

RAIL PUBLIC REGISTER COPY
REDACTED IN ACCORDANCE WITH FOIA 2000

Dated 22 March 2015

- (1) The Secretary of State for Transport
- (2) First Greater Western Limited

FRANCHISE AGREEMENT – GREAT WESTERN

CONTENTS

Clause		Page
1	INTERPRETATION	6
2	DEFINITIONS	10
3	COMMENCEMENT	121
4	TERM	122
5	GENERAL OBLIGATIONS	122
6	RELATIONSHIP WITH PREVIOUS FRANCHISE AGREEMENTS	122
7	COMPLIANCE WITH LAWS.....	122
8	ENTIRE AGREEMENT/WARRANTY	123
9	AGREED PRE-START DATE ACTIONS	123
10	GOVERNING LAW	125
Schedules		
1	Passenger Service Obligations	127
	SCHEDULE 1.1	128
	Service Development	128
	SCHEDULE 1.2	143
	Operating Obligations.....	143
	SCHEDULE 1.3	151
	Not Used	151
	SCHEDULE 1.4	152
	Passenger Facing Obligations	152
	SCHEDULE 1.5	171
	Information about Passengers	171
	SCHEDULE 1.6	176
	Franchise Services	176
	SCHEDULE 1.7	182
	The Train Fleet	182
2	Assets, Leases, Third Parties, Other Franchise Operations and Schemes	195
	SCHEDULE 2.1	196
	Asset Vesting and Transfer	196
	SCHEDULE 2.2	197
	Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases.....	197
	SCHEDULE 2.3	203
	Third Party Delivery of Passenger Services and Other Franchisees	203
	SCHEDULE 2.4	205
	Other Franchise Operations.....	205
	SCHEDULE 2.5	207
	Transport, Travel and Other Schemes	207
3	Not Used	209
4	Persons with Disabilities and Disability Discrimination	210
	APPENDIX 1 TO SCHEDULE 4	217
	Minor Works.....	217
	APPENDIX 2 TO SCHEDULE 4	218

5 Alternative Transport 218

5 Fares 219

SCHEDULE 5.1 220

Purpose, Structure and Construction 220

SCHEDULE 5.2 223

Franchisee's Obligation to Create Fares 223

SCHEDULE 5.3 224

Allocation of Fares to Fares Baskets 224

SCHEDULE 5.4 226

Regulation of Fares Basket Values 226

SCHEDULE 5.5 229

Regulation of Individual Fares 229

SCHEDULE 5.6 232

Exceeding the Regulated Value, Regulated Price or Regulated Child Price
..... 232

SCHEDULE 5.7 234

Changes to Fares and Fares Regulation 234

SCHEDULE 5.8 238

Fares Regulation Information and Monitoring 238

SCHEDULE 5.9 239

ITSO Certified Smartmedia 239

6 Committed Obligations and Franchise Specific Obligations 260

SCHEDULE 6.1 261

Committed Obligations and Related Provisions 261

SCHEDULE 6.2 312

Great Western Franchise Specific Provisions..... 312

APPENDIX 1 TO SCHEDULE 6.2 377

Crossrail Business Transfer Agreements 377

APPENDIX 2 TO SCHEDULE 6.2 402

Reading Wheel Lathe Stage 2 Payment..... 402

APPENDIX 3 TO SCHEDULE 6.2 403

Stage 2 Package Work Plan..... 403

APPENDIX 4 TO SCHEDULE 6.2 404

Worcester HST Fuelling Facility Payment..... 404

APPENDIX 5 TO SCHEDULE 6.2 405

Worcester HST Fuelling Facility Specification 405

APPENDIX 6 TO SCHEDULE 6.2 406

Part A: Electrification Change Advance Works Specification 406

APPENDIX 7 TO SCHEDULE 6.2 408

HS2 Project Activities Specification 408

SCHEDULE 6.3 421

The IEP Provisions 421

7 Performance Benchmarks 437

SCHEDULE 7.1 438

Performance Benchmarks 438

APPENDIX 1 TO SCHEDULE 7.1 Cancellations Benchmarks and Annual Cancellations Benchmarks 453

APPENDIX 2 TO SCHEDULE 7.1 TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks 458

Part 1 – TOC Minute Delay Benchmark Table..... 458

Part 2 – Annual TOC Minute Delay Benchmark Table 461

Part 3 – Annual TOC Minute Delay Payment Table..... 462

SCHEDULE 7.2 467

National Rail Passenger Surveys and Customer and Communities Improvement Fund 467

