisee is a party, which includes the carrying out for the Franchisee of any maintenance work (including Light Maintenance Services) or service provision in respect of rolling stock vehicles used by the Franchisee in the provision of the Passenger Services or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles;
"Major Flow Operator"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Managed Station"	means any station used in connection with the provision of the Franchise Services where an Infrastructure Manager is the Facility Owner or becomes the Facility Owner during the Franchise Period;
"Managed Station Area"	means the premises comprising part or parts of a Managed Station to be occupied by the Franchisee on or after the Start Date and to be used for or in connection with the provision of the Franchise Services;
"Management Accounts"	means the: <ul style="list-style-type: none">(a) ICWC Section of the Management Accounts, as applicable; and/or(b) IOC Section of the Management Accounts, as applicable; and/or(c) Shadow Operator Section of the Management Accounts, as applicable;
"Management Action Plan"	means such document or documents prepared by the Franchisee in accordance with Appendix 3 to Schedule 18.4 (Shadow Operator Annual Review);
"Management Action Plan Notice"	has the meaning given to that term in paragraph 1.1 of Appendix 3 to Schedule 18.4 (Shadow Operator Annual Review);

“Management Action Point”	has the meaning given to that term in paragraph 2.1 of Appendix 3 to Schedule 18.4 (Shadow Operator Annual Review);
“Management Objectives”	has the meaning given to that term in paragraph 1.1 of Appendix 3 to Schedule 18.4 (Shadow Operator Annual Review);
“Mandatory Modification”	means a modification or addition to any rolling stock vehicle which is required to be made under any applicable Law or any directive of the Rail Safety and Standards Board or any government authority;
“MAP Costs”	has the meaning given to that term in paragraph 2.1 of Appendix 3 to Schedule 18.4 (Shadow Operator Annual Review);
“Marketing Plan”	has the meaning given to it in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);
“Marketing Team”	has the meaning given to it in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);
“Marks”	means such trade marks as the Franchisee may apply to any Primary Franchise Asset or other asset used by it under a Key Contract, which are applied on the expiry of the Franchise Period and are not the subject of a Brand Licence;
“Material”	means any document, information, data or other material (in whatever form) including documented methodology, process and procedure and any other output;
“Material Discrepancies”	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
“Minimum Marketing Spend”	has the meaning given to it in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);
“Minimum Marketing Team Spend”	has the meaning given to it in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);
“Minister of the Crown”	has the meaning given to it in section 8(1) of the Minister of the Crown Act 1975;
“Minor Works”	has the meaning given to it in paragraph 3A.1 of Schedule 4 (Accessibility and Inclusivity);
“Minor Works’ Budget”	means two hundred and fifty thousand pounds (£250,000) for each Franchisee Year allocated by the Franchisee for the purpose of facilitating Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, save that:

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

Minor Works' Budget x RPI

where:

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

"Minor Works' Programme"

means the Franchisee's programme of Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, developed prior to the start of each Franchisee Year pursuant to paragraph 3A.2 of Schedule 4 (Accessibility and Inclusivity);

"Minutes Delay"

means the minutes of delay to the Passenger Services that are attributed to the Franchisee or the Infrastructure Manager (as the case may be) pursuant to the Relevant Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;

"Model Changes"

has the meaning given in paragraph 4.3 of Schedule 9.1A (Financial and Other Consequences of Change);

"Modified Revenue"

means:

- (a) the sum of:
 - (i) the Franchisee's total revenue (calculated on gross, actual basis (whether or not the Franchisee accounts on the agency basis)) for the period being reviewed as stated in its profit and loss account:
 - (A) including any amounts receivable from the Secretary of State, the Infrastructure Manager and any interest; but
 - (B) excluding the proportion of income recognised in the profit and loss account in relation to grants

received in respect of capital expenditure; and

- (C) excluding (during (or in relation to) the ICWC Term) any income arising from the activities comprised in the Accepted Programme and/or the Transitional Programme; and
 - (D) excluding (so far as relates to the ICWC Term) Shadow Operator Payments receivable from the Secretary of State pursuant to the provisions of Schedule 18.5 (Shadow Operator Payments);
- (ii) the opening cash balance for the period being reviewed excluding:
- (A) any cash held for the exclusive purpose of the provision of the Performance Bond; and
 - (B) the amount equivalent to:
 - (1) any cash that is held pursuant to any restrictive terms under any agreement and that, consequently, cannot be used for general operating purposes;
 - (2) any cash capable of being drawn down but not actually received,
- including, in both cases, under any loan or funding agreement or arrangements (including the Funding Deed) entered into with an Affiliate of the Franchisee; and
- (C) the amount of the opening season ticket liabilities which relate to Passenger Services yet to be delivered; and
 - (D) during (or in relation to) the ICWC Term, any cash arising from the activities comprised in the Shadow Operator Services (excluding the PMO Services);

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

where total debtors exclude:

- (A) any bad debts provision or write off;
- (B) any capital-related debtors;
- (C) during (or in relation to) the ICWC Term, any debtors arising from the activities comprised in the Shadow Operator Services (excluding the PMO Services);

“Monthly Season Ticket”

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

“Morning Peak”

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

“Morning Peak Service”

means a Passenger Service which arrives at destination in the Morning Peak;

“MSA Competent Authority”

means:

- (a) any legislative, judicial, regulatory or administrative body or agency (or any subdivision of them) of the United Kingdom; or
- (b) the EU, or any supranational body, which from time to time has the power to make rules which are directly applicable to the performance of the High Speed Rolling Stock MSA or whose directions, instructions, rulings, laws or regulations are directly enforceable against a party to the High Speed Rolling Stock MSA in connection with the performance of the High Speed Rolling Stock MSA;

“MSA Relevant Approvals”

means all up-to-date consents, approvals, permissions, authorisations, acceptances, certifications, licences, exemptions, filings, permits, registrations, notarisations, declarations, letters of no objection and other matters required in each case from any MSA Competent Authority, pursuant to any

	applicable laws and standards in relation to any of the TMM's obligations under the High Speed Rolling Stock MSA;
"MSA Relevant Approvals Management Plan"	means the plan to be produced by the TMM in accordance with the High Speed Rolling Stock MSA relating to the TMM's proposed approach to ensuring that all MSA Relevant Approvals are duly obtained in a timely manner;
"National Community Rail Steering Group"	means the National Community Rail Steering Group administered by the Department for Transport, or such successor organisation;
"National Cyber Security Centre"	means the National Cyber Security Centre, which is a part of Government Communications Headquarters established to protect UK critical services from cyber attacks, manage major incidents, and improve the underlying security of the UK Internet through technological improvement and advice to citizens and organisations;
"National Joint ROSCO Project"	means the joint project between <i>Angel Trains Limited, Eversholt Rail (UK) Limited and Porterbrook Leasing Company Limited</i> funded by Network Rail, for implementing ERTMS first in class designs to existing rolling stock which will operate over the routes where ERTMS will be rolled out;
"National Rail Communication Centre"	means the centre supporting Train Operators by gathering railway related information from the Train Operators, Network Rail and other sources, filtering, sorting and (where possible) improving that information, and distributing that information the Network Rail information channels to passengers;
"National Rail Enquiry Scheme"	means the telephone information scheme run by RDG, providing information to customers regarding rail journeys throughout the country;
"National Rail Passenger Survey"	means a passenger satisfaction survey in respect of the Franchise Services to be carried out by the Passengers' Council as described in paragraph 2 of Schedule 7.2A (Customer Experience and Engagement) and shall include any Alternative NRPS as referred to in paragraph 2.6 of Schedule 7.2A (Customer Experience and Engagement);
"National Rail Timetable"	means the passenger timetable published by Network Rail (currently twice per annum) specifying the timings and stopping patterns of all passenger railway services in Great Britain;
"NCHSR"	means the National College for High Speed Rail, an education and training institution with a registered address at Faraday Wharf, Innovation Birmingham

Campus, Holt Street, Aston, Birmingham B7 4BB,
United Kingdom;

"Net Revenue Share"	has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);
"Net Revenue Support"	has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);
"Network Change"	has the meaning given to it in the Network Code;
"Network Code"	means; (a) in respect of the Conventional Rail Network, the document known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement applying to Network Rail or NR; and (b) in respect of the HS2 Network, any code equivalent to that specified in (a) which applies to the HS2 Network or any other code which the Secretary of State may specify from time to time;
"Network Rail"	means in respect of: (a) the network or any relevant facility (other than the HS2 Network): (i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is 1 Eversholt Street, London NW1 2DN; and (ii) any successor in title to the network or any relevant railway facility; or (b) any new or other sections of network or any relevant new or other railway facilities (other than the HS2 Network or any railway facilities constructed solely in relation to the HS2 Network), the owner (if different);
"Network Rail Asset Management Policy"	means the policy set by Network Rail for a holistic asset management approach that includes asset capability, asset performance and reporting, sustainability, asset whole-life cost modelling, forecasting and reporting, cost efficient asset management, and asset management to meet customer service requirements;

“Network Rail Cancellation”

means a Passenger Service:

- (a) which is included in the Enforcement Plan of the Day and which is cancelled; or
- (b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day),

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

“Network Rail Data”

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

“Network Rail Partial Cancellation”

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

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

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

“Network Rail Track Access Agreement”

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

“Network Rail’s Traction Electricity Rules”

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

“New Facilities”

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

“New Insurance Arrangements”

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

“New Results”

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

- (a) the restated values of **FXD, VCRPI, VCAWE, PRPI, ORRPI, PRRPI_{GDP}, and ARPI** to be specified for each Franchisee Year in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to Schedule 8.1A (Franchise Payments);
- (b) the restated values of **FPST, SPST and TPST** to be specified for each Franchisee Year in paragraphs 1, 2 and 3 (respectively) of Appendix 1 (Profit Share Thresholds) to Schedule 8.2A (Profit Share Mechanism);
- (c) the restated amounts of Target Revenue to be specified for each Franchisee Year in Appendix 1 (Target Revenue) to Schedule 8.6A (Forecast Revenue Mechanism); and
- (d) the restated values of **DfT_{GDP}R** (and so **DfT_{GDP}1RW** and **DfT_{GDP}2RW**) for each Franchisee Year in Appendix 1 (**DfT_{GDP}RW**) to Schedule 8.4A (GDP Adjustment Payments);

“New Services”

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

“New Station”

means:

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

“NICC”

means the Network Integrated Control Centre, a single integrated control centre staffed by an interdisciplinary operational control team empowered to collaboratively make and implement all decisions regarding the operation of the HS2 Network;

“NICC Competence Management Strategy”

means the HS2 Limited strategy, as updated by HS2 Limited from time to time, specifying the competences required and the training requirements and delivery methodology for all NICC roles;

"NICC Interfaces"	means information flows of operational data that originate in the NICC and are distributed into other railway systems, including: <ul style="list-style-type: none">(a) the signalling interface including that which allows a train to be signalled off the HS2 Network and onto the Conventional Rail Network;(b) customer information for station customer information systems and the National Rail Communication Centre;(c) fleet maintenance and allocation data;(d) traincrew allocation data; and(e) seat reservation data;
"NICC Roles and Responsibilities Strategy"	means the HS2 Limited strategy, as updated by HS2 Limited from time to time, specifying the roles within the NICC which each of HS2 Limited and the Franchisee are required to fill, and the responsibilities associated with those roles;
"NJRP ROSCOs"	means the rolling stock leasing companies, participating in the National Joint ROSCO Project, being Eversholt Rail (UK) Limited, Porterbrook Leasing Company Limited and Angel Trains Limited;
"Nominee"	has the meaning given to it in paragraph 5.1 of Schedule 15.1 (Reletting Provisions);
"Non Fares Basket Fare"	means a Fare that is designated as such by the Secretary of State pursuant to paragraph 2.1 of Schedule 5.3A (Allocation of Fares to Fares Baskets) and which has not been de-designated as such pursuant to paragraph 1.1 of Schedule 5.7A (Changes to Fares and Fares Regulation);
"Notified Fault"	shall have the meaning given to such term in paragraph 9.1 of Schedule 1.4 (Passenger Facing Obligations);
"NR"	means Network Rail Limited (company number 04402220), Network Rail Infrastructure Limited (company number 2904587) whose registered offices are both at 1, Eversholt Street, London NW1 2DN or any Affiliate thereof from time to time;
"NR Performance Regime"	means the regulated performance regime for operating on the Conventional Rail Network as determined from time to time by the ORR;

"NRPS Action Plan"	has the meaning given to it in paragraph 1.1 of Schedule 7.2A (Customer Experience and Engagement);
"NRPS Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 7.2A (Customer Experience and Engagement);
"NRPS Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.2A (Customer Experience and Engagement);
"NRPS Measure"	has the meaning given to it in paragraph 1.1 of Schedule 7.2A (Customer Experience and Engagement);
"Occasion of Tax Non-Compliance"	has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);
"Off-Peak Passenger Service"	means a Passenger Service that is not a Morning Peak Service or an Evening Peak Service;
"Old Results"	<p>means in relation to any ICWC Change, the following as produced in accordance with Schedule 9.1A (Financial and Other Consequences of Change) by or following the Run of the ICWC Financial Model in respect of the immediately preceding ICWC Change or, in relation to the first ICWC Change only, the following as at the date hereof:</p> <ul style="list-style-type: none"> (a) the values of FXD, VCRPI, VCAWE, PRPI, ORRPI, PRRPI_{GDP}, and ARPI specified for each Franchisee Year in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to Schedule 8.1A (Franchise Payments); and (b) the values of FPST, SPST and TPST specified for each Franchisee Year in paragraphs 1, 2 and 3 of Appendix 1 (Profit Share Threshold) to Schedule 8.2A (Profit Share Mechanism); (c) the amounts of Target Revenue specified for each Franchisee Year in Appendix 1 (Target Revenue) to Schedule 8.6A (Forecast Revenue Mechanism); and (d) the values of DfT_{GDP}R (and so DfT_{GDP}1RW and DfT_{GDP}2RW) for each Franchisee Year in Appendix 1 (DfT_{GDP}RW) to Schedule 8.4A (GDP Adjustment Payments);
"On-Network Works"	means in respect of the Conventional Rail Network, any works in connection with the HS2 Project to facilitate the operation of High Speed Services on the Conventional Rail Network;

