

**ITT DRAFT WEST COAST PARTNERSHIP FRANCHISE  
AGREEMENT**

**ITT VERSION**

**VOLUME FOUR**

**SCHEDULES 18 TO 20**

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**SCHEDULE 18**

**SHADOW OPERATOR**

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Schedule 18.2:	Accepted Programme Specific Requirements
	Appendix 1: Form of Novation Agreement for Functional Requirement Asset
Schedule 18.3:	Transitional Programme Specific Requirements
Schedule 18.4:	Shadow Operator Annual Review
	Appendix 1: Shadow Operator Annual Review Checklist
	Appendix 2: Shadow Operator Annual Review Scorecard
	Appendix 3: Management Action Plan
Schedule 18.5:	Shadow Operator Payments
	Appendix 1: Shadow Operator Cost Reimbursement
	Appendix 2: Shadow Operator Performance Fee

## SCHEDULE 18.1

### Shadow Operations

#### 1 Accepted Programme and Accepted Programme Modelling Suite

- 1.1 Within 5 Weekdays of signature of the Franchise Agreement, the Secretary of State shall notify the Franchisee, in writing, of any:
- (a) additions and/or amendments which the Secretary of State requires be made to the Proposed Accepted Programme;
  - (b) information relating to the Shadow Operator Services which is additional to that on which the Proposed Accepted Programme was based or reasonably ought to have been based; and
  - (c) additional and/or amended Accepted Programme Specific Requirements which the Secretary of State requires the Franchisee to perform.
- 1.2 Within 15 Weekdays of signature of the Franchise Agreement, the Franchisee shall provide to the Secretary of State:
- (a) a draft Accepted Programme, which shall be based upon the Proposed Accepted Programme and shall:
    - (i) be in such format as the Secretary of State may specify;
    - (ii) incorporate the additions and amendments required to be made to the Proposed Accepted Programme by the Secretary of State in accordance with paragraph 1.1(a) of this Schedule 18.1;
    - (iii) be amended to reflect any information provided by the Secretary of State in accordance with paragraph 1.1(b) of this Schedule 18.1;
    - (iv) be amended to reflect the additional and/or amended Accepted Programme Specific Requirements provided by the Secretary of State in accordance with paragraph 1.1(c) of this Schedule 18.1;
    - (v) be amended to reflect any developments in Good Industry Practice and any other information relating to the HS2 Project and/or contents of the Proposed Accepted Programme, Proposed Resourcing Plan and Proposed Cost Baseline, of which the Franchisee has become aware in the period between submitting the Proposed Accepted Programme and the date on which the draft Accepted Programme is provided to the Secretary of State; and
    - (vi) be amended to reflect the requirements of paragraph 55 of Schedule 18.2;
  - (b) a draft Resourcing Plan, which shall:
    - (i) be in such format as the Secretary of State may specify;
    - (ii) be based upon the Proposed Resourcing Plan;
    - (iii) be developed in line with and reconcile to the draft Accepted Programme provided to the Secretary of State in accordance with paragraph 1.2(a) of this Schedule 18.1;
    - (iv) represent the Franchisee's best estimate, based on reasonable assumptions, of its resourcing and staffing requirements to ensure the efficient and effective



performance of the Shadow Operator Services in accordance with the draft Accepted Programme provided to the Secretary of State in accordance with paragraph 1.2(a) of this Schedule 18.1;

- (v) identify and explain in reasonable detail the assumptions relied on in its preparation; and
- (vi) identify the extent of any anticipated involvement of Shadow Operator PMO Personnel in the performance of the Shadow Operator Services.

(c) a draft Accepted Programme Modelling Suite, which shall be:

- (i) in such format as the Secretary of State may specify from time to time;
- (ii) updated to reflect the draft Accepted Programme and the draft Resourcing Plan provided to the Secretary of State in accordance with paragraphs 1.2(a) and 1.2(b) of this Schedule 18.1; and
- (iii) based upon and developed using the Product Cost Assumption Statements and consistent with the Proposed Cost Baseline;

(d) an updated demonstration, confirmed in writing by a statutory director of the Franchisee, that the draft Accepted Programme Modelling Suite is compliant with the Shadow Operator Procurement Strategy and the Shadow Operator Financial Management Strategy; and

(e) a summary of the differences between:

- (i) the Proposed Accepted Programme and the draft Accepted Programme;
- (ii) the Proposed Resourcing Plan and the draft Resourcing Plan; and
- (iii) the Proposed Cost Baseline and the draft Accepted Programme Modelling Suite,

together with a detailed explanation of the reasons for such differences.

1.3 Within 5 Weekdays of the Franchisee providing the Secretary of State with the documents required under paragraph 1.2 of this Schedule 18.1, the Franchisee and the Secretary of State shall meet (at such location, date and time as the Secretary of State may specify) to discuss the draft Accepted Programme, draft Resourcing Plan and draft Accepted Programme Modelling Suite ("**Shadow Operator Planning Meeting**").

1.4 The Franchisee shall ensure that the representatives of the Franchisee at the Shadow Operator Planning Meeting include such directors and/or senior managers of the Franchisee and such directors and/or senior managers of the Parent as the Secretary of State may require.

1.5 The Parties shall seek to agree, by no later than ten (10) Weekdays after the Shadow Operator Planning Meeting, the:

- (a) Accepted Programme;
- (b) Resourcing Plan; and
- (c) Accepted Programme Modelling Suite,

and if so agreed, the Secretary of State shall approve the Accepted Programme, the Resourcing Plan and the Accepted Programme Modelling Suite.

1.6 If the Parties have not agreed the Accepted Programme, Resourcing Plan and/or Accepted Programme Modelling Suite within the timescale specified in paragraph 1.5, the Secretary of State

shall reasonably determine the form and contents of the Accepted Programme, Resourcing Plan and Accepted Programme Modelling Suite.

- 1.7 The Accepted Programme, Resourcing Plan and Accepted Programme Modelling Suite agreed or determined under this paragraph 1 shall be Placed in Escrow and apply with effect from the Shadow Operator Start Date.
- 1.8 Any notice given by the Secretary of State under paragraph 1.1(c) of this Schedule 18.1 which sets out additional and/or amended Accepted Programme Specific Requirements shall constitute a Variation in accordance with paragraph 1.1 of Schedule 9.3B (Variations to the Franchise Agreement) and the Franchisee shall execute such documentation as the Secretary of State may reasonably require to give effect to such Variation.

## **2 Development of the Transitional Modelling Suite and the IOC Modelling Suite**

- 2.1 Within six (6) Reporting Periods of the Start Date, the Franchisee shall provide the Secretary of State with:
- (a) a draft Transitional Modelling Suite;
  - (b) a draft Transitional Record of Assumptions;
  - (c) a draft IOC Modelling Suite; and
  - (d) a draft IOC Record of Assumptions.
- 2.2 The draft Transitional Modelling Suite submitted by the Franchisee in accordance with paragraph 2.1 of this Schedule 18.1 shall:
- (a) be developed within Microsoft Excel;
  - (b) satisfy the same best practice modelling principles as adopted in the development of the ICWC Modelling Suite;
  - (c) use the same input price base as the ICWC Modelling Suite;
  - (d) calculate costs and revenues on the basis of Reporting Periods;
  - (e) cover the period from the Start Date to the Expiry Date;
  - (f) be designed to capture an equivalent level of detail to that provided in the ICWC Modelling Suite;
  - (g) be populated only with entries of zero (0);
  - (h) be designed with the functionality to amend line items;
  - (i) in respect of the draft Transitional Operational Models to be included in the draft Transitional Modelling Suite, be developed to support the calculation of costs and revenues under the IOC Operational Models during the ICWC Term and be capable of interfacing with the IOC Operational Models to enable this.
- 2.3 The draft Transitional Record of Assumptions submitted by the Franchisee in accordance with paragraph 2.1 of this Schedule 18.1 shall:
- (a) include all the inputs, assumptions and calculations to be contained in the Transitional Modelling Suite; and
  - (b) provide the equivalent level of detail as the ICWC Record of Assumptions,

to the extent reasonably practicable at that stage of development of the Transitional Modelling Suite.

2.4 The draft IOC Modelling Suite submitted by the Franchisee in accordance with paragraph 2.1 of this Schedule 18.1 shall:

- (a) be substantially based on the ICWC Modelling Suite;
- (b) be developed within Microsoft Excel;
- (c) satisfy the same best practice modelling principles as adopted in the development of the ICWC Modelling Suite;
- (d) use the same input price base as the ICWC Modelling Suite;
- (e) calculate costs and revenues on the basis of Reporting Periods;
- (f) cover the period from the Integrated Operator Start Date to 01:59 on 1 April 2034;
- (g) be populated with:
  - (i) the costs and revenues contained in the ICWC Modelling Suite for the period from the Integrated Operator Start Date to 01:59 on 1 April 2031; and
  - (ii) entries of zero (0) for Franchisee Years after the end of the period described in paragraph (g)(i);
- (h) incorporate all of the component parts of the ICWC Modelling Suite, except to the extent that the Franchisee can demonstrate that amendments are required to be suitable for modelling the Actual IOC Costs and the Actual IOC Revenues;
- (i) be designed with the functionality to amend line items;
- (j) enable the Secretary of State to understand the costs and revenues which will be included in the IOC Modelling Suite at a level of detail no less than that set out in the ICWC Modelling Suite;
- (k) in respect of the draft IOC Operational Models to be included in the draft IOC Modelling Suite, be developed to support the calculation of costs and revenues under the Transitional Operational Models during the ICWC Term and be capable of interfacing with the Transitional Operational Models to enable this.

2.5 The draft IOC Record of Assumptions submitted by the Franchisee in accordance with paragraph 2.1 of this Schedule 18.1 shall:

- (a) provide for the equivalent level of detail as the ICWC Record of Assumptions; and
- (b) include all the inputs, assumptions and calculations contained in the draft IOC Modelling Suite.

2.6 The Parties shall seek to agree, by no later than twenty (20) Weekdays after the date on which the documents set out in paragraph 2.1 of this Schedule 18.1 are provided to the Secretary of State, the Transitional Modelling Suite, Transitional Record of Assumptions, IOC Modelling Suite and IOC Record of Assumptions and if so agreed, the Secretary of State shall formally approve the Transitional Modelling Suite, Transitional Record of Assumptions, IOC Modelling Suite and IOC Record of Assumptions.

2.7 If the Parties have not agreed any one or more of the documents set out in paragraph 2.1 of this Schedule 18.1 within the timescale specified in paragraph 2.6, the Secretary of State shall reasonably determine the form and content of the relevant document or documents.

2.8 The Transitional Modelling Suite, Transitional Record of Assumptions, IOC Modelling Suite and IOC Record of Assumptions agreed or determined under this paragraph 2 shall be Placed in Escrow.

### **3 Shadow Operator Services**

3.1 Without prejudice to clause 6 (General Obligations), the Franchisee shall perform the Shadow Operator Services:

- (a) in accordance with the Franchise Agreement, the Accepted Programme and/or the Transitional Programme including:
  - (i) any scope agreed or determined in accordance with paragraphs 1.1 and 1.2 or 4.1, 4.2 and 4.3 (as appropriate) of Schedule 18.2 (Accepted Programme Specific Requirements); and
  - (ii) each timescale set out and, where no timescale is set out in the Franchisee Agreement, Accepted Programme or Transitional Programme, promptly;
- (b) using all reasonable endeavours to comply with the Resourcing Plan and the Resourcing Strategy;
- (c) in accordance with the Shadow Operator Procurement Strategy and Shadow Operator Financial Management Strategy;
- (d) with reasonable skill, care and diligence and in accordance with Good Industry Practice; and
- (e) in a demonstrably objective and unbiased manner and shall take reasonable steps to avoid any real or perceived conflicts of interest in performing the Shadow Operator Services.

3.2 The Franchisee shall have regard to each of the following when performing the Shadow Operator Services:

- (a) the HS2 Strategic Goals;
- (b) any publicly available franchising policy of the Secretary of State, including the Secretary of State's policies on track:train integration set out in "Connecting people: a strategic vision for rail"; and
- (c) Value for Money in relation to the GB Railway.

3.3 Without prejudice to paragraph 3.1(b) and 3.1(d), the Franchisee shall ensure that it provides a sufficient level of appropriately skilled resource to:

- (a) perform the Shadow Operator Services in accordance with the Franchise Agreement, the Accepted Programme, the Transitional Programme and the Collaboration Agreement; and
- (b) provide representatives to attend appropriate meetings, including with relevant Stakeholders, HS2 Limited, Network Rail and such other persons as may be required for the Franchisee to perform the Shadow Operator Services in accordance with this Schedule 18.

3.4 The Secretary of State may, at any time, perform itself or retain third parties to perform the Shadow Operator Services (or any part thereof) and/or any services similar, related to or substantially the same as the Shadow Operator Services.

#### **4 Key Shadow Operator Personnel**

4.1 In addition to the Franchisee's obligation pursuant to paragraph 3.1 of Schedule 11.2 (Management Information), on or before the Shadow Operator Start Date, the Franchisee shall provide to the Secretary of State:

- (a) a schedule of Key Shadow Operator Personnel who are or shall be employed or contracted by the Franchisee in the performance of the Key Shadow Operator Roles<sup>15</sup> (identifying any vacancies); and
- (b) an organisation chart detailing the responsibilities and reporting lines of each of the Key Shadow Operator Personnel,

in each case to the Secretary of State's reasonable satisfaction.

4.2 The Franchisee shall update each of the schedule and organisation chart provided to the Secretary of State in accordance with paragraph 4.1 as and when any changes occur and provide a copy to the Secretary of State promptly thereafter.

4.3 The Franchisee shall use all reasonable endeavours to appoint a suitably qualified person to any vacant Key Shadow Operator Role as soon as practicable.

4.4 The Franchisee shall not amend any responsibilities and reporting lines relating to a Key Shadow Operator Role, without giving prior notice in writing to the Secretary of State.

#### **5 Compliance with Resourcing Plan**

5.1 The Franchisee shall use all reasonable endeavours to comply with the Resourcing Plan and shall deliver a report to the Secretary of State in respect of such compliance no less than twice each Shadow Operator Performance Period in accordance with paragraph 5.2 of this Schedule 18.1 (each a "**Resourcing Plan Compliance Report**").

5.2 The Franchisee shall submit to the Secretary of State:

- (a) the first Resourcing Plan Compliance Report no later than six (6) months following the Start Date; and
- (b) thereafter, a Resourcing Plan Compliance Report:
  - (i) at the same time as a Shadow Operator Annual Review Checklist is delivered by the Franchisee to the Secretary of State in accordance with paragraph 3.4 of Schedule 18.4 (Shadow Operator Annual Review); and
  - (ii) in each Shadow Operator Performance Period, no later than six (6) months following the most recent date of submission required by paragraph (b)(i).

5.3 Each Resourcing Plan Compliance Report provided to the Secretary of State in accordance with paragraph 5.2 of this Schedule 18.1 shall:

- (a) set out in detail the Franchisee's compliance with the Resourcing Plan for the period from the date of the immediately preceding Resourcing Plan Compliance Report (except in the

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15 **Note to Bidders:** The Key Shadow Operator Roles will be confirmed as part of bid contractualisation, prior to signature (see Definitions, clause 3.1).

case of the first Resourcing Plan Compliance Report, which shall be from the date of the Shadow Operator Start Date) until the date of that Resourcing Plan Compliance Report;

- (b) identify and explain in reasonable detail the reasons for any material non-compliance;
- (c) be in such format as the Secretary of State may specify from time to time; and
- (d) contain such other information as the Secretary of State may specify from time to time.

## **6 Failure to Perform the Shadow Operator Services**

6.1 Without prejudice to the provisions of Schedule 10 (Remedies, Events of Default and Termination Events) or the provisions of paragraph 19 of this Schedule 18.1, where the Secretary of State notifies the Franchisee that the Secretary of State reasonably considers that any part of the Shadow Operator Services has not been performed in accordance with the Franchise Agreement, the Accepted Programme and/or the Transitional Programme (including any scope agreed or determined in accordance with paragraphs 1.1 and 1.2 or 4.1, 4.2 and 4.3 (as appropriate) of Schedule 18.2 (Accepted Programme Specific Requirements)), the Franchisee shall:

- (a) take whatever action is necessary to minimise the impact of the failure, including by promptly performing any Shadow Operator Services which have not been performed;
- (b) where the relevant Shadow Operator Services have been performed but the Secretary of State reasonably considers that they have not been performed in accordance with the Franchise Agreement, the Accepted Programme and/or the Transitional Programme, re-perform (including by taking any of the actions set out in paragraphs 1.6 and/or 2.5 of Schedule 18.2 (Accepted Programme Specific Requirements) (as appropriate)) (at the Franchisee's own cost) the relevant Shadow Operator Services so as to meet the requirements of the Franchise Agreement, the Accepted Programme and/or the Transitional Programme;
- (c) where the failure relates to a timescale set out in the Franchise Agreement, Accepted Programme and/or Transitional Programme as set out in paragraph 3.1(a)(ii) of this Schedule 18.1, take all necessary steps to complete the relevant Shadow Operator Services promptly;
- (d) upon the request of the Secretary of State, at the Franchisee's own cost, investigate the cause of any failure to perform the Shadow Operator Services and provide the Secretary of State with a report outlining the reasons for the failure and the steps which the Franchisee shall take in order to prevent any similar failure from recurring; and
- (e) upon the request of the Secretary of State, implement the steps set out in the report provided to the Secretary of State in accordance with paragraph 6.1(d) or such other steps as the Secretary of State may reasonably request in order to prevent any similar failure from recurring.

6.2 Where any part of the Shadow Operator Services has not been performed by the Franchisee in accordance with the Franchise Agreement, the Accepted Programme and/or the Transitional Programme (including any scope agreed or determined in accordance with paragraphs 1.1 and 1.2 or 4.1 and 4.2 (as appropriate) of Schedule 18.2 (Accepted Programme Specific Requirements)), the Franchisee shall promptly notify the Secretary of State of such failure and then take the steps set out in paragraph 6.1 of this Schedule 18.1 in relation to such failure.

## **7 The Collaboration Agreement**

7.1 Each of the Secretary of State and the Franchisee shall comply with the provisions of the Collaboration Agreement until the termination or expiry of the Collaboration Agreement.

7.2 Any failure by the Franchisee to comply with the provisions of the Collaboration Agreement shall constitute a contravention of the Franchise Agreement.

## **8 Contractualisation of the IOC Confirmable Obligations**

8.1 Where:

- (a) an approved Final Output Report contains drafting and/or amendments to the Franchise Agreement to reflect the impact of the Recommended Option on any IOC Confirmable Obligation in accordance with paragraph 2.3(f) of Schedule 18.2 (Accepted Programme Specific Requirements), where applicable by reference to the means of confirmation for that IOC Confirmable Obligation contained in Appendix 1 to Schedule 20 (IOC Confirmable Obligations);
- (b) the Franchisee has provided amendments to the IOC Modelling Suite necessary for the Franchisee to comply with the IOC Performance Regime and IOC Benchmarks in accordance with paragraph 9.2 of this Schedule 18.1; or
- (c) where either Party provides the other with any proposed drafting relating to any IOC Confirmable Obligation (other than under (a) or (b) above), where applicable by reference to the means of confirmation for that IOC Confirmable Obligation contained in Appendix 1 to Schedule 20 (IOC Confirmable Obligations);

then:

(d) within twenty (20) Weekdays of:

- (i) the Secretary of State giving notice of the Secretary of State's approval in accordance with paragraph 2.4 of Schedule 18.2 (Accepted Programme Specific Requirements); and/or
- (ii) the Franchisee providing the amendments to the IOC Modelling Suite in accordance with paragraph 9.2 of this Schedule 18.1; or
- (iii) providing the other with proposed drafting as described in paragraph 8.1(c),

the Franchisee and the Secretary of State shall agree a process to finalise the drafting for the relevant IOC Confirmable Obligation (to convert that into an IOC Confirmed Obligation) or the IOC Performance Regime and the updates to the IOC Modelling Suite; and/or

(e) where the Integrated Operator Start Date has occurred and the relevant IOC Confirmed Obligation will come into effect in the then current Franchisee Year and prior to the next occasion on which the IOC Modelling Suite should be Placed in Escrow in accordance with paragraph 1.1(b) of Schedule 9.2B (IOC Escrow Documents and Shadow Operator Escrow Documents), the approved Final Output Report shall constitute notice of a proposed Change to the IOC Cost Budget in accordance with paragraph 2.1 of Schedule 9.1B (Financial and Other Consequences of Change) and the provisions of Schedule 9.1B (Financial and Other Consequences of Change) shall apply to determine the necessary Change to the IOC Cost Budget.

8.2 If the Parties are unable to agree a process to finalise the drafting for the relevant IOC Confirmable Obligation or the IOC Performance Regime and the updates to the IOC Modelling Suite in accordance with paragraph 8.1(d) of this Schedule 18.1, then the Secretary of State shall reasonably determine such process.

8.3 Notwithstanding any process agreed under paragraph 8.1(d) of this Schedule 18.1, the Franchisee shall, within a reasonable period of receiving a request from the Secretary of State, attend a meeting with the Secretary of State (at such location as the Secretary of State may specify) to discuss any drafting for the relevant IOC Confirmable Obligation or the IOC Performance Regime



and/or updates to the IOC Modelling Suite. The Franchisee shall ensure that the representatives of the Franchisee at such meeting include such directors and/or senior managers of the Franchisee and such directors and/or senior managers of the Parent as the Secretary of State may reasonably require.

- 8.4 If the Parties have not agreed the drafting for the relevant IOC Confirmable Obligation or the IOC Performance Regime and the updates to the IOC Modelling Suite by the date agreed or determined in accordance with paragraph 8.1(d) or 8.2 (as appropriate) of this Schedule 18.1, the Secretary of State shall reasonably determine the drafting for the relevant IOC Confirmable Obligations or the IOC Performance Regime and the updates to the IOC Modelling Suite.
- 8.5 Following agreement or determination of the drafting for any IOC Confirmable Obligations and, where the circumstances in paragraph 8.1(e) of this Schedule 18.1 apply, any Change to the IOC Cost Budget, the Parties shall execute a variation agreement to amend the Integrated Operator Provisions in accordance with the agreed or determined drafting.
- 8.6 Upon execution of a variation agreement in accordance with paragraph 8.5 of this Schedule 18.1, the Franchisee shall provide the Secretary of State with an IOC Modelling Suite which has been amended as agreed or determined in accordance with this paragraph 8 and an IOC Record of Assumptions reflecting the amended IOC Modelling Suite each of which shall be Placed in Escrow.

## **9 Contractualisation of the IOC Benchmarks**

- 9.1 At any time following submission by the Franchisee to the Secretary of State of:
- (a) the High Speed Operational Performance Criteria Plan under paragraph 46 of Schedule 18.2 (Accepted Programme Specific Requirements), the Secretary of State may provide the Franchisee with its proposed drafting for the operational performance aspects and any other related aspects of the IOC Performance Regime and the IOC Benchmarks; and
  - (b) the Passenger Proposition under paragraph 49.6 of Schedule 18.2 (Accepted Programme Specific Requirements), the Secretary of State may provide the Franchisee with its proposed drafting for the customer experience and engagement aspects and any other related aspects of the IOC Performance Regime and the IOC Benchmarks.
- 9.2 Within a reasonable period following the provision by the Secretary of State of each of the:
- (a) drafting required under paragraph 9.1(a); and/or
  - (b) drafting required under paragraph 9.1(b),

the Franchisee shall provide the Secretary of State with the amendments to the IOC Modelling Suite necessary for the Franchisee to comply with the relevant aspects of the IOC Performance Regime and the IOC Benchmarks.

## **10 First IOC Year Budget Setting Process**

- 10.1 The Franchisee shall by no later than three (3) Reporting Periods before the Anticipated Switch Review Date or, if the Switch Review has occurred, the Integrated Operator Start Date submit to the Secretary of State drafts of the IOC Cost Budget, IOC Record of Assumptions and a periodic forecast of the Forecast IOC Revenue for the First IOC Year. Each such draft shall be prepared in accordance with paragraph 10.4 of this Schedule 18.1.
- 10.2 The Parties shall, in good faith, seek to agree the relevant IOC Cost Budget, Forecast IOC Revenue and the associated IOC Record of Assumptions for each Reporting Period in the First IOC Year.
- 10.3 In the event that the IOC Cost Budget, IOC Record of Assumptions and/or the Forecast IOC Revenue are not agreed by one (1) Reporting Period before the Integrated Operator Start Date then the Secretary of State shall reasonably determine, to the extent not agreed, the relevant



IOC Cost Budget, IOC Record of Assumptions and Forecast IOC Revenue and the Secretary of State shall (inter alia) take account of:

- (a) the Franchisee's obligations to perform the Franchise Services in accordance with the provisions of the Franchise Agreement; and
- (b) whether (in the reasonable opinion of the Secretary of State) in relation to the proposed item in the IOC Cost Budget, IOC Record of Assumptions and/or the Forecast IOC Revenue, the Franchisee has acted as an Efficient Operator.

10.4 The IOC Cost Budget and Forecast IOC Revenue shall:

- (a) adopt a format and structure which facilitates the easy comparison of costs and revenue with the information reported in the IOC Management Accounts and the IOC Annual Management Accounts;
- (b) be identical to the outputs of the IOC Modelling Suite as most recently Placed in Escrow;
- (c) in the case of:
  - (i) the IOC Cost Budget and associated IOC Record of Assumptions, make no assumptions or include any costs or adjustments which would not fall within the definition of Actual IOC Costs or which (unless otherwise expressly agreed in writing with or required by the Secretary of State) would not be included by an Efficient Operator; and
  - (ii) the Forecast IOC Revenue and associated IOC Record of Assumptions, make assumptions and include all revenue and adjustments which would fall within the definition of Actual IOC Revenue or which (unless otherwise expressly agreed in writing with or required by the Secretary of State) would be included by an Efficient Operator;
- (d) adopt:
  - (i) the format as agreed by the Parties, or failing such agreement as reasonably determined by the Secretary of State; and
  - (ii) the same accounting principles and standards as set out in the ICWC Record of Assumptions most recently Placed in Escrow (as these may be varied by agreement between the Parties or, in the case of accounting standards, as these may be reasonably revised by the Secretary of State to take account of changes to GAAP);
- (e) include an amount to reflect the depreciation or amortisation of all RV Assets during the First IOC Year; and
- (f) identify any proposed:
  - (i) payments to an Affiliate of the Franchisee (including management fees, royalty fees and any commission); and
  - (ii) payment of any fees, remuneration and/or pension contributions in respect of any director or officer of the Franchisee,

in each case by reference to each Reporting Period of the First IOC Year.

10.5 At the same time as the Franchisee submits the draft IOC Cost Budget to the Secretary of State in accordance with paragraph 10.1 of this Schedule 18.1, the Franchisee shall provide to the Secretary of State:

- (a) an extract of the Franchisee's Fixed or Non-Current Asset register setting out:
    - (i) each Fixed or Non-Current Asset owned by the Franchisee, including those Fixed or Non-Current Assets which have been fully depreciated;
    - (ii) an accurate valuation (determined in accordance with GAAP) of each Fixed or Non-Current Asset; and
    - (iii) the remaining useful economic life as calculated by applying GAAP accounting assumptions as appropriate to the asset of each Fixed or Non-Current Asset; and
  - (b) a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that the contents of the extract provided under paragraph 10.5(a) are true and accurate.
- 10.6 If requested by the Secretary of State, the Franchisee shall promptly provide written confirmation from the auditor of the Franchisee that the contents of the extract provided under paragraph 10.5(a) are consistent with the Franchisee's Annual Audited Accounts.
- 10.7 The Secretary of State may, by serving notice on the Franchisee, designate any of the Fixed or Non-Current Assets included in the register submitted to the Secretary of State in accordance with paragraph 10.5 as a Primary Franchise Asset and such Fixed or Non-Current Asset shall transfer to a successor operator at nil value.
- 10.8 By no later than two (2) Reporting Periods following receipt of the draft IOC Cost Budget, IOC Record of Assumptions and periodic forecast of the Forecast IOC Revenue for the First IOC Year in accordance with paragraph 10.1 of this Schedule 18.1, the Secretary of State shall notify the Franchisee, in respect of each RV Asset, whether at the Integrated Operator Start Date:
- (a) the relevant RV Asset shall be de-designated as an RV Asset with effect from the Integrated Operator Start Date, in which case:
    - (i) the Secretary of State shall pay to the Franchisee an amount equal to the RV Asset Transfer Value (or, if the Integrated Operator Start Date is later than 1 April 2026, the Revised RV Asset Transfer Value calculated in accordance with paragraph 1.4(a)) within fifty (50) days following the ICWC Expiry Date;
    - (ii) the Franchisee shall resubmit the IOC Cost Budget in accordance with this paragraph 10 of Schedule 18.1 (Shadow Operations) without including any amounts to reflect depreciation in respect of the relevant RV Asset;
    - (iii) the relevant RV Asset shall not be included in the Appendix to Schedule 14.6B (Residual Value Mechanism); and
    - (iv) notwithstanding its de-designation as an RV Asset, the relevant asset shall remain designated as a Primary Franchise Asset which shall transfer to a Successor Operator at nil value and the Appendix to Schedule 14.4B shall be updated to reflect such designation; or
  - (b) the relevant RV Asset shall remain an RV Asset, in which case:
    - (i) the relevant RV Asset shall be included in Appendix 1 to Schedule 14.6B (Residual Value Mechanism) with (subject to paragraph (ii)) the same RV Asset Information being included as was included in Appendix 1 to Schedule 14.6A (Residual Value Mechanism);
    - (ii) Column 2 of the table in Appendix 1 to Schedule 14.6B (Residual Value Mechanism) shall be completed by the Secretary of State adjusting the RV Asset Transfer Value applicable to each RV Asset by depreciating each such RV Asset on a straight line

bases from the Planned Delivery Date until the end of the Franchise Period, so that the RV Asset Transfer Value for each such RV Asset from the Integrated Operator Start Date will be the residual value of each such RV Asset following such depreciation as at the Expiry Date or, if the RV Asset has been fully depreciated on that basis by the Expiry Date, nil.

- 10.9 If the Secretary of State fails to provide a notice to the Franchisee under paragraph 10.8 in respect of any RV Asset, then the provisions of paragraph 10.8(b) shall apply in respect of such RV Asset as if the Secretary of State had notified the Franchisee that the relevant RV Asset is to remain an RV Asset as at the Integrated Operator Start Date.

**11 Anticipated Switch Review Date, Anticipated High Speed Start Date and Anticipated High Speed Established Services Date**

- 11.1 The Secretary of State may, from time to time, notify the Franchisee in writing of an amendment to the:

- (a) Anticipated Switch Review Date;
- (b) Anticipated High Speed Start Date; and/or
- (c) Anticipated High Speed Established Services Date,

provided that:

- (d) such notice is provided to the Franchisee at least one month prior to the date originally specified;
- (e) the Secretary of State may not amend any of the dates referred to in paragraphs 11.1(a) to 11.1(c) by bringing them forward in time;
- (f) in respect of the Anticipated High Speed Start Date, the amended date notified to the Franchisee under this paragraph 11 is no earlier than the date on which the Secretary of State reasonably considers that the Franchisee can commence operation of the High Speed Services in accordance with the Integrated Services TSR (as the same may have been amended by any Integrated Services TDR Amendment issued in accordance with paragraph 8.6(a) of Schedule 18.3 (Transitional Programme Specific Requirements)); and
- (g) in respect of the Anticipated High Speed Established Services Date, the amended date notified to the Franchisee under this paragraph 11 is no earlier than the date on which the Secretary of State reasonably considers that the Franchisee can commence operation of the High Speed Services in accordance with the Established Integrated Services TSR (as the same may have been amended by any Integrated Services TDR Amendment issued in accordance with paragraph 8.6(a) of Schedule 18.3 (Transitional Programme Specific Requirements)).

- 11.2 For the avoidance of doubt, where the Secretary of State notifies the Franchisee of any amendment to the Anticipated Switch Review Date, Anticipated High Speed Start Date and/or Anticipated High Speed Established Services Date, either Party may propose a Change to reflect the impact of such amendment on the Shadow Operator Services, the Cost Baseline and/or the Transitional Budget.

**12 Liability**

- 12.1 Nothing in this Schedule 18.1 shall limit or exclude the liability of either the Franchisee or the Secretary of State:

- (a) for death or personal injury caused by negligence;

- (b) for any fraud or fraudulent misrepresentation (including that of its officers, employees, agents, contractors or subcontractors);
  - (c) under the indemnity given at paragraph 12.15 of this Schedule 18.1;
  - (d) under the indemnity given at paragraph 14.8 of this Schedule 18.1; or
  - (e) for any matter in respect of which it would be unlawful for the Parties to exclude or limit their liability.
- 12.2 Subject to paragraph 12.1 of this Schedule 18.1, the maximum aggregate liability of the Franchisee to the Secretary of State in connection with the performance of the Accepted Programme Specific Requirements and the Accepted Programme (whether in contract, tort (including negligence), under the Act or otherwise) shall be ten million pounds (£10 million).
- 12.3 The Franchisee's liability to the Secretary of State in connection with the performance of any aspect of the Franchise Agreement other than the performance of the Accepted Programme Specific Requirements and the Accepted Programme (whether in contract, tort (including negligence), under the Act or otherwise), shall be uncapped.
- 12.4 For the avoidance of doubt, the provisions of Schedule 10.4 shall apply to this Schedule 18.1.
- 12.5 Subject to the Franchisee's compliance with paragraphs 12.7 to 12.9 and 12.11 of this Schedule 18.1, the Franchisee shall not be responsible for any failure to perform any of its obligations under Schedule 18 (Shadow Operator) and/or Schedule 19.4 (High Speed Services Review), nor shall any such failure constitute a contravention of the Franchise Agreement, if and to the extent that such failure is caused by any Shadow Operator Delay Event.
- 12.6 Where paragraph 12.5 of this Schedule 18.1 applies, the Secretary of State shall have due regard to that Shadow Operator Delay Event in completing the Shadow Operator Annual Review Scorecard for the relevant Shadow Operator Performance Period under paragraph 6 of Schedule 18.4 (Shadow Operator Annual Review) and shall not apply any scoring deduction as a result of any failure by the Franchisee to perform any of its obligations under the Franchise Agreement, to the extent that such failure is caused by a Shadow Operator Delay Event.
- 12.7 The Franchisee shall promptly give notice in writing to the Secretary of State if it becomes aware that a Shadow Operator Delay Event is going to occur or is reasonably likely to occur.
- 12.8 If any Shadow Operator Delay Event occurs, or on request by the Secretary of State following receipt of a notice from the Franchisee under paragraph 12.7 of this Schedule 18.1, then without prejudice to the Franchisee's obligations to comply with the Franchise Agreement, the Franchisee shall promptly notify the Secretary of State in writing of the Shadow Operator Delay Event (a "**Shadow Operator Delay Event Notice**"), giving full details of the nature of the event and its potential consequences and impact on the:
- (a) Accepted Programme or Transitional Programme (including delay and/or costs);
  - (b) Franchisee's compliance with the Accepted Programme Specific Requirements and/or Transitional Programme Specific Requirements; and/or
  - (c) Franchisee's ability to comply with its obligations in paragraph 1.1 of Schedule 19.4 (High Speed Services Review).
- 12.9 Following provision of a Shadow Operator Delay Event Notice, the Franchisee shall submit within a timescale reasonably appropriate to the nature of the Shadow Operator Delay Event in question (subject to a maximum of twenty (20) Weekdays) to the Secretary of State for approval a plan (the "**Shadow Operator Delay Action Plan**") for the Shadow Operator Delay Event, which shall include:

- (a) a reasonably detailed proposal, including any proposal for a Change or Variation to the Accepted Programme, Accepted Programme Modelling Suite, Transitional Programme Transitional Modelling Suite, the Anticipated High Speed Start Date, the Anticipated High Speed Established Services Date and/or any waiver of a High Speed Services Preparation Obligation effective to mitigate and address the impact of the Shadow Operator Delay Event; and
- (b) details for implementing such proposals and the Franchisee's forecast of the impact of such proposals on the Franchisee's compliance with its obligations under the Franchise Agreement.

12.10 Following receipt of a Shadow Operator Delay Event Notice (whether before, along with or after receipt of any Shadow Operator Delay Action Plan required pursuant to paragraph 12.9 of this Schedule 18.1), the Secretary of State shall notify the Franchisee of any action the Secretary of State proposes to take, or to require the Franchisee to take, with respect to the Shadow Operator Delay Event, which may include:

- (a) agreement to part or all of the proposals set out in the Shadow Operator Delay Action Plan, in which case the Franchisee (and, to the extent specified in the Shadow Operator Delay Action Plan, the Secretary of State) shall implement the Shadow Operator Delay Action Plan in accordance with its terms;
- (b) requests that the Franchisee revise the Shadow Operator Delay Action Plan to take into account any alternative proposals suggested by the Secretary of State, in which case the Franchisee shall re-submit the Shadow Operator Delay Action Plan and this paragraph 12.10 shall apply again following that re-submission;
- (c) if relevant, responses to the Franchisee's proposal for a Change or Variation to the Accepted Programme, Accepted Programme Modelling Suite, Transitional Programme and/or Transitional Modelling Suite in accordance with Schedule 9.1B (Financial and Other Consequences of Change) or Schedule 9.3B (Variation to the Franchise Agreement), as applicable;
- (d) proposals for an alternative Change or Variation pursuant to Schedule 9.1B (Financial and Other Consequences of Change) or Schedule 9.3B (Variation to the Franchise Agreement), as applicable;
- (e) a change to the Anticipated High Speed Start Date, the Anticipated High Speed Established Services Date and/or a waiver of any relevant High Speed Services Preparation Obligation; and/or
- (f) any other action as the Secretary of State sees fit in the circumstances,

and any such response shall be without prejudice to the other rights that are available to the Secretary of State under the Franchise Agreement, or otherwise.

12.11 The Franchisee shall use its reasonable endeavours to mitigate the impact of any Shadow Operator Delay Event.

12.12 Subject to paragraph 12.14 of this Schedule 18.1, the Franchisee shall not (and shall procure that its contractors, sub-contractors and Affiliates shall not) bring any proceedings, claims or demands against HS2 Limited (whether in contract, tort (including negligence), or otherwise) arising out of or in relation to the Shadow Operator Services (including any Shadow Operator Delay Event).

12.13 Subject to paragraph 12.14 of this Schedule 18.1, the Secretary of State shall procure that HS2 Limited (and the contractors, sub-contractors and Affiliates of HS2 Limited) shall not bring any proceedings, claims or demands (whether in contract, tort (including negligence), or otherwise) against the Franchisee arising out of or in relation to the Franchisee's performance of the Shadow Operator Services.