APPENDIX 1 TO SCHEDULE 7.2 NRPS Benchmark Table..... 474

8 Payments 475

SCHEDULE 8.1 476

Franchise Payments 476

APPENDIX 1 TO SCHEDULE 8.1 503

Profit Share Thresholds 503

APPENDIX 2 TO SCHEDULE 8.1 505

Components of AFA and DFR..... 505

APPENDIX 3 TO SCHEDULE 8.1 507

Committed Investments Amount 507

SCHEDULE 8.2 526

Annual Franchise Payments 526

APPENDIX TO SCHEDULE 8.2 527

Figures for Calculation of Annual Franchise Payments..... 527

SCHEDULE 8.3 528

Miscellaneous Payment Provisions..... 528

SCHEDULE 8.4 529

Track Access Adjustments and Station Charge Adjustments 529

9 Changes and Variations 533

SCHEDULE 9.1 534

Financial and Other Consequences of Change..... 534

APPENDIX 1 TO SCHEDULE 9.1 543

SUMMARY FLOW CHART 543

APPENDIX 2 TO SCHEDULE 9.1 545

Agreement or Determination of Revised Inputs..... 545

ANNEX TO APPENDIX 2 TO SCHEDULE 9.1 549

Incentivising Long Term Investment 549

SCHEDULE 9.2 551

Identity of the Financial Model etc. 551

SCHEDULE 9.3 554

Secretary of State Risk Assumptions 554

SCHEDULE 9.4 557

Specified Infrastructure and Rolling Stock Change 557

SCHEDULE 9.5 571

Variations and Incentivising Beneficial Changes 571

10 Remedies, Termination and Expiry 578

	SCHEDULE 10.1.....	579
	Remedial Plans and Remedial Agreements	579
	SCHEDULE 10.2.....	581
	Termination and Expiry	581
	SCHEDULE 10.3.....	582
	Events of Default and Termination Events	582
	SCHEDULE 10.4.....	589
	Force Majeure	589
	SCHEDULE 10.5.....	595
	Liability	595
11	Agreement Management Provisions.....	597
12	Financial Obligations and Covenants	600
	SCHEDULE 12	601
	Financial Obligations and Covenants	601
	APPENDIX 1 TO SCHEDULE 12	612
	Form of Initial Performance Bond.....	612
	Form of Performance Bond.....	619
	APPENDIX 2 TO SCHEDULE 12	625
	FORM OF SEASON TICKET BOND	625
13	Information and Industry Initiatives.....	631
	SCHEDULE 13	632
	Information and Industry Initiatives.....	632
	APPENDIX 1 TO SCHEDULE 13	651
	Environmental Impact Monitoring Dataset.....	651
	APPENDIX 2 TO SCHEDULE 13	652
	Key Assets.....	652
	APPENDIX 3 TO SCHEDULE 13	653
	Operational Information	653
14	Preservation of Assets.....	658
	SCHEDULE 14.1.....	659
	Maintenance of Franchise.....	659
	SCHEDULE 14.2.....	661
	Maintenance of Operating Assets	661
	SCHEDULE 14.3.....	665
	Key Contracts	665
	APPENDIX TO SCHEDULE 14.3	668
	List of Key Contracts	668
	SCHEDULE 14.4.....	670
	Designation of Franchise Assets.....	670
	APPENDIX TO SCHEDULE 14.4	674
	List of Primary Franchise Assets	674
	SCHEDULE 14.5.....	682
	Dealing with Franchise Assets	682
15	Obligations Associated with Termination	684
	SCHEDULE 15.1.....	685
	Reletting Provisions.....	685

	SCHEDULE 15.2.....	692
	Last 12 or 13 Months of Franchise Period and other conduct of business provisions.....	692
	SCHEDULE 15.3.....	698
	Handover Package	698
	APPENDIX TO SCHEDULE 15.3	699
	Form of Handover Package	699
	SCHEDULE 15.4.....	700
	Provisions Applying on and after Termination	700
	APPENDIX 1 TO SCHEDULE 15.4.....	709
	Form of Transfer Scheme.....	709
	APPENDIX 2 TO SCHEDULE 15.4.....	713
	Form of Supplemental Agreement.....	713
	SCHEDULE TO THE SUPPLEMENTAL AGREEMENT	725
	Net Asset Statement	725
16	Pensions.....	756
17	Confidentiality and Freedom of Information.....	760
18	Additional Reporting Periods	767
19	Other Provisions	768

THIS AGREEMENT is dated 22 March 2015

BETWEEN

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
- (2) **FIRST GREATER WESTERN LIMITED** (Company Number 05113733), whose registered office is at Milford House, 1 Milford Street, Swindon, Wiltshire, SN1 1HL (the "**Franchisee**").

WHEREAS

- (A) The Secretary of State and the Franchisee were parties to the Previous Franchise Agreement pursuant to which the Franchisee provided the Previous Passenger Services. The Previous Franchise Agreement expires at 01.59 on 20th September 2015 and pending the award of a new franchise agreement the parties have agreed that the Franchise Services will be provided by the Franchisee pursuant to this Franchise Agreement during the period from the Start Date until the Expiry Date.
- (B) The Secretary of State has issued a direction under Section 26(1) of the Act that the person who is appointed as a franchisee to provide the Franchise Services under a franchise agreement need not be selected from among those who submit tenders in response to an invitation to tender.
- (C) The Secretary of State wishes to appoint a franchisee to provide railway passenger services within the Franchise and expects his franchisee, on the terms of this Franchise Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (D) The Franchisee wishes to be appointed as the Secretary of State's franchisee for the Franchise and intends, on the terms of this Franchise Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (E) The parties have agreed terms on which the Franchisee will provide the Franchise Services and wish to record their agreement. The following provisions of this Franchise Agreement are intended to reflect and give effect to the matters referred to in Recitals (A) to (D) inclusive.