"On Time"	means the percentage of recorded station stops called at within 59 seconds of the planned time relating to the Franchise as produced and/or published by Network Rail;
"On Time Figures"	means the moving annual average percentage published by Network Rail in respect of On Time, rounded to one (1) decimal place;
"Operating Assets"	means all assets (including any Intellectual Property Rights or intangible assets) employed by the Franchisee in the performance of the Franchisee's obligations under the Franchise Agreement;
"Operational Review"	has the meaning given to that term in paragraph 23.1 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Operational Review Completion Date"	means the date that the Secretary of State notifies the Franchisee in writing in accordance with paragraph 23.9 of Schedule 18.2 (Accepted Programme Specific Requirements) that the Operational Review is complete;
"Operational Review Documents"	has the meaning given to that term in paragraph 23.2 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Operational Review Report"	has the meaning given to that term in paragraph 23.3(b) of Schedule 18.2 (Accepted Programme Specific Requirements);
"Operator's Representative"	means the role to be performed by the Franchisee, in support of the activities of HS2 Limited under the High Speed Rolling Stock MSA and the High Speed Rolling Stock TSA, as broadly described in paragraph 26.1 of Schedule 18.2 (Accepted Programme Specific Requirements), and including any relevant roles and functions delegated to the Franchisee by HS2 Limited with the approval of the Secretary of State, as contemplated in paragraph 26 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Original Rolling Stock"	has the meaning given to it in paragraph 2.1(a) of Schedule 1.6 (The Rolling Stock);
"ORR"	means the Office of Rail and Road established by section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;
"ORRPI"	has the meaning given to such term in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments);

“Other Passenger Route Within the Geographical Area”

means any route which is not a Route but is a route in the Geographical Area over which a passenger train operator other than the Franchisee operates passenger services included in the National Rail Timetable;

“Parent”⁴¹

means:

[INSERT DETAILS OF FRANCHISEE’S IMMEDIATE PARENT(S)];

[INSERT DETAILS OF ANY FURTHER ENTITY WHO IS ABLE TO EXERCISE CONTROL OVER THE ENTITY IN SUB-PARAGRAPH (A) INCLUDING ANY INTERMEDIATE PARENTS UP TO THE ULTIMATE PARENT BUT EXCLUDING ANY SOVEREIGN STATE;]

“Partial Cancellation”

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

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

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

“Participating Employer”

has the meaning given to it in the Pension Trust;

“Partnership Protocol”

means the non-binding document in the agreed terms marked **PP** with the title “Partnership Protocol” agreed between the Franchisee and HS2 Limited prior to the Start Date and containing the provisions required under the Collaboration Agreement;

“Pass Rate”

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

“Passenger Assistance”

means the passenger assistance service provided by train operating companies and referred to by the ORR as **“Passenger Assist”**, as such service may be further described by the ORR from time to time at: <http://orr.gov.uk/info-for-passengers/passengers-with-disabilities> (or such other applicable web address that is adopted by the ORR for these purposes from time to time);

41 **Note to Bidders:** These details will be populated by the DfT based on the winning bidder’s details.

"Passenger Carrying Capacity"	means, in relation to a Passenger Service, the capacity of the vehicles (as stated in Schedule 1.6 (The Rolling Stock) or determined by the Secretary of State in accordance with paragraph 3.4 of Schedule 1.6 (The Rolling Stock)) from which the Passenger Service is formed;
"Passenger Change Date"	means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code;
"Passenger Proposition"	has the meaning given to it in paragraph 49.6 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Passenger Proposition Aspect"	means each separate aspect of the Passenger Proposition;
"Passenger Services"	means the Franchisee's railway passenger services as specified in any Timetable and/or Plan of the Day including the High Speed Services and those railway passenger services which the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;
"Passenger Services Annual Review"	means: <ul style="list-style-type: none">(a) where referring to a time prior to the Integrated Operator Start Date, an ICWC Annual Review; or(b) where referring to a time after the Integrated Operator Start Date, an IOC Annual Review;
"Passenger Services Annual Review Criterion"	means, as applicable to the relevant Passenger Services Annual Review, an ICWC Criterion or an IOC Criterion;
"Passenger Survey Methodology"	has the meaning given to it in paragraph 2.4 of Schedule 7.2A (Customer Experience and Engagement);
"Passenger's Charter" or "PC"	means the Franchisee's service commitments to its passengers in the agreed terms marked PC , as amended or replaced from time to time with the prior written consent of the Secretary of State in accordance with paragraph 4 of Schedule 1.4 (Passenger Facing Obligations);
"Passengers' Council"	means the passengers' council established under section 19 of the Railways Act 2005 (as amended by The Passengers' Council (Non-Railway Functions) Order 2010). The Passengers' Council shall be

generally known as **"Transport Focus"** from 30 March 2015;

- "Passport"** means the confirmation awarded by the Secretary of State to a successful applicant that their application meets the requirements set out in the documentation relating to the OJEU Notice (reference no: 2015/S 189-34364);
- "Passport Holder"** means, during the validity period of the relevant Passport, a successful applicant to whom a Passport has been awarded;
- "Pay As You Go Agreement"** means an agreement dated 16 October 2009 between Transport Trading Limited and train operators operating in London enabling joint ticketing and the acceptance of each other's tickets using smartmedia technology under the name **"Pay as You Go"**;
- "PAYG Off-Peak Fare"** means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time on Saturdays and Sundays and at such times as the Franchisee may designate on Mondays to Fridays (where such Fare need not be valid between 06:30 and 09:30 or between 16.00 and 19.00 but must be valid at all other times) and which may take into account the different directions of travel;
- "PAYG Peak Fare"** means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time;
- "PAYG Zone"** means the Stations within the **"PAYG Area"** (as such is defined in the PAYG Agreement) or otherwise included in part 1 (PAYG Acceptance) of Schedule 3 (Operation of PAYG) of the Pay As You Go Agreement (as such is amended from time to time);
- "Payment Date"** means the relevant date for the payment of Franchise Payments as set out in:
- (a) paragraph 2.3 of Schedule 8.1A (Franchise Payments); or
 - (b) paragraph 2.3 of Schedule 8.1B (Franchise Payments);
- "Peak"** means the Morning Peak and the Evening Peak;

"Peak Passenger Service"	means, as the case may be, a Morning Peak Service or an Evening Peak Service;
"Pension Trust"	means the pension trust governing the Railways Pension Scheme;
"Pensions Committee"	has the meaning given to it in the Railways Pension Scheme;
"Percentage Allocation"	has the meaning given to it in the Ticketing and Settlement Agreement (and references to "Percentage Allocations" shall be construed accordingly);
"Performance Bond"	means the Initial Performance Bond and any Replacement Performance Bond, which in each case, shall comply with the requirements of paragraph 4.2 of Schedule 12 (Financial Covenants and Bonds);
"Performance Calculation Year"	has the meaning given to it in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);
"Performance Period"	means, as the context requires, an ICWC Performance Period, an IOC Performance Period or a Shadow Operator Performance Period;
"Performance Strategy Plan"	means any joint plan, which the Franchisee and Network Rail or HS2 Limited are party to, which has been designed to achieve the performance objectives set out in Part L of the Network Code (and/or other objectives related to train service reliability and punctuality as agreed by Network Rail and the Franchisee);
"Performance Sum"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Permanent Fare"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Permitted Aggregate Increase" or "PAI"	has the meaning given to it in paragraph 4.2 of Schedule 5.4A (Regulation of Fares Basket Values);
"Permitted Individual Increase" or "PII"	has the meaning given to it in paragraph 2.2 of Schedule 5.5A (Regulation of Individual Fares);
"Personal Data"	has the same meaning as in the Data Protection Act and includes Sensitive Personal Data as defined therein;
"Personal Data Legislation"	has the meaning given to it in paragraph 6.1 of Schedule 1.5 (Information about Passengers);

“Placed in Escrow”

means:

- (a) in respect of the ICWC Financial Model, delivery of the ICWC Financial Model:
 - (i) dated the date of the Franchise Agreement;
 - (ii) adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (iii) where Schedule 9.1A (Financial and Other Consequences of Change) and Schedule 9.2A (Identity of the ICWC Financial Model (Escrow Documents)) apply, the inputs to the ICWC Financial Model derived therefrom following an audit of a Run of the ICWC Financial Model;
- (b) in respect of the ICWC Operational Models, delivery of:
 - (i) the ICWC Operational Models dated the date of the Franchise Agreement;
 - (ii) the ICWC Operational Models adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (iii) where Schedule 9.1A (Financial and Other Consequences of Change) and Schedule 9.2A (Identity of the ICWC Financial Model (Escrow Documents)) apply, audited following a Run of the ICWC Financial Model and updated with any Revised Inputs;
- (c) in respect of the IOC Escrow Documents and the Shadow Operator Escrow Documents, delivery thereof in accordance with paragraph 1.1 of Schedule 9.2B (IOC Escrow Documents and Shadow Operator Escrow Documents); and
- (d) in respect of the ICWC Record of Assumptions, the IOC Record of Assumptions and/or the Transitional Record of Assumptions, the delivery thereof,

each in accordance with Schedule 9.2A (Identity of the ICWC Financial Model (Escrow Documents) or Schedule 9.2B (IOC Escrow Documents and Shadow Operator Escrow Documents) (as the case may be);

“Plan” means a completed suicide prevention plan that complies with the requirements of paragraph 14.1 of Schedule 13.1 (Rail Industry Initiatives and Co-operation);

“Plan of the Day” means, in relation to each day during the Franchise Term, the Passenger Services scheduled to be operated on that day through specification in the Timetable or as notified to the Franchisee by the relevant Infrastructure Manager from time to time prior to 2200 on the previous day;

“Planned Delivery Date” shall have the meaning given to such term in paragraph 1.4 of Schedule 14.6 (Residual Value Mechanism);

“Planned Step-Out Date” means, in respect of a Step-In, the date on which the Secretary of State plans to cease that Step-In as notified to the Franchisee in a Step-In Notice in accordance with paragraph 19.7(e) of Schedule 18.1 (Shadow Operations);

“Planned Train Mileage” means the aggregate train mileage planned during each Reporting Period by each train used in the provision of the Passenger Services (excluding, any train mileage planned as a result of positioning or other movements of rolling stock vehicles outside the Timetable);

“PMO Costs” means:

- (a) any costs incurred by the Franchisee in performing the PMO Services (including all staff costs relating to the performance of the PMO Services, whether or not these costs are incurred in relation to the Shadow Operator PMO Personnel);
- (b) any direct, indirect and central overhead staff costs in respect of the Shadow Operator PMO Personnel;
- (c) any accommodation-related costs, including utilities costs, business rates and other costs, and IT costs in respect of:
 - (i) the provision of the:
 - (A) Proposed Accepted Programme;

- (B) Accepted Programme Specific Requirements which are set out in the Franchise Agreement at the date on which the Franchise Agreement is signed; and
 - (C) any additional elements of the Accepted Programme and/or additional Accepted Programme Specific Requirements, where such elements can reasonably be delivered from the same accommodation as was used to deliver the requirements set out in (A) and (B) above;
- (ii) the Shadow Operator PMO Personnel; and
 - (iii) any other person who is from time to time directly involved in the performance of the PMO Services (to the extent that such costs are incurred in relation to the PMO Services and not in relation to other Shadow Operator Services);
- (d) all costs associated with taking out and maintaining professional indemnity insurance in accordance with paragraph 13.1 of Schedule 18.1 (Shadow Operations),

but shall, subject to paragraph (c)(i) of this definition, exclude any costs relating to the management or delivery of the Shadow Operator Services set out in the Accepted Programme Specific Requirements or Transitional Programme Specific Requirements;

“PMO Services”

means:

- (a) the overall leadership of the Franchisee’s performance of the Shadow Operator Services, including any technical leadership capability required to oversee the quality and delivery of any Shadow Operator Services;
- (b) the programme management of all Shadow Operator Services excluding the management of any Accepted Programme Specific Requirements or Transitional Programme Specific Requirements;
- (c) the performance of any obligations of the Franchisee set out in Schedule 18.4 (Shadow Operator Annual Review);

- (d) the performance of any obligations of the Franchisee set out in paragraphs 1, 2, 5, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18 and 20 of Schedule 18.1 (Shadow Operations);
- (e) the performance of any obligations of the Franchisee under Schedule 9B (Changes and Variations);
- (f) the drafting of any IOC Confirmable Obligations and associated amendments to the IOC Modelling Suite, including where the same are required as part of any Final Output Report;
- (g) monitoring and ensuring compliance with the Shadow Operator Procurement Strategy and the Shadow Operator Financial Management Strategy; and
- (h) overall management of the Franchisee's relationship with HS2 Limited, in relation to the Shadow Operator Services;

"Post-RR SPF" means the Post-RR SPF Annual Review Payment and the Post-RR SPF High Speed Milestone Payments;

"Post-RR SPF Annual Review Payment" the amount determined in accordance with the provisions of paragraph 3.1(a) of Appendix 2 (Shadow Operator Performance Fee) to Schedule 18.5 (Shadow Operator Payments);

"Post-RR SPF High Speed Milestone Payments" the amount determined in accordance with the provisions of paragraph 3.1(b) of Appendix 2 (Shadow Operator Performance Fee) to Schedule 18.5 (Shadow Operator Payments);

"Power of Attorney" or "POA" means the power of attorney granted by the Franchisee in favour of the Secretary of State in the agreed terms marked **POA**;

"Pre-RR SPF" means the amount determined in accordance with the provisions of paragraph 2.1 of Appendix 2 (Shadow Operator Performance Fee) to Schedule 18.5 (Shadow Operator Payments);

"Preceding thirteen (13) Reporting Periods" has the meaning given to it in paragraph 2.1 of Schedule 12 (Financial Covenants and Bonds);

"Preceding Year Ticket Price" has the meaning given to it in paragraph 2.1 of Schedule 5.5A (Regulation of Individual Fares);

"Pre-condition" has the meaning given to it in paragraph 8.1 of Schedule 6.2 (Committed Obligations);

