

WEST COAST PARTNERSHIP FRANCHISE AGREEMENT

ITT VERSION

VOLUME TWO

SCHEDULES 1A TO 17A

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SCHEDULE 1A

PASSENGER SERVICE OBLIGATIONS

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SCHEDULE 1.1A

Franchise Services and Service Development

Part 1 - Franchise Services

1. Franchise Services

- 1.1 The Franchisee may at all times during the ICWC Term provide and operate the Franchise Services specified in this Schedule 1.1. The Franchisee is required to provide the Passenger Services that comply with the Train Service Requirement and (without prejudice to the other provisions of the Franchise Agreement) is permitted to provide other Franchise Services subject to the provisions of Part 1 of this Schedule 1.1. The Franchisee is also required to provide the Shadow Operator Services in accordance with the provisions of Schedule 18 (Shadow Operator).
- 1.2 The Franchisee shall not directly or indirectly, without the prior written consent of the Secretary of State, carry on any business or activity other than the provision and operation of the Franchise Services.
- 1.3 Nothing in this Schedule 1.1 shall restrict any Affiliate of the Franchisee from having an interest in or participating in any business or activity.
- 1.4 The Franchisee shall not engage any Franchise Employee in any activity or business which it may not conduct or engage in under this Schedule 1.1.

2. Station Services

2.1 The Station Services shall comprise:

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

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

3. Light Maintenance Services

3.1 Light Maintenance Services shall comprise:

- (a) the provision of access to any other person under an Access Agreement;

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

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

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

4. Ancillary Services

The Franchisee may carry out the following Ancillary Services:

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials information or materials targeted at tourists and other leisure passengers (such as maps) or phone cards;
- (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 4(a) or which, if provided at a Station, would fall within paragraph 2 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;
- (c) in any Reporting Period, the subleasing, hiring or licensing of up to ten per cent (10%) of the rolling stock vehicles used in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock vehicles are sub-let, hired or licensed and the aggregate period of time for which they are used in the provision of the Passenger Services);
- (d) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:
 - (i) up to one per cent (1%) of the number of Franchise Employees as at the Start Date, for over ninety per cent (90%) of their normal working hours during such Reporting Period (including on a full-time basis); and

- (ii) one per cent (1%) of any other Franchise Employees as at the Start Date, provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 4(a) to 4(c) inclusive and paragraphs 4(e) to 4(p) inclusive, or engaged in any other activity which is permitted under this Schedule 1.1;
- (e) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the following Depot(s), subject to the number of persons engaged or employed in such activity not exceeding by more than ten per cent (10%) the number so engaged or employed on the Start Date:
- [Note to Bidders: INSERT DETAILS IF APPLICABLE];¹**
- (f) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchisee on or before the date of the Franchise Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
- (g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
- (i) travel on any other train or light rail service;
 - (ii) travel on any aircraft;
 - (iii) travel on any shipping or ferry service;
 - (iv) travel on any bus; or
 - (v) attend any event or attraction or enter any location;
- (h) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on any such operator's trains;
- (i) the provision of information relating to railway passenger services within Great Britain to passengers through telephone, internet, mobile data services or other appropriate means;
- (j) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (k) the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Franchisee or the lending, hiring or contracting out of any employees of the Franchisee or the provision of any other services to Network Rail or any other Train Operator on an emergency basis;
- (l) the licensing or permitting of any other person (including an Affiliate of the Franchisee) to carry out any activity or business, in connection with the provision of the Franchise Services, or otherwise, on any rolling stock vehicle operated by the Franchisee, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting,

1 **Note to Bidders:** Bidders to populate.

leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);

- (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with the Franchise Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (n) the subleasing to any other person of the following property which is not comprised in a Station or Depot:

[Note to Bidders: INSERT DETAILS IF APPLICABLE];²

- (o) the provision or operation of Charter Services, subject to the Planned Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent (2%) of the Planned Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;
- (p) the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services; and
- (q) any services or activity not falling within paragraphs 2, 3, 4(a) to 4(p) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding twenty five thousand pounds (£25,000) per annum in each Franchisee Year, per item and in aggregate, two hundred and fifty thousand pounds (£250,000) per annum in each Franchisee Year provided that in the second and each subsequent Franchisee Year, these amounts will be increased by multiplying by RPI (**RPI** is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for January 2019).

5. Royal Train

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

² **Note to Bidders:** Bidders to populate.

6. Restrictions relating to Franchise Services

6.1 The Franchisee shall not without the prior written consent of the Secretary of State operate Passenger Services other than on the following routes (and, in the event of disruption, any reasonable diversionary route):

(a) the West Coast Main Line between:

- (i) London Euston to Birmingham New Street, Wolverhampton and Shrewsbury via Coventry;
- (ii) London Euston to Manchester via Stoke-on-Trent and Crewe;
- (iii) London Euston to Chester, Wrexham General and Holyhead via the Trent Valley;
- (iv) London Euston to Liverpool Lime Street via the Trent Valley;
- (v) London Euston to Preston and Glasgow Central or Edinburgh Waverley via Coventry and the Trent Valley; and
- (vi) London Euston to Preston and Blackpool or Glasgow Central via the Trent Valley; and

(b) any diversionary route or depot access route as set out on any certificate issued by the Network Rail Acceptance Panel from time to time for the relevant rolling stock comprised in the Train Fleet; [and]

(c) **[Note to Bidders: any other additional route geography proposed by Bidders and agreed by the Secretary of State that may be added for inclusion within the franchise geography during the Bid Phase].**³

6.2 It is acknowledged that a Passenger Service to be operated by the Franchisee on the routes specified above in paragraph 6.1 may be operated throughout the route, on part of the route or any combination of the whole or part of any two or more of the routes specified above.

6.3 The Secretary of State may impose such conditions to the Secretary of State's consent as the Secretary of State considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the ICWC Term and Franchise Term.

6.4 The Franchisee shall not during the Franchise Term, without the consent of the Secretary of State:

- (a) provide or operate any railway passenger services other than the Passenger Services or Charter Services;
- (b) operate any stations or light maintenance depots other than the Stations and Depots; or
- (c) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:
 - (i) Network Rail; or

3 **Note to Bidders:** Bidders to insert details if applicable.

- (ii) owned directly or indirectly by another participant in the railway industry and the holding is incidental to the Franchisee's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

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

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

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

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

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

8. Subcontracting any Passenger Services

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

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

- (a) the Secretary of State receives prior written notice of any such subcontracting or delegation;
- (b) the Franchisee continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;
- (c) the Franchisee continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;
- (d) the Planned Train Mileage of the Passenger Services so delegated or subcontracted does not exceed five per cent (5%) of the Planned Train Mileage of the Franchisee in any Reporting Period; and
- (e) the Franchisee continues to perform its obligations under this Schedule 1.1 in respect of any subcontracted or delegated services.

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

Part 2 - Service Development

9. Train Service Requirement - Purpose and Responsibility

- 9.1 This Part 2 of Schedule 1.1 sets out the obligations of the Franchisee in relation to the acquisition of timetable development rights required for the purposes of securing a Timetable that complies with the Train Service Requirement and preparing a Train Plan consistent with the obligations of the Franchisee and the provision of appropriate levels of passenger carrying capacity. It also provides for alteration of the Train Service Requirement by the Secretary of State. The Train Service Requirement does not in any way limit the Franchisee's obligations pursuant to paragraph 14 of this Schedule 1.1.
- 9.2 The Train Service Requirement is the minimum specification of the Passenger Services to be provided by the Franchisee during the Franchise Term.
- 9.3 The Train Service Requirement as at the date of the Franchise Agreement is in the agreed terms marked TSR1, and shall be applicable from the Start Date until the High Speed Start Date.
- 9.4 NOT USED.
- 9.5 For the purposes of this Schedule 1.1, the Train Service Requirement shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1.
- 9.6 The Train Service Requirement may be expressed in whole or in part at any level of generality or to any level of detail the Secretary of State considers appropriate.

10. Train Plan

- 10.1 For the purposes of this Agreement, the "Train Plan" shall be the plan (including sub-plans) prepared by the Franchisee for the operation of trains and train formations under the Timetable that best matches available capacity to Forecast Passenger Demand as amended from time to time during the Franchise Period in accordance with this Agreement.
- 10.2 NOT USED.
- 10.3 The Franchisee shall submit to the Secretary of State a Train Plan in respect of each Timetable in accordance with this Schedule 1.1.
- 10.4 In preparing any Train Plan, the Franchisee shall do so by reference to the Timetable that it envisages operating in order to comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1.
- 10.5 Each Train Plan shall set out for each railway passenger service in the Timetable to which it relates:
- (a) its start point and departure time;
 - (b) its terminating point and arrival time;
 - (c) the number and class of rolling stock vehicles allocated to each such railway passenger service;
 - (d) the Passenger Carrying Capacity that each such railway passenger service, as formed, is to have; and

(e) its Forecast Passenger Demand and, where this has been requested by the Secretary of State and is capable of calculation, Actual Passenger Demand.

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

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

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

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

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

11. Consultation on Significant Alterations to the Timetable

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

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

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

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

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

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

11.2 The first Timetable to which these provisions apply is the Timetable with effect from the Passenger Change Date in May 2020.

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

(a) as soon as reasonably practicable provide to the Secretary of State and all Stakeholders a comprehensive summary of the proposed changes from the Timetable then in force specifying the proposed Timetable changes, the reasons for them and the likely impact on passengers;

(b) carry out the consultation in relation to such proposed changes using a reasonable range of communication channels (taking into account the scale of the proposed changes) and

in a manner that can be reasonably expected to encourage responses from a broad range of affected Stakeholders;

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

12. Timetable Development Rights

- 12.1 The Franchisee shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and otherwise comply with its obligations under the Franchise Agreement (including under paragraph 14 of this Schedule 1.1).
- 12.2 Prior to exercising any Timetable Development Rights to secure a Timetable the Franchisee shall make an informed estimate of Forecast Passenger Demand and in doing so shall make reasonable assumptions based on available evidence (making proper use of recognised railway industry systems and forecasting tools as these may develop over the Franchise Period) with the estimate being in such format and to such level of disaggregation as the Secretary of State may reasonably require.
- 12.3 Subject to the remaining provisions of this paragraph 12, the Franchisee shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1 in accordance with its obligations under paragraph 17 of this Schedule 1.1.
- 12.4 Where the Franchisee proposes to exercise its Timetable Development Rights so that the Timetable in force after the relevant Passenger Change Date contains Significant Alterations to that in force prior to such Passenger Change Date the Franchisee shall (without prejudice to its obligation to consult pursuant to paragraph 11) act reasonably with the intention of obtaining a Timetable which enables:
- (a) paragraph 14.1(b); and
 - (b) paragraph 14.1(c),

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

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

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

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

- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights; and
- (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR.

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

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

12.8 TDR Amendments

- (a) If and to the extent that the Franchisee is not able to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement as a result of it not being able to obtain the Timetable Development Rights that it requires for that purpose, the Secretary of State shall (subject to paragraphs 12.8(b) and 12.8(c) below) issue to the Franchisee amendments to the Train Service Requirement ("**TDR Amendment**"). The amendments to the Train Service Requirement contained in the TDR Amendment shall be those that the Secretary of State considers necessary for the purposes of enabling the Franchisee to secure a Timetable that is compliant with the Train Service Requirement by exercise of the Timetable Development Rights that the Franchisee does have.

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

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

12.10 Any TDR Amendment issued pursuant to paragraph 12.8 shall:

- (a) unless otherwise required by the Secretary of State, cease to have effect on the date (if any) on which the first Timetable comes into effect after the Franchisee has obtained the Timetable Development Rights to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without any such TDR Amendment; and
- (b) amount to a Change but only to the extent that the Franchisee makes a saving as a consequence of such TDR Amendment and provided that if such TDR Amendment has been issued in consequence of Network Rail exercising the rights referred to in paragraphs 12.7(b) or 12.7(c) there shall be no Change.

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

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

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

- 13.1 Before exercising any Timetable Development Right to bid for Train Slots, the Franchisee shall provide a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 12.3.
- 13.2 If requested by the Secretary of State, the Franchisee agrees to demonstrate to the reasonable satisfaction of the Secretary of State that the Franchisee's certificate referred to in paragraph 13.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 12.3.
- 13.3 The Franchisee shall:
- (a) keep the Secretary of State fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may, in the reasonable opinion of the Franchisee, have a material impact on the ability of the Franchisee to deliver the Train Service Requirement or meet the requirements of paragraph 14 of this Schedule 1.1 through the Timetable and shall, if required to do so by the Secretary of State, supply copies of any related correspondence to the Secretary of State; and
 - (b) update any notification under this paragraph 13.3 and/or certification under paragraph 13.1 as soon as reasonably practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development Rights following Network Rail's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

14. Planning to meet Target Passenger Demand

14.1 Capacity and Timetable Planning

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

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

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

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

14.3 Preparation of Timetable and Train Plan

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

14.4 Finalising the Train Plan

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

15. Capacity Mitigation Proposal

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

- 15.2 The Capacity Mitigation Proposal may, without limitation, include measures to be implemented by the Franchisee to:
- (a) remedy the circumstances leading to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1; and/or
 - (b) minimise, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
 - (c) ensure, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
 - (d) minimise, so far as is possible, the extent to which passengers are required to stand:
 - (i) on boarding any Off-Peak Passenger Service; and
 - (ii) twenty (20) minutes after boarding (or such other time period as the Secretary of State may stipulate) on any Peak Passenger Service,

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

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

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

- (a) alterations to the Train Service Requirement;
- (b) modification of rolling stock or the acquisition of additional or replacement rolling stock;
- (c) alterations to Fares; and/or
- (d) alterations or enhancements to any track, signalling, station, depot or other relevant railway infrastructure.

- 15.5 The Capacity Mitigation Proposal shall provide a comprehensive analysis backed by relevant data and assumptions of:

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

15.6 The Franchisee shall meet with the Secretary of State to discuss the Capacity Mitigation Proposal and provide such further information or analysis and further iterations of the Capacity Mitigation Proposal as the Secretary of State shall reasonably require. If the Secretary of State decides that the Secretary of State wishes to implement any Capacity Mitigation Proposal (or any part thereof) this shall be by way of a Variation.

16. New or amended Train Service Requirement by the Secretary of State and Franchisee Informed Opinion

16.1 As and when required, whether for the purposes of considering alterations to the Train Service Requirement or otherwise, the Franchisee shall provide to the Secretary of State:

- (a) its informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require in order to assist the Secretary of State's decision making on future train service requirements, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding;
- (b) its informed opinion as to any changes to the current Train Service Requirement which:
 - (i) should be made in order to deliver an optimal range of railway passenger services relative to Target Passenger Demand; and
 - (ii) could be implemented and operated without additional resources or an adjustment to the Franchise Payments;
- (c) its informed opinion as to any changes to the current Train Service Requirement which:
 - (i) would deliver an optimal range of railway passenger services relative to Target Passenger Demand; and
 - (ii) could only be implemented and operated with additional resources and/or an adjustment to the Franchise Payments, together with an explanation as to:
 - (A) what additional resources and/or adjustments are necessary to make such changes; and
 - (B) why such additional resources and/or adjustments are necessary;
- (d) a draft of the Train Plan that the Franchisee considers that each set of proposed changes would require.

16.2 Prior to issuing any amended or new Train Service Requirement the Secretary of State shall provide to the Franchisee the Secretary of State's draft of any proposed amended or new Train Service Requirement stating the date upon which the Secretary of State proposes that such amended or new Train Service Requirement should take effect along with the Secretary of State's views as to the changes (if any) that the Secretary of State proposes to make to the Benchmarks and/or the Annual Benchmarks.

16.3 On receipt of any such draft of a proposed amended or new Train Service Requirement the Franchisee shall provide to the Secretary of State (if so requested) its informed opinion:

- (a) with supporting reasons as to the impact of the proposed amended or new Train Service Requirement on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 14.1 of this Schedule 1.1;

- (b) with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amended or new Train Service Requirement;
- (c) with supporting reasons as to changes (if any) to the Benchmarks and/or the Annual Benchmarks;
- (d) of the process to be required to implement the proposed amendment to the Train Service Requirement together with a plan for the implementation of the amendment to the Train Service Requirement (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such amended or new Train Service Requirement) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 17 of this Schedule 1.1; and
- (e) with supporting reasons of the likely impact of the proposed amended or new Train Service Requirement on existing and future passenger journeys and journey opportunities,

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

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

17. Procedural Arrangements and Timescales

- 17.1 The Franchisee agrees that the effective operation of the provisions of this Schedule 1.1 (and of provisions addressing the same or similar matters in other franchise agreements) will require

certain procedural arrangements and timescales to be followed to a common timescale by the Secretary of State, the Franchisee, Network Rail and others.

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

18. Obligations in relation to other Train Operators

- 18.1 Subject to the terms of the Licences and any applicable Law, the Franchisee shall co-operate with other Train Operators in respect of their timetable development rights where such other Train Operators provide railway passenger services meeting common or displaced passenger demand, with a view to ensuring that:
- (a) the levels of overcrowding over the Routes or other relevant routes are minimised and not unduly concentrated on particular railway passenger services, Routes or other relevant routes;
 - (b) the stopping patterns of such railway passenger services are placed at approximately evenly-spaced intervals throughout each relevant hour, taking into account the reasonable needs of passengers and the different types of railway passenger services provided by other Train Operators and the Franchisee; and
 - (c) a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated, first trains or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).

19. Provisions relating to Access Agreements and Property Leases

- 19.1 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under the Franchise Agreement, or any other franchise agreement,

or for the better achievement by the Secretary of State of any of the Secretary of State's duties, functions and powers in relation to railways, the Secretary of State may require the Franchisee:

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

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

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

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

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

19.4 If and to the extent that:

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

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

20. The Timetable and Network Rail's Working Timetable

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

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

SCHEDULE 1.2A

Operating Obligations

1. Daily Operating Obligations

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

2. Timetabling and Train Planning Compliance Investigation

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

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

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

- (v) the alternative solutions considered by the Franchisee before finalising the Timetable and Train Plan and the reasons why any such alternative solutions were not adopted; and
- (b) permit the Secretary of State to carry out an audit of the extent to which the Timetable and Train Plan enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of Schedule 1.1 (Franchise Services and Service Development) and fully co-operate with and provide all information needed to facilitate such audit.

2.3 **Contravention of the Franchise Agreement**

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

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

- 3.1 The Franchisee shall notify the Secretary of State promptly after being notified by Network Rail that Network Rail has decided or proposes to:
 - (a) omit from the Plan of the Day Passenger Services that are included in the Timetable; or
 - (b) reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable.
- 3.2 To the extent that any such decision or proposal may, in the reasonable opinion of the Franchisee, materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan the Franchisee shall explain in such notification the way in which, in its reasonable opinion, such omission or

rescheduling may materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan.

- 3.3 The Franchisee agrees to supply to the Secretary of State from time to time, in the format required by the Secretary of State, such details of any actual or proposed omission or rescheduling of Passenger Services by Network Rail as the Secretary of State may reasonably require, including details of the steps which the Franchisee proposes to take pursuant to paragraph 3.4.
- 3.4 Where the actual or proposed omission or rescheduling of Passenger Services is one which may, in the reasonable opinion of the Secretary of State or the Franchisee, materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan, the Franchisee agrees (unless the Secretary of State specifically agrees otherwise) to exercise its rights under the Network Rail Track Access Agreement (including the Network Code) to:
- (a) object (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR);
 - (b) make representations; and
 - (c) withhold consent,
- in respect of any actual or proposed omission or rescheduling of Passenger Services by Network Rail.
- 3.5 The provisions of this paragraph 3 shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than Network Rail, as those provisions apply to Network Rail.

4. Timetable changes proposed by the Franchisee

- 4.1 The Franchisee agrees, subject to paragraph 4.3, not to propose to Network Rail:
- (a) the addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;
 - (b) the omission from the Plan of the Day of any Passenger Services included in the Timetable; or
 - (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable,
- without the Secretary of State's prior consent.
- 4.2 The Franchisee shall submit to the Secretary of State an amended Train Plan in respect of each Timetable change proposal.
- 4.3 The Franchisee shall use all reasonable endeavours to operate adequate railway passenger services to or from any special events which are not already provided for in the Plan of the Day to meet the passenger demand that is reasonably likely to arise from such special events and to ensure that the railway passenger services provided have an appropriate amount of passenger carrying capacity. The Franchisee shall in meeting its obligations pursuant to this paragraph 4.3:

- (a) work with Network Rail and other Train Operators to plan amendments to the Plan of the Day through the omission, addition or rescheduling of Passenger Services including, but not limited to, additional or retimed late services and the operation of services on reasonable diversionary routes;
- (b) seek to optimise the effective delivery of the Passenger Services as a whole with the provision of appropriate capacity in the context of the additional demand consequent upon a relevant special event, including considering how maintenance requirements will be planned around special events and alternative options to provide appropriate capacity; and
- (c) work with the organisers of special events to understand the additional passenger demand that is likely to arise from such special events.

4.4 The Franchisee shall from time to time promptly provide such evidence of its compliance with its obligations under paragraph 4.3 as the Secretary of State may reasonably request.

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

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

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

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

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

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

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

- (c) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2.

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

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

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

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

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

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

- (a) variations in weather and operating conditions (including Network Rail's infrastructure not being available for any reason), which may in either case include seasonal variations;
- (b) default by, or restrictions imposed by, suppliers to the Franchisee;

- (c) shortages of appropriately skilled or qualified Franchise Employees;
- (d) disputes with Franchise Employees;
- (e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
- (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew and the servicing or cleaning of any rolling stock vehicles; and
- (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction).

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

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

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

- (a) co-operating with Network Rail in the development, agreement and implementation of:
 - (i) a five (5) year (rolling) Performance Strategy Plan; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Performance Strategy Plan;
- (b) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and the Franchisee from time to time;
- (c) undertaking regular reviews of:
 - (i) the most common and most detrimental causes of delay to the Passenger Services; and
 - (ii) the causes of the ten (10) delays to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 7.4(c)(i)),

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

- (d) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 7.4(c)(i) and

7.4(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;

- (e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the Parties;
- (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail in the Performance Strategy Plan and derived delivery plans and using reasonable endeavours to specify and develop such delivery plans;
- (g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains (and data collected from train systems), other facilities and/or information;
- (h) co-operating with Network Rail in other delay management initiatives and ongoing quarterly reviews of the Performance Strategy Plan;
- (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
- (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
- (k) where appropriate and where Network Rail fails to perform its obligations under the Network Rail Track Access Agreement, enforcing the Franchisee's rights under the Network Rail Track Access Agreement.

7.5 The Franchisee undertakes to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules.

7.6 To the extent not already provided for in the Franchise Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by the Secretary of State, enforcing its rights against Network Rail under any such agreement.

7.7 When and to the extent reasonably requested by the Secretary of State, the Franchisee shall provide to the Secretary of State evidence of the steps taken by the Franchisee in order to comply with its obligations under this paragraph 7.

SCHEDULE 1.3A

NOT USED

SCHEDULE 1.4A

Passenger Facing Obligations

1. Publishing the Timetable

1.1 The First Timetable

The Franchisee shall publish on the Start Date:

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

1.2 Timetable Revisions and Alterations

The Franchisee shall publish updates or replacements to the Timetable at the locations specified in paragraph 1.1 to the extent necessary to reflect any changes which come into effect on a Passenger Change Date:

- (a) in the case of booklets, at least four (4) weeks before the changes come into effect;
- (b) in the case of information displays, no later than the day before the changes come into effect;
- (c) in the case of information provided to the operators of Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limits provided for in this paragraph 1.2; and
- (d) in the case of the Franchisee's website, at least four (4) weeks before the changes come into effect.

1.3 In addition, the Franchisee shall:

- (a) subject to paragraph 1.4, display posters at each Station advising passengers of all Significant Alterations between any two Passenger Change Dates to railway passenger services calling at that Station, no later than four (4) weeks in advance of the date on which the alterations come into effect; and
- (b) provide posters to the operators of Franchisee Access Stations, advising passengers of all Significant Alterations between any two (2) Passenger Change Dates to the Passenger

Services which call at such Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limit provided for in paragraph 1.3(a).

1.4 Other Train Operators' Timetables

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

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

1.5 National Rail Timetable and National Rail Enquiry Scheme

The Franchisee shall use all reasonable endeavours to procure (including by virtue of any arrangements made from time to time between Network Rail and RSP) that the National Rail Timetable (or any replacement timetable), which Network Rail is responsible for publishing from time to time in relation to the Passenger Services, incorporates or is consistent with its Timetable from time to time.

1.6 The Franchisee shall use all reasonable endeavours to procure that information in relation to:

- (a) the Timetable; and
- (b) any Significant Alterations to the Timetable to take effect between any two (2) Passenger Change Dates,

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

2. Communicating Late Timetable Changes

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

2.2 Such information shall be provided by:

- (a) revising or adding to the information displays referred to in paragraph 1.1;
- (b) notifying the operators of the Franchisee Access Stations, as appropriate, including by providing such operators with revised posters; and
- (c) updating the Franchisee's website.

- 2.3 The Franchisee shall revise or add to the information displays at the Stations promptly on receipt of any equivalent information relating to the railway passenger services of other Train Operators whose services call at the Stations.
- 2.4 Where the Franchisee is unable to provide the information specified in paragraph 2.1 because the relevant revisions are made on an emergency basis, the Franchisee shall notify passengers and publish the relevant revisions by way of the means contemplated by paragraph 2.2 as soon as reasonably practicable.
- 2.5 The Franchisee shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), passengers making enquiries regarding the Passenger Services are informed of the revised Timetable and any revised travel arrangements of the Franchisee as far in advance as is reasonably practicable.

3. Fares Selling Restrictions

3.1 *Restrictions on Sales*

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

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

3.2 The Franchisee shall procure that for any:

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

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

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

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

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

3.4 The Franchisee shall not sell or offer to sell:

- (a) any Fare in respect of which the:
 - (i) Prices are regulated under Schedule 5.4 (Regulation of Fare Basket Values) and Schedule 5.5 (Regulation of Individual Fares), at prices that are greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 and Schedule 5.5; or
 - (ii) Child Prices are regulated under paragraph 1.3 of Schedule 5.5 (Regulation of Individual Fares) at prices that are greater than fifty per cent (50%) of the Price of the relevant Fare;
- (b) any Fare or Discount Card which has a validity of thirteen (13) or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.

3.5 **Agents of the Franchisee**

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

- (a) for Fares in respect of which the:
 - (i) Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), sell or offer to sell at prices no greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 and Schedule 5.5; and
 - (ii) NOT USED;
- (b) for Fares in respect of which the Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (Franchisee's Obligation to Create Fares), sell or offer to sell such Fares to any person under the age of 16 for an amount which is no greater than fifty per cent (50%) of the Price of the relevant Fare; and
- (c) for all Fares:
 - (i) do not sell or offer to sell any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld); and
 - (ii) comply with the provisions of paragraph 5 of Schedule 15.2 (Last Twelve (12) or Thirteen (13) Months of Franchise Period and Other Conduct of Business Provisions) to the extent they apply to the selling of Fares by the Franchisee.

3.6 **Additional Ancillary Services**

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

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

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

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

4. **Passenger's Charter**

4.1 ***Content***

The Franchisee shall:

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

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

4.3 ***Publishing the Passenger's Charter***

The Franchisee shall publicise its Passenger's Charter by:

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

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

- 4.4 The Franchisee shall also provide at each staffed Station the then current passenger's charter of any other Train Operator whose trains call there, subject to the provision of such passenger's charter to the Franchisee by such other Train Operator.
- 4.5 The Franchisee shall provide copies of its Passenger's Charter to the operators of Franchisee Access Stations to enable such operators to publish it.

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

The Franchisee shall:

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

5. End to End Journeys and Cycles

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

6. Statutory Notices

If requested by the Secretary of State, the Franchisee shall publish and display at the Stations (and shall use all reasonable endeavours to procure the publication and display at Franchisee Access Stations of) such statutory notices as the Secretary of State may wish to publish from

time to time in the exercise of the Secretary of State's functions (including in relation to Closures or any enforcement or penalty orders).

7. Train and Station Cleaning

The Franchisee shall:

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

8. Publication of Performance Data

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

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

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

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

- (a) in relation to all Passenger Services;
- (b) disaggregated by reference to Service Groups;
- (c) on a periodic and/or on an average basis (as applicable); and
- (d) include details of:
 - (i) the number of Passenger Services operated by the Franchisee during each relevant Reporting Period which are late in arriving at their final scheduled destination in the Plan of the Day:
 - (A) by between 30 minutes and 59 minutes;
 - (B) by between 60 minutes and 119 minutes; and
 - (C) by 120 minutes or more,

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

- (ii) NOT USED.

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

- (a) the mean average of each of the Cancellations Figures for the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report (or, in the case of the second (2nd) Customer Report, since the Start Date);
- (b) the latest Time to 3 Minutes Figures, Time to 15 Minutes Figures, All Cancellation Figures and On Time Figures for the last Reporting Period before publication of the relevant Customer Report;
- (c) from the fourth (4th) Customer Report onwards, a summary comparison of the statistics produced pursuant to paragraphs 8.3(a) and 8.3(b) as against the equivalent statistics provided for the same Reporting Period(s) in the previous Franchisee Year;
- (d) an update on the key activities undertaken by the Franchisee to improve its performance in relation to the measures referred to in paragraphs 8.3(a) and 8.3(b); and
- (e) a summary of the key activities planned to be undertaken by the Franchisee in the period in relation to which the next Customer Report will report to improve its performance in relation to the measures referred to in paragraphs 8.3(a) and 8.3(b).

9. Publication of Complaints and Faults Handling Data

9.1 As part of each Customer Report (excluding the first (1st) Customer Report) to be provided by the Franchisee pursuant to paragraph 10.1 of Schedule 7.2 (Customer Experience and Engagement), the Franchisee shall publish (in such format as the Secretary of State may reasonably require) in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in

the previous Customer Report or, in the case of the second (2nd) Customer Report, since the Start Date):

- (a) a summary of the data published by the ORR from time to time in relation to the handling of passenger complaints regarding the Franchisee's operation of the Passenger Services;
- (b) details of the number of faults notified to the Franchisee by passengers or station users through specified channels including the website of the Franchisee (each a "**Notified Fault**") in each case identifying the total numbers of Notified Faults (by reference to whether such Notified Faults relate to rolling stock or stations), with such numbers further disaggregated by Service Group and broken down into relevant sub-categories of Notified Fault;
- (c) the mean average time taken by the Franchisee:
 - (i) to resolve Notified Faults; and
 - (ii) where Notified Faults are not resolved within twenty (20) Weekdays, to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults; and
- (d) from the fourth (4th) Customer Report onwards a summary comparison of:
 - (i) the mean average number of Notified Faults notified to the Franchisee;
 - (ii) the mean average time taken by the Franchisee to resolve Notified Faults; and
 - (iii) the mean average time taken by the Franchisee, where Notified Faults have not been resolved within twenty (20) Weekdays to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults,

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

10. Route Maps

10.1 The Franchisee shall produce a Route Map which shall include as a minimum;

- (a) all stations served by the Passenger Services; and
- (b) key stations located on any Other Passenger Route Within the Geographical Area (which shall either be selected by the Franchisee on a reasonable basis or, if so directed by the Secretary of State, specified by the Secretary of State in a notice to the Franchisee).

10.2 The Route Map shall include notes identifying:

- (a) in relation to any Other Passenger Route Within the Geographical Area with a principal destination point outside of the Geographical Area, such ultimate origin or ultimate destination point; and
- (b) those Routes over which services are also operated and such service is:
 - (i) operated by a passenger train operator other than the Franchisee; and

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

10.3 The Franchisee shall, as soon as reasonably practicable, update the Route Map in all places where it is displayed where there is any change:

- (a) to the Passenger Services, leading to a change in the routes falling within the definition of Route; or
- (b) to the passenger services operated by another passenger train operator (as stated in the National Rail Timetable), leading to a change to the routes falling within the definition of Other Passenger Route Within the Geographical Area.

10.4 The Route Map shall at all times be displayed:

- (a) in every passenger carrying vehicle within the Train Fleet;
- (b) at every Station; and
- (c) on its website.

10.5 The Franchisee shall be regarded as having complied with the requirement of paragraph 10.1 if a map that meets the requirements of a Route Map is produced by a Local Authority or other relevant Stakeholder. The provisions of paragraphs 10.3 and 10.4 shall apply in relation to any such map.

SCHEDULE 1.5A

Information about Passengers

1. Passenger Numbers Information

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

(a) the number of passengers travelling in each class of accommodation:

- (i) on each Passenger Service;
- (ii) on each Route; and/or
- (iii) at any station or between any stations;

(b) the times of the day, week or year at which passengers travel; and

(c) the Actual Consist Data and the Scheduled Consist Data,

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

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

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

(a) promptly following its collation and in any case within the following timescales:

- (i) in the case of data collected automatically by the Count Equipment and capable of being transmitted directly and automatically to the RPC Database or the Preliminary Database (as appropriate), within forty-eight (48) hours of its collation;
- (ii) in the case of data collected automatically by the Count Equipment but not capable of direct and automatic transmission to the RPC Database or the Preliminary Database (as appropriate), within one (1) calendar month of its collation; and

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

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

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

2. Manual Passenger Counts

- 2.1 The Secretary of State shall have the right to require the Franchisee to carry out manual counts in relation to some or all of the Passenger Services at such times as may be required and in such manner (including as to levels of accuracy and the number of days) as may be specified from time to time by the Secretary of State including if, exceptionally, the Franchisee is unable to comply with its obligations to provide data generated by the technology specified in paragraph 3.
- 2.2 The Secretary of State shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by the Secretary of State or otherwise). In the event that such audit reveals, in the reasonable opinion of the Secretary of State, a material error, or a reasonable likelihood of material error, in such counts, the Secretary of State may require the counts to be repeated or the results adjusted as the Secretary of State considers appropriate, and in these circumstances the Franchisee shall pay to the Secretary of State the costs of any such audits.

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

- 3.1 The technology to be used for the purpose of paragraph 1.2 shall be [\[INSERT DETAILS\]](#).

-
- 4 **Note to Bidders:** Bidders to populate (i.e. specify technology here), noting the requirements of paragraph 3.2 (b).

- 3.2 The technology to be used for the purposes of paragraph 1.2 shall be fitted to:
- (a) in the case of any brand new rolling stock which is admitted to the Train Fleet, one hundred per cent (100%) of it from the date that such rolling stock is properly admitted; and
 - (b) in the case of all other rolling stock, by 1 April 2022, to every vehicle comprised within no less than thirty-five per cent (35%) of such rolling stock units included in the Train Fleet from time to time in aggregate.
- 3.3 Without limiting the Secretary of State's rights under paragraph 1.1 of this Schedule 1.5, the technology specified in paragraph 3.1 above shall be used to provide counts in respect of, in any period of not less than twelve (12) weeks, at least two (2) of each of the Timetabled Services, and each count shall be carried out on each rolling stock unit comprising a particular train. The Franchisee may only use a method of extrapolation and use extrapolated data to provide a reliable estimate of a full train's count with the Secretary of State's prior written approval of the use of extrapolated data and the method of extrapolation (such approval not to be unreasonably withheld or delayed). The Franchisee shall comply with its obligation under this paragraph 3 from the date(s) such rolling stock is incorporated into the Train Fleet.
- 3.4 The Parties acknowledge that the information supplied under paragraph 1.1 above, and any product of it created by the RPC Database or the Preliminary Database (as appropriate), may constitute Confidential Information to which Schedule 17 (Confidentiality and Freedom of Information) applies.

4. Client Relationship Management (CRM) Data

- 4.1 The Franchisee shall ensure that any CRM System is the property of the Franchisee or is licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and that any CRM Data obtained by or on behalf of the Franchisee shall be:
- (a) obtained on terms such that the Franchisee shall be the Data Controller of such data; and
 - (b) the property of the Franchisee.
- 4.2 In relation to any CRM Data obtained by or on behalf of the Franchisee, the Franchisee shall ensure or procure that at the same time as the Franchisee seeks consent to process such CRM Data, the consent of the Data Subject is also sought to such CRM Data being disclosed to any Successor Operator and/or the Secretary of State and processed by any Successor Operator for the same purposes as the Franchisee sought consent to process such CRM Data.
- 4.3 Any consent referred to in paragraph 4.2 shall be sought in such manner as shall from time to time be approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and shall be on terms such as shall permit, in each case in compliance with the Data Protection Act:
- (a) the Franchisee to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and
 - (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 4.2.
- 4.4 The Franchisee shall not be required to:

- (a) disclose, publish, share or otherwise provide or make available any Personal Data (including CRM Data) to any person (including a Successor Operator or any participant involved with the re-letting of the Franchise); or
- (b) provide access to any CRM System,

in each case pursuant to the terms of the Franchise Agreement (together, the "**CRM Obligations**") if and to the extent that the Franchisee demonstrates to the satisfaction of the Secretary of State that compliance with such CRM Obligations would put the Franchisee, acting as a Data Controller, in contravention of its duties and/or obligations under any Personal Data Legislation.

5. Yield Management Data

- 5.1 The Franchisee shall ensure that any Yield Management Data and Yield Management System are the property of the Franchisee or are licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).
- 5.2 If and to the extent that the collection, use and/or processing of any Yield Management Data is subject to the Data Protection Act then paragraphs 4.1(a), 4.2, 4.3, 4.4 and 6 of this Schedule 1.5 shall apply in respect of Yield Management Data in the same way as they apply to CRM Data.

6. Personal Data - General Provisions

- 6.1 In respect of any Personal Data processed by the Franchisee, including CRM Data, the Franchisee agrees that it shall:
 - (a) comply with the Data Protection Act and all other legislation relating to the protection and use of personal information (including the Privacy and Electronic Communications (EC Directive) Regulations 2003) (all such legislation collectively being the "**Personal Data Legislation**") to the extent that such legislation applies to it; and
 - (b) procure that its agents or sub-contractors shall do the same to the extent that such legislation applies to any of them.
- 6.2 Pursuant to paragraph 6.1, the Franchisee agrees to comply with the Personal Data Legislation in respect of its processing of CRM Data and in particular, but without limitation, the Franchisee shall:
 - (a) ensure that CRM Data is processed fairly and lawfully (in accordance with Part 1 of Schedule 1 of the Data Protection Act);
 - (b) ensure that CRM Data is obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes (in accordance with Part 2 of Schedule 1 of the Data Protection Act); and
 - (c) obtain and maintain all appropriate notifications as required under the Data Protection Act.

5 **Note to Bidders:** this paragraph is being updated by the Department.

- 6.3 In accordance with its capacity as Data Controller of CRM Data and in accordance with the ensuing obligations under the Data Protection Act:
- (a) the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (i) prior to any disclosure of CRM Data to the CRM Data Processor, enter into written terms between itself and the Franchisee which are equivalent to those contained in this paragraph 6.3; and
 - (ii) process CRM Data only on behalf of the Franchisee, only for the purpose(s) as defined by the Franchisee and only in accordance with instructions received from the Franchisee from time to time;
 - (b) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times have in place appropriate technical and organisational measures against unauthorised or unlawful processing of CRM Data and against accidental loss or destruction of, or damage to, CRM Data and that such measures shall:
 - (i) reflect the level of harm, damage and/or distress that might be suffered by the Data Subject to whom the CRM Data relates in the event of a contravention of the measures as set out herein;
 - (ii) ensure that only authorised personnel have access to CRM Data and that any persons authorised to have access to CRM Data will respect and maintain all due confidentiality; and
 - (iii) (in the case of the CRM Data Processor) include compliance with a schedule of minimum security measures pursuant to the written terms between the Franchisee and the CRM Data Processor;
 - (c) the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (i) promptly notify the Franchisee of any actual or suspected, threatened or 'near miss' incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access to the CRM Data or other breach of this paragraph 6.3(c) ("**Security Breach**") and, pursuant to this the Franchisee shall promptly notify the Secretary of State of all Security Breaches by itself or by the CRM Data Processor (the Franchisee hereby acknowledges that whilst the Secretary of State is not Data Controller in respect of the CRM Data, the Secretary of State's legitimate interests given its duties under the Act may be affected in the event of a Security Breach and as such the Secretary of State wishes to be notified of the same); and
 - (ii) promptly provide the Franchisee on request with all reasonable information, assistance and co-operation in relation to its use of the CRM Data, including in relation to any audit by the Franchisee or by any person appointed on its behalf to permit an accurate and complete assessment of compliance with this paragraph 6;
 - (d) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times take reasonable steps to ensure the reliability of its/their personnel who have access to the CRM Data and ensure they are aware of the obligations of the Franchisee or the CRM Data Processor (as appropriate) in relation to the same; and

- (e) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, not cause or permit the CRM Data to be transferred to any location outside the European Economic Area (as defined in the Data Protection Act or otherwise as appropriate) without the prior written permission of:
- (i) (in the case of the Franchisee) the Secretary of State; or
 - (ii) (in the case of any Data Processor appointed by the Franchisee) the Franchisee provided that the Franchisee shall not give any such consent without the prior written permission of the Secretary of State;

and in any case without first executing as between the Data Controller and the relevant Data Processor outside the EEA the Standard Contractual Clauses for Data Processors established in Third Countries pursuant to the Commission Decision (2010/87/EU) of 5 February 2010 under the EU Directive (95/46/EC).

7. Rail Passenger Counts Database

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

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

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

- (a) any data or information contained in the RPC Database;
- (b) the raw Actual Passenger Demand information provided by the Franchisee or any Infrastructure Manager Data or any Third Party Data (as inputted to the RPC Database by whatever means); or
- (c) any product of that Actual Passenger Demand information, Network Rail Data and/or Third Party Data.

7.3

- (a) The Secretary of State is not liable for:
 - (i) any inaccuracy, incompleteness or other error in Actual Passenger Demand information, Infrastructure Manager Data, Third Party Data or product of the above provided to the Secretary of State by the Franchisee, Infrastructure Manager, NR or a third party; or

- (ii) any failure of the RPC Database to achieve any particular business result for the Franchisee. For the avoidance of doubt, it is the responsibility of the Franchisee to decide the appropriateness of using the RPC Database to achieve its own business results; or
 - (iii) any loss, destruction, corruption, degradation, inaccuracy or damage of or to the Actual Passenger Demand information following its submission to the RPC Database; or
 - (iv) any loss or damage to the property or assets of the Franchisee (tangible or intangible) as a result of a contravention of paragraph 7.1 of this Schedule 1.5; or
 - (v) any indirect, special or consequential loss or damage.
- (b) The Secretary of State's total liability for the duration of the Franchise Agreement in respect of a contravention of its obligations under paragraph 7.1 of this Schedule 1.5 for all other heads of loss or damage which can lawfully be limited shall be limited to the extent to which the Secretary of State is successful in recovering the equivalent loss from such entity to whom the Secretary of State subcontracts its obligations under paragraph 7.1 of this Schedule 1.5 (the "**Subcontractor**"), subject to the following provisions:
- (i) if reasonably requested by the Franchisee within three (3) months of incurring such loss or damage, the Secretary of State shall use reasonable endeavours to recover the equivalent losses from the Subcontractor;
 - (ii) it shall not be reasonable for the Franchisee to make a request pursuant to paragraph 7.3(b)(i) above if the value of the Franchisee's losses does not exceed ten thousand pounds sterling (£10,000) x RPI (RPI is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for January 2019 provided that, for the first Franchisee Year, RPI shall be one);
 - (iii) prior to accounting to the Franchisee for any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b), the Secretary of State shall be entitled to deduct and retain any reasonable costs and expenses incurred in pursuing such a claim which the Secretary of State does not successfully recover from the Subcontractor; and
 - (iv) the Secretary of State shall be entitled to deduct from any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b) such sum as the Secretary of State reasonably deems appropriate to take account of the Secretary of State's actual or potential liability to other train operating companies pursuant to equivalent arrangements with them, with a view to distributing any sums received from the Subcontractor fairly between the various operators.
- (c) The Franchisee shall use all reasonable endeavours to mitigate any losses incurred by the Franchisee as a result of a contravention by the Secretary of State of the Secretary of State's obligations contained in paragraph 7.1 of this Schedule 1.5.

7.4 The Parties acknowledge that it is intended that the RPC Database will also contain actual passenger demand information relating to franchisees other than the Franchisee but a franchisee shall have access only to information relating to its own franchise (in the case of the Franchisee,

via the log on details provided pursuant to paragraph 7.1(c)). For the avoidance of doubt, the licence granted at paragraph 8.6 shall only permit the usage of the RPC Database, Derivative Output and Intellectual Property Rights related to the Actual Passenger Demand information supplied by the Franchisee.

- 7.5 Without prejudice to Schedule 14.4 (Designation of Franchise Assets), paragraphs 2.1 and 3 of Schedule 15.1 (Reletting Provisions), Schedule 15.4 (Provisions Applying on and after Termination) or any other rights of the Secretary of State, the Franchisee agrees that, following the expiry or termination by whatever means of the Franchise Agreement and any Continuation Document, the Secretary of State shall be entitled to allow access to the Franchisee's Actual Passenger Demand information by way of granting access to that area of the RPC Database or otherwise to any future operator of the Passenger Services (whether or not in direct succession to the Franchisee) or to such part of the Actual Passenger Demand information as relates to the part of the franchise which is being taken over by such future operator.

8. Intellectual Property Rights and General Provisions

- 8.1 All Intellectual Property Rights in the RPC Database and Derivative Output shall at all times remain owned by the Secretary of State and to the extent that any rights in the RPC Database vest in the Franchisee by operation of law, the Franchisee hereby assigns such rights to the Secretary of State.
- 8.2 Subject to Schedule 14.4 (Designation of Franchise Assets) and Schedule 15.4 (Provisions Applying on and after Termination), all Intellectual Property Rights in the Actual Passenger Demand information will at all times remain owned by the Franchisee and (subject as previously stated) to the extent that any rights in the Actual Passenger Demand information vest in the Secretary of State by operation of law, the Secretary of State hereby assigns such rights to the Franchisee.
- 8.3 All Intellectual Property Rights in the Infrastructure Manager Data will at all times remain owned by the relevant NR entity or Infrastructure Manager entity and to the extent that any rights in the Infrastructure Manager Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the Franchisee (as applicable) will enter into a separate agreement with the relevant Infrastructure Manager entity to assign such rights to it.
- 8.4 All Intellectual Property Rights in the Third Party Data will at all times remain owned by the third party from whom they have been obtained and to the extent that any rights in the Third Party Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the Franchisee (as applicable) will enter into a separate agreement with the relevant Third Party to assign such rights to it.
- 8.5 Subject to Schedule 14.4 (Designation of Franchise Assets) and Schedule 15.4 (Provisions Applying on and after Termination), each Party:
- (a) acknowledges and agrees that it shall not acquire or claim any title to any of the other Party's Intellectual Property Rights (or those of the other Party's licensors) by virtue of the rights granted to it under this Agreement or through its use of such Intellectual Property Rights; and
 - (b) agrees that it will not, at any time, do, or omit to do, anything which is likely to prejudice the other Party's ownership (or the other Party's licensors' ownership) of such Intellectual Property Rights.

- 8.6 The Secretary of State hereby grants, for the duration of the Franchise Period, the Franchisee a non-exclusive, non-transferable licence to use:
- (a) the RPC Database;
 - (b) any Derivative Output; and
 - (c) all Intellectual Property Rights in the same,
- in the United Kingdom for the purposes of accessing the Actual Passenger Demand information by using the functionality of the RPC Database.
- 8.7 Without limiting any other rights the Secretary of State may have, the Franchisee hereby grants the Secretary of State a perpetual, non-terminable, non-exclusive licence (which is transferable and/or capable of being sub-licensed in the circumstances set out in this paragraph 8.7) to use the Actual Passenger Demand information and all Intellectual Property Rights in the same:
- (a) by including them in the RPC Database; and/or
 - (b) by including them in the Preliminary Database; and/or
 - (c) whether included in the RPC Database, the Preliminary Database or in any other format for such purposes as the Secretary of State may reasonably require including for the purposes of assisting the Secretary of State's decision making on train service requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding; and/or
 - (d) to the extent permitted by the other provisions of the Franchise Agreement to share, disclose, or publish the same and transfer and/or sub-licence and permit the use and sharing, disclosing or publishing for the purposes it is shared or disclosed; and/or
 - (e) to allow a future operator of the Passenger Services (whether or not in direct succession to the Franchisee) to view and access such Actual Passenger Demand information (whether via the RPC Database or otherwise) as directly relates to the services that it will be running,
- and such rights to use the Actual Passenger Demand information and all Intellectual Property Rights pursuant to this paragraph 8.7 shall continue following expiry or termination of this Agreement.
- 8.8 Paragraphs 7.2, 7.3, 8.1, 8.2 and 8.7 of this Schedule 1.5 shall continue in force after expiry or termination of the Franchise Agreement or any Continuation Document, together with any other provisions which expressly or impliedly continue in force after the expiry or termination of the Franchise Agreement or any Continuation Document.
- 8.9 The Parties intend that the provisions of The Contract (Rights of Third Parties) Act 1999 will apply to allow the relevant NR entity or Infrastructure Manager entity to rely on and enforce against a third party the provisions of paragraph 8.3 of this Schedule 1.5.

SCHEDULE 1.6A

The Rolling Stock

1. Purpose

1.1 This Schedule records the rolling stock vehicles which shall be comprised in the Train Fleet from the Start Date (Original Rolling Stock shown in Table 1) and further additional rolling stock that will become part of the Train Fleet during the Franchise Term (Specified Additional Rolling Stock shown in Table 2 and Unspecified Additional Rolling Stock shown in Table 3) and key information in relation to it. It includes other requirements in relation to the Train Fleet including in relation to rolling stock testing and commissioning and compliance with the requirements of the Secretary of State in relation to the specification of the Train Fleet including in relation to baby changing facilities and Controlled Emission Toilets.

2. The Composition/Deployment of the Train Fleet

2.1 The Train Fleet consists of:

- (a) from the Start Date until the earlier of the expiry of the ICWC Term and the lease expiry dates referred to in Column 6 of Table 1 in Appendix 1 to this Schedule 1.6 the rolling stock vehicles set out in Table 1 in Appendix 1 to this Schedule 1.6 ("**Original Rolling Stock**") with the Passenger Carrying Capacity per unit referred to in Column 3 and Column 4 of Table 1 in Appendix 1 to this Schedule 1.6;
- (b) from the dates set out in Column 6 of Table 2 in Appendix 1 to this Schedule 1.6, until the earlier of the expiry of the ICWC Term and the lease expiry dates referred to in Column 7 of Table 2 in Appendix 1 to this Schedule 1.6 the rolling stock vehicles including new build or cascaded rolling stock ("**Specified Additional Rolling Stock**") set out in Table 2, in Appendix 1 to this Schedule 1.6 with the Passenger Carrying Capacity per unit referred to in Column 3 and Column 4 of Table 2;
- (c) from the relevant dates specified in paragraph 2.3, each Unspecified Additional Rolling Stock⁶; and
- (d) NOT USED.

2.2 NOT USED.

2.3 The Franchisee shall by no later than:

- (a) the date which is [INSERT NUMBER OF MONTHS⁷] months prior to each such date specified in Column 1 of Table 3 in Appendix 1 to this Schedule 1.6, enter into Rolling Stock Leases

6 **Note to Bidders:** The inclusion of this provision will depend on the Bidders' rolling stock solution and whether it is intended that unspecified additional rolling stock will be used.

7 **Note to Bidders:** DfT will insert the number of months prior to signature date of the Franchise Agreement. The period to be inserted by the DfT will be based on the winning Bidder's bid proposal in relation to the lead time between entering in to the Transaction Documents for the new rolling

(subject to compliance with all other relevant provisions of this Agreement including in relation to Rolling Stock Related Contracts) in respect of; and

- (b) each date specified in Column 1 of Table 3 in Appendix 1 to this Schedule 1.6, introduce into revenue earning passenger service,

the quantum of rolling stock specified in Column 2 of Table 3 in Appendix 1 to this Schedule 1.6 and which (unless otherwise agreed by the Secretary of State) provides at least the minimum Passenger Carrying Capacity per unit and has at least the minimum reliability, capability and quality characteristics referred to in Column 3, Column 4 and Column 5 (respectively) of the Table 3 in Appendix 1 to this Schedule 1.6 ("**Unspecified Additional Rolling Stock**").⁸

- 2.4 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 or 3 in Appendix 1 to this Schedule 1.6 or as determined by the Secretary of State in accordance with paragraph 3.4 of this Schedule 1.6 (as applicable).
- 2.5 The Franchisee shall procure that the rolling stock vehicles described in the Tables 1 or 2 or 3 in Appendix 1 to this Schedule 1.6, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services to the extent required by the Timetable and Train Plan during the periods referred to therein.

3. Changes to the Train Fleet

- 3.1 The Franchisee shall maintain the composition of the Train Fleet during the Franchise Period, unless the Secretary of State otherwise agrees, such that there are no changes to the Train Fleet, including changes:
- (a) to the classes or types;
- (b) to the interior configurations; or
- (c) which may reduce the journey time capabilities,
- of any rolling stock vehicles specified in the Train Fleet.
- 3.2 NOT USED.
- 3.3 During the Franchise Period, the Franchisee shall advise the Secretary of State of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of three (3) consecutive Reporting Periods or more.
- 3.4 If any change is made to the Train Fleet in accordance with this Schedule 1.6, the Secretary of State may, after consulting the Franchisee, determine the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such

stock and the date of introduction of the new rolling stock but shall, in any case, be no later than 12 months prior to the date of introduction of any of the Unspecified Additional Rolling Stock into Passenger Service.

- 8 **Note to Bidders:** The inclusion of this provision will depend on the Bidders' rolling stock solution and whether it is intended that unspecified additional rolling stock will be used.

change. The Secretary of State shall notify the Franchisee of the Secretary of State's determination of any such Passenger Carrying Capacity.

4. Rolling Stock Testing and Commissioning

- 4.1 The Franchisee shall, to the extent reasonably requested by the Secretary of State and subject to payment of the Franchisee's reasonable costs by the relevant third party, co-operate with any third party which the Secretary of State may specify (including a Successor Operator, a rolling stock vehicle manufacturer or Network Rail or the Secretary of State) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise).
- 4.2 The co-operation referred to in paragraph 4.1 shall not unreasonably disrupt the provision and operation of the Franchise Services and may include:
- (a) the movement of test trains within and around depots;
 - (b) making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;
 - (c) making Train Slots available for such purposes;
 - (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
 - (e) the delivery of rolling stock vehicles to specific locations.

5. Controlled Emission Toilets

- 5.1 The Franchisee shall ensure that all rolling stock vehicles comprised in the Train Fleet used for the provision of the Passenger Services which have on board toilet facilities shall be fitted with Controlled Emission Toilets with a tank capacity sufficient for the requirements of the Passenger Services by no later than 1 January 2020 so that for the remainder of the Franchise Term all rolling stock vehicles which have on board toilets are exclusively fitted with Controlled Emission Toilets. Any newly built rolling stock which becomes part of the Train Fleet prior to 1 January 2020 which have on board toilet facilities shall be fitted exclusively with Controlled Emission Toilets.
- 5.2 The Franchisee shall ensure that the contents of the toilet retention tanks relating to each Controlled Emission Toilet fitted on rolling stock vehicles in accordance with the requirements of paragraph 5.1 are disposed of in a safe and hygienic manner at suitable facilities designed for these purposes including at Depots and stabling points.

6. Baby Changing Facilities

- 6.1 The Franchisee shall ensure that as soon as reasonably practicable but in any event by no later than 1 January 2020 each train operated by the Franchisee in delivering the Passenger Services that is fitted with toilet facilities is also fitted with such number of baby change facilities as is necessary to be compliant with the requirements of the PRM TSI.

7. Measurement of Traction Energy Usage

7.1 The Franchisee shall ensure that all rolling stock units that form part of the Train Fleet are able to measure and monitor fuel use as soon as reasonably practicable, and in the case of electric traction, enable the Franchisee to be a **"Metered Train Operator"** as defined by Network Rail's Traction Electricity Rules.

APPENDIX TO SCHEDULE 1.6A ⁹

The Composition of the Train Fleet

1. Original Rolling Stock

Explanatory Note A: Where in Column 6 both a Scheduled Lease Expiry Date and an Early Redelivery Date are specified in relation to one or more specified units (each being a "**Specified Unit**") the Lease Expiry Date for the Specified Units shall be the Early Redelivery Date provided that where any unit shown in Table 2 or Table 3 below as replacing any Specified Unit from the Early Delivery Date is delivered after the Early Redelivery Date such Specified Unit shall remain in the Train Fleet until the relevant Scheduled Lease Expiry Date or such earlier date as the Secretary of State acting reasonably may agree.

Table 1 (Original Rolling Stock)								
Column 1	Column 2	Column 3		Column 4		Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit		First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease expiry date(s) (See Explanatory Note A above)	
							Scheduled Lease Expiry Date	Early Redelivery Date (if any)
		Seats	Wheelchair spaces	Seats	Wheelchair Spaces			
390	35 x 11 car	444	2	145	1	Angel Trains	[NOTE TO BIDDERS: date to be inserted by Franchisee but date must be no earlier	[NOTE TO BIDDERS: date to be inserted by Franchisee but date must be no

⁹ **Note to Bidders:** To be completed by DfT based on the Bidders' proposal.

Table 1 (Original Rolling Stock)								
Column 1	Column 2	Column 3		Column 4		Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit		First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease expiry date(s) (See Explanatory Note A above)	
							Scheduled Lease Expiry Date	Early Redelivery Date (if any)
		Seats	Wheelchair spaces	Seats	Wheelchair Spaces			
							than 31 March 2022]	earlier than 31 March 2022]
390	21 x 9 car	367	2	145	1	Angel Trains	[NOTE TO BIDDERS: date to be inserted by Franchisee but date must be no earlier than 31 March 2022]	[NOTE TO BIDDERS: date to be inserted by Franchisee but date must be no earlier than 31 March 2022]

2. Specified Additional Rolling Stock¹⁰

Table 2 (Specified Additional Rolling Stock)										
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	Column 7	Column 8
Class of vehicle /unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease start date(s)	Lease expiry date(s)	Identity of any unit in Table 1 (Original Rolling Stock) intended to be replaced by the Specified Additional Rolling Stock and the date of replacement
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair spaces				

10 **Note to Bidders:** Table 2 sets out details of rolling stock to be acquired during the Franchise Term where the identity of the rolling stock, lessor, its characteristics and the lease start and expiry dates are known when the Franchise Agreement is signed.

3. Unspecified Additional Rolling Stock¹¹¹²

Table 3 (Unspecified Additional Rolling Stock)								
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6
Date of introduction into revenue earning passenger service	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class Passenger Carrying Capacity per unit		Characteristics (e.g. minimum reliability, capability and quality such as CET, automated passenger counts or other characteristics of the rolling stock specified in the Franchisee's proposal)	Identity of any unit in Table 1 (Original Rolling Stock) intended to be replaced by the Unspecified Additional Rolling Stock and the date of replacement
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair spaces		

11 **Note to Bidders:** The inclusion of this provision will depend on the Bidders' rolling stock solution and whether it is intended that unspecified additional rolling stock will be used.

12 **Note to Bidders:** Table 3 sets out details of rolling stock to be acquired during the Franchise Term where the identity of the rolling stock and the lease start and/or expiry dates are not known when the Franchise Agreement is signed and only the introduction date and basic specification to be set out in the Table.

SCHEDULE 1.7A

Stations

1. Station Asset Management

1.1 NOT USED.

1.2 By no later than 1 April 2023 the Franchisee shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Station Asset Management Plan.

1.3 Where the Secretary of State does not approve the draft Station Asset Management Plan submitted to it, the Franchisee shall make:

- (a) such amendments to it as the Secretary of State shall reasonably direct; and
- (b) provide such additional information as the Secretary of State may reasonably require.

1.4 From the date of approval, the Franchisee shall implement and comply with the Station Asset Management Plan.

1.5 The Station Asset Management Plan shall:

- (a) include the information set out in paragraph 1.6; and
- (b) meet the requirements of paragraph 1.7,

and it shall be reasonable for the Secretary of State to not approve a plan which does not include such information or meet such requirements.

1.6 The Franchisee shall ensure that the Station Asset Management Plan in relation to each Station shall include the following:

- (a) the details of all maintenance, repair and renewal activity undertaken by the Franchisee since the Start Date;
- (b) the details of any maintenance, repair and renewal activity which the Franchisee has not completed or not completed within the specified time frame set out in any Station Asset Management Plan together with reasons;
- (c) the details of the maintenance, repair and renewal activity undertaken since the Start Date or planned by Network Rail, any Local Authority, any Community Rail Partnership and any other relevant stakeholder, which the Franchisee is aware of;
- (d) the assumptions that the Franchisee has made about the current state and future degradation of assets at the Station at the time the Station Asset Management Plan was prepared or, if an asset becomes an asset at the Station on a later date, the assumptions of the Franchisee about the current state and future degradation of each relevant asset on the date that it becomes such an asset at the Station;
- (e) the details of under and over provision of assets at the Station at the time the Station Asset Management Plan was prepared given current and projected future customer volumes and characteristics, reasonable customer demands and any implications of the

commencement of or operation of the High Speed Services and planned enhancements or removals to accommodate changing customer volumes and characteristics, reasonable customer demands and any implications of the commencement or operation of the High Speed Services;

- (f) the plans for improving the environmental performance of Stations, including where appropriate, plans for:
 - (i) energy metering and data management, including measurement and verification plans for measures adopted;
 - (ii) lighting and lighting controls;
 - (iii) heating and heating controls;
 - (iv) auxiliary power uses;
 - (v) other energy efficiency measures;
 - (vi) renewable energy generation;
 - (vii) water efficiency measures;
 - (viii) waste reduction;
 - (ix) identification of opportunities for recycling or reuse of assets; and
 - (x) identification of opportunities for local sourcing of assets and asset materials;
- (g) the plans to ensure that delivery of Station Services is resilient to periods of extreme weather and minimises disruption to passengers;
- (h) the plans to ensure that maintenance, repair, renewal, enhancement and other building works to be carried out at such Stations is consistent with:
 - (i) the Principles of Inclusive Design; and
 - (ii) the Security in the Design of Stations Guidance; and
- (i) the plans to ensure that activity at such Stations is consistent with the Network Rail Asset Management Policy.

1.7 In addition, the Franchisee shall ensure that the Station Asset Management Plan:

- (a) shall cover a period of no less than forty (40) years from the date that it is created or revised and updated in accordance with this Schedule 1.7, as if the Franchisee was to operate each of the Stations for such forty (40) year period;
- (b) is developed in accordance, and complies, with guidance and policies (including the guidance documents known as "*Subject Specific Guidelines*" published by the Institute of Asset Management (or such appropriate replacement guidance) which are commensurate with those that would be referred to by a competent, skilled and experienced train operator using an asset management planning approach, in particular in respect of the balance of maintenance and renewal of each asset type.

1.8 Any amendments to the Station Asset Management Plan must be agreed by the Secretary of State (such consent not to be unreasonably withheld or delayed).

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

1.10 Updating the Station Asset Management Plan

(a) By no later than each anniversary of the date on which the Franchisee submitted the Station Asset Management Plan in accordance with paragraph 1.2, the Franchisee shall have reviewed the Station Asset Management Plan and shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) a draft updated version of the Station Asset Management Plan.

(b) The updated draft Station Asset Management Plan shall include and reflect the following:

- (i) a schedule of any revisions to the current Station Asset Management Plan and a brief summary of the rationale supporting any change for review and approval by the Secretary of State;
- (ii) any changed and developing circumstances and the requirements of the Station Asset Management Plan Accreditation;
- (iii) where relevant, the outcomes of, and the Franchisee's responses to the stakeholder consultation process described in paragraph 4; and
- (iv) the information required in accordance with paragraphs 1.6 and 1.7 of this Schedule 1.7 save that the reference to the "Start Date" in paragraph 1.6(a) shall be read as the date on which the Station Asset Management Plan is reviewed and updated by the Franchisee in accordance with this paragraph 1.10 of this Schedule 1.7.

(c) If:

- (i) the Secretary of State approves an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.10(a), such document shall become the then current Station Asset Management Plan; or
- (ii) the Secretary of State does not approve an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.10(a), then the Franchisee shall make:
 - (A) such amendments to it as the Secretary of State shall reasonably direct; and
 - (B) provide such additional information as the Secretary of State may reasonably require.

(d) The Franchisee shall put in place such arrangements as are necessary (to the reasonable satisfaction of the Secretary of State) to ensure that the Station Asset Management Plan is (and continues to be maintained) in a format acceptable to the Secretary of State which is capable of being transferred to a Successor Operator as part of the Handover Package so that the Successor Operator is able to access, use and amend the Station Asset Management Plan using the same format.

1.11 Station Asset Management Plan Accreditation Certificate

- (a) The Franchisee shall:
- (i) ensure that it applies for and obtains the Station Asset Management Plan Accreditation by no later than the date falling twelve (12) months from the date on which the Franchisee submitted its Station Asset Management Plan in accordance with paragraph 1.2;
 - (ii) promptly upon receipt by the Franchisee, provide to the Secretary of State a certificate of accreditation issued by an organisation accredited by the United Kingdom Accreditation System (UKAS) which has been signed by a director of the Franchisee and which confirms that the Station Asset Management Plan Accreditation has been obtained (the "**Station Asset Management Plan Accreditation Certificate**"); and
 - (iii) maintain the Station Asset Management Plan Accreditation from the date that it is required to be achieved in accordance with paragraph 1.11(a)(i) for the remainder of the Franchise Period.
- (b) If the Station Asset Management Plan Accreditation is at any time lost or the Franchisee fails to secure such then the Franchisee shall report that fact to the Secretary of State as soon as reasonably practicable and in any event within ten (10) Weekdays of the Franchisee becoming aware of such fact.
- (c) From the date upon which the Franchisee notified the Secretary of State pursuant to paragraph 1.11(b) (or should have notified the Secretary of State having complied with the provisions of this Agreement), the Franchisee shall:
- (i) re-secure such accreditation as soon as reasonably practicable and in any case within three (3) months; and
 - (ii) report to the Secretary of State every Reporting Period on the measures it is proposing to take, and is taking, to achieve such restoration of the Station Asset Management Plan Accreditation.
- (d) Where the Franchisee fails to secure the Station Asset Management Plan Accreditation pursuant to paragraph 1.11(c) within three (3) months of the date of such accreditation being lost or failed to be secured (as the case may be) such failure shall constitute a contravention of the Franchise Agreement and the Secretary of State may issue a Remedial Plan Notice pursuant to Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement) and the provisions of Schedule 10 (Remedies, Events of Default and Termination Events) shall apply.

2. Grey Assets

2.1

- (a) The Franchisee shall use all reasonable endeavours to agree a comprehensive list of all Grey Assets with Network Rail within twelve (12) months of the Start Date.
- (b) If at any time during the Franchise Period the Franchisee reasonably considers that an asset not included in the list prepared pursuant to paragraph 2.1(a) is a Grey Asset it shall

notify Network Rail accordingly and use all reasonable endeavours to agree whether or not such asset should be considered to be a Grey Asset as soon as reasonably practicable.

- 2.2 If the Franchisee reaches agreement with Network Rail that any asset is a Grey Asset pursuant to paragraph 2.1 above the Franchisee shall:
- (a) consult with Network Rail and, where reasonably necessary and agreed by Network Rail, carry out a joint inspection of each such Grey Asset; and
 - (b) use all reasonable endeavours to agree with Network Rail the proper allocation of responsibility in relation to each such Grey Asset (including whether such Grey Asset falls within or outside the boundary of an area subject to a Station Lease) on a reasonable basis consistent with the document entitled "*The Secretary of State's baseline principles for establishing asset responsibilities at stations*" (as it may be updated from time to time). The Franchisee shall use all reasonable endeavours to reach such agreement as soon as reasonably practicable and in any event within:
 - (i) twenty four (24) months of the Start Date in the case of Grey Assets identified pursuant to paragraph 2.1(a); or
 - (ii) twenty four (24) months of any such asset being identified to Network Rail as a Grey Asset in the case of Grey Assets identified pursuant to paragraph 2.1(b).
- 2.3 Where the Franchisee is unable to agree with Network Rail the proper allocation of responsibility under the relevant Station Lease in relation to any Grey Asset pursuant to paragraph 2.2(b) (including whether such Grey Asset falls within or outside the boundary of an area subject to a Station Lease), the Franchisee shall refer such matter to the dispute resolution process under the terms of the relevant Station Lease.
- 2.4 The Franchisee shall ensure, that where the allocation of responsibility for a Grey Asset is agreed pursuant to paragraph 2.2 or determined pursuant to paragraph 2.3), such Grey Asset is:
- (a) to the extent that a Station Asset Management Plan has not been submitted to the Secretary of State as at the date of such agreement or determination (as the case may be), included in the Station Asset Management Plan to be submitted to the Secretary of State pursuant to paragraph 1.2; or
 - (b) to the extent that a Station Asset Management Plan has been submitted to the Secretary of State as at the date of such agreement or determination (as the case may be), is included in the next update to the Station Asset Management Plan to be submitted to the Secretary of State pursuant to paragraph 1.10 immediately after the date of such agreement or determination.
- 2.5 The Franchisee shall use all reasonable endeavours to ensure that the allocation of responsibility for each Grey Assets agreed pursuant to paragraph 2.2 or determined pursuant to paragraph 2.3 shall be recorded via an amendment to the Station Lease and, where applicable, by an amendment to the relevant Station Access Conditions as soon as reasonably practicable and in any event within thirty-six (36) months of the date upon which allocation of responsibility for each such Grey Asset is so agreed or determined. The Franchisee shall obtain the prior written consent of the Secretary of State to any such amendment to the Station Lease and/or Station Access Conditions.

3. Station Social and Commercial Development Plan

- 3.1 From the Start Date, the Franchisee shall implement, resource and comply with the Station Social and Commercial Development Plan for the duration of the Franchise Term that as a minimum must:
- (a) provide the Franchisee's initial view of potentially suitable sites at Stations to be refurbished for use by community groups and social enterprises for commercial development;
 - (b) be for a period of 10 years and be reviewed on a rolling basis; and
 - (c) set out how the Franchisee shall:
 - (i) identify schemes to develop currently redundant or under-utilised station buildings and facilities for use by community groups and social enterprises or for commercial development including schemes which sustain and enhance the viability of existing facilities at Stations or lead to the development of new facilities including through appropriate sub-leasing of Station buildings;
 - (ii) consult with customers and the community on the concerns, issues, opportunities and risks relating to the Stations and the priorities for investment;
 - (iii) effectively evaluate, prioritise and develop such schemes taking account of customer and community views; and
 - (iv) implement the schemes in accordance with their allocated priority.
- 3.2 Any amendments to the Station Social and Commercial Development Plan must be agreed by the Secretary of State in accordance with this paragraph 3.
- 3.3 By no later than the end of the first Franchisee Year, and on each subsequent anniversary of this date, the Franchisee shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld) a revised Station Social and Commercial Development Plan updated in accordance with the requirements of paragraph 3.4 below.
- 3.4 Each updated version of the Station Social and Commercial Development Plan shall:
- (a) incorporate a schedule of any revisions made to the previous Station Social and Commercial Development Plan and a brief summary of the rationale supporting those revisions;
 - (b) appropriately reflect changed and developing circumstances where relevant; and
 - (c) appropriately reflect the outcomes of, and the Franchisee's responses to, the stakeholder consultation process described in paragraph 4, below.
- 3.5 The Franchisee shall ensure that the Station Social and Commercial Development Plan shall be updated so that following each update it continues to cover at least a period of ten (10) years from the date of the update.

3.6 If:

- (a) the Secretary of State approves an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 3.3, such document shall become the then current Station Social and Commercial Development Plan; or
- (b) the Secretary of State does not approve an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 3.3, then the Franchisee shall:
 - (i) make such amendments to it as the Secretary of State shall reasonably direct; and
 - (ii) provide such additional information as the Secretary of State may reasonably require,

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

4. Consultations

4.1 On or before the annual submission of the Station Asset Management Plan or the Station Social and Commercial Development Plan pursuant to the provisions of this Schedule 1.7, the Franchisee shall conduct consultations with relevant Stakeholders (including ACoRP, passengers, users of Stations, members of relevant local communities, Network Rail and the British Transport Police) in relation to the potential risks, opportunities and priorities for investment and operational efficiencies in relation to Stations. The Franchisee shall act reasonably in determining the scope of the specification of such consultations including the Stations to be considered.

5. NOT USED.

6. Security at Stations

6.1 The Franchisee shall maintain for the duration of the Franchise Period the Secure Stations Accreditation for the Stations already achieved by the Train Operator under the Previous Franchise Agreement as set out in Appendix 1 to this Schedule 1.7.

6.2 The Franchisee shall maintain for the duration of the Franchise Period the Secure Car Parks Accreditation for the Stations already achieved by the Train Operator under the Previous Franchise Agreement as set out in Appendix 1 to this Schedule 1.7.

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

- (a) in respect of a Station that does not have Secure Station Accreditation, notify the Secretary of State of such increase and, as soon as reasonably practicable, obtain Secure Station Accreditation for such Station. The Franchisee shall notify the Secretary of State once such Secure Station Accreditation has been obtained and shall maintain the same through the Franchise Term; or
- (b) in respect of a Station that already has Secure Station Accreditation (either pursuant to paragraph 6.1 above, or because the Franchisee has been required to obtain Secure Station Accreditation pursuant to paragraph 6.3(a) above), notify the Secretary of State of such increase and the provisions of paragraph 6.4 shall apply.

- 6.4 Upon the Secretary of State receiving notification pursuant to paragraph 6.3(b) above, the Secretary of State may, following consultation with the British Transport Police, revoke the Secure Station Accreditation for such Station. For the avoidance of doubt, revocation of Secure Station Accreditation pursuant to this paragraph 6.4 shall constitute a contravention of the Franchise Agreement by the Franchisee.
- 6.5 Where a Station loses its Secure Station Accreditation (whether pursuant to paragraph 6.4 or otherwise) the Franchisee shall:
- (a) obtain Secure Station Accreditation for such Station as soon as reasonably practicable, in any event no later than 12 months from and including the date of the loss of such Secure Station Accreditation, and notify the Secretary of State that such Secure Station Accreditation has been achieved; and
 - (b) maintain such Secure Station Accreditation once obtained for the duration of the Franchise Term.
- 6.6 In this paragraph 6:
- (a) **"BTP Methodology"** means the document in the agreed form marked BTP Methodology;
 - (b) **"Secure Car Parks Accreditation"** and means car parks at Stations which have achieved accreditation under the Secure Car Parks Scheme;
 - (c) **"Secure Car Parks Scheme"** means the scheme run by the British Parking Association that sets design and management safety standards for crime reduction at car parks, also known as Park Mark;
 - (d) **"Secure Stations Accreditation"** means Stations which have achieved accreditation under the Secure Stations Scheme;
 - (e) **"Secure Stations Scheme"** means the certification scheme which is managed by the Department for Transport and British Transport Police and sets station design and management safety standards for crime reduction and supporting vulnerable people at railway stations; and
 - (f) **"TRH Score"** means the threat, risk harm score for each Station calculated by the British Transport Police in accordance with the BTP Methodology.

7. Information about Station Improvement Measures

- 7.1 The Franchisee shall at all times during the Franchise Period maintain records in relation to the measures taken by it to improve the Station environment at each of the Stations, covering the areas and the information set out in Appendix 2 to this Schedule 1.7.
- 7.2 The Franchisee shall, subject to paragraph 7.3, provide to the Secretary of State the information set out in Appendix 2 to this Schedule 1.7 within one (1) Reporting Period of each anniversary of the Start Date during the Franchise Period.
- 7.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
- (a) such level of disaggregation as is reasonably specified by the Secretary of State; and

(b) any particular Station as is reasonably specified by the Secretary of State.

7.4 The information to be provided by the Franchisee to the Secretary of State within the timescales stipulated are set out in Appendix 2 to this Schedule 1.7.

8. NOT USED.

9. Station Investment

9.1 The Franchisee shall at all times during the Franchise Term, co-operate with the Secretary of State and any third party nominated by the Secretary of State and notified to the Franchisee in developing opportunities for financing investment at Stations and Franchisee Access Stations in order to improve the station environment at such stations.

9.2 In co-operating with the Secretary of State and/or any nominated third party in developing any such financing opportunities, the Franchisee shall:

- (a) attend meetings with the Secretary of State and/or such third party to discuss such opportunities;
- (b) provide the Franchisee's opinion on those opportunities;
- (c) review and comment on implementation timetables and programmes for any such opportunities; and
- (d) where requested by the Secretary of State to do so use all reasonable endeavours to engage with Network Rail for the purposes of ascertaining the feasibility and costs of making amendments to any Station Leases in order to facilitate the implementation of those opportunities.

10. CCTV

10.1 The Franchisee shall ensure that any installation of, or upgrade to, CCTV at any Station shall be undertaken in accordance with the CCTV Guidance.

11. Station Toilet Access

11.1 The Franchisee shall ensure that access to toilet facilities at all Stations is provided free of charge.

APPENDIX 1 TO SCHEDULE 1.7A

**List of Stations and Car Parks with Secure Stations Accreditation
and Secure Car Parks Accreditation**

1. Secure Stations Accreditation

Birmingham International
Carlisle
Coventry
Crewe
Lancaster
Macclesfield
Oxenholme
Penrith
Preston
Rugby
Runcorn
Stafford
Stockport
Stoke-on-Trent
Warrington Bank Quay
Wigan North Western

2. Secure Car Parks Accreditation

Birmingham International
Carlisle
Coventry
Crewe
Lancaster
Macclesfield
Oxenholme
Penrith
Preston
Rugby
Runcorn
Stafford
Stoke-on-Trent
Warrington Bank Quay
Wigan North Western

APPENDIX 2 TO SCHEDULE 1.7A

Information about Station Improvement Measures

[Note to Bidders: Bidders to populate Columns 1 and 2 of Table A. Column 1 to be populated with the information to be maintained and provided by the Franchisee as required by paragraph 7, such information to relate to the dashboard metrics requirements set out in the ITT and, if relevant, any information relating to the additional proposals offered by the bidder as contemplated in the ITT.]

Table A		
Column 1	Column 2	Column 3
Information to be provided	Information (format)	When information to be provided
		As per paragraph 7.2 but subject to paragraph 7.3.

APPENDIX 3 TO SCHEDULE 1.7A

NOT USED

APPENDIX 4 TO SCHEDULE 1.7A

NOT USED

SCHEDULE 2A

ASSETS, LEASES, OTHER FRANCHISEES AND SCHEMES

Schedule 2.1A:	Asset Vesting and Transfer
Schedule 2.2A:	Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases
Schedule 2.3A:	Other Franchisees
Schedule 2.4A:	NOT USED
Schedule 2.5A:	Transport, Travel and Other Schemes
	Appendix 1: List of Transport, Travel and Other Schemes

SCHEDULE 2.1A

Asset Vesting and Transfer

1. NOT USED.

2. Vesting of Property Leases during the Franchise Term

2.1 The Franchisee shall not without the prior written consent of the Secretary of State (such consent not to be unreasonably withheld), whether generally or on a case-by-case basis:

- (a) enter into any new Property Lease; or
- (b) effect any amendment to any Property Lease, except to the extent that the Franchisee is required to do so by virtue of any station or depot access conditions to which it is a party.

2.2 In respect of the new Property Leases specified in paragraph 2.3 or any other new Property Lease with Network Rail, the Franchisee shall enter into such Property Leases:

- (a) with the intent that section 31 of the Act shall apply to such leases; and
- (b) in the agreed terms marked **SL** and **DL** (as appropriate).

2.3 The Franchisee shall enter into the following leases with Network Rail:

- (a) a lease of each Station, on or before the expiry of the Station Lease relating to each such Station (each such lease, once granted, shall be a Station Lease for the purposes of the Franchise Agreement);
- (b) a lease of each Depot, on or before the expiry of the Depot Lease relating to each such Depot (each such lease, once granted, shall be a Depot Lease for the purposes of the Franchise Agreement);
- (c) a supplemental lease relating to any Station or Depot, as soon as practicable following the successful completion of any procedure (including obtaining any requisite approval from the ORR) for including additional land within the demise of such Station or Depot (as the case may be) and each such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of the Franchise Agreement; and
- (d) a lease of any Network Rail owned station or depot, which:
 - (i) the Secretary of State consents to or requires the Franchisee to be a party to; and
 - (ii) the Franchisee was not a party to on the date hereof, but which has been contemplated by the Franchise Agreement,

and the Franchisee shall enter into such lease as soon as practicable after its terms and form have been agreed and all applicable preconditions to its granting have been satisfied or waived (including obtaining any requisite approval of the ORR). Any such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of the Franchise Agreement and any such station or depot (as the case may be) shall be a Station or Depot for the purposes of the Franchise Agreement.

2.4 The Franchisee shall not be in contravention of paragraph 2.3 if and to the extent that Network Rail refuses to enter into any leases specified therein.

- 2.5 In respect of any assignment or amendment of any Property Lease to which section 31 of the Act applied on its grant, each of the Secretary of State and the Franchisee acknowledges that it is their intention that section 31 of the Act shall continue to apply to such assigned or amended lease.
- 2.6 The Franchisee shall use all reasonable endeavours to ensure that any Station Lease that it enters into accurately records all fixtures and fittings in relation to such Station Lease.

SCHEDULE 2.2A

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

1. Novation of Access Agreements during the Franchise Term

- 1.1 The Franchisee shall, to the extent so requested by the Secretary of State (other than on termination of the Franchise Agreement, for which the provisions of paragraph 1 of Schedule 15.4 (Provisions Applying on and after Termination) apply):
- (a) following receipt of a notice purporting to terminate any Access Agreement to which it is a party, in relation to such Access Agreement; or
 - (b) following receipt of a notice purporting to terminate a Station Lease or Depot Lease in whole or in part or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, in relation to any Access Agreement under which it is a Facility Owner by virtue of such Station Lease or Depot Lease,
- novate its interest under any such relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as the Secretary of State may direct.
- 1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.
- 1.3 Such novation shall be on such terms as the Secretary of State may reasonably require, including:
- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or the Secretary of State's nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
 - (b) that neither the Secretary of State nor the Secretary of State's nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a contravention referred to in paragraph 1.3(a),
- but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.
- 1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as the Secretary of State may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.
- 1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. Rolling Stock Related Contracts and Insurance Arrangements

2.1 The Franchisee shall not:

- (a) execute any Rolling Stock Related Contract;
- (b) exercise any option or other discretion in any Rolling Stock Related Contract that would result in any increased payment or delay in delivery being made by or to the Franchisee or the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of the Franchise Agreement; or
- (c) amend or waive the terms of any Rolling Stock Related Contract,

without, in each case, the prior written consent of the Secretary of State (not to be unreasonably withheld).

2.2 The Franchisee shall supply to the Secretary of State a copy of all draft Rolling Stock Related Contracts and, immediately following execution, all executed Rolling Stock Related Contracts (including any agreement amending any Rolling Stock Related Contract) together with:

- (a) such other information or documentation relating to such Rolling Stock Related Contract and/or the relevant rolling stock as the Secretary of State may request (which may include offer letters (original and final));
- (b) the terms proposed by any person providing finance in relation to the relevant rolling stock (including cash flows);
- (c) any agreement (in whatever form) to which the Franchisee (or an Affiliate of the Franchisee) is a party and which relates to the relevant rolling stock;
- (d) information relating to capital allowances, details of any changes in the terms (including rentals) on which the relevant rolling stock is proposed to be leased compared to the terms on which such rolling stock was previously leased; and
- (e) a detailed justification of the Franchisee's proposed maintenance strategy for the relevant rolling stock and/or the Franchisee's analysis of the whole life costs of the relevant rolling stock.

2.3 Where the information or documentation so requested by the Secretary of State is not held by the Franchisee, the Franchisee shall use reasonable endeavours to obtain the relevant information or documentation from a third party (including any person from whom the Franchisee leases rolling stock).

2.4 The Franchisee shall not, without the prior written consent of the Secretary of State:

- (a) amend the terms of any insurance arrangements which relate to rolling stock vehicles used by it in the provision of the Passenger Services to which it is a party on the Start Date; or
- (b) enter into any new insurance arrangements after the Start Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services ("**New Insurance Arrangements**").

2.5 The Franchisee shall, in addition, if it enters into any New Insurance Arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Franchisee, whether on a reciprocal basis or otherwise.

3A Train Maintenance

- 3A.1 The Franchisee shall procure that heavy maintenance of Train Fleet is undertaken in accordance with a standard expected of a competent, skilled and experienced train operator.
- 3A.2 The Franchisee shall seek approval from the Secretary of State for any changes to the heavy maintenance regime for the Train Fleet where such change will result in any material cost saving to the Franchisee including the reduction of any lease payments for the relevant Rolling Stock (such approval not to be unreasonably withheld or delayed). If the Secretary of State does not confirm the Secretary of State's approval to the Franchisee within one (1) month of receiving a request in respect of such the Secretary of State shall be deemed to have approved the change requested.

3. Cascaded Rolling Stock and Delayed Cascade Mitigation Plan

- 3.1 For the purpose of this paragraph 3:

"Cascaded Rolling Stock" means rolling stock proposed to be used by the Franchisee in the provision of the Passenger Services the availability of which is, in the opinion of the Secretary of State, directly or indirectly dependent upon the successful introduction into service of any Relevant Rolling Stock by any other Train Operator;

"Prior Train Operator" means the Train Operator which used or is using the Cascaded Rolling Stock immediately prior to its proposed use by the Franchisee;

"Relevant Delay" means any delay to the successful introduction into service of any Relevant Rolling Stock; and

"Relevant Rolling Stock" means rolling stock to be acquired by another Train Operator which, when acquired, will initiate the **"cascade"** of rolling stock that directly or indirectly makes the Cascaded Rolling Stock available for use by the Franchisee.

- 3.2 Without limiting paragraph 2.1, where the rolling stock to be leased by the Franchisee under any Rolling Stock Lease is Cascaded Rolling Stock the Secretary of State may:

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

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

- 3.3 Where the Secretary of State exercises the Secretary of State's right pursuant to paragraph 3.2(b) to make Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period there shall be a Change and where this is a Qualifying Change, it shall be assumed that the period that the Prior Train Operator retains any Cascaded Rolling Stock shall not exceed ninety (90) days and the only Revised Inputs shall be in relation to the difference between each of the rolling stock lease costs and variable track usage charge for the Cascaded Rolling Stock and the rolling stock lease costs and variable track usage charge applicable in

relation to whatever rolling stock is to be used by the Franchisee in place of the Cascaded Rolling Stock.

- 3.4 Where there is a Change pursuant to paragraph 3.3 and the period that the Prior Train Operator retains any Cascaded Rolling Stock is more than ninety (90) days there shall be a further Change. Where such Change is a Qualifying Change the modifications to the methodology for calculating Revised Inputs provided for in paragraph 3.3 shall not apply.
- 3.5 Where there is a Change pursuant to paragraphs 3.3 or 3.4 and any such Change is a Qualifying Change there shall be a further Change (which shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change) on the date that the last Cascaded Rolling Stock ceases to be retained by the Prior Train Operator.
- 3.6 NOT USED.
- 3.7 Where the Secretary of State exercises the Secretary of State's right pursuant to paragraph 3.2(b) to require the Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period, the Franchisee shall not be liable for any failure to comply with its obligations under the Franchise Agreement to the extent that:
- (a) such failure to comply arises directly as a result of the Franchisee being unable to use the Cascaded Rolling Stock; and
 - (b) the Franchisee uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.
- 3.8 The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of any material risk that a Relevant Delay will occur. If a Relevant Delay does occur the Franchisee shall use all reasonable endeavours to mitigate the impact on the delivery of the Franchise Services of the unavailability of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.
- 3.9 If a Relevant Delay has occurred or the Secretary of State believes that there is a material risk that a Relevant Delay will occur the Secretary of State may serve a notice on the Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate the impact of the delayed availability of the Cascaded Rolling Stock ("**Delayed Cascade Mitigation Plan**"). Such specification may include measures to be implemented by the Franchisee to mitigate the direct or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (b) the implications (if any) for the Benchmarks; and
 - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- 3.10 The Franchisee shall meet with the Secretary of State to discuss the Delayed Cascade Mitigation Plan and provide such further information or analysis and further iterations of the Delayed Cascade Mitigation Plan as the Secretary of State shall reasonably require.
- 3.11 Where any rolling stock vehicles cease to be part of the Train Fleet but are acquired by another Train Operator for use in delivering passenger services the Franchisee shall:

- (a) ensure that:
 - (i) such rolling stock is in an acceptable redelivery condition consistent with the hand back terms agreed with the lessor;
 - (ii) a complete set of maintenance and mileage records are handed over in a suitable format; and
 - (iii) the Train Operator is given reasonable access to the relevant rolling stock prior to handover to assist with an effective hand over in relation to both operation and maintenance; and
- (b) use reasonable endeavours to ensure that:
 - (i) the Train Operator is offered 'knowledge transfer' sessions to enable recipient engineers and operational personnel to learn from informed peers;
 - (ii) the Train Operator is offered on-train development programmes to train their maintenance staff to an appropriate level of competence; and
 - (iii) it offers medium-term support and advice in relation to such rolling stock including technical and operational support.

4. Assignment of Property Leases during the Franchise Term

- 4.1 The Franchisee shall (other than on termination of the Franchise Agreement, for which the provisions of paragraph 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as the Secretary of State may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- 4.2 Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or the Secretary of State's nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such antecedent breach in connection with the relevant assignment); and
 - (b) that neither the Secretary of State nor the Secretary of State's nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a contravention referred to in paragraph 4.2(a), and the Franchisee shall indemnify the Secretary of State or the Secretary of State's nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- 4.3 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.1 in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as the Secretary of State may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.2 shall apply to any such assignment.

4.4 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. Station and Depot Leases

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

5.2 The Franchisee shall not:

- (a) terminate or agree to terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Station Lease or Depot Lease;
- (b) assign all or part of its interest under any Station Lease or Depot Lease; or
- (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease,

except to the extent that the Secretary of State may otherwise agree from time to time (such agreement not to be unreasonably withheld if the Franchisee has made arrangements, reasonably satisfactory to the Secretary of State, for the continued operation of such Station or Depot (as the case may be) for the remainder of the Franchise Term or if consent to the Closure of the relevant Station or Depot has been granted).

6. Station Subleases

6.1 Unless the Secretary of State agrees otherwise, the Franchisee shall not sublet to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:

- (a) (other than any subletting to an Affiliate which is a Train Operator) is terminable without compensation immediately upon the termination of the Franchise Agreement; and
- (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

6.2 If so requested by the Secretary of State, the Franchisee shall:

- (a) extend each Station Sublease on the same terms for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease); and
- (b) if such Station Sublease terminates (which for the purposes of this paragraph 6.2(b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sublease in respect of which the Franchisee was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease),

subject, where required, to the consent of Network Rail (and, if required, the relevant sub-lessee) and to the duration of the relevant Station Lease.

6.3 The Franchisee shall notify the Secretary of State immediately on it becoming aware of any event which might give the Franchisee a right to forfeit or terminate any Station Sublease. The Franchisee shall notify the Secretary of State if it wishes to forfeit or terminate any such Station Sublease but shall not (without the Secretary of State's prior written consent) effect such

forfeiture or termination until the date which occurs three (3) months after the date of such notice.

SCHEDULE 2.3A

Other Franchisees

1. Other Franchisees

- 1.1 If the franchise agreement of another franchisee terminates or a railway administration order is made in respect of another franchisee, the Franchisee shall co-operate with any reasonable request of the Secretary of State to ensure:
- (a) that the services provided or operated by such other franchisee may continue to be provided or operated by any successor Train Operator or the railway administrator; and
 - (b) that the benefit of any arrangements between the Franchisee and such other franchisee which were designated as a key contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.
- 1.2 The benefit of any arrangements of the type referred to in paragraph 1.1(b) shall be provided on substantially the same terms as previously obtained by the relevant franchisee, subject to clause 14.8 (Arm's Length Dealings) and paragraph 1.3 of this Schedule 2.3, provided that the Secretary of State may exclude or modify any terms agreed or amended by such franchisee in the twelve (12) months preceding the date on which such franchisee's franchise agreement was terminated or the date on which the relevant railway administration order was made which were, in the Secretary of State's reasonable opinion, to the material detriment of such franchisee's business. The benefit of such arrangements shall be provided for such period as the Secretary of State may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.
- 1.3 The Franchisee shall notify the Secretary of State of its intention to terminate any contract with any other Train Operator which is designated as a Key Contract under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.
- 1.4 If the franchise agreement of another franchisee terminates in contemplation of the entry into or entry into effect of a new franchise agreement with the same franchisee in respect of all or a material part of the relevant railway passenger services, the Franchisee shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.
- 1.5 References in this paragraph 1 to **"a franchisee"** include references to any franchise operator of that franchisee.

SCHEDULE 2.4A

NOT USED

SCHEDULE 2.5A

Transport, Travel and Other Schemes

1. Local Authority Concessionary Travel Schemes

1.1 The Franchisee shall:

- (a) subject to paragraph 1.2, participate in and comply with its obligations under:
 - (i) the concessionary travel schemes listed in Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
 - (ii) any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 1.1(b); and
- (b) subject to paragraph 1.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:
 - (i) any concessionary travel scheme listed in the Franchise Agreement the terms of which have been amended since the date of the Franchise Agreement; and
 - (ii) such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in.

1.2 Subject to the terms of the relevant concessionary travel scheme, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 1.1(a) where, in the reasonable opinion of the Secretary of State:

- (a) the Franchisee's continuing participation in such scheme; and/or
- (b) the obligations assumed by the relevant Local Authority in connection therewith,

each pursuant to Part II of the Travel Concession Schemes Regulations 1986 (SI 1986/77) (the "**Regulations**"), would fail to leave the Franchisee financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) than it was immediately following the Start Date.

1.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 1.1(b) where the Secretary of State is reasonably satisfied that:

- (a) the reimbursement arrangements with respect to the Franchisee's participation in any such scheme; and/or
- (b) the obligations to be assumed by such Local Authority in connection therewith,

each pursuant to the Regulations would fail to leave the Franchisee financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a result of such participation.

1.4 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new concessionary travel scheme pursuant to paragraph 1.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to the Secretary of State with respect to any such participation.

1.5 The Franchisee shall supply to the Secretary of State, in respect of any concessionary travel schemes referred to in paragraph 1.1(b), such information within such period as the Secretary of

State may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a consequence of its participation in any such scheme, and/or the obligations assumed by such Local Authority in connection therewith.

- 1.6 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations), the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

2. Multi-modal Fares Schemes

2.1 The Franchisee shall:

(a) subject to paragraph 2.2, participate in and comply with its obligations under:

- (i) the multi-modal fares schemes set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
- (ii) any other multi-modal fares scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2.1(b);

including by co-operating in the implementation of any smart card technology pursuant to any such multi modal fares schemes; and

(b) subject to paragraph 2.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:

- (i) any multi-modal fares scheme set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, the terms of which have been amended since the date of signature of this Agreement; and
- (ii) such other multi-modal fares schemes as any relevant Local Authority may require or request it to participate in.

2.2 Subject to the terms of the relevant multi-modal fares scheme, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 2.1(a) where, in the reasonable opinion of the Secretary of State:

(a) the Franchisee's continuing participation in such scheme; and/or

(b) the obligations assumed by the relevant Local Authority in connection therewith,

would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.

2.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 2.1(b) where the Secretary of State is reasonably satisfied that the Franchisee's participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith, would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.

2.4 In determining whether the Franchisee shall, pursuant to paragraph 2.2, continue to participate or, pursuant to paragraph 2.3, participate in any multi-modal fares scheme, the Secretary of State shall construe the term "**financially no worse off**" to mean:

- (a) in respect of any multi-modal fares scheme set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Start Date under that scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date;
 - (b) in respect of any multi-modal fares scheme which replaces and (in the Secretary of State's reasonable opinion) is reasonably similar to any such scheme as may be set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Start Date under the replaced scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date; and
 - (c) in respect of any multi-modal fares scheme which does not replace or which does replace but which is not (in the Secretary of State's reasonable opinion) reasonably similar to any such scheme or schemes as may be set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, such reimbursement arrangements as agreed by the relevant parties to such multi-modal fares schemes (or on failure to agree, as determined by the Secretary of State).
- 2.5 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new multi-modal fares scheme pursuant to paragraph 2.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such participation.
- 2.6 The Franchisee shall supply to the Secretary of State, in respect of any multi-modal fares schemes referred to in paragraph 2.1 such information within such period as the Secretary of State may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off as a consequence of its participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith.
- 2.7 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off, the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

3. Discount Fare Schemes

3.1 If the Secretary of State:

- (a) effects, or proposes to effect, an amendment to a Discount Fare Scheme;
- (b) introduces any new Discount Fare Scheme; or
- (c) ceases to approve a Discount Fare Scheme,

for the purposes of section 28 of the Act, such amendment, intended amendment, introduction or cessation of approval shall be a Change.

3.2 The Secretary of State shall provide a reasonable opportunity to the Franchisee to make representations to the Secretary of State before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 3.1.

3.3 The Franchisee shall supply to the Secretary of State, in respect of any Discount Fare Scheme referred to in paragraph 3.1, such information within such period as the Secretary of State may reasonably require for the purposes of determining the financial effect of any such amendment, intended amendment, introduction or cessation of approval.

4. Inter-Operator Schemes

- 4.1 The Franchisee shall participate in and comply with its obligations under the terms of each of the Inter-Operator Schemes.
- 4.2 Without limiting paragraphs 4.1 and 4.3, the Franchisee agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Secretary of State.
- 4.3 The Franchisee shall not amend, or agree or propose to amend, any Inter-Operator Scheme other than in accordance with its terms.
- 4.4 The Franchisee shall:
- (a) provide reasonable notice to the Secretary of State of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which, in its opinion, is reasonably likely to materially affect the provision of the Franchise Services; and
 - (b) have regard to the Secretary of State's views in respect of any such proposal.
- 4.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Secretary of State in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

APPENDIX TO SCHEDULE 2.5A

List of Transport, Travel and Other Schemes

1. Local Authority Concessionary Travel Schemes

1.1 Each of the following schemes:

- (a) Strathclyde Partnership for Transport Concessionary Scheme;
- (b) Transport for Greater Manchester Concessionary Fare Scheme;
- (c) West Midlands Combined Authority Concessionary Fares Scheme
- (d) Greater Manchester Traincard;
- (e) Rail Ranger;
- (f) Manchester CTLZ; and
- (g) any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 1.1(b) of Schedule 2.5.

2. Multi-modal Fares Schemes

2.1 Each of the following schemes:

- (a) Strathclyde Transport multi-modal scheme;
- (b) West Midlands Combined Authority Centrocard Scheme;
- (c) West Midlands Combined Authority Rail Master Scheme;
- (d) TfGM Wayfarer;
- (e) Greater Manchester System One Travelcards; and
- (f) any other multi-modal fares travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2.1(b) of Schedule 2.5.

3. Discount Fare Schemes

3.1 Each of the following schemes:

- (a) Disabled Persons Railcard Scheme dated 23 July 1995 between the participants therein;
- (b) Young Persons Railcard Scheme dated 23 July 1995 between the participants therein; and
- (c) Senior Railcard Scheme dated 23 July 1995 between the participants therein; or
- (d) any other discount fare scheme approved from time to time by the Secretary of State for the purposes of section 28 of the Act,

in each case until such time as it may cease to be approved by the Secretary of State for the purposes of section 28 of the Act.

4. Inter-Operator Schemes

- 4.1 Each of the following schemes which relate to arrangements between the Franchisee and other participants in the railway industry:
- (a) Staff Travel Scheme dated 23 July 1995 between the participants named therein;
 - (b) Ticketing and Settlement Agreement;
 - (c) LRT Scheme dated 23 July 1995 between the participants named therein;
 - (d) Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
 - (e) Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 (as amended and restated) between London Regional Transport and the parties named therein;
 - (f) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein;
 - (g) the Pay As You Go Agreement;
 - (h) the CPAY Agreement;
 - (i) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the ICWC Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; and
 - (j) any Discount Fare Scheme.