1. INTERPRETATION

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

- (c) the words “include”, “including” and “in particular” are to be construed without limitation;
- (d) references to any person include its successors, transferees or assignees;
- (e) the words “subsidiary”, “subsidiary undertaking”, and “parent undertaking” each have the same meaning in this Franchise Agreement as in Section 1162 of the Companies Act 2006;
- (f) references to documents “in the agreed terms” are references to documents initialled by or on behalf of the Secretary of State and the Franchisee. As at the date of this Franchise Agreement the documents “in the agreed terms” are as follows:

(i)	2018 FM¹	2018 Financial Model;
(ii)	2018 IRAD²	amended and restated Infrastructure and Rolling Stock Assumptions Document;
(iii)	2018 ROA³	2018 Record of Assumptions;
(iv)	CFD	Commuter Fares Document;
(v)	CSES	Customer and Stakeholder Engagement Strategy;
(vi)	DL	Depot Lease;
(vii)	DRMR⁴	DR Mobilisation Requirements;
(viii)	DRIP⁵	DR Implementation Programme;
(ix)	ERTMSP	Proposed ERTMS Implementation Plan;
(x)	FD	Funding Deed;
(xi)	FF	Financial Formats;
(xii)	FM	Financial Model;
(xiii)	IEP IS	IEP Implementation Strategy;
(xiv)	IRAD	Infrastructure and Rolling Stock Assumptions Document;
(xv)	OM	Operational Model;
(xvi)	PC	Passenger’s Charter;

¹ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

² 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

(xvii)	PFD	Protected Fares Document;
(xviii)	POA	Power of Attorney;
(xix)	PSM	Passenger Survey Methodology;
(xx)	ROA	Record of Assumptions;
(xxi)	SDS	Sustainable Development Strategy;
(xxii)	SL	Station Lease;
(xxiii)	SLC1	Service Level Commitment (1);
(xxiv)	SLC2	Service Level Commitment (2);
(xxv)	SLC3(a)	Service Level Commitment (3)(a);
(xxvi)	STNRCS⁶	STNR Costs Schedule;
(xxvii)	STNRMP⁷	STNR Milestone Programme;
(xxviii)	STNROO⁸	STNR Optional Outputs;
(xxix)	STNRP⁹	STNR Programme;
(xxx)	STNRRR¹⁰	STNR Reporting Requirements; and
(xxxix)	STNRSOW¹¹	STNR Scope of Work

- (g) references in any of the agreements comprising the Franchise Agreement to Recitals, clauses, Schedules, Parts, paragraphs and Appendices are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices of Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of this Franchise Agreement;
- (h) references in any Schedule in any of the agreements comprising the Franchise Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (i) headings and references to headings shall be disregarded in construing this Franchise Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified

⁶ 13 December 2017 – (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷ 13 December 2017 – (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸ 13 December 2017 – (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁹ 13 December 2017 – (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁰ 13 December 2017 – (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹¹ 13 December 2017 – (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;

- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which the Secretary of State reasonably considers have an equivalent effect or are intended to fulfil the same function;
- (m) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (n) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words "notify", "endorse", "consent", "approve", "waive", "certify" or "determine" and other cognate expressions shall be construed accordingly;
- (o) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (p) references to the Franchisee bidding for Train Slots or a Timetable shall mean the final action incumbent on the Franchisee under the Network Code to confirm to Network Rail its interests in the Train Slots to which that confirmation relates, and "bid" shall be construed accordingly;
- (q) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger's Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;
- (r) references to stations at which any train calls include stations at which such train commences or terminates its journey;
- (s) references to "railway passenger services" are to be construed subject to Section 40 of the Railways Act 2005;
- (t) references to the provision of railway passenger services include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner;
- (u) references in lower case letters to terms defined in Clause 2 shall be construed, where relevant, as being references to the terms defined as such in the franchise agreement or relevant agreement made under Section 30 of the Act or Section 6 of the Railways Act 2005 with any other Train Operator;

- (v) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;
- (w) references to sums of money being expended by the Franchisee shall be to such sums exclusive of Value Added Tax;
- (x) the words "shall not be liable" are to be construed as meaning that no contravention of the Franchise Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;
- (y) references to a "contravention of the Franchise Agreement" (and cognate expressions) are to be construed as meaning a breach of this Franchise Agreement;
- (z) wherever provision is made for the Franchisee to "procure" or "ensure" the delivery of an obligation under the Franchise Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the Franchisee to deliver that obligation;
- (aa) the Secretary of State is acting as part of the Crown;
- (bb) references to "profit" shall be construed as meaning profit before corporation tax, determined in accordance with GAAP; and
- (cc) where there is a requirement on the Franchisee to "fully and effectively cooperate" with one or more other parties with regard to an objective, that requirement relates to the quality of cooperation to be provided by the Franchisee taking into account and subject to the response of the other parties concerned. It does not indicate an obligation on the Franchisee beyond cooperation, relating to the funding of detailed design and development of an infrastructure project, actual delivery or subsequent operation (including in each case performance, cost and revenue effects). It does indicate that the Franchisee shall participate actively in relation to the relevant objective including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Franchisee reasonably considers in all of the circumstances to be an appropriate use of its resources and effective to achieve the relevant objective.