- 12.14 The provisions of paragraphs 12.12 and 12.13 of this Schedule 18.1 do not prevent the Franchisee or HS2 Limited from bringing claims under:
- (a) the HS2 Track Access Agreement; or
  - (b) any other contract between the Franchisee and HS2 Limited, provided that such contract has not been entered into with the aim of avoiding the restrictions set out in paragraph 12.12 and/or 12.13 of this Schedule 18.1.
- 12.15 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 to the extent arising out of or in relation to any failure by the Franchisee to comply with paragraph 12.12 of this Schedule 18.1, including any claims made by HS2 Limited under clause [◆]<sup>16</sup> of the Development Agreement.
- 12.16 The Secretary of State, on demand, shall hold the Franchisee fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Franchisee out of or in relation to any failure by the Secretary of State to comply with paragraph 12.13 of this Schedule 18.1.

### **13 Insurance**

- 13.1 The Franchisee shall take out and maintain during the Shadow Operator Term, and for six (6) years following expiry of the Shadow Operator Term (or, if earlier, six (6) years after the date of termination of the Franchise Agreement), professional indemnity insurance for an insured amount of not less than ten million pounds (£10,000,000) per occurrence and in the aggregate with a reputable insurance company and on terms acceptable to the Secretary of State.
- 13.2 The Franchisee shall promptly provide to the Secretary of State:
- (a) certificates evidencing the insurance policy required under paragraph 13.1 of this Schedule 18.1; and
  - (b) copies of any written notice of:
    - (i) its intention not to renew such policy; and/or
    - (ii) any material adverse change relating to such policy,and in each case its intended replacement policy, at least thirty (30) days prior to the expiration of its term.
- 13.3 The Franchisee shall not do or cause anything to be done to invalidate the insurance policy required by this paragraph 13.
- 13.4 If the Franchisee fails to effect the insurance policy required under this paragraph 13, the Secretary of State may effect such insurance policy and pay such premiums as may be necessary for that purpose. If the Secretary of State pays any such premiums, then the Secretary of State shall be entitled to set off, or recover at the Secretary of State's option as a debt, reasonable compensation for administrative costs incurred by the Secretary of State in effecting such insurance policy against any sums due to the Franchisee under the Franchise Agreement.

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16 **Note to Bidders:** This provision will cross-refer to a cross indemnity in the Development Agreement under which the Secretary of State indemnifies HS2 Limited for any losses, costs, etc. incurred due to the Franchisee failing to comply with paragraph 12.12 of this Schedule.



- 13.5 On request from the Secretary of State, the Franchisee shall provide the Secretary of State with any information which the Secretary of State requires in order to effect insurance in accordance with paragraph 13.4 of this Schedule 18.1.
- 13.6 On request from the Secretary of State, the Secretary of State's interest shall at all times be noted on all insurance policies required under this paragraph 13.

#### **14 Intellectual Property Rights**

- 14.1 Subject to paragraph 8 of Schedule 1.5 (Information about Passengers), the Franchise Agreement shall not operate to assign any title, interest or Intellectual Property Rights in any Franchisee Material or Secretary of State Material.
- 14.2 The Secretary of State hereby grants, or shall procure the grant of, to the Franchisee a non-exclusive, non-transferable, royalty free, paid-up, worldwide, personal licence to use, copy, maintain and modify the Secretary of State Material during the Franchise Period to the extent necessary and for the sole purpose of the proper performance of the Franchise Services.
- 14.3 The licence granted to the Franchisee under paragraph 14.2 of this Schedule 18.1 shall terminate automatically at the end of the Franchise Period or (if earlier) when such Secretary of State Material is no longer required in connection with the performance of the Franchise Services.
- 14.4 The Franchisee hereby grants, or shall procure the grant of, to the Secretary of State a perpetual non-exclusive, irrevocable, worldwide, paid-up, royalty-free licence to use, copy, maintain, transmit and modify any Franchisee Background Material to the extent necessary and for the sole purpose of enabling the Secretary of State to receive the full benefit of the Shadow Operator Services both during and after the Franchise Period, and such licence shall be transferable and/or capable of being sub-licensed.<sup>17</sup>
- 14.5 The Franchisee hereby grants, or shall procure the grant of, to the Secretary of State a perpetual exclusive (subject only to the licence grant made in paragraph 14.7 of this Schedule 18.1), irrevocable, worldwide, paid-up royalty-free licence to use, copy, maintain, transmit, distribute, publish and modify all Franchisee New Material for any purpose, and such licence shall be transferable and/or capable of being sub-licensed. Notwithstanding the provisions of this paragraph 14.5, the Franchisee shall be entitled to use the Franchisee New Material during the Franchise Period and for the sole purpose of the proper performance of the Franchise Services.
- 14.6 The Secretary of State shall procure the grant to the Franchisee of a non-exclusive, non-transferable, royalty free, paid-up, worldwide, personal licence to use, copy, maintain and modify the HS2 Limited Material during the Franchise Period to the extent necessary and for the sole purpose of the proper performance of the Shadow Operator Services.
- 14.7 Without prejudice to paragraph 8 of Schedule 15.4 (Provisions Applying on and after Termination), upon expiry of the Franchise Period, the Franchisee shall grant to each and every Successor Operator a non-exclusive, worldwide, irrevocable, perpetual royalty-free licence to use, copy, maintain and modify the Franchisee New Material as may, in the reasonable opinion of the Secretary of State, be necessary for any Successor Operator to perform services similar or equivalent to the Franchise Services after the expiry of the Franchise Period.<sup>18</sup>
- 14.8 The Franchisee shall indemnify, defend and hold harmless the Secretary of State in respect of any and all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands

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17 **Note to Bidders:** Bidders may bid back a more extensive licence grant to Franchisee Background Material, however, this represents the Secretary of State's minimum position.

18 **Note to Bidders:** Bidders may bid back additional provisions relating to making Franchisee New Material available to the wider rail industry so as to achieve industry benefits (in line with the wider industry benefits sought under ITT Delivery Plan 1.1).

incurred by or made on the Secretary of State whether wholly or in part, resulting from, or connected in any way with:

- (a) any claim that any Franchisee Material or the use, reproduction or exploitation of any of the same by or on behalf of the Secretary of State and/or any Successor Operator in accordance with the Franchise Agreement infringes the Intellectual Property Rights or rights in respect of confidential information of any third party; and
- (b) any claim that any Secretary of State Material infringes the Intellectual Property Rights of any third party, if the claim is based on or attributable to the fact that the Franchisee has modified (directly or indirectly) any Secretary of State Material in contravention of the Franchise Agreement.

## **15 Shadow Operator Stakeholder Survey**

15.1 The Franchisee shall, no later than six (6) months after the Start Date, submit to the Secretary of State for approval a draft Shadow Operator Stakeholder Survey which shall be used as part of the Shadow Operator Annual Review.

15.2 The Shadow Operator Stakeholder Survey shall enable an assessment of:

- (a) the Franchisee's approach to collaborative working in its performance of the Shadow Operator Services;
- (b) the manner in which the Franchisee has sought to address challenges which have arisen in its performance of 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 and Network Rail; and
- (d) the Franchisee's performance in the relevant Shadow Operator Performance Period in comparison to the Franchisee's performance in any prior Shadow Operator Performance Period, whether by maintaining materially similar survey questions or by other means.

15.3 If:

- (a) the Secretary of State approves the draft Shadow Operator Stakeholder Survey submitted to it pursuant to paragraph 15.1, such document shall become the Shadow Operator Stakeholder Survey; or
- (b) the Secretary of State does not approve the draft Shadow Operator Stakeholder Survey submitted to it pursuant to paragraph 15.1, then the Franchisee shall make:
  - (i) such amendments as the Secretary of State shall reasonably direct; and
  - (ii) re-submit a revised draft Shadow Operator Stakeholder Survey by such date as the Secretary of State may reasonably specify (and the provisions of paragraph 15.1 to 15.3 shall apply to such re-submitted draft).

15.4 For each Shadow Operator Performance Period, prior to undertaking the Shadow Operator Stakeholder Survey in accordance with paragraph 3.3 of Schedule 18.4 (Shadow Operator Annual Review), the Franchisee shall submit to the Secretary of State for approval:

- (a) the questions to be included in that Shadow Operator 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 Shadow Operator Stakeholder Survey.



15.5 If:

- (a) the Secretary of State approves the questions and list of Stakeholders submitted to it pursuant to paragraph 15.4, the Franchisee shall include such questions in the Shadow Operator Stakeholder Survey and shall invite such Stakeholders, and Network Rail, HS2 Limited and the Department, 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 15.4, then the Secretary of State shall reasonably determine the questions and/or list and the Franchisee shall include such questions in the Shadow Operator Stakeholder Survey and shall invite such Stakeholders, and Network Rail, HS2 Limited and the Department, to respond to it in accordance with that determination.

## **16 Shadow Operator Performance Meetings**

16.1 The Parties shall hold a Shadow Operator Performance Meeting at least once in every Reporting Period (or at such other time or interval as the Secretary of State may notify to the Franchisee in writing) at a time and location as notified to the Franchisee by the Secretary of State. The Secretary of State may invite attendees from Network Rail and HS2 Limited to attend any Shadow Operator Performance Meeting for such part of any Shadow Operator Performance Meeting as the Secretary of State considers necessary.

16.2 The Franchisee shall ensure that:

- (a) the representatives of the Franchisee at a Shadow Operator 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 Shadow Operator Performance Meeting at least once every quarter.

16.3 The Franchisee shall prepare and present to each Shadow Operator Performance Meeting:

- (a) a report setting out the Franchisee's performance of the Shadow Operator Services against the Accepted Programme, the Accepted Programme Specific Requirements, the Transitional Programme and the Transitional Programme Specific Requirements, in the Reporting Period prior to the Reporting Period in which the Shadow Operator Performance Meeting is held;
- (b) a report setting out the Franchisee's forecast of performance of the Shadow Operator Services against the Accepted Programme, the Accepted Programme Specific Requirements, the Transitional Programme and the Transitional Programme Specific Requirements:
  - (i) for all Shadow Operator Services that are being performed in the Reporting Period in which the Shadow Operator Performance Meeting is held and all Shadow Operator Services that are scheduled to commence during the next Shadow Operator Performance Period; and
  - (ii) for such longer term, or in respect of such other activities, as the Secretary of State may reasonably request (subject to the Franchisee receiving at least twenty eight (28) days' notice of the requirement to prepare and present a report on such basis); and
- (c) such other reports as the Secretary of State may reasonably request, subject to the Franchisee receiving at least twenty eight (28) days' notice of the requirement to prepare and present any such report.

16.4 No comment or failure to comment nor any agreement or approval, implicit or explicit by either Party at a Shadow Operator Performance Meeting shall 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 (respectively) clause 14.1 (Waivers) and paragraph 1 of Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes) or paragraph 1 of Schedule 9.3B (Variations to the Franchise Agreement) (as applicable).

## **17 Shadow Operator Financial Information**

17.1 Each Shadow Operator Section of the Management Accounts and each Shadow Operator Section of the Annual Management Accounts shall:

- (a) be in the formats set out in the document in the agreed terms marked **SO MA** or in such other format as the Secretary of State may reasonably specify from time to time;
- (b) 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
- (c) identify to the reasonable satisfaction of the Secretary of State, any changes in such accounting policies from those policies that were applied in preparing the Accepted Programme Modelling Suite Placed in Escrow under paragraph 1.7 of this Schedule 18.1 and the Transitional Modelling Suite Placed in Escrow under paragraph 2.8 of this Schedule 18.1.

17.2 The Franchisee shall deliver to the Secretary of State, within ten (10) Weekdays of the end of each Reporting Period:

- (a) the Shadow Operator Section of the Management Accounts, setting out:
  - (i) a cashflow statement, profit and loss account and balance sheet in relation to the performance of the Accepted Programme and Accepted Programme Specific Requirements; and
  - (ii) a cashflow statement, profit and loss account and balance sheet in relation to the performance of the Transitional Programme and Transitional Programme Specific Requirements,

in each case for that Reporting Period cumulatively for the Franchisee Year to date and cumulatively from the Shadow Operator Start Date to the date as at which the Management Accounts are prepared;

- (b) written confirmation that the Shadow Operator Section of 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:
  - (i) the revenues, costs, assets and liabilities of the Franchisee relating to the performance of the Shadow Operator Services (including contingent assets or liabilities and known business risks and opportunities) excluding the PMO Services; and
  - (ii) the allocation of costs between those budgeted in the Cost Baseline and those budgeted in the Transitional Budget;

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 to that report; and

- (c) the Shadow Operator Section of the Management Accounts shall also set out:

- (i) a comparison of the Franchisee's financial performance during such period against the Cost Baseline and the Transitional Budget. Such comparison shall follow the same structure and format as, and report costs (on a line by line basis) consistently with, the Cost Baseline and the Transitional Budget and shall present the information so as to facilitate the identification of Actual Shadow Operator Costs and Actual Shadow Operator Revenue (if any) as reported in the Shadow Operator Section of the Management Accounts and an easy comparison of those Actual Shadow Operator Costs and Actual Shadow Operator Revenue (if any) with both the Cost Baseline and the Transitional Budget, each as most recently Placed in Escrow;
- (ii) a comparison of the Franchisee's cumulative financial performance during the Franchisee Year in which such period occurs against the cumulative position set out in the Cost Baseline and the Transitional Budget including clear identification of any costs on an individual line of the Shadow Operator Section of the Management Accounts which are cumulatively in the Franchisee Year to date in excess of the cumulative year to date costs on that corresponding line of the Cost Baseline or the Transitional Budget (as appropriate), each as most recently Placed in Escrow;
- (iii) a comparison of the Franchisee's cumulative financial performance against the period from the Shadow Operator Start Date to date against the cumulative position set out in the Cost Baseline and the Transitional Budget including clear identification of any costs on an individual line of the Shadow Operator Section of the Management Accounts which are cumulatively for the period from the Shadow Operator Start Date to date in excess of the cumulative year to date costs on that corresponding line of the Cost Baseline or the Transitional Budget (as appropriate), each as most recently Placed in Escrow;
- (iv) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Shadow Operator Section of the Management Accounts and the Cost Baseline and the Transitional Budget;
- (v) separate identification of any costs and related accounting adjustments in the Shadow Operator Section of the Management Accounts which relate to the provision of the Shadow Operator Services but which do not fall within the definition of Actual Shadow Operator Costs;
- (vi) a statement of any revenue not recorded in the Shadow Operator Section of the Management Accounts but which falls within the definition of Actual Shadow Operator Revenue together with an explanation of why such revenue was not received or accrued by the Franchisee (with evidence to demonstrate that it acted as an Efficient Operator);
- (vii) separate identification of payments to or from any Affiliate of the Franchisee;
- (viii) a statement of any costs incurred for the period from the Shadow Operator Start Date to the date as at which the Management Accounts are prepared which exceed the amount specified in the relevant line in the Cost Baseline or Transitional Budget together with an explanation of why the overspend occurred (with evidence to demonstrate that it acted as an Efficient Operator) and (where applicable), why no proposal for Change was made by the Franchisee to address the excess cost;
- (ix) explanations of any prior period or retrospective adjustments to transactions in previous Shadow Operator Section of the Management Accounts which impact the cumulative costs and/or revenues as reported in the Shadow Operator Section of the Management Accounts for any Reporting Period;

- (x) costs reported complying with the same structure, in the same format and on the same basis as costs as set out in the Cost Baseline and the Transitional Budget (as appropriate) for that Franchisee Year;
  - (xi) a statement setting out the total budgeted cost of work performed in the period from the Shadow Operator Start Date to the date as at which the Management Accounts are prepared for each line item in the Cost Baseline or Transitional Budget (each as most recently Placed in Escrow);
  - (xii) a statement of any revenue not recorded in the Shadow Operator Section of the Management Accounts but which falls within the definition of Actual Shadow Operator Revenue together with an explanation of why such revenue was not received or accrued by the Franchisee (with evidence to demonstrate that it acted as an Efficient Operator); and
  - (xiii) an accrual or accruals of cost or revenue (presented in the relevant Section(s) of the Management Accounts) representing the difference between the actual Franchise Payment paid or received in the Reporting Period and the amount of the draft calculation of the total Franchise Payment payable or receivable (including each element of the CostADJ<sub>ShOp</sub>) for the Reporting Period based on the cumulative costs and revenues in the Shadow Operator Section of the Management Accounts, pursuant to paragraph 2 of Appendix 1 to Schedule 18.5 (Shadow Operator Payments), together with supporting information showing how the Franchisee has calculated such payment including a breakdown of the information used for the purposes of the calculation of each element of the CostADJ<sub>ShOp</sub> pursuant to Appendix 1 of Schedule 18.5 (Shadow Operator Payments);
  - (xiv) separate identification of any costs, revenues, balances and accounting adjustments in the Shadow Operator Section of the Management Accounts that relate to the Actual Digital Railway Shadow Operator Costs; and
  - (xv) a statement of the Digital Railway Account Balance as at the end of that Reporting Period together with details of all deposits and withdrawals made:
    - (A) during that Reporting Period; and
    - (B) cumulatively from the Shadow Operator Start Date to the date as at which the Management Accounts are prepared.
- 17.3 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 a forecast of expected Actual Shadow Operator Revenue (if any) and expected Actual Shadow Operator Costs together with a detailed and comprehensive written explanation as to any changes in such forecast from the previous forecast (if any) provided pursuant to the provisions of this Schedule 18.1, for each of the following thirteen (13) Reporting Periods. For the avoidance of doubt, this forecast does not replace or alter the Cost Baseline as agreed or determined.
- 17.4 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.
- 17.5 Within five (5) Weekdays after receipt of the Shadow Operator Section of the Management Accounts for each Reporting Period the Secretary of State shall notify the Franchisee of any further information, explanation or analysis that the Secretary of State requires in relation to the Shadow Operator 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 or Schedule 8.1B (as applicable)) and the Franchisee shall promptly provide such further information, explanation or analysis.

- 17.6 Within four (4) Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the Shadow Operator Section of the Annual Management Accounts for that Franchisee Year.
- 17.7 Within four (4) Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State a detailed reconciliation of the Shadow Operator Section of the Annual Management Accounts to the Annual Audited Accounts delivered to the Secretary of State in accordance with paragraph 9.4(b)(iii) of Schedule 11.2 (Management Information).
- 17.8 At all times the Franchisee shall maintain records of cumulative spend relating to individual line items in the Cost Baseline and Transitional Budget sufficient to allow for the calculation of the total costs relating to an Accepted Programme Specific Requirement from the Shadow Operator Start Date to the High Speed Established Services Date.

**18 Shadow Operator PMO<sup>19</sup>**

- 18.1 On or before the Start Date, the Franchisee shall provide to the Secretary of State:
- (a) a schedule of Shadow Operator PMO Personnel who are or shall be employed or contracted by the Franchisee in the performance of the Shadow Operator PMO Roles (identifying any vacancies); and
  - (b) an organisation chart detailing the responsibilities and reporting lines of each of the Shadow Operator PMO Personnel,
- in each case to the Secretary of State's reasonable satisfaction.
- 18.2 The Franchisee shall update each of the schedule and organisation chart provided to the Secretary of State in accordance with paragraph 18.1 as and when any changes occur and provide a copy to the Secretary of State promptly thereafter. For the avoidance of doubt, the Franchisee shall not be permitted to change the number or nature of Shadow Operator PMO Roles, or the responsibilities and reporting lines, without the prior written consent of the Secretary of State.
- 18.3 On and from the Start Date, the Franchisee shall ensure that the Shadow Operator PMO Personnel are employed or contracted by the Franchisee in the performance of the Shadow Operator PMO Roles and the PMO Services.
- 18.4 The Franchisee shall not be entitled to any reimbursement of costs whether under the Cost Baseline, the Transitional Budget or otherwise in respect of any PMO Costs.
- 18.5 The Secretary of State may, from time to time, give notice in writing to the Franchisee that any member of the Shadow Operator PMO Personnel is to be designated as Key Shadow Operator Personnel and the provisions of paragraph 4 of this Schedule 18.1 shall apply to any persons in respect of whom the Secretary of State gives such notice.
- 18.6 The Franchisee shall ensure that each member of the Shadow Operator PMO Personnel that has been designated as Key Shadow Operator Personnel under paragraph 18.5 has the skills and experience to undertake the relevant Shadow Operator PMO Role as set out in the Resourcing Strategy.
- 18.7 If the Secretary of State, acting reasonably, considers that any member of the Shadow Operator PMO Personnel that has been designated as Key Shadow Operator Personnel under paragraph 18.5:

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19 **Note to Bidders:** the drafting of this obligation will be revised as necessary to reflect proposals in response to ITT Delivery Plan 1.1.

- (a) does not have the skills and experience required to undertake the relevant Shadow Operator PMO Role; or
- (b) is otherwise unsatisfactory for any reason which has a material impact upon such person's responsibilities,

the Secretary of State may notify the Franchisee requiring the removal of that member of the Shadow Operator PMO Personnel and the appointment of a suitable replacement.

18.8 If:

- (a) any Shadow Operator PMO Role is left vacant for more than twenty (20) Weekdays (including, for the avoidance of doubt, any Shadow Operator PMO Role which is vacant as a result of the Franchisee complying with a request of the Secretary of State made under paragraph 18.7); or
- (b) the Secretary of State, acting reasonably, considers that the circumstances set out in paragraph 18.7 continue to apply to any member of the Shadow Operator PMO Personnel later than twenty (20) Weekdays after the Secretary of State's notification under paragraph 18.7,

then the Secretary of State may either:

- (c) appoint an individual to undertake the relevant Shadow Operator PMO Role (at the Franchisee's own cost) until the Franchisee has appointed an alternative member of the Shadow Operator PMO Personnel, with the skills and experience required and not otherwise unsatisfactory to the Secretary of State, to perform the relevant Shadow Operator PMO Role; or
- (d) notify the Franchisee of a Change to take account of the reduction in the Franchisee's costs due to the failure to fill the relevant Shadow Operator PMO Role whether at all or (where applicable) with a person satisfying the requirements of paragraph 18.6 (and such Change shall be deemed to be a Qualifying Change).

18.9 Where the Secretary of State appoints an individual to undertake the relevant Shadow Operator PMO Role (at the Franchisee's own cost) in accordance with paragraph 18.8(c), then the Secretary of State may propose a Change to the ICWC Financial Model and/or the IOC Financial Model (as appropriate) to reflect that the Franchisee shall bear the costs associated with the recruitment, appointment and employment of such individual (and such Change shall be deemed to be a Qualifying Change).

## 19 Right of Step-In

19.1 The Secretary of State may exercise the Secretary of State's right of Step-In in accordance with this paragraph 19 in the following circumstances:

- (a) there is a contravention, or, the Secretary of State believes, acting reasonably, that a contravention is likely to occur, of the Franchisee's obligations under the Accepted Programme, Transitional Programme or any other part of the Shadow Operator Services; or
- (b) in order to discharge a statutory duty of the Secretary of State.

19.2 In accordance with paragraph 19.1 of this Schedule 18.1, the Secretary of State may serve on the Franchisee a notice ("**Pre-Step-In Notice**") notifying the Franchisee of the occurrence of the relevant matter and indicating the Secretary of State's intention to exercise its right of Step-In.

19.3 Following delivery of a Pre-Step-In Notice, the Secretary of State shall permit the Franchisee the opportunity to, within five (5) Weekdays, demonstrate to the Secretary of State's satisfaction that



the Franchisee is and will be able to provide the Shadow Operator Services or the relevant part of the Shadow Operator Services in accordance with the terms of this Franchise Agreement, the Accepted Programme and/or the Transitional Programme (as appropriate) and/or rectify the state of affairs giving rise to the Secretary of State's right to Step-In.

- 19.4 If the Secretary of State acting reasonably is not satisfied with the Franchisee's demonstration pursuant to paragraph 19.3, the Secretary of State may require the Franchisee by notice in writing to:
- (a) adopt such processes or methods and to take such operational steps that the Secretary of State considers necessary or expedient to mitigate or rectify the state of affairs giving rise to the Secretary of State's right to Step-In; and/or
  - (b) appoint any person to manage, perform, or to work with or shadow the Franchisee in performing, all or a part of the Shadow Operator Services.
- 19.5 The Franchisee shall co-operate fully and in good faith with the Secretary of State in the exercise of its rights under paragraph 19.4, or any person appointed under paragraph 19.4(b), and, without limitation, shall:
- (a) adopt any processes or methods in providing the Shadow Operator Services and take such steps as may be notified to it by the Secretary of State pursuant to paragraph 19.4(a);
  - (b) co-operate or work with a person appointed in accordance with paragraph 19.4(b); and
  - (c) follow any directions, instructions, administrative practices or formal or informal guidance given by the Secretary of State or that person, provided that such instructions do not breach applicable Law.
- 19.6 If the Franchisee:
- (a) fails to confirm within five (5) Weekdays of receipt of a notice served pursuant to paragraph 19.4(a) that it is willing to comply with that notice; or
  - (b) fails to co-operate fully and in good faith with the Secretary of State in the exercise of its right of Step-In in accordance with paragraph 19.5,
- then the Secretary of State may serve notice under paragraph 19.7 in respect of all or any part of the Shadow Operator Services.
- 19.7 Pursuant to paragraph 19.6, the Secretary of State may serve notice ("**Step-In Notice**") on the Franchisee. The Step-In Notice shall set out the following:
- (a) the circumstances giving rise to the Step-In;
  - (b) the action the Secretary of State wishes to take and in particular the Shadow Operator Services that will be affected;
  - (c) the reason for and the objective of taking the action;
  - (d) the date the Secretary of State wishes to commence the action;
  - (e) the period of time which the Secretary of State believes it is necessary for the action to be effective and the Planned Step-Out Date;
  - (f) whether the Secretary of State (or any third party contractor appointed by the Secretary of State) will require access to the Franchisee's premises, personnel, systems, data, records, information, reports and documents;

- (g) to the extent practicable, the effect on the Franchisee and its obligations to continue to provide the Shadow Operator Services during the period the action is being taken.

19.8 Following service of a Step-In Notice, the Secretary of State shall:

- (a) take the action set out in the Step-In Notice and any additional action as the Secretary of State reasonably believes is necessary, desirable or expedient to achieve the stated objective of taking the action (together, the "**Required Action**");
- (b) keep records of the Required Action taken and provide, from time to time, information about the Required Action to the Franchisee; and
- (c) co-operate wherever reasonable with the Franchisee in order to enable the Franchisee to continue to provide any Shadow Operator Services which are not subject to the Step-In Notice, and to act reasonably to mitigate any disruption to those services.

19.9 Following receipt of a Step-In Notice, the Franchisee shall:

- (a) co-operate fully and in good faith with the Secretary of State (or any person appointed by the Secretary of State) in respect of the Required Action;
- (b) provide such access to its premises, personnel, systems, data, records, information, reports and documents, as the Secretary of State and the Secretary of State's representatives and advisers (or any person appointed by the Secretary of State) reasonably requires as described in the Step-In Notice or for the Secretary of State to perform or monitor the performance of the Required Action and to procure access to any premises, personnel, systems, data, records, information, reports and documents of any third parties, where data, records, information, reports and documents are kept by such third parties by or on behalf of the Franchisee;
- (c) permit the Secretary of State and the Secretary of State's representatives and advisers (or any person appointed by the Secretary of State) to inspect and copy any books, records and any other material kept by or on behalf of the Franchisee and /or its auditors and any assets (including the Franchisee Assets) used by the Franchisee in connection with the Shadow Operator Services and to take photographs, film or make a video recording, or make any other kind of record of any such inspection;
- (d) not less than twenty (20) Weekdays prior to the Planned Step-Out Date, develop for the Secretary of State's approval a draft plan relating to the resumption by the Franchisee of the Shadow Operator Services which are the subject of the Required Action ("**Step-Out Plan**"), including any action that the Franchisee proposes to take to ensure that the affected Shadow Operator Services satisfy the requirements of this Franchise Agreement.

19.10 If the Secretary of State does not approve the draft Step-Out Plan, the Secretary of State shall inform the Franchisee of its reasons for not approving it. The Franchisee shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Secretary of State for the Secretary of State's approval not to be unreasonably withheld or delayed.

19.11 For so long as and to the extent that the Required Action is continuing, then:

- (a) the Franchisee shall not be obliged to provide the Shadow Operator Services to the extent that they are the subject of the Required Action;
- (b) the Franchisee shall not incur any costs and expenses in relation to the Shadow Operator Services to the extent that they are the subject of the Required Action, except with the prior written consent of the Secretary of State;



- (c) if, notwithstanding paragraph 19.11(b), the Franchisee does incur any costs and expenses in relation to the Shadow Operator Services which are the subject of the Required Action without the prior written consent of the Secretary of State, then it shall bear such costs and expenses at its own cost; and
- (d) for the avoidance of doubt, the Franchisee shall have no liability in relation to any acts or omissions of the Secretary of State or any person appointed by the Secretary of State which arise from the performance of the Required Action.

19.12 If the Required Action results (or is reasonably likely to result) in:

- (a) the degradation of any Shadow Operator Services not subject to the Required Action; or
- (b) the non-achievement of a milestone in relation to the Shadow Operator Services, beyond that which would have been the case had the Secretary of State not taken the Required Action, then the Franchisee shall promptly on becoming aware:
  - (c) take reasonable steps to mitigate the degradation of such Shadow Operator Services and/or the non-achievement of such milestones; and
  - (d) notify the Secretary of State in writing and specify the steps it is taking in accordance with sub-paragraph (c) above.

19.13 Before ceasing to exercise its right of Step-In under this paragraph the Secretary of State shall deliver a written notice to the Franchisee ("**Step-Out Notice**"), specifying:

- (a) the Required Action the Secretary of State has actually taken; and
- (b) the Step-Out Date, subject to the Secretary of State being satisfied with the Franchisee's ability to resume the performance of the Shadow Operator Services the subject of the Required Action and the Step-Out Plan.

19.14 If any Step-In (for the avoidance of doubt, including any Required Action or the ceasing of any Step-In) requires any amendment to the Accepted Programme, the Accepted Programme Modelling Suite, the Transitional Programme and/or the Transitional Modelling Suite, the Franchisee shall promptly propose a Change to reflect the required amendments in accordance with paragraph 3.1 of Schedule 9.1B (Financial and Other Consequences of Change) and the Franchisee and the Secretary of State shall comply with that Schedule in agreeing or determining the required Change.

19.15 For the avoidance of doubt:

- (a) no exercise, or failure to exercise, nor any delay in exercising of any right of Step-In by the Secretary of State, shall operate as a waiver of any other right or remedy the Secretary of State may have under the Franchise Agreement; and
- (b) no Event of Default will occur under Schedule 10.2 (Events of Default and Termination Events) solely by virtue of the exercise of a right of Step-In by the Secretary of State.

## **20 Obligations on Termination of the Shadow Operator Services**

20.1 The Franchisee shall fully co-operate with and assist the Secretary of State and/or any Successor Shadow Operator in ensuring the smooth handover and continued running of the Shadow Operator Services during the Shadow Operator Termination Assistance Period and shall render such assistance to the Secretary of State and/or any Successor Shadow Operator as the Secretary of State may require including:

- (a) promptly upon request:

- (i) providing a copy of any and all Franchisee Material to the Secretary of State and, where such Franchisee Material is in electronic form, providing an electronic copy of such Franchisee Material to the Secretary of State in such format as the Secretary of State may reasonably require;
  - (ii) providing a copy of any correspondence with Network Rail, HS2 Limited and/or any other Stakeholder which relates to the Shadow Operator Services;
  - (iii) providing a copy of the most recent version of the Partnership Protocol and any ways of working which are in place between the Franchisee and Network Rail, HS2 Limited and/or any other Stakeholder in relation to the Shadow Operator Services;
  - (iv) return to the Secretary of State or destroy (at the Secretary of State's option) any copies of the Secretary of State Material;
  - (v) answer any questions which the Secretary of State or a Successor Shadow Operator may have regarding the Shadow Operator Services;
  - (vi) make available to the Secretary of State and/or each Successor Shadow Operator such of the Shadow Operator Employees and for such period as the Secretary of State and/or the relevant Successor Shadow Operator may reasonably require;
- (b) providing such assistance to any Successor Shadow Operator as the Secretary of State may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Shadow Operator may enter into (or enjoy the benefit of) contracts equivalent to any Key Contracts relating to the Shadow Operator Services;
  - (c) in satisfaction of its obligations under paragraph 20.1(b), the Franchisee shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) relating to the Shadow Operator Services 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 termination of the Shadow Operator Services; and
  - (d) taking such steps as the Secretary of State and/or any Successor Shadow Operator may require to effect the transfer of any Primary Franchise Assets relating to the Shadow Operator Services to the Secretary of State or a Successor Shadow Operator (as the Secretary of State may require).

## **21 Employees**

21.1 For the purposes of this paragraph 21, "**Taxation**" shall mean "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 HS2 Limited or Successor Shadow Operator) all penalties and interest relating thereto."

### 21.2 Entry

The Parties accept that, to the extent that services similar or equivalent to the Shadow Operator Services or part of the Shadow Operator Services are currently provided by HS2 Limited before the Shadow Operator Start Date, the transfer which is effected by the Secretary of State is governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- (a) the contract of employment of each of the HS2 Limited TUPE 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 Franchisee with effect from the Shadow Operator Start Date which shall be the "time of transfer" under the Transfer Regulations and the Franchisee shall employ each such HS2 Limited TUPE 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 Shadow Operator Start Date;

- (b) the Secretary of State shall procure that HS2 Limited shall perform and discharge all its obligations in respect of all the HS2 Limited TUPE Employees for its own account up to and including the Shadow Operator Start Date including, without limitation, discharging all wages and salaries of the HS2 Limited TUPE 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 Shadow Operator TUPE Transfer Date) and shall procure that HS2 Limited shall indemnify the Franchisee and keep the Franchisee 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 HS2 Limited's failure so to discharge;
- (c) the Secretary of State shall procure that HS2 Limited shall indemnify the Franchisee and keep the Franchisee 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 HS2 Limited or any other event or occurrence prior to the Shadow Operator Start Date and which the Franchisee may incur in relation to any contract of employment or collective agreement concerning one or more of the HS2 Limited TUPE Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:
- (i) HS2 Limited'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 Franchisee in accordance with the Transfer Regulations; or
- (ii) anything done or omitted before the Shadow Operator Start Date by or in relation to HS2 Limited in respect of any such contract of employment or collective agreement or any HS2 Limited TUPE Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Franchisee save where the thing done or omitted to be done before the Shadow Operator Start Date relates to the Franchisee's failure to comply with its obligations referred to in paragraph 21.11;
- (d) if any contract of employment or collective agreement which is not disclosed in writing to the Franchisee by HS2 Limited prior to the Shadow Operator Start Date shall have effect as if originally made between the Franchisee and any employee (the "**Undisclosed HS2 Limited TUPE 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 Franchisee):
- (i) the Franchisee 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 Secretary of State shall procure that HS2 Limited shall indemnify the Franchisee 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 Franchisee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his or her employment following the Shadow Operator Commencement Date; and

(iii) the Secretary of State shall procure that HS2 Limited shall indemnify the Franchisee in respect of any Undisclosed HS2 Limited TUPE Employee on the same terms mutatis mutandis as HS2 Limited has indemnified the Franchisee in respect of an HS2 Limited TUPE Employee pursuant to the terms of paragraphs 21.2(b) and 21.2(c); and

(e) the Secretary of State shall procure that HS2 Limited shall indemnify the Franchisee and keep the Franchisee 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 Franchisee of any employee (not being an HS2 Limited TUPE Employee) and which the Franchisee may incur pursuant to the provisions of the Transfer Regulations.

21.3 The Franchisee shall indemnify the Secretary of State and HS2 Limited and keep the Secretary of State and HS2 Limited 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 HS2 Limited TUPE Employees to his or her detriment or any of them occurring on or after the Shadow Operator Start 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 HS2 Limited TUPE Employees;

(c) the employment by the Franchisee on or after the Shadow Operator Start Date of any of the HS2 Limited TUPE Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Shadow Operator Start Date or the termination of the employment of any of them on or after the Shadow Operator Start Date; or

(d) any claim by any HS2 Limited TUPE Employees (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 Franchisee after the Shadow Operator Start Date.

21.4 The Franchisee shall indemnify the Secretary of State and HS2 Limited and keep the Secretary of State and HS2 Limited 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, HS2 Limited in writing with such information and at such time as will enable HS2 Limited to carry out its duties under Regulation 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Franchisee in relation to the HS2 Limited TUPE Employees.

21.5 Without prejudice to HS2 Limited's duties under the Transfer Regulations, the Secretary of State shall procure that HS2 Limited will warrant to the Secretary of State that it will provide to the Franchisee, at least twenty eight (28) days prior to the Shadow Operator Start Date, full particulars of:

(a) each HS2 Limited TUPE Employees, including name, sex, and the date on which continuity of employment began for each HS2 Limited TUPE Employees 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 HS2 Limited TUPE Employees or termination of employment effected within twelve (12) months prior to the Shadow Operator Start Date including the Shadow Operator Start Date;
- (e) all agreements or arrangements entered into in relation to the HS2 Limited TUPE Employees between HS2 Limited, any Affiliate of HS2 Limited 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 HS2 Limited TUPE Employees within twelve (12) months prior to the Shadow Operator Start Date including the Shadow Operator Start Date.

21.6 The Franchisee shall, and the Secretary of State shall procure that HS2 Limited shall, deliver to each of the HS2 Limited TUPE Employees letters in an agreed form from the Franchisee and HS2 Limited as soon as is practicable (to the extent not already delivered prior to the Shadow Operator Start Date).