SCHEDULE 3A

NOT USED

SCHEDULE 4A

ACCESSIBILITY AND INCLUSIVITY

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

SCHEDULE 4A

Accessibility and Inclusivity

1. Relationship with other obligations relating to persons with disabilities

- 1.1 The Franchisee acknowledges that its obligations in this Schedule 4 are in addition to and do not limit its obligations to comply with:
- (a) the EA and any regulations imposed by it;
 - (b) any applicable condition(s) in any of its Licences (including in respect of persons with disabilities); and
 - (c) any other requirements of the Franchise Agreement.
- 1.2 This Schedule 4 sets out:
- (a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and
 - (b) specific obligations of the Franchisee directed at meeting the needs of persons with disabilities.

2. Physical Alterations and Accessibility of Stations

- 2.1 In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by the Franchisee that:
- (a) there is limited funding available to the Secretary of State to assist franchisees and/or franchise operators with the carrying out of those works;
 - (b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised with regard to where there is the greatest need and/or where physical alterations can have the greatest effect; and
 - (c) the Secretary of State's national programme of works of physical alterations at stations addresses these issues in a structured way.
- 2.2 The Franchisee shall:
- (a) co-operate reasonably with and assist the Secretary of State in the development and furtherance by the Secretary of State of the programme described in paragraph 2.1(c) by providing to the Secretary of State:
 - (i) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and
 - (ii) advice as to the most economical way in which accessibility for Disabled Persons could, in the Franchisee's reasonable opinion, be improved at Stations;
 - (b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and

(c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through the Secretary of State pursuant to paragraph 2.5), including from Local Authorities, local development agencies and the National Lottery Commission. The Franchisee shall notify the Secretary of State of:

- (i) any such additional funding which it secures; and
- (ii) the terms on which such additional funding has been granted.

2.3 In participating in any multi-modal fares scheme, the Franchisee shall use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant station, including within and in the immediate proximity of such station.

2.4 If, during the Franchise Term:

- (a) the Franchisee has complied with its obligations in section 20(4) and section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station accessible to a Disabled Person to avoid a Disabled Person being placed at a substantial disadvantage by a physical feature at a Station) and its obligations in paragraph 3A concerning Minor Works; and
- (b) notwithstanding such compliance, the Franchisee reasonably considers it is still required to carry out or procure physical works of alteration at a Station in order to comply with the EA Requirements in respect of that Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,

the Franchisee may seek funding from the Secretary of State in respect of that expenditure.

2.5 If the Franchisee seeks funding from the Secretary of State under paragraph 2.4, and demonstrates to the Secretary of State's satisfaction that the criteria in paragraph 2.4 have been satisfied, then the Secretary of State may agree to adjust the amount of Franchise Payments in respect of some or all of the works and/or expenditure. In considering the Secretary of State's response to any such request, the Secretary of State will have regard to the availability of funding and the priorities set out in the national programme described in paragraph 2.1(c), together with any other available sources of funding described in paragraph 2.2(c). If and to the extent the Secretary of State agrees to adjust Franchise Payments in accordance with this paragraph 2.5 in any Franchisee Year:

- (a) the Secretary of State shall make such adjustment to the Franchise Payments; and
- (b) the Franchisee shall spend such additional funds:
 - (i) in order to comply with the EA Requirements referred to in paragraph 2.4(b); and
 - (ii) in accordance with any conditions the Secretary of State may notify the Franchisee of.

2.6 If and to the extent the Franchisee is required to pay any increased access charges as a result of additional expenditure required to be incurred by another station Facility Owner for the purpose of complying with the EA Requirements in respect of a Franchisee Access Station, provided that the Franchisee:

- (a) notifies the Secretary of State within seven (7) days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and

- (b) complies with the Secretary of State's reasonable directions regarding the exercise of any rights the Franchisee may have in respect thereof,
- the imposition of the increased access charges shall be a Change.

3A. Minor Works

3A.1 For the purposes of this paragraph 3A, "**Minor Works**" means small scale physical alterations or additions to improve accessibility of Stations to Disabled Persons, not involving substantial works of construction or reconstruction. The Minor Works:

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

3A.2 The Franchisee shall:

- (a) establish and manage the Minor Works' Budget to fund the carrying out of Minor Works;
- (b) as soon as reasonably practicable (and in any event within four (4) months) after the Start Date and thereafter before the start of each Franchisee Year:
 - (i) develop a Minor Works' Programme and consult with the Disabled Persons Transport Advisory Committee and relevant Passengers' Council in relation thereto;
 - (ii) in conjunction with its activities in paragraph 3A.2(b)(i), and, consistent with its obligations under paragraph 2.2(b), liaise with Network Rail and other Train Operators as necessary with regard to the determination and implementation of each Minor Works' Programme; and
 - (iii) following the consultation and liaison described in paragraphs 3A.2(b)(i) and 3A.2(b)(ii), obtain the Secretary of State's prior approval (such approval not to be unreasonably withheld) of each Minor Works' Programme;
- (c) carry out or procure the carrying out of the Minor Works' Programme in each Franchisee Year and in doing so, spend at least the amount of the Minor Works' Budget for the relevant Franchisee Year in such Franchisee Year (unless otherwise agreed by the Secretary of State);
- (d) report progress to the Secretary of State in determining and carrying out the Minor Works' Programme no less than once every three (3) Reporting Periods; and

- (e) co-operate, as the Secretary of State may reasonably require, with Network Rail or any other person seeking to carry out or procure Minor Works at the Stations or any other stations.

3. Dealing with Claims relating to Stations

- 3.1 If the Franchisee receives notification of a claim under the EA in respect of any alleged non-compliance with the EA Requirements or otherwise in respect of any Station (an **"EA Claim"**) then the Franchisee shall:
- (a) notify the Secretary of State within seven (7) days of receiving notification of the EA Claim. The Franchisee shall at the same time notify the Secretary of State of any reasonable alternative methods of making services at the Station accessible to Disabled Persons that it has considered and/or put in place pursuant to section 20(4) and section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA;
 - (b) if required by the Secretary of State, defend the EA Claim or any aspect of the EA Claim (which may include appealing the judgment). The Secretary of State will, subject to paragraph 3.4, pay the Franchisee's reasonable costs of:
 - (i) any defence or appeal required by the Secretary of State; and/or
 - (ii) compliance with the Secretary of State's instructions in accordance with paragraph 3.1(c); and
 - (c) act in accordance with the reasonable instructions of the Secretary of State to defend the EA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of the Secretary of State) settle or enter into any compromise in relation to the EA Claim (or the relevant aspect of it), including by entering into mediation.
- 3.2 If, in the reasonable opinion of the Franchisee, it will be more cost effective to settle the EA Claim rather than act in accordance with the Secretary of State's requirement under paragraph 3.1, it shall produce for the Secretary of State's approval a settlement proposal, setting out the terms of the Franchisee's proposals to make an offer to the Disabled Person making the EA Claim and its reasons for making such offer (the **"Settlement Proposal"**).
- 3.3 If the Secretary of State does not accept the Settlement Proposal and still requires the Franchisee to defend the EA Claim (or any aspect of it) then the Franchisee shall defend the EA Claim in accordance with paragraph 3.1.
- 3.4 If the Franchisee is required to defend an EA Claim where it has submitted a Settlement Proposal to the Secretary of State and an award is made in respect of the EA Claim in favour of the person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.5, the Secretary of State shall pay to the Franchisee:
- (a) the difference between such an award and the figure set out in the Settlement Proposal; and
 - (b) the further reasonable costs incurred or payable by the Franchisee in defending the EA Claim, to the extent that such costs have not already been paid by the Secretary of State under paragraph 3.1(b).
- 3.5 The Secretary of State shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, the Secretary of State, in the Secretary of State's reasonable opinion, considers that the Franchisee has not taken such steps as it is reasonable, in

all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.

4. Specific additional obligations relating to persons with disabilities

4.1 The Franchisee shall establish and implement procedures necessary to:

- (a) record the making of reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities which are made through the Passenger Assistance (or whatever service may replace it from time to time for the purposes of ORR's most recent guidance on Disabled People's Protection Policies);
- (b) record whether such seating accommodation and/or assistance is actually provided; and
- (c) provide such records to the Secretary of State on the Secretary of State's request.

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

4.3 Where the Franchisee's Disabled People's Protection Policy:

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

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

4.4 The Franchisee shall comply with the requirements set out in Appendix 2 (Accessible Transport Arrangements) to this Schedule 4 in respect of the provision of accessible transport arrangements for persons with disabilities.

APPENDIX 1 TO SCHEDULE 4A

Minor Works

1. Providing additional signage, where it does not currently exist, to allow better way finding around the Station by Disabled Persons.
2. Removing:
 - (a) thresholds (above 15 millimetres) which do not comply with the Code of Practice; or
 - (b) fewer than three steps,from the entrances to booking halls or platforms to enable those facilities to have step-free access.
3. Providing contrasting manifestations on glazed areas where contrasting manifestations do not currently exist.
4. Providing additional handrails around the Station where handrails do not currently exist and where the Franchisee reasonably believes they may be required by a Disabled Person.
5. Providing new accessible stair nosings where stair nosings do not currently exist.
6. Providing new tactile surfaces, including at the top and bottom of flights of steps (but excluding at platform edges) where tactile surfaces do not currently exist.
7. Providing additional seating that is accessible to Disabled Persons, but not replacing existing seating.
8. Providing induction loops for ticket office windows where induction loops do not currently exist.
9. Replacing non-standard fittings with fittings that are compliant with the Code of Practice in existing disabled toilets, which would include replacing non-standard fittings in respect of toilet bowls and sinks, but would not include making major changes to plumbing or to the dimensions of the toilet area.
10. Providing dropped kerbs at drop off/set down points or Station car parks to enable access/egress thereto where dropped kerbs do not currently exist.
11. Marking out existing car-parking bays for use by persons with disabilities which comply with the Code of Practice, where such car parking bays do not currently comply.

APPENDIX 2 TO SCHEDULE 4A

Accessible Transport Arrangements

1. References in this Appendix 2 to Schedule 4 (Accessibility and Inclusivity) to passengers are references to passengers with disabilities who are wheelchair users or otherwise severely mobility impaired.
2. Subject to paragraph 4, where:
 - (a) a passenger wants to travel on a Passenger Service; and
 - (b) the design of the station at which the passenger's journey on such Passenger Service is to start (the "Departure Station") or finish (the "Destination Station") prevents the passenger from using that station to access or disembark from that Passenger Service,

the Franchisee shall provide accessible transport arrangements for that passenger in accordance with paragraph 3.

3. The Franchisee shall provide accessible transport arrangements for the passenger referred to in paragraph 2:
 - (a) from the Departure Station to the next station at which the Passenger Service is scheduled to call and at which it is possible for the passenger to access that Passenger Service;
 - (b) to the Destination Station, from the station closest to such station at which the Passenger Service is scheduled to call and which it is possible for the passenger to use to disembark from that Passenger Service; and/or
 - (c) to or from such other station as the Franchisee may, having regard to the journey and the needs of the passenger, agree,

and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.

4. The Franchisee's obligations under this Appendix 2 to Schedule 4 (Accessibility and Inclusivity) are subject to:
 - (a) reasonable prior notice of the passenger's requirement for accessible transport arrangements; and
 - (b) the availability of suitable accessible transport arrangements (provided that the Franchisee has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such accessible transport arrangements).

SCHEDULE 5A

FARES AND SMART TICKETING

Schedule 5.1A:	Purpose, Structure and Construction
Schedule 5.2A:	Franchisee's Obligation to Create Fares
Schedule 5.3A:	Allocation of Fares to Fares Baskets
Schedule 5.4A:	Regulation of Fares Basket Values
Schedule 5.5A:	Regulation of Individual Fares
Schedule 5.6A:	Exceeding the Regulated Value or Regulated Price or Regulated Child Price
Schedule 5.7A:	Changes to Fares and Fares Regulation
Schedule 5.8A:	Fares Regulation Information and Monitoring
Schedule 5.9A:	Smart Ticketing

SCHEDULE 5.1A

Purpose, Structure and Construction

1. Purpose of provisions relating to Creating Fares

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

1.2 Purpose of Fares Regulation

- (a) The purpose of Schedule 5.3 (Allocation of Fares to Fares Baskets) to Schedule 5.8 (Fares Regulation Information and Monitoring) (inclusive) is to provide for the regulation of Fares by the Secretary of State pursuant to section 28 of the Act.
- (b) For the purpose of regulating Fares, each Fare that is to be regulated shall be allocated in accordance with this Schedule 5.1 to one of the following Fares Baskets:
- (i) the Commuter Fares Basket; or
 - (ii) the Protected Fares Basket.
- (c) The Secretary of State's regulation of Fares places a limit on:
- (i) the Price of each Fare that is allocated by the Secretary of State to a Fares Basket. The limit on the Price of each Fare is set by reference to:
 - (A) the overall increase of the Prices of all Fares in a Fares Basket;
 - (B) the individual increase in the Price of each Fare in a Fares Basket; and
 - (C) the Child Price of each Fare as specified in paragraph 1.3 of Schedule 5.5 (Regulation of Individual Fares).
- (d) Subject to the more detailed provisions of Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares):
- (i) the overall increase of the Prices of all Fares in a Fares Basket may not exceed the Retail Prices Index + k per cent per annum in respect of each Fare Year; and
 - (ii) the increase in the Price of any individual Fare in a Fares Basket may not exceed the Retail Prices Index + k per cent + f per cent per annum in respect of each Fare Year.

For the purposes of paragraph 1.2(d)(i), "k" shall have the meaning given to it in paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values) and for the purposes of paragraph 1.2(d)(ii) "k" and "f" shall each have the meaning given to each such term in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares).

- (e) The Secretary of State may alter these limits, and other aspects of the regulation of Fares, in accordance with the more detailed provisions of Schedule 5.7 (Changes to Fares and Fares Regulation).

2. Structure of Schedule 5

- 2.1 Schedule 5.2 (Franchisee's Obligation to Create Fares) sets out or refers to the Franchisee's obligations to Create Fares.
- 2.2 Schedule 5.3 (Allocation of Fares to Fares Baskets) sets out the allocation of Fares to Fares Baskets.
- 2.3 Schedule 5.4 (Regulation of Fares Basket Values) sets out the limits applicable to the overall increase in Prices of all Fares in a Fares Basket.
- 2.4 Schedule 5.5 (Regulation of Individual Fares) sets out the limits applicable to the increase in the Price of any individual Fare in a Fares Basket and the Child Price of each Fare;
- 2.5 Schedule 5.6 (Exceeding the Regulated Value or Regulated Price or Regulated Child Price) sets out the consequences of the Franchisee exceeding:
 - (a) the Regulated Value of any Fares Basket; or
 - (b) the Regulated Price and/or Regulated Child Price of any Fare.
- 2.6 Schedule 5.7 (Changes to Fares and Fares Regulation) sets out the Secretary of State's ability to vary the foregoing provisions.
- 2.7 Schedule 5.8 (Fares Regulation Information and Monitoring) sets out Fares regulation information and monitoring provisions.
- 2.8 Schedule 5.9 (Smart Ticketing) sets out provisions relating to the introduction of smart ticketing.

3. References to "Fare"

- 3.1 For the purposes of:
 - (a) Schedule 5.2 (Franchisee's Obligation to Create Fares), Fare shall have the wide meaning given to it in paragraph (a) of that definition; and
 - (b) Schedule 5.3 (Allocation of Fares to Fares Baskets) to Schedule 5.8 (Fares Regulation Information and Monitoring) (inclusive), Fare shall have the narrow meaning given to it in paragraph (b) of that definition.
- 3.2 References in this Schedule 5 to a Fare shall, except to the extent the context otherwise requires, be construed as references to the Fare which is or can be Created by the Lead Operator for the Flow to which the Fare relates or, if such Flow is not a Compulsory Inter available Flow, any Fare which the Franchisee has Created or can Create in respect of that Flow as the Secretary of State may specify.

4. Fares Documents

- 4.1 In the event that, in the Secretary of State's reasonable opinion, there is an immaterial inconsistency between the Fares or the maximum Price (as the case may be) for any Fare recorded by RSP in 2017 or the 2017 Nominal Ticket Sales:
 - (a) described in or determined in accordance with this Schedule 5; and
 - (b) described in the relevant Fares Document,the relevant Fares Document shall prevail.

4.2 In the event that, in the Secretary of State's reasonable opinion, there is a material inconsistency between the Fares or the maximum Price (as the case may be) for any Fare recorded by RSP in 2017 or the 2017 Nominal Ticket Sales:

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

this Schedule 5 shall prevail.

5. Setting of Child Prices

5.1 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare shall be satisfied by the Franchisee Creating either:

- (a) a Fare which is only valid for use by persons under the age of 16; or
- (b) a Fare which is valid for use:
 - (i) by any person at a price; and
 - (ii) by persons under the age of 16 at a discounted price relative to the price set pursuant to paragraph 5.1(b)(i).

6. New Stations

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

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

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

SCHEDULE 5.2A

Franchisee's Obligation to Create Fares

1. Creation of Commuter Fares and Protected Fare

The Franchisee shall ensure that each Commuter Fare and Protected Fare has been Created, to the extent it is entitled or obliged to do so under the terms of the Ticketing and Settlement Agreement.

2. Restrictions on Creation of Fares

2.1 The Franchisee shall set the Child Price for any Fare that it Creates so that that Fare may be purchased by or for a person under the age of 16 for an amount which is no greater than fifty per cent (50%) of the Price of the relevant Fare.

2.2 The Franchisee shall not Create or agree to Create any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld).

SCHEDULE 5.3A

Allocation of Fares to Fares Baskets

1. Allocation of Fares to Fares Baskets

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

2. Designation of Non Fares Basket Fares

- 2.1 On or prior to the Start Date, the Secretary of State shall:
- (a) separately (or in aggregate with other Fares of the same type in the opposite direction or for similar journeys that have the same Price) rank, in descending order according to their Gross Revenue for the period of twelve (12) months which ended 31 March 2017:
 - (i) all Commuter Fares; and
 - (ii) all Protected Fares;
 - (b) aggregate, following such ranking:
 - (i) those Commuter Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent (5%) of the aggregate Reference Revenue of all Commuter Fares;
 - (ii) those Protected Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent (5%) of the aggregate Reference Revenue of all Protected Fares; and
 - (c) designate, following such aggregation:
 - (i) those Commuter Fares referred to in paragraph 2.1(b)(i) as Non Fares Basket Fares; and
 - (ii) those Protected Fares referred to in paragraph 2.1(b)(ii) as Non Fares Basket Fares.
- 2.2 Without prejudice to the Secretary of State's right to require the content of a Fares Basket to change at any time prior to the Start Date, or, thereafter, prior to the commencement of any Fares Setting Round, pursuant to paragraph 1 of Schedule 5.7 (Changes to Fares and Fares Regulation), any Commuter Fare or Protected Fare that is also designated as a Non Fares Basket Fare shall not be allocated to the relevant Fares Basket.
- 2.3 The Secretary of State may de-designate any Non Fares Basket Fare pursuant to paragraph 1.1(d) (iii) of Schedule 5.7 (Changes to Fares and Fares Regulation).

SCHEDULE 5.4A

Regulation of Fares Basket Values

1. Value of Fares Basket not to exceed Regulated Value

Subject to paragraph 1.3 of Schedule 5.6 (Exceeding the Regulated Value or Regulated Price or Regulated Child Price) the Franchisee shall procure that the Value of a Fares Basket at any time in any Fare Year does not exceed its Regulated Value for that Fare Year.

2. Value

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

3. Projected Revenue

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

P x 2017 Nominal Ticket Sales				
where:				
P	is the Price of that Fare at that time; and			
2017 Nominal Ticket Sales	is the number of nominal ticket sales of that Fare for 2017 ascertained as follows:			
	$\frac{A}{B}$			
	where:			
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">A</td> <td>is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of twelve (12) months which ended 31 March 2017; and</td> </tr> <tr> <td>B</td> <td>is the Price for that Fare recorded by RSP in January 2017.</td> </tr> </table>	A	is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of twelve (12) months which ended 31 March 2017; and	B
A	is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of twelve (12) months which ended 31 March 2017; and			
B	is the Price for that Fare recorded by RSP in January 2017.			

4 Regulated Value

4.1 The Regulated Value of a Fares Basket for any Fare Year shall be an amount equal to:

2017 Ticket Revenue x PPAI	
where:	
2017 Ticket Revenue	is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in that Fares Basket for the period of twelve (12) months which ended 31 March 2017;

PPAI	is:	
	where:	
	(a)	in respect of the Fare Year commencing 1 January 2017, the Permitted Aggregate Increase for that Fare Year; and
	(b)	in respect of each Fare Year commencing on or after 1 January 2017, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1 January 2017 (inclusively).

4.2 The Permitted Aggregate Increase in any Fare Year shall be an amount equal to:

PAI =	$PAI = \frac{(100 \times RPI) + k}{100}$	
where:		
PAI	is the Permitted Aggregate Increase in that Fare Year;	
RPI	is an amount equal to:	
	$\frac{RPI - 1}{RPI - 2}$	
	where:	
	RPI-1	is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and
	RPI-2	is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1 ; and
k	is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter.	

SCHEDULE 5.5A

Regulation of Individual Fares

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

1.1 The Franchisee shall procure that the Price of:

- (a) each Commuter Fare included in the Commuter Fares Basket;
- (b) each Protected Fare included in the Protected Fares Basket,

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

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

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

2. Regulated Price

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

(a) Preceding Year Ticket Price + £0.10p; and	
(b) Preceding Year Ticket Price x PII	
where:	
Preceding Year Ticket Price	for the Fare Year commencing 1 January 2017, is the maximum Price for that Fare recorded by RSP in 2017 and, for any subsequent Fare Year, is the maximum Price recorded by RSP in the Fare Year preceding that Fare Year, provided that such maximum Price complied with the requirements of this Schedule 5. If such maximum Price did not so comply, then such maximum Price shall be the last Price recorded by RSP which did so comply; and
PII	is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2.

2.2 The Permitted Individual Increase in any Fare Year shall be an amount equal to:

PII =	$\frac{(100 \times RPI) + k + f}{100}$
where:	
PII	is the Permitted Individual Increase in that Fare Year;
RPI	is an amount equal to:

	$\frac{RPI - 1}{RPI - 2}$	
	where:	
	RPI-1	is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and
	RPI-2	is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1 ;
k	is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter.	
f	is equal to zero (0).	

2.3 Where:

- (a) the Franchisee sets the Price of any Commuter Fare or Protected Fare in any Fare Year; and
- (b) the Secretary of State reasonably determines that the Price of such Commuter Fare or Protected Fare was set solely for the purpose of increasing the value of the Preceding Year Ticket Price in the next Fare Year,

the Preceding Year Ticket Price for the purposes of determining the Regulated Price pursuant to paragraph 2.1 in the next Fare Year shall be the maximum Price prior to such setting that complied with the requirements of this Schedule 5, as recorded by RSP in the relevant preceding Fare Year.

3. Compulsory Inter-available Flows

3.1 Where the Franchisee:

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

the Franchisee shall not increase the Price of that Commuter Fare in the same Fares Setting Round without the consent of either the Secretary of State or each other Train Operator which provides Railway Passenger Services for such Flow.

SCHEDULE 5.6A

Exceeding the Regulated Value or Regulated Price or Regulated Child Price

1. Exceeding the Regulated Value

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

Year, or any subsequent Fare Year, where such Price has previously been set in a Fares Setting Round.

2. Exceeding the Regulated Price or Regulated Child Price

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

- (a) it shall reduce the Price and/or Child Price (as the case may be) of any relevant Fare at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares) from such date; and
- (b) the Secretary of State may adjust Franchise Payments by an amount equivalent in the Secretary of State's opinion to the sum of:
 - (i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the sale of Fares at Prices and/or Child Prices in excess of the relevant amounts permitted under Schedule 5.5 (Regulation of Individual Fares); and
 - (ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.

2.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 2.1:

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

SCHEDULE 5.7A

Changes to Fares and Fares Regulation

1. Changes to Fares Baskets

1.1 The Secretary of State may require the content of the Commuter Fares Basket or Protected Fares Basket (as the case may be) to change in accordance with the following:

- (a) where the Secretary of State is not satisfied that the Price of any Non Fares Basket Fare is reasonably constrained by the Price of other Fares which:
 - (i) have been set in respect of the same, or part of the same, Flow as such Non Fares Basket Fare, or a Flow which is reasonably proximate to the Flow on which such Non Fares Basket Fare has been set; and
 - (ii) have been included in the relevant Fares Basket,

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

- (b) where any Commuter Fare for a Flow has been included in the Commuter Fares Basket, the Secretary of State may require the inclusion in the Commuter Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2017;
- (c) where any Protected Fare for a Flow has been included in the Protected Fares Basket, the Secretary of State may require the inclusion in the Protected Fares Basket of any Protected Return Fare or Protected Weekly Season Ticket that existed on that Flow in February 2003; and/or
- (d) where the Secretary of State changes the Reference Revenue and/or the Gross Revenue of any Fare pursuant to paragraphs 3.1(a) and/or 3.1(b) then, in relation to the Fares Basket in which such Fare is or would be included, and without limiting paragraphs 1.1(a) to (c) inclusive, the Secretary of State may also:
 - (i) make any of the changes to such Fares Basket contemplated by this paragraph 1.1;
 - (ii) designate any Fare as a Non Fares Basket Fare in accordance with the provisions (other than the requirement that such designation occurs on or prior to the Start Date) of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets); and/or
 - (iii) de-designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the relevant Fares Basket.

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

- (a) at any time prior to the Start Date; and
- (b) thereafter, no later than the commencement of any Fares Setting Round,

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

2. Changes to the 2017 Nominal Ticket Sales

- 2.1 The Franchisee may, in the event of any significant change to the pattern of travel on the Passenger Services during the ICWC Term, apply to the Secretary of State for the **value of factors A and/or B** in the formula for determining 2017 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be adjusted to take account of such changes, such that:
- (a) the **value of factor A** is re calculated by using the Gross Revenue in respect of the sales of the relevant Fares for the most recently completed period of twelve (12) months ending 31 March 2017; and/or
 - (b) the **value of factor B** is recalculated by using the Price of the relevant Fares recorded by RSP in the month of February during such period.
- 2.2 The Secretary of State shall act reasonably in relation to any such application but shall not under any circumstances be obliged to accept any such application in whole or in part. The Secretary of State shall be entitled to impose conditions upon any such acceptance, including conditions requiring that the **value of both factors A and B** are adjusted and/or are adjusted in respect of any or all Fares in the relevant Fares Basket.

3. Changes to the Reference Revenue, Gross Revenue, 2017 Nominal Ticket Sales and/or 2017 Ticket Revenue

- 3.1 The Secretary of State may, by notice in writing served on the Franchisee no later than the date of commencement of any Fares Setting Round, require:
- (a) the Reference Revenue of any Fares Basket to be calculated by reference to a different reference period for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) than the period of twelve (12) months ended 31 March 2017; and/or
 - (b) the Gross Revenue of all Commuter Fares and Protected Fares to be recalculated for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) by reference to a different reference period than the period of twelve (12) months ended 31 March 2017; and/or
 - (c) **the value of factor A** in the formula for determining the 2017 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be recalculated in respect of any Fare by reference to a different reference period than the period of twelve (12) months ended 31 March 2017; and/or
 - (d) **the value of factor B** in the formula for determining the 2017 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be re calculated in respect of any Fare by reference to a different reference date other than February 2017; and/or
 - (e) the 2017 Ticket Revenue in respect of any Fares Basket to be re calculated for the purpose of paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) by reference to a different reference period than the period of twelve (12) months ended 31 March 2017.
- 3.2 Where, in accordance with paragraph 3.1(e), the 2017 Ticket Revenue in respect of any Fares Basket is re calculated by reference to a different reference period, the value of **"PPAI"** in paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) shall be determined solely by reference to the product of the Permitted Aggregate Increase for each Fare Year beginning after the end of such reference period.

3.3 Any revision pursuant to paragraph 3.1 or 3.2 shall take effect upon commencement of the next Fare Year to commence after the Fares Setting Round referred to in paragraph 3.1.

4. Changes to Prices

The Franchisee may request permission from the Secretary of State from time to time to increase any Prices beyond the levels permitted under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Secretary of State shall act reasonably in relation to any such request but shall not under any circumstances be obliged to accept any such request in whole or in part.

5. Changes to Fares Regulation

The Parties agree that the Secretary of State shall have the power at any time and on more than one occasion during the ICWC Term to alter the obligations of, and restrictions on, the Franchisee under Schedule 5.1 (Purpose, Structure and Construction) to Schedule 5.8 (Fares Regulation Information and Monitoring) inclusive for any Fare Year, or part thereof (including alteration of the **value of "k"** under paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values) and/or paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares) and/or alteration of the **value of "f"** under paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares)). The exercise by the Secretary of State of the Secretary of State's powers under this paragraph 5 shall be a Change.

6. Changes to Compulsory Inter available Flows

6.1 Where:

- (a) pursuant to Clauses 4 to 7 of the Ticketing and Settlement Agreement, the consent of the Secretary of State is requested for the abolition of a Compulsory Inter available Flow (the **"Reference Flow"**) in respect of which any Fare Created would be a Commuter Fare or a Protected Fare (the **"Reference Fare"**); and
- (b) a Flow exists, which, in the Secretary of State's opinion, is substantially similar to the Reference Flow (the **"Equivalent Flow"**),

the Secretary of State may, as a condition of granting the Secretary of State's consent to the abolition of the Reference Flow, by written notice to the Franchisee, require any Fare Created in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in a Fares Basket (**"Equivalent Fare"**).

6.2 The Secretary of State shall not issue any such notice in respect of an Equivalent Fare unless the provisions of such notice have first been approved by the Ticketing and Settlement Scheme Council (as defined in the Ticketing and Settlement Agreement) or a delegate of such council.

6.3 The Price of any Equivalent Fare in the first Fare Year in which it is to be introduced shall be no greater than the maximum permitted Price in that Fare Year of the relevant Reference Fare, as if such Reference Fare had not been abolished.

7. Change of Lead Operator/Major Flow Operator

7.1 The Franchisee shall not without the Secretary of State's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.

7.2 The Franchisee shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Franchisee becoming the Lead Operator in respect of any Flow, the Secretary

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

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

8. Changes to Fares Documents

8.1 Following:

(a) any allocation of Fares to any Fares Basket pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets); or

(b) any subsequent adjustment thereof pursuant to this Schedule 5.7,

the Secretary of State shall set out in the Commuter Fares Document and/or Protected Fares Document (as the case may be) all Fares then included in the relevant Fares Basket and, as soon as reasonably practicable thereafter, the Secretary of State shall issue or reissue (as the case may be) such Fares Document(s) to the Franchisee.

SCHEDULE 5.8A

Fares Regulation Information and Monitoring

1. Information

- 1.1 The Franchisee shall provide to the Secretary of State by no later than week twelve (12) of each Fares Setting Round, a summary (to such level of detail or generality as the Secretary of State may reasonably require) of the Prices of the Commuter Fares or Protected Fares it is intending to set.
- 1.2 The Franchisee shall notify, or procure the notification to, the Secretary of State of any proposed increase to the Price of any Commuter Fare or Protected Fare and shall provide such details of any such proposal at such times (including before and during each Fares Setting Round) and in such form (including by electronic data transfer) as the Secretary of State may reasonably request from time to time.
- 1.3 The Franchisee shall make available, or procure that RSP makes available, to the Secretary of State, for any Fares Setting Round during the ICWC Term, such details (including the proposed Prices) of the Initial Permanent Fare of any Commuter Fare or Protected Fare for each such Fares Setting Round as the Secretary of State may reasonably request from time to time.

2. Monitoring

- 2.1 The Franchisee shall provide to the Secretary of State:
 - (a) such access as the Secretary of State may require to information pertaining to the Prices of Commuter Fares and Protected Fares from time to time; and
 - (b) such further information as the Secretary of State may require for the purpose of determining the Gross Revenue of the Franchisee in relation to any particular Fare or Fares or any particular period.
- 2.2 By no later than week seventeen (17) of each Fares Setting Round, the Franchisee shall provide to the Secretary of State written confirmation from a statutory director of the Franchisee of whether the Franchisee has complied with its obligations under this Schedule 5 (Fares and Smart Ticketing) during each such Fares Setting Round. It shall be a contravention of the Franchise Agreement if any such written confirmation from a statutory director of the Franchisee is, in the reasonable opinion of the Secretary of State, in any material respect, untrue, inaccurate and/or misleading.
- 2.3 The Franchisee shall take such action as the Secretary of State may require following receipt of any details from the Franchisee pursuant to paragraph 1 in order to ensure that the Franchisee shall comply with the provisions of Schedule 5.2 (Franchisee's Obligation to Create Fares) to this Schedule 5.8 (inclusive).

3. Car Park Revenue

- 3.1 Where the Franchisee sells Fares that incorporate car park tickets in the purchase price (each a "**Combined Ticket**"), the Franchisee shall ensure that the revenue received from such sales is apportioned between passenger revenue (for the purposes of this paragraph 3 of Schedule 5.8, as that term is defined in limb (a) of the definition of FRM Revenue) and car park revenue so as to reflect the respective value of the Fare and the car park ticket.
- 3.2 Notwithstanding paragraph 3.1 of this Schedule 5.8, the Franchisee shall notify the Secretary of State of any proposals to:

- (a) introduce new Combined Tickets; and/or
- (b) change the apportionment of revenue received from Combined Tickets between passenger revenue and car park revenue,

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

3.3 Each Combined Ticket Notification shall be provided to the Secretary of State not less than thirty (30) days prior to the proposed implementation of the introduction or change that is the subject of the Combined Ticket Notification and shall include the following information:

- (a) details of the applicable Fare and car park ticket (including the origin, destination and type of Fare and the location of the car park) that comprise the Combined Ticket or that will comprise the proposed Combined Ticket (as applicable);
- (b) a breakdown of how the existing Combined Ticket or proposed Combined Ticket revenue (as applicable) will be apportioned between passenger revenue and car park revenue; and
- (c) the revenue that would have been derived from the Fare and car park ticket comprising the existing Combined Ticket or proposed Combined Ticket (as applicable) had they been sold separately.

3.4 The Secretary of State may consider whether the proposed apportionment between passenger revenue and car park revenue as set out in the Combined Ticket Notification is reasonable. Where the Secretary of State determines that such apportionment is not reasonable, the Secretary of State may amend such apportionment accordingly.

3.5 Within thirty (30) days of any request by the Secretary of State, the Franchisee shall provide a report setting out:

- (a) the total sales of Combined Tickets;
- (b) the information set out in paragraph 3.3 of this Schedule 5.8 in respect of such Combined Tickets; and
- (c) any further information requested by the Secretary of State from time to time.

SCHEDULE 5.9A

Smart Ticketing

1. Smart Ticketing

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

"EMV" means contactless payment cards that conform to the international standards issued by EMVCo (owned by American Express, Discover, JCB, MasterCard, UnionPay and Visa) which manages, maintains and enhances the EMV1 integrated circuit card specifications;

"ITSO" means (as the context may require) both:

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

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

"ITSO Operating Licence" means the licence granted to operators by ITSO which, among other things, permits them to issue ITSO-compliant cards and issue, sell and accept ITSO products;

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

"Previous Franchisee ITSO Smartmedia Ticketing Scheme" means any ITSO Smartmedia Ticketing Scheme operated by the Previous Franchisee prior to the Start Date;

"RSPS3002" means the RSP document with reference RSPS3002, version 02.01 re-published on 6 May 2015 which specifies standards for issuing, checking and validating rail products on ITSO Certified Smartmedia and defines the rail specific rules required to ensure interoperability across the rail network; and

"Smart Ticketing Scheme" means an electronic based system (not including the current "magstripe system") that evidences the purchase of a Fare by a passenger.

1.2 The Franchisee shall:

- (a) join and comply with any RDG approved Smart Ticketing Schemes relevant to some or all of the Passenger Services;
- (b) fully and effectively co-operate with Network Rail, TfL, other Train Operators and relevant Local Authorities, including in relation to the provision any required equipment, to implement and operate Smart Ticketing Schemes; and
- (c) fully and effectively co-operate with TfL, other Train Operators and relevant Local Authorities in relation to proposals to apply Smart Ticketing Schemes to new or existing multi modal fares schemes including in the implementation of any smart card technology pursuant to any multi-modal fares schemes that it may participate in pursuant to its obligations under paragraph 2.1 of Schedule 2.5 (Transport, Travel and Other Schemes); and
- (d) prepare and submit a report to the Secretary of State in advance of each Franchise Performance Meeting (in such form as the Secretary of State may reasonably require) setting out:
 - (i) the level of take-up and usage of Smart Ticketing Schemes by users of the Passenger Services, for each completed Reporting Period during the ICWC Term;
 - (ii) ¹³the Franchisee's performance against targets relating to Smart Ticketing Schemes as set out in Schedule 6.2 (Committed Obligations); and
 - (iii) the steps that the Franchisee is taking to increase take-up of Smart Ticketing Schemes operated by the Franchisee and increase usage of Smart Ticketing Schemes by users of the Passenger Services,

and the Franchisee shall present the report at the Franchise Performance Meeting.

1.3 The Franchisee shall ensure, with effect from the Start Date in relation to any Previous Franchisee ITSO Smartmedia Ticketing Scheme and from the date of commissioning in relation to any ITSO Smartmedia Ticketing Scheme introduced by it, that from such relevant date until the end of the ICWC Term:

- (a) it continues to provide, make available and promote (and where applicable effectively maintain) such ITSO Smartmedia Ticketing Scheme (including any associated infrastructure);
- (b) all components of the ITSO Smartmedia Ticketing Scheme (and any amendment, extension or replacement thereof) inherited, used or introduced by the Franchisee (whether on a permanent or a trial basis) are at all times compliant with:
 - (i) version 4.0.4 of ITSO and the ITSO Operating Licence; and
 - (ii) the RSPS3002,

or such subsequent versions as the Franchisee and the Secretary of State may agree;

13 **Note to Bidders:** Targets to be included in bids as per the instructions set out in the ITT.

- (c) any ITSO Certified Smartmedia readers introduced by the Franchisee (whether on a permanent or temporary basis) shall conform to EMV level 1 certification (Hardware) and be capable of being upgraded whilst in operation to EMV level 2 (Application);
 - (d) it pays all costs of participating in the relevant ITSO Smartmedia Ticketing Scheme including the costs of maintaining all required scheme components to the standards specified in this Schedule 5.9; and
 - (e) the RSP owned product set is used;
 - (f) all available Fares on all Flows for which it is Lead Operator are capable of residing upon and being fulfilled by the use of ITSO Certified Smartmedia; and
 - (g) if so requested in writing by another Train Operator the Franchisee will as soon as reasonably practicable give all necessary permissions to that Train Operator so that all available Fares on all Flows for which that Train Operator is Lead Operator are capable of residing upon and being fulfilled by the use of ITSO Certified Smartmedia.
- 1.4 Where the Previous Franchisee was a participant in any RDG approved Smart Ticketing Scheme, the Franchisee shall take such action as may be required to ensure that there is an orderly handover process so that the Franchisee participates in such Smart Ticketing Scheme from the Start Date without any disruption to the continuity of service received by passengers.
- 1.5 Without prejudice to its other obligations pursuant to this Schedule 5.9, the Franchisee shall undertake such further actions as the Secretary of State may reasonably require in connection with the introduction of Smart Ticketing Schemes.
- 1.6 NOT USED.
- 1.7 The Secretary of State shall reimburse the reasonable costs incurred by the Franchisee in complying with any such requirement of the Secretary of State pursuant to paragraph 1.5 subject to the Franchisee obtaining the prior written approval of the Secretary of State to the incurring of any such cost and provided that the Franchisee shall not have the right to be reimbursed any costs to the extent that:
- (a) it has already been reimbursed for such costs pursuant to any other provision of the Franchise Agreement or other arrangements with the Secretary of State; and/or
 - (b) it has the right or ability to recover such costs from any third party.

SCHEDULE 6A

FRANCHISE SPECIFIC OBLIGATIONS AND COMMITTED OBLIGATIONS

Schedule 6.1A:	Franchise Specific Obligations
	Part 1: NOT USED
	Part 2: List of Franchise Specific Obligations
Schedule 6.2A:	Committed Obligations
	Part 1: List of Committed Obligations
	Part 2: Special Terms related to Committed Obligations
Schedule 6.3A:	Contractual Incentive Mitigations
Schedule 6.4A:	Alliances

SCHEDULE 6.1A
Franchise Specific Obligations
Part 1 - NOT USED

Part 2 – Mandatory Franchise Specific Obligations ¹⁴

1 Definitions

1.1 In this part 2 of Schedule 6.1 except to the extent the context otherwise requires the following words and expressions have the following meanings:

“Access Agreements”	has the meaning given to the term access agreement in section 83(1) of the Act;
“Birmingham Gateway”	means the project to redevelop and expand Birmingham New Street station;
“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 21.1 of Schedule 6.1 which contains (as a minimum) the information set out in paragraph 21.2 of Part 2 of Schedule 6.1;
“Incident Response Plan”	means the plan created by the Franchisee pursuant to paragraph 20.1 of Schedule 6.1 (Franchise Specific Obligations) which contains (as a minimum) the information set out in paragraph 20.2 of Part 2 of Schedule 6.1;
“Pop-Up Shop”	means a small permanent or temporary shop or stall at a station that is operated by a charity organisation, local SME or local interest organisation, for the purpose of retail or promotion of a charity or local interest organisation;
“Scottish Ministers”	has the meaning ascribed to it in section 44 of the Scotland Act 1998;
“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; and

14 **Note to Bidders:** drafting for Franchise Specific Obligations relating to ETCS and TMS will be provided by the Department.

“Welsh Ministers”

has the meaning ascribed to it in section 45 of the Government of Wales Act 2006.

2. Boxing Day Services

2.1 At least six (6) months prior to the Passenger Change Date occurring in December 2022 the Franchisee shall:

- (a) consult with passengers, user groups, Network Rail, other train operators licensed under the Act and who operate along the affected Routes and other relevant Stakeholders on the potential demand for passenger services on 26 December in each Franchisee Year (“**Boxing Day Services**”); and
- (b) prepare and submit a report to the Secretary of State which sets out its proposals for operating Boxing Day Services which are additional to those Passenger Services to be operated by the Franchisee on 26 December in each Franchisee Year pursuant to the relevant Train Service Requirement (the “**Additional Boxing Day Services**”). Such report shall include:
 - (i) the Franchisee’s view on whether or not the operation of the Additional Boxing Day Services will be commercially viable;
 - (ii) the impact on Franchise Payments (if any) if the Secretary of State (at the Secretary of State's sole discretion) elects to vary the Train Service Requirement to require the provision of the Additional Boxing Day Services thereby triggering a Change pursuant to paragraph (d) of the definition of Change.

2.2 Following the submission of the report required pursuant to paragraph 2.1(b) the Franchisee shall:

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

2.3 The Franchisee shall have due regard to the outcomes and findings of the consultation referred to in paragraph 2.1(a) in proposing on which Routes Additional Boxing Day Services should operate if the Secretary of State (at the Secretary of State's sole discretion) elects to vary the Train Service Requirement to require the provision of the Additional Boxing Day Services.

3. Pop-Up Shops

3.1 At all Stations where a Pop-Up Shop is present at the Start Date, the Franchisee shall use reasonable endeavours to continue to make space available for Pop-Up Shops.

3.2 At all other Stations, the Franchisee shall use reasonable endeavours to establish Pop-Up Shops by no later than two (2) years after the Start Date or two (2) years following the Franchisee’s appointment as Facility Owner (as applicable).

3.3 The Franchisee shall use reasonable endeavours to work with Network Rail and other train operating companies to establish Pop-Up Shops at all Franchisee Access Stations.

4. Transferring Stations

4.1 Transfer to the Franchisee

- (a) The Franchisee shall use all reasonable endeavours to provide such assistance and information as the Secretary of State may reasonably require in relation to the potential transfer of any station (each such station being an **"Identified Station"**) to the Franchisee during the ICWC Term.
- (b) If, during the ICWC Term, agreement is reached in relation to the transfer of any Identified Station between the Secretary of State, the current facility owner in respect of any Identified Station and the Franchisee, then the Secretary of State may direct the Franchisee to take such actions as may be necessary to give effect to the transfer of any Identified Station to the Franchisee. Any such direction by the Secretary of State shall constitute a Variation under paragraph 1.1 of Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes). Where a Variation occurs as contemplated under this paragraph 4.1(b), the Secretary of State shall be entitled to make such consequential changes to the terms of the Franchise Agreement as reasonably considered necessary by the Secretary of State in order to give effect to the transfer of such Identified Station.

4.2 Transfer from the Franchisee

- (a) The Franchisee shall use all reasonable endeavours to provide such assistance and information as the Secretary of State may reasonably require during the ICWC Term in relation to the transfer of any Station in respect of which the Franchisee is Facility Owner to a third party.
- (b) If, during the ICWC Term, agreement is reached between the Secretary of State and any third party in relation to the transfer of a Station, then the Secretary of State may direct the Franchisee (including by exercising the Secretary of State's rights under paragraph 19 of Schedule 1.1 (Franchise Services and Service Development)) to take such actions as may be necessary to give effect to the transfer of such Stations. Any such direction by the Secretary of State shall constitute a Variation under paragraph 1.1 of Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes).
- (c) Where a Variation occurs as contemplated under this paragraph 4.2(c), the Secretary of State shall be entitled to make such consequential changes to the terms of the Franchise Agreement as reasonably considered necessary by the Secretary of State in order to give effect to the transfer of such stations (including, notwithstanding the provisions of Schedule 14.6 (Residual Value Mechanism) in order to ensure that such provisions will continue to apply in relation to any Infrastructure Manager Fixture Asset comprised in a transferring station in the same way as such provisions would have applied had the Franchisee remained the Facility Owner at such Station).

5. Digital Railway Programme

- 5.1 The Franchisee shall co-operate in good faith with Network Rail, any relevant ROSCO and any other relevant third party in connection with the development by Network Rail of a plan for the implementation and operational introduction on the routes of:
 - (a) the Connected Driver Advisory System (**"C-DAS"**);
 - (b) the Combined Performance and Safety System (**"COMPASS"**);
 - (c) such similar system(s) which may be developed to succeed C-DAS or COMPASS;

- (d) the Defect Reporting Analysis and Correctional Action System for ETCS ("**DRACAS**"), including but not limited to sharing of relevant defect corrective and preventative action data; and
- (e) any system which is intended to provide interconnectivity between the European Train Control System ("**ETCS**"), C-DAS and COMPASS for the purposes of improving capacity management, performance, and safety.

5.2 In respect of any plan developed by Network Rail pursuant to paragraph 5.1 above, the Franchisee shall:

- (a) use all reasonable endeavours to provide assistance to Network Rail, any relevant ROSCO and any other relevant third party in connection with the development of the elements of the plan relating to:
 - (i) C-DAS;
 - (ii) COMPASS;
 - (iii) DRACAS; and/or
 - (iv) such similar system(s) which may be developed to succeed C-DAS, COMPASS or DRACAS; and
- (b) use reasonable endeavours to provide assistance to Network Rail, any relevant ROSCO and any other relevant third party in connection with the development of the elements of the plan relating to any system which is intended to provide interconnectivity between ETCS, C-DAS and COMPASS for the purposes of improving capacity management, performance, and safety.

6. Birmingham Gateway TVMs

6.1 The Franchisee shall ensure that the branding of all ticket vending machines owned by the Franchisee at Birmingham New Street station is consistent with the Birmingham Gateway station design.

7. Gating

7.1 The Franchisee shall ensure that all:

- (a) automatic ticket gates at the Stations; and
- (b) automatic ticket gates owned by the Franchisee at Franchisee Access Stations, are staffed during the Peak.

7.2 The Franchisee shall continue to be responsible for ticket checking and gateline operation at Birmingham New Street station.

8. Train Fleet Refurbishments

8.1 The Franchisee shall fully and effectively co-operate with Network Rail on the introduction of the UOMS system on one Class 390 train.

8.2 The Franchisee shall for the useful life of the assets and for so long as the Class 390 trains in question form part of the Train Fleet, operate and maintain the:

- (a) UOMS that will be fitted to 1 Class 390 train; and
- (b) ride monitoring bump boxes fitted to 4 Class 390 trains as at the Start Date.

9. Infrastructure Projects

9.1 For the purposes of this paragraph 9:

- (a) **“Infrastructure Project”** shall mean any of:
 - (i) **Euston conventional station upgrade**, which means proposals to refurbish or redevelop the conventional (National Rail) station at Euston and works to integrate the conventional station with the High Speed station at Euston;
 - (ii) **Crossrail 2**;
 - (iii) **North Wembley to Euston Power Supply Works (Bushey feeder area)**, which means proposals to enable an independent and resilient power supply between North Wembley and Euston, including the renewal and upgrade of the 25kV power supply equipment in the Bushey feeder area and associated work in relation to an additional neutral section at Bushey;
 - (iv) **East West Rail**, which means the phased delivery of an east-west rail network connecting Oxford / Aylesbury with Milton Keynes / Cambridge, with a significant interface with the West Coast Main Line around Milton Keynes;
 - (v) **Birmingham New Street signalling**, which means works associated with the renewal and resignalling of signalling infrastructure in the Birmingham New Street area including New Street Station;
 - (vi) **Midlands Rail Hub**, which means the proposed package of infrastructure enhancements in the West Midlands area to facilitate up to 10 additional paths into central Birmingham for additional local / regional services. The proposal includes reinstating platform 4 at Snow Hill; additional platforms at Moor Street (with associated signalling improvements); new chords at Bordesley to connect the Camp Hill and Snow Hill lines; reconfiguration of Kings Norton station to bring disused platforms back into use; and four-tracking / additional crossovers in the Water Orton area;
 - (vii) **Crewe Hub**, which consists of a number of engineering proposals that would enable a greater number of trains per hour to stop at the existing Crewe station, including a possible northern junction between the West Coast Main Line and new HS2 line;
 - (viii) **Northern Powerhouse Rail**, which means the proposed new east-west rail network across the Pennines which could potentially link with HS2 and the West Coast Main Line;
 - (ix) **North of England Programmes**, which is a collective term for enhancements delivered as part of Northern Hub and North West Electrification, referred to as the ‘Great North Rail Project’; and
 - (x) **Transpennine Route upgrade**, which is a proposal to deliver improvements to journey times between Leeds and Manchester, the ability to run longer trains offering more seats on both long distance and local services and improvements to overall performance on the whole route,

and any other infrastructure projects as may be notified to the Franchisee by the Secretary of State during the ICWC Term.

- 9.2 The Franchisee shall from the Start Date until completion of each Infrastructure Project engage constructively with all relevant parties responsible for the delivery of such Infrastructure Project with the intention of assisting its timely, efficient and effective completion.
- 9.3 To the extent that any Infrastructure Project leads to the Franchisee having rights under railway industry procedures (including Network Change and Station Change) the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of such Infrastructure Project and the Franchisee shall not unreasonably raise any objection under any railway industry procedure (including Network Change or Station Change) and any reasonable objections shall be raised by the Franchisee in accordance with the relevant railway industry procedures. It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of the Infrastructure Projects and their implementation on passengers and the Franchise Services, while recognising the need for the Infrastructure Projects to be able to be undertaken in a reasonable manner.
- 9.4 The Franchisee shall throughout the ICWC Term allocate such appropriate Franchise Employees and other relevant resource as is reasonably required for the purposes of complying with its obligations in relation to all of the Infrastructure Projects pursuant to both the Franchise Agreement and the Access Agreements to which it is a party.
- 9.5 The Franchisee shall provide within ten (10) Weekdays of the end of each Reporting Period a detailed report complying with the reasonable requirements of the Secretary of State describing progress in relation to matters relating to each Infrastructure Project and identifying and quantifying so far as the Franchisee is reasonably able the emerging risk position in relation to each such Infrastructure Project as it affects passengers and the Franchise Services. The Franchisee shall provide such additional information as the Secretary of State shall reasonably request and if requested by the Secretary of State it shall develop such alternative and contingency plans as the Secretary of State may reasonably require for the purpose of mitigating relevant risk and ensuring that the adverse impacts on passengers and the Franchise Services of any relevant risk arising is mitigated to the greatest extent reasonably practicable.

10. NOT USED.

11. NOT USED.

12. NOT USED.

13. Co-operation with third party promoted franchise schemes

13.1 Except to the extent that any of the following third party promoted franchise schemes are completed and in operation prior to the Start Date, the Franchisee shall fully and effectively co-operate with relevant Local Authorities and/or other interested bodies (each being a "**Sponsor**") and with Network Rail and act reasonably and in good faith in its engagement with each of them in relation to each such third party promoted franchise scheme:

- (a) **Coventry station upgrade**, which is a local authority-funded scheme to upgrade the station buildings and environs as part of a wider city centre regeneration project, and includes construction of a second footbridge connecting all platforms, extension of platform canopies and construction of additional car parking;
- (b) **Wolverhampton station upgrade**, which is a local authority-funded scheme to deliver a station renovation project to better integrate rail, light rail and local buses in Wolverhampton and to provide a new multi-storey car park;

- (c) **Halton curve**, which is a scheme promoted by the local authority to provide access to and from Liverpool Lime Street to Chester and North Wales via Liverpool South Parkway, Runcorn and Frodsham. The scheme will include enhancement and renewals of track and signalling across the full length of the curve and new track and signalling infrastructure at either end on the West Coast Main Line and the Chester and Warrington Line;
 - (d) **Carlisle station upgrade**, which is a scheme promoted by the Local Authority to relocate the long stay car park and improve the pick-up and drop-off area of the station forecourt; and
 - (e) **Stockport station enhancements**, which is a scheme promoted by Rail North to address conflicting moves on the Stockport to Slade Junction section.
- 13.2 Where instructed to do so by the Secretary of State the Franchisee shall fully and effectively co-operate with the Secretary of State, Network Rail and any relevant Local Authority in relation to any scheme to reopen or divert any rail route.
- 13.3 The Franchisee shall at all times during the ICWC Term fully and effectively co-operate with the Secretary of State, Network Rail, any Local Authority, Welsh Ministers, Scottish Ministers or any relevant third party in the development and implementation of plans and proposals to:
- (a) enhance existing stations;
 - (b) open new stations;
 - (c) open new rail routes, or re-open existing rail routes that are not currently used to operate regular passenger services; and
 - (d) regenerate and redevelop the areas at or immediately surrounding stations.
- 13.4 The obligation to co-operate pursuant to paragraph 13.3 shall include the Franchisee carrying out in a timely manner all the activities and actions reasonably required to be carried out or taken by a Train Operator who:
- (a) in the case of paragraphs 13.3(a) and 13.3(d) only, is the Facility Owner at the relevant station;
 - (b) in any of the cases in paragraphs 13.3(a), 13.3(b), 13.3(c) or 13.3(d) is or is likely to be a provider of passenger services at the station or on the route in question.
- 13.5 Without limiting the above, the obligation to co-operate pursuant to paragraph 13.3 shall also include:
- (a) attending meetings with the Secretary of State, Network Rail, Welsh Ministers, Scottish Ministers, a Local Authority or a relevant third party (as the case may be);
 - (b) reviewing and commenting on the implementation and programme plans for the development of a brand new station;
 - (c) providing analysis and advice to any of the above parties in relation to station location and design, timetabling, staffing, marketing, rolling stock and other relevant operational and practical issues;
 - (d) negotiating in good faith with the Secretary of State or relevant scheme promoter with a view to reaching agreement with that person in relation to the terms (including price) for provision of Passenger Services at any new station or on any new or re-opened rail route;

- (e) maintaining records of usage and financial performance of passenger services calling at the relevant stations or operating on the relevant routes;
- (f) make available those records to the Secretary of State or relevant scheme promoter;
- (g) co-operate with any reasonable request by the Secretary of State or relevant scheme promoter to undertake a review of the operational and financial performance of the Passenger Services at the relevant stations or on the relevant routes (including their value for money); and
- (h) in the case of paragraph 13.3 (a) or 13.3 (b) above only, using reasonable endeavours to achieve any necessary amendments to any Station Lease or enter into new station leases as may be required for the purposes of the development and implementation of any such new station.

13.6 Without limiting the above, the Franchisee shall at all times during the ICWC Term fully and effectively co-operate with Welsh Ministers in relation to:

- (a) any scheme to reopen or divert any rail route; and
- (b) any proposal which may be promoted by (or on behalf of) Welsh Ministers during the ICWC Term for the provision of additional, varied or extended Passenger Services to and from destinations in Wales, such co-operation to include the provision of information to Welsh Ministers in respect of the implications of such proposals on the operation of the existing Passenger Services in Wales, costs and revenues and any other impact on the Franchisee's obligations under the Franchise Agreement.

13.7 Without limiting the above, the Franchisee shall at all times during the ICWC Term fully and effectively co-operate with Scottish Ministers in relation to:

- (a) any scheme to reopen or divert any rail route; and
- (b) any proposal which may be promoted by (or on behalf of) Scottish Ministers during the ICWC Term for the provision of additional, varied or extended Passenger Services to and from destinations in Scotland, such co-operation to include the provision of information to Scottish Ministers in respect of the implications of such proposals on the operation of the existing Passenger Services in Scotland, costs and revenues and any other impact on the Franchisee's obligations under the Franchise Agreement.

14. NOT USED.

15. Railway Heritage

15.1 The Franchisee shall:

- (a) engage constructively with the Railway Heritage Trust in order to maintain a register of listed buildings, those in conservation areas, and a list of designated artefacts and records (to ensure compliance with the Railway Heritage Act 1996);
- (b) engage constructively with the Railway Heritage Trust, Network Rail, and other relevant organisations to ensure that historic buildings and structures are conserved and promoted; and
- (c) maintain close and purposeful contact with heritage railway lines within the area of the Franchise, to identify and execute initiatives which will increase their usage and provide benefit to Passengers and the community.

16. NOT USED.

17. NOT USED.

18. Station Travel Plans

18.1 The Franchisee shall implement, maintain and comply with the Previous Franchisee's Station Travel Plans which are in existence as at the Start Date.

18.2 In addition to the obligation in paragraph 18.1, by no later than each anniversary of the Start Date, the Franchisee shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) an updated version of each Station Travel Plan.

18.3 Each updated Station Travel Plan submitted in accordance with paragraph 18.2 shall:

- (a) reflect the best practice approach in accordance with Station Travel Plan Guidance; and
- (b) include a schedule of any revisions to the current Station Travel Plan and a brief summary of the rationale supporting any revision.

18.4 If in respect of any Station:

- (a) the Secretary of State approves an updated Station Travel Plan submitted to it pursuant to paragraph 18.2, such document shall become the then current Station Travel Plan for that Station; or
- (b) the Secretary of State does not approve an updated Station Travel Plan submitted to it pursuant to paragraph 18.2, then the Franchisee shall:
 - (i) make such amendments to it as the Secretary of State shall reasonably direct; and
 - (ii) provide such additional information as the Secretary of State may reasonably require.

18.5 From the date of approval pursuant to paragraph 18.4(a), the Franchisee shall implement, maintain and comply with the Station Travel Plans.

19. NOT USED.

20. Incident Response Plan

20.1 By no later than six (6) months following the Start Date the Franchisee shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Incident Response Plan.

20.2 The Incident Response Plan shall:

- (a) detail how the Franchisee would respond to an incident or emergency (including cyber security incidents); and
- (b) reflect the RDG guidance on Emergency Planning, Knowledge, Understanding and Responsibilities,

and it shall be reasonable for the Secretary of State to not approve a plan which does not include such information or meet such requirements.

- 20.3 Where the Secretary of State does not approve the draft Incident Response Plan submitted to it, the Franchisee shall make:
- (a) such amendments to it as the Secretary of State shall reasonably direct; and
 - (b) provide such additional information as the Secretary of State may reasonably require.
- 20.4 From the date of approval, the Franchisee shall implement and comply with the Incident Response Plan.
- 20.5 The Incident Response Plan shall be updated by the Franchisee on an annual basis and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).
- 20.6 Each updated version of the Incident Response Plan shall incorporate a schedule of revisions to the Incident Response Plan compared to the previous version and a brief summary of the rationale supporting each such revision.
- 20.7 If:
- (a) the Secretary of State approves an updated draft Incident Response Plan submitted to it pursuant to paragraph 20.5, such document shall become the then current Incident Response Plan; or
 - (b) the Secretary of State does not approve an updated draft Incident Response Plan submitted to it pursuant to paragraph 20.5, the provisions of paragraph 20.3 shall apply.

21. Cyber Security Information Sharing Strategy

- 21.1 By no later than six (6) months following the Start Date the Franchisee shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Cyber Security Information Sharing Strategy.
- 21.2 The Cyber Security Information Sharing Strategy shall:
- (a) detail how the Franchisee will share information regarding cyber security threats and incidents with the Department for Transport, British Transport Police, Police Scotland (where relevant), the National Cyber Security Centre and other industry partners; and
 - (b) detail how the Franchisee will use the Cyber Information Sharing Platform,
- and it shall be reasonable for the Secretary of State to not approve a plan which does not include such information or meet such requirements.
- 21.3 Where the Secretary of State does not approve the draft Cyber Security Information Sharing Strategy submitted to it, the Franchisee shall make:
- (a) such amendments to it as the Secretary of State shall reasonably direct; and
 - (b) provide such additional information as the Secretary of State may reasonably require.
- 21.4 From the date of approval, the Franchisee shall implement and comply with the Cyber Security Information Sharing Strategy.

- 21.5 The Cyber Security Information Sharing Strategy shall be updated by the Franchisee on an annual basis and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).
- 21.6 Each updated version of the Cyber Security Information Sharing Strategy shall incorporate a schedule of revisions to the Cyber Security Information Sharing Strategy compared to the previous version and a brief summary of the rationale supporting each such revision.
- 21.7 If:
- (a) the Secretary of State approves an updated draft Cyber Security Information Sharing Strategy submitted to it pursuant to paragraph 21.5, such document shall become the then current Cyber Security Information Sharing Strategy; or
 - (b) the Secretary of State does not approve an updated draft Cyber Security Information Sharing Strategy submitted to it pursuant to paragraph 21.5, the provisions of paragraph 21.3 shall apply.

22. NOT USED.

23. ISO44001

- 23.1 Within twelve (12) months of the Start Date, the Franchisee shall obtain ISO44001 certification and maintain and comply with the same for the Franchise Term.

24. Digital Railway Account

- 24.1 Not later than seven (7) days following each of 1 April 2020, 1 April 2021, 1 April 2022 and 1 April 2023, the Franchisee shall deposit the Annual Digital Railway Account Contribution into the Digital Railway Account. In calculating the amount of each Annual Digital Railway Account Contribution, RPI means as follows:

Relevant Date	RPI
1 April 2020	RPI is the quotient of the Retail Prices Index for January 2020 divided by the Retail Prices Index for January 2019
1 April 2021	RPI is the quotient of the Retail Prices Index for January 2021 divided by the Retail Prices Index for January 2019
1 April 2022	RPI is the quotient of the Retail Prices Index for January 2022 divided by the Retail Prices Index for January 2019
1 April 2023	RPI is the quotient of the Retail Prices Index for January 2023 divided by the Retail Prices Index for January 2019

- 24.2 The Digital Railway Account shall be an interest bearing account, with a commercially reasonable rate of interest (such interest to be promptly credited to the account) and on terms which prevent the account from being overdrawn.

- 24.3 Where the Digital Railway Account contains (or should contain) any monies upon the earlier of:
- (a) the High Speed Established Services Date; or
 - (b) the end of the Franchise Period,

the Franchisee shall pay the Digital Railway Account Balance to the Secretary of State promptly upon receiving a request for payment from the Secretary of State.

- 24.4 The Secretary of State may, at any time after 1 May 2023, require the Franchisee to pay the Digital Railway Account Balance to the Secretary of State and the Franchisee shall pay such monies promptly upon receiving such request.

25. ETCS Fitment

- 25.1 Subject to paragraph 25.3, the Franchisee shall ensure that ETCS Fitment is complete by no later than 1 April 2025 and shall conduct such ETCS Fitment in accordance with the ETCS Fitment Plan.

- 25.2 The Franchisee shall ensure that all Rolling Stock Leases and manufacture and supply agreements or equivalent agreements relating to rolling stock vehicles which are intended to form part of the Train Fleet shall:

- (a) have an option enabling the Franchisee to cancel ETCS Fitment at no cost which can be exercised at any time prior to and including the ETCS Decision Date;
- (b) provide that the Franchisee shall not be required to pay and/or incur any costs relating to ETCS Fitment:
 - (i) at any time, if the option referred to in paragraph 25.2(a) is exercised; and/or
 - (ii) until the first day after the ETCS Decision Date, if the option referred to in paragraph 25.2(a) is not exercised; and
- (c) clearly identify any and all costs which may be incurred in relation to ETCS Fitment separately from any other costs under the relevant Rolling Stock Lease.

- 25.3 The Secretary of State may, at any time, notify the Franchisee that it is cancelling or revising the ETCS Fitment. The provision of such notice shall constitute a Qualifying Change.

- 25.4 Where a Qualifying Change occurs under paragraph 25.3, the adjustments, if any, to the Franchise Payments, the Profit Share Components and the Target Revenue Amounts shall be established by agreement by the parties or determination by the Secretary of State such that they only reflect the removal of any unspent costs which would have been incurred by the Franchisee, in accordance with the ETCS Fitment Plan, had the Secretary of State not given notice to cancel or revise the ETCS Fitment.

APPENDIX 1 TO SCHEDULE 6.1A

ETCS Fitment Plan

[**Note to Bidders:** Bidders to populate Appendix 1 with a plan, in Gantt chart form, which clearly demonstrates the key milestones required to achieve ETCS Fitment by 1 April 2025, the ETCS Decision Date and the costs which would be incurred by the Franchisee in achieving ETCS Fitment (such costs to be clearly tracked against each of the key milestones).]

SCHEDULE 6.2A

Committed Obligations

Part 1 – Committed Obligations

[Note to Bidders:

1. This Schedule will specify the terms of the Committed Obligations and the dates by which the Committed Obligations must be performed.
2. For any Specimen Scheme, this will also include the applicable expenditure commitment and the output intended to be delivered by the Specimen Scheme.
3. Where the Department wishes to contractualise initiatives in the bid as Committed Obligations based on the Bidders' completed Schedule of Initiatives submitted in response to the ITT, the DfT will provide Bidders with drafting which reflects such requirements.
4. Franchisee shall set up an Accessibility Plan in accordance with its bid proposals in response to ITT Delivery Plan 4.1]

Part 2 - Special Terms related to the Committed Obligations

This Part 2 of Schedule 6.2 sets out further provisions which shall apply to the Committed Obligations contained in the Franchise Agreement and these provisions shall be construed as supplemental to the related provisions set out in Part 1 of this Schedule 6.2 and elsewhere in the Franchise Agreement.

1. Continuation of Availability

- 1.1 Where the Franchisee is obliged under this Schedule 6.2 to provide, implement or install something (whether a service, facility or otherwise) the Franchisee shall ensure that once the same is provided, implemented or installed that it continues to be provided and made available (and where relevant, effectively maintained) for the remainder of the ICWC Period unless the contrary is expressly stated.
- 1.2 Where Part 1 to Schedule 6.2 (Committed Obligations) includes a commitment:
- (a) regarding the maintenance of certain facilities or activities or other similar analogous matters which are the subject of the Committed Obligations, the Franchisee shall not be regarded as having contravened the relevant obligation due to any temporary non-availability of the facility or activity (as the case may be) due to accidental damage or vandalism or maintenance, repair or replacement activities; or
 - (b) regarding staffing requirements or particular appointments the Franchisee is required to make and maintain, the obligation of the Franchisee shall not be regarded as being contravened by:
 - (i) temporary absences (for example for sickness or holiday); or
 - (ii) temporary non-fulfilment of a relevant post whilst the Franchisee is recruiting for that post,

providing always that the Franchisee is using all reasonable endeavours to keep the duration of any (x) non-availability of a facility or activity or (y) vacant or unfulfilled post or appointment (as the case may be) as short as reasonably practicable.

2. Expenditure Commitments

2.1 Annual Expenditure

Where Part 1 to Schedule 6.2 (Committed Obligations) provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee, that amount:

- (a) is assessed net of Value Added Tax; and
- (b) is the amount required to be expended by the Franchisee itself or procured by the Franchisee to be expended.

2.2 Expenditure Commitments in real amounts

All expenditure commitments set out in Part 1 to Schedule 6.2 (Committed Obligations), to the extent they have not already been incurred by the Franchisee, shall be indexed by the Retail Prices Index (in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments)).

2.3 Expenditure by Network Rail

All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 1 to Schedule 6.2 (Committed Obligations) to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

3. Underspend

- (a) Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, the Franchisee is able to achieve that stated objective without incurring the full amount referred to in that Committed Obligation, whether because of cost savings or otherwise, the Franchisee shall notify the Secretary of State, together with a statement of the costs it has incurred (excluding any third party funding) in delivering the relevant obligations and a reconciliation against the amount it had committed to spend (excluding any third party funding) ("**Underspend**").
- (b) The Parties shall, acting reasonably, seek to agree an additional scheme or schemes which would give rise to benefits to passengers using the Passenger Services to be funded using one or more Underspends and, once agreed, the Franchisee shall apply such relevant Underspend in the delivery of the agreed scheme(s). In circumstances only where, despite having used reasonable endeavours the Parties fail to agree an additional scheme in relation to which relevant Underspend will be applied, the aggregate amount of unallocated Underspend shall be repaid to the Secretary of State as soon as reasonably practicable.

4. Nature of Commitment

- 4.1 Any commitment in terms of Part 1 to Schedule 6.2 (Committed Obligations) shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Schedule 6.2 (Committed Obligations) shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.
- 4.2 Save as expressly provided in Part 1 to Schedule 6.2 (Committed Obligations), each Committed Obligation is a separate obligation from any other Committed Obligation and satisfaction of or steps taken towards the satisfaction of one Committed Obligation will not amount to or contribute towards satisfaction of any other Committed Obligation.
- 4.3 Where in Part 1 to Schedule 6.2 (Committed Obligations), references are made to particular manufacturers or suppliers of equipment or services, the Franchisee may fulfil its relevant commitment by using reasonable equivalents.

5. Review of Compliance

- 5.1 Progress with Committed Obligations shall be considered and discussed at Franchise Performance Meetings.
- 5.2 In addition to its obligation under paragraph 5.1, the Franchisee shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as the Secretary of State may reasonably request.

6. Consequences of Late Completion or Non-Delivery of Committed Obligations

If the Franchisee fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in Schedule 6.2 (Committed Obligations), such late, partial or non-delivery shall constitute a contravention of the Franchise Agreement.

7. Specimen Schemes

7.1 The Franchisee may propose to undertake an Alternative Scheme in place of a Specimen Scheme. Any such Alternative Scheme must:

- (a) be intended to deliver as a minimum the relevant Specimen Scheme Output;
- (b) require the Franchisee to incur expenditure of no less than the expenditure which the Franchisee is committed to incur in relation to the relevant Specimen Scheme; and
- (c) deliver at least an equivalent level of benefits (whether to passengers, the Secretary of State, the wider rail industry or otherwise) as the Specimen Scheme.

7.2 If the Franchisee wishes to propose an Alternative Scheme, the Franchisee shall provide the Secretary of State with such details of the Alternative Scheme as the Secretary of State may reasonably require.

7.3 If the Secretary of State approves (such approval not to be unreasonably withheld or delayed) such Alternative Scheme then it shall replace the relevant Specimen Scheme and Part 1 to Schedule 6.2 (Committed Obligations) shall be amended accordingly.

7.4 For the avoidance of doubt, if the Franchisee does not propose or the Secretary of State does not approve an Alternative Scheme then the Franchisee shall remain obliged to deliver the relevant Specimen Scheme in accordance with Part 1 to Schedule 6.2 (Committed Obligations).

8. Third Party Consents, Agreement and Conditions

8.1 A Committed Obligation may be expressed to be conditional upon the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consent and/or entering into any agreement or arrangement with a third party) ("**Pre-condition**"). Where a Committed Obligation is subject to a Pre-condition and, despite having used all reasonable endeavours, the Franchisee is not able to satisfy such Pre-condition within such timescales (if any) as are required to enable the Franchisee to deliver such Committed Obligation in accordance with its terms then the Secretary of State and the Franchisee shall agree (or on failure to agree, the Secretary of State shall reasonably determine) such modifications to such Committed Obligation as may be necessary to allow the Franchisee to deliver a scheme which would give rise to benefits to passengers using the Passenger Services similar to (but not necessarily the same as) those benefits which would have arisen if the Franchisee had delivered such Committed Obligation.

8.2 If the Franchisee and the Secretary of State agree (or on failure to agree, the Secretary of State reasonably determines) a modification to a Committed Obligation pursuant to paragraph 8.1 then to the extent that the Franchisee delivers such modified Committed Obligation by the date agreed by the Parties (or, on failure to agree reasonably determined by the Secretary of State) then the Franchisee shall not be in breach of the Franchise Agreement.

9. Designation of Assets comprised in COs as Primary Franchise Assets

9.1 The Secretary of State may at any time designate as a Primary Franchise Asset any asset (other than those designated as RV Assets) introduced by the Franchisee by way of a Committed

Obligation (the “**Designated CO Primary Franchise Assets**”). Such designation shall take effect from the date on which the Secretary of State delivers to the Franchisee a notice designating the relevant asset as a Designated CO Primary Franchise Asset.

- 9.2 The transfer value in relation to any Designated CO Primary Franchise Asset, which at the end of the Franchise Period is:
- (a) not de-designated as a Primary Franchise Asset pursuant to paragraph 10 of Schedule 14.4A or 14.4B (Designation of Primary Franchise Assets); and
 - (b) transferred to a Successor Operator (whether pursuant to the Transfer Scheme or otherwise),

shall (unless otherwise agreed by the Secretary of State) be nil.

10. Obligations on Delivery of a Committed Obligation

By no later than thirty (30) days after the date of delivery of a Committed Obligation the Franchisee shall provide to the Secretary of State a certificate (in such form as may be specified by the Secretary of State from time to time) signed by a statutory director of the Franchisee confirming that such Committed Obligation has been delivered in full and in accordance with its terms, together with such supporting information as may be requested by the Secretary of State from time to time.

SCHEDULE 6.3A

Contractual Incentive Mitigations

1 Definitions

For the purpose of this Schedule 6.3 only the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

"Actual Marketing Spend"	shall have the meaning given to it in paragraph 5.7(b)(ii)(A) of this Schedule 6.3;
"Actual Marketing Team Spend"	shall have the meaning given to it in paragraph 5.7(b)(ii)(B) of this Schedule 6.3;
"Alternative Fare"	has the meaning given to it in paragraph 11.1(a)(ii) of this Schedule 6.3;
"Annual Breach Ticketless Travel Benchmark"	means, in relation to a Performance Calculation Year, the benchmark for that Performance Calculation Year as specified in Column 3 of the table in Part 2 of Appendix 2 to this Schedule 6.3;
"Annual Target Ticketless Travel Benchmark"	means, in relation to a Performance Calculation Year, the benchmark for that Performance Calculation Year as specified in Column 2 of the table in Part 2 of Appendix 2 to this Schedule 6.3;
"Annual Ticketless Travel Benchmark"	means any of the Annual Breach Ticketless Travel Benchmark and Annual Target Ticketless Travel Benchmark;
"Bespoke Revenue Initiative Proposal"	has the meaning given to it in paragraph 4.1 of this Schedule 6.3;
"Breach Ticketless Travel Benchmark"	means, in relation to a Ticketless Travel Survey Period, the benchmark relevant for that Ticketless Travel Survey Period in that Performance Calculation Year as specified in Column 3 of the table in Part 1 of Appendix 2 to this Schedule 6.3;
"CIM Activation Date"	means a Franchisee Activation Date or SoS Activation Date (as applicable);
"CIM Deactivation Date"	means the last day of a Franchisee Year wherein no CIM Activation Date in respect of the following Franchisee Year has occurred ¹⁵ ;

15 **Note to Bidders:** For the avoidance of doubt, pursuant to the provisions of paragraphs 3.1 or 5.1 or 5.2 of Schedule 8.6A (Forecast Revenue Mechanism) (as applicable), the notice issued by

“CIM Notification Date”	means the date on which the Secretary of State serves notice on the Franchisee pursuant to paragraph 3.1 or 5.1 of Schedule 8.6A (Forecast Revenue Mechanism) that Contractual Incentive Mitigations shall apply;
“CIM NRPS Performance Sum”	has the meaning given to it in paragraph 17.1 of this Schedule 6.3;
“CIM Performance Sum”	has the meaning given to it in paragraph 7.1 of this Schedule 6.3;
“CIM Period”	means the period from and including the CIM Activation Date to and including the CIM Deactivation Date;
“Draft Marketing Plan”	means a draft marketing plan produced pursuant to paragraph 5.1 or 5.2 of this Schedule 6.3;
“Franchisee Activation Date”	means the first day of the Franchisee Year following an election by the Franchisee pursuant to paragraph 5.1 of Schedule 8.6A (Forecast Revenue Mechanism) if the Secretary of State exercises the Secretary of State's consequent right to require that Contractual Incentive Mitigations shall apply in relation to the relevant Franchisee Year;
“Marketing Plan”	shall have the meaning given to it in paragraph 5.5 of this Schedule 6.3;
“Marketing Team”	means a team of not less than [INSERT NUMBER] ¹⁶ people [or the full time equivalent to such number of people] whose role is largely concerned with the organisation and delivery of marketing activities for the Franchise in accordance with paragraph 5 of this Schedule 6.3;
“Minimum Marketing Spend”	shall have the meaning given to it in paragraph 5.7(a) of this Schedule 6.3;
“Minimum Marketing Team Spend”	shall have the meaning given to it in paragraph 5.7(b) of this Schedule 6.3;

the Secretary of State to the Franchisee stating that the provisions of this Schedule 6.3 are to apply must be issued afresh by the Secretary of State for each Franchisee Year in respect of which CIMS are intended to apply. It is not the case that once such notification is issued that the provisions of this Schedule 6.3 will continue to automatically apply throughout consecutive Franchisee Years until they are no longer required.

16 **Note to Bidders:** Bidders to populate.

“Performance Calculation Year”	means: (a) the period of 13 Reporting Periods starting on the CIM Activation Date (that day inclusive); or (b) each subsequent period of 13 Reporting Periods during the CIM Period commencing the day after the last day of the preceding Performance Calculation Year, (as applicable) provided that the last such period may be shorter than 13 Reporting Periods and shall end on the last day of the ICWC Period;
“SoS Activation Date”	means the first day of the Franchisee Year following the service of notice by the Secretary of State on the Franchisee pursuant to paragraph 3.1 of Schedule 8.6A (Forecast Revenue Mechanism) requiring that Contractual Incentive Mitigations shall apply in relation to a Franchisee Year;
“Target Ticketless Travel Benchmark”	means, in relation to a Ticketless Travel Survey Period, the benchmark for that Performance Calculation Year as specified in Column 2 of the table in Part 1 of Appendix 2 to this Schedule 6.3;
“Ticketless Travel Benchmark”	means any of the Target Ticketless Travel Benchmark or the Breach Ticketless Travel Benchmark;
“Ticketless Travel Payment Adjustment”	means an adjustment made to Franchise Payments as determined in accordance with paragraph 6.3 of this Schedule 6.3;
“Ticketless Travel Rate”	means, for any Ticketless Travel Survey Period, that proportion (expressed as a percentage to three decimal places) of revenue estimated by the Ticketless Travel Survey for that Ticketless Travel Survey Period to be associated with passengers travelling on the Passenger Services without a valid ticket or other valid permission to travel;
“Ticketless Travel Survey”	means 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; and

“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 6.3 (Contractual Incentive Mitigations));
- (b) the seventh to the thirteenth Reporting Period (Inclusive) to fall in any Performance Calculation Year (for the purposes of Schedule 6.3 (Contractual Incentive Mitigations)).

2. Application of Contractual Incentive Mitigations

2.1 The provisions of paragraphs:

- (a) 3, 4, 5.1 to 5.5 (inclusive), 8, 9, 10, 11, 13, 14 and 15 of this Schedule 6.3, shall apply from the CIM Notification Date until the CIM Deactivation Date; and
- (b) 5.6 to 5.15 (inclusive), 6A, 6, 7, 12, 16 and 17 of this Schedule 6.3 shall apply:
 - (i) in full from the CIM Activation Date (where the CIM Activation Date is a Franchisee Activation Date); and
 - (ii) to the extent elected by the Secretary of State (where the CIM Activation Date is a SoS Activation Date),

until the CIM Deactivation Date.

3. General Obligation of the Franchisee when the provisions of Schedule 6.3 (Contractual Incentive Mitigations) apply

- 3.1 At all times when this Schedule 6.3 applies (in accordance with the provisions of paragraph 2) the Franchisee shall, in addition to complying with the other provisions of this Schedule 6.3, use all reasonable endeavours, consistent with a Train Operator bearing revenue risk in relation to its franchise and acting in an economical and efficient manner, to maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than the Franchisee had forecast including maximising revenue collections, growing Peak Passenger Service revenues and Off-Peak Passenger Service revenues and driving performance. For the avoidance of doubt the provisions of this Schedule 6.3 shall not contribute towards any Performance Bonus Payment under Schedule 7.1 (Operational Performance) or any other payment in favour of the Franchisee.
- 3.2 The Franchisee shall proactively consider and implement actions to meet its obligations pursuant to paragraph 3.1 above, provided that where the consent of the Secretary of State is required to any action pursuant to the terms of the Franchise Agreement, the Franchisee shall seek the Secretary of State's consent as soon as reasonably practicable and shall only pursue such action once consent has been provided.
- 3.3 The Secretary of State shall have the right to propose to the Franchisee measures that the Franchisee could take to maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than the Franchisee had forecast such

measures being consistent with a Train Operator bearing revenue risk in relation to its franchise and acting in an economical and efficient manner. The Franchisee shall give reasonable consideration to any such measures proposed by the Secretary of State and shall either implement such actions or shall explain why in its reasonable opinion such measures would not be appropriate.

4. Bespoke Revenue Initiative Proposal

- 4.1 Notwithstanding the provisions of Schedule 8.6A (Forecast Revenue Mechanism), the Franchisee shall be permitted to make a proposal ("**Bespoke Revenue Initiative Proposal**") to the Secretary of State that revenue identifiable as being derived from a specified initiative of the Franchisee not already included under the terms of the Franchise Agreement shall be subject to an alternative division of the revenue arising from its implementation during periods that Net Revenue Share or Net Revenue Support is payable or where it is reasonably likely that Net Revenue Share or Net Revenue Support shall become payable in the next twenty-four (24) months.
- 4.2 Any Bespoke Revenue Initiative Proposal shall:
- (a) identify what the proposed initiative is and the capital and operational costs that are likely to be incurred delivering it;
 - (b) provide an estimate of the financial value that the Franchisee reasonably considers the initiative is likely to deliver for the Secretary of State; and
 - (c) propose an appropriate division of revenue between the Franchisee and the Secretary of State when the Franchisee is paying Net Revenue Share or receiving Net Revenue Support and shall propose how the revenue derived from the initiative can be separately identified and the purpose of the Franchisee's proposed revenue allocation.
- 4.3 The Secretary of State may also require the Franchisee in any Bespoke Revenue Initiative Proposal to include:
- (a) a business case with a financial cost benefit analysis by reference to criteria specified by the Secretary of State; and
 - (b) proposed drafting to be included into the Franchise Agreement in connection with the Bespoke Revenue Initiative Proposal.
- 4.4 The Franchisee shall meet with the Secretary of State to discuss the Bespoke Revenue Initiative Proposal and provide such additional information as the Secretary of State shall reasonably require. The Secretary of State shall be permitted to propose alterations to the Bespoke Revenue Initiative Proposal and the Franchise Agreement drafting proposed by the Franchisee. The Secretary of State shall have an unfettered discretion to accept or reject any Bespoke Revenue Initiative Proposal. If the Secretary of State accepts it, the Franchise Agreement shall be amended on terms agreed between the parties for the purposes of implementing it.

5. Marketing Plan

- 5.1 In the event that the Franchisee elects prior to the beginning of the First FRM Franchisee Year or any subsequent Franchisee Year to be eligible to be paid Revenue Support Adjustments pursuant to paragraph 5.1 of Schedule 8.6A (Forecast Revenue Mechanism) and the Secretary of State exercises the Secretary of State's consequent right to require that Contractual Incentive Mitigations shall apply in relation to the relevant Franchisee Year the Franchisee shall produce and submit to the Secretary of State a Draft Marketing Plan by no later than two (2) Reporting Periods prior to the CIM Activation Date.

- 5.2 In the event that the Secretary of State serves notice on the Franchisee pursuant to paragraph 3.1 of Schedule 8.6A (Forecast Revenue Mechanism) requiring that Contractual Incentive Mitigations shall apply in relation to a Franchisee Year the Franchisee shall produce and submit to the Secretary of State a Draft Marketing Plan by no later than two (2) Reporting Periods prior to the CIM Activation Date.
- 5.3 The Draft Marketing Plan shall as a minimum set out:
- (a) the proposed marketing initiatives to be undertaken in the upcoming Franchisee Year, the proposed spend in respect of such initiatives and the estimated return in respect of the same;
 - (b) the structure, focus and utilisation of the members of the Marketing Team;
 - (c) a three-year rolling marketing strategy; and
 - (d) if applicable, the performance of the initiatives implemented in the previous Franchisee Year, taking into account the cost of the same.
- 5.4 The Franchisee shall provide to the Secretary of State such further analysis or iterations of the Draft Marketing Plan as the Secretary of State reasonably requires and shall, if required by the Secretary of State, meet with the Secretary of State to discuss the Draft Marketing Plan.
- 5.5 The Secretary of State shall (acting reasonably) within one (1) Reporting Period of receipt of the Draft Marketing Plan following an election by the Franchisee pursuant to paragraph 5.1 of Schedule 8.6A (Forecast Revenue Mechanism) approve or reject the Draft Marketing Plan. Where the Secretary of State rejects the Draft Marketing Plan, the Franchisee shall make such amendments necessary to the Secretary of State's reasonable satisfaction. This document, as either approved or amended to the Secretary of State's reasonable satisfaction, shall become the form of the Franchisee's marketing plan (the "**Marketing Plan**").
- 5.6 The Franchisee shall comply with the Marketing Plan.
- 5.7 In each Franchisee Year the Franchisee shall:
- (a) spend no less than the amount specified in column 2 of the table in set out in Appendix 1 to this Schedule 6.3 for that Franchisee Year ("**Minimum Marketing Spend**"):
 - (i) on such marketing activities as specified in paragraph 5.12; or
 - (ii) as otherwise agreed by the Franchisee and the Secretary of State (or in the event of any failure to agree, as reasonably determined by the Secretary of State),and such activities shall be identified in the Marketing Plan; and
 - (b) spend no less than the amount specified in column 3 of the table set out in Appendix 1 to this Schedule 6.3 for that Franchisee Year ("**Minimum Marketing Team Spend**") on remuneration of the Marketing Team (including, for the avoidance of doubt, any and all pension contributions made by the Franchisee in respect of the Marketing Team),
- provided that:
- (i) if the Franchisee terminates part way through a Franchisee Year, the required Minimum Marketing Spend and Minimum Marketing Team Spend shall each be reduced on a pro rata basis to reflect the number of days by which the Franchisee Year was less than 365 days (or less than 366 days in a leap year);

- (ii) within 15 Weekdays of the end of each Franchisee Year a statutory director of the Franchisee shall certify:
 - (A) the amount of marketing expenditure actually incurred by the Franchisee in respect of that Franchisee Year (excluding in respect of remuneration of the Marketing Team) ("**Actual Marketing Spend**"); and
 - (B) the amount of the marketing expenditure actually incurred by the Franchisee in respect of remuneration of the Marketing Team in respect of that Franchisee Year ("**Actual Marketing Team Spend**").

if the Final ICWC Franchisee Year is less than 365 (or less than 366 days in a leap year) the required Minimum Marketing Spend and Minimum Marketing Team Spend shall each be reduced on a pro rata basis to reflect the number of days by which the Final ICWC Franchisee Year was less than 365 days (or less than 366 days in a leap year).

- 5.8 If the Actual Marketing Spend is less than the Minimum Marketing Spend then the difference between the Actual Marketing Spend and the Minimum Marketing Spend shall be treated as Underspend for the purpose of Part 2 of Schedule 6.2 (Special Terms related to the Committed Obligations).
- 5.9 If the Actual Marketing Team Spend is less than the Minimum Marketing Team Spend then the difference between the Actual Marketing Team Spend and the Minimum Marketing Team Spend shall also be treated as Underspend for the purpose of Part 2 of Schedule 6.2 (Special Terms related to the Committed Obligations).
- 5.10 The Franchisee shall provide such information as the Secretary of State shall reasonably require for the purposes of verifying the information contained in the certificate provided and if the Secretary of State reasonably determines that the marketing expenditure (excluding in respect of remuneration of the Marketing Team) made by the Franchisee was less than the Actual Marketing Spend then the difference between the expenditure as determined by the Secretary of State (rather than the Actual Marketing Spend certified by the Franchisee) and the Minimum Marketing Spend shall be treated as Underspend for the purpose of Part 2 of Schedule 6.2 (Special Terms related to the Committed Obligations) and if the Secretary of State reasonably determines that the marketing expenditure made by the Franchisee in respect of remuneration of the Marketing Team was less than the Actual Marketing Team Spend then such difference between the expenditure as determined by the Secretary of State (rather than the Actual Marketing Team Spend certified by the Franchisee) and the Minimum Marketing Team Spend shall also be treated as Underspend for the purpose of Part 2 of Schedule 6.2 (Special Terms related to the Committed Obligations);
- 5.11 The Minimum Marketing Spend and Minimum Marketing Team Spend in respect of each Franchisee Year (other than the first Franchisee Year) shall be subject to indexation by the [Retail Prices Index /Average Weekly Earnings Index]¹⁷ in the same way as the component of [RPI/AWE]¹⁸ is indexed in Schedule 8.1A (Franchise Payments) of the Franchise Agreement.

17 **Note to Bidders:** Bidders to select RPI or AWE.

18 **Note to Bidders:** Bidders to select RPI or AWE.

5.12 Any costs attributable to:

- (a) initiatives that advertise and promote passenger services in order to drive growth in passenger volumes and revenues;
- (b) promotional material including but not limited to timetable printing and posters;
- (c) digital marketing; and
- (d) marketing activities relating to franchise specific areas including but not limited to infrastructure or rolling stock changes,

shall count towards the Minimum Marketing Spend.

5.13 As part of each Business Plan to be submitted during the CIM Period in accordance with paragraph 10 of Schedule 11.2 (Management Information) the Franchisee shall deliver to the Secretary of State for the Secretary of State's approval an updated version of the Marketing Plan in respect of the remainder of the ICWC Term:

- (a) in substantially the same form as the preceding Marketing Plan delivered to the Secretary of State in accordance with the Franchise Agreement;
- (b) which shall be revised to:
 - (i) describe the Franchisee's planned expenditure and activities to advertise, market and promote the Passenger Services for each Franchisee Year (or part Franchisee Year) during the remainder of the ICWC Term (such description being in detail for the next Franchisee Year and in outline for subsequent Franchisee Years);
 - (ii) include details of the Franchisee's planned arrangements to measure the effectiveness of such expenditure and activities; and
 - (iii) confirm how the Franchisee will improve the Marketing Plan and increase the effectiveness of its expenditure and activities; and
- (c) containing a statement of the differences between such updated Marketing Plan and the preceding Marketing Plan delivered to the Secretary of State in accordance with the Franchise Agreement, together with an explanation of such differences.

5.14 The Franchisee may also apply to the Secretary of State to make interim revisions to the Marketing Plan in the course of any Franchisee Year.

5.15 The Marketing Plan shall be reviewed by the Franchisee and the Secretary of State every three (3) months, or more frequently and/or at a meeting in person upon the Secretary of State's request, and as soon as reasonably practicable following each such review, the Franchisee shall:

- (a) produce evidence to the Secretary of State's satisfaction that it has incurred the expenditure and carried out the activities shown in the Marketing Plan for the period under review;
- (b) report on the effectiveness of such expenditure and activities, based on reasonably available evidence, and areas for improvement which the Franchisee has identified and the actions it plans to take; and

- (c) confirm how the effectiveness of the expenditure and activities could be further improved by explaining the successes and failures of such Marketing Plan and how the Franchisee plans to build on successes and address and rectify failures going forward.

6A. Ticketless Travel Surveys

6A.1 The Franchisee on behalf of the Secretary of State shall carry out Ticketless Travel Surveys in accordance with the Ticketless Travel Survey Methodology.

6A.2 It is acknowledged and agreed by the Franchisee that:

- (a) a Ticketless Travel Survey can only be carried out during a Ticketless Travel Survey Period; and
- (b) nothing in this paragraph 6A shall prevent the Secretary of State from carrying out any other ticketless travel surveys as the Secretary of State may wish to undertake from time to time (such surveys not to be subject to the provisions of this paragraph 6A).

Within thirty (30) days of the completion of each Ticketless Travel Survey the Franchisee shall produce and provide to the Secretary of State a report setting out the results of such Ticketless Travel Survey and detailing how such Ticketless Travel Survey was carried out in accordance with the Ticketless Travel Survey Methodology.

6. Ticketless Travel Payments

6.1 Ticketless Travel Survey Periods Calculations

Ticketless Travel Survey Periods

- (a) At the end of each Ticketless Travel Survey Period the Secretary of State shall use the Ticketless Travel Rate for such Ticketless Travel Survey Period to calculate the Franchisee's performance against the relevant Ticketless Travel Benchmark in accordance with the following formula:

$$[TT \text{ Deemed}] = \frac{A+B}{2}$$

where:

TT Deemed	is the Franchisee's deemed performance against the relevant Ticketless Travel Benchmark;
A	is the Ticketless Travel Rate for that Ticketless Travel Survey Period; and
B	is the Ticketless Travel Rate for the preceding Ticketless Travel Survey Period.

6.2 Consequences of Poor Performance

- (a) Without limiting paragraph 6.3, if for any Ticketless Travel Survey Period the TT Deemed as calculated pursuant to paragraph 6.1 above is more than (that is, is **equal to or worse than**) the relevant Breach Ticketless Travel Benchmark then a contravention shall occur and the Secretary of State may serve a Remedial Plan Notice in accordance with the

provisions of paragraph 1 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise).

- (b) For the purposes of paragraph 4.2(c) of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement) the steps to be proposed by the Franchisee pursuant to that paragraph are those which ensure that the Ticketless Travel Rates will be below (that is, **better than**) the Target Ticketless Travel Benchmark.

6.3 Ticketless Travel Payment Adjustment

- (a) At the end of each Performance Calculation Year the Secretary of State shall use the Ticketless Travel Rates for that Performance Calculation Year to calculate the Franchisee's performance against the Annual Ticketless Travel Benchmark in accordance with the following formula:

$$ACTUAL = \frac{\sum A}{Y}$$

where:

ACTUAL is the average of the Ticketless Travel Rates for each of the Ticketless Travel Survey Periods in that Performance Calculation Year; and

$\sum A$ is the sum of the values of the Ticketless Travel Rates for the Ticketless Travel Survey Periods in that Performance Calculation Year; and

Y is the number of Ticketless Travel Survey Periods in that Performance Calculation Year;

- (b) If the value of ACTUAL for a Performance Calculation Year as calculated pursuant to paragraph 6.3(a) is:
- (i) more than (that is, **worse than**) the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year but less than (that is, better than) the Annual Breach Ticketless Travel Benchmark for that Performance Calculation Year then the Ticketless Travel Payment Adjustment payable by the Franchisee to the Secretary of State shall be an amount calculated as follows, noting that any such amount shall be a negative number which represents a payment by the Franchisee to the Secretary of State:

$$(TARGET - ACTUAL) \times 100 \times TTPY$$

where:

ACTUAL has the meaning given to it in paragraph 6.3(a);

TARGET is the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year; and

TTPY is:

$$TTP \times RPI \times TTSPn / 2$$

where:

TTP is the amount that is equal to the amount specified in the table in part 3 of Appendix 2 to this Schedule 6.3;

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

TTSPn is the number of full Ticketless Travel Survey Periods in that Performance Calculation Year.

- (ii) more than (that is, is **worse than**) the Annual Breach Ticketless Travel Benchmark for that Performance Calculation Year then the Ticketless Travel Payment Adjustment payable by the Franchisee to the Secretary of State shall be an amount calculated as follows, noting that any such amount shall be a negative number which represents a payment by the Franchisee to the Secretary of State:

$$(TARGET - BREACH) \times 100 \times TTPY$$

where:

BREACH is the Annual Breach Ticketless Travel Benchmark for that Performance Calculation Year;

TARGET is the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year; and

TTPY is

$$TTP \times RPI \times TTSPn / 2$$

TTP is the amount that is equal to the amount specified in the table in Part 3 of Appendix 2 to this Schedule 6.3.

RPI has the meaning given to it in Appendix 1 to Schedule 8.1A; and

TTSP_n is the number of full Ticketless Travel Survey Periods in that Performance Calculation Year.

For the avoidance of doubt, when conducting the calculations set out in this paragraph 6.3(b), the percentage amounts for ACTUAL, BREACH and TARGET shall be construed such that 2.7% is equal to 0.027.

- (c) In the event that, in respect of the relevant Franchisee Year occurring within the CIM Period, Net Revenue Support or Net Revenue Share is payable pursuant to Schedule 8.6A (Forecast Revenue Mechanism) then any amount payable by the Franchisee to the Secretary of State pursuant to paragraph 6.3(b)(i) or paragraph 6.3(b)(ii) shall fall due on the first Payment Date falling no less than seven (7) days after that determination of whether there is Net Revenue Support or Net Revenue Share (as applicable).
- (d) Any Ticketless Travel Payment Adjustment which is payable:
 - (i) in respect of the Final ICWC Franchisee Year; and
 - (ii) has not been made during the ICWC Period,

shall be determined in accordance with paragraph 6.1 above, but shall be paid within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such Ticketless Travel Payment Adjustment.

6.3A If a Performance Calculation Year does not include one (1) or more full Ticketless Travel Survey Periods then no Ticketless Travel Payment Adjustment shall be payable.

6.4 Calculations

The Secretary of State shall perform the calculations referred to in paragraphs 6.1 and 6.3 rounded to three decimal places, with the mid-point rounded up (e.g. 3.3771% rounded to 3.377% or 3.3775% rounded to 3.378%).

7. Operational Performance

7.1 Following the end of each Franchisee Year occurring within the CIM Period the Secretary of State shall, in addition to calculating any performance deduction payment payable in respect of the Annual Benchmarks in accordance with Schedule 7.1 (Operational Performance) using the values set out in the tables in the appendices to the same, separately calculate a CIM performance sum in accordance with the formula for calculating the relevant performance deduction payment in respect of the Annual Benchmarks as set out in paragraph 22 of Schedule 7.1 (Operational Performance) respectively, except that:

- (a) the value of **PDP_{CCIM}** in the table at Part 3 of Appendix 2 to this Schedule 6.3 shall be used in place of the value of **PDP_C** in the table at Part 2B of Appendix 1 to Schedule 7.1 (Operational Performance);
- (b) the value of **PDP_{MDCIM}** in the table at Part 3 of Appendix 2 to this Schedule 6.3 shall be used in place of the value of **PDP_{MD}** in the table at Part 2B of Appendix 2 to Schedule 7.1 (Operational Performance),

together (a) to (b) being the "**CIM Performance Sum**".

7.2 In the event that, in respect of the relevant Franchisee Year occurring within the CIM Period, Net Revenue Support or Net Revenue Share is payable pursuant to Schedule 8.6A (Forecast Revenue Mechanism) then the CIM Performance Sum is payable by the Franchisee to the Secretary of State on the first Payment Date falling no less than seven (7) days after that determination of whether there is Net Revenue Support or Net Revenue Share (as applicable).

7.3 Any CIM Performance Sum which is payable:

- (a) in respect of the Final ICWC Franchisee Year; and
- (b) has not been made during the ICWC Period,

shall be determined in accordance with paragraph 7.1 above, but shall be paid within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such CIM Performance Sum.