2. DEFINITIONS

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

"16 to 25 Railcard" means a Discount Card issued under the Discount Fare Scheme referred to in paragraph (a)(ii) of the definition of Discount Fare Scheme;

"2005 Franchise Agreement" means the franchise agreement dated 12 December 2005 and made between the Secretary of State and the Franchisee under which services equivalent to the Franchise Services (or a material proportion thereof) were provided by the Franchisee;

"2010 Nominal Ticket Sales"	has the meaning given to it in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values);
"2010 Ticket Revenue"	has the meaning given to it in paragraph 4.1 of Schedule 5.4 (Regulation of Fares Basket Values);
"2018 IRAD"¹²	means the amended and restated IRAD prepared in connection with the IRAD Change 1 Deed of Amendment in the agreed terms marked 2018 IRAD;
"2018 Financial Model"¹³	means the financial model prepared for the purpose of the IRAD Change 1 Deed of Amendment in the agreed terms marked 2018 FM;
"2018 Record of Assumptions"¹⁴	means the record of assumptions addendum prepared for the purpose of the IRAD Change 1 Deed of Amendment in the agreed terms marked 2018 ROA;
"Accepted Unit"¹⁵	has the meaning ascribed to such word in the West of England Manufacture and Supply Agreement;
"Access Agreement"	has the meaning given to the term "access agreement" hstin Section 83(1) of the Act;
"Act"	means the Railways Act 1993 and any regulations or orders made thereunder;
"Actual CaSL Performance Level"	means, in respect of a Performance Calculation Year, the moving annual average CaSL Figures most recently published by Network Rail for that Performance Calculation Year in relation to the Franchisee;
"Actual Operating Costs"	means: <ul style="list-style-type: none"> (a) the Franchisee's total operating expenses for the period being reviewed as stated in its profit and loss account, including any of the following operating expenses that are payable during that period:

¹² 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹³ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁴ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁵ **Date of contract insertion 27/07/2015 – Agreed by the Secretary of State and Franchisee.**

- (i) amounts payable to the Secretary of State and Network Rail;
- (ii) taxation;
- (iii) shareholder distributions including dividends;
- (iv) interest;
- (v) capital expenditure (net of grants received);
- (vi) lease payments in relation to on-balance sheet leased assets; and
- (vii) ¹⁶ **operating costs incurred in the delivery of the hex services agreement,**

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

- (A) interest relating to on-balance sheet leased assets;
- (B) depreciation;
- (C) amortisation; and
- (D) bad debt provisions; and

(b) either:

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

where creditors:

- (A) include any persons owed amounts by the Franchisee in respect of loans or

¹⁶ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

funding agreements, operating expenses, including the types of expenses set out in paragraphs (a)(i) to (v) inclusive, provisions and deferred income balances; but

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

- “Actual Passenger Demand”** has the meaning given to it in paragraph 1.1 of Schedule 1.5 (Information about Passengers);
- “Actual PPM Performance Level”** means, in respect of a Performance Calculation Year, the moving annual average PPM Figures most recently published by Network Rail for that Performance Calculation Year in relation to the Franchisee;
- “Actuary”** has the meaning given to it in the Pension Trust;
- “Additional CI Scheme”** has the meaning given to it in paragraph 45.4(b) of part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);
- “Additional Expenditure”** has the meaning given to it in paragraph 2.8 of Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Improvement Fund);
- “Additional HM Report”** has the meaning given to it paragraph 7.5(a) of part 1 of Schedule 6.1;
- “Additional Rolling Stock”** has the meaning given to it paragraph 1.6 of Schedule 1.7 (Train Fleet);
- “Additional 387 Units”¹⁷** **means the two Class 387 units which have been cleared to operate in passenger**

¹⁷ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

service over the routes between London Paddington and Heathrow Airport and have been fitted with ETCS but which are not the New Rolling Stock Units;

"Administration Fee"	has the meaning given to it in paragraph 4.3 of Schedule 10.3 (Events of Default and Termination Events);
"Advance Purchase Train-specific Fares"	has the meaning given to it under the Ticketing and Settlement Agreement;
"Affected Train Fleet"	has the meaning given to it in paragraph 10.1(a)(ii)(B) of Schedule 6.2 (Great Western Franchise Specific Provisions);
"Affiliate"	means, in respect of any person, any person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person;
"Aggregate Driver Recruit Requirement"¹⁸	has the meaning given to it in paragraph 47.3 of Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);
"Aggregate Productive Drivers Requirement"¹⁹	has the meaning given to it in paragraph 47.4(a) of Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);
"Aggregated Qualifying Change"	means two or more Changes which: <ul style="list-style-type: none"> (a) are notified or agreed (in the case of a Change which is a Variation pursuant to paragraph 1.1 of Schedule 9.5 (Variations and Incentivising Beneficial Changes)); or (b) a party has become aware of (in the case of any other kind of Change), <p>in a Franchisee Year (the "Aggregation Year") which individually do not exceed the Threshold Amount for the Aggregation Year taken alone but do exceed it when taken together. For the avoidance of doubt, where the Changes arise in different Franchisee Years, for the purposes of</p>

¹⁸ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁹ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

determining whether in aggregate they exceed the Threshold Amount:

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

"Alliance Agreement"	has the meaning given to such term in paragraph 11.7 of Schedule 13 (Information and Industry Initiatives);
"Alternative NRPS"	has the meaning given to such term in paragraph 1.6 of Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Improvement Fund);
"Amendment Date" ²⁰	means 17 April 2018;
"Ancillary Service" ²¹	means any service specified in paragraph 5 of Schedule 1.6 (Franchise Services) and which shall not include the HEx Outsourced Services;
"Annual Audited Accounts"	means the accounts of the Franchisee which: <ul style="list-style-type: none"> (a) comply with paragraph 3.10 of Schedule 13 (Information and Industry Initiatives); and (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.8 of Schedule 13 (Information and Industry Initiatives) and certified by the Franchisee's auditors as true and fair;
"Annual Benchmark"	means any of the Annual Cancellations Benchmark or the Annual TOC Minute Delay Benchmark;

²⁰ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²¹ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

“Annual Benchmark Table”	means, in relation to: <ul style="list-style-type: none"> (a) any Annual Cancellations Benchmark, the Annual Cancellations Benchmark Table; and (b) any Annual TOC Minute Delay Benchmark, the Annual TOC Minute Delay Benchmark Table;
“Annual Business Plan”	means the plan to be provided by the Franchisee to the Secretary of State in accordance with paragraph 2.3 of Schedule 13 (Information and Industry Initiatives);
“Annual Cancellations Benchmark”	means, for each Performance Calculation Year, each of the benchmarks specified in the Annual Cancellations Benchmark Table for that Performance Calculation Year provided that paragraph 5.1 of Schedule 7.1 (Performance Benchmarks) applies where a Performance Calculation Year is shorter than 13 Reporting Periods;
“Annual Cancellations Benchmark Table”	means the table set out in Part 2 (Annual Cancellations Benchmark Table) of Appendix 1 (Cancellations Benchmark and Annual Cancellations Benchmark) of Schedule 7.1 (Performance Benchmarks);
“Annual Cap Performance Level”	means, in relation to an Annual Benchmark for any Performance Calculation Year, the number set out in Column 2 of the Annual Benchmark Table relating to that Annual Benchmark and in the row of that table for that Performance Calculation Year;
“Annual CaSL Target Performance Level”	means, in respect of a Performance Calculation Year, the number set out in Column 5 of the Annual Cancellation Benchmark Table and in the row in that table for that Performance Calculation Year;
“Annual Financial Statements”	means the final draft financial statements of the Franchisee which: <ul style="list-style-type: none"> (a) comply with paragraph 3.10 of Schedule 13 (Information and Industry Initiatives); and (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.7 of Schedule 13 (Information and Industry Initiatives);

“Annual Floor Performance Level”	means, in relation to an Annual Benchmark for any Performance Calculation Year, the number set out in Column 4 of the Annual Benchmark Table relating to that Annual Benchmark and in the row of that table for that Performance Calculation Year;
“Annual Franchise Payment”	means, in relation to any Franchisee Year, the amount determined in accordance with Schedule 8.2 (Annual Franchise Payments);
“Annual Franchise Payment Components”	means the values of “FXD”, “VCRPI”, “VCAWE”, “PRPI”, “RRPI” and “ICRPI” specified for each Franchisee Year in the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to Schedule 8.2 (Annual Franchise Payments);
“Annual Management Accounts”	means the management accounts of the Franchisee which: <ul style="list-style-type: none"> (a) comply with paragraph 3.9 of Schedule 13 (Information and Industry Initiatives); and (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.6 of Schedule 13 (Information and Industry Initiatives);
“Annual PPM Target Performance Level”	means, in respect of a Performance Calculation Year, the number set out in Column 5 of the Annual TOC Minute Delay Benchmark Table and in the row of that table for that Performance Calculation Year;
“Annual Season Ticket”	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day on which it first comes into effect until (but excluding) the day which falls 12 months after such day;
“Annual Target Performance Level”	means, in relation to an Annual Benchmark for any Performance Calculation Year, the number set out in Column 3 of the relevant Annual Benchmark Table relating to that Annual Benchmark and in the row of that table for that Performance Calculation Year;
“Annual TOC Minute Delay Benchmark”	means, for each Performance Calculation Year, each of the benchmarks specified in the Annual TOC Minute Delay Benchmark Table for that Performance Calculation Year, provided that paragraph 5.1 of Schedule 7.1 (Performance Benchmarks) applies where a Performance

Calculation Year is shorter than 13 Reporting Periods;

“Annual TOC Minute Delay Benchmark Table”

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

“Approved CCIF Scheme”

means a CCIF Scheme approved by the Secretary of State in accordance with paragraph 3.6 of Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Improvement Fund);

“Assisted Passenger Reservation System”

means the system known as the Assisted Passenger Reservation System as described in the Code of Practice as published in September 2010 (version 2 – valid from 1 September 2010);

“Assumed Heavy Maintenance Funding”

has the meaning given to it in paragraph 7.7 of part 1 of Schedule 6.1;

“ATOC”

means the Association of Train Operating Companies including any of its successors and assigns;

“Average Weekly Earnings”

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

“Bank”

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

“Bank Holiday”

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

“Benchmark”

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

“Benchmark Table”

means, in relation to:

- (a) any Cancellations Benchmark, the Cancellations Benchmark Table; and
- (b) any TOC Minute Delay Benchmark, the TOC Minute Delay Benchmark Table;

"Bid Profit Stream"

means the estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to paragraph 2.3 of Schedule 10.3 (Events of Default and Termination Sum) is to occur until the Expiry Date as shown in the profit and loss forecast in the Initial Business Plan (without taking into account any Annual Business Plan) calculated in real terms as at the date of the Change of Control and applying the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines" (such rate being 3.5 per cent. per annum (in real terms) as at the date of the Franchise Agreement);