21.7 Exit

The Parties accept that, to the extent that services similar or equivalent to the Shadow Operator Services or part of the Shadow Operator Services are continued by a Successor Shadow Operator after the date on which the Shadow Operator Services terminate or (if earlier) the Expiry Date (the "**Shadow Operator TUPE Transfer Date**"), the transfer which is effected by the Secretary of State is governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- (a) the contract of employment of each of the Shadow Operator TUPE 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 Successor Shadow Operator with effect from the Shadow Operator TUPE Transfer Date which shall be the "time of transfer" under the Transfer Regulations and the Secretary of State shall procure that the Successor Shadow Operator shall employ each such Shadow Operator TUPE 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 Shadow Operator TUPE Transfer Date;
- (b) the Franchisee shall perform and discharge all its obligations in respect of all the Shadow Operator TUPE Employees for its own account up to and including the Shadow Operator TUPE Transfer Date including, without limitation, discharging all wages and salaries of the Shadow Operator TUPE 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 Shadow Operator TUPE Transfer Date) and shall indemnify the Successor Shadow Operator and keep the Successor Shadow Operator 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 Franchisee's failure so to discharge;
- (c) the Franchisee shall indemnify the Successor Shadow Operator and keep the Successor Shadow Operator 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 Franchisee or any other event or occurrence prior to the Shadow Operator TUPE Transfer Date and which the Successor Shadow Operator may incur in relation to any contract of employment or collective agreement concerning one or more of the Shadow Operator TUPE 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 Franchisee'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 Successor Shadow Operator in accordance with the Transfer Regulations; or
  - (ii) anything done or omitted before the Shadow Operator TUPE Transfer Date by or in relation to the Franchisee in respect of any such contract of employment or collective agreement or any Shadow Operator TUPE Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Successor Shadow Operator save where the thing done or omitted to be done before the Shadow Operator TUPE Transfer Date relates to the Successor Shadow Operator's failure to comply with its obligations referred to in paragraph 21.11;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Successor Shadow Operator by the Franchisee prior to the Shadow Operator TUPE Transfer Date nor made available to the Secretary of State under Schedule 15.3 (Handover Package) of the Franchise Agreement prior to the Shadow Operator TUPE Transfer Date shall have effect as if originally made between the Successor Shadow Operator and any employee (the "**Undisclosed Shadow Operator TUPE 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 Successor Shadow Operator):
- (i) the Successor Shadow Operator 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 Franchisee shall indemnify the Successor Shadow Operator 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 Successor Shadow Operator for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his or her employment following the Shadow Operator TUPE Transfer Date; and
  - (iii) the Franchisee shall indemnify the Successor Shadow Operator in respect of any Undisclosed Shadow Operator TUPE Employee on the same terms mutatis mutandis as the Franchisee has indemnified the Successor Shadow Operator in respect of a Shadow Operator TUPE Employee pursuant to the terms of paragraphs 21.7(b) and 21.7(c); and
- (e) the Franchisee shall indemnify the Successor Shadow Operator and keep the Successor Shadow Operator 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 Franchisee of any employee (not being a Shadow Operator TUPE Employee) and which the Successor Shadow Operator may incur pursuant to the provisions of the Transfer Regulations.

21.8 The Secretary of State shall procure that the Successor Shadow Operator shall indemnify the Franchisee and keep the Franchisee 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 Shadow Operator TUPE Employees to his or her detriment or any of them occurring on or after the Shadow Operator TUPE 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 Shadow Operator TUPE Employees;
- (c) the employment by the Successor Shadow Operator on or after the Shadow Operator TUPE Transfer Date of any of the Shadow Operator TUPE Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Shadow Operator TUPE Transfer Date or the termination of the employment of any of them on or after the Shadow Operator TUPE Transfer Date; or
- (d) any claim by any Shadow Operator TUPE 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 Successor Shadow Operator after the Shadow Operator TUPE Transfer Date.

21.9 The Secretary of State shall procure that the Successor Shadow Operator shall indemnify the Franchisee and keep the Franchisee 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 Franchisee in writing with such information and at such time as will enable the Franchisee to carry out its duties under Regulation 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Successor Shadow Operator in relation to the Shadow Operator TUPE Employees.

21.10 Without prejudice to the Franchisee's duties under the Transfer Regulations, the Franchisee shall at the relevant time warrant to the Secretary of State and to the Successor Shadow Operator 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 Shadow Operator TUPE Transfer Date) provided the Successor Shadow Operator prior to the Shadow Operator TUPE Transfer Date with full particulars of:

- (a) each Shadow Operator TUPE Employee, including name, sex, and the date on which continuity of employment began for each Shadow Operator TUPE 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 Shadow Operator TUPE Employees or termination of employment effected within twelve (12) months prior to the Shadow Operator TUPE Transfer Date including the Shadow Operator TUPE Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Shadow Operator TUPE Employees between the Franchisee, any Affiliate of the Franchisee 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 Shadow Operator TUPE Employee within twelve (12) months prior to the Shadow Operator TUPE Transfer Date including the Shadow Operator TUPE Transfer Date.

21.11 The Franchisee shall, and the Secretary of State shall procure that the Successor Shadow Operator shall, deliver to each of the Shadow Operator TUPE Employees letters in an agreed form from the Franchisee and Successor Shadow Operator as soon as is practicable (to the extent not already delivered prior to the Shadow Operator TUPE Transfer Date).

## **22 Consequences of Expiry or Termination of the Shadow Operator Services**

22.1 Upon:

- (a) expiry of this Schedule 18 (Shadow Operator) in accordance with clause 4.2 (Commencement); or
- (b) termination of the Shadow Operator Services following service of a Termination Notice in accordance with paragraph 5 of Schedule 10.2 (Events of Default and Termination Events) or following service of a Readiness Review Failure Termination Notice in accordance with paragraph 5 of Schedule 19.1 (Readiness Review),

the obligations of the Parties under or in connection with this Schedule 18 (Shadow Operator) shall cease except for:

- (c) any obligations arising as a result of any antecedent contravention of the Franchise Agreement;
- (d) any obligations which are expressed to continue in accordance with the terms of the Franchise Agreement; and
- (e) any other obligations which give effect to such expiry or termination or to the consequences of such expiry or termination or which otherwise apply (expressly or impliedly on or after such expiry or termination).

22.2 Nothing in this paragraph 22 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.

## **23 Entry into Third Party Contracts**

23.1 Where:

- (a) the Secretary of State directs and/or requires the Franchisee to enter into any contract with a third party; and/or
- (b) the Franchisee enters into any contract with a third party in accordance with paragraphs 8.3(b) or 49.1 of Schedule 18.2 (Accepted Programme Specific Requirements) or paragraph 6.1 of Schedule 18.3 (Transitional Programme Specific Requirements),

the Franchisee shall be entitled to:

- (c) propose a Change to reflect the cost and revenue impacts of entering into the relevant third party contract on the Cost Baseline, the Transitional Budget and the IOC Cost Budget; and/or
- (d) notify the Secretary of State, in writing, of any provisions relating to the liability of the Franchisee in the relevant third party contract which the Franchisee (acting reasonably) believes are not consistent with standard industry practice for a contract of the nature, value and risk profile of the relevant third party contract, together with a detailed explanation of the reasons for the Franchisee's opinion.

23.2 The Secretary of State shall consider any notice provided by the Franchisee in accordance with paragraph 23.1(d) of this Schedule 18.1 and may (at the Secretary of State's absolute discretion) propose a Variation to provide the Franchisee with relief relating to any provisions notified to the Secretary of State in accordance with paragraph 23.1(d) of this Schedule 18.1.

23.3 The provisions of this paragraph 23 shall not apply to any Access Agreement entered into (or to be entered into) with HS2 Limited.



**APPENDIX 1 TO SCHEDULE 18.1**

**Shadow Operator PMO Roles<sup>20</sup>**

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20 **Note to Bidders:** Appendix to be completed with schedule of Shadow Operator PMO Roles submitted in response to the ITT.

## SCHEDULE 18.2

### Accepted Programme Specific Requirements

#### 1 Initial Output Report

- 1.1 If the Required Output is provision of advice or production of a report to the Secretary of State, the Franchisee shall propose the scope and form of the Required Output Report in which that advice or report will be presented to the Secretary of State, in compliance with any instructions, administrative practices, formal or informal guidance, policies measures or publications advised by the Secretary of State.
- 1.2 The Franchisee and the Secretary of State shall discuss and agree, and, in the event of any dispute, the Secretary of State may reasonably determine, the scope and form of the Required Output Report.
- 1.3 If the finalised scope and form of any Required Output Report (as agreed or determined in accordance with paragraph 1.2) requires any amendment to the Accepted Programme Specific Requirements, Accepted Programme and/or the Accepted Programme Modelling Suite, the Franchisee shall promptly propose a Change and/or a Variation (in the case of an amendment to the Accepted Programme Specific Requirements) to reflect the required amendments in accordance with Schedule 9.1B (Financial and Other Consequences of Change) and/or Schedule 9.3B (Variations to the Franchise Agreement).
- 1.4 Following finalisation of the scope and form of the Required Output Report, the Franchisee shall produce and submit to the Secretary of State an Initial Output Report by the date specified in the Accepted Programme Specific Requirements (or if earlier, the date specified in the Accepted Programme) (or such other date as the Parties may agree), which shall contain:
- (a) a summary of research undertaken and evidence considered in connection with the production of the Initial Output Report;
  - (b) a detailed explanation of the options available in progressing the relevant Shadow Operator Service;
  - (c) a detailed explanation of how each of the options corresponds to or deviates from the assumptions and decisions contained in the Strategic Operational Baseline Report;
  - (d) a detailed explanation of the impact of the research and/or assumptions undertaken in respect of the Initial Output Report on the findings and recommendations contained in the Operational Review Report and/or the Rolling Stock Operational Review Report;
  - (e) a detailed explanation of how the costs and revenues associated with each of the options will vary from the Strategic Operational Baseline Forecast and, where relevant, the ICWC Management Accounts and Financial Model;
  - (f) an assessment of the financial implications and a Value for Money Assessment in respect of each option provided in the Initial Output Report as set out in paragraph 1.4(b), for:
    - (i) the High Speed Services;
    - (ii) if applicable, the Passenger Services other than the High Speed Services; and
    - (iii) passenger and freight services in respect of the GB Railway,for the following periods:
    - (iv) during the ICWC Term;

- (v) during the Integrated Operator Term; and
  - (vi) after the Expiry Date;
  - (g) a recommendation as to which of the options provided in the Initial Output Report is the preferred option, including a detailed description of that recommendation and reasons for that recommendation (the "**Recommended Option**");
  - (h) an assessment of the market for procuring any assets and/or services required to deliver the Recommended Option, including the approximate number of potential suppliers for each required asset or service, identifying any potential supplier with which the Franchisee has an existing relationship together with a summary of such existing relationship, and stating if the relevant market is served by only one or two potential suppliers;
  - (i) in respect of each of the Transitional Modelling Suite, IOC Modelling Suite, ICWC Modelling Suite and Accepted Programme Modelling Suite a detailed financial assessment of the Recommended Option;
  - (j) evidence that relevant Stakeholders, and each of HS2 Limited and Network Rail where appropriate, have each been consulted in respect of the Recommended Option;
  - (k) a summary of any concerns, still outstanding at the time of the Initial Output Report, of HS2 Limited and/or Network Rail and/or other relevant Stakeholders in relation to the Recommended Option;
  - (l) an assessment of the impact of the Recommended Option on any Shadow Operator Services other than those in relation to which the Initial Output Report was produced, if applicable; and
  - (m) an assessment of the impact of any other Shadow Operator Services on the Recommended Option, if applicable.
- 1.5 Within thirty (30) days of receiving the Initial Output Report (or such other period as is notified by the Secretary of State to the Franchisee when agreeing or determining the scope of the relevant Initial Output Report), the Secretary of State shall give notice in writing to the Franchisee:
- (a) approving the Recommended Option and requiring a Final Output Report;
  - (b) if the Secretary of State considers that:
    - (i) amendments are required (including minor amendments) to the Initial Output Report; or
    - (ii) the Initial Output Report does not adequately fulfil the scope agreed in accordance with paragraph 1.2,  
  
requiring revisions to the Initial Output Report (including to the Recommended Option) and, if so, specifying what revisions are required (including where required in order to fulfil the agreed scope) and (where paragraph 1.5(b)(ii) applies) whether or not the revisions are to be re-performed at the Franchisee's own cost under paragraph 6.1(b) of Schedule 18.1 (Shadow Operations);
  - (c) subject to agreement by the Secretary of State on any necessary additional costs:
    - (i) requiring additional evidence, information and/or explanation in support of the Recommended Option, any other component part of the Initial Output Report or any other matter contained in the Initial Output Report; or

(ii) requiring further development of an alternative course(s) of action to the Recommended Option; or

(d) confirming that no further action, including a Final Output Report, is required.

1.6 If the Secretary of State gives notice in writing of any requirement set out in paragraphs 1.5(b) or 1.5(c) of this Schedule 18.2, the Franchisee shall produce and submit a revised Initial Output Report within thirty (30) days incorporating the required amendments in accordance with paragraph 1.4 of this Schedule 18.2.

## **2 Final Output Report**

2.1 If the Secretary of State gives notice in writing of the Secretary of State's approval of the Initial Output Report under paragraph 1.5(a) of this Schedule 18.2 or a Final Output Report is otherwise required to be produced in respect of such other plan or document under the Franchise Agreement, the Franchisee shall produce and submit a Final Output Report developed from such Initial Output Report, plan or document within thirty (30) days of receiving such notice (or such longer period as the Secretary of State may specify, or such shorter period as the Parties may agree).

2.2 If a Final Output Report is required to be produced in respect of a plan or document under the Franchise Agreement that is not an Initial Output Report, the Secretary of State shall advise the Franchisee in writing of the Recommended Option to be used for the purposes of that Final Output Report.

2.3 The Final Output Report shall contain:

(a) the Recommended Option;

(b) an explanation of the steps required to implement the Recommended Option;

(c) any applicable additions and/or amendments necessary to deliver the Recommended Option to the Accepted Programme Specific Requirements, Accepted Programme, Transitional Programme Specific Requirements and Transitional Programme;

(d) a plain English note describing the Recommended Option;

(e) if the Recommended Option includes any proposals for implementation during the ICWC Term (provided that such proposals do not relate solely to the Shadow Operator Services):

(i) any proposed amendments to the Franchise Agreement to implement the Recommended Option during the ICWC Term;

(ii) a plain English note summarising and explaining any such proposed amendments; and

(iii) a certificate that appropriate legally-qualified personnel acting for the Franchisee have reviewed such amendments and plain English note,

provided always that such amendments shall not become effective until a Variation has been agreed in accordance with Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes) and any such Variation shall be a Qualifying Change for the purposes of Schedule 9.1A (Financial and Other Consequences of Change);

(f) any proposed drafting and/or amendments to the Franchise Agreement to reflect the impact of the Recommended Option on any IOC Confirmable Obligation, and a plain English note summarising and explaining any such proposed drafting and/or amendments, together with a certificate that appropriate legally-qualified personnel acting for the Franchisee have reviewed such drafting and/or amendments and plain English note;

- (g) any applicable additions and/or amendments necessary to deliver the Recommended Option to the:
  - (i) Transitional Modelling Suite;
  - (ii) IOC Modelling Suite;
  - (iii) ICWC Modelling Suite;
  - (iv) Accepted Programme Modelling Suite; and
  - (v) where the Integrated Operator Start Date has occurred and the Recommended Options will require an IOC Confirmed Obligation to come into effect in the then current Franchisee Year and prior to the next occasion on which the IOC Modelling Suite shall be Placed in Escrow in accordance with paragraph 1.1(b) of Schedule 9.2B (IOC Escrow Documents and Shadow Operator Escrow Documents), the IOC Cost Budget; and
- (h) for all additional capital expenditure or operating expenditure:
  - (i) a detailed explanation of all costs and revenue impacts in relation to the IOC Modelling Suite and the Transitional Modelling Suite; and
  - (ii) confirmation by a statutory director of the Franchisee that any applicable additions and/or amendments included in the Final Output Report in accordance with paragraph 2.3(g) are compliant with the Shadow Operator Procurement Strategy and the Shadow Operator Financial Management Strategy.

2.4 Within sixty (60) days of receiving the Final Output Report, the Secretary of State shall give notice in writing to the Franchisee:

- (a) approving the Final Output Report; or
- (b) requiring revisions to the Final Output Report and, if so, specifying what revisions are required and whether the reason for the revisions is that the Final Output Report does not fulfil the agreed scope (in the reasonable opinion of the Secretary of State).

2.5 If the Secretary of State gives notice in writing of any requirement set out in paragraph 2.4(b) of this Schedule 18.2, the Franchisee shall promptly after receiving such notice, produce and submit a revised Final Output Report incorporating the required amendments in accordance with paragraphs 2.1 and 2.3 of this Schedule 18.2 and such revision shall be undertaken at the Franchisee's own cost if the reason for the revision was that the Final Output Report did not fulfil the agreed scope (in the reasonable opinion of the Secretary of State).

2.6 If the Secretary of State gives notice in writing of the Secretary of State's approval of any Final Output Report under paragraph 2.4(a) of this Schedule 18.2:

- (a) if the Final Output Report contains additions to the Accepted Programme Specific Requirements, the Accepted Programme, the Accepted Programme Modelling Suite, the Transitional Programme Specific Requirements, the Transitional Programme, the Transitional Modelling Suite and/or the IOC Cost Budget, the relevant parts of the Final Output Report shall be deemed to constitute a notice of proposed Change served by the Franchisee in accordance with paragraph 3.1 of Schedule 9.1B (Financial and Other Consequences of Change) and the Franchisee and the Secretary of State shall comply with that Schedule in agreeing or determining the required Change;
- (b) where the Final Output Report contains drafting relating to the IOC Confirmable Obligations and/or the IOC Modelling Suite the Franchisee shall procure that the necessary Variation is carried out and the Franchisee and the Secretary of State shall comply with

the provisions of paragraph 8 of Schedule 18.1 (Shadow Operations), in order to agree or determine the content of the relevant IOC Confirmable Obligations; and

- (c) if the Final Output Report contains any proposals to be implemented during the ICWC Term (provided always that such proposals do not relate solely to the Shadow Operator Services), the relevant parts of the Final Output Report shall be deemed to constitute a notice of proposed Variation served by the Secretary of State in accordance with Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes) and the Franchisee and the Secretary of State shall comply with that Schedule in agreeing or determining the required Variation.

### **3 Further Provisions Applicable to Required Output Reports**

- 3.1 The Franchisee shall, from time to time if circumstances arise that require an amendment to any Required Output Report, give notice in writing to the Secretary of State of such amendment, which notice shall be given promptly after the Franchisee becomes aware of the circumstances requiring such amendment. The Secretary of State shall confirm in writing promptly after receiving such notice whether or not an amended Required Output Report is required.
- 3.2 The Secretary of State may, by giving notice in writing to the Franchisee, further require the Franchisee to review, update and amend, as applicable, each Required Output Report from time to time as the Secretary of State considers necessary or desirable.
- 3.3 Within thirty (30) days of notice being given either by the Franchisee pursuant to paragraph 3.1, subject to the Secretary of State's written confirmation, or by the Secretary of State pursuant to paragraph 3.2 of this Schedule 18.2, the Franchisee shall produce and submit a revised Required Output Report incorporating the required amendments in accordance with paragraphs 1.4 to 1.6 of this Schedule 18.2, in the case of an Initial Output Report, or paragraphs 2.1 to 2.6 of this Schedule 18.2 (inclusive), in the case of a Final Output Report.
- 3.4 If there is any dispute between the Parties regarding any Required Output Report, the Parties shall use all reasonable endeavours to resolve such dispute so that the Secretary of State may approve the Required Output Report within thirty (30) days of its submission.

### **4 HS2 Outputs and HS2 Output Reports<sup>21</sup>**

- 4.1 If the Required Output is to cooperate with HS2 Limited to enable delivery of HS2 Limited's obligations under the Development Agreement including in respect of HS2 Phase One, HS2 Phase 2a and HS2 Phase 2b (the "**HS2 Output**"), the Franchisee shall discuss and agree with HS2 Limited the scope and form of its role and involvement ("**Franchisee's HS2 Input**") in the delivery of the HS2 Output, including in relation to costs and funding and timescales, in compliance with any instructions, administrative practices, formal or informal guidance, policies measures or publications advised by the Secretary of State.
- 4.2 The Franchisee shall promptly notify the Secretary of State in writing once the scope and form of any Franchisee's HS2 Input has been agreed between the Franchisee and HS2 Limited.
- 4.3 If there is any dispute between the Franchisee and HS2 Limited as to the appropriate scope and form of the Franchisee's HS2 Input the Franchisee shall promptly notify the Secretary of State of such dispute. The Secretary of State may reasonably determine the scope and form of the Franchisee's HS2 Input.

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<sup>21</sup> **Note to Bidders:** Corresponding provisions will be added to the Development Agreement to ensure that HS2 Limited is under an obligation to co-operate with the Franchisee in relation to HS2 Outputs and HS2 Output Reports.

- 4.4 The Franchisee shall provide the Franchisee's HS2 Input in respect of each HS2 Output reasonably promptly (and in accordance with any agreed timescales) following notification in relation to the HS2 Output by HS2 Limited.
- 4.5 If HS2 Limited is required to produce any paper, document, report, plan, advice or recommendation as contemplated by the Franchise Agreement or otherwise in relation to any HS2 Output, delivery of which requires the Franchisee to cooperate with HS2 Limited (a "**HS2 Output Report**"), the Franchisee shall discuss, review and provide comment in writing to HS2 Limited upon each version of the HS2 Output Report received by the Franchisee within thirty (30) days, or such other period as HS2 Limited and the Franchisee may agree, of its submission to the Franchisee by HS2 Limited.
- 4.6 At any time following the Franchisee's notification under paragraph 4.2, the Secretary of State may require the Franchisee to provide some or all of the information stated in paragraph 5.1 of this Schedule 18.2 by such time as the Secretary of State may reasonably specify.
- 4.7 If there is any dispute between the Franchisee and HS2 Limited, arising out of or in connection with any HS2 Output or HS2 Output Report, including any concerns of the Franchisee relating to the HS2 Recommended Option that the Franchisee considers have not been given reasonable consideration by HS2 Limited, the Franchisee shall promptly notify the Secretary of State of such dispute.

## **5 Information to be Provided in Respect of HS2 Output or HS2 Output Report**

- 5.1 The Secretary of State may, in accordance with paragraph 4.6 of this Schedule 18.2, require the Franchisee to provide some or all of the following information in respect of any HS2 Output or HS2 Output Report:
- (a) an evaluation of each option proposed by HS2 Limited for implementing the HS2 Output (if applicable, as set out in the HS2 Output Report), including the option preferred by HS2 Limited (the "**HS2 Recommended Option**");
  - (b) any concerns still outstanding of the Franchisee in relation to the HS2 Recommended Option;
  - (c) a detailed explanation of how the HS2 Recommended Option will impact upon the Strategic Operational Baseline Forecast;
  - (d) a detailed explanation of how the HS2 Recommended Option corresponds to or deviates from the assumptions and decisions contained in the Strategic Operational Baseline Report;
  - (e) an assessment of the financial implications and a Value for Money Assessment in respect of each option proposed (as set out in paragraph 5.1(a)), if adopted, for:
    - (i) the High Speed Services;
    - (ii) if applicable, the Passenger Services other than High Speed Services;
    - (iii) passenger and freight services in respect of the GB Railway,for the following periods:
    - (iv) during the ICWC Term;
    - (v) during the Integrated Operator Term; and
    - (vi) after the Expiry Date.



- (f) a detailed explanation of how the Recommended Option corresponds to or deviates from the assumptions and decisions contained in the Strategic Operational Baseline Report;
- (g) an explanation of the steps required to implement the HS2 Recommended Option;
- (h) any applicable additions and/or amendments to the Accepted Programme Specific Requirements, Accepted Programme, Transitional Programme Specific Requirements and Transitional Programme necessary to deliver the HS2 Recommended Option;
- (i) a plain English note describing the HS2 Recommended Option;
- (j) if the HS2 Recommended Option may involve any implementation during the ICWC Term (provided that that implementation does not relate solely to the Shadow Operator Services):
  - (i) any proposed amendments to the Franchise Agreement to implement the HS2 Recommended Option during the ICWC Term;
  - (ii) a plain English note summarising and explaining any such proposed amendments; and
  - (iii) a certificate that appropriate legally-qualified personnel acting for the Franchisee have reviewed such amendments and plain English note,  
  
provided always that such amendments shall not become effective until a Variation has been agreed in accordance with Schedule 9.3A (Variations to the Franchise Agreement and Incentivising Beneficial Changes) and any such Variation shall be a Qualifying Change for the purposes of Schedule 9.1A (Financial and Other Consequences of Change);
- (k) any proposed drafting and/or amendments to the Franchise Agreement to reflect the impact of the HS2 Recommended Option on any IOC Confirmable Obligation, and a plain English note summarising and explaining any such proposed drafting and/or amendments, together with a certificate that appropriate legally-qualified personnel acting for the Franchisee have reviewed such drafting and/or amendments and plain English note;
- (l) any applicable additions and/or amendments necessary to deliver the HS2 Recommended Option to the:
  - (i) Transitional Modelling Suite;
  - (ii) IOC Modelling Suite;
  - (iii) ICWC Modelling Suite;
  - (iv) Accepted Programme Modelling Suite; and
  - (v) where the Integrated Operator Start Date has occurred and the HS2 Recommended Option will require an IOC Confirmed Obligation to come into effect in the then current Franchisee Year and prior to the next occasion on which the IOC Modelling Suite shall be Placed in Escrow in accordance with paragraph 1.1(b) of Schedule 9.2B (IOC Escrow Documents and Shadow Operator Escrow Documents), the IOC Cost Budget; and
- (m) for all additional capital expenditure or operating expenditure:
  - (i) a detailed explanation of all costs and revenue impacts in relation to the IOC Modelling Suite and the Transitional Modelling Suite; and

- (ii) confirmation by a statutory director of the Franchisee that any applicable additions and/or amendments included in accordance with paragraph 5.1(l) are compliant with the Shadow Operator Procurement Strategy and the Shadow Operator Financial Management Strategy.

## **6 Agreement on Functional Requirements**

6.1 If the Required Output, whether under the Accepted Programme or the Transitional Programme, is to provide Functional Requirements to HS2 Limited to enable delivery of any HS2 Output, the Franchisee shall provide its proposed functionality and compatibility for the relevant Functional Aspect to HS2 Limited and the Franchisee and HS2 Limited shall discuss and agree:

- (a) the scope and form of the relevant Functional Requirement;
- (b) the costs and funding relating to the relevant Functional Requirement; and
- (c) a recommendation as to whether the Functional Requirement Asset should be vested in HS2 Limited, the Franchisee or a third party and, if a third party, identifying such third party,

in each case, in compliance with any instructions, administrative practices, guidance, policies measures or publications advised by the Secretary of State.

6.2 The Franchisee shall promptly notify the Secretary of State in writing once the scope and form of any Functional Requirement has been agreed between the Franchisee and HS2 Limited, including in relation to whole life costs and funding.

6.3 If there is any dispute between the Franchisee and HS2 Limited as to the appropriate scope and form of any Functional Requirement, the Franchisee shall promptly notify the Secretary of State of such dispute. The Secretary of State may reasonably determine the scope and form of any Functional Requirement.

6.4 If the Franchisee and HS2 Limited agree on the scope and form of any Functional Requirement but such Functional Requirement diverges from existing industry practice, the Franchisee shall submit such Functional Requirement in writing to the Secretary of State for approval.

6.5 Following agreement or determination of the scope and form of any Functional Requirement, and, if applicable, written approval from the Secretary of State pursuant to paragraph 6.4 of this Schedule 18.2, the Franchisee shall cooperate with HS2 Limited in accordance with the Collaboration Agreement to finalise such Functional Requirement.

6.6 Following finalisation of any Functional Requirement, the Franchisee shall promptly submit such Functional Requirement in writing to the Secretary of State for approval.

6.7 Within thirty (30) days of receiving any Functional Requirement, the Secretary of State shall give notice in writing to the Franchisee (and HS2 Limited):

- (a) approving the Functional Requirement; or
- (b) requiring revisions to the Functional Requirement, in which case the Franchisee shall cooperate with HS2 Limited in accordance with the Collaboration Agreement to produce a revised Functional Requirement incorporating such revisions; and
- (c) determining whether the Functional Requirement Asset should be vested in HS2 Limited, the Franchisee or a third party and, if a third party, identifying such third party (taking into account the recommendation provided pursuant to paragraph 6.1(c)).

## 7 Delivering the Functional Requirement<sup>22</sup>

- 7.1 Following agreement regarding Functional Requirements, the Franchisee and HS2 Limited shall discuss and agree in order that HS2 Limited may develop:
- (a) the necessary project requirement specification to deliver such Functional Requirement;
  - (b) the necessary technical specification to deliver such project requirement specification;
  - (c) the form of contract under which such Functional Requirement will be procured and (where applicable) maintained; and
  - (d) the acceptance criteria (or equivalent, where the performance of services is being procured) relating to such Functional Requirement ("**Functional Requirement Acceptance Criteria**").
- 7.2 If there is any dispute between the Franchisee and HS2 Limited in agreeing the Functional Requirement Acceptance Criteria, the Franchisee shall promptly notify the Secretary of State of such dispute. The Secretary of State may reasonably determine the Functional Requirement Acceptance Criteria.
- 7.3 If HS2 Limited does not consult the Franchisee reasonably promptly after commencing, or reasonably frequently during, the process for the procurement of any Functional Requirement Asset, or if the Franchisee (acting reasonably) has any concerns about such a process, the Franchisee shall immediately notify the Secretary of State.
- 7.4 Prior to HS2 Limited completing the purchase (or acquisition, entry into or assumption, as applicable) of a Functional Requirement Asset, the Franchisee shall work with HS2 Limited to confirm whether the Functional Requirement Asset meets the Functional Requirement or Functional Requirements and whether the Functional Requirement Asset is reasonably likely to meet the Functional Requirement Acceptance Criteria. The Franchisee shall:
- (a) promptly notify HS2 Limited if the Franchisee considers (acting reasonably) that the Functional Requirement Asset meets the Functional Requirement or Functional Requirements and meets, or is reasonably likely to meet, the Functional Requirement Acceptance Criteria, setting out the reasons for its opinion; or
  - (b) promptly notify HS2 Limited and the Secretary of State if the Franchisee does not consider (acting reasonably) that the Functional Requirement Asset meets the Functional Requirement or Functional Requirements and meets, or is reasonably likely to meet, the Functional Requirement Acceptance Criteria, any proposed solution to any failure to meet the Functional Requirement or Functional Requirements and/or the Functional Requirement Acceptance Criteria (if appropriate).
- 7.5 Following HS2 Limited's purchase (or acquisition, entry into or assumption, as applicable) of the Functional Requirement Asset:
- (a) the Franchisee shall undertake an assessment of that Functional Requirement Asset in order to confirm whether the Functional Requirement Asset meets the Functional Requirement Acceptance Criteria and shall promptly notify HS2 Limited and the Secretary of State of whether or not it considers the Functional Requirement Acceptance Criteria have been met, setting out the reasons for its opinion;
  - (b) the Franchisee shall produce a Required Output Report in accordance with paragraph 1 of this Schedule 18.2, including:

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22 **Note to Bidders:** Appropriate provisions will be added to the Development Agreement to ensure that HS2 Limited is under an obligation to follow this process.

- (i) detailed information on how the Functional Requirement or Functional Requirements meet the relevant Accepted Programme Specific Requirement or Transitional Programme Specific Requirement (as applicable); and
- (ii) the Franchisee's assessment of the Functional Requirement Asset including details of:
  - (A) how the Functional Requirement Asset meets the Functional Requirement or Functional Requirements;
  - (B) whether, in the Franchisee's reasonable opinion, the Functional Requirement Asset meets the Functional Requirement Acceptance Criteria; and
  - (C) where the Secretary of State has notified the Franchisee in accordance with paragraph 6.7(c) that the Functional Requirement Asset should be vested in the Franchisee, the life and the maintenance requirements (if any) of the Functional Requirement Asset.

## **8 Functional Requirement Asset**

- 8.1 If the Secretary of State has determined in accordance with paragraph 6.7(c) that the Functional Requirement Asset should be vested in HS2 Limited the Secretary of State shall confirm in writing to HS2 Limited and the Franchisee that no further action is required and the Functional Requirement Asset shall remain vested in HS2 Limited.
- 8.2 If the Secretary of State has determined in accordance with paragraph 6.7(c) that the Functional Requirement Asset should be vested in the Franchisee, then within thirty (30) days of receiving the Required Output Report pursuant to paragraph 7.5(b) of this Schedule 18.2, the Secretary of State shall notify HS2 Limited and the Franchisee in writing of the anticipated date on which such Functional Requirement Asset shall be transferred to the Franchisee.
- 8.3 Upon the Secretary of State providing written notice to the Franchisee pursuant to paragraph 8.2 of this Schedule 18.2:
- (a) the Franchisee shall accept the transfer of any Functional Requirement Asset which the Secretary of State has determined should be vested in the Franchisee;
  - (b) the Franchisee shall enter into a novation agreement with HS2 Limited and any relevant third party to transfer any agreements relating to such Functional Requirement Asset to the Franchisee (such novation agreement to be in the form set out in Appendix 1 to this Schedule 18.2, unless otherwise agreed by the Secretary of State);
  - (c) the Franchisee shall provide HS2 Limited with all reasonable assistance in ensuring that any relevant third party enters into Direct Agreements relating to such Functional Requirement Asset;
  - (d) the Franchisee shall do and execute any act or document reasonably requested of it by the Secretary of State to implement and give full effect to the transfer of any Functional Requirement Asset to the Franchisee;
  - (e) the Functional Requirement Asset and any agreements relating to that Functional Requirement Asset shall be designated a Primary Franchise Asset which shall transfer to a Successor Operator at nil value and shall not be de-designated as such and the costs associated with such Functional Requirement Asset and any agreements relating to that Functional Requirement Asset shall be added to the Transitional Modelling Suite and/or IOC Modelling Suite, as applicable. Following completion of the transfer of such Functional Requirement Asset, the Secretary of State shall confirm that no further action is required in respect of each Functional Requirement Asset which has been transferred.

## **Business Design and Organisation**

### **9 Business Structure Proposal**

- 9.1 The Franchisee shall, by no later [DATE]<sup>23</sup>, submit to the Secretary of State a Required Output Report that sets out recommendations for the future design and structuring of the Franchisee (the "**Integrated Operator Business Report**") in accordance with paragraphs 1 to 3 and 9.2 of this Schedule 18.2.
- 9.2 The Integrated Operator Business Report shall set out the Franchisee's proposals for structuring the Franchisee and the Franchise during the Integrated Operator Term and, following the Expiry Date, for the expected term of the successor operator, having given due regard to:
- (a) the division of operational responsibilities between HS2 Limited and the Franchisee;
  - (b) the relationship between the Franchisee and the supply chain for rolling stock supply and maintenance, together with other operational and customer-facing services delivered to, or in connection with, the Franchise;
  - (c) the impacts of any Industry Remapping Proposals arising from the TSS Options Report;
  - (d) the requirements of paragraph 1 of Part 1(b) of Schedule 6.2B (Committed Obligations); and
  - (e) any proposed changes to the applicable regulatory or legislative framework.
- 9.3 Without limiting the provisions of paragraph 2 of Schedule 15.1 (Reletting Provisions), the Franchisee shall, if so requested by the Secretary of State, in connection with any proposal (whether or not yet finalised) to tender for the right and obligation to provide the High Speed Services in succession to the Franchisee, provide the Secretary of State (or any of the Secretary of State's advisers, employees, representatives, nominees or agents) with such information, reports and analysis as the Secretary of State (or any of the Secretary of State's advisers, employees, representatives, nominees or agents) may require in respect of the High Speed Business Unit. This may include:
- (i) operational and financial information, data, reports and analysis (including driver, other train crew and rolling stock diagrams, health and safety and environmental information, Network Rail charges and performance data, HS2 Limited (as Infrastructure Manager) charges and performance data);
  - (ii) terms and conditions of employees and human resources policies; and
  - (iii) any other information as the Secretary of State may specify from time to time.

### **10 Railway Schemes Proposal**

- 10.1 The Franchisee shall, no later than 1 June 2024, submit to the Secretary of State a Required Output Report relating to a proposal in respect of Railway Schemes (the "**Railway Schemes Proposal**") in accordance with paragraphs 1 to 3 and 10.2 of this Schedule 18.2, in which the Franchisee shall propose:
- (a) which Railway Schemes should apply to the Franchisee in respect of:
    - (i) the High Speed Services; and/or

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23 **Note to Bidders:** Bidders to populate date, not to be later than 1 June 2024.

(ii) the Conventional Services,

in each case, following the High Speed Start Date;

- (b) (in reasonable detail) any recommended amendments or modifications the Franchisee recommends to be made to such Railway Schemes; and
- (c) any additional industry schemes the Franchisee considers could provide beneficial outcomes for passengers (including a description of the nature and scope of any such additional industry scheme).

10.2 The Railway Schemes Proposal submitted pursuant to paragraph 10.1 of this Schedule 18.2 shall include a detailed explanation of the reasons for the Railway Schemes Proposal, together with any supporting evidence that the Franchisee considers relevant.

10.3 When developing the Railway Schemes Proposal (and any Supplementary Railway Schemes Proposal), the Franchisee shall consult with; fully and effectively co-operate with; and take into account the views and representations of, the Secretary of State, Network Rail, HS2 Limited, the ORR, the RDG and all other relevant railway industry bodies and organisations.

## 11 New Railway Schemes

11.1 If following the submission of the Railway Schemes Proposal in accordance with paragraph 10 of this Schedule 18.2, the Franchisee becomes aware of a Railway Scheme that may be relevant to the High Speed Services and/or the Conventional Services following the High Speed Start Date that was not considered in the Railway Schemes Proposal, then the Franchisee shall submit to the Secretary of State a supplementary proposal in respect of that Railway Scheme within 30 days of the date of establishment of that Railway Scheme (a "**Supplementary Railway Schemes Proposal**").

11.2 Any Supplementary Railway Schemes Proposal shall contain:

- (a) (in reasonable detail) any recommended amendments or modifications the Franchisee recommends to be made to the relevant Railway Scheme; and
- (b) a detailed explanation of the reasons for the Supplementary Railway Schemes Proposal, together with any supporting evidence that the Franchisee considers relevant.

## 12 Development of an Integrated Operator Business Plan

12.1 The Franchisee shall, no later than twenty four (24) months prior to the Anticipated High Speed Start Date, submit to the Secretary of State as a Required Output Report a draft business plan setting out how it will deliver the Franchise Services with effect from the High Speed Start Date (the "**Integrated Operator Business Plan**") in accordance with paragraphs 1 to 3 and 12.2 of this Schedule 18.2.

12.2 The Integrated Operator Business Plan shall include, in relation to the period from the Integrated Operator Start Date to the Expiry Date:

- (a) the items set out in paragraph 10.1(a) of Schedule 11.2B (Management Information);
- (b) the Franchisee's plans for implementing the Integrated Services Marketing Plan;
- (c) the Franchisee's plans for operating the Passenger Services;
- (d) the Franchisee's plans for implementing the Passenger Proposition, including quality management systems to ensure that the IOC Benchmarks are achieved;
- (e) the Franchisee's plans for implementing the Integrated Services Staffing Plan;



- (f) the Franchisee's plans for implementing the approach to Fares recommended in the Fares Options Analysis;
- (g) those Franchise Specific Obligations in Schedule 6.1A (Franchise Specific Obligations) and Committed Obligations in Schedule 6.2A (Committed Obligations) which the Franchisee recommends should be carried forward and apply during the Integrated Operator Term;
- (h) projected operational revenues and costs for each Franchisee Year with underpinning assumptions;
- (i) the Franchisee's plans for implementing the recommendations of the Integrated Operator Business Report; and
- (j) the Franchisee's procurement strategy for the Integrated Operator Period ("**Integrated Operator Procurement Strategy**"), which shall be based upon and consistent with the Shadow Operator Procurement Strategy but extended as is necessary to reflect the different nature of the procurement requirements for the Integrated Services.