"Preliminary Database"	means such database as may reasonably be put in place by the Secretary of State prior to making any RPC Database available to the Franchisee, as part of the development of the RPC Database;
"Pre-Step-In Notice"	has the meaning given to it in paragraph 19.2 of Schedule 18.1 (Shadow Operations);
"Previous Franchise Agreement"	means a franchise agreement dated 5 February 2018 under which services equivalent to the Franchise Services (or a material proportion thereof, excluding the Shadow Operator Services and the Integrated Services) were provided by West Coast Trains Limited on or about the day prior to the Start Date;
"Previous Franchisee"	means West Coast Trains Limited with company number: 03007940 of The Battleship Building, 179 Harrow Road London W2 6NB;
"Previous Franchisee ITSO Smartmedia Ticketing Scheme"	has the meaning given to it in paragraph 1 of Schedule 5.9A (Smart Ticketing);
"Price"	means, in respect of any Fare, the price of such Fare before the deduction of any applicable discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5A (Fares and Smart Ticketing) to the Ticketing and Settlement Agreement;
"Primary Franchise Assets"	<p>means:</p> <ul style="list-style-type: none">(a) the property, rights and liabilities of the Franchisee listed in Appendix 1 (List of Primary Franchise Assets) to Schedule 14.4 (Designation of Franchise Assets); and(b) any other property, rights and liabilities of the Franchisee which is or are designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets) and/or Schedule 18.2 (Accepted Programme Specific Requirements), <p>but excluding such property, rights or liabilities as may, in accordance with the terms of the Franchise Agreement, cease to be so designated;</p>
"Principles of Inclusive Design"	means planning, designing, building and managing places, while having due regard and a proportionate response to stakeholder views obtained through consultation or otherwise, so that they work better for everybody and reflect the diversity of the people who use them as embodied in the document published by the Commission for Architecture and the Built Environment in 2006 with the title " <i>The Principles of Inclusive Design</i> " (as revised from time to time);

"Prior Train Operator"	has the meaning given to it in paragraph 3.1 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"Priority Station"	has the meaning given to it paragraph 6.3 of Schedule 1.7 (Stations);
"Private Finance Option"	means the option to be retained by HS2 Limited, and contemplated in each of the High Speed Rolling Stock MSA and High Speed Rolling Stock TSA, under which HS2 Limited may procure the provision of private finance to fund, wholly or in part, the High Speed Rolling Stock;
"Private Finance Option Agreement"	means any agreement relating to the exercise of the Private Finance Option, to which the Franchisee shall become a party in accordance with the provisions of paragraph 6.1 of Schedule 18.3 (Transitional Programme Specific Requirements);
"Private Finance Owner"	means any person which becomes the owner of the High Speed Rolling Stock, following an exercise of the Private Finance Option;
"PRM TSI"	means the EU's Regulation (EU) No 1300/2014 of 18 November 2014 (as amended from time to time) on the technical specifications for interoperability relating to accessibility of the European Union's rail system for persons with disabilities and persons with reduced mobility;
"Product Cost Assumption Statements"	means the document in the agreed terms marked PCAS being the narrative which supports and details the assumptions regarding costs, volumes and drivers in the Accepted Programme Financial Model;
"Profit Share Components"	has the meaning ascribed to it in paragraph 1.1(a) of Schedule 9.1A (Financial and Other Consequences of Change);
"Projected Revenue"	means the revenue in any Fare Year which is projected to be attributable to any Fare, determined in accordance with paragraph 3 of Schedule 5.4A (Regulation of Fares Basket Values);
"Property Lease"	means any Depot Lease, any lease in respect of a Managed Station Area, any lease in respect of Shared Facilities or any Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which the Franchisee may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Franchise Services;

"Proposal"	means a "Proposal" as defined in and for the purposes of the Collaboration Agreement;
"Proposed Accepted Programme"	means the document in the agreed terms marked PAP ;
"Proposed Cost Baseline"	means the document in the agreed terms marked PCB which was submitted by the Franchisee in response to the Invitation to Tender, as the same may have been negotiated by the Secretary of State and the Franchisee during the procurement process pursuant to which the Franchise Agreement was entered into;
"Proposed Resourcing Plan"	means the document in the agreed terms marked PRP for the performance of the Proposed Accepted Programme which was submitted by the Franchisee in response to the Invitation to Tender, as the same may have been negotiated by the Secretary of State and the Franchisee during the procurement process pursuant to which the Franchise Agreement was entered into;
"Proposed RV Asset"	has the meaning given to it in paragraph 3.1 of Schedule 14.6A (Residual Value Mechanism);
"Proposed Accepted Programme"	means the programme of Shadow Operator Services which was submitted by the Franchisee in response to the Invitation to Tender, as the same may have been negotiated by the Secretary of State and the Franchisee during the procurement process pursuant to which the Franchise Agreement was entered into;
"Protected Fare"	means a Protected Return Fare or a Protected Weekly Season Ticket;
"Protected Fares Basket"	means the grouping of Protected Fares: <ul style="list-style-type: none">(a) determined by the Secretary of State pursuant to Schedule 5.3A (Allocation of Fares to Fares Baskets);(b) for the purposes of regulating their aggregate Prices in accordance with Schedule 5.4A (Regulation of Fares Basket Values);(c) amended by the Secretary of State from time to time in accordance with Schedule 5.7A (Changes to Fares and Fares Regulation); and(d) set out in the Protected Fares Document;
"Protected Fares Document" or "PFD"	means the document in the agreed terms marked PFD , as the same may be amended from time to time in accordance with Schedule 5.7A (Changes to Fares and Fares Regulation);

“Protected Proposal” has the meaning given to it in paragraph 2 of Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes);

“Protected Return Fare” means in respect of a Fare for a Flow:

- (a) for which there was a Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price under the Ticketing and Settlement Agreement, subject to the following additional rights and restrictions:
 - (i) it shall be valid for no less than one (1) month;
 - (ii) it shall be valid all day on a Saturday or Sunday and from no later than 1030 on any other day;
 - (iii) it need not be valid for any journey:
 - (A) beginning between 1500 and 1900 on any day other than a Saturday or Sunday;
 - (B) where such journey begins from a London Station or any station between any London Station and Reading station, Watford station, Luton station, or Stevenage station (inclusively); and
 - (C) which is in a direction away from London; or
- (b) for which there was no Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price under the Ticketing and Settlement Agreement,

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

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

- "PRPI"** shall have the meaning given to such term in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments);
- "PRRPI_{GDP}"** shall have the meaning given to such term in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments);
- "Public Sector Operator"** means any person (other than a franchisee or franchise operator in relation to the services provided or operated under its franchise agreement) who provides railway passenger services or operates any station or light maintenance depot pursuant to or under section 30 of the Act or section 6 of the Railways Act 2005;
- "Qualifying Change"** means an ICWC Change which:
- (a) following a Run of the ICWC Financial Model (where Schedule 9.1 (Financial and Other Consequences of Change) applies) in accordance with Schedule 9 (Changes and Variations) results in adjustments in Franchise Payments over the remaining life of the Franchise Agreement that have a net present value as at the date of the Change in excess of the Threshold Amount for the Franchisee Year during which the relevant Change arises. For the purposes of ascertaining a net present value of the amount of any adjustment in any Franchise Payment, the amount of the adjustment shall be discounted at the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines", counting back from the date of receipt of that adjusted Franchise Payment to the date of the Change. As at the date of the Franchise Agreement that rate is [three point five per cent] ([3.5%])⁴²; or
 - (b) the Franchise Agreement expressly provides shall be a Qualifying Change;
- "Quarterly Season Ticket"** means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls three (3) months after such day;
- "Rail Delivery Group" or "RDG"** means the Rail Delivery Group Limited (company number 08176197) (including any of its successors and assigns) whose principal place of business is at 2nd Floor, 200-202 Aldersgate Street, London EC1A 4HD, which is responsible for preserving and

42 **Note to Bidders:** To be confirmed at the signature date of the Franchise Agreement.

enhancing the benefits for passengers of Britain's national rail network policy formulation and communications on behalf of the whole rail industry;

"Rail Franchise"	has the meaning given to it in clause 15.1(f) (Competition);
"Rail Industry Sustainable Development Principles"	means the principles which were published by the Rail Safety and Standards Board in May 2016 as amended from time to time;
"Rail North"	means Rail North Limited (company number 9229441) whose registered office is at Transport for Greater Manchester, 2 Piccadilly Place, Manchester M1 3BG
"Rail Products"	has the meaning given to it in the Ticketing and Settlement Agreement and references to "Rail Products" shall be construed accordingly;
"Rail Safety and Standards Board" or "RSSB"	means Rail Safety and Standards Board Limited, a company registered in England with registered number 04655675 whose registered office is at The Helicon, 4th Floor, One South Place, London, EC2M 2RB;
"Rail Safety and Standards Board Sustainable Development Self-Assessment Framework"	means the online self-assessment framework against the Rail Industry Sustainable Development Principles published by the Rail Safety and Standards Board;
"Railway Group"	means the committee responsible for cross industry co-ordination in respect of rail safety legislation and industry safety standards chaired by the Rail Safety and Standards Board;
"Railway Operational Code"	has the meaning given to it in Condition H of the Network Code;
"Railway Passenger Services"	means, for the purposes of Schedule 5A (Fares and Smart Ticketing) only, services for the carriage of passengers by railway which are provided by a person who is bound by the Ticketing and Settlement Agreement, or any part of it, and including the Franchisee and any other Train Operator from time to time;
"Railway Schemes"	means a scheme developed by Network Rail, HS2 Limited, the Secretary of State, ORR or any other relevant railway industry body and organisation, or any relevant local authority in relation to the development of anything that can reasonably be considered to be a railway scheme including Industry Schemes, concessionary travel schemes, discount fares schemes, Community Rail Partnerships, inter-

operator schemes and schemes in relation to the attribution of train delay, the allocation of revenue and the collection and dissemination of industry wide information or such other scheme as the Secretary of State may decide from time to time;

"Railway Schemes Proposal"

has the meaning given to it in paragraph 10.1 of Schedule 18.2 (Accepted Programme Specific Requirements);

"Railway Systems Operational Sub-Concept"

means the railway systems operational sub concept produced by HS2 Limited and provided to the Franchisee from time to time;

"Railways Pension Scheme"

means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433);

"Readiness Review"

means the review carried out (or to be carried out) in accordance with Schedule 19.1 (Readiness Review);

"Readiness Review Failure Termination Notice"

means a notice from the Secretary of State to the Franchisee terminating the Franchise Agreement following a failure of the Readiness Review;

"Readiness Review Notification"

means the notification given by the Secretary of State to the Franchisee, in accordance with paragraph 6.1(b) of Schedule 18.4 (Shadow Operator Annual Review), that the Readiness Review will occur immediately following completion of the next Shadow Operator Annual Review;

"Recommended Option"

has the meaning given to it in paragraph 1.4(f) of Schedule 18.2 (Accepted Programme Specific Requirements);

"Reconciliation Amount"

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

"Redactions"

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

"Reference Fare"

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

"Reference Flow"

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

"Reference Revenue"

means the aggregate Gross Revenue recorded by RSP as attributable to sales of all Commuter Fares or Protected Fares for the period of twelve (12) months which ended 31 March 2017 or such other reference period as the Secretary of State may require pursuant

to paragraph 3.1(a) of Schedule 5.7A (Changes to Fares and Fares Regulation);

“Regulated Child Price”

means the Child Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year as specified in paragraph 1.3 of Schedule 5.5A (Regulation of Individual Fares);

“Regulated Price”

means the Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5A (Regulation of Individual Fares);

“Regulated Qualifications Framework”

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

“Regulated Value”

means the Value of any Fares Basket that is permitted in any Fare Year, determined in accordance with paragraph 4.1 of Schedule 5.4A (Regulation of Fares Basket Values);

“Regulations”

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

“Re-inspection Failure”

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

“Relevant Agreement”

means any Property Lease or Access Agreement in relation to any stations or network which may be used from time to time by the Franchisee in connection with the Franchise Services, as replaced or amended from time to time. If and to the extent that:

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

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

“Relevant Credit Rating”

means a credit rating of:

- (a) **A- (or better) (A minus or better)** by Standard and Poor’s Corporation or Fitch

Ratings Limited in respect of long term senior debt; or

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

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

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

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

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

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

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

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

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

"Relevant Track Access Agreement" means, in relation to the:

- (a) Conventional Rail Network, the Network Rail Track Access Agreement; and
- (b) HS2 Network, the HS2 Track Access Agreement,

and a reference to a **"Track Access Agreement"** means either the Network Rail Track Access Agreement or the HS2 Track Access Agreement as the context requires;

- “Remedial Agreement”** has the meaning given to it in paragraph 5.1 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement);
- “Remedial Plan”** has the meaning given to it in paragraph 3.1(b) of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement);
- “Remedial Plan Notice”** has the meaning given to it in paragraph 2 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement);
- “Replacement Agreement”** means an agreement entered into as a replacement for any Relevant Agreement;
- “Replacement Copy”** has the meaning given to it in paragraph 2.2(b) of Schedule 9.2 (Identity of the ICWC Financial Model (Escrow Documents));
- “Replacement Performance Bond”** means any performance bond issued or to be issued following the issue of the Initial Performance Bond by a Bond Provider to the Secretary of State which complies with the requirements of paragraph 4.2 of Schedule 12 (Financial Covenants and Bonds);
- “Reporting Period”** means:
- (a) for the purposes of the Season Ticket Bond, any consecutive seven (7) day period or any other period, each within a Reporting Period (as defined in paragraph (b)) agreed in accordance with paragraph 5.10 of Schedule 12 (Financial Covenants and Bonds); or
 - (b) for all other purposes, a period of twenty eight (28) days, provided that:
 - (i) the first such period during the Franchise Period shall exclude any days up to but not including the Start Date;
 - (ii) the first and last such period in any Reporting Year may be varied by up to seven (7) days by notice from the Secretary of State to the Franchisee;
 - (iii) each such period shall start on the day following the last day of the preceding such period; and
 - (iv) the last such period during the Franchise Period shall end at the end of the Franchise Period;