8. Changes in Numbers and Total Cost of Employees

8.1 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State increase or decrease the number of Franchise Employees whose role wholly or partially relates to (i) revenue protection, (ii) ticket office staff or (iii) the sale of tickets such that:

- (a) the total number of such Franchise Employees or the total cost per annum to the Franchisee and each other relevant employer of employing such Franchise Employees is increased; or
- (b) the total number of such Franchise Employees is decreased,

in each case, by more than five per cent (5%) in any Franchisee Year or seven point five per cent (7.5%) cumulatively across any two consecutive Franchisee Years that occur within a CIM Period as against the figures included at *[insert relevant cross reference]* of the ICWC Record of Assumptions¹⁹.

8.2 The Franchisee shall provide to the Secretary of State a report at the end of each Reporting Period which sets out:

- (a) the numbers of Franchise Employees that fall into the categories noted at (i), (ii) and (iii) in paragraph 8.1 above; and
- (b) in outline, the Franchisee's plan for recruitment to fill any vacancies where the vacant role wholly or partially relates to the categories noted at (i), (ii) and (iii) in paragraph 8.1 above.

9. Percentage Allocations

9.1 The Franchisee shall monitor on an on-going basis the Percentage Allocations in relation to Rail Products.

19 **Note to Bidders:** Please set out the total number of applicable Franchise Employees and applicable total cost per annum with sufficient clarity in the ICWC Record of Assumptions in order to allow the calculation in paragraph 7.1 to be carried out. The relevant cross-reference to the ROA will be added to the final form Franchise Agreement.

- 9.2 The Franchisee shall ensure that it manages and requests changes (including by disputing Percentage Allocations under the Ticketing and Settlement Agreement) to the Percentage Allocations in relation to Rail Products in such manner as would reasonably be expected from a skilled and experienced Train Operator bearing farebox revenue risk in relation to its franchise and seeking to maximise its profit consistent with its other obligations under its franchise agreement.
- 9.3 Except to the extent that the Secretary of State may consent from time to time the Franchisee shall not take any action or step which may result in its Percentage Allocation in respect of any Rail Product being reduced.
- 9.4 The Franchisee shall notify the Secretary of State before taking any such action or step and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take such action as the Secretary of State may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures. If the Secretary of State does not respond to the Franchisee's notification within one (1) month of the date of receipt of such notification, the Franchisee shall be entitled to take the action or step so notified.

10. The Bid Fares Strategy

- 10.1 Subject to paragraph 10.2 and paragraph 11, for each Fares Setting Round from the CIM Notification Date until the CIM Deactivation Date, the Franchisee shall Create such Fares as are specified in the Bid Fares Strategy.
- 10.2 The Franchisee shall, in advance of every Fares Setting Round from the CIM Notification Date until the CIM Deactivation Date review:
- (a) whether changes are necessary to the Bid Fares Strategy or the price or terms of any Fare specified in the Bid Fares Strategy; and
 - (b) if so, what the changes to the Bid Fares Strategy or any such Fare should be,
- and in doing so the Franchisee shall act in a reasonable and proper manner and to a Good Operator Standard.

11. Changes to the Bid Fares Strategy

- 11.1 By no later than week 4 of each Fares Setting Round, the Franchisee shall provide to the Secretary of State:
- (a) details (including supporting documentation) of any Fare specified in the Bid Fares Strategy where, in the reasonable opinion of the Franchisee, the Creation of such Fare would require the Franchisee to act other than to a Good Operator Standard, together with:
 - (i) a detailed explanation of the reasons for the Franchisee's opinion pursuant to paragraph 11.1(a) and, if applicable, an explanation of the changes that would need to be made to the Bid Fares Strategy to ensure that the Creation of any Fares specified in such amended Bid Fares Strategy in any subsequent Fares Setting Rounds would not require the Franchisee to act other than to a Good Operator Standard;
 - (ii) the details of such alternative Fare (including the Price or Child Price (as the case may be) and the terms of such alternative Fare) that it wishes to Create in place of the relevant Fare contained in the Bid Fares Strategy (plus supporting documentation to evidence that Creation of such Fare would not require the

Franchisee to act other than to a Good Operator Standard) ("**Alternative Fare**"); and

- (iii) written confirmation from a statutory director of the Franchisee which confirms that Creation of the Alternative Fare would not require the Franchisee to act other than to a Good Operator Standard. It shall be a contravention of the Franchise Agreement if any such written confirmation from a statutory director pursuant to this paragraph 11.1 is, in the reasonable opinion of the Secretary of State, in any material respect, untrue, inaccurate and/or misleading.

11.2 On receipt of the information required by paragraph 11.1, the Secretary of State may, by no later than week 9 of each Fares Setting Round, by notice to the Franchisee:-

- (a) confirm the Secretary of State's agreement to the modification of the Bid Fares Strategy as proposed by the Franchisee pursuant to paragraph 11.1 and the Bid Fares Strategy as so modified shall apply indefinitely (in accordance with the terms of this paragraph 11.2) or for such alternative period as the Secretary of State may specify; or
- (b) decline to agree the modification, in which case the provisions of paragraph 11.3 shall apply.

If the Secretary of State does not notify the Franchisee within the time specified, the Secretary of State shall be deemed to have declined to agree.

11.3 Where the Secretary of State declines (or is deemed to have declined) to agree a modification to the Bid Fares Strategy the Franchisee may refer the question on whether:

- (a) the Creation of the relevant Fare as specified in the Bid Fares Strategy would require the Franchisee to act other than to a Good Operator Standard; and/or
- (b) the Creation of the proposed Alternative Fare and associated modification of the Bid Fares Strategy would require the Franchisee to act other than to a Good Operator Standard,

in each case, to an independent expert at its own expense, subject to the provisions of paragraph 3.2 of Schedule 8.6A (Forecast Revenue Mechanism). Provided that the expert's opinion is received within thirty (30) Weekdays after the Franchisee received notice of the Secretary of State's decision in paragraph 11.2(b), the Secretary of State shall be required to take such expert's opinion into consideration when determining whether to uphold or change the Secretary of State's decision to decline to agree the modification. Until the determination of any such dispute the Franchisee shall Create such relevant Fare(s) as specified in the Bid Fares Strategy. Following determination of any such dispute the Secretary of State and the Franchisee shall take such steps as are required to give effect to such determination (including, if applicable, by making the required modification to the Bid Fares Strategy and by the Franchisee Creating the Alternative Fare at the next available opportunity and, in any event, at the next Fares Setting Round).

12. Industrial Action

12.1 During the CIM Period the occurrence of Industrial Action shall, at the sole discretion of the Secretary of State constitute a Qualifying Change where, and to the extent that, the Secretary of State determines that the Franchisee has experienced (or would otherwise in the absence of a Change have experienced) an increase in profit before tax or a reduction in losses before tax that is attributable to the Industrial Action (including as a consequence of any adjustments to Franchise Payments pursuant to Schedule 8.6 (Forecast Revenue Mechanism) being different from what they would have been if the Industrial Action had not occurred).

12.2 When making the determination in paragraph 12.1 the Secretary of State shall be entitled to disregard any increase in costs or reduction in revenue which in the Secretary of State's reasonable opinion was incurred or brought about by the Franchisee primarily for the purpose of circumventing the operation of paragraph 12.1.

13. NOT USED.

14. Additions to the Annual Business Plan

14.1 The Franchisee shall include, in each Annual Business Plan delivered to the Secretary of State in accordance with paragraph 10.2 of Schedule 11.2 (Management Information):

- (a) proposals for measures that the Franchisee could take to maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than the Franchisee had forecast; and
- (b) notwithstanding the Franchisee's obligations pursuant to paragraph 10.2 of this Schedule 6.3, proposals for any changes to the Bid Fares Strategy or the price or terms of any Fare specified in the same that the Franchisee (acting in a reasonable and proper manner and to a Good Operator Standard) considers necessary.

14.2 Within one (1) month of the provision of the Annual Business Plan by the Franchisee to the Secretary of State in accordance with paragraph 10.2 of Schedule 11.2 (Management Information), the Secretary of State shall raise in writing to the Franchisee any reasonable objections regarding the content of such Annual Business Plan.

14.3 Within one (1) month of the receipt of any objections pursuant to paragraph 14.2 of this Schedule 6.3 the Franchisee shall:

- (a) amend the Annual Business Plan to address such objections; or
- (b) provide reasons in writing to the Secretary of State as to why the Franchisee reasonably considers that no amendment to the Annual Business Plan is required.

15. Complimentary services provided within ticket price

15.1 [\[NOTE TO BIDDERS – This will be populated in line with the successful bidder's complimentary service provisions\]](#)

16. Service Quality Regime

The Franchisee shall comply with the provisions of paragraph 4 of Schedule 7.3 (Service Quality Regime).

17. NRPS Benchmarks

17.1 Following the end of each Franchisee Year occurring within the CIM Period, the Secretary of State shall, in addition to calculating any Additional Expenditure incurred in respect of each of the NRPS Measures in accordance with Schedule 7.2 (Customer Experience and Engagement) using the values set out in the tables in the appendices to the same, separately calculate a performance sum to be paid to the Secretary of State in respect of each of the NRPS Measures in accordance with paragraph 17.2 below (the "**CIM NRPS Performance Sum**").

17.2 The CIM NRPS Performance Sum shall be calculated in accordance with the formula for calculating the Additional Expenditure as set out in Appendix 2 to Schedule 7.2 (Customer Experience and Engagement) using the same values set out in the tables in the appendices to Schedule 7.2 so

that the CIM NRPS Performance Sum due in respect of any Franchisee Year shall be equal to the Additional Expenditure.

17.3 In the event that, in respect of the relevant Franchisee Year occurring within the CIM Period, Net Revenue Support or Net Revenue Share is payable pursuant to Schedule 8.6A (Forecast Revenue Mechanism) then the CIM NRPS Performance Sum is payable by the Franchisee to the Secretary of State on the first Payment Date falling no less than seven (7) days after that determination of whether there is Net Revenue Support or Net Revenue Share (as applicable).

17.4 Any CIM NRPS Performance Sum which is payable:

- (a) in respect of the Final ICWC Franchisee Year; and
- (b) has not been made during the ICWC Period,

shall be determined in accordance with paragraph 17.1 above, but shall be paid within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such CIM NRPS Performance Sum.

APPENDIX 1 TO SCHEDULE 6.3A

Minimum Marketing Spend

Column 1	Column 2²⁰	Column 3²¹
Franchisee Year	Minimum Marketing Spend	Minimum Marketing Team Spend
Year 2		
Year 3		
Year 4		
Year 5		
Year 6		
Year 7		
Reset Period		
Year 8		
Year 9		
Year 10		
Year 11		
Year 12		

20 **Note to Bidders:** Bidders to populate.

21 **Note to Bidders:** Bidders to populate.

APPENDIX 2 TO SCHEDULE 6.3A

Ticketless Travel Payments

Part 1 - Ticketless Travel Benchmark

Column 1		Column 2	Column 3
Performance Calculation Year	Ticketless Travel Survey Periods	Target Ticketless Travel Benchmark (%)	Breach Ticketless Travel Benchmark (%)
Year 2	The first to the sixth Reporting Period (inclusive) in 2020	2.4%	2.9%
	The seventh to the thirteenth Reporting Period (inclusive) in 2020	2.4%	2.9%
Year 3	The first to the sixth Reporting Period (inclusive) in 2021	2.4%	2.9%
	The seventh to the thirteenth Reporting Period (inclusive) in 2021	2.4%	2.9%
Year 4	The first to the sixth Reporting Period (inclusive) in 2022	2.4%	2.9%
	The seventh to the thirteenth Reporting Period (inclusive) in 2022	2.4%	2.9%
Year 5	The first to the sixth Reporting Period (inclusive) in 2023	2.4%	2.9%
	The seventh to the thirteenth Reporting Period (inclusive) in 2023	2.4%	2.9%
Year 6	The first to the sixth Reporting Period (inclusive) in 2024	2.4%	2.9%
	The seventh to the thirteenth Reporting Period (inclusive) in 2024	2.4%	2.9%
Year 7	The first to the sixth Reporting Period (inclusive) in 2025	2.4%	2.9%
	The seventh to the thirteenth Reporting Period (inclusive) in 2025	2.4%	2.9%

Year 8	The first to the sixth Reporting Period (inclusive) in 2026	2.4%	2.9%
	The seventh to the thirteenth Reporting Period (inclusive) in 2026	2.4%	2.9%
Year 9	The first to the sixth Reporting Period (inclusive) in 2027	2.4%	2.9%
	The seventh to the thirteenth Reporting Period (inclusive) in 2027	2.4%	2.9%
Year 10	The first to the sixth Reporting Period (inclusive) in 2028	2.4%	2.9%
	The seventh to the thirteenth Reporting Period (inclusive) in 2028	2.4%	2.9%
Year 11	The first to the sixth Reporting Period (inclusive) in 2029	2.4%	2.9%
	The seventh to the thirteenth Reporting Period (inclusive) in 2029	2.4%	2.9%
Year 12	The first to the sixth Reporting Period (inclusive) in 2030	2.4%	2.9%
	The seventh to the thirteenth Reporting Period (inclusive) in 2030	2.4%	2.9%

Part 2 - Annual Ticketless Travel Benchmark

Column 1	Column 2	Column 3
Performance Calculation Year	Annual Target Ticketless Travel Benchmark (%)	Annual Breach Ticketless Travel Benchmark (%)
Year 1	N/A	N/A
Year 2	2.4%	2.9%
Year 3	2.4%	2.9%
Year 4	2.4%	2.9%
Year 5	2.4%	2.9%
Year 6	2.4%	2.9%
Year 7	2.4%	2.9%
Reset Period		
Year 8	2.4%	2.9%
Year 9	2.4%	2.9%
Year 10	2.4%	2.9%
Year 11	2.4%	2.9%
Year 12	2.4%	2.9%

Part 3 - Payment Table

Definitions	Amount (£)
TTP	£10,000,000

APPENDIX 3 TO SCHEDULE 6.3A

Part 1

Column 1	Column 2
Payment	Amount (£)
PDP _{CCIM}	£6,000,000

Part 2

Column 1	Column 2
Payment	Amount (£)
PDP _{MDCIM}	£750,000

SCHEDULE 6.4A

Alliances

1. Co-operation with Network Rail

1.1 General Co-operation

The Franchisee shall use all reasonable endeavours to work with Network Rail to identify ways in which co-operation between the Franchisee and Network Rail can be enhanced, costs can be reduced and closer working and alignment of incentives can improve value for money within the parameters of this Agreement.

1.2 Sharing of information with Network Rail

The Franchisee shall to the extent reasonably requested by Network Rail share with Network Rail all relevant data including GPS data and data derived from geometry measurement systems, forward facing CCTV, driver advisory systems and train condition monitoring systems fitted to any rolling stock within the Train Fleet. Any such data provided to Network Rail shall be provided in such format as Network Rail may reasonably request without charge.

2. Compliance with the Alliance Agreement

2.1 The Franchisee shall enter into the Alliance Agreement with Network Rail (in the agreed terms marked AA or as otherwise approved by the Secretary of State) by the Start Date.

2.2 The Franchisee shall comply with the terms of the Alliance Agreement (and any Joint Task Agreement developed pursuant to the Alliance Agreement) for the duration of the Franchise Period, save where the Alliance Agreement is terminated by Network Rail or by the Franchisee in accordance with the provisions of this Schedule 6.4.

2.3 The Franchisee shall not amend the Alliance Agreement without the approval of the Secretary of State (such approval not to be unreasonably withheld).

3. Termination of the Alliance Agreement

3.1 The Franchisee shall not terminate the Alliance Agreement without the consent of the Secretary of State (such approval not to be unreasonably withheld).

3.2 The Franchisee shall notify the Secretary of State if:

- (a) it receives a termination notice from Network Rail under the Alliance Agreement within one (1) Weekday of the date of receipt of such termination notice;
- (b) Network Rail takes any steps to terminate the Alliance Agreement or warned in writing to terminate the Alliance Agreement within one (1) Weekday of becoming aware such steps have been taken or receipt of any notice threatening to terminate the Alliance Agreement;
- (c) the Franchisee considers (acting reasonably) that it may have taken an action or omitted to take an action which could constitute a material or persistent breach of the Alliance Agreement.

4. Reporting on the Alliance Agreement

4.1 The Franchisee shall report to the Secretary of State in writing each quarter on activities undertaken pursuant to the Alliance Agreement including:

- (a) progress on the Joint Tasks;
- (b) reasons for any delay or obstacles to implementing the Joint Tasks and actions being taken to mitigate such delay or obstacle, where appropriate;
- (c) a report on performance against any key performance indicators agreed between Network Rail and the Franchisee to monitor the performance of the Alliance Agreement,²²

and each report shall include written confirmation from Network Rail that it agrees with the content of such report.

22 **Note to Bidders:** The requirements for the report may be tailored by the DfT to reflect Bidders specific proposals on monitoring and KPIs.

SCHEDULE 7A

PERFORMANCE BENCHMARKS

Schedule 7.1A:	Operational Performance	
	Part A - Non-Financial Enforcement Regime	
	Part B - Financial Regime	
	Part C - Miscellaneous Provisions	
	Appendix 1: Cancellations Benchmarks and Annual Cancellations Benchmarks Part 1 - Cancellations Benchmark Table (Enforcement Regime) Part 2(A) - Annual Cancellations Benchmark Table (Financial Regime) Part 2(B) - Annual Cancellations Payment Table (Financial Regime)	
	Appendix 2: TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks Part 1 - TOC Minute Delay Benchmark Table (Enforcement Regime) Part 2(A) - Annual TOC Minute Delay Benchmark Table (Financial Regime) Part 2(B) - Annual TOC Minute Delay Payment Table (Financial Regime)	
	Appendix 3: T- 3 Measures (Financial Regime) Part 1(A) – Annual T-3 Table (Financial Regime) Part 1(B) – Annual T-3 Payment Table (Financial Regime)	
	Appendix 4: T-15 Measures (Financial Regime) Part 1(A) – Annual T-15 Table (Financial Regime) Part 1 (B) – Annual T-15 Payment Table (Financial Regime)	
	Appendix 5: All Cancellations Measures (Financial Regime) Part 1(A) – Annual All Cancellations Table (Financial Regime) Part 1(B) – Annual All Cancellations Payment Table (Financial Regime)	
	Schedule 7.2A:	Customer Experience and Engagement
		Appendix 1: NRPS Benchmark Table
	Schedule 7.3A:	Service Quality Regime
		Appendix 1: Service Quality Schedules

	Appendix 2: Service Quality Areas/SQR Benchmarks/Service Quality Indicators/Weightings
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SCHEDULE 7.1A

Operational Performance

1. Definitions, Charging Review, Track Access Agreement, Changes to Benchmarks and Annual Benchmarks and Notice of Performance Results

1.1 For the purposes of this Schedule 7.1 (Operational Performance) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

“Actual All Cancellations Performance Level” means, in respect of a Franchisee Year, the All Cancellations Figures most recently published by Network Rail for that Franchisee Year in relation to the Franchisee provided that where a Franchisee Year is less than thirteen (13) Reporting periods but six (6) Reporting Periods or more, then the Actual All Cancellations Performance Level for that Franchisee Year shall be as determined pursuant to paragraph 24.2 of this Schedule 7.1 (Operational Performance);

“Actual T-3 Performance Level” means, in respect of a Franchisee Year, the T-3 Figures most recently published by Network Rail for that Franchisee Year in relation to the Franchisee provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then the Actual T-3 Performance Level for that Franchisee Year shall be as determined pursuant to paragraph 24.2 of this Schedule 7.1 (Operational Performance);

“Actual T-15 Performance Level” means, in respect of a Franchisee Year, the T-15 Figures most recently published by Network Rail for that Franchisee Year in relation to the Franchisee provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then the Actual T-15 Performance Level for that Franchisee Year shall be as determined pursuant to paragraph 24.2 of this Schedule 7.1 (Operational Performance);

“Adjusted Annual Target Performance Level” means, in relation to an Annual T-3 Measure, Annual T-15 Measure and/or Annual All Cancellations Measure for any Franchisee Year, the number set out in Column 5 (Adjusted Annual Target Performance Level) of the Annual T-3 Table, Annual T-15 Table or Annual All Cancellations Table for that Franchisee Year;

“Annual All Cancellations Measure” means, for each Franchisee Year each of the benchmarks specified in the Annual All Cancellations Table for that Franchisee Year, provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more then the Annual All Cancellations Measure for that Franchisee Year shall be as determined pursuant to paragraph 23.1(h) of this Schedule 7.1;

“Annual All Cancellations Payment Table” means the table set out in Part 1(B) (Annual All Cancellations Table) of Appendix 8 (Annual All Cancellations Measures) of Schedule 7.1 (Operational Performance);

“Annual All Cancellations Table” means, the table set out in Part 1(A) (Annual All Cancellations Table) of Appendix 8 (Annual All Cancellations Measures) of Schedule 7.1 (Operational Performance);

“Annual Cancellations Benchmark” means for each Franchisee Year, each of the benchmarks specified in the Annual Cancellations Benchmark Table for that Franchisee Year, provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then the Annual Cancellations Benchmark for that Franchisee Year shall be as determined pursuant to paragraph 23.1(a) of Schedule 7.1 (Operational Performance);

“Annual Cancellations Benchmark Table” means the table set out in Part 2(A) (Annual Cancellations Benchmark Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) of Schedule 7.1 (Operational Performance);

“Annual Cancellations Payment Table” means the table set out in Part 2(B) (Annual Cancellations Payment Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) of Schedule 7.1 (Operational Performance);

“Annual Cap Performance Level” means in relation to:

- (a) an Annual Cancellations Benchmark for any Franchisee Year, the number set out in Column 2 (Annual Cap Performance Level) of the Annual Cancellations Benchmark Table for that Franchisee Year;
- (b) an Annual TOC Minute Delay Benchmark for any Franchisee Year, the number set out in Column 2 (Annual Cap Performance Level) of the Annual TOC Minute Delay Benchmark Table for that Franchisee Year;
- (c) NOT USED;
- (d) NOT USED; or
- (e) an Annual T-3 Measure, Annual T-15 Measure and/or Annual All Cancellations Measure for any Franchisee Year, the number set out in Column 2 (Annual Cap Performance Level) of the Annual T-3 Table, Annual T-15 Table or Annual All Cancellations Table for that Franchisee Year;

“Annual Floor Performance Level” means, in relation to:

- (a) an Annual Cancellations Benchmark for any Franchisee Year, the number set out in Column 4 (Annual Floor Performance Level) of the Annual Cancellations Benchmark Table for that Franchisee Year;
- (b) an Annual TOC Minute Delay Benchmark for any Franchisee Year the number set out in Column 4 (Annual Floor Performance Level) of the Annual TOC Minute Delay Benchmark Table for that Franchisee Year;

- (c) NOT USED;
- (d) NOT USED;
- (e) NOT USED; or
- (f) an Annual T-3 Measure, Annual T-15 Measure and/or Annual All Cancellations Measure for any Franchisee Year, the number set out in Column 4 (Annual Floor Performance Level) of the Annual T-3 Table, Annual T-15 Table or Annual All Cancellations Table for that Franchisee Year;

“Annual T-3 Measure” means, for each Franchisee Year each of the benchmarks specified in the Annual T-3 Table for that Franchisee Year, provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more then the Annual T-3 Measure for that Franchisee Year shall be as determined pursuant to paragraph 23.1(f) of Schedule 7.1 (Operational Performance);

“Annual T-3 Payment Table” means the table set out in Part 1(B) (Annual T-3 Measures) of Appendix 6 (Annual T-3 Measures) of Schedule 7.1 (Operational Performance);

“Annual T-3 Table” means the table set out in Part 1(A) of Appendix 6 (Annual T-3 Measures) of Schedule 7.1 (Operational Performance);

“Annual T-15 Measure” means, for each Franchisee Year each of the benchmarks specified in the Annual T-15 Table for that Franchisee Year, provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more then the Annual T-15 Measure for that Franchisee Year shall be as determined pursuant to paragraph 23.1 (g) of Schedule 7.1 (Operational Performance);

“Annual T-15 Payment Table” means the table set out in Part 1(B) of Appendix 7 (Annual T-15 Measures) of Schedule 7.1 (Operational Performance);

“Annual T-15 Table” means, the table set out in Part 1(A) of Appendix 7 (Annual T-15 Measures) of Schedule 7.1 (Operational Performance);

“Annual Target Performance Level” means, in relation to:

- (a) an Annual Cancellations Benchmark for any Franchisee Year, the number set out in Column 3 (Annual Target Performance Level) of the Annual Cancellations Benchmark Table for that Franchisee Year;
- (b) an Annual TOC Minute Delay Benchmark for any Franchisee Year, the number set out in Column 3 (Annual Target Performance Level) of the Annual TOC Minute Delay Benchmark Table for that Franchisee Year;
- (c) NOT USED;

(d) NOT USED;

(e) NOT USED;

“Annual TOC Minute Delay Benchmark” means, for each Franchisee Year, each of the benchmarks specified in the Annual TOC Minute Delay Benchmark Table for that Franchisee Year, provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then the Annual TOC Minute Delay Benchmark for that Franchisee Year shall be as determined pursuant to paragraph 23.1(b) of Schedule 7.1 (Operational Performance);

“Annual TOC Minute Delay Benchmark Table” means the table set out in Part 2(A) (Annual TOC Minute Delay Benchmark Table) of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) of Schedule 7.1 (Operational Performance);

“Annual TOC Minute Delay Payment Table” means the table set out in Part 2(B) (Annual TOC Minute Delay Payment Table) of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to Schedule 7.1 (Operational Performance);

“Benchmark” means any of the Cancellations Benchmark, or the TOC Minute Delay Benchmark (as the context may require);

“Bid Annual Target Performance Level” means, in relation to an Annual T-3 Measure, Annual T-15 Measure and/or Annual All Cancellations Measure for any Franchisee Year, the number set out in Column 3 (Bid Annual Target Performance Level) of the Annual T-3 Table, Annual T-15 Table or Annual All Cancellations Table for that Franchisee Year;

“Breach Performance Level” means, in relation to a Benchmark for any Reporting Period, the number set out in the relevant column of the Cancellations Benchmark Table and the TOC Minute Delay Benchmark Table (as the case may be) and in the row of the applicable table for that Reporting Period;

“Breach Reporting Stage” means the period from the first Reporting Period to the fifth Reporting Period of the second Franchisee Year;

“Cancellation” means a Passenger Service:

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

“Cancellations Benchmark” means any of the performance levels in respect of Cancellations and Partial Cancellations set out in the Cancellations Benchmark Table;

"Cancellations Benchmark Table"	means the table set out in Part 1 (Cancellations Benchmark Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) of Schedule 7.1 (Operational Performance);
"Performance Sum"	means each of the Cancellations Performance Sum, the TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum, and/or All Cancellations Performance Sum as determined pursuant to paragraph 22 of Schedule 7.1 (Operational Performance);
"Required Performance Improvement"	has the meaning given to it in paragraph 26.1 of Schedule 7.1 (Operational Performance);
"Subsequent Reporting Stage"	means the Reporting Periods falling after the expiry of the Breach Reporting Stage until the Expiry Date;
"Target Performance Level"	means, in relation to a Benchmark for any Reporting Period, the number set out in the relevant column of the Cancellations Benchmark Table and the TOC Minute Delay Benchmark Table (as the case may be) and in the row of the applicable table for that Reporting Period;
"TOC Minute Delay Benchmark"	means any of the performance levels in respect of Minutes Delay attributable to the Franchisee set out in the TOC Minute Delay Benchmark Table;
"TOC Minute Delay Benchmark Table"	means the table set out in Part 1 (TOC Minute Delay Benchmark Table) of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to Schedule 7.1 (Operational Performance);
"Undisputed Cancellation"	means a Cancellation that is not a Disputed Cancellation;
"Undisputed Network Rail Cancellation"	means a Network Rail Cancellation that is not a Disputed Cancellation;
"Undisputed Network Rail Partial Cancellation"	means a Network Rail Partial Cancellation that is not a Disputed Partial Cancellation; and
"Undisputed Partial Cancellation"	means a Partial Cancellation that is not a Disputed Partial Cancellation.

- 1.2 NOT USED.
- 1.3 The Cancellations Benchmarks are set out in the table in Part 1 of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) to this Schedule.
- 1.4 The Annual Cancellations Benchmarks are set out in the table in Part 2(A) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) of this Schedule.

- 1.5 The TOC Minute Delay Benchmarks are set out in the table in Part 1 of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule.
- 1.6 The Annual TOC Minute Delay Benchmarks are set out in the table in Part 2(A) of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule.
- 1.7 NOT USED.
- 1.8 NOT USED.
- 1.9 NOT USED.
- 1.10 NOT USED.
- 1.10A The Annual T-3 Measures are set out in the table in Part 1(A) of Appendix 6 (Annual T-3 Measures) to this Schedule.
- 1.10B The Annual T-15 Measures are set out in the table in Part 1(A) of Appendix 7 (Annual T-15 Measures) to this Schedule.
- 1.10C The Annual All Cancellations Measures are set out in the table in Part 1(A) of Appendix 8 (Annual All Cancellations Measures) to this Schedule.

1.11 Charging Review

The Secretary of State may at any time after a Charging Review vary, on giving not less than three (3) months' notice in writing, any of the Cancellations Benchmarks, Annual Cancellations Benchmarks, TOC Minute Delay Benchmarks, the Annual TOC Minute Delay Benchmarks, Annual T-3 Measure, Annual T-15 Measure and/or Annual All Cancellations Measure (as the case may be) to reflect the Secretary of State's reasonable view of the performance trajectory set as part of such Charging Review. Where the Secretary of State exercises the Secretary of State's right pursuant to this paragraph 1.11, the relevant Cancellations Benchmark Table, Annual Cancellations Benchmark Table, TOC Minute Delay Benchmark Table, Annual TOC Minute Delay Benchmark Table, Annual T-3 Table, Annual T-15 Table and/or Annual All Cancellations Table shall be deemed to have been amended accordingly. The exercise by the Secretary of State of the Secretary of State's rights pursuant to this paragraph 1.11 shall be a Change.

1.12 Track Access Agreement

The Franchisee agrees with the Secretary of State to comply with the requirements of the Network Rail Track Access Agreement in respect of cancellations attribution (Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations) and Minutes Delay attribution.

1.13 Changes to Benchmarks and Annual Benchmarks on the occurrence of a Change

Paragraph 5 of Schedule 9.1A (Financial and Other Consequences of Change) sets out the circumstances and the process by which any adjustments to Benchmarks and Annual Benchmarks consequent upon the occurrence of a Change will be determined and effected.

1.14 Notice of Performance Results

As soon as reasonably practicable after the end of each Reporting Period and each Franchisee Year, the Secretary of State shall notify the Franchisee of the results of the calculations performed pursuant to this Schedule 7.1.

2. Reporting Requirements

The Franchisee shall at the end of each Reporting Period and in accordance with the relevant requirements of Appendix 2 (Operational Performance Information) of Schedule 11.2 (Management Information) report to the Secretary of State the operational information as specified in Appendix 2 (Operational Performance Information) of Schedule 11.2 (Management Information) and required for the purposes of the Secretary of State undertaking any the calculations required to be performed by the Secretary of State pursuant to this Schedule 7.1.

Part 1 – Non Financial Enforcement Regime

3. Cancellation Calculation: Value of A

Table 1		
A	=	$\frac{B}{C} \times 100$
where:		
B		<p>is the total number of Cancellations or Partial Cancellations of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, on the basis that:</p> <ul style="list-style-type: none"> (a) a Cancellation shall count as 1; (b) a Partial Cancellation shall count as 0.5; and (c) any Cancellations or Partial Cancellations during that Reporting Period which were caused by: <ul style="list-style-type: none"> (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (ii) the occurrence or continuing effect of a Force Majeure Event, <p>shall, if the Franchisee has complied with paragraph 17.1 of this Schedule 7.1, be disregarded in determining such total number of Cancellations and Partial Cancellations;</p>
C		<p>is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, disregarding, if the Franchisee has complied with paragraph 17.1 of this Schedule 7.1, any Cancellations or Partial Cancellations during that Reporting Period which were caused by:</p> <ul style="list-style-type: none"> (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event.

4. Cancellation Calculations during the Initial Reporting Stage

For each Reporting Period during the Initial Reporting Stage the Secretary of State shall calculate the Franchisee's performance against the Cancellations Benchmark in accordance with the following formula:

Table 2		
A	=	$\frac{B}{C} \times 100$
where:		
	B	has the meaning given to it in paragraph 3 in respect of that Reporting Period; and
	C	has the meaning given to it in paragraph 3 in respect of that Reporting Period; and

5. Cancellation Calculation during the Breach Reporting Stage

For each Reporting Period during the Breach Reporting Stage the Secretary of State shall calculate the Franchisee's performance against the Cancellations Benchmark in accordance with the following formula:

Table 3	
$\frac{A+D}{N}$	
where:	
A	has the meaning given to it in paragraph 3 in respect of that Reporting Period;
D	is the sum of the values of A in each of the Reporting Periods immediately preceding that Reporting Period; and
N	is the number of Reporting Periods that have elapsed since the Start Date.

6. Cancellation Calculations during the Subsequent Reporting Stage

For each Reporting Period during the Subsequent Reporting Stage the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Cancellations Benchmark in accordance with the following formula:

Table 4	
$\frac{A+E}{13}$	
where:	
A	has the meaning given to it in paragraph 3 in respect of that Reporting Period; and
E	is the sum of the values of A in each of the twelve (12) Reporting Periods preceding that Reporting Period.

7. NOT USED.

8. NOT USED.

9. NOT USED.

10. TOC Minute Delay Calculations during the Initial Reporting Stage

For each Reporting Period during the Initial Reporting Stage the Secretary of State shall calculate the Franchisee's performance against the TOC Minute Delay Benchmark in accordance with the following formula:

Table 5	
$\frac{MD_{TRP}}{H_{TRP}}$	
where:	
MD_{TRP}	is the Minutes Delay that are attributable to the Franchisee in such Reporting Period; and
H_{TRP}	is ascertained as follows:

	$\frac{Y}{1000}$	
	where:	
Y	is the Actual Train Mileage in that Reporting Period.	

11. TOC Minute Delay Calculations during the Breach Reporting Stage

For each Reporting Period during the Breach Reporting Stage the Secretary of State shall calculate the Franchisee's performance against the TOC Minute Delay Benchmark in accordance with the following formula:

Table 6		
$\frac{MD_{BRP}}{H_{BRP}}$		
where:		
MD_{BRP}	is the sum of the number of Minutes Delay that are attributable to the Franchisee:	
	(a) in that Reporting Period; and	
	(b) in each of the Reporting Periods immediately preceding that Reporting Period; and	
H_{BRP}	is ascertained as follows:	
	$\frac{Z}{1000}$	
	where:	
Z	is the sum of the Actual Train Mileage:	
	(a) in that Reporting Period; and	
	(b) in each of the Reporting Periods immediately preceding that Reporting Period.	

12. TOC Minute Delay Calculations during the Subsequent Reporting Stage

For each Reporting Period during the Subsequent Reporting Stage the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the TOC Minute Delay Benchmark in accordance with the following formula:

Table 7	
$\frac{MD_{SRP}}{H_{SRP}}$	
where:	
MD_{SRP}	is the sum of Minutes Delay that are attributable to the Franchisee:
	(a) in that Reporting Period; and
	(b) in each of the twelve (12) Reporting Periods immediately preceding that Reporting Period; and
H_{SRP}	is ascertained as follows:
	$\frac{V}{1000}$
	where:
V	is the sum of Actual Train Mileage:
	(a) in that Reporting Period; and
	(b) in each of the twelve (12) Reporting Periods immediately preceding that Reporting Period.

13. NOT USED.

14. NOT USED.

15. NOT USED.

16. Calculations

The Secretary of State shall perform the calculations referred to in paragraphs 4, 5, 6, 10, 11 and 12 rounded to two (2) decimal places with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

17. Service Recovery Plans and Force Majeure

- 17.1 The Franchisee shall, within eight (8) weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such other period as may be agreed by the Secretary of State), submit to the Secretary of State all the comprehensive records (as more particularly described in the "Approved Code of Practice 2013" or any document of a similar equivalent nature) which relate to the implementation of such Service Recovery Plan during that Reporting Period.
- 17.2 In performing the calculations pursuant to paragraphs 10, 11 and 12 the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

18. Consequences for Poor Performance – Benchmarks

- 18.1 The Franchisee shall ensure that its performance in each Reporting Period (other than any Reporting Period falling within the Initial Reporting Stage), as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, is **not equal to or worse than** each Breach Performance Level in respect of each such Reporting Period.
- 18.2 NOT USED.
- 18.3 Without limiting the provisions of paragraph 18.5 below and paragraph 22 below, if in any Reporting Period (other than any Reporting Period falling within the Initial Reporting Stage) the Franchisee's performance, as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, is **equal to or worse than** any Breach Performance Level relating to a Benchmark in respect of that Reporting Period, then a contravention of the Franchise Agreement shall occur and the Secretary of State may serve a Remedial Plan Notice in accordance with the provisions of paragraph 2 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement).
- 18.4 For the purposes of paragraph 4.2(c) of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement) the steps to be proposed by the Franchisee pursuant to that paragraph are those which ensure that the Franchisee's performance against the relevant Benchmark will be **equal to or better than** the Target Performance Level relating to such Benchmark.
- 18.5 Certain consequences of the Franchisee's performance being **equal to or worse than** the Breach Performance Levels and Default Performance Levels relating to each Benchmark are set out in Schedule 10 (Remedies, Events of Default and Termination Events).

Part 2 – Financial Regime

19. Annual Cancellations Calculations

At the end of each Franchisee Year the Secretary of State shall calculate the Franchisee's performance against the Annual Cancellations Benchmark in accordance with the following formula:

Table 8		
ACTUAL_c	=	$\frac{\Sigma A}{X}$
where:		
ΣA	is the sum of the values of A (A being as defined in paragraph 3 above) for each of the Reporting Periods in that Franchisee Year; and	
X	(a) in respect of a Franchisee Year consisting of thirteen (13) Reporting Periods equals, 13; or (b) in respect of a Franchisee Year consisting of less than thirteen (13) Reporting Periods, the number of Reporting Periods in such Franchisee Year.	

20. Annual TOC Minute Delay Calculations

20.1 At the end of each Franchisee Year the Secretary of State shall calculate the Franchisee's performance against the Annual TOC Minute Delay Benchmark in accordance with the following formula:

Table 9		
ACTUAL_{MD}	=	$\frac{AA}{AD}$
where:		
AA	is the sum of the number of Minutes Delay that are attributable to the Franchisee in each Reporting Period in that Franchisee Year; and	
AD	is ascertained as follows:	
	$\frac{AB}{1000}$	
	where:	
AB	is the sum of the Actual Train Mileage in each Reporting Period in that Franchisee Year.	

20.2 In performing the calculations pursuant to paragraph 20, the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

21. NOT USED.

22. Performance Sum Payments

22.1 The provisions of this paragraph 22 shall not apply in relation to any Franchisee Year which is less than six (6) Reporting Periods.

22.2 At the end of each Franchisee Year the Secretary of State shall, in accordance with this paragraph 22, calculate:

(a) the Cancellations Performance Sum, the TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum and All Cancellations Performance Sum payable by the Secretary of State to the Franchisee or required to be incurred (or in respect of the Final ICWC Franchisee Year to be paid) by the Franchisee (as the case may be); and

(b) **NOT USED.**

22.3 Cancellations Performance Sum

For any Franchisee Year the Cancellations Performance Sum shall be calculated as follows:

Table 10	
ACTUAL_c	is the Franchisee’s performance for that Franchisee Year as calculated pursuant to paragraph 19 above;
TARGET_c	is the Annual Target Performance Level relating to that Annual Cancellations Benchmark for that Franchisee Year;
CAP_c	is the Annual Cap Performance Level relating to that Annual Cancellations Benchmark for that Franchisee Year; and
FLOOR_c	is the Annual Floor Performance Level relating to that Annual Cancellations Benchmark for that Franchisee Year.

Table 11			
	Column 1	Column 2	Column 3
	Value of ACTUAL_c is	Cancellations Performance Sum payable by the Secretary of State to the Franchisee shall be an amount calculated by the following Table	Cancellations Performance Sum to be incurred or to be paid by the Franchisee to Secretary of State shall be an amount calculated by the following Table
1	$\leq CAP_c$	Table 12	
2	$> CAP_c \text{ and } < TARGET_c$	Table 13	
3	$\geq TARGET_c \text{ and } < FLOOR_c$		Table 14
4	$\geq FLOOR_c$		Table 15

Table 12				
$(TARGET_c - CAP_c) \times PB_c$				
where:				
TARGET_c	has the meaning given to it in this paragraph 22.3 (Table 10);			
CAP_c	has the meaning given to it in this paragraph 22.3 (Table 10); and			
PB_c (performance bonus payment)	is, in respect of that Franchisee Year, an amount calculated as follows:			
	$PBP_c \times RPI$			
	where:			
	<table border="1"> <tr> <td>PBP_c</td> <td>the amount specified in row 1 (PBP_c) of Column 2 of the Annual Cancellation Payment Table; and</td> </tr> <tr> <td>RPI</td> <td>has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).</td> </tr> </table>	PBP_c	the amount specified in row 1 (PBP _c) of Column 2 of the Annual Cancellation Payment Table; and	RPI
PBP_c	the amount specified in row 1 (PBP _c) of Column 2 of the Annual Cancellation Payment Table; and			
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).			

Table 13				
(TARGET_c – ACTUAL_c) x PB_c				
where:				
TARGET_c	has the meaning given to it in this paragraph 22.3 (Table 10);			
ACTUAL_c	has the meaning given to it in this paragraph 22.3 (Table 10); and			
PB_c (performance bonus payment)	is, in respect of that Franchisee Year, an amount calculated as follows:			
	PB _{Pc} x RPI			
	where:			
	<table border="1"> <tr> <td>PB_{Pc}</td> <td>the amount specified in row 1 (PB_{Pc}) of Column 2 of the Annual Cancellation Payment Table; and</td> </tr> <tr> <td>RPI</td> <td>has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).</td> </tr> </table>	PB _{Pc}	the amount specified in row 1 (PB _{Pc}) of Column 2 of the Annual Cancellation Payment Table; and	RPI
PB _{Pc}	the amount specified in row 1 (PB _{Pc}) of Column 2 of the Annual Cancellation Payment Table; and			
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).			

Table 14				
(ACTUAL_c - TARGET_c) x PD_c				
where:				
ACTUAL_c	has the meaning given to it in this paragraph 22.3 (Table 10);			
TARGET_c	has the meaning given to it in this paragraph 22.3 (Table 10); and			
PD_c (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:			
	PDP _c x RPI			
	where:			
	<table border="1"> <tr> <td>PDP_c</td> <td>the amount specified in row 2 (PDP_c) in Column 2 of the Annual Cancellations Payment Table; and</td> </tr> <tr> <td>RPI</td> <td>has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).</td> </tr> </table>	PDP _c	the amount specified in row 2 (PDP _c) in Column 2 of the Annual Cancellations Payment Table; and	RPI
PDP _c	the amount specified in row 2 (PDP _c) in Column 2 of the Annual Cancellations Payment Table; and			
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).			

Table 15	
(FLOOR_c - TARGET_c) x PD_c	
where:	
FLOOR_c	has the meaning given to it in this paragraph 22.3(Table 10);
TARGET_c	has the meaning given to it in this paragraph 22.3 (Table 10); and
PD_c	is, in respect of that Franchisee Year, an amount calculated as follows:
(performance deduction payment)	PDP _c x RPI
	where:
PDP _c	the amount specified in row 2 (PDP _c) in Column 2 of the Annual Cancellations Payment Table; and
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).

22.4 TOC Minute Delay Performance Sum

For any Franchisee Year the TOC Minute Delay Performance Sum is calculated as follows:

Table 16	
ACTUAL_{MD}	is the Franchisee's performance for that Franchisee Year as calculated pursuant to paragraph 20 above;
TARGET_{MD}	is the Annual Target Performance Level relating to that Annual TOC Minute Delay Benchmark for that Franchisee Year;
CAP_{MD}	is the Annual Cap Performance Level relating to that Annual TOC Minute Delay Benchmark for that Franchisee Year; and
FLOOR_{MD}	is the Annual Floor Performance Level relating to that Annual TOC Minute Delay Benchmark for that Franchisee Year.

Table 17			
	Column 1	Column 2	Column 3
	Value of ACTUAL_{MD} is	TOC Minute Delay Performance Sum payable by the Secretary of State to the Franchisee shall be an amount calculated by the following Table	TOC Minute Delay Performance Sum to be incurred or to be paid by the Franchisee to Secretary of State shall be an amount calculated by the following Table
1	$\leq CAP_{MD}$	Table 18	
2	$> CAP_{MD}$ and $< TARGET_{MD}$	Table 19	
3	$\geq TARGET_{MD}$ and $< FLOOR_{MD}$		Table 20
4	$\geq FLOOR_{MD}$		Table 21

Table 18				
$(TARGET_{MD} - CAP_{MD}) \times PB_{MD}$				
where:				
TARGET_{MD}	has the meaning given to it in this paragraph 22.4 (Table 16);			
CAP_{MD}	has the meaning given to it in this paragraph 22.4 (Table 16); and			
PB_{MD} (performance bonus payment)	is, in respect of that Franchisee Year, an amount calculated as follows:			
	$PBP_{MD} \times RPI$			
	where:			
	<table border="1" style="width: 100%;"> <tr> <td style="width: 30%;">PBP_{MD}</td> <td>the amount specified in row 1 (PBP_{MD}) of Column 2 of the Annual TOC Minute Delay Payment Table; and</td> </tr> <tr> <td>RPI</td> <td>has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).</td> </tr> </table>	PBP_{MD}	the amount specified in row 1 (PBP _{MD}) of Column 2 of the Annual TOC Minute Delay Payment Table; and	RPI
PBP_{MD}	the amount specified in row 1 (PBP _{MD}) of Column 2 of the Annual TOC Minute Delay Payment Table; and			
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).			

Table 19		
(TARGET_{MD} – ACTUAL_{MD}) x PB_{MD}		
where:		
TARGET_{MD}	has the meaning given to it in this paragraph 22.4 (Table 16);	
ACTUAL_{MD}	has the meaning given to it in paragraph 20 above; and	
PB_{MD} (performance bonus payment)	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PBP _{MD} x RPI	
	where:	
	PBP _{MD}	the amount specified in row 1 (PBP _{MD}) of Column 2 of the Annual TOC Minute Delay Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).

Table 20		
(ACTUAL_{MD} – TARGET_{MD}) x PD_{MD}		
where:		
ACTUAL_{MD}	has the meaning given to it in paragraph 20 above;	
TARGET_{MD}	has the meaning given to it in this paragraph 22.4 (Table 16); and	
PD_{MD} (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PDP _{MD} x RPI	
	where:	
	PDP _{MD}	the amount specified in row 2 (PDP _{MD}) of Column 2 of the Annual TOC Minute Delay Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).

Table 21		
(FLOOR_{MD} – TARGET_{MD}) x PD_{MD}		
where:		
FLOOR_{MD}	has the meaning given to it in this paragraph 22.4 (Table 16);	
TARGET_{MD}	has the meaning given to it in paragraph 22.4 (Table 16); and	
PD_{MD} (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PDP _{MD} x RPI	
	where:	
	PDP _{MD}	the amount specified in row 2 (PDP _{MD}) of Column 2 of the Annual TOC Minute Delay Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).

22.5 NOT USED.

22.6 NOT USED.

22.7 NOT USED.

22.7A T-3 Performance Sum

For any Franchisee Year the T-3 Performance Sum is calculated as follows:

Table UT3-A	
ACTUAL_{T-3}	is the Actual T-3 Performance Level for that Franchisee Year;
TARGET_{T-3ADJ}	is the Adjusted Annual Target Performance Level relating to that Annual T-3 Measure for that Franchisee Year;
TARGET_{T-3BID}	is the Bid Annual Target Performance Level relating to that Annual T-3 Measure for that Franchisee Year;
TARGET_{T-3A}	is: (a) where TARGET _{T-3ADJ} is higher than TARGET _{T-3BID} , TARGET _{T-3ADJ} ; or (b) where TARGET _{T-3ADJ} is lower than TARGET _{T-3BID} , TARGET _{T-3BID} ;
TARGET_{T-3B}	is: (a) where TARGET _{T-3BID} is higher than TARGET _{T-3ADJ} , TARGET _{T-3ADJ} ; or (b) where TARGET _{T-3BID} is lower than TARGET _{T-3ADJ} , TARGET _{T-3BID} ;
CAP_{T-3}	is the Annual Cap Performance Level relating to that Annual T-3 Measure for that Franchisee Year; and
FLOOR_{T-3}	is the Annual Floor Performance Level relating to that Annual T-3 Measure for that Franchisee Year.

Table UT3-B			
	Column 1	Column 2	Column 2
	Value of ACTUAL _{T-3} is	T-3 Performance Sum payable by the Secretary of State to the Franchisee shall be	T-3 Performance Sum payable by the Franchisee to Secretary of State shall be
1.	$\geq CAP_{T-3}$	an amount calculated by Table UT3-C	
2.	$< CAP_{T-3}$ and $> TARGET_{T-3A}$	an amount calculated by Table UT3-D	
3.	$\leq TARGET_{T-3A}$ and $> TARGET_{T-3B}$	nil	nil
4.	$\leq TARGET_{T-3B}$ and $> FLOOR_{T-3}$		an amount calculated by Table UT3-E
5.	$\leq FLOOR_{T-3}$		an amount calculated by Table UT3-F

Table UT3-C	
$(CAP_{T-3} - TARGET_{T-3A}) \times PB_{T-3}$	
where:	
CAP _{T-3}	has the meaning given to it in paragraph 22.7A (Table UT3-A);
TARGET _{T-3A}	has the meaning given to it in paragraph 22.7A (Table UT3-A); and
PB _{T-3}	is, in respect of that Franchisee Year, an amount calculated as follows:
	$PBP_{T-3} \times RPI$
(performance bonus payment)	where:
PBP _{T-3}	the amount specified in row 1 (PBP _{T-3}) of Column 2 of the Annual T-3 Payment Table; and
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).

Table UT3-D		
(ACTUAL_{T-3} – TARGET_{T-3A}) x PB_{T-3}		
where:		
ACTUAL_{T-3}	means the Actual T-3 Performance Level for that Franchisee Year;	
TARGET_{T-3A}	has the meaning given to it in paragraph 22.7A (Table UT3-A); and	
PB_{T-3} (performance bonus payment)	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PB _{T-3} x RPI	
	where:	
	PB _{T-3}	the amount specified in row 1 (PB _{T-3}) of Column 2 of the Annual T-3 Payment Table; and
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).	

Table UT3-E		
(TARGET_{T-3B} – ACTUAL_{T-3}) x PD_{T-3}		
where:		
TARGET_{T-3B}	has the meaning given to it in paragraph 22.7A (Table UT3-A);	
ACTUAL_{T-3}	means the Actual T-3 Performance Level for that Franchisee Year; and	
PD_{T-3} (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PDP _{T-3} x RPI	
	where:	
	PDP _{T-3}	the amount specified in row 2 (PDP _{T-3}) of Column 3 of the Annual T-3 Payment Table; and
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).	

Table UT3-F		
(TARGET_{T-3B} – FLOOR_{T-3}) x PD_{T-3}		
where:		
TARGET_{T-3B}	has the meaning given to it in paragraph 22.7A (Table UT3-A);	
FLOOR_{T-3}	has the meaning given to it in paragraph 22.7A (Table UT3-A); and	
PD_{T-3} (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PDP _{T-3} x RPI	
	where:	
	PDP _{T-3}	the amount specified in row 2 (PDP _{T-3}) of Column 3 of the Annual T-3 Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).

22.7B T-15 Performance Sum

For any Franchisee Year the T-15 Performance Sum is calculated as follows:

Table UT15-A	
ACTUAL_{T-15}	is the Actual T-15 Performance Level for that Franchisee Year;
TARGET_{T-15ADJ}	is the Adjusted Annual Target Performance Level relating to that Annual T-15 Measure for that Franchisee Year;
TARGET_{T-15BID}	is the Bid Annual Target Performance Level relating to that Annual T-15 Measure for that Franchisee Year;
TARGET_{T-15A}	is: (a) where TARGET _{T-15ADJ} is higher than TARGET _{T-15BID} , TARGET _{T-15ADJ} ; or (b) where TARGET _{T-15ADJ} is lower than TARGET _{T-15BID} , TARGET _{T-15BID} ;
TARGET_{T-15B}	is: (a) where TARGET _{T-15BID} is higher than TARGET _{T-15ADJ} , TARGET _{T-15ADJ} ; or (b) where TARGET _{T-15BID} is lower than TARGET _{T-15ADJ} , TARGET _{T-15BID} ;
CAP_{T-15}	is the Annual Cap Performance Level relating to that Annual T-15 Measure for that Franchisee Year; and
FLOOR_{T-15}	is the Annual Floor Performance Level relating to that Annual T-15 Measure for that Franchisee Year.

Table UT15-B			
	Column 1	Column 2	Column 2
	Value of ACTUAL_{T-15} is	T-15 Performance Sum payable by the Secretary of State to the Franchisee shall be	T-15 Performance Sum payable by the Franchisee to Secretary of State shall be
1.	$\geq CAP_{T-15}$	an amount calculated by Table UT15-C	
2.	$< CAP_{T-15}$ and $> TARGET_{T-15A}$	an amount calculated by Table UT15-D	
3.	$\leq TARGET_{T-15A}$ and $> TARGET_{T-15B}$	nil	nil
4.	$\leq TARGET_{T-15B}$ and $> FLOOR_{T-15}$		an amount calculated by Table UT15-E

5.	$\leq FLOOR_{T-15}$		an amount calculated by Table UT15-F
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Table UT15-C				
$(CAP_{T-15} - TARGET_{T-15A}) \times PB_{T-15}$				
where:				
CAP_{T-15}	has the meaning given to it in paragraph 22.7B (Table UT15-A);			
TARGET_{T-15A}	has the meaning given to it in paragraph 22.7B (Table UT15-A); and			
PB_{T-15} (performance bonus payment)	is, in respect of that Franchisee Year, an amount calculated as follows:			
	$PBP_{T-15} \times RPI$			
	where:			
	<table border="1" style="width: 100%;"> <tr> <td style="width: 20%;">PBP_{T-15}</td> <td>the amount specified in row 1 (PBP_{T-15}) of Column 2 of the Annual T-15 Payment Table; and</td> </tr> <tr> <td>RPI</td> <td>has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).</td> </tr> </table>	PBP_{T-15}	the amount specified in row 1 (PBP _{T-15}) of Column 2 of the Annual T-15 Payment Table; and	RPI
PBP_{T-15}	the amount specified in row 1 (PBP _{T-15}) of Column 2 of the Annual T-15 Payment Table; and			
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).			

Table UT15-D				
$(ACTUAL_{T-15} - TARGET_{T-15A}) \times PB_{T-15}$				
where:				
ACTUAL_{T-15}	means the Actual T-15 Performance Level for that Franchisee Year;			
TARGET_{T-15A}	has the meaning given to it in paragraph 22.7B (Table UT15-A); and			
PB_{T-15} (performance bonus payment)	is, in respect of that Franchisee Year, an amount calculated as follows:			
	$PBP_{T-15} \times RPI$			
	where:			
	<table border="1" style="width: 100%;"> <tr> <td style="width: 20%;">PBP_{T-15}</td> <td>the amount specified in row 1 (PBP_{T-15}) of Column 2 of the Annual T-15 Payment Table; and</td> </tr> <tr> <td>RPI</td> <td>has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).</td> </tr> </table>	PBP_{T-15}	the amount specified in row 1 (PBP _{T-15}) of Column 2 of the Annual T-15 Payment Table; and	RPI
PBP_{T-15}	the amount specified in row 1 (PBP _{T-15}) of Column 2 of the Annual T-15 Payment Table; and			
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).			

Table UT15-E	
(TARGET_{T-15B} – ACTUAL_{T-15}) x PD_{T-15}	
where:	
TARGET_{T-15B}	has the meaning given to it in paragraph 22.7B (Table UT15-A);
ACTUAL_{T-15}	means the Actual T-15 Performance Level for that Franchisee Year; and
PD_{T-15} (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:
	PDP _{T-15} x RPI
	where:
	PDP _{T-15}
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).

Table UT15-F	
(TARGET_{T-15B} – FLOOR_{T-15}) x PD_{T-15}	
where:	
TARGET_{T-15B}	has the meaning given to it in paragraph 22.7B (Table UT15-A);
FLOOR_{T-15}	has the meaning given to it in paragraph 22.7B (Table UT15-A)); and.
PD_{T-15} (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:
	PDP _{T-15} x RPI
	where:
	PDP _{T-15}
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).

22.7C All Cancellations Performance Sum

For any Franchisee Year the All Cancellations Performance Sum is calculated as follows:

Table UAC-A	
ACTUAL_{AC}	is the Actual All Cancellations Performance Level for that Franchisee Year;
TARGET_{AC-ADJ}	is the Adjusted Annual Target Performance Level relating to that Annual All Cancellations Measure for that Franchisee Year;
TARGET_{AC-BID}	is the Bid Annual Target Performance Level relating to that Annual All Cancellations Measure for that Franchisee Year;
TARGET_{AC-A}	is: (a) where TARGET _{AC-ADJ} is higher than TARGET _{AC-BID} , TARGET _{AC-BID} ; or (b) where TARGET _{AC-ADJ} is lower than TARGET _{AC-BID} , TARGET _{AC-ADJ} ;
TARGET_{AC-B}	is: (a) where TARGET _{AC-BID} is higher than TARGET _{AC-ADJ} , TARGET _{AC-BID} ; or (b) where TARGET _{AC-BID} is lower than TARGET _{AC-ADJ} , TARGET _{AC-ADJ} ;
CAP_{AC}	is the Annual Cap Performance Level relating to that Annual All Cancellations Measure for that Franchisee Year; and
FLOOR_{AC}	is the Annual Floor Performance Level relating to that Annual All Cancellations Measure for that Franchisee Year.

Table UAC-B			
	Column 1	Column 2	Column 2
	Value of ACTUAL_{AC} is	All Cancellations Performance Sum payable by the Secretary of State to the Franchisee shall be	All Cancellations Performance Sum payable by the Franchisee to Secretary of State shall be
1.	$\leq CAP_{AC}$	an amount calculated by Table UAC-C	
2.	$> CAP_{AC}$ and $< TARGET_{AC-A}$	an amount calculated by Table UAC-D	
3.	$\geq TARGET_{AC-A}$ and $< TARGET_{AC-B}$	nil	nil
4.	$\geq TARGET_{AC-B}$ and $< FLOOR_{AC}$		an amount calculated by Table UAC-E
5.	$\geq FLOOR_{AC}$		an amount calculated by Table UAC-F

Table UAC-C				
(TARGET_{AC-A} – CAP_{AC}) x PB_{AC}				
where:				
TARGET_{AC-A}	has the meaning given to it in paragraph 22.7C (Table UAC-A);			
CAP_{AC}	has the meaning given to it in paragraph 22.7C (Table UAC-A); and			
PB_{AC} (performance bonus payment)	is, in respect of that Franchisee Year, an amount calculated as follows:			
	PB _{AC} x RPI			
	where:			
	<table border="1"> <tr> <td>PB_{AC}</td> <td>the amount specified in row 1 (PB_{AC}) of Column 2 of the Annual All Cancellations Payment Table; and</td> </tr> <tr> <td>RPI</td> <td>has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).</td> </tr> </table>	PB _{AC}	the amount specified in row 1 (PB _{AC}) of Column 2 of the Annual All Cancellations Payment Table; and	RPI
PB _{AC}	the amount specified in row 1 (PB _{AC}) of Column 2 of the Annual All Cancellations Payment Table; and			
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).			

Table UAC-D				
(TARGET_{AC-A} – ACTUAL_{AC}) x PB_{AC}				
where:				
TARGET_{AC-A}	has the meaning given to it in paragraph 22.7C (Table UAC-A);			
ACTUAL_{AC}	means the Actual All Cancellations Performance Level for that Franchisee Year; and			
PB_{AC} (performance bonus payment)	is, in respect of that Franchisee Year, an amount calculated as follows:			
	PB _{AC} x RPI			
	where:			
	<table border="1"> <tr> <td>PB_{AC}</td> <td>the amount specified in row 1 (PB_{AC}) of Column 2 of the Annual All Cancellations Payment Table; and</td> </tr> <tr> <td>RPI</td> <td>has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).</td> </tr> </table>	PB _{AC}	the amount specified in row 1 (PB _{AC}) of Column 2 of the Annual All Cancellations Payment Table; and	RPI
PB _{AC}	the amount specified in row 1 (PB _{AC}) of Column 2 of the Annual All Cancellations Payment Table; and			
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).			

Table UAC-E	
(ACTUAL_{AC} – TARGET_{AC-B}) x PD_{AC}	
where:	
ACTUAL_{AC}	means the Actual All Cancellations Performance Level for that Franchisee Year;
TARGET_{AC-B}	has the meaning given to it in paragraph 22.7D (Table UAC-A); and
PD_{AC} (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:
	PDP _{AC} x RPI
	where:
	PDP _{AC}
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).

Table UAC-F	
(FLOOR_{AC} – TARGET_{AC-B}) x PD_{AC}	
where:	
FLOOR_{AC}	has the meaning given to it in paragraph 22.7D (Table UAC-A);
TARGET_{AC-B}	has the meaning given to it in paragraph 22.7D (Table UAC-A); and
PD_{AC} (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:
	PDP _{AC} x RPI
	where:
	PDP _{AC}
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).

22.8 For the purpose of the calculations referred to in this paragraph 22, each of the Annual Cap Performance Level, the Adjusted Annual Target Performance Level, the Bid Annual Target Performance Level and the Annual Floor Performance Level will be specified as an absolute number not as a percentage (i.e. one point five per cent (1.5%) equals 1.5).

22.9 **NOT USED.**

23. Determination for Franchisee Years that are less than thirteen (13) Reporting Periods but are six (6) Reporting Periods or more

23.1 Where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, the Secretary of State will perform the following calculations for the purposes of determining the Annual Cancellations Benchmark, the Annual TOC Minute Delay Benchmark, Annual T-3 Measure, Annual T-15 Measure and Annual All Cancellations Measure relating to that Franchisee Year:

(a) in respect of the Annual Cancellations Benchmark for that Franchisee Year:

Table 22	
$\frac{\Sigma A_c}{XY}$	
where:	
ΣA_c	<p>is ascertained as follows:</p> <ul style="list-style-type: none"> (i) for the Annual Cap Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; or (ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; or (iii) for the Annual Floor Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; and
XY	is the number of Reporting Periods in that Franchisee Year.

(b) in respect of the Annual TOC Minute Delay Benchmark for that Franchisee Year:

Table 23	
$\frac{\Sigma A_{MD}}{AB_{MD}}$	
where:	
ΣA_{MD}	<p>is ascertained as follows:</p> <p>(i) for the Annual Cap Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; or</p> <p>(ii) for the Annual Target Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; or</p> <p>(iii) for the Annual Floor Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; and</p>
AB_{MD}	<p>is ascertained as follows:</p> $\frac{B}{1000}$

where:

B is:

- (i) for the Annual Cap Performance Level, the sum of the Actual Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Actual Train Mileage data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; or
- (ii) for the Annual Target Performance Level, the sum of the Actual Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Actual Train Mileage data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; or
- (iii) for the Annual Floor Performance Level, the sum of the Actual Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Actual Train Mileage data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**.

(c) NOT USED.

(d) NOT USED.

(e) NOT USED.

(f) in respect of the Annual T-3 Measure for that Franchisee Year:

Table X3	
$\frac{\sum A_{XT3}}{XY}$	
Where:	
$\sum A_{XT3}$	<p>is ascertained as follows:</p> <ul style="list-style-type: none"> (i) for the Annual Cap Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; or (ii) for the Adjusted Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Adjusted Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; (iii) for the Bid Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Bid Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; (iv) for the Annual Floor Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; and
XY	is the number of Reporting Periods in that Franchisee Year.

(g) in respect of the Annual T-15 Measure for that Franchisee Year:

Table X15	
$\frac{\sum A_{XT15}}{XY}$	
Where:	
$\sum A_{XT15}$	<p>is ascertained as follows:</p> <ul style="list-style-type: none"> (i) for the Annual Cap Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as

	<p>more particularly set out in the document in the agreed terms marked ABD; or</p> <p>(ii) for the Adjusted Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Adjusted Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD;</p> <p>(iii) for the Bid Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Bid Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD;</p> <p>(iv) for the Annual Floor Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; and</p>
XY	is the number of Reporting Periods in that Franchisee Year.

(h) in respect of the Annual All Cancellations Measure for that Franchisee Year:

Table XAC	
$\frac{\sum A_{XAC}}{XY}$	
Where:	
$\sum A_{XAC}$	<p>is ascertained as follows:</p> <ul style="list-style-type: none"> (i) for the Annual Cap Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; or (ii) for the Adjusted Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Adjusted Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; (iii) for the Bid Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Bid Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; (iv) for the Annual Floor Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; and
XY	is the number of Reporting Periods in that Franchisee Year.

24. Determination for Franchisee Years that are less than thirteen (13) Reporting Periods but are six (6) Reporting Periods or more

24.1 NOT USED.

24.2 Where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, the Secretary of State will perform the following calculations for the purposes of determining the Actual T-3 Performance Level, Actual T-15 Performance Level and Actual All Cancellations Performance Level relating to that Franchisee Year:

(a) in respect of the Actual T-3 Performance Level for that Franchisee Year:

Table Z3	
$\frac{\sum A_{ZT3}}{XY}$	
where:	
$\sum A_{ZT3}$	is the sum of the figures published by Network Rail in respect of Time to 3 Minutes in respect of the Franchisee for each Reporting Period in that Franchisee Year; and
XY	is the number of Reporting Periods in that Franchisee Year.

(b) in respect of the Actual T-15 Performance Level for that Franchisee Year:

Table Z15	
$\frac{\sum A_{ZT15}}{XY}$	
where:	
$\sum A_{ZT15}$	is the sum of the figures published by Network Rail in respect of Time to 15 Minutes in respect of the Franchisee for each Reporting Period in that Franchisee Year; and
XY	is the number of Reporting Periods in that Franchisee Year.

(c) in respect of the Actual All Cancellations Performance Level for that Franchisee Year:

Table ZAC	
$\frac{\sum A_{ZAC}}{XY}$	
where:	
$\sum A_{ZAC}$	is the sum of the figures published by Network Rail in respect of All Cancellations in respect of the Franchisee for each Reporting Period in that Franchisee Year; and
XY	is the number of Reporting Periods in that Franchisee Year.

25. Network Rail Claims

25.1 For the purposes of this paragraph 25, **"T-3/T-15/All Cancellation Loss"** means any loss suffered or costs incurred by the Franchisee as a result of the Franchisee:

- (a) being required to incur or pay any T-3 Performance Sum or T-15 Performance Sum or All Cancellations Performance Sum (as the case may be); or

- (b) not being entitled to receive from the Secretary of State any T-3 Performance Sum or T-15 Performance Sum or All Cancellations Performance Sum (as the case may be),

in each case in accordance with paragraph 22.

25.2 The Franchisee shall not include in any claim for compensation from Network Rail, whether under Schedule 8 of the Network Rail Track Access Agreement or otherwise, any amounts to compensate the Franchisee for a T-3/T-15/All Cancellation Loss.

25.3 Without prejudice to the Secretary of State's rights under Schedule 10 (Remedies, Events of Default and Termination Events), if the Franchisee receives compensation from Network Rail in respect of a T-3/T-15/All Cancellation Loss, the Franchisee shall pay such compensation received to the Secretary of State within five (5) Weekdays of receipt.

26. Consequences for Poor Performance

26.1 Where in any Franchisee Year a relevant Performance Sum is due from the Franchisee, the Franchisee shall, subject to paragraph 29, incur expenditure **equal to the amount** of the relevant Performance Sum in order to secure an improvement in the Franchisee's performance against:

- (a) the Annual Cancellations Benchmark so that such level is **better than or equal to** the Annual Target Performance Level for that Annual Cancellations Benchmark; and/or
- (b) the Annual TOC Minute Delay Benchmark so that such level is **better than or equal to** the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark; and/or
- (c) NOT USED;
- (d) NOT USED;
- (e) NOT USED;
- (f) the Annual T-3 Measure so that such level is **better than or equal to** the higher of the Adjusted Annual Target Performance Level and the Bid Annual Target Performance Level for that Annual T-3 Measure; and/or
- (g) the Annual T-15 Measure so that such level is **better than or equal to** the higher of the Adjusted Annual Target Performance Level and the Bid Annual Target Performance Level for that Annual T-15 Measure; and/or
- (h) the Annual All Cancellations Measure so that such level is **better than or equal to** the lower of the Adjusted Annual Target Performance Level and the Bid Annual Target Performance Level for that Annual All Cancellation Measure,

or, in each case, as the Secretary of State may otherwise direct (the "**Required Performance Improvement**").

26.2 Action Plans

- (a) Without limiting paragraph 26.1, on each occasion that the Franchisee becomes obliged to incur expenditure under paragraph 26.1 for the purposes of securing a Required Performance Improvement the Franchisee shall produce a plan which is consistent with its obligations under paragraph 26.1 (the "**Action Plan**").
- (b) The Franchisee shall (i) produce, (ii) obtain the Secretary of State's approval of, and (iii) commence the implementation of the Action Plan within three (3) months after the notification of the results of calculations in accordance with paragraph 1.14.

- (c) The Action Plan shall contain specific tangible action points and indicate in the case of each action point:
 - (i) how that action will contribute to achieving the Required Performance Improvement;
 - (ii) where the action is to be implemented;
 - (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the Action Plan shall include specific review dates;
 - (iv) how performance of the action is to be measured; and
 - (v) identify the amount of the Cancellations Performance Sum, the TOC Minute Delay Performance Sum, the T-3 Performance Sum, T-15 Performance Sum and/or the All Cancellations Performance Sum associated with each such action.
- (d) The Franchisee shall, except to the extent otherwise agreed by the Secretary of State in advance, implement each Action Plan referred to in this paragraph 26.2 in accordance with its terms.
- (e) It is acknowledged by the Franchisee that the approval or lack of approval by the Secretary of State of each Action Plan as contemplated in this paragraph 26.2 shall not relieve the Franchisee of its obligations under this Schedule 7.1 or any other provisions of the Franchise Agreement.

27. Payments made by the Secretary of State

27.1 Each Cancellations Performance Sum, TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum and the All Cancellations Performance Sum calculated pursuant to paragraphs 22.3, 22.4, 22.7A, 22.7B and 22.7C (respectively) in respect of any Franchisee Year payable by the Secretary of State to the Franchisee shall, subject to paragraph 29, be paid by way of adjustment to the Franchise Payments in accordance with paragraph 2.6 of Schedule 8.1A (Franchise Payments).

27.2 NOT USED

28. NOT USED.

29. Payments in respect of the Final ICWC Franchisee Year

29.1 Any Cancellations Performance Sum, TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum and/or All Cancellations Performance Sum:

- (a) to be made in respect of the Final ICWC Franchisee Year shall be calculated in accordance with the provisions of paragraph 22; and/or
- (b) relating to any Franchisee Year preceding the Final ICWC Franchisee Year and which has not been incurred by the Franchisee prior to the end of the Final ICWC Franchisee Year for the purposes of securing the Required Performance Improvements,

in each case, shall be paid (by the Secretary of State or the Franchisee as the case may be) within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such Cancellations Performance Sum, TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum and/or All Cancellations Performance Sum.

Part 3 – Miscellaneous Provisions

30. Allocation of Disputed Cancellations/Disputed Partial Cancellations

For the purpose of performing the calculations referred to in paragraphs 4, 5, 6 and/or 19 the Secretary of State shall allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the Franchisee and Network Rail at the end of a Reporting Period and/or a Franchisee Year (as applicable) in the following ratio of:

Table 24	
F : G	
where:	
F	<p>is:</p> <p>(a) for the purposes of the calculations specified in paragraph 4, the total number of Undisputed Cancellations and/or Undisputed Partial Cancellations in respect of a Reporting Period during the Initial Reporting Stage including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Franchisee) during such Reporting Period;</p> <p>(b) for the purposes of the calculations specified in paragraph 5, the total number of Undisputed Cancellations and/or Undisputed Partial Cancellations for the Reporting Periods preceding the Breach Reporting Stage including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Franchisee) during such Reporting Period; and</p> <p>(c) for the purposes of the calculations specified in paragraph 6 and paragraph 19, the total number of Undisputed Cancellations and/or Undisputed Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Franchisee) during such twelve (12) preceding Reporting Periods; and</p>
G	<p>is:</p> <p>(a) for the purposes of the calculations specified in paragraph 4, the total number of Undisputed Network Rail Cancellations and/or Undisputed Network Rail Partial Cancellations in respect of a Reporting Period during the Initial Reporting Stage including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to Network Rail) during such Reporting Period;</p> <p>(b) for the purposes of paragraph 5, the total number of Undisputed Network Rail Cancellations and/or Undisputed Network Rail Partial Cancellations for the Reporting Periods preceding the Breach Reporting Stage including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to Network Rail) during such Reporting Period; and</p>

(c) for the purposes of paragraph 6 (Cancellation Calculations during the Subsequent Reporting Stage) and paragraph 19 (Annual Cancellations Calculations), the total number of Undisputed Network Rail Cancellations and/or Undisputed Network Rail Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.
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31 Allocation of Disputed Minutes Delay

Where the attribution of any Minutes Delay is in dispute between Network Rail and the Franchisee at the end of a Reporting Period and/or a Franchisee Year (as applicable) the Secretary of State shall, for the purpose of performing the calculations referred to in paragraphs 10, 11, 12 and/or 20, allocate any disputed Minutes Delay between the Franchisee and Network Rail in the ratio of:

Table 25	
FF: GG	
where:	
FF	<p>is:</p> <p>(a) for the purposes of the calculations specified in paragraph 10, the total number of undisputed Minutes Delay in respect of a Reporting Period during the Initial Reporting Stage that are attributable to the Franchisee including any disputed attributions which were resolved or determined (and attributed to the Franchisee) during such Reporting Period;</p> <p>(b) for the purposes of the calculations specified in paragraph 11, the total number of undisputed Minutes Delay for the Reporting Periods preceding the Breach Reporting Stage that are attributable to the Franchisee including any disputed attributions which were resolved or determined (and attributed to the Franchisee) during such Reporting Period; and</p> <p>(c) for the purposes of the calculations specified in paragraph 12 and paragraph 20, the total number of undisputed Minutes Delay, in each case, from the twelve (12) preceding Reporting Periods that are attributable to the Franchisee including any disputed attributions which were resolved or determined (and attributed to the Franchisee) during such twelve (12) preceding Reporting Periods; and</p>
GG	<p>is:</p> <p>(a) for the purposes of the calculations specified in paragraph 10, the total number of undisputed Minutes Delay in respect of a Reporting Period during the Initial Reporting Stage that are attributable to Network Rail including any disputed attributions which were resolved or determined (and attributed to Network Rail) during such Reporting Period;</p> <p>(b) for the purposes of paragraph 11, the total number of undisputed Minutes Delay for the Reporting Periods preceding the Breach Reporting Stage that are attributable to Network Rail including any disputed attributions which were resolved or determined (and attributed to Network Rail) during such Reporting Period; and</p> <p>(c) for the purposes of the calculations specified in paragraph 12 and paragraph 20, the total number of undisputed Minutes Delay, in each case from the twelve (12) preceding Reporting Periods that are attributable to Network Rail including any disputed attributions which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.</p>

APPENDIX 1 TO SCHEDULE 7.1A

Cancellations Benchmarks and Annual Cancellations Benchmarks

Part 1 – Cancellations Benchmarks Table (Enforcement Regime)

1. Start of the Franchise

The Reporting Period in the cells entitled “**Year 1, Period 1**” shall be the first Reporting Period of the first Franchisee Year of the ICWC Period.

	Column 1	Column 2	Column 3	Column 4	Column 5
	Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
			(% Cancelled)	(% Cancelled)	(% Cancelled)
Initial Reporting Stage	Period 7, Year 1	2019/20	0.22	N/A	
	Period 8, Year 1	2019/20	0.25		
	Period 9, Year 1	2019/20	0.46		
	Period 10, Year 1	2019/20	0.29		
	Period 11, Year 1	2019/20	0.26		
	Period 12, Year 1	2019/20	0.36		
	Period 13, Year 1	2019/20	0.29		
Breach Reporting Stage					
	Period 1, Year 2	2020/21	0.29	0.64	0.99
	Period 2, Year 2	2020/21	0.28	0.63	0.98
	Period 3, Year 2	2020/21	0.28	0.63	0.98
	Period 4, Year 2	2020/21	0.29	0.64	0.99
	Period 5, Year 2	2020/21	0.30	0.65	1.00
Subsequent Reporting Stage					
Subsequent Report	Period 6, Year 2	2020/21	0.30	0.65	1.00
	Period 7, Year 2	2020/21	0.30	0.65	1.00

	Column 1	Column 2	Column 3	Column 4	Column 5
	Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
			(% Cancelled)	(% Cancelled)	(% Cancelled)
	Period 8, Year 2	2020/21	0.30	0.65	1.00
	Period 9, Year 2	2020/21	0.30	0.65	1.00
	Period 10, Year 2	2020/21	0.30	0.65	1.00
	Period 11, Year 2	2020/21	0.30	0.65	1.00
	Period 12, Year 2	2020/21	0.30	0.65	1.00
	Period 13, Year 2	2020/21	0.30	0.65	1.00
	Period 1, Year 3	2021/22	0.30	0.65	0.99
	Period 2, Year 3	2021/22	0.30	0.64	0.98
	Period 3, Year 3	2021/22	0.30	0.64	0.97
	Period 4, Year 3	2021/22	0.30	0.63	0.97
	Period 5, Year 3	2021/22	0.30	0.63	0.96
	Period 6, Year 3	2021/22	0.30	0.62	0.95
	Period 7, Year 3	2021/22	0.29	0.62	0.94
	Period 8, Year 3	2021/22	0.29	0.61	0.93
	Period 9, Year 3	2021/22	0.29	0.61	0.92
	Period 10, Year 3	2021/22	0.29	0.60	0.92

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)	(% Cancelled)
Period 11, Year 3	2021/22	0.29	0.60	0.91
Period 12, Year 3	2021/22	0.29	0.59	0.90
Period 13, Year 3	2021/22	0.29	0.59	0.89
Period 1, Year 4	2022/23	0.29	0.59	0.88
Period 2, Year 4	2022/23	0.29	0.58	0.87
Period 3, Year 4	2022/23	0.29	0.58	0.86
Period 4, Year 4	2022/23	0.29	0.57	0.86
Period 5, Year 4	2022/23	0.29	0.57	0.85
Period 6, Year 4	2022/23	0.29	0.56	0.84
Period 7, Year 4	2022/23	0.28	0.56	0.83
Period 8, Year 4	2022/23	0.28	0.55	0.82
Period 9, Year 4	2022/23	0.28	0.55	0.81
Period 10, Year 4	2022/23	0.28	0.54	0.81
Period 11, Year 4	2022/23	0.28	0.54	0.80
Period 12, Year 4	2022/23	0.28	0.53	0.79

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)	(% Cancelled)
Period 13, Year 4	2022/23	0.28	0.53	0.78
Period 1, Year 5	2023/24	0.28	0.53	0.78
Period 2, Year 5	2023/24	0.28	0.53	0.78
Period 3, Year 5	2023/24	0.28	0.53	0.78
Period 4, Year 5	2023/24	0.28	0.53	0.78
Period 5, Year 5	2023/24	0.28	0.53	0.78
Period 6, Year 5	2023/24	0.28	0.53	0.78
Period 7, Year 5	2023/24	0.27	0.52	0.77
Period 8, Year 5	2023/24	0.27	0.52	0.77
Period 9, Year 5	2023/24	0.27	0.52	0.77
Period 10, Year 5	2023/24	0.27	0.52	0.77
Period 11, Year 5	2023/24	0.27	0.52	0.77
Period 12, Year 5	2023/24	0.27	0.52	0.77
Period 13, Year 5	2023/24	0.27	0.52	0.77
Period 1, Year 6	2024/25	0.27	0.52	0.77

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)	(% Cancelled)
Period 2, Year 6	2024/25	0.27	0.52	0.77
Period 3, Year 6	2024/25	0.27	0.52	0.77
Period 4, Year 6	2024/25	0.27	0.52	0.77
Period 5, Year 6	2024/25	0.27	0.52	0.77
Period 6, Year 6	2024/25	0.27	0.52	0.77
Period 7, Year 6	2024/25	0.27	0.52	0.77
Period 8, Year 6	2024/25	0.27	0.52	0.77
Period 9, Year 6	2024/25	0.27	0.52	0.77
Period 10, Year 6	2024/25	0.27	0.52	0.77
Period 11, Year 6	2024/25	0.27	0.52	0.77
Period 12, Year 6	2024/25	0.27	0.52	0.77
Period 13, Year 6	2024/25	0.27	0.52	0.77
Period 1, Year 7	2025/26	0.27	0.52	0.77
Period 2, Year 7	2025/26	0.27	0.52	0.77
Period 3, Year 7	2025/26	0.27	0.52	0.77

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)	(% Cancelled)
Period 4, Year 7	2025/26	0.27	0.52	0.77
Period 5, Year 7	2025/26	0.27	0.52	0.77
Period 6, Year 7	2025/26	0.27	0.52	0.77
Period 7, Year 7	2025/26	0.27	0.52	0.77
Period 8, Year 7	2025/26	0.27	0.52	0.77
Period 9, Year 7	2025/26	0.27	0.52	0.77
Period 10, Year 7	2025/26	0.27	0.52	0.77
Period 11, Year 7	2025/26	0.27	0.52	0.77
Period 12, Year 7	2025/26	0.27	0.52	0.77
Period 13, Year 7	2025/26	0.27	0.52	0.77
Reset Period				
Period 1, Year 8	2026/27	0.27	0.52	0.77
Period 2, Year 8	2026/27	0.27	0.52	0.77
Period 3, Year 8	2026/27	0.27	0.52	0.77
Period 4, Year 8	2026/27	0.27	0.52	0.77

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)	(% Cancelled)
Period 5, Year 8	2026/27	0.27	0.52	0.77
Period 6, Year 8	2026/27	0.27	0.52	0.77
Period 7, Year 8	2026/27	0.27	0.52	0.77
Period 8, Year 8	2026/27	0.27	0.52	0.77
Period 9, Year 8	2026/27	0.27	0.52	0.77
Period 10, Year 8	2026/27	0.27	0.52	0.77
Period 11, Year 8	2026/27	0.27	0.52	0.77
Period 12, Year 8	2026/27	0.27	0.52	0.77
Period 13, Year 8	2026/27	0.27	0.52	0.77
Period 1, Year 9	2027/28	0.27	0.52	0.77
Period 2, Year 9	2027/28	0.27	0.52	0.77
Period 3, Year 9	2027/28	0.27	0.52	0.77
Period 4, Year 9	2027/28	0.27	0.52	0.77
Period 5, Year 9	2027/28	0.27	0.52	0.77
Period 6, Year 9	2027/28	0.27	0.52	0.77

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)	(% Cancelled)
Period 7, Year 9	2027/28	0.27	0.52	0.77
Period 8, Year 9	2027/28	0.27	0.52	0.77
Period 9, Year 9	2027/28	0.27	0.52	0.77
Period 10, Year 9	2027/28	0.27	0.52	0.77
Period 11, Year 9	2027/28	0.27	0.52	0.77
Period 12, Year 9	2027/28	0.27	0.52	0.77
Period 13, Year 9	2027/28	0.27	0.52	0.77
Period 1, Year 10	2028/29	0.27	0.52	0.77
Period 2, Year 10	2028/29	0.27	0.52	0.77
Period 3, Year 10	2028/29	0.27	0.52	0.77
Period 4, Year 10	2028/29	0.27	0.52	0.77
Period 5, Year 10	2028/29	0.27	0.52	0.77
Period 6, Year 10	2028/29	0.27	0.52	0.77
Period 7, Year 10	2028/29	0.27	0.52	0.77
Period 8, Year 10	2028/29	0.27	0.52	0.77

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)	(% Cancelled)
Period 9, Year 10	2028/29	0.27	0.52	0.77
Period 10, Year 10	2028/29	0.27	0.52	0.77
Period 11, Year 10	2028/29	0.27	0.52	0.77
Period 12, Year 10	2028/29	0.27	0.52	0.77
Period 13, Year 10	2028/29	0.27	0.52	0.77
Period 1, Year 11	2029/30	0.27	0.52	0.77
Period 2, Year 11	2029/30	0.27	0.52	0.77
Period 3, Year 11	2029/30	0.27	0.52	0.77
Period 4, Year 11	2029/30	0.27	0.52	0.77
Period 5, Year 11	2029/30	0.27	0.52	0.77
Period 6, Year 11	2029/30	0.27	0.52	0.77
Period 7, Year 11	2029/30	0.27	0.52	0.77
Period 8, Year 11	2029/30	0.27	0.52	0.77
Period 9, Year 11	2029/30	0.27	0.52	0.77
Period 10, Year 11	2029/30	0.27	0.52	0.77

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)	(% Cancelled)
Period 11, Year 11	2029/30	0.27	0.52	0.77
Period 12, Year 11	2029/30	0.27	0.52	0.77
Period 13, Year 11	2029/30	0.27	0.52	0.77
Period 1, Year 12	2030/31	0.27	0.52	0.77
Period 2, Year 12	2030/31	0.27	0.52	0.77
Period 3, Year 12	2030/31	0.27	0.52	0.77
Period 4, Year 12	2030/31	0.27	0.52	0.77
Period 5, Year 12	2030/31	0.27	0.52	0.77
Period 6, Year 12	2030/31	0.27	0.52	0.77
Period 7, Year 12	2030/31	0.27	0.52	0.77
Period 8, Year 12	2030/31	0.27	0.52	0.77
Period 9, Year 12	2030/31	0.27	0.52	0.77
Period 10, Year 12	2030/31	0.27	0.52	0.77
Period 11, Year 12	2030/31	0.27	0.52	0.77
Period 12, Year 12	2030/31	0.27	0.52	0.77

	Column 1	Column 2	Column 3	Column 4	Column 5
	Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
			(% Cancelled)	(% Cancelled)	(% Cancelled)
	Period 13, Year 12	2030/31	0.27	0.52	0.77

Part 2(A) - Annual Cancellations Benchmark Table (Financial Regime)

Year		Column 1	Column 2	Column 3	Column 4
(e.g. 2026/2027)		Franchisee Year	Annual Cap Performance Level	Annual Target Performance Level	Annual Floor Performance Level
		(e.g. Year 1)	(% Cancelled)	(% Cancelled)	(% Cancelled)
2019	2020	Year 1	0.06	0.31	0.56
2020	2021	Year 2	0.05	0.30	0.55
2021	2022	Year 3	0.04	0.29	0.54
2022	2023	Year 4	0.03	0.28	0.53
2023	2024	Year 5	0.02	0.27	0.52
2024	2025	Year 6	0.02	0.27	0.52
2025	2026	Year 7	0.02	0.27	0.52
Reset Period					
2026	2027	Year 8	0.02	0.27	0.52
2027	2028	Year 9	0.02	0.27	0.52
2028	2029	Year 10	0.02	0.27	0.52
2029	2030	Year 11	0.02	0.27	0.52
2030	2031	Year 12	0.02	0.27	0.52

Part 2(B) – Annual Cancellations Payment Table (Financial Regime)

Column 1	Column 2
Payment	Amount (£)
PBP_c	[REDACTED] ²³
PDP_c	[REDACTED] ²⁴

Provided that in respect of any Franchisee Year of less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then **PBP_c** and/or **PDP_c** (as applicable) shall be multiplied by the number of whole Reporting Periods in the relevant Franchisee Year and then divided by thirteen (13).

²³ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁴ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 2 TO SCHEDULE 7.1A

TOC Minute Delay and Annual TOC Minute Delay Benchmarks

Part 1 - TOC Minute Delay Benchmark Table (Enforcement Regime)

1. Start of the Franchise

The Reporting Period in the cells entitled "Year 1, Period 1" shall be the first Reporting Period of the first Franchisee Year of the ICWC Period.

	Column 1	Column 2	Column 3	Column 4	Column 5
	Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
			(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)
Initial Reporting Stage	Period 7, Year 1	2019/20	3.32	N/A	N/A
	Period 8, Year 1	2019/20	3.71		
	Period 9, Year 1	2019/20	4.23		
	Period 10, Year 1	2019/20	3.76		
	Period 11, Year 1	2019/20	3.60		
	Period 12, Year 1	2019/20	3.63		
	Period 13, Year 1	2019/20	3.48		
Breach Reporting Stage					
	Period 1, Year 2	2020/21	3.58	6.58	9.58
	Period 2, Year 2	2020/21	3.58	6.58	9.58
	Period 3, Year 2	2020/21	3.58	6.58	9.58
	Period 4, Year 2	2020/21	3.63	6.63	9.63
	Period 5, Year 2	2020/21	3.68	6.68	9.68
Subsequent Reporting Stage					
Subse	Period 6, Year 2	2020/21	3.70	6.70	9.70

	Column 1	Column 2	Column 3	Column 4	Column 5
	Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
			(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)
	Period 7, Year 2	2020/21	3.70	6.70	9.70
	Period 8, Year 2	2020/21	3.70	6.70	9.70
	Period 9, Year 2	2020/21	3.70	6.70	9.70
	Period 10, Year 2	2020/21	3.70	6.70	9.70
	Period 11, Year 2	2020/21	3.70	6.70	9.70
	Period 12, Year 2	2020/21	3.70	6.70	9.70
	Period 13, Year 2	2020/21	3.70	6.70	9.70
	Period 1, Year 3	2021/22	3.70	6.66	9.62
	Period 2, Year 3	2021/22	3.69	6.62	9.54
	Period 3, Year 3	2021/22	3.69	6.57	9.46
	Period 4, Year 3	2021/22	3.68	6.53	9.38
	Period 5, Year 3	2021/22	3.68	6.49	9.30
	Period 6, Year 3	2021/22	3.68	6.45	9.22
	Period 7, Year 3	2021/22	3.67	6.40	9.13
	Period 8, Year 3	2021/22	3.67	6.36	9.05
	Period 9, Year 3	2021/22	3.67	6.32	8.97

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)
Period 10, Year 3	2021/22	3.66	6.28	8.89
Period 11, Year 3	2021/22	3.66	6.23	8.81
Period 12, Year 3	2021/22	3.65	6.19	8.73
Period 13, Year 3	2021/22	3.65	6.15	8.65
Period 1, Year 4	2022/23	3.65	6.11	8.57
Period 2, Year 4	2022/23	3.64	6.07	8.49
Period 3, Year 4	2022/23	3.64	6.02	8.41
Period 4, Year 4	2022/23	3.63	5.98	8.33
Period 5, Year 4	2022/23	3.63	5.94	8.25
Period 6, Year 4	2022/23	3.63	5.90	8.17
Period 7, Year 4	2022/23	3.62	5.85	8.08
Period 8, Year 4	2022/23	3.62	5.81	8.00
Period 9, Year 4	2022/23	3.62	5.77	7.92
Period 10, Year 4	2022/23	3.61	5.73	7.84

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)
Period 11, Year 4	2022/23	3.61	5.68	7.76
Period 12, Year 4	2022/23	3.60	5.64	7.68
Period 13, Year 4	2022/23	3.60	5.60	7.60
Period 1, Year 5	2023/24	3.60	5.60	7.60
Period 2, Year 5	2023/24	3.59	5.59	7.59
Period 3, Year 5	2023/24	3.59	5.59	7.59
Period 4, Year 5	2023/24	3.58	5.58	7.58
Period 5, Year 5	2023/24	3.58	5.58	7.58
Period 6, Year 5	2023/24	3.58	5.58	7.58
Period 7, Year 5	2023/24	3.57	5.57	7.57
Period 8, Year 5	2023/24	3.57	5.57	7.57
Period 9, Year 5	2023/24	3.57	5.57	7.57
Period 10, Year 5	2023/24	3.56	5.56	7.56
Period 11, Year 5	2023/24	3.56	5.56	7.56

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)
Period 12, Year 5	2023/24	3.55	5.55	7.55
Period 13, Year 5	2023/24	3.55	5.55	7.55
Period 1, Year 6	2024/25	3.55	5.55	7.55
Period 2, Year 6	2024/25	3.54	5.54	7.54
Period 3, Year 6	2024/25	3.54	5.54	7.54
Period 4, Year 6	2024/25	3.53	5.53	7.53
Period 5, Year 6	2024/25	3.53	5.53	7.53
Period 6, Year 6	2024/25	3.53	5.53	7.53
Period 7, Year 6	2024/25	3.52	5.52	7.52
Period 8, Year 6	2024/25	3.52	5.52	7.52
Period 9, Year 6	2024/25	3.52	5.52	7.52
Period 10, Year 6	2024/25	3.51	5.51	7.51
Period 11, Year 6	2024/25	3.51	5.51	7.51
Period 12, Year 6	2024/25	3.50	5.50	7.50

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)
Period 13, Year 6	2024/25	3.50	5.50	7.50
Period 1, Year 7	2025/26	3.50	5.50	7.50
Period 2, Year 7	2025/26	3.50	5.50	7.50
Period 3, Year 7	2025/26	3.50	5.50	7.50
Period 4, Year 7	2025/26	3.50	5.50	7.50
Period 5, Year 7	2025/26	3.50	5.50	7.50
Period 6, Year 7	2025/26	3.50	5.50	7.50
Period 7, Year 7	2025/26	3.50	5.50	7.50
Period 8, Year 7	2025/26	3.50	5.50	7.50
Period 9, Year 7	2025/26	3.50	5.50	7.50
Period 10, Year 7	2025/26	3.50	5.50	7.50
Period 11, Year 7	2025/26	3.50	5.50	7.50
Period 12, Year 7	2025/26	3.50	5.50	7.50
Period 13, Year 7	2025/26	3.50	5.50	7.50

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)
Reset Period				
Period 1, Year 8	2026/27	3.50	5.50	7.50
Period 2, Year 8	2026/27	3.50	5.50	7.50
Period 3, Year 8	2026/27	3.50	5.50	7.50
Period 4, Year 8	2026/27	3.50	5.50	7.50
Period 5, Year 8	2026/27	3.50	5.50	7.50
Period 6, Year 8	2026/27	3.50	5.50	7.50
Period 7, Year 8	2026/27	3.50	5.50	7.50
Period 8, Year 8	2026/27	3.50	5.50	7.50
Period 9, Year 8	2026/27	3.50	5.50	7.50
Period 10, Year 8	2026/27	3.50	5.50	7.50
Period 11, Year 8	2026/27	3.50	5.50	7.50
Period 12, Year 8	2026/27	3.50	5.50	7.50
Period 13, Year 8	2026/27	3.50	5.50	7.50

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)
Period 1, Year 9	2027/28	3.50	5.50	7.50
Period 2, Year 9	2027/28	3.50	5.50	7.50
Period 3, Year 9	2027/28	3.50	5.50	7.50
Period 4, Year 9	2027/28	3.50	5.50	7.50
Period 5, Year 9	2027/28	3.50	5.50	7.50
Period 6, Year 9	2027/28	3.50	5.50	7.50
Period 7, Year 9	2027/28	3.50	5.50	7.50
Period 8, Year 9	2027/28	3.50	5.50	7.50
Period 9, Year 9	2027/28	3.50	5.50	7.50
Period 10, Year 9	2027/28	3.50	5.50	7.50
Period 11, Year 9	2027/28	3.50	5.50	7.50
Period 12, Year 9	2027/28	3.50	5.50	7.50
Period 13, Year 9	2027/28	3.50	5.50	7.50
Period 1, Year 10	2028/29	3.50	5.50	7.50

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)
Period 2, Year 10	2028/29	3.50	5.50	7.50
Period 3, Year 10	2028/29	3.50	5.50	7.50
Period 4, Year 10	2028/29	3.50	5.50	7.50
Period 5, Year 10	2028/29	3.50	5.50	7.50
Period 6, Year 10	2028/29	3.50	5.50	7.50
Period 7, Year 10	2028/29	3.50	5.50	7.50
Period 8, Year 10	2028/29	3.50	5.50	7.50
Period 9, Year 10	2028/29	3.50	5.50	7.50
Period 10, Year 10	2028/29	3.50	5.50	7.50
Period 11, Year 10	2028/29	3.50	5.50	7.50
Period 12, Year 10	2028/29	3.50	5.50	7.50
Period 13, Year 10	2028/29	3.50	5.50	7.50
Period 1, Year 11	2029/30	3.50	5.50	7.50
Period 2, Year 11	2029/30	3.50	5.50	7.50

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)
Period 3, Year 11	2029/30	3.50	5.50	7.50
Period 4, Year 11	2029/30	3.50	5.50	7.50
Period 5, Year 11	2029/30	3.50	5.50	7.50
Period 6, Year 11	2029/30	3.50	5.50	7.50
Period 7, Year 11	2029/30	3.50	5.50	7.50
Period 8, Year 11	2029/30	3.50	5.50	7.50
Period 9, Year 11	2029/30	3.50	5.50	7.50
Period 10, Year 11	2029/30	3.50	5.50	7.50
Period 11, Year 11	2029/30	3.50	5.50	7.50
Period 12, Year 11	2029/30	3.50	5.50	7.50
Period 13, Year 11	2029/30	3.50	5.50	7.50
Period 1, Year 12	2030/31	3.50	5.50	7.50
Period 2, Year 12	2030/31	3.50	5.50	7.50
Period 3, Year 12	2030/31	3.50	5.50	7.50

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period, Franchisee Year	Year	Target Performance Level	Breach Performance Level	Default Performance Level
		(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)
Period 4, Year 12	2030/31	3.50	5.50	7.50
Period 5, Year 12	2030/31	3.50	5.50	7.50
Period 6, Year 12	2030/31	3.50	5.50	7.50
Period 7, Year 12	2030/31	3.50	5.50	7.50
Period 8, Year 12	2030/31	3.50	5.50	7.50
Period 9, Year 12	2030/31	3.50	5.50	7.50
Period 10, Year 12	2030/31	3.50	5.50	7.50
Period 11, Year 12	2030/31	3.50	5.50	7.50
Period 12, Year 12	2030/31	3.50	5.50	7.50
Period 13, Year 12	2030/31	3.50	5.50	7.50

Part 2 (A) - Annual TOC Minute Delay Benchmark Table (Financial Regime)

Year		Column 1	Column 2	Column 3	Column 4
(e.g. 2026/2027)		Franchisee Year (e.g. Year 1)	Annual Cap Performance Level (relevant Minutes Delay per 1000 Actual Train Miles)	Annual Target Performance Level (relevant Minutes Delay per 1000 Actual Train Miles)	Annual Floor Performance Level (relevant Minutes Delay per 1000 Actual Train Miles)
2019	2020	Year 1	1.70	3.70	5.70
2020	2021	Year 2	1.70	3.70	5.70
2021	2022	Year 3	1.65	3.65	5.65
2022	2023	Year 4	1.60	3.60	5.60
2023	2024	Year 5	1.55	3.55	5.55
2024	2025	Year 6	1.50	3.50	5.50
2025	2026	Year 7	1.50	3.50	5.50
Reset Period					
2026	2027	Year 8	1.50	3.50	5.50
2027	2028	Year 9	1.50	3.50	5.50
2028	2029	Year 10	1.50	3.50	5.50
2029	2030	Year 11	1.50	3.50	5.50
2030	2031	Year 12	1.50	3.50	5.50

Part 2(B) - Annual TOC Minute Delay Payment Table (Financial Regime)

Column 1	Column 2
Payment	Amount (£)
PBP_{MD}	[REDACTED] ²⁵
PDP_{MD}	[REDACTED] ²⁶

Provided that in respect of any Franchisee Year of less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then **PBP_{MD}** and/or **PDP_{MD}** shall be multiplied by the number of whole Reporting Periods in the relevant Franchisee Year and then divided by thirteen (13).