12.3 The Franchisee shall, no later than twelve (12) months prior to the Anticipated High Speed Start Date, provide the Secretary of State with a further Integrated Operator Business Plan in accordance with paragraph 3 of this Schedule 18.2, amended to take account of:

- (a) any changes to the items set out in paragraph 12.2;
- (b) any other changes to the HS2 Project and/or Integrated Services as the Franchisee considers necessary; and
- (c) a profit and loss forecast, cash flow forecast and forecast balance sheet together with a list of assumptions on the basis of which each such forecast has been prepared.

12.4 Where the Secretary of State considers that the period of time between the Integrated Operator Start Date and the High Speed Start Date is likely to be such that an interim version of the Integrated Operator Business Plan, relating to the Franchise Services other than the High Speed Services, is required (an "**Interim Integrated Operator Business Plan**"), the Secretary of State shall notify the Franchisee in writing and specify:

- (a) the required content of the Interim Integrated Operator Business Plan;
- (b) the timings for the provision of the relevant Required Output Report and Final Output Report (if required); and
- (c) any changes to the timings stated in paragraphs 12.1 and 12.3 for the Integrated Operator Business Plan,

in which case the Franchisee shall provide the Interim Integrated Operator Business Plan in accordance with that notification, but for the avoidance of doubt such provision shall not relieve the Franchisee from its obligation also to provide the Integrated Operator Business Plan in accordance with paragraphs 12.1 to 12.3.

### **13 Initial Integrated Services Mobilisation Plan**

13.1 The Franchisee shall, by no later than 1 January 2024, deliver to the Secretary of State an Initial Output Report relating to the Integrated Services Mobilisation Plan (the "**Initial Integrated Services Mobilisation Plan**") in accordance with paragraphs 1 to 3 and 13.2 and 13.3 of this Schedule 18.2.

13.2 The Initial Integrated Services Mobilisation Plan shall set out the Franchisee's plans in relation to the transition from the Passenger Services operated prior to the Integrated Operator Start Date to the Passenger Services to be operated during the Integrated Operator Term (taking



into account any phasing of the launch of services and any infrastructure or other works affecting or likely to affect passenger services to and from any Stations) including:

- (a) staffing and management, which shall:
  - (i) represent the Franchisee's best estimate, based on reasonable assumptions, of its staffing and training requirements in relation to the Franchisee's role in the mobilisation of the Integrated Services; and
  - (ii) identify and explain in reasonable detail the assumptions relied on for its preparation,

in a manner that is consistent with the Integrated Services Staffing Plan and the Integrated Services TSR, the Integrated Established Services TSR, as applicable;

- (b) delivering the Trial Operations Plan and achieving operational readiness by the High Speed Start Date;
- (c) regulatory and licensing requirements, including:
  - (i) satisfying any High Speed Services Preparation Obligation by the relevant date stated for satisfaction of it in paragraph 1.1 of Schedule 19.4 (High Speed Services Review);
  - (ii) obtaining all Licenses and otherwise satisfying all applicable regulatory requirements necessary for the Franchisee to operate the High Speed Services on and from the High Speed Start Date,

in each case in relation to the period from the date of the Initial Integrated Services Mobilisation Plan until the date falling six (6) months after the High Speed Start Date; and

- (d) delivering any obligations to customers and/or the Secretary of State during the period from the High Speed Start Date until the date falling six (6) months after the High Speed Established Services Date.

13.3 The Initial Integrated Services Mobilisation Plan must set out the information required pursuant to paragraph 13.2 of this Schedule 18.2 in sufficient detail that the Secretary of State may effectively evaluate, in the first instance, the Initial Integrated Services Mobilisation Plan and, on an ongoing basis, the Franchisee's performance against the Initial Integrated Services Mobilisation Plan.

#### **14 Ongoing Revisions to the Integrated Services Mobilisation Plan**

14.1 The Franchisee shall discuss each version or update of the Integrated Services Mobilisation Plan with HS2 Limited prior to submitting that version or update of the Integrated Services Mobilisation Plan to the Secretary of State in accordance with paragraphs 1.5 and/or 3 of this Schedule 18.2.

14.2 Annually following the approval of the Integrated Services Mobilisation Plan pursuant to paragraphs 2 and 13 of this Schedule 18.2, at the same time as each Shadow Operator Annual Review Checklist is delivered to the Secretary of State by the Franchisee under paragraph 3.4 of Schedule 18.4 (Shadow Operator Annual Review), the Franchisee shall either:

- (a) confirm that no updates to the Integrated Services Mobilisation Plan are required at such time; or
- (b) (without prejudice to paragraph 3 of this Schedule 18.2) give notice in writing to the Secretary of State of any necessary amendment to the Integrated Services Mobilisation

Plan and shall provide to the Secretary of State a revised Integrated Services Mobilisation Plan incorporating such amendments within thirty (30) days of giving such notice.

## **15 Final Integrated Services Mobilisation Plan**

- 15.1 No later than twelve (12) months prior to the Anticipated High Speed Start Date, the Franchisee shall produce a final version of the Integrated Services Mobilisation Plan.
- 15.2 Within sixty (60) days of receiving a draft final version of the Integrated Services Mobilisation Plan, the Secretary of State shall give notice in writing to the Franchisee:
- (a) approving the final version of the Integrated Services Mobilisation Plan; or
  - (b) requiring revisions to the draft final version of the Integrated Services Mobilisation Plan and, if so, specifying what revisions are required.
- 15.3 If the Secretary of State gives notice in writing of any requirement set out in paragraphs 2.4(b) and 15.2(b) of this Schedule 18.2, the Franchisee shall promptly after receiving such notice, produce and submit a revised final version of the Integrated Services Mobilisation Plan incorporating the required amendments and the provisions of paragraph 15.2 will apply.
- 15.4 If the Secretary of State gives notice in writing of the Secretary of State's approval of the Integrated Services Mobilisation Plan under paragraph 15.2(a) of this Schedule 18.2 and the Integrated Services Mobilisation Plan contains additions to the Accepted Programme Specific Requirements, Accepted Programme, the Accepted Programme Modelling Suite, the Transitional Programme Specific Requirements, the Transitional Programme and/or the Transitional Modelling Suite, the relevant parts of the Integrated Services Mobilisation Plan shall be deemed to constitute a notice of proposed Change served by the Franchisee in accordance with paragraph 3.1 of Schedule 9.1B (Financial and Other Consequences of Change) and the Franchisee and the Secretary of State shall comply with that Schedule in agreeing or determining the required Change.

## **16 Integrated Services Mobilisation Communications Strategy**

- 16.1 The Franchisee shall, no later than [DATE]<sup>24</sup>, submit to the Secretary of State a Required Output Report relating to a communications strategy in relation to the launch of the Integrated Services setting out the Franchisee's proposed overall approach to mobilisation communications, audiences to be targeted and key messages to communicate effectively to passengers, staff, relevant Stakeholders and members of the public in relation to the launch of the Integrated Services (the "**Integrated Services Mobilisation Communications Strategy**") in accordance with paragraphs 1 to 3 of this Schedule 18.2.
- 16.2 The Integrated Services Mobilisation Communications Strategy shall also include:
- (a) the Franchisee's rationale for why it considers its communications strategy to be cost-effective and optimal;
  - (b) any assumptions made by the Franchisee in relation to its communications strategy, including with respect to any market patterns, trends or analysis;
  - (c) a summary of the points that the Franchisee consulted on with each of the persons specified in paragraph 17.2 of this Schedule 18.2 and any feedback received in relation to those points;
  - (d) any alternative strategies considered and the reasons that the Franchisee has decided not to progress those;

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24 **Note to Bidders:** Bidders to populate date.

- (e) any risks associated with its communications strategy and any potential mitigations of such risks; and
- (f) any supporting evidence in relation to the matters described sub-paragraphs (a) to (e) above.

## **17 Integrated Services Mobilisation Communications Plan**

- 17.1 The Franchisee shall, following approval by the Secretary of State of the Integrated Services Mobilisation Communications Strategy and no later than twelve (12) months following the date of issue by the Secretary of State of the Integrated Services TSR and the Established Integrated Services TSR under paragraph 42.6 of this Schedule 18.2, submit to the Secretary of State a Required Output Report relating to a communications plan in relation to the launch of the Integrated Services in order to implement the Integrated Services Mobilisation Communications Strategy (the "**Integrated Services Mobilisation Communications Plan**") in accordance with paragraphs 1 to 3 and 17.3 of this Schedule 18.2.
- 17.2 The Franchisee shall consult with each of HS2 Limited, Network Rail and any franchisee of a Rail Franchise that the Secretary of State notifies the Franchisee in writing, together with such other persons as the Secretary of State notifies the Franchisee in writing or the Franchisee considers necessary or desirable to prepare the Integrated Services Mobilisation Communications Plan.
- 17.3 The Integrated Services Mobilisation Communications Plan shall set out in reasonable detail, in accordance with the Integrated Services Mobilisation Communications Strategy:
- (a) the communications that the Franchisee proposes are made in respect of the launch of the Integrated Services during appropriate phases during the period from thirty six (36) months prior to the Anticipated High Speed Start Date until six (6) months following the Anticipated High Speed Established Services Date;
  - (b) the person or persons responsible for making those communications (including, where the person proposed to make the communication is not the Franchisee whether that person has agreed to make that communication) and the proposed audiences for those communications;
  - (c) the communication channels that are intended to be utilised; and
  - (d) the planned timing and frequency of those communications; and
  - (e) how the success of each phase of the communications plan (referred to in sub-paragraph (a)) will be evaluated.
- 17.4 The Franchisee, in preparing the Integrated Services Mobilisation Communications Plan, shall have regard to, and ensure that the Integrated Services Mobilisation Communications Plan is designed to deliver, the following objectives:
- (a) that the passenger benefits and benefits to passenger and freight services across the GB Railway, in each case arising from the Integrated Services, are effectively and efficiently conveyed to passengers, staff, relevant Stakeholders and members of the public in a positive, proactive and timely manner;
  - (b) that passengers, staff, relevant Stakeholders and members of the public are kept informed with relevant developments in connection with the launch of the Integrated Services in a proactive and timely manner;
  - (c) that the Franchisee engages with, and responds to, passengers, staff, relevant Stakeholders and members of the public in relation to any concerns that they may have

in relation to the Passenger Services or the Integrated Services (or any part of them) in a positive, proactive and timely manner;

- (d) that the Franchisee communicates effectively and efficiently, in a positive, proactive and timely manner, with all relevant persons, to ensure that the launch of the Integrated Services goes smoothly; and
- (e) that no sensitive or confidential information is disclosed by the Franchisee in contravention of the Franchise Agreement (or any other Agreement binding on the Franchisee).

17.5 The Franchisee shall provide to the Secretary of State an Integrated Services Mobilisation Communications Plan in the form of a Final Output Report (if required) for Secretary of State approval by the date notified by the Secretary of State to the Franchisee in writing (provided always that the Secretary of State gives at least six (6) months' notice of such date).

## 18 Development of Integrated Services Staffing Plan

18.1 The Franchisee shall, no later than 1 January 2021, submit to the Secretary of State a Required Output Report relating to a staffing, recruitment and training plan setting out the comprehensive, robust and deliverable strategy of the Franchisee for providing an appropriately skilled, trained and qualified workforce of Franchise Employees for the Franchisee's efficient and effective delivery of the Integrated Services (the "**Integrated Services Staffing Plan**") in accordance with paragraphs 1 to 3 and 18.2 of this Schedule 18.2.

18.2 The Integrated Services Staffing Plan shall:

- (a) set out in detail the proposed organisation and operation of the Franchisee's business to efficiently and effectively provide the Integrated Services, including:
  - (i) details of the roles and anticipated number of staff required to deliver the Integrated Services;
  - (ii) analysis of where such roles are intended to be filled by existing Franchise Employees or through recruitment of new staff; and
  - (iii) an explanation of how it will deliver the Integrated Operator Business Report;
- (b) take into account and reflect the Integrated Operator Business Report prepared by the Franchisee in accordance with paragraph 9 as approved by the Secretary of State (as updated from time to time);
- (c) be developed in accordance with the Franchisee's draft Skills and Leadership Strategy as required by paragraph 9 of Schedule 13.1 (Rail Industry Initiatives and Co-operation);
- (d) set out in detail a plan for:
  - (i) the recruitment of new staff; and
  - (ii) the training of all staff (including existing Franchise Employees and newly recruited staff),

in connection with the Franchisee's efficient and effective delivery of the Trial Operations Plan and the Integrated Services, which plan shall include detail of:

- (A) how an appropriately skilled, trained and qualified workforce will be available to allow the Franchisee to perform its obligations in relation to testing and commissioning activities, including under the HS2 Network

Testing and Commissioning Requirements, without affecting the delivery of the Passenger Services;

- (B) the latest date by which the Franchisee's organisation will be operationally able to deliver the Integrated Services, which in any event must be no later than the Anticipated High Speed Start Date;
- (e) set out in detail the arrangements or proposed arrangements (as the case may be) with any applicable training providers (including the NCHSR);
- (f) set out in detail any proposed changes to the terms of any Franchisee Employee's contract of employment or any collective agreement in connection with the Franchisee's efficient and effective delivery of the Integrated Services; and
- (g) an explanation of the risks associated with the Integrated Services Staffing Plan described in this paragraph 18, including an explanation of how the Franchisee intends to mitigate those risks (identifying where this will rely on third parties) and any steps that the Franchisee proposes to take to mitigate the risks.

18.3 The Franchisee shall provide to the Secretary of State an Integrated Services Staffing Plan in the form of a Final Output Report (if required) for Secretary of State approval no later than twenty four (24) months following the Shadow Operator Start Date.

## 19 Update of the Integrated Services Staffing Plan

19.1 The Franchisee shall submit to the Secretary of State, the following:

- (a) by not later than three (3) months following the date on which the Integrated Operator Business Report is approved by the Secretary of State, a revised Integrated Services Staffing Plan in accordance with paragraph 3 (for the avoidance of doubt, containing the information set out in paragraph 18.2 of this Schedule 18.2);
- (b) by no later than six (6) months following the date of issue by the Secretary of State of the Integrated Services TSR and the Established Integrated Services TSR under paragraph 42.6 of this Schedule 18.2, a revised Integrated Services Staffing Plan in accordance with paragraph 3 (for the avoidance of doubt, containing the information set out in paragraph 18.2 of this Schedule 18.2), which has been updated to reflect any changes to the proposed structure and organisation of the Franchisee's business to efficiently and effectively provide the Integrated Services; and
- (c) by no later than 1 January 2026, a schedule identifying the Key Personnel who will be employed by the Franchisee in the delivery of the Integrated Services (and to which paragraph 3.1 of Schedule 11.2B (Management Information) shall apply from the Integrated Operator Start Date) and an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel,

in each case, updated to reflect the Integrated Operator Business Report.

## 20 Staff Engagement Plan

20.1 The Franchisee shall, no later than six (6) months following the Shadow Operator Start Date, submit to the Secretary of State a Required Output Report relating to the Franchisee's strategy for engagement with its staff and any applicable trade unions in relation to the proposed changes to the Franchisee's business as a result of the planned launch of the Integrated Services to ensure the smooth, efficient and effective transition to the Integrated Services (the "**Staff Engagement Plan**") in accordance with paragraphs 1 to 3 and 20.2 of this Schedule 18.2.

20.2 The Staff Engagement Plan shall:

- (a) set out in reasonable detail an explanation of the risks associated with staff management and industrial relations in relation to the proposed changes to the Franchisee's business as a result of the planned launch of the Integrated Services and an explanation of how the Franchisee intends to mitigate those risks; and
- (b) set out in reasonable detail any assumptions made by the Franchisee in relation to the information required by sub-paragraph (a) and otherwise in respect of the implementation of the Staff Engagement Plan.

20.3 Without prejudice to paragraph 3 of this Schedule 18.2, the Franchisee shall update the Staff Engagement Plan annually and shall deliver such updated Staff Engagement Plan at the same time as each Shadow Operator Annual Review Checklist is delivered to the Secretary of State by the Franchisee under paragraph 3.4 of Schedule 18.4 (Shadow Operator Annual Review).

### ***Rolling Stock and Operations***

## **21 Strategic Operational Baseline Report**

21.1 The Franchisee shall, within six (6) months of the Shadow Operator Start Date, provide the Secretary of State and HS2 Limited with a draft Strategic Operational Baseline Report.

21.2 The draft Strategic Operational Baseline Report shall:

- (a) set out all assumptions which were used to develop any forecast costs, revenues, economic benefits and operational performance contained in the HS2 Business Case, in so far as the same relate to the Integrated Services;
- (b) set out all assumptions and/or decisions that have been made in respect of any aspect of the HS2 Operational Concept and which will inform future operational Functional Requirements;
- (c) set out all decisions that underpin any existing HS2 Limited contracts and procurements in so far as the same relate to the Integrated Services;
- (d) explain how each of the decisions and assumptions referred to in paragraphs 21.2(a), 21.2(b) and 21.2(c) will impact upon the IOC Modelling Suite; and
- (e) explain each of the decisions and assumptions referred to in paragraphs 21.2(a), 21.2(b) and 21.2(c) in a clear and accessible manner with references back to the original source material.

21.3 In preparing the Strategic Operational Baseline Report, the Franchisee shall consult with the Secretary of State and HS2 Limited so as to ensure that it has all relevant information required to complete the Strategic Operational Baseline Report in accordance with paragraph 21.2 of this Schedule 18.2.

21.4 If the Franchisee is unable to gather all relevant information in accordance with paragraph 21.3 of this Schedule 18.2, the Franchisee shall promptly notify the Secretary of State in writing giving details of the information which it has been unable to obtain.

21.5 Within sixty (60) days of receiving the draft Strategic Operational Baseline Report, the Secretary of State shall give notice in writing to the Franchisee:

- (a) approving the draft Strategic Operational Baseline Report and confirming that it is complete; or
- (b) requiring revisions to the draft Strategic Operational Baseline Report and, if so, specifying what revisions are required and whether the reason for the revisions is that the draft



Strategic Operational Baseline Report does not fulfil the agreed scope (in the reasonable opinion of the Secretary of State).

- 21.6 If the Secretary of State gives notice in writing of any required revisions under paragraph 21.5(b) of this Schedule 18.2, the Franchisee shall promptly after receiving such notice, produce and submit a revised Strategic Operational Baseline Report incorporating the required revisions for review by the Secretary of State in accordance with paragraph 21.5 of this Schedule 18.2 and such revision shall be undertaken at the Franchisee's own cost if the reason for the revision was that the draft Strategic Operational Baseline Report did not fulfil the agreed scope (in the reasonable opinion of the Secretary of State).

## **22 Strategic Operational Baseline**

- 22.1 Within three (3) months of the later of the Secretary of State notifying the Franchisee that the Strategic Operational Baseline Report is complete in accordance with paragraph 21.5(a) of this Schedule 18.2 and the IOC Modelling Suite being agreed or determined in accordance with paragraphs 2.6 or 2.7 of Schedule 18.1 (Shadow Operations), the Franchisee shall notify the Secretary of State whether the Franchisee, acting reasonably, considers that any updates are required to the functionality of the IOC Modelling Suite in order for the IOC Modelling Suite to be used as a comparator.
- 22.2 Within thirty (30) days of the Secretary of State receiving the Franchisee's notification in accordance with paragraph 22.1 of this Schedule 18.2, the Secretary of State shall give notice in writing to the Franchisee:
- (a) approving the recommended updates and requesting that the Franchisee develop the IOC Baseline Comparator; or
  - (b) requiring revisions and/or additions to the recommended updates, specifying what revisions and/or additions are required.
- 22.3 Within two (2) months of receiving the Secretary of State's notification in accordance with paragraph 22.2 of this Schedule 18.2, the Franchisee shall provide the Secretary of State with a draft IOC Baseline Comparator which shall:
- (a) be updated to include the additional functionality required in accordance with paragraphs 22.1 and 22.2 of this Schedule 18.2; and
  - (b) be populated so as to reflect the assumptions and decisions referred to in paragraphs 21.2(a), 21.2(b) and 21.2(c) of this Schedule 18.2 (as the same may have been updated following receipt of the Secretary of State's notice in accordance with paragraph 21.5 of this Schedule 18.2).
- 22.4 Within sixty (60) days of receiving the draft IOC Baseline Comparator in accordance with paragraph 22.3 of this Schedule 18.2, the Secretary of State shall give notice in writing to the Franchisee:
- (a) approving the draft IOC Baseline Comparator; or
  - (b) requiring revisions to the draft IOC Baseline Comparator and, if so, specifying what revisions are required and whether the reason for the revisions is that the draft IOC Baseline Comparator does not fulfil the agreed scope (in the reasonable opinion of the Secretary of State).
- 22.5 If the Secretary of State gives notice in writing of any required revisions under paragraph 22.4(b) of this Schedule 18.2, the Franchisee shall promptly after receiving such notice, produce and submit a draft IOC Baseline Comparator incorporating the required revisions for review by the Secretary of State in accordance with paragraph 22.4 of this Schedule 18.2 and such revision shall be undertaken at the Franchisee's own cost if the reason for the revision



was that the draft IOC Baseline Comparator did not fulfil the agreed scope (in the reasonable opinion of the Secretary of State).

- 22.6 Following approval of the IOC Baseline Comparator in accordance with this paragraph 22 the Franchisee shall provide the Secretary of State with a forecast of the costs and revenues expected in relation to the Integrated Services on the basis of the IOC Baseline Comparator ("**Strategic Operational Baseline Forecast**").

## 23 Operational Review

- 23.1 The Franchisee shall, as soon as practicable after the Shadow Operator Start Date and in its capacity as Critical Friend, undertake an operational review of the HS2 Plans and other documents notified to it in accordance with paragraph 23.2 of this Schedule 18.2 for the purpose of preparing a Rolling Stock Operational Review Report and an Operational Review Report to be delivered to the Secretary of State in accordance with paragraphs 23.7 and 23.8 of this Schedule 18.2 (the "**Operational Review**").
- 23.2 The Secretary of State shall, on or before the Shadow Operator Start Date, provide to the Franchisee a list of the HS2 Plans which will be subject to the Operational Review (the "**Operational Review Documents**"). Nothing in this paragraph prohibits the Franchisee from reviewing any other document for the purposes of the Operational Review.
- 23.3 The Franchisee shall:
- (a) no later than thirty (30) days after the Shadow Operator Start Date, submit to the Secretary of State a report in relation to the rolling stock aspects of the Operational Review (the "**Rolling Stock Operational Review Report**") in accordance with 23.7 of this Schedule 18.2; and
  - (b) no later than six (6) months after the Shadow Operator Start Date, submit to the Secretary of State a report in relation to the Operational Review (the "**Operational Review Report**") in accordance with paragraph 23.8 of this Schedule 18.2.
- 23.4 The Franchisee and the Secretary of State shall discuss and agree, and, in the event of any dispute, the Secretary of State may reasonably determine, the scope and form of the Operational Review Report and the Rolling Stock Operational Review Report.
- 23.5 If the finalised scope and form of the Operational Review Report and/or Rolling Stock Operational Review Report requires any amendment to the Accepted Programme Specific Requirements, the Accepted Programme and/or the Accepted Programme Modelling Suite, the Franchisee shall promptly propose a Change to reflect the required amendments in accordance with Schedule 9.1B (Financial and Other Consequences of Change).
- 23.6 The Franchisee shall consult with HS2 Limited, together with such other persons as the Secretary of State requires, or that, subject to Secretary of State's prior written approval, the Franchisee considers necessary or desirable, to prepare the Operational Review Report and the Rolling Stock Operational Review Report and will permit HS2 Limited reasonable time to review and comment on the Operational Review Report and the Rolling Stock Operational Review Report prior to their submission to the Secretary of State.
- 23.7 The Rolling Stock Operational Review Report shall:
- (a) provide a summary of the Franchisee's:
    - (i) review of each of the Operational Review Documents relating to the High Speed Rolling Stock, including the testing and commissioning thereof;

- (b) provide recommendations for optimising the overall efficiency and value of the operation of the High Speed Rolling Stock, including identifying any areas for improvement by HS2 Limited and the nature, scope and extent of such improvements, together with:
  - (i) an explanation of the advantages and disadvantages of each recommendation, including:
    - (A) the estimated costs and benefits of adopting the recommendation;
    - (B) the risks associated with adopting the recommendation;
    - (C) the risks associated with not adopting the recommendation; and
    - (D) the degree of urgency necessary to obtain the benefits and/or mitigate the risks associated with recommendation and the impact on estimated costs and benefits of not progressing with urgency;
  - (ii) any assumptions made by the Franchisee in relation to such recommendations;
  - (iii) any supporting evidence in relation to the matters described in this sub-paragraph 23.7(b); and
  - (iv) where any range of recommendations is provided in relation to a relevant matter, identify the Franchisee's preferred recommendation and set out in reasonable detail why it considers such recommendation to be optimal; and
- (c) provide a summary of the feedback received from HS2 Limited following:
  - (i) the Franchisee's consultation with HS2 Limited in preparation of the Rolling Stock Operational Review Report; and
  - (ii) HS2 Limited's review of the Rolling Stock Operational Review Report,

in each case in accordance with paragraph 23.6 of this Schedule 18.2, which shall outline the level of support (or otherwise) for each recommendation contained in the feedback received from HS2 Limited, together with reasons for HS2 Limited's support (or otherwise).

**23.8 The Operational Review Report shall:**

- (a) provide a summary of the Franchisee's:
  - (i) review of each of the Operational Review Documents relating to the design and construction the HS2 Project, which shall include a review of the design specification output requirements in respect of the following:
    - (A) the stations owned by HS2 Limited;
    - (B) the Depot and Stabling Strategy; and
    - (C) the Railway Systems Operational Sub-Concept;
  - (ii) review of each of the Operational Review Documents relating to HS2 Limited's role as infrastructure manager, which shall include a review of the Infrastructure Management Strategy;
  - (iii) review of each of the Operational Review Documents relating to the testing and commissioning of the HS2 Network, including in relation to HS2 Limited's role as Systems Integrator;

- (b) provide recommendations for optimising the overall efficiency and value of the operation of HS2 Network and the Integrated Services, including identifying any areas for improvement by HS2 Limited and the nature, scope and extent of such improvements, together with:
  - (i) an explanation of the advantages and disadvantages of each recommendation, including:
    - (A) the estimated costs and benefits of adopting the recommendation;
    - (B) the risks associated with adopting the recommendation;
    - (C) the risks associated with not adopting the recommendation; and
    - (D) the degree of urgency necessary to obtain the benefits and/or mitigate the risks associated with recommendation and the impact on estimated costs and benefits of not progressing with urgency;
  - (ii) any assumptions made by the Franchisee in relation to such recommendations;
  - (iii) any supporting evidence in relation to the matters described in this sub-paragraph (b); and
  - (iv) where any range of recommendations is provided in relation to a relevant matter, identify the Franchisee's preferred recommendation and set out in reasonable detail why it considers such recommendation to be optimal; and
- (c) provide a summary of the feedback received from HS2 Limited following (i) the Franchisee's consultation with HS2 Limited in preparation of the Operational Review Report, and (ii) HS2 Limited's review of the Operational Review Report, in each case in accordance with paragraph 23.6 of this Schedule 18.2, which shall outline the level of support (or otherwise) for each recommendation contained in the feedback received from HS2 Limited, together with reasons for HS2 Limited's support (or otherwise).

23.9 Following receipt by the Secretary of State of the Operational Review Report and the Rolling Stock Operational Review Report (each of which shall meet the requirements set out in this paragraph 23) of this Schedule 18.2, the Secretary of State may (in the Secretary of State's discretion) require the Franchisee to develop a Proposal or set of Proposals in relation to any HS2 Plan or other matter addressed or raised in the Operational Review Report and/or the Rolling Stock Operational Review Report in accordance with the terms of the Collaboration Agreement.

23.10 Following approval by the Secretary of State of the Operational Review Report, the Rolling Stock Operational Review Report and any Proposals required by the Secretary of State under paragraph 23.9 of this Schedule 18.2, the Secretary of State shall give written notice to the Franchisee that the Operational Review is complete (the "**Operational Review Completion Date**").

## **24 The Franchisee's Role as Critical Friend**

24.1 The Franchisee shall, from the Shadow Operator Start Date, act as Critical Friend to HS2 Limited and as Critical Friend shall review:

- (a) each HS2 Plan when it is initially provided to the Franchisee by HS2 Limited; and
- (b) any further versions of each HS2 Plan as HS2 Limited develops such HS2 Plan further and provides such further versions to the Franchisee,

in order to advise HS2 Limited how such HS2 Plan could be improved from the perspective of any current or future Train Operator (including any Successor Operator) of the High Speed Services such that the outcome of the HS2 Plan may be delivered more efficiently and/or effectively.

24.2 If the Franchisee as Critical Friend wishes to put forward any improvement to any HS2 Plan (or any update or revision to such improvement), the Franchisee shall produce a Category 1 Proposal relating to such HS2 Plan in accordance with the Collaboration Agreement.

24.3 Such Category 1 Proposals shall include, among other matters, in relation to any Collaboration Agreement Change proposed:

- (a) a detailed itemisation of the estimated costs and benefits of implementing such Collaboration Agreement Change;
- (b) an assessment of the risks and benefits of implementing, or not implementing, such Collaboration Agreement Change;
- (c) an assessment of the required timescale for implementing such Collaboration Agreement Change in order to derive the full benefit of such Collaboration Agreement Change;
- (d) a detailed itemisation of the costs of not implementing such Collaboration Agreement Change in accordance with the timescale proposed in accordance with paragraph 24.3(c); and
- (e) an assessment of the risks of not implementing such Collaboration Agreement Change in accordance with the timescale proposed in accordance with paragraph 24.3(c).

**25 [REDACTED]<sup>25</sup>**

**26 [REDACTED]<sup>26</sup>**

**27 [REDACTED]<sup>27</sup>**

**28 [REDACTED]<sup>28</sup>**

**29 [REDACTED]<sup>29</sup>**

**30 [REDACTED]<sup>30</sup>**

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<sup>25</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>26</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>27</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>28</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>29</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>30</sup> 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 [REDACTED]<sup>31</sup>

32 [REDACTED]<sup>32</sup>

33 [REDACTED]<sup>33</sup>

34 [REDACTED]<sup>34</sup>

35 [REDACTED]<sup>35</sup>

36 [REDACTED]<sup>36</sup>

37 [REDACTED]<sup>37</sup>

38 [REDACTED]<sup>38</sup>

39 **TSS Options Report**

39.1 The Franchisee shall, no later than the first (1st) anniversary of the Shadow Operator Start Date, submit to the Secretary of State an Initial Output Report in relation to optimising the Baseline TSS in relation to the Integrated Services (the "**TSS Options Report**") in accordance with paragraphs 1, 3 and 39.2 of this Schedule 18.2.

39.2 The TSS Options Report shall:

- (a) provide a range of recommendations for optimising the Baseline TSS in relation to the Integrated Services in accordance with paragraph 39.3 (each a "**TSS Option**") of this Schedule 18.2, including a draft TSS for the Integrated Services for each recommendation, together with:
  - (i) an explanation of the advantages and disadvantages of each TSS Option;
  - (ii) an explanation of how each TSS Option has regard to the considerations set out in paragraph 39.3, including the balancing of those considerations involved in that TSS Option;
  - (iii) any Industry Remapping Proposals associated with each TSS Option; and

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<sup>31</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>32</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>33</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>34</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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

<sup>36</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>37</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>38</sup> 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.

- (iv) an explanation of how each TSS Option reflects and takes account of the Strategic Market Report,

based on the matters referred to in sub-paragraph (b);

- (b) set out in reasonable detail:

- (i) an informed estimate of Integrated Services Forecast Passenger Demand based on available evidence (making proper use of recognised railway industry systems and forecasting tools as available at that time), with the estimate being in such format and to such level of disaggregation as the Secretary of State may reasonably require;
- (ii) an analysis of any patterns and trends which the Franchisee using reasonable skill and care can derive from the Strategic Market Report;
- (iii) the impact on passenger and freight services across the GB Railway;
- (iv) where any Industry Remapping Proposals are included in the TSS Options Report, such assessment in support of those Industry Remapping Proposals as the Franchisee can reasonably carry out based on the information available;
- (v) any assumptions made by the Franchisee in relation to the matters described in sub-paragraphs (i) to (iii); and
- (vi) any supporting evidence in relation to the matters described in sub-paragraphs (i) to (iii);

- (c) demonstrate how each of the TSS Options will enable the Integrated Services to meet the Integrated Services Forecast Passenger Demand; and

- (d) identify the Franchisee's preferred TSS Option from the range of TSS Options submitted (the "**Franchisee Preferred TSS Option**") and set out in reasonable detail why it considers such recommendation to be optimal, including by reference to the explanations provided pursuant to 39.2(a)(i) and 39.2(a)(ii) of this Schedule 18.2.

39.3 Each TSS Option will seek to optimise the Baseline TSS in relation to the Integrated Services by having regard to the following considerations:

- (a) the impact on passenger and freight services across the GB Railway;

- (b) the following Sponsor Requirements:

- (i) SR Theme 4 (Journey time);
- (ii) SR Theme 6 (Reliability);
- (iii) SR Theme 10 (Integration with the Existing Network); and
- (iv) SR Theme 13 (Integration with other transport modes);

- (c) the following:

- (i) use of released capacity to deliver enhanced regional and commuter services;
- (ii) maintain broadly comparable or improved services to and from all towns and cities connected to London;
- (iii) reduce passenger crowding for journeys on the Conventional Rail Network;

- (iv) provide additional capacity and/or services to address known instances of crowding or to cater for special events or seasonal demand, including the provision of services on Boxing Day;
- (v) improve connectivity with interfacing services; and
- (vi) maintain or improve performance on the Conventional Rail Network.

39.4 The Franchisee shall, in respect of any TSS Options contained or to be contained in the TSS Options Report:

- (a) consult with each of HS2 Limited, Network Rail, each freight service operator and any franchisee of a Rail Franchise that the Secretary of State notifies the Franchisee in writing, together with such other persons as the Franchisee considers necessary or desirable or as otherwise required by the Secretary of State, to prepare the TSS Options Report; and
- (b) use all reasonable endeavours to obtain Network Rail's written support for the TSS Options Report,

prior to the submission of the TSS Options Report to the Secretary of State.

39.5 The Secretary of State shall, no later than one (1) month following approval by the Secretary of State of the TSS Options Report, notify the Franchisee in writing of the TSS Options (as varied, modified, amended or substituted by the Secretary of State in the Secretary of State's discretion) and any other matters that the Secretary of State requires be subject to a consultation in accordance with paragraph 41 (the "**TSS Options Response Report**").

#### **40 TSS Consultation Plan**

40.1 The Franchisee shall, no later than one (1) month following the Franchisee's receipt of the TSS Options Response Report, submit to the Secretary of State a Required Output Report in relation to the TSS Consultation Plan in accordance with paragraphs 1 to 3 and 40.2 of this Schedule 18.2.

40.2 The TSS Consultation Plan shall:

- (a) set out in detail a plan for undertaking a TSS public consultation, which shall include details of the process, methodology, structure and format of the consultation, including:
  - (i) the division of responsibilities between the Franchisee and the Secretary of State in respect of the consultation process;
  - (ii) the planned timing of the consultation process, including the dates of relevant milestones throughout the process;
  - (iii) the communication channels that the Franchisee intends to use in respect of the consultation and the manner in which it expects to use them to encourage responses from a broad range of affected Stakeholders; and
  - (iv) any other requirement notified by the Secretary of State; and
- (b) include a draft TSS Consultation Document in such form as the Secretary of State may reasonably require, based on the TSS Options Response Report.

#### **41 TSS Public Consultation**

41.1 Following the Secretary of State's approval of the TSS Consultation Plan the Franchisee shall (on behalf of the Secretary of State) carry out the consultation in relation to the TSS



Consultation Document in a manner that is in all material respects in accordance with the TSS Consultation Plan and to the Secretary of State's reasonable satisfaction.

41.2 Following close of the consultation, the Franchisee shall:

- (a) in accordance with the TSS Consultation Plan, submit a draft consultation response report to the Secretary of State, in such form as the Secretary of State may reasonably require, containing:
  - (i) 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 the steps it intends to take and other steps that should be taken (by third parties or otherwise) in order to take due account of the results of the consultation; and
  - (ii) such other matters specified in the TSS Consultation Plan,
- (a **"TSS Consultation Response Report"**);
- (b) discuss with the Secretary of State the TSS Consultation Response Report;
- (c) prepare a report on optimising the Baseline TSS, having regard to the TSS Consultation Response Report and the matters contained in that report, including the responses received by respondents under the consultation; and
- (d) provide a final draft train service specification.

41.3 The Secretary of State shall prepare and publish a report of the consultation undertaken pursuant to paragraph 41.1 of this Schedule 18.2 based on the TSS Consultation Response Report.

## **42 Development of a TSR**

- 42.1 Following the receipt of the report described in paragraph 41.2(c) and the final draft TSS in accordance with paragraph 41.2(d) of this Schedule 18.2, the Secretary of State shall prepare an Integrated Services TSR and an Established Integrated Services TSR to be issued to the Franchisee.
- 42.2 The Secretary of State may, in relation to the preparation of the Integrated Services TSR and the Established Integrated Services TSR:
  - (a) consult with the Franchisee and such other persons as the Secretary of States considers appropriate; and
  - (b) require the Franchisee to provide such further information explanation or evidence for any matter contained in that report as the Secretary of State reasonably requires.
- 42.3 The Secretary of State shall issue the draft Integrated Services TSR and draft Established Integrated Services TSR to the Franchisee by no later than [DATE]<sup>39</sup>.
- 42.4 Upon receipt of the draft Integrated Services TSR and draft Established Integrated Services TSR the Franchisee shall review each of the draft Integrated Services TSR and draft Established Integrated Services TSR and shall notify the Secretary of State if the Franchisee (acting reasonably) considers that either of the draft Integrated Services TSR or draft Established

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39 **Note to Bidders:** Bidders to populate date, to be at least six (6) months after submission of the TSS Consultation Response Report.

Integrated Services TSR cannot be delivered in a way that meets the Integrated Services Forecast Passenger Demand due to:

- (a) rolling stock availability, capability and/or capacity;
- (b) capacity constraints and planning rules on the HS2 Network and/or Conventional Rail Network;
- (c) capacity constraints at Depots and/or stations; and
- (d) the interaction with any train service requirements being operated or to be operated by other train operating companies.