"Reporting Year"	means a period normally commencing on 1 April in each calendar year, comprising thirteen (13) consecutive Reporting Periods;
"Request for Information"	means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations;
"Required Action"	has the meaning given in paragraph 19.8(a) of Schedule 18.1 (Shadow Operations);
"Required Improvement"	has the meaning given to it in paragraph 1.1 of Schedule 7.2A (Customer Experience and Engagement);
"Required Output"	means the action or product the Franchisee is required to deliver in order to demonstrate fulfilment of any Accepted Programme Specific Requirement or Transitional Programme Specific Requirement;
"Required Output Report"	means any Initial Output Report, as supplemented or amended by each applicable Final Output Report, where the Required Output in response to any Accepted Programme Specific Requirement is production of a report;
"Required Performance Improvement"	has the meaning given to it in paragraph 26.1 of Schedule 7.1 (Operational Performance);
"Reset"	means the setting of the Annual Franchise Payment Components, Profit Share Components, Target Revenue Amounts, DfT _{GDP} RW, Adjusted Target GDP Index and the other matters relevant for the Reset Period, pursuant to the provisions of Schedule 8.7A (Resetting) (but not the benchmarks in Schedules 6.3(A) (Contractual Incentive Mitigations), 7.1A (Operational Performance), 7.2A (Customer Experience and Engagement) or 7.3A (Service Quality Regime));
"Reset Period"	means the period commencing at 02:00 on 1 April 2026 and ending at 01:59 on 1 April 2031;
"Reset Report"	means the report to be submitted by the Franchisee pursuant to the provisions of paragraph 2 of Schedule 8.7A (Resetting);
"Reset Revised Inputs"	means the Revised Inputs as calculated pursuant to the provisions of Appendix 1 (Calculation of Reset Revised Inputs) to Schedule 8.7A (Resetting) which give effect to the Reset;
"Resourcing Plan"	means a resourcing plan to be submitted by the Franchisee to the Secretary of State from time to time in accordance with paragraphs 1.2(b) of Schedule 18.1

(Shadow Operations) and paragraph 4.6 of Schedule 18.4 (Shadow Operator Annual Review), which shall be developed in line and comply with the Resourcing Strategy, demonstrate how the Franchisee will resource the Accepted Programme and Accepted Programme Specific Requirements and contain details of:

- (a) any proposed deployment of any Shadow Operator Employee away from the Shadow Operator Services to any other part of the Franchisee's business (including to deliver any other part of the Franchise Services), including details of:
 - (i) any Shadow Operator Employees being redeployed and the percentage of their normal working hours (including on a full-time basis) that each such Shadow Operator Employee will be deployed; and;
 - (ii) the reason for such deployment and any benefits that the Franchisee reasonably expects to be realised from that and any supporting evidence for the same;
- (b) any proposed deployment of any Franchise Employees that are not Shadow Operator Employees to Shadow Operator Services, including details of:
 - (i) the names and roles of such Franchise Employees and the percentage of their normal working hours (including on a full-time basis) that each such Franchise Employee will be deployed; and
 - (ii) the reason for such deployment and any benefits that the Franchisee reasonably expects to be realised and any supporting evidence for the same;
- (c) any proposed lending, seconding or contracting out of any Shadow Operator Employee to another person or persons (including any Affiliate, whether for a charge or not), including details of:
 - (i) the names and roles of such Shadow Operator Employees and the percentage of their normal working hours (including on a full-time basis) that each such Shadow Operator

Employee will be lent, seconded or contracted out; and

(ii) the reason for such lending, seconding or contracting out and any benefits that the Franchisee reasonably expects to be realised and any supporting evidence for the same; and

(d) contain such other information as the Secretary of State may specify from time to time;

"Resourcing Plan Compliance Report" has the meaning given to it in paragraph 5.1 of Schedule 18.1 (Shadow Operations);

"Resourcing Strategy" means the document in the agreed terms **RS**, setting out the Franchisee's strategy for resourcing the personnel required to deliver the Shadow Operator Services;

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

"Return Fare" means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, a journey in each direction in Standard Class Accommodation between the stations and/or the zones for which such Fare is valid and which expires no earlier than 02:00 hours on the day after the day of the outward journey or, if later, the time the relevant return journey may be completed if commenced before 02:00 hours;

"Revenue Share Adjustment" has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);

"Revenue Share Reconciliation Amount" has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);

"Revenue Share Reconciliation Date" has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);

"Revenue Support Adjustment" has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);

"Revenue Support Reconciliation Amount"	has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);
"Revenue Support Reconciliation Date"	has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);
"Review Procedures"	has the meaning given to it in paragraph 3.5 of Schedule 8.2A (Profit Share Mechanism);
"Revised Inputs"	has the meaning given to it in paragraph 4.2 of Schedule 9.1A (Financial and Other Consequences of Change);
"Revised Proposal"	has the meaning given to it in paragraph 20.2 of Schedule 7.3A (Service Quality Regime);
"Revised RV Asset Transfer Values"	has the meaning given to it in paragraph 1.4 (c) of Schedule 14.6 (Residual Value Mechanism);
"Rolling Stock and Depots Strategy"	means the strategy for rolling stock and depots provided by HS2 Limited to the Franchisee as updated from time to time;
"Rolling Stock Functional Aspects"	means each of the aspects listed at paragraph 27.1 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Rolling Stock Lease"	means any agreement for the leasing of rolling stock vehicles to which the Franchisee is a party as at the Start Date and any agreement of a similar or equivalent nature (including, any agreement or arrangement for the subleasing, hiring, licensing or other use of rolling stock vehicles) to which the Franchisee is a party from time to time during the Franchise Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement;
"Rolling Stock Operational Review Report"	has the meaning given to it in paragraph 23.3(a) of Schedule 18.2 (Accepted Programme Specific Requirements);
"Rolling Stock Related Contract"	means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;
"Rolling Stock Units"	has the meaning given to it in paragraph 1(c) of Schedule 10.3 (Force Majeure and Business Continuity);
"ROSCO"	means any company leasing rolling stock vehicles to the Franchisee under a Rolling Stock Lease;
"Route"	means any route specified in the Timetable over which the Franchisee has permission to operate the

Passenger Services pursuant to the Relevant Track Access Agreement;

"Route Map"	means a map (which may be a topological map) showing each of the Routes and each Other Passenger Route Within the Geographical Area meeting the requirements set out in paragraph 10 of Schedule 1.4 (<i>Passenger Facing Obligations</i>);
"RPC Database"	means a database to be provided by the Secretary of State pursuant to and on the terms of paragraph 7.1 of Schedule 1.5 (Information about Passengers) containing rail passenger counts information and providing analytical reporting tools or such other functionality as the Secretary of State may decide from time to time;
"RPIX"	has the meaning given to it in paragraph 6.2 (a) of Schedule 7.2A (Customer Experience and Engagement);
"RSP"	means Rail Settlement Plan Limited;
"RSPS3002"	has the meaning given to it in paragraph 1 of Schedule 5.9A (Smart Ticketing);
"Run of the ICWC Financial Model"	means a run of the ICWC Financial Model with the Revised Inputs which complies with the requirements of Schedule 9.1A (Financial and Other Consequences of ICWC Change);
"RV Asset"	means: (a) a Franchisee Owned RV Asset; or (b) an Infrastructure Manager Fixture Asset;
"RV Asset Business Case"	has the meaning given to it in paragraph 3.1 of Schedule 14.6A (Residual Value Mechanism);
"RV Asset Information"	has the meaning given to it in paragraph 3.4 of Schedule 14.6A (Residual Value Mechanism);
"RV Asset Transfer Values"	has the meaning given to it in paragraph 1.4 (c) of Schedule 14.6 (Residual Value Mechanism);
"Safeguarding on Rail Audit"	means the principles and measures to protect vulnerable children and adults at risk on rail transport, published by the British Transport Police, against which the Franchisee will be assessed (as amended or replaced from time to time);
"Safeguarding Strategy"	means a safeguarding strategy to promote and enforce the principles and measures set out in the

Safeguarding on Rail Audit and approved by the British Transport Police;

- “Safety Authorisation”** means the authorisation issued by the ORR under the Safety Regulations authorising the Franchisee’s safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Routes;
- “Safety Certificate”** means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Franchisee’s safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe operation on the Routes;
- “Safety Regulations”** means the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended pursuant to the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2006);
- “Saver Return Fare”** means a Return Fare which is shown as a saver fare in the fares manuals and systems of the RSP as at the date of such manuals;
- “Scheduled Consist Data”** means information as to the type of individual vehicles of rolling stock that have been scheduled by the Franchisee to form a train in the Train Fleet for any particular Passenger Service and the manner in which they are scheduled to be configured;
- “Season Ticket Bond”** means the season ticket bond to be provided to the Secretary of State in respect of the Franchisee’s liabilities under certain Fares and Season Ticket Fares in the form set out in Appendix 2 (Template Form of Season Ticket Bond) to Schedule 12 (Financial Covenants and Bonds) and such other bond as may replace it from time to time under Schedule 12 (Financial Covenants and Bonds);
- “Season Ticket Fare”** means:
- (a) for the purposes of Schedule 12 (Financial Covenants and Bonds) and the definition of Season Ticket Bond only, a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid; and
 - (b) for all other purposes, a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction

during the period for which, and between the stations and/or the zones for which, such Fare is valid;

"Second Extension Period"	has the meaning given to it in clause 5.2(b);
"Second Profit Share Threshold" or "SPST"	has the meaning given to it in paragraph 1.1(b) of Schedule 8.2A (Profit Share Mechanism);
"Secretary of State Material"	means any Material created by, for or on behalf of the Secretary of State (or any of the Secretary of State's subcontractors) which is provided to the Franchisee in connection with the performance or receipt of the Franchise Services;
"Secretary of State Risk Assumptions"	means those assumptions set out in Schedule 9.4 (Secretary of State Risk Assumptions);
"Secretary of the Access Disputes Committee"	means the person appointed as the secretary of the Access Disputes Committee from time to time;
"Secure Car Parks Accreditation"	has the meaning given to it in paragraph 6.6 of Schedule 1.7 (Stations);
"Secure Car Parks Scheme"	has the meaning given to it in paragraph 6.6 of Schedule 1.7 (Stations);
"Secure Stations Accreditation"	has the meaning given to it in paragraph 6.6 of Schedule 1.7 (Stations);
"Secure Stations Scheme"	has the meaning given to it in paragraph 6.6 of Schedule 1.7 (Stations);
"Security Breach"	has the meaning given to it in paragraph 6.3(c)(i) of Schedule 1.5 (Information about Passengers);
"Security in the Design of Stations Guidance"	means the "Security in Design of Stations (SIDOS)" Guidance published by the Secretary of State, the British Transport Police and the Centre for the Protection of National Infrastructure dated July 2012 as amended, updated or replaced from time to time, and/or any other relevant security guidance as reasonably directed by the Secretary of State;
"Security Interest"	means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect;
"Security Requirements"	means any security requirements that have been specified by: <ul style="list-style-type: none"> (a) British Transport Police;

- (b) the Secretary of State; and/or
- (c) any other body as specified by the Secretary of State;

"Service Group" has the meaning given to it in the Relevant Track Access Agreement or as specified by the Secretary of State from time to time;

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

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

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

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

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

"Service Quality Regime" or "SQR" has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);

"Service Quality Re-inspection" has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);

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

"Service Recovery Plan" means, in the event of a prevention or restriction of access to the track or a section of the track (howsoever caused) which results in any Cancellation, Partial Cancellation, and/or any Passenger Service being operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for such Passenger Service in the Train Plan, a plan implemented by the Franchisee:

- (a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best possible level of service given such disruption, including by:
 - (i) keeping service intervals to reasonable durations;
 - (ii) keeping extended journey times to reasonable durations; and
 - (iii) managing any resulting overcrowding;

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

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

"Servicing and Cleaning Plan"

means the plan, in respect of the servicing and cleaning of the High Speed Rolling Stock, to be developed and presented by the Franchisee pursuant to paragraph 36 of Schedule 18.2 (Accepted Programme Specific Requirements);

"Settlement Proposal"

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

"Shadow Operator Annual Review"

means an annual review carried out (or to be carried out) in accordance with Schedule 18.4 (Shadow Operator Annual Review);

"Shadow Operator Annual Review Checklist"	means, in respect of a Shadow Operator Annual Review, a checklist completed (or, as the case may be, to be completed) substantially in the form of that set out in Appendix 1 to Schedule 18.4 (Shadow Operator Annual Review), as updated from time to time in accordance with paragraph 7.3 of Schedule 18.4 (Shadow Operator Annual Review);
"Shadow Operator Annual Review Meeting"	means in respect of each Shadow Operator Annual Review any Shadow Operator Annual Review Performance Meeting or Shadow Operator Annual Review Planning Meeting;
"Shadow Operator Annual Review Performance Meeting"	means, in respect of each Shadow Operator Annual Review regarding the past performance of the Franchisee, a meeting or meetings held between the Parties on one or more days in accordance with paragraph 5 of Schedule 18.4 (Shadow Operator Annual Review);
"Shadow Operator Annual Review Planning Meeting"	means, in respect of each Shadow Operator Annual Review regarding the forward plans of the Franchisee, a meeting or meetings held between the Parties on one or more days in accordance with paragraph 5 of Schedule 18.4 (Shadow Operator Annual Review);
"Shadow Operator Annual Review Scorecard"	means, in respect of a Shadow Operator Annual Review, a scorecard completed (or, as the case may be, to be completed) in writing by the Secretary of State in accordance with paragraph 6 of Schedule 18.4 (Shadow Operator Annual Review) substantially in the form set out in Appendix 2 to Schedule 18.4 (Shadow Operator Annual Review), or in such other form as the Franchisee and the Secretary of State may agree in writing from time to time;
"Shadow Operator Area of Assessment"	means each of the areas of assessment for which the Franchisee's performance will be measured at each Shadow Operator Annual Review and for which a score will be awarded under the corresponding Annual Review Scorecard;
"Shadow Operator Change"	means any change to any of the Shadow Operator Escrow Documents as such change is from time to time agreed or determined pursuant to the provisions of paragraph 2.3 of Schedule 9.1B (Financial and other Consequences of Change);
"Shadow Operator Commencement Date"	has the meaning given to it in paragraph 21.2 of Schedule 18.1 (Shadow Operations);
"Shadow Operator Contingency"	means the contingency amounts which apply to the Cost Baseline and the Transitional Budget, as set out in the Shadow Operator Financial Management Strategy;

- “Shadow Operator Contractor”** means each contractor who, as part of their terms of engagement, is from time to time directly involved in the performance of the Shadow Operator Services (other than those persons for whom the provision of the Shadow Operator Services forms an incidental part of their terms of engagement only);
- “Shadow Operator Cost Reimbursement” or “ShOpR”** means for any Reporting Period the amount (if any) determined in accordance with the provisions of Appendix 1 (Shadow Operator Cost Reimbursement) to Schedule 18.5 (Shadow Operator Payments);
- “Shadow Operator Delay Action Plan”** has the meaning given to it in paragraph 12.9 of Schedule 18.1 (Shadow Operations);
- “Shadow Operator Delay Event”** means:
- (a) any failure by HS2 Limited to perform (or procure the performance of) any activity (including producing or delivering any item) on or before a date agreed in advance by the Franchisee and HS2 Limited;
 - (b) on receipt of any reasonable request by the Franchisee to agree in advance a date for HS2 Limited to perform (or procure the performance of) any activity, any failure by HS2 Limited to respond promptly to that request to either:
 - (i) where the Franchisee has proposed a date, agree to that date or to propose or to propose an alternative date; or
 - (ii) where the Franchisee has requested that HS2 Limited propose a date, propose a date;
 - (c) any failure by Network Rail to perform (or procure the performance of) any activity (including producing or delivering any item) on or before a date agreed in advance by the Franchisee and Network Rail;
 - (d) on receipt of any reasonable request by the Franchisee to agree in advance a date for Network Rail to perform (or procure the performance of) any activity, any failure by Network Rail to respond promptly to that request to either:
 - (i) where the Franchisee has proposed a date, agree to that date or to propose an alternative date; or