"Bond Provider"

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

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

in each case with the Relevant Credit Rating;

"Bond Year"

means the period beginning on the Start Date and ending on the 31 March 2016 and any subsequent period of 13 Reporting Periods beginning on the day after the end of the preceding Bond Year provided that:

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

"Brand Licence"

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

“Breach Performance Level”	means, in relation to a Benchmark for any Reporting Period, the number set out in column 2 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;
“British Transport Police”	means the British Transport Police created pursuant to Section 18 of the Railways and Transport Safety Act 2003 (or any successor or successors to its statutory policing functions);
“Business Action Plan”	means an action plan produced by the Franchisee in relation to the delivery of any aspect of the Franchise Services (including in respect of any outcome anticipated by its Business Plan, in accordance with paragraph 2.7 of Schedule 13 (Information and Industry Initiatives));
“Business Continuity Plan” and “BCP”	a business continuity and disaster recovery plan (including a Force Majeure Events recovery plan) required to be produced, maintained and implemented by the Franchisee in accordance with paragraph 3.3 of Schedule 10.4 (Force Majeure);
“Business Plan”	means the Initial Business Plan or any Annual Business Plan, as the context requires, to be delivered in accordance with paragraphs 2.1 and 2.3 of Schedule 13 (Information and Industry Initiatives);
“Cancellation”	means a Passenger Service: <ul style="list-style-type: none"> (a) which is included in the Enforcement Plan of the Day and which is cancelled and attributed to the Franchisee pursuant to its Track Access Agreement; or (b) which is included in the Enforcement Plan of the Day and which operates less than 50 per cent. of its scheduled mileage (as prescribed in the Enforcement Plan of the Day) for reasons attributed to the Franchisee pursuant to its Track Access Agreement;
“Cancellations Benchmark”	means any of the performance levels in respect of Cancellations and Partial Cancellations set out in the Cancellations Benchmark Table;
“Cancellations Benchmark Table”	means the table set out in Part 1 (Cancellations Benchmark Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations

Benchmarks) of Schedule 7.1 (Performance Benchmarks);

"Cancellations Performance Sum" means an amount determined in accordance with paragraph 3.2 of Schedule 7.1 (Performance Benchmarks);

"Capacity Mitigation Plan" has the meaning given to it in paragraph 8.1(a) of Schedule 1.1 (Service Development);

"Capital Expenditure" has the meaning given to it in paragraph 2.4 of Schedule 9.5 (Variations and Incentivising Beneficial Changes);

"Carrier Sub Division"²² means any of the following three sets of passenger services, as categorised in the ticketing system known as LENNON as at the date of the DR Deed:

(i) **High Speed Services (HSS);**

(ii) **London Thames Valley Services (LTV); and**

(iii) **West Services (West).**

"Cascaded Rolling Stock" has the meaning given to it in paragraph 2.5 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

"CaSL" means the measure of the proportion of trains (expressed as a percentage of Passenger Services which are scheduled to be provided under the Plan of the Day) which are cancelled, or arrive significantly late at their final scheduled destination measured on the basis that for this purpose, "significantly late" means arriving thirty minutes or more after the scheduled public arrival time at destination, as produced and/or published by Network Rail or the Office of Rail Regulation;

"CaSL Figures" means the moving annual average percentage published by Network Rail in respect of CaSL;

"CCIF Amount" means the sum of £750,000 (indexed by the Retail Prices Index in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments)) per Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than 365 days) as adjusted in accordance with paragraph 3.10 of Schedule 7.2

²² 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

(National Rail Passenger Surveys and Customer and Communities Improvement Fund);

"CCIF Period"

means the period beginning on 1 April 2016 and ending on the Expiry Date;

"CCIF Programme"²³

Means a document accumulating and describing the Franchisee's Approved CCIF Schemes for each CCIF period (as amended from time to time as permitted by paragraph 3.7A of Schedule 7.2 (National Rail Passenger Surveys and Customer Communities Improvement Fund));

"CCIF Scheme"

has the meaning given in paragraph 3.3 of Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Improvement Fund);

"CCIF Scheme Cost"

means, in respect of any CCIF Scheme, the total cost to the Franchisee of developing and implementing that CCIF Scheme;

"CCIF Scheme Margin"

means 5% of the applicable CCIF Scheme Costs;

"CCIF Scheme Revenue"

means, in respect of any CCIF Scheme, the revenue earned by the Franchisee from that CCIF Scheme;

"CCIF Scheme Shortfall"

means, in relation to a CCIF Scheme, the amount (if any) by which the CCIF Scheme Revenue is less than the aggregate of the CCIF Scheme Costs and the CCIF Scheme Margin;

"CCIF Underspend"

has the meaning given in paragraph 3.8 of Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Improvement Fund);

"Central Government Body"

has the meaning given to it in paragraph 2.3 of Schedule 17 (Confidentiality and Freedom of Information);

"Change"

means if and whenever any of the following occurs:

- (a) an event set out in any Secretary of State Risk Assumption specified in Schedule 9.3 (Secretary of State Risk Assumptions);
- (b) **Not used;**

²³ **Date of contract insertion 25/01/2017 – Agreed by the Secretary of State and Franchisee.**