²⁵ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁶ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 3 TO SCHEDULE 7.1A

NOT USED

APPENDIX 4 TO SCHEDULE 7.1A

NOT USED

APPENDIX 5 TO SCHEDULE 7.1A

NOT USED

APPENDIX 6 TO SCHEDULE 7.1A

T-3 Measure

Part 1 (A) - Annual T-3 Table (Financial Regime)

	Column 1	Column 2	Column 3	Column 4	Column 5
Year	Franchisee Year	Annual Cap Performance Level (% T-3) ²⁷	Bid Annual Target Performance Level (% T-3)	Annual Floor Performance Level (% T-3) ²⁸	Adjusted Annual Target Performance Level (% T-3) ²⁹
2019/20	Year 1	74.40	69.40	64.40	
2020/21	Year 2	75.50	70.50	65.50	
2021/22	Year 3	76.00	71.00	66.00	
2022/23	Year 4	76.00	71.00	66.00	
2023/24	Year 5	76.50	71.50	66.50	
2024/25	Year 6	77.00	72.00	67.00	
2025/26	Year 7	77.00	72.00	67.00	
Reset Period					

²⁷ **Note to Bidders:** The Annual Cap Performance Level will be amended prior to signature of the FA, such that: (a) if the Adjusted Annual Target Performance Level is lower than the Bid Annual Target Performance Level, the Annual Cap Performance Level will be unchanged; and (b) if the Adjusted Annual Target Performance Level is higher than the Bid Annual Target Performance Level, the Annual Cap Performance Level will be increased by the amount of the difference between the Bid Annual Target Performance Level and the Adjusted Annual Target Performance Level.

²⁸ **Note to Bidders:** The Annual Floor Performance Level will be amended prior to signature of the FA, such that: (a) if the Adjusted Annual Target Performance Level is lower than the Bid Annual Target Performance Level, the Annual Floor Performance Level will be decreased by the amount of the difference between the Bid Annual Target Performance Level and the Adjusted Annual Target Performance Level; and (b) if the Adjusted Annual Target Performance Level is higher than the Bid Annual Target Performance Level, the Annual Floor Performance Level will be unchanged.

²⁹ **Note to Bidders:** The Adjusted Annual Target Performance Level will be completed prior to signature of the FA and will be determined by DfT, following agreement with Network Rail and the ORR in relation to industry performance benchmarks.

2026/27	Year 8	77.00	72.00	67.00	
2027/28	Year 9	77.00	72.00	67.00	
2028/29	Year 10	77.00	72.00	67.00	
2029/30	Year 11	77.00	72.00	67.00	
2030/31	Year 12	77.00	72.00	67.00	

Part 1 (B) – Annual Payment Table (Financial Regime)

Column 1	Column 2
Payment	Amount (£)
PBP _{T-3}	[REDACTED] ³⁰
PDP _{T-3}	[REDACTED] ³¹

Provided that in respect of any Franchisee Year of less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then **PBP_{T-3}** and/or **PDP_{T-3}** shall be multiplied by the number of whole Reporting Periods in the relevant Franchisee Year and then divided by thirteen (13).

³⁰ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³¹ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 7 TO SCHEDULE 7.1A

T-15 Measure

Part 1 (A) – Annual T-15 Table (Financial Regime)

	Column 1	Column 2	Column 3	Column 4	Column 5
Year	Franchisee Year	Annual Cap Performance Level (% T-15) ³²	Bid Annual Target Performance Level (% T-15)	Annual Floor Performance Level (% T-15) ³³	Adjusted Annual Target Performance Level (% T-15) ³⁴
2019/20	Year 1	95.10	93.60	92.10	
2020/21	Year 2	95.50	94.00	92.50	
2021/22	Year 3	96.00	94.50	93.00	
2022/23	Year 4	96.00	94.50	93.00	
2023/24	Year 5	96.50	95.00	93.50	
2024/25	Year 6	96.50	95.00	93.50	
2025/26	Year 7	97.00	95.50	94.00	
Reset Period					

³² **Note to Bidders:** The Annual Cap Performance Level will be amended prior to signature of the FA, such that: (a) if the Adjusted Annual Target Performance Level is lower than the Bid Annual Target Performance Level, the Annual Cap Performance Level will be unchanged; and (b) if the Adjusted Annual Target Performance Level is higher than the Bid Annual Target Performance Level, the Annual Cap Performance Level will be increased by the amount of the difference between the Bid Annual Target Performance Level and the Adjusted Annual Target Performance Level.

³³ **Note to Bidders:** The Annual Floor Performance Level will be amended prior to signature of the FA, such that: (a) if the Adjusted Annual Target Performance Level is lower than the Bid Annual Target Performance Level, the Annual Floor Performance Level will be decreased by the amount of the difference between the Bid Annual Target Performance Level and the Adjusted Annual Target Performance Level; and (b) if the Adjusted Annual Target Performance Level is higher than the Bid Annual Target Performance Level, the Annual Floor Performance Level will be unchanged.

³⁴ **Note to Bidders:** The Adjusted Annual Target Performance Level will be completed prior to signature of the FA and will be determined by DfT, following agreement with Network Rail and the ORR in relation to industry performance benchmarks.

2026/27	Year 8	97.00	95.50	94.00	
2027/28	Year 9	97.00	95.50	94.00	
2028/29	Year 10	97.00	95.50	94.00	
2029/30	Year 11	97.00	95.50	94.00	
2030/31	Year 12	97.00	95.50	94.00	

Part 1 (B) – Annual T-15 Payment Table (Financial Regime)

Column 1	Column 2
Payment	Amount (£)
PBP _{T-15}	[REDACTED] ³⁵
PDP _{T-15}	[REDACTED] ³⁶

Provided that in respect of any Franchisee Year of less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then **PBP_{T-15}** and/or **PDP_{T-15}** shall be multiplied by the number of whole Reporting Periods in the relevant Franchisee Year and then divided by thirteen (13).

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.

³⁶ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 8 TO SCHEDULE 7.1A

All Cancellations Measure

Part 1 (A) – Annual All Cancellations Table (Financial Regime)

	Column 1	Column 2	Column 3	Column 4	Column 5
Year	Franchisee Year	Annual Cap Performance Level (% All Cancelled) ³⁷	Bid Annual Target Performance Level (% All Cancelled)	Annual Floor Performance Level (% All Cancelled) ³⁸	Adjusted Annual Target Performance Level (% All Cancelled) ³⁹
2019/20	Year 1	1.02	2.02	3.02	
2020/21	Year 2	0.75	1.75	2.75	
2021/22	Year 3	0.73	1.73	2.73	
2022/23	Year 4	0.70	1.70	2.70	
2023/24	Year 5	0.68	1.68	2.68	
2024/25	Year 6	0.65	1.65	2.65	
2025/26	Year 7	0.65	1.65	2.65	

³⁷ **Note to Bidders:** The Annual Cap Performance Level will be amended prior to signature of the FA, such that: (a) if the Adjusted Annual Target Performance Level is higher than the Bid Annual Target Performance Level, the Annual Cap Performance Level will be unchanged; and (b) if the Adjusted Annual Target Performance Level is lower than the Bid Annual Target Performance Level, the Annual Cap Performance Level will be decreased by the amount of the difference between the Bid Annual Target Performance Level and the Adjusted Annual Target Performance Level.

³⁸ **Note to Bidders:** The Annual Floor Performance Level will be amended prior to signature of the FA, such that: (a) if the Adjusted Annual Target Performance Level is higher than the Bid Annual Target Performance Level, the Annual Floor Performance Level will be increased by the amount of the difference between the Bid Annual Target Performance Level and the Adjusted Annual Target Performance Level; and (b) if the Adjusted Annual Target Performance Level is lower than the Bid Annual Target Performance Level, the Annual Floor Performance Level will be unchanged.

³⁹ **Note to Bidders:** The Adjusted Annual Target Performance Level will be completed prior to signature of the FA and will be determined by DfT, following agreement with Network Rail and the ORR in relation to industry performance benchmarks.

Reset Period					
2026/27	Year 8	0.65	1.65	2.65	
2027/28	Year 9	0.65	1.65	2.65	
2028/29	Year 10	0.65	1.65	2.65	
2029/30	Year 11	0.65	1.65	2.65	
2030/31	Year 12	0.65	1.65	2.65	

Part 1 (B) - Annual All Cancellations Payment Table (Financial Regime)

Column 1	Column 2
Payment	Amount (£)
PBP _{Ac}	[REDACTED] ⁴⁰
PDP _{Ac}	[REDACTED] ⁴¹

Provided that in respect of any Franchisee Year of less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then **PBP_{Ac}** and/or **PDP_{Ac}** shall be multiplied by the number of whole Reporting Periods in the relevant Franchisee Year and then divided by thirteen (13).

⁴⁰ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴¹ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

SCHEDULE 7.2A

Customer Experience and Engagement

1. Definitions

1.1 For the purposes of this Schedule 7.2 (Customer Experience and Engagement) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

"Additional Expenditure" or "AD"	has the meaning given to it in paragraph 6.1 of this Schedule 7.2 (Customer Experience and Engagement);
"Alternative NRPS"	has the meaning given to it in paragraph 2.6 of this Schedule 7.2 (Customer Experience and Engagement);
"Existing Expenditure"	has the meaning given to it in paragraph 6.2(a) of this Schedule 7.2 (Customer Experience and Engagement);
"First Additional Expenditure Year"	has the meaning given to it in paragraph 6.2(a) of this Schedule 7.2 (Customer Experience and Engagement);
"NRPS Action Plan"	has the meaning given to it in paragraph 5.1 of this Schedule 7.2 (Customer Experience and Engagement);
"NRPS Benchmark"	means, in respect of a relevant Franchisee Year, the benchmark for each NRPS Measure as set out in the NRPS Benchmark Table;
"NRPS Benchmark Table"	means table 1 in Appendix 1 to Schedule 7.2 (Customer Experience and Engagement);
"NRPS Measure"	means each of the factors more particularly described in the Passenger Survey Methodology and grouped as "Stations (S)", "Trains (T)", "Customer Services (C)" and "Dealing with Delays (D)";
"Required Improvement"	means an improvement in the level of customer satisfaction for the relevant NRPS Measure as measured by a National Rail Passenger Survey so that such level is equal to or higher than the related NRPS Benchmark; and
"RPIX"	has the meaning given to it in paragraph 6.2(a) of this Schedule 7.2 (Customer Experience and Engagement).

2. Conduct of National Rail Passenger Surveys

2.1 The Franchisee agrees with the Secretary of State that:

- (a) the Passengers' Council may measure the level of passenger satisfaction with the Franchise Services through National Rail Passenger Surveys;
- (b) the Passengers' Council shall determine how, when (normally twice per annum) and where National Rail Passenger Surveys are to be carried out;

- (c) the Franchisee shall grant access on trains or at stations to the Passengers' Council (or its representatives and agents) to carry out National Rail Passenger Surveys;
- (d) the Franchisee shall co-operate with the Passengers' Council (in such manner as the Passengers' Council may reasonably request or as the Secretary of State may reasonably direct) in order to enable the Passengers' Council to carry out National Rail Passenger Surveys; and
- (e) the Passengers' Council and/or the Secretary of State may, from time to time, publish the results of each National Rail Passenger Survey.

2.2 The Secretary of State shall ensure or shall procure that:

- (a) the findings of any National Rail Passenger Survey are made available by the Passengers' Council to the Franchisee within a reasonable period of time after the completion of each such survey and shall use all reasonable endeavours to procure that those findings are made available in a timely manner to enable the Franchisee to comply with its obligations under paragraph 2.3; and
- (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

2.3 The Franchisee shall, as soon as reasonably practicable after such information is made available to the Franchisee in accordance with paragraph 2.2, publicise its performance against the NRPS Benchmarks by including such information in its Customer Report and displaying such information at all of the Stations and on its website.

2.4 It is agreed by the Franchisee that, subject to paragraph 2.5, the methodology to be adopted by the Passengers' Council in conducting any such National Rail Passenger Survey shall be as described in the document in the agreed terms marked **PSM** (the "**Passenger Survey Methodology**");

2.5 If:

- (a) at any time during the ICWC Term the methodology adopted in conducting any National Rail Passenger Survey is, in the reasonable opinion of the Secretary of State, materially inconsistent with the Passenger Survey Methodology; and
- (b) the Secretary of State reasonably determines that in consequence a revision to the NRPS Benchmark is required in order to hold constant the risk of the Franchisee failing to satisfy the NRPS Benchmark,

then the Secretary of State shall make such revisions to such NRPS Benchmarks as the Secretary of State reasonably considers appropriate to hold constant such risk.

2.6 If the Passengers' Council ceases to undertake National Rail Passenger Surveys then the relevant National Rail Passenger Survey for the purposes of this Schedule 7.2 shall be such other passenger survey as the Secretary of State may, after consultation with the Franchisee, reasonably determine to be appropriate in the circumstances (the "**Alternative NRPS**"). The provisions of this Schedule 7.2 shall apply in respect of any Alternative NRPS and for these purposes Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NRPS.

3. NRPS Benchmarks

- 3.1 It is agreed by the Secretary of State and the Franchisee that, subject to paragraph 2.6, the results of the National Rail Passenger Survey(s) published by the Passengers' Council in any Franchisee Year should be used to determine the Franchisee's performance against the NRPS Benchmarks for that Franchisee Year. If in any Franchisee Year the Passengers' Council has published:
- (a) only one (1) National Rail Passenger Survey in that Franchisee Year then the performance of the Franchisee against the NRPS Benchmarks shall be measured against the results of such National Rail Passenger Survey; or
 - (b) more than one (1) National Rail Passenger Survey in that Franchisee Year then the performance of the Franchisee against the NRPS Benchmarks shall be measured against the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that Franchisee Year.

4. Performance Review

- 4.1 For each Franchisee Year the Secretary of State shall determine the Franchisee's performance against each NRPS Benchmark by comparing:
- (a) if only one (1) National Rail Passenger Survey has been published by Passengers' Council in that Franchisee Year, the results of such National Rail Passenger Survey against the NRPS Benchmarks applicable in respect of that Franchisee Year; or
 - (b) if more than one (1) National Rail Passenger Survey has been published by Passengers' Council in that Franchisee Year, the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that Franchisee Year against the NRPS Benchmarks applicable in respect of that Franchisee Year.
- 4.2 For the purposes of undertaking the comparison pursuant to paragraph 4.1, the results referred to in paragraph 4.1(a) or paragraph 4.1(b) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).
- 4.3 If, following the Secretary of State's determination pursuant to any of paragraphs 4.1(a) or 4.1(b) (as the case may be), the results show that the level of customer satisfaction in respect of any NRPS Measure is below the NRPS Benchmark for such measure then the Franchisee shall, unless the Secretary of State shall otherwise direct, incur Additional Expenditure in order to secure the Required Improvement.

5. Required Improvement and NRPS Action Plans

- 5.1 Without limiting paragraph 4.3, on each occasion that the Franchisee becomes obliged to incur Additional Expenditure to secure a Required Improvement, the Franchisee shall produce a plan (the "**NRPS Action Plan**") which is consistent with its obligations under paragraph 4.3 and in compliance with the following provisions:
- (a) the Franchisee shall (i) produce; (ii) obtain the Secretary of State's approval of; and (iii) commence the implementation of the NRPS Action Plan within three (3) months after the date on which the results of such National Rail Passenger Survey which triggered the requirement for the Required Improvement were published or otherwise made available to the Franchisee pursuant to paragraph 2.2;
 - (b) the NRPS Action Plan will contain specific tangible action points and indicate in the case of each action point:

- (i) how that action will contribute to meeting the NRPS Measure;
- (ii) where the action is to be implemented;
- (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the plan shall include specific review dates; and
- (iv) how performance of the action is to be measured; and

(c) the NRPS Action Plan will identify the Additional Expenditure associated with each action.

5.2 The Franchisee shall, except to the extent otherwise agreed by the Secretary of State in advance, implement each NRPS Action Plan referred to in paragraph 5.1 in accordance with its terms.

5.3 It is acknowledged by the Franchisee that the approval or lack of approval by the Secretary of State of each NRPS Action Plan as contemplated in paragraph 5.1(a) shall not relieve the Franchisee of its obligations under this Schedule 7.2 or any other provisions of the Franchise Agreement.

6. Additional Expenditure

6.1 For the purposes of paragraphs 4, 5 and 7 of this Schedule 7.2 **"Additional Expenditure" or "AD"** means the amount calculated in accordance with Appendix 2 to this Schedule 7.2 in respect of a single NRPS Measure.

6.2 For the purposes of paragraph 4.3, the Additional Expenditure shall be:

- (a) in addition to any sums provided for expenditure in respect of the same or similar commitments as those to be specified in an NRPS Action Plan in the Business Plan for the Franchisee Year (the **"First Additional Expenditure Year"**) in which the obligation to incur Additional Expenditure under paragraph 4.3 first arises (the **"Existing Expenditure"**) and, in respect of any subsequent Franchisee Year, shall be in addition to the Existing Expenditure increased by an amount equivalent to RPIX. For the purpose of this paragraph 6.2(a) **"RPIX"** means the increase in the Retail Prices Index between the beginning of the First Additional Expenditure Year and the beginning of that subsequent Franchisee Year; and
- (b) in addition to and without limiting paragraph 6.2(a), any expenditure made, or to be made, by the Franchisee for the purposes of complying with the provisions of Schedule 1 (Passenger Service Obligations), Schedule 4 (Accessibility and Inclusivity), Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligations) and Schedule 7 (Performance Benchmarks).

7. Payments on Termination or Expiry

Following the end of the ICWC Period the Franchisee shall pay to the Secretary of State an amount equivalent to the amount of any Additional Expenditure that the Franchisee is committed to incur, such payment to be made by way of adjustment to Franchise Payments (or, where no Franchise Payment(s) remain due and payable in respect of the ICWC Period, such payment to be made to the Secretary of State within thirty (30) days of the end of the ICWC Period.

8. Consultations

The Franchisee shall undertake consultations from time to time as required with:

- (a) passengers, potential passengers, Stakeholders and other users of the rail network; and

- (b) persons who are protected by a Disabled People's Protection Policy; and
- (c) persons with other protected characteristics within the meaning of the EA,

for the purposes of the Customer and Stakeholder Engagement Strategy, the Customer Report and the CCI Scheme.

9. Customer and Stakeholder Engagement Strategy

- 9.1 The Franchisee shall comply with the Customer and Stakeholder Engagement Strategy from the Start Date.
- 9.2 The Franchisee shall:
 - (a) undertake and complete a review of the Customer and Stakeholder Engagement Strategy during each of the third (3rd) and the sixth (6th) Franchisee Years; and
 - (b) provide the Secretary of State with any proposed revisions to the Customer and Stakeholder Engagement Strategy arising out of such review by no later than the end of each such Franchisee Year.
- 9.3 The aim of the review referred to in paragraph 9.2 shall be to update the Customer and Stakeholder Engagement Strategy to reflect lessons learned in the period since the Start Date or the previous review of the Customer and Stakeholder Engagement Strategy (as applicable) and to ensure that the Customer and Stakeholder Engagement Strategy achieves effective passenger engagement.
- 9.4 Any revisions to the Customer and Stakeholder Engagement Strategy shall require the consent of the Secretary of State (such consent not to be unreasonably withheld or delayed).

10. Customer Report

- 10.1 The Franchisee shall, in accordance with the requirements of paragraph 10.2 and paragraph 10.3 below, publish a Customer Report in such readily accessible formats as the Secretary of State may reasonably require (including in booklet or other similar hard copy formats, in electronic formats (such as on the Franchisee's website, through social media channels and by email)), in each case in accordance with the Customer and Stakeholder Engagement Strategy and the provisions of paragraph 8 and paragraph 9 of Schedule 1.4 (Passenger Facing Obligations) and paragraph 16 of Schedule 11.2 (Management Information).
- 10.2 The Franchisee shall publish a Customer Report as follows:
 - (a) in respect of the first (1st) Franchisee Year:
 - (i) where such Franchisee Year is less than seven (7) Reporting Periods, the Franchisee shall only be required to publish a Customer Report for that Franchisee Year by no later than the Start Date; or
 - (ii) where such Franchisee Year is less than thirteen (13) Reporting Periods but equal to or more than seven (7) Reporting Periods, the Franchisee shall be required to publish two (2) Customer Reports in that Franchisee Year, the first Customer Report to be published by no later than the Start Date and the second Customer Report to be published before the end of that first Franchisee Year; and
 - (b) in respect of each subsequent Franchisee Year during the ICWC Period, the Franchisee shall be required to publish a Customer Report at least twice in that Franchisee Year provided that where any such subsequent Franchisee Year is less than thirteen (13)

Reporting Periods the Franchisee shall be required to publish a Customer Report only once in respect of that Franchisee Year.

- 10.3 Without prejudice to the obligations of the Franchisee as specified in each of paragraphs 12.1 and 12.3 of this Schedule 7.2, paragraphs 8.3 and 9 of Schedule 1.4 (Passenger Facing Obligations) and paragraph 16 of Schedule 11.2 (Management Information), the Secretary of State and the Franchisee acknowledge and agree that in respect of each Franchisee Year to which the provisions of paragraph 10.2(b) apply, the first Customer Report to be published for that Franchisee Year shall be prepared in respect of the first six (6) Reporting Periods of that Franchisee Year and the second Customer Report to be published for that Franchisee Year shall be prepared in respect of the last seven (7) Reporting Periods of that Franchisee Year.

11. Customer and Communities Investment (CCI) Scheme

- 11.1 No later than three (3) months prior to the start of each CCI Period the Franchisee shall provide to the Secretary of State details of those initiatives, works or proposals (each a **"CCI Scheme"**) which the Franchisee proposes to undertake in that CCI Period in order to resolve or mitigate issues raised with the Franchisee through the consultations as carried out pursuant to paragraph 8. The Franchisee shall use all reasonable endeavours to propose, in respect of each CCI Period, CCI Schemes with an aggregate projected CCI Scheme Shortfall of not less than the aggregate of the CCI Amount for each Franchisee Year in the relevant CCI Period.
- 11.2 In relation to each CCI Scheme proposed by the Franchisee pursuant to paragraph 11.1 the Franchisee shall provide:
- (a) details of the specific issues which that CCI Scheme is intended to resolve or mitigate (including how those issues have been identified) and how that CCI Scheme will resolve or mitigate those issues; and
 - (b) fully worked up details of the CCI Scheme sufficient to enable the Secretary of State to evaluate the same, including:
 - (i) a timetable for the implementation of that CCI Scheme, setting out the proposed commencement and completion date of such CCI Scheme and any other key dates and milestones;
 - (ii) details of the projected CCI Scheme Cost; and
 - (iii) details of the projected CCI Scheme Revenue.
- 11.3 The Franchisee shall provide the Secretary of State with such further information in relation to any CCI Scheme proposed by the Franchisee pursuant to paragraph 11.1 as the Secretary of State may reasonably require.
- 11.4 A CCI Scheme proposed by the Franchisee pursuant to paragraph 11.1 shall not be an Approved CCI Scheme unless and until approved by the Secretary of State pursuant to this paragraph 11.4. Without limitation, the Secretary of State may withhold the Secretary of State's approval to any proposed CCI Scheme which:
- (a) has not been identified and/or developed in accordance with the Customer and Stakeholder Engagement Strategy;
 - (b) is not designed to resolve or mitigate issues raised with the Franchisee through the consultations referred to in paragraph 8;
 - (c) has a completion date falling later than the end of the relevant CCI Period;

- (d) is projected to generate a Commercial Return or in relation to which the Secretary of State considers the CCI Scheme Costs (or any part of them) to be too high or disproportionate to the benefits accruing from the CCI Scheme;
- (e) the Franchisee is otherwise funded to undertake; or
- (f) in the opinion of the Secretary of State, amounts to actions or steps which the Franchisee is otherwise obliged to take or which any competent train operator should be taking in relation to the operation of the Franchise.

11.5 Approved CCI Schemes shall be deemed to be, and treated for the purposes of this Agreement as, Committed Obligations and the provisions of Part 2 of Schedule 6.2 (Special Terms related to the Committed Obligations) shall apply.

11.6 Paragraph 11.8 will apply if:

- (a) the aggregate projected CCI Scheme Shortfall in respect of all Approved CCI Schemes for any CCI Period is less than the aggregate of the CCI Amount for each Franchisee Year in that CCI Period; or
- (b) subject to paragraph 11.7 in any CCI Period, in the Secretary of State's reasonable opinion, the aggregate of the actual CCI Scheme Shortfall incurred by the Franchisee during that CCI Period upon Approved CCI Schemes is less than the aggregate of the CCI Amount for each Franchisee Year in that CCI Period,

in each case the underspend against the aggregate CCI Amount being the **"CCI Scheme Underspend"**.

11.7 If:

- (a) the amount of the CCI Scheme Costs actually incurred by the Franchisee in relation to any Approved CCI Scheme exceed the projected CCI Scheme Costs notified to the Secretary of State pursuant to paragraph 11.2 for such Approved CCI Scheme, then the amount of the excess shall not amount to CCI Scheme Cost; or
- (b) in the Secretary of State's reasonable opinion, the amount of the CCI Scheme Revenue actually earned by the Franchisee in relation to any Approved CCI Scheme is less than the projected CCI Scheme Revenue notified to the Secretary of State pursuant to paragraph 11.2 for such Approved CCI Scheme then, for the purposes of paragraph 11.6(b) the actual CCI Scheme Revenue shall be deemed to be the projected CCI Scheme Revenue.

11.8 Where this paragraph 11.8 applies the Secretary of State may require:

- (a) all or part of the CCI Scheme Underspend to be added to the CCI Amount for the first Franchisee Year in the subsequent CCI Period;
- (b) the Franchisee to propose further CCI Schemes using all or part of the CCI Scheme Underspend by such new deadline as the Secretary of State may specify;
- (c) the Franchisee to spend all or part of the CCI Scheme Underspend in such manner as the Secretary of State may direct; and/or
- (d) the Franchisee to pay all or part of the CCI Scheme Underspend to the Secretary of State,

provided that paragraph 11.8(d) shall automatically apply in respect of the last CCI Period unless the Secretary of State specifies otherwise.

11.9 Any Franchise Asset arising as a result of an Approved CCI Scheme shall be designated as a Primary Franchise Asset and shall not be de-designated as such. Any such Primary Franchise Asset which falls to be valued in accordance with the Supplemental Agreement shall be valued at nil.

12. Customer Service and Satisfaction Data

12.1 As part of each Customer Report (excluding the first (1st) Customer Report) to be provided by the Franchisee pursuant to paragraph 10.1 of this Schedule 7.2, the Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of the Franchisee's:

- (a) level of adherence to scheduled ticket office opening hours at Stations (so that the Customer Report shows, as a percentage, the proportion of scheduled ticket office opening hours not delivered aggregated across all ticket offices at all Stations); and
- (b) performance by reference to such benchmarks as may be agreed between the Franchisee and the ORR as part of the Franchisee's Disabled People's Protection Policy in respect of the Passenger Assistance service operated by the Franchisee,

in each case in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the second (2nd) Customer Report, since the Start Date, along with (from the fourth (4th) Customer Report onwards) a comparison with the relevant statistics or results (as applicable) provided for the same Reporting Periods in the previous Franchisee Year.

12.2 The Franchisee shall publish on its website (in such format as the Secretary of State may reasonably require):

- (a) within twenty (20) Weekdays of the publication of each National Rail Passenger Survey carried out by the Passengers' Council during the ICWC Term, details of the scores achieved by the Franchisee in such National Rail Passenger Survey, including the scores achieved in respect of passengers' 'overall satisfaction'; and
- (b) within twenty (20) Weekdays of the publication of the last National Rail Passenger Survey to be carried out by the Passengers' Council during any Franchisee Year, details of the scores achieved by the Franchisee in respect of each NRPS Benchmark, as calculated in accordance with paragraph 3 of this Schedule 7.2.

12.3 The Franchisee shall ensure that the scores achieved in relation to the NRPS Benchmarks, published by it pursuant to paragraph 12.2, are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable NRPS Benchmarks were achieved, along with:

- (a) from the fourth (4th) Customer Report onwards, a comparison with the scores that were achieved against the NRPS Benchmarks for the same Reporting Periods in the previous Franchisee Year, accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise;
- (b) details of any remedial work either:
 - (i) planned by the Franchisee to occur in the period in relation to which the next Customer Report will report to improve the Franchisee's performance in relation to achieving and exceeding the NRPS Benchmarks (for instance, the planned application of Additional Expenditure); or
 - (ii) undertaken by the Franchisee during the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in

the case of the first (1st) Customer Report, since the Start Date, for the purposes of improving the Franchisee's performance in relation to achieving and exceeding the NRPS Benchmarks (for instance, the planned application of Additional Expenditure); and

- (c) details of any other initiatives planned to be implemented by the Franchisee to improve passenger experience.

12.4 The Franchisee shall ensure that a summary of the then current Customer Report is made available at all staffed Stations (in such format as the Secretary of State may reasonably require) and that such summary includes instructions to enable passengers to locate and obtain a full copy of the applicable Customer Report.

APPENDIX 1 TO SCHEDULE 7.2A

NRPS Benchmark Table

Table 1						
NRPS BENCHMARKS						
Year		Franchisee Year	NRPS MEASURE	NRPS MEASURE	NRPS MEASURE	NRPS MEASURE
From	To		STATION (S) (%)	TRAINS (T) (%)	CUSTOMER SERVICES (C) (%)	DEALING WITH DELAYS (D) (%)
2019	2020	Year 1	74.6	81.7	84.2	63.7
2020	2021	Year 2	75.9	82.0	84.9	64.5
2021	2022	Year 3	77.7	82.6	85.5	65.5
2022	2023	Year 4	79.3	82.7	86.0	66.4
2023	2024	Year 5	80.9	82.8	86.0	67.3
2024	2025	Year 6	81.2	82.9	86.9	67.8
2025	2026	Year 7	81.6	83.0	87.4	68.2
Reset Period						
2026	2027	Year 8	81.6	83.0	87.4	68.2
2027	2028	Year 9	81.6	83.0	87.4	68.2
2028	2029	Year 10	81.6	83.0	87.4	68.2
2029	2030	Year 11	81.6	83.0	87.4	68.2
2030	2031	Year 12	81.6	83.0	87.4	68.2

APPENDIX 2 TO SCHEDULE 7.2A

The Additional Expenditure shall be calculated in accordance with this Appendix 2:

1. Core Amount

- (i) The Core Amount shall be specified in Tables 1, 2, 3 and 4 as set out in this Appendix 2.
- (ii) The Core Amount shall be adjusted at the beginning of each Franchisee Year in accordance with the following formula:

Core Amount x RPI	
where:	
Core Amount	has the meaning given to it in this Appendix 2; and
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).

- (iii) For any Franchisee Year which is shorter than thirteen (13) Reporting Periods, Additional Expenditure for that Franchisee Year shall be reduced pro rata.

2. Table 1 - NRPS Measure – Stations

“**Core Amount**” means eighty thousand sterling pounds (£80,000).

Column A	Column B
Percentage points below NRPS Benchmark in relation to NRPS Measure for Stations	Additional Expenditure
0.1 to 2.1 below NRPS Benchmark	Core Amount
2.2 to 4.2 below NRPS Benchmark	Core Amount x 2
4.3 or more below NRPS Benchmark	Core Amount x 3.125

3. Table 2 - NRPS Measure – Trains

“**Core Amount**” means eighty thousand sterling pounds (£80,000).

Column A	Column B
Percentage points below NRPS Benchmark in relation to NRPS Measure for Trains	Additional Expenditure
0.1 to 1.5 below NRPS Benchmark	Core Amount
1.6 to 3.1 below NRPS Benchmark	Core Amount x 2
3.2 or more below NRPS Benchmark	Core Amount x 3.125

4. Table 3 - NRPS Measure – Customer Services

“Core Amount” means eighty thousand sterling pounds (£80,000).

Column A	Column B
Percentage points below NRPS Benchmark in relation to NRPS Measure for Customer Services	Additional Expenditure
0.1 to 1.9 below NRPS Benchmark	Core Amount
2.0 to 3.9 below NRPS Benchmark	Core Amount x 2
4.0 or more below NRPS Benchmark	Core Amount x 3.125

5. Table 4 - NRPS Measure – Dealing with Delays

“Core Amount” means eighty thousand sterling pounds (£80,000).

Column A	Column B
Percentage points below NRPS Benchmark in relation to NRPS Measure for Dealing with Delays	Additional Expenditure
0.1 to 3.3 below NRPS Benchmark	Core Amount
3.4 to 6.7 below NRPS Benchmark	Core Amount x 2
6.8 or more below NRPS Benchmark	Core Amount x 3.125

SCHEDULE 7.3A

Service Quality Regime

1. Purpose

1.1 This Schedule 7.3 sets out the following:

- (a) Part A – Service Quality Management Process;
- (b) Part B – Inspections and Audits;
- (c) Part C – Calculation of Pass Rates and Service Quality Payments;
- (d) Part D – Publication and Reporting Requirements; and
- (e) Part E – Remedies.

1.2 NOT USED.

1.3 NOT USED.

2. Definitions

2.1 For the purposes of this Schedule 7.3 (Service Quality Regime) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

“Affected Service Quality Indicator” has the meaning given to such term in paragraph 20.1(a) of this Schedule 7.3;

“Affected Service Quality Area” has the meaning given to such term in paragraph 20.1(b) of this Schedule 7.3;

“Ceased Services” has the meaning given to such term in paragraph 3.3(c) of this Schedule 7.3;

“Customer Service Quality Inspection” means an inspection (and provision of reports as specified) of the Franchisee's customer facing systems and procedures against each Service Quality Indicator in the manner specified in the Service Quality Schedules and in accordance with the requirements of this Schedule 7.3;

“Independent Service Quality Audits” has the meaning given to such term in paragraph 7.1 of this Schedule 7.3;

“Material Discrepancies” has the meaning given to such term in paragraph 18.1 of this Schedule 7.3;

“New Facilities” has the meaning given to such term in paragraph 3.3(a)(ii) of this Schedule 7.3;

“New Services” has the meaning given to such term in paragraph 3.3(a)(i) of this Schedule 7.3;

“Pass Rate”	means: (a) in respect of a Reporting Period and for each Service Quality Schedule, the pass rate (<i>i.e. the number of Service Quality Indicators that have passed rather than failed</i>) for a Service Quality Area comprised in such Service Quality Schedule as calculated in accordance with paragraph 10 of this Schedule 7.3; and (b) in respect of each Service Quality Schedule and for each Franchisee Year, the pass rate (<i>i.e. the number of Service Quality Indicators that have passed rather than failed</i>) for a Service Quality Area comprised in such Service Quality Schedule calculated in accordance with paragraph 10 of Schedule 7.3, both expressed as a percentage;
“Re-inspection Failure”	has the meaning given to such term in paragraph 6.3 of this Schedule 7.3;
“Revised Proposal”	has the meaning given to such term in paragraph 20.2 of this Schedule 7.3;
“Service Quality Area”	means each of the service quality areas for SQR Trains, SQR Stations and SQR Customer Service as set out in Column 1 of the table in Appendix 2 of this Schedule 7.3;
“Service Quality Failure”	has the meaning given to such term in paragraph 6.1 of this Schedule 7.3;
“Service Quality Indicator”	means each of the indicators for SQR Trains, SQR Stations and SQR Customer Service comprised in a Service Quality Area as specifically specified in Column 3 of the table in Appendix 2 of this Schedule 7.3;
“Service Quality Inspection”	has the meaning given to such term in paragraph 4.1 of this Schedule 7.3;
“Service Quality Payment”	means the payment to be made by the Franchisee to the Secretary of State as such payment is calculated pursuant to paragraph 11 (<i>Calculation of the Service Quality Payment</i>) of this Schedule 7.3;
“Service Quality Regime” or “SQR”	means the regime for the measurement of standards at SQR Stations, on SQR Trains and SQR Customer Services as set out in this Schedule 7.3;
“Service Quality Re-inspection”	has the meaning given to such term in paragraph 6.1 of this Schedule 7.3;
“Service Quality Schedules”	means each of the service schedules for SQR Trains, SQR Stations and SQR Customer Service contained in Appendix 1 of Schedule 7.3;

“SoS Audits”	has the meaning given to such term in paragraph 8.1 of this Schedule 7.3;
“SoS Nominee”	has the meaning given to such term in paragraph 7.6 of this Schedule 7.3;
“SoS Service Quality Inspection”	means inspections undertaken by the Secretary of State or the Secretary of State's agents in place of the Franchisee;
“SoS Service Quality Inspection Period”	has the meaning given to such term in paragraph 17.2(b)(iii) of this Schedule 7.3;
“SQR Benchmark”	means any SQR Train Benchmark, SQR Station Benchmark, or SQR Customer Service Benchmark (as the context may require);
“SQR Customer Service”	means the services measured by the indicators set out in Part 3 of Appendix 1 to this Schedule 7.3;
“SQR Customer Service Benchmark”	means the benchmark for each Service Quality Area relating to SQR Customer Service as set out in Column 2 of the table in Appendix 2 to Schedule 7.3;
“SQR Management System”	has the meaning given to such term in paragraph 3.1 of this Schedule 7.3;
“SQR Register”	means the register of the facilities and services which exist on a SQR Train or at a SQR Station which is to be used for carrying out Service Quality Inspections, Independent Service Quality Audits, SoS Audits or SoS Service Inspections, as such register is required pursuant to paragraph 3.2 of this Schedule 7.3;
“SQR Station”	means the Stations;
“SQR Station Benchmark”	means the benchmark for each Service Quality Area relating to SQR Stations as set out in Column 2 of the table in Appendix 2 to this Schedule 7.3;
“SQR Train”	means a train engaged in the provision of Passenger Services;
“SQR Train Benchmark”	means, in relation to a SQR Train, the benchmark for each Service Quality Area as set out in Column 2 of the table in Appendix 2 to this Schedule 7.3;
“Station Service Quality Inspection”	means an inspection of the facilities and services at a SQR Station in the manner specified in the Service Quality Schedules and in accordance with the requirements of this Schedule 7.3; and
“Train Service Quality Inspection”	means an inspection of the facilities and services on a vehicle comprised within a SQR Train in the manner specified in the Service Quality Schedules and in accordance with the requirements of this Schedule 7.3.

Part A - Service Quality Management Process

3. Service Quality Management

3.1 SQR Management System

- (a) The Franchisee shall put in place service quality management arrangements and processes (including the collection of relevant data) which shall (as a minimum):
- (i) be capable of measuring and reporting the Franchisee's performance against each Service Quality Indicator comprised in a Service Quality Area; and
 - (ii) set out procedures for:
 - (A) ensuring compliance with the requirements of this Schedule 7.3 including the obligation to conduct Service Quality Inspections as required pursuant to this paragraph 3; and
 - (B) identifying and rectifying failures identified during each Service Quality Inspection (including processes which ensure that corrective actions identified during any Service Quality Inspection are undertaken in a diligent and prompt manner),

(the "**SQR Management System**").

- (b) The SQR Management System shall be implemented and fully operational by no later than the first day of the Reporting Period commencing on 1 April 2020.

3.2 SQR Register

- (a) The Franchisee shall prepare and complete the SQR Register by no later than the last day of the Reporting Period which ends on 1 April 2020 so as to include the facilities and services which exist at every SQR Train and at every SQR Station.
- (b) The form and content of the SQR Register shall include as a minimum the following content:
- (i) description, purpose and quantity of each facility or service;
 - (ii) photographic evidence of each facility or service;
 - (iii) individual serial number and asset tracking number (where applicable) for each facility or service;
 - (iv) details of the applicable Service Quality Indicators against which the facility or service will be measured and reported against as set out in Appendix 2 of this Schedule 7.3; and
 - (v) map of each SQR Station, setting out the location of each facility or service located at such SQR Station.
- (c) The Franchisee shall maintain the SQR Register and update such SQR Register at such regular intervals as is reasonably necessary to ensure compliance with its obligations under this Schedule 7.3.

- (d) The Franchisee shall provide an up to date copy of the SQR Register to the Secretary of State (when requested to do so from time to time) or to any person carrying out an SoS Audit or SoS Service Quality Inspection on behalf of the Secretary of State.

3.3 **Changes to Franchise Services**

- (a) If at any time during the ICWC Term, the Franchisee:
- (i) operates additional railway passenger services or operates additional stations which are not part of the SQR Trains or SQR Stations (as the case may be) at the Start Date (including where such are transferred from another Train Operator) ("**New Services**"); and/or
 - (ii) introduces new facilities or services on a SQR Train and/or on a SQR Station (including Managed Stations) which were not in existence at the Start Date (including where such are transferred from another Train Operator) ("**New Facilities**"),

then it shall update its SQR Management System and the SQR Register to include such New Services and New Facilities by no later than the first day of the first Reporting Period which commences after the date upon which the Franchisee begins to operate such New Services or such New Facilities are introduced (as the case may be).

- (b) The requirements of this Schedule 7.3 shall begin to apply in relation to such New Services and such New Facilities from the first day of the first Reporting Period which commences after the date on which the Franchisee commences the operation of such New Services or New Facilities are introduced (as the case may be).
- (c) If at any time during the ICWC Term, the Secretary of State directs the Franchisee to permanently stop operating certain railway passenger services or permanently stop operating stations which are part of the SQR Trains or SQR Stations (as the case may be) at the Start Date ("**Ceased Services**"), then the Franchisee shall update the SQR Management System and the SQR Register to remove such Ceased Services by no later than the first day of the first Reporting Period which commences after the date upon which the Franchisee stopped operating such Ceased Services.
- (d) The requirements of this Schedule 7.3 shall cease to apply in relation to such Ceased Services from the first day of the first Reporting Period which commences after the date on which the Franchisee stops the operation of such Ceased Services are introduced.

Part B – Inspections and Audits

4. Franchisee Service Quality Inspections

- 4.1A The provisions of this paragraph 4 shall apply in accordance with the provisions of paragraph 2 of Schedule 6.3 (Contractual Incentive Mitigations).
- 4.1 In each Reporting Period the Franchisee shall, in accordance with the requirements of paragraph 4.3, undertake or procure the undertaking of Station Service Quality Inspections, and Train Service Quality Inspections and Customer Service Quality Inspections (together to be known as the "**Service Quality Inspections**").
- 4.2 NOT USED.
- 4.3 The Franchisee shall (as a minimum):

- (a) ensure that each Service Quality Inspection is carried out so as to determine whether any Service Quality Indicator has been passed or failed in accordance with the failure criteria specified in the Service Quality Schedules;
- (b) ensure that each Service Quality Inspection (except in relation to the Customer Service Quality Inspections, where the principles of paragraph 5 apply) is carried out accurately and impartially by independent persons (who for the purposes of this paragraph 4.3 only can be Franchise Employees dedicated to delivering the Service Quality Regime);
- (c) if the Franchisee elects for Service Quality Inspections to be carried out by Franchise Employees then any such Franchise Employees must not be persons:
 - (i) who are responsible for customer service or the management or operation of any of the SQR Stations or SQR Trains which are the subject of the Service Quality Inspection; or
 - (ii) whose base salary payment or provision of any benefit (whether contractual or otherwise) are dependent on the result of any Service Quality Inspection;
- (d) ensure that any Franchise Employee who is a member of the customer relations team or who is involved in the operation of any SQR Stations or SQR Train (including any person who is responsible for the management and operation of any such SQR Stations or SQR Train) in respect of which a Service Quality Inspection is to be undertaken is not notified or otherwise made aware of the date or time of any proposed or actual Service Quality Inspection;
- (e) ensure that:
 - (i) NOT USED
 - (ii) a Station Service Quality Inspection is carried out in respect of each Reporting Period at each SQR Station with such Station Service Quality Inspection being distributed across the day and between the days of the week in proportion to typical passenger use of the SQR Station across the day and the days of the week in each such Reporting Period. Such Station Service Quality Inspections shall be reasonably apportioned so that subsequent Service Quality Inspections in respect of each SQR Station are not unduly concentrated on a particular time of the day or day of the week;
 - (iii) NOT USED
- (f) ensure that:
 - (i) in respect of each Reporting Period, (one hundred and ninety eight) 198 Train Service Quality Inspections are carried out in respect of different vehicles comprised within different SQR Trains with such Train Service Quality Inspections being distributed across the day and between the days of the week in proportion to the typical distribution of passenger journeys across the day and between the days of the week;
 - (ii) Train Service Quality Inspections are carried out in respect of vehicles operating on each Route once every Reporting Period with such Train Service Quality Inspections not unduly concentrated on vehicles that operate on a particular Route; and

(iii) (one hundred and seventy eight) 178 of the Train Service Quality Inspections are carried out on standard class vehicles and twenty (20) of the Train Service Quality Inspections are carried out on first class vehicles each Reporting Period;

(g) ensure that:

(i) at least one hundred and eighty (180) Customer Service Quality Inspections are conducted in each Reporting Period;

(ii) Customer Service Quality Inspections relating to SQR Stations are apportioned across the day and between the days of the week in proportion to typical passenger use of the SQR Station across the day and the days of the week in each such Reporting Period; and

(iii) Customer Service Quality Inspections relating to SQR Trains are carried out on each Route once every Reporting Period. Such Customer Service Quality Inspections shall be reasonably distributed so that they are undertaken on SQR Trains across the Routes.

4.4 For any Reporting Period which is longer than thirty-two (32) days or shorter than twenty-five (25) days the minimum number of:

(a) Station Service Quality Inspections as specified in paragraph 4.3(e);

(b) Train Service Quality Inspections as specified in paragraph 4.3(f); and

(c) Customer Service Quality Inspections as specified in paragraph 4.3(g),

shall be increased or reduced pro rata based on a normal Reporting Period of twenty-eight (28) days.

4.5 For any Franchisee Year which has less than thirteen (13) Reporting Periods:

(a) Station Service Quality Inspections as specified in paragraph 4.3(e);

(b) Train Service Quality Inspections as specified in paragraph 4.3(f); and

(c) Customer Service Quality Inspections as specified in paragraph 4.3(g),

shall be reduced pro rata based on a normal Franchisee Year of thirteen (13) Reporting Periods.

5. **Mystery Shopper Inspection**

5.1 The Franchisee shall (at its cost) procure the carrying out of the Customer Service Quality Inspections by an independent person ("**Mystery Shopper Inspection**").

5.2 The Franchisee shall agree that the terms of reference for the procurement of any Mystery Shopper Inspection and the identity of any independent person proposed to undertake such Mystery Shopper Inspection with the Secretary of State prior to any procurement by the Franchisee of any such Mystery Shopper Inspection.

6. **Service Quality Re-Inspection**

6.1 If in any Reporting Period a "*fail*" is recorded against any Service Quality Indicator set out in any Service Quality Schedule ("**Service Quality Failure**") then, in relation to SQR Trains and SQR Stations the Franchisee shall within the relevant time period specified in the Service Quality Schedule rectify such specific Service Quality Failure and undertake an inspection of the relevant

facility or service which resulted in the occurrence of such Service Quality Failure ("**Service Quality Re-inspection**").

- 6.2 Notwithstanding the expiry of any CIM Period, the provisions of this paragraph 6 shall continue to apply until such a time as the relevant facility or service which has resulted in the occurrence of a Service Quality Failure is rectified and a Service Quality Re-inspection in respect of that facility or service has not resulted in a Service Quality Failure.
- 6.3 If following two (2) Service Quality Re-inspections a Service Quality Failure is recorded against the same facility or service which resulted in the occurrence of a Service Quality Failure ("**Re-inspection Failure**") then the Franchisee shall within fourteen (14) days of the occurrence of such Re-inspection Failure notify the Secretary of State of such failure.
- 6.4 The Franchisee shall prepare and submit to the Secretary of State together with such notice a plan which sets out the steps the Franchisee proposes to implement to ensure that the Re-inspection Failure is rectified before the next Service Quality Inspection and the Re-inspection Failure does not reoccur. The Franchisee shall implement such plan in accordance with its terms.
- 6.5 Where a Service Quality Re-inspection results in a Service Quality Failure being recorded against a facility or service, the scores for that Service Quality Re-inspection shall be included for the purposes of calculating the Pass Rates under this paragraph 6 and paragraph 20 and determining the Service Quality Payment under paragraph 11.
- 6.6 The provisions of this paragraph 6 shall not apply to Customer Service Quality Inspections or the Service Quality Indicators relating to 'Information During Disruption'.

7. Independent Service Quality Audit

- 7.1 In respect of each Franchisee Year during which Service Quality Inspections have been carried out the Franchisee shall (at its cost) procure the carrying out of an independent audit ("**Independent Service Quality Audit**").
- 7.2 The Franchisee shall agree the terms of reference for the procurement of any Independent Service Quality Audit and the identity of any independent person proposed to undertake such Independent Service Quality Audit with the Secretary of State prior to any procurement by the Franchisee of any such Independent Service Quality Audit.
- 7.3 The Independent Service Quality Audit shall be undertaken a minimum of once per year to verify and confirm that the:
- (a) SQR Management System complies with the requirements of paragraph 3.1 and has been implemented as required pursuant to this Schedule 7.3;
 - (b) Service Quality Inspections undertaken in that Franchisee Year comply with the requirements of paragraph 4.3;
 - (c) SQR Register has been maintained and updated as required pursuant to paragraph 3.2;
 - (d) Pass Rates reported by the Franchisee for Reporting Periods within that Franchisee Year have been calculated in accordance with the requirements of paragraph 10.1;
 - (e) Pass Rates reported by the Franchisee for that Franchisee Year have been calculated in accordance with paragraph 10.2.
- 7.4 Any Independent Service Quality Audit shall either:

- (a) confirm that, after having regard to the findings of such inspections, its assessment of the matters referred to in paragraphs 7.3(a) to 7.3(e) and any other relevant information at the disposal of any person conducting such Independent Service Quality Audit, it can reasonably be concluded that the Pass Rates reported by the Franchisee for that Reporting Periods within that Franchisee Year and/or for that Franchisee Year are a fair, accurate and impartial reflection of the Franchisee's performance against each Service Quality Indicator or Service Quality Area; or
 - (b) state that such confirmation cannot be provided and proceed to comply with paragraph 7.9 below.
- 7.5 Any Independent Service Quality Audit carried out on behalf of the Franchisee as required under this paragraph 7 shall be for the benefit of the Secretary of State.
- 7.6 The Secretary of State (and any of the Secretary of State's employees, agents, representatives and/or advisers, and any of its advisers, representatives and employees (each such person to be referred to as a **"SoS Nominee"**)) shall have the right to witness any inspection carried out as part of an Independent Service Quality Audit.
- 7.7 The Franchisee shall co-operate in good faith with the Secretary of State in permitting the Secretary of State (including a SoS Nominee) to exercise the Secretary of State's rights under paragraph 7.6 and this paragraph 7.7 including by promptly providing to the Secretary of State the details of how and when any Independent Service Quality Audit will be conducted a reasonable time (and in any event not less than two (2) weeks) prior to the commencement of any such Independent Service Quality Audit.
- 7.8 The Franchisee shall provide the report together with all data produced as a consequence of any Independent Service Quality Audit to the Secretary of State as soon as reasonably practicable after the completion of the Independent Service Quality Audit to which it relates and in any event by no later than the date that is three (3) Reporting Periods after the completion of the Independent Service Quality Audit.
- 7.9 To the extent that the confirmation specified in paragraph 7.4(b) cannot be provided in respect of any Independent Service Quality Audit, the Franchisee shall procure that any such audit report specifies in detail the reasons why such confirmation cannot be provided (including details of any Material Discrepancies between any Pass Rate reported by the Franchisee in accordance with paragraph 14 and a comparable Pass Rate derived from the inspections carried out as part of the Independent Service Quality Audit (and in particular where any such Material Discrepancies are in favour of the Franchisee)).

8. Secretary of State's Right of Audit

- 8.1 Without prejudice to any other audit rights the Secretary of State may have under the Franchise Agreement, the Secretary of State (and a SoS Nominee on the Secretary of State's behalf), shall have the right to carry out audits (the **"SoS Audits"**) for the purposes of verifying, as a minimum, the matters referred to in paragraph 4.1.
- 8.2 The Secretary of State shall use the Secretary of State's reasonable endeavours to procure that any inspections carried out as part of any SoS Audits undertaken pursuant to this paragraph 8 are conducted on a basis that is, as far as reasonable practicable, consistent with the Service Quality Inspections undertaken in respect of the Franchisee Year to which the SoS Audit relates.

9. Access Rights

- 9.1 The Franchisee shall grant such access to information, individuals and facilities including:
- (a) access to the SQR Trains and SQR Stations;

- (b) access to schedules of the locations and times of any actual or planned Independent Service Quality Audits or Service Quality Inspections (as the case may be); and
- (c) access to the relevant Franchise Employees, records and information (including access to relevant third parties and information, records and other materials kept by such third parties on behalf of the Franchisee),

as is reasonably necessary to enable the Secretary of State and/or the SoS Nominees to carry out SoS Audits or SoS Service Quality Inspections (as the case may be) or to witness any Service Quality Inspections or Independent Service Quality Audits.

- 9.2 The Franchisee shall ensure that it has necessary arrangements in place with any relevant third parties for the purposes of ensuring that it can comply with its obligations under this paragraph 9.
- 9.3 The Secretary of State shall use reasonable endeavours to ensure that the persons employed in undertaking any SoS Service Quality Inspections or SoS Audits carry out such audits diligently and objectively.
- 9.4 The Secretary of State shall use reasonable endeavours to notify the Franchisee of the result of any SoS Service Quality Inspection or SoS Audit that is undertaken.
- 9.5 In carrying out any SoS Service Quality Inspection or SoS Audit (as the case may be) or witnessing any Service Quality Inspections or Independent Service Quality Audits, the Secretary of State shall, subject to paragraph 9.6, be responsible for ensuring that the SoS Nominees:
 - (a) are appropriately trained and briefed with respect to such reasonable location-specific safety rules and regulations; and
 - (b) obey such reasonable location-specific rules and regulations in respect of security and access,

in each case, as have been notified to the Secretary of State under paragraph 9.6.

- 9.6 The Franchisee shall provide reasonable prior notice from time to time of current location-specific access, security and safety rules and regulations to the Secretary of State for the purpose of ensuring that the Secretary of State (and the SoS Nominees) can carry out their respective inspection and auditing rights in an efficient, secure and safe manner.

Part C – Calculations of Pass Rates and Service Quality Payments

10. Calculation of Pass Rates

- 10.1 In respect of each Reporting Period during which Service Quality Inspections have been carried out, the Franchisee shall calculate the Pass Rates for the Train Service Quality Inspections, the Station Service Quality Inspections and the Customer Service Quality Inspections for the relevant Reporting Period as follows:

Table 1	
$SQA_{rp} = \Sigma IPR_{rp}$	
where:	
SQA_{rp}	is the Pass Rate for each Service Quality Area comprised in such Service Quality Schedule for that Reporting Period;

Table 1		
<i>IPR_{rp}</i>	is ascertained as follows:	
	$p \times w$	
	where:	
	p is ascertained as follows:	
	$P = \left(\frac{SQ_i - SQ_f}{SQ_i} \right) \times 100$	
	where:	
	<i>SQ_i</i>	is in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of Service Quality Inspections (and where applicable Service Quality Re-inspections), carried out in respect of that Service Quality Indicator for that Reporting Period; and
	<i>SQ_f</i>	is in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of Service Quality Inspections (and where applicable Service Quality Re-inspections) carried out in respect of that Service Quality Indicator for that Reporting Period where a "fail" was recorded; and
<i>w</i>	is the weighting as specified in Column 4 of the table in Appendix 2 of the table of this Schedule 7.3 in respect of the relevant Service Quality Indicator comprised in that Service Quality Area.	

- 10.2 Within fourteen (14) days after the end of each Franchisee Year during which Service Quality Inspections have been carried out, the Franchisee shall provide to the Secretary of State its calculation of the Pass Rate for the relevant Franchisee Year in respect of each Service Quality Area comprised in each Service Quality Schedule, such Pass Rate to be separately calculated for the Train Service Quality Inspections, the Station Service Quality Inspections and the Customer Service Quality Inspections carried out in that Franchisee Year as follows:

Table 2	
$SQA_{yr} = \sum IPR_{yr}$	
where:	
<i>SQA_{yr}</i>	is the Pass Rate for each Service Quality Area comprised in such Service Quality Schedule for that Franchisee Year;
<i>IPR_{yr}</i>	is ascertained as follows:
	$p \times w$

Table 2

where:	
p is ascertained as follows:	
$P = \left(\frac{SQ_i - SQ_f}{SQ_i} \right) \times 100$	
where:	
SQ _i	is in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of Service Quality Inspections (and where applicable Service Quality Re-inspections), carried out in respect of that Service Quality Indicator for that Franchisee Year;
SQ _f	is in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of Service Quality Inspections (and where applicable Service Quality Re-inspections) carried out in respect of that Service Quality Indicator for that Franchisee Year where a "fail" was recorded; and
w	is the weighting as specified in Column 4 of the table in Appendix 2 of this Schedule 7.3 in respect of the Service Quality Indicator comprised in that Service Quality Area.

10.3 The Franchisee shall perform the calculations referred to in paragraphs 10.1 and 10.2 rounded to two (2) decimal places with the midpoint (that is, 0.115) rounded upwards (that is, 0.12).

11. Calculation of the Service Quality Payments

11.1 For each Franchisee Year during which Service Quality Inspections have been carried out the Franchisee shall calculate the sum of the Franchisee's performance payments in respect of each Service Quality Area and for each Service Quality Schedule as follows:

Table 3

SQP = TSQP + SSQP + SQA_{LD} + CSQP	
where:	
RPI	is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for January 2019 provided that, for the first Franchisee Year, RPI shall be one;
SQP	is the Service Quality Payment payable by the Franchisee to the Secretary of State for that Franchisee Year;
TSQP	= $\sum SAP_t$

Table 3

Table 3		
	where:	
	SAP _T	is the amount which is payable by the Franchisee in respect of a Service Quality Area relating to SQR Trains (save that the maximum amount which the Franchisee shall be liable to pay in respect of any such Service Quality Area in any Franchisee Year shall not exceed £500,000 x RPI) and which is calculated as follows:
		$(TBM - SQAT_{yr}) \times 100 \times \text{£PR}$
		where:
	TBM	is the SQR Train Benchmark for each Service Quality Area;
	SQAT _{yr}	is the value for SQAYr ascertained as specified in paragraph 10.2 but only in so far as such value relates to the Train Service Quality Inspections carried out in that Franchisee Year; and
		<p>£PR is:</p> <p>(i) in respect of the First Franchisee Year, £100,000; and</p> <p>(ii) in respect of any subsequent Franchisee Year £100,000 x RPI,</p> <p>provided that in the event that a Franchisee Year has fewer than 13 Reporting Periods or this Schedule 7.3 applies to fewer than 13 Reporting Periods in a Franchisee Year, the value of £PR shall be reduced pro rata based on a normal Franchisee Year of thirteen (13) Reporting Periods.</p>
SSQP	$= \sum SAP_s$	
	where:	
	SAP _s	is the amount payable by the Franchisee in respect of a Service Quality Area relating to SQR Stations (save that the maximum amount which the Franchisee shall be liable to pay in respect of such Service Quality Area shall not exceed £375,000 x RPI) and which is calculated as follows:
		$(SBM - SQAS_{yr}) \times 100 \times \text{£PR}$
	where:	

Table 3			
		SBM	is the SQR Station Benchmark for each Service Quality Area;
		SQAS _{yr}	is the value for SQAYr ascertained as specified in paragraph 10.2 but only in so far as such value relates to the Station Service Quality Inspections carried out in that Franchisee Year; and
		<p>£PR is:</p> <p>(i) in respect of the first Franchisee Year, £75,000 ; and</p> <p>(ii) in respect of any subsequent Franchisee Year £75,000 x RPI,</p> <p>provided that in the event that a Franchisee Year has fewer than 13 Reporting Periods or this Schedule 7.3 applies to fewer than 13 Reporting Periods in a Franchisee Year, the value of £PR shall be reduced pro rata based on a normal Franchisee Year of thirteen (13) Reporting Periods.</p>	
SQALD	is the amount determined pursuant to paragraph 18 and payable by the Franchisee in that Franchisee Year; and		
CSQP	= $\sum SAP_{Cs}$		
	where:		
	SAP _{Cs}	is the amount payable by the Franchisee in respect of a Service Quality Area relating to SQR Customer Service (save that the maximum amount which the Franchisee shall be liable to pay in respect of such Service Quality Area shall not exceed £750,000 x RPI) and which is calculated as follows:	
	$(CBM - SQAC_{yr}) \times 100 \times \text{£PR}$		
	where:		
	CBM	is the SQR Customer Services Benchmark for each Service Quality Area;	
	SQAC _{yr}	is the value for SQAYr ascertained as specified in paragraph 10.2 but only in so far as such value relates to the Customer Service Quality Inspections carried out in that Franchisee Year; and	

Table 3		
		<p>£PR is:</p> <p>(i) in respect of the first Franchisee Year, £150,000; and</p> <p>(ii) in respect of any subsequent Franchisee Year £150,000 x RPI,</p> <p>provided that in the event that a Franchisee Year has fewer than 13 Reporting Periods or this Schedule 7.3 applies to fewer than 13 Reporting Periods in a Franchisee Year, the value of £PR shall be reduced pro rata based on a normal Franchisee Year of thirteen (13) Reporting Periods.</p>
<p>For the avoidance of doubt, when conducting any calculation in this table, any amounts expressed as a percentage shall be construed as a decimal, such that 4.5% is equal to 0.045.</p>		

11.2 For each Franchisee Year during which Service Quality Inspections have been carried out, the Franchisee shall by the date that is no later than twenty-eight (28) days after the end of that Franchisee Year calculate and notify to the Secretary of State the value of SQA_{yr} (as determined pursuant to paragraph 11.3 and disaggregated by reference to the Train Service Quality Inspections, the Station Service Quality Inspections, and the Customer Service Quality Inspections undertaken in that Franchisee Year) and the Service Quality Payment (calculated in accordance with this paragraph 11) for that Franchisee Year.

11.3 On the later of receipt of the:

- (a) notification referred to in paragraph 11.2 by the Secretary of State in respect of a Franchisee Year; and
- (b) any audit report relating to any Independent Service Quality Audit or SoS Audit (as the case may be) undertaken in respect of that Franchisee Year:

the Secretary of State shall:

- (i) confirm to the Franchisee that the Secretary of State agrees with the calculation of SQA_{yr} and the Service Quality Payment for that Franchisee Year, in which case, the Service Quality Payment for that Franchisee Year shall be paid in accordance with paragraph 12; and
- (ii) where any Independent Service Quality Audit or SoS Audit (as the case may be) reveals that there were Material Discrepancies in the calculation of the Pass Rate (and so the Service Quality Payment) in favour of the Franchisee for that Franchisee Year (including where any such Independent Service Quality Audit or SoS Audit (as the case may be) fails to confirm or verify any of the matters specified in paragraph 7.1, notify the Franchisee of that fact and the provisions of paragraph 18 shall apply.

12. Payment of Service Quality Payments

12.1 Any Service Quality Payment to be made in respect of any Franchisee Year shall be made by way of adjustment to Franchise Payments on the next Payment Date which falls more than seven (7) days following the receipt of the confirmation pursuant to paragraph 11.3(b)(i) and, where applicable, notification from the Secretary of State pursuant to paragraph 11.3(b)(ii) provided that any Service Quality Payment to be made in respect of the Final ICWC Franchisee Year shall be calculated in accordance with paragraph 11 but shall be paid by the Franchisee to the Secretary of State within thirty (30) days of the receipt of the confirmation from the Secretary of State pursuant to paragraph 11.3(b)(i) and, where applicable, notification from the Secretary of State pursuant to paragraph 11.3(b)(ii).

Part D – Publication and Reporting Requirements

13. Publication of Pass Rates

- 13.1 The Franchisee shall publish (as a minimum) on its web site (in such format as the Secretary of State may reasonably require):
- (a) in respect of each Reporting Period during which Service Quality Inspections have been carried out, the Pass Rate for SQR Stations, SQR Trains and SQR Customer Service for that Reporting Period alongside the SQR Benchmark for such Service Quality Area within one (1) week of the end of that Reporting Period; and
 - (b) in respect of each Franchisee Year in which Service Quality Inspections have been carried out, the Pass Rate for each Service Quality Area for each Franchisee Year alongside the applicable SQR Benchmark for such Service Quality Area within two (2) weeks of receipt of the confirmation from the Secretary of State provided in accordance with paragraph 11.3(b)(ii).
- 13.2 The Franchisee shall ensure that the Pass Rates published by it pursuant to paragraph 13.1 are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable Pass Rates were achieved, along with:
- (a) a comparison with the Pass Rates achieved for the same Reporting Periods in the previous Franchisee Year accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise from the third Customer Report to be published after the commencement of the Service Quality Inspections onwards;
 - (b) details of any remedial work either:
 - (i) planned by the Franchisee to occur in the period in relation to which the next Customer Report will report to improve the Franchisee's performance in relation to achieving and exceeding the SQR Benchmarks in respect of any Service Quality Area where performance is below the applicable SQR Benchmark; or
 - (ii) undertaken by the Franchisee during the Reporting Periods that have elapsed since the previous Customer Report for the purposes of improving the Franchisee's performance in relation to achieving and exceeding the SQR Benchmarks for any Service Quality Area where performance was below the applicable SQR Benchmark; and
 - (c) details of any other initiatives planned to be implemented by the Franchisee to improve the Franchisee's performance against the SQR Benchmarks.

14. Reporting Requirements

- 14.1 Within fourteen (14) days after the end of each Reporting Period during which Service Quality Inspections have been carried out, the Franchisee shall provide to the Secretary of State:
- (a) a statement (disaggregated to separately show the total number of Train Service Quality Inspections, Station Service Quality Inspections and Customer Service Quality Inspections carried out in that Reporting Period) setting out the following:
 - (i) the raw data produced by any Service Quality Inspection and Service Quality Re-Inspection (where applicable) including the reports provided as part of the Mystery Shopper Inspections;

- (ii) the number of Service Quality Inspections (and where applicable Service Quality Re-inspections) carried out in respect of each Service Quality Schedule in that Reporting Period;
- (iii) the number of Service Quality Inspections (and where applicable Service Quality Re-inspections) where a "fail" was recorded in respect of a Service Quality Indicator in that Reporting Period and setting out (to the extent known) the reasons why such failures occurred for each Service Quality Schedule;
- (iv) the number of Service Quality Inspections (and where applicable Service Quality Re-inspections) where a "pass" was recorded in respect of a Service Quality Indicator in that Reporting Period for each Service Quality Schedule; and
- (v) for each Service Quality Schedule and in respect of a Service Quality Area, the total number of "passes" and "fails" recorded in respect of each Service Quality Indicator comprised in such Service Quality Area; and

(b) in respect of that Reporting Period, the Franchisee's calculation of the Pass Rate for each Service Quality Area comprised in the relevant Service Quality Schedule.

14.2 The Pass Rate shall be separately calculated for the Train Service Quality Inspections, the Station Service Quality Inspections and the Customer Service Quality Inspections in that Reporting Period determined as set out in paragraph 10.

15. Additional Information Requirements for Service Quality Re-inspections

15.1 In addition to the information to be provided by the Franchisee pursuant to paragraph 14, the Franchise shall at the end of each Reporting Period during which Service Quality Inspections have been carried out, provide to the Secretary of State a list of each facility or service or train comprised in a SQR Train and SQR Station (on a Station by Station basis) against which a "fail" was recorded during any Service Quality Inspections or Service Quality Re-inspection (as the case may be).

16. Maintenance of Records

16.1 Without limiting the obligations of the Franchisee pursuant to paragraph 5 of Schedule 11.2 (Management Information), the Franchisee shall maintain true, up to date and complete records of the results of each Service Quality Inspection, its calculations of the Pass Rates in relation to such Service Quality Inspections and the results of each Independent Service Quality Audit and Mystery Shopper Inspection.

16.2 The Franchisee shall, immediately at the request of the Secretary of State make any records required under this Schedule 7.3 available to the Secretary of State.

Part E – Remedies

17. Consequences of a Failed Audit

17.1 If:

- (a) following an Independent Service Quality Audit or SoS Audit (as the case may be) any such audit cannot verify or confirm any of the matters referred to in paragraph 7 or any confirmation required by paragraph 7.4(a) cannot be provided; or
- (b) the Franchisee fails to:
 - (i) carry out a Service Quality Inspection as required by paragraph 4.1; or

- (ii) calculate the Pass Rates and/or report to the Secretary of State the Pass Rates as required pursuant to paragraphs 10.1 and 10.2; or
- (iii) procure that an Independent Service Quality Audit is carried out or fails to provide an audit report as required pursuant to paragraph 7.9,

then the provisions of this paragraph 17 shall apply.

17.2 If any of the circumstances specified in paragraph 17.1 occur then:

- (a) the Secretary of State may in the case of an SoS Audit, require the Franchisee to reimburse to the Secretary of State the reasonable and proper costs incurred in undertaking any such SoS Audit; and
- (b) the Secretary of State may in all cases:
 - (i) require the Franchisee to carry out additional Service Quality Inspections at the Franchisee's cost (that is, in excess of those required pursuant to paragraph 4.1);
 - (ii) require the Franchisee to procure a further Independent Service Quality Audit (or the Secretary of State may carry out a further SoS Audit) for the purposes of verifying whether any deficiencies in the SQR Management System have led or contributed to the failure of any Independent Service Quality Audit or SoS Audit or to confirm or verify whether any of the matters referred to in paragraph 7 have been subsequently rectified by the Franchisee; or
 - (iii) elect to step in and carry out SoS Service Quality Inspections in place of the Service Quality Inspections for such period as the Secretary of State may specify (the "**SoS Service Quality Inspection Period**") and in these circumstances:
 - (A) the results of each SoS Service Quality Inspection shall be used for the purposes of calculating the Pass Rates and the Service Quality Payments in accordance with paragraph 10 and paragraph 11 (respectively);
 - (B) the Franchisee's obligations to undertake Service Quality Inspections and procure an Independent Service Quality Audit shall cease to apply for the duration of the SoS Service Quality Inspection Period; and
 - (C) the Secretary of State may require the Franchisee to reimburse to the Secretary of State the reasonable and proper costs incurred by the Secretary of State in undertaking any such SoS Service Quality Inspection during the SoS Service Quality Inspection Period.

18. Material Discrepancies

18.1 For the purposes of this Schedule 7.3, "**Material Discrepancies**" means:

- (a) discrepancies in the Franchisee's calculation of the Pass Rate which in the reasonable opinion of the Secretary of State are considered to be material; or
- (b) where an Independent Service Quality Audit or SoS Audit fails to confirm or verify any of the matters specified in paragraph 7.3 in circumstances where the Pass Rate has been calculated wrongly; or
- (c) where an Independent Service Quality Audit or SoS Audit confirms that there would have been a different Pass Rate if the Franchisee had complied with the requirements of paragraph 7.3.

18.2 On the first occasion that any Independent Service Quality Audit or SoS Audit (as the case may be) reveals that any such Material Discrepancies have resulted in the Franchisee paying less Service Quality Payment than it should have done had the Material Discrepancies not occurred, then the Franchisee shall include in the calculation of the Service Quality Payment that it makes for that Franchisee Year pursuant to paragraph 6 and paragraph 20 an amount determined as follows:

Table 4	
SQA_{LD} = (SQA_{actual} – SQA_{paid}) x 2	
where:	
SQA_{LD}	means the amount to be added to the Service Quality Payment where the circumstances contemplated in this paragraph 18 apply;
SQA_{actual}	means the Service Quality Payment that should have been made in that Franchisee Year but for the Material Discrepancies in the Franchisee’s calculation of the Pass Rate; and
SQA_{paid}	means the actual Service Quality Payment made in that Franchisee Year.

19. Contravention of the Franchise Agreement in respect of Material Discrepancies

19.1 On the second occasion that any Independent Service Quality Audit or SoS Audit (as the case may be) identifies any Material Discrepancies (irrespective of the nature or type of such Material Discrepancy) then this shall constitute a contravention of the Franchise Agreement in addition to the provisions of paragraph 18.2 of this Schedule 7.3 applying.

20. Consequences of Performance falling below the SQR Benchmark

20.1 If :

- (a) the Pass Rate of any individual Service Quality Indicator falls below the SQR Benchmark for the applicable Service Quality Area (“**Affected Service Quality Indicator**”) for:
 - (i) any three (3) consecutive Reporting Periods; or
 - (ii) any four (4) Reporting Periods within any period of thirteen (13) consecutive Reporting Periods; or
- (b) the Pass Rate as calculated in accordance with paragraph 10 (*Calculation of the Pass Rates*) in respect of any Service Quality Area is below any SQR Benchmark for that Service Quality Area (“**Affected Service Quality Area**”) for:
 - (i) any three (3) consecutive Reporting Periods; or
 - (ii) any four (4) Reporting Periods within any period of thirteen (13) consecutive Reporting Periods; or
 - (iii) any Franchisee Year,

then the Franchisee shall immediately notify the Secretary of State of such fact and, if requested to do so by the Secretary of State, within twenty-eight (28) days (or such longer period as the

Secretary of State may specify) of such request submit to the Secretary of State (for the Secretary of State's approval) the Franchisee's proposals (including proposed timescales for the implementation of any such proposals) for ensuring that the Affected Service Quality Area or Affected Service Quality Indicator (as applicable) will, as soon as reasonably practicable, be provided at a level that is equal to or above the SQR Benchmark.

- 20.2 If the Secretary of State is not reasonably satisfied that any proposal submitted to the Secretary of State by the Franchisee pursuant to paragraph 20.1 will ensure that the Affected Service Quality Area or Affected Service Quality Indicator (as applicable) will, as soon as reasonably practicable, be provided at a level that is equal to or above the SQR Benchmark for each such Affected Service Quality Area or Affected Service Quality Indicator then the Secretary of State will notify the Franchisee of such fact (including the Secretary of State's reasons for not being so reasonably satisfied) and the Franchisee shall within two (2) weeks (or such longer period as the Secretary of State may specify) from receipt of any such notice from the Secretary of State submit a revised proposal which seeks to address any of the Secretary of State's concerns as notified to the Franchisee (the "**Revised Proposal**").
- 20.3 Following receipt of any proposal pursuant to paragraph 20.1 or (where applicable) receipt of a Revised Proposal the Secretary of State may require the Franchisee to implement any such proposal within such timescales as the Secretary of State may reasonably determine having regard to any timescales proposed by the Franchisee in any such Revised Proposal.
- 20.4 If following receipt of any Revised Proposal the Secretary of State is still not satisfied that such Revised Proposal will ensure that the Franchisee's performance in relation to the Affected Service Quality Area or Affected Service Quality Indicator will, as soon as reasonably practicable, be provided at a level that is equal to or above the SQR Benchmark then the Secretary of State may require the Franchisee to implement such alternative proposals or measures as the Secretary of State may reasonably determine, within such timescales as the Secretary of State may reasonably determine having regard to any timescales proposed by the Franchisee in such Revised Proposal.
- 20.5 If:
- (a) the Franchisee fails to implement any proposal as required pursuant to this paragraph 20 within the required timescales; or
 - (b) the Franchisee's performance in relation to the Affected Service Quality Area is not at a level that is equal to or above the SQR Benchmark within the period specified in such proposal (or the period reasonably determined by the Secretary of State in exercise of the Secretary of State's rights under paragraph 20.3 or 20.4 (as the case may be)),

then this shall constitute a contravention of the Franchise Agreement the Secretary of State may, (except as the Secretary of State may otherwise agree including by agreeing a variation pursuant to paragraph 21 (Variations to the Service Quality Regime), and without prejudice to the Secretary of State's other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 2 of Schedule 10.1 (Procedure for Remedying a Contravention of the Franchise Agreement).

21. Variations to the Service Quality Regime

- 21.1 Without prejudice to paragraph 21.2, the Secretary of State and the Franchisee may from time to time agree to vary the contents of the Service Quality Schedules, any SQR Benchmark and/or any of the payment rates in respect of any Service Quality Area as specified in paragraph 11.1 (including by reducing the SQR Benchmark in respect of certain Service Quality Areas and at the same time increasing others). Any variation agreed by the Secretary of State and the Franchisee pursuant to this paragraph 21.1 shall be effective from the date agreed by the parties for this purpose. Any such variation as agreed by the Secretary of State and the Franchisee shall not constitute a Change.

21.2 The Parties agree that the Secretary of State shall have the right at any time to vary the provisions of this Schedule 7.3 (including in respect of any of the matters referred to in paragraph 21.1) without the approval of the Franchisee. The exercise by the Secretary of State of the Secretary of State's rights under this paragraph 21.2 shall be a Change.

APPENDIX 1 TO 7.3
Service Quality Schedule
Part 1 – SQR Stations

Please note that a Service Quality Indicator should only be subject to a Service Quality Inspection if the relevant facility or service is included in the SQR Register for that SQR Station.

Table 1			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
Ambience & Assets	Lighting	(a) 10% or more of lighting is missing or broken within the customer facing areas of the Station, or if there are any areas of blackout. (b) Running in boards are not covered by sufficient lighting that they are legible to people from a distance of 4m.	Within 7 days
	Seating	(a) Seats are not present where they are intended to be as specified in the SQR Register. (b) Seats are damaged or unsuitable for use by the public including torn upholstery, splinters, wood or metal likely to cause injury or damage to clothing. (c) Seats are dirty (includes rust stains and dirt likely to soil clothing). (d) Seats are unsecure and/or unstable.	(a), (b), (d) or (e) within 28 days (c) within 48 hours

Table 1			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
	Shelters/Canopies/Waiting Areas	<p>(a) Any shelters, waiting areas or canopies are not present where they are intended to be as specified in the SQR Register.</p> <p>(b) Any shelters, waiting area or canopy is not fit for purpose or damaged in any way that restricts its use (e.g. holes in panels, missing panels, broken windows, clouded or unclear polycarbonate which significantly restricts visibility, burn marks).</p> <p>(c) Any shelters, waiting rooms and canopies have leaks or are not waterproof where designed to be waterproof.</p> <p>(d) Any shelters and waiting areas are closed when they are advertised to be open.</p>	Within 28 days
	Lifts & Escalators	<p>(a) Any lift or escalator to enter/exit station is not working.</p> <p>(b) Any lift or escalator serving the platform level is not working.</p> <p>(c) Any lift or escalator serving core station facilities (ticket office, toilet) is not working.</p> <p>(d) Lifts and escalators are not accessible and operational from 15 minutes before the</p>	Within 48 hours

Table 1			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		scheduled departure of the first train and ten minutes after the actual arrival of the last train.	
	Toilet Operation	<ul style="list-style-type: none"> (a) The toilet is not open as specified in the SQR Register. (b) Any cubicles are out of use. (c) Any lavatories or urinals are blocked. (d) Any flush system is not functioning correctly. (e) Any lavatory seats are missing or broken. (f) Disabled toilet facilities are not operational. (g) Baby change facilities are not operational. (h) Hand wash facilities are not operational. (i) Any door locks are not operational. (j) There is no toilet paper available. (k) Soap is not available. (l) Facilities to dry hands are not operational or available i.e. hand dryers should be present and working and/or paper towels provided. 	<p>All failure criteria apart from (d) within 24 hours</p> <p>(d) within 48 hours</p>

Table 1			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
	Cycle Parking	<ul style="list-style-type: none"> (a) Cycle racks/lockers/hoops are broken or damaged to the extent that they cannot be used. (b) Cycle racks/lockers/hoops are not present as specified in the SQR Register. (c) Cycles are parked outside of designated areas/there is evidence of abandoned bicycles and there is no evidence that this is being managed. 	(a), (b), (c) within 28 days
Cleanliness	General Cleanliness	<ul style="list-style-type: none"> (a) Any area or facility that a customer may come into contact with appears unclean (such that a customer would not wish to touch it). (b) There is staining to the floor or walls, or fluid on the floor. (c) There is evidence of bird roosting which is not being managed. (d) There is noticeable dirt on glass surfaces. (e) Any area has a prolonged/lingering bad smell (which is not perceived to be temporary). (f) There is evidence of recent chewing gum. 	(a), (b), (d),(e), (f), (g), (i) within 48 hours (c) within 14 days (h) within 28 days

Table 1			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		<ul style="list-style-type: none"> (g) There is evidence of unhygienic substances e.g. vomit. (h) Bins are not present in line with the SQR Register. (i) There is no space in litter bins to place items. 	
	Toilets	<ul style="list-style-type: none"> (a) Any lavatory is soiled. (b) Any urinal is soiled. (c) Any sinks are soiled. (d) The baby change facilities are soiled. (e) Floors, doors or walls are stained. (f) There are fluids on the floor (not to include mild splashing). (g) There are no litter bins, or bins for sanitary products in cubicles or there is no space in them to place items. (h) There is a prolonged/lingering unpleasant smell which is not perceived to be temporary. 	Within 24 hours

Table 1			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
	Litter	<p>(a) There are more than ten items of litter each item being equivalent to or larger than the size of a credit card found within any public area of the station (including any station car park).</p> <p>(b) There is evidence of fly tipping within the station area.</p> <p>(c) The track bed has more than ten items of litter present that is credit card sized or larger, or has effluent discharge.</p> <p>(d) There is evidence of fly posting/unauthorised posters or fliers.</p>	<p>(a), (b), (d) within 48 hours</p> <p>(c) within 28 days</p>
	Graffiti & Etching	<p>(a) There is any surface based graffiti e.g. painted/pen graffiti that would be immediately evident to a customer.</p> <p>(b) There is any etching or "<i>structural</i>" graffiti that would be immediately evident to a customer (graffiti which is ingrained and cannot be cleaned off without replacing the item on which the graffiti is administered/without undertaking constructional work).</p>	<p>Offensive surface-based graffiti – within 24 hours</p> <p>Non-offensive surface-based graffiti – within 7 days</p> <p>Offensive structural graffiti – within 7 days</p> <p>Non-offensive structural graffiti – within 28 days</p>
Information	Customer Information Screens	<p>(a) Any customer information screen is not present as specified in the SQR Register.</p>	<p>(a) within 14 days</p>

Table 1			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		<p>(b) Any customer information screen is not functioning correctly.</p> <p>(c) Any customer information screen is functional but displaying illegible information.</p> <p>(d) Any customer information screen is showing incorrect information at the time of audit including the expected time of arrival and the destination of services.</p> <p>(e) Any clocks are inaccurate or there are no clocks.</p> <p>(f) Any additional information messages are out of date.</p>	(b), (c), (d), (e), (f) within 48 hours
	Help Points	<p>(a) Any help point is not present if shown on the SQR Register.</p> <p>(b) Any help point is out of operation, faulty or has poor reception.</p> <p>(c) Any help point is not answered within 30 seconds.</p> <p>(d) Any help point is inaudible and/or unclear.</p>	Within 7 days
	Posters/Frames	<p>(a) Any poster or frame is not present where specified in the SQR Register.</p>	(a), (b) within 7 days

Table 1			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		<ul style="list-style-type: none"> (b) Any poster frame is damaged, rusting or unsecure. (c) Any Information on the poster is not fully visible. (d) Any poster is not in the correct location as specified in the SQR Register. (e) Any poster is showing incorrect or out of date information. (f) Any poster is torn, damaged or slipped in the case. (g) Any poster is visibly faded from a distance of one metre. 	(c), (d),(e), (f),(g) within 48 hours
	Public Address System	<ul style="list-style-type: none"> (a) A public address system is not present or not operational where intended to be. (b) The public address system is inaudible or unclear. (c) Announcements are not made when required e.g. on approach of the arrival of services and during disruption. (d) Information is not provided in a timely way or is incorrect at time of audit. 	(a),(b) within 14 days (c), (d) within 48 hours

Table 1			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
	Signage & Information (including running in boards)	<ul style="list-style-type: none"> (a) Any signs are not easy to read from 4m. (b) Any signs are missing from those specified in the SQR Register. (c) Any signs are damaged, defaced or illegible. (d) Any signs provide incorrect information. (e) A map or poster is not available showing up to date information on the location and times of onward transport services. (f) Timetables are not available for onward transport services (bus/tram). (g) Staff do not have access to information on onward travel information including services and ticketing. (h) There is no wayfinding to onward transport services. (i) Any out of date leaflets are present. (j) Up to date "Delay Repay" forms, timetables relevant to the station and customer complaint forms are not available. 	<ul style="list-style-type: none"> (a),(b),(c) within 14 days (d)-(l) inclusive within 7 days

Table 1			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		<ul style="list-style-type: none"> (k) Passenger’s Charter is not available from staffed stations. (l) Leaflets are kept in an untidy manner. 	
	Information During Disruption	<ul style="list-style-type: none"> (a) A passenger announcement is not made within 3 minutes where there is a delay of more than 5 minutes, detailing the nature of the delay and anticipated length of delay (or, if any information about the delay is not known the announcement should detail steps being taken to obtain this information). (b) Information provided through announcements is inconsistent with that provided through social media, the websites and the Smartphone application. (c) Where a delay of over 15 minutes is announced, accurate information is not provided on alternative journey options / next steps. (d) Where a delay occurs, an apology for this delay is not provided. (e) Where a delay of over 15 minutes occurs, no information is given about right to claim compensation. 	N/A

Table 1			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
Ticketing & Staffing	Ticket Vending Machines	<p>(a) Any ticket machines are not present as specified in the SQR Register.</p> <p>(b) Any ticket machines are not operational.</p> <p>(c) The full functionality of any ticket machine is not available.</p> <p>(d) Any of the following information is missing: brand, name, address of operator, range of fares available, what process passengers should follow in the event of a problem or to obtain a refund and contact details.</p>	Within 48 hours
	Ticket Office	(a) The ticket office is not open when it is advertised to be so at the station as set out in the SQR Register.	Within 48 hours
	Staff Presence	<p>(a) Staff are not available at the station as required pursuant to the SQR Register.</p> <p>(b) Staff are not in full uniform.</p> <p>(c) A member of staff cannot be contacted (either face to face or remotely) by passengers of any train service using that station (regardless of train operator).</p>	Within 48 hours
	Ticket Gates	(a) Any ticket gates are out of use due to a fault or are not functioning correctly.	Within 7 days

Table 1			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		(b) Where an excess fares window is available at a station, the excess fares window is not open whilst ticket barriers are in use.	

Part 2 – SQR Trains

Please note that a Service Quality Indicator should only be subject to a Service Quality Inspection if the relevant facility or service is included in the SQR Register for that SQR Station.

Table 2			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
Ambience and Assets	Lighting	(a) Any light bulb or lighting tube does not illuminate when the power is on (except during load shedding). (b) Any light cover is cracked or broken, is loose or is otherwise unfit for purpose or missing.	Within 7 days
	Vehicle Interior Condition	(a) There are any unsightly damaged panels or damaged panel trims. (b) There are any seat tears in the fabric. (c) Seat covers are worn, visible from 1 m. (d) There is heavy wear on floor coverings or seat coverings visible from 1m. (e) Any window seals are loose, torn or missing. (f) Any windows are broken, cracked or scratched (not to include etching). (g) There are any holes in the floor vinyl/ carpet.	Within 28 days

Table 2			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		<ul style="list-style-type: none"> (h) Luggage racks are broken, cracked or damaged. (i) There are any broken or missing door buttons. (j) The temperature is excessively hot or cold. 	
	Toilet Operation	<ul style="list-style-type: none"> (a) Any general toilet is out of use. (b) Any disabled toilet is out of use. (c) The door handle or locking mechanism is not operating correctly. (d) Any lavatory seat is not in place. (e) Any lavatory is blocked. (f) Any lavatory flush system is not in working order. (g) The hand wash system is not operating correctly, including water and soap dispensers. (h) The baby change facilities (if present) are not in working order. (i) The disabled access facilities (if present) are not in working order. 	Within 24 hours

Table 2			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		<p>(j) There is no toilet tissue available.</p> <p>(k) There is no room in litter or disposal bins for additional items.</p> <p>(l) A mirror is not provided.</p> <p>(m) There is no means of hand drying available i.e. the hand dryer is not operational/there are no paper towels.</p> <p>(n) The air freshener is not in place/working.</p> <p>(o) There are prolonged, lingering smells that are not perceived to be temporary.</p>	
Cleanliness	Exterior	<p>(a) There are apparent stains or ingrained dirt on the front, rear and/or sides of the vehicle.</p> <p>(b) The windows are evidently dirty.</p>	Within 7 days except where the temperature is below 4 degrees centigrade for prolonged periods
	Interior	<p>(a) Any surface in the interior of the vehicle is subject to excessive dust, dirt (that a letter can be written in the dirt or dust and is legible) staining or recent chewing gum.</p> <p>(b) The floor has ingrained dirt excepting recent tracked dirt from people's shoes.</p> <p>(c) There is any fly posting or stickers.</p>	Within 24 hours

Table 2			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		(d) There are fluids on the floor (not mild splashing).	
	Graffiti & Etching	<p>(a) There is any surface based graffiti e.g. paint or pen graffiti that would be immediately evident to a customer.</p> <p>(b) There is any etching or "<i>structural</i>" graffiti that would be immediately evident to a customer (graffiti which is ingrained and cannot be cleaned off without replacing the item on which the graffiti is administered/without undertaking constructional work).</p>	<p>Offensive surface-based graffiti – within 24 hours</p> <p>Non-offensive surface-based graffiti – within 7 days</p> <p>Offensive structural graffiti – within 7 days</p> <p>Non-offensive structural graffiti – within 28 days</p>
	Litter	<p>(a) There are more than six items of litter each the same or greater in size than a credit card in the interior of each vehicle.</p> <p>(b) There is no space to place rubbish in the bins.</p>	Within 24 hours
	Toilets	<p>(a) Any lavatory is soiled.</p> <p>(b) Any sink is soiled.</p> <p>(c) Any baby change facility is soiled.</p> <p>(d) There is staining on the floor or walls.</p>	Within 24 hours

Table 2			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		<p>(e) There are fluids on the floor (not mild splashing).</p> <p>(f) Any fixtures or fittings are unclean</p> <p>(g) There are no litter bins, or bins for sanitary products in cubicles or there is no space in them to place items.</p>	
Information	Customer Information Screens/Public Announcement	<p>(a) Any customer information display is not working.</p> <p>(b) Any customer information display is working but not legible.</p> <p>(c) Any customer information display is showing incorrect information.</p> <p>(d) Any customer information display is not showing next stop information (internal) and major/final destinations (internal and external).</p> <p>(e) Any announcement is not audible or capable of being understood.</p> <p>(f) An announcement of the train destination and major destinations is not made prior to departure of any station allowing sufficient</p>	Within 48 hours

Table 2			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		<p>time for people who have boarded an incorrect train to alight.</p> <p>(g) An announcement of the next station is not made between one and five minutes before arrival at the next station.</p> <p>(h) An announcement is not made requesting passengers to move down the train or free up seats from bags, etc. during crowding.</p> <p>(i) Where selective door operation is in operation, passengers are not informed before arrival at each station of the section of the train where doors will not be operational at that station.</p>	
	Wi-Fi	(a) A Wi-Fi connection to the internet is not possible.	Within 7 days
	Catering	<p>(a) The facility is unavailable when it should be available in accordance with the on-board information.</p> <p>(b) There is no announcement advising of the location of the catering, the opening times and what is offered.</p>	Within 14 days
	Posters, Frames & Signs	(a) Any poster or frame is missing, in line with the SQR register.	(a) within 7 days

Table 2			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		<p>(b) Any poster frame is damaged, rusting or unsecure.</p> <p>(c) Any information on the poster is not visible.</p> <p>(d) Any poster is showing incorrect or out of date information.</p> <p>(e) Any poster is torn, damaged or slipped in the case.</p> <p>(f) Any poster is faded, evident from 1m.</p> <p>(g) Any signs fixed to the interior of the train are damaged or illegible</p> <p>(h) Route diagrams are not available showing train routes and key connection information.</p>	(b), (c), (d),(e),(f), (g),(h) within 48 hours
	Information During Disruption	<p>(a) Where a delay has occurred, an announcement was not made following the delay or was made more than two minutes after the delay commenced.</p> <p>(b) Where a delay has occurred, information was not provided about the nature of the delay and expected duration (or if this is not known, an update on the action being taken to establish the nature of the delay is not provided).</p>	N/A

Table 2			
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		<p>(c) Where disruption has occurred, ongoing updates are not provided every three minutes or less for the duration of the disruption.</p> <p>(d) If the train is to terminate before its destination, fails to stop or is going to skip a stop due to disruption, or for delays of over 15 minutes, information on next steps, alternatives and passenger ticket validity on other operators' services is not provided.</p> <p>(e) Where a delay has occurred and is resolved, an update on scheduled arrival times is not provided.</p> <p>(f) Information provided by on train announcement is not consistent with the information provided through social media, the websites and the Smartphone application.</p> <p>(g) Where a delay has occurred, an apology for the delay is not received.</p>	

Part 3 – SQR Customer Service

Please note that a Service Quality Indicator should only be subject to a Service Quality Inspection if the relevant facility or service is included in the SQR Register for that SQR Station or SQR Train.

Table 3		
Service Quality Area	Service Quality Indicator	Failure Criteria
Information & Contact	Social Media Mystery Shopper Question	(a) No response within 30 minutes. (b) The response did not answer the question or advise to where additional information could be found.
	Helpfulness of Staff at Stations	(a) Staff member does not provide a friendly interaction with the mystery shopper. (b) Staff member does not have the correct information to hand when responding to a mystery shopper question. (c) Staff member gives incorrect information in response to a Mystery Shopper Inspection. (d) The staff member’s behaviour and/or body language reflects poorly on the Franchisee.
	Helpfulness of Staff On Trains	(a) Staff member does not provide a friendly interaction with the mystery shopper. (b) Staff member does not have the correct information to hand when responding to a mystery shopper question. (c) Staff member gives incorrect information in response to a Mystery Shopper Inspection. (d) The staff member’s behaviour and/or body language reflects poorly on the Franchisee.

APPENDIX 2 TO SCHEDULE 7.3

Service Quality Areas/SQR Benchmarks/Service Quality Indicators/Weightings

Part 1 – SQR Stations

Table 1														
Column 1	Column 2												Column 3	Column 4
SQR Station Benchmarks														
Service Quality Area	Franchisee Years												Service Quality Indicators	Weighting
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12		
Ambience & Assets	N/A	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	91%	Lighting	21%
													Seating	21%
													Shelters	16%
													Lifts & Escalators	11%
													Landscaping	6%
													Toilet operation	16%
													Cycle	9%

Table 1														
Column 1	Column 2												Column 3	Column 4
SQR Station Benchmarks														
Service Quality Area	Franchisee Years												Service Quality Indicators	Weighting
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12		
Cleanliness	N/A	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	General	30%
		Toilets	25%											
		Litter	30%											
		Graffiti & Etching	15%											
Information	N/A	94%	94%	94%	94%	94%	94%	94%	94%	94%	94%	94%	Customer Information Screens	15%
		Help Points	15%											
		Posters/Frames	10%											
		Public Address System	15%											

Table 1															
Column 1	Column 2												Column 3	Column 4	
SQR Station Benchmarks															
Service Quality Area	Franchisee Years												Service Quality Indicators	Weighting	
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12			
													Signage & Information (including running in boards)	20%	
													Information During Disruption	25%	
Ticketing & Staffing	N/A	96%	96%	96%	96%	96%	96%	96%	96%	96%	96%	96%	Ticket Vending Machines	25%	
														Ticket Office	25%
														Staff Presence	25%
														Ticket Gates	25%

Part 2 – SQR TRAINS

Table 2															
Column 1	Column 2												Column 3	Column 4	
SQR Train Benchmarks															
Service Quality Area	Franchisee Years												Service Quality Indicators	Weighting	
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12			
Ambience and Assets	N/A	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	Lighting	30%
			Vehicle Interior Condition	35%											
			Toilet Operation	35%											
Cleanliness	N/A	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	Exterior	10%
			Interior	30%											
			Graffiti & Etching	15%											
			Litter	20%											
			Toilets	25%											

Table 2															
Column 1	Column 2												Column 3	Column 4	
	SQR Train Benchmarks														
Service Quality Area	Franchisee Years												Service Quality Indicators	Weighting	
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12			
Information	N/A	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	Customer Information Screens/Public Announcement	32%
		Wi-Fi	15%												
		Catering	8%												
		Posters, Frames & Signs	10%												
		Information During Disruption	35%												

Part 3 – SQR Customer Service

Table 3																	
Column 1	Column 2												Column 3	Column 4			
	SQR Customer Service Benchmarks																
Service Quality Area	Franchisee Year												Service Quality Indicators	Weighting			
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12					
Information & Contact	N/A	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	Conductor Visibility	30%		
															Social Media Mystery Shopper Question	10%	
																Helpfulness of Staff at Stations	30%
																Helpfulness of Staff On Trains	30%

SCHEDULE 8A

PAYMENTS

Schedule 8.1A:	Franchise Payments
	Appendix 1: Annual Franchise Payments
	Appendix 2: Figures for Calculation of Annual Franchise Payments
Schedule 8.2A:	Profit Share Mechanism
	Appendix 1: Profit Share Thresholds
	Appendix 2: Components of AFA and DFR
Schedule 8.3A:	Track Access Adjustments and Station Charge Adjustments
Schedule 8.4A:	GDP Adjustment Payments
	Appendix 1: $DfT_{GDP_{RW}}$
	Appendix 2: Adjusted Target GDP Index
Schedule 8.5A:	NOT USED
Schedule 8.6A:	Forecast Revenue Mechanism
	Appendix 1: Target Revenue
Schedule 8.7A	Resetting
	Appendix 1: Calculation of Reset Revised Inputs
	Appendix 2: Other matters to be updated on Reset

SCHEDULE 8.1A

Franchise Payments

1. Franchise Payments

1.1 The Franchise Payment for each Reporting Period in the ICWC Period shall be an amount equal to:

£FP =	PFP + TAA + SCA + CPS + TMDPS + T-3PS + T-15PS + ACPS + GDPA + GDPR ₁ + GDPR ₂ + RShA + RShRA + RSuA + RSuRA + FRM _{GDPAP} + FRM _{GDP} P + FRM _{GDPREC} P + PS + ShOpP
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where:

PFP (Periodic Franchise Payment)	<p>means that part of the Annual Franchise Payment which is to be made on that Reporting Period's Payment Date being calculated in accordance with the following formula:</p> $\left(\frac{RPD}{FYD_1} \times AFP \right)$ <p>PFP may be a positive or negative number. PFP may be payable by the Secretary of State or the Franchisee;</p>	
	where:	
	RPD	means the number of days in that Reporting Period;
	FYD₁	means the number of days in the Franchisee Year in which that Reporting Period occurs being three hundred and sixty five (365), or if February 29 falls during that Franchisee Year, three hundred and sixty six (366) days for every Franchisee Year other than in respect of any Reporting Period which commences during the Franchisee Year commencing on the Start Date, in which case FYD ₁ shall be the number of days during the period from 15 September 2019 to 31 March 2020 (inclusive);
	AFP	means the Annual Franchise Payment for the Franchisee Year in which that Reporting Period occurs, as determined in accordance with Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).