- (ii) where the Franchisee has requested that Network Rail propose a date, propose a date;
- (e) any failure by the Secretary of State to perform (or procure the performance of) any activity (including producing or delivering any item) on or before a date agreed in advance by the Franchisee and the Secretary of State; or
- (f) on receipt of any reasonable request by the Franchisee to agree in advance a date for the Secretary of State to perform (or procure the performance of) any activity, any failure by the Secretary of State to respond promptly to that request to either:
 - (i) where the Franchisee has proposed a date, agree to that date or to propose an alternative date; or
 - (ii) where the Franchisee has requested that the Secretary of State propose a date, propose a date;

in each case, which causes the Franchisee to be delayed in the performance of, or unable to perform any part of, the Shadow Operator Services;

“Shadow Operator Delay Event Notice”

has the meaning given to it in paragraph 12.8 of Schedule 18.1 (Shadow Operations);

“Shadow Operator Employee”

means each Franchise Employee who, as part of their employment services, is from time to time directly involved in the performance of the Shadow Operator Services (other than those persons for whom the provision of the Shadow Operator Services forms an incidental part of their employment services only);

“Shadow Operator Escrow Documents”

means the:

- (a) Accepted Programme;
- (b) Accepted Programme Modelling Suite;
- (c) Resourcing Plan;
- (d) Transitional Modelling Suite; and
- (e) Transitional Programme;

“Shadow Operator Financial Management Strategy”

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

"Shadow Operator Handover Package"	means the package which contains the information specified in Appendix 2 (Form of Shadow Operator Handover Package) to Schedule 15.3 (Handover Package) and such other information as the Secretary of State may reasonably specify from time to time;
"Shadow Operator Only Call Event"	has the meaning given to it in paragraph 4.5(a)(vii) of Schedule 12 (Financial Covenants and Bonds);
"Shadow Operator Payment" or "ShOpP"	means for any Reporting Period the Shadow Operator Cost Reimbursement <u>plus</u> the Shadow Operator Performance Fee (if any);
"Shadow Operator Performance Fee" or "ShOpF"	means the Post-RR SPF and/or the Pre-RR SPF as the case may be;
"Shadow Operator Performance Period"	means each Franchisee Year, provided that: <ul style="list-style-type: none">(a) the first Shadow Operator Performance Period will commence on the Shadow Operator Start Date;(b) the final Shadow Operator Performance Period will end on the High Speed Established Services Date unless otherwise determined by the Secretary of State;(c) where the Integrated Operator Start Date is on a date other than 1 April, the Franchisee Year ending immediately prior to the Integrated Operator Start Date (being the last Franchisee Year in the ICWC Period) and the Franchisee Year beginning on the Integrated Operator Start Date (being the first Franchisee Year in the Integrated Operator Period) shall, taken together, constitute one (1) Shadow Operator Performance Period; and(d) no Shadow Operator Performance Period will be a period of less than six (6) months or more than eighteen (18) months;
"Shadow Operator Performance Period Date"	means the last date in the relevant Shadow Operator Performance Period;
"Shadow Operator Performance Meeting"	means a meeting between the Secretary of State and the Franchisee to be held in accordance with paragraph 16 of Schedule 18.1 (Shadow Operations);
"Shadow Operator Planning Meeting"	has the meaning given to it in paragraph 1.3 of Schedule 18.1 (Shadow Operations);

"Shadow Operator PMO Personnel"	means those personnel identified as such in the schedule provided by the Franchisee to the Secretary of State in accordance with paragraph 18.1 of Schedule 18.1 (Shadow Operations) as updated from time to time in accordance with paragraph 18.2 of Schedule 18.1 (Shadow Operations);
"Shadow Operator PMO Roles"	means the roles relating to the PMO Services as described in Appendix 1 to Schedule 18.1 (Shadow Operator); ⁴³
"Shadow Operator Procurement Strategy"	means the document in the agreed terms marked SOPS ;
"Shadow Operator Readiness Review Scores"	has the meaning given in paragraph 3.1(a) of Schedule 19.1 (Readiness Review);
"Shadow Operator Scoring Standard"	means each standard set out within each Shadow Operator Area of Assessment as set out in Appendix 2 to Schedule 18.4 (Shadow Operator Annual Review);
"Shadow Operator Section of the Annual Management Accounts"	means the annual management accounts of the Franchisee which: <ul style="list-style-type: none">(a) comply with paragraph 17.1 of Schedule 18.1 (Shadow Operations); and(b) are required to be delivered to the Secretary of State by the Franchisee in accordance with paragraph 17.4 of Schedule 18.1 (Shadow Operations);
"Shadow Operator Section of the Management Accounts"	means the management accounts of the Franchisee relating to the provision of the Shadow Operator Services, which: <ul style="list-style-type: none">(a) comply with paragraph 17.1 of Schedule 18.1 (Shadow Operations); and(b) are required to be delivered to the Secretary of State by the Franchisee in accordance with paragraphs 17.2 of Schedule 18.1 (Shadow Operations);
"Shadow Operator Services"	means all of the obligations to be performed by the Franchisee in accordance with Schedule 18 (Shadow Operator), including the provision of services, the exercise of rights and all other activities that the Franchisee is required to perform, including any of such obligations as the Franchisee may delegate or subcontract or otherwise secure through any other

43 **Note to Bidders:** schedule of roles to be submitted by Bidders as a response to the ITT.

person from time to time in accordance with the Franchise Agreement;

"Shadow Operator Stakeholder Report"

means a report to be completed in respect of each Shadow Operator Stakeholder Survey, to be included in the Shadow Operator Annual Review Checklist and to meet the requirements set out in paragraph 3.3 of Schedule 18.4 (Shadow Operator Annual Review);

"Shadow Operator Stakeholder Survey"

means a stakeholder survey in the form designed in accordance with the provisions of paragraph 15 of Schedule 18.1 (Shadow Operations);

"Shadow Operator Start Date"

means the earlier of:

- (a) the Start Date; and
- (b) the date on which the Accepted Programme and Accepted Programme Modelling Suite are Placed in Escrow in accordance with paragraph 1.7 of Schedule 18.1 (Shadow Operations);

"Shadow Operator Term"

means the period commencing on the Shadow Operator Start Date and expiring on the High Speed Established Services Date;

"Shadow Operator Termination Assistance Period"

means the period beginning on the earlier of the date:

- (a) on which a Termination Notice is served by the Secretary of State; or
- (b) on which a Readiness Review Failure Termination Notice is served by the Secretary of State;
- (c) which is six (6) months prior to the Expiry Date;

and expiring on the date on which the Shadow Operator Services terminate or on the Expiry Date (whichever is the earlier);

"Shadow Operator TUPE Employees"

means all persons employed in the performance of the Shadow Operator Services immediately before the Shadow Operator TUPE Transfer Date (whether employed by the Franchisee or otherwise) whose contract of employment has been or is to be transferred to the Successor Shadow Operator by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the performance of the Shadow Operator Services in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

"Shadow Operator TUPE Transfer Date"	has the meaning given to it in paragraph 21.7 of Schedule 18.1 (Shadow Operations);
"Shared Facilities"	means those facilities in respect of which the Franchisee and Network Rail or HS2 Limited carry out their respective activities concurrently;
"ShOp Adjust"	has the meaning given to it in paragraph 4.4(b)(ii) of Schedule 12 (Financial Covenants and Bonds);
"Significant Alterations"	<p>shall, in relation to any proposed new or amended Timetable, include alterations from the then current Timetable which result in, or are likely to result in:</p> <ul style="list-style-type: none">(a) the addition or removal of railway passenger services;(b) changes to stopping patterns or destinations or origin;(c) changes of timings for first/last trains by more than 10 minutes;(d) NOT USED;(e) significant changes to journey times and/or key connections at the Stations or at other stations at which relevant railway passenger services call by more than 15 minutes;
"Simulator"	means the cab simulator(s) to be supplied by the TMM pursuant to the High Speed Rolling Stock MSA;
"Simulator Functional Requirements"	means the Functional Requirements in respect of the Simulator which the Franchisee is required to provide, as set out in paragraph 28.1 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Simulator Functional Requirements Plan"	means the plan of dates by when the Franchisee shall provide the Simulator Functional Requirements in accordance with paragraph 28.3 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Single Fare"	means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, on any one (1) day, one (1) journey in Standard Class Accommodation between the stations and/or the zones for which the Fare is valid;
"SKA Rating Standard"	means the recognised environmental assessment tool known as "SKA Rating" for sustainable fit outs published by the Royal Institute of Chartered Surveyors;

“Skills and Leadership Strategy” means the skills and leadership strategy of the Franchisee required to be implemented pursuant to paragraph 9 of Schedule 13.1 (Rail Industry Initiatives and Co-operation) as it may be revised pursuant to such paragraph;

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

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

The three categories are:

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

“Smart Ticketing Scheme” has the meaning given to it in paragraph 1 of Schedule 5.9A (Smart Ticketing);

“SO MA” means the document in the agreed terms marked **SO MA**;

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

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

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

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

“SoS Service Quality Inspection Period” has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);

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

“Specifically Included Change of Law” has the meaning given to it in the definition of Change of Law;

"Specified Additional Rolling Stock"	has the meaning given in paragraph 2.1(b) of Schedule 1.6 (The Rolling Stock);
"Specimen Scheme"	means the Committed Obligations set out in paragraphs [INSERT LIST ⁴⁴] of Part 1 (Committed Obligations) of Schedule 6.2A (Committed Obligations);
"Specimen Scheme Output"	means, for each Specimen Scheme, the output intended to be achieved by that Specimen Scheme, as set out in the relevant paragraph of Part 1 (Committed Obligations) of Schedule 6.2A (Committed Obligations);
"Sponsor Requirements"	means such requirements set out in Annex 2 of the Development Agreement as advised by the Secretary of State to the Franchisee from time to time;
"SQR Benchmark"	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
"SQR Customer Service"	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
"SQR Customer Service Benchmark"	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
"SQR Management System"	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
"SQR Register"	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
"SQR Station"	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
"SQR Station Benchmark"	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
"SQR Train"	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
"SQR Train Benchmark"	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
"Staff Engagement Plan"	has the meaning given to that term in paragraph 20.1 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Stakeholder"	means the Passengers' Council and any relevant Local Authority and organisations who can reasonably be

44 **Note to Bidders:** To be populated by the DfT taking into account the schemes proposed by Bidders in their Schedule of Initiatives.

considered to have a legitimate and proper interest in the Passenger Services including Community Rail Partnerships representing Community Rail Routes designated as such by the Secretary of State;

“Standard Class Accommodation”

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

“Standard Occupational Classification Codes”

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

“Start Date”

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

- (a) 02:00 on 15 September 2019; or
- (b) such time and date as may be notified to the Franchisee by the Secretary of State pursuant to:
 - (i) Clause 4.2 of the Conditions Precedent Agreement; or
 - (ii) Clause 4.3 of the Conditions Precedent Agreement; or
- (c) such time and date as may be notified to the Franchisee by the Secretary of State pursuant to clause 5.3 (a) (Amendment of Start Date/Expiry Date) of this Agreement;

“Start Date Transfer Scheme”

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

“Station”

means:

- (a) any station in respect of which the Franchisee has entered into a Station Lease; or

(b) any New Station at which the Franchisee becomes the Facility Owner;

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

"Station Asset Management Plan" means the plan created by the Franchisee pursuant to paragraph 1 of Schedule 1.7A (Stations) and as amended from time to time in accordance with the provisions of Schedule 1.7A (Stations) and 1.7B (Stations);

"Station Asset Management Plan Accreditation" means the certification of the Franchisee's station asset management organisation and systems for Stations as complying with the requirements of ISO55001:2014 (or such other reasonably equivalent standard as may be approved in writing by the Secretary of State from time to time in place of ISO55001:2014);

"Station Asset Management Plan Accreditation Certificate" means a certificate of accreditation issued by an organisation accredited by the United Kingdom Accreditation System (UKAS) which has been signed by a director of the Franchisee and which confirms that the Station Asset Management Plan Accreditation has been obtained;

"Station Charge Adjustment" means any adjustment to payments under an Access Agreement determined in accordance with paragraph 2 of Schedule 8.3A (Track Access Adjustments and Station Charge Adjustments);

"Station/Depot Change Compensation Amount" has the meaning given to it in paragraph 7.4 of Schedule 2.2B (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

"Station Lease" or "SL" means:

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

"Station Proposal for Change" has the meaning given to the term "Proposal for Change" under the Station Access Conditions or any proposal or arrangement which, in the reasonable opinion of the Secretary of State, has a similar effect;

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

"Station Service Quality Inspection"	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);
"Station Social and Commercial Development Plan" or "SCDP"	means the Franchisee's station social and commercial development plan in the agreed terms marked SCDP , as such plan may be updated in accordance with the provisions of paragraph 3 of Schedule 1.7A (Stations) and paragraph 3 of Schedule 1.7B (Stations);
"Station Sublease"	means a lease or sub lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator;
"Station Travel Plan"	means, in relation to a Station, a strategy for managing travel to and from that Station by passengers and other station users with the aim of reducing the environmental impact of such travel;
"Station Travel Plan Guidance"	means the guidance on station travel plans set out in the document entitled "Guidance on the Implementation of Station Travel Plans" dated July 2013 published by RSSB as amended or updated from time to time, or other relevant guidance as reasonably specified by the Secretary of State during the Franchise Term;
"Step-In"	means the Secretary of State stepping in and undertaking the Required Action in respect of any of the Shadow Operator Services;
"Step-In Notice"	has the meaning given to it in paragraph 19.7 of Schedule 18.1 (Shadow Operations);
"Step-Out Date"	means in respect of a Step-In, the date on which the Secretary of State ceases that Step-In as notified to the Franchisee in a Step-Out Notice in accordance with paragraph 19.13(b) of Schedule 18.1 (Shadow Operations);
"Step-Out Notice"	means a written notice delivered by the Secretary of State to the Franchisee before ceasing a Step-In in accordance with paragraph 19.13 of Schedule 18.1 (Shadow Operations);
"Step-Out Plan"	means a plan prepared by the Franchisee relating to the resumption by the Franchisee of the Shadow Operator Services the subject of Required Action in accordance with paragraph 19.9(d) of Schedule 18.1 (Shadow Operations);
"Stored Credit Balance"	means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium);