- (c) a Charge Variation;
- (d) a Change of Law (excluding any Change of Law to the extent that it results in an adjustment to the Franchise Payments pursuant to Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments));
- (e) a change to the Service Level Commitment previously in force pursuant to the issue of an amended or new Service Level Commitment in accordance with paragraph 9.6 of Schedule 1.1 (Service Development);
- (f) the Franchisee is required to take any action pursuant to paragraph 12.1(a) and/or paragraph 12.1(b) of Schedule 1.1 (Service Development);
- (g) the issue of any SLC (TDR) Amendments pursuant to paragraph 5.9 of Schedule 1.1 (Service Development) or any SLC (TDR) Amendments ceasing to have effect in accordance with paragraph 5.12 of Schedule 1.1;
- (h) the Secretary of State effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of Section 28 of the Act;
- (i) the Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph (a) of the definition of Inter-Operator Scheme to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment;
- (j) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (Persons with Disabilities and Disability Discrimination), of any increased

- access charges in respect of EA Requirements at Franchisee Access Stations;
- (k) the Secretary of State exercises his power pursuant to paragraph 5 of Schedule 5.7 (Changes to Fares and Fares Regulation) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (Fares);
- (l) the Franchisee is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Passenger Services;
- (m) the Secretary of State exercises his rights pursuant to paragraph 2.5(b) of Schedule 2.2 (Security of Access, Rolling Stock, Leases, Station and Depot Leases);
- (n) a Variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 9.5 (Variations and Incentivising Beneficial Changes);
- (o) the exercise by the Secretary of State of his rights pursuant to paragraph 18.2 of Schedule 13 (Information and Industry Initiatives);
- (p) any of the circumstances set out in paragraphs 2.10, 2.13(c)(i), 2.13(d), 2.13B, 3.3, 4.1 and 4.3 (as the case may be) of Schedule 6.3 (The IEP Provisions);
- (q) the issuance of, amendment to or expiry of an SLC (TDR - 387) Amendment pursuant to paragraph 5.17(a) or (b) of Schedule 1.1 (Service Development);
- (r) any of the circumstances set out in paragraphs 2.1, 2.3, 3.9 or 3.10 (as the case may be) of Schedule 9.4 (Specified

Infrastructure and Rolling Stock Change);

- (s) ²⁴**the circumstances set out in paragraph 18.3, 18.5 and 18.8(e) (West of England Rolling Stock) of Schedule 6.2 (Great Western Franchise Specific Provisions);**
- (t) [Deleted²⁵];
- (u) the circumstances set out in paragraph 2.4 of Schedule 5.9 (ITSO Certified Smartmedia); or
- (v) any two or more of the foregoing that the Secretary of State groups together in accordance with any procedures issued by him pursuant to paragraph 1.4 of Schedule 9.5 (Variations and Incentivising Beneficial Changes);
- (w) ²⁶**the following amendments to the Train Fleet:**
 - (i) **the removal of the Relevant Class 387 Units for the purposes of reconfiguration for use in airport services prior to the commencement of the HEx Outsourced Services; and**
 - (ii) **the introduction of 19 Class 769 units to replace the Relevant Class 387 Units and become part of the Train Fleet;**
- (x) ²⁷**the Secretary of State exercises his right pursuant to paragraph 1.1 of Schedule 9.6;**
- (y) ²⁸**allocated depot charges and overheads are recovered by the Franchisee as part of the charges under the HEx Services Agreement as the**

²⁴ Date of contract change 27/07/2015 – Agreed by the Secretary of State and Franchisee.

²⁵ 19 December 2017 – (Date of DOA) Contract deletion agreed by the Secretary of State and Franchisee.

²⁶ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁷ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁸ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Relevant Class 387 Units enter into use in airport services (and for these purposes the Revised Input in respect of this Change shall correspond to the amount of those depot charges and overheads included in the HEx Services Agreement service payments as identified in the financial model relating to the HEx Services Agreement),

²⁹and, for the avoidance of doubt:

a "Change" arising under the HEx Services Agreement shall not, unless expressly provided for by this Franchise Agreement, be considered a Change under this Franchise Agreement;

"Change of Control"

has the meaning given to it in paragraph 2.3 of Schedule 10.3 (Events of Default and Termination Events);

"Change of Law"

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

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

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

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

²⁹ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (A) in a draft parliamentary bill as part of a government departmental consultation paper;
- (B) in a parliamentary bill;
- (C) in a draft statutory instrument; or
- (D) as a proposal in the Official Journal of the European Communities except to the extent that such proposal is intended to apply solely within member states other than the United Kingdom,

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

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

"Charge Variation"

means a variation:

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

"Charging Review"

means:

- (a) the exercise by the ORR of its powers under:
 - (i) Part 7 of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Start Date or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that term;
 - (ii) Condition F11.5 of the Station Access Conditions in relation to any station which is not an Independent Station; or
 - (iii) Condition 42.5 of the Independent Station Access Conditions in relation to any station which is an Independent Station;
- (b) the following by the ORR of the procedure in Schedule 4A of the Act;
- (c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in the Secretary of State's reasonable opinion:
 - (i) has an equivalent effect to; or
 - (ii) is intended to fulfil the same function as,

any of the powers referred to in paragraphs (a) or (b) in relation to any Relevant Agreement. For this purpose, Relevant Agreement includes any Relevant Agreement which is not the subject of any previous Charging Review; or
- (d) any amendment to a Relevant Agreement, or entry into a new Relevant Agreement which is approved by the ORR to the extent that it relates to an Incremental Output Statement