42.5 The notice to be given by the Franchisee under paragraph 42.4 shall be given:

- (a) where the draft Integrated Services TSR and the draft Established Integrated Services TSR are not materially different to any one of the TSS Options, within thirty (30) days of the Franchisee receiving the draft Integrated Services TSR and the draft Established Services TSR from the Secretary of State; or
- (b) where either the draft Integrated Services TSR or the draft Established Integrated Services TSR is materially different to each of the TSS Options, within such period as the Franchisee and the Secretary of State may agree (or, if the Parties cannot reach agreement, within such period of time as the Secretary of State may reasonably determine).

42.6 Within thirty (30) days of receiving the Franchisee's notice under paragraph 42.4, the Secretary of State shall issue the Integrated Services TSR and Established Integrated Services TSR to the Franchisee with such amendments as the Secretary of State reasonably determines are necessary.

### **43 Development of HS2 Testing and Commissioning Plan**

- 43.1 The Franchisee shall advise HS2 Limited as to the latest date by which it will need to have received the plan of resourcing requirements from HS2 Limited confirming the Franchisee's role in the testing and commissioning of the HS2 Network (the "**HS2 Testing and Commissioning Plan**") in order for the Franchisee to inform its staffing and resource planning activities.
- 43.2 The Franchisee shall, within three (3) months of receipt of the draft HS2 Testing and Commissioning Plan, review the draft HS2 Testing and Commissioning Plan in its capacity as Critical Friend. Such review shall include, where required, working collaboratively with Network Rail, taking into account any relevant HS2 Plans and making recommendations for amendments and/or additions which the Franchisee considers would improve the robustness and/or efficiency of the draft HS2 Testing and Commissioning Plan.
- 43.3 The Franchisee shall, by no later than three (3) months following receipt by the Franchisee of the HS2 Testing and Commissioning Plan, submit to the Secretary of State a Required Output Report setting out how the Franchisee shall meet the HS2 Network Testing and Commissioning Requirements (the "**Franchisee Testing and Commissioning Report**") in accordance with paragraphs 1 to 3 and 43.4 of this Schedule 18.2.
- 43.4 The Franchisee Testing and Commissioning Report shall:
  - (a) detail how the Franchisee shall meet the HS2 Network Testing and Commissioning Requirements;
  - (b) include a costed resource plan for the Franchisee's delivery of resources set out the HS2 Testing and Commissioning Plan which shall include allocation of resources and services

as reasonably requested by HS2 Limited to enable delivery of the testing and commissioning programme; and

- (c) include commentary on the impact on the Integrated Services Mobilisation Plan of the steps required under sub-paragraph (a).

43.5 The Secretary of State shall, within one (1) month of approving the Franchisee Testing and Commissioning Report in accordance with paragraph 2.4 of this Schedule 18.2:

- (a) notify the Franchisee that the Franchisee shall carry out all or some of the activities at the cost set out in the Franchisee Testing and Commissioning Report; or
- (b) notify the Franchisee that the Franchisee is not required to carry out any activities set out in the Franchisee Testing and Commissioning Report.

#### **44 Development of the Integrated Services Security Plan**

44.1 The Franchisee shall, no later than 1 June 2024, submit to the Secretary of State a Required Output Report relating to a plan for operational and security standards for the Integrated Services ("**Integrated Services Security Plan**") in accordance with paragraphs 1 to 3 and 44.2 of this Schedule 18.2.

44.2 The Integrated Services Security Plan shall:

- (a) include detail of any Security Requirements in relation to the Integrated Services;
- (b) describe in detail the processes for compliance with each Security Requirement; and
- (c) include proposals for mitigating the impact of the Security Requirements on the Franchisee and on HS2 Limited (including, where relevant, through any design changes to Stations and Depots).

44.3 Upon acceptance of the Integrated Services Security Plan by the Secretary of State, the Franchisee shall collaborate with HS2 Limited in accordance with paragraph 4 of this Schedule 18.2 to enable HS2 Limited to deliver a draft security plan ("**HS2 Security Plan**") to the Secretary of State.

44.4 The Franchisee shall, no later than sixty (60) days from the date the Franchisee receives the draft HS2 Security Plan, deliver a report to the Secretary of State addressing the matters set out in paragraph 5 of this Schedule 18.2 and setting out:

- (a) a detailed financial breakdown of the cost of implementing the HS2 Security Plan which shall include a Value for Money Assessment; and
- (b) any disagreement with the contents of the HS2 Security Plan; and
- (c) its reasons and evidence for any such disagreement; and/or
- (d) any additional comment it has with regard to the content of the HS2 Security Plan.

#### **45 Control Arrangements and Traffic Management Process**

45.1 The Franchisee shall work with Network Rail and HS2 Limited to develop a review of [Digital Railways]<sup>40</sup> plans for the Conventional Rail Network in respect of the Integrated Services.

45.2 The Franchisee shall collaborate with HS2 Limited in accordance with paragraph 4 of this Schedule 18.2 to enable HS2 to deliver an operational control system for the purposes of

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40 **Note to Bidders:** To be updated to reflect Digital Rail provisions in Schedule 6A.

managing the HS2 Network, including the NICC. This shall include planning for provision of the necessary staff in its Integrated Services Staffing Plan by:

- (a) advising HS2 Limited as to the latest date by which it will need to have received the roles it is required to fill to inform the Integrated Services Staffing Plan;
- (b) collaborating with HS2 Limited to develop the draft NICC Roles and Responsibilities Strategy and the draft NICC Competence Management Strategy.

45.3 On receipt of the final version of each of:

- (a) the NICC Roles and Responsibilities Strategy; and
- (b) the NICC Competence Management Strategy,

from HS2 Limited, the Franchisee shall produce (for each) a Required Output Report setting out how it will deliver its agreed role, including a costed resource plan, in accordance with paragraph 5 of this Schedule 18.2.

45.4 The Franchise shall collaborate with HS2 Limited (and any suppliers nominated in writing by HS2 Limited) in accordance with paragraph 4 of this Schedule 18.2 to enable development of the traffic management system for the HS2 Network, which shall include system level configuration regarding conflict resolution modes and objectives.

45.5 The Franchisee collaborate with HS2 Limited in accordance with paragraph 4 of this Schedule 18.2 to ensure that any of the Franchisee's systems that interface with the traffic management system for the HS2 Network have the requisite functionality to support the traffic management system for the HS2 Network, including:

- (a) developing a specification for necessary updates to the [Crew and Stock Management Systems]<sup>41</sup> to ensure the Franchisee's systems have the capability to receive and process fixed, static and dynamic data in order to identify and resolve resource allocation conflicts and communicate this back to the traffic management system for the HS2 Network; and
- (b) ensuring that:
  - (i) the Functional Requirements that are developed in accordance with paragraph 50 of this Schedule 18.2 for:
    - (A) ticketing, yield management and reservations systems;
    - (B) customer information systems that provide accurate, timely, real time information that pushes information and travel choices to customers; and
    - (C) other systems notified to the Franchisee by the Secretary of State in writing; and
  - (ii) the other requirements that are developed for end-to-end journey information and assistance requirements in such manner as may be notified to the Franchisee by the Secretary of State in writing,

are developed in a way that ensures an interface with the traffic management system for the HS2 Network that optimises the customer experience implications of conflict resolution and train running interventions.

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41 **Note to Bidders:** To be updated to reflect Digital Rail provisions in Schedule 6A.

**46 High Speed Operational Performance Regime and High Speed Operational Performance Criteria**

- 46.1 The Franchisee shall work with Network Rail and collaborate with HS2 Limited in accordance with paragraph 4 of this Schedule 18.2 to enable HS2 Limited to deliver a draft plan which sets out the High Speed Operational Performance Regime in order to inform the development of the HS2 Track Access Agreement ("**High Speed Operational Performance Regime Proposal**").
- 46.2 As part of its collaboration with HS2 Limited, and in addition to its obligations under paragraph 4 of this Schedule 18.2, the Franchisee shall provide:
- (a) advice on how the NR Performance Regime and the High Speed Operational Performance Regime should interface in an efficient and seamless manner;
  - (b) advice regarding the High Speed Operational Performance Regime and the High Speed Operational Performance Criteria applicable to the Integrated Services;
  - (c) advice on the possibility of, and an analysis of the benefits and opportunities in, introducing the High Speed Operational Performance Regime on the Conventional Rail Network; and
  - (d) any other assistance and advice as directed by the Secretary of State.
- 46.3 Where the Franchisee disagrees with, or has any comment on, any of the contents of the High Speed Operational Performance Regime Proposal, the Franchisee shall deliver a report to the Secretary of State by no later than thirty (30) Weekdays from the date the Franchisee receives the High Speed Operational Performance Regime Proposal, setting out:
- (a) any disagreement with the contents of the High Speed Operational Performance Regime Proposal;
  - (b) its reasons and evidence for any such disagreement; and/or
  - (c) any additional comment it has with regard to the content of the High Speed Operational Performance Regime Proposal,
- taking into account the comments provided by the Franchisee under paragraph 4, and any evaluations undertaken by the Franchisee in accordance with paragraph 5, of this Schedule 18.2.
- 46.4 Within thirty (30) Weekdays of receipt of HS2 Limited's High Speed Operational Performance Regime Proposal, the Franchisee shall provide to the Secretary of State a detailed financial breakdown of the cost of implementing the High Speed Operational Performance Regime Proposal which shall include a Value for Money Assessment.
- 46.5 Within six (6) months of the Secretary of State notifying the Franchisee that it has approved the High Speed Operational Performance Regime Proposal, the Franchisee shall submit to the Secretary of State a plan (the "**High Speed Operational Performance Criteria Plan**") in accordance with paragraphs 1 to 3 of this Schedule 18.2, setting out:
- (a) realistic and measurable operational performance criteria for the High Speed Services which reflect the nature and operational characteristics of the HS2 Network and High Speed Rolling Stock; and
  - (b) if directed by the Secretary of State, realistic and measurable operational performance criteria for the Conventional Services which align with the criteria for the High Speed Services as set out in paragraph 46.5(a) of this Schedule 18.2 and which reflect the infrastructure and operational characteristics of the Conventional Network and Conventional Rolling Stock.

## 47 Development of the Integrated Services Sustainable Development Strategy

- 47.1 The Franchisee shall cooperate with HS2 Limited in accordance with paragraphs 4 and 5 of this Schedule 18.2 to enable HS2 Limited to deliver its sustainability obligations as set out in the HS2 Phase One Environmental Minimum Requirements including the HS2 Phase One Undertakings and Assurances Register, in so far as the same relate to the High Speed Services. The collaboration required under this paragraph shall include, in addition to the Franchisee's obligations under paragraphs 4 and 5 of this Schedule 18.2:
- (a) the identification of any obligations that relate to the operation of the High Speed Services; and
  - (b) the development of processes to measure and/or test compliance with the HS2 Phase One Environmental Minimum Requirements.
- 47.2 The Franchisee shall, no later than 1 June 2024, submit to the Secretary of State an Initial Output Report relating to the sustainability of the Integrated Services ("**Integrated Services Sustainability Review**") in accordance with paragraphs 1 to 3 of this Schedule 18.2.
- 47.3 The Integrated Services Sustainability Review shall:
- (a) include a review of its Sustainable Development Strategy developed in accordance with paragraph 10 of Schedule 13.1A (Rail Industry Initiatives and Co-operation) identifying the impact of the High Speed Services and Conventional Services upon its Sustainability Development Strategy and setting out options and recommendations for how the operation of the High Speed Services should be managed to meet:
    - (i) the requirements of paragraph 10.1(a) of Schedule 13.1 (Maintenance of Franchise);
    - (ii) any standards and/or guidance notified by the Secretary of State to the Franchisee;
    - (iii) the environmental requirements set out in the HS2 Phase One Environmental Minimum Requirements and the HS2 Phase One Undertakings and Assurances Registers; and
    - (iv) any of HS2 Limited's additional sustainability and environmental policies, as notified from time to time by the Secretary of State to the Franchisee.
  - (b) be substantially agreed, as far as reasonably practicable, with HS2 Limited prior to submission to the Secretary of State.
- 47.4 Within thirty (30) days of approval or determination of the Integrated Services Sustainability Review by the Secretary of State, the Franchisee shall submit to the Secretary of State a Final Output Report relating to environmental monitoring ("**Environmental Information Plan**") and a draft sustainability strategy for the Integrated Services ("**Integrated Services Sustainability Strategy**") which shall apply with effect from the High Speed Start Date in accordance with paragraphs 1 to 3 of this Schedule 18.2.
- 47.5 The Environmental Information Plan shall include:
- (a) a proposed dataset to be set out in paragraph 1 of Appendix 1 of Schedule 11.2B (Management Information), including any new reporting requirements for HS2 Limited;
  - (b) proposed targets to be set out in paragraph 2 of Appendix 1 of Schedule 11.2B (Management Information); and
  - (c) any proposed updates to paragraph 16.2(a) of Schedule 11.2B (Management Information).

47.6 The Integrated Services Sustainability Strategy shall:

- (a) set out how the operation of the Integrated Services shall be managed to meet the requirements of paragraph 10.1(a) of Schedule 13.1 (Maintenance of Franchise); and
- (b) reflect the review carried out in accordance with paragraph 47.3(a).

***Customer Experience, Fares and Marketing***

**48 Development of the Strategic Market Report**

48.1 The Franchisee shall, no later than the date falling six (6) months following the Shadow Operator Start Date, submit to the Secretary of State a Required Output Report which analyses the markets for Integrated Services and the travel corridors impacted by the HS2 Project and provides recommendations as to how to develop these passenger markets (the "**Strategic Market Report**") in accordance with paragraphs 1 to 3 and 48.2 of this Schedule 18.2.

48.2 The Strategic Market Report shall:

- (a) identify the markets which are relevant to the Integrated Services, including long term quantitative and qualitative market analysis (in respect of each market for Integrated Services and each travel corridor impacted by the HS2 Project) of:
  - (i) market drivers and forecast trends;
  - (ii) market characteristics (including journey purpose, customer types and needs and expectations);
  - (iii) competition to passenger rail services (to include both threats and opportunities);
  - (iv) major factors likely to affect forecast demand (including potential customer proposition elements and Fares and non-Fares pricing);
- (b) set out strategic proposals for market segmentation and customer proposition, including:
  - (i) analysis supporting the proposed market segmentation;
  - (ii) proposals for growing each of the markets for the Integrated Services over the Franchise Term and for five (5) years following the end of the Franchise Term including growing demand and Fares and non-Fares revenue;
  - (iii) market price levels and expectations for price levels and their relationship with business profitability;
  - (iv) recommendations for the development of a marketing strategy which will include product, service and brand proposals;
  - (v) initial demand forecasts and revenue forecasts together with their underpinning assumptions and sensitivity analyses;
  - (vi) provide a detailed explanation of how the information contained in the Strategic Market Report corresponds to or deviates from the assumptions and decisions contained in the Strategic Operational Baseline Report; and
  - (vii) provide a detailed explanation of how the information contained in the Strategic Market Report will impact upon the Strategic Operational Baseline Forecast.



48.3 Notwithstanding paragraph 3 of this Schedule 18.2, the Franchisee shall update the Strategic Market Report on an annual basis to reflect any changes to the underlying assumptions used by the Franchisee in preparing the Strategic Market Report.

48.4 The Franchisee shall ensure that it incorporates the conclusions set out in the Strategic Market Report when developing proposals and delivering obligations in relation to the Shadow Operator Services.

#### **49 Customer Community and Development of Passenger Proposition**

49.1 The Franchisee shall, no later than one (1) month after the Shadow Operator Start Date, enter into and maintain in place until the High Speed Established Services Date either:

- (a) the HS2 Customer Community Contract, by taking a novation of the rights and obligations of HS2 Limited under it; or
- (b) equivalent arrangements with Transport Focus (or other equivalent body) for the performance of services that are substantially similar to those being provided by Transport Focus to HS2 Limited under the HS2 Customer Community Contract,

which may include the Franchisee taking a novation of the HS2 Customer Community Contract and then entering into arrangements of the type described in paragraph 49.1(b) on expiry of the HS2 Customer Community Contract.

49.2 The Franchisee shall procure that an appropriate number of senior, suitably qualified personnel with high levels of expertise in customer experience attend on behalf of the Franchisee and actively participate in each meeting of:

- (a) the HS2 Design Group; and
- (b) the HS2 Independent Design Panel,

to which the Franchisee is invited.

49.3 The Franchisee shall, no later than [DATE]<sup>42</sup>, deliver to the Secretary of State an Initial Output Report relating to the passenger proposition (the "**Draft Passenger Proposition**") in accordance with paragraphs 1 to 3, 49.4 and 49.5 of this Schedule 18.2.

49.4 The Draft Passenger Proposition shall:

- (a) set out the Franchisee's proposals, in each case in respect of the period on and from the High Speed Start Date, for:
  - (i) a structured approach to defining the end to end customer journey;
  - (ii) the service to be offered to customers on trains (including the approach to retail and catering) and at stations (including retail services) served by the Passenger Services;
  - (iii) information to be provided at each stage of the customer journey, including in times of planned and unplanned disruption;
  - (iv) a strategy for ticketing and ticket retail, including business and commercial models for retailing, retailing and journey validation systems, and integration with existing rail and multi-modal systems;

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42 **Note to Bidders:** Bidders to populate date.

- (v) a strategy for pricing and Yield Management;
  - (vi) a strategy for revenue protection drawing on the recommendations in the Fares Options Analysis, where relevant;
  - (vii) a strategy for customer relationship management;
  - (viii) service commitments to passengers, including compensation for delays and poor performance and whether this will be set out in a Passenger's Charter only or in the Passenger's Charter and in another format;
  - (ix) reviewing and updating existing Station Travel Plans and developing new Station Travel Plans where required;
  - (x) an approach and methodology for ongoing measurement of passenger satisfaction across all Passenger Services to deliver more granular and regular results and with a wider sample size than the National Rail Passenger Survey; and
  - (xi) a strategy for mobile communications services;
- (b) set out the Franchisee's evaluation of the implications of each Passenger Proposition Aspect on integration with other railway passenger services operated by another Train Operator;
- (c) set out the Franchisee's consideration of whether each Passenger Proposition Aspect should be introduced for:
- (i) High Speed Services only;
  - (ii) Passenger Services prior to the Integrated Operator Start Date;
  - (iii) Conventional Services only;
  - (iv) the Integrated Services; and/or
  - (v) any passenger services operated by another Train Operator;
- (d) be deliverable within the budget notified to the Franchisee by the Secretary of State; and
- (e) demonstrate how each of the factors described in paragraph 49.5(b) has been considered in developing the Passenger Proposition.

49.5 In developing the Draft Passenger Proposition, the Franchisee shall:

- (a) consult with the following on its Draft Passenger Proposition:
- (i) the HS2 Customer Community;
  - (ii) the HS2 Independent Design Panel;
  - (iii) Transport Focus;
  - (iv) London Travelwatch;
  - (v) the Accessibility Panel; and
  - (vi) such other stakeholders or groups of stakeholders as the Secretary of State may specify for this purpose; and
- (b) take into account:

- (i) the results of the consultation described in paragraph 49.5(a); and
- (ii) the research previously commissioned by HS2 Limited and made available to the Franchisee.

49.6 Upon approval of the Draft Passenger Proposition by the Secretary of State in accordance with paragraph 1.5(a) of this Schedule 18.2, the Franchisee shall undertake the actions set out in the Draft Passenger Proposition in order to develop the passenger proposition for the High Speed Services and the Conventional Services ("**Passenger Proposition**") and shall submit the Passenger Proposition in the form of a Final Output Report to the Secretary of State for approval in accordance with paragraph 2 of this Schedule 18.2 by no later than [DATE]<sup>43</sup> (notwithstanding the thirty (30) day period stated in paragraph 2.1 of this Schedule 18.2).

49.7 The Franchisee shall prepare the Passenger Proposition in substantially the same form as the Draft Passenger Proposition and shall specify its recommendation as to whether each Passenger Proposition Aspect should be introduced for:

- (a) High Speed Services only;
- (b) Passenger Services prior to the Integrated Operator Start Date;
- (c) Conventional Services only;
- (d) the Integrated Services; and/or
- (e) any passenger services operated by another Train Operator,

in each case providing a written assessment of the relative opportunities and benefits.

49.8 The Secretary of State may require amendments to a Passenger Proposition Aspect.

49.9 Where requested by the Secretary of State, the Franchisee shall make the Draft Passenger Proposition and/or Passenger Proposition (as the case may be) available to such persons as the Secretary of State may from time to time require.

## **50 Functional Requirements for Passenger Proposition Aspects**

50.1 Following approval of each Passenger Proposition Aspect by the Secretary of State, the Franchisee shall provide to the Secretary of State and HS2 Limited, in accordance with paragraphs 6 to 8 of this Schedule 18.2 and by no later than the date stated, the Functional Requirements for:

- (a) ticketing, yield management and reservations systems (by no later than 1 June 2020);
- (b) customer information systems that provide accurate, timely, real time information that pushes information and travel choices to customers (by no later than 1 June 2020);
- (c) revenue protection systems (by no later than 1 June 2020);
- (d) other systems notified to the Franchisee by the Secretary of State in writing (by the date specified);
- (e) passenger wayfinding and car park offer (by no later than 1 December 2020);
- (f) catering (by no later than 1 August 2020).

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43 **Note to Bidders:** Bidders to populate date.

## 51 Fares Options Analysis

51.1 The Franchisee shall, no later than 1 January 2021, submit to the Secretary of State an Initial Output Report which analyses and presents options for a fares and fares regulation strategy ("**Fares Options Analysis**") in accordance with paragraphs 1 to 3 and 51.2 of this Schedule 18.2.

51.2 The Fares Options Analysis shall include, as a minimum:

- (a) a range of options for Fare structures and fare pricing levels for the High Speed Services and Conventional Services to be operated by the Franchisee together with an evaluation of each option against a range of measures including:
  - (i) Value for Money and affordability;
  - (ii) social and equality;
  - (iii) consumer issues and ease of use by the passenger; and
  - (iv) deliverability;
- (b) a range of options for Fare regulatory regimes for High Speed Services and Conventional Services and the consequential implications for passenger services operated (or to be operated) by other Train Operators, together with an analysis of each option against its consistency with current laws and regulations, the regulatory burden, consumer protection objectives and any other objectives as the Secretary of State may specify;
- (c) a recommendation of the options that the Franchisee considers should be adopted together with:
  - (i) reasons for its recommendations; and
  - (ii) the implications for retailing and ticketing systems including the Functional Requirements that the Franchisee shall be required to provide to HS2 Limited;
- (d) the applicability of the recommended options to the High Speed Services and the Conventional Services and any potential for wider application of the recommended options; and
- (e) any other analysis and options as the Secretary of State may reasonably request.

51.3 Upon approval of the Fares Options Analysis by the Secretary of State in accordance with paragraph 2.4(a) of this Schedule 18.2, the Franchisee shall provide as a Final Output Report a detailed plan for delivery of the recommended options set out in the Fares Options Analysis and any other option as notified by the Secretary of State, (the "**Fares Delivery Plan**") in accordance with paragraphs 1 to 3 of this Schedule 18.2, which shall include a detailed list of the regulatory actions that the Secretary of State shall be required to undertake to implement the fares regulation options set out in the Fares Delivery Plan.

## 52 Development of the Integrated Services Marketing Plan

52.1 The Franchisee shall, by [DATE]<sup>44</sup>, submit a Required Output Report in relation to a marketing plan for the Integrated Services for the period from the High Speed Start Date (the "**Integrated Services Marketing Plan**") in accordance with paragraphs 1 to 3 and 52.2 of this Schedule 18.2.

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44 **Note to Bidders:** Bidders to populate date, to be earlier than 1 June 2023.

52.2 The Integrated Services Marketing Plan shall:

- (a) take into account and reflect:
  - (i) the Strategic Market Report prepared by the Franchisee in accordance with paragraph 48 as approved by the Secretary of State (as updated from time to time); and
  - (ii) the Passenger Proposition prepared by the Franchisee in accordance with paragraph 49 as approved by the Secretary of State (as updated from time to time); and
- (b) include:
  - (i) a marketing strategy for Integrated Services;
  - (ii) brand proposals, in accordance with any requirements of the Secretary of State notified to the Franchisee in writing and, where relevant any amendments required to paragraph 3 of Schedule 14.2B (Maintenance of Operating Assets), and any other provision of the Franchise Agreement relevant to branding, required to take account of such brand proposals; and
  - (iii) a detailed and costed plan for all marketing and branding activity which is to be undertaken in relation to the Integrated Services from 1 January 2024.

52.3 The Franchisee shall provide to the Secretary of State an Integrated Services Marketing Plan in the form of a Final Output Report for Secretary of State's approval by the date that is thirty six (36) months prior to the Anticipated High Speed Start Date.

52.4 Where the Secretary of State considers that the period of time between the Integrated Operator Start Date and the High Speed Start Date is likely to be such that an interim version of the Integrated Services Marketing Plan, relating only to the Conventional Services, is required (an "**Interim Integrated Services Marketing Plan**"), the Secretary of State shall notify the Franchisee in writing and specify:

- (a) the required content of the Interim Integrated Services Marketing Plan;
- (b) the timings for the provision of the relevant Required Output Report and Final Output Report (if required); and
- (c) any changes to the timings stated in paragraphs 52.1 and 52.3, or the date stated in paragraph 52.2(b)(iii), for the Integrated Services Marketing Plan,

and the Franchisee shall provide the Interim Integrated Services Marketing Plan in accordance with that notification, but for the avoidance of doubt such provision shall not relieve the Franchisee from its obligation also to provide the Integrated Services Marketing Plan in accordance with paragraphs 52.1 to 52.3.

### 53 Initial Trial Operations Plan

53.1 The Franchisee shall, by no later than 1 June 2022, deliver to the Secretary of State an Initial Output Report relating to the Franchisee's plans to test the operation of high speed train services and progressively introduce the High Speed Services to the HS2 Network and the Conventional Network (the "**Trial Operations Plan**") in accordance with paragraphs 1 to 3 and 53.2 and 53.3 of this Schedule 18.2.

53.2 The Trial Operations Plan shall set out the Franchisee's plans to test the readiness of the HS2 Network, the Conventional Network, the High Speed Rolling Stock and the integration of systems for the operation of the Passenger Services and to progressively introduce High Speed Services

to the HS2 Network and the Conventional Network in accordance with the Integrated Services TSR and the Established Integrated Services TSR, including how the Franchisee shall conduct:

- (a) train crew training and certification of train crew to operate the High Speed Rolling Stock at lower speeds;
- (b) launching and performance testing of sales and reservations systems
- (c) full certification of train crew to operate the High Speed Rolling Stock at full speeds;
- (d) training and certification of NICC control staff in accordance with the prevailing railway group standards;
- (e) training and certification of any platform dispatch staff in accordance with the prevailing railway group standards;
- (f) supporting HS2 Limited's testing of real-time customer information flows and NICC Interfaces between the Conventional Network and the HS2 Network;
- (g) test running to enable the testing of:
  - (i) the integration of the traffic management systems and control arrangements between the HS2 Network and the Conventional Network;
  - (ii) the full functionality of real-time customer information flows;
  - (iii) interfaces with industry ticketing and clearing systems; and
  - (iv) the stabling of Conventional Rolling Stock and High Speed Rolling Stock; and
- (h) preview operations, including:
  - (i) the mobilisation of full retail activities and ensuring they are fully-prepared by the High Speed Start Date;
  - (ii) station operations at stations on the Conventional Network, including:
    - (A) platform and train interfaces;
    - (B) train turnaround and servicing; and
    - (C) wayfinding to High Speed Services; and
  - (iii) the Franchisee's responses to delays on the Conventional Network;
- (i) a soft launch of the High Speed Services in accordance with the Integrated Services TSR which will enable the testing of:
  - (i) ticketing systems;
  - (ii) station and train interfaces;
  - (iii) passenger flow management;
  - (iv) the interfaces between the High Speed Services and other modes of transport;
  - (v) station security;
  - (vi) train turnaround and servicing;

- (vii) onboard information systems and the effectiveness of the onboard services;
- (viii) the Franchisee's responses to delays and service perturbations; and
- (ix) post-travel follow-up;
- (j) any other readiness training or testing as reasonably directed by the Secretary of State from time to time.

53.3 The Trial Operations Plan must:

- (a) set out the information required pursuant to paragraph 53.2 of this Schedule 18.2 in sufficient detail that the Secretary of State may effectively evaluate, in the first instance, the Trial Operations Plan and, on an ongoing basis, the Franchisee's performance against the Trial Operations Plan;
- (b) be developed in consultation with Network Rail and HS2 Limited; and
- (c) reflect the latest information and dates provided by HS2 Limited relating to the availability of the HS2 Network for trial operations.

53.4 The Franchisee shall provide to the Secretary of State a Final Output Report in relation to the Trial Operations Plan in accordance with paragraphs 1 to 3 of this Schedule 18.2.

#### **54 Ongoing Revisions to the Trial Operations Plan**

54.1 The Franchisee shall discuss each version or update of the Trial Operations Plan with HS2 Limited prior to submitting that version or update of the Trial Operations Plan to the Secretary of State in accordance with paragraphs 1.5 and/or 3 of this Schedule 18.2.

54.2 Annually following the approval of the Trial Operations Plan pursuant to paragraphs 2 and 53 of this Schedule 18.2, at the same time as each Shadow Operator Annual Review Checklist is delivered to the Secretary of State by the Franchisee under paragraph 3.4 of Schedule 18.4 (Shadow Operator Annual Review), the Franchisee shall either:

- (a) confirm that no updates to the Trial Operations Plan are required at such time; or
- (b) (without prejudice to paragraph 3 of this Schedule 18.2) give notice in writing to the Secretary of State of any necessary amendment to the Trial Operations Plan and shall provide to the Secretary of State a revised Trial Operations Plan incorporating such amendments within thirty (30) days of giving such notice.

#### **55 Digital Railway Business Case**

55.1 By the date notified by the Secretary of State, such date to be no earlier than 1 September 2020, the Franchisee shall submit to the Secretary of State a Required Output Report that sets out a business case for the deployment of specified aspects of the Digital Railway on the West Coast Main Line ("**Digital Railway Business Case**") in accordance with paragraphs 1 to 3 and paragraphs 55.2 and 55.3 of this Schedule 18.2.

55.2 When developing the Digital Railway Business Case the Franchisee shall collaborate, consult and fully and effectively co-operate with and take into account the views and representations of Network Rail, HS2 Limited and any other relevant Stakeholders.

55.3 The Digital Railway Business Case shall:

- (a) separately identify those Digital Railway Options which can be implemented for a cost which is no greater than the Franchisee's reasonable estimate of the Total Digital Railway



Account Amount minus the amount which is reasonably expected to be spent in developing the Digital Railway Business Case;

- (b) contain details of how the Franchisee shall ensure that all procurement is carried out in a manner that would be compliant with the Utilities Contracts Regulations 2016 (if the Franchisee was a "utility" for the purposes of those Regulations) including any proposal for Network Rail and/or HS2 Limited (as appropriate) to jointly procure the relevant contract;
- (c) include an assessment of the financial implications and a Value for Money Assessment in respect of each Digital Railway Option for the following periods:
  - (i) during the Franchise Term;
  - (ii) during the fifteen (15) year period following implementation of the relevant Digital Railway Option; and
  - (iii) during the thirty (30) year period following implementation of the relevant Digital Railway Option;
- (d) include a programme for the implementation of each Digital Railway Option, including:
  - (i) the high-level milestones required to implement the relevant Digital Railway Option;
  - (ii) a profile of the estimated costs which will be incurred in achieving each such milestone; and
  - (iii) a comparison of the profile of estimated costs against the amounts expected to be in the Digital Railway Account at the expected time of payment;
- (e) include detailed evidence of the Franchisee's collaboration with Network Rail, HS2 Limited and any other relevant Stakeholders (where appropriate) along with details of the level of their support for each Digital Railway Option; and
- (f) include a summary of any concerns, still outstanding at the time of the Digital Railway Business Case, of HS2 Limited, Network Rail and/or other relevant Stakeholders in relation to each Digital Railway Option.

**APPENDIX 1 TO SCHEDULE 18.2**

**Form of Novation Agreement for Functional Requirement Asset**

Dated [Year]

**[INSERT NAME OF SUPPLIER]**

**HIGH SPEED TWO (HS2) LIMITED**

**[INSERT NAME OF FRANCHISEE]**

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**[TEMPLATE] DEED OF NOVATION OF A  
CONTRACT**

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This deed is dated

### Parties

- (1) **[INSERT NAME OF SUPPLIER]** incorporated and registered in **[INSERT JURISDICTION IN WHICH SUPPLIER IS REGISTERED]** with company number **[INSERT COMPANY NUMBER OF SUPPLIER]** whose registered office is at **[INSERT REGISTERED OFFICE OF SUPPLIER]** (**Supplier**)
- (2) **HIGH SPEED TWO LIMITED** incorporated and registered in England with company number 06791686 whose registered office is at Two Snow Hill, Snow Hill Queensway, Birmingham, B4 6GA (**HS2 Limited**)
- (3) **[INSERT NAME OF FRANCHISEE]** incorporated and registered in England with company number **[INSERT COMPANY NUMBER OF FRANCHISEE]** whose registered office is at **[INSERT REGISTERED OFFICE OF SUPPLIER]** (**Franchisee**)

### Background

- (A) The Supplier and HS2 Limited are party to a contract for the provision of **[INSERT BRIEF DESCRIPTION OF PURPOSE OF CONTRACT TO BE NOVATED]** dated **[INSERT DATE OF CONTRACT TO BE NOVATED]** (**Contract**).
- (B) HS2 Limited wishes to transfer its rights and obligations under the Contract to the Franchisee.
- (C) HS2 Limited shall continue to be liable for any failure by it to perform its obligations under the Contract before the Effective Date, with the Franchisee assuming responsibility for all liabilities arising on and from the Effective Date.
- (D) The parties have therefore agreed to novate HS2 Limited's rights and obligations under the Contract to the Franchisee on the terms of this deed with effect from the date of this deed (**Effective Date**).

### Agreed terms

#### Novation

- 1.1 HS2 Limited transfers all its rights and obligations under the Contract to the Franchisee with effect from the Effective Date.
- 1.2 The Franchisee shall enjoy all the rights and benefits of HS2 Limited under the Contract with effect from the Effective Date (including any rights and benefits which have accrued prior to the Effective Date). The Franchisee agrees to perform the Contract with effect from the Effective Date and be bound by its terms in every way as if it were the original party to it in place of HS2 Limited.
- 1.3 The Supplier agrees to perform the Contract and be bound by its terms in every way as if the Franchisee were the original party to it in place of HS2 Limited.
- 1.4 All references to HS2 Limited in the Contract shall be read and construed as references to the Franchisee.

#### Release of obligations

- 1.5 The Supplier and HS2 Limited release each other from all future obligations to the other under the Contract.
- 1.6 Nothing in this deed shall affect or prejudice any claim or demand that the Supplier may have against HS2 Limited under or in connection with the Contract with respect to matters occurring before the Effective Date.

- 1.7 The Franchisee shall have the right to enforce the Contract and pursue any claims and demands under the Contract against the Supplier with respect to matters arising before, on or after the Effective Date as though the Franchisee were the original party to the Contract instead of HS2 Limited.
- 1.8 HS2 Limited shall have the right to enforce the Contract and pursue any claims and demands under the Contract against the Supplier with respect to any losses incurred by HS2 Limited due to breaches of the Contract which occurred prior to the Effective Date.

**Indemnity**

- 1.9 The Franchisee shall indemnify HS2 Limited against all liabilities, costs, expenses, damages and losses that HS2 Limited suffers or incurs under or in connection with the Contract as a result of the Franchisee's failure, with effect from the Effective Date, to perform or satisfy its assumed obligations under the Contract.
- 1.10 HS2 Limited shall indemnify the Franchisee against all liabilities, costs, expenses, damages and losses that the Franchisee suffers or incurs under or in connection with the Contract as a result of HS2 Limited's failure to perform or satisfy its obligations under the Contract before the Effective Date.

**Governing law**

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

**Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by )  
**[INSERT NAME OF SUPPLIER]** acting by ) .....  
 a director in the presence of ) Director

.....  
Signature of witness

Name .....

Address .....

.....

Executed as a deed by )  
**HIGH SPEED TWO (HS2) LIMITED** ) .....  
 acting by a director in the presence of ) Director

.....  
Signature of witness

Name .....

Address .....

.....

Executed as a deed by )  
[INSERT NAME OF FRANCHISEE] acting ) .....  
by a director in the presence of ) Director

.....  
Signature of witness

Name .....

Address .....

.....

## SCHEDULE 18.3

### Transitional Programme Specific Requirements

#### 1 Entry Into and Co-operation with Railway Schemes

- 1.1 No later than six (6) months prior to the Anticipated High Speed Start Date, or such other later date as the Secretary of State may, from time to time, advise the Franchisee in writing, the Franchisee shall join and/or participate in such Railway Schemes as agreed by the Secretary of State in respect of the High Speed Services and/or Conventional Services.
- 1.2 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 the Railway Schemes as agreed by the Secretary of State in respect of the High Speed Services and/or Conventional Services.

#### 2 Support in Obtaining MSA Relevant Approvals

- 2.1 As part of its requirements under the Transitional Programme:
  - (a) the Franchisee shall prepare any documentation forming part of a submission to an MSA Competent Authority for obtaining an MSA Relevant Approval which may only be prepared by a Train Operator in its capacity as an operator of rolling stock;
  - (b) the Franchisee shall, within any applicable timeframes set out in the MSA Relevant Approvals Management Plan, submit to HS2 Limited and/or to any MSA Competent Authority (as applicable) all such relevant information as is identified for provision by the Franchisee in the MSA Relevant Approvals Management Plan; and
  - (c) where an MSA Relevant Approval may only be granted to a Train Operator, the Franchisee shall make the formal presentation of the submissions for such MSA Relevant Approval,

provided that, in each case, the TMM has supplied in a timely manner (and in a format suitable for submission to the applicable MSA Competent Authority without redrafting) any materials, data and information relating to the applicable MSA Relevant Approval as are required to be prepared by the TMM in accordance with the MSA Relevant Approvals Management Plan.

- 2.2 The Franchisee shall do all such things in relation to route acceptance (as such term comes to be defined in the High Speed Rolling Stock MSA) in respect of each of the HS2 Network and the MSA Conventional Rail Network which only the Franchisee can undertake as a Train Operator, including the preparation and approval of the applicable Safety Certificate, provided that the TMM has supplied in a timely manner all relevant materials, data, documentation and information as are required to be prepared by the TMM in relation to route acceptance (as such term comes to be defined in the High Speed Rolling Stock MSA) in accordance with the MSA Relevant Approvals Management Plan.
- 2.3 The Franchisee shall communicate regularly and effectively with HS2 Limited to coordinate the exchange of all relevant materials, data, documentation and information with the TMM as is required in connection with the development of necessary submissions to MSA Competent Authorities for the purpose of obtaining MSA Relevant Approvals.