TAA	means any Track Access Adjustment to be made on that Reporting Period's Payment Date. TAA may be a positive or negative number. TAA may be payable by the Secretary of State or the Franchisee;
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SCA	means any Station Charge Adjustment to be made on that Reporting Period's Payment Date. SCA may be a positive or negative number. SCA may be payable by the Secretary of State or the Franchisee;
CPS	means any Cancellations Performance Sum to be made on that Reporting Period's Payment Date. CPS will be a positive number except in respect of the Final ICWC Franchisee Year when it may be positive or negative or when due pursuant to paragraph 29.1(b) of Schedule 7.1 (Operational Performance) when it will be negative. CPS will be payable by the Secretary of State except in respect of the Final ICWC Franchisee Year when it may be payable by the Secretary of State or the Franchisee or when due pursuant to paragraph 29.1(b) of Schedule 7.1 (Operational Performance) when it will be payable by the Franchisee;
TMDPS	means any TOC Minute Delay Performance Sum to be made on that Reporting Period's Payment Date. TMDPS will be a positive number except in respect of the Final ICWC Franchisee Year when it may be positive or negative or when due pursuant to paragraph 29.1(b) of Schedule 7.1 (Operational Performance) when it will be negative. TMDPS will be payable by the Secretary of State except in respect of the Final ICWC Franchisee Year when it may be payable by the Secretary of State or the Franchisee or when due pursuant to paragraph 29.1(b) of Schedule 7.1 (Operational Performance) when it will be payable by the Franchisee;
T-3PS	means any Time to 3 Minutes Performance Sum to be made on that Reporting Period's Payment Date. T-3PS will be a positive number except in respect of the Final ICWC Franchisee Year when it may be positive or negative or when due pursuant to paragraph 29.1(b) of Schedule 7.1 (Operational Performance) when it will be negative. T-3PS will be payable by the Secretary of State except in respect of the Final ICWC Franchisee Year when it may be payable by the Secretary of State or the Franchisee or when due pursuant to paragraph 29.1(b) of Schedule 7.1 (Operational Performance) when it will be payable by the Franchisee;
T-15PS	means any Time to 15 Minutes Performance Sum to be made on that Reporting Period's Payment Date. T-15PS will be a positive number except in respect of the Final ICWC Franchisee Year when it may be positive or negative or when due pursuant to paragraph 29.1(b) of Schedule 7.1 (Operational Performance) when it will be negative. T-15PS will be payable by the Secretary of State except in respect of the Final ICWC Franchisee Year when it may be payable by the Secretary of State or the Franchisee or when due pursuant to paragraph 29.1(b) of Schedule 7.1 (Operational Performance) when it will be payable by the Franchisee;
ACPS	means any All Cancellations Performance Sum to be made on that Reporting Period's Payment Date. ACPS will be a positive number except in respect of the Final ICWC Franchisee Year when it may be positive or negative or when due pursuant to paragraph 29.1(b) of Schedule 7.1 (Operational Performance) when it will be negative. ACPS will be payable by the Secretary of State except in respect of the Final ICWC Franchisee Year when it may be payable by the Secretary of State or the Franchisee or when due pursuant to

	paragraph 29.1(b) of Schedule 7.1 (Operational Performance) when it will be payable by the Franchisee;
GDPA	means any GDP Adjustment Payment, determined in accordance with paragraph 4 of Schedule 8.4A (GDP Adjustment Payments), to be made on that Reporting Period's Payment Date. GDPA may be a positive or negative number. GDPA may be payable by the Secretary of State or the Franchisee;
GDPR₁	means any GDP Reconciliation Payment, determined in accordance with paragraph 5 of Schedule 8.4A (GDP Adjustment Payments), to be made on that Reporting Period's Payment Date. GDPR ₁ may be a positive or negative number. GDPR ₁ may be payable by the Secretary of State or the Franchisee;
GDPR₂	means any GDP Reconciliation Payment, determined in accordance with paragraph 5 of Schedule 8.4A (GDP Adjustment Payments), to be made on that Reporting Period's Payment Date. GDPR ₂ may be a positive or negative number. GDPR ₂ may be payable by the Secretary of State or the Franchisee;
RShA	means any Revenue Share Adjustment determined in accordance with paragraph 3.7 of Schedule 8.6A to be made on that Reporting Period's Payment Date. RShA may be a positive or negative number. RShA may be payable by the Secretary of State or the Franchisee;
RShRA	means the amount of any Revenue Share Reconciliation Amount to be paid on that Reporting Period's Payment Date in accordance with paragraph 4.1 of Schedule 8.6A. RShRA may be a positive or negative number. RShRA may be payable by the Secretary of State or the Franchisee;
RSuA	means the amount of any Revenue Support Adjustment determined in accordance with paragraph 5.3 of Schedule 8.6A to be made on that Reporting Period's Payment Date. RSuA may be a positive or negative number. RSuA may be payable by the Secretary of State or the Franchisee;
RSuRA	means the amount of any Revenue Support Reconciliation Amount to be paid on that Reporting Period's Payment Date in accordance with paragraph 6.1 of Schedule 8.6A. RSuRA may be a positive or negative number. RSuRA may be payable by the Secretary of State or the Franchisee;
FRM_{GDP}AP	means the amount of any FRM _{GDP} Adjustment Payment to be made on that Reporting Period's Payment Date, in accordance with paragraph 11.6 of Schedule 8.6A. FRM _{GDP} AP may be a positive or negative number. FRM _{GDP} AP may be payable by the Secretary of State or the Franchisee;
FRM_{GDP}P	means the amount of any FRM _{GDP} Payment to be made on that Reporting Period's Payment Date, in accordance with paragraph 11.2 of Schedule 8.6A. FRM _{GDP} P may be a positive or negative number. FRM _{GDP} P may be payable by the Secretary of State or the Franchisee;

FRM_{GDPREC}P	means the amount of any FRM _{GDPREC} Payment to be made on that Reporting Period's Payment Date, in accordance with paragraph 11.3 of Schedule 8.6A. FRM _{GDPREC} P may be a positive or negative number. FRM _{GDPREC} P may be payable by the Secretary of State or the Franchisee;
PS	means the amount of any payment determined in accordance with paragraph 1.5 of Schedule 8.2A (Profit Share Mechanism) to be made on that Reporting Period's Payment Date. PS shall be a negative number for the purposes of this formula notwithstanding that paragraph 1.5 of Schedule 8.2A (Profit Share Mechanism) generates a positive number. PS is payable by the Franchisee; and
ShOpP	means the amount calculated in accordance with paragraph 1.1 of Schedule 18.5 (Shadow Operator Payments).

1.2 NOT USED.

1.3 The Parties agree that:

- (a) where **£FP is a positive number**, the Secretary of State shall pay that amount to the Franchisee on the Payment Date for that Reporting Period;
- (b) where **£FP is a negative number**, the Franchisee shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period;
- (c) the following components of the formula at paragraph 1.1 of this Schedule 8.1A shall, for the purposes of that formula, be expressed as a negative number notwithstanding that Schedule 7.1 (Operational Performance) calculates the same as a positive number:
 - (i) any Cancellations Performance Sum calculated by reference to **Table 14 or Table 15** of paragraph 22.3 of Schedule 7.1 (Operational Performance);
 - (ii) any TOC Minute Delay Performance Sum calculated by reference to **Table 20 or Table 21** of paragraph 22.4 of Schedule 7.1 (Operational Performance);
 - (iii) **NOT USED;**
 - (iv) **NOT USED;**
 - (v) **NOT USED;**
 - (vi) any T-3 Performance Sum calculated by reference to **Table UT3-E or Table UT3-F** of paragraph 22.7A of Schedule 7.1 (Operational Performance);
 - (vii) any T-15 Performance Sum calculated by reference to **Table UT15-E or Table UT15-F** of paragraph 22.7B of Schedule 7.1 (Operational Performance); and
 - (viii) any All Cancellations Performance Sum calculated by reference to **Table UAC-E or Table UAC-F** of paragraph 22.7C of Schedule 7.1 (*Operational Performance*);
- (d) paragraph 26.1 of Schedule 7.1 (*Operational Performance*) applies in respect of the Cancellations Performance Sum, TOC Minute Delay Performance Sum, T-3 Performance

Sum, T-15 Performance Sum and All Cancellations Performance Sum and which accordingly shall only be payable to the Secretary of State as part of the Franchise Payments in the circumstances set out in paragraph 29 of Schedule 7.1 (Operational Performance).

2. Payment of Franchise Payments

- 2.1 The Secretary of State shall notify the Franchisee, no less than five (5) Weekdays prior to the end of each Reporting Period, of the amount of the Franchise Payment payable in respect of that Reporting Period.
- 2.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.
- 2.3 The Payment Date for a Reporting Period shall be the last Weekday of that Reporting Period.
- 2.4 Each Franchise Payment shall be payable by the Franchisee or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.
- 2.5 Each Franchise Payment shall be made:
 - (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
 - (b) so that cleared funds are received in that account on or before the due date for payment.
- 2.6 Each Cancellations Performance Sum, TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum and All Cancellations Performance Sum calculated pursuant to paragraphs 22.3, 22.4, 22.7A, 22.7B and 22.7C (respectively) in respect of any Franchisee Year payable by the Secretary of State to the Franchisee shall, subject to paragraph, be paid by way of the Franchise Payment due on the second Payment Date following the notification of the results in accordance with paragraph 1.14 of Schedule 7.1.
- 2.7 Provided that the Franchisee has submitted the Management Accounts to the Secretary of State in accordance with paragraph 9.2 of Schedule 11.2A, the Secretary of State shall not be entitled to withhold payment of any undipusted amounts of the Shadow Operator Payment (ShOpP) for the relevant Reporting Period, which amounts shall be paid by the Secretary of State as part of the Franchise Payment (£FP) in accordance with this paragraph 2.

3. Interest

- 3.1 If either Party fails to pay any amount to the other Party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.
- 3.2 If the amount of any Franchise Payment is agreed or determined to be incorrect and:
 - (a) either Party has made a payment to the other Party which is greater than it would have made if the amount of the Franchise Payment had been correct, then the recipient shall repay the excess within three (3) Weekdays of the agreement or determination; or
 - (b) either Party has made a payment to the other Party which is less than it would have made if the amount of the Franchise Payment had been correct, then the payer shall pay the

amount of any shortfall to the payee within three (3) Weekdays of the agreement or determination,

together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Franchise Payment was paid until the date on which such excess amount or shortfall is paid.

4. Disputes under Schedule 8A

If either Party disputes the amount of a Franchise Payment, the dispute shall, unless the Parties otherwise agree, be resolved in accordance with the provisions of clause 17 (Governing Law and Jurisdiction) of the Franchise Agreement. Any such dispute shall not affect the obligation of either Party to pay a Franchise Payment notified in accordance with this Schedule 8.1A.

5. Industrial Action

The Secretary of State, in the Secretary of State's discretion, may at any time decide to reimburse or ameliorate net losses of the Franchisee arising from Industrial Action (however caused and of whatever nature) in circumstances where the Franchisee has demonstrated to the satisfaction of the Secretary of State that it has taken all reasonable steps to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, the Franchisee has taken all reasonable steps to mitigate its effects.

6. No Double Recovery

The Franchisee shall not be entitled to recover (by way of a Change or otherwise) more than once in respect of the same loss suffered by it.

7. Force Majeure and Payments

Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue unaffected.

APPENDIX 1 TO SCHEDULE 8.1A

Annual Franchise Payments

The Annual Franchise Payment for any Franchisee Year is an amount equal to:

£AFP =	$FXD + (VCRPI \times RPI) + (VCAWE \times AWE) + (PRPI \times RPI) + (ORRPI \times RPI) + (PRRPI_{GDP} \times RPI) + (ARPI \times RPI)$
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where:

"FXD"	means the Franchisee's costs which are not to be subject to indexation for the purpose of calculating AFP being the figure shown in respect of the relevant Franchisee Year in Column 2 of Table 1 set out in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.1A (Franchise Payments) (and which shall always be expressed as a positive number);
"VCRPI"	means the Franchisee's costs which are to be subject to indexation by reference to the Retail Prices Index for the purpose of calculating AFP being the figure shown in respect of the relevant Franchisee Year in Column 3 of Table 1 set out in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.1A (Franchise Payments) (and which shall always be expressed as a positive number);
"RPI"	is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for January 2019 provided that, for the first Franchisee Year, RPI shall be one;
"VCAWE"	means the Franchisee's costs which are to be subject to indexation by reference to the Average Weekly Earnings for the purpose of calculating AFP being the figure shown in respect of the relevant Franchisee Year in Column 4 of Table 1 set out in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.1A (Franchise Payments) (and which shall always be expressed as a positive number);
"AWE"	is the quotient of the Average Weekly Earnings for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Average Weekly Earnings for January 2019 provided that, for the first Franchisee Year, AWE shall be one;
"PRPI"	means the Franchisee's profit figure before tax which is to be subject to indexation by reference to the Retail Prices Index for the purpose of calculating AFP being the figure shown in respect of the relevant Franchisee Year in Column 5 of Table 1 set out in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.1A (Franchise Payments) (and which shall always be expressed as a positive number);

<p>"ORRPI"</p>	<p>means the Franchisee's non passenger revenue which is to be subject to indexation by reference to the Retail Prices Index for the purpose of calculating AFP being the figure shown in respect of the relevant Franchisee Year in Column 6 of Table 1 set out in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.1A (Franchise Payments) (and which shall always be expressed as a negative number); and</p>
<p>"PRRPI_{GDP}"</p>	<p>means the Franchisee's passenger fares revenue (including other fares revenue) which is to be subject to indexation by reference to the Retail Prices Index for the purpose of calculating AFP being the figure shown in respect of the relevant Franchisee Year in Column 7 of Table 1 set out in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.1A (Franchise Payments)(and which shall always expressed as a negative number);</p>
<p>"ARPI"⁴²</p>	<p>means the Franchisee's forecast payments and/or receipts pursuant to Schedule 8.4A (GDP Adjustment Payments) which are to be subject to indexation by reference to the Retail Prices Index for the purpose of calculating AFP being the figure shown in respect of the relevant Franchisee Year in Column 8 of Table 1 set out in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.1A (Franchise Payments) (and which may be expressed as either a positive or negative number). ARPI being based on forecast payments and/or receipts, in agreeing or determining Revised Inputs that are required in respect of a Change, there shall be no restatement of ARPI to reflect any actual payments and/or receipts pursuant to Schedule 8.4A (GDP Adjustment Payments).</p>

42 **Note to Bidders:** Please see ITT (Section 6) for further information.

APPENDIX 2 TO SCHEDULE 8.1A⁴³

Figures for Calculation of Annual Franchise Payments

Table 1

Year		Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
From	To	Franchisee Year	FXD	VCRPI	VCAWE	PRPI	ORRPI	PRRPI _{GDP}	ARPI
2019	2020	Year 1 (part)							
2020	2021	Year 2							
2021	2022	Year 3							
2022	2023	Year 4							
2023	2024	Year 5							
2024	2025	Year 6							
2025	2026	Year 7							

43 **Note to Bidders:** Bidders to populate table for Franchisee Years 1 to 7 and submit as part of the Bid.

Year		Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
From	To	Franchisee Year	FXD	VCRPI	VCAWE	PRPI	ORRPI	PRRPI _{GDP}	ARPI
Reset Period ⁴⁴									
2026	2027	Year 8 (Reset Period)							
2027	2028	Year 9 (Reset Period)							
2028	2029	Year 10 (Reset Period)							
2029	2030	Year 11 (Reset Period)							
2030	2031	Year 12 (Reset Period)							

44 **Note to Bidders:** Franchisee Years 8 to 12 shall be populated with the New Results resulting from the Run of the ICWC Financial Model pursuant to the provisions of Schedule 8.7A (Resetting).

SCHEDULE 8.2A

Profit Share Mechanism

1. Profit Share

1.1 For the purposes of this Schedule 8.2A:

(a) **First Profit Share Threshold**

"First Profit Share Threshold" means an amount in respect of any Franchisee Year determined as follows:

FPST x RPI x (FYD_A/FYD)

where:

FPST	is (as the case may be): (a) if no Net Revenue Support (including any adjustment under paragraph 11 of Schedule 8.6A) is payable in respect of the relevant Franchisee Year, the amount prescribed for these purposes in column 4 of the table set out at paragraph 1 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2A in respect of the relevant Franchisee Year; or (b) if Net Revenue Support (including any adjustment under paragraph 11 of Schedule 8.6A) is payable in respect of the relevant Franchisee Year, the amount prescribed for these purposes in column 5 of the table set out at paragraph 1 of Appendix 1 (<i>Profit Share Thresholds</i>) to this Schedule 8.2A in respect of the relevant Franchisee Year;
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments);
FYD_A	means the number of days in that Franchisee Year; and
FYD	means the number of days in that Franchisee Year being three hundred and sixty five (365), or if February 29 falls during that Franchisee Year, three hundred and sixty six (366) days for every Franchisee Year other than in respect of the Franchisee Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 15 September 2019 to 31 March 2020 (inclusive).

(b) **Second Profit Share Threshold**

"Second Profit Share Threshold" means an amount in respect of any Franchisee Year determined as follows:

SPST x RPI x (FYD_A/FYD)

where:

SPST	is (as the case may be): <ul style="list-style-type: none"> (a) if no Net Revenue Support (including any adjustment under paragraph 11 of Schedule 8.6A) is payable in respect of the relevant Franchisee Year, the amount prescribed for these purposes in column 4 of the table set out at paragraph 2 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2A in respect of the relevant Franchisee Year; or (b) if Net Revenue Support (including any adjustment under paragraph 11 of Schedule 8.6A) is payable in respect of the relevant Franchisee Year, the amount prescribed for these purposes in column 5 of the table set out at paragraph 2 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2A in respect of the relevant Franchisee Year;
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments);
FYDA	means the number of days in that Franchisee Year; and
FYD	means the number of days in that Franchisee Year being three hundred and sixty five (365), or if February 29 falls during that Franchisee Year, three hundred and sixty six (366) days for every Franchisee Year other than in respect of the Franchisee Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 15 September 2019 to 31 March 2020 (inclusive).

(c) **Third Profit Share Threshold**

“Third Profit Share Threshold” means an amount in respect of any Franchisee Year determined as follows:

TPST x RPI x (FYDA/FYD)

where:

TPST	is (as the case may be): <ul style="list-style-type: none"> (a) if no Net Revenue Support (including any adjustment under paragraph 11 of Schedule 8.6A) is payable in respect of the relevant Franchisee Year, the amount prescribed for these purposes in column 4 of the table set out at paragraph 3 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2A in respect of the relevant Franchisee Year; (b) if Net Revenue Support (including any adjustment under paragraph 11 of Schedule 8.6A) is payable in respect of the relevant Franchisee Year, the amount prescribed for these purposes in column
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	5 of the table set out at paragraph 3 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2A in respect of the relevant Franchisee Year;
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments);
FYD_A	means the number of days in that Franchisee Year; and
FYD	means the number of days in that Franchisee Year being three hundred and sixty five (365), or if February 29 falls during that Franchisee Year, three hundred and sixty six (366) days for every Franchisee Year other than in respect of the Franchisee Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 15 September 2019 to 31 March 2020 (inclusive).

1.2 Relevant Profit

“Relevant Profit” means, subject to paragraph 2, in respect of any Franchisee Year, the total profit of the Franchisee for that Franchisee Year calculated by applying the accounting policies and standards set out in the ICWC Record of Assumptions and applied through the ICWC Financial Model;

- (a) after taking into account in respect of that Franchisee Year:
- (i) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits);
 - (ii) Franchise Payments including true and fair estimates of GDPA, GDPR₁, GDPR₂ payable or receivable pursuant to Schedule 8.4A (GDP Adjustment Payments); and/or; FRM_{GDP}P, FRM_{GDP}AP, FRM_{GDP}REC P, RShA, RShRA, RSuA or RSuRA payable or receivable pursuant to Schedule 8.6A (Forecast Revenue Mechanism) (as the case may be) calculated in accordance with the accounting policies and standards set out in the ICWC Record of Assumptions and applied through the ICWC Financial Model;
 - (iii) all extraordinary and exceptional items, as defined under the accounting policies and standards set out in the ICWC Record of Assumptions and applied through the ICWC Financial Model;
 - (iv) contributions payable by the Franchisee into (i) the Franchise Sections; and (ii) any other pension scheme(s) to the extent connected with the Franchise, in each case as required under such schemes’ rules and schedule of contributions;
 - (v) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed an amount to be determined as set out in paragraph 1.3;
 - (vi) any sums payable by or to the Franchisee pursuant to the terms of the Supplemental Agreement; and
 - (vii) any capital expenditure to the extent that it is recognised as an operating cost in the Annual Audited Accounts and any depreciation on capital expenditure that is recognised as an expense in the Annual Audited Accounts, unless the depreciation

policy and assumptions used in the Annual Audited Accounts are different to those set out in the ICWC Record of Assumptions and applied through the ICWC Financial Model, in which case an adjustment should be made to take account of the depreciation which would have been charged had the policy and assumptions set out in the ICWC Record of Assumptions been applied for the relevant Franchisee Year; and

- (b) before taking into account in respect of that Franchisee Year:
- (i) any taxation on profits including corporation tax;
 - (ii) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;
 - (iii) non cash entries in respect of the Franchise Sections and any other pension scheme(s) to the extent connected with the Franchise (excluding accruals or prepayments of any contributions payable by the Franchisee into (i) the Franchise Sections; and (ii) any other pension scheme(s) to the extent connected with the Franchise, in each case as required under such schemes' rules and schedule of contributions);
 - (iv) any payment made by the Franchisee consequent upon any breach or contravention of the Franchise Agreement and/or its Licences (including as a consequence of any penalty payment paid or payable pursuant to section 57A of the Railways Act 1993);
 - (v) any profit share payments payable to the Secretary of State in relation to any Franchisee Year; and
 - (vi) fees, remuneration and pension contributions in respect of any director and officer of the Franchisee in excess of an amount to be determined as set out in paragraph 1.4.

1.3 Payments to Affiliates

AFA x RPI x (FYD_A/FYD)	
where:	
AFA	is the amount prescribed for these purposes in the table set out in paragraph 1 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.2A in respect of the relevant Franchisee Year;
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) of Schedule 8.1A (Franchise Payments);
FYD_A	means the number of days in that Franchisee Year; and
FYD	means the number of days in that Franchisee Year being three hundred and sixty five (365), or if February 29 falls during that Franchisee Year, three hundred and sixty six (366) days for every Franchisee Year other than in respect of the Franchisee Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 15 September 2019 to 31 March 2020 (inclusive).

1.4 Payments to Directors and Officers

DFR x [RPI OR AWE⁴⁵] x (FYDA/FYD)	
where:	
DFR	is the amount prescribed for these purposes in the table set out in paragraph 2 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.2A in respect of the relevant Franchisee Year;
FYDA	means the number of days in that Franchisee Year; and
FYD	means the number of days in that Franchisee Year being three hundred and sixty five (365), or if February 29 falls during that Franchisee Year, three hundred and sixty six (366) days for every Franchisee Year other than in respect of the Franchisee Year commencing on the Start Date, in which case FYD shall be the number of days during the period from 15 September 2019 to 31 March 2020 (inclusive).
[Option A⁴⁶]	has the meaning given to it in Appendix 1 (Annual Franchise Payments) of Schedule 8.1A (Franchise Payments);
RPI	
[Option B⁴⁷]	$\frac{CAWE}{OAVE}$
AWE	<p>where:</p> <p>CAWE means the Average Weekly Earnings published in the January immediately preceding the commencement of that Franchisee Year; and</p> <p>OAVE means the Average Weekly Earnings for January 2019</p>

1.5 Payment Obligations

- (a) If the Annual Audited Accounts in respect of any Franchisee Year show that the Relevant Profit for that Franchisee Year exceeds the First Profit Share Threshold then, subject to paragraph 2, the Franchisee shall pay to the Secretary of State:
- (i) 20% of Relevant Profit in excess of the First Profit Share Threshold but less than or equal to the Second Profit Share Threshold;
 - (ii) 50% of Relevant Profit in excess of the Second Profit Share Threshold but less than or equal to the Third Profit Share Threshold; and

45 **Note to Bidders:** Bidders to select RPI or AWE as appropriate.

46 **Note to Bidders:** Bidders to select Option A or Option B as appropriate.

47 **Note to Bidders:** Bidders to select Option A or Option B as appropriate.

- (iii) 100% of Relevant Profit in excess of the Third Profit Share Threshold.
- (b) Subject to paragraphs 3 and 4 below, payments due under paragraph 1.5(a) shall be paid as part of the Franchise Payment for the first Reporting Period that falls thirty (30) or more days after delivery of the Annual Audited Accounts by the Franchisee to the Secretary of State under paragraph 9.4 of Schedule 11.2 (*Management Information*) or if there is no such Reporting Period, within thirty (30) days of the date of such delivery.

2. Additional Compensation or Settlement Payments

- 2.1 If in any Franchisee Year (or any period of twelve (12) consecutive months after the end of the Franchise Period) (the "**Current Franchisee Year**") the Franchisee receives a compensation or other settlement payment of at least:

two hundred thousand pounds (£200,000) x RPI

arising from a single claim or series of related claims which relate wholly or partly to costs, losses or expenses (including loss of revenue) arising in any other Franchisee Year or Franchisee Years, then the Franchisee shall notify the Secretary of State of such payment as soon as reasonably practicable and for the purposes of paragraphs 1 and 2 and notwithstanding its other terms:

- (a) the payment which relates to such other Franchisee Year shall be attributed to that other Franchisee Year and not treated as received in the Current Franchisee Year;
 - (b) where and to the extent any payments under paragraphs 1 and 2 in respect of any other Franchisee Year would have been made or would have been higher had that amount actually been received in that other Franchisee Year, the Franchisee shall pay a reconciliation amount to the Secretary of State within thirty (30) days after delivery of the Annual Audited Accounts that relate to the Current Franchisee Year by the Franchisee to the Secretary of State under paragraph 9.4 of Schedule 11.2 (*Management Information*) or, if there is no further requirement on the Franchisee to deliver Annual Audited Accounts following the end of the Franchise Period, within thirty (30) days of the Franchisee receiving the relevant payment; and
 - (c) **RPI** has the meaning given to it in Appendix 1 (Annual Franchise Payments) of Schedule 8.1A (Franchise Payments).
- 2.2 Where the Secretary of State reasonably considers that in calculating Relevant Profit any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) the Secretary of State shall be entitled to require it to be accounted for on such other basis as the Secretary of State may reasonably determine and notify to the Franchisee provided that the Secretary of State shall not be entitled pursuant to this paragraph to alter the accounting policies of the Franchisee from those set out in the ICWC Record of Assumptions and applied through the ICWC Financial Model.
- 2.3 Without prejudice to paragraph 2.1 where the Annual Audited Accounts in relation to any previous Franchisee Year are subject to adjustment or restatement the Secretary of State shall have a discretion to require the recalculation of Relevant Profit for the relevant Franchisee Year and to require that the Franchisee shall pay to the Secretary of State the amount which is the difference between the profit share actually paid to the Secretary of State pursuant to paragraph 1.5(a) and the amount that would have been paid had the Relevant Profit been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts.

2.4 Any payment due to the Secretary of State shall be paid by the Franchisee within thirty (30) days of the Secretary of State notifying the Franchisee that the Secretary of State requires a payment to be made pursuant to this paragraph.

3. Relevant Profit Report

3.1 The Franchisee shall, at the same time as the Annual Audited Accounts are delivered under paragraph 9.4 of Schedule 11.2 (Management Information), deliver to the Secretary of State a report (the "**Relevant Profit Report**") identifying:

- (a) the amount of total profit and the adjustments made in the calculation of Relevant Profit pursuant to paragraphs 1 and 2;
- (b) any items falling under paragraph 2.1, including details of the allocation across Franchisee Years of such items; and
- (c) any adjustments or restatements made in relation to the Annual Audited Accounts in respect of any previous Franchisee Year,

and shall provide such additional information, records or documents as the Secretary of State may reasonably require in relation to such matters.

3.2 The Franchisee and/or the Franchisee's auditors shall include a statement referring to the Relevant Profit in the Annual Audited Accounts. The format of such statement shall be agreed with the Secretary of State.

3.3 If required, the Franchisee's auditors shall provide additional written confirmation to the Secretary of State that the Relevant Profit Report gives a true and fair view of the matters contained within it including the amount of total profit and the adjustments made in the calculation of Relevant Profit.

3.4 The Franchisee and/or the Franchisee's auditors shall provide a reconciliation between:

- (a) profit as set out in its Annual Audited Accounts determined by applying GAAP applicable to the accounting period for which the accounts are prepared; and
- (b) Relevant Profit determined by applying the accounting policies, as set out in the ICWC Record of Assumptions at the time of bidding.

3.5 The Franchisee's auditors shall provide a statement in a format to be agreed with the Secretary of State, confirming that the Franchisee's auditors have undertaken review procedures on the Relevant Profit figures and associated accounting policies ("**Review Procedures**"). The nature and scope of the Review Procedures shall be agreed between the Secretary of State, the Franchisee and the Franchisee's auditor.

3.6 The statement referred to in paragraph 3.5 may be used by the Secretary of State in considering whether the Relevant Profit has been determined consistent with the requirements of this Agreement and the accounting policies as set out in the ICWC Record of Assumptions.

4. Payment of Profit Share and Determination by the Secretary of State

4.1 Any profit share payment pursuant to paragraph 1.5(a) to be made in respect of the Final Franchisee Year shall be determined in accordance with paragraphs 1 and 2 but shall be paid within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such profit share payment.

- 4.2 If the Franchisee fails to provide the Annual Audited Accounts for the Final ICWC Franchisee Year within four (4) Reporting Periods of the expiry of the Final ICWC Franchisee Year pursuant to paragraph 9.4 of Schedule 11.2 (Management Information), the Secretary of State shall be entitled (but not obliged) to determine any Profit Share Adjustment in accordance with paragraphs 1 and 2 but by reference to any relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year-to-date the ICWC Section of the Management Accounts or in the ICWC Annual Management Accounts.

APPENDIX 1 TO SCHEDULE 8.2A

Profit Share Thresholds

1. First Profit Share Threshold

The prescribed amounts for the component of FPST for the relevant Franchisee Year and for the purposes of the definition of First Profit Share Threshold are as set out in the table below:

Table 1 [Note to Bidders: Bidders to Populate for Franchisee Years 1 to 7]				
Columns 1 and 2		Column 3	Column 4	Column 5
Year		Franchisee Year	First Profit Share Threshold Amount or FPST (if no Net Revenue Support payable)	First Profit Share Threshold Amount or FPST (if Net Revenue Support payable)
From	To			
2019	2020	Year 1 (part)	⁴⁸ £[Insert Amount]	⁴⁹ £[Insert Amount]
2020	2021	Year 2	£[Insert Amount]	£[Insert Amount]
2021	2022	Year 3	£[Insert Amount]	£[Insert Amount]
2022	2023	Year 4	£[Insert Amount]	£[Insert Amount]

48 **Note to Bidders:** The maximum amount to be specified in this Column 4 for Franchisee Years 1 to 7 will be 7.50% of total revenue, as provided in the Financial Templates in the ITT.

49 **Note to Bidders:** The maximum amount to be specified in this Column 5 for Franchisee Years 1 to 7 will be 1.50 % of total revenue, as provided in the Financial Templates in the ITT.

Table 1 [Note to Bidders: Bidders to Populate for Franchisee Years 1 to 7]				
Columns 1 and 2		Column 3	Column 4	Column 5
Year		Franchisee Year	First Profit Share Threshold Amount or FPST (if no Net Revenue Support payable)	First Profit Share Threshold Amount or FPST (if Net Revenue Support payable)
From	To			
2023	2024	Year 5	£[Insert Amount]	£[Insert Amount]
2024	2025	Year 6	£[Insert Amount]	£[Insert Amount]
2025	2026	Year 7	£[Insert Amount]	£[Insert Amount]
Reset Period				
2026	2027	Year 8 (Reset Period)	50	51
2027	2028	Year 9 (Reset Period)		
2028	2029	Year 10(Reset Period)		
2029	2030	Year 11(Reset Period)		
2030	2031	Year 12 (Reset Period)		

- 50 **Note to Bidders:** The maximum amount to be specified in this Column 4 for Franchisee Years 8 to 12 will be 5.0% of total revenue, and total revenue shall be the total revenue resulting from the Run of the ICWC Financial Model pursuant to the provisions of Schedule 8.7A (Resetting) as provided in the Financial Templates in the ITT.
- 51 **Note to Bidders:** The maximum amount to be specified in this Column 5 for Franchisee Years 8 to 12 will be 1.50% of total revenue, and total revenue shall be the total revenue resulting from the Run of the ICWC Financial Model pursuant to the provisions of Schedule 8.7A (Resetting) as provided in the Financial Templates in the ITT.

2. Second Profit Share Threshold

The prescribed amounts for the component of SPST for the relevant Franchisee Year and for the purposes of the definition of Second Profit Share Threshold are as set out in the table below:

Table 2 [Note to Bidders: Bidders to Populate for Franchisee Years 1 to 7]				
Columns 1 and 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Second Profit Share Threshold Amount or SPST (if no Net Revenue Support payable)	Second Profit Share Threshold Amount or SPST (if Net Revenue Support payable)
From	To			
2019	2020	Year 1 (part)	⁵² £[Insert Amount]	⁵³ £[Insert Amount]
2020	2021	Year 2	£[Insert Amount]	£[Insert Amount]
2021	2022	Year 3	£[Insert Amount]	£[Insert Amount]
2022	2023	Year 4	£[Insert Amount]	£[Insert Amount]
2023	2024	Year 5	£[Insert Amount]	£[Insert Amount]

52 **Note to Bidders:** The maximum amount to be specified in this Column 4 for Franchisee Years 1 to 7 will be 9.50% of total revenue, as provided in the Financial Templates in the ITT.

53 **Note to Bidders:** The maximum amount to be specified in this Column 5 for Franchisee Years 1 to 7 will be 2.50% of total revenue, as provided in the Financial Templates in the ITT.

Table 2 [Note to Bidders: Bidders to Populate for Franchisee Years 1 to 7]				
Columns 1 and 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Second Profit Share Threshold Amount or SPST (if no Net Revenue Support payable)	Second Profit Share Threshold Amount or SPST (if Net Revenue Support payable)
From	To			
2024	2025	Year 6	£[Insert Amount]	£[Insert Amount]
2025	2026	Year 7	£[Insert Amount]	£[Insert Amount]
Reset Period				
2026	2027	Year 8 (Reset Period)	54	55
2027	2028	Year 9 (Reset Period)		
2028	2029	Year 10 (Reset Period)		
2029	2030	Year 11 (Reset Period)		
2030	2031	Year 12 (Reset Period)		

54 **Note to Bidders:** The maximum amount to be specified in this Column 4 for Franchisee Years 8 to 12 will be 7.50% of total revenue, and total revenue shall be the total revenue resulting from the Run of the ICWC Financial Model pursuant to the provisions of Schedule 8.7A (Resetting) as provided in the Financial Templates in the ITT.

55 **Note to Bidders:** The maximum amount to be specified in this Column 5 for Franchisee Years 8 to 12 will be 2.50% of total revenue, and total revenue shall be the total revenue resulting from the Run of the ICWC Financial Model pursuant to the provisions of Schedule 8.7A (Resetting) as provided in the Financial Templates in the ITT.

3. Third Profit Share Threshold

The prescribed amounts for the component of TPST for the relevant Franchisee Year and for the purposes of the definition of Third Profit Share Threshold are as set out in the table below:

Table 3 [Note to Bidders: Bidders to Populate for Franchisee Years 1 to 7]					
Columns 1 and 2		Column 3	Column 4	Column 5	
Year		Franchisee Year	Third Profit Share Threshold Amount or TPST (if no Net Revenue Support payable)	Third Profit Share Threshold Amount or TPST (if Net Revenue Support payable)	
From	To				
2019	2020	Year 1 (part)	⁵⁶ £[Insert Amount]	⁵⁷ £[Insert Amount]	
2020	2021	Year 2	£[Insert Amount]	£[Insert Amount]	
2021	2022	Year 3	£[Insert Amount]	£[Insert Amount]	
2022	2023	Year 4	£[Insert Amount]	£[Insert Amount]	
2023	2024	Year 5	£[Insert Amount]	£[Insert Amount]	

⁵⁶ **Note to Bidders:** The maximum amount to be specified in this Column4 for Franchisee Years 1 to 7 will be 13.0 % of total revenue, as provided in the Financial Templates in the ITT.

⁵⁷ **Note to Bidders:** The maximum amount to be specified in this Column 5 for Franchisee Years 1 to 7 will be 4.50 % of total revenue, as provided in the Financial Templates in the ITT.

Table 3 [Note to Bidders: Bidders to Populate for Franchisee Years 1 to 7]

Columns 1 and 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Third Profit Share Threshold Amount or TPST (if no Net Revenue Support payable)	Third Profit Share Threshold Amount or TPST (if Net Revenue Support payable)
From	To			
2024	2025	Year 6	£[Insert Amount]	£[Insert Amount]
2025	2026	Year 7	£[Insert Amount]	£[Insert Amount]
Reset Period				
2026	2027	Year 8 (Reset Period)	58	59
2027	2028	Year 9 (Reset Period)		
2028	2029	Year 10 (Reset Period)		
2029	2030	Year 11 (Reset Period)		
2030	2031	Year 12 (Reset Period)		

58 **Note to Bidders:** The maximum amount to be specified in this Column 4 for Franchisee Years 8 to 12 will be 9.50% of total revenue, and total revenue shall be the total revenue resulting from the Run of the ICWC Financial Model pursuant to the provisions of Schedule 8.7A (Resetting) as provided in the Financial Templates in the ITT.

59 **Note to Bidders:** The maximum amount to be specified in this Column 5 for Franchisee Years 8 to 12 will be 4.50% of total revenue, and total revenue shall be the total revenue resulting from the Run of the ICWC Financial Model pursuant to the provisions of Schedule 8.7A (Resetting) as provided in the Financial Templates in the ITT.

APPENDIX 2 TO SCHEDULE 8.2A

Components of AFA and DFR

1. AFA

The amounts for the purposes of the component of AFA in paragraph 1.3 of Schedule 8.2A are set out in the table below:

Table 1 [Note to Bidders: Bidders to Populate for Franchisee Years 1 to 7]			
Year		Franchisee Year	Component of AFA
From	To		
2019	2020	Year 1 (part)	£[Insert Amount]
2020	2021	Year 2	£[Insert Amount]
2021	2022	Year 3	£[Insert Amount]
2022	2023	Year 4	£[Insert Amount]
2023	2024	Year 5	£[Insert Amount]
2024	2025	Year 6	£[Insert Amount]
2025	2026	Year 7	£[Insert Amount]

Reset Period			
2026	2027	Year 8 (Reset Period)	60
2027	2028	Year 9 (Reset Period)	
2028	2029	Year 10 (Reset Period)	
2029	2030	Year 11 (Reset Period)	
2030	2031	Year 12 (Reset Period)	

60 **Note to Bidders:** Component AFA for Franchisee Years 8 to 12 shall be populated using the information from the FAA tab of the ICWC Financial Model as updated by the Run of the ICWC Financial Model as carried out pursuant to the provisions of Schedule 8.7A (Resetting).

2. DFR

The amounts for the purposes of the component of DFR in paragraph 1.4 of Schedule 8.2A are set out in the table below:

Table 2 [Note to Bidders: Bidders to Populate for Franchisee Years 1 to 7]			
Year		Franchisee Year	Component of DFR
From	To		
2019	2020	Year 1 (part)	£[Insert Amount]
2020	2021	Year 2	£[Insert Amount]
2021	2022	Year 3	£[Insert Amount]
2022	2023	Year 4	£[Insert Amount]
2023	2024	Year 5	£[Insert Amount]
2024	2025	Year 6	£[Insert Amount]
2025	2026	Year 7	£[Insert Amount]
Reset Period			
2026	2027	Year 8 (Reset Period)	61
2027	2028	Year 9 (Reset Period)	
2028	2029	Year 10 (Reset Period)	
2029	2030	Year 11 (Reset Period)	
2030	2031	Year 12 (Reset Period)	

61 **Note to Bidders:** Component DFR for Franchisee Years 8 to 12 shall be populated using the information from the FAA tab of the ICWC Financial Model as updated by the Run of the ICWC Financial Model as carried out pursuant to the provisions of Schedule 8.7A (Resetting).

SCHEDULE 8.3A

Track Access Adjustments and Station Charge Adjustments

1. Track Access Adjustments

1.1 The Track Access Adjustment to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

$TAA = (GCA - W) \times \frac{RPD}{FYD}$	
Where:	
TAA	means the Track Access Adjustment to be made in that Reporting Period;
GCA	is the value of " GC " for the Franchisee Year in which the Reporting Period falls under Part 3A of Schedule 7 of the Network Rail Track Access Agreement;
W	is the value of " Wt " for the Franchisee Year in which the Reporting Period falls under Part 2 of Schedule 7 of the Network Rail Track Access Agreement;
RPD	means the number of days in that Reporting Period; and
FYD	means the number of days in the Franchisee Year in which that Reporting Period falls,
	except that, where a Reporting Period falls during two (2) Franchisee Years, TAA shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one (1) of such Franchisee Years and the Track Access Adjustment to be made in that Reporting Period shall reflect the sum of TAA as determined for each such period.

1.2 The Franchisee shall notify the Secretary of State upon becoming aware that any Track Access Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise its rights under the Network Rail Track Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for "**Wt**" or "**GC**" under Parts 2 or 3A of Schedule 7 of the Network Rail Track Access Agreement.

1.3 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the value of **W** and **GCA** under paragraph 1.1.

1.4 If no value is ascertained for **W** or **GCA** prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Track Access Adjustment shall only be determined

to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, adjustment shall be made to reflect the full Track Access Adjustment for such Reporting Period.

- 1.5 The values of **W** and **GCA** when used in the computation in paragraph 1.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under sections 24 to 26 of the Value Added Tax Act 1994.
- 1.6 References in this paragraph 1 to **"Wt"** and **"GC"** and Parts 2 and 3A of Schedule 7 of the Network Rail Track Access Agreement shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any Track Access Agreement as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function, as **"Wt"** or **"GC"** and Parts 2 or 3A of Schedule 7 of the Network Rail Track Access Agreement to which the Franchisee is a party on the Start Date.

2. Station Charge Adjustment

2.1 NOT USED.

2.2 The Station Charge Adjustment to be made in respect of any Reporting Period shall be the aggregate of the Individual Station Charge Adjustments as determined in accordance with the following formula for each Station and each other Franchisee Access Station:

$ISCA = L \times \frac{RPD}{FYD}$	
where:	
ISCA	means the Individual Station Charge Adjustment for the relevant station for that Reporting Period;
L	<p>is the value of "Lt" for the Franchisee Year in which the Reporting Period falls under:</p> <p>(a) if the relevant station is not an Independent Station, Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)" relating to such station; or</p> <p>(b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station,</p> <p>in each case, to the extent that value represents an amount payable to or by Network Rail or any other relevant Facility Owner by or to the Franchisee on its own behalf under the relevant Access Agreement (excluding any amount payable to Network Rail by the Franchisee in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of a Station);</p>
RPD	means the number of days in that Reporting Period; and

FYD	means the number of days in the Franchisee Year in which that Reporting Period falls except that, where a Reporting Period falls during two (2) Franchisee Years, the Station Charge Adjustment shall be determined as if the references to Reporting Period were to each of the two (2) periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Station Charge Adjustment for such Reporting Period shall be the sum of the Station Charge Adjustment as determined for each such period.
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- 2.3 The Franchisee shall notify the Secretary of State upon becoming aware that any Station Charge Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise such rights as it may have under any Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for **"Lt"** under any relevant Access Agreement.
- 2.4 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the **value of L** under paragraph 2.2.
- 2.5 If no value is ascertained for **"L"** prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.
- 2.6 The value of **"L"** when used in the computation in paragraph 2.2 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under sections 24 to 26 of the Value Added Tax Act 1994.
- 2.7 For the purposes of this paragraph 2, **"Independent Station"** shall mean, at any time, any station of which Network Rail (or any other person other than a Train Operator) is the Facility Owner at that time.
- 2.8 References in this paragraph 2 to **"Lt"**, Condition F11.2 of the Station Access Conditions entitled **"National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)"** and Condition 42.3 of the Independent Station Access Conditions shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any relevant station access conditions as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function as, **"Lt"** and Condition F11.2 of the Station Access Conditions entitled *"National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)"* and Condition 42.3 of the Independent Station Access Conditions which are in effect on the Start Date.

SCHEDULE 8.4A

GDP Adjustment Payments

1. Purpose and Application of Schedule

- 1.1 This Schedule 8.4A sets out the formulae to be used to calculate the value of **GDPA**, **GDPR₁** and **GDPR₂** for the purposes of Schedule 8.1A (Franchise Payments).
- 1.2 The provisions of this Schedule 8.4A shall survive the expiry or earlier termination of the Franchise Agreement, in the case of an early termination irrespective of the reason for such termination.

2. Definitions

- 2.1 For the purposes of this Schedule 8.4A:

"Adjusted Actual GDP Index" (expressed in the formulae in this Schedule 8.4A as **GDP^{CA}**) means, in respect of each Franchisee Year, the figure calculated for that Franchisee Year in accordance with paragraph 4.3;

"Adjusted Target GDP Index" (expressed in the formulae in this Schedule 8.4A as **GDP^{CT}**) means, in respect of each Franchisee Year, the figure specified for that Franchisee Year in the Column headed **"GDP^{CT}"** in Appendix 2 (Adjusted Target GDP Index);

"Base Year GDP" (expressed in the formulae in this Schedule 8.4A as **GDP^B**) means, at the time of any calculation pursuant to paragraphs 4.3, 5.2 and 5.5, the sum of the GDP (ABMI) Figures most recently published by the Office for National Statistics for the quarters ending at the end of each of June 2016, September 2016, December 2016 and March 2017;

"Current Year GDP" means, in respect of a Franchisee Year, the sum of the GDP (ABMI) Figures most recently published (as at the time of any calculation pursuant to paragraphs 4.3, 5.2 and 5.5) by the Office for National Statistics in respect of each quarter of the Franchisee Year, being those figures published for the quarters ending at the end of each of June, September, December and March of that Franchisee Year;

"GDP Adjustment Payment" (expressed in this Schedule 8.4A as **"GDPA"**) means, in respect of each Franchisee Year, the figure calculated in accordance with paragraph 4.2 or paragraph 6.1 (as applicable) which shall be due in accordance with paragraph 4.5 and payable in accordance with Schedule 8.1A (Franchise Payments);

"GDP (ABMI) Figures" means the **"Gross Domestic Product at Market Prices in Chained Volume Measure, Seasonally Adjusted in £m"** output figures as published by the Office for National Statistics for the quarters ending at the end of each March, June, September and December of each year or, if such figures cease to be published or there is, in the reasonable opinion of the Secretary of State, a material change in the basis on which those figures are calculated or if, at any relevant time, there is a delay in the publication of those figures, such other gross domestic product figures as the Parties may agree or the Secretary of State shall reasonably determine together with such changes as may be appropriate to this Schedule 8.4A to reflect any such reasonable replacement measure;

"GDP Nil Band Lower" means, in respect of each Franchisee Year, the figure specified in Column 6 headed **"GDP Nil Band Lower"** of the table in Appendix 2 (Adjusted Target GDP Index) in respect of that Franchisee Year;

"GDP Nil Band Upper" means, in respect of each Franchisee Year, the figure specified in Column 7 headed **"GDP Nil Band Upper"** of the table in Appendix 2 (Adjusted Target GDP Index) in respect of that Franchisee Year;

"GDP Reconciliation Payments" (expressed in this Schedule 8.4A as **"GDPR₁"** and **"GDPR₂"**) means the reconciliations to the GDP Adjustment Payment payable in respect of the relevant Franchisee Year, calculated in accordance with paragraph 5 and/or paragraph 6 (as applicable);

"GDPR₁ Reconciliation Date" has the meaning given to it in paragraph 5.1; and

"GDPR₂ Reconciliation Date" has the meaning given to it in paragraph 5.4.

3. GDP Adjustment Payment

3.1 If, in respect of any Franchisee Year:

- (a) Adjusted Actual GDP Index and Adjusted Target GDP Index are the same; or
- (b) Adjusted Actual GDP Index for that Franchisee Year is equal to or greater than the GDP Nil Band Lower figure for that Franchisee Year but less than or equal to the GDP Nil Band Upper figure for that Franchisee Year,

GDPA in respect of that Franchisee Year shall be zero.

However, GDPR₁ and/or GDPR₂ may be greater or less than zero in respect of that Franchisee Year as a result of a reconciliation made in accordance with paragraph 5 or paragraph 6.

3.2 Subject to paragraph 3.1(b), if, in respect of any Franchisee Year:

- (a) Adjusted Actual GDP Index is less than Adjusted Target GDP Index, GDPA will be a positive number for the purposes of Schedule 8.1A (Franchise Payments); or
- (b) Adjusted Actual GDP Index is greater than Adjusted Target GDP Index, GDPA will be a negative number for the purposes of Schedule 8.1A (Franchise Payments).

3.3 The Office for National Statistics publishes the GDP (ABMI) Figures by quarters and calendar years. In respect of each Franchisee Year, the GDP (ABMI) Figures to be used for the purposes of calculating GDPA, GDPR₁ and GDPR₂ will be the sum of those GDP (ABMI) Figures published in respect of (a) quarter 2 (ending in June), (b) quarter 3 (ending in September), (c) quarter 4 (ending in December), in each case, of the calendar year in which the relevant Franchisee Year starts and (d) quarter 1 (ending in March) of the following calendar year.

3.4 As the GDP (ABMI) Figures used in the calculation of Base Year GDP may be refined and/or rebased by the Office for National Statistics from time to time following their initial publication, the most recently published GDP (ABMI) Figures in respect of the quarters ending each of June 2016, September 2016, December 2016 and March 2017, shall be used to determine Base Year GDP for the purpose of calculating Adjusted Actual GDP Index.

3.5 As the GDP (ABMI) Figures used in the calculation of Current Year GDP for each Franchisee Year may be revised by the Office for National Statistics from time to time following their initial publication, two (2) reconciliation payments shall, subject to paragraph 6, be calculated in respect of each Franchisee Year in accordance with paragraph 5, to adjust for the difference between the amount of GDPA already paid in respect of each Franchisee Year and the amount of GDPA which would have been payable in respect of that Franchisee Year had the GDP (ABMI) Figures used in the calculation of Current Year GDP and Base Year GDP been those most recently published at the GDPR₁ Reconciliation Date or the GDPR₂ Reconciliation Date (as the case may be).

3.6 The GDP (ABMI) Figures as at the date of the Franchise Agreement are specified in 2015 prices. During the Franchise Period the Office for National Statistics may rebase to a different base year. If it does so, the rebased GDP (ABMI) Figures shall be used for the purpose of calculating the Adjusted Actual GDP Index. The final GDPA and reconciliation payments to be made at the end of the ICWC Period shall be calculated in accordance with paragraph 6.

3.7 If the Final ICWC Franchisee Year ends other than on 31 March:

- (a) there shall be a pro-rata adjustment to $DfT_{GDP_{RW}}$ for that Franchisee Year in accordance with paragraph 6.1; and
- (b) there shall be no change to the figures for the Adjusted Target GDP Index or the figures used to calculate the Adjusted Actual GDP Index.

4. GDP Adjustment Payments (GDPA)

4.1 GDP Nil Band

The GDP Adjustment Payment for a Franchisee Year shall be zero if the Adjusted Actual GDP Index for that Franchisee Year is equal to or greater than the GDP Nil Band Lower figure for that Franchisee Year but less than or equal to the GDP Nil Band Upper figure for that Franchisee Year.

4.2 GDP Adjustment Payments outside the GDP Nil Band

Where paragraph 4.1 does not apply for a Franchisee Year, the GDP Adjustment Payment payable for that Franchisee Year shall be an amount calculated in accordance with the following formula:

$GDPA = DfT_{GDP_{RW}} \times \left[\frac{(GDP^C_A) - A}{(GDP^C_T)} \right] \times RPI$	
where:	
$DfT_{GDP_{RW}}$	is, subject to paragraph 5, the figure shown in respect of the relevant Franchisee Year in: <ul style="list-style-type: none"> (a) Column 4 (DfT_{GDP1RW}) of the table in Appendix 1 ($DfT_{GDP_{RW}}$) where GDP^C_A is greater than GDP^C_T; or (b) Column 5 (DfT_{GDP2RW}) of the table in Appendix 1 ($DfT_{GDP_{RW}}$) where GDP^C_A is less than GDP^C_T.
GDP^C_A	is the Adjusted Actual GDP Index for the relevant Franchisee Year;
GDP^C_T	is the Adjusted Target GDP Index for the relevant Franchisee Year;
A	means the figure determined in accordance with paragraph 4.4 for the relevant Franchisee Year; and
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).

4.3 Calculating Adjusted Actual GDP Index (GDP^{C_A)}

The Adjusted Actual GDP Index for a Franchisee Year shall be an amount calculated in accordance with the following paragraph:

$\text{GDP}^{\text{C}_A} = \left[\frac{\text{GDP}_Y}{\text{GDP}_B} \right]^{\text{C}}$	
where:	
C	means 0.82;
GDP_Y	is Current Year GDP for the relevant Franchisee Year;
GDP_B	is Base Year GDP.

The Adjusted Actual GDP Index shall be specified as a decimal (to 4 decimal places) and where Adjusted Actual GDP Index is negative, it shall be specified as a positive number less than 1.

4.4 Calculating the relevant GDP threshold (A)

The figure A for a Franchisee Year shall be:

- (a) the GDP Nil Band Upper figure for that Franchisee Year, where GDP^{C_A} is greater than the GDP Nil Band Upper figure for that Franchisee Year; or
- (b) the GDP Nil Band Lower figure for that Franchisee Year, where GDP^{C_A} is less than the GDP Nil Band Lower figure for that Franchisee Year.

4.5 Payment

Where an amount of GDPA is payable in respect of a Franchisee Year, GDPA shall be payable in accordance with Schedule 8.1A (Franchise Payments) as a single annual payment on the first Payment Date to occur following the date falling fifteen (15) days after publication of the GDP (ABMI) Figures published as part of the Office for National Statistics second estimate of GDP for quarter one, relating to the final quarter of the relevant Franchisee Year (such date of publication being the **"Second Estimate Date"**), or where there is no Payment Date which occurs following the date falling fifteen (15) days after the Second Estimate Date, not later than thirty (30) days after the Second Estimate Date.

5. GDP Reconciliation Payments (GDPR₁ and GDPR₂)

First Reconciliation - GDPR₁

5.1 Subject to paragraph 6, GDPR₁ for a Franchisee Year shall be calculated based on the GDP (ABMI) Figures in respect of that Franchisee Year published in the UK Quarterly National Accounts for quarter one in the year following the Second Estimate Date (as defined in paragraph 4.5) for that Franchisee Year (the **"GDPR₁ Reconciliation Date"**).

5.2 GDPR₁ for a Franchisee Year shall be an amount equal to:

- (a) the amount which GDPA would have been for that Franchisee Year if:
 - (i) Current Year GDP for that Franchisee Year had been calculated using the UK Quarterly National Accounts for Q1 GDP (ABMI) Figures in respect of that Franchisee Year available at the GDPR₁ Reconciliation Date; and
 - (ii) Base Year GDP had been calculated using the most recently published GDP (ABMI) Figures available at the GDPR₁ Reconciliation Date;

minus

- (b) GDPA for that Franchisee Year.

5.3 If GDPR₁ is:

- (a) a negative number, GDPR₁ will be a negative number for the purpose of Schedule 8.1A (Franchise Payments); or
- (b) a positive number, GDPR₁ will be a positive number for the purpose of Schedule 8.1A (Franchise Payments).

Second Reconciliation - GDPR₂

5.4 Subject to paragraph 6, GDPR₂ for a Franchisee Year shall be calculated based on the GDP (ABMI) Figures in respect of that Franchisee Year published in the UK Quarterly National Accounts for quarter one in the year following the GDPR₁ Reconciliation Date (the "**GDPR₂ Reconciliation Date**").

5.5 GDPR₂ for a Franchisee Year shall be an amount equal to:

- (a) the amount which GDPA would have been for that Franchisee Year if:
 - (i) Current Year GDP for that Franchisee Year had been calculated using the UK Quarterly National Accounts for Q1 GDP (ABMI) Figures in respect of that Franchisee Year available at the GDPR₂ Reconciliation Date; and
 - (ii) Base Year GDP had been calculated using the most recently published GDP (ABMI) Figures available at the GDPR₂ Reconciliation Date;

minus

- (b) the sum of GDPA and any GDPR₁ for that Franchisee Year.

5.6 If GDPR₂ is:

- (a) a negative number, GDPR₂ will be a negative number for the purpose of Schedule 8.1A (Franchise Payments); or
- (b) a positive number, GDPR₂ will be a positive number for the purpose of Schedule 8.1A (Franchise Payments).

5.7 Payment of any GDPR₁ or GDPR₂

Where an amount of GDPR₁ or GDPR₂ is payable for a Franchisee Year, such amount shall be payable in accordance with Schedule 8.1A (Franchise Payments) as a single annual payment on the first Payment Date to occur following the date falling fifteen (15) days after publication of the

refined GDP (ABMI) Figures referred to in paragraph 5.2(a) or 5.5(a) (as applicable) or as set out in paragraph 6 (the **"GDP Publication Date"**) or, where there is no Payment Date which occurs following the date falling fifteen (15) days after the GDP Publication Date, not later than fifteen (15) days after the GDP Publication Date.

6. Final Adjustments/Reconciliations

Final Year

6.1 GDPA for the Final ICWC Franchisee Year (including in the event of an early termination) shall be calculated and payable in accordance with paragraph 4 provided that, if such Final ICWC Franchisee Year ends other than on 31 March, for the purpose of calculating GDPA for that Final ICWC Franchisee Year:

- (a) $DfT_{GDP_{RW}}$ shall be adjusted on a pro-rata basis to reflect the number of days by which the number of days in the Final ICWC Franchisee Year was less than 365 (or in a leap year, 366); and
- (b) no other component of GDPA referred to in the formula in paragraph 4.2 shall be adjusted to reflect that the Final ICWC Franchisee Year ended other than on 31 March, and

GDPA for the Final ICWC Franchisee Year shall be payable in accordance with paragraph 4.5.

6.2 No $GDPR_1$ or $GDPR_2$ payment shall be payable in respect of the Final ICWC Franchisee Year.

Penultimate Year

6.3 $GDPR_1$ for the penultimate Franchisee Year shall be calculated in accordance with paragraph 5.2 and payable in accordance with paragraph 5.7 provided that, if the Final ICWC Franchisee Year ends other than on 31 March, in paragraph 5.2(a) the words:

- (a) **"at the $GDPR_1$ Reconciliation Date"**

shall be deemed to be replaced by the following words:

- (b) **"in the month in which GDPA is calculated for the Final ICWC Franchisee Year"**.

6.4 No $GDPR_2$ payment shall be payable in respect of the penultimate Franchisee Year.

Year before Penultimate Year

6.5 $GDPR_2$ for the Franchisee Year immediately prior to the penultimate Franchisee Year shall be calculated in accordance with paragraph 5.5 and payable in accordance with paragraph 5.7 provided that, where the Final ICWC Franchisee Year ends other than on 31 March, in paragraph 5.5(a) the words:

- (a) **"at the $GDPR_2$ at the Reconciliation Date"**

shall be deemed to be replaced by:

- (b) **"in the month in which GDPA is calculated for the Final ICWC Franchisee Year"**.

APPENDIX 1 TO SCHEDULE 8.4A

DfT_{GDP}RW⁶²

Column 1		Column 2	Column 3	Column 4	Column 5
Year		Franchisee Year	DfT _{GDP} R	DfT _{GDP} 1RW	DfT _{GDP} 2RW
From	To			(90% of DfT _{GDP} R)	(90% of DfT _{GDP} R)
2019	2020	Year 1 (part)	687,993	619,194	619,194
2020	2021	Year 2	1,257,010	1,131,309	1,131,309
2021	2022	Year 3	1,288,089	1,159,280	1,159,280
2022	2023	Year 4	1,304,177	1,173,759	1,173,759
2023	2024	Year 5	1,320,989	1,188,890	1,188,890
2024	2025	Year 6	1,364,093	1,227,684	1,227,684
2025	2026	Year 7	1,375,853	1,238,268	1,238,268
Reset Period⁶³					
2026	2027	Year 8 (Reset Period)			
2027	2028	Year 9 (Reset Period)			
2028	2029	Year 10 (Reset Period)			
2029	2030	Year 11 (Reset Period)			
2030	2031	Year 12 (Reset Period)			

62 **Note to Bidders:** Bidders should note that the Department reserves the right to update this table to reflect any revisions to the Forecasts of Exogenous Factors up to 8 weeks prior to the closure of the Bid Window, pursuant to subsection 7.15.1 of the ITT.

63 **Note to Bidders:** For the Reset Period, DfT_{GDP}R (and so columns 4 and 5) shall be as determined in accordance with the provisions of paragraph 5 of Appendix 2 to of Schedule 8.7A (Resetting).

APPENDIX 2 TO SCHEDULE 8.4A

Adjusted Target GDP Index⁶⁴

Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Year		Franchisee Year	GDP Index value	C	GDP ^c _T	GDP Nil Band Lower	GDP Nil Band Upper
From	To					GDP ^c _T - 0.02	GDP ^c _T + 0.02
2016	2017	Year -2	1.0000	0.8200	1.0000	0.9800	1.0200
2017	2018	Year -1	1.0163	0.8200	1.0134	0.9934	1.0334
2018	2019	Year 0	1.0312	0.8200	1.0255	1.0055	1.0455
2019	2020	Year 1	1.0440	0.8200	1.0360	1.0160	1.0560
2020	2021	Year 2	1.0577	0.8200	1.0471	1.0271	1.0671
2021	2022	Year 3	1.0723	0.8200	1.0589	1.0389	1.0789
2022	2023	Year 4	1.0879	0.8200	1.0716	1.0516	1.0916
2023	2024	Year 5	1.1057	0.8200	1.0859	1.0659	1.1059
2024	2025	Year 6	1.1251	0.8200	1.1015	1.0815	1.1215
2025	2026	Year 7	1.1464	0.8200	1.1185	1.0985	1.1385
Reset Period⁶⁵							
2026	2027	Year 8 (Reset Period)		0.8200			
2027	2028	Year 9 (Reset Period)		0.8200			
2028	2029	Year 10 (Reset Period)		0.8200			
2029	2030	Year 11 (Reset Period)		0.8200			
2030	2031	Year 12 (Reset Period)		0.8200			

64 **Note to Bidders:** Bidders should note that the Department reserves the right to update this table to reflect any revisions to the Forecasts of Exogenous Factors up to 8 weeks prior to the closure of the Bid Window, pursuant to subsection 7.15.1 of the ITT.

65 **Note to Bidders:** For the Reset Period, GDP Index Value and GDP^c_T (and so columns 6 and 7) shall be as determined in accordance with the provisions of paragraph 6 of Appendix 2 of Schedule 8.7A (Resetting).

SCHEDULE 8.5A

NOT USED

SCHEDULE 8.6A

Forecast Revenue Mechanism

1. Purpose and Application

- 1.1 This Schedule 8.6A sets out the basis of calculation of the components **RS_hA**, **RS_hRA**, **RS_uA**, and **RS_uRA**, **FRM_{GDP}AP**, **FRM_{GDP}P** and **FRM_{GDP}PREC** for the purposes of paragraph 1 of Schedule 8.1A (Franchise Payments).
- 1.2 The provisions of this Schedule 8.6A shall survive the expiry or earlier termination of the Franchise Agreement, in the case of an early termination irrespective of the reason for such termination.

2 Definitions

- "First FRM Franchisee Year"** means the Franchisee Year beginning on 1 April 2021;
- "FRM_{GDP} Adjustment Payment"** has the meaning given to it in paragraph 11.6 of Schedule 8.6A;
- "FRM_{GDP} Payment"** has the meaning given to it in paragraph 11.2 of this Schedule 8.6A;
- "FRM_{GDP}PREC Payment"** has the meaning given to it in paragraph 11.3 of this Schedule 8.6A;
- "FRM Revenue"** means the gross revenue (without any deduction for operating costs or charges except for commission charged to revenue in the normal course of business in respect of credit card and other payment processing methods) of the Franchisee, as stated in the FRM Revenue Report submitted to the Secretary of State in accordance with paragraph 9.1 of this Schedule 8.6A or the ICWC Section of the Management Accounts submitted to the Secretary of State in accordance with Schedule 11.2 (Management Information), relating to:
- (a) the sale of tickets of any type for the carriage of passengers by railway or otherwise arising out of the Franchisee permitting any person to be carried on the Passenger Services (including revenue allocated to the Franchisee through the Ticketing and Settlement Agreement and pursuant to any multi modal fares scheme, local authority concessionary travel scheme, inter operator scheme, discount fares scheme, the Pay As You Go Agreement, the CPAY Agreement or otherwise);
 - (b) any compensation for loss of revenue payable by Network Rail to the Franchisee under Schedule 4 (Engineering Access Statement, Timetable Planning Rules and Restrictions of Use) to the Track Access Agreement;
 - (c) any compensation for loss of revenue payable to the Franchisee by Network Rail pursuant to

paragraph 9 (Network Rail Performance Sum) and/or paragraph 18 (Compensation for Sustained Poor Performance) of Schedule 8A (Performance Regime) to the Track Access Agreement as the case may be, and payments from the Franchisee to Network Rail pursuant to paragraph 9 (Network Rail Performance Sum) of Schedule 8A (Performance Regime) to the Track Access Agreement;

- (d) the revenue element of any payments to the Franchisee by Network Rail under Condition G (Network Change) of the Network Code relating to the sale of tickets of any type for the carriage of passengers by railway (including revenue allocated to the Franchisee through the Ticketing and Settlement Agreement or otherwise);
- (e) the sale of any Discount Card;
- (f) NOT USED;
- (g) the imposition of any penalty upon any person making a journey on the Passenger Services without a ticket which is valid for such journey,

but shall not include any Franchise Payment. Where during the ICWC Period the Franchisee obtains gross revenue from sources not referred to in this definition of FRM Revenue and such revenue was derived from business activities in relation to the Franchise Services which were not provided by the Train Operator which provided the Passenger Services immediately prior to the Start Date, the Secretary of State determine (acting reasonably) that such revenue will be included within the definition of FRM Revenue if it would have been included in limbs (a) to (g) of this definition of FRM Revenue had such business activities been provided by the Train Operator which provided the Passenger Services immediately prior to the Start Date;

- “FRM Revenue Report”** has the meaning given to it in paragraph 9.1 of this Schedule 8.6A;
- “FRM Review Procedures”** has the meaning given to it in paragraph 9.3 of this Schedule 8.6A;
- “Net Revenue Share”** means in relation to any Franchisee Year the net amount of Revenue Share Adjustments payable to the Secretary of State adjusted to reflect the amount of any Revenue Share Reconciliation Amount in respect of such Franchisee Year to give the net amount that may be payable to the Secretary of State;
- “Net Revenue Support”** means in relation to any Franchisee Year the net amount of Revenue Support Adjustments payable to the Franchisee adjusted to reflect the amount of any Revenue Support

	Reconciliation Amount in respect of such Franchisee Year to give the net amount that may be payable to the Franchisee;
“Revenue Share Adjustment”	means an adjustment to a Franchise Payment determined pursuant to paragraph 3.7 of this Schedule 8.6A;
“Revenue Share Reconciliation Amount”	means an amount determined pursuant to paragraph 4.1 of this Schedule 8.6A;
“Revenue Share Reconciliation Date”	means either: (a) in the case of a Revenue Share Reconciliation Amount calculated pursuant to paragraph 4.1 of this Schedule 8.6A, the first Payment Date falling no less than five (5) Weekdays after the relevant determination; or (b) in the case of any Revenue Share Reconciliation Amount falling due in respect of the Final ICWC Franchisee Year and which has not been made during the ICWC Period, the date determined in accordance with paragraph 7.1 of this Schedule 8.6A;
“Revenue Support Adjustment”	means an adjustment to a Franchise Payment determined pursuant to paragraph 5.4 of this Schedule 8.6A;
“Revenue Support Reconciliation Amount”	means an amount determined pursuant to paragraph 6.1 of this Schedule 8.6A;
“Revenue Support Reconciliation Date”	means either: (a) in the case of a Revenue Support Reconciliation Amount calculated pursuant to paragraph 6.1 of this Schedule 8.6A, the first Payment Date falling no less than five (5) Weekdays after the relevant determination; or (b) in the case of any Revenue Support Reconciliation Amount falling due in respect of the Final ICWC Franchisee Year and which has not been made during the ICWC Period, the date determined in accordance with paragraph 7.2 of this Schedule 8.6A;
“Target Revenue”	means, in relation to: (a) any Franchisee Year, an amount equal to: TR x RPI where: TR is the amount specified as Target Revenue in Appendix 1 (<i>Target Revenue</i>) to this Schedule 8.6A prepared consistently with the definition of FRM

Revenue. If the Secretary of State reasonably determines that it has not been prepared consistently with the definition of FRM Revenue the Secretary of State shall have the right to rectify such amount so that it is consistent but the Secretary of State shall be under no obligation to so rectify; and

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

- (b) any Reporting Period wholly within a Franchisee Year other than the first and last Franchisee Years, one thirteenth of the amount determined pursuant to paragraph (a) for that Franchisee Year;
- (c) any Reporting Period wholly within the first or last Franchisee Year, the amount determined pursuant to paragraph (a) for that Franchisee Year divided by the number of Reporting Periods within that Franchisee Year.

3. Revenue Share

- 3.1 If the Secretary of State believes that it is likely that the Secretary of State will be entitled to be paid a Revenue Share Adjustment in relation to any Franchisee Year the Secretary of State shall have the right, by serving notice on the Franchisee at least three (3) Reporting Periods prior to the commencement of such Franchisee Year, to require that Contractual Incentive Mitigations shall apply in relation to that Franchisee Year pursuant to Schedule 6.3 (Contractual Incentive Mitigations).
- 3.2 If, following the calculation of any Revenue Share Reconciliation Amount for any Franchisee Year in respect of which the Secretary of State has exercised the Secretary of State's rights pursuant to paragraph 3.1, the Secretary of State receives no net amount from the Franchisee pursuant to paragraphs 3 and 4 in relation to such Franchisee Year, the Secretary of State shall reimburse to the Franchisee the incremental costs it reasonably and properly incurred in consequence of complying with paragraphs 6A, 11.3 and 16 of Schedule 6.3 (Contractual Incentive Mitigations) applying in relation to such Franchisee Year. The Franchisee shall provide a report with full supporting information identifying all such costs and why they were incurred within two (2) months of it being determined that no net amount was payable from the Franchisee to the Secretary of State pursuant to paragraphs 3 and 4 in relation to such Franchisee Year. The Franchisee shall provide such further information in relation to such report as the Secretary of State shall reasonably require.
- 3.3 The Franchisee and the Secretary of State shall seek to agree the amount of costs to be reimbursed within two (2) months of the receipt of the report. In the event that agreement cannot be reached within such timescale the Secretary of State shall have the right to reasonably determine the cost to be reimbursed to the Franchisee.
- 3.4 Any amounts payable by the Secretary of State to the Franchisee pursuant to paragraph 3.2 shall be paid by way of adjustment to the next Franchise Payment due after agreement or reasonable determination of the relevant amount or, in relation to the last Franchisee Year, paid to the Franchisee within thirty (30) days of such agreement or reasonable determination of the relevant amount.

3.5 All of the rights of the Secretary of State pursuant to paragraph 3 to be paid a Revenue Share Adjustment shall apply whether or not the Secretary of State makes the election referred to in paragraph 3.1.

3.6 Entitlement to Revenue Share Adjustments

A Revenue Share Adjustment shall be made in accordance with paragraphs 3.7 and 3.9 below in respect of each Reporting Period falling within the First FRM Franchisee Year or any subsequent Franchisee Year in respect of which the ICWC Section of the Management Accounts for that Reporting Period report that the cumulative year-to-date FRM Revenue for the period commencing on the first day of the Franchisee Year within which that Reporting Period starts and ending on the final day of that Reporting Period is more than 104% of Target Revenue for that same period. Where a Revenue Share Adjustment is paid for a Reporting Period in a Franchisee Year, a Revenue Share Adjustment calculation shall also be carried out for each subsequent Reporting Period in such Franchisee Year to confirm whether any further Revenue Share Adjustments shall be made.

3.7 Amount of Revenue Share Adjustments

(a) Any Revenue Share Adjustment under this paragraph 3 in respect of a Reporting Period shall be paid in accordance with paragraph 3.9 below and shall be an amount calculated in accordance with the following formula:

RS_{hA} = RS_{hE} - PRS_{hA}	
where:	
RS _{hA}	is the Revenue Share Adjustment for that Reporting Period;
RS _{hE}	is the cumulative Revenue Share Adjustment entitlement for the Franchisee Year to date, determined by reference to the following formula:
	RS _{hE} = (A multiplied by 80%)
	where:
A	is the amount by which the cumulative year-to-date FRM Revenue for the period commencing on the first day of the Franchisee Year within which that Reporting Period starts and ending on the final day of that Reporting Period, as reported in the ICWC Section of the Management Accounts for that Reporting Period and prior Reporting Periods, is more than 104% of Target Revenue for the Franchisee Year to date. Where such cumulative year-to-date FRM Revenue is not more than 104% of Target Revenue for the Franchisee Year to date, A shall equal zero. Where it is not zero the value of A shall be a positive number; and
PRS _{hA}	is the sum of the Revenue Share Adjustments (if any) made in respect of each previous Reporting Periods (if any) in the same Franchisee Year as such Reporting Period.

3.8 If RShA is:

- (a) a positive number, RShA will be a negative number for the purposes of Schedule 8.1A (Franchise Payments); or
- (b) a negative number, RShA will be a positive number for the purpose of Schedule 8.1A (Franchise Payments),

and shall be payable on the date specified in paragraph 3.9.

3.9 Payment

A Revenue Share Adjustment in respect of any Reporting Period shall be payable by the Franchisee or the Secretary of State (as the case may be) on the next Payment Date or, in the case of any Revenue Share Adjustment falling due in respect of the Final ICWC Franchisee Year and which has not been made during the ICWC Period, the date determined in accordance with paragraph 7 of this Schedule 8.6A.

4. Revenue Share Reconciliation Amount

4.1 Where any Revenue Share Adjustment has been made in respect of a Franchisee Year pursuant to paragraph 3, the Secretary of State shall, following receipt by the Secretary of State of the Annual Audited Accounts and FRM Revenue Report in respect of that Franchisee Year, calculate the Revenue Share Reconciliation Amount in respect of that Franchisee Year in accordance with the following formula:

$RS_{hRA} = RS_{hA}(FS) - PRS_{hA}$	
where:	
RS _h RA	is the Revenue Share Reconciliation Amount for that Franchisee Year;
RS _h A(FS)	is the Revenue Share Adjustment for that Franchisee Year determined in accordance with the following formula:
	$RS_{hA}(FS) = (A \text{ multiplied by } 80\%)$
	where:
A	is the amount by which FRM Revenue for that Franchisee Year as reported in the FRM Revenue Report is more than 104% of Target Revenue for that Franchisee Year. Where FRM Revenue for that Franchisee Year as reported in the FRM Revenue Report is not more than 104% of Target Revenue for that Franchisee Year, A shall equal zero. Where it is not zero the value of A shall be a positive number; and
PRS _h A	is the sum of the Revenue Share Adjustment (if any) determined pursuant to paragraph 3.7 in respect of each Reporting Period in that Franchisee Year.

4.2 If RShRA is:

- (a) a positive number, RShRA will be a negative number for the purposes of Schedule 8.1A (Franchise Payments); or
- (b) a negative number, RShRA will be a positive number for the purpose of Schedule 8.1A (Franchise Payments),

and shall be payable on the Revenue Share Reconciliation Date.

5. Revenue Support

5.1 Eligibility for Revenue Support Adjustments

Subject to paragraph 5.2 below no later than six (6) Reporting Periods prior to the beginning of the First FRM Franchisee Year and every Franchisee Year thereafter, the Franchisee shall notify the Secretary of State whether or not it elects that it shall be eligible to be paid Revenue Support Adjustments pursuant to this paragraph 5 in relation to such Franchisee Year. If the Franchisee does make such election, the Secretary of State shall have the right to require that Contractual Incentive Mitigations apply in relation to that Franchisee Year pursuant to Schedule 6.3 (Contractual Incentive Mitigations) and it shall notify the Franchisee of this at least three (3) Reporting Periods before the commencement of the relevant Franchisee Year. If no such election is made in relation to a relevant Franchisee Year, the Franchisee shall have no right to be paid Revenue Support Adjustments in relation to such Franchisee Year. The provisions of Schedule 6.3 (Contractual Incentive Mitigations) shall be applicable if the Franchisee makes a relevant election and the Secretary of State exercises the Secretary of State's right to require Contractual Incentive Mitigations to apply, whether or not Revenue Support Adjustments are actually payable. All costs incurred by the Franchisee in consequence of complying with the provisions of Schedule 6.3 (Contractual Incentive Mitigations) applying as a result of the Franchisee making the election to be eligible to receive Revenue Support Adjustments shall be borne by the Franchisee.

5.2 Entitlement to Revenue Support Adjustments

A Revenue Support Adjustment shall be made in accordance with paragraphs 5.3 and 5.5 in respect of any Reporting Period falling within a Franchisee Year in relation to which the Franchisee has elected, in accordance with paragraph 5.1, to be eligible to be paid Revenue Support Adjustments of the ICWC Section of the Management Accounts for that Reporting Period report that the cumulative year-to-date FRM Revenue for the period commencing on the first day of the Franchisee Year within which that Reporting Period starts and ending on the final day of that Reporting Period is less than 96% of Target Revenue for that same period. Where a Revenue Support Adjustment is paid for a Reporting Period in a Franchisee Year a Revenue Support Adjustment calculation shall also be carried out for each subsequent Reporting Period in such Franchisee Year to confirm whether any further Revenue Support Adjustments shall be made. If Net Revenue Support (including any adjustment under paragraph 11 of Schedule 8.6A) is payable in relation to any Franchisee Year, Profit Share Thresholds specified in Appendix 1 to Schedule 8.2A (Profit Share Mechanism) shall be subject to the adjustments provided for in the relevant tables.

5.3 Amount of Revenue Support Adjustments

Any Revenue Support Adjustment under this paragraph 5 in respect of a Reporting Period shall be paid in accordance with paragraph 5.5 and calculated in accordance with the following formula:

$RS_{uA} = RS_{uE} - PRS_{uA}$	
where:	
RS _{uA}	is the Revenue Support Adjustment for that Reporting Period;
RS _{uE}	is the cumulative Revenue Support Adjustment entitlement for the Franchisee Year to date, determined by reference to the following formula:
	$RS_{uE} = (A \text{ multiplied by } 80\%)$
	where:
	A is the amount by which the cumulative year-to-date FRM Revenue for the period commencing on the first day of the Franchisee Year within which that Reporting Period starts and ending on the final day of that Reporting Period, as reported in the ICWC Section of the Management Accounts for that Reporting Period and prior Reporting Periods, is less than 96% of Target Revenue for the Franchisee Year to date. Where such cumulative year-to-date FRM Revenue is not less than 96% of Target Revenue for the Franchisee Year to date, A shall equal zero. Where it is not zero the value of A shall be a positive number; and
PRS _{uA}	is the sum of the Revenue Support Adjustments (if any) made in respect of each previous Reporting Period (if any) in the same Franchisee Year as such Reporting Period.

5.4 If RS_{uA} is:

- (a) a positive number, RS_{uA} will be a positive number for the purposes of Schedule 8.1A (Franchise Payments); or
- (b) a negative number, RS_{uA} will be a negative number for the purpose of Schedule 8.1A (Franchise Payments),

and shall be payable on the date specified in paragraph 5.5.

5.5 Payment

A Revenue Support Adjustment in respect of any Reporting Period shall be payable by the Franchisee or the Secretary of State (as the case may be) on the next Payment Date or in the case of any Revenue Support Adjustment falling due in respect of the Final ICWC Franchisee Year and which has not been made during the ICWC Period, the date determined in accordance with paragraph 7.2 of Schedule 8.6A (Forecast Revenue Mechanism).

6. Revenue Support Reconciliation Amount

6.1 Where any Revenue Support Adjustment has been made in respect of a Franchisee Year pursuant to paragraph 5, the Secretary of State shall, following receipt by the Secretary of State of the

Annual Audited Accounts and FRM Revenue Report in respect of that Franchisee Year, calculate the Revenue Support Reconciliation Amount in respect of that Franchisee Year in accordance with the following formula:

$RS_uRA = RS_uA(FS) - PRS_uA$	
where:	
RS _u RA	is the Revenue Support Reconciliation Amount for that Franchisee Year;
RS _u A(FS)	is the Revenue Support Adjustment for that Franchisee Year determined in accordance with the following formula:
	RS _u A(FS) = (A multiplied by 80%)
	where:
A	is the amount by which FRM Revenue for that Franchisee Year as reported in the FRM Revenue Report is less than 96% of Target Revenue for that Franchisee Year. Where the FRM Revenue for that Franchisee Year as reported in the FRM Revenue Report is not less than 96% of Target Revenue for that Franchisee Year, A shall equal zero. Where it is not zero the value of A shall be a positive number; and
PRS _u A	is the sum of the Revenue Support Adjustment (if any) determined pursuant to paragraph 5.3 in respect of each Reporting Period in that Franchisee Year.

6.2 If RS_uRA is:

- (a) a positive number, RS_uRA will be a positive number for the purposes of Schedule 8.1A (Franchise Payments); or
- (b) a negative number, RS_uRA will be a negative number for the purpose of Schedule 8.1A (Franchise Payments),

and shall be payable on the Revenue Support Reconciliation Date.

7. Final ICWC Franchisee Year

7.1 Revenue Share

Any Revenue Share Adjustment and/or Revenue Share Reconciliation Amount which:

- (a) is to be made in respect of the Final ICWC Franchisee Year; and
- (b) has not been made during the ICWC Period,

shall be determined in accordance with paragraphs 3.7 and 4.1 above respectively, but shall be paid within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such Revenue Share Adjustment and/or Revenue Share Reconciliation Amount.

7.2 Revenue Support

Any Revenue Support Adjustment and/or Revenue Support Reconciliation Amount which:

- (a) is to be made in respect of the Final ICWC Franchisee Year; and
- (b) has not been made during the ICWC Period,

shall be determined in accordance with paragraphs 5.3 and 6.1 above respectively, but shall be paid within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such Revenue Support Adjustment and/or Revenue Support Reconciliation Amount.

7.3 Failure to Provide Annual Audited Accounts and/or FRM Revenue Report

If the Franchisee fails to provide the Annual Audited Accounts and/or the FRM Revenue Report for the Final ICWC Franchisee Year within four (4) Reporting Periods of the expiry of the Final ICWC Franchisee Year pursuant to paragraph 9.4(b) of Schedule 11.2 (Management Information), the Secretary of State shall be entitled (but not obliged) to determine any of:

- (a) any Revenue Share Adjustment in accordance with paragraph 3.7;
- (b) any Revenue Share Reconciliation Amount in accordance with paragraph 4.1;
- (c) any Revenue Support Adjustment in accordance with paragraph 5.3; and
- (d) any Revenue Support Reconciliation Amount in accordance with paragraph 6.1,

notwithstanding references to amounts reported in the Annual Audited Accounts, FRM Revenue Report or the ICWC Section of the Management Accounts, by reference to any relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year-to-date ICWC Section of the Management Accounts or in the ICWC Annual Management Accounts.

8. Pro-rata Adjustment to Target Revenue at the end of the ICWC Period

- 8.1 At the end of the ICWC Period, Target Revenue shall be adjusted on a pro rata basis to reflect the number of days (if any) by which the Final ICWC Franchisee Year was less than 365 days (or less than 366 days in a leap year) and the Secretary of State shall have the right to reasonably determine all final calculations and payments pursuant to this Schedule 8.6A by reference to such pro rating.

9. FRM Revenue Report

- 9.1 The Franchisee shall, at the same time as the Annual Audited Accounts are delivered under paragraph 9.4 of Schedule 11.2 (Management Information), deliver to the Secretary of State a report (the "**FRM Revenue Report**"):

- (a) identifying the total amount of FRM Revenue earned by the Franchisee during the relevant Franchisee Year and the amount of revenue earned in relation to each sub category of revenue included within the definition of FRM Revenue;

- (b) identifying any adjustments or restatements made in relation to the Annual Audited Accounts in respect of any previous Franchisee Year which affect the amount of FRM Revenue in such Franchisee Year; and
 - (c) providing a reconciliation between:
 - (i) revenue as set out in its Audited Annual Accounts; and
 - (ii) FRM Revenue.
- 9.2 The Franchisee shall provide such additional information, records or documents as the Secretary of State may reasonably require in relation to such matters.
- 9.3 The Franchisee's auditors shall provide a statement in a format to be agreed with the Secretary of State, confirming that the Franchisee's auditors have undertaken review procedures on the FRM Revenue figures ("**FRM Review Procedures**"). The nature and scope of the FRM Review Procedures shall be agreed between the Secretary of State, the Franchisee and the Franchisee's auditor.
- 9.4 The statement referred to in paragraph 9.3 may be used by the Secretary of State in considering whether FRM Revenue has been determined in a manner consistent with the requirements of this Agreement and the accounting policies as set out in the ICWC Record of Assumptions.
- 9.5 Where the FRM Revenue Report identifies adjustments or restatements pursuant to paragraph 9.1(b) and materially different amounts would have been payable either to the Franchisee or to the Secretary of State pursuant to this Schedule 8.6A had such adjustments or restatements been included in the Annual Audited Accounts and been reflected in the relevant FRM Revenue Report for the relevant previous Franchisee Year, the Secretary of State shall seek to agree the amount of an appropriate payment to reflect the adjusted and restated position with the Franchisee. If the amount of such a payment cannot be agreed within forty (40) days of the Secretary of State receiving the relevant FRM Revenue Report from the Franchisee, the Secretary of State shall have the right to reasonably determine it. Any payment shall be made within forty (40) days of the date of agreement or determination of the amount. Where such agreement or determination occurs during the ICWC Term and another Franchise Payment is payable the Secretary of State may require that a payment is made by way of adjustment to a Franchise Payment which has a Payment Date within such forty (40) day period.

10. Affiliates and Forecast Revenue Mechanism

- 10.1 At any time at which:
- (a) the Franchisee is paying Revenue Share Adjustments pursuant to paragraph 3 above or it is reasonably likely that Revenue Share Adjustments shall be payable in the next twenty-four (24) months; and/or
 - (b) the Franchisee has made the election pursuant to paragraph 5.1 above to be eligible to be paid Revenue Support Adjustments or it is reasonably likely that, if such an election was made, Revenue Support Adjustments would be payable in the next twenty-four (24) months,

the Franchisee shall not, without prejudice to any other provision of the Franchise Agreement and its obligations under Law, manage its business of providing the Franchise Services in a way that is intended to, or may reasonably be expected to, result in reducing the FRM Revenue of the Franchisee and increasing the revenue of another Affiliate of the Franchisee.

10.2 Where an Affiliate of the Franchisee is a Train Operator with a franchise agreement containing provisions equivalent to those in paragraph 10.1 above, the Franchisee shall act in a way consistent with such Train Operator complying with those obligations.

11. Forecast Revenue Mechanism and Payments under Schedule 8.4A

11.1 If in relation to any Franchisee Year payments are made by the Franchisee or the Secretary of State pursuant to Schedule 8.4A (GDP Adjustment Payments), then the provision of this paragraph 11 shall apply.

11.2 If a GDP Adjustment Payment is payable pursuant to paragraph 4 of Schedule 8.4A the Secretary of State shall recalculate the amount of Net Revenue Share or Net Revenue Support payable in relation to the Franchisee Year to which the GDP Adjustment Payment relates on the basis that:

- (a) a GDP Adjustment Payment payable to the Franchisee is an addition to FRM Revenue received by the Franchisee; and
- (b) a GDP Adjustment Payment payable to the Secretary of State is a deduction from FRM Revenue received by the Franchisee,

in the Franchisee Year to which the GDP Adjustment Payment relates.

Where such recalculation means that the amount of Net Revenue Share or Net Revenue Support payable pursuant to this Schedule 8.6A should have been different to that actually paid, a payment equal to that difference ("**FRM_{GDP} Payment**") shall be payable from the Franchisee to the Secretary of State or from the Secretary of State to the Franchisee, as the case may be.

11.3 Where a GDP Reconciliation Payment is payable pursuant to paragraph 5 of 6 of Schedule 8.4A the Secretary of State shall further recalculate the amount of Net Revenue Share or Net Revenue Support payable in relation to the Franchisee Year to which the GDP Reconciliation Payment relates on the basis that

- (a) a GDP Reconciliation Payment payable to the Franchisee is additional FRM Revenue received by the Franchisee; and
- (b) a GDP Reconciliation Payment payable to the Secretary of State is a deduction from FRM Revenue received by the Franchisee,

in the Franchisee Year to which the GDP Reconciliation Payment relates.

Where such recalculation means that the amount of Net Revenue Share or Net Revenue Support payable pursuant to this Schedule 8.6A (including following any prior adjustment pursuant to paragraph 11.2 or this paragraph 11.3) should have been different to that actually paid, a payment equal to that difference ("**FRM_{GDPREC} Payment**") shall be payable from the Franchisee to the Secretary of State or from the Secretary of State to the Franchisee, as the case may be.

11.4 The Secretary of State shall carry out calculations pursuant to paragraphs 11.2 and 11.3 so that:

- (a) a FRM_{GDP} Payment is payable at the same time as the GDP Adjustment Payment; and
- (b) a FRM_{GDPREC} Payment is payable at the same time as the relevant GDP Reconciliation Payment as the case may be.

11.5 Where at the time that a GDP Adjustment Payment is due, the Revenue Share Reconciliation Amount or Revenue Support Reconciliation Amount has yet to be calculated for the relevant Franchisee Year, the FRM_{GDP} Payment shall be calculated by the Secretary of State on the basis

of the total Revenue Share Adjustment Payments or Revenue Support Adjustment Payments reported in the ICWC Section of the Management Accounts in respect of the relevant Franchisee Year.

- 11.6 If the FRM_{GDP} Payment is calculated according to paragraph 11.5, then an adjustment payment ("**FRM_{GDP} Adjustment Payment**") will be payable on any Revenue Share Reconciliation Date or Revenue Support Reconciliation Date by way of adjustment to the Revenue Share Reconciliation Amount or Revenue Support Reconciliation Amount, as the case may be, for the purposes of putting the parties into the position they would have been in had the FRM_{GDP} Payment been calculated by reference to FRM Revenue as shown in the FRM Revenue Report.

APPENDIX 1 TO SCHEDULE 8.6A

Target Revenue

Table 1 [Note to Bidders: Bidders to Populate for Franchisee Years 1 to 7]			
Year		Franchisee Year	Target Revenue
From	To		
2019	2020	Year 1	£[Insert Amount]
2020	2021	Year 2	£[Insert Amount]
2021	2022	Year 3	£[Insert Amount]
2022	2023	Year 4	£[Insert Amount]
2023	2024	Year 5	£[Insert Amount]
2024	2025	Year 6	£[Insert Amount]
2025	2026	Year 7	£[Insert Amount]
Reset Period			
2026	2027	Year 8 (Reset Period)	66
2027	2028	Year 9 (Reset Period)	
2028	2029	Year 10 (Reset Period)	
2029	2030	Year 11 (Reset Period)	
2030	2031	Year 12 (Reset Period)	

66 **Note to Bidders:** Target Revenue for Franchisee Years 8 to 12 shall be populated using the information generated by the Run of the ICWC Financial Model pursuant to the provisions of Schedule 8.7A (Resetting).

SCHEDULE 8.7A

Resetting

1. Purpose and Application of Schedule

1.1 This Schedule 8.7A sets out:

- (a) the circumstances in which a Reset shall occur; and
- (b) the process by which the Franchise Payments, Profit Share Components, Target Revenue Amounts, $DfT_{GDP\text{RW}}$, Adjusted Target GDP Index and other matters relevant to the Reset Period (but not the benchmarks in Schedule 6.3A (Contractual Incentive Mechanisms), 7.1A (Operational Performance), 7.2A (Customer Experience and Engagement) or 7.3A (Service Quality Regime)) will be determined and effected.

1.2 Appendix 1 sets out how the Reset Revised Inputs will be established.

1.3 Appendix 2 sets out how the other matters relevant to effect the Reset will be established.

2. Reset Report

2.1 Unless the Secretary of State otherwise directs by notice in writing, then the Franchisee shall deliver a Reset Report to the Secretary of State in accordance with the provisions of paragraph 2.2 by no later than 21 June 2025.

2.2 The Reset Report shall include:

- (a) the proposed Reset Revised Inputs;
- (b) the Franchisee's draft of the revised Franchise Payments, Profit Share Components, Target Revenue Amounts, $DfT_{GDP\text{RW}}$ and Adjusted Target GDP Index which would result from such proposed Reset Revised Inputs and the other matters relevant to the Reset as referred to in this Schedule 8.7A (Resetting); and
- (c) the Franchisee's draft of the changes proposed to be made to the ICWC Record of Assumptions as a result of the Reset which must detail how the proposed Reset Revised Inputs have been calculated in accordance with Appendix 1.

3. Reset

3.1 Reset shall occur effective at 02:00 on 1 April 2026, provided that the Secretary of State has not notified the Franchisee, in accordance with paragraph 3.1 of Schedule 19.2 (Switch Review), that the Integrated Operator Start Date shall occur at that time.

3.2. If the Reset occurs, then:

- (a) it shall be a Qualifying Change for the purposes of Schedule 9.1A (Financial and Other Consequences of Change);
- (b) the Revised Inputs for the purposes of Schedule 9.1A (Financial and Other Consequences of Change) shall be the Reset Revised Inputs;

- (c) the New Results from the Run of the ICWC Financial Model and the resulting revised Franchise Payments, Profit Share Components, Target Revenue Amounts, $DfT_{GDP_{RW}}$, Adjusted Target GDP Index and the other matters relevant to the Reset as referred to in this Schedule 8.7A (Resetting) will apply for the Reset Period;
- (d) the provisions of paragraphs 5 and 9 of Schedule 9.1A (Financial and other Consequences of Change) shall not apply;
- (e) the provisions of Appendix 1 (Definition of Threshold Amount) and Appendix 2 (Agreement or Determination of Revised Inputs) of Schedule 9.1A (Financial and other Consequences of Change) shall not apply; and
- (f) (for the avoidance of doubt) the provisions of paragraph 1 of Schedule 19.3 (Switch to Integrated Operator Provisions) shall continue to apply.

3.3 The Parties shall, in good faith, seek to agree Reset in accordance with the provisions of this Schedule 8.7A (Resetting). In the event that the Parties are not agreed by 13 September 2025, the Secretary of State shall reasonably determine the Reset (including the Revised Inputs and the other matters relevant to the Reset as referred to in this Schedule 8.7A (Resetting)).

APPENDIX 1 TO SCHEDULE 8.7A

Calculation of Reset Revised Inputs

- 1.1 This Appendix 1 (Calculation of Reset Revised Inputs) to Schedule 8.7A (Resetting) sets out how the Reset Revised Inputs shall be calculated.
- 1.2 In this Appendix 1 (Calculation of Reset Revised Inputs) the following definitions shall apply:

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).
Actual Passenger Ticket Data	means the data for the Franchisee Year 1 April 2024 to 31 March 2025 (as reported in the LENNON ticket sales and revenue allocation database): (a) for outturn passenger demand (by flowgroup and ticket type); and (b) for outturn passenger ticket revenue (by flowgroup and ticket type) multiplied by the RPI Deflation Factor.
RPI Base Year Adjustment Factor	is: $\frac{RPI_{Jan2019}}{(RPI_{Jan2024} \times Forecast\ Deflation\ Factor_{2024/25})}$ Where: RPIJan₂₀₁₉ = Retail Prices Index for January 2019; RPIJan₂₀₂₄ = Retail Prices Index for January 2024; and Forecast Deflation Factor_{2024/25} = forecast deflation factor for the Franchisee Year 1 April 2024 to 31 March 2025 as shown in cell Q74 of the NPV worksheet in the ICWC Financial Model.
RPI Deflation Factor	is the quotient of the Retail Prices Index for January [insert year ⁶⁷] divided by the Retail Prices Index for January 2024.

67 **Note to Bidders:** Bidder to insert reference to the ICWC Revenue Model price base year.

2. The Reset Revised Inputs shall be calculated on the following basis:

Input	Basis
Revenue Inputs:	
2.1	Subject to the provisions of paragraphs 2.2 and 2.3 (if applicable) the Reset Revised Input for forecast passenger demand and passenger fares revenue for the Reset Period shall be calculated by inputting the Actual Passenger Ticket Data at [insert reference ⁶⁸] of the ICWC Revenue Model as most recently Placed in Escrow, and applying the functionality associated with these inputs in the ICWC Revenue Model.
2.2	<p>Either Party may identify extraordinary matters which had affected the Actual Passenger Ticket Data and suggest adjustments to that data to take account of such matters and the Parties shall, in good faith, seek to agree the relevant adjustment (if any). Save as provided for in paragraph 2.7, or as the Secretary of State may (at the Secretary of State's sole discretion) elect to agree with the Franchisee, Network Rail or other Train Operators on the Actual Passenger Ticket Data, such adjustments may relate to (but are not limited to):</p> <p>(a) passenger ticket revenue allocations settled outside of LENNON; and</p> <p>(b) unresolved passenger ticket revenue allocation disputes.</p> <p>In the event that the Parties are not agreed by 13 September 2025, the Secretary of State shall reasonably determine what adjustments (if any) shall be made to the data.</p>
2.3	<p>(a) Subject to paragraph 2.3(b), in calculating the Reset Revised Input for forecast passenger demand and passenger fares revenue, the inputs to the ICWC Revenue Model relating to forecasts of exogenous factors may be revised to equivalent forecasts based on the latest projections from the same sources as detailed in the ICWC Record of Assumptions as most recently Placed in Escrow.</p> <p>(b) In the event that any such projection from a particular source 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 projection or if, at the relevant time, there is a delay in its publication by the source, either Party may, acting reasonably, propose forecasts of exogenous factors based on projections from an alternative source to apply, in which case the Parties shall, in good faith, seek to agree the same. In the event that the Parties are not agreed by 13 September 2025, the Secretary of State shall reasonably determine how the exogenous forecast inputs to the ICWC Revenue Model will be revised</p>

68 **Note to Bidders:** Bidders to insert reference to the relevant section (sheet and cell reference) of the ICWC Revenue Model containing the functionality set out in paragraph 6.3.4.19 of the ITT.

	<p>for the purpose of calculating the Reset Revised Input for forecast passenger demand and passenger fares revenue.</p> <p>(c) For the avoidance of doubt, the calculation of the Reset Revised Input for forecast passenger demand and passenger fares revenue in the ICWC Revenue Model shall use the same forecasting methodology as set out in the ICWC Record of Assumptions as most recently Placed in Escrow (and in particular the relationship between exogenous factors and forecast passenger demand and passenger revenue shall be unchanged).</p>
2.4	<p>For the avoidance of doubt, the only other revenue items which will be reset on the basis of the Reset Revised Input for forecast passenger demand and passenger fares revenue, are as set out below (and the same modelled relationships as contained within the ICWC Operational Models and ICWC Financial Model (each as most recently Placed in Escrow) will apply):</p> <p>(a) other LENNON revenue;</p> <p>(b) ticket sales commission receivable;</p> <p>(c) catering income; and</p> <p>(d) car parking income.</p>
2.5	<p>The Reset Revised Inputs will (as applicable) reflect the revised values for $DfT_{GDP_{RW}}$ and GDP^C_T calculated in accordance with Appendix 2 to this Schedule.</p>
2.6	<p>The Reset Revised Input assumption for outturn GDP growth (i.e. the input used to calculate GDP^C_A), will be calculated to be consistent with the revised forecast of exogenous factors used in calculating the Reset Revised Inputs for forecast passenger demand and passenger fares revenue.</p>
2.7	<p>An additional input (the "Additional Input") will be included as a Reset Revised Input for revenue (to reflect differences between the actual and forecast levels of Schedule 4 and Schedule 8 compensation (under the Network Rail Track Access Agreement) in the Franchisee Year 1 April 2024 to 31 March 2025), calculated as follows:</p> <p>$AComp_{def}$ minus $FComp_{def}$ equals the Additional Input to be added to revenue in the ICWC Financial Model.</p> <p>Where:</p> <p>$AComp_{def}$ is the actual Schedule 4 and Schedule 8 compensation (under the Network Rail Track Access Agreement) for the Franchisee in the Franchisee Year 1 April 2024 to 31 March 2025 (as shown in the ICWC Section of the Annual Management Accounts), <u>multiplied</u> by the RPI Base Year Adjustment Factor; and</p>

	<p>FComp_{def} is the Schedule 4 and Schedule 8 compensation (under the Network Rail Track Access Agreement) as forecast in nominal prices by the ICWC Financial Model (as most recently Placed in Escrow) for the Franchisee Year 1 April 2024 to 31 March 2025.</p> <p>In carrying out this calculation of the Additional Input, where <u>actual</u> or <u>forecast</u> compensation is <u>received</u> or receivable <u>by</u> the Franchisee this shall be expressed as a <u>positive</u> figure, (and where <u>paid</u> or <u>payable</u> by the Franchisee, this shall be expressed as a <u>negative</u> figure).</p> <p>The Additional Input shall be included as a Reset Revised Input for the Franchisee Year 1 April 2024 to 31 March 2025, to be added as revenue, with onward price indexation at RPI as assumed in the ICWC Financial Model (as most recently Placed in Escrow). The Additional Input shall be included in the calculation of VCRPI for the purposes of Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments).</p> <p>In the event that the Parties have not agreed the Additional Input by 13 September 2025, the Secretary of State shall reasonably determine the Additional Input (if any).</p>
2.8	For the avoidance of doubt, there will be no other Reset Revised Inputs or Model Changes in relation to revenue.
Cost Inputs	
3.1	<p>(a) Save as otherwise agreed or determined pursuant to the provisions of paragraph 3.1(b) and 3.1(c), the Reset Revised Inputs for fuel and energy costs which are identified as linked to fuel and energy price indexation in the ICWC Record of Assumptions as most recently Placed in Escrow (with the exception of Traction Electricity Charges), for the Reset Period, shall be as follows:</p> <p>(i) the actual unit prices (but not consumption rates or volumes) for the Franchisee Year 1 April 2024 to 31 March 2025 at [insert references⁶⁹] of the ICWC Financial Model as most recently Placed in Escrow (which in the case of items which are included in the calculation of VCRPI for the purposes of Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments) shall be multiplied by the RPI Base Year Adjustment Factor); and</p>

69 **Note to Bidders:** Bidder to insert reference to the relevant sections (sheet and cell references) of the ICWC Financial Model containing the Reset Revised Inputs.