“Strategic Market Report”	has the meaning given to it in paragraph 48.1 of Schedule 18.2 (Accepted Programme Specific Requirements);
“Strategic Operational Baseline Forecast”	has the meaning given to it in paragraph 22.6 of Schedule 18.2 (Accepted Programme Specific Requirements);
“Strategic Operational Baseline Report”	means the report to be provided to the Secretary of State by the Franchisee in accordance with paragraph 21 of Schedule 18.2 (Accepted Programme Specific Requirements);
“Subcontractor”	has the meaning given to it in paragraph 7.3 (b) of Schedule 1.5 (Information about Passengers);
“Subsequent Reporting Stage”	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
“Suburban Station”	means any station which is not a London Station and which is listed below or is closer to London than (and on the same line as) the following stations: <ul style="list-style-type: none">(a) Shoeburyness;(b) Southend Victoria;(c) Southminster;(d) Marks Tey (excluding Sudbury branch);(e) Audley End (but not including Stansted Airport);(f) Ashwell & Morden;(g) Arlesey;(h) Harlington;(i) Bletchley (excluding Bedford branch);(j) Aylesbury;(k) Haddenham & Thame Parkway;(l) Twyford (including Henley branch);(m) Windsor & Eton Riverside;(n) Earley;(o) Fleet;(p) Alton;

- (q) Witley;
- (r) Christ's Hospital;
- (s) Brighton (excluding Coastway);
- (t) East Grinstead;
- (u) Crowborough;
- (v) Wadhurst;
- (w) Paddock Wood (including the line between Strood and Paddock Wood);
- (x) Maidstone East;
- (y) Canterbury East; and
- (z) Margate;

"Successor Operator" means a Train Operator or, in the case of the Shadow Operator Services any third party, succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Franchisee by the Secretary of State) the Franchisee in the provision or operation of all or any of the Franchise Services including, where the context so admits:

- (a) the Franchisee where it is to continue to provide or operate the Franchise Services following termination of the Franchise Agreement; and/or
- (b) any Successor Shadow Operator;

"Successor Operator Timetable" has the meaning given to it in paragraph 2.2(a) of Schedule 14.1 (Maintenance of Franchise);

"Successor Shadow Operator" means any third party succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Franchisee by the Secretary of State) the Franchisee in provision of services similar or equivalent to the Shadow Operator Services including, where the context so admits, the Franchisee where it is to continue to provide or operate services similar or equivalent to the Shadow Operator Services following termination of the Franchise Agreement;

"Suicide Prevention Duty Holders' Group's 9 Point Plan" means the best practice plan established and published by the "cross-industry suicide prevention group", setting out nine deliverables aimed at suicide reduction (as amended or replaced from time to time);

"Suicide Prevention Strategy"	means the 'From Crisis to Care' strategy document for the period 2016-2019 (as amended or replaced from time to time) published by the British Transport Police;
"Supplemental Agreement"	means a supplemental agreement between the Franchisee and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of Appendix 2 (Form of Supplemental Agreement) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Secretary of State may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such supplemental agreement between the date of the Franchise Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4 (Provisions Applying on and after Termination);
"Supplementary Railway Schemes Proposal"	has the meaning given to it in paragraph 11.1 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Sustainable Development Strategy" or "SDS"	means the Franchisee's strategy for sustainable development for the Franchise as agreed or determined pursuant to paragraph 10.1(b) of Schedule 13.1 (Rail Industry Initiatives and Co-operation) including as a minimum: the matters listed in paragraph 10.1(a) of Schedule 13.1 (Rail Industry Initiatives and Co-operation), key aims, resources, risks and details of how sustainable development will be embedded in the governance of the Franchise and investment decisions (as revised from time to time);
"Switch Review"	means the process to be carried out by the Secretary of State in accordance with Schedule 19.2 (Switch Review);
"Switch Review Date"	has the meaning given in paragraph 2.1 of Schedule 19.2 (Switch Review);
"Systems Integrator"	means HS2 Limited acting in its role as "systems integrator" to ensure that the separate supplier packages relating to the Conventional Rail Network, HS2 Network, HS2 Systems and High Speed Rolling Stock are integrated in order to provide a functioning and integrated railway system on the HS2 Network and the Conventional Rail Network;
"Target Passenger Demand"	means the higher of Actual Passenger Demand and Forecast Passenger Demand or any other level of passenger demand specified by the Secretary of State not being greater than the higher of Actual Passenger Demand or Forecast Passenger Demand;

"Target Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Target Revenue"	has the meaning given to it in paragraph 2 of Schedule 8.6A (Forecast Revenue Mechanism);
"Target Revenue Amounts "	means the amounts of Target Revenue for each Franchisee Year specified in the table set out in Appendix 1 (Target Revenue) to Schedule 8.6A (Forecast Revenue Mechanism);
"Target Ticketless Travel Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);
"Taxation"	means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of the Franchise Agreement and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere;
"TDR Amendment"	has the meaning given to it in paragraph 12.8 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services and Service Development);
"Technical Support Contract"	means a contract for technical support to which the Franchisee is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;
"Tendering/Reletting Process"	means either of the processes described in paragraph 1.1 and 1.2 of Schedule 15.1 (Reletting Provisions);
"Termination Event"	has the meaning given to it in paragraph 2 of Schedule 10.2 (Events of Default and Termination Events);
"Termination Notice"	means a notice from the Secretary of State to the Franchisee terminating the Franchise Agreement following an Event of Default or a Termination Event in accordance with Schedule 10.2 (Events of Default and Termination Events);
"Third Extension Period"	has the meaning given to it in clause 5.2(c);
"Third Party Data"	means any information, data and materials that may be provided to the Secretary of State by any third party that relates to the Franchisee and which the Secretary of State decides (in the Secretary of State's absolute discretion) to add to the RPC Database;
"Third Profit Share Threshold" or "TPST"	has the meaning given to it in paragraph 1.1(c) of Schedule 8.2A (Profit Share Mechanism);

"Threshold Amount"	has the meaning given to it in Appendix 1 (Definition of Threshold Amount) to Schedule 9.1A (Financial and Other Consequences of Change);
"Through Ticketing (Non-Travelcard) Agreement"	means the agreement of that name referred to in paragraph 4.1(e) of Appendix 1 (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes);
"Ticketing and Settlement Agreement"	means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the Franchisee and the other Train Operators named therein, as amended from time to time with the approval of the Secretary of State;
"Ticketless Travel Benchmark"	has the meaning given to such term in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);
"Ticketless Travel Payment Adjustment"	has the meaning given to such term in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);
"Ticketless Travel Rate"	has the meaning given to such term in paragraph 1.1 of Schedule 6.3A (Contractual Incentive Mitigations);
"Ticketless Travel Survey"	means the survey carried out by or on behalf of the Secretary of State in each Ticketless Travel Survey Period to determine the Ticketless Travel Rate for such period;
"Ticketless Travel Survey Methodology" or "TTSM"	means the document in the agreed terms marked TTSM;
"Ticketless Travel Survey Period"	means such day or days as are determined by the Secretary of State falling within each of the following periods: (a) the first to the sixth Reporting Period (inclusive) to fall in any Performance Calculation Year (for the purposes of Schedule 6.3A (Contractual Incentive Mitigations)) or in any Franchisee Year (for the purposes of paragraph 6A (Ticketless Travel Surveys) of Part 2 of Schedule 6.1 (Franchise Specific Obligations)); (b) the seventh to the thirteenth Reporting Period (Inclusive) to fall in any Performance Calculation Year (for the purposes of Schedule 6.3A (Contractual Incentive Mitigations)) or in any Franchisee Year (for the purposes of paragraph 6A (Ticketless Travel Surveys) of Part 2 of Schedule 6.1 (Franchise Specific Obligations));

"Time to 3 Minutes Figures"	means the moving annual average percentage published by Network Rail in respect of Time to 3 Minutes, rounded to one (1) decimal place;
"Time to 3 Minutes" or "T-3" or "Time to 3"	means the percentage of recorded station stops called at within three (3) minutes of the planned time relating to the Franchise as produced and/or published by Network Rail;
"Time to 15 Minutes Figures"	means the moving annual average percentage published by Network Rail in respect of Time to 15 Minutes, rounded to one (1) decimal place;
"Time to 15 Minutes" or "T-15" or "Time to 15"	means the percentage of recorded station stops called at within fifteen (15) minutes of the planned time relating to the Franchise as produced and/or published by Network Rail;
"Timetable"	means the timetable which reflects the working timetable issued by Network Rail at the conclusion of its timetable development process, containing the departure and arrival times of: <ul style="list-style-type: none">(a) all Passenger Services which call at Stations and/or Franchisee Access Stations; and(b) principal Connections at those stations and other stations;
"Timetable Development Rights"	means all or any of the rights of the Franchisee under the Relevant Track Access Agreement to: <ul style="list-style-type: none">(a) operate Passenger Services and ancillary movements by virtue of that Track Access Agreement;(b) deliver any required notification and/or declaration to the Infrastructure Manager in respect of its intention to exercise any rights;(c) make or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Network Code;(d) surrender any Train Slots allocated to the Franchisee by the Infrastructure Manager in accordance with the Network Code;(e) object to, make representations, appeal or withhold consent in respect of any actual or proposed act or omission by the Infrastructure Manager; and(f) seek from the Infrastructure Manager additional benefits as a condition to granting

any consent to any actual or proposed act or omission by the Infrastructure Manager;

"Timetable Planning Rules"	has the meaning given to it in the Network Code;
"Timetabled Services"	means any particular Passenger Service characterised by the day of the week (including Saturday and Sunday), time of day, origin station and destination and calling pattern which is scheduled to operate (for example, the 12:00 hours service departing London Euston to Manchester on a Sunday etc.);
"Timetabling and Train Planning Compliance Investigation"	has the meaning set out in paragraph 2.1 of Schedule 1.2 (Operating Obligations);
"TMM"	means the train manufacturer and maintainer to be appointed by HS2 Limited in respect of the procurement of the High Speed Rolling Stock;
"TOC Minute Delay Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"TOC Minute Delay Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"TOC Minute Delay Performance Sum"	means an amount determined in accordance with paragraph 22.4 of Schedule 7.1A (Operational Performance) payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final ICWC Franchisee Year, where the provisions of paragraph 29 of Schedule 7.1A (Operational Performance) shall apply) by the Franchisee (as the case may be);
"Total Actual Operating Costs"	means the sum of the Actual Operating Costs for the relevant Reporting Period and each of the twelve (12) preceding Reporting Periods during the ICWC Term (or the sum of the Actual Operating Costs for the relevant Reporting Period and all of the Reporting Periods that have elapsed since the Start Date or, where the Integrated Operator Start Date has occurred, the Integrated Operator Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made);
"Total Digital Railway Account Amount"	means the sum of all four (4) Annual Digital Railway Account Contributions plus all interest earned (and reasonably expected to be earned) thereon;
"Total Forecast Modified Revenue"	means the sum of the Forecast Modified Revenue for each of the thirteen (13) Reporting Periods following the relevant Reporting Period (or, where there are less

	than thirteen (13) Reporting Periods remaining in the ICWC Term, the remaining Reporting Periods);
"Total Forecast Operating Cost"	means the sum of the Forecast Operating Cost for each of the thirteen (13) Reporting Periods following the relevant Reporting Period (or, where there are less than thirteen (13) Reporting Periods remaining in the Franchise Term, the remaining Reporting Periods);
"Total Modified Revenue"	means the sum of the Modified Revenue for the relevant Reporting Period and each of the twelve (12) preceding Reporting Periods during the ICWC Term (or the sum of the Modified Revenue for the relevant Reporting Period and all of the Reporting Periods that have elapsed since the Start Date or, where the Integrated Operator Start Date has occurred, the Integrated Operator Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made);
"Track Access Adjustment"	means any adjustment to payments under the Relevant Track Access Agreement determined in accordance with paragraph 1 of Schedule 8.3A (Track Access Adjustments and Station Charge Adjustments);
"Train Fleet"	means: <ul style="list-style-type: none">(a) the rolling stock vehicles described in or required by Schedule 1.6 (The Rolling Stock);(b) any other rolling stock vehicles the Secretary of State consents to in accordance with paragraph 3 of Schedule 1.6 (The Rolling Stock); and(c) the HS2 Rolling Stock;
"Train Management System"	means the train management system for the High Speed Rolling Stock;
"Train Operator"	means a franchisee or franchise operator, either of which operate railway passenger services pursuant to a franchise agreement or a Public Sector Operator;
"Train Plan" or "TP"	shall have the meaning given to it in paragraph 10 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services and Service Development);
"Train Plan Parameters"	means the train plan parameters set out in Part C to Schedule 1 of the High Speed Rolling Stock TSA;
"Train Service Quality Inspection"	has the meaning given to it in paragraph 2.1 of Schedule 7.3A (Service Quality Regime);

"Train Service Requirement" or "TSR"	means the train service requirement more particularly described in paragraph 9 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services and Service Development) as such train service requirement may subsequently be amended or replaced in accordance with Schedule 1.1 (Franchise Services and Service Development);
"Train Slots"	shall have the meaning given to it in the Network Code;
"Training Materials"	means the training materials and equipment to be provided by the TMM in respect of the Training Programme;
"Training Programme"	means the training programme in respect of the High Speed Rolling Stock which is to be provided by the TMM in accordance with the requirements of the High Speed Rolling Stock MSA;
"Training Services"	means the training services to be provided by the TMM in accordance with the requirements of the High Speed Rolling Stock MSA, as the same shall be more fully described in the Training Programme;
"Transaction"	has the meaning given to it in clause 15.1(g) (Competition);
"Transfer Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);
"Transfer Scheme"	means a transfer scheme made by the Secretary of State under section 12 and Schedule 2 of the Railways Act 2005 (or equivalent statutory provision) pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination), being substantially in the form of Appendix 1 (Template Form of Transfer Scheme) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Secretary of State may make thereto as a result of any change of Law affecting such transfer scheme or other change of circumstances between the date of the Franchise Agreement and the date on which such scheme is made;
"Transitional Budget"	means the cost budget (expressed in nominal prices) generated from the Transitional Financial Model which applies to the Transitional Programme Specific Requirements and the Transitional Programme, as the same may be updated from time to time in accordance with the provisions of Schedule 9.1B (Financial and Other Consequences of Change) and/or Schedule 18.4