#### 3 Participation in Training

- 3.1 The Franchisee shall, in accordance with the Training Programme, make its relevant training staff available to receive the Training Services and Training Materials, and thereafter shall ensure that its training staff provide all required training onwards to the Franchisee's applicable drivers, train crew, cleaning and servicing staff and any other relevant employees to, as appropriate, operate, maintain, clean and service the High Speed Rolling Stock and the Simulator (and any related items), in each case in accordance with all Laws and industry

standards, the MSA Relevant Approvals, the relevant train and simulator manuals and the Safety Certificate.

- 3.2 The Franchisee shall use the Simulator to train its drivers in developing a working knowledge of: (i) the High Speed Rolling Stock; and (ii) the Routes over which High Speed Services are to be operated, making appropriate use of the Simulator's functionality in simulating different operating scenarios.
- 3.3 The Franchisee shall work with HS2 Limited and the TMM to maximise the number of High Speed Rolling Stock units that are available for the purpose of driver training, including meeting with HS2 Limited and the TMM to agree the times and locations for those units to be made available for that training to be carried out.

#### **4 Implementing the Depot and Stabling Strategy**

- 4.1 The Franchisee shall support HS2 Limited and the TMM in implementing the agreed Depot and Stabling Strategy, including procuring access to relevant Ancillary Maintenance Facilities on the Conventional Rail Network and, where required, procuring access for the TMM to use such Ancillary Maintenance Facilities to maintain the trains or undertake fault finding.

#### **5 Input to Plans and Procedures under High Speed Rolling Stock TSA**

- 5.1 The Franchisee shall cooperate with HS2 Limited in relation to the preparation and/or review by HS2 Limited of any plans and procedures that are required to be developed pursuant to the High Speed Rolling Stock TSA (including, for instance, any train hand-over and hand-back procedure, fault notification procedure or other like plan and procedures).

#### **6 Commencing Operation of High Speed Rolling Stock**

- 6.1 On or before the High Speed Start Date the Franchisee shall, as directed by the Secretary of State, enter into all such relevant High Speed Rolling Stock Contracts (Franchisee) as the Secretary of State shall specify, in the forms so specified at the relevant time.
- 6.2 Following the execution of the High Speed Rolling Stock Contracts (Franchisee), the Franchisee shall comply with all its obligations under such High Speed Rolling Stock Contracts (Franchisee).
- 6.3 On or before the High Speed Start Date, the Franchisee agrees to take all steps required in order to become depot facility owner of the Home Depot and shall, as directed by the Secretary of State:
- (a) enter into, or take an assignment of, the relevant depot lease in respect of the Home Depot with HS2 Limited; and
  - (b) enter into any other associated documentation to ensure that the Franchisee has all the rights required to be the depot facility owner at the Home Depot and that the TMM is granted, or retains the benefit of, a licence to occupy the Home Depot on the terms to be specified in the High Speed Rolling Stock TSA.

#### **7 NOT USED**

#### **8 Timetable Development Rights**

- 8.1 Without prejudice to paragraph 17 of this Schedule 18.3, 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 Integrated Services TSR and the Established Integrated Services TSR and



otherwise comply with its obligations under the Franchise Agreement (including under paragraph 12 of this Schedule 18.3).

8.2 Subject to the remaining provisions of this paragraph 8, the Franchisee shall exercise its Timetable Development Rights so as to secure:

- (a) an Integrated Services Timetable that enables it to operate railway passenger services that comply with the Integrated Services TSR;
- (b) an Established Integrated Services Timetable that enables it to operate railway passenger services that comply with the Established Integrated Services TSR,

and in each case that enables the Franchisee to comply with paragraph 12 of this Schedule 18.3 in accordance with its obligations under paragraph 13 of this Schedule 18.3.

8.3 Unless the Secretary of State otherwise directs, the Franchisee shall, for the purposes of securing an Integrated Services Timetable and an Established Integrated Services Timetable which complies with paragraph 8.2 of this Schedule 18.3, exercise its rights under the Relevant 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 the relevant Infrastructure Manager in relation to such agreement in respect of its Timetable Development Rights.

8.4 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 8.3 of this Schedule 18.3, 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 the relevant Infrastructure Manager 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.

8.5 Subject to the Franchisee complying with its obligations under paragraph 8.3 of this Schedule 18.3, it shall not be liable for any failure to secure an Integrated Services Timetable and/or an Established Integrated Services Timetable that enables the Franchisee to operate railway passenger services that comply with the requirements of paragraph 8.2 of this Schedule 18.3, 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 8.1 of this Schedule 18.3;
- (b) the relevant Infrastructure Manager exercising its flexing rights from time to time under the Relevant Track Access Agreement or the Network Code in respect of such Train Slots;
- (c) the relevant Infrastructure Manager exercising its other rights from time to time under the Relevant Track Access Agreement or the Network Code; or
- (d) the exercise by the ORR of its powers pursuant to section 22C of the Act.

**8.6 TDR Amendments**

- (a) If and to the extent that the Franchisee is not able to secure an Integrated Services Timetable and/or Established Integrated Services Timetable that enables it to operate

railway passenger services that comply with the Integrated Services TSR and/or the Established Integrated Services TSR (as appropriate) 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 8.6(b) and 8.6(c) of this Schedule 18.3) issue to the Franchisee amendments to the Integrated Services TSR and/or Established Integrated Services TSR ("**Integrated Services TDR Amendment**"). The amendments contained in the Integrated Services TDR Amendment shall be those that the Secretary of State considers necessary for the purposes of enabling the Franchisee to secure an Integrated Services Timetable and/or an Established Integrated Services Timetable that is compliant with the Integrated Services TSR and/or the Established Integrated Services TSR (as appropriate) 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 an Integrated Services 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 8.1 of this Schedule 18.3; and
  - (ii) is not relieved by paragraph 8.5 of this Schedule 18.3 from liability for such failure to secure an Integrated Services Timetable and/or an Established Integrated Services Timetable that enables the Franchisee to operate railway passenger services that comply with the Integrated Services TSR and/or the Established Integrated Services TSR (as appropriate).
- (c) The Franchisee shall not be relieved from its obligations to obtain an Integrated Services Timetable or an Established Integrated Services Timetable that enables the Franchisee to operate the Integrated Services TSR or the Established Integrated Services TSR (as applicable) by the issue of any Integrated Services TDR Amendment where the Secretary of State reasonably considers that such failure 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 Integrated Services TDR Amendment may be drafted so that it does not relieve the Franchisee of the obligation to comply with the Integrated Services TSR and/or the Established Integrated Services TSR (as appropriate) 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.
- (d) Following issue of any Integrated Services TDR Amendment pursuant to paragraph 8.6 of this Schedule 18.3 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 an Integrated Services Timetable and/or an Established Integrated Services Timetable (as appropriate) that enables it to operate railway passenger services that comply with the Integrated Services TSR and/or the Established Integrated Services TSR (as appropriate) without such Integrated Services TDR Amendment.
- (e) Any Integrated Services TDR Amendment issued pursuant to paragraph 8.6 of this Schedule 18.3 shall 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 Integrated Services TSR and/or the Established Integrated Services TSR without any such Integrated Services TDR Amendment.

8.7 With effect from the date on which any Integrated Services TDR Amendment ceases to have effect in accordance with paragraph 8.7 of this Schedule 18.3 the Integrated Services TSR

and/or the Established Integrated Services TSR (as applicable) without such Integrated Services TDR Amendment shall thereafter apply.

## **9 Certification and Notification by Franchisee of Exercising Timetable Development Rights**

- 9.1 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 8.2 of this Schedule 18.3.
- 9.2 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 9.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 8.2 of this Schedule 18.3.
- 9.3 The Franchisee shall:
- (a) keep the Secretary of State fully informed of any discussions with the relevant Infrastructure Manager in relation to the matters referred to in paragraphs 8 to 15 of this Schedule 18.3 which may, in the reasonable opinion of the Franchisee, have a material impact on the ability of the Franchisee to deliver the Integrated Services TSR and/or the Established Integrated Services TSR or meet the requirements of paragraph 12 of this Schedule 18.3 through the Integrated Services Timetable and/or the Established Integrated Services 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 9.3 and/or certification under paragraph 9.1 of this Schedule 18.3 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 the relevant Infrastructure Manager's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

## **10 Timetable Consultation with Stakeholders**

- 10.1 The Franchisee shall consult with Stakeholders who would reasonably be expected to be affected by the Integrated Services Timetable and the Established Integrated Services Timetable.
- 10.2 The Franchisee shall:
- (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 to implement the Integrated Services Timetable and the Established Services Timetable 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 such 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 changes are not exercised prior to the publication of the report and exercise such Timetable Development Rights in the manner indicated in the report.

## **11 Train Plan**

- 11.1 For the purposes of this Schedule 18.3, the "**Train Plan**" shall be the plan (including sub-plans) prepared by the Franchisee for the operation of trains and train formations under the Integrated Services Timetable or the Established Integrated Services Timetable (as applicable) that best matches available capacity to Integrated Services Forecast Passenger Demand.
- 11.2 The Franchisee shall submit to the Secretary of State a Train Plan in respect of each of the Integrated Services Timetable and the Established Integrated Services Timetable on the same date as each of the Integrated Services Timetable and the Established Integrated Services Timetable is submitted to the Secretary of State.
- 11.3 Each Train Plan shall set out for each railway passenger service in the Integrated Services Timetable or the Established Integrated Services Timetable (as appropriate):
  - (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) the Integrated Services Forecast Passenger Demand.
- 11.4 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.

## **12 Planning to Meet Target Passenger Demand**

### **12.1 Capacity and Timetable Planning**

- (a) The Franchisee shall, in preparing the Integrated Services Timetable, the Established Integrated Services Timetable and the related Train Plans, unless the Secretary of State otherwise agrees, provide for at least the capacity specified in the Integrated Services TSR or the Established Integrated Services TSR (as appropriate).
- (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, in relation to the Conventional Services and the High

Speed Services, in accordance with such requirements as are set out in the Passenger Proposition.

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

If at the time it prepares the Integrated Services Timetable, the Established Integrated Services Timetable and the related Train Plans, having exercised all reasonable endeavours, the Franchisee is unable to prepare an Integrated Services Timetable, Established Integrated Services Timetable and/or related Train Plan having the capacity, Passenger Carrying Capacity and/or meeting the reasonable expectations referred to in paragraphs 12.1(a) to 12.1(c) of this Schedule 18.3, then the Integrated Services Timetable, Established Integrated Services Timetable and/or related 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 in accordance with any spread of capacity between the High Speed Services and Conventional Services as the Secretary of State may specify from time to time; and
- (c) minimising, so far as is possible, the extent to which passengers are required to stand on Conventional Services or High Speed Services, or both, by reference to the expectations specified in, or in accordance with, paragraph 12.1(c) of this Schedule 18.3.

**12.3 Preparation of Integrated Services Timetable, Established Integrated Services Timetable and related Train Plans**

- (a) Subject to paragraph 12.3(b) of this Schedule 18.3, the Franchisee shall in preparing the Integrated Services Timetable, the Established Integrated Services Timetable and the related Train Plans, take full and proper account of its calculation of Integrated Services 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 12.1 and 12.2 of this Schedule 18.3.
- (b) The Franchisee shall in preparing the Integrated Services Timetable, the Established Integrated Services Timetable and the related Train Plans, 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 12.1 and 12.2 of this Schedule 18.3.

**12.4 Finalising the Train Plan**

- (a) The Franchisee shall submit its proposed Train Plan to the Secretary of State as soon as reasonably practicable after the relevant Infrastructure Manager has issued the working timetable on which the Train Plan is to be based. If the Secretary of State notifies the Franchisee within thirty (30) days of receipt of the proposed Train Plan that amendments to it are required, the Franchisee shall make those amendments and re-submit a revised proposed Train Plan within thirty (30) days of receipt of the Secretary of State's notification (and the provisions of this paragraph (a) shall apply to such re-submitted proposed Train

Plan). Where the Secretary of State does not require any amendments, or any further amendments (as applicable), the draft Train Plan shall become the final Train Plan.

- (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) Each 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 Integrated Services TSR or the Established Integrated Services TSR (as appropriate).
- (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.

### **13 Procedural Arrangements and Timescales**

- 13.1 The Franchisee agrees that the effective operation of the provisions of paragraphs 8 to 15 of this Schedule 18.3 (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, the Infrastructure Managers and others.
- 13.2 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 Integrated Services Timetable, the Established Integrated Services Timetable and the relevant Train Plans) and that the Secretary of State may amend any such stipulation from time to time.
- 13.3 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 13.2 of this Schedule 18.3.
- 13.4 Any stipulation by the Secretary of State pursuant to paragraph 13.2 of this Schedule 18.3:
  - (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 in conjunction with the Integrated Services TSR and the Established Integrated Services TSR; and
  - (c) may provide for iterations of drafts of the Integrated Services Timetable, Established Integrated Services Timetable and/or the relevant Train Plans.
- 13.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 13.2 of this Schedule 18.3 shall have contractual effect between the Franchisee and the Secretary of State in accordance with the terms of such stipulation.

### **14 Obligations in Relation to Other Train Operators**

- 14.1 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).

## **15 The Timetable and the Working Timetable**

- 15.1 Any specification of Passenger Services in the Integrated Services TSR and the Established Integrated Services TSR 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 (or other applicable timetable) that the relevant Infrastructure Manager publishes for passengers.
- 15.2 The Franchisee shall ensure, for each period between two (2) consecutive Passenger Change Dates during the Integrated Operator Term that the Timetable for such period is, in its reasonable opinion, not materially different from the relevant working timetable issued by the relevant Infrastructure Manager.

## **16 HS2 Testing and Commissioning**

- 16.1 Where the Secretary of State notifies the Franchisee in accordance with paragraph 43.5(a) of Schedule 18.2 (Accepted Programme Specific Requirements), that it is required to carry out all or some of the activities set out in the Franchisee Testing and Commissioning Report, then the Franchisee shall:
  - (a) enter into the HS2 Track Access Agreement in such form as is required in order for the Franchisee to perform the activities set out in the Franchisee Testing and Commissioning Report;
  - (b) enter into any other such Access Agreements as are required in order for the Franchisee to perform the activities set out in the Franchisee Testing and Commissioning Report; and
  - (c) after entering into the HS2 Track Access Agreement, and any other required Access Agreements, perform the required activities.

## **17 HS2 Track Access Agreement**

- 17.1 The Secretary of State shall give notice in writing to the Franchisee of the form of Access Agreement which permits the provision of Passenger Services on track operated by HS2 Limited when that form has been approved by the ORR. The Franchisee shall enter into the HS2 Track Access Agreement in that form (or shall amend any HS2 Track Access Agreement already entered into by the Franchisee pursuant to paragraph 16.1(a) of this Schedule 18.3, to the extent not already in that form, so that it is in that form) promptly (and in any event within one (1) month) following receipt of the Secretary of State's notice.

## **18 Digital Railway Assets**

- 18.1 The Franchisee shall ensure that the relevant third parties enter into Direct Agreements relating to all Digital Railway Assets.
- 18.2 All Digital Railway Assets and any agreements relating to Digital Railway Assets shall, unless transferred to Network Rail and/or HS2 Limited (as appropriate) in accordance with this paragraph



18, be designated as Primary Franchise Assets which shall transfer to a Successor Operator at nil value and shall not be de-designated as such.

- 18.3 The Secretary of State may at any time, by providing written notice to the Franchisee, require the Franchisee to transfer any or all of the Digital Railway Assets to Network Rail and/or HS2 Limited (as the Secretary of State may specify in the Secretary of State's notice) at nil value with effect from such date as the Secretary of State may specify (provided that such date is a minimum of thirty (30) days following the date of the notice).
- 18.4 Upon the Secretary of State providing written notice to the Franchisee pursuant to paragraph 18.3 of this Schedule 18.3:
- (a) the Franchisee shall enter into such novation agreements as are required to transfer any agreements relating to the relevant Digital Railway Assets to HS2 Limited and/or Network Rail (as appropriate);
  - (b) any novation agreement referred to in paragraph 18.4(a) shall be on such terms as the Secretary of State shall reasonably specify;
  - (c) the Franchisee shall do and execute any act or document reasonably requested of it by the Secretary of State to implement and give full effect to the transfer of any Digital Railway Asset to Network Rail and/or HS2 Limited (as appropriate).

## SCHEDULE 18.4

### Shadow Operator Annual Review

#### 1 Purpose of Shadow Operator Annual Review

- 1.1 The purpose of a Shadow Operator Annual Review is for:
- (a) the Secretary of State to undertake a review of the Franchisee's performance in delivering the Shadow Operator Services in respect of the most recently completed Shadow Operator Performance Period; and
  - (b) the Parties to agree (or the Secretary of State to determine):
    - (i) any updates to the Accepted Programme, Cost Baseline and Resourcing Plan;
    - (ii) any updates to the Transitional Programme and Transitional Budget; and
    - (iii) any updates to the Shadow Operator Contingency.
- 1.2 The previous Accepted Programme, Cost Baseline, Resourcing Plan, Transitional Programme, Transitional Budget, Transitional Record of Assumptions and Shadow Operator Contingency will continue to apply until updated versions of the same have been agreed or determined in accordance with this Schedule 18.4.
- 1.3 **NOT USED.**
- 1.4 Where the Actual Shadow Operator Costs in any Shadow Operator Performance Period that ends prior to the completion of the Readiness Review are less than **[REDACTED]**<sup>45</sup> x RPI (where RPI is the quotient of the Retail Prices Index for the January which immediately precedes the relevant date of calculation of the Shadow Operator Performance Fee divided by the Retail Prices Index for January 2019), then:
- (a) the provisions of paragraphs 3, 5.3 and 6 of this Schedule shall not apply in respect of the Shadow Operator Annual Review conducted in respect of such Shadow Operator Performance Period and;
  - (b) the Franchisee shall not be entitled to any Shadow Operator Performance Fee in respect of such Shadow Operator Performance Period; and
  - (c) the Franchisee shall not receive any scores in the Shadow Operator Annual Review conducted in respect of such Shadow Operator Performance Period and such Shadow Operator Annual Review shall not be considered for the purposes of the Readiness Review.

#### 2 Shadow Operator Annual Review Meetings

- 2.1 The Secretary of State shall notify the Franchisee of the number of Shadow Operator Annual Review Meetings and the date, time and location for each Shadow Operator Annual Review Meeting by no later than the relevant Shadow Operator Performance Period Date, provided always that the last Shadow Operator 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 Shadow Operator Performance Period.

<sup>45</sup> 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.

2.2 For the avoidance of doubt, nothing in this Schedule 18.4 will prevent the Parties from discussing any matter relevant to a Shadow Operator Annual Review outside of a Shadow Operator Annual Review Meeting.

### **3 Shadow Operator Annual Review Checklist**

3.1 Not less than thirty (30) days prior to the Shadow Operator Performance Period Date, 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 Shadow Operator Annual Review Checklist.

3.2 Not less than fifteen (15) days prior to the Shadow Operator Performance Period Date, the Franchisee shall notify the Secretary of State in writing of any matters in addition to those set out in the Shadow Operator 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 Shadow Operator 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 Shadow Operator Annual Review.

3.3 Unless notified otherwise in writing by the Secretary of State, the Franchisee shall undertake a Shadow Operator Stakeholder Survey in accordance with paragraph 15 of Schedule 18.1 (Shadow Operations) in respect of each Shadow Operator Performance Period and shall include the Shadow Operator Stakeholder Report in the relevant Shadow Operator Annual Review Checklist. The Shadow Operator Stakeholder Report shall:

- (a) set out an analysis of the responses received from Stakeholders, and Network Rail, HS2 Limited and the Department, in response to the Shadow Operator Stakeholder Survey; and
- (b) provide for the approach of the Franchisee to collaborative working to be assessed by Stakeholders, and Network Rail, HS2 Limited and the Department, on a scale from poor to excellent.

3.4 As soon as reasonably practicable after the Shadow Operator Performance Period Date, and in any event no later than thirty (30) days, after the Shadow Operator Performance Period Date, the Franchisee shall deliver to the Secretary of State a duly completed copy of the Shadow Operator Annual Review Checklist in respect of the relevant Shadow Operator Performance Period.

3.5 The Shadow Operator Annual Review Checklist delivered by the Franchisee in accordance with paragraph 3.4 may include written commentary from the Franchisee in respect of the relevant Shadow Operator Performance Period covering:

- (a) each of the matters listed in the Shadow Operator 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 18.4; and
- (c) any other matter which the Secretary of State has confirmed as relevant for the Shadow Operator Annual Review in accordance with paragraph 3.2.

3.6 At any time following delivery by the Franchisee of the Shadow Operator Annual Review Checklist and other information in accordance with paragraph 3.4 and 3.5 of this Schedule 18.4, and until no later than forty five (45) days after the Shadow Operator Performance Period Date, the Secretary of State may notify the Franchisee in writing of such further detail or evidence the Secretary of State reasonably requires the Franchisee to provide in relation to its performance during the relevant Shadow Operator Performance 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 completed Shadow Operator Annual Review Checklist (including any commentary provided by the Franchisee under paragraph 3.5 of this Schedule 18.4); and
  - (b) any information additional to that contained in the completed Shadow Operator Annual Review Checklist which the Secretary of State has used or intends to use to assess the Franchisee's performance,

in each case, no later than thirty (30) days prior to the first Shadow Operator Annual Review Performance 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 18.4, 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 Shadow Operator Requirements**

- 4.1 The Secretary of State may from time to time require an audit to be conducted on the Franchisee, the findings of which audit may inform the Secretary of State's requirements in relation to the Shadow Operator Annual Review, including, but not limited to, in relation to this paragraph 4 of this Schedule 18.4.
- 4.2 Thirty (30) days prior to the Shadow Operator Performance Period Date, the Secretary of State shall notify the Franchisee in writing (including, where relevant, by providing additional and/or amended Accepted Programme Specific Requirements and Transitional Programme Specific Requirements) of any additional requirements specified by the Secretary of State to be reflected in the draft Accepted Programme, the draft Cost Baseline, the draft Resourcing Plan, the draft Transitional Programme and the draft Transitional Budget.
- 4.3 At approximately the same time as the Franchisee submits the completed Shadow Operator Annual Review Checklist and other information in accordance with paragraph 3.4 of this Schedule 18.4, and in any event no later than the Shadow Operator Performance Period Date, the Franchisee shall also deliver to the Secretary of State:
- (a) a draft Accepted Programme, a draft Cost Baseline and a draft Resourcing Plan (in electronic form), in each case reflecting the requirements of the Secretary of State notified in accordance with paragraph 4.2 of this Schedule 18.4 together with a demonstration that such drafts have been prepared in accordance with the Resourcing Strategy, the Shadow Operator Procurement Strategy and the Shadow Operator Financial Management Strategy;
  - (b) a draft Transitional Programme and a draft Transitional Budget (in electronic form), in each case reflecting the requirements of the Secretary of State notified in accordance with paragraph 4.2 of this Schedule 18.4 together with a demonstration that such drafts have been prepared in accordance with the Shadow Operator Procurement Strategy and the Shadow Operator Financial Management Strategy;
  - (c) a report detailing the changes between the previous Accepted Programme, Cost Baseline, Resourcing Plan, Transitional Programme and Transitional Budget and the draft Accepted Programme, Cost Baseline, Resourcing Plan, Transitional Programme and Transitional Budget, including an explanation of and justification for such changes;
  - (d) a report summarising the changes between the draft Transitional Programme and Transitional Budget and the Transitional Programme and Transitional Budget which were Placed in Escrow immediately following the previous Shadow Operator Annual Review, including an explanation of and justification for such changes; and

- (e) any proposed amendments to the Shadow Operator Contingency, in each case reflecting the draft Cost Baseline and the draft Transitional Budget,
- 4.4 At any time following delivery by the Franchisee of the documents referred to in paragraph 4.3 of this Schedule 18.4:
- (a) and until no later than thirty (30) days before the final Shadow Operator Annual Review Planning Meeting in respect of such Shadow Operator Performance Period, the Secretary of State may make written requests that the Franchisee:
    - (i) provide further detail or evidence in relation to the documents delivered in accordance with paragraph 4.3 of this Schedule 18.4; and/or
    - (ii) amend the draft Accepted Programme and/or draft Transitional Programme in accordance with the Secretary of State's requirements and provide the amended draft to the Secretary of State (together with any consequent amendments to the Cost Baseline, Resourcing Plan and/or Transitional Budget); and
  - (b) the Franchisee shall comply with such request within a reasonable amount of time and in any event no later than fifteen (15) days before the final Shadow Operator Annual Review Planning Meeting in respect of such Shadow Operator Performance Period.
- 4.5 Each draft Cost Baseline provided to the Secretary of State in accordance with this paragraph 4 of this Schedule 18.4 shall:
- (a) be in the format of the initial Cost Baseline as amended from time to time by the Secretary of State; and
  - (b) represent the Franchisee's best estimate, based on reasonable assumptions, of the costs and expenses of the Franchisee's performance of the Accepted Programme Specific Requirements in accordance with the draft Accepted Programme.
- 4.6 Each draft Resourcing Plan provided to the Secretary of State in accordance with this paragraph 4 of this Schedule 18.4 shall:
- (a) be in the format of the initial Resourcing Plan as amended from time to time by the Secretary of State;
  - (b) be developed in line with and be consistent with the draft Accepted Programme provided to the Secretary of State in accordance with paragraph 4.3(a) of this Schedule 18.4; and
  - (c) represent the Franchisee's best estimate, based on reasonable assumptions, of the Franchisee's resourcing requirements to ensure the efficient and effective performance of the Accepted Programme and delivery of the Accepted Programme Specific Requirements.
- 4.7 Each draft Transitional Budget provided to the Secretary of State in accordance with this paragraph 4 of this Schedule 18.4 shall:
- (a) be updated to the extent necessary to reflect any additional and/or amended requirements notified to the Franchisee in accordance with paragraph 4.2;
  - (b) contain written confirmation that the Franchisee is not aware of any material change to any assumption underlying the Transitional Budget which may require a change to the draft Transitional Budget; and
  - (c) in the format of the initial Transitional Budget as amended from time to time by the Secretary of State.

4.8 Where the draft Cost Baseline and/or draft Resourcing Plan provided to the Secretary of State in accordance with this paragraph 4 of this Schedule 18.4 includes any changes to the assumptions set out in the Product Cost Assumptions Statement which was previously Placed in Escrow, then the Franchisee shall (at the same time as the draft Cost Baseline is provided to the Secretary of State) submit to the Secretary of State:

- (a) an updated Product Cost Assumption Statement which has been amended to reflect the changed assumptions; and
- (b) an explanation of and the reasons for the changed assumptions.

## **5 Shadow Operator Annual Review Meetings – Performance and Planning**

5.1 Each Shadow Operator 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 18.4 and shall be attended by representatives of each of the Secretary of State and the Franchisee.

5.2 The Franchisee shall ensure that the representatives of the Franchisee at a Shadow Operator 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.

5.3 The last Shadow Operator Annual Review Performance Meeting shall take place no later than eighteenth (18th) day of the fourth (4th) Reporting Period following the end of the Shadow Operator Performance Period. At each Shadow Operator Annual Review Performance Meeting the Parties shall discuss:

- (a) matters of the Franchisee's performance by reference to the Shadow Operator 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 18.4 and any commentary and/or information provided by the Secretary of State to the Franchisee in accordance with paragraph 3.7 of this Schedule 18.4; and
- (b) any updates on matters referred to in the Shadow Operator Annual Review Checklist or any supporting commentary, documents or evidence submitted by the Franchisee to the Secretary of State in accordance with paragraph 3.4 of this Schedule 18.4, in respect of which the Franchisee was unable to provide full details in accordance with the timescales set out in paragraph 3 of this Schedule 18.4 provided that the Franchisee has notified the Secretary of State of any information relevant to the update as soon as reasonably practicable.

5.4 The last Shadow Operator Annual Review Planning Meeting shall take place no later than seventy five (75) days after the Shadow Operator Performance Period Date. At each Shadow Operator Annual Review Planning Meeting the Parties shall discuss:

- (a) the Accepted Programme Specific Requirements for the following Shadow Operator Performance Period;
- (b) the draft Accepted Programme, draft Cost Baseline and draft Resourcing Plan (including any changes proposed by either Party thereto);

- (c) the Transitional Programme Specific Requirements for the following Shadow Operator Performance Period:
- (d) the draft Transitional Programme and draft Transitional Budget (including any changes proposed thereto by either Party);
- (e) any changes to the Shadow Operator Annual Review Checklist to be used for the following year's Shadow Operator Annual Review;
- (f) any proposed amendments to the Shadow Operator Contingency; and
- (g) any other matter which any representative of either Party considers relevant for discussion, provided that the Party has notified the other Party of its intention to discuss such matter not less than ten (10) days prior to the Shadow Operator Annual Review Planning Meeting.

## **6 Shadow Operator Annual Review Performance Meetings – Scoring**

- 6.1 The Secretary of State shall provide to the Franchisee, no later than ten (10) days following the final Shadow Operator Performance Meeting:
- (a) a duly completed Shadow Operator Annual Review Scorecard setting out the Franchisee's performance in each of the Shadow Operator Areas of Assessment for such Shadow Operator Performance Period; and
  - (b) confirmation of whether the Readiness Review will be carried out immediately following the next Shadow Operator Annual Review.
- 6.2 Each Shadow Operator Annual Review shall be complete once the Secretary of State has sent a duly completed Shadow Operator Annual Review Scorecard to the Franchisee in accordance with paragraph 6.1 of this Schedule 18.4.
- 6.3 Scores in the Shadow Operator Annual Review Scorecard shall be awarded by the Secretary of State having regard to the Shadow Operator Scoring Standards. One single, integer, overall score shall be awarded in relation to each Shadow Operator Area of Assessment based on the Secretary of State's assessment of the Franchisee's performance in respect of that Shadow Operator Area of Assessment against the Shadow Operator Scoring Standard taking into account:
- (a) the Shadow Operator Annual Review Checklist provided to the Secretary of State by the Franchisee in accordance with paragraphs 3.4, 3.5 and 3.8 of this Schedule 18.4;
  - (b) any commentary provided to the Franchisee by the Secretary of State in accordance with paragraph 3.7 of this Schedule 18.4;
  - (c) any discussions between the Franchisee and the Secretary of State at any Shadow Operator Annual Review Performance Meeting; and
  - (d) any additional detail or evidence provided to the Secretary of State by the Franchisee in accordance with paragraph 3.6 of this Schedule 18.4.
- 6.4 If the Shadow Operator Annual Review Scorecard provided to the Franchisee in accordance with paragraph 6.1:
- (a) indicates that the Franchisee has been awarded a score of "2":
    - (i) in relation to any Shadow Operator Area of Assessment, then the Secretary of State may by written notice to the Franchisee require the Franchisee to propose a Management Action Plan in accordance with Appendix 3 to this Schedule 18.4, to improve its performance in that Shadow Operator Area of Assessment;



(ii) in relation to any Shadow Operator Area of Assessment for which the Franchisee was also awarded a score of "2" or less in the Shadow Operator Annual Review Scorecard for the immediately preceding Shadow Operator Annual Review (if any), then such score shall be deemed to be a contravention of the Franchise Agreement and the provisions of Schedule 10 (Remedies, Events of Default and Termination Events) shall apply and the Secretary of State may issue a Remedial Plan Notice in respect of that Shadow Operator Area of Assessment pursuant to Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement); or

(b) indicates that the Franchisee has been awarded a score of "1" in relation to any Shadow Operator Area of Assessment, then such score will be deemed to be a contravention of the Franchise Agreement and the provisions of Schedule 10 (Remedies, Events of Default and Termination Events) shall apply and the Secretary of State may issue a Remedial Plan Notice in respect of that Area of Assessment pursuant to Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement).

6.5 If the Shadow Operator Annual Review Scorecard provided to the Franchisee in accordance with paragraph 6.1 indicates that the Franchisee has been awarded a score of "1" in relation to more than half of the Shadow Operator Areas of Assessment, then that shall be deemed to be a contravention of, and an Event of Default in relation to, the Franchise Agreement and the Secretary of State may issue a Remedial Plan Notice in respect of those Shadow Operator Areas of Assessment (or any of them) pursuant to Schedule 10.1 (Procedures for remedying a Contravention of the Franchise Agreement) and the provisions of Schedule 10 (Remedies, Events of Default and Termination Events) shall apply.

## **7 Shadow Operator Annual Review Planning Meetings – Draft Accepted Programme and Cost Baseline**

7.1 The Parties shall seek to agree, by no later fifteen (15) days after the Shadow Operator Annual Review Planning Meeting, the matters discussed in the Shadow Operator Annual Review Planning Meeting(s) and the draft:

- (a) Accepted Programme;
- (b) Cost Baseline;
- (c) Resourcing Plan;
- (d) Transitional Programme;
- (e) Transitional Budget; and
- (f) Shadow Operator Contingency,

and if so agreed, the Secretary of State shall:

- (g) formally approve the draft Accepted Programme, Cost Baseline, Resourcing Plan, Transitional Programme, Transitional Budget and Shadow Operator Contingency, by giving written notice to the Franchisee; and
- (h) where relevant, issue a notice of Variation to the Franchisee in relation to any additional or revised Accepted Programme Specific Requirements and/or Transitional Programme Specific Requirements provided to the Franchisee during the Shadow Operator Annual Review and the provisions of Schedule 18.2 (Accepted Programme Specific Requirements) and/or Schedule 18.3 (Transitional Programme Specific Requirements) shall be deemed to be varied from the date on which the notice of Variation is issued to the Franchisee.

7.2 If the Parties have not agreed the Accepted Programme, Cost Baseline, Resourcing Plan, Transitional Programme, Transitional Budget and/or Shadow Operator Contingency by the date

which is one hundred and twenty (120) days after the Shadow Operator Performance Period Date the Secretary of State shall:

- (a) reasonably determine the contents of the Accepted Programme, Cost Baseline, Resourcing Plan, Transitional Programme, Transitional Budget and/or Shadow Operator Contingency and provide the Franchisee with written notice of the determined Accepted Programme, Cost Baseline, Resourcing Plan, Transitional Programme, Transitional Budget and/or Shadow Operator Contingency;
- (b) where relevant, issue a notice of Variation to the Franchisee in relation to any additional or revised Accepted Programme Specific Requirements and/or Transitional Programme Specific Requirements provided to the Franchisee during the Shadow Operator Annual Review and the provisions of Schedule 18.2 (Accepted Programme Specific Requirements) and/or Schedule 18.3 (Transitional Programme Specific Requirements) shall be deemed to be varied from the date on which the notice of Variation is issued to the Franchisee; and
- (c) in considering or determining the Accepted Programme, Cost Baseline, Resourcing Plan, Transitional Programme, Transitional Budget and/or Shadow Operator Contingency, the Secretary of State shall (inter alia) take account of:
  - (i) the Franchisee's obligations to perform the Franchise Services in accordance with the provisions of the Franchise Agreement; and
  - (ii) whether (in the reasonable opinion of the Secretary of State) in relation to the proposed item, the Franchisee has acted as an Efficient Operator.

7.3 The Parties shall seek to agree, by no later fifteen (15) days after the Shadow Operator Annual Review Planning Meeting, any changes to the Shadow Operator Annual Review Checklist to be used for the following year's Shadow Operator Annual Review, or the Secretary of State shall reasonably determine such changes if the Parties have not agreed by the date which is one hundred and twenty (120) days after the Shadow Operator Performance Period Date.

## **8 Miscellaneous**

8.1 No comment or failure to comment nor any agreement or approval, implicit or explicit by either Party in a Shadow Operator Annual Review Checklist, Shadow Operator Annual Review Scorecard or at a Shadow Operator Annual Review Meeting shall 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 18.4**

**Shadow Operator Annual Review Checklist**

**1 Shadow Operator Annual Review Checklist**

- 1.1 A report on the Franchisee's performance against the Accepted Programme including:
- (a) any Required Output Reports delivered to the Secretary of State, including an analysis against delivery to time;
  - (b) an explanatory note detailing any Required Output Reports where further work has been required at the Franchisee's own cost, if applicable;
  - (c) any Required Output Reports in progress, including:
    - (i) estimated completion dates and an explanation for any variance to the completion dates set out in the Accepted Programme; and
    - (ii) an update on the status of the drafting of relevant IOC Confirmable Obligations and the Transitional Programme and associated updates to the IOC Modelling Suite and the Transitional Budget, including an analysis against delivery to time;
  - (d) any Required Output Reports which the Franchisee has proposed be deferred with rationale for such deferral and status of agreement between the Parties;
  - (e) an update on requirements to collaborate with HS2 Limited;
  - (f) an update on requirements to provide Functional Requirements to HS2 Limited;
  - (g) an update on requirements to provide resource to HS2 Limited;
  - (h) details of any Shadow Operator Delay Event;
  - (i) a report on the Franchisee's role as Operator Representative in respect of the High Speed Rolling Stock Contracts (Franchisee); and
  - (j) a report on the Franchisee's performance in its role acting as Critical Friend to HS2 Limited.
- 1.2 A report on staff resourcing, comparing actual resourcing against that proposed as part of the Resourcing Plan and including any adjustments or significant variations thereto.
- 1.3 A report on the Franchisee's performance against the Transitional Programme including:
- (a) Transitional Programme Specific Requirements delivered, including an analysis against delivery to time;
  - (b) Transitional Programme Specific Requirements in progress (with estimated completion dates and an explanation for any variance to the completion dates set out in the Transitional Programme); and
  - (c) activities that the Franchisee has proposed be deferred including explanation of rationale for such deferral and status of agreement between the Parties.
- 1.4 A report on the Franchisee's performance against the Cost Baseline both on a line by line basis in respect of each Accepted Programme Specific Requirement and in the aggregate across all Accepted Programme Specific Requirements, including:
- (a) whether Changes have been raised proactively;

- (b) an explanation of any overspends, underspends, accruals or deferred payments (as assessed against the requirements in 1.1 above); and
  - (c) the reasons for any overspending or underspending.
- 1.5 A report on the Franchisee's performance against the Transitional Budget both on a line by line basis in respect of each Transitional Programme Specific Requirement and in the aggregate across all Transitional Programme Specific Requirements, including:
  - (a) whether Changes have been raised proactively;
  - (b) an explanation of any overspends, underspends, accruals or deferred payments (as assessed against the requirements in 1.3 above); and
  - (c) the reasons for any overspending or underspending.
- 1.6 An explanation of whether all budgets and costed proposals set out in a Required Output Report and all Changes arising from or related to the Shadow Operator Services were developed in accordance with Value for Money (where appropriate) and the Shadow Operator Procurement Strategy and Shadow Operator Financial Management Strategy.
- 1.7 A copy of each Resourcing Plan Compliance Report relating to the relevant Shadow Operator Performance Period.
- 1.8 A summary of any breaches of or non-compliance with Schedule 18 (Shadow Operator), the Accepted Programme and/or the Transitional Programme by the Franchisee and any additional existing such breaches or non-compliances, including:
  - (a) whether the breach or non-compliance has previously been reported to the Secretary of State; and
  - (b) details of any completed remediation of, or approaches to remediate, such breaches or non-compliance (including any Management Action Plans or Remedial Plans, if relevant);
- 1.9 The status of any Management Action Plans or Remedial Plans relating to Shadow Operator Services.
- 1.10 A report on the Franchisee's view of its relationship with HS2 Limited with reference to the Partnership Protocol and the Collaboration Agreement, including any proposed amendments to the Partnership Protocol and any relevant results of the Shadow Operator Stakeholder Survey.
- 1.11 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 Shadow Operator Stakeholder Survey.
- 1.12 Evidence of engagement with relevant Stakeholders (including any Stakeholders notified by the Secretary of State to the Franchisee) and any relevant results of the Shadow Operator Stakeholder Survey.
- 1.13 The Shadow Operator Stakeholder Report.
- 1.14 Evidence of any ways in which the Franchisee, through its performance of the Shadow Operator Services, identified that benefits could be delivered prior to the High Speed Start Date.
- 1.15 Evidence of any recommendations identified that could lead to efficiencies and to whole-life cost reductions or additional benefits in the HS2 Project.
- 1.16 A report on the progress made in confirming the IOC Confirmable Obligations.