	<p>(ii) use equivalent onward price indexation assumptions based on a forecast from the same sources as detailed in the Record of Assumptions, at [insert references⁷⁰] of the ICWC Financial Model as most recently Placed in Escrow with a price base of January 2024.</p> <p>(b) In the event that any such equivalent forecast for onward price indexation assumptions from a particular source 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 forecast or if, at the relevant time, there is a delay in its publication by the source, either Party may, acting reasonably, propose different onward price indexation assumptions, from an alternative source to apply, in which case the Parties shall in good faith seek to agree the onward price indexation assumptions. In the event that the Parties are not agreed by 13 September 2025, the Secretary of State shall reasonably determine what onward price indexation assumptions will be used for the purpose of calculating the Reset Revised Input for fuel and energy cost.</p> <p>(c) In the case that traction diesel fuel costs (in the ICWC Record of Assumptions as most recently Placed in Escrow) were assumed to be subject to a price hedge, the Franchisee may, acting reasonably, propose either a new hedged price or current market price for traction diesel (presenting reasonable evidence that these are competitive prices in the market). In the case of a current market price being proposed:</p> <p style="padding-left: 40px;">(i) onward price indexation assumptions from an authoritative source will be applied, in which case the Parties shall, in good faith, seek to agree the Reset Revised Input for diesel traction fuel; and</p> <p style="padding-left: 40px;">(ii) if the proposed traction diesel fuel costs are proposed to be included in the calculation of VCRPI for the purposes of Appendix 1 (Annual Franchise Payments) to Schedule 8.1A (Franchise Payments), the Reset Revised Input shall be multiplied by the RPI Base Year Adjustment Factor.</p> <p>In the event that the Parties are not agreed by 13 September 2025, the Secretary of State shall reasonably determine what traction diesel fuel costs and (where relevant) associated indexation assumptions shall be used for the purpose of calculating the Reset Revised Inputs for traction diesel fuel costs.</p>
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70 **Note to Bidders:** Bidder to insert reference to the relevant sections (sheet and cell references) of the ICWC Financial Model containing the Reset Revised Inputs.

3.2	<p>For the avoidance of doubt, the only other operating costs, which will be reset on the basis of the Reset Revised Input for forecast passenger demand and passenger fares revenue, are as set out below (and the same modelled relationships as contained within the ICWC Operational Models and ICWC Financial Model (each as most recently Placed in Escrow) will apply):</p> <ul style="list-style-type: none">(a) ticket sales commission payable;(b) catering costs;(c) ticket consumables and printing costs;(d) Wi-Fi costs; and(e) passenger compensation.
3.3	<p>The Secretary of State shall be entitled to require other Reset Revised Inputs which remove or reduce any costs in the Reset Period to reflect any efficiency savings related to changes in practice(s) that an Efficient Operator would be reasonably expected to have made prior to 1 April 2026 and to be making during the Reset Period.</p>
3.4	<p>For the avoidance of doubt, there will be no other Reset Revised Inputs or Model Changes in relation to costs.</p>

APPENDIX 2 TO SCHEDULE 8.7A

Other Updated Matters on Reset

1. Purpose and Application of Appendix

- 1.1 This Appendix 2 (Other Updated Matters on Reset) to Schedule 8.7A (Resetting) sets out the process for populating the following for the Reset Period:
- (a) the Figures For Calculation of Annual Franchise Payments (**AFP**) in Table 1 of Appendix 2 to Schedule 8.1A (Franchise Payments);
 - (b) the **Profit Share Components** in Tables 1, 2 and 3 respectively of Appendix 1 to Schedule 8.2A (Profit Share Mechanism);
 - (c) **AFA** and **DFR** in the tables in Appendix 2 to Schedule 8.2A (Profit Share Mechanism);
 - (d) **DfT_{GDP}R** (and so **DfT_{GDP}1RW** and **DfT_{GDP}2RW**) in the table in Appendix 1 to Schedule 8.4A (GDP Adjustment Payments);
 - (e) the **Adjusted Target GDP Index** value (**GDP^C_T**) in the table in Appendix 2 to Schedule 8.4A (GDP Adjustment Payments) (and so **GDP Nil Band Lower** and **GDP Nil Band Upper**) for the Reset Period); and
 - (f) the **Target Revenue** in the table in the Appendix to Schedule 8.6A (Forecast Revenue Mechanism).

2. Figures for Calculation of Annual Franchise Payments (AFP)

- 2.1 The Figures for Calculation of Annual Franchise Payments (**AFP**) in Table 1 of Appendix 2 to Schedule 8.1A (Franchise Payments) shall be populated for the Reset Period with the New Results resulting from the Run of the ICWC Financial Model pursuant to the provisions of paragraph 3 of Schedule 8.7A (Resetting).

3. Profit Share Components

- 3.1 The Profit Share Components in Tables 1, 2 and 3 respectively of Appendix 1 (Profit Share Thresholds) to Schedule 8.2A (Profit Share Mechanism) shall be populated for the Reset Period with the New Results resulting from the Run of the ICWC Financial Model (using the total revenue resulting from the Run of the ICWC Financial Model) pursuant to the provisions of paragraph 3.2 of Schedule 8.7A (Resetting).

4. AFA and DFR

- 4.1 **AFA** and **DFR** in the tables in Appendix 2 (Components of AFA and DFR) to Schedule 8.2A (Profit Share Mechanism) shall be populated for the Reset Period using the information from the FAA tab in the ICWC Financial Model as updated by the Run of the ICWC Financial Model pursuant to the provisions of Schedule 8.7A (Resetting).

5. Calculating DfT_{GDP}RW for Reset

- 5.1 If the Reset occurs, then **DfT_{GDP}R** (and so **DfT_{GDP}1RW** and **DfT_{GDP}2RW**) in the table in Appendix 1 (**DfT_{GDP}RW**) to Schedule 8.4A (GDP Adjustment Payments) for each Franchisee Year in the Reset Period shall be calculated and populated as follows:

$DfT_{GDP}R = DfT_{GDP}R_{old} \times \left(\frac{GDP^C_T}{GDP^C_{Told}} \right)$	
where:	
DFT_{GDP}R_{old}	is, in respect of a Franchisee Year, the figure included for DfT_{GDP}R_{old} in Column 3 of the table at paragraph 5.2 below;
GDP^C_T	is the Adjusted Target GDP Index for the relevant Franchisee Year for the Reset Period (as calculated pursuant to the provisions of paragraph 6.1 below); and
GDP^C_{Told}	is, in respect of a Franchisee Year, the figure included for the Adjusted Target GDP Index in Column 4 of the table at paragraph 5.2 below.

5.2

Column 1		Column 2	Column 3	Column 4
Year		Franchisee Year	DfT _{GDP} R _{old}	GDP ^C _{Told}
From	To			
2026	2027	Year 8 (Reset Period)	1,400,041	1.1368
2027	2028	Year 9 (Reset Period)	1,460,991	1.1563
2028	2029	Year 10 (Reset Period)	1,465,140	1.1769
2029	2030	Year 11 (Reset Period)	1,522,558	1.1982
2030	2031	Year 12 (Reset Period)	1,547,895	1.2207

- 5.3 By no later than 11 June 2025, the Secretary of State shall deliver to the Franchisee a copy of its draft calculation of DfT_{GDP}RW for the Reset Period. For the avoidance of doubt the Secretary of State shall be entitled (but not be obliged) to update such calculation at any time prior to the date that the Reset is agreed or determined pursuant to the provisions of paragraph 3.3 of this Schedule 8.7A (Resetting).
- 5.4 Following the agreement or determination of the Reset pursuant to the provisions of paragraph 3.3 of this Schedule 8.7A (Resetting), the Secretary of State shall issue a replacement Appendix 1 (DfT_{GDP}RW) of Schedule 8.4A (GDP Adjustment Payments) and such replacement appendix shall replace the existing appendix without further act.

6. Calculating Adjusted Target GDP Index for Reset (GDP^c_T)

6.1 If the Reset occurs, then the **Adjusted Target GDP Index** value (GDP^c_T) (and so **GDP Nil Band Lower** and **GDP Nil Band Upper**) in the table in Appendix 2 (Adjusted Target GDP Index) to Schedule 8.4A (GDP Adjustment Payments) for each Franchisee Year in the Reset Period) shall be calculated and populated as follows:

$GDP^c_T = \left(\frac{GDP_R}{GDP_B} \right)^c$	
where:	
c	means 0.82;
GDP_R	is the annual GDP forecast most recently published by the Office for Budget Responsibility at the date that the Reset Inputs and are agreed or determined, for the relevant Franchisee Year; and
GDP_B	is Base Year GDP.

6.2 By no later than 11 June 2025, the Secretary of State shall deliver to the Franchisee a copy of its draft calculation of the Adjusted Target GDP Index for Reset (GDP^c_T) for the Reset Period. For the avoidance of doubt the Secretary of State shall be entitled (but not be obliged) to update such calculation at any time prior to the date that the Reset values are agreed or determined pursuant to the provisions of paragraph 3.3 of this Schedule 8.7A (Resetting).

6.3 Following the agreement or determination of the Reset values pursuant to the provisions of paragraph 3.3 of this Schedule 8.7A (Resetting), the Secretary of State shall issue a replacement Appendix 2 (Adjusted Target GDP Index) of Schedule 8.4A (GDP Adjustment Payments) and such replacement appendix shall replace the existing appendix without further act.

7. Target Revenue for Forecast Revenue Mechanism

7.1 The Target Revenue in the table in the Appendix to Schedule 8.6A (Forecast Revenue Mechanism) shall be populated for the Reset Period with the New Results resulting from the Run of the ICWC Financial Model pursuant to the provisions of paragraph 3 of Schedule 8.7A (Resetting).

SCHEDULE 9A
CHANGES AND VARIATIONS

Schedule 9.1A:	Financial and Other Consequences of Change
	Appendix 1: Definition of Threshold Amount
	Appendix 2: Agreement or Determination of Revised Inputs
Schedule 9.2A:	Identity of the ICWC Financial Model (Escrow Documents)
Schedule 9.3A:	Variations to the Franchise Agreement and Incentivising Beneficial Changes
Schedule 9.4A:	Secretary of State Risk Assumptions
Schedule 9.5A:	NOT USED

SCHEDULE 9.1A

Financial and Other Consequences of Change

1. Purpose and Application of Schedule

1.1 This Schedule 9.1A sets out:

- (a) the circumstances in which the occurrence of a Change will result in an adjustment to the Franchise Payments, the Benchmarks and/or the Annual Benchmarks and/or the Target Revenue Amounts and/or DfT_{GDP}RW and/or Ticketless Travel Benchmarks and/or Annual Ticketless Travel Benchmarks and wherever in Schedule 9A reference is made to **"adjustment to Franchise Payments"** such reference shall be construed to include (unless the context otherwise requires) the restatement of the values of FPST, SPST and TPST as specified in respect of each Franchisee Year in paragraphs 1, 2 and 3 (respectively) of Appendix 1 (Profit Share Thresholds) to Schedule 8.2A (Profit Share Mechanism) (**"Profit Share Components"**);
- (b) the process by which that adjustment to the Franchise Payments, the Benchmarks, the Annual Benchmarks and/or the Target Revenue Amounts will be determined and effected; and
- (c) the provisions dealing with the responsibility for costs incurred by the Franchisee in connection with any audit of the Run of the ICWC Financial Model and its results.

1.2 Schedule 9.2A (Identity of the ICWC Financial Model (Escrow Documents)) contains provisions dealing with the ICWC Financial Model which are relevant to the operation of this Schedule 9.1A.

1.3 This Schedule 9.1A shall apply in relation to a Change where:

- (a) there are good reasons for considering that that Change will be a Qualifying Change or, with other Changes, part of an Aggregated Qualifying Change; and
- (b) the required notice(s) has/have been given in accordance with paragraph 1.4 (or the Parties have agreed that this Schedule 9.1A will apply and there should be a Run of the ICWC Financial Model and/or a review of the Benchmarks, the Annual Benchmarks, the Ticketless Travel Benchmarks and/or the Annual Ticketless Travel Benchmarks even though the required notices have not been given),

and for the avoidance of doubt, this Schedule 9.1A shall not apply in relation to a Shadow Operator Change, an IOC Confirmed Obligations Change or an IOC Change.

1.4 The notice requirements are that:

- (a) subject to paragraph 1.4(b), a Party must have notified the other that it considers that the Change will be a Qualifying Change and that it requires a Run of the ICWC Financial Model and/or a review of the Benchmarks and/or the Annual Benchmarks in respect of that Change:
 - (i) within six (6) months of the notification or agreement of that Change if it is a Variation pursuant to paragraph 1.1 of Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes); or
 - (ii) within six (6) months of becoming aware of it, if it is any other type of Change; and
- (b) in the case of an Aggregated Qualifying Change, a Party must have notified the other:

- (i) after an individual Change occurs, within the time limits stated in paragraphs 1.4(a)(i) or 1.4(a)(ii), that it reserves the right to count that Change towards an Aggregated Qualifying Change; and
- (ii) within six (6) months of the occurrence of the last Change which that Party considers will trigger an Aggregated Qualifying Change, that the Party requires a Run of the ICWC Financial Model and/or a review of the Benchmarks, the Annual Benchmarks, the Ticketless Travel Benchmarks and/or the Annual Ticketless Travel Benchmarks in respect of the Changes comprised in that Aggregated Qualifying Change. The notice must identify each of the Changes included in the Aggregated Qualifying Change.

1.5 References in the remainder of this Schedule 9.1A and in Schedule 9.2A (Identity of the ICWC Financial Model (Escrow Documents)) to a **"Change"** are to a Change in respect of which the requirements in paragraph 1.3 have been satisfied.

2. Timescales

2.1 Where this Schedule 9.1A applies, any resulting restatement of the Annual Franchise Payment Components, the Profit Share Components, the Benchmarks, the Annual Benchmarks, the Ticketless Travel Benchmarks, the Annual Ticketless Travel Benchmarks, the Target Revenue Amounts and/or $DFT_{GDP\text{RW}}$ (as applicable) shall be made in accordance with this Schedule 9.1A:

- (a) where it is reasonably practicable to do so, at least three (3) Reporting Periods prior to the Change; or
- (b) where the timescale in paragraph 2.1(a) is not reasonably practicable, as soon as reasonably practicable after that.

2.2 If paragraph 2.1(b) applies and it is not reasonably practicable for the restatement of the Annual Franchise Payment Components, the Profit Share Components and the Target Revenue Amounts to be made before the Change occurs, then paragraph 10 shall apply.

3. How any adjustments to Franchise Payments will be established

3.1 The adjustments, if any, to the Franchise Payments, the Profits Share Components and the Target Revenue Amounts to be made in respect of any Change shall be established by:

- (a) establishing those Model Changes and/or Revised Inputs required to take account of the Change; then
- (b) applying those Model Changes and/or Revised Inputs to the ICWC Financial Model before performing a Run of the ICWC Financial Model to generate the New Results; then
- (c) restating the Annual Franchise Payment Components, the Profit Share Components and the Target Revenue Amounts, by substituting the New Results for the Old Results (so that, to the extent that the New Results and the Old Results are different, this will result in an adjustment to the Franchise Payments),

in each case, subject to and in accordance with the terms more particularly described in this Schedule 9.1A.

4. How Model Changes and/or Revised Inputs will be established

4.1 The Parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs and (if any) the Model Changes.

4.2 **“Revised Inputs”** means:

- (a) the data that the ICWC Financial Model utilised in order to produce the Old Results, as such data is recorded in the ICWC Financial Model released by the Secretary of State pursuant to either of paragraphs 2.1(d) or 2.2 of Schedule 9.2A (Identity of the ICWC Financial Model (Escrow Documents)) for the purposes of the Run of the ICWC Financial Model; but
- (b) amended, whether by way of increase, reduction or other alterations to such data, (if at all) only as the Parties may agree or the Secretary of State may reasonably determine is required by the provisions of Appendix 2 (Agreement or Determination of Revised Inputs) to this Schedule 9.1A in respect of a Change.

4.3 **“Model Changes”** means any changes that the Parties may agree or the Secretary of State may reasonably determine are required to the ICWC Financial Model and/or the ICWC Operational Models, as released by the Secretary of State pursuant to either of paragraphs 2.1(d) or 2.2 of Schedule 9.2A (Identity of the ICWC Financial Model (Escrow Documents)), for the purposes of the Run of the ICWC Financial Model, as a consequence of and in order to give effect to the Revised Inputs.

4.4 The Secretary of State shall provide a written statement of the Revised Inputs and any Model Changes to the Franchisee for the purposes of paragraph 7 promptly after they have been agreed or determined.

5. Changes to Benchmarks and/or Annual Benchmarks and/or Ticketless Travel Benchmark and/or Annual Ticketless Travel Benchmark

5.1 This paragraph 5 shall apply if either Party has given notice to the other that it considers that a Change has or will have, in that Party’s reasonable opinion, a material effect on the risk of the Franchisee failing to satisfy the requirements of any Benchmarks, Annual Benchmarks, Ticketless Travel Benchmarks and/or Annual Ticketless Travel Benchmarks (whether in terms of increasing or reducing that risk).

5.2 Any notice referred to in paragraph 5.1 shall be given as soon as reasonably practicable and in any event before the Parties have agreed or the Secretary of State has reasonably determined the Revised Inputs in respect of the Change.

5.3 Where this paragraph 5 applies, the relevant Benchmarks, Annual Benchmarks, Ticketless Travel Benchmarks and/or Annual Ticketless Travel Benchmarks shall be revised to the extent that such revision is reasonably considered to be necessary to hold constant the risk of the Franchisee failing to satisfy the requirements of that Benchmark, Annual Benchmarks, Ticketless Travel Benchmark and/or Annual Ticketless Travel Benchmark. The Parties shall agree or the Secretary of State shall reasonably determine any such revision(s).

5.4 For the purposes of any revision to the Benchmarks, Annual Benchmarks, Ticketless Travel Benchmarks and/or Annual Ticketless Travel Benchmarks under this paragraph 5, regard may be had to:

- (a) any relevant assumptions in the ICWC Record of Assumptions (as proposed to be updated to reflect the relevant Change) and the contents of an ICWC Operational Models; and/or
- (b) any other information,

to the extent they are relevant to the consideration of whether a revision is reasonably considered to be appropriate to take account of the Change.

6. Run of the ICWC Financial Model following agreement or determination of the Revised Inputs and Model Changes

- 6.1 When the Revised Inputs and Model Changes (if any) are agreed or determined there shall be a Run of the ICWC Financial Model.
- 6.2 The Run of the ICWC Financial Model shall be performed after making any Model Changes and utilising the Revised Inputs and shall be performed by:
- (a) the Franchisee promptly on receiving notification of the Revised Inputs and any Model Changes from the Secretary of State pursuant to paragraph 4.4 or within such period of time as the Secretary of State shall reasonably determine; or
 - (b) the Secretary of State if the Franchisee fails to do so. In these circumstances, the Franchisee shall reimburse to the Secretary of State the Secretary of State's costs of performing the Run of the ICWC Financial Model.
- 6.3 The Party that performs the Run of the ICWC Financial Model pursuant to paragraph 6.2 shall provide the non performing Party with a reasonable opportunity to be in attendance and shall promptly notify such other Party of the New Results.
- 6.4 Where there is more than one Change, Runs of the ICWC Financial Model in respect of such Changes shall (unless otherwise agreed or the Secretary of State reasonably determines) be undertaken in the order in which such Changes occur. For this purpose, the order of occurrence will be determined by reference to the earliest date from which the Franchise Payments are reasonably expected to require adjustment as a result of the restatement of the Annual Franchise Payment Components, the Profit Share Components and the Target Revenue Amounts triggered by a Change. This will be as agreed between the Parties or in the absence of agreement be reasonably determined by the Secretary of State.

7. Certification or Audit of the New Results

- 7.1 The Secretary of State, as soon as reasonably practicable after receiving or generating the New Results pursuant to paragraphs 6.2 and 6.3, shall either:
- (a) certify to the Franchisee the Secretary of State's approval of the New Results; or
 - (b) notify the Franchisee that the Secretary of State requires the Run of the ICWC Financial Model and its results to be audited by an independent auditor appointed by the Secretary of State with the approval (not to be unreasonably withheld) of the Franchisee.
- 7.2 For the purposes of paragraph 7.1(b), the requirement for an audit is one that requires the auditor either to certify:
- (a) that the New Results have been produced by applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4) to the ICWC Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4); or
 - (b) the New Results themselves, by itself applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4) to the ICWC Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4).
- 7.3 The Parties shall procure that any auditor is, as soon as reasonably practicable after the Secretary of State's appointment, able to discharge the audit requirements.

- 7.4 The results as certified by the Secretary of State pursuant to paragraph 7.1 or by the auditor pursuant to paragraph 7.2 shall be final and binding on the Parties, except in the case of manifest error.
- 7.5 The Secretary of State may stipulate (on or before the date on which the Secretary of State approves or the auditor certifies the results of the Run of the ICWC Financial Model) in respect of a Change that the restated Annual Franchise Payment Components, the Profit Share Components and the Target Revenue Amounts are to apply for a limited period of time only (the "**Initial Period**"), with provision thereafter, if appropriate, for a further Run of the ICWC Financial Model with new Revised Inputs and/or Model Changes based on information available at that time.

8. Costs of Audit

- 8.1 This paragraph deals with the costs incurred by the Franchisee in connection with any audit required by the Secretary of State pursuant to paragraph 7.
- 8.2 The costs of any audit required under paragraph 7.1(b) shall be met by the Secretary of State subject to the following:
- (a) the costs of the audit shall be met entirely by the Franchisee in the case of a Change falling within any of the following sub-paragraphs within the definition of Change:
 - (i) a Charge Variation;
 - (ii) an event set out in any Secretary of State Risk Assumptions specified in Schedule 9.4A (Secretary of State Risk Assumptions); and
 - (b) the costs of the audit shall be met entirely by the Franchisee:
 - (i) where,
 - (A) the New Results produced by applying the Revised Inputs to the ICWC Financial Model after making the Model Changes (if any); or
 - (B) the New Results themselves,were incorrect as a result of manifest error by the Franchisee; and
 - (c) where paragraphs 8.2(a) and/or 8.2(b) do not apply, the Secretary of State shall only be responsible for the reasonable costs reasonably incurred of the Franchisee in connection with the audit, and the Franchisee shall comply with the Secretary of State's reasonable directions in connection with the audit which may include a requirement for a competitive tender for the appointment of the auditor.

9. Restatement of Annual Franchise Payment Components, Benchmarks, Annual Benchmarks, Ticketless Travel Benchmarks, Annual Ticketless Travel Benchmarks, Profit Share Components, the Target Revenue Amounts and/or DfT_{GDP}RW

- 9.1 When the New Results have been certified by the Secretary of State or the auditor in accordance with paragraph 7 then:
- (a) if:
 - (i) there is any difference between the Old Results and the New Results; and
 - (ii) the New Results are such that the Change:

- (A) meets the criteria for a Qualifying Change; or
 - (B) with other Changes meets the criteria for an Aggregated Qualifying Change,
- the Annual Franchise Payment Components, the Profit Share Components and the Target Revenue Amounts shall be restated in the amounts of the New Results; and

(b) if any changes the Benchmarks, Annual Benchmarks, Ticketless Travel Benchmarks and/or Annual Ticketless Travel Benchmarks have been agreed or determined in accordance with paragraph 5, the Benchmarks, Annual Benchmarks, Ticketless Travel Benchmarks and/or Annual Ticketless Travel Benchmarks shall be restated to give effect to those changes

9.2 Subject to paragraph 9.3, the restatement of the Annual Franchise Payment Components, the Profit Share Components and the Target Revenue Amounts shall have effect on and from the date on which the Secretary of State or the auditor certifies the results of the Run of the ICWC Financial Model.

9.3 If and to the extent that:

- (a) the application of the New Results in respect of the then current or any earlier Franchisee Year would result in any change to the amount of any payments already made between the Secretary of State and the Franchisee; and
- (b) that change in payments is not already taken into account in any Reconciliation Amount payable pursuant to paragraph 10.11,

then a reconciliation payment shall be paid by the Franchisee or the Secretary of State (as the case may be). The payment shall be made on the first Payment Date which falls more than seven (7) days after agreement or determination of the amount of the reconciliation payment required (or if there is no such Payment Date, within fourteen (14) days after such agreement or determination).

9.4 Changes to **DfT_{GDP}R** in Schedule 8.4A which may arise as a consequence of a Change

(a) Following the certification of the New Results by the Secretary of State or the auditor in accordance with paragraph 7, "**DfT_{GDP}R**" as specified in Column 3 of Appendix 1 (DfT_{GDP}RW) to Schedule 8.4A (GDP Adjustment Payments) shall be adjusted to reflect any adjustment to "**PRRPI_{GDP}**" in accordance with the following formula and for each Franchisee Year in respect of which the change to "**PRRPI_{GDP}**" applies:

New DfT_{GDP}R = DfT_{GDP}R x (PRRPI_{GDP}new/PRRPI_{GDP}old)	
where:	
DfT_{GDP}R	is, in respect of a Franchisee Year, the figure included for DfT _{GDP} R in Column 3 in Appendix 1 (DfT _{GDP} RW) of Schedule 8.4A (GDP Adjustment Payments) at the time of certification of the New Results;
PRRPI_{GDP}new	is, in respect of a Franchisee Year, the figure for PRRPI _{GDP} for that Franchisee Year in the New Results; and
PRRPI_{GDP}old	is, in respect of a Franchisee Year, the figure for PRRPI _{GDP} for that Franchisee Year in the Old Results.

- (b) Following calculation of New $DfT_{GDP R}$ by the Secretary of State in accordance with this paragraph 9.4, the Secretary of State shall issue a replacement Appendix 1 ($DfT_{GDP RW}$) of Schedule 8.4A (GDP Adjustment Payments) which, in respect of each Franchisee Year, shall specify: New $DfT_{GDP R}$ in Column 3 of that appendix as " **$DfT_{GDP R}$** " and 90% of New $DfT_{GDP R}$ in Column 4 (being " **$DfT_{GDP 1RW}$** ") and 90% of New $DfT_{GDP R}$ in Column 5 (being " **$DfT_{GDP 2RW}$** ") of that appendix, together being " **$DfT_{GDP RW}$** ", and such replacement appendix shall replace the existing appendix without further act.

9.5 Not used.

10. Estimated Revisions

10.1 This paragraph 10 applies where there is or is to be a Change before there is a Run of the ICWC Financial Model in respect of it. It provides a mechanism for interim adjustments in Franchise Payments and the Profit Share Components and the Target Revenue Amounts pending the final agreement or determination of those adjustments under this Schedule 9.1A.

10.2 Where this paragraph 10 applies, the Secretary of State shall make the Estimated Revisions described in paragraph 10.3:

- (a) if the Franchisee requests the Secretary of State to do so at the same time as requesting a Run of the ICWC Financial Model in respect of the Change under paragraph 1.4; or
- (b) if the Secretary of State otherwise agrees or chooses (in the Secretary of State's discretion) to do so.

10.3 The estimated revisions are the Secretary of State's estimates of the New Results which will apply once the process in paragraphs 4 to 9 of this Schedule 9.1A has been completed in respect of the Change (the "**Estimated Revisions**"). For the avoidance of doubt, Revised Inputs are not made in order to generate or take account of the Estimated Revisions.

10.4 The estimates referred to in paragraph 10.3 will be such estimates as the Secretary of State, acting reasonably, makes having regard to the time and the information available to the Secretary of State at the time the estimates fall to be made, provided always that it is acknowledged that:

- (a) the purpose of the estimates is to enable provision to be made in respect of adjustments to the Annual Franchise Payment Components, the Profit Share Components and/or the Target Revenue Amounts before full information about the Change is available and/or full consideration of the nature and extent of Revised Inputs and/or Model Changes has been undertaken;
- (b) it may not be reasonably practicable in all circumstances for the Secretary of State to take into account in such an estimate all actual or potential impacts of a Change. Where the Secretary of State is aware that there are any such actual or potential impacts which the Secretary of State has not taken into account, the Secretary of State shall notify the Franchisee of them when notifying the Estimated Revisions pursuant to paragraph 10.2; and
- (c) the Secretary of State shall be entitled to adjust any Estimated Revision notified pursuant to paragraph 10.2 to the extent the Secretary of State reasonably considers appropriate if at any time:
- (i) the Secretary of State becomes aware of any new or revised information which would, if it had been available to the Secretary of State at the time the Secretary of State made the Secretary of State's original estimate, have resulted in the Secretary of State making a different Estimated Revision; and

- (ii) it is reasonable to revise the Estimated Revision having regard to the likely period of delay prior to the Run of the ICWC Financial Model in respect of the relevant Change.
- 10.5 In the circumstances described in paragraph 10.2 and paragraph 10.4(c), the Annual Franchise Payment Components and the Profit Share Components and/or the Target Revenue Amounts shall be restated in the amounts and values of the Estimated Revisions, and Franchise Payments shall be paid accordingly until the Run of the ICWC Financial Model has taken place and its results have been put into effect.
- 10.6 The Secretary of State shall use all reasonable endeavours to notify the Franchisee of the Estimated Revisions required by paragraph 10.2 at least two (2) Reporting Periods before the Secretary of State considers the Change is likely to occur. If, having exercised all reasonable endeavours, the Secretary of State cannot provide two (2) Reporting Periods' notice, the Secretary of State shall provide such notification as soon as reasonably practicable afterwards.
- 10.7 The restatement of the Annual Franchise Payment Components and the Profit Share Components and/or the Target Revenue Amounts referred to in paragraph 10.5 shall have effect on and from:
 - (a) the date on which the Secretary of State notifies the Franchisee of the Estimated Revisions; or
 - (b) such other date as the Secretary of State, acting reasonably, may notify the Franchisee as the date on which the Secretary of State considers the Estimated Revisions should reasonably take effect, consistent with the matters taken into account by the Secretary of State in estimating the Estimated Revisions.
- 10.8 No estimate made by the Secretary of State pursuant to this paragraph 10 shall prejudice the Secretary of State's subsequent determination of any Revised Input or Model Change pursuant to paragraph 4.
- 10.9 Subject to paragraph 10.10, where adjustments to Franchise Payments have resulted from the operation of paragraph 10.5 then, as soon as reasonably practicable after the certification of the New Results following the related Run of the ICWC Financial Model, the Parties shall agree or the Secretary of State shall reasonably determine the difference (the "**Reconciliation Amount**") between:
 - (a) the total amount of Franchise Payments paid or to be paid to which adjustments have been made pursuant to the operation of paragraph 10.5; and
 - (b) the total amount of the Franchise Payments, as determined by that Run of the ICWC Financial Model, in respect of the same period as the period over which the adjusted Franchise Payments referred to in paragraph 10.9(a) have been paid or are to be paid.
- 10.10 If a Change is agreed or determined not to be a Qualifying Change or not to be part of an Aggregated Qualifying Change with or without any Run of the ICWC Financial Model having been performed, the Reconciliation Amount shall be the total amount of the adjustments to Franchise Payments which have resulted from the operation of paragraph 10.5.
- 10.11 The Reconciliation Amount shall be paid:
 - (a) by the Franchisee to the Secretary of State where the Estimated Revisions resulted in an overpayment of Franchise Payments by the Secretary of State to the Franchisee or an underpayment of Franchise Payments by the Franchisee to the Secretary of State compared with:
 - (i) the amount of the Franchise Payments described in paragraph 10.9(b); or

- (ii) where paragraph 10.10 applies, the amount of the unrestated Franchise Payments over the same period; and
- (b) by the Secretary of State to the Franchisee where the Estimated Revisions resulted in an underpayment of Franchise Payments by the Secretary of State to the Franchisee or an overpayment of Franchise Payments by the Franchisee to the Secretary of State compared with:
 - (i) the amount of the Franchise Payments described in paragraph 10.9(b); or
 - (ii) where paragraph 10.10 applies, the amount of the unrestated Franchise Payments over the same period.

In either case, such payment shall be made on the first Payment Date which falls more than seven (7) days after agreement or determination (or if none, within fourteen (14) days after such agreement or determination).

10.12 For the purposes of paragraphs 10.9, 10.10 and 10.11, references to Franchise Payments shall include any profit share payments made under Schedule 8.2A (Profit Share Mechanism).

11. Information

The Franchisee shall promptly, having regard to the other timescales anticipated in this Schedule 9.1A, provide to the Secretary of State such information as the Secretary of State may request for the purpose of enabling the Secretary of State to exercise the Secretary of State's rights and comply with the Secretary of State's obligations pursuant to this Schedule 9.1A.

APPENDIX 1 TO SCHEDULE 9.1A

Definition of Threshold Amount

“Threshold Amount” means [REDACTED]⁷¹ subject to indexation as follows:

Threshold Amount x RPI	
where:	
RPI	shall have the meaning given to it in Appendix 1 (Annual Franchise Payments) of Schedule 8.1A (Franchise Payments).

⁷¹ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 2 TO SCHEDULE 9.1A

Agreement or Determination of Revised Inputs

1. The Parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs that are required in respect of a Change:
 - (a) on the basis of the general adjustments and/or assumptions referred to in paragraph 2;
 - (b) on the basis of the assumptions in the ICWC Record of Assumptions as added to and/or amended (if at all) in accordance with paragraph 3;
 - (c) so as to provide for Traction Electricity Charges in accordance with paragraph 4;
 - (d) so as to provide for profit in accordance with paragraph 5;
 - (e) so as to give effect to the provisions of paragraph 6 in relation to indexation;
 - (f) so as to give effect to the provisions of paragraph 8 in relation to the Cancellations Performance Sum, the TOC Minute Delay Performance Sum, the T-3 Performance Sum, the T-15 Performance Sum and the All Cancellations Performance Sum,

provided that if there is any inconsistency between the assumptions in the ICWC Record of Assumptions described in paragraph (b) above and any other of the requirements of this paragraph 1, those other requirements shall prevail, unless the Secretary of State (acting reasonably) otherwise elects.

2. General Adjustments/Assumptions

- 2.1 Revised Inputs are to be agreed between the Parties or reasonably determined by the Secretary of State on the basis that:

- (a) any increase in costs relating to a Change; and/or
- (b) any reduction in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be disregarded.

- 2.2 Revised Inputs are to be agreed between the Parties or reasonably determined by the Secretary of State on the basis that:

- (a) any reduction in costs relating to a Change; and/or
- (b) any increase in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be taken into account.

- 2.3 Revised Inputs are also to be agreed between the Parties or reasonably determined by the Secretary of State on the basis that:

- (a) the Franchisee shall use all reasonable endeavours to:
 - (i) reduce any costs that may arise or income that may be foregone; and

(ii) increase any revenue that may arise and avoid any cost that may be avoided, as a consequence of a Change; and

(b) any requirement for borrowing in respect of Capital Expenditure by the Franchisee is dealt with in accordance with paragraph 3 of Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes).

2.4 Where and as directed to do so by the Secretary of State (acting reasonably) the Franchisee shall undertake one or more competitive tendering exercises for the purposes of ascertaining the likely level of any costs relating to a Change which are relevant to a Revised Input.

3. Assumptions in the ICWC Record of Assumptions

3.1 The Parties shall (unless to do so would be contrary to paragraph 2) agree or the Secretary of State shall reasonably determine Revised Inputs that are in accordance with the assumptions that are contained in the ICWC Record of Assumptions, as added to or modified pursuant to paragraph 3.2 or paragraph 3.3.

3.2 Where the Secretary of State reasonably considers that the assumptions contained in the ICWC Record of Assumptions are ambiguous or that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the ICWC Record of Assumptions, the Parties shall agree or the Secretary of State shall reasonably determine the assumptions or additional assumptions to be utilised for this purpose.

3.3 Where the Secretary of State reasonably considers that:

(a) a Change is likely to result in an increase or reduction in either or both of the costs of the Franchisee and the revenues of the Franchisee; and

(b) an assumption relevant to the Change contained in the ICWC Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient franchisee,

then the Parties shall agree or the Secretary of State shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient franchisee.

4. Traction Electricity Charges

4.1 This paragraph 4 applies only in relation to Charge Variations.

4.2 In agreeing or determining Revised Inputs, no adjustment shall be made in respect of a Charge Variation to the extent that Charge Variation relates, directly or indirectly and however it may be effected, to the Traction Electricity Charge payable by the Franchisee pursuant to any Track Access Agreement. For this purpose (and subject to clause 1.1(k) of this Agreement), the Traction Electricity Charge is the component of the Track Charges (as defined in the Network Rail Track Access Agreement) identified as such in any Track Access Agreement or any similar arrangement under which the Franchisee pays for traction current consumed by rolling stock vehicles operated by or on behalf of the Franchisee.

5. Revised Input for Profit

5.1

(a) Where a Change is forecast to result in an increase to the Franchisee's revenue in a Franchisee Year, the Parties shall agree or the Secretary of State shall reasonably

determine Revised Inputs in relation to profit that provide for an increase in the amount of profit in any Franchisee Year equal to **[Note to Bidders: INSERT AGREED PROFIT MARGIN]**⁷² of the forecast increase in revenue for that Franchisee Year; and/or

- (b) Where a Change is forecast to result in a reduction in the Franchisee's revenue in a Franchisee Year, the Parties shall agree or the Secretary of State shall reasonably determine Revised Inputs in relation to profit that provide for a decrease in the amount of profit in any Franchisee Year equal to the lower of:
 - (i) the percentage specified in paragraph 5.1(a); or
 - (ii) the average profit margin in the current Business Plan for the remaining ICWC Term,

of the forecast reduction in revenue for that Franchisee Year.

5.2 In agreeing or determining Revised Inputs in relation to profit in respect of any Change, the Parties or the Secretary of State shall effect such change (if any) in the amount attributable to profit in paragraph 5.1 as they agree or the Secretary of State reasonably determines to reflect:

- (a) the risk for the Franchisee in continuing to operate the Franchise on the terms of the Franchise Agreement after and as a result of the Change; and
- (b) the likelihood of:
 - (i) material benefit from such Change arising after expiry of the ICWC Term; and
 - (ii) material detriment from such Change arising prior to the expiry of the ICWC Term.

5.3 In agreeing or determining Revised Inputs for the purposes of any Protected Proposal, the Parties or the Secretary of State shall effect such change (if any) to the amount attributable to profit as they agree or the Secretary of State reasonably determines:

- (a) fairly rewards the Franchisee for proposing the Protected Proposal; and
- (b) reasonably incentivises the Franchisee to propose further Protected Proposals,

by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the Protected Proposal.

5.4 Schedule 14.7A (Incentivising Long Term Investment) sets out the Secretary of State's guidance on how the Secretary of State approaches incentivising long term investment.

6. Indexation

6.1 In agreeing or determining Revised Inputs, the Parties shall apply the following principles in connection with indexation. For each relevant item of data in the ICWC Financial Model in respect of which a Revised Input is agreed or determined to be required:

- (a) the Parties shall agree or the Secretary of State shall reasonably determine, having regard to the particular facts of the Change, the base rate at which that item is priced; and

72 **Note to Bidders:** Bidders to populate so that paragraph 5.1(a) is consistent with the percentage profit margin stated in your ICWC Financial Model for each Franchisee Year.

- (b) that item shall be deflated by reference to the original base date and index (if any) relevant to that item in the ICWC Financial Model.

7. NOT USED.

8. Cancellations Performance Sum, TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum and All Cancellations Performance Sum

- 8.1 In agreeing or determining Revised Inputs, no adjustment shall be made to the ICWC Financial Model to reflect any change in the amount of the Cancellations Performance Sum, the TOC Minute Delay Performance Sum, the T-3 Performance Sum, the T-15 Performance Sum and/or the All Cancellations Performance Sum payable either by the Secretary of State or the Franchisee and arising from the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 1.11 (*Charging Review*) of Schedule 7.1 (Operational Performance). For example if prior to such exercise the Franchisee would have been entitled to receive a Cancellations Performance Sum of one hundred pounds (£100) for a particular level of performance against the Annual Cancellations Benchmark and after such exercise the Franchisee would only be entitled to receive a Cancellations Performance Sum of fifty pounds (£50) for achieving the same level of performance, no adjustment shall be made to the ICWC Financial Model to reflect this.

SCHEDULE 9.2A

Identity of the ICWC Financial Model (Escrow Documents)

1. Franchisee's Obligations

- 1.1 The Franchisee shall deliver two (2) copies of each of the ICWC Financial Model, the ICWC Operational Models and the ICWC Record of Assumptions (each such copy in electronic format on non-rewritable password protected CD-ROM or other appropriate electronic medium) together with hard format copies of the output template of the ICWC Financial Model in the format set out in the document in the agreed terms marked **FF** (the "**Escrow Documents**") to the Secretary of State in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow.⁷³
- 1.2 The Franchisee shall deliver the Escrow Documents to the Secretary of State in accordance with paragraph 1.1:
- (a) on the date of the Franchise Agreement;
 - (b) within seven (7) days of the Start Date, but updated only as strictly necessary for any elapsed time between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (c) within seven (7) days of any approval or audit of a Run of the ICWC Financial Model as provided for in paragraph 7 of Schedule 9.1A (Financial and Other Consequences of Change), but updated with the Revised Inputs and any Model Changes together with an updated ICWC Record of Assumptions and copies of both the modified and unmodified ICWC Financial Model.
- 1.3 The Franchisee shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:
- (a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
 - (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and
 - (c) if required by the Secretary of State, a certificate from independent auditors approved by the Secretary of State, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.1 or (as the case may be) is in accordance with paragraphs 1.2(a), 1.2 (b) or 1.2(c).

2. Secretary of State's Obligations

- 2.1 The Secretary of State shall:

73 **Note to Bidders:** If a USB stick is used, the model needs to be time and date stamped (this includes when it is updated for any contract change). Any disc or hard copy format needs to be signed and dated by both Parties at Completion (this includes when it is updated for any future contract change). The winning Bidder/the Franchisee will need to provide non-rewritable electronic media when submitting documents to be held in Escrow.

- (a) within three (3) days following receipt, acknowledge receipt to the Franchisee of any version of the Escrow Documents delivered to the Secretary of State for the purposes of being Placed in Escrow;
 - (b) save as provided under paragraph 2.1(c), store each copy of the Escrow Documents in a different physical location from any other copy of each such document and use all reasonable endeavours to ensure that each copy of the Escrow Documents is at all times kept in a safe and secure environment. In so doing the Secretary of State shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of the Franchise Agreement;
 - (c) notify the Franchisee if the Secretary of State becomes aware at any time during the term of the Franchise Agreement that any copy of the Escrow Documents or part thereof stored in a particular location has been lost, damaged or destroyed. In such an event, the Secretary of State shall be permitted to create a new copy of the Escrow Documents or part thereof from the other copy Placed in Escrow and shall within seven (7) days notify the Franchisee accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a "*complete and accurate*" copy has been made. Following the making of such a new copy of the Escrow Documents, the Secretary of State shall retain all copies of the Escrow Documents in accordance with paragraph 2.1(b);
 - (d) within seven (7) days of receipt of a notice from the Franchisee stating that the Escrow Documents are required for the purposes of a Run of the ICWC Financial Model in relation to any Change, or should the Secretary of State so decide that the Escrow Documents are required by the Franchisee or by the Secretary of State for such purposes release one copy of the Escrow Documents accordingly and retain one copy of the Escrow Documents in escrow in accordance with paragraph 2.1(b);
 - (e) maintain a record of any release of any copy of any version of the Escrow Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Escrow Documents are released;
 - (f) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Escrow Documents; and
 - (g) not be liable for any loss, damage or destruction caused to the Franchisee arising from any loss of, damage to or destruction of the Escrow Documents.
- 2.2 If the Franchisee fails to perform a Run of the ICWC Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1A (Financial and Other Consequences of Change) or fails to return the copy of the Escrow Documents released pursuant to paragraph 2.1(d):
- (a) such failure to perform or to return the released copy to the Secretary of State shall be a contravention of the Franchise Agreement;
 - (b) the Secretary of State may release the other copy of the Escrow Documents Placed in Escrow and take a copy thereof (the "**Replacement Copy**") in order that the Secretary of State may perform a Run of the ICWC Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1A (Financial and Other Consequences of Change);
 - (c) once copied, the second copy of the Escrow Documents released pursuant to this paragraph 2.2 shall be Placed in Escrow; and
 - (d) once the Run of the ICWC Financial Model has been approved or audited as provided for in paragraph 7 of Schedule 9.1A (Financial and Other Consequences of Change), two copies of the Replacement Copy shall also be Placed in Escrow.

2.3 Nothing in this Schedule 9.2A shall prevent the Secretary of State or the Franchisee each retaining for their working use one or more copies of any of the Escrow Documents Placed in Escrow provided that no such working copy shall (unless otherwise explicitly agreed by the Parties) be regarded as a copy released from Escrow for the purposes of this Schedule 9.2A or any Run of the ICWC Financial Model.

3. Errors in Escrow Documents

3.1 Any feature of the Escrow Documents which is in the reasonable opinion of the Secretary of State an error will be addressed as follows:

- (a) if rectification of such an error would (as the case may be) over the Franchise Term result in a net increase in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net decrease in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified provided that there shall not be a restatement of the values of the Annual Franchise Payment Components, the Profit Share Components and the Target Revenue Amounts;
- (b) if rectification of such an error would (as the case may be) over the Franchise Term result in a net decrease in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net increase in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified and the values of the Annual Franchise Payment Components, the Profit Share Components and the Target Revenue Amounts shall be restated where appropriate;
- (c) a record of the error shall be noted in the ICWC Record of Assumptions and, if applicable, the ICWC Financial Model; and

as soon as reasonably practicable after the date of the rectification of the error, the Franchisee shall (unless otherwise agreed by the Secretary of State) deliver to the Secretary of State a certificate from independent auditors approved by the Secretary of State confirming that the error has been rectified as required by this paragraph 3 and is now in the agreed form in accordance with paragraphs 1.1, 1.2(a), 1.2(b) or 1.2(c) as the case may be.

SCHEDULE 9.3A

Variations to the Franchise Agreement and Incentivising Beneficial Changes

1. Variations

1.1 The terms of the Franchise Agreement may be varied as follows but not otherwise:

(a) by the Secretary of State (as contemplated where relevant in the Invitation to Tender) in relation to:

(i) any aspect of the Franchise Services; and/or

(ii) any provision of the Franchise Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the Franchisee referring to this paragraph 1.1(a) and setting out the variation to the terms of the Franchise Agreement; and

(b) in relation to any other provision of the Franchise Agreement, by agreement in writing between the Parties to that effect,

(each a "**Variation**").

1.2 Without prejudice to the Secretary of State's rights under paragraph 1.1(a), the terms of each of:

(a) clauses 5 (Duration of the Franchise Agreement), 7 (Assignment), 10 (Cumulative Rights and Remedies), 11 (Dispute Resolution), 12 (Notices), 13 (Set-Off) and 14 (Miscellaneous Provisions) of this Agreement;

(b) Schedules 8A (Payments), 9A (Changes and Variations), 10A (Remedies, Events of Default and Termination Events), 12A (Financial Covenants and Bonds) and 14A (Preservation of Assets) of this Agreement; and

(c) the definitions set out at clause 3 (Definitions) of this Agreement insofar as such affect the respective rights and obligations of the Secretary of State and the Franchisee pursuant to the provisions referred to at (a) and (b) above,

shall not be varied at any time other than in accordance with the terms of the Franchise Agreement or with the agreement of the Parties.

1.3 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.

1.4 The Secretary of State may:

(a) issue, revise and withdraw from time to time procedures that the Secretary of State requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and

- (b) require the Franchisee to provide any information that the Secretary of State reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).
- 1.5 Procedures issued pursuant to paragraph 1.4 may provide for indicative iterations of Runs of the ICWC Financial Model in relation to one or more Changes that the Secretary of State is considering and may also provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the ICWC Financial Model.
- 1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the Parties in accordance with their terms.
- 1.7 The Franchisee may notify the Secretary of State of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:
- (a) the timescale for doing so;
 - (b) the effect (if any) on the timing of the performance of its other obligations under the Franchise Agreement;
 - (c) the impact of effecting the proposed Variation on the provision of the Franchise Services and the Franchisee's proposals as to how to minimise such impact; and
 - (d) the financial consequences of implementing the Variation proposed by the Franchisee in terms of the Revised Inputs that the Franchisee considers the Variation would require.

2. Protected Proposals

- 2.1 Where the Franchisee proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of the Franchisee through costs saving measures (a "**Protected Proposal**"), the Secretary of State may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of the Secretary of State without complying with the provisions of paragraph 2, and paragraph 5 of Appendix 2 (Agreement or Determination of Revised Inputs) to Schedule 9.1A (Financial and Other Consequences of Change).
- 2.2 The Franchisee and the Secretary of State acknowledge that the Franchisee may during the Franchise Term identify actions that could be taken by the Franchisee to achieve savings and improved financial performance and that such actions may if implemented give rise to a Change under the terms of this Agreement which, if it is a Qualifying Change, will give a financial benefit to the Secretary of State. It is further acknowledged that it is appropriate for the Franchisee to seek to identify such actions for the purposes of improving the cost effective delivery of railway passenger services.
- 2.3 To incentivise the Franchisee to seek to identify such actions it is agreed that the Franchisee may approach the Secretary of State with a proposal to take an action that would constitute a Change on the basis that if such a Change occurred and was a Qualifying Change in agreeing or determining Revised Inputs the Parties or the Secretary of State would effect such change (if any) to the amount attributable to profit as they agree or the Secretary of State reasonably determines:
- (a) fairly rewards the Franchisee for proposing the Change; and

- (b) reasonably incentivises the Franchisee to propose further Changes that achieve savings and/or improved financial performance by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the relevant Change.

2.4 The Secretary of State shall have an unfettered discretion as to whether or not to agree such a proposal but if the Secretary of State does so agree and a Qualifying Change in consequence occurs then in agreeing or determining Revised Inputs the provisions referred to in paragraph 2.3 above shall apply.

3. Capital Expenditure

3.1 Capital Expenditure Threshold

The Franchisee shall notify the Secretary of State promptly if it reasonably expects that a Change to which paragraph 1 or 2 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of one per cent (1%) of its annual Turnover as disclosed by its latest available Annual Audited Accounts and, when so notified, the Secretary of State shall either:

- (a) withdraw (or direct the Franchisee to withdraw) the Change;
- (b) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (c) direct the Franchisee to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in the Franchisee failing to comply with the financial covenants contained in Schedule 12 (Financial Covenants and Bonds).

3.2 Franchisee to Seek Finance

If the Secretary of State elects to require the Franchisee to use all reasonable endeavours as described in paragraph 3.1(c) then the Franchisee shall:

- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to the Franchisee, the Guarantor and the Parent or any other Affiliate;
- (b) if it is unable to raise funding, provide the Secretary of State with all information the Secretary of State may reasonably require in relation to the efforts made by the Franchisee and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), the Franchisee shall provide to the Secretary of State letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if the Secretary of State so requires, arrange and attend meetings with them for the Secretary of State to discuss those reasons; and
- (d) if funding is not available, or is not available on terms that the Secretary of State considers to be commercial terms or at rates which are consistent with market conditions at that time the Secretary of State may:

- (i) withdraw the Change; or
- (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

3.3 Treatment of Borrowings in Revised Inputs

In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 3, the Franchisee shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

3.4 Meaning of Capital Expenditure

The expression "**Capital Expenditure**" when used in this Schedule 9.3A refers to the nature of the expenditure incurred by the Franchisee and, accordingly, does not include expenditure incurred under operating leases.

SCHEDULE 9.4A

Secretary of State Risk Assumptions

[REDACTED]⁷⁴

⁷⁴ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

SCHEDULE 9.5A

NOT USED

SCHEDULE 10A

REMEDIES, EVENTS OF DEFAULT AND TERMINATION EVENTS

Schedule 10.1A:	Procedure for remedying a Contravention of the Franchise Agreement
Schedule 10.2A:	Events of Default and Termination Events
Schedule 10.3A:	Force Majeure and Business Continuity
Schedule 10.4A:	Liability

SCHEDULE 10.1A

Procedure for remedying a Contravention of the Franchise Agreement

1. Contraventions of the Franchise Agreement

- 1.1 The Franchisee shall notify the Secretary of State, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Franchisee of any provision of the Franchise Agreement. This includes where the Franchisee is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.
- 1.2 The Franchisee shall deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, the Franchise Agreement.

2. Remedies for Contraventions of the Franchise Agreement

If the Secretary of State is satisfied that the Franchisee is contravening, or is likely to contravene any term of the Franchise Agreement, the Secretary of State may serve a notice on the Franchisee requiring it to propose such steps as the Franchisee considers appropriate for the purpose of securing or facilitating compliance with the term in question (a **"Remedial Plan Notice"**).

3. Remedial Plan Notices

- 3.1 Each Remedial Plan Notice shall specify the following:
- (a) the term or terms of the Franchise Agreement that the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene (each a **"Relevant Term"**); and
 - (b) the time period (**"Remedial Plan Period"**) within which the Secretary of State requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with such Relevant Term (a **"Remedial Plan"**).

4. Remedial Plans

- 4.1 If the Secretary of State issues a Remedial Plan Notice, the Franchisee shall submit (at its own cost) a Remedial Plan to the Secretary of State within the Remedial Plan Period.
- 4.2 Each Remedial Plan shall set out:
- (a) the Relevant Term which has caused such Remedial Plan to be required;
 - (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
 - (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and
 - (d) the time period within which the Franchisee proposes to implement those steps.

5. Remedial Agreements

- 5.1 If the Secretary of State is satisfied that the matters within such Remedial Plan referred to in paragraphs 4.2(c) and (d) are appropriate (with or without further modification as the Parties may agree) the Secretary of State may require the Franchisee to enter into a supplemental

agreement (the "**Remedial Agreement**") with the Secretary of State to implement those matters.

5.2 It is a term of the Franchise Agreement that the Franchisee (at its own cost) complies with each Remedial Agreement in accordance with its terms.

6. Effect of Force Majeure Event on a Remedial Agreement

6.1 Without prejudice to the operation of paragraph 2.1 of Schedule 10.2 (Events of Default and Termination Events), the following provisions shall apply in relation to Force Majeure Events affecting the Franchisee's performance of their obligations pursuant to a Remedial Agreement:

- (a) the Franchisee shall give written notice to the Secretary of State promptly after the Franchisee becomes aware (and in any event within twenty-four (24) hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchisee's ability to comply with a Remedial Agreement within the period specified therein;
- (b) each notice submitted in accordance with paragraph 6.1(a) shall state the extent or likely extent of the relevant Force Majeure Event and in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Franchisee considers it likely to occur;
- (c) the Franchisee shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
- (d) subject to the Franchisee having complied with its obligations under paragraphs 6.1(a) to 6.1(c) (inclusive) the Franchisee shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with that Remedial Agreement.

7. Enhanced Monitoring by the Secretary of State

7.1 Following the occurrence of a contravention of the Franchise Agreement, the Secretary of State may at the Secretary of State's option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Franchisee's performance of any relevant obligations until such time as the Franchisee demonstrates, to the Secretary of State's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the Franchise Agreement.

7.2 The Franchisee shall co-operate fully with the Secretary of State in relation to the monitoring referred to in paragraph 7.1.

7.3 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11.1 (Franchise Performance Meetings).

7.4 The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out such monitoring.

SCHEDULE 10.2A

Events of Default and Termination Events

1. Definition of Events of Default

Each of the following is an “**Event of Default**”:

1.1 Insolvency⁷⁵

- (a) **Administration:** Any step being taken by any person with a view to the appointment of an administrator to the Franchisee, the Parent, any Bond Provider or the Guarantor;
- (b) **Insolvency:** Any of the Franchisee, the Parent, any Bond Provider or the Guarantor stopping or suspending or threatening to stop or suspend payment of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph the words “*it is proved to the satisfaction of the court that*” in sub-section (1)(e) and sub-section (2) of section 123 shall be deemed to be deleted;
- (c) **Arrangements with Creditors:** The directors of the Franchisee, the Parent, any Bond Provider or the Guarantor making any proposal under section 1 of the Insolvency Act 1986, or any of the Franchisee, the Parent, any Bond Provider or the Guarantor proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** Any expropriation, attachment, sequestration, execution or other enforcement action or other similar process affecting any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent, any Bond Provider or the Guarantor, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Franchisee, the Parent, any Bond Provider or Guarantor with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee, the Parent, any Bond Provider or Guarantor ceasing or threatening to cease to carry on all or, in the reasonable opinion of the Secretary of State, a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Secretary of State before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Franchisee under sections 60 to 62 of the Act; and
- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 1.1,

⁷⁵ **Note to Bidders:** Where there are multiple parents, DfT may customise provisions such that it applies to the Franchisee, such immediate parent of the Franchisee and any intermediate parents up to the ultimate parent.

subject, in the case of any relevant event occurring in relation to a Bond Provider where no such other Event of Default has occurred and is unremedied or continuing at such time, to a period of twenty (20) Weekdays having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

1.2 Non-payment

The Franchisee failing to pay to the Secretary of State any amount due under the Franchise Agreement within twenty eight (28) days of the due date for such payment.

1.3 Change of Control

A Change of Control other than in accordance with the prior consent of the Secretary of State pursuant to clause 8 (Change of Control and Facilitation Fee).

1.4 Revocation of Licence

Revocation of any Licence required to be held by the Franchisee in order to comply with its obligations under the Franchise Agreement.

1.5 Safety Certificate and Safety Authorisation

The Safety Certificate and/or Safety Authorisation of the Franchisee being withdrawn or terminated.

1.6 Passenger Service Performance

Except in respect of any Reporting Period falling within the Initial Reporting Stage, the Franchisee's performance in relation to any Benchmark is equal to or worse than the Default Performance Level for that Benchmark for:

- (a) any three (3) consecutive Reporting Periods;
- (b) any four (4) Reporting Periods within a period of thirteen (13) consecutive Reporting Periods; or
- (c) any five (5) Reporting Periods within a period of twenty six (26) consecutive Reporting Periods.

1.7 Non-compliance with Remedial Agreements and Orders under the Act

- (a) Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is reasonably considered by the Secretary of State to be material.
- (b) Non-compliance by the Franchisee with:
 - (i) a provisional order;
 - (ii) a final order;
 - (iii) a penalty; or
 - (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in section 55 of the Act) or another order,

in each case made by the Secretary of State under the Act.

- (c) Non-compliance by the Franchisee with any enforcement notice issued to it by the Secretary of State pursuant to section 120 of the Act.
- (d) NOT USED.

1.8 Financial Ratios

Breach by the Franchisee of either or both of the Financial Ratios specified in paragraph 2 of Schedule 12 (Financial Covenants and Bonds).

1.9 Breach of Law

- (a) It becoming unlawful for the Franchisee to provide all or, in the reasonable opinion of the Secretary of State, a material part of the Passenger Services or to operate all or, in the reasonable opinion of the Secretary of State, a material number of the Stations or Depots (except to the extent not required under the Franchise Agreement);
- (b) The Franchisee or any of the directors or senior managers of the Franchisee being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Franchise Services; or
- (c) The Franchisee being, in the reasonable opinion of the Secretary of State, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the Franchisee makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 1.9(c) until such appeal has been determined to be unsuccessful; or
- (d) It becoming unlawful for the Franchisee to provide all or, in the reasonable opinion of the Secretary of State, a material part of the Shadow Operator Services.

1.10 Contravention of Other Obligations

The occurrence of the following:

- (a) the Franchisee contravening to an extent which is reasonably considered by the Secretary of State to be material any one or more of its obligations under the Franchise Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.2 other than this paragraph 1.10);
- (b) the service by the Secretary of State on the Franchisee of a written notice specifying:
 - (i) such contravention; and
 - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Franchisee is required to so remedy; and
- (c) the Franchisee:
 - (i) contravening such obligation or obligations again to an extent which is reasonably considered by the Secretary of State to be material; or
 - (ii) permitting the contravention to continue; or
 - (iii) if the contravention is capable of remedy, failing to remedy such contravention within such period as the Secretary of State has specified in the notice served pursuant to paragraph 1.10(b)(ii).

1.11 Non-membership of Inter-Operator Schemes

The Franchisee ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

1.12 Bonds

- (a) Any Performance Bond or Season Ticket Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for such Bond Provider to perform its obligations thereunder;
- (b) A failure by the Franchisee to procure the provision to the Secretary of State of a Performance Bond (or Performance Bonds) required to be provided pursuant to paragraph 4 of Schedule 12 (Financial Covenants and Bonds) which individually or in aggregate fulfil the requirements of Schedule 12 (Financial Covenants and Bonds); or
- (c) A failure by the Franchisee to procure the provision to the Secretary of State of a Season Ticket Bond (or Season Ticket Bonds) required to be provided pursuant to paragraph 5 of Schedule 12 (Financial Covenants and Bonds) which individually or in aggregate fulfil the requirements of Schedule 12 (Financial Covenants and Bonds).

1.13 Key Contracts

Termination of any Key Contract, or the failure by the Franchisee to take all reasonable steps to enter into an appropriate replacement contract prior to the scheduled expiry date of any Key Contract, except where requested by the Secretary of State or to the extent that the Franchisee has demonstrated to the reasonable satisfaction of the Secretary of State that for the duration of the Franchise Term:

- (a) it is no longer necessary for it to be party to such Key Contract; or
- (b) it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

1.14 Funding Deed

A failure by the Franchisee or the Guarantor to comply with their respective obligations under the Funding Deed.

1.15 Rolling Stock Leases

A failure by the Franchisee to enter into a new Rolling Stock Lease in accordance with paragraph 2.3(a) of Schedule 1.6 (The Rolling Stock) in respect of the Unspecified Additional Rolling Stock.

1.16 Other Events of Default

Any other failure, or act or omission of the Franchisee, or other circumstances, explicitly stated in the Franchise Agreement to be an Event of Default.

1.17 Shadow Operator Annual Review

The occurrence of the Event of Default set out in paragraph 6.5 of Schedule 18.4 (Shadow Operator Annual Review)

2. Definition of Termination Events

Each of the following is a **"Termination Event"**:

- 2.1 any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months; or
- 2.2 the warranty given by the Franchisee pursuant to paragraph 6.1 (Tax Compliance) of Schedule 12 (Financial Covenants and Bonds) is materially untrue; or
- 2.3 the Franchisee commits a material breach of its obligation to notify the Secretary of State of any Occasion of Tax Non-Compliance in respect of any Affected Party (as defined in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds)) as required by paragraph 6.2(a) of Schedule 12 (Financial Covenants and Bonds); or
- 2.4 the Franchisee fails to provide details of proposed mitigating factors as required by paragraph 6.2(b) of Schedule 12 (Financial Covenants and Bonds) which in the reasonable opinion of the Secretary of State, are acceptable; or
- 2.5 the Secretary of State serves a Competition Event Notice on the Franchisee pursuant to clause 15.5 (Competition); or
- 2.6 any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Shadow Operator Services for more than six (6) consecutive months; or
- 2.7 in the circumstances set out in paragraph 5.8 of Schedule 19.1 (Readiness Review), being a failure or refusal by the Franchisee to enter into a Remedial Agreement in such form as the Secretary of State specifies; or
- 2.8 the Anticipated High Speed Start Date has been delayed to a date later than the Passenger Change Date in December 2029; or
- 2.9 the HS2 Project is cancelled prior to completion of the Readiness Review.

3. Consequences of Events of Default

The occurrence of an Event of Default shall constitute a contravention of the Franchise Agreement by the Franchisee. On the occurrence of an Event of Default, the provisions of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement) shall apply.

4. Notification of Event of Default

The Franchisee shall notify the Secretary of State as soon as reasonably practicable on, and in any event within twenty four (24) hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Franchisee shall take such action or steps as the Secretary of State may require to remedy any Event of Default or potential Event of Default.

5. Termination Notices

- 5.1 The Secretary of State may, on and at any time after the occurrence of:
 - (a) (subject to paragraphs 5.2 and 5.3) an Event of Default which:
 - (i) is unremedied or continuing; and
 - (ii) the Secretary of State considers to be material; or

- (b) a Termination Event specified in paragraph 2.1 and/or 2.6 of this Schedule 10.2 which is unremedied or continuing; or
- (c) a Termination Event specified in paragraphs 2.2, 2.3, 2.4, 2.5, 2.7, 2.8 and 2.9 of this Schedule 10.2,

terminate the Franchise Agreement by serving a Termination Notice on the Franchisee. Subject to paragraphs 5.4 and 5.5, the Franchise Agreement shall terminate with effect from the date specified in any such Termination Notice.

- 5.2 The Secretary of State may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the Remedial Plan Period has expired.
- 5.3 The Secretary of State may not serve a Termination Notice in respect of an Event of Default for which the Franchisee is implementing a Remedial Agreement in accordance with its terms.
- 5.4 Where the Secretary of State terminates the Franchise Agreement by serving a Termination Notice under paragraph 5.1 solely in respect of an Event of Default specified in paragraph 1.9(d) or 1.17, or a Termination Event specified in paragraph 2.6, of this Schedule 10.2, then:
 - (a) the Shadow Operator Services shall terminate with effect from the date specified in such Termination Notice; and
 - (b) the remainder of the Franchise Agreement shall terminate with effect from:
 - (i) 01:59 on 1 April 2026; or
 - (ii) any later date specified in such Termination Notice.
- 5.5 Where the Secretary of State serves a Termination Notice solely in relation to the Termination Event specified in paragraphs 2.8 and 2.9 of this Schedule 10.2, then:
 - (a) the Shadow Operator Services shall terminate with effect from the date specified in such Termination Notice; and
 - (b) the remainder of the Franchise Agreement shall terminate with effect from the later of:
 - (i) the date which is two (2) years after the date on which the Termination Notice was served on the Franchisee;
 - (ii) 01:59 on 1 April 2026; or
 - (iii) any later date specified in such Termination Notice.
- 5.6 A notice served on the Franchisee by the Secretary of State pursuant to paragraph 2.1(b) or 2.2(b) of Schedule 19.4 (High Speed Services Review) shall constitute a Termination Notice.

6. Consequences of Termination or Expiry

- 6.1 Upon termination of the Franchise Agreement (whether through default or effluxion of time or otherwise) the obligations of the Parties shall cease except for:
 - (a) any obligations arising as a result of any antecedent contravention of the Franchise Agreement;
 - (b) any obligations which are expressed to continue in accordance with the terms of the Franchise Agreement; and

- (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.
- 6.2 Nothing in this paragraph 6 shall prevent the Secretary of State from bringing an action against the Franchisee in connection with the termination of the Franchise Agreement prior to the expiry of the Franchise Term.
- 6.3 Upon termination of the Shadow Operator Services, paragraphs 20, 21 and 22 of Schedule 18.1 (Shadow Operations) shall apply.

SCHEDULE 10.3A

Force Majeure and Business Continuity

1. Definition of Force Majeure Events

The following events shall constitute "**Force Majeure Events**", subject to the conditions specified in paragraph 2 being satisfied:

- (a) the Franchisee or any of its agents or subcontractors is prevented or restricted by the relevant Infrastructure Manager (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:
- (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Franchisee is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1(a)(i) and 1(a)(ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
 - (iv) "**Contingency Plan**" means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of the relevant Infrastructure Manager, or such other contingency or recovery plan as the Secretary of State may agree from time to time;
- (b) the Franchisee or any of its agents or subcontractors is prevented or restricted by the relevant Infrastructure Manager or any Facility Owner (other than a Facility Owner which is an Affiliate of the Franchisee) from entering or leaving:
- (i) any station or part thereof (excluding any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
- (c) any of the following events occurs:
- (i) a programme of Mandatory Modifications commences;
 - (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
 - (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,

and, in each case, the greater of two (2) Rolling Stock Units and ten per cent (10%) of all rolling stock vehicles used by the Franchisee in the provision of the Passenger Services in

relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event. For the purposes of this paragraph 1(c), **"Rolling Stock Units"** means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Franchisee in the provision of the Passenger Services;

- (d) the Franchisee prevents or restricts the operation of any train on safety grounds provided that:
- (i) the Franchisee has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
 - (ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;
- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion (together **"Emergency Events"**) or the act of any government instrumentality (including the ORR but excluding the Secretary of State) in so far as the act of government instrumentality directly relates to any of the Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1(e) by reason of:
- (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
 - (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
 - (iii) an act of God which results in the Franchisee or its agents or subcontractors being prevented or restricted by the Infrastructure Manager from gaining access to any relevant section or part of track; and
- (f) any strike or other Industrial Action by any or all of the employees of the Franchisee or any or all of the employees of:
- (i) a relevant Infrastructure Manager;
 - (ii) the operator of any other railway facility; or
 - (iii) any person with whom the Franchisee has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Franchisee in the provision of the Franchise Services,

or of the agents or sub-contractors of any such person listed in paragraphs 1(f)(i) to 1(f)(iii).

2. Conditions to Force Majeure Events

2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

- (a) in relation to an event occurring under paragraph 1(a), that event has continued for more than twelve (12) consecutive hours;
- (b) the Franchisee notifies the Secretary of State within two (2) Weekdays of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:
 - (i) the occurrence or likely occurrence of the relevant event; and
 - (ii) the effect or the anticipated effect of such event on the Franchisee's performance of the Passenger Services and/or Shadow Operator Services (as appropriate);
- (c) at the same time as the Franchisee serves notification on the Secretary of State under paragraph 2.1(b), it informs the Secretary of State of the steps taken and/or proposed to be taken by the Franchisee to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services and/or Shadow Operator Services (as appropriate);
- (d) the relevant event did not occur as a result of:
 - (i) any act or omission to act by the Franchisee or its agents or subcontractors, save that in respect of the occurrence of Industrial Action in accordance with paragraph 1(f), the provisions of paragraph 2.2 apply; or
 - (ii) the Franchisee's own contravention of, or default under, the Franchise Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) the Franchisee used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services and/or Shadow Operator Services (as appropriate) as soon as reasonably practicable after the onset of the occurrence of such event; and
- (f) the Franchisee shall, to the extent reasonably so requested by the Secretary of State, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1(f) occurs as a result of an act or omission to act by the Franchisee or its agents or subcontractors;
- (b) the Secretary of State reasonably believes that it was reasonable for the Franchisee, its agents or subcontractors (as the case may be) so to act or omit to act; and
- (c) the other conditions specified in paragraph 2.1 have been satisfied,

such occurrence shall be a Force Majeure Event.

3. Consequences of Force Majeure Events

- 3.1 The Franchisee shall not be responsible for any failure to perform any of its obligations under the Franchise Agreement, nor shall there be any contravention of the Franchise Agreement if and to the extent that such failure is caused by any Force Majeure Event.
- 3.2 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months, it shall be a Termination Event in accordance with paragraph 2.1 of Schedule 10.2 (Events of Default and Termination Events).
- 3.3 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Shadow Operator Services for more than six (6) consecutive months, it shall (subject to paragraph 5.4 of Schedule 10.2 (Events of Default and Termination Events)) be a Termination Event in accordance with paragraph 2.6 of Schedule 10.2 (Events of Default and Termination Events).

4. Business Continuity

4.1 Obligation to Produce a BCP

- (a) Within one (1) month following the Start Date the Franchisee shall produce and provide to the Secretary of State a written Business Continuity Plan in respect of the Franchise Services and the people, facilities and assets used to provide them which is consistent with the requirements of ISO 22301.
- (b) Within one (1) month of the end of each Franchisee Year the Franchisee shall provide to the Secretary of State a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that the Business Continuity Plan is consistent with the requirements of the ISO 22301.

4.2 No Relief under Force Majeure

- (a) Nothing in paragraph 3 will relieve the Franchisee from its obligations under the Franchise Agreement to create, implement and operate the Business Continuity Plan.
- (b) If a Force Majeure Event affecting the Franchisee occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, then paragraph 3.1 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if:
- (i) the Franchisee had complied with this paragraph 4; and
 - (ii) the Business Continuity Plan had been fully and properly implemented and operated in accordance with this paragraph 4 and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

SCHEDULE 10.4A

Liability

1. Exclusion of Liability

1.1 Liability with respect to Passengers and Third Parties

- (a) The Franchisee hereby acknowledges that the Secretary of State will not be responsible for the actions of the Franchisee or any Affiliate of the Franchisee and that, except as expressly provided in the Franchise Agreement, the Franchisee shall provide and operate the Franchise Services at its own cost and risk without recourse to the Secretary of State or government funds or guarantees.
- (b) The Franchisee, on demand, shall hold the Secretary of State fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Secretary of State in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the Franchise Services which is caused or contributed to by the Franchisee, any Affiliate of the Franchisee, or any employee, agent, contractor or sub-contractor of the Franchisee or of any Affiliate of the Franchisee.

1.2 Liability of the Secretary of State

Neither the Secretary of State nor any of the Secretary of State's officers, agents or employees shall in any circumstances be liable to the Franchisee for any loss or damage caused by the negligent exercise of any powers reserved to the Secretary of State under the Franchise Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Secretary of State under the Franchise Agreement. The Franchisee may not recover from the Secretary of State or any of the Secretary of State's officers, agents, or employees any amount in respect of loss of profit or consequential loss.

2. Review or Monitoring by the Secretary of State

- 2.1 The Secretary of State may for the Secretary of State's own purposes (whether under the Franchise Agreement or under any other arrangement or otherwise and whether before or after the date of the Franchise Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchisee under the Franchise Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Secretary of State during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either Party from or reduce or otherwise affect the obligations of such Party under the Franchise Agreement.
- 2.2 The exercise by or on behalf of the Secretary of State of (or, as the case may be, any failure to exercise) any of the Secretary of State's functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on the Secretary of State to any other Party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Secretary of State of an express provision of the Franchise Agreement and the Secretary of State does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable either Party to comply with its obligations under the Franchise Agreement.

SCHEDULE 11A

FRANCHISE PERFORMANCE MEETINGS AND MANAGEMENT INFORMATION

Schedule 11.1A:	Franchise Performance Meetings
Schedule 11.2A:	Management Information
	Appendix 1: Environmental Information
	Appendix 2: Operational Information
	Appendix 3: Summary of Reporting and Other Requirements
Schedule 11.3A:	ICWC Annual Review

SCHEDULE 11.1A

Franchise Performance Meetings

1. Franchise Performance Meetings

- 1.1 The Parties shall hold a Franchise Performance Meeting at least once in every Reporting Period (or such other interval as the Secretary of State may notify to the Franchisee in writing) at a time and location notified to the Franchisee by the Secretary of State.
- 1.2 ⁷⁶The Franchisee shall ensure that:
- (a) the representatives of the Franchisee at a Franchise Performance Meeting shall include such directors and/or senior managers of the Franchisee as the Secretary of State may require; and
 - (b) representatives of the Parent (which shall include such directors and/or senior managers of the Parent as the Secretary of State may require) attend a Franchise Performance Meeting at least once every quarter.
- 1.3 The Franchisee shall prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably request. The Franchisee's obligations under this paragraph 1.3 are subject to the Franchisee receiving at least twenty eight (28) days' notice of the requirement to prepare and present any such report.
- 1.4 No comment or failure to comment nor any agreement or approval, implicit or explicit by either Party at a Franchise Performance Meeting will relieve a party of its obligations, constitute a waiver of an obligation or otherwise vary the terms of the Franchise Agreement. The terms of the Franchise Agreement shall only be capable of waiver or variation in writing in accordance with clause 14.1 (Waivers) and paragraph 1 of Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes) (respectively).

76 **Note to Bidders:** Where there are multiple parents, DfT may customise provisions such that the Secretary of State will have approval rights in circumstances where the Franchisee proposes to nominate representatives other than from the immediate parent.

SCHEDULE 11.2A

Management Information

1. Corporate Information

1.1 The Franchisee shall provide the following information to the Secretary of State on the Start Date and shall notify the Secretary of State of any change to such information within twenty one (21) days of such change:

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names; and
- (f) to the best of the Franchisee's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than twenty per cent (20%) of the votes at general meetings of the Franchisee.

1.2 ⁷⁷The Franchisee shall inform the Secretary of State of any:

- (a) material change or proposed material change in its business;
- (b) material change in or restructuring of the capitalisation or financing of the Franchisee, the Parent or the Guarantor; and
- (c) litigation or other dispute which may have a material effect on its business.

For the purposes of paragraph 1.2(a), a material change or proposed material change shall include the employment or the termination of employment of any Key Personnel or the termination of any Key Contract.

2. Information about Assets used in the Franchise

The Franchisee shall at all times during the Franchise Term maintain (and shall provide copies to the Secretary of State when requested to do so from time to time) records covering the following information:

- (a) for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:

77 **Note to Bidders:** Where there are multiple parents, DfT may customise provisions such that it applies to the Franchisee, such immediate parent of the Franchisee and any intermediate parents up to the ultimate parent

- (i) the progress and completion of all work described in the maintenance schedules and manuals;
- (ii) all operating manuals (including any safety related regulations);
- (iii) all permits, licences, certificates or other documents required to operate such asset; and
- (iv) a printed or electronic list of all assets owned by the Franchisee from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items).

3. Identificaton of Key Personnel and Provision of Organisation Chart

3.1 The Franchisee shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Franchisee in the performance of the Franchise Agreement and an organisational chart detailing the responsibilities and reporting lines of each of the Key Personnel. This shall include but not be limited to the following persons:

- (a) a managing director whose role will include the overall management of the operation of the Franchise Services;
- (b) a train service delivery director, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1A (Operational Performance);
- (c) a safety director, whose role will include responsibility for ensuring that the Franchisee complies with its legal obligations in relation to the Franchise Services including the Safety Certificate; and
- (d) a finance director, whose role will include responsibility in relation to the ICWC Financial Model, IOC Modelling Suite, Forecast IOC Revenue, Accepted Programme Modelling Suite and Transitional Programme Modelling Suite.

3.2 The Franchisee shall nominate a board level director of the Franchisee (or at the Secretary of State's discretion, a director of the Parent or any appropriate Affiliate) within fourteen (14) Weekdays of the date of this Agreement. Such director's responsibilities shall include overseeing, at a strategic level, the Franchisee's interface with the Secretary of State in relation to sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of the Franchisee in connection with the Franchisee's compliance with relevant instructions issued by the Secretary of State under section 119 of the Act from time to time. Such director shall be identified by job title in the organisation chart referred to in paragraph 3.3 and shall be deemed part of the Key Personnel.

3.3 On or before the Start Date the Franchisee shall provide to the Secretary of State a schedule of Key Personnel and an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update such schedule and chart (and provide copies to the Secretary of State promptly thereafter) as and when any changes occur.

4. Operational Performance Information

4.1 The Franchisee shall provide to the Secretary of State the information specified in Appendix 2 (Operational Performance Information) to this Schedule 11.2 at the times specified therein.

5. Maintenance of Records

5.1 The Franchisee shall at all times create and maintain true, up to date and complete records, books and other materials relating to the:

- (a) operation and maintenance of Franchise Assets;
- (b) operation of the Franchise Services; and
- (c) financial performance of the Franchise,

in each case, in exercising that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would reasonably be expected from a prudent and leading Train Operator and in order to fulfil the requirements of this Franchise Agreement including in relation to maintenance of the Franchise as a going concern in accordance with paragraph 1 of Schedule 14.1 (Maintenance of Franchise).

5.2 Unless otherwise agreed by the Secretary of State, all records, books and materials required to be maintained by the Franchisee in accordance with this Schedule 11.2 shall be held in a form that is capable of audit for a period of not less than six (6) years following the Expiry Date or the date of any earlier termination of this Agreement.

5.3 References to records, books and materials in this Schedule 11.2 shall include records, books and materials maintained under any Previous Franchise Agreement to the extent that such records relate to services equivalent to the Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure). Notwithstanding the requirements of paragraphs 5.2 and 5.4, the Franchisee shall only be required to hold such records, books and materials created under any Previous Franchise Agreement for a period of six (6) years following the date of this Agreement.

5.4 The Franchisee shall not be responsible for any records, books or materials maintained under any Previous Franchise Agreement, as referred to in paragraph 5.3, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records, books or materials are not true, complete and up to date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records, books or materials in accordance with paragraph 5.1.

6. Right to Inspect

6.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and the Secretary of State's representatives and advisers:

- (a) to inspect and copy any records referred to in this Schedule 11.2 and paragraph 17 of Schedule 18.1 (Shadow Operations) and the Secretary of State may verify any such records; and/or
- (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services.

6.2 The Franchisee shall make available to the Secretary of State, the Secretary of State's representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, the Secretary of State's representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 6.2 shall include an obligation

on the Franchisee to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 6.1 is kept by or on behalf of the Franchisee.

- 6.3 The Secretary of State, the Secretary of State's representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.
- 6.4 If any inspection reveals that information previously supplied to the Secretary of State was, in the reasonable opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchisee's obligations under the Franchise Agreement which the Secretary of State considers to be material, the costs of any such inspection shall be borne by the Franchisee.

7. Information to the Passengers' Council and Local Authorities

The Franchisee shall comply with any reasonable requests and guidance issued by the Secretary of State from time to time in respect of the provision of information to and co-operation and consultation with the Passengers' Council and Local Authorities.

8. Periodic Update Reports

- 8.1 The Franchisee shall prepare and submit to the Secretary of State a periodic report in each Reporting Period which shall:
- (a) contain updates on the Franchisee's progress in complying with its Committed Obligations together with any other information as the Secretary of State may specify from time to time;
 - (b) relate to the period preceding the date of the report, unless another period is reasonably required by the Secretary of State; and
 - (c) be disaggregated to the extent required by the Secretary of State.
- 8.2 Where, as part of the periodic report referred to in paragraph 8.1, the Secretary of State requires the Franchisee to provide information and/or details in addition to those required pursuant to paragraph 8.1, the Franchisee shall ensure that the periodic report includes such additional information and/or details subject to the Franchisee having received at least twenty eight (28) days' notice of the additional information and/or details required by the Secretary of State.

9. Financial Information

9.1 Accounting Records

The Franchisee shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period.

- 9.1A The Franchisee shall ensure that each of the:
- (a) Shadow Operator Section of the Management Accounts; and
 - (b) Shadow Operator Section of the Annual Management Accounts,

reports costs (and where relevant revenues) on a line by line basis (for each and every item) which matches the corresponding lines in the relevant Cost Baseline and Transitional Budget (as the case may be) each as most recently Placed in Escrow.

9.2 Reporting Period Financial Information

- (a) The Franchisee shall deliver to the Secretary of State, within ten (10) Weekdays of the end of each Reporting Period:
- (i) the Management Accounts for such Reporting Period, setting out in separate sections, the ICWC Section of the Management Accounts and the Shadow Operator Section of the Management Accounts, each such section including a cash flow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date;
 - (ii) written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the Franchisee, contain a true and accurate reflection of the current revenues, costs, assets and liabilities of the Franchisee (including contingent assets or liabilities and known business risks and opportunities) appropriately allocated to the ICWC and Shadow Operator Sections respectively of the Management Accounts and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further information that the Secretary of State shall reasonably require in relation; and
 - (iii) in circumstances where the Franchisee was in a Lock-up Period during such Reporting Period, written confirmation from a statutory director of the Franchisee that the Franchisee has complied with the restrictions applicable during a Lock-up Period pursuant to paragraph 3 of Schedule 12A (Financial Covenants and Bonds).
- (b) The Management Accounts shall also set out:
- (i) sufficient information to enable the Secretary of State to calculate Actual Operating Costs and Modified Revenue in accordance with paragraph 2.1 of Schedule 12A (Financial Covenants and Bonds);
 - (ii) the ratio of the Franchisee's:
 - (A) Total Modified Revenue to its Total Actual Operating Costs; and
 - (B) Total Forecast Modified Revenue to its Total Forecast Operating Costs,together with supporting information showing how the Franchisee has calculated such ratios including a breakdown of the Modified Revenue, Forecast Modified Revenue, Actual Operating Costs and Forecast Operating Costs for each of the Reporting Periods used for the purposes of the calculation of the ratios pursuant to this paragraph 9.2(b);
 - (iii) a comparison of the Franchisee's financial performance during such period against the forecast provided by the Franchisee in the then current Business Plan;
 - (iv) a comparison of the Franchisee's cumulative financial performance during the Franchisee Year in which such period occurs against the forecast referred to in paragraph 9.2(b)(iii);

- (v) a detailed statement and a detailed and comprehensive written explanation of any material differences between the ICWC Section of the Management Accounts and the forecast referred to in paragraph 9.2(b)(iii);
 - (vi) where the level of financial performance reported in the ICWC Section of the Management Accounts is, in the reasonable opinion of the Secretary of State, materially worse than forecast by the Franchisee in its current Business Plan, the Secretary of State may require the Franchisee to prepare and submit to the Secretary of State, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan;
 - (vii) a detailed statement and explanation of any Agreed Funding Commitment and PCS Advances and/or PCG Advances (each as defined in the Funding Deed) provided and/or repaid during such Reporting Period and any repayments made during such Reporting Period in respect of (i) previously provided Agreed Funding Commitments as against the AFC Plan (as defined in the Funding Deed) and (ii) PCS Advances and/or PCG Advances;
 - (viii) separate identification of any costs, revenues, balances and accounting adjustments in the ICWC Section of the Management Accounts which relate to the provision of the PMO Services;
 - (ix) explanations of any prior period or retrospective adjustments to transactions in the previous Management Accounts which impact the cumulative costs and/or revenues as reported in the ICWC Section of the Management Accounts and/or the Shadow Operator Section of the Management Accounts for any Reporting Period; and
 - (x) separate identification of payments to or from any Affiliate of the Franchisee.
- (c) Within five (5) Weekdays after receipt of the Management Accounts for each Reporting Period in accordance with paragraphs (a) and (b) above, the Secretary of State shall notify the Franchisee of any further information, explanation or analysis which the Secretary of State requires in relation to the ICWC Section of the Management Accounts (including information that the Secretary of State requires in relation to the calculation of the Franchise Payment under the provisions of Schedule 8.1A (Franchise Payments)) and the Franchisee shall promptly provide such further information or analysis.

9.3 Quarterly Financial Information

- (a) Within twenty (20) Weekdays after the end of the third (3rd), sixth (6th) and ninth (9th) Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (i) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 10.1(iv) together with a detailed and comprehensive written explanation as to any changes in such forecast from the previous forecast provided pursuant to the provisions of this Schedule 11.2, for each of the following thirteen (13) Reporting Periods; and
 - (ii) a statement of calculation demonstrating the Franchisee's performance against each of the financial covenants in paragraph 2 of Schedule 12A (Financial Covenants and Bonds) at the beginning of each Reporting Period and a forecast of

performance against such covenants for each of the following thirteen (13) Reporting Periods.

- (b) Where any Reporting Period falls partly within one Franchisee Year and partly within another, the results for each section of such Reporting Period falling either side of such Franchisee Year end shall be prepared on an accruals basis for each such section of such Reporting Period.

9.4 Annual Financial Information

- (a) NOT USED.
- (b) Within four (4) Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
 - (i) its Annual Management Accounts for that Franchisee Year;
 - (ii) certified true copies of its annual report and Annual Audited Accounts for that Franchisee Year, together with copies of all related directors' and auditors' reports;
 - (iii) a detailed reconciliation of the Annual Management Accounts to the Annual Audited Accounts (in such format as the Secretary of State may reasonably specify from time to time), which shall:
 - (A) disaggregate the costs in the Annual Audited Accounts so as to report against (and show in a format consistent with that used in) each Section of the Annual Management Accounts;
 - (B) demonstrate that the Actual Shadow Operator Costs reported in the Shadow Operator Section of the Annual Management Accounts are consistent with the Actual Shadow Operator Costs as reported in the Annual Audited Accounts; and
 - (C) demonstrate that the Actual Shadow Operator Revenue reported in the Shadow Operator Section of the Annual Management Accounts are consistent with the Actual Shadow Operator Revenue as reported in the Annual Audited Accounts;
 - (iv) a statement from the Franchisee's auditors, (in a format to be from time to time reasonably specified by the Secretary of State) that the detailed reconciliation referred to in (iii) above has been prepared reasonably based on the underlying actual costs and revenues in the Annual Audited Accounts and Annual Management Accounts;
 - (v) a statement from the Franchisee's auditors confirming compliance with the financial covenants in paragraph 2 of Schedule 12A (Financial Covenants and Bonds); and
 - (vi) a statement from the Franchisee (signed by a statutory director of the Franchisee) confirming compliance with the reporting requirements of paragraph 9.2(b)(vii) of this Schedule 11.2.

9.5 Accounting Standards and Practices

- (a) Each set of Management Accounts and Annual Management Accounts shall:

- (i) be in the formats as from time to time agreed between the Parties or in such other format as the Secretary of State may reasonably specify from time to time;
 - (ii) be prepared consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
 - (iii) identify to the reasonable satisfaction of the Secretary of State, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cashflow projection and the balance sheet contained in the ICWC Financial Model Placed in Escrow on the date of the Franchise Agreement.
- (b) The Annual Audited Accounts shall:
- (i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
 - (ii) give a true and fair view of:
 - (A) the state of affairs, profits and financial condition of the Franchisee for the period covered by such accounts; and
 - (B) the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee) such revenue to be disaggregated by reference to revenue derived by the Franchisee from:
 - (i) the sale of tickets;
 - (ii) income received from the relevant Infrastructure Manager pursuant to Schedule 4 and Schedule 8A to the Relevant Track Access Agreement;
 - (iii) car park revenue; and
 - (iv) other income;
 - (C) or to such other level of disaggregation as may be notified to the Franchisee by the Secretary of State from time to time derived by the Franchisee in respect of that Franchisee Year.

9.6 Parent and Guarantor Accounts

The Franchisee shall, upon the request of the Secretary of State, promptly deliver to, or procure delivery to, the Secretary of State, certified true copies of the annual reports and audited accounts of the Parent, the Guarantor and any Affiliate, together with copies of all related directors' and auditors' reports. If any of the Parent, the Guarantor or the Affiliate is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the Parent, the Guarantor or the Affiliate (as applicable) shall be delivered to the Secretary of State.

9.7 Secretary of State Audit of calculations provided pursuant to paragraphs 9.2, 9.3 and 9.4

- (a) Without prejudice to paragraph 2.2 of Schedule 12A (Financial Covenants and Bonds) and paragraph 17 of Schedule 18.1 (Shadow Operations) or to any other rights of the Secretary

of State under the Franchise Agreement, the Secretary of State and the Secretary of State's representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to:

- (i) the statement of calculations required by paragraph 9.2(b)(ii) of this Schedule 11.2 and any other matter in connection with the Franchisee's obligations under paragraph 2 of Schedule 12A (Financial Covenants and Bonds);
 - (ii) the calculation of Franchise Payments;
 - (iii) the calculation of the reconciliation referred to at paragraph 9.4(b)(iii); and/or
 - (iv) any other information required pursuant to the provisions of paragraphs 9.2, 9.3 or 9.4.
- (b) The Franchisee shall make available to the Secretary of State and the Secretary of State's representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 9.7(a). If any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts, the Annual Management Accounts and/or the Annual Audited Accounts (but only in so far as such accounts relate to the statement of calculations required by paragraph 9.2(b)(ii)) then the Secretary of State may exercise the Secretary of State's rights as described in paragraphs 2.2(i) or 2.2(ii) of Schedule 12A (Financial Covenants and Bonds) and the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 7.4 of Schedule 10.1A (Procedure for remedying a Contravention of the Franchise Agreement).

10. Business Plans

10.1 Initial Business Plan

- (a) Within three (3) Reporting Periods of the Start Date, the Franchisee shall deliver to the Secretary of State its Initial Business Plan, describing its planned activities for each Franchisee Year during the Franchise Term, which shall include:
- (i) a description as to how the Franchisee shall meet its obligations under the Franchise Agreement for the Franchise Term, supported by operational plans demonstrating this;
 - (ii) details of any investments proposed to be made or procured by the Franchisee in relation to the Franchise Services during the Franchise Term;
 - (iii) a summary of the Franchisee's plans for marketing and developing the Franchise Services; and
 - (iv) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of first thirteen (13) Reporting Periods following the Start Date and each subsequent Franchisee Year of the ICWC Period, together with a list of assumptions on the basis of which each such forecast has been prepared.

10.2 **Annual Business Plans**⁷⁸

- (a) No later than one (1) Reporting Period before the start of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the Franchisee's business plan for the forthcoming Franchisee Year (the "Annual Business Plan"). The Annual Business Plan shall be a detailed and comprehensive description of the Franchisee's planned activities for such Franchisee Year and the manner in which the Franchisee shall meet its obligations under the Franchise Agreement in respect of that Franchisee Year, excluding in relation to the Shadow Operator Services, and include:
- (i) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the thirteen (13) Reporting Periods in the relevant Franchisee Year and each subsequent Franchisee Year of the Franchise Period;
 - (ii) a forecast of the Franchisee's performance against each of the financial covenants in paragraph 2 of Schedule 12A (Financial Covenants and Bonds) for each of the thirteen (13) Reporting Periods; and
 - (iii) an annual improvement plan providing:
 - (A) details of any new technologies, processes, developments and/or proposals which could improve the provision of the Franchise Services, reduce the cost of providing the Franchise Services or enable the Franchise Services to be provided more efficiently;
 - (B) an analysis of the impact of any technologies, processes, developments and/or proposals that are proposed in relation to the Franchise Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of the Franchise Services;
 - (C) details of those technologies, processes, developments and/or proposals which the Franchisee proposes to implement during the relevant Franchisee Year; and
 - (D) an analysis of the technologies, processes, developments and/or proposals which the Franchisee implemented in the previous Franchisee Year including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for that previous Franchisee Year; and
 - (E) a statement from each of, a statutory director of the Franchisee and, a statutory director of the Parent confirming that the Annual Business Plan has been provided to, considered and endorsed by the board of directors of the Parent and that the board of directors of the Parent is not aware of any other plan which may alter, vary or impact on the Business Plan and shall at any time during the following twelve (12) months notify the Secretary of State should any of them become aware of any such plan.

78 **Note to Bidders:** Where there are multiple parents, the Annual Business Plan must be provided to at least the immediate and ultimate parents, and confirmation statements from a statutory director of those entities must be provided.

- (b) If at any time during a Franchisee Year the Franchisee produces any other annual business plan or periodic plan which is delivered to its Parent it shall at the same time as delivering such plan to its Parent notify the Secretary of State of all such plans and shall explain to the Secretary of State how (if at all) such further plan alters, amends or otherwise varies or impacts on the applicable Annual Business Plan or Initial Business Plan. The Secretary of State shall be entitled to copies of such further plans as the Secretary of State shall reasonably determine.

10.3 Business Action Plan

- (a) The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
 - (i) timetable and service pattern development;
 - (ii) Station facility improvement;
 - (iii) performance management improvement;
 - (iv) customer service improvement; and
 - (v) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- (b) The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.
- (c) Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which the Secretary of State may impose.

11. Safety Information

11.1 Safety

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

12. Further Information

12.1 The Franchisee shall:

- (a) deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such

period as the Secretary of State may reasonably require and which relate to or are connected with the Franchisee's performance of the Franchise Agreement; and

- (b) procure that each Affiliate of the Franchisee complies with paragraph 12.1(a) in respect of any information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of its obligations under the Franchise Agreement.

12.2 The information referred to in paragraph 12.1 shall include:

- (a) any agreement, contract or arrangement to which the Franchisee is a party in connection with any rolling stock vehicles used in the operation of Passenger Services and/or Shadow Operator Services;
- (b) in so far as the Franchisee has or is able to obtain the same, any agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock vehicles;
- (c) any agreement for or any documents associated with the manufacture or supply of any rolling stock vehicles; or
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

12.3 The Secretary of State may require the Franchisee to provide:

- (a) the information required to be provided under this Schedule 11.2 more frequently than set out in this Schedule 11.2;
- (b) the information required to be provided under this Schedule 11.2, or, in the Secretary of State's discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise; and
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time.

13. Information from Third Parties

13.1 The Franchisee shall, if the Secretary of State so requests, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Franchisee which is or are maintained by third parties and to which the Secretary of State is entitled to have access, or of which the Secretary of State is entitled to receive a copy under the Franchise Agreement.

13.2 The Franchisee shall, if the Secretary of State so requests, procure the provision by RSP to the Secretary of State of such information, data and records as the Franchisee is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.

13.3 The obligations of the Franchisee under this Schedule 11.2 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that the Secretary of State has received the relevant information directly from any other person (including the relevant Infrastructure Manager or RSP). The Franchisee shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.

13.4 The Franchisee shall promptly advise the Secretary of State of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the Franchisee, materially affect the continuity of any of the records that are provided pursuant to this Schedule 11.2. Any such advice shall include an assessment of the materiality of the relevant change.

14. Compatibility of Information

14.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under the Franchise Agreement shall be provided, if so requested by the Secretary of State, in a form compatible with the Secretary of State's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraph 3 of Schedule 13.1A (Rail Industry Initiatives and Co-operation).

14.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under the Franchise Agreement will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.

15. Environmental Information

15.1 Environmental Information Data Collection Plan

(a) The Franchisee shall, by no later than three (3) months after the Start Date, provide a report to the Secretary of State setting out:

- (i) which measures included in the Dataset the Franchisee is unable to provide, despite using reasonable endeavours to do so ("**Excluded Data**");
- (ii) for each item of Excluded Data, the technical, operational or commercial reason why the Franchisee is unable to provide the Excluded Data; and
- (iii) a plan ("**Environmental Data Collection Plan**") detailing, in relation to each item of Excluded Data, the actions which the Franchisee would need to take in order to be able to provide such Excluded Data, the Franchisee's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Franchisee would be able to begin providing such Excluded Data to the Secretary of State.

(b) The Dataset, excluding any measures which the Secretary of State agrees, acting reasonably, that the Franchisee is, despite using reasonable endeavours, unable to provide, shall be referred to as the "**Initial Dataset**".

(c) The Secretary of State may require:

- (i) the Franchisee to implement the Environmental Data Collection Plan in whole or in part; and/or
- (ii) the Franchisee to take such other actions as, in the reasonable opinion of the Secretary of State, would enable the Franchisee to provide any item of Excluded Data,

following which the relevant item of Excluded Data will form part of the Initial Dataset.

(d) Where the Franchisee is:

- (i) undertaking works, whether at a Station or Depot or in respect of rolling stock;
- (ii) procuring rolling stock; or
- (iii) taking any other action which could enable the Franchisee to provide any items of Excluded Data in a cost effective manner,

the Franchisee shall use reasonable endeavours to do so in a manner which would enable the Franchisee to provide any relevant item of Excluded Data (and any item of Excluded Data which the Franchisee becomes able to provide as a result will, with effect from the date on which the Franchisee becomes able to provide the same, form part of the Initial Dataset).