	(Shadow Operator Annual Review) and Placed in Escrow;
"Transitional Financial Model"	means the financial model used to generate the Transitional Budget;
"Transitional Modelling Suite"	means the modelling suite which contains the: <ul style="list-style-type: none">(a) Transitional Operational Models;(b) Transitional Financial Model;(c) operating manual; and(d) Transitional Record of Assumptions;
"Transitional Operational Models"	means the operational models which feed into and support the cost and other figures in the Accepted Programme Financial Model;
"Transitional Programme"	means the programme of activities to enable the commencement of High Speed Services as updated in accordance with Schedule 9.1B (Financial and Other Consequences of Change) or Schedule 18.4 (Shadow Operator Annual Review) and Placed in Escrow;
"Transitional Programme Specific Requirement"	means those Shadow Operator Services set out in Schedule 18.3 (Transitional Programme Specific Requirements);
"Transitional Record of Assumptions"	means the Transitional Budget record of assumptions as from time to time agreed or determined in accordance with the provisions of Schedule 18.1 (Shadow Operations) as may be revised in accordance with Schedule 9B (Changes and Variations) and Placed in Escrow;
"Transport Act"	means the Transport Act 2000;
"Transport Focus"	means the passengers' council established under section 19 of the Railways Act 2005 (as amended by The Passengers' Council (Non-Railway Functions) Order 2010), generally known as "Transport Focus" from 30 March 2015;
"Transport for London" or "TfL"	means Transport for London as established under the Greater London Authority Act 1999;
"Transport Infrastructure Skills Strategy"	means the document of that name launched by the Department for Transport on 28 January 2016 (as located at the date of this Agreement at: https://www.gov.uk/government/publications/transport-infrastructure-skills-strategy-building-sustainable-skills);

"Travelcard Agreement"	means the agreement of that name referred to in paragraph 4.1(d) of Appendix 1 (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes);
"Traveline"	means the website available at: http://www.traveline.info (or such other applicable address that is adopted from time to time) which is provided by the partnership of transport companies, local authorities and passenger groups which have come together to bring the information on routes and timers for door to door travel by bus, rail, tube, tram, coach and ferry around Great Britain;
"TRH Score"	has the meaning given to it in paragraph 6.6 of Schedule 1.7 (Stations);
"Trial Operations Plan"	has the meaning given to it in paragraph 53.1 of Schedule 18.2 (Accepted Programme Specific Requirements);
"Trustee"	has the meaning given to it in paragraph 4.1 of Schedule 16 (Pensions);
"TSI"	means any Technical Standard for Interoperability with which the Franchisee is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;
"TSS Consultation Document"	means the document prepared by the Franchisee and submitted to the Secretary of State in accordance with paragraph 40.2(b) of Schedule 18.2 (Accepted Programme Specific Requirements);
"TSS Consultation Plan"	means the plan prepared by the Franchisee and submitted to the Secretary of State pursuant to paragraph 40.1 and in accordance with paragraph 40.2 of Schedule 18.2 (Accepted Programme Specific Requirements);
"TSS Consultation Response Report"	has the meaning given to that term in paragraph 41.2 of Schedule 18.2 (Accepted Programme Specific Requirements);
"TSS Option"	has the meaning given to it in paragraph 39.2(a) of Schedule 18.2 (Accepted Programme Specific Requirements);
"TSS Options Report"	has the meaning given to it in paragraph 39.1 of Schedule 18.2 (Accepted Programme Specific Requirements);
"TSS Options Response Report"	has the meaning given to it in paragraph 39.5 of Schedule 18.2 (Accepted Programme Specific Requirements);

“Turnaround Time”	means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles;
“Turnover”	means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchisee from the sale of Fares, other revenue and the receipt of Franchise Payments during such period;
“T-3 Performance Sum”	means an amount determined in accordance with paragraph 22.7A of Schedule 7.1 (Operational Performance) payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final Franchisee Year where the provisions of paragraph 29 shall apply) by the Franchisee (as the case may be);
“T-15 Performance Sum”	means an amount determined in accordance with paragraph 22.7B of Schedule 7.1 (Operational Performance) payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final Franchisee Year where the provisions of paragraph 29 shall apply) by the Franchisee (as the case may be);
“UGMS”	means the unmanned geometry measurement system;
“Underspend”	has the meaning given to it in paragraph 3(a) of Part 2 (Special Terms related to the Committed Obligations) of Schedule 6.2 (Committed Obligations);
“Undisclosed HS2 Limited TUPE Employee”	has the meaning given to it in paragraph 21.2(d) of Schedule 18.1 (Shadow Operations);
“Undisclosed Shadow Operator TUPE Employee”	has the meaning given to it in paragraph 21.7(d) of Schedule 18.1 (Shadow Operations);
“Undisputed Cancellation”	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
“Undisputed Network Rail Cancellation”	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
“Undisputed Network Rail Partial Cancellation”	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);

"Undisputed Partial Cancellation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1A (Operational Performance);
"Unspecified Additional Rolling Stock" ⁴⁵	has the meaning given in paragraph 2.3 of Schedule 1.6 (The Rolling Stock);
"UOMS"	means the unattended overhead monitoring system;
"User"	shall have the meaning given to it in the Station Access Conditions;
"Value"	means at any time the aggregate of the Projected Revenue of each Fare in a Fares Basket at that time;
"Value Added Tax"	means value added tax as provided for in the Value Added Tax Act 1994;
"Value for Money"	means the utilisation of public resources so as to create and maximise public value;
"Value for Money Assessment"	means an assessment of whether public resources are being utilised so as to create and maximise public value, such assessment being carried out in a manner consistent with HM Treasury's The Green Book: appraisal and evaluation in central government, the Department for Transport's Transport analysis guidance: WebTAG, the Department for Transport's Value-for-Money Framework, HM Treasury's Managing Public Money and, where appropriate, the Passenger Demand Forecasting Handbook or equivalent documentation from time to time;
"Variation"	means a variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes) and/or Schedule 9.BA (Variations to the Franchise Agreement);
"VCAWE"	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments);
"VCRPI"	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments);

45 **Note to Bidders:** Drafting to be adopted if the Bidders propose Unspecified Additional Rolling Stock as part of its rolling stock solution.

"Weekday"	means any day other than a Saturday, a Sunday or a Bank Holiday;
"Weekly Season Ticket"	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls seven (7) days after such day;
"West Coast Main Line"	means the railway line from London to Glasgow with branches to Birmingham, Manchester, Liverpool and Northampton;
"Yield Management"	means the process of setting the prices of tickets for travel on the Passenger Services and any quotas and/or restrictions applying to such tickets;
"Yield Management Data"	means data collected by or on behalf of the Franchisee for the purpose of or in connection with managing or setting the prices at which any tickets for travel on the Passenger Services are sold and/or any quotas and/or restrictions applying to such tickets including: <ul style="list-style-type: none">(a) the number of passengers travelling upon any particular Passenger Service;(b) the ticket types held by such passengers;(c) the prices paid by such passengers for such tickets; and(d) the dates and/or times between which such tickets were made available to purchase at such prices;
"Yield Management System"	means any system (whether a Computer System or otherwise) for the collection of Yield Management Data and/or onto which Yield Management Data is input, processed and/or held as such system may be amended or altered from time to time; and
"Zone"	means a zone set out in the map in Schedule 2 of the Travelcard Agreement on the date such agreement came into effect or as amended by agreement with the Secretary of State.

4. COMMENCEMENT

4.1 ⁴⁶ All the clauses of this Agreement (save for clause 15 (Competition)) and the following Schedules of this Agreement shall take effect and be binding upon each of the Secretary of State and the Franchisee immediately upon signature of this Agreement:

- (a) paragraph 8 (Subcontracting any Passenger Services) of Schedule 1.1A (Franchise Services and Service Development);
- (b) paragraph 9 (Train Service Requirement Purpose and Responsibility) of Schedule 1.1A (Franchise Services and Service Development);
- (c) paragraph 10 (Train Plan) of Schedule 1.1A (Franchise Services and Service Development);
- (d) paragraph 14.4 (Finalising the Train Plan) of Schedule 1.1A (Franchise Services and Service Development);
- (e) paragraph 4.3 (Publishing the Passenger's Charter) of Schedule 1.4A (Passenger Facing Obligations);
- (f) Schedule 2.1A (Asset Vesting and Transfer);
- (g) paragraph 2 (Rolling Stock Related Contracts and Insurance Arrangements) and paragraph 3 (Cascaded Rolling Stock and Delayed Cascade Mitigation Plan) of Schedule 2.2A (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
- (h) paragraph 1 (Other Franchisees) of Schedule 2.3A (Other Franchisees);
- (i) paragraph 4.3 (Specific additional obligations relating to people with disabilities) of Schedule 4A (Accessibility and Inclusivity);
- (j) Schedule 5.1A (Purpose, Structure and Construction);
- (k) Schedule 5.3A (Allocation of Fares to Fares Baskets);
- (l) Schedule 5.7A (Changes to Fares and Fares Regulation);
- (m) Schedule 5.9A (Smart Ticketing);
- (n) paragraph 10 of Schedule 7.2A (Customer Experience and Engagement);
- (o) Schedule 9A (Changes and Variations);
- (p) Schedule 9B (Changes and Variations);
- (q) Schedule 10A (Remedies, Events of Default and Termination Events);
- (r) paragraphs 1 (Corporate Information), 3 (Identification of Key Personnel and Provision of Organisation Chart), 5 (Maintenance of Records), 6 (Right to inspect) and 8 (Periodic Update Reports) of Schedule 11.2A (Management Information);

46 **Note to Bidders:** DfT to confirm. Provisions are subject to review and amendment to take account of bidder proposals and will be finalised at the signature date of the Franchise Agreement.

- (s) paragraph 4 (Performance Bond) of Schedule 12A (Financial Covenants and Bonds);
 - (t) Schedule 14.3A (Key Contracts);
 - (u) Schedule 15.1A (Reletting Provisions);
 - (v) paragraph 1.1 (Handover Package Status) of Schedule 15.3A (Handover Package);
 - (w) Schedule 15.4A (Provisions applying on and after Termination);
 - (x) Schedule 17A (Confidentiality and Freedom of Information); and
 - (y) paragraph 1 (Accepted Programme and Accepted Programme Modelling Suite) of Schedule 18.1 (Shadow Operations).
- 4.2 Without prejudice to clause 4.1(y), the provisions of Schedule 18 (Shadow Operator) shall take effect and become binding upon the Parties on the Shadow Operator Start Date and shall expire on the High Speed Established Services Date or on the date of any earlier termination of the Shadow Operator Services pursuant to Schedule 10 (Remedies, Events of Default and Termination Events) or Schedule 19.1 (Readiness Review).
- 4.3 Subject to clause 4.4 and Schedule 19.3 (Switch to Integrated Operator Provisions), the other provisions of this Agreement, including clause 15 (Competition), Schedule 19 (Readiness Review, Switch Review and High Speed Services Review) and Schedule 20 (IOC Confirmable Obligations), shall take effect and become binding upon the Parties on the Start Date, as stated in the Certificate of Commencement issued pursuant to the Conditions Precedent Agreement.
- 4.4 The following Schedules of this Agreement shall take effect and be binding upon each of the Secretary of State and the Franchisee upon the Integrated Operator Start Date in accordance with Schedule 19.3 (Switch to Integrated Operator Provisions):
- (a) Schedule 1B (Passenger Service Obligations);
 - (b) Schedule 2B (Assets, Leases, Other Franchisees and Schemes);
 - (c) Schedule 4B (Accessibility and Inclusivity);
 - (d) Schedule 5B (Fares and Smart Ticketing);
 - (e) Schedule 6B (Franchise Specific Obligations and Committed Obligations);
 - (f) Schedule 7B (Performance Benchmarks);
 - (g) Schedule 8B (Payments);
 - (h) Schedule 10B (Remedies, Events of Default and Termination Events);
 - (i) Schedule 11B (Franchise Performance Meetings and Management Information);
 - (j) Schedule 12B (Financial Covenants and Bonds);
 - (k) Schedule 13B (Rail Industry Initiatives and Innovation Obligations);
 - (l) Schedule 14B (Preservation of Assets);
 - (m) Schedule 15B (Obligations Associated with Termination);

- (n) Schedule 16B (Pensions); and
- (o) Schedule 17B (Confidentiality and Freedom of Information).

5. DURATION OF THE FRANCHISE AGREEMENT

5.1 This Agreement shall expire on the Expiry Date or on the date of any earlier termination pursuant to clauses 4.2 (b) or 4.3 (b) of the Conditions Precedent Agreement, pursuant to Schedule 10 (Remedies, Events of Default and Termination Events) or pursuant to Schedule 19.1 (Readiness Review).

5.2 Additional Reporting Periods

- (a) If the Secretary of State gives notice to the Franchisee not less than three (3) months before the date on which the Franchise Agreement is due to expire in accordance with clause 5.1, the Franchise Agreement shall continue after such date on the terms set out in the Franchise Agreement for (subject to clause 5.2 (d)) such number of Reporting Periods as the Secretary of State may stipulate (being not less than one (1) Reporting Period) ("**First Extension Period**").
- (b) If the Secretary of State gives notice to the Franchisee not less than three (3) months before the date on which the First Extension Period is due to expire in accordance with clause 5.2(a) the Franchise Agreement shall continue after such date on the terms set out in the Franchise Agreement for (subject to clause 5.2 (d)) such number of Reporting Periods, as the Secretary of State may stipulate (being not less than one (1) Reporting Period) ("**Second Extension Period**").
- (c) If the Secretary of State gives notice to the Franchisee not less than three (3) months before the date on which the Second Extension Period is due to expire in accordance with clause 5.2(a) the Franchise Agreement shall continue after such date on the terms set out in the Franchise Agreement for (subject to clause 5.2 (d)) such number of Reporting Periods, as the Secretary of State may stipulate (being not less than one (1) Reporting Period) ("**Third Extension Period**").
- (d) Notwithstanding the provisions of clauses 5.2(a), (b) and (c) above, the maximum aggregate combined duration of the First Extension Period, Second Extension Period and Third Extension Period shall not exceed thirty nine (39) Reporting Periods.
- (e) Where the Secretary of State exercises the Secretary of State's rights in accordance with clause 5.3 to amend the Expiry Date by a specified number of Reporting Periods then the maximum number of Reporting Periods by which the Franchise Term can be amended pursuant to clauses 5.2(a) to (d) shall be reduced by the same number of Reporting Periods.