**APPENDIX 2 TO SCHEDULE 18.4**

**Shadow Operator Annual Review Scorecard**

<b>Score</b>	<b>1. Delivery of Shadow Operator Services</b>	<b>2. Management of Shadow Operator Finances</b>
<p><b>4:</b> strong performance</p>	<p>The Franchisee has delivered all relevant:</p> <p>(i) Accepted Programme Specific Requirements in line with the Accepted Programme timescales and the scope agreed with the Secretary of State; and</p> <p>(ii) Transitional Programme Specific Requirements in line with the Transitional Programme scope (if any) and timescales agreed with the Secretary of State,</p> <p>and has delivered a material number of Accepted Programme Specific Requirements ahead of the relevant timescales where this mitigates risks to the delivery of the HS2 Programme, or has delivered Accepted Programme Specific Requirements and/or Transitional Programme Specific Requirements to a level of quality materially higher than required or has proactively addressed risks and challenges in delivering such requirements.</p>	<p>The Franchisee has worked proactively and in a collaborative manner with the Secretary of State to agree any:</p> <p>(i) updates to the Accepted Programme Modelling Suite and Transitional Modelling Suite; and</p> <p>(ii) Changes and/or Variations relating to the Shadow Operator Services,</p> <p>in an efficient way, through the provision of strong and comprehensive supporting evidence including by complying with the Shadow Operator Financial Management Strategy and Shadow Operator Procurement Strategy.</p> <p>The Franchisee has identified the need for any Changes and/or Variations relating to the Shadow Operator Services to the Secretary of State in a timely manner.</p>
<p><b>3:</b> good</p>	<p>The Franchisee has delivered all relevant:</p> <p>(i) Accepted Programme Specific Requirements in line with the Accepted Programme timescales and the scope agreed with the Secretary of State; and</p> <p>(ii) Transitional Programme Specific Requirements in line with the Transitional Programme scope (if any) and timescales agreed with the Secretary of State.</p>	<p>The Franchisee has worked with the Secretary of State to agree any:</p> <p>(i) updates to the Accepted Programme Modelling Suite and Transitional Modelling Suite; and</p> <p>(ii) Changes and/or Variations relating to the Shadow Operator Services,</p> <p>in an efficient way, through the provision of acceptable supporting evidence including by complying with the Shadow Operator Financial Management Strategy and Shadow Operator Procurement Strategy.</p> <p>The Franchisee has identified the need for any Changes and/or Variations relating to the Shadow</p>

<b>Score</b>	<b>1. Delivery of Shadow Operator Services</b>	<b>2. Management of Shadow Operator Finances</b>
		Operator Services to the Secretary of State in a timely manner.
<b>2:</b> mostly acceptable with minor reservations	<p>The Franchisee is not in material breach of:</p> <p>(i) the Accepted Programme or the Transitional Programme; or</p> <p>(ii) any Accepted Programme Specific Requirement or Transitional Programme Specific Requirement,</p> <p>but is in non-material breach of:</p> <p>(i) the Accepted Programme or the Transitional Programme; and/or</p> <p>(ii) any Accepted Programme Specific Requirement or Transitional Programme Specific Requirement,</p> <p>and any such non-material breach has not contributed to a material delay in the performance of any other part of the Shadow Operator Services, to the High Speed Start Date or to the High Speed Established Services Date.</p>	<p>The Franchisee has worked with the Secretary of State to agree any:</p> <p>(i) updates to the Accepted Programme Modelling Suite and Transitional Modelling Suite; and</p> <p>(ii) Changes and/or Variations relating to the Shadow Operator Services,</p> <p>however, the Franchisee has provided limited supporting evidence and/or has not complied with the Shadow Operator Procurement Strategy and/or the Shadow Operator Financial Management Strategy.</p> <p>and/or</p> <p>the Franchisee has not identified the need for any Changes and/or Variations relating to the Shadow Operator Services to the Secretary of State in a timely manner.</p>
<b>1:</b> major reservations	<p>The Franchisee is in material breach of:</p> <p>(i) the Accepted Programme or the Transitional Programme; and/or</p> <p>(ii) any Accepted Programme Specific Requirement or Transitional Programme Specific Requirement,</p> <p>or any non-material breach has contributed to a material delay in the performance of any other part of the Shadow Operator Services, to the High Speed Start Date or to the High Speed Established Services Date.</p>	<p>The Franchisee has provided little or no evidence to the Secretary of State and/or has failed to comply with the provisions of the Franchise Agreement in seeking to agree any:</p> <p>(i) updates to the Accepted Programme Modelling Suite and Transitional Modelling Suite; and/or</p> <p>(ii) Changes and/or Variations relating to the Shadow Operator Services.</p>

<b>Score</b>	<b>3. Collaborative working</b>	<b>4. Planning a Value for Money Integrated Operator Contract</b>
<b>4:</b> strong performance	<p>The Franchisee has demonstrated (including through responses to the Shadow Operator Stakeholder Survey, where applicable) strong collaborative working with:</p> <p>(i) Network Rail, HS2 Limited and the Department, including in relation to responsiveness and problem solving; and</p> <p>(ii) such other persons and organisations (including Stakeholders) with whom the Franchisee has been required to have a material level of interaction in performing 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 Shadow Operator Performance 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>The Franchisee has, in performing the Shadow Operator Services, pro-actively developed strong proposals for:</p> <p>(i) the effective delivery of the HS2 Project and the Integrated Services;</p> <p>(ii) whole-life cost efficiency, long-term value and innovation in customer service in delivering the Integrated Services; and</p> <p>(iii) meeting the Secretary of State objectives as set out in Schedule 18.1 paragraph 3.2.</p> <p>When identifying areas of long-term value or innovation, the Franchisee has provided strong supporting evidence for the deliverability of its proposals.</p>
<b>3:</b> good	<p>The Franchisee has demonstrated (including through responses to the Shadow Operator Stakeholder Survey, where applicable) a good level of collaborative working with:</p> <p>(i) Network Rail, HS2 Limited and the Department, including in relation to responsiveness and problem solving; and</p> <p>(ii) such other persons and organisations (including Stakeholders) with whom the Franchisee has been required to have a material level of interaction in performing 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 Shadow Operator Performance Period) as being relevant to this assessment,</p>	<p>The Franchisee has, in performing the Shadow Operator Services, developed acceptable proposals for the following:</p> <p>(i) the effective delivery of the HS2 Project and the Integrated Services;</p> <p>(ii) whole-life cost efficiency, long-term value and innovation in customer service in delivering the Integrated Services; and</p> <p>(iii) meeting the Secretary of State objectives as set out in Schedule 18.1 paragraph 3.2.</p> <p>When identifying areas of long-term value or innovation, the Franchisee has provided acceptable supporting evidence for the deliverability of its proposals.</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><b>2:</b> mostly acceptable with minor reservations</p>	<p>The Franchisee has demonstrated (taking into account the feedback received by the Franchisee in the Shadow Operator Stakeholder Survey, where applicable) a mostly acceptable level of collaborative working:</p> <p>(i) with Network Rail, HS2 Limited and the Department, including in relation to responsiveness and problem solving; and</p> <p>(ii) such other persons and organisations (including Stakeholders) with whom the Franchisee has been required to have a material level of interaction in performing 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 Shadow Operator Performance 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>The Franchisee has, in performing the Shadow Operator Services, developed proposals for the following:</p> <p>(i) the effective delivery of the HS2 Project and the Integrated Services;</p> <p>(ii) whole-life cost efficiency, long-term value and innovation in customer service in delivering the Integrated Services; and</p> <p>(iii) meeting the Secretary of State objectives as set out in Schedule 18.1 paragraph 3.2,</p> <p>however, the Franchisee has:</p> <p>(i) only identified limited areas of long-term value or innovation; and/or</p> <p>(ii) has not provided sufficient supporting evidence for the deliverability of its proposals.</p>
<p><b>1:</b> major reservations</p>	<p>The Franchisee has failed to demonstrate (including through responses to the Shadow Operator Stakeholder Survey, where applicable) an effective level of collaborative working with:</p> <p>(i) Network Rail, HS2 Limited or the Department; and/or</p> <p>(ii) such other persons and organisations (including Stakeholders) with whom the Franchisee has been required to have a material level of interaction in performing 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</p>	<p>The Franchisee has not developed proposals for the following in performing the Shadow Operator Services:</p> <p>(i) the effective delivery of the HS2 Project and the Integrated Services;</p> <p>(ii) whole-life cost efficiency, long-term value and innovation in customer service in delivering the Integrated Services; and/or</p> <p>(iii) meeting the Secretary of State objectives as set out in Schedule 18.1 paragraph 3.2.</p>

	<p>Shadow Operator Performance 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>	
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## APPENDIX 3 TO SCHEDULE 18.4

### Management Action Plan

#### 1 Management Action Plan Notice

- 1.1 If a Management Action Plan is required pursuant to paragraph 6.4(a)(i) of Schedule 18.4 (Shadow Operator Annual Review), the Secretary of State shall provide to the Franchisee a written notice within a reasonable period following the delivery of the relevant Shadow Operator Annual Review Scorecard setting out:
- (a) the objectives of the Management Action Plan ("Management Objectives"); and
  - (b) with reference to the objectives referred to in paragraph 1.1(a) and the relevant Annual Review Scorecard and Area(s) of Assessment, the particular areas that the Secretary of State requires to be addressed,
- (the "**Management Action Plan Notice**").
- 1.2 Within thirty (30) days of receipt of the Management Action Plan Notice by the Franchisee, the Franchisee shall prepare and submit to the Secretary of State a draft Management Action Plan in accordance with paragraph 2 of this Appendix.

#### 2 Submission of Draft Management Action Plan

- 2.1 The Franchisee shall ensure that each draft Management Action Plan contains:
- (a) estimated costs for delivering the draft Management Action Plan ("MAP Costs"); and
  - (b) specific tangible action points (each a "Management Action Point"), indicating in the case of each Management Action Point:
    - (i) how that Management Action Point will contribute to meeting the Management Objectives;
    - (ii) when implementation of that Management Action Point is to be commenced and completed or, in the case of any Management Action Point that is continuous, dates for reviewing progress; and
    - (iii) how performance of that Management Action Point is to be measured.
- 2.2 On receipt of each draft Management Action Plan by the Secretary of State, the Secretary of State shall consider whether the draft Management Action Plan is appropriate to achieve the Management Objectives. If the Secretary of State:
- (a) is satisfied with the draft Management Action Plan the Secretary of State shall provide the Franchisee with notice of the Secretary of State's approval within thirty (30) days; and
  - (b) is not satisfied with the draft Management Action Plan the Secretary of State shall, within thirty (30) days, provide the Franchisee with written feedback which describes the shortcomings of the Management Action Plan and in particular why the Management Action Plan does not meet the Management Objectives. Following which, the Franchisee shall promptly amend the draft Management Action Plan to the Secretary of State's reasonable satisfaction and the Secretary of State shall provide the Franchisee with notice of the Secretary of State's approval.

### 3 Implementation of Management Action Plan

- 3.1 Following notice of the Secretary of State's approval of a Management Action Plan in accordance with paragraph 2.2:
- (a) the Franchisee shall:
    - (i) provide the Secretary of State with the final Management Action Plan; and
    - (ii) implement the proposals set out in that Management Action Plan in accordance with its terms; and
  - (b) the MAP Costs shall be deemed to constitute a notice of proposed Change served by the Franchisee in accordance with paragraph 2.1 of Schedule 9.1B (Financial and Other Consequences of Change) and the Franchisee and the Secretary of State shall comply with that Schedule in agreeing or determining the required Change.
- 3.2 Any failure by the Franchisee to comply with the terms of a Management Action Plan shall constitute a contravention of the Franchise Agreement.

## SCHEDULE 18.5

### Shadow Operator Payments

#### 1 Shadow Operator Payment

1.1 The Shadow Operator Payment (ShOpP) (if any) for each relevant Reporting Period shall be an amount equal to:

<b>ShOpP =</b>	<b>ShOpR + ShOpF – DR<sub>ADJ</sub></b>
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where:

<b>ShOpR</b>	means the amount of any Shadow Operator Cost Reimbursement calculated pursuant to the provisions of Appendix 1 (Shadow Operator Cost Reimbursement) to this Schedule 18.5 (Shadow Operator Payments).
<b>ShOpF</b>	means (where relevant) the amount of any Shadow Operator Performance Fee calculated pursuant to the provisions of Appendix 2 (Shadow Operator Performance Fee) to this Schedule 18.5 (Shadow Operator Payments).
<b>DR<sub>ADJ</sub></b>	means in relation to the Reporting Period for which the Shadow Operator Payment ( <b>ShOpP</b> ) calculation is being made, the amount of any Digital Railway Adjustment ( <b>DR<sub>ADJ</sub></b> ) calculated pursuant to the provisions of paragraph 3 of Appendix 1 (Calculation of Shadow Operator Cost Reimbursement and Digital Railway Adjustment) to this Schedule 18.5 (Shadow Operator Payments).

- 1.2 The Parties shall at all times act in good faith, reasonably and in a timely manner in relation to the calculation of the Shadow Operator Payment (ShOpP) (including each element thereof) for each Reporting Period.
- 1.3 If the Parties have not agreed the amount of the Shadow Operator Payment (ShOpP) for each relevant Reporting Period within fifteen (15) Weekdays after the end of that Reporting Period, subject to paragraph 1.4 the Secretary of State may (but shall not be obliged to) reasonably determine it on the basis of the information then available to the Secretary of State.
- 1.4 Provided that the Franchisee has submitted the Shadow Operator Section of the Management Accounts to the Secretary of State in accordance with paragraph 17.2 of Schedule 18.1, the Secretary of State shall not be entitled to withhold payment of any undisputed amounts of the Shadow Operator Payment (ShOpP) for the relevant Reporting Period, which amounts shall be included in the calculation of the Franchise Payment (£FP) for the relevant Reporting Period and paid by the Secretary of State in accordance with paragraph 2 of Schedule 8.1A or 8.1B (as applicable).

#### 2 Indexation

2.1 For the avoidance of doubt, it is agreed that Franchise Payments and the amounts shown in the Cost Baseline or (as the case may be) in any Transitional Budget for any given Franchisee Year shall not be subject to any indexation or adjustment to take into account the effects of inflation.

#### 3 Digital Railway Account Withdrawals

3.1 Each notification by the Secretary of State to the Franchisee under paragraph 2.1 of Schedule 8.1A (Franchise Payments) or paragraph 2.1 of Schedule 8.1B (Franchise Payments) (as applicable) shall entitle the Franchisee to withdraw from the Digital Railway Account an amount equal to **DR<sub>ADJ</sub>** as calculated for that Reporting Period such withdrawal to be made on or after the last Weekday of that Reporting Period.

**APPENDIX 1 TO SCHEDULE 18.5**

**Calculation of Shadow Operator Cost Reimbursement (ShOpR)**

**1 Shadow Operator Cost Reimbursement**

- 1.1 This Appendix 1 (Shadow Operator Cost Reimbursement) to Schedule 18.5 (Shadow Operator Payments) sets out how the Shadow Operator Cost Reimbursement (**ShOpR**) shall be calculated.
- 1.2 In carrying out the calculations in this Appendix 1 (Shadow Operator Cost Reimbursement):
- (a) Actual Shadow Operator Costs, the Cost Baseline and the Transitional Budget shall be expressed as positive numbers where they are paid or payable by the Franchisee; and
  - (b) Actual Shadow Operator Revenue shall be expressed as positive numbers where received or receivable by the Franchisee.
- 1.3 In this Appendix 1 (Shadow Operator Cost Reimbursement) to Schedule 18.5 (Shadow Operator Payments):

<b>“Current Reporting Period”</b>	means the Reporting Period for which the Shadow Operator Payment (ShOpP) calculation is being made;
<b>“Preceding Reporting Period”</b>	means the Reporting Period immediately before the Current Reporting Period;
<b>“TD”</b>	means calculated for the period from the Shadow Operator Start Date up to and including the Current Reporting Period; and
<b>“TPP”</b>	means calculated for the period from the Shadow Operator Start Date up to and including the Preceding Reporting Period.

**2 Calculation of Shadow Operator Cost Reimbursement (ShOpR)**

- 2.1 The Shadow Operator Cost Reimbursement (ShOpR) (which may be a positive or a negative number and therefore may be payable by the Secretary of State or the Franchisee) shall be calculated in relation to each relevant Reporting Period after the Start Date as follows:

<b>ShOpR =</b>	<b><math>ICP_{ShOp} + CostADJ_{ShOp} - ARev_{ShOp}</math></b>
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<p><b>ICP<sub>ShOp</sub></b> (initial Shadow Operator cost payment)</p> <p style="font-size: small;">*</p>	<p>means <b>CBC<sub>ShOp</sub></b> <u>minus</u> <b>PICP<sub>ShOp</sub></b> i.e.:</p> $ICP_{ShOp} = CBC_{ShOp} - PICP_{ShOp}$
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<p><b>CostADJ<sub>Shop</sub></b> (periodic Shadow Operator cost adjustment) (i.e. the adjustment for the difference between the initial Shadow Operator cost payment and the relevant Shadow Operator costs actually incurred, in the preceding period)</p>	<p>means:</p> <p>(a) for the first Reporting Period of the first Franchisee Year, £0 (zero);</p> <p>(b) for all subsequent relevant Reporting Periods, <b>CAC<sub>Shop</sub></b> <u>minus</u> <b>PICP<sub>Shop</sub></b> <u>minus</u> <b>PCostADJ<sub>Shop</sub></b> i.e.:</p> $CostADJ_{Shop} = CAC_{Shop} - PICP_{Shop} - PCostADJ_{Shop}$
<p><b>CBC<sub>Shop</sub></b> (cumulative budgeted Shadow Operator costs to date)</p>	<p>means the sum of budgeted Shadow Operator costs TD as shown in the Cost Baseline and the Transitional Budget (each as most recently Placed in Escrow).</p>
<p><b>PICP<sub>Shop</sub></b> (cumulative previous initial Shadow Operator costs payments (to preceding period))</p>	<p>means the sum of the initial cost payments (calculated as <b>ICP<sub>Shop</sub></b>) TPP. For the avoidance of doubt, in calculating <b>PICP<sub>Shop</sub></b>, each <b>ICP<sub>Shop</sub></b> is the amount as at the date of its original calculation (i.e. each <b>ICP<sub>Shop</sub></b> shall not be recalculated to take account of any Changes to the Cost Baseline and/or the Transitional Budget).</p>
<p><b>CAC<sub>Shop</sub></b> (cumulative actual Shadow Operator costs (to preceding period))</p>	<p>means the sum of <b>CAC<sub>ShopJ</sub></b> for all line items <b>J</b>, where <b>CAC<sub>ShopJ</sub></b> means, for each and every line item <b>J</b>, the <u>lower of</u>:</p> <p>(a) the sum of Actual Shadow Operator Costs for line item <b>J</b>, TPP as shown in the Shadow Operator Section of the Annual Management Accounts to date and (for Reporting Periods where Annual Management Accounts are not yet available) as shown in the Shadow Operator Section of the Management Accounts; and</p> <p>(b) the sum of budgeted costs for line item <b>J</b>, TPP, as shown in the Cost Baseline and the Transitional Budget (each as most recently Placed in Escrow).</p>
<p><b>J</b> (line item)</p>	<p>means each and every line item in each of the Cost Baseline and the Transitional Budget (each as most recently Placed in Escrow).</p>
<p><b>PCostADJ<sub>Shop</sub></b> (previous periodic Shadow Operator cost adjustments (to preceding period))</p>	<p>means:</p> <p>(a) for the first and second Reporting Period of the first Franchisee Year, £0 (zero);</p> <p>(b) for all subsequent relevant Reporting Periods, the sum of all previous periodic cost adjustments (calculated as <b>CostADJ<sub>Shop</sub></b>)</p>

	TPP. For the avoidance of doubt, in calculating <b>PCostADJ<sub>Shop</sub></b> each <b>CostADJ<sub>Shop</sub></b> is the amount as at the date of its original calculation (i.e. each <b>CostADJ<sub>Shop</sub></b> shall not be recalculated to take account of any Changes to the Cost Baseline and/or the Transitional Budget).
<b>AREv<sub>Shop</sub></b>	means for the first Reporting Period after the delivery of each Annual Management Accounts; the Actual Shadow Operator Revenue (if any) as shown in the Shadow Operator Section of such Annual Management Accounts.

\* *Explanatory note: The descriptions in parenthesis in column one of this table are included to assist the reader only and shall not affect the meaning of these definitions.*

### 3 Calculation of Digital Railway Adjustment (**DR<sub>ADJ</sub>**)

3.1 The amount of any Digital Railway Adjustment (**DR<sub>ADJ</sub>**) shall be calculated in relation to each relevant Reporting Period after the Start Date as follows:

<b>DR<sub>ADJ</sub></b>	<p>means:</p> <p>(a) for the first Reporting Period of the first Franchisee Year, £0 (zero); and</p> <p>(b) for all subsequent relevant Reporting Periods, <b>CAC<sub>ShopDR</sub></b> <u>minus</u> the sum of all previous <b>DR<sub>ADJ</sub></b></p> <p>PROVIDED ALWAYS that:</p> <p>(i) if such amount exceeds the Digital Railway Account Balance, <b>DR<sub>ADJ</sub></b> shall equal the Digital Railway Account Balance; and</p> <p>(ii) <b>DR<sub>ADJ</sub></b> shall never be negative and so, if the sum of all previous <b>DR<sub>ADJ</sub></b> exceeds <b>CAC<sub>ShopDR</sub></b>, then <b>DR<sub>ADJ</sub></b> for that Reporting Period shall be £0 (zero);</p>
<b>CAC<sub>ShopDR</sub></b>	<p>means the sum of <b>CAC<sub>ShopDRJ(DR)</sub></b> for all line items <b>J<sub>(DR)</sub></b>, where <b>CAC<sub>ShopDRJ(DR)</sub></b> means, for each and every line item <b>J<sub>(DR)</sub></b>, the <u>lower of</u>:</p> <p>(a) the sum of Actual Digital Railway Shadow Operator Costs for line item <b>J<sub>(DR)</sub></b>, TPP as shown in the Shadow Operator Section of the Annual Management Accounts to date and (for Reporting Periods where Annual Management Accounts are not yet available) as shown in the Shadow Operator Section of the Management Accounts; and</p> <p>(b) the sum of budgeted costs for line item <b>J<sub>(DR)</sub></b>, TPP, as shown in the Cost Baseline and the Transitional Budget (each as most recently Placed in Escrow);</p>

<b>J<sub>(DR)</sub></b>	means each and every line item of Actual Digital Railway Shadow Operator Costs in each of the Cost Baseline and the Transitional Budget (each as most recently Placed in Escrow);
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**APPENDIX 2 TO SCHEDULE 18.5**

**Shadow Operator Performance Fee**

**1 Shadow Operator Performance Fee**

- 1.1 This Appendix 2 (Shadow Operator Performance Fee) to Schedule 18.5 (Shadow Operator Payments) applies in relation to the Shadow Operator Period and sets out how the Shadow Operator Performance Fee shall be calculated and paid.
- 1.2 In this Appendix 2 (Shadow Operator Performance Fee) to Schedule 18.5 (Shadow Operator Payments) the following definitions shall apply:

<b>Post-RR Period</b>	means the three (3) Shadow Operator Performance Periods, from (and including) the Shadow Operator Performance Period in which the Readiness Review occurs.
<b>RPI</b>	is the quotient of the Retail Prices Index for the January which immediately precedes the relevant due date for payment of the Shadow Operator Performance Fee divided by the Retail Prices Index for January 2019.
<b>Pre-RR Allocatable SPF</b>	means <b>[REDACTED]</b> . <sup>46</sup>
<b>Post-RR Allocatable SPF</b>	means in relation to each of: (a) the Post-RR SPF Annual Review Payment; and (b) the Post-RR SPF High Speed Milestone Payments, <b>[REDACTED]</b> . <sup>47</sup>

- 1.3 Subject to paragraph 1.4, for any Shadow Operator Performance Period, the Shadow Operator Performance Fee:
- (a) for the period before the Post-RR Period, the Pre-RR SPF shall be calculated in accordance with paragraph 2 of this Appendix 2 (Shadow Operator Performance Fee) to Schedule 18.5 (Shadow Operator Payments) and is payable in accordance with 2.3 below; and
  - (b) for the Post-RR Period, the Post-RR SPF shall be calculated in accordance paragraph 3 of this Appendix 2 (Shadow Operator Performance Fee) to Schedule 18.5 (Shadow Operator Payments) and is payable in accordance with paragraphs 3.3 and 3.4 below,

in each case, allocated pro rata if a Shadow Operator Performance Period is other than thirteen (13) Reporting Periods or if a Reporting Period is other than twenty-eight (28) days.

<sup>46</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>47</sup> 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.

1.4 If the Actual Shadow Operator Costs (as shown in the Shadow Operator Section of the Annual Management Accounts) in any Shadow Operator Performance Period before the Post-RR Period are:

- (a) less than ([REDACTED]<sup>48</sup> multiplied by RPI ([REDACTED]<sup>49</sup> x RPI), but more than or equal to ([REDACTED]<sup>50</sup> multiplied by RPI ([REDACTED]<sup>51</sup> x RPI); the Shadow Operator Performance Fee for that Shadow Operator Performance Period (as calculated pursuant to the provisions of paragraph 2) shall be reduced pro rata i.e. shall be multiplied by:

$$\frac{\text{Actual ShOp Costs}}{([\text{REDACTED}]^{52} \times \text{RPI})}$$

- (b) less than ([REDACTED]<sup>53</sup> multiplied by RPI ([REDACTED]<sup>54</sup> x RPI); the Shadow Operator Performance Fee for that Shadow Operator Performance Period shall be zero (£0),

in each case, such amounts to be allocated pro rata if a Shadow Operator Performance Period is other than thirteen (13) Reporting Periods or if a Reporting Period is other than twenty-eight (28) days.

## **2 Shadow Operator Performance Fee before start of Post-RR Period (Pre-RR SPF)**

2.1 Subject to paragraph 1.4, in relation to each Shadow Operator Performance Period before the start of the Post-RR Period, the Shadow Operator Performance Fee (Pre-RR SPF) shall be the sum of the four (4) amounts corresponding to the Franchisee's Shadow Operator Annual Review score for the Shadow Operator Areas of Assessment set out below:

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<sup>48</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>49</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>50</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>51</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>52</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>53</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>54</sup> 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.

Shadow Operator Area of Assessment	Shadow Operator Annual Review Scorecard score for relevant Shadow Operator Areas of Assessment	Pre-RR SPF £
Delivery of Shadow Operator Services	4	[REDACTED] <sup>55</sup>
	3	[REDACTED] <sup>56</sup>
	2 or 1	[REDACTED] <sup>57</sup>
Management of Shadow Operator Finances	4	[REDACTED] <sup>58</sup>
	3	[REDACTED] <sup>59</sup>
	2 or 1	[REDACTED] <sup>60</sup>
Collaborative Working	4	[REDACTED] <sup>61</sup>
	3	[REDACTED] <sup>62</sup>
	2 or 1	[REDACTED] <sup>63</sup>

<sup>55</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>56</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>57</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>58</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>59</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>60</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>61</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>62</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>63</sup> 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.

Planning a value for money Integrated Operator Contract	4	[REDACTED] <sup>64</sup>
	3	[REDACTED] <sup>65</sup>
	2 or 1	[REDACTED] <sup>66</sup>

**Where:**

**ASPF<sub>PreRR</sub>** means the relevant part of the Pre-RR Allocatable SPF as is allocated pursuant to the provisions of paragraph 2.2.

2.2 The Pre-RR Allocatable SPF shall be:

- (a) allocated equally across the four (4) Shadow Operator Areas of Assessment for achieving a score of 4, and then 50% of each of those amounts for achieving a score of 3 in respect of that Shadow Operator Area of Assessment; or
- (b) allocated as the Secretary of State otherwise notifies, across the four (4) Shadow Operator Areas of Assessment for achieving a score of 4, and then the amount for achieving a score of 3 in respect of that Shadow Operator Area of Assessment. Such notice:
  - (i) must be served no later than one (1) Reporting Period prior to the commencement of the relevant Shadow Operator Performance Period;
  - (ii) must allocate the whole Pre-RR Allocatable SPF amount in such a way as means that it can be earned in its entirety by the Franchisee (subject to attaining the relevant scores);
  - (iii) may (in the Secretary of State's absolute discretion) within any Shadow Operator Areas of Assessment, allocate the same amount for a score of a 4 and a score of a 3 (but may not allocate less for a score of 4 than for a score of 3 within that Shadow Operator Area of Assessment); and
  - (iv) may (in the Secretary of State's absolute discretion) contain allocations of zero (£0) (but not less than zero) Pre-RR Allocatable SPF to any one or more of the four (4) Shadow Operator Areas of Assessment and/or for achieving a score of 4 and/or for achieving a score of 3 within each Shadow Operator Area of Assessment.

2.3 (Unless a Termination Notice has been served by the Secretary of State pursuant to the provisions of paragraph 5 of Schedule 10.2 (Events of Default and Termination Events) before the due date for payment), the Pre-RR SPF shall be payable on the later of:

<sup>64</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>65</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>66</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.



- (a) the first Payment Date falling no less than twenty (20) Weekdays after the relevant Shadow Operator Annual Review has been completed (or if there is no such Payment Date, within twenty (20) Weekdays after the relevant Shadow Operator Annual Review has been completed); and
- (b) the first Payment Date falling no less than twenty (20) Weekdays after the relevant Shadow Operator Annual Management Accounts are delivered to the Secretary of State (or if there is no such Payment Date, within twenty (20) Weekdays after the relevant Shadow Operator Annual Management Accounts are delivered).

2.4 For the avoidance of doubt, for Payment Dates other than as referred to in paragraphs 2.3, 3.3 or 3.4, the Shadow Operator Performance Fee shall be zero (£0).

2.5 Any overpayment of the Pre-RR SPF (arising pursuant to the provisions of paragraph 1.4) shall be repaid by the Franchisee to the Secretary of State on the first Payment Date falling no less than ten (10) Weekdays after the identification of the overpayment (or if there is no such Payment Date, within twenty (20) Weekdays after identification of the overpayment).

### **3 Shadow Operator Performance Fee after start of Post-RR Period (Post-RR SPF)**

3.1 In relation to each of the Shadow Operator Performance Periods during the Post-RR Period:

- (a) the Post-RR SPF Annual Review Payment shall be the sum of the four (4) amounts corresponding to the Franchisee's Shadow Operator Annual Review score for the Shadow Operator Areas of Assessment set out in Column 3 of the table below; and
- (b) the Post-RR SPF High Speed Milestone Payments shall be the sum of the four (4) amounts corresponding to the Franchisee's Shadow Operator Annual Review score for the Shadow Operator Areas of Assessment set out in Column 4 of the table below:

<b>Shadow Operator Area of Assessment</b>	<b>Shadow Operator Annual Review Scorecard score for relevant Shadow Operator Areas of Assessment</b>	<b>Post-RR SPF Annual Review Payment £ Column 3</b>	<b>Post-RR SPF High Speed Milestone Payments £ Column 4</b>
Delivery of Shadow Operator Services	4	[REDACTED] <sup>67</sup>	[REDACTED] <sup>68</sup>
	3	[REDACTED] <sup>69</sup>	[REDACTED] <sup>70</sup>
	2 or 1	[REDACTED] <sup>71</sup>	[REDACTED] <sup>72</sup>
Management of Shadow Operator Finances	4	[REDACTED] <sup>73</sup>	[REDACTED] <sup>74</sup>

<sup>67</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>68</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>69</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>70</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>71</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>72</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>73</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>74</sup> 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.

	3	[REDACTED] <sup>75</sup>	[REDACTED] <sup>76</sup>
	2 or 1	[REDACTED] <sup>77</sup>	[REDACTED] <sup>78</sup>
Collaborative Working	4	[REDACTED] <sup>79</sup>	[REDACTED] <sup>80</sup>
	3	[REDACTED] <sup>81</sup>	[REDACTED] <sup>82</sup>
	2 or 1	[REDACTED] <sup>83</sup>	[REDACTED] <sup>84</sup>

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<sup>75</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>76</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>77</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>78</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>79</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>80</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>81</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>82</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>83</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>84</sup> 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.

Planning a value for money Integrated Operator Contract	4	[REDACTED] <sup>85</sup>	[REDACTED] <sup>86</sup>
	3	[REDACTED] <sup>87</sup>	[REDACTED] <sup>88</sup>
	2 or 1	[REDACTED] <sup>89</sup>	[REDACTED] <sup>90</sup>

<sup>85</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>86</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>87</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>88</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>89</sup> Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>90</sup> 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.

**Where:**

**ASPF<sub>PostRR</sub>** means the relevant part of the Post-RR Allocatable SPF as is allocated pursuant to the provisions of paragraph 3.2.

3.2 The Post-RR Allocatable SPF shall be:

- (a) allocated equally across the four (4) Shadow Operator Areas of Assessment for achieving a score of 4, and then 50% of each of those amounts for achieving a score of 3 in respect of that Shadow Operator Area of Assessment; or
- (b) allocated as the Secretary of State otherwise notifies, across the four (4) Shadow Operator Areas of Assessment for achieving a score of 4, and then the amount for achieving a score of 3 in respect of that Shadow Operator Area of Assessment. Such notice:
  - (i) must be served no later than one (1) Reporting Period prior to the commencement of the relevant Shadow Operator Performance Period;
  - (ii) must allocate the whole Post-RR Allocatable SPF amount in such a way as means that it can be earned in its entirety by the Franchisee (subject to attaining the relevant scores);
  - (iii) may (in the Secretary of State's absolute discretion) within any Shadow Operator Areas of Assessment, allocate the same amount for a score of a 4 and a score of a 3 (but may not allocate less for a score of 4 than for a score of 3 within that Shadow Operator Area of Assessment); and
  - (iv) may (in the Secretary of State's absolute discretion) contain allocations of zero (£0) (but not less than zero) Post-RR Allocatable SPF to any one or more of the four (4) Shadow Operator Areas of Assessment and/or for achieving a score of 4 and/or for achieving a score of 3 within each Shadow Operator Area of Assessment.

For the avoidance of doubt, the same allocation of the Post-RR Allocatable SPF shall apply for both the Post-RR SPF Annual Review Payment and the Post-RR SPF High Speed Milestone Payments.

3.3 (Unless a Termination Notice has been served by the Secretary of State pursuant to the provisions of paragraph 5.1(a) or 5.2(a) of Schedule 10.2 (Events of Default and Termination Events) before the due date for payment) the Post-RR SPF Annual Review Payment shall be payable on the later of:

- (a) the first Payment Date falling no less than twenty (20) Weekdays after the relevant Shadow Operator Annual Review has been completed (or if there is no such Payment Date, within twenty (20) Weekdays after the relevant Shadow Operator Annual Review has been completed); and
- (b) the first Payment Date falling no less than twenty (20) Weekdays after the relevant Shadow Operator Annual Management Accounts are delivered to the Secretary of State (or if there is no such Payment Date, within twenty (20) Weekdays after the relevant Shadow Operator Annual Management Accounts are delivered).

3.4 Unless a Termination Notice has been served by the Secretary of State pursuant to the provisions of paragraph 5.1(a) or 5.2(a) of Schedule 10.2 (Events of Default and Termination Events) before the due date for payment, the Post-RR SPF High Speed Milestone Payments shall be payable as follows:

- (a) where the relevant Shadow Operator Annual Review was completed before the High Speed Start Date:
  - (i) half of the Post-RR SPF High Speed Milestone Payments shall be payable on the first Payment Date which falls more than five (5) Weekdays after the High Speed Start Date; and
  - (ii) half of the Post-RR SPF High Speed Milestone Payments shall be payable on the first Payment Date which falls more than five (5) Weekdays after the High Speed Established Services Date; and
- (b) where the relevant Shadow Operator Annual Review was completed on or after the High Speed Start Date, such amount shall be payable on the first Payment Date which falls more than five (5) Weekdays after the High Speed Established Services Date,

provided always that (and for the avoidance of doubt) if the High Speed Start Date and/or the High Speed Established Services Date do not occur within the Franchise Period (irrespective of the reason for such non-occurrence), after the end of the Franchise Period no amounts (other than amounts which were properly due and payable within the Franchise Period) will be payable under paragraphs (a) (i) and/or (ii) and/or (b) as the case may be.

- 3.5 For the avoidance of doubt, for Payment Dates other than as referred to in paragraphs 2.3, 3.3, or 3.4 the Shadow Operator Performance Fee shall be zero (£0).

**SCHEDULE 19**

**READINESS REVIEW, SWITCH REVIEW AND HIGH SPEED SERVICES REVIEW**

Schedule 19.1:	Readiness Review
Schedule 19.2:	Switch Review
Schedule 19.3:	Switch to Integrated Operator Provisions
Schedule 19.4:	High Speed Services Review



## SCHEDULE 19.1

### Readiness Review

#### 1 Purpose of Readiness Review

- 1.1 The purpose of the Readiness Review is for the Secretary of State to undertake a cumulative assessment of the Franchisee's overall delivery of the Franchise, in order to ensure that the Franchisee's behaviours and performance to date are such that the Secretary of State is confident that the Franchisee is capable of delivering the High Speed Services.