- (e) With effect from the date that is 3 months after the Start Date, the Franchisee shall measure and collect and provide to the Secretary of State in accordance with this paragraph 15, that data included in the Initial Dataset so as to allow the Secretary of State and the Franchisee to understand the current environmental performance of the Franchise and any potential for improvement in terms of environmental impact.
- (f) The Franchisee may, in its discretion, measure and collect additional data provided that the minimum required under the Initial Dataset is adhered to and the Franchisee shall cooperate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.
- (g) The Franchisee shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated periodic or annual usage figure to the Secretary of State as specified for each measure in paragraph 1 of Appendix 1 (Environmental Information) to this Schedule 11.2.

15.2 Environmental Impact Monitoring Report and Environmental Impact Monitoring Audit

- (a) The Franchisee shall submit to the Secretary of State a report setting out the result of the data collection of the Initial Dataset required by this paragraph 15 in accordance with the applicable granularity and regularity specified in paragraph 1 of Appendix 1 (Environmental Information) to this Schedule 11.2 (the "**Environmental Impact Monitoring Report**") within three (3) months following the end of each Franchisee Year.
- (b) The Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an annual independent written audit of the data provided in the Environmental Impact Monitoring Report and the collection methodology of the Initial Dataset in respect of each Franchisee Year (the "**Environmental Impact Monitoring Audit**").
- (c) The Franchisee shall procure that the independent body appointed pursuant to paragraph 15.2(b) includes in the Environmental Impact Monitoring Audit:
 - (i) a retrospective assessment (covering the Franchisee Year to which the audit relates) of the Franchisee's data collection methodology and level of data granularity carried out in accordance with this paragraph 15.2 and any recommendations by the independent body in respect of such methodology;
 - (ii) a verification of the accuracy of past data submissions made in respect of the Initial Dataset and as summarised in the Environmental Impact Monitoring Report; and

- (iii) an assessment of the Franchisee's proposed data collection methodology and level of data granularity for the following Franchisee Year's data collection, and
 - (iv) where the independent body has identified as part of its audit any errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, whether these are, in the reasonable opinion of the independent body undertaking the audit material or minor errors, discrepancies or concerns.
- (d) The Franchisee shall submit a copy of the Environmental Impact Monitoring Audit to the Secretary of State at the same time as the Environmental Impact Monitoring Report is submitted in accordance with paragraph 15.2(a) above.
- (e) Where the Environmental Impact Monitoring Audit highlights errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, the Franchisee shall, at the Franchisee's cost:
- (i) **in the case of minor errors, discrepancies or concerns which are capable of rectification without material additional expenditure** - rectify such minor errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays, following the date of the submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question;
 - (ii) **in the case of material errors, discrepancies or concerns which are capable of rectification** - rectify such material errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays, following the date of submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question; and
 - (iii) **in the case of concerns in relation to the Franchisee's data collection methodology and level of data granularity for the forthcoming Franchisee Year's data collection** - make such amendments to such methodology as recommended in the Environmental Impact Monitoring Audit so as to address those concerns.

16. Environmental Impact Targets

16.1 Environmental Impact Targets set by the Secretary of State

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

16.2 Performance against the Environmental Impact Targets

- (a) For each Franchisee Year the Secretary of State shall determine the Franchisee's performance against each Environmental Impact Target on an annual basis (within two (2) Reporting Periods of receipt of the Environmental Impact Monitoring Report) by comparing:

- (i) **for traction carbon emissions:** the Franchisee's performance set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Target for the relevant Franchisee Year, in accordance with the annual trajectory specified in the Sustainable Development Strategy;
 - (ii) **for non-traction energy use:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;
 - (iii) **for waste:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;
 - (iv) **for mains water:** for the second (2nd) Franchisee Year, the number of automatic water meters installed against the total number of water meters. These details shall be reported by the Franchisee within three (3) months of the end of the second (2nd) Franchisee Year. For subsequent Franchisee Years, the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets.
- (b) For the purposes of undertaking the comparison pursuant to paragraph 16.2(a), the results referred to in paragraphs 16.2(a)(i) to (iii) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).
- (c) As soon as reasonably practicable following the Start Date and in any event within six (6) months of the Start Date, the Franchisee shall produce and provide to the Secretary of State for approval an implementation plan for the duration of the ICWC Period which is capable of achieving each of the Environmental Impact Targets each Franchisee Year (as such implementation plan may be revised in accordance with paragraph 16.3 (the "**Environmental Impact Targets Plan**")).
- (d) Following the Secretary of State's approval, the Franchisee shall use all reasonable endeavours to implement the Environmental Impact Targets Plan (including any such plan which is revised in accordance with paragraph 16.2(e)) in order to achieve the Environmental Impact Targets.
- (e) Notwithstanding the requirements of this paragraph 16.2, the Franchisee shall review its then current Environmental Impact Targets Plan and revise such plan as necessary by the end of the fifth (5th) Franchisee Year to ensure that such plan, in the reasonable opinion of the Secretary of State, is capable of achieving each Environmental Impact Target in each Franchisee Year.

16.3 Remedial Actions

- (a) In the event that an Environmental Impact Target is not met in any Franchisee Year, the Franchisee shall as soon as reasonably practicable produce and provide to the Secretary of State a revised Environmental Impact Targets Plan which, in the reasonable opinion of the Secretary of State, is capable of achieving the Environmental Impact Targets.
- (b) The Franchisee shall use all reasonable endeavours to implement the revised Environmental Impact Targets Plan, which shall be the Environmental Impact Targets Plan for the purposes of the Franchise Agreement.

16.4 Publication

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

APPENDIX 1 TO SCHEDULE 11.2A

Environmental Information

1. Environmental Impact Monitoring Dataset

Table 1			
Subject	Unit	Granularity	Regularity
TRACTION	EC4T (kWh)	Breakdown per distinct fleet - metered	Four (4) week period
	EC4T (kWh)	Breakdown per distinct fleet - unmetered	Four (4) week period
	Gas-oil (litres)	Breakdown per distinct fleet	Four (4) week period
NONTRACTION	Electricity (kWh)	Total	Four (4) week period or monthly
	Gas (kWh)	Total	Four (4) week period or monthly
	Gas-oil (litres)	Total	Four (4) week period or monthly
CARBON	Scope 1 emissions (tonnes)	Total	Annual
	Scope 2 emissions (tonnes)	Total	Annual
	Embodied carbon in new infrastructure projects over the amount set out in paragraph 10.3 (b) (Sustainable Construction) of Schedule 13.1 (Rail Industry Initiatives and Co-operation)	Total	Per project
WATER	Mains Water consumption (m ³)	Total	Annual
	Water recycling initiatives	Narrative	Annual
WASTE	Waste generated (tonnes)	Total	Annual
	Waste recycled (tonnes)	Total	Annual
	Waste subject to other recovery (tonnes)	Total	Annual
	Waste to landfill (tonnes)	Total	Annual
	Hazardous waste	Total	Annual

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

2. Environmental Impact Targets

Table 2			
Traction Carbon Emissions	Non-Traction Energy Use	Waste	Mains Water
<p>A reduction of 29% in kg CO2E per vehicle km against the 0.56g/CO2E per vehicle km over the Franchise Term, such reduction to be achieved in accordance with the Sustainable Development Strategy referred to in paragraph 10.2 (Sustainable Development Strategy) of Schedule 13.1 (Rail Industry Initiatives and Co-operation), which will contain a target for each Franchisee Year for this purpose.</p>	<p>1. By the ICWC Expiry Date, an overall reduction in kilowatt hours (kWh) of an amount expressed as a percentage equal to (A) + (B) + (C) (calculated in accordance with paragraph 2 below), against the 2016/17 baseline figure of 21,576,193 kWh (the "Overall kWh Reduction").</p> <p>2. For the purposes of paragraph 1 of Table 2, the references to (A), (B) and (C) shall have the meanings given to them below:</p> <p>(A) means an amount equal to the product of:</p> <p>(i) the total number of Franchisee Years comprised in the Franchise Term which are of thirteen (13) Reporting Periods in duration; and</p> <p>(ii) two point five per cent (2.5%);</p> <p>(B) means, if the first Franchisee Year is of less than thirteen (13) Reporting Periods in duration, an amount expressed as a percentage in relation to that Franchisee Year which is derived by the application of the following formula:</p> <p>2.5 x (FY/13)</p> <p>where:</p> <p>FY means the number of Reporting Periods in the first Franchisee Year during the Franchise Term; and</p> <p>(C) means, if the Final Franchisee Year is of less than thirteen (13) Reporting Periods in duration, an amount expressed as a percentage in relation to that Franchisee Year which is derived by the</p>	<p>From the end of the second (2nd) Franchisee Year, the Franchisee must send zero waste to landfill and must recycle or prepare for re-use, ninety per cent (90%) of waste (by weight) per Franchisee Year.</p>	<p>By the end of the second (2nd) Franchisee Year, the Franchisee must install automatic meter readings (AMR) for all water meters, where practicable. The Franchisee shall determine a baseline of water consumption by the end of the third (3rd) Franchisee Year, such baseline to be agreed with the Secretary of State. The Franchisee shall develop a target to reduce water consumption against the agreed baseline referred to above by the end of the fourth (4th) Franchisee Year, such target to be agreed with the Secretary of State.</p>

Table 2			
Traction Carbon Emissions	Non-Traction Energy Use	Waste	Mains Water
	<p>application of the following formula:</p> <p>2.5 x (FY/13)</p> <p>where:</p> <p>FY means the number of Reporting Periods in the Final Franchisee Year during the Franchise Term.</p> <p>3. By 1 April 2023, a reduction in kWh of an amount equal to not less than fifty per cent (50%) of the Overall kWh Reduction.</p> <p>4. By 1 October 2024, a reduction in kWh of an amount equal to not less than seventy five per cent (75%) of the Overall kWh Reduction.</p>		

APPENDIX 2 TO SCHEDULE 11.2A

Operational Performance Information

1. Information about the operational performance of the Franchisee

- 1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under the Franchise Agreement, covering the areas and the information described in this Appendix 2. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
- 1.2 The Franchisee shall, subject to paragraph 1.3, provide to the Secretary of State the information set out in the following tables at the frequency specified in the Column of each such table headed **"When information to be provided"**.
- 1.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
- (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
 - (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.
- 1.4 The following key shall apply to the table in this Appendix 2:

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

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

Table 1 - Operational Performance Information		
Information to be provided	Information (format)⁷⁹	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable.	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day.	[number]	B
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation.	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation.	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan.	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan.	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation.	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation.	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation.	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation.	[number]	B

79 **Note to Bidders:** The winning Bidder will provide this information as determined by the key set out in this Schedule 11.2 after the Start Date.

Table 1 - Operational Performance Information		
Information to be provided	Information (format)⁷⁹	When information to be provided
Number of Disputed Cancellations and Disputed Partial Cancellations for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee.	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee.	[number]	B
Where there is a difference between the Timetable and the Plan of the Day on any day the following: <ul style="list-style-type: none"> (a) the fact of such difference; and (b) the number of: <ul style="list-style-type: none"> (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day. 	[number]	B
Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day: <ul style="list-style-type: none"> (a) the fact of such difference; (b) the number of: <ul style="list-style-type: none"> (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Plan of the Day had been the same as the Enforcement Plan of the Day. 	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)⁷⁹	When information to be provided
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event.	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event.	[number]	B
Minutes Delay		
Number of Minutes Delay attributable to the Franchisee.	[minutes]	B
Number of Minutes Delay attributable to Network Rail.	[minutes]	B
Number of Minutes Delay attributable to any other Train Operator.	[minutes]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee.	[minutes]	B
Number of Minutes Delay for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee.	[minutes]	B
Number of Minutes Delay from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination.	[minutes]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event.	[minutes]	B
T-3, T-15 and On Time		

Table 1 - Operational Performance Information		
Information to be provided	Information (format)⁷⁹	When information to be provided
Time to 3 Minutes percentage published by Network Rail, rounded to one (1) decimal place;	[number]	B
Time to 15 Minutes percentage published by Network Rail, rounded to one (1) decimal place;	[number]	B
On Time percentage published by Network Rail, rounded to one (1) decimal place;	[number]	B
Train Mileage		
Planned Train Mileage	[mileage]	A
Actual Train Mileage	[mileage]	B

APPENDIX 3 TO SCHEDULE 11.2A

Summary of Reporting and Other Requirements⁸⁰

This Appendix contains a non-exhaustive summary of the obligations on the Franchisee throughout this Agreement in respect of the provision of information to the Secretary of State which are not set out in this Schedule 11.2. This summary is for guidance only. If there are any inconsistencies with the other contents of the Schedules mentioned below (including any Appendix), those other contents shall apply.

Reference	Summary of Obligation
Schedule 1.1 (Franchise Services and Service Development), paragraph 11.3(a) (Consultation on Significant Alterations to the Timetable)	Requirement for Franchisee to provide a comprehensive summary of the proposed changes from the Timetable then in force.
Schedule 1.1 (Franchise Services and Service Development), paragraphs 11.3(e) and 11.3(f) (Consultation on Significant Alterations to the Timetable)	Requirement for Franchisee to publish a report containing a summary of the main issues raised by respondents to the consultation.
Schedule 1.1 (Franchise Services and Service Development), paragraph 13.1 (Certification and Notification by Franchisee of Exercising Timetable Development Rights)	Requirement for Franchisee to provide a certificate addressed to the Secretary of State signed by a statutory director in respect of the exercise of timetable development rights.
Schedule 1.1 (Franchise Services and Service Development), paragraph 13.3(a) (Certification and Notification by Franchisee of Exercising Timetable Development Rights)	Requirement for Franchisee to provide copies to the Secretary of State of correspondence in respect of discussions with Network Rail.
Schedule 1.1 (Franchise Services and Service Development), paragraph 14.4 (Finalising the Train Plan)	Requirement for Franchisee to provide the Train Plan certified as true and accurate by a statutory director.
Schedule 1.1 (Franchise Services and Service Development), paragraph 15.1 (Capacity Mitigation Proposal)	Requirement for Franchisee to provide a Capacity Mitigation Proposal if required by the Secretary of State.
Schedule 1.1 (Franchise Services and Service Development), paragraph 16.1 (New or amended Train Service Requirement by Secretary of State and Franchisee's Informed Opinion)	Requirement for Franchisee to provide informed opinion in respect of a new or amended Train Service Requirement.
Schedule 1.2 (Operating Obligations), paragraph 7.7	Provide evidence to the Secretary of State of the steps taken under Paragraph 7 (Obligation to use all reasonable endeavours under this Schedule 1.2).
Schedule 1.4 (Passenger Facing Obligations), paragraph 8 (Publication of Performance Data)	Requirements to publish performance data.

80 [Note to Bidders: DfT will customise this table of reporting requirements.](#)

Reference	Summary of Obligation
Schedule 1.4 (Passenger Facing Obligations), paragraph 9 (Publication of Complaints and Faults Handling Data)	Requirements to publish complaints and fault handling data.
Schedule 1.5 (Information about Passengers), paragraph 1 (Passenger Numbers Information)	Requirement to provide Secretary of State information about the use by passengers of the Passenger Services.
Schedule 1.7 (Stations), paragraph 7 (Information about Station Improvement Measures)	Requirement to maintain and provide records regarding Station improvement measures and measures taken to improve Station environments.
Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases), paragraph 2.2 (Rolling Stock Related Contracts and Insurance Arrangements)	Obligation to provide a copy of all draft Rolling Stock Related Contracts and all executed Rolling Stock Related Contracts and any agreements amending the Rolling Stock Related Contracts including such other information as required by the Secretary of State together with a justification of the Franchisee's proposed rolling stock maintenance strategy and provision of analysis of whole life costs.
Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases), paragraph 3.9(b) (Cascaded Rolling Stock and Delayed Cascade Mitigation Plan)	Requirement to produce a Delayed Cascade Mitigation Plan.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 1.5 (Local Authority Concessionary Travel Schemes)	Requirement to provide information about Local Authority Concessionary Travel Schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 2.6 (Multi-Modal Fares Schemes)	Requirement to provide information about multi-modal fares schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 3.3 (Discount Fares Schemes)	Requirement to provide information about Discount Fares Schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 4.4 (Inter-Operator Schemes)	Requirement to provide information about Inter-Operator Schemes.
Schedule 4 (Accessibility and Inclusivity), paragraph 4 (Specific additional obligations relating to persons with disabilities)	Recording of obligations relating to persons with disabilities.
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 1 (Information)	Requirement to provide a summary of the Prices of Commuter Fares and Protected Fares to the Secretary of State no later than week twelve (12) of each Fares Setting Round.
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 2.1 (Monitoring)	Requirement to provide information relating to the Prices of Commuter Fares and Protected Fares to the Secretary of State and information relating to

Reference	Summary of Obligation
	the Gross Revenue of the Franchisee in relation to the any particular Fare or Fares or any particular period.
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 2.2 (Monitoring)	Requirement to provide written confirmation to the Secretary of State from a statutory director whether the Franchisee has complied with the obligations under Schedule 5 (Fares and Smart Ticketing) during each Fares Setting Round.
Schedule 6.1 (Franchise Specific Obligations) paragraph 9.5 (Infrastructure Projects)	Requirement to provide reports describing progress in relation to matters relating to each Infrastructure Project.
Schedule 6.1 (Franchise Specific Obligations), paragraph 2.1 (Boxing Day Services)	Requirement to provide reports setting out proposals for operation of Additional Boxing Day Services.
Part 2 to Schedule 6.2 (Special Terms related to Committed Obligations), paragraph 5 (Review of Compliance)	Requirement to provide such evidence of compliance with Committed Obligations as the Secretary of State may request.
Schedule 7.1 (Operational Performance), paragraph 2 (Reporting Requirements)	Reporting requirements relating to the operational performance information set out in Appendix 2 (Operational Performance Information) of Schedule 11.2 (Management Information).
Schedule 7.1 (Operational Performance), paragraph 17 (Service Recovery Plans and Force Majeure)	Requirement to provide comprehensive records relating to the implementation of a Service Recovery Plan.
Schedule 7.1 (Operational Performance), paragraph 26.2 (Action Plans)	Requirement to produce an Action Plan to secure a Required Performance Improvement.
Schedule 7.2 (Customer Experience and Engagement), paragraph 5 (Required Improvement and NRPS Action Plans)	Requirement to produce a NRPS Action Plan to secure any Required Improvement for submission to the Secretary of State.
Schedule 7.2 (Customer Experience and Engagement), paragraph 9 (Customer and Stakeholder Engagement Strategy)	Requirement to provide to the Secretary of State any proposed revisions to the Customer and Stakeholder Engagement Strategy.
Schedule 7.2 (Customer Experience and Engagement), paragraph 10 (Customer Report)	Requirement to produce and publish a Customer Report.
Schedule 7.2 (Customer Experience and Engagement), paragraph 11 (CCI Scheme)	Requirement to provide details of any CCI Scheme proposed by the Franchisee.
Schedule 7.2 (Customer Experience and Engagement), paragraph 12.1 (Customer Service and Satisfaction Data)	Requirement to publish details of the Franchisee's level of adherence to scheduled ticket office opening hours and performance in respect of Passenger Assistance service.

Reference	Summary of Obligation
Schedule 7.2 (Customer Experience and Engagement), paragraphs 12.2 and 12.3 (Customer Service and Satisfaction Data)	Requirement to publish NRPS scores achieved by the Franchisee.
Schedule 8.2A (Profit Share Mechanism), paragraph 2 (Relevant Profit Report)	Reporting requirements relating to Relevant Profit Reports.
Schedule 9.1A (Financial and Other Consequences of Change), paragraph 11 (Information)	Requirement to provide information in respect of obligations under Schedule 9.1A as the Secretary of State may request.
Schedule 9.2A (Identity of ICWC Financial Model (Escrow Documents)), paragraph 1 (Franchisee's Obligations)	Requirement to provide the ICWC Financial Model and the Escrow Documents.
Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement), paragraphs 3 (Remedial Plan Notices) and 4 (Remedial Plans)	Obligation to provide certain information in a Remedial Plan Notices/Remedial Plans.
Schedule 10.3 (Force Majeure and Business Continuity), paragraph 4 (Business Continuity)	Requirement to provide a Business Continuity Plan.
Schedule 11.1 (Franchise Performance Meetings), paragraph 1.3 (Franchise Performance Meetings)	Requirement to prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably requests.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 2 (Community Rail Partnerships)	Requirement to provide a Community Rail Report.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 8 (Small and Medium-sized Enterprises)	Requirement to provide breakdown of Small and Medium-sized Enterprises.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9 (Apprenticeships)	Requirement to provide the information relating to Apprenticeships as set out in paragraphs 9.1 and 9.2.
Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>), paragraph 9.4 (Apprenticeships)	Requirement to submit a draft Skills and Leadership Strategy.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9.6 (Apprenticeships)	Requirement to submit a copy of the assessment report produced by an independent body in respect of performance against the Rail Safety and Standard's Board's Sustainable Development Self-Assessment Framework.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9.8 (Apprenticeships)	Requirement to submit the Apprenticeships Data Collection Form to Rail Delivery Group.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(d)	Requirement to submit a copy of the assessment report produced by an independent body in respect of performance against the Rail Safety and

Reference	Summary of Obligation
	Standard's Board's Sustainable Development Self Assessment Framework
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(f)	Obligation to produce an improvement plan in respect of the targets against the Sustainable Development Strategy.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(h)	Obligation to provide a report identifying progress in respect of delivering a sustainable franchise and revisions to the Sustainable Development Strategy.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.2	Requirement to provide copies of the certification audit reports and a copy of the ISO50001 Energy Review.
Schedule 14.4 (Designation of Franchise Assets), paragraph 9 (Provision of Information to the Secretary of State)	Obligation to provide such information as the Secretary of State requires in respect of Primary Franchise Assets including details of Security Interests.
Schedule 14.5 (Dealing with Franchise Assets), paragraph 5 (Miscellaneous)	Obligation to provide such information as the Secretary of State requires in respect of Security Interests.
Schedule 14.6 (Residual Value Mechanism), paragraph 1.3 (Process for issue of a Certificate of Completion for RV Assets)	Obligation to provide such information as the Secretary of State requires in respect of RV Assets.
Schedule 14.6 (Residual Value Mechanism), paragraph 2(Maintenance Requirements for RV Assets)	Obligation to provide a schedule of condition in respect of RV Assets.
Schedule 15.1 (Reletting Provisions), paragraphs 2 (Preparation for Reletting) and 3 (Data Site Information)	Obligation to provide certain information to the Secretary of State in respect of a reletting of the Franchise.
Schedule 15.3 (Handover Package), paragraph 1 (Handover Package Status)	Requirement to produce and maintain the Handover Package.
Schedule 15.3 (Handover Package), paragraph 2 (Director's Certificate)	Requirement to provide a director's certificate in each Franchisee Year.
Schedule 15.4 (Provisions Applying on and after Termination), paragraph 9 (Information about Passengers)	Requirement to provide passenger numbers information, CRM Data and Yield Management Data on expiry of the Franchise Period.
Appendix 2 (Template Form of Supplemental Agreement) to Schedule 15.4 (Provisions Applying on and after Termination), paragraph 2.2 (Net Asset Statement)	Obligation to prepare and provide a net asset statement under the supplemental agreement.
Schedule 16 (Pensions), paragraph 6 (Discharge of Obligations)	Obligation to provide a certificate signed by the Trustee in relation to the Franchise Sections stating that the Franchisee has fully complied with

Reference	Summary of Obligation
	its obligations under the Railways Pensions Scheme.
Schedule 17 (Confidentiality and Freedom of Information), paragraph 10 (Redactions)	Obligation to provide details of provisions of the Franchise Documents or any such variations which the Franchisee believes are exempt from the Freedom of Information Act, Environmental Information Regulations or the Act.

SCHEDULE 11.3A

ICWC Annual Review

1. Purpose Of Annual Review

- 1.1 The purpose of the ICWC Annual Review is for the Secretary of State to undertake an ICWC Measurement Review to review performance in relation to Franchise Services (excluding Shadow Operator Services) in respect of the most recently completed ICWC Annual Review.
- 1.2 NOT USED.

2. Annual Review Meetings

- 2.1 The Secretary of State shall notify the Franchisee of the date, time and location for the ICWC Annual Review Meeting by no later than the end of the relevant ICWC Measurement Period, provided always that the ICWC Annual Review Meeting shall take place no later than the eighteenth (18th) day of the fourth (4th) Reporting Period following the end of the relevant ICWC Measurement Period.
- 2.2 For the avoidance of doubt, nothing in this Schedule 11.3 (ICWC Annual Review) shall prevent the Parties from discussing the Franchisee's behaviours as measured by the ICWC Criteria, the ICWC Annual Review Scorecard or any other matter relevant to an ICWC Annual Review outside of an ICWC Annual Review Meeting.

3. Annual Review Checklist

- 3.1 Not less than thirty (30) days prior to the last date in each ICWC Measurement Period, the Secretary of State, acting reasonably, shall notify the Franchisee in writing of any additional information that the Franchisee is required to submit at the same time as the completed ICWC Annual Review Checklist.
- 3.2 Not less than fifteen (15) days prior to the last date in each ICWC Measurement Period, the Franchisee shall notify the Secretary of State in writing of any matters in addition to those set out in the ICWC Annual Review Checklist or the information notified to the Franchisee by the Secretary of State in accordance with paragraph 3.1, which the Franchisee considers to be relevant for the ICWC Annual Review. The Secretary of State shall, within five (5) days of receiving such notice, provide written confirmation to the Franchisee of whether the Secretary of State considers such matters to be relevant to the ICWC Annual Review.
- 3.3 Unless notified otherwise in writing by the Secretary of State, the Franchisee shall undertake an ICWC Stakeholder Survey in respect of each ICWC Measurement Period and shall include the ICWC Stakeholder Report in the relevant ICWC Annual Review Checklist. The ICWC Stakeholder Report shall:
- (a) set out an analysis of the responses received from Stakeholders and the Department, HS2 Limited, Network Rail and passenger representative bodies in response to the ICWC Stakeholder Survey; and
 - (b) provide for the approach of the Franchisee to collaborative working to be assessed by Stakeholders and the Department, HS2 Limited, Network Rail and passenger representative bodies on a scale from poor to excellent.
- 3.4 As soon as reasonably practicable after the end of each ICWC Measurement Period, and in any event no later than thirty (30) days after the end of each ICWC Measurement Period, the Franchisee shall deliver to the Secretary of State a duly completed copy of the ICWC Annual Review Checklist in respect of the relevant ICWC Measurement Period.

- 3.5 The ICWC Annual Review Checklist delivered by the Franchisee in accordance with paragraph 3.4 of this Schedule 11.3 (ICWC Annual Review) may include written commentary from the Franchisee on the following matters in respect of the relevant ICWC Measurement Period:
- (a) each of the matters listed in the ICWC Annual Review Checklist;
 - (b) any other such matter notified by the Secretary of State to the Franchisee in accordance with paragraph 3.1 of this Schedule 11.3 (ICWC Annual Review); and
 - (c) any other matter which the Secretary of State has confirmed as relevant to the ICWC Annual Review in accordance with paragraph 3.2
- 3.6 At any time following delivery by the Franchisee of the ICWC Annual Review Checklist and other information in accordance with paragraph 3.4 and 3.5 of this Schedule 11.3 (ICWC Annual Review) and prior to the date that is sixty (60) days prior to the ICWC Annual Review Meeting, the Secretary of State may notify the Franchisee, in writing of such further detail or evidence as the Secretary of State reasonably requires the Franchisee to provide in relation to its behaviours as measured by the ICWC Criteria during the ICWC Measurement Period and the Franchisee shall comply with such request within a reasonable amount of time and in any event no later than fifteen (15) days following receipt of such request.
- 3.7 The Secretary of State shall provide the Franchisee with:
- (a) written commentary on the Franchisee's behaviours as measured by the ICWC Criteria in the relevant ICWC Measurement Period; and
 - (b) any information additional to that contained in the ICWC Annual Review Checklist which the Secretary of State has used or intends to use to assess the Franchisee's behaviours as measured by the ICWC Criteria,
- in each case, no later than thirty (30) days prior to the ICWC Annual Review Meeting.
- 3.8 As soon as reasonably practicable, and in any event no later than ten (10) days, after the Secretary of State has delivered written commentary in accordance with paragraph 3.7 of this Schedule 11.3 (ICWC Annual Review), the Franchisee shall provide the Secretary of State with a written response to the Secretary of State's written commentary in such format as is notified by the Secretary of State to the Franchisee from time to time.

4. ICWC Annual Review Meetings

- 4.1 Each ICWC Annual Review Meeting shall take place at the date, time and location notified by the Secretary of State in accordance with paragraph 2.1 of this Schedule 11.3 (ICWC Annual Review) and shall be attended by representatives of each of the Secretary of State and the Franchisee.
- 4.2 The Franchisee shall ensure that the representatives of the Franchisee at each ICWC Annual Review Meeting include such:
- (a) appropriate and qualified personnel of the Franchisee;
 - (b) directors and/or senior managers of the Franchisee; and
 - (c) directors and/or senior managers of the Parent,
- as the Secretary of State may reasonably require.
- 4.3 At each ICWC Annual Review Meeting the Parties shall discuss the Franchisee's behaviours as measured by the ICWC Criteria by reference to the ICWC Annual Review Checklist, together with

any supporting commentary, documents or evidence submitted by the Franchisee to the Secretary of State in accordance with paragraph 3.4, 3.5, 3.6 or 3.8 of this Schedule 11.3 (ICWC Annual Review) and any commentary and/or information provided by the Secretary of State to the Franchisee in accordance with paragraph 3.7 of this Schedule 11.3A (ICWC Annual Review).

5. ICWC Annual Review Scoring

- 5.1 The Secretary of State shall provide to the Franchisee, no later than ten (10) days following the ICWC Annual Review Meeting, a duly completed ICWC Annual Review Scorecard setting out the Franchisee's behaviours as measured by the ICWC Criteria for such ICWC Measurement Period.
- 5.2 Each ICWC Annual Review shall be complete once the Secretary of State has sent a duly completed ICWC Annual Review Scorecard to the Franchisee in accordance with paragraph 5.1 of this Schedule 11.3 (ICWC Annual Review).
- 5.3 Scores in the ICWC Annual Review Scorecard shall be awarded by the Secretary of State having regard to the ICWC Scoring Standards. One single, integer, overall score shall be awarded in relation to each ICWC Criterion based on the Secretary of State's assessment of the Franchisee's behaviours as measured by the ICWC Criterion against the ICWC Scoring Standards and taking into account:
- (a) the Annual Review Checklist provided to the Secretary of State by the Franchisee in accordance with paragraphs 3.4, 3.5 and 3.7 of this Schedule 11.3 (ICWC Annual Review);
 - (b) any commentary provided to the Franchisee by the Secretary of State in accordance with paragraph 3.7 of this Schedule 11.3 (ICWC Annual Review); and
 - (c) any discussions between the Franchisee and the Secretary of State at the ICWC Annual Review Meeting.
- 5.4 In considering the Readiness Review, the Secretary of State shall have regard to the scores awarded against each ICWC Criterion in the five (5) most recent ICWC Annual Reviews.

6. ICWC Stakeholder Survey

- 6.1 The Franchisee shall, no later than six (6) months after the Start Date, submit to the Secretary of State for approval a draft ICWC Stakeholder Survey which shall be used to assess the Franchisee's performance as part of the ICWC Annual Review.
- 6.2 The ICWC Stakeholder Survey shall enable an assessment of:
- (a) the Franchisee's approach to collaborative working in its performance of the Franchise Services (excluding the Shadow Operator Services);
 - (b) the manner in which the Franchisee has sought to address challenges which have arisen in its performance of the Franchise Services (excluding the Shadow Operator Services) (including whether the Franchisee has taken a constructive and pro-active approach to solving such challenges);
 - (c) the satisfaction of Stakeholders, the Department, HS2 Limited, Network Rail and passenger representative bodies; and
 - (d) the Franchisee's performance in the relevant ICWC Measurement Period in comparison to the Franchisee's performance in any prior ICWC Measurement Period, whether by maintaining materially similar survey questions or by other means.

- 6.3 If:
- (a) the Secretary of State approves the draft ICWC Stakeholder Survey submitted to it pursuant to paragraph 6.1 of this Schedule 11.3, such document shall become the ICWC Stakeholder Survey; or
 - (b) the Secretary of State does not approve the draft ICWC Stakeholder Survey submitted to it pursuant to paragraph 6.1 of this Schedule 11.3, then the Franchisee shall make:
 - (i) such amendments as the Secretary of State shall reasonably direct; and
 - (ii) re-submit a revised draft ICWC Stakeholder Survey by such date as the Secretary of State may reasonably specify (and the provisions of paragraph 6.1 to 6.3 of this Schedule 11.3 shall apply to such re-submitted draft).
- 6.4 For each ICWC Measurement Period, prior to undertaking the ICWC Stakeholder Survey in accordance with paragraph 3.3 of this Schedule 11.3, the Franchisee shall submit to the Secretary of State for approval:
- (a) the questions to be included in that ICWC Stakeholder Survey; and
 - (b) the list of Stakeholders (including, where requested by the Secretary of State), the names or roles of individuals representing such Stakeholders) whom the Franchisee proposes to invite to respond to the ICWC Stakeholder Survey.
- 6.5 If:
- (a) the Secretary of State approves the questions and list of Stakeholders submitted to it pursuant to paragraph 6.4 of this Schedule 11.3, the Franchisee shall include such questions in the ICWC Stakeholder Survey and shall invite such Stakeholders and the Department, Network Rail, HS2 Limited and passenger representative bodies to respond to it; or
 - (b) the Secretary of State does not approve the questions and/or list of Stakeholders submitted to it pursuant to paragraph 6.4 of this Schedule 11.3, then the Secretary of State shall reasonably determine the questions and/or list and the Franchisee shall include such questions in the ICWC Stakeholder Survey and shall invite such Stakeholders to respond to it in accordance with that determination.

7. Miscellaneous

- 7.1 No comment or failure to comment nor any agreement or approval, implicit or explicit by either party in an ICWC Annual Review Checklist, ICWC Annual Review Scorecard or at an ICWC Annual Review Meeting will relieve a Party of its obligations, constitute a waiver of an obligation, or breach or right or entitlement or otherwise vary the terms of the Franchise Agreement.

APPENDIX 1 TO SCHEDULE 11.3A

Annual Review Checklist

- 1.1 The ICWC Stakeholder Report.
- 1.2 Evidence of engagement with relevant Stakeholders (including any Stakeholders notified by the Secretary of State to the Franchisee) and any passenger representative bodies and any relevant results of the ICWC Stakeholder Survey.
- 1.3 A report on the Franchisee's view of its relationship with HS2 Limited any relevant results of the ICWC Stakeholder Survey.
- 1.4 A report on the Franchisee's view of its relationship with Network Rail with reference to the Alliance Agreement and any relevant results of the ICWC Stakeholder Survey.
- 1.5 Evidence of any ways in which the Franchisee has sought to identify areas of innovation and/or improvement in delivering the Franchise Services, including details of the level of supporting evidence to those proposals.

APPENDIX 2 TO SCHEDULE 11.3A

Annual Review Scorecard

Behaviours

Score	Collaborative Working	Continuous Improvement
<p>4: strong performance</p>	<p>The Franchisee has demonstrated (including through responses to the ICWC Stakeholder Survey, where applicable) strong collaborative working with:</p> <ul style="list-style-type: none"> (i) Network Rail, HS2 Limited and the Department, including in relation to responsiveness and problem solving; and (ii) such other persons and organisations (including Stakeholders and passenger representative bodies) with whom the Franchisee has been required to have a material level of interaction in performing Franchise Services (excluding the Shadow Operator Services), and such other persons and organisations as have been notified to the Franchisee by the Secretary of State (from time to time during the ICWC Measurement Period) as being relevant to this assessment, <p>in each case taking into account the level of interaction that the Franchisee has been required to have with such persons and/or organisations.</p>	<p>The Franchisee has proactively identified areas of innovation and/or improvement in delivering the Franchise Services (excluding the Shadow Operator Services) and actively discussed those areas with the Secretary of State.</p>

<p>3: good</p>	<p>The Franchisee has demonstrated (including through responses to the ICWC Stakeholder Survey, where applicable) a good level of collaborative working with:</p> <ul style="list-style-type: none"> (i) Network Rail, HS2 Limited and the Department, including in relation to responsiveness and problem solving; and (ii) such other persons and organisations (including Stakeholders and passenger representative bodies) with whom the Franchisee has been required to have a material level of interaction in performing the Franchise Services (excluding the Shadow Operator Services), and such other persons and organisations as have been notified to the Franchisee by the Secretary of State (from time to time during the ICWC Measurement Period) as being relevant to this assessment, <p>in each case taking into account the level of interaction that the Franchisee has been required to have with such persons and/or organisations.</p>	<p>The Franchisee has identified areas of innovation and/or improvement in delivering the Franchise Services (excluding the Shadow Operator Services), albeit only as a result of active management by the Secretary of State.</p>
<p>2: mostly acceptable with minor reservations</p>	<p>The Franchisee has demonstrated (taking into account the feedback received by the Franchisee in the ICWC Stakeholder Survey, where applicable) a mostly acceptable level of collaborative working with:</p> <ul style="list-style-type: none"> (i) Network Rail, HS2 Limited and the Department, including in relation to responsiveness and problem solving; and (ii) such other persons and organisations (including Stakeholders and passenger representative bodies) with whom the Franchisee has been required to have a 	<p>The Franchisee has identified areas of innovation and/or improvement in delivering the Franchise Services (excluding the Shadow Operator Services), however, limited areas of efficiency have been identified and each of these areas has only been identified as a result of active management by the Secretary of State.</p>

	<p>material level of interaction in performing the Franchise Services (excluding the Shadow Operator Services), and such other persons and organisations as have been notified to the Franchisee by the Secretary of State (from time to time during the ICWC Measurement Period) as being relevant to this assessment,</p> <p>in each case taking into account the level of interaction that the Franchisee has been required to have with such persons and/or organisations.</p>	
<p>1: major reservations</p>	<p>The Franchisee has failed to demonstrate (including through responses to the ICWC Stakeholder Survey, where applicable) an effective level of collaborative working with:</p> <ul style="list-style-type: none"> (i) Network Rail, HS2 Limited or the Department; and/or (ii) such other persons and organisations (including Stakeholders and passenger representative bodies) with whom the Franchisee has been required to have a material level of interaction in performing the Franchise Services (excluding the Shadow Operator Services), and such other persons and organisations as have been notified to the Franchisee by the Secretary of State (from time to time during the ICWC Measurement Period) as being relevant to this assessment, <p>in each case taking into account the level of interaction that the Franchisee has been required to have with such persons and/or organisations.</p>	<p>The Franchisee has not identified areas of innovation and/or improvement in delivering the Franchise Services (excluding the Shadow Operator Services).</p>

SCHEDULE 12A

FINANCIAL COVENANTS AND BONDS

Schedule 12A:	Financial Covenants and Bonds
	Appendix 1: Template Form of Performance Bond
	Appendix 2: Template Form of Season Ticket Bond

SCHEDULE 12A

Financial Covenants and Bonds

1. Obligations

- 1.1 Except to the extent that the Secretary of State may otherwise agree from time to time, the Franchisee shall not:
- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;
 - (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph 1.1(d) or to an employee in the ordinary course of its business);
 - (c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Franchise Services; or
 - (d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank.
- 1.2 For the avoidance of doubt, any agreement by the Secretary of State under paragraph 1.1 may be given subject to such conditions as the Secretary of State considers appropriate and the Franchisee shall, comply with, any such conditions.

2. Financial Ratios

- 2.1 The Franchisee covenants that as at the end of each Reporting Period during the ICWC Term:
- (a) commencing prior to 1 April 2026:
 - (i) the ratio of its Modified Revenue to its Actual Operating Costs during the Preceding thirteen (13) Reporting Periods of the ICWC Term (or, prior to the end of the thirteenth such Reporting Period, during all preceding Reporting Periods) will **equal or exceed the ratio of 1.050:1**; and
 - (ii) the ratio of its Forecast Modified Revenue to its Forecast Operating Costs for the next thirteen (13) Reporting Periods (or, where there are less than thirteen (13) Reporting Periods remaining prior to 1 April 2026, for all remaining Reporting Periods ending prior to that Reporting Period) will **equal or exceed the ratio of 1.050:1**;
 - (b) commencing on or after 1 April 2026:
 - (i) the ratio of its Modified Revenue to its Actual Operating Costs during the Preceding thirteen (13) Reporting Periods (or, prior to the end of the thirteenth such Reporting Period, during all preceding Reporting Periods commencing on or after 1 April 2026) will **equal or exceed the ratio of 1.050:1**; and
 - (ii) the ratio of its Forecast Modified Revenue to its Forecast Operating Costs for the next thirteen (13) Reporting Periods (or, where there are less than thirteen (13) Reporting Periods remaining in the ICWC Term, all Reporting Periods remaining in the ICWC Term) will **equal or exceed the ratio of 1.050:1** and for the purposes

of this paragraph (b)(ii), the Franchisee shall assume that the ICWC Term will end on the Expiry Date unless the Secretary has notified the Franchisee of the Integrated Operator Start Date pursuant to the provisions of paragraph 3.1(a) of Schedule 19.2 (Switch Review) in which case the Franchisee shall assume that the ICWC Term will end on the date so notified, and

for the purposes of this paragraph 2 "**Preceding thirteen (13) Reporting Periods**" means the Reporting Period just ended and the preceding twelve (12) Reporting Periods of the Franchise Term.

2.2 If:

- (a) in respect of any Reporting Period, the Franchisee fails pursuant to paragraph 9.2(b) of Schedule 11.2 (Management Information) to provide a statement of calculation of performance against the covenants set out in paragraphs 2.1(a)(ii) or 2.1(b)(ii); or
- (b) the Secretary of State reasonably considers that any particular item of Forecast Modified Revenue or Forecast Operating Cost used for the purposes of determining the Franchisee's performance against the covenants set out in paragraph 2.1(b) has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance),

then the Secretary of State may:

- (i) in the circumstances referred to in paragraph 2.2(a) above reasonably determine the ratio of the Forecast Modified Revenue and Forecast Operating Cost on the basis of information available to the Secretary of State; or
- (ii) in the circumstances referred to in paragraph 2.2(b) above require any such particular item of Forecast Modified Revenue or Forecast Operating Cost to be adjusted in a manner which is fair and reasonable and, so far as reasonably determinable, on the basis on which such particular item of Forecast Modified Revenue or Forecast Operating Cost should have been accounted for by the Franchisee as reasonably determined by the Secretary of State,

in either case after having exercised the Secretary of State's rights under paragraph 9.7 of Schedule 11.2 (Management Information) to the extent that the Secretary of State considers appropriate in the circumstances for the purpose of making any such reasonable determination.

3. Breach of Financial Ratios

3.1 The Franchisee shall not during any Lock-up Period, do any of the following without the Secretary of State's consent:

- (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchisee, without the prior written consent of the Secretary of State;
- (b) pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan; or
- (c) make payment under any intra-group borrowings,

provided that, during the Lock-up Period, the Franchisee may repay any borrowing and/or make any payment in respect of interest accrued on such borrowing, in each case relating to the Agreed Funding Commitment in accordance with the AFC Plan (each as defined in the Funding Deed).

3.2 **“Lock-up Period”** means any period from the time when any of the ratios referred to in paragraph 2.1 falls below the ratio of **1.070:1** until the time at which the Secretary of State is satisfied that the relevant ratio is again above the ratio of **1.070:1**.

3.3 Failure by the Franchisee at any time to comply with any of the ratios referred to in paragraph 2.1 shall be an Event of Default under paragraph 1.8 of Schedule 10.2 (Events of Default and Termination Events).

4. Performance Bond

4.1 The Franchisee shall procure that there shall be a valid and effective Performance Bond in place with effect from the date of the Franchise Agreement, and the Franchisee shall procure that there shall be a valid and effective Performance Bond in place:

- (a) throughout the Franchise Period; and
- (b) for a further period that is the later of the date:
 - (i) falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under the Supplemental Agreement; and
 - (ii) that is seven (7) Reporting Periods after the end of the Franchise Period.

The provisions of this paragraph 4.1 shall survive the termination of the Franchise Agreement.

4.2 Each Performance Bond shall:

- (a) be substantially in the form of Appendix 1 (Template Form of Performance Bond) to this Schedule 12A;
- (b) be issued by a Bond Provider;
- (c) have a value equal to the relevant amount determined under paragraph 4.4; and
- (d) have a minimum duration of three (3) years.

4.3 Provision of Replacement Performance Bond

- (a) The Franchisee may replace the then current Performance Bond at any time
- (b) The Franchisee shall replace each Performance Bond at least six (6) months prior to its scheduled expiry with a Replacement Performance Bond.
- (c) If at any time the Secretary of State reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Secretary of State may require the Franchisee within twenty (20) Weekdays to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State.

4.4 Amount of Performance Bond

The value of the Performance Bond shall be as follows:

- (a) subject to paragraph 4.4(c), in relation to the Initial Performance Bond, twenty million pounds (**£20,000,000**);
- (b) subject to paragraph 4.4(c), in relation to each Replacement Performance Bond (whenever issued) an amount which is equal to:

(twenty million pounds (£20,000,000) x RPI) minus ShOp Adjust;

(c) for the Performance Bond in place at 02:00 on 1 April 2026, an amount which is equal to:

(twenty million pounds (£20,000,000) x RPI) minus ShOp Adjust,

and, for the purpose of this paragraph 4.4:

- (i) **RPI** shall be the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined on the date on which the Franchisee is to replace the Performance Bond or change its value, divided by the Retail Prices Index for January 2019;
- (ii) **ShOp Adjust** shall be any amount(s) paid under the Performance Bond by the Bond Provider to the Secretary of State in relation to a Shadow Operator Only Call Event minus any amount(s) paid to the Franchisee by the Secretary of State pursuant to paragraph 4.5(b) in relation to a Shadow Operator Only Call Event; and
- (iii) for the avoidance of doubt, the amount from time to time drawable under any Performance Bond shall be the relevant bond value minus any amount(s) paid under the Performance Bond by the Bond Provider to the Secretary of State but plus an amount equal to any amount(s) paid to the Franchisee by the Secretary of State pursuant to paragraph 4.5(b).

4.5 Demands under the Performance Bond

- (a) The Performance Bond shall be on terms that the amount as from time to time specified by the Secretary of State, is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
 - (i) that the Franchise Agreement has:
 - (A) either terminated or expired and, in either case, in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State; and/or
 - (B) terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (Events of Default and Termination Events) or pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the Franchise;
 - (ii) that a railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Act;
 - (iii) the occurrence of an Event of Default:
 - (A) under paragraph 1.12(a) of Schedule 10.2 (Events of Default and Termination Events) in relation to the Performance Bond; or
 - (B) under paragraph 1.12(b) of Schedule 10.2 (Events of Default and Termination Events),

whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;

- (iv) that the Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement;
- (v) that the Franchisee has failed to provide a Replacement Performance Bond complying with this paragraph 4 at least six (6) months prior to the scheduled expiry of the existing Performance Bond;
- (vi) that the Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c); or
- (vii) that the Shadow Operator Services have been terminated pursuant to the provisions of:
 - (A) paragraph 5.2(a) of Schedule 19.1 (Readiness Review); or
 - (B) paragraph 5.4(a) of Schedule 10.2A (Events of Default and Termination Events) solely as a consequence of an Event of Default specified in paragraph 1.17 of Schedule 10.2A (Events of Default and Termination Events),

and in such circumstances (a "**Shadow Operator Only Call Event**") the provisions of paragraph (e) shall apply (to limit the demand in those circumstances to a maximum of ten per cent (10%) of the bond value).

- (b) If the Secretary of State makes a demand under the Performance Bond, the Secretary of State shall, within a reasonable period, account to the Franchisee for the proceeds of such Performance Bond **less** the amount of the losses, liabilities costs or expenses which, in the reasonable opinion of the Secretary of State, the Secretary of State or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer including as a result of:
 - (i) early termination of the Franchise Agreement; and/or
 - (ii) termination of the Shadow Operator Services prior to the High Speed Established Services Date; and/or
 - (iii) any failure by the Franchisee to perform or comply with any of its obligations to the Secretary of State under the Franchise Agreement or to a Successor Operator under the Supplemental Agreement; and/or
 - (iv) any change and/or variation which is required to the terms of the Development Agreement (including any requirement for the Secretary of State to pay additional sums or make additional funds available to HS2 Limited) directly caused by the early termination of the Shadow Operator Services,

and which are not otherwise recovered by the Secretary of State (including pursuant to Clause 7.4 of the Funding Deed). To the extent that the Secretary of State accounts to the Franchisee pursuant to this paragraph, the Franchisee shall procure that an amount equal to the amount so paid shall thereupon become re-drawable under the Performance Bond (in accordance with its terms) with immediate effect.

- (c) It is agreed that for the purposes of paragraph 4.5(b) losses, liabilities, costs or expenses which the Secretary of State or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer shall include any losses, liabilities, costs or expenses

consequent upon the fact that the Successor Operator and any Train Operators that might succeed the Franchisee in providing all or any of the Franchise Services during the remainder of the Franchise Term may do so on a different financial basis with regard to amounts equivalent to the Franchise Payments and/or other amounts payable pursuant to Schedule 8A and/or 8B (Franchise Payments) of the Franchise Agreement than the financial basis on which the Franchisee provided the Franchise Services pursuant to the Franchise Agreement.

- (d) Nothing in paragraphs 4.5(b) and 4.5(c) shall oblige the Secretary of State to account to the Franchisee for any proceeds of such Performance Bond in the circumstances described in paragraphs 4.5(a)(iii), 4.5(a)(v) or 4.5(a)(vi) until such time as the Franchisee has procured a Replacement Performance Bond which complies with the requirements of paragraph 4.
- (e) Without prejudice to the Secretary of State's rights to call up to one hundred per cent (100%) of the bond value pursuant to the provisions of paragraphs 4.5(a)(i) to (vi), the maximum amount that the Secretary of State shall be entitled to demand from the Bond Provider under the Performance Bond in relation to a Shadow Operator Only Call Event (as defined in paragraph 4.5(a)(vii)) shall be ten per cent (10%) of the bond value. For the avoidance of doubt any amounts drawn in relation to a Shadow Operator Only Call Event which are paid by the Secretary of State to the Franchisee pursuant to the provisions of paragraph 4.5(b), shall be re-drawable.

4.6 **Characteristics of Performance Bond Provider**

- (a) In determining whether a Bond Provider under any Replacement Performance Bond is acceptable, the Secretary of State may exercise the Secretary of State's discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.
- (b) The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.

4.7 **Provision of more than one Performance Bond**

The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Performance Bond by providing up to three (3) valid and effective Performance Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 4.4. With the exception of the value of each individual Performance Bond the provisions of the Franchise Agreement in relation to the Performance Bond shall be deemed to apply separately in relation to each such Performance Bond. Where more than one (1) Performance Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under one or more of such Performance Bonds and the extent to which the Secretary of State accounts to the Franchisee for the proceeds of each such Performance Bond in accordance with the provisions of paragraph 4.5(b).

5. **Season Ticket Bond**

5.1 **Provision of Season Ticket Bond**

The Franchisee shall procure that, for each Franchisee Year throughout the Franchise Term and during the relevant call period specified in Clauses 4 and 5 of the Season Ticket Bond, there shall be in place a valid and effective Season Ticket Bond substantially in the form of Appendix 2 (Template Form of Season Ticket Bond) to this Schedule 12A.

5.2 Provision of Replacement Season Ticket Bond

No later than one (1) Reporting Period before the expiry of each Bond Year, the Franchisee shall provide to the Secretary of State (or procure that the Secretary of State receives) a Season Ticket Bond for the following Bond Year:

- (a) substantially in the form of Appendix 2 (Template Form of Season Ticket Bond) to this Schedule 12A (or in any other form acceptable to the Secretary of State in the Secretary of State's discretion);
- (b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and
- (c) in an amount determined in accordance with paragraph 5.3.

5.3 Amount of Season Ticket Bond

The amount of any Season Ticket Bond shall vary for each Reporting Period during the Bond Year to which the Season Ticket Bond relates in accordance with the following formula:

$$STBA = STL \times \frac{((RPI \times 100) + k)}{100} \times Z$$

where:

STBA equals the amount of the Season Ticket Bond in the relevant Reporting Period;

STL equals in respect of such Reporting Period:

- (a) the maximum amount which would be payable by the Franchisee in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) and the rights and liabilities of the Franchisee relating to an obligation of carriage under the terms of any Season Ticket Fares which were transferred under a Transfer Scheme relating to that Supplemental Agreement to a Successor Operator at that time; and
- (b) the Stored Credit Balance which would be held by the Franchisee,

if the Franchise Agreement were to terminate on any day during the Reporting Period (the "**Relevant Reporting Period**") falling thirteen (13) Reporting Periods before such Reporting Period,

provided that for these purposes only:

- (i) Season Ticket Fares shall mean any Season Ticket Fare which expires more than seven (7) days after it first comes into effect;
- (ii) the Start Date shall be assumed, where relevant, to have occurred before the commencement of the Relevant Reporting Period; and
- (iii) if STL cannot reasonably be determined at the time at which the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond (including because the Relevant Reporting Period has not yet occurred), the Relevant Reporting Period shall be the Reporting Period falling twenty six (26) Reporting Periods before the Reporting Period in the relevant Bond Year;

RPI equals the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined at the time the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond divided by the Retail Prices Index for the month falling twelve (12) months before such month;

k has the value attributed to it in Schedule 5 (Fares and Smart Ticketing) for the Fare Year in which the Reporting Period in the relevant Bond Year falls; and

Z equals **+1 or**, if the Relevant Reporting Period falls twenty six (26) Reporting Periods before such Reporting Period, an amount equal to:

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

where **RPI** and **k** are determined for the twelve (12) months and the Fare Year preceding the twelve (12) months and the Fare Year for which **RPI** and **k** are respectively determined above.

- 5.4 The Franchisee shall supply to the Secretary of State, not later than three (3) Reporting Periods before the end of each Bond Year, its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the Secretary of State may request in connection therewith.
- 5.5 The Franchisee and the Secretary of State shall endeavour to agree the amount of such Season Ticket Bond by no later than two (2) Reporting Periods before the end of each Bond Year. If the Parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond Year, the matter shall be resolved in accordance with the Dispute Resolution Rules.
- 5.6 If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year has not been agreed two (2) Reporting Periods before the end of the preceding Bond Year, then, until the amount is agreed or determined in accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the Secretary of State.
- 5.7 The Secretary of State and the Franchisee may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time.

5.8 Demands under the Season Ticket Bond

- (a) The Season Ticket Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
- (i) that the Franchise Agreement has terminated or expired;
 - (ii) that a railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Act; or
 - (iii) that an Event of Default:
 - (A) under paragraph 1.12(a) of Schedule 10.2 (Events of Default and Termination Events) in relation to the Season Ticket Bond; or
 - (B) under paragraph 1.12(c) of Schedule 10.2 (Events of Default and Termination Events),

has occurred (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).

- (b) If the Secretary of State makes a demand under the Season Ticket Bond, the Secretary of State shall account to the Franchisee for the proceeds of such Season Ticket Bond remaining following settlement of all liabilities or obligations of the Franchisee in respect of any Season Ticket Fares and/or Stored Credit Balance that may be transferred or is transferred whether under a Transfer Scheme (or otherwise) to a Successor Operator.

5.9 Characteristics of Season Ticket Bond Provider

- (a) In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Secretary of State may exercise the Secretary of State's discretion and shall not be obliged to accept a Bond Provider accepted under any previous Season Ticket Bond.
- (b) The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.
- (c) The Secretary of State agrees that, subject to receipt of a Season Ticket Bond in an amount determined in accordance with paragraph 5.3 in respect of any Bond Year, the Secretary of State shall release the relevant Bond Provider from any liability under the Season Ticket Bond provided in relation to the preceding Bond Year on the expiry of such Bond Year, provided that no Event of Default has occurred and is unremedied or continuing.

5.9A Provision of more than one Season Ticket Bond

The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Season Ticket Bond by providing up to three (3) valid and effective Season Ticket Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 5.3. With the exception of the value of each individual Season Ticket Bond the provisions of the Franchise Agreement in relation to the Season Ticket Bond shall be deemed to apply separately in relation to each such Season Ticket Bond. Where more than one (1) Season Ticket Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under one or more of such Season Ticket Bonds and the extent to which the Secretary of State accounts to the Franchisee for the proceeds of each such Season Ticket Bond in accordance with the provisions of paragraph 5.8(b).

5.10 Meaning of "Reporting Period"

References in this paragraph 5 to a "Reporting Period" shall be construed, where the Franchisee so requests and the Secretary of State consents (such consent not to be unreasonably withheld), to be references to each consecutive seven (7) day period (or such other period as may be agreed) during such Reporting Period. The Franchisee may only make such a request in respect of a maximum of two (2) Reporting Periods in each Bond Year and only where the amount of the Season Ticket Bond over any such period would, in the reasonable opinion of the Franchisee, differ materially if determined by reference to such seven (7) day periods.

6. Tax Compliance

- 6.1 The Franchisee represents and warrants that as at the Start Date, it has notified the Secretary of State in writing of any Occasions of Tax Non-Compliance where the Franchisee (including where the Franchisee is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) is the Affected Party (as defined in paragraph 6.3 below) or any litigation that it is involved in that is in connection with any Occasions of Tax Non

Compliance where the Franchisee (including where the Franchisee is a joint venture or consortium, the members of that joint venture or consortium) is the Affected Party.

- 6.2 If, at any point during the Franchise Term, an Occasion of Tax Non-Compliance occurs in relation to any Affected Party, the Franchisee shall:
- (a) notify the Secretary of State in writing of such fact within five (5) Weekdays of its occurrence; and
 - (b) promptly provide to the Secretary of State:
 - (i) details of the steps which the Affected Party is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Secretary of State may reasonably require.

6.3 For the purposes of this paragraph 6, the following defined terms shall have the following meanings:

- “Affected Party”** has the meaning given to it in the definition of Occasion of Tax Non Compliance;
- “DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
- “General Anti-Abuse Rule”** means:
- (a) the legislation in Part 5 of the Finance Act 2013; and
 - (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
- “Halifax Abuse Principles”** means the principle explained in the CJEU Case C-255/02 Halifax and others; and
- “Occasion of Tax Non-Compliance”** means, in respect of the Franchisee (including where Franchisee is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) or the

Franchisee (such party being the "**Affected Party**"):

- (a) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 is found to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Affected Party under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Affected Party was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion.

APPENDIX 1 TO SCHEDULE 12A⁸¹

Template Form of Performance Bond

[DOCUMENT "PB" - PERFORMANCE BOND]

Dated [INSERT DATE]

[INSERT NAME OF BOND PROVIDER]

[Template] Performance Bond

Secretary of State for Transport

33 Horseferry Road

London SW1P 4DR

81 **Note to Bidders:** This is a template document. DfT to populate based on the winning Bidder's details.

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(The Secretary of State)

Whereas:

We are informed that you have entered into a franchise agreement dated [INSERT DATE] (the "**Franchise Agreement**") with [INSERT NAME OF FRANCHISEE] (the "**Franchisee**"). Pursuant to the Franchise Agreement the Franchisee will provide certain railway passenger and other services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed performance bond in the amount of [£ INSERT AMOUNT [PLUS RPI UPLIFT IF APPLICABLE]] (or such lesser amount as you may notify us of from time to time in writing) (the "**Bond Value**") to secure the performance by the Franchisee of and its compliance with its respective obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in Clause 2 hereof) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us under this Bond provided that the amount of any call under this Bond shall not exceed the Available Bond Value at the time of that Call Event. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

In this Bond, **Available Bond Value** means, at any time, the Bond Value minus the aggregate amount of any calls paid by us under this Bond prior to that time but after adding back the aggregate amount of any monies paid to the Franchisee pursuant to the provisions of paragraph 4.5(b) of Schedule 12.A or Schedule 12.B (Financial Covenants and Bonds) of the Franchise Agreement.

1. The undertaking given by us above shall operate provided that:
 - (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value;
 - (b) subject always to Clause 1(a) above, without prejudice to your entitlement (whether before or after the High Speed Established Services Date) to call on us for sums in aggregate up to the Available Bond Value at the time of the Call Event, following the occurrence of any Call Event under Clauses 2(a) to (g) inclusive, our maximum liability in respect of a Shadow Operator Only Call Event (as defined in Clause 2(h)) shall be limited to a sum or sums not exceeding in the aggregate an amount equal to ten per cent (10%) of the Bond Value; and

- (c) notwithstanding anything contained herein, our liability hereunder shall expire on the earliest of:
- (i) the date falling six (6) months after the date on which any railway administration order is made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993; and
 - (ii) the latest of:
 - (A) the date falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under each relevant Supplemental Agreement; and
 - (B) the date falling seven (7) Reporting Periods after the end of the Franchise Period; and
 - (C) the end of the Franchise Term; and
 - (iii) **[INSERT DATE]**,

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands (less any amounts paid to the Franchisee pursuant to the provisions of paragraph 4.5 (b) of Schedule 12A or 12B (Financial Covenants and Bonds) of the Franchise Agreement), amounts to the Bond Value or less; after which date such undertaking shall be void whether returned to us or not.

2. **"Call Event"** means, in this Bond, any of:

- (a) the termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- (b) the termination of the Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2A or Schedule 10.2B (as the case may be) (Events of Default and Termination Events) of the Franchise Agreement or pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the **[INSERT NAME OF FRANCHISE]** franchise;
- (c) the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993;
- (d) the occurrence of an Event of Default under the Franchise Agreement in respect of:
 - (i) paragraph 1.12(a) of Schedule 10.2A or Schedule 10.2B (as the case may be) (Events of Default and Termination Events) of the Franchise Agreement in relation to the Performance Bond; or
 - (ii) paragraph 1.12(b) of Schedule 10.2A or Schedule 10.2B (as the case may be) (Events of Default and Termination Events) of the Franchise Agreement, whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;
- (e) the failure by the Franchisee to perform or comply with its obligations under any Supplemental Agreement;

- (f) the failure by the Franchisee to provide the Secretary of State with a Replacement Performance Bond which complies with paragraph 4 of Schedule 12A or Schedule 12B (as the case may be) (Financial Covenants and Bonds) of the Franchise Agreement at least six (6) months prior the scheduled expiry of the existing Performance Bond;
- (g) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12A or Schedule 12B (as the case may be) (Financial Covenants and Bonds) of the Franchise Agreement; or
- (h) the termination of the Shadow Operator Services pursuant to the provisions of:
 - (i) paragraph 5.2(a) of Schedule 19.1 (Readiness Review); or
 - (ii) paragraph 5.4(a) of Schedule 10.2A (Events of Default and Termination Events) solely as a consequence of an Event of Default specified in paragraph 1.17 of Schedule 10.2A (Events of Default and Termination Events),

(such a Call Event being a "**Shadow Operator Only Call Event**").

- 3. This undertaking is made to you, your successors and your assigns.
- 4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
- 5. You may make demand or give notice to us under this Bond in writing by hand or via email transmission to us as follows:

Address: [INSERT BOND PROVIDER'S ADDRESS]

Email Address: [INSERT BOND PROVIDER'S EMAIL ADDRESS]
- 6. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and any Supplemental Agreement as amended from time to time.
- 7. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.
- 8. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [INSERT DAY AND MONTH] of [INSERT YEAR].

SCHEDULE TO THE PERFORMANCE BOND

SPECIMEN DEMAND NOTICE

To: [INSERT NAME AND ADDRESS OF BOND PROVIDER]

[INSERT DATE OF DEMAND NOTICE]

We refer to the performance bond issued by you on [INSERT DATE OF BOND] (the "**Performance Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and [INSERT NAME OF FRANCHISEE] (the "**Franchisee**") on [INSERT FRANCHISE AGREEMENT SIGNATURE DATE].

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [INSERT DATE OF OCCURRENCE OF CALL EVENT]: [**DRAFTING NOTE: DELETE AS APPROPRIATE**]

- [The Franchise Agreement has [**terminated/expired**] on [INSERT DATE OF TERMINATION/EXPIRY] in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State.]
- The Franchise Agreement has terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2A or Schedule 10.2B (as the case may be) (Events of Default and Termination Events) on [INSERT DATE OF TERMINATION] in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the [INSERT NAME OF THE FRANCHISE] franchise.
- [A railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993.]
- [That an Event of Default under the Franchise Agreement has occurred under:

[(a) paragraph 1.12(a) of Schedule 10.2A or Schedule 10.2B (as the case may be) (*Events of Default and Termination Events*) of the Franchise Agreement in relation to the Performance Bond; or]

[(b) paragraph 1.12(b) of Schedule 10.2A or Schedule 10.2B (as the case may be) (*Events of Default and Termination Events*) of the Franchise Agreement.]]
- [The Franchise Agreement has terminated pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the [INSERT NAME OF FRANCHISE] franchise.]
- [The Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement.]
- [The Franchisee has failed to provide a Replacement Performance Bond (as described in the Franchise Agreement) complying with paragraph 4 of Schedule 12[A][B] (Financial Covenants and Bonds) of the Franchise Agreement at least six (6) months prior to the scheduled expiry of the existing Performance Bond.]
- [The Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12[A][B] (Financial Covenants and Bonds) of the Franchise Agreement.]

- [A Shadow Operator Only Call Event has occurred as the Shadow Operator Services have been terminated pursuant to the provisions of paragraph 5.2(a) of Schedule 19.1 (Readiness Review) or paragraph 5.4(a) of Schedule 10.2A (Events of Default and Termination Events) solely as a consequence of an Event of Default specified in paragraph 1.17 of Schedule 10.2A (Events of Default and Termination Events) of the Franchise Agreement.]

We hereby demand immediate payment from you of [SPECIFY ALTERNATIVE AMOUNT IF NOT BOND VALUE] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[INSERT ACCOUNT DETAILS TO WHICH BOND MONIES TO BE PAID INTO]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of **Secretary of State for Transport**

.....

APPENDIX 2 TO SCHEDULE 12A ⁸²

Template Form of Season Ticket Bond

DOCUMENT "STB" - SEASON TICKET BOND

Dated [INSERT DATE]

[INSERT NAME OF BOND PROVIDER]

[Template] Season Ticket Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

82 **Note to Bidders:** This is a template document. DfT to populate based on the winning Bidder's details.

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR

(The "**Secretary of State**")

Whereas:

We are informed that you have entered into a franchise agreement dated [INSERT DATE] (the "**Franchise Agreement**") with [INSERT NAME OF FRANCHISEE] (the "**Franchisee**") under which the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed season ticket bond to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in Schedule 1 (Specimen Demand Notice) and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in Clause 2) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value (as defined in Clause 3). All sums payable hereunder shall be paid free and clear of any restriction or condition and free and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:

- (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value on the date of occurrence of the Call Event stated in your written demand on us; and
- (b) you may only call on us (whether on one or more occasions) in relation to one Call Event, such Call Event to be determined by reference to the first written demand which is received by us in the form set out in Schedule 1 (Specimen Demand Notice).

2. "**Call Event**" means, in this Bond, any of:

- (a) the termination or expiry of the Franchise Agreement;
- (b) the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993; or
- (c) the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2A and/or Schedule 10.2B (*Events of Default and Termination Events*) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).

3. Bond Value shall mean, in respect of any date, the amount specified in Schedule 2 (Bond Value) as being the value of this Bond for such date (provided that for these purposes the date of occurrence of the Call Event specified in Clause 2(c) shall be deemed to be the last date for which a Bond Value is assigned under Schedule 2 (Bond Value) of this Bond).
4. Notwithstanding anything contained herein, but subject to Clause 5, our liability hereunder in respect of any Call Event shall expire no later than the end of the Franchise Term and:
- 4.1 in relation to a Call Event specified in Clauses 2(a) and 2(b), at noon (London time) on the date falling three (3) business days after the date of occurrence of such Call Event (business day being a day on which banks are open for business in the City of London); and
- 4.2 in relation to any other Call Event, on the day falling one (1) month after the last date for which a Bond Value is assigned under Schedule 2 of this Bond unless you notify us in writing prior to the relevant expiry time that the relevant Call Event has occurred (whether or not you call on us at the same time under this Bond).
5. If you do notify us under Clause 4 our liability shall expire on:
- 5.1 if the Call Event in respect of which you may call on us under this Bond is the termination of the Franchise Agreement, the date falling one (1) month after the determination of the Purchase Price (as defined in the Supplemental Agreement) under each relevant Supplemental Agreement;
- 5.2 if the Call Event in respect of which you may call on us under this Bond is the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993, the date falling three (3) months after the making of such railway administration order; or
- 5.3 if the Call Event in respect of which you may call on us under this Bond is the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2A and/or Schedule 10.2B (Events of Default and Termination Events) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof), the date falling one (1) month after your notification to us under Clause 4,
- except, in each case, in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before the relevant date, after which date this undertaking shall be void whether returned to us or not.
6. This undertaking is made to you, your successors and your assigns.
7. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
8. You may make demand or give notice to us under this Bond in writing by hand or via email transmission to us as follows:
- Address: [INSERT BOND PROVIDER'S ADDRESS]
- Email Address: [INSERT BOND PROVIDER'S EMAIL ADDRESS]
9. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and the Supplemental Agreement as amended from time to time and terms defined therein shall have the same meaning in this Bond.

10. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.
11. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [INSERT DAY AND MONTH] of [INSERT YEAR].

SCHEDULE 1 TO THE SEASON TICKET BOND

SPECIMEN DEMAND NOTICE

To: [INSERT NAME AND ADDRESS OF BOND PROVIDER]

[INSERT DATE OF DEMAND NOTICE]

We refer to the season ticket bond issued by you on [INSERT DATE OF BOND] (the “**Season Ticket Bond**”) in connection with the franchise agreement (the “**Franchise Agreement**”) entered into between the Secretary of State for Transport (the “**Secretary of State**”) and [INSERT NAME OF FRANCHISEE] (the “**Franchisee**”) on [INSERT FRANCHISE AGREEMENT SIGNATURE DATE].

We hereby notify you that the following Call Event (as defined in the Season Ticket Bond) occurred on [INSERT DATE OF OCCURRENCE OF CALL EVENT]: [**DRAFTING NOTE: DELETE AS APPROPRIATE**]

- [The Franchise Agreement [**terminated/expired**] on [INSERT DATE OF TERMINATION/EXPIRY].
- [A railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993.]
- [An Event of Default occurred under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2[A][B] (Events of Default and Termination Events) of the Franchise Agreement.]

We hereby demand immediate payment from you of [SPECIFY ALTERNATIVE AMOUNT IF NOT BOND VALUE] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[INSERT ACCOUNT DETAILS TO WHICH BOND MONIES TO BE PAID INTO]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of **Secretary of State for Transport**

.....

SCHEDULE 2 TO THE SEASON TICKET BOND⁸³

Bond Value

Call Event occurring in Reporting Period	Bond Value £
1	[INSERT AMOUNT]
2	[INSERT AMOUNT]
3	[INSERT AMOUNT]
4	[INSERT AMOUNT]
5	[INSERT AMOUNT]
6	[INSERT AMOUNT]
7	[INSERT AMOUNT]
8	[INSERT AMOUNT]
9	[INSERT AMOUNT]
10	[INSERT AMOUNT]
11	[INSERT AMOUNT]
12	[INSERT AMOUNT]
13	[INSERT AMOUNT]

83 **Note to Bidders:** DfT to populate based on the winning Bidder's response to the ITT.

SCHEDULE 13A

RAIL INDUSTRY INITIATIVES AND INNOVATION OBLIGATIONS

Schedule 13.1A:	Rail Industry Initiatives and Co-operation
	Appendix 1: Community Rail Partnerships
Schedule 13.2A:	Innovation Obligations
	Appendix 1: NOT USED
Schedule 13.3A:	NOT USED

SCHEDULE 13.1A

Rail Industry Initiatives and Co-operation

1. British Transport Police

- 1.1 The Franchisee shall give due consideration to any request by the British Transport Police to provide suitable accommodation (including additional or alternative accommodation) or facilities at Stations to enable the British Transport Police to effectively perform the services owed to the Franchisee under any contract or arrangement entered into between the British Transport Police and the Franchisee.
- 1.2 The Franchisee shall:
- (a) work with the British Transport Police to:
 - (i) reduce crime and anti-social behaviour on the railway;
 - (ii) reduce minutes lost to police-related disruption;
 - (iii) increase passenger confidence with personal security on train and on station;
 - (b) work in partnership with the British Transport Police and conduct an annual assessment of the security and crime risk at all Stations and across the Franchise generally;
 - (c) co-operate with the British Transport Police to provide it with access to records and/or systems maintained by the Franchisee which relate to lost property to enable the British Transport Police to have access to such information when dealing with items reported to them as lost; and
 - (d) consult with the British Transport Police as to its requirements in relation to records and/or systems and shall ensure that the British Transport Police has access to such records and/or systems within fifteen (15) Weekdays of the Start Date and in any event within five (5) Weekdays of the notification of a crime by the British Transport Police.
- 1.3 The Franchisee shall consult with the British Transport Police in relation to plans to develop any part of the land within a Property Lease which could affect staff or customers and give the British Transport Police an opportunity to advise on and/or provide comments on any opportunities for the enhancement of safety and reduction in crime.

2. Community Rail Partnerships

- 2.1 The Franchisee shall become a member of and shall continue to participate in the Community Rail Partnerships relevant to the Passenger Services, including but not limited to the Community Rail Partnerships listed in the table in Appendix 1 to this Schedule 13.1 (and any successor Community Rail Partnerships). As part of such participation the Franchisee shall identify a senior Franchise Employee whose duties shall include:
- (a) supporting the Community Rail Partnerships;
 - (b) ensuring managerial focus within the Franchisee's organisation to enable the Franchisee to meet its Community Rail Partnership obligations; and
 - (c) leading on the Franchisee's development of community rail projects.

- 2.2 The Franchisee shall, at the request of the Secretary of State:
- (a) co-operate with the Secretary of State, Network Rail, ACoRP, local transport authorities and/or any other person as the Secretary of State may nominate for the purposes of developing and furthering the success of the Community Rail Partnerships;
 - (b) co-operate with, establish and/or participate in any Community Rail Partnership;
 - (c) provide technical support in respect of timetable specification for the Community Rail Partnerships, including providing appropriate journey and revenue data; and
 - (d) co-operate in the development of the Secretary of State's initiatives to examine:
 - (i) options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route (such options to include changes in working practices of the relevant Franchise Employees, reducing rolling stock lease costs and maximising opportunities for obtaining local funding of development at relevant stations and developing new ways of maintaining and renewing relevant railway infrastructure); and
 - (ii) the actual costs incurred in operating, maintaining and renewing the infrastructure relevant for such Community Rail Route.
- 2.3 The Franchisee shall use reasonable endeavours to develop and implement the Community Rail Partnership's initiatives in order to increase the use of the Passenger Services by non-users of the Passenger Services and tourists including, where appropriate, the development of and implementation of marketing strategies.
- 2.4 The Secretary of State may at any time, by proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes), require the Franchisee to develop and/or implement any changes to the Franchise Services and/or the transfer of any Franchise Services to another Train Operator in order to deliver either of the initiatives that were examined pursuant to paragraph 2.2(d).
- 2.5 The Franchisee shall become a member and shall continue to participate in the National Community Rail Steering Group.
- 2.6 Within three (3) months of the Start Date in respect of the first Franchisee Year and no later than three (3) months before the start of each subsequent Franchisee Year, the Franchisee shall provide to the Secretary of State a report ("**Community Rail Report**") setting out the distribution of the CRP Amount in full amongst the Community Rail Partnerships identified in paragraphs 2.1 and 2.2.
- 2.7 The Community Rail Report shall contain the following information:
- (a) a statement confirming that the Franchisee's distribution of funds to the Community Rail Partnerships takes account of the Secretary of State's then current published Community Rail Strategy;
 - (b) a statement confirming that the Franchisee has discussed the funding of the Community Rail Partnerships with ACoRP and has taken sufficient account of ACoRP's views;
 - (c) confirmation that the Franchisee has discussed with all Community Rail Partnerships the aims and needs of such partnerships and the funding required to achieve these;

- (d) a table setting out the relevant portions of the CRP Amount which are to be paid to each Community Rail Partnership (on a non-indexed basis) over the next three (3) years (it being acknowledged that these amounts are likely to be different for each Community Rail Partnership);
 - (e) the activities undertaken by the Franchise pursuant to paragraph 2.3 of this Schedule 13;
 - (f) from the second (2nd) CRP Report onwards, a table setting out how the CRP Project Sum has been allocated and a description of the projects that have received CRP Project Sum funding since the previous CRP Report was submitted; and
 - (g) such further information as the Secretary of State may from time to time request.
- 2.8 Within twenty eight (28) days of the signature date of this Agreement, the Franchisee shall notify the Community Rail Partnerships of the CRP Amount which shall be distributed to such partnerships during the first three (3) Franchisee Years. The Franchisee shall within thirty (30) days of the commencement of each Franchisee Year, make the relevant payments totalling the CRP Amount to each of the Community Rail Partnerships identified in the Community Rail Report for that year.
- 2.9 The Franchisee shall by the end of each Franchisee Year pay the CRP Project Sum to the Community Rail Partnerships for the sole purpose of funding projects proposed by the Community Rail Partnerships.
- 2.10 If and to the extent that at the end of any Franchisee Year the Franchisee has spent less than CRP Project Sum in that Franchisee Year, the Franchisee may on notice to the Secretary of State carry forward the unspent amount (excluding any unspent amount previously carried forward to that Franchisee Year) to the following Franchisee Year, and any unspent amount in the Final ICWC Franchisee Year shall be returned to the Secretary of State.
- 2.11 The Franchisee shall hold an annual conference for the Community Rail Partnerships' officers and station adopters in conjunction with ACoRP to encourage the spread of best practice and to communicate plans for franchise development. The first such conference shall be held within six (6) months of the Start Date.
- 2.12 The Franchisee shall devise and implement, in collaboration with the relevant Community Rail Partnerships, a "**station adopters scheme**" under which members of the local community can "**adopt**" a local Station and engage in activities such as:
- (a) promotion of the Passengers Services calling at the Station;
 - (b) monitoring and reporting faults, damage and anti-social and criminal behaviour;
 - (c) carrying out minor Station cleaning and maintenance tasks and the development and cultivation of station gardens.
- 2.13 The Franchisee shall take reasonable steps to promote the station adopters scheme and provide safety and other training and support to participants.
- 2.14 In collaboration with the relevant Community Rail Partnership and other Stakeholders the Franchisee shall use reasonable endeavours to identify sources of third party funding for the Community Rail Partnerships and encourage such third parties to make funding commitments.

3. Development of Industry Systems

The Franchisee shall fully and effectively co-operate, in a manner consistent with it being a responsible Train Operator of the Franchise, with Network Rail, HS2 Limited, the Secretary of State, ORR and all other relevant railway industry bodies and organisations in relation to the development of anything that can reasonably be considered to be a railway industry system including systems in relation to the attribution of train delay, the allocation of revenue and the collection and dissemination of industry wide information.

4. Co-operation with Industry Schemes

The Franchisee shall co-operate (in good faith) with the Secretary of State, the relevant Local Authority and/or any other affected railway industry parties in the development and the implementation of initiatives relating to its participation in multi-modal fares schemes and Traveline (the "**Industry Schemes**"), where such Industry Schemes relate to the Franchise.

5. Co-operation with Local Authorities

5.1 General co-operation with Local Authority in respect of schemes

- (a) The Franchisee shall co-operate in good faith with any Local Authority that seeks to promote a scheme for the provision of additional or varied Passenger Services including by attending meetings, contributing to feasibility schemes and project plans and liaising with relevant industry participants including Network Rail and HS2 Limited.
- (b) Paragraph 5.1 does not oblige the Franchisee to incur any cost in the actual provision of the revised Passenger Services.

6. NOT USED.

7. NOT USED.

8. Small and Medium-sized Enterprises

- 8.1 The Franchisee shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Franchise Services.
- 8.2 By no later than 31 January in each year (and within one (1) month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of SMEs used by the Franchisee in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

9. Apprenticeships

- 9.1 The Franchisee shall at all times keep accurate and complete records of the Apprenticeships (and the training provided to apprentices) offered by the Franchisee and (if applicable) its immediate UK based supply chain in delivering the Franchise Services. In particular, in relation to each Reporting Period the Franchisee shall record:
 - (a) the number of new Apprenticeships created, continuing and concluding in that Reporting Period;
 - (b) the date of commencement and conclusion of each Apprenticeship; and

- (c) in relation to each Franchise Employee that commences an Apprenticeship in such Reporting Period:
- (i) the level of such Apprenticeship as described in the Regulated Qualifications Framework;
 - (ii) the skills category (as described in the Standard Occupational Classification Codes) within which Apprenticeship falls;
 - (iii) the month and year of birth of that Franchise Employee;
 - (iv) the current occupation of that Franchise Employee;
 - (v) the gender of that Franchise Employee (except in relation to those Franchise Employees who do not permit disclosure);
 - (vi) whether that Franchise Employee is of BAME origin (except in relation to those Franchise Employees who do not permit disclosure);
 - (vii) the postcode of the location at which that Franchise Employee is principally employed at (e.g. the relevant train crew depot of train crew); and
 - (viii) the first half of that Franchise Employee's residential postcode.

9.2 In order to comply with the Data Protection Act, the Franchisee must ensure that each Franchise Employee that commences an Apprenticeship is made aware that their Personal Data will be shared with the Rail Delivery Group and the Secretary of State in order to enable the Secretary of State to monitor the achievement of the apprenticeship targets set out in the Transport Infrastructure Skills Strategy and check for any inadvertent duplication of records. The Franchisee shall make each Franchise Employee that commences an Apprenticeship aware that their Personal Data shall be anonymised before appearing in any reports and shall be retained by the Secretary of State for a period of seven (7) years.

9.3 By no later than 31 January in each year (and within one (1) month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the information recorded pursuant to paragraph 9.1 of this Schedule 13.1 during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

9.4 The Franchisee shall ensure that the number of Franchise Employees who begin an Apprenticeship in any Franchisee Year shall constitute two point five per cent (2.5%) of the total number of Franchise Employees (the "**Apprenticeships Requirement**"), provided that:

- (a) the Apprenticeships Requirement shall be subject to a pro rata reduction in relation to the first Franchisee Year, it being acknowledged that for such purposes the first Franchisee Year shall be treated as commencing on the date on which the Skills and Leadership Strategy is adopted by the Franchisee pursuant to paragraph 9.5 of this Schedule 13.1; and
- (b) the Apprenticeships Requirement shall be subject to a pro rata reduction in respect of the Final Franchisee Year in the event that the Final Franchisee Year consists of less than thirteen (13) Reporting Periods,

and the Franchisee shall provide evidence of the satisfaction of the Apprenticeships Requirement to the Secretary of State within ten (10) days of the end of each Franchisee Year.

- 9.5 The Franchisee shall submit a draft Skills and Leadership Strategy to the Secretary of State by no later than three (3) months after the Start Date. Such draft Skills and Leadership Strategy shall set out the comprehensive, robust and deliverable strategy of the Franchisee for providing an appropriately skilled and trained workforce of Franchise Employees based on a skills gap analysis including through the delivery of the Apprenticeships specified in the Apprenticeships Data Collection Form. The draft Skills and Leadership Strategy shall take into account the likely short, medium and long term requirements of the Franchisee and any Successor Operator including in the context of expected change to the Franchise Services (including as a result of technological change) and the age profile of the Franchise Employees. The draft Skills and Leadership Strategy shall include a management/leadership maturity model to help target and improve investment in developing leadership and management. The Franchisee shall meet with the Secretary of State to discuss the draft Skills and Leadership Strategy and shall have due regard to the opinions of the Secretary of State. The Skills and Leadership Strategy shall be finalised and adopted by the Franchisee within six (6) months of the Start Date and the Franchisee shall implement it in accordance with its terms from the date that it is adopted.
- 9.6 The Franchisee shall:
- (a) undertake and complete a review of its Skills and Leadership Strategy and compliance with the Apprenticeships Data Collection Form during each of the second (2nd) and fourth (4th) Franchisee Years; and
 - (b) provide the Secretary of State with any proposed revisions to the Skills and Leadership Strategy and the Apprenticeships Data Collection Form arising out of such review by no later than the end of each such Franchisee Year.
- 9.7 The aim of such review shall be to update the Skills and Leadership Strategy by reference to an updated skills gap analysis and to ensure that the Skills and Leadership Strategy continues to effectively achieve its purposes to the greatest extent reasonably practicable. The review shall check compliance with the targets contained in the Apprenticeships Data Collection Form and if they have not been met shall propose robust and effective strategies and methodologies to be contained in the revised Skills and Leadership Strategy to ensure delivery in future. The review may propose amendments to the Apprenticeships Data Collection Form that are consistent with any proposed revisions to the Skills and Leadership Strategy. Any revisions to the Skills and Leadership Strategy (including the Apprenticeships Data Collection Form) shall require the consent of the Secretary of State (such consent not to be unreasonably withheld or delayed). The Franchisee shall implement any revised Skills and Leadership Strategy in accordance with its terms from the date that the Secretary of State consents to the relevant revisions.
- 9.8 For the purposes of this paragraph 9, the Franchisee shall submit the completed Apprenticeships Data Collection Form to the Rail Delivery Group for onward transmission to the Secretary of State on a quarterly basis or at such other time as the Secretary of State may specify.

10. Sustainability and other related initiatives

10.1 Sustainable Development Strategy

- (a) By no later than six (6) months following the Start Date, the Franchisee shall consult with the RSSB and such other Stakeholders as agreed between the Secretary of State and the Franchisee (or, in the absence of agreement, such Stakeholders as the Secretary of State shall determine) in order to agree:
 - (i) key priority sustainable development areas;
 - (ii) the outcomes associated with such key priority and sustainable development areas;

- (iii) the annual traction carbon trajectory (CO₂E/vehicle km) for the duration of the Franchise Term; and
 - (iv) target levels according to the Rail Safety and Standards Board Sustainable Development Self-Assessment Framework that will be reached by the end of the third (3rd), sixth (6th) and ninth (9th) Franchisee Years.
- (b) The Franchisee shall develop the Sustainable Development Strategy to reflect such consultation and the Franchisee shall propose and agree a final version of the Sustainable Development Strategy with the RSSB and the Secretary of State by no later than twelve (12) months after the Start Date for the purposes of the Franchise Agreement. Such agreed strategy shall be the Sustainable Development Strategy for the purposes of the Franchise Agreement, provided that in the absence of agreement between the Parties of the Sustainable Development Strategy shall be the strategy determined by the Secretary of State (acting reasonably).
- (c) The Franchisee shall at all times comply with the Sustainable Development Strategy. Any amendments to the Sustainable Development Strategy must be agreed by the Secretary of State.
- (d) By no later than three (3) months following the end of the third (3rd), sixth (6th) and ninth (9th) Franchisee Years, the Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an assessment of performance against the Rail Safety and Standards Board's Sustainable Development Self-Assessment Framework and produce a report in respect of such assessment, such assessment to review performance against the targets set out in the Sustainable Development Strategy.
- (e) The Franchisee shall submit a copy of the assessment report produced by the independent body pursuant to paragraph 10.1(d) to the Secretary of State within six (6) months following the end of the third (3rd), sixth (6th) and ninth (9th) Franchisee Years.
- (f) Where the assessment report identifies a significant shortfall against the targets set out in the Sustainable Development Strategy, the Franchisee must as soon as reasonably practicable and in any event within two (2) months, produce an improvement plan which, in the reasonable opinion of the Secretary of State, is capable of achieving the targets set out within the Sustainable Development Strategy.
- (g) The Franchisee shall use all reasonable endeavours to implement the improvement plan referred to in paragraph 10.1(f) and improve its performance against the targets set out in the Sustainable Development Strategy against the agreed timeframes for performance as set out in the revised Sustainable Development Strategy.
- (h) The Franchisee shall, within three (3) months following the end of each Franchisee Year, provide to the Secretary of State a report showing:
 - (i) progress against the outcomes in key priority sustainable development areas;
 - (ii) progress on development of Franchise Employees to ensure they have the skills and knowledge required to deliver a sustainable franchise; and
 - (iii) proposed revisions to the Sustainable Development Strategy (such revisions to include those revisions reflecting feedback and advice from Stakeholders, and which have been consulted on with RSSB).

- (i) The Franchisee shall obtain the Secretary of State's consent to any amendments to the Sustainable Development Strategy proposed pursuant to paragraph 10.1(h)(iii) before such amendments are adopted and the Sustainable Development Strategy updated.
- (j) On request by the Secretary of State, the Franchisee shall publish (in such form as the Secretary of State may reasonably determine):
 - (i) all or any part of its Sustainable Development Strategy; and/or
 - (ii) all or any of the information described in paragraphs 10.1(h)(i) to (h)(iii).

10.2 Environmental Management and Sustainability Accreditation

- (a) The Franchisee shall, by no later than the date which is eighteen (18) months after the Start Date, attain and, at all times thereafter, maintain certification pursuant to ISO14001:2015 and ISO50001:2011 or equivalent standards.
- (b) The Franchisee shall provide the Secretary of State with copies of the certification audit reports and a copy of their ISO50001 Energy Review within four (4) weeks of their certification and each subsequent recertification during the Franchise Period.

10.3 Sustainable Construction

For construction projects (including building refurbishment or fit out):

- (a) which are either being funded by the Franchisee or in respect of which the Franchisee has design responsibility; and
- (b) in respect of which the total capital cost exceeds one million pounds (£1,000,000) (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)),

the Franchisee shall use reasonable endeavours to achieve at least an **"excellent"** rating from an accredited assessor using BREEAM (or a rating equivalent to **"excellent"** in an equivalent recognised standard such as the SKA Rating Standard as appropriate) at both the design stage and the post-construction stage unless the Secretary of State (acting reasonably) agrees that the relevant project is not of a suitable scale or type to be so assessed and the Franchisee shall provide to the Secretary of State such information in relation to any construction project as the Secretary of State may reasonably request.

11. NOT USED.

12. NOT USED.

13. NOT USED.

14. Suicide Prevention Strategy

14.1

- (a) As soon as reasonably practicable after the Start Date the Franchisee shall, in consultation with the British Transport Police and the wider cross-industry suicide prevention group, develop a draft suicide prevention plan that fully delivers and complies with the Suicide Prevention Strategy and the Suicide Prevention Duty Holders' Group's 9 Point Plan and submit it to the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) for approval.

- (b) The Franchisee shall make such amendments to the draft suicide prevention plan as:
- (i) the British Transport Police shall require for the purposes of ensuring that it fully delivers and complies with the Suicide Prevention Strategy; and
 - (ii) the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) shall require for the purposes of ensuring that it fully delivers and complies with the Suicide Prevention Duty Holders' Group's 9 Point Plan.
- (c) The Franchisee shall submit a completed suicide prevention plan (the "**Plan**") to the Secretary of State together with written confirmation from the British Transport Police that the Plan complies with the requirements of the Suicide Prevention Strategy and from the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) that the Plan complies with the Suicide Prevention Duty Holders' Group's 9 Point Plan as reasonably practicable and in any event within twelve (12) months of the Start Date.
- (d) The Franchisee shall review and update the Plan:
- (i) at least every twelve (12) months; and
 - (ii) immediately following any amendment to, or replacement of, the Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan.

Such review and any updating shall be by reference to changing circumstances, new relevant information and any amended or replaced Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan with the intention that it is kept as up to date and effective as reasonably possible. The Franchisee shall consult with the British Transport Police and wider cross-industry suicide prevention group (as appropriate) in relation to any such review and update of the Plan. The Franchisee shall deliver a copy of any revised and/or updated Plan to the Secretary of State as soon as is reasonably practicable together with written confirmation from the British Transport Police that the Plan complies with the requirements of the Suicide Prevention Strategy and the Suicide Prevention Duty Holders' Group's 9 Point Plan and accordingly remains approved by it.

14.2 The Franchisee shall implement the Plan as it may be revised and/or updated pursuant to paragraph 14.1 in accordance with its then prevailing provisions.

15. Safeguarding Strategy

15.1 As soon as reasonably practicable after the Start Date, the Franchisee shall, in consultation with the British Transport Police and such other relevant groups as the Franchisee and/or the British Transport Police consider appropriate, develop a draft safeguarding strategy.

15.2 The draft safeguarding strategy shall be submitted to the British Transport Police for its approval that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit and the Franchisee shall take into account any comments or amendments proposed by:

- (a) the British Transport Police; and
- (b) such other relevant groups as the Franchisee and/or the British Transport Police consider appropriate,

as are required to ensure that such draft safeguarding strategy complies with the Safeguarding on Rail Audit.

- 15.3 The Franchisee shall deliver a copy of the Safeguarding Strategy to the Secretary of State together with written confirmation of the approval issued by the British Transport Police that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit as soon as reasonably practicable following such approval and in any event within twelve (12) months of the Start Date.
- 15.4 The Franchisee shall review and, as necessary, update the Safeguarding Strategy:
- (a) at least every (twelve) 12 months; and
 - (b) within one (1) month following the publication of any amendment to, or replacement of the Safeguarding on Rail Audit.
- 15.5 Any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 15.4 shall take into account any changes to, or replacement of the Safeguarding on Rail Audit and any other relevant circumstances that would reasonably be considered to impact the objectives contained in the Safeguarding on Rail Audit and shall ensure that the Safeguarding Strategy remains up-to-date and appropriate for delivering the objectives contained in the Safeguarding on Rail Audit.
- 15.6 The Franchisee shall undertake any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 15.4 in consultation with the British Transport Police and such other relevant groups as the Franchisee and/or the British Transport Police consider appropriate. The Franchisee shall submit such updated Safeguarding Strategy to the British Transport Police within one (1) month of such review for its approval that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit and the Franchisee shall take into account any comments or amendments proposed by:
- (a) the British Transport Police; and
 - (b) such other relevant groups as the Franchisee and/or the British Transport Police consider appropriate,
- as are required to ensure that the Safeguarding Strategy remains up-to-date and appropriate for delivering the objectives contained in the Safeguarding on Rail Audit.
- 15.7 The Franchisee shall deliver a copy of any updated Safeguarding Strategy to the Secretary of State together with written confirmation of the approval issued by the British Transport Police as soon as reasonably practicable following such approval.
- 15.8 The Franchisee shall implement the approved Safeguarding Strategy as it may be revised and/or updated pursuant to this paragraph 15 from time to time.

APPENDIX 1 TO SCHEDULE 13.1A

Community Rail Partnerships

	Community Rail Partnership	Community Rail Route
1.	Abbey Line CRP	Watford – St Albans Abbey
2.	Bentham CRP	Leeds – Morecambe/Heysham Port
3.	Chester to Shrewsbury Rail Partnership	Chester - Shrewsbury
4.	Community Rail Cumbria	Cumbrian Coast Line CRP, Carlisle – Barrow-in-Furness, Furness Line, Lancaster – Barrow-in-Furness and the Lakes Community Rail Line, Oxenholme – Windermere
5.	Crewe – Manchester Community Rail	Crewe – Manchester Piccadilly
6.	Community Rail Lancashire	East Lancashire CRP, Preston – Colne, Preston to Ormskirk CRP, Preston – Ormskirk, South Fylde CRP, Blackpool South - Preston
7.	High Peak and Hope Valley Community Rail Partnership	Buxton Line CRP, Buxton – Manchester Piccadilly, Glossop Line CRP, Glossop/Hadfield – Manchester Piccadilly, Hope Valley, Sheffield - Manchester
8.	Marston Vale CRP	Bletchley - Bedford
9.	Mid Cheshire Line CRP	Chester – Manchester Piccadilly
10.	North Cheshire CRP	Chester – Manchester Piccadilly via Warrington
11.	North Staffordshire Line	Crewe – Derby
12.	Settle - Carlisle Railway Development Company	Settle - Carlisle
13.	South East Manchester Community Rail Partnership	Manchester to New Mills Central, Manchester to Rose Hill via Hyde and Manchester to Hadfield as far as Broadbottom
14.	Tyne Valley CRP	Newcastle - Carlisle
15.	SW Glasgow	Glasgow Central - Barrhead
16.	RAIL 74	Glasgow Central – Hamilton Central
17.	S36 Scotland	Glasgow Central – Carlisle/Stranraer
18.	Heart of Wales Development Company	Shrewsbury - Swansea

	Community Rail Partnership	Community Rail Route
19.	Cambrian Railways Partnership	Shrewsbury – Aberystwyth and Dovey Junction – Pwllheli

SCHEDULE 13.2A

Innovation Obligations

1. Innovation Strategy

- 1.1 By the first anniversary of the Start Date, the Franchisee shall submit its Innovation Strategy to the Secretary of State for approval (such approval not to be unreasonably withheld).
- 1.2 Thereafter every one (1) year, the Franchisee shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld) a revised Innovation Strategy updated in accordance with the requirements of paragraph 1.3.
- 1.3 Each Innovation Strategy submitted in accordance with this paragraph 1 must have regard to the following core requirements:
 - (a) how the Franchisee has developed, and proposes to develop during the Franchise Term, its innovation capability, including leadership, employees, systems and processes, and how progress is measured;
 - (b) how the Franchisee has utilised, and proposes to utilise during the Franchise Term, effective techniques for capturing ideas from employees, passengers, the community, industry partners and the supply chain; and
 - (c) how, during the Franchise Term, the Franchisee will partner and collaborate with other organisations and seek third party funding (where appropriate) in order to assist bringing new technologies, processes, business models and products to the rail market, that are viable for implementation during the Franchise Term.
- 1.4 The Franchisee shall at all times comply with its Innovation Strategy.

2. NOT USED.

APPENDIX 1 TO SCHEDULE 13.2A

NOT USED

SCHEDULE 13.3A

NOT USED

SCHEDULE 14A

PRESERVATION OF ASSETS

Schedule 14.1A:	Maintenance of Franchise
Schedule 14.2A:	Maintenance of Operating Assets
Schedule 14.3A:	Key Contracts
	Appendix 1: List of Key Contracts
Schedule 14.4A:	Designation of Franchise Assets
	Appendix 1: List of Primary Franchise Assets
Schedule 14.5A:	Dealing with Franchise Assets
Schedule 14.6A:	Residual Value Mechanism
	Appendix 1: List of the RV Assets
Schedule 14.7A:	Incentivising Long-Term Investment

SCHEDULE 14.1A

Maintenance of Franchise

1. Maintenance as a going concern

- 1.1 The Franchisee shall maintain and manage the business of providing the Franchise Services so that, to the greatest extent possible and practicable:
- (a) the Franchisee is able to perform its obligations under the Franchise Agreement;
 - (b) a Successor Operator would be able to take over the business of providing the Franchise Services immediately at any time; and
 - (c) (without limiting (b)) a Successor Shadow Operator would be able to take over the business of providing the Shadow Operator Services immediately at any time.
- 1.2 The Franchisee's obligation under paragraph 1.1 shall include an obligation to ensure that any computer and information technology systems of the Franchisee shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a stand alone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of the Franchise Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for the Franchisee to obtain consent to such arrangements relating to sharing computer and information technology systems from the Secretary of State).
- 1.3 The Franchisee shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Primary Franchise Assets for such purpose.
- 1.4 The Franchisee shall maintain and manage the business of providing the Franchise Services on the basis that such business will be transferred, in the manner contemplated under the Franchise Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator (including, where applicable, with regard to the transfer of the Shadow Operator Services to a Successor Shadow Operator).
- 1.5 The Franchisee shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator (including, where applicable, to any Successor Shadow Operator) following the expiry of the Franchise Period and in so doing shall plan for the recruitment and training of Franchise Employees to continue up until the end of the Franchise Term.
- 1.6 The Franchisee shall comply with all reasonable requirements of the Secretary of State to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Term (or, to the extent applicable and where earlier, may transfer to any Successor Shadow Operator on termination of the Shadow Operator Services).

2. Post-Franchise Timetables

- 2.1 Both prior to and following the selection of a Successor Operator (whether a franchisee or otherwise and whether or not subject to the satisfaction of any conditions), the Franchisee shall:

- (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State; and
 - (b) take such steps as may reasonably be requested by the Secretary of State,
- so as to ensure the continuity of, and orderly handover of control over of the Franchise Services.