5.3 Amendment of Start Date/ Expiry Date

- (a) The Secretary of State shall have the right on or before 15 August 2019 to serve notice on the Franchisee that the Start Date shall be a date later than 02:00 on 15 September 2019. Such amended Start Date shall be 02:00 on the first day of a Reporting Period and the latest such date that the Start Date can be amended to is 02:00 on 15 August 2020. The Secretary of State may in such notice also require that the Expiry Date is amended to a later date. Such amended Expiry Date shall be 02:00 on the first day of a Reporting Period and the same number of Reporting Periods after the unamended Expiry Date as the number of Reporting Periods that the amended Start Date is after the unamended Start Date.

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

6. GENERAL OBLIGATIONS

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

7. ASSIGNMENT

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

8. CHANGE OF CONTROL AND FACILITATION FEE

- 8.1 A "**Change of Control**" is a change occurring in the identity of any one person, or two (2) or more persons acting by agreement, who may Control the Franchisee on and from the date of the Franchise Agreement and during the Franchise Term, which shall include a person, or two (2) or more persons acting by agreement, ceasing to Control the Franchisee at any time during the Franchise Term, whether or not any other person Controls the Franchisee at the same time and for the purposes of this clause 8, two (2) or more persons shall be deemed to be acting by agreement in relation to the Franchisee if, assuming the Franchisee was a target company as defined in the Companies Act 2006, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.
- 8.2 Otherwise than in accordance with the prior consent of the Secretary of State given pursuant to clause 8.3, a Change of Control shall constitute an Event of Default pursuant to paragraph 1.3 of Schedule 10.2 (Events of Default and Termination Events).
- 8.3 The Franchisee may, at any time, apply in writing to the Secretary of State for the Secretary of State's consent to a Change of Control (as such term is defined pursuant to clause 8.1).
- 8.4 The Secretary of State may require the Franchisee to pay a fee in consideration of the grant of such consent (the "**Facilitation Fee**").
- 8.5 The Secretary of State may require the Franchisee to pay an additional fee in respect of the staff, professional and other costs incurred by the Secretary of State in connection with the Franchisee's application (the "**Administration Fee**"). The Administration Fee shall be payable whether or not the Secretary of State consents to the proposed Change of Control.

- 8.6 On or after submitting such application to the Secretary of State, the Franchisee will provide, and will procure that the seller and the buyer provide, the Secretary of State with such documentation and information as the Secretary of State may require to assess such application and the amount of the Facilitation Fee. Without limiting clauses 8.11 or 8.12, it shall be deemed to be reasonable for the Secretary of State to delay or withhold consent to the Change of Control where any such documentation is not provided.
- 8.7 The Facilitation Fee shall be:
- (a) for a Change of Control occurring before or at 02:00 on 01 April 2026, a sum equal to the greater of:
 - (i) one million pounds (£1,000,000); or
 - (ii) where the Estimated Profit Stream is greater than the Bid Profit Stream five per cent (5%) of the difference between the Bid Profit Stream and the Estimated Profit Stream; and
 - (b) for a Change of Control occurring after 02:00 on 01 April 2026, one million pounds (£1,000,000) x RPI where RPI is the quotient of the Retail Prices Index for January 2026 divided by the Retail Prices Index for January 2019.
- 8.8 The Administration Fee shall be determined by the Secretary of State on the basis of:
- (a) the aggregate time spent by officials within the Secretary of State's Department on matters relating to such application;
 - (b) the Secretary of State's hourly scale rates for such officials, as varied from time to time; and
 - (c) the aggregate costs and disbursements, including where applicable VAT and professional costs, incurred by the Secretary of State in connection with such application.
- 8.9 Any determination by the Secretary of State for the purposes of clauses 8.7 or 8.8 shall in the absence of manifest error be final and binding as between the Secretary of State and the Franchisee (but without prejudice to the requirement of the Secretary of State to reasonably determine the Estimated Profit Stream).
- 8.10 Any consent by the Secretary of State to a Change of Control may be given subject to such conditions as the Secretary of State sees fit and the Franchisee shall, as applicable, comply with, and/or procure that the seller and/or the buyer comply with, any such conditions.
- 8.11 The Secretary of State shall have absolute discretion as to the grant of consent to any Change of Control and may accordingly refuse such consent for any reason the Secretary of State sees fit.
- 8.12 The Secretary of State shall have no liability whatever to the Franchisee in respect of any refusal of consent to a Change of Control, any delay in providing such consent, or any condition of such consent.
- 8.13 The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.1 or otherwise, of any Facilitation Fee or Administration Fee paid by it under the terms of this clause 8.

9. COMPLIANCE WITH LAWS

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

10. CUMULATIVE RIGHTS AND REMEDIES

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

11. DISPUTE RESOLUTION PROCEDURE

11.1 Disputes under the Franchise Agreement

- (a) Wherever the Franchise Agreement provides that the Secretary of State may reasonably determine any matter, the Franchisee may, unless the Franchise Agreement expressly provides otherwise, dispute whether a determination made by the Secretary of State is reasonable, but the Secretary of State's determination shall prevail unless and until it is agreed or found to have been unreasonable.
- (b) Where either Party is entitled, pursuant to the terms of the Franchise Agreement, to refer a dispute arising out of or in connection with the Franchise Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the Parties otherwise agree and subject to any duty of the Secretary of State under section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.
- (c) Where, in the absence of an express provision in the Franchise Agreement entitling it to do so, either Party wishes to refer a dispute arising out of or in connection with the Franchise Agreement to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:
 - (i) the Party seeking to refer to arbitration shall serve a written notice upon the other Party stating (i) the nature and circumstances of the dispute, (ii) the relief sought including, to the extent possible, an indication of any amount(s) claimed, and (iii) why it is considered that the dispute should be resolved by way of arbitration rather than litigation;
 - (ii) the other Party shall respond within twenty (20) Weekdays of service of the notice confirming whether or not referral of the dispute to arbitration is agreed. In the absence of any response, the referral to arbitration shall be deemed not to have been agreed;
 - (iii) in the event that the Parties agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with the Dispute Resolution Rules;
 - (iv) in the event that the Parties do not agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with clause 17 (Governing Law and Jurisdiction); and
 - (v) nothing in this clause 11.1 shall preclude either Party from commencing, continuing or otherwise taking any step by way of litigation in pursuit of the resolution or

determination of the dispute unless an agreement is reached to refer the dispute to arbitration.

- (d) The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the Parties or, in default of agreement, chosen by the Secretary of the Access Disputes Committee from a panel of persons agreed from time to time for such purposes between the Secretary of State and the Franchisee or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any Party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

11.2 Disputes under other agreements

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

11.3 Disputes under Schedule 8 (Payments) of this Agreement

The Parties shall comply with the terms of paragraph 4 of Schedule 8.1A (Franchise Payments) and paragraph 2.8 of Schedule 8.1B (Franchise Payments) of this Agreement.

12. NOTICES

12.1 Notices

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

Name: The Department for Transport

Address: 33 Horseferry Road, London SW1P 4DR

Email: franchise.notices@dft.gsi.gov.uk
Attention: The Manager – West Coast Partnership
Name:⁴⁷ [INSERT COMPANY NAME OF FRANCHISEE]
Address:⁴⁸ [INSERT BUSINESS ADDRESS OF FRANCHISEE]
Email:⁴⁹ [INSERT FRANCHISEE CONTACT'S EMAIL ADDRESS]
Attention:⁵⁰ [INSERT NAME OF CONTACT AT FRANCHISEE].

- (b) Any other notice, notification or other communication under or in connection with the Franchise Agreement shall be in writing and shall be delivered:
- (i) in accordance with clause 12.1(a); or
 - (ii) by electronic data transfer,
- except that it shall be marked for the attention of the Contract Manager or the Franchise Manager.

12.2 Deemed Receipt

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

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

13. SET-OFF

- 13.1 Save as otherwise expressly provided under the Franchise Agreement or required by law, all sums payable under the Franchise Agreement shall be paid in full and without any set-off or any deduction or withholding including on account of any counter-claim.
- 13.2 Notwithstanding clause 13.1 the Secretary of State shall be entitled to set-off against any amounts payable by the Secretary of State under the Franchise Agreement:

47 **Note to Bidders:** To be populated by the DfT at the signature date of the Franchise Agreement.
48 **Note to Bidders:** To be populated by the DfT at the signature date of the Franchise Agreement.
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50 **Note to Bidders:** To be populated by the DfT at the signature date of the Franchise Agreement.

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

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

14. MISCELLANEOUS PROVISIONS

14.1 Waivers

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

14.2 Time Limits

Where in the Franchise Agreement any obligation of a Party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or reasonable endeavours to secure a particular result within such time limit): (i) that obligation shall be deemed to continue after the expiry of such time limit if such Party fails to comply with that obligation (or secure such result, as appropriate) within such time limit; (ii) the Parties shall consult on the relevant Party's failure to perform the obligation within the specified time limit; and (iii) the relevant Party shall, as applicable, continue to use all reasonable endeavours or reasonable endeavours to do or procure that the relevant thing is done as soon as reasonably practicable thereafter.

14.3 Partial Invalidity

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

14.4 Further Assurance

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

14.5 Rights of Third Parties

- (a) A person who is not a Party to the Franchise Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Franchise Agreement except to the extent set out in this clause 14.5.
- (b) Any Successor Operator or potential Successor Operator nominated by the Secretary of State and notified to the Franchisee and the Franchisee for the purposes of this clause 14.5 may enforce and rely on the provisions of Schedule 15 (Obligations Associated with Termination) and paragraph 21 of Schedule 18.1 (Shadow Operations) to the same extent as if it were a Party but subject to clauses 14.5(d) and 14.5(e).
- (c) HS2 Limited may enforce and rely on the provisions of paragraph 21 of Schedule 18.1 (Shadow Operations) to the same extent as if it were a Party but subject to clauses 14.5(d) and 14.5(e)
- (d) The Franchise Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of the Franchise Agreement, without the consent of any person nominated under clause 14.5(b).
- (e) The person nominated under clause 14.5(b) and HS2 Limited shall only be entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination) and/or paragraph 21 of Schedule 18.1 (Shadow Operations) to the extent determined by the Secretary of State (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination) and/or paragraph 21 of Schedule 18.1 (Shadow Operations), any legal proceedings in relation thereto must be commenced within one (1) year of the expiry of the Franchise Period and any such person shall not be entitled to enforce or rely on Schedule 15 (Obligations Associated with Termination) and/or paragraph 21 of Schedule 18.1 (Shadow Operations) to the extent that it has consented to any particular act or omission of the Franchisee which may constitute a contravention of Schedule 15 (Obligations Associated with Termination) and/or paragraph 21 of Schedule 18.1 (Shadow Operations) (as appropriate) or has been afforded a reasonable opportunity to indicate to the Franchisee that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Secretary of State unless otherwise agreed).

14.6 Secretary of State's Consent or Approval

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

14.7 Enforcement Costs

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

14.8 **Arm's Length Dealings**

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

14.9 **Non-Discrimination**

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

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

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

14.10 **No Partnership**

Nothing in the Franchise Agreement is to be construed as establishing or implying any partnership or joint venture between the Parties, or as appointing any Party as the agent or employee of the other Party. Neither Party shall hold out the other Party as its partner or joint venturer. Except, and to the extent, that the Franchise Agreement expressly states otherwise, neither Party may incur any expenses or negotiate on behalf of the other Party or commit the other Party in any way to any person without that other Party's prior written consent.

15. **COMPETITION**

15.1 For the purposes of this clause 15:

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

(ii) any Affiliate of the Franchisee to continue to operate any other Rail Franchise of which it is the franchisee;

(e) **"Intervention"** means a determination following the completion of a second phase investigation that the merger resulting from the award of the Franchise to the Franchisee (i) in the case of the CMA has resulted or may be expected to result in a substantial lessening of competition in the UK market or (ii) in the case of the European Commission would significantly impede effective competition in the internal market and that in either case specified actions are required to be taken for the purposes of remedying those anticipated competition issues;

(f) **"Rail Franchise"** means any passenger rail franchise awarded pursuant to the Act in respect of which a franchisee or its wholly owned subsidiary provides franchised services; and

(g) **"Transaction"** means the entry into the Franchise Agreement by the Secretary of State and the Franchisee.

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

(a) notified to the European Commission under Council Regulation (EC) 139/2004 concerning the control of concentrations between undertakings as amended from time to time (the **"EU Merger Regulation"**); or

(b) within the jurisdiction of the CMA in the United Kingdom (including as a result of a referral under Article 4(4) or Article 9 of the EU Merger Regulation),

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

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

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

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

16. ENTIRE AGREEMENT

- 16.1 This Agreement and the Conditions Precedent Agreement contain the entire agreement between the Parties 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, High Speed Services and Shadow Operator Services under the Franchise Agreement.
- 16.2 The Franchisee hereby acknowledges that it is not entering into the Franchise Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such warranties, representations or undertakings are contained in the Franchise Agreement.
- 16.3 The Franchisee hereby acknowledges and agrees with the Secretary of State (for the Secretary of State and as trustee for each of the other persons referred to therein) to the disclaimers of liability which are contained in Section 3.2 of the Invitation to Tender and the section entitled "**Important Notice**" contained in any document supplied by or on behalf of the Secretary of State in connection with the Franchise Agreement, the process leading to the entering into of the Franchise Agreement, or the Franchise Services (including any Invitation to Tender issued in connection therewith).
- 16.4 The Franchisee irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement and/or the Conditions Precedent Agreement on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement or the Conditions Precedent Agreement) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

17. GOVERNING LAW AND JURISDICTION

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

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

SEAL REF No.

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

Authenticated by authority of the
Secretary of State for Transport

SIGNED FOR AND ON BEHALF OF)
[INSERT NAME OF FRANCHISEE⁵¹])
)
)

Director:

Director/Secretary:

51 **Note to Bidders:** To be populated by the Bidders.