#### 2 Timing of Readiness Review

- 2.1 The Readiness Review shall be carried out in accordance with this Schedule 19.1 on and from the date specified in the Readiness Review Notification, provided that the Readiness Review shall not be completed:
- (a) prior to:
    - (i) the Earliest Readiness Review Date; and
    - (ii) completion of both the Latest Shadow Operator Annual Review and the Latest Passenger Services Annual Review; or
  - (b) any later than twenty-six (26) Reporting Periods prior to the Anticipated High Speed Start Date.

#### 3 Factors assessed for Readiness Review

- 3.1 The Readiness Review is formed of the following factors:
- (a) the scores awarded against each Shadow Operator Area of Assessment in all Shadow Operator Annual Reviews (excluding any Shadow Operator Annual Review to which paragraph 1.4 of Schedule 18.4 (Shadow Operator Annual Review) applied) prior to the Readiness Review (including the Latest Shadow Operator Annual Review) ("**Shadow Operator Readiness Review Scores**");
  - (b) the scores awarded against each ICWC Criterion in the five (5) most recent ICWC Annual Reviews (including the Latest Passenger Services Annual Review where that is an ICWC Annual Review) ("**ICWC Readiness Review Scores**");
  - (c) (where the Readiness Review is completed after the Integrated Operator Start Date), the scores awarded against each IOC Criterion in all IOC Annual Reviews prior to the Readiness Review (including the Latest Passenger Services Annual Review where that is an IOC Annual Review) ("**IOC Readiness Review Scores**");
  - (d) the scores awarded against each Shadow Operator Area of Assessment in the Latest Shadow Operator Annual Review ("**Latest Shadow Operator Annual Review Scores**");
  - (e) the scores awarded against each Passenger Services Annual Review Criterion in the Latest Passenger Services Annual Review ("**Latest Passenger Services Annual Review Scores**"); and
  - (f) any ICWC Delivery Failure.
- 3.2 The Secretary of State may, in the Secretary of State's discretion, convene one or more meetings with the Franchisee for the purposes of discussing any of the factors described in paragraph 3.1

of this Schedule 19.1. The date, time and location of any meeting shall be determined by the Secretary of State and notified to the Franchisee in writing at least ten (10) days in advance of the meeting.

#### **4 Assessment at Readiness Review**

4.1 The Readiness Review is passed where all of the following are satisfied:

- (a) the mean average of all Shadow Operator Readiness Review Scores is equal to or greater than 2.5;
- (b) the mean average of all ICWC Readiness Review Scores is equal to or greater than 2.5;
- (c) (where the Readiness Review is completed after the Integrated Operator Start Date) the mean average of all IOC Readiness Review Scores is equal to or greater than 2.5;
- (d) the Latest Shadow Operator Annual Review Scores are:
  - (i) "2" or higher for all four (4) of the Shadow Operator Areas of Assessment; and
  - (ii) "3" or higher for at least three (3) of the Shadow Operator Areas of Assessment;
- (e) the Latest Passenger Services Annual Review Scores are:
  - (i) where the Latest Passenger Services Annual Review is an ICWC Annual Review: "3" or higher for all ICWC Criteria; or
  - (ii) where the Latest Passenger Services Annual Review is an IOC Annual Review:
    - (A) "2" or higher for all six (6) of the IOC Criteria; and
    - (B) "3" or higher for at least four (4) of the IOC Criteria; and
- (f) there are, and have been, no ICWC Delivery Failures.

4.2 Where the Readiness Review is not passed, the Readiness Review is failed and paragraph 5 of this Schedule 19.1 applies.

4.3 The Secretary of State shall notify the Franchisee in writing of the result of the Readiness Review (whether it is passed or failed) as soon as reasonably practicable, and in any event no later than ten (10) days after the Secretary of State's determination of the result. On the giving of such notification, the Readiness Review is complete.

#### **5 Consequences of Readiness Review being Failed**

5.1 Where the Readiness Review is failed, the Secretary of State may terminate the Franchise Agreement by serving a Readiness Review Failure Termination Notice on the Franchisee.

5.2 In the event of service of a Readiness Review Failure Termination Notice under paragraph 5.1 of this Schedule 19.1 (subject to paragraph 5.3):

- (a) the Shadow Operator Services shall, subject to paragraph 5.5, terminate with immediate effect;
- (b) the remainder of the Franchise Agreement shall terminate:

- (i) where the Readiness Review is completed prior to 1 April 2026, at 01:59 on 1 April 2026;
- (ii) where the Readiness Review is completed on or after 1 April 2026, at 01:59 on the date specified by the Secretary of State in the Readiness Review Failure Termination Notice, provided that such date shall not be less than twelve (12) months after the date of service of the Readiness Review Failure Termination Notice,

or, in each case, shall terminate with effect from such later date specified in any such Readiness Review Failure Termination Notice.

- 5.3 The Secretary of State may by further notice in writing to the Franchisee extend the date of termination in any Readiness Review Failure Termination Notice (of either the Shadow Operator Services, or the remainder of the Franchise Agreement, or both) by up to twelve (12) months from the date originally specified, provided that:
- (a) such further notice is served at least three (3) months prior to the date originally specified; and
  - (b) the date of termination may only be extended once.
- 5.4 In the event of service of a Readiness Review Failure Termination Notice prior to the Integrated Operator Start Date, the provisions of Schedule 15.2A (Last Twelve (12) or Thirteen (13) Months of Franchise Period and Other Conduct of Business) shall apply and the period defined in paragraph 1.1 of that Schedule shall be deemed to commence on the earliest of the dates listed in paragraphs (a) to (c) of that paragraph 1.1 of that Schedule or the date of service of the Readiness Review Failure Termination Notice.
- 5.5 Upon termination of the Shadow Operator Services, paragraphs 20 to 22 of Schedule 18.1 (Shadow Operations) shall apply.
- 5.6 Upon termination of the Franchise Agreement 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.
- 5.7 Nothing in this paragraph 5 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.
- 5.8 Where the Secretary of State elects, in the Secretary of State's discretion, not to terminate the Franchise Agreement under paragraph 5.1 of this Schedule 19.1, then if required by the Secretary of State, the Franchisee shall enter into a Remedial Agreement in such form as the Secretary of State specifies (and a failure or refusal by the Franchisee to enter into a Remedial Agreement in such form shall constitute a Termination Event).

**6 Miscellaneous**

- 6.1 Without prejudice to paragraph 4.5(a)(vii) of Schedule 12A (Financial Covenants and Bonds) and paragraph 4.5(a)(vii) of Schedule 12B (Financial Covenants and Bonds), no contravention of the Franchise Agreement shall occur solely by virtue of the failure of the Readiness Review.
- 6.2 Nothing related to the Readiness Review 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. The rights of the Secretary of State in paragraph 5 of this Schedule 19.1, and the exercise of those rights, shall be without prejudice to the Secretary of State's rights in any other provision of the Franchise Agreement, including any right to serve a Termination Notice for any other reason.

## SCHEDULE 19.2

### Switch Review

#### 1 Purpose of Switch Review and preparation

- 1.1 The purpose of the Switch Review is for the Secretary of State to confirm the Integrated Operator Start Date, the IOC Cost Budget, the Integrated Operator Business Plan (or Interim Integrated Operator Business Plan, as applicable) and the details of the switch to the Integrated Operator Provisions.
- 1.2 Without prejudice to any other obligations of the Franchisee under this Agreement, the Franchisee shall take all reasonable steps to finalise any of the matters to be confirmed by the Switch Review (as set out in paragraph 3.1 of this Schedule 19.2) prior to the Switch Review Date. This obligation shall include the provision of such documentation and information within such time as the Secretary of State may reasonably request and shall include permitting the Secretary of State (and the Secretary of State's representatives and advisers) inspection rights equivalent to those set out at paragraph 5 of Schedule 15.1A (Reletting Provisions) (*mutatis mutandis*).

#### 2 Timing of Switch Review

- 2.1 The Secretary of State may, at any time, notify the Franchisee in writing that the Switch Review will be carried out and the date on which the Secretary of State expects the Switch Review to be completed ("**Switch Review Date**"), provided that:
- (a) the Switch Review Date shall not be earlier than the Anticipated Switch Review Date;
  - (b) notification is given:
    - (i) at least one (1) month prior to the Switch Review Date; and
    - (ii) not earlier than six (6) months prior to the Switch Review Date.
- 2.2 The Secretary of State may, in the Secretary of State's discretion, convene one or more meetings with the Franchisee for the purposes of discussing any outstanding matters before completing the Switch Review. The date, time and location of any meeting shall be determined by the Secretary of State and notified to the Franchisee in writing at least ten (10) days in advance of the meeting.
- 2.3 Without prejudice to any other right of the Secretary of State under the Franchise Agreement, the Secretary of State may reasonably determine, to the extent not agreed as at the Switch Review Date, any of the matters to be confirmed by the Switch Review (as set out in paragraph 3.1 of this Schedule 19.2).

#### 3 Completion of the Switch Review and matters to be confirmed

- 3.1 The Switch Review will be completed when the Secretary of State notifies the Franchisee in writing that the Switch Review is complete and sets out in that notification:
- (a) the Integrated Operator Start Date, provided that the Integrated Operator Start Date shall not be:
    - (i) earlier than 02:00 on 1 April 2026;
    - (ii) earlier than one (1) month after completion of the Switch Review; or
    - (iii) later than six (6) months after completion of the Switch Review;

- (b) to the extent confirmed as at the date of completion of the Switch Review, the Integrated Operator Provisions, including all IOC Confirmed Obligations;
- (c) the status of the drafts of the IOC Cost Budget, IOC Record of Assumptions and Forecast IOC Revenue for the First IOC Year by reference to the process applicable under paragraph 10 of Schedule 18.1 (Shadow Operations);
- (d) details of all Key Contracts intended to be in place on and/or after the Integrated Operator Start Date and that are assumed in the draft of the IOC Cost Budget and included in the draft of the IOC Record of Assumptions;
- (e) a draft Integrated Operator Business Plan, or Interim Integrated Operator Business Plan (if applicable), for the First IOC Year, developed in accordance with paragraph 12 of Schedule 18.2 (Accepted Programme Specific Requirements);
- (f) those aspects of the Integrated Operator Provisions (if any) that remain to be confirmed as at the date of completion of the Switch Review, including all outstanding IOC Confirmable Obligations, and for each such aspect:
  - (i) the proposed process for confirming that aspect (which may, for the avoidance of doubt, include the relevant aspect being determined by the Secretary of State); and
  - (ii) the target date by which that process will be completed; and
- (g) confirmation that the Secretary of State has received evidence in form and substance satisfactory to the Secretary of State that the Franchisee will comply, on and from the Integrated Operator Start Date, with its obligations in respect of the financial covenants set out in paragraph 2 of Schedule 12B (Financial Covenants and Bonds).

#### **4 Further steps following competition of the Switch Review**

- 4.1 Following completion of the Switch Review, the Secretary of State may, in the Secretary of State's discretion, carry out one or more further reviews for the purposes of checking progress on the processes notified under paragraph 3.1(f) of this Schedule 19.2, to revise those processes or the target dates notified under that paragraph, or to consider any update or Change to the matters confirmed on completion of the Switch Review.
- 4.2 Such further reviews may involve convening further meetings with the Franchisee. The date, time and location of any meeting shall be determined by the Secretary of State and notified to the Franchisee in writing at least ten (10) days in advance of the meeting.

**SCHEDULE 19.3**

**Switch to Integrated Operator Provisions**

**1 Integrated Operator Start Date**

- 1.1 At and with effect from the Integrated Operator Start Date:
- (a) the Integrated Operator Provisions shall take effect and be binding upon each of the Secretary of State and the Franchisee; and
  - (b) (subject to paragraphs 1.2 and 2 of this Schedule 19.3) Schedules 1A, 2A and 4A to 17A (inclusive) of the Franchise Agreement shall cease to be effective and binding upon each of the Secretary of State and the Franchisee.
- 1.2 Upon the Schedules listed in paragraph 1.1(b) of this Schedule 19.3 ceasing to be effective and binding, the rights and obligations of the Parties under those Schedules shall cease except for:
- (a) any rights and obligations arising as a result of any antecedent contravention of those Schedules;
  - (b) any current and continuing Remedial Agreement; and
  - (c) any obligations which apply, or continue to apply, in accordance with the terms of the Franchise Agreement (expressly or impliedly) on or after such date.

**2 Continuation of Schedules for ICWC Term Residual Transactions**

- 2.1 Without prejudice to the generality of paragraph 1.2 of this Schedule 19.3, the following provisions of the following Schedules shall, to the extent stated below, continue to be effective and binding upon each of the Secretary of State and the Franchisee at and with effect from the Integrated Operator Start Date:
- (a) Schedule 8A (Payments) (including any provision of any other Schedule supporting any calculation in Schedule 8A (Payments)) to the extent necessary to calculate and pay any Franchise Payments due in respect of the ICWC Term;
  - (b) Schedule 9.1A (Financial and Other Consequences of Change) to the extent necessary to apply the Change process to any ICWC Change;
  - (c) Schedule 10A (Remedies, Events of Default and Termination) in respect of any antecedent contravention of Schedules 1A, 2A and 4A to 17A (inclusive) of the Franchise Agreement (including any antecedent Event of Default or Termination Event);
  - (d) Schedule 11A (Franchise Performance Meetings and Management Information) to the extent necessary to:
    - (i) ensure that a comprehensive set of the information required by Schedule 11.2A is provided in respect of the ICWC Term; and
    - (ii) an ICWC Annual Review is completed in accordance with Schedule 11.3A for the final ICWC Performance Period;
  - (e) Schedule 15.4A (Provisions applying on and after Termination) in respect of the Franchisee's obligation to provide ticketing and related information under paragraph 7 of that Schedule; and



- (f) Schedule 17A (Confidentiality and Freedom of Information) in accordance with paragraph 8 of that Schedule.

## SCHEDULE 19.4

### High Speed Services Review

#### 1 High Speed Services Preparation Obligations

- 1.1 The Franchisee shall no later than six (6) months prior to the Anticipated High Speed Start Date:
- (a) provide the Secretary of State with a written notice from the ORR confirming that the Franchisee has been granted (or will be granted) such Licences (or that the Franchisee's Licences have been amended or will be amended) as are necessary to operate the High Speed Services on and from the Anticipated High Speed Start Date;
  - (b) provide the Secretary of State with a written notice from the ORR confirming that the Franchisee has been granted such Safety Certificate and Safety Authorisation (or that the Franchisee's Safety Certificate and/or Safety Authorisation have been amended) as necessary to enable the Franchisee to operate the High Speed Services on and from the Anticipated High Speed Start Date;
  - (c) have updated the Incident Response Plan to cover the High Speed Services, and received the approval of the Secretary of State to it (such approval not to be unreasonably withheld or delayed);
  - (d) enter into such Connection Agreements, Access Agreements and leases, in respect of Depots, High Speed Stations, Managed Stations and other stations as are necessary for the Franchisee to operate the High Speed Services and the Conventional Services on and from the Anticipated High Speed Start Date;
  - (e) ensure that it has entered into any Key Contracts which are necessary for the delivery of the High Speed Services and the Conventional Services on and from the Anticipated High Speed Start Date and that the counterparties to such Key Contracts have each entered into a Direct Agreement with the Secretary of State in relation to the relevant Key Contracts; and
  - (f) be a party to the relevant Rolling Stock Related Contracts in respect of:
    - (i) all the rolling stock vehicles specified (or to be specified) in Table 1 (Original Rolling Stock) of Appendix 1 (The Composition of the Train Fleet) to Schedule 1.6B (The Rolling Stock); and
    - (ii) all the rolling stock vehicles specified (or to be specified) in Table 2 (Specified Additional Rolling Stock) of Appendix 1 (The Composition of the Train Fleet) to Schedule 1.6B (The Rolling Stock).

#### 2 Review of Satisfaction of High Speed Services Preparation Obligations

- 2.1 For each of the High Speed Services Preparation Obligations the Franchisee shall, on or prior to the date that is six (6) months prior to the Anticipated High Speed Start Date, demonstrate to the Secretary of State (in a manner satisfactory to the Secretary of State in form and substance) that such High Speed Services Preparation Obligation has been satisfied. If the Secretary of State considers that a High Speed Services Preparation Obligation has not been so satisfied, the Secretary of State may promptly (and in any event within one (1) month) afterwards by service of a notice on the Franchisee:
- (a) waive the relevant High Speed Services Preparation Obligation pursuant to paragraph 2.4 of this Schedule 19.4 or set, by specifying in that notice:

- (i) a new date for satisfaction of that High Speed Services Preparation Obligation; and/or
    - (ii) a new Anticipated High Speed Start Date; or
  - (b) terminate the Franchise Agreement on the Anticipated High Speed Start Date or such earlier date as the Secretary of State may specify in that notice (which shall constitute a Termination Notice for the purposes of paragraph 5 of Schedule 10.2B (Events of Default and Termination Events)).
- 2.2 If, in respect of any High Speed Services Preparation Obligation, the Franchisee has not satisfied that High Speed Services Preparation Obligation by the Anticipated High Speed Start Date, and such High Speed Services Preparation Obligation has not been waived by the Secretary of State, the Secretary of State may promptly (and in any event within one (1) month) by service of a notice on the Franchisee either:
- (a) set, by specifying in that notice, either:
    - (i) a new Anticipated High Speed Start Date; or
    - (ii) a new date for satisfaction of that High Speed Services Preparation Obligation and a new Anticipated High Speed Start Date; or
  - (b) terminate the Franchise Agreement with effect from such date as the Secretary of State may specify in such notice (which shall constitute a Termination Notice for the purposes of paragraph 5 of Schedule 10.2B (Events of Default and Termination Events)).
- 2.3 On service of a notice by the Secretary of State pursuant to paragraph 2.1(b) or 2.2(b) of this Schedule 19.4, the Franchise Agreement shall terminate on the date specified in that notice.
- 2.4 The Secretary of State may in accordance with clause 14.1 (Waivers) waive the requirement to satisfy any High Speed Services Preparation Obligation prior to the relevant date stated for satisfaction of it in paragraph 1.1 of this Schedule 19.4 or (if later) prior to the Anticipated High Speed Start Date, attaching such conditions as the Secretary of State considers appropriate. If the Secretary of State so waives the requirement to satisfy any High Speed Services Preparation Obligation, the Franchisee shall satisfy such High Speed Services Preparation Obligation, together with any conditions attaching to such waiver, as soon as reasonably practicable thereafter, or on or prior to such other later date as the Secretary of State may specify.
- 2.5 Where the Secretary of State sets a new date or dates pursuant to paragraph 2.1(a), 2.2(a) or 2.4 of this Schedule 19.4, the relevant provisions of this paragraph 2 shall apply again on such new dates.
- 2.6 The Secretary of State shall not be entitled to terminate the Franchise Agreement in accordance with paragraph 2.1(b) and/or 2.2(b) of this Schedule 19.4, where a Shadow Operator Delay Event has occurred which has prevented the Franchisee from fulfilling one or more of the High Speed Services Preparation Obligations, provided that the Franchisee has and is complying with the provisions of paragraphs 12.7 to 12.9 and 12.11 of Schedule 18.1 (Shadow Operations) in respect of the relevant Shadow Operator Delay Event.

**SCHEDULE 20**

**IOC CONFIRMABLE OBLIGATIONS**

Schedule 20:	IOC Confirmable Obligations
	Appendix 1: List of IOC Confirmable Obligations

## SCHEDULE 20

### IOC Confirmable Obligations

#### 1 IOC Confirmable Obligations

- 1.1 In respect of each IOC Confirmable Obligation, the Secretary of State and the Franchisee intend to confirm and incorporate into this Franchise Agreement a corresponding IOC Confirmed Obligation, prior to the Switch Review Date.
- 1.2 The process for agreeing or determining the drafting of the relevant IOC Confirmed Obligation and amending the Integrated Operator Provisions is set out in paragraph 8 (Contractualisation of the IOC Confirmable Obligations) of Schedule 18.1 (Shadow Operations).

#### 2 List of IOC Confirmable Obligations

- 2.1 The IOC Confirmable Obligations are listed in Appendix 1 to this Schedule 20 (IOC Confirmable Obligations).
- 2.2 Where relevant for an IOC Confirmable Obligation, Appendix 1 also contains details of the means by which the IOC Confirmable Obligation is to be confirmed, including any information, analysis or other detail that is to support this.

#### 3 Changes to Integrated Operator Provisions and IOC Confirmed Obligations Changes

- 3.1 This Schedule 20 (IOC Confirmable Obligations) is without prejudice to Schedule 9B (Changes and Variations) which applies to all Integrated Operator Provisions including to any IOC Confirmed Obligations Change.

**APPENDIX 1 TO SCHEDULE 20**

**List of IOC Confirmable Obligations**

	<b>Reference</b>	<b>IOC Confirmable Obligation</b>	<b>Means of confirmation</b>
1.	Schedule 1.1B (Franchise Services and Service Development), paragraphs 6.1(a) and 6.1(b)	Routes on the Conventional Rail Network and the HS2 Network.	To be included in the Integrated Services TSR and the Established Integrated Services TSR issued by the Secretary of State under paragraph 42 (Development of a TSR) of Schedule 18.2 (Accepted Programme Specific Requirements).
2.	Schedule 1.1B (Franchise Services and Service Development), paragraph 14.1(c)	Requirements relating to reasonable expectation of a seat for passengers on the Conventional Services and High Speed Services.	<p>The Franchisee's proposals shall be included in the Draft Passenger Proposition submitted by the Franchisee under paragraph 49 (Customer Community and Development of Passenger Proposition) of Schedule 18.2 (Accepted Programme Specific Requirements).</p> <p>The Secretary of State shall determine the obligation and confirm it to the Franchisee along with the approval of the Draft Passenger Proposition given in accordance with paragraph 1.5(a) of Schedule 18.2 (Accepted Programme Specific Requirements).</p>
3.	Schedule 1.4B (Passenger Facing Obligations), paragraph 4	Bespoke obligation to be proposed for any format in addition to the Passenger's Charter in which the service commitments to passengers will be set out.	The Draft Passenger Proposition submitted by the Franchisee under paragraph 49 (Customer Community and Development of Passenger Proposition) of Schedule 18.2 (Accepted Programme Specific Requirements) shall set out proposals for

Reference	IOC Confirmable Obligation	Means of confirmation	
		<p>service commitments to passengers, including compensation for delays and poor performance and whether this is to be set out in a Passenger's Charter only or in a Passenger's Charter and in another format.</p> <p>Where another format is proposed for such service commitments, the Franchisee shall include the proposed drafting for a bespoke obligation (to be included in Schedule 1.4B) as part of the Draft Passenger Proposition, along with a plain English note describing that obligation and summarising and explaining the proposed drafting.</p> <p>The Secretary of State shall determine the obligation and confirm it to the Franchisee along with the approval of the Draft Passenger Proposition given in accordance with paragraph 1.5(a) of Schedule 18.2 (Accepted Programme Specific Requirements).</p>	
4.	Schedule 1.4B (Passenger Facing Obligations), paragraph 4.1(a)(ii)	Form of Passenger's Charter.	<p>The Franchisee's proposals are to be included in the Draft Passenger Proposition submitted by the Franchisee under paragraph 49 (Customer Community and Development of Passenger Proposition) of Schedule 18.2 (Accepted Programme Specific Requirements).</p> <p>The Secretary of State shall determine the obligation and confirm it to the Franchisee along with the approval of the Draft Passenger Proposition given in accordance</p>



	<b>Reference</b>	<b>IOC Confirmable Obligation</b>	<b>Means of confirmation</b>
			with paragraph 1.5(a) of Schedule 18.2 (Accepted Programme Specific Requirements).
5.	Schedule 1.4B (Passenger Facing Obligations), paragraph 4.3	Publication requirements for Passenger's Charter.	<p>The Franchisee's proposals are to be included in the Draft Passenger Proposition submitted by the Franchisee under paragraph 49 (Customer Community and Development of Passenger Proposition) of Schedule 18.2 (Accepted Programme Specific Requirements).</p> <p>The Secretary of State shall determine the obligation and confirm it to the Franchisee along with the approval of the Draft Passenger Proposition given in accordance with paragraph 1.5(a) of Schedule 18.2 (Accepted Programme Specific Requirements).</p>
6.	Schedule 1.4B (Passenger Facing Obligations), paragraphs 8.2(d) and 8.3	Confirmation of performance data publication requirements.	To be confirmed as part of the confirmation of the IOC Performance Regime in Schedule 7B (IOC Performance Regime).
7.	Schedule 1.5B (Information about Passengers), paragraphs 3.1 and 3.2	Technology for obtaining and collating information on the extent of the use by passengers of the Passenger Services and rolling stock to which it is to be fitted.	<p>In respect of the High Speed Rolling Stock, the technology and fitment will be as specified in the High Speed Rolling Stock MSA.</p> <p>In respect of the Conventional Rolling Stock, the Franchisee's proposals are to be included in the Conventional Rolling Stock and Depot Strategy to be submitted by the Franchisee under paragraph 37 (Proposal of Conventional Rolling Stock and Depot</p>

Reference	IOC Confirmable Obligation	Means of confirmation
		Strategy) of Schedule 18.2 (Accepted Programme Specific Requirements). The Secretary of State shall determine the obligation and confirm it to the Franchisee along with the approval of the relevant Required Output Report given in accordance with paragraph 1.5(a) of Schedule 18.2 (Accepted Programme Specific Requirements).
8.	Schedule 1.6B (The Rolling Stock), Appendix 1	Composition of the Train Fleet.
		<p>In respect of the High Speed Rolling Stock, the Franchisee's proposals are to be included in the Required Output Report to be submitted by the Franchisee under paragraph 33 (Advice in Relation to Exercise of Priced Options under High Speed Rolling Stock MSA) of Schedule 18.2 (Accepted Programme Specific Requirements).</p> <p>The Secretary of State shall determine the obligation and confirm it to the Franchisee along with the approval of the relevant Required Output Report given in accordance with paragraph 1.5(a) of Schedule 18.2 (Accepted Programme Specific Requirements).</p> <p>In respect of the Conventional Rolling Stock, the Franchisee's proposals are to be included in the Conventional Rolling Stock and Depot Strategy to be submitted by the Franchisee under paragraph 37 (Proposal of Conventional Rolling Stock and Depot Strategy) of Schedule 18.2 (Accepted</p>

	<b>Reference</b>	<b>IOC Confirmable Obligation</b>	<b>Means of confirmation</b>
			<p>Programme Specific Requirements).</p> <p>The Secretary of State shall determine the obligation and confirm it to the Franchisee along with the approval of the relevant Required Output Report given in accordance with paragraph 1.5(a) of Schedule 18.2 (Accepted Programme Specific Requirements).</p>
9.	Schedule 2.5B (Transport, Travel and Other Schemes), Appendix 1, paragraph 1.1	List of concessionary travel schemes.	The Railway Schemes in respect of the High Speed Services and/or Conventional Services will be as advised to the Franchisee in writing under paragraph 1 (Entry into and co-operation with Railway Schemes) of Schedule 18.3 (Transitional Programme Specific Requirements).
10.	Schedule 2.5B (Transport, Travel and Other Schemes), Appendix 1, paragraph 2.1	List of multi-modal fares schemes.	The Railway Schemes in respect of the High Speed Services and/or Conventional Services will be as advised to the Franchisee in writing under paragraph 1 (Entry into and co-operation with Railway Schemes) of Schedule 18.3 (Transitional Programme Specific Requirements).
11.	Schedule 2.5B (Transport, Travel and Other Schemes), Appendix 1, paragraph 4.1	List of Inter-Operator Schemes.	The Railway Schemes in respect of the High Speed Services and/or Conventional Services will be as advised to the Franchisee in writing under paragraph 1 (Entry Into and co-operation with Railway Schemes) of Schedule 18.3 (Transitional Programme Specific Requirements).

Reference	IOC Confirmable Obligation	Means of confirmation
12. Schedule 5B (Fares)	<p>Fares regime for the Conventional Services and High Speed Services during the Integrated Operator Period, including any:</p> <ul style="list-style-type: none"> <li>(a) obligations to create Fares;</li> <li>(b) regulations relating to Fares;</li> <li>(c) changes to Fares and regulations;</li> <li>(d) any Fares selling restrictions; and</li> <li>(e) information and monitoring requirements.</li> </ul>	<p>The Franchisee shall submit to the Secretary of State the Fares Delivery Plan under paragraph 51 (Fares Options Analysis) of Schedule 18.2 (Accepted Programme Specific Requirements), to include a plain English note describing the Recommended Option(s) and summarising and explaining the proposed drafting for Schedule 5B (Fares) to reflect the Recommended Option(s).</p> <p>The Secretary of State shall determine the option to apply to the Conventional Services and High Speed Services, based on the Fares Delivery Plan or otherwise, and determine the obligation and confirm it to the Franchisee in writing.</p>
13. Schedule 6.2B (Committed Obligations), Part 1(b), paragraph 1	Confirmation of Committed Obligation relating to creation of an internal High Speed Business Unit, and/or other separable business unit(s).	<p>The Franchisee shall submit to the Secretary of State the Integrated Operator Business Report under paragraph 9 (Business Structure Proposal) of Schedule 18.2 (Accepted Programme Specific Requirements), to confirm or propose amendments to the drafting for a Committed Obligation relating to structuring a High Speed Business Unit and, where amendments are proposed, include a plain English note describing the amendments and summarising and explaining the proposed drafting for the Committed Obligation.</p> <p>The Secretary of State shall determine the</p>

Reference	IOC Confirmable Obligation	Means of confirmation	
		relevant Committed Obligation(s), based on the Integrated Operator Business Report or otherwise, and confirm it to the Franchisee in writing.	
14.	Schedule 6.2B (Committed Obligations), Part 1(b)	<p>1. Committed Obligations in respect of each of the following Passenger Proposition Aspects:</p> <ul style="list-style-type: none"> <li>(a) the structured approach to defining the end to end customer journey;</li> <li>(b) the service to be offered to customers on trains (including the approach to retail and catering) and at stations (including retail services) served by the Passenger Services;</li> <li>(c) the information to be provided at each stage of the customer journey, including in times of planned and unplanned disruption;</li> <li>(d) the strategy for ticketing and ticket retail, including business and commercial models for retailing, retailing and journey validation systems, and integration with existing</li> </ul>	<p>1. The Franchisee's proposals shall be included in the Draft Passenger Proposition submitted by the Franchisee under paragraph 49 (Customer Community and Development of Passenger Proposition) of Schedule 18.2 (Accepted Programme Specific Requirements), to include proposed drafting and a plain English note describing the Recommended Option(s) and summarising and explaining the proposed drafting for each proposed Committed Obligation.</p> <p>The Secretary of State shall determine the obligations that are to become Committed Obligations and confirm those to the Franchisee along with the approval of the Draft Passenger Proposition given in accordance with paragraph 1.5(a) of Schedule 18.2 (Accepted Programme Specific Requirements).</p>

Reference	IOC Confirmable Obligation	Means of confirmation
	<p>rail and multi-modal systems;</p> <p>(e) the strategy for pricing and Yield Management;</p> <p>(f) the strategy for revenue protection;</p> <p>(g) the strategy for customer relationship management; and</p> <p>(h) the strategy for mobile communications services.</p>	
15.	<p>2. Committed Obligations in respect of compliance with the Integrated Services Security Plan and/or the HS2 Security Plan.</p>	<p>2. The Franchisee's proposals shall be included in the Integrated Services Security Plan submitted by the Franchisee under paragraph 44 (Development of the Integrated Services Security Plan) of Schedule 18.2 (Accepted Programme Specific Requirements) and/or in submitting comments on the HS2 Output Report in respect of the HS2 Security Plan under that paragraph of that Schedule.</p> <p>The Secretary of State shall determine the obligations that are to become Committed Obligations and confirm those to the Franchisee along with the approval of the Integrated Services Security Plan given in accordance with paragraph 1.5(a) of Schedule 18.2 (Accepted Programme Specific Requirements) and/or the approval</p>

	<b>Reference</b>	<b>IOC Confirmable Obligation</b>	<b>Means of confirmation</b>
			of the HS2 Output Report under paragraph 5.1(a) of that Schedule.
16.		3. Committed Obligation in respect of the scope and form of any role and involvement of the Franchisee in cooperating with HS2 Limited to enable the delivery of HS2 Limited's obligations under the Development Agreement in respect of HS2 Phase 2b, on and from the High Speed Established Services Date.	3. As agreed by the Parties.
17.	Schedule 6.2B (Committed Obligations), Part 1(b), paragraph 4	All additional Committed Obligations arising out of the Shadow Operator Services or as otherwise required by the Secretary of State for the Franchise Services, the Conventional Services and/or the High Speed Services.	As notified by the Secretary of State from time to time, in the form of proposed drafting under paragraph 8.1(c) (Contractualisation of the IOC Confirmable Obligations) of Schedule 18.1 (Shadow Operations).
18.	Schedule 6.3B (Service Quality Regime)	Confirmation of any service quality regime (or equivalent) for the Franchise Services, the Conventional Services and/or the High Speed Services.	<p>The Franchisee's proposals for quality management systems to ensure that the IOC Benchmarks are achieved shall be included in the Integrated Operator Business Plan submitted by the Franchisee under paragraph 12 (Development of an Integrated Operator Business Plan) of Schedule 18.2 (Accepted Programme Specific Requirements).</p> <p>The Secretary of State shall determine whether or not a service quality regime (or equivalent) is required. If a service quality</p>



Reference	IOC Confirmable Obligation	Means of confirmation	
		regime is required, the Secretary of State shall confirm that to the Franchisee, along with drafting for the terms of that regime.	
19.	Schedule 7B (IOC Performance Regime)	<p>The IOC Performance Regime and IOC Benchmarks, including:</p> <ul style="list-style-type: none"> <li>(a) any operational performance regime for the Conventional Services;</li> <li>(b) any operational performance regime for the High Speed Services;</li> <li>(c) any customer experience and engagement and passenger satisfaction (or similar) measurement for the Conventional Services;</li> <li>(d) any customer experience and engagement and passenger satisfaction (or similar) measurement for the High Speed Services; and</li> <li>(e) any benchmarks or floor levels in respect of any operational performance regime.</li> </ul>	<p>The IOC Benchmarks and IOC Performance Regime will be agreed or determined by the Secretary of State under paragraphs 8 (Contractualisation of the IOC Confirmable Obligations) and 9 (Contractualisation of the IOC Benchmarks) of Schedule 18.1 (Shadow Operations).</p> <p>The Secretary of State shall take into account the High Speed Operational Performance Criteria Plan submitted by the Franchisee under paragraph 46 (High Speed Operational Performance Regime and High Speed Operational Performance Criteria) of Schedule 18.2 (Accepted Programme Specific Requirements), the High Speed Operational Regime Proposal and the NR Performance Regime.</p> <p>In addition, the Draft Passenger Proposition submitted by the Franchisee under paragraph 49 (Customer Community and Development of Passenger Proposition) of Schedule 18.2 (Accepted Programme Specific Requirements) shall include an approach and methodology for ongoing measurement of passenger satisfaction across all Passenger Services to deliver more granular and regular results and with a wider sample size than the National Rail Passenger</p>

Reference	IOC Confirmable Obligation	Means of confirmation	
		<p>Survey.</p> <p>In respect of the approach and methodology for ongoing measurement of passenger satisfaction, the Secretary of State shall determine the obligation and confirm it to the Franchisee along with the approval of the Draft Passenger Proposition given in accordance with paragraph 1.5(a) of Schedule 18.2 (Accepted Programme Specific Requirements).</p>	
20.	Schedule 11.2B (Management Information), paragraph 3.1	Roles to be included in Key Personnel on and from High Speed Start Date	<p>The Franchisee's proposed roles for Key Personnel on and from the High Speed Start Date shall be included in the Integrated Operator Business Plan submitted by the Franchisee under paragraph 12 (Development of an Integrated Operator Business Plan) of Schedule 18.2 (Accepted Programme Specific Requirements).</p> <p>The Secretary of State shall confirm the required roles to the Franchisee along with the approval of the Integrated Operator Business Plan given in accordance with paragraph 1.5(a) of Schedule 18.2 (Accepted Programme Specific Requirements).</p>
21.	Schedule 11.2B (Management Information), paragraph 16.2 (a) and Appendix 1, paragraphs 1 and 2	Confirm Environmental Impact Monitoring Dataset and Environmental Impact Targets in Appendix 1, and list in relation to determining performance in paragraph 16.2(a), for the Franchisee	To be included in the Environmental Information Plan in accordance with paragraph 47.5 (Development of the Integrated Services Sustainable Development Strategy) of Schedule 18.2 (Accepted Programme Specific

	<b>Reference</b>	<b>IOC Confirmable Obligation</b>	<b>Means of confirmation</b>
		during the Integrated Operator Term.	Requirements), subject to such revisions as the Secretary of State may require under paragraph 2.4(b) of Schedule 18.2 (Accepted Programme Specific Requirements).
22.	Schedule 11.2B (Management Information) Appendix 2, paragraph 1.5	Table of operational performance information.	To be confirmed as part of the confirmation of the IOC Performance Regime in Schedule 7B (IOC Performance Regime).
23.	Schedule 13.1B (Rail Industry Initiatives and Co-operation), Appendix 1	List of Community Rail Partnerships	The List of Community Rail Partnerships in respect of the High Speed Services and/or Conventional Services will be as advised to the Franchisee in writing under paragraph 1 (Entry into and co-operation with Railway Schemes) of Schedule 18.3 (Transitional Programme Specific Requirements).
24.	Schedule 14.3B (Key Contracts), Appendix 1	List of Key Contracts	To be updated by the Secretary of State to carry forward, and/or add to or update, the list in Appendix 1 to Schedule 14.3A (Key Contracts) (as amended in accordance with paragraph 1.3 of that Schedule), to include all Key Contracts intended to be in place on and/or after the Integrated Operator Start Date and that are assumed in the IOC Cost Budget and included in the IOC Record of Assumptions.
25.	Schedule 14.4B (Designation of Franchise Assets), Appendix 1	List of Primary Franchise Assets	To include all Primary Franchise Assets included in the list in Appendix 1 to Schedule 14.4A (Designation of Franchise Assets) on the day immediately prior to the Integrated

	<b>Reference</b>	<b>IOC Confirmable Obligation</b>	<b>Means of confirmation</b>
			Operator Start Date.
26.	Schedule 14.6B (Residual Value Mechanism), Appendix 1	List of the RV Assets	To be completed in accordance with paragraph 10.8(b) (First IOC Year Budget Setting Process) of Schedule 18.1 (Shadow Operations).