2.2 The steps that the Secretary of State may reasonably request the Franchisee to take pursuant to paragraph 2.1 include:

- (a) participating in any timetable development process that takes place during the Franchise Period, but which relates to any timetable period applying wholly or partly after the expiry of the Franchise Term ("**Successor Operator Timetable**"), including bidding for and securing any Successor Operator Timetable, whether or not:
 - (i) the Successor Operator has been identified; or
 - (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
- (b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Franchise Period;
- (c) assisting the Secretary of State or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or
- (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Franchisee shall not be required to enter into any such Access Agreement unless the Secretary of State has first provided to it confirmation in writing that the Secretary of State will include that Access Agreement in any Transfer Scheme pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination).

SCHEDULE 14.2A

Maintenance of Operating Assets and Branding

1. Operating Assets

- 1.1 The Franchisee shall maintain, protect and preserve the Operating Assets in good standing or good working order, subject to fair wear and tear.
- 1.2 Notwithstanding paragraph 14 of Schedule 18.1 (Shadow Operations) the Franchisee shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the ICWC Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Franchise Services (or, to the extent applicable and where earlier, transferred on termination of the Shadow Operator Services to, and used by, any Successor Shadow Operator, in the provision or operation of similar services to the Shadow Operator Services).
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Franchisee shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced before the Integrated Operator Start Date. The Franchisee shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under the Franchise Agreement.
- 1.4 The Secretary of State may at any time require the Franchisee to provide to the Secretary of State a schedule specifying the condition of any asset or class of assets that the Secretary of State specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Secretary of State may reasonably require. If the Parties are unable to agree the content of such schedule of condition, either Party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Franchisee shall comply with the Secretary of State's requirements in respect of such schedule of condition.

2. Spares

The obligation of the Franchisee to maintain, preserve and protect the Operating Assets under this Schedule 14.2 shall, in respect of Spares, prior to the Integrated Operator Start Date include the obligation to replace any Spare which has been designated as a Primary Franchise Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchisee for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

3. Brand Licence and Branding

3.1 Not Used.

3.2 Brand Licences

The Franchisee shall comply with its obligations under each of the Brand Licences.

3.3 Branding

Subject to any applicable obligations or restrictions on the Franchisee (including the terms of the Rolling Stock Leases), the Franchisee may apply registered or unregistered trade marks (including company names, livery and other distinctive get-up) to any assets owned or used by the Franchisee in the operation and provision of the Franchise Services.

- (a) Subject to paragraphs 3.3(c) and (g), the Franchisee may:
- (i) in respect of unregistered Marks, provide or procure the provision of an irrevocable undertaking to any relevant Successor Operator to the effect that neither it nor the owner of the Marks will enforce such rights as it may have or may in the future have in respect of such Marks against such Successor Operator and its successors; and
 - (ii) in respect of registered Marks, grant or procure the grant of an irrevocable licence to use such Marks to such Successor Operator and its successors.
- (b) Any such licence or undertaking under paragraph 3.3(a) shall be in such form as the Secretary of State shall reasonably require except that the terms of any such licence and, to the extent appropriate, any such undertaking shall accord with the provisions of paragraph 8.3 of Schedule 15.4 (Provisions Applying on and after Termination).
- (c) Subject to paragraph 3.3(g), to the extent that:
- (i) the Franchisee does not provide a relevant undertaking or licence in accordance with paragraph 3.3(a);
 - (ii) the Secretary of State considers the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the Marks are applied; or
 - (iii) the Franchisee has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the Secretary of State prior to the expiry of the Franchise Period,

then the Franchisee shall pay to the relevant Successor Operator such amount as may be agreed between the Franchisee and such Successor Operator, as being the reasonable cost (including any Value Added Tax for which credit is not available under sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the Secretary of State. Such amount shall not in any event exceed the cost to the Successor Operator of replacing such Marks with its own. If the Franchisee and the relevant Successor Operator fail to agree such cost within twenty eight (28) days of the expiry of the Franchise Period, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.

- (d) The amount to be paid to a Successor Operator under paragraph 3.3(c) may include the reasonable cost of:
- (i) removing or covering Marks from the exterior of any rolling stock vehicle;
 - (ii) removing or covering interior indications of the Marks including upholstery and carpets;
 - (iii) replacing or covering all station or other signs including bill boards; and
 - (iv) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the Franchise Services.

- (e) The Franchisee shall, in addition to making a payment under paragraph 3.3(c) grant or procure the grant of a licence or undertaking complying with paragraphs 3.3(a) and (b) except that such licence shall only be for such period as may be agreed between the Franchisee and the Successor Operator as being reasonably required by the Successor Operator to remove the Marks from all relevant assets without causing excessive disruption to the operation of services similar to the Franchise Services provided by such Successor Operator. If such period cannot be agreed, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.
- (f) The Secretary of State shall determine at or around the end of the Franchise Period, and after consultation with the Franchisee, the maximum liability of the Franchisee under paragraph 3.3(c) and the maximum length of licence or undertaking under paragraph 3.3(e).
- (g) The provisions of paragraphs 3.3(a) to 3.3(f) shall not apply to the extent that the relevant asset is not to be used by a Successor Operator in the provision of services similar to the Franchise Services. The Secretary of State shall notify the Franchisee as soon as the Secretary of State becomes aware of whether or not any such asset is to be so used.

3.4 **Non-designation of New Brands**⁸⁴

The Secretary of State agrees not to designate as a Primary Franchise Asset any registered or unregistered trade mark which is developed by the Franchisee.

3.5 **Change in requirement to debrand**

- (a) By no later than 3 months prior to the end of the ICWC Period the Secretary of State may, at the Secretary of State's sole discretion, notify the Franchisee that it is not required to debrand some, or all, of the assets referred to in paragraph 3.
- (b) Should the Secretary of State notify the Franchisee that it is not required to debrand some, or all, of the assets under paragraph 3.5(a), then:
 - (i) the provisions of paragraph 3.3(a) to (g) will not apply to the assets specified in such notice; and
 - (ii) such notice shall constitute a Change.

84 **NOTE TO BIDDERS:** as described in section 5.16.10 of the ITT, this provision is subject to amendment to take account of the bidder's branding proposals

SCHEDULE 14.3A

Key Contracts

1. Key Contracts

1.1 This Schedule sets out the rights of the Secretary of State to:

- (a) designate certain contracts or categories of contracts as Key Contracts where the Secretary of State considers that such contracts or categories of contract are necessary for the purposes of securing continuity of the Franchise Services by a Successor Operator on expiry of the Franchise Period (or, to the extent applicable and where earlier, by a Successor Shadow Operator on termination of the Shadow Operator Services); and
- (b) in accordance with paragraph 5, require the Franchisee to procure that a counterparty to a Key Contract enters into a Direct Agreement with the Secretary of State.

This Schedule 14.3 shall apply to all contracts designated as Key Contracts from time to time.

1.2

- (a) The Key Contracts as at the date of the Franchise Agreement are set out in Appendix 1 (List of Key Contracts) to this Schedule 14.3.
- (b) The Franchisee shall enter into any and all Key Contracts which are necessary for the Franchise Agreement to continue in accordance with clause 5 (Duration of the Franchise Agreement).
- (c) Where at any time after the date of the Franchise Agreement the Franchisee proposes to enter into any agreement, contract, licence or other arrangement which falls within one of the categories listed in Appendix 1 (List of Key Contracts) to this Schedule 14.3 the Franchisee shall:
 - (i) inform the Secretary of State from time to time of any such agreement, contract, licence or other arrangement which it may be intending to enter into; and
 - (ii) comply with the provisions of paragraph 5.1 in respect of any such agreement, contract, licence or other arrangement.

1.3 Without prejudice to the provisions of paragraphs 2, 3 and 4 of this Schedule 14.3, Appendix 1 (List of Key Contracts) to this Schedule 14.3 shall be amended as considered necessary from time to time to take account of any:

- (a) designation by the Secretary of State of any actual or prospective agreement, contract, licence or other arrangement or any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary pursuant to paragraph 2 of this Schedule 14.3; or
- (b) de-designation by the Secretary of State of any Key Contract pursuant to paragraph 3 of this Schedule 14.3; or
- (c) re-designation by the Secretary of State pursuant to paragraph 4 of this Schedule 14.3.

2. Designation of Key Contracts

2.1 Where the Secretary of State considers that it is reasonably necessary for securing the continued provision of the Franchise Services or the provision of services similar to the Franchise Services by a Successor Operator in accordance with the Franchise Agreement, the Secretary of State may make a designation pursuant to paragraph 2.2.

2.2 The Secretary of State may at any time, by serving notice on the Franchisee, designate as a Key Contract:

- (a) any actual or prospective agreement, contract, licence or other arrangement; and/or
- (b) any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary,

with effect from the date specified in such notice.

2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Franchisee or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

3. De-designation of Key Contracts

The Secretary of State may at any time, by serving a notice on the Franchisee, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. Re-designation of Key Contracts

The Secretary of State may at any time, by serving notice on the Franchisee, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

5. Direct Agreements

5.1 Unless the Secretary of State otherwise agrees, or unless directed to do so by the ORR, the Franchisee shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

- (a) is a Train Operator; or
- (b) has entered into a Direct Agreement with the Secretary of State in respect of that prospective Key Contract, providing on a basis acceptable to the Secretary of State, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;
 - (ii) termination or expiry of the Franchise Agreement; or
 - (iii) the making of a railway administration order in respect of the Franchisee.

5.2 Where the Secretary of State designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Franchisee is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Franchisee is already a party to a contract, licence or other arrangement which, by virtue of the Secretary of State's designation or re-designation, is classified in such category,

the Franchisee shall use all reasonable endeavours to assist the Secretary of State in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

5.3 The Franchisee shall pay to the Secretary of State an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Secretary of State under the provisions of any Direct Agreement and which may be notified to the Franchisee as a result of, or in connection with:

- (a) any breach by the Franchisee of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the Franchisee against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. Emergencies

6.1 Where any emergency may arise in connection with the provision and operation of the Franchise Services, the Franchisee:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist the Secretary of State in entering into the same;
- (c) shall promptly inform the Secretary of State of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as the Secretary of State may request.

7. No Amendment

The Franchisee shall not without the prior consent of the Secretary of State (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

8. Replacement of Key Contracts

The Franchisee shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter into an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Secretary of State in relation to such replacement contract.

9. Termination of Key Contracts

The Franchisee shall, to the extent so requested by the Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.

APPENDIX 1 TO SCHEDULE 14.3A

List of Key Contracts

Subject to any de-designations by the Secretary of State under paragraph 3 of Schedule 14.3 (Key Contracts), the following items have as at the date of the Franchise Agreement been agreed between the Parties, to be Key Contracts:

1. any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner;
2. any Property Lease and all side agreements relating to such relevant Property Lease;
3. any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 (Original Rolling Stock), Table 2 (Specified Rolling Stock) and Table 3 (Unspecified Additional Rolling Stock) of Appendix 1 (*The Composition of the Train Fleet*) to Schedule 1.6 (The Rolling Stock);
4. NOT USED;
5. any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator or other third party of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services or the Shadow Operator Services;
6. any contract or arrangement for the subcontracting or delegation to another Train Operator or other third party of the provision of any of the Passenger Services or the Shadow Operator Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 8 (Subcontracting any Passenger Services) of Schedule 1.1 (Franchise Services and Service Development));
7. any contract or arrangement with a Train Operator or other third party (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
8. any contract or arrangement with a Train Operator or other third party for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services or the Shadow Operator Services;
9. any contract or arrangement for the supply of spare parts or Spares;
10. any contract or arrangement for the maintenance of track and other related infrastructure;
11. any licences of Marks to the Franchisee;
12. any contract or arrangement relating to the operation of smart ticketing;
13. any licence of any CRM System or Yield Management System;
14. any contract or arrangement for the provision or lending of Computer Systems (other than the CRM System and Yield Management System) that the Secretary of State reasonably considers is essential for the delivery of the Franchise Services;
15. any contract for the maintenance and renewal works at Stations including any framework delivery contracts for the provision of building and civil engineering works, mechanical and electrical works at Stations; and

16. [Insert any other specific agreement, contract, licence or other arrangement that the Parties agree to be a Key Contract prior to signature of the Franchise Agreement].

SCHEDULE 14.4A

Designation of Franchise Assets

1. Franchise Assets

- 1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Franchisee from time to time during the Franchise Period shall be designated as Franchise Assets and shall constitute Franchise Assets for the purposes of section 27(11) of the Act.
- 1.2 The rights and liabilities of the Franchisee in respect of the following items shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of section 27(11) of the Act:
- (a) any contracts of employment;
 - (b) the Franchise Agreement and any Transfer Scheme or Supplemental Agreement;
 - (c) the Ticketing and Settlement Agreement;
 - (d) any sums placed on deposit with a bank or other financial institution;
 - (e) such other property, rights and liabilities as the Franchisee and the Secretary of State may agree from time to time or as the Secretary of State may de-designate as Franchise Assets under paragraph 10.2; and
 - (f) any Rolling Stock Leases.
- 1.3 The Franchisee shall keep vested in it at all times during the Franchise Period all Franchise Assets designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets) as it may require in order to comply with:
- (a) the Licences;
 - (b) any contracts of employment with Franchise Employees;
 - (c) any relevant Fares;
 - (d) any Key Contracts; and
 - (e) any applicable safety legislation regulations or safety standards and the Safety Certificate,
- in order to ensure that the Secretary of State may designate such assets as Primary Franchise Assets.

2. Primary Franchise Assets

- 2.1 The following property, rights and liabilities shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the following dates:
- (a) the property, rights and liabilities listed as such in the table in Appendix 1 (List of Primary Franchise Assets) to this Schedule 14.4 (which constitute Primary Franchise Assets agreed between the Parties as at the date of the Franchise Agreement), on the Start Date;
 - (b) any additional property, rights and liabilities designated under paragraph 3 during the Franchise Period, on the date of such designation;

- (c) any property or right which is vested in the Franchisee and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- (d) the rights and liabilities of the Franchisee under any Key Contract designated under paragraph 5, on the date of such designation;
- (e) the rights and liabilities of the Franchisee in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation;
- (f) any CRM Data and/or Yield Management Data and, to the extent that any CRM System and/or Yield Management System is the property of the Franchisee, such CRM System and/or Yield Management System on the later of the Start Date and:
 - (i) in relation to CRM Data or Yield Management Data, the date on which such CRM Data or Yield Management Data (as applicable) is collected; or
 - (ii) in relation to any such CRM System or Yield Management System, the date on which such CRM System or Yield Management System is created,save, in relation to CRM Data and Yield Management Data, any data in respect of which the Data Subject has not consented to such data being disclosed and processed by any Successor Operator and/or the Secretary of State;
- (g) any licence of any CRM System and/or Yield Management System, on the date of such licence;
- (h) an RV Asset on the date in which such RV Asset is brought into operational use as specified in the applicable Certification of Completion;
- (i) Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same), on the date such information is supplied to the Secretary of State pursuant to paragraph 1.1 of Schedule 1.5 (Information about Passengers);
- (j) any property and rights comprised in Committed Obligations and designated by the Secretary of State as Primary Franchise Assets pursuant to paragraph 9 of Schedule 6.2 (Committed Obligations), on the date of such designation;
- (k) the Primary Franchise Assets designated under the Functional Requirement Assets transfer process in paragraph 8 of Schedule 18.2 (Accepted Programme Specific Requirements), on the date of such designation; and
- (l) any assets purchased through the Franchisee completing its obligations under Schedule 18 (Shadow Operator), the Accepted Programme and/or the Transitional Programme, on the date that such asset is purchased by the Franchisee.

2.2 NOT USED.

3. Designation of Additional Primary Franchise Assets

3.1 The Secretary of State may at any time and from time to time, by serving notice on the Franchisee, designate any or all of the Franchise Assets as Primary Franchise Assets.

- 3.2 Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.
- 3.3 On or before designation of any Franchise Asset as a Primary Franchise Asset, the Secretary of State may agree not to subsequently de-designate such Primary Franchise Asset without the prior written consent of the Franchisee. If the Secretary of State so agrees, the notice designating the relevant Franchise Asset as a Primary Franchise Asset shall state the commitment not to de-designate.

4. Designation during last twelve (12) months of Franchise Period

- 4.1 If the Secretary of State designates a Franchise Asset as a Primary Franchise Asset under paragraph 3 at any time during the last twelve (12) months of the Franchise Period then, within twenty eight (28) days of such designation, the Secretary of State may, subject to paragraph 4.2, de-designate such Primary Franchise Asset by serving notice on the Franchisee. Such de-designation shall take effect upon delivery of such notice.
- 4.2 Where, the Secretary of State has given a commitment not to de-designate a Primary Franchise Asset pursuant to paragraph 3.3, the Secretary of State shall not de-designate such Primary Franchise Asset pursuant to paragraph 4.1 without first obtaining the prior written consent of the Franchisee.

5. Designation of Key Contracts as Primary Franchise Assets

The Secretary of State shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Franchise Asset at any time during the Franchise Period by serving notice on the Franchisee. Such designation shall take effect from delivery of such notice.

6. Designation of Fares and Discount Cards

The Secretary of State may designate any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchisee. Such designation shall take effect from delivery of such notice.

7. Rights and Liabilities

The Secretary of State, in designating the rights and liabilities of the Franchisee (whether under a particular contract or other arrangement) as a Primary Franchise Asset may, in the Secretary of State's discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

8. Disputes over Designation

- 8.1 The Franchisee may object in writing to the Secretary of State to any designation pursuant to paragraph 3 or 4.
- 8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Franchisee's opinion, reasonably necessary to secure the continued provision of the Franchise Services by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or to facilitate the transfer to such Successor Operator of the provision of the Franchise Services at such time.

- 8.3 Any such objection may only be made within twenty eight (28) days of a designation made more than twelve (12) months prior to the end of the Franchise Period or fourteen (14) days of a designation made during the last twelve (12) months of the Franchise Period.
- 8.4 The Franchisee shall not have a right to challenge the designation of Primary Franchise Assets where:
- (a) the Primary Franchise Assets are designated pursuant to the asset transfer mechanism in paragraph 8 of Schedule 18.2 (Shadow Operations); or
 - (b) where the Primary Franchise Assets have been designated automatically as a result of being purchased in order to fulfil the Franchisee's obligations under Schedule 18.1 (Shadow Operations).
- 8.5 The Secretary of State shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Franchisee regarding the use of the relevant Primary Franchise Asset otherwise than in the provision and operation of the Franchise Services.
- 8.6 If the Franchisee's objection cannot be resolved by agreement within a period of fourteen (14) days from the date of submission of that objection, the Franchisee may refer the dispute for resolution in accordance with the Dispute Resolution Rules.
- 8.7 Any body duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or otherwise facilitating the transfer of the provision of the Franchise Services at such time, and accordingly whether or not they should cease to be so designated.
- 8.8 If any dispute as to any designation pursuant to paragraph 3 remains outstanding on the expiry of the Franchise Period, then such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant Franchise Assets shall continue to be designated as Primary Franchise Assets on and after the expiry of the Franchise Period.

9. Provision of Information to the Secretary of State

- 9.1 The Franchisee shall provide such information as the Secretary of State may reasonably require in order to satisfy the Secretary of State that any Franchise Assets which are to be designated as Primary Franchise Assets after the Start Date under this Schedule 14.4 will at the time of such designation be vested in the Franchisee. Such information may include details of any Security Interests over such property, rights and liabilities.
- 9.2 The Franchisee shall further provide such information as to the property, rights and liabilities of the Franchisee as the Secretary of State may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Secretary of State within such timescale as the Secretary of State may reasonably require.

10. De-Designation of Franchise Assets and Primary Franchise Assets

- 10.1 The Secretary of State and the Franchisee may agree in writing at any time that a:
- (a) Franchise Asset shall cease to be designated as a Franchise Asset; or
 - (b) Primary Franchise Asset shall cease to be designated as a Primary Franchise Asset,

and the relevant Franchise Asset or Primary Franchise Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.

- 10.2 The Secretary of State may, in addition at any time during the Franchise Period, by serving notice on the Franchisee:
- (a) cause a Franchise Asset which is not a Primary Franchise Asset to cease to be designated as a Franchise Asset. Such Franchise Asset shall cease to be designated on the date specified in such notice; or
 - (b) subject to paragraph 10.3, cause a particular Primary Franchise Asset to cease to be designated as such. Such Primary Franchise Asset shall cease to be designated on the date specified in such notice.
- 10.3 Where, the Secretary of State has given a commitment not to de-designate a Primary Franchise Asset pursuant to paragraph 3.3, or pursuant to any provision of the Franchise Agreement giving that commitment, the Secretary of State shall not de-designate such Primary Franchise Asset pursuant to paragraph 10.2(b) without first obtaining the prior written consent of the Franchisee.
- 10.4 The Secretary of State's rights pursuant to paragraph 10.2(b) may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Asset, no later than one (1) year prior to the expiry of the Franchise Term.

11. Amendment of the List of Primary Franchise Assets

The table in Appendix 1 (List of Primary Franchise Assets) to this Schedule 14.4 shall be amended as the Secretary of State considers necessary or desirable from time to time to take account of designation and de-designation of Primary Franchise Assets pursuant to this Schedule 14.4.

APPENDIX TO SCHEDULE 14.4A

List of Primary Franchise Assets⁸⁵

Description of Primary Franchise Asset*	Commitment not to de-designate	To Transfer to Successor Operator at Nil Value
The rights and liabilities of the Franchisee under the Sub-licence Deed between the British Railways Board and the Previous Franchisee dated 27 February 1996.	No	Yes
The rights and liabilities of the Franchisee under the Master Software Licence between the British Railways Board and the Previous Franchisee dated 27 February 1996.	No	Yes
The rights and liabilities of the Franchisee under the Computer Services Agreement between the British Railways Board and the Previous Franchisee dated 27 February 1996.	No	Yes
The rights and liabilities of the Franchisee under the Universal Licence Agreement between the British Railways Board and the Previous Franchisee dated 27 February 1996.	No	Yes
The Track Access Agreement dated 1 September 2011 and entered into between Network Rail Infrastructure Limited and the Secretary of State for Transport as such agreement was novated to the Previous Franchisee on 26 October 2011.	No	Yes
Lease dated 28 November 2003 between Network Rail Infrastructure Limited and West Coast Trains Limited relating to the leases of stations in the West	No	Yes

85 **Note to Bidders:** To be updated and populated by the winning Bidder and DfT. The List of Primary Franchise Assets to be updated on a periodic basis.

Coast Franchise, England and Wales.		
Any information technology hardware, software and other information technology equipment purchased or acquired by the Previous Franchisee pursuant to the franchise agreements dated 5 December 2012 and 18 June 2014 and the Previous Franchise Agreement	No	Yes
Any equipment relating to the provision of catering services to passengers using Class 390 Rolling Stock purchased or acquired by the Previous Franchisee pursuant to the franchise agreements dated 5 December 2012 and 18 June 2014 and the Previous Franchise Agreement	No	Yes
The standalone Human Resources IT system acquired by the Previous Franchisee in accordance with paragraph 8.1(d) of Part 1 to Schedule 6.1 of the Franchise Agreement dated 18 June 2014.	No	Yes
Any IT or IT-related assets procured by the Previous Franchisee for the development of the Virtual Driver Depot in accordance with paragraph 14.1 of Part 1 to Schedule 6.1 of the Franchise Agreement dated 18 June 2014.	No	Yes
All ticket vending machines and automatic ticket gates.	No	Yes
Any on-board catering equipment, including trolleys, carts, cutlery and crockery, and appropriate service centre equipment and any replacement system of the TIS AVOCET sales system acquired by the Previous Franchisee in accordance with paragraph 11.2 of Part 1 to	No	Yes

Schedule 6.2 of the Previous Franchise Agreement.		
Any Help Points, CCTV systems and SISS designated as Primary Franchise Assets in accordance with paragraph 31.6 of Part 1 to Schedule 6.1 of the Franchise Agreement dated 18 June 2014.	No	Yes
Any Wi-Fi equipment on board trains and at Stations which allows customers access to Wi-Fi networks to the extent funded by the Secretary of State under the Franchise Agreement dated 18 June 2014 or the Previous Franchise Agreement.	No	Yes
Any Wi-Fi equipment on board trains and at Stations which allows customers access to Wi-Fi networks acquired and funded by the Previous Franchisee under the Previous Franchise Agreement.	No	Yes
All ticket reading equipment including bar-code readers on ticket gates and hand held devices.	No	Yes

**Note that the Secretary of State may elect to designate under Schedule 14.4 as Primary Franchise Assets any assets delivered by the Franchisee as part of a Committed Obligation under Schedule 6.2 (Committed Obligations).*

SCHEDULE 14.5A

Dealing with Franchise Assets

1. Assets not Designated as Primary Franchise Assets

- 1.1 This paragraph 1 relates to any Franchise Assets that are property or rights and are not designated as Primary Franchise Assets.
- 1.2 For the purposes of section 27(3) of the Act, the Secretary of State consents to the Franchisee:
- (a) transferring or agreeing to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets; and
 - (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Franchise Assets.

2. Liabilities not Designated as Primary Franchise Assets

- 2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Franchise Assets.
- 2.2 For the purposes of section 27(3) of the Act, the Secretary of State consents to the Franchisee entering into any agreement under which any such liability is released or discharged, or transferred to another person.

3. Franchise Assets and Primary Franchise Assets

- 3.1 This paragraph 3 relates to Franchise Assets (whether or not designated as Primary Franchise Assets) which are property or rights.
- 3.2 The Secretary of State hereby consents to the installation of Spares which have been designated as Primary Franchise Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.
- 3.3 For the purposes of section 27(3) of the Act, the Secretary of State hereby consents to the Franchisee creating or agreeing to create any Security Interest over any of these Franchise Assets to the extent that the terms of any such Security Interest provided that:
- (a) if the relevant Franchise Asset becomes the subject of a transfer scheme made under section 12 and Schedule 2 of the Railways Act 2005, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;
 - (b) if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with the Franchise Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
 - (c) such Security Interest shall not be enforced or enforceable until the date on which such Franchise Asset ceases to be designated as a Franchise Asset.

4. Prohibition on Other Security Interests

The Franchisee shall not create or agree to create a Security Interest over any Franchise Asset except on the terms permitted under paragraph 3.3.

5. Miscellaneous

The Franchisee shall promptly inform the Secretary of State of any Security Interest arising at any time over any of its property or rights and shall provide the Secretary of State with such information in relation thereto as the Secretary of State may reasonably require.

SCHEDULE 14.6A

Residual Value Mechanism

1. Provisions relating to RV Assets

1.1 The provisions of paragraphs 3, 4, 7, 8 and 10 to 12 of Schedule 14.4 (Designation of Franchise Assets) (inclusive) shall not apply in respect of any RV Asset.

1.2 De-Designation of RV Assets as Primary Franchise Assets

The Secretary of State may, at any time during the Franchise Period, by serving notice on the Franchisee cause a particular RV Asset designated as a Primary Franchise Asset pursuant to paragraph 2.1(h) of Schedule 14.4 (Designation of Franchise Assets) to cease to be designated as such on the occurrence of any of the following:

- (a) such RV Asset is lost, destroyed or otherwise beyond repair after the date upon which it is designated as a Primary Franchise Asset pursuant to paragraph 2.1(h) of Schedule 14.4 (Designation of Franchise Assets) and such RV Asset is not replaced; or
- (b) the Secretary of State and the Franchisee agree in writing at any time during the Franchise Period that such RV Asset shall cease to be so designated as a Primary Franchise Asset; or
- (c) for an RV Asset that is an Infrastructure Manager Fixture Asset the applicable Station Access Conditions or Depot Access Conditions are amended at any time after the date of designation of such RV Asset such that the Franchisee ceases to be responsible under the applicable Station Access Conditions or Depot Access Conditions (as the case may be) for the maintenance, repair and renewal of such RV Asset.

Such RV Asset shall cease to be designated as a Primary Franchise Asset with effect from the date specified in any notice served by the Secretary of State pursuant to this paragraph 1.2 and the table in Appendix 1 to Schedule 14.6 (List of the RV Assets) shall be deemed to be amended and thereafter shall be amended to take account of any such de-designation.

1.2A De-Designated RV Assets which remain Primary Franchise Assets

A notice served by the Secretary of State on the Franchisee pursuant to paragraph 10.8(a) of Schedule 18.1 (Shadow Operations) shall constitute a notice of de-designation for the purpose of this paragraph 1.2A and:

- (a) the relevant RV Asset shall cease to be designated as an RV Asset with effect from the Integrated Operator Start Date;
- (b) the table in Appendix 1 to Schedule 14.6 (List of the RV Assets) shall be deemed to be amended and thereafter shall be amended to take account of any such de-designation; and
- (c) the relevant RV Asset shall, with effect from the Integrated Operator Start Date, be designated as a Primary Franchise Asset which shall transfer to a Successor Operator at nil value and the table in the Appendix to Schedule 14.4B (Designation of Franchise Assets) shall be updated to reflect such designation.

1.3 Process for issue of a Certificate of Completion for RV Assets

- (a) Within twenty (20) days of the date upon which an RV Asset is brought into operational use the Franchisee shall provide to the Secretary of State such information as is required

by the Secretary of State for, and in the detail needed for demonstrating that such RV Asset has been brought into operational use and evidencing the actual capital cost incurred by the Franchisee on the procurement of such RV Asset including the following:

- (i) information described in paragraph 9 of Schedule 14.4 (Designation of Franchise Assets), including such information as the Secretary of State may require pursuant to paragraph 9.2 of Schedule 14.4 (Designation of Franchise Assets);
 - (ii) information which shows the actual date upon which such RV Asset was brought into operational use (including photographic evidence or any other kind of record which shows that such RV Asset has been brought into operational use);
 - (iii) in respect of an RV Asset that is an Infrastructure Manager Fixture Asset, written confirmation from the Infrastructure Manager that:
 - (A) such RV Asset will be owned by the Franchisee and remain the unencumbered asset of the Franchisee for the duration of the asset life of such RV Asset or the duration of the Franchise Period (whichever is the shorter);
 - (B) the Franchisee has the responsibility under the Station Access Conditions or the Depot Access Conditions (as the case may be) applicable in relation to such Station or Depot (as the case may be) to maintain, repair and renew such RV Asset from the date upon which such RV Asset property is brought into operational use for the duration of the asset life of such RV Asset or the duration of the Franchise Period (whichever is the shorter);
 - (iv) information evidencing the actual capital cost of procuring such RV Asset (including receipts and other supporting evidence) or where all information required to evidence the actual capital cost of procuring such RV Asset is not yet available the Franchisee's reasonable estimate of such actual capital cost with a commentary explaining how the estimate has been arrived at;
 - (v) information which shows that such RV Asset satisfies the requirements of the Committed Obligations to which it relates;
 - (vi) information required by paragraph 2.1; and
 - (vii) such other information as the Secretary of State may reasonably require for the purposes of verifying the actual capital costs incurred by the Franchisee on the procurement of such RV Asset.
- (b) Subject to receipt of the information required in paragraph 1.3(a) and none of the events described in paragraph 1.2 having occurred, the Secretary of State shall issue to the Franchisee a certificate of completion ("**Certificate of Completion**") which shall specify for the purposes of this Agreement the date upon which the relevant RV Asset was brought into operational use provided that nothing in this paragraph 1.3(b) shall oblige the Secretary of State to issue a Certificate of Completion in respect of any RV Asset:
- (i) if the Secretary of State, acting reasonably is not satisfied that such RV Asset will at the time of such designation be vested in the Franchisee;
 - (ii) if the Secretary of State reasonably determines that such RV Asset does not satisfy the requirements of the Committed Obligation to which it relates; or
 - (iii) where the confirmation from the Infrastructure Manager referred to in paragraph 1.3(a)(iii) has not been issued.

- (c) The Secretary of State may, prior to the issue of a Certificate of Completion in respect of an RV Asset, exercise the Secretary of State's rights under paragraph 6 (Right to Inspect) of Schedule 11.2 (Management Information) to inspect an RV Asset for the purposes of satisfying the Secretary of State that such RV Asset satisfies the requirements of the Committed Obligation to which it relates.
- (d) Where the Franchisee is only able to provide an estimate of the capital cost of procuring an RV Asset pursuant to paragraph 1.3(a)(iv) above it shall notify the Secretary of State of the actual capital cost of procuring the RV Asset (with receipts and other supporting evidence) as soon as reasonably practicable and in any event within six months of the date of issue of a Certificate of Completion of such RV Asset. The Franchisee shall provide the Secretary of State with such further information as the Secretary of State may reasonably require for the purposes of verifying the actual capital costs incurred by the Franchisee on the procurement of such RV Asset.

1.4 Adjustments to the Transfer Value

If:

- (a) the Franchise Agreement is extended as contemplated in clause 5 (Duration of the Franchise Agreement) or the Integrated Operator Start Date is later than 1 April 2026, then the Secretary of State shall adjust the RV Asset Transfer Value applicable to each RV Asset by depreciating each such RV Asset on a straight line basis from the date specified for such RV Asset in Column 3 of Appendix 1 to this Schedule 14.6 ("**Planned Delivery Date**") until the end of the Franchise Period (as extended) or the date of the Integrated Operator Start Date (as applicable) and so that:
 - (i) the Revised RV Asset Transfer Value will be the residual value of the RV Asset following such depreciation as at the end of the Franchise Period (as extended) or the date of the Integrated Operator Start Date (as applicable) or, if the RV Asset has been fully depreciated on that basis at that time, nil; and
 - (ii) from the date of the extension of the Franchise Agreement Column 2 of the table in Appendix 1 to this Schedule 14.6 (List of the RV Assets) shall be deemed to be and shall be restated in the amounts of the Revised RV Asset Transfer Value; or
- (b) the actual capital cost incurred by the Franchisee in procuring any RV Asset is less than the amount specified in Column 5 of the table in Appendix 1 to this Schedule 14.6 (List of the RV Assets) in respect of any such RV Asset, then:
 - (i) the Secretary of State shall adjust the RV Asset Transfer Value applicable to such RV Asset by using the same principles as were specified in the ICWC Financial Model and ICWC Record of Assumptions for the calculation of the initial RV Asset Transfer Value except that actual capital cost for such RV Asset shall replace the capital cost specified for such RV Asset in Column 5 of the table of Appendix 1 to this Schedule 14.6 (List of the RV Assets) in order to calculate the Revised RV Asset Transfer Value. Such adjustment shall be deemed to take effect from the date upon which a Certificate of Completion is issued including in the circumstance where the actual capital cost is notified to the Secretary of State pursuant to paragraph 1.3(d) after the date of issue of a Certificate of Completion; and
 - (ii) Column 2 of the table in Appendix 1 to this Schedule 14.6 (List of the RV Assets) shall be restated and shall be restated in the amounts of the Revised RV Asset Transfer Value such restatement to be deemed to be effective from the date of issue of a Certificate of Completion.
- (c) For the purposes of this paragraph 1.4:

- (i) **“RV Asset Transfer Values”** means each of the transfer values relating to the RV Assets as specified in Column 2 of the table in Appendix 1 to this Schedule 14.6 (List of RV Assets);
- (ii) **“Revised RV Asset Transfer Values”** means each of the RV Asset Transfer Values as adjusted by the Secretary of State in accordance with the provisions of paragraph 1.4(a) or paragraph 1.4(b) (as applicable).

2. Maintenance Requirements for RV Assets

- 2.1 At the same time as the Franchisee provides the information required pursuant to paragraph 1.3(a) in respect of any RV Asset, the Franchisee shall submit to the Secretary of State a schedule of condition specifying the condition of such RV Asset as at the date upon which such RV Asset was brought into operational use as specified in the applicable Certificate of Completion. Such schedule of condition must be approved by the Secretary of State and shall be in respect of such aspects of an RV Asset as the Secretary of State may reasonably require. The Franchisee shall ensure that each RV Asset is maintained, preserved and protected in at least the same condition, subject to fair wear and tear, as specified in the applicable schedule of condition as approved by the Secretary of State in respect of such RV Asset pursuant to this paragraph 2.1. In respect of any RV Asset that is an Infrastructure Manager Fixture Asset the Franchisee shall ensure that any schedule of condition prepared as required by this paragraph 2.1 shall comply with the Franchisee's maintenance obligations relating to such Infrastructure Manager Fixture Asset under the applicable Station Access Conditions and/or Depot Access Conditions (as the case may be).
- 2.2 Subject to paragraph 2.3, where the Franchisee has failed to demonstrate to the reasonable satisfaction of the Secretary of State that it has complied with its maintenance obligations in paragraph 2.1 in respect of any RV Asset then the Secretary of State may by notice in writing to the Franchisee require that the RV Asset Transfer Value payable by a Successor Operator required pursuant to the Supplemental Agreement to pay to the Franchisee the RV Asset Transfer Value for such RV Asset (**“Relevant Successor Operator”**) is adjusted downwards by an amount that is equal to the amount that is agreed by the Franchisee and the Relevant Successor Operator (or on failure to agree, as reasonably determined by the Secretary of State) as being the amount reasonably expected to be incurred by the Relevant Successor Operator for putting such RV Asset in the condition required pursuant to paragraph 2.1.
- 2.3 The provisions of paragraph 2.2 shall not apply in circumstances where the Franchisee and the Relevant Successor Operator agree that the Franchisee shall either:
 - (a) rectify any relevant non-compliance with the requirements of paragraph 2.1; or
 - (b) indemnify the Relevant Successor Operator (the form of such indemnity to be in a form that is acceptable to the Relevant Successor Operator) against the reasonable costs of putting the relevant RV Asset in the condition required by paragraph 2.1.

3. Additional RV Assets

- 3.1 At any time prior to the ICWC Expiry Date, the Franchisee may submit to the Secretary of State in writing a business case (**“RV Asset Business Case”**) relating to the purchase of any Fixed or Non-Current Asset which will have a useful economic life of at least one year, as calculated by applying GAAP accounting assumptions as appropriate to the asset, beyond the Anticipated Switch Review Date (**“Proposed RV Asset”**).
- 3.2 Any RV Asset Business Case submitted to the Secretary of State shall:
 - (a) provide the information required to complete each of the columns in the Appendix to this Schedule 14.6 in respect of the Proposed RV Asset;

- (b) identify whether the Proposed RV Asset is intended to be affixed to a Station or Depot (as the case may be) such that it will be regarded as a fixture to and part of such Station or Depot (as the case may be) and/or is intended to be located on the land of an Infrastructure Manager;
 - (c) where the Proposed RV Asset is intended to be affixed to a Station or Depot such that it will be regarded as a fixture to and part of such Station or Depot and/or is intended to be located on the land of an Infrastructure Manager, identify whether the relevant Infrastructure Manager supports the designation of the Proposed RV Asset as an RV Asset;
 - (d) demonstrate (with supporting evidence) that the Proposed RV Asset does not conflict with any requirement or plan of HS2 Limited;
 - (e) demonstrate (with supporting evidence) the useful economic life of the Proposed RV Asset as calculated by applying GAAP accounting assumptions as appropriate to the asset;
 - (f) set out the revenue generated and/or cost savings expected to arise from the use of the Proposed RV Asset, including any incremental additional maintenance or other ongoing costs;
 - (g) demonstrate that the Proposed RV Asset shall be and remain the unencumbered property of the Franchisee for the Franchise Period and shall transfer unencumbered to a Successor Operator at the end of the Franchise Period; and
 - (h) confirmation of the nature of any third party funding relating to the Proposed RV Asset and of any obligations relating to such third party funding.
- 3.3 Upon receipt of an RV Asset Business Case, the Secretary of State may request such further information and/or evidence as the Secretary of State requires in order to consider whether to designate the Proposed RV Asset as an RV Asset and the Franchisee shall provide such information and/or evidence promptly upon receiving a request from the Secretary of State.
- 3.4 If the Secretary of State considers that the Proposed RV Asset should be designated an RV Asset, the Parties shall seek to agree the information required to complete each of the columns in the Appendix to this Schedule 14.6 in respect of the Proposed RV Asset ("**RV Asset Information**").
- 3.5 Following agreement of the RV Asset Information, the Secretary of State may (at the Secretary of State's sole discretion) notify the Franchisee that the Proposed RV Asset is to be designated an RV Asset, and the Proposed RV Asset and the RV Asset Information agreed in accordance with paragraph 3.4 shall be deemed to be added to the Appendix to this Schedule 14.6.
- 3.6 The provisions of paragraph 2.1(h) of Schedule 14.4 and paragraphs 1 and 2 of this Schedule 14.6 apply to any RV Assets included in the Appendix to this Schedule 14.6 in accordance with paragraph 3.5.

APPENDIX 1 TO SCHEDULE 14.6A

List of the RV Assets

Column 1	Column 2	Column 3	Column 4	Column 5	
Description of the RV Assets ⁸⁶	RV Transfer Value (£) at 1 April 2026 ⁸⁷	Asset Value April ⁸⁸	Planned Delivery Date ⁸⁸	Is RV Asset an Infrastructure Manager Fixture Asset (Yes/No) ⁸⁹	Capital Cost (£) ⁹⁰

86 **Note to Bidders:** Bidders to populate. Description of assets to be populated by Bidders. Assets to be included in the table must comply with each of the principles set out in the ITT.

87 **Note to Bidders:** Bidders to populate. Bidders to include the residual value of the asset listed in Column 1 of the table, such value to be determined in accordance with the principles set out in the ITT as at 1 April 2026.

88 **Note to Bidders:** Bidders to populate. The date in which the asset listed in Column 1 is to be delivered and brought into use is to be specified by the Bidders in this Column.

89 **Note to Bidders:** Bidders to populate.

90 **Note to Bidders:** Bidders to populate. The capital cost specified in this Column shall comply with the requirements for capital costs as set out in the ITT.

SCHEDULE 14.7A

Incentivising Long Term Investment

This Schedule sets out the Secretary of State's guidance on how the Secretary of State approaches incentivising long term investment.

1. The Secretary of State wishes to encourage the Franchisee to:
 - (a) improve the efficiency;
 - (b) reduce the cost; and
 - (c) enhance the revenue earning potential of the delivery of services to passengers, from the commencement of the Franchise, through the ICWC Term and into IOC Term and/or the successor franchises.
2. It is recognised however that the length of the ICWC Term may be perceived to be a barrier to undertaking investment or change programmes where:
 - (a) the time scale for implementation limits the benefit to the Franchisee; or
 - (b) the business case for such investment or change has a payback period longer than the ICWC Term.
3. In this context investment or change may be considered to encompass:
 - (a) capital investments undertaken solely by the Franchisee;
 - (b) capital investments undertaken by the Franchisee in association with others;
 - (c) total or partial substitution of certain train services by bus services where an enhanced service level could be provided for reduced cost or where the provision of bus services improves the overall capacity of the network or delivers other benefits;
 - (d) changes in working practices of the Franchisee's employees;
 - (e) changes in the contracted roles and responsibilities between the Franchisee and its major suppliers; and
 - (f) operational changes.
4. Accordingly, the Franchisee is encouraged to propose schemes that seek to achieve the objectives set out in paragraph 1 of this Schedule 14.7 for consideration by the Secretary of State during the ICWC Term.
5. In considering the Franchisee's proposals for any investment or change proposed to be undertaken, the Secretary of State will recognise:
 - (a) the capital cost and proposed payment profile;
 - (b) legitimate costs of the Franchisee in developing, procuring, delivering and project managing the project;

- (c) the life of any capital assets and the duration of the benefits stream arising;
- (d) the remaining ICWC Term and the projected payback period;
- (e) the benefits associated with undertaking the investment early rather than waiting until the Franchise is re-let;
- (f) the risks of cost overrun or under performance of the projected benefits;
- (g) a profit element for undertaking the project commensurate with the risks of the proposed project; and
- (h) alternative benefit sharing arrangements which could be based on:
 - (i) a capital lump sum when the expenditure is incurred;
 - (ii) an enhanced Franchise Payment over the ICWC Term;
 - (iii) a balloon payment on expiry of the ICWC Term of Franchise Term which allocates a proportion of future benefits to the Franchisee;
 - (iv) an ongoing payment if the benefits materialise after the ICWC Term; and/or
 - (v) any combination of any of paragraphs 5(h)(i) to 5(h)(iv) of this Schedule 14.7 inclusive.

6. In evaluating the Franchisee's proposals for any investment or change proposed to be undertaken and to enable best value for money to be obtained from third party financiers, the Secretary of State shall also give consideration to the appropriateness of the provision, by the Secretary of State, of an undertaking (or other form of comfort) pursuant to section 54 of the Act.

SCHEDULE 15A

OBLIGATIONS ASSOCIATED WITH TERMINATION

Schedule 15.1A:	Reletting Provisions
Schedule 15.2A:	Last Twelve (12) or Thirteen (13) months of Franchise Period and other conduct of business provisions
Schedule 15.3A:	Handover Package
	Appendix 1: Form of Handover Package
Schedule 15.4A:	Provisions Applying on and after Termination
	Appendix 1: Template Form of Transfer Scheme
	Appendix 2: Template Form of Supplemental Agreement

SCHEDULE 15.1A

Reletting Provisions

1. Reletting of Franchise

1.1 The Franchisee acknowledges that the Secretary of State may wish, at or before the expiry of the Franchise Period, either to invite persons to tender for the right to:

- (a) provide all or some of the Passenger Services under a franchise agreement;
- (b) provide all or some of the Shadow Operator Services under an agreement; and/or
- (c) provide all or some of the Passenger Services and the Shadow Operator Services under a franchise agreement

or alternatively to enter into an agreement for the provision of such services without having gone through a tendering process.

1.2 The Franchisee further acknowledges that the Secretary of State has in certain circumstances a duty under section 30 of the Act to secure the continued provision of services equivalent to the Passenger Services on expiry or termination of the Franchise Agreement. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development), Schedule 14 (Preservation of Assets) and this Schedule 15 (Obligations Associated with Termination).

2. Preparation for Reletting

2.1 The Franchisee shall, if so requested by the Secretary of State provide the Secretary of State and the Secretary of State's representatives and advisers with access to officers, the Franchise Employees and all books, records and other materials kept by or on behalf of the Franchisee in connection with the Franchise Services (including electronic or magnetic records, any CRM System and any Yield Management System) for the purpose of assisting such representatives and advisers:

- (a) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Franchise Services;
- (b) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
- (c) to enter into any franchise agreement or other agreement (including any agreement entered into by the Secretary of State in fulfilment of the Secretary of State's duties under section 30 of the Act) relating to the services equivalent to the Franchise Services, (or any part thereof) without undergoing a tendering process,

provided that the exercise of such access rights by the Secretary of State and the Secretary of State's representatives and advisers shall not unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

3. Data Site Information

3.1 The Franchisee shall, at the request of the Secretary of State, make available to the Secretary of State and the Secretary of State's representatives and advisers:

- (a) the information relating to the Franchise Services as specified in the document in the agreed terms marked **DSMI** (the "**Data Site Monitor and Index**"); and
- (b) such other information as they shall reasonably require in connection with the matters referred to in paragraph 2.1,

in each case, by no later than three (3) months after the date of any such request. For the purposes of this paragraph 3 the information referred to in paragraphs 3.1(a) and 3.1(b) shall be the "**Data Site Information**".

3.2 The Data Site Monitor and Index shall be amended and updated by the Secretary of State from time to time. Such amended and updated Data Site Monitor and Index shall, from the date that the Franchisee receives notification from the Secretary of State of any such amendment or update, be the applicable Data Site Monitor and Index for the purposes of this paragraph 3.

3.3 The Franchisee shall prepare and present the Data Site Information in such manner and in such format (including in disaggregated form) as the Secretary of State may specify in the Data Site Monitor and Index or otherwise require, and shall provide such assistance as the Secretary of State may require in connection with the verification and the updating of such Data Site Information.

3.4 The Franchisee shall provide such confirmation in relation to the accuracy of:

- (a) the contents of the documents referred to in paragraph 2.1; and
- (b) any Data Site Information uploaded to such electronic data site as the Secretary of State may require pursuant to paragraph 3.5,

in each case, as the Secretary of State shall require from time to time.

3.5 The Franchisee shall upload the Data Site Information to such electronic data site as the Secretary of State may specify and shall make a sufficient number of appropriate staff available for that purpose. The Franchisee shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Secretary of State).

3.6 The Franchisee shall:

- (a) comply with its obligations under paragraph 2.1 and this paragraph 3 promptly and in any case in accordance with any reasonable timetable with which the Secretary of State requires the Franchisee by notice in writing to comply;
- (b) where the Secretary of State raises with the Franchisee any query in relation to any Data Site Information, make a full and substantive response to such query within five (5) Weekdays. Such response shall include any further information requested by the Secretary of State in relation to such query; and
- (c) nominate a person to whom:
 - (i) all queries or requests for information pursuant to paragraph 3.6(b);

- (ii) requests for access to premises pursuant to paragraph 5; and
- (iii) requests for access to employees,

shall be addressed and who shall be responsible for complying with any such queries or requests for information and such requests for access to employees and premises. The Franchisee shall notify the Secretary of State (the Secretary of State's representatives and advisers) of the name and contact details of such person.

3.7 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of services equivalent to the Franchise Services (whether or not together with other railway passenger services) at or following the end of the Franchise Period, the Franchisee agrees and acknowledges that the Secretary of State may require:

- (a) that the Franchisee provides the Secretary of State with additional information and reports and analysis in respect of such Service Groups as the Secretary of State may specify. This may include:
 - (i) information relating to the operational and financial performance of the Franchisee in relation to such Service Groups; and
 - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
- (b) subject to paragraph 3.8, that the Franchisee reorganises the business of providing services equivalent to the Franchise Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Franchise Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:
 - (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or
 - (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Franchise Services within that Service Group; and
- (c) that the Franchisee uploads Data Site Information to more than one data site.

3.8 Subject to paragraph 3.9, the Secretary of State shall reimburse any reasonable out of pocket expenses that the Franchisee may incur in complying with its obligations under this paragraph 3.

3.9 Without prejudice to any other rights the Secretary of State may have (under the Franchise Agreement or otherwise) in respect of any contravention by the Franchisee of its obligations under this paragraph 3, if the Secretary of State is of the reasonable opinion that the Franchisee does not have sufficient resources to enable its compliance with its obligations under this paragraph 3 the Secretary of State may:

- (a) require the Franchisee (at its own cost) to employ; or
- (b) after notification to the Franchisee, employ,

such suitable additional resource as may be required to ensure that the Franchisee can comply with its obligations under this paragraph 3. The Franchisee shall reimburse to the Secretary of State, by way of adjustment to Franchise Payments, any proper costs (including staff costs) incurred by the Secretary of State in the employment of any such additional resource pursuant to paragraph 3.9(b).

- 3.10 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 3.9, the Secretary of State shall allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning the exercise by the Secretary of State of the Secretary of State's rights under paragraph 3.9 but the Secretary of State shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 3.9.

4. Non-Frustration of Transfer to Successor Operator

- 4.1 The Franchisee shall take no action or steps which is or are designed, directly or indirectly:
- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Franchise Services at the end of the Franchise Period to a Successor Operator;
 - (b) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Shadow Operator Services at the end of the Franchise Period or upon termination of the Shadow Operator Services to a Successor Shadow Operator; or
 - (c) to avoid, frustrate or circumvent any provision of the Franchise Agreement (including in particular the provisions of Schedule 14 (Preservation of Assets) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventative, prejudicial or frustrating action steps.
- 4.2 Subject to the restrictions set out in paragraph 4.1 and the other provisions of the Franchise Agreement, the Franchisee may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

5. Inspection Rights during the Tendering/Reletting Process

- 5.1 Without limiting any other rights of the Secretary of State under the Franchise Agreement and subject to paragraph 5.3, the Franchisee shall permit the undertaking of inspections (including the taking of inventories) or surveys of:
- (a) trains;
 - (b) Stations;
 - (c) Depots;
 - (d) sidings; and/or
 - (e) other premises owned or occupied by the Franchisee or any of its Affiliates or used in connection with the provision of the Franchise Services by the Franchisee or any of its Affiliates,

("Inspections") by the Secretary of State (or the Secretary of State's nominee, which for these purposes shall include potential Successor Operators including potential bidders who have expressed an interest in tendering for the right and obligation to operate any or all of the Franchise Services, and who carry suitable identification and evidence of authorisation ("Nominee")) as

the Secretary of State may reasonably require in connection with any Tendering/Reletting Process.

- 5.2 The Franchisee shall provide a travel permit(s) which will allow the Secretary of State or a Nominee to travel free of charge on the Routes in order to carry out the Inspections.
- 5.3 The Secretary of State shall use reasonable endeavours to ensure that any Inspections shall be undertaken so as not to unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

SCHEDULE 15.2A

**Last Twelve (12) or Thirteen (13) Months of the ICWC Period
and Other Conduct of Business Provisions**

1. Last Twelve (12) or Thirteen (13) Month Period

- 1.1 Where reference is made in the Franchise Agreement to the last twelve (12) or thirteen (13) months of the ICWC Period, such period shall be deemed to commence on the earliest of the following dates:
- (a) the date which is twelve (12) or thirteen (13) months, as the case may be, prior to the Anticipated Switch Review Date or if the actual Switch Review Date is known the date which is twelve (12) or thirteen (13) months prior to that date;
 - (b) the date on which the Secretary of State notifies the Franchisee that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Secretary of State reasonably considers that an Event of Default may occur within the following twelve (12) months; or
 - (c) the date on which the Secretary of State notifies the Franchisee that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Secretary of State considers it reasonably likely that the Franchise Agreement will be terminated by agreement between the Parties within such period.
- 1.2 Any such period (which may be longer or shorter than twelve (12) or thirteen (13) months, as the case may be) shall expire on the ICWC Expiry Date or, if earlier:
- (a) in the case of periods commencing under paragraph 1.1(b) or 1.1(c), the date falling twelve (12) or thirteen (13) months after the date of any notice under paragraph 1.1(b) or 1.1(c); or
 - (b) such earlier date as the Secretary of State may determine.

2. Terms of Employment of Existing Employees

- 2.1 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld), vary or purport or promise to vary the terms or conditions of employment of any Franchise Employee (in particular, the Franchisee shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:
- (a) takes effect in the last twelve (12) months of the ICWC Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the following formula:

$$\frac{MAWE + JAWE + SAWE + DAWE}{4}$$

where:	
MAWE	is the change in the Average Weekly Earnings between March in the preceding twelve (12) months and the corresponding March one (1) year before, expressed as a percentage;
JAWWE	is the change in the Average Weekly Earnings between June in the preceding twelve (12) months and the corresponding June one (1) year before, expressed as a percentage;
SAWE	is the change in the Average Weekly Earnings between September in the preceding twelve (12) months and the corresponding September one year before, expressed as a percentage; and
DAWE	is the change in the Average Weekly Earnings between December in the preceding twelve (12) months and the corresponding December one (1) year before, expressed as a percentage;

- (b) wholly or partly first takes effect after the end of the ICWC Period;
- (c) results in any such employment not being terminable by the Franchisee or other relevant employer within six (6) months of the expiry of the ICWC Period;
- (d) relates to a payment or the provision of a benefit triggered by termination of employment;
- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the ICWC Period; or
- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the Franchisee.

It is agreed that the Franchisee shall be permitted to make a decrease in the remuneration of any Franchise Employee that takes effect in the last twelve (12) months of the ICWC Period without first obtaining the consent of the Secretary of State in circumstances where such decrease is in the ordinary course of business and when aggregated with any other variation which takes effect during such period, represents a decrease in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the formula contained in paragraph 2.1(a) where a calculation pursuant to such formula gives rise to a negative percentage. In any other circumstances the prior consent of the Secretary of State will be required to any decrease in the remuneration of a Franchise Employee in the last twelve (12) months of the ICWC Period.

2.2 Without limiting the foregoing, the Franchisee shall consult the Secretary of State as soon as reasonably practicable in any circumstances in which the Secretary of State's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for the Secretary of State to withhold the Secretary of State's consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided the Secretary of State:

- (a) makes an overall increase in Franchise Payments equal to the amount of the direct net losses suffered by the Franchisee on the days when the Passenger Services are affected

by Industrial Action taken by the Franchise Employees which is a consequence of a refusal by the Secretary of State to agree to the variation or addition; and

- (b) agrees that, to the extent that the Franchisee would otherwise be in contravention of the Franchise Agreement as a consequence of the Industrial Action referred to in this paragraph 2.2, no such contravention shall have occurred, save where such contravention relates to safety requirements.

2.3 The expression “**promise to vary**” when used in paragraph 2.2 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining the Secretary of State's consent).

3. Terms of Employment of New Employees

3.1 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any Franchise Employee where the employment of such Franchise Employee by the Franchisee or such other relevant employer may commence on or after the Start Date if and to the extent that:

- (a) such terms or conditions are, in the reasonable opinion of the Franchisee, materially different from the terms or conditions of employment of equivalent or nearest equivalent Franchise Employees at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent Franchise Employees already employed by the Franchisee by way of variation to their terms or conditions of employment, the Franchisee would be in contravention of paragraph 2.1.

4. Changes in Numbers and Total Cost of Employees

4.1 Subject to and excluding any increase in the remuneration of Franchise Employees permitted under paragraph 2.1, the Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State (which shall not be unreasonably withheld) increase or decrease in the last twelve (12) months of the ICWC Period the number of Franchise Employees such that:

- (a) the total number of Franchise Employees or the total cost per annum to the Franchisee and each other relevant employer of employing all Franchise Employees is increased; or
- (b) the total number of Franchise Employees is decreased,

in each case, by more than one per cent (1%) during such period of twelve (12) months provided that where the last twelve (12) or thirteen (13) months of the ICWC Period has been deemed to have commenced under paragraph 1.1 and the period of the restriction contemplated by this paragraph 4 lasts longer than twelve (12) months such restriction shall apply in respect of the longer period.

5. Fares

5.1 Reduction in Prices of Fares

- (a) During the last thirteen (13) months of the ICWC Period the Franchisee shall not, without the prior written consent of the Secretary of State (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms

of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the ICWC Period for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement of such thirteen (13) month period or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.

- (b) Paragraph 5.1(a) shall not prevent the Franchisee from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:
- (i) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the commencement of such thirteen (13) month period and to which the purchaser would have been entitled before the commencement of such period;
 - (ii) presenting a Discount Card issued by another train operator;
 - (iii) the Passenger's Charter or the passenger's charter of any other train operator; or
 - (iv) any relevant conditions of carriage.
- (c) The Franchisee shall procure that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with the provisions of paragraph 5.1(a) to the extent that such provisions apply to the selling of Fares by the Franchisee.

5.2 Percentage Allocations

- (a) Except to the extent that the Secretary of State may consent from time to time (such consent not to be unreasonably withheld), the Franchisee shall not, in the last thirteen (13) Reporting Periods of the ICWC Period, take any action or step which may result in its Percentage Allocation (as defined in the Ticketing and Settlement Agreement) in respect of any Rail Product (as defined in the Ticketing and Settlement Agreement) being reduced.
- (b) The Franchisee shall notify the Secretary of State before taking any such action or step in the last thirteen (13) Reporting Periods of the ICWC Period and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take such action as the Secretary of State may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

5.3 Restrictions in respect of Sale of Advance Purchase Train-specific Fares

- (a) It is acknowledged that the Franchisee shall make available for sale prior to the end of the ICWC Period Advance Purchase Train-specific Fares which are valid for travel after the end of the ICWC Period.
- (b) In making such Advance Purchase Train-specific Fares available for purchase the Franchisee shall not change its commercial practice in terms of the number of such Advance Purchase Train-specific Fares made available or the Passenger Services on which they are valid for use when compared with its previous commercial practice in respect of Advance Purchase Train-specific Fares valid for travel prior to the end of the ICWC Period.

- (c) The Franchisee shall be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of the Franchisee's practice in addressing such seasonal factors in the corresponding period in the previous year.

6. Voting on Scheme Councils

6.1 Subject to paragraph 7.4, during the last twelve (12) months of the ICWC Period the Franchisee shall give the Secretary of State reasonable notice of:

- (a) any meeting of:
 - (i) a scheme council of an Inter-Operator Scheme on which the Franchisee is represented; or
 - (ii) a scheme management group of any Inter-Operator Scheme:
 - (A) in which the Franchisee has a permanent position; or
 - (B) where the Franchisee employs a member of such group;
- (b) the resolutions to be voted upon at any such meeting; and
- (c) the Franchisee's voting intentions.

6.2 Subject to paragraph 7, the Franchisee shall vote at any such meeting in the manner required by the Secretary of State.

7. Successor Operator

7.1 Where the Franchisee has been notified by the Secretary of State that a Successor Operator has been selected (whether a franchisee or otherwise and whether or not such selection is conditional), the Franchisee shall give such Successor Operator reasonable notice of:

- (a) any meeting referred to in paragraph 6.1(a);
- (b) any resolutions to be voted upon at any such meeting where such resolutions might reasonably be considered to affect the interests of such Successor Operator; and
- (c) the Franchisee's voting intentions.

7.2 The Franchisee shall discuss with the Successor Operator in good faith with a view to agreeing the way the Franchisee should vote on the resolutions referred to in paragraph 7.1(b). In the absence of any agreement, the Franchisee shall, as soon as reasonably practicable thereafter, having regard to the deadline for voting on such resolutions, refer the matter to the Secretary of State for determination.

7.3 The Secretary of State shall reasonably determine the way the Franchisee should vote on any resolutions referred to the Secretary of State in accordance with paragraph 7.2, having regard to the transfer of the Franchise Services as a going concern at the end of the ICWC Period.

7.4 Where paragraph 7 applies, the Franchisee shall vote at any meeting referred to in paragraph 6.1(a) in accordance with any agreement pursuant to paragraph 7.2 or determination pursuant paragraph 7.3.

8. Fixed or Non-Current Assets

8.1 During the last twelve (12) months of the ICWC Period, the Franchsisee shall not sell any Fixed or Non-Current Assets without the prior written consent of the Secretary of State.

SCHEDULE 15.3A

Handover Package

1. Handover Package Status

1.1 The Franchisee shall:

- (a) on or before the Start Date, provide to the Secretary of State:
 - (i) the package which contains the information specified in Appendix 1 (Form of Handover Package) to this Schedule 15.3 and such other information as the Secretary of State may reasonably specify from time to time (the "**Handover Package**");
 - (ii) the package which contains the information specified in Appendix 2 (Form of Shadow Operator Handover Package) to Schedule 15.3B and such other information as the Secretary of State may reasonably specify from time to time (the "**Shadow Operator Handover Package**"); and
 - (iii) a letter in a form approved by and addressed to the Secretary of State confirming the details of any insurer providing insurance to the Franchisee and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Secretary of State, a Successor Operator or its agent on demand;
- (b) maintain the Handover Package and update it at least every three (3) Reporting Periods; and
- (c) in respect of the information required pursuant to paragraph 1.1(a)(ii), supply revised information and/or letters to the Secretary of State as and when required in order to ensure that such information and letters remain accurate and up to date.

1.2 The Franchisee shall ensure that:

- (a) any Successor Operator will have immediate access to the Handover Package on the expiry of the Franchise Period (provided that any Successor Operator that is solely a Successor Shadow Operator shall not be required to have such access); and
- (b) any Successor Shadow Operator will have immediate access to the Shadow Operator Handover Package on the expiry of the Franchise Period or (if earlier) on termination of the Shadow Operator Services.

1.3 The Franchisee shall also ensure that the Key Contacts List is provided to the Secretary of State within twenty four (24) hours of the receipt of any Termination Notice or Readiness Review Termination Notice.

1.4 From the date that the Station Asset Management Plan or the Station Social and Commercial Development Plan is created pursuant to Schedule 1.7 (Stations) the Franchisee shall update the Handover Package to include the Station Asset Management Plan and the Station Social and Commercial Development Plan and shall update the Station Asset Management Plan and the Station Social and Commercial Development Plan included in the Handover Package pursuant to this paragraph 1.4 whenever such plans are updated in accordance with Schedule 1.7 (Stations).

2. Director's Certificate

2.1 At the same time as the Franchisee is required to provide the Annual Business Plan to the Secretary of State as required by paragraph 10.2 of Schedule 11.2 (Management Information), the Franchisee shall provide to the Secretary of State the latest version of the Handover Package (updated as required pursuant to paragraph 1.1(b) of Schedule 15.3 together with:

- (a) a certificate signed by a statutory director of the Franchisee, addressed to the Secretary of State, which confirms that:
 - (i) the Passenger Services Handover Package contains the information specified in Appendix 1 (Form of Passenger Services Handover Package) to this Schedule 15.3A (and such other information specified from time to time by the Secretary of State); and
 - (ii) such information is accurate as at the date of the certificate; and
- (b) a document setting out all the changes that have been made to the Handover Package since the last version of the Handover Package provided to the Secretary of State pursuant to this paragraph 2.1.

2.2 At the same time as the Franchisee is required to provide the Shadow Operator Annual Review Checklist to the Secretary of State as required by Schedule 18.4 (Shadow Operator Annual Review), the Franchisee shall provide to the Secretary of State the latest version of the Shadow Operator Handover Package (updated as required pursuant to paragraph 1.1(b)(i) of this Schedule 15.3 together with:

- (a) a certificate signed by a statutory director of the Franchisee, addressed to the Secretary of State, which confirms that:
 - (i) the Shadow Operator Handover Package contains the information specified in Appendix 2 (Form of Shadow Operator Handover Package) to Schedule 15.3 (and such other information specified from time to time by the Secretary of State); and
 - (ii) such information is accurate as at the date of the certificate; and
- (b) a document setting out all the changes that have been made to the Shadow Operator Handover Package since the last version of the Shadow Operator Handover Package provided to the Secretary of State pursuant to this paragraph 2.2.

APPENDIX 1 TO SCHEDULE 15.3A

Form of Handover Package

1. All information in the Handover Package must be provided electronically in a form that is acceptable to the Secretary of State.
2. **Property**

A list of all property owned, leased, operated or occupied by the Franchisee which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.
3. **Contracts**

A list of all contracts (sales, purchases or otherwise including leases and licences) between the Franchisee and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of the Franchisee and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Secretary of State.
4. **Systems**

A list of the electronic systems in use by the Franchisee, together with the name, office address and telephone number of the Franchisee's Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.
5. **Asset Register**

A list of all assets owned or operated by the Franchisee, together with their location.
6. **Insurance**

A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Franchisee, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.
7. **Safety Certificate**

A complete copy of the Safety Certificate, an electronic copy of the Franchisee's application for the Safety Certificate and full details of the Franchisee's safety management system in place to support the Safety Certificate.
8. **Key Contacts**

A list of key contacts relating to the Franchise Services (excluding the Shadow Operator Services), to include all Key Personnel. This must include operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents). This list must include the name, address and office telephone numbers of such key contacts (including any out of business hours contact details that such key contacts will usually provide to the Franchisee for emergency or business continuity reasons) and a brief description of the person's role and responsibilities in the business.

APPENDIX 2 TO SCHEDULE 15.3A

Form of Shadow Operator Handover Package

1. All information in the Shadow Operator Handover Package must be provided electronically in a form that is acceptable to the Secretary of State.

2. **Key Contracts**

A list of all Key Contracts relating to the Shadow Operator Services between the Franchisee and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of the Franchisee and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all Key Contracts relating to the Shadow Operator Services unless otherwise agreed by the Secretary of State.

3. **Primary Franchise Asset Register**

A list of all Primary Franchisee Assets owned or operated by the Franchisee and which are used, intended to be used or required for the performance of the Shadow Operator Services, together with their location.

4. **Key Contacts**

A list of key contacts relating to the Shadow Operator Services to include all Key Shadow Operator Personnel. This must include operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents). This list must include the name, address and office telephone numbers of such key contacts (including any out of business hours contact details that such key contacts will usually provide to the Franchisee for emergency or business continuity reasons) and a brief description of the person's role and responsibilities in the business.

5. **Intellectual Property**

A list of all Franchisee Material relating to the Shadow Operator Services, including details of the purpose of the Franchisee Material and the location in which it is stored.

6. **Employees**

A list of all Shadow Operator Employees together with the role which each individual undertakes.

7. **Contractors**

A list of all Shadow Operator Contractors who are Key Shadow Operator Personnel together with the role that each such Shadow Operator Contractor undertakes.

SCHEDULE 15.4A

Provisions Applying on and after Termination

1. Novation of Access Agreements on Termination of the Franchise Agreement

- 1.1 The Franchisee shall, to the extent so requested by the Secretary of State on termination of the Franchise Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as the Secretary of State may direct.
- 1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.
- 1.3 Such novation shall be on such terms as the Secretary of State may reasonably require, including:
- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or the Secretary of State's nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
 - (b) that neither the Secretary of State nor the Secretary of State's nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach of the relevant agreement referred to in paragraph 1.3(a),
- but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.
- 1.4 The Franchisee shall, on the occurrence of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as the Secretary of State may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.
- 1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. Co-operation with Successor Operator

- 2.1 In order to ensure the continuity of, and an orderly handover of control over, the Franchise Services, the Franchisee shall co-operate with:
- (a) where one or more Successor Operators have been appointed, each such Successor Operator; and
 - (b) the Secretary of State,

and shall take such steps as may be reasonably requested by the Secretary of State in connection therewith.

- 2.2 In satisfaction of its obligations under paragraph 2.1, the Franchisee shall make appropriately skilled and qualified Franchise Employees reasonably available to attend such meetings with the Secretary of State, any Successor Operator, Network Rail, HS2 Limited, any rolling stock lessor and/or and other relevant third party as are reasonably required in order to determine:
- (a) those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:
 - (i) Access Agreements;
 - (ii) Property Leases;
 - (iii) agreements in relation to Shared Facilities;
 - (iv) Rolling Stock Leases;
 - (v) Rolling Stock Related Contracts;
 - (vi) any other Key Contract; and
 - (b) without prejudice to the Secretary of State's rights under this Schedule 15.4, those rights and liabilities as may be specified in any Transfer Scheme.

3. Transfer of Primary Franchise Assets

3.1 Option Arrangements

- (a) The Secretary of State hereby grants to the Franchisee the right to require the Secretary of State to make, and the Franchisee hereby grants to the Secretary of State the right to make, a Transfer Scheme in accordance with section 12 and Schedule 2 of the Railways Act 2005 for the transfer of any or all Primary Franchise Assets on the expiry of the Franchise Period.
- (b) On or within fourteen (14) days before the expiry of the Franchise Period:
 - (i) either Party may serve notice on the other Party specifying the Primary Franchise Assets to be transferred; and
 - (ii) the other Party may (within such timescale) serve a subsequent notice specifying any additional Primary Franchise Assets to be transferred.
- (c) The Secretary of State may (and shall if required by the Franchisee) make one or more such Transfer Schemes for the transfer of the Primary Franchise Assets specified in any such notice within fourteen (14) days after service of such notice (except in relation to any such Primary Franchise Assets which are, in accordance with Schedule 14.4 (Designation of Franchise Assets), de-designated as such prior to the end of the Franchise Period).
- (d) Any Franchise Assets or Primary Franchise Assets which are not so transferred shall cease to be designated as such fourteen (14) days after service of such notice.

3.2 Supplemental Agreement

Without prejudice to the duties, powers, rights and obligations of the Secretary of State under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on the Franchisee and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be

paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. The Franchisee shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

3.3 Payment of Estimated Transfer Price

- (a) The Secretary of State may require the Franchisee to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to the Franchisee, on the day on which the Transfer Scheme comes into force such sum as the Secretary of State may determine should be so paid having regard to:
 - (i) the Secretary of State's estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise Assets being transferred under the relevant Transfer Scheme;
 - (ii) the Secretary of State's estimate of any other sums likely to be paid thereunder;
 - (iii) the financial condition of the Franchisee and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
 - (iv) such other matters as the Secretary of State may consider appropriate.
- (b) The Franchisee shall pay to any such transferee the sum determined by the Secretary of State in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

3.4 Possession of Franchise Assets

On the coming into force of a Transfer Scheme, the Franchisee shall deliver up to the Secretary of State (or the Secretary of State's nominee) possession of the Primary Franchise Assets transferred under such Transfer Scheme.

3.5 Transfer of Primary Franchise Assets to a Successor Shadow Operator

- (a) At any time during the Shadow Operator Termination Assistance Period or within the period which is fourteen (14) days before the expiry of the Franchise Period, the Franchisee shall, upon receipt of a request from the Secretary of State:
 - (i) take such actions and execute such agreements as may be necessary to transfer all Primary Franchise Assets that the Successor Shadow Operator may (in the Secretary of State's reasonable opinion) require to provide services similar and/or equivalent to the Shadow Operator Services to the Successor Shadow Operator at nil value with full title guarantee and free from all encumbrances and other rights of whatever nature exercisable by any third party;
 - (ii) transfer any and all documentation (which shall, for the avoidance of doubt be Franchisee Background Material) relating to the Primary Franchise Assets referred to in paragraph (i) to the Successor Shadow Operator;
 - (iii) assign or novate any contracts relating to the Primary Franchise Assets referred to in paragraph (i) to the Successor Shadow Operator;
 - (iv) provide the Successor Shadow Operator with such assistance and/or information as the Successor Shadow Operator and/or the Secretary of State reasonably requires in order to enable the Successor Shadow Operator to receive the full

benefit of, maintain and operate the Primary Franchise Assets referred to in paragraph (i); and

- (v) where the relevant Primary Franchise Assets are physical assets, deliver such Primary Franchise Assets to such location at such date and time as the Secretary of State or the Franchisee may reasonably request.
- (b) Paragraph 3.5(a) applies to all Primary Franchise Assets other than Key Contracts, which shall be subject to the provisions of paragraph 4.3 of this Schedule 15.4.

4. Associated Obligations on Termination

4.1 Assistance in Securing Continuity

- (a) In order to facilitate the continuity of the Franchise Services on expiry of the Franchise Period, the Franchisee shall take such steps, both before and after the expiry of the Franchise Period, as the Secretary of State may reasonably require, to assist and advise any Successor Operator in providing and operating the Franchise Services.
- (b) In particular, the Franchisee shall provide any Successor Operator with such records and information relating to or connected with the Franchise Services as the Secretary of State may reasonably require (other than confidential financial information but including all records relating to the Franchise Employees).

4.2 Access

On the expiry of the Franchise Period, the Franchisee shall grant the Secretary of State and the Secretary of State's representatives such access as the Secretary of State may reasonably request to any property owned, leased or operated by the Franchisee at such time, for the purpose of facilitating the continued provision of the Franchise Services.

4.3 Key Contracts

- (a) The Franchisee shall provide such assistance to any Successor Operator as the Secretary of State may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).
- (b) In satisfaction of its obligations under paragraph 4.3(a), the Franchisee shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Franchisee to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Franchise Period.

4.4 Change of Name

The Franchisee shall cease to use any trade marks which are licensed to the Franchisee under any of the Brand Licences forthwith upon expiry of the Franchise Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

4.5 Property Leases

- (a) The Franchisee shall, on the expiry of the Franchise Period, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or

as the Secretary of State may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.

- (b) Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
 - (i) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or the Secretary of State's nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (ii) that neither the Secretary of State nor the Secretary of State's nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.5(b)(i), and the Franchisee shall indemnify the Secretary of State or the Secretary of State's nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- (c) The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.5(a) in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as the Secretary of State may direct, subject, where applicable, to the consent of the relevant Infrastructure Manager. The provisions of paragraph 4.5(b) shall apply to any such assignment.
- (d) The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. Actions required immediately on Handover

- 5.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State:
 - (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Franchisee is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and
 - (b) information concerning any contract necessary for the continued operation of the Franchise where a procurement or bidding process has been initiated.
- 5.2 The Franchisee agrees that the Secretary of State or the Secretary of State's agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as the Secretary of State sees fit (for the purposes of continuing the operation of the Franchise Services).

6. Maintenance Records

- 6.1 The Franchisee shall immediately on expiry of the Franchise Period provide to the Secretary of State:
- (a) records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;
 - (b) records of the status of the maintenance of any lifting equipment;
 - (c) a list of any deferred maintenance; and
 - (d) records of the status of the maintenance of any depot or station which is a Franchise Asset, including the extent of completion of examinations and the modification status of each such rolling stock vehicle

7. Ticketing Arrangements

- 7.1 The Franchisee shall provide immediately on expiry of the ICWC Period a statement certifying:
- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
 - (b) the extent of any outstanding claims with ticketing settlement agencies;
 - (c) refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
 - (d) commissions owed and/or due.

8. Franchisee's Intellectual Property

- 8.1 On the expiry of the Franchise Period, and without prejudice to the provisions of paragraph 14 of Schedule 18.1 (Shadow Operations) the Franchisee shall grant to any Successor Operator licences of any Intellectual Property Rights which:
- (a) are owned by or licensed to the Franchisee;
 - (b) were not owned by or licensed to it immediately prior to the Start Date;
 - (c) have not been designated as a Primary Franchise Asset;
 - (d) do not represent or constitute a Mark; and
 - (e) may, in the reasonable opinion of the Secretary of State, be necessary for any Successor Operator to operate the Franchise Services on an efficient and economic basis after the expiry of the Franchise Period.
- 8.2 When agreeing the terms on which Intellectual Property Rights are to be licensed to it, the Franchisee shall use all reasonable endeavours to ensure that such terms include the right to sub-license such Intellectual Property Rights in accordance with this paragraph 8. The Franchisee shall not enter into a licence that does not include such a provision without first obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld).

- 8.3 Any licence of any Intellectual Property Rights shall be granted to the relevant Successor Operator for such period as the Secretary of State may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Franchise Services. Such licence shall be free of charge and royalty-free for a minimum of three (3) months.
- 8.4 If the licence of any Intellectual Property Rights is for a period in excess of three (3) months, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such Intellectual Property Rights. If the Franchisee and the relevant Successor Operator are unable to agree such royalty, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.
- 8.5 Any such licence shall be in such form as the Secretary of State shall reasonably determine and shall:
- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Franchise Services and will not provide for any right to use such Intellectual Property Rights for any other purpose (including its marketing or exploitation for any other purpose);
 - (b) be terminable on material breach by the Successor Operator;
 - (c) contain an indemnity from the Franchisee to the effect that to the best of its knowledge and belief it owns the relevant Intellectual Property Rights or has the right to license them and the licensing of such Intellectual Property Rights and the subsequent use of the Intellectual Property Rights will not infringe any third party Intellectual Property Rights; and
 - (d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the Franchisee provided that it shall not be reasonable for the Franchisee to require any such trade mark to be used in a manner materially different from its use during the Franchise Period.

9. Information about Passengers

- 9.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State and/or the Secretary of State's nominee:
- (a) passenger numbers information specified in paragraph 1 of Schedule 1.5 (Information about Passengers), in such format and to such level of disaggregation as the Secretary of State and/or the Secretary of State's nominee may reasonably require; and
 - (b) the CRM Data and Yield Management Data.

**APPENDIX 1 TO SCHEDULE 15.4A
Template Form of Transfer Scheme**

Dated [INSERT DATE]

**TRANSFER SCHEME
OF
THE SECRETARY OF STATE FOR TRANSPORT
MADE PURSUANT TO SCHEDULE 2 OF THE RAILWAYS ACT 2005**

**IN FAVOUR OF
[INSERT NAME OF SUCCESSOR OPERATOR]**

**IN RESPECT OF
CERTAIN PROPERTY, RIGHTS AND LIABILITIES
OF
[INSERT NAME OF FRANCHISEE]**

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

TRANSFER SCHEME

Whereas:

- (A) [INSERT NAME OF FRANCHISEE] (the “**Transferor**”) has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the “**Secretary of State**”) dated [INSERT DATE] (the “**Franchise Agreement**”).
- (B) The Franchise Agreement terminated or is to terminate on [INSERT DATE] and [INSERT NAME OF SUCCESSOR OPERATOR] (the “**Transferee**”) is to continue the provision of all or part of such services or the operation of all or some of such stations and light maintenance depots under a new franchise agreement or in connection with the performance or exercise of the duties and powers of the Secretary of State to secure the provision of such services or the operation of such stations or light maintenance depots.
- (C) Certain property, rights and liabilities of the Transferor which were designated as franchise assets for the purpose of the Franchise Agreement are to be transferred to the Transferee under a transfer scheme made by the Secretary of State under section 12 and Schedule 2 of the Railways Act 2005.

The Secretary of State, in exercise of the powers conferred on the Secretary of State by Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. **Definitions and Interpretation**

In this Transfer Scheme functions has the meaning ascribed to it in the Railways Act 2005 and relevant enactment has the meaning ascribed to it in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. **Transfer of Property, Rights and Liabilities**

With effect from [INSERT DATE] the property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. **Statutory Functions**

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the functions of the Transferor under any relevant enactments if and to the extent that any such relevant enactment:

- (a) relates to any property which is to be transferred by this Transfer Scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

4. **Supplemental Agreement**

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Franchise Agreement) on the coming into force of this Transfer Scheme.

This Transfer Scheme is made by the Secretary of State on **[INSERT DATE]**.

SEAL REF NO:

THE CORPORATE SEAL OF
THE SECRETARY OF STATE
FOR TRANSPORT IS
HEREUNTO AFFIXED:



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

SCHEDULE TO THE TRANSFER SCHEME

[LIST RELEVANT FRANCHISE ASSETS TO BE TRANSFERRED TO SUCCESSOR OPERATOR]

APPENDIX 2 TO SCHEDULE 15.4A
Template Form of Supplemental Agreement

Dated [INSERT DATE]

[INSERT NAME OF OUTGOING FRANCHISEE]

- and -

[INSERT NAME OF SUCCESSOR OPERATOR]

[Template] SUPPLEMENTAL AGREEMENT

to the transfer scheme dated [INSERT DATE] made
by the Secretary of State for Transport in respect of
certain property rights and liabilities of
[INSERT NAME OF OUTGOING FRANCHISEE]

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

THIS SUPPLEMENTAL AGREEMENT is made on [INSERT DAY] [INSERT YEAR]

BETWEEN:

- (1) [INSERT NAME OF OUTGOING FRANCHISEE] whose registered office is at [INSERT ADDRESS OF REGISTERED OFFICE] (the "Transferor"); and
- (2) [INSERT NAME OF SUCCESSOR OPERATOR] whose registered office is at [INSERT ADDRESS OF REGISTERED OFFICE] (the "Transferee").

WHEREAS

- (A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "Secretary of State") dated [INSERT DATE] (the "Franchise Agreement").
- (B) The Franchise Agreement terminated or is to terminate on [INSERT DATE] and the Transferee has been selected by the Secretary of State to continue the provision of all or part of such services pursuant either to a franchise agreement with the Secretary of State or arrangements made with the Secretary of State in connection with the Secretary of State's duties and powers.
- (C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Secretary of State on [INSERT DATE] under section 12 and Schedule 2 of the Railways Act 2005 (the "Transfer Scheme").
- (D) This Agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

IT IS AGREED THAT:

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 The following words and expressions shall have the following meaning:

"**Business**" means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

"**Credit**" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"**Debit**" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"**DfT Funded Assets**" means those property, rights and liabilities that are legally or beneficially owned by the Franchisee and which are funded through the following schemes, funds or budgets:

- (a) NOT USED;
- (b) the Minor Works' Budget; [or]
- (c) an Approved CCI Scheme; [or]

(d) [ANY OTHER RELEVANT FRANCHISE SPECIFIC SCHEME, FUND OR BUDGET]⁹¹.

"Estimated Completion Payment" has the meaning ascribed to that term in Clause 2.1;

"Net Asset Statement" means the statement to be drawn up pursuant to Clause 2.2;

"Net Asset Value" means the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement agreed or determined pursuant to Clause 2.2;

"Purchase Price" has the meaning ascribed to that term in Clause 2.1;

"Relevant Contract Liabilities" means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement;

"Relevant Debits and Credits" means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of Clause 11-33 of the Ticketing and Settlement Agreement;

"Relevant Employee Liabilities" means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Employees" means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Franchise Assets" means such of the property, rights and liabilities that are legally or beneficially owned by the Transferor and which are or are to be transferred to the Transferee under the Transfer Scheme;

"Reporting Accountants" means such firm of accountants as may be selected by agreement between the Parties within four (4) weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State upon the request of either party;

"Season Ticket Fare" means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

"Stored Credit Balance" means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (stored in any medium);

91 **Note to Bidders:** This will be populated on a Franchise-specific and a bidder-specific basis to reflect any other relevant funds, budgets or schemes which are used to purchase Franchise assets.

"Taxation" comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

"TOGC" has the meaning assigned to that term in Clause 6.2;

"Transfer Date" means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

"Transferring Assets and Liabilities" has the meaning assigned to that term in Clause 2.1; and

"Undisclosed Employee" has the meaning assigned to that term in Clause 7.1(d).

Construction and Interpretation

1.2 In this Agreement terms and expressions defined in the Franchise Agreement shall have the same meaning and the terms **"contract of employment"**, **"collective agreement"**, **"employee representatives"** and **"trade union"** shall have the same meanings respectively as in the Transfer Regulations.

2. **TRANSFER PRICE**

2.1 **Amount and Payment**

The price for the transfer of:

- (a) the Relevant Franchise Assets;
- (b) the Relevant Contract Liabilities;
- (c) the Relevant Debits and Credits; and
- (d) the Relevant Employee Liabilities,

(together the **"Transferring Assets and Liabilities"**) shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value (the **"Purchase Price"**). The sum of [£INSERT AMOUNT], as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement (the **"Estimated Completion Payment"**) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement, on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be) in accordance with Clause 2.1.

2.2 **Net Asset Statement**

The Transferee shall procure that, as soon as practicable and in any event not later than two (2) months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

- 2.3 The Net Asset Statement shall be:
- (a) drawn up in the manner described in the Schedule;
 - (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the schedule; and
 - (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.
- 2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four (4) weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

2.5 **Adjustment of Price**

If the Purchase Price exceeds or is less than the Estimated Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within fourteen (14) days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. **REFERENCES TO THE REPORTING ACCOUNTANTS**

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed, provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within fourteen (14) days of their appointment having been determined (or such longer period as the Parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under Clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;
- (b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the Parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference;

- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any manifest error discovered within fourteen (14) days of the issue of their decision) be conclusive and binding (and in accordance with Clause 3(g) below) and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise; and
- (g) without prejudice to Clauses 3(a) to 3(f) above, either party may, prior to or during the course of the reference to the Reporting Accountants, seek a declaration from the court on a relevant point of law, including but not limited to a point of legal interpretation. Upon such application for a declaration being issued and served all applicable time limits relative to the reference to the Reporting Accountant shall be stayed pending the outcome of such application (including any appeal). The Reporting Accountants are bound to make their determination in a manner consistent with the findings of the Court.

4. **WARRANTY**

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

5. **INTEREST**

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. **VALUE ADDED TAX**

- 6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern ("**TOGC**") and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.
- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five (5) days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in Clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under Clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within thirty (30) days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking

such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.

- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, Clauses 6.3 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.
- 6.8 All of the records referred to in section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- (a) preserve those records in such manner and for such periods as may be required by law; and
 - (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. EMPLOYEES

7.1 Transfer Regulations

The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- (a) the contract of employment of each of the Relevant Employees (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the **"time of transfer"** under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
- (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;
- (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or

occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:

- (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
 - (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in Clause 7.4;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Secretary of State under Schedule 15.3 (Handover Package) of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the "**Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
- (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
 - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his or her employment following the Transfer Date; and
 - (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of Clauses 7.1(b) and 7.1(c); and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

7.2 Transferee's Indemnities

The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- (a) any substantial change in the working conditions of the Relevant Employees to his or her detriment or any of them occurring on or after the Transfer Date;
- (b) the change of employer occurring by virtue of the Transfer Regulations and/or the Franchise Agreement being significant and detrimental to any of the Relevant Employees;
- (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
- (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

7.4 **Details of Relevant Employees**

Without prejudice to the Transferor's duties under the Transfer Regulations, the Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- (b) terms and conditions of employment of each such person;
- (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
- (d) dismissals of Relevant Employees or termination of employment effected within twelve (12) months prior to the Transfer Date including the Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
- (f) all strikes or other Industrial Action taken by any Relevant Employee within twelve (12) months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

8. MISCELLANEOUS PROVISIONS

8.1 Variations in Writing

No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

8.2 Partial Invalidity

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

8.3 Further Assurance

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

8.4 Notices

Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

(a) in the case of the Transferor to [INSERT NAME OF TRANSFEROR] at:

Address: [INSERT ADDRESS]

Email Address: [INSERT EMAIL ADDRESS]

Attention: [INSERT NAME]

(b) in the case of the Transferee to [INSERT NAME OF TRANSFEREE] at:

Address: [INSERT ADDRESS]

Email Address: [INSERT EMAIL ADDRESS]

Attention: [INSERT NAME]

Any such notice or other communication shall be delivered by email transmission, by hand or sent by courier or prepaid first class post. If sent by courier such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two (2) Weekdays from the time of posting.

8.5 Counterparts

This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

8.6 Third Parties

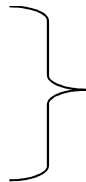
This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

8.7 Governing Law and Jurisdiction

This Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

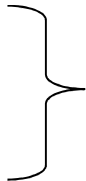
SIGNED FOR AND ON
BEHALF OF THE **[INSERT
NAME OF TRANSFEROR]:**



DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF THE **[INSERT
NAME OF TRANSFEREE]:**



DIRECTOR:

DIRECTOR/SECRETARY:

Schedule to the Supplemental Agreement

Net Asset Statement

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B} + E$$

where:

C	equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:
	(a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;
	(b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
	(c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
	(d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);
D	equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

$\frac{A}{B}$ equals:	(a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);
	(b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or
	(c) in the case of any other Fare, zero; and

E	<p>equals, if $\frac{A}{B}$ is greater than zero:</p> <p>the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare,</p>
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and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

2. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.
3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B}$$

where:

C	equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;
D	equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and
$\frac{A}{B}$	equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Start Date, zero,
and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).	

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) relate to a period after the Transfer Date.
5. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand Column of the following table, which shall be valued on the basis specified in the right hand Column of the following table:

Rights and Liabilities	Value
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued

Rights and Liabilities	Value
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability

6. CRM Data, Yield Management Data and Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same) shall be valued at nil.
7. The Stored Credit Balance held by the Franchisee at the Transfer Date shall be valued at the monetary amount so held.
8. Any DfT Funded Assets shall be valued at nil.
9. Any ITSO equipment (including smartcard and ITSO Certified Smartmedia readers and ITSO database) and any Intellectual Property Rights associated with that ITSO equipment transferred from the Transferor to the Transferee pursuant to the Transfer Scheme shall be valued at nil.
10. Any RV Asset shall be valued at an amount that is equivalent to the RV Asset Transfer Value of such RV Asset as specified in Column 2 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) of the Franchise Agreement, as such RV Asset Transfer Value may be adjusted or deemed to have been adjusted pursuant to paragraphs 1.4 or 2.2 of Schedule 14.6 (Residual Value Mechanism) of the Franchise Agreement.
11. NOT USED.
12. NOT USED.
13. NOT USED.
14. NOT USED.
15. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.

SCHEDULE 16A

PENSIONS⁹²

92 **Note to Bidders:** drafting for Schedule 16A (with any changes to associated definitions) will be provided by the Department.

SCHEDULE 17A

CONFIDENTIALITY AND FREEDOM OF INFORMATION

Schedule 17:	Confidentiality and Freedom of Information
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SCHEDULE 17A

Confidentiality and Freedom of Information

1. Confidentiality

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 8 and 10 inclusive of this Schedule 17, each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement) (all together the "**Confidential Information**") and shall not, except with the other Party's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in the Franchise Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the Franchise Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. Disclosure of Confidential Information

2.1 Each Party may disclose any data or information acquired by it under or pursuant to the Franchise Agreement or information relating to a dispute arising under the Franchise Agreement without the prior written consent of the other Party if such disclosure is made in good faith:

- (a) to any Affiliate of such Party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (b) to any outside consultants or advisers engaged by or on behalf of such Party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such Party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (f) to any director, employee or officer of such Party, to the extent necessary to enable such Party to perform its obligations under the Franchise Agreement or to protect or enforce its rights under the Franchise Agreement; or
- (g) by the Franchisee, to the ORR, the Passengers' Council or a Local Authority.
- (h) NOT USED.

2.2 The Secretary of State may disclose the Confidential Information of the Franchisee:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Secretary of State or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Secretary of State (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in paragraph 2.2(a) of this Schedule 17 (including any benchmarking organisation) for any purpose relating to or connected with the Franchise;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including but not limited to its right of audit, assessment or inspection pursuant to paragraph 6 of Schedule 11.2 (Management Information) and its rights pursuant to Schedule 15.1 (Reletting Provisions);
- (f) on a confidential basis to a Local Authority or other relevant Stakeholder to the extent that the Secretary of State (acting reasonably) deems such disclosure necessary or appropriate for the purposes of the development and/or implementation of any proposal promoted by (or on behalf of) such Local Authority or other relevant Stakeholder in relation to the provision of additional, varied and/or extended Passenger Services, introduction of new stations or enhancements to Stations or other infrastructure schemes which impact on the Franchise; or
- (g) on a confidential basis to a proposed successor, transferee or assignee of the Secretary of State in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Secretary of State under this paragraph 2.2 of this Schedule 17.

3. Publication of Certain Information

3.1 Notwithstanding the provisions of paragraph 1, the Secretary of State may publish (whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective Successor Operator and/or Successor Shadow Operator) in such form and at such times as the Secretary of State sees fit, the following (irrespective of whether the same was provided to the Secretary of State by the Franchisee or a third party):

- (a) any or all of the Franchise Documents provided that the Secretary of State will, prior to publishing the same, redact from any Franchise Document any information contained therein which the Secretary of State and the Franchisee agree or failing which the Secretary of State determines, in the Secretary of State's absolute discretion, is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations;

- (b) the amount of any Franchise Payments payable under the Franchise Agreement and the aggregate amount of Franchise Payments paid in each year under the Franchise Agreement;
- (c) such information as the Secretary of State may consider reasonably necessary to publish in connection with the performance of the Secretary of State's functions in relation to any Closure or proposed Closure;
- (d) the amount of any payments by the Franchisee under the Passenger's Charter;
- (e) such information (including CRM Data and Yield Management Data) as may reasonably be required in connection with any Tendering/Reletting Process or the retendering or reletting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (f) any reports and accounts delivered to the Secretary of State under Schedule 13 (Rail Industry Initiatives and Innovation Obligations) including any analyses, statistics and other information derived from such reports and accounts;
- (g) the results of any monitoring or measurement of the performance of the Franchisee in the provision of the Franchise Services (including any information provided under Schedule 11 (Franchise Performance Meetings and Management Information));
- (h) the results, on a Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (Information about Passengers);
- (i) the results of any survey (or similar) specified in Schedule 7 (Performance Benchmarks);
- (j) the results of any assessment or inspection under Schedule 11.2 (Management Information);
- (k) details of the Franchisee's plans and performance in respect of safety;
- (l) such information as the Secretary of State may reasonably require to include in the Secretary of State's annual report in respect of the Franchisee provided that, in preparing that report, the Secretary of State shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Secretary of State; and
- (m) such information as the Secretary of State may reasonably require to publish at or around the expiry or possible termination of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services; and
- (n) such information as the Secretary of State may reasonably require to publish at or around the possible termination of the Shadow Operator Services in order to secure continuity of the provision and operation of the Shadow Operator Services.

3.2 Without prejudice to any other provision of this Schedule 17, the Secretary of State may publish any other information relating to the Franchisee if the Secretary of State has previously notified the Franchisee and the Franchisee does not demonstrate to the reasonable satisfaction of the Secretary of State within fourteen (14) days of such notification that the publication of such information would, in the reasonable opinion of the Franchisee, have a material adverse effect on

its business. If the Franchisee attempts so to demonstrate to the Secretary of State but the Secretary of State is not so satisfied, the Secretary of State shall allow seven (7) more days before publishing the relevant information.

4. Service Development Information

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render either Party liable for, the disclosure by either Party to Network Rail, HS2 Limited, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the Passengers' Council and/or any Local Authority of any information relating to the development of the Train Service Requirement in accordance with Schedule 1.1 (Franchise Services and Service Development) and/or paragraphs 39 to 42 of Schedule 18.2 (Accepted Programme Specific Requirements) and/or paragraphs 8 to 15 of Schedule 18.3 (Transitional Programme Specific Requirements)

5. Publication by Secretary of State

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Secretary of State liable for, the disclosure of any information by the Secretary of State to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of the Secretary of State's functions.

6. Provision of Information to the ORR

The Franchisee hereby authorises the Secretary of State to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Secretary of State in relation to the Franchisee under the Franchise Agreement.

7. Disclosure by Comptroller and Auditor General

The Parties recognise that the Comptroller and Auditor General may, in pursuance of the functions of the Comptroller and Auditor General under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which the Comptroller and Auditor General has obtained pursuant to those Acts and which a Party to the Franchise Agreement would not be able to disclose otherwise than under this Schedule 17.

8. Continuing Obligation

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of the Franchise Agreement, irrespective of the reason for termination.

9. Freedom of Information - General Provisions

9.1 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that the Secretary of State is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly the Franchisee shall (and shall procure that its agents and subcontractors shall) assist and co-operate with the Secretary of State to enable the Secretary of State to comply with the Secretary of State's information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations.

- 9.2 Notwithstanding paragraph 10, the Franchisee shall (and shall procure that its agents and subcontractors shall):
- (a) transfer to the Secretary of State any Requests for Information received by the Franchisee (or its agents or subcontractors) as soon as practicable and in any event within two (2) Weekdays of receiving any such Request for Information;
 - (b) provide the Secretary of State with a copy of all information in its (or their) possession or power in the form that the Secretary of State requires within five (5) Weekdays of the Secretary of State's request (or within such other period as the Secretary of State may specify); and
 - (c) provide all necessary assistance as reasonably requested by the Secretary of State to enable the Secretary of State to respond to any Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations as applicable.
- 9.3 The Secretary of State shall be responsible for determining in the Secretary of State's absolute discretion, and notwithstanding any other provision in the Franchise Agreement or any other agreement, whether Confidential Information (as such term is defined in paragraph 1 of this Schedule 17) and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.
- 9.4 The Franchisee shall not (and shall procure that its agents and subcontractors shall not) respond directly to any Request for Information unless expressly authorised to do so by the Secretary of State.
- 9.5 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in the Franchise Agreement the Secretary of State may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning the Franchisee and/or its agents and subcontractors:
- (a) in certain circumstances without consulting the Franchisee (or its agents and/or subcontractors where applicable); or
 - (b) following consultation with the Franchisee and having taken its views into account (and the views of its agents and/or subcontractors where applicable),

provided always that where applicable the Secretary of State shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give the Franchisee advance notice or failing that to draw the disclosure to the Franchisee's attention after any such disclosure.

10. Redactions

- 10.1 Subject to paragraph 9, by no later than the date which is:
- (a) thirty (30) Weekdays after the date of this Agreement (in respect of the Franchise Documents referred to in paragraph (a) of the definition thereof);
 - (b) thirty (30) Weekdays after the date of notification by the Secretary of State to the Franchisee of another agreement that is required for publication (in respect of the Franchise Documents referred to in paragraph (e) of the definition thereof); and

- (c) thirty (30) Weekdays after the date of any document varying the terms of any Franchise Document,

the Franchisee shall provide to the Secretary of State details of any provisions of the Franchise Documents or any such variation which the Franchisee believes are exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the Environmental Information Regulations and/or section 73(3) of the Act (the "**Redactions**").

10.2 For each such Redaction the Franchisee should specify:

- (a) the exact text of the Franchise Document or variation that the Franchisee proposes is redacted;
- (b) whether the Franchisee proposes that the Redaction applies in relation to the publication of the relevant Franchise Document or variation on the website of the Department for Transport, on the register required to be maintained by the Secretary of State pursuant to section 73 of the Act or on both such website and such register; and
- (c) the reasons why the Franchisee believes that the proposed Redaction is justified in accordance with the Freedom of Information Act, the Environmental Information Regulations and/or section 73(3) of the Act.

10.3 The Secretary of State shall consult with the Franchisee in relation to the Franchisee's proposed Redactions (provided that the same are provided to the Secretary of State in accordance with paragraph 10.1). If the Secretary of State and the Franchisee are unable to agree upon any proposed Redaction, the Secretary of State shall be entitled to determine, in the Secretary of State's absolute discretion, whether or not to make such proposed Redaction. If the Franchisee does not provide its proposed Redactions to the Secretary of State in accordance with paragraph 10.1, the Franchisee shall be deemed to have consented to publication of the relevant document without any Redactions.