Charge or a scheme to which that charge relates;

“Charter Service”

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

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

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

“Child Price”

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

“CI Expenditure Assumptions”

has the meaning given to it in paragraph 45.1 of Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions”);

“CI Report”

has the meaning given to it in paragraph 45.2 of part 1 (List of Committed Obligations) to

	Schedule 6.1 (Committed Obligations and Related Provisions);
"CI Report Date"	means the date falling 5 Weekdays prior to each Franchise Performance Meeting;
"CI Underspend"	has the meaning given to it in paragraph 45.2 of part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);
"Claims Paid Statement"³⁰	has the meaning given to it in paragraph 7.3(b) of Schedule 8.1 (Franchise Payments);
"Class 387 Additional Units"	means the eight (8) Class 387 Electric Multiple Units to be leased by the Franchisee in consequence of it entering into the lease for those units with Porterbrook Leasing Company Limited of even date with this Franchise Agreement;
"Class 387 Cascade Fleet"	means the twenty nine (29) Class 387 Electric Multiple Units to be leased by the Franchisee in consequence of it entering into the Class 387 Lease referred to in paragraph 16 of Schedule 6.2 (Great Western Franchise Specific Provisions);
"Class 387 Deed of Amendment and Novation"	means the agreement dated 17 November 2014, entered into between Porterbrook Leasing Company Limited, Southern Railway Limited and Govia Thameslink Railway Limited and entitled "Deed of Amendment and Novation in respect of the leasing of twenty nine (29) Class 387 Electric Multiple Units";
"Class 387 ETCS Route"	means the route between London Paddington and Didcot Parkway;
"Class 387 Entire Fleet"	means the Class 387 Cascade Fleet and the Class 387 Additional Units;
"Class 387 TSGN Lease"	means the lease dated 17 November 2014, entered into between Porterbrook Leasing Company Limited and Southern Railway Limited and entitled "Lease Agreement in respect of 116 Class 387 Bombardier Electrostar Vehicles" (as such lease is to be novated to Govia Thameslink Railway Limited in accordance with the terms of the Class 387 Deed of Amendment and Novation);

³⁰ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"Class 387 Maintenance Reserve Agreement"

means the maintenance reserve agreement dated 17 November 2014, entered into between Porterbrook Leasing Company Limited and Southern Railway Limited and entitled "Maintenance Reserve Agreement in respect of Twenty Nine (29) Four (4) Car Class 387 Multiple Units" (as such maintenance reserve agreement is to be novated to Govia Thameslink Railway Limited in accordance with the terms of the Class 387 Deed of Amendment and Novation);

"Class 387 MSA"

means the manufacture and supply agreement for the Class 387 Units between Bombardier Transportation UK Ltd, Southern Railway Limited as "Operator" and Southern Railway Limited as "Initial Financier" dated 30 July 2013 (as novated pursuant to the Financier Novation Agreement (as defined under the Class 387 Deed of Amendment and Novation) and as to be further novated as contemplated in the Class 387 Deed of Amendment and Novation such that the rights and liabilities of Southern Railway Limited under such manufacturer and supply agreement is novated to Govia Thameslink Railway Limited);

"Class 387 Units"

means Class 387 Units within the Class 387 Cascade Fleet, unless expressly stated to refer to Class 387 Units within the Class 387 Entire Fleet, in which case it shall refer to Class 387 Units within both the Class 387 Cascade Fleet and the Class 387 Additional Units;

"Closed Scheme Employees"

has the meaning given to it in paragraph 2.2 of Schedule 16 (Pensions);

"Closure"

means a discontinuance or closure under Part 4 of the Railways Act 2005 of any of the Passenger Services or of any network on which the Passenger Services may be operated or of any of the Stations or of any part of such network or Station;

"Code of Practice"

means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time and published by the Secretary of State pursuant to Section 71B of the Act;

"Collateral Agreement"

means an agreement which is required to be entered into by the Franchisee with Network Rail or any other franchisee as a condition to any Access Agreement of which the Franchisee is the beneficiary;

“Commercial Return”	a CCIF Scheme will have a Commercial Return where the CCIF Scheme Revenue equals or exceeds the aggregate of the CCIF Scheme Costs and the CCIF Scheme Margin;
“Committed Obligations”	means any of the Franchisee’s obligations listed in Part 1 (Committed Obligations and Related Provisions) to Schedule 6.1 (Committed Obligations and Related Provisions);
“Committed Investments”	means each of the investment obligations on the Franchisee contemplated by paragraphs 40, 41, 42, 43 and 44 of part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions) and references to “Committed Investment” shall be construed accordingly;
“Community Rail Partnership”	means any not-for-profit organisation of the same name that has an interest in the development of responsive and good quality railway passenger services;
“Community Rail Route”	means any Route in respect of which the Secretary of State determines that any relevant Community Rail Partnership has an interest;
“Commuter Fare”	means any: <ul style="list-style-type: none"> (a) Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket (and their equivalent ITSO products) between each London Station and any other such station or other station; (b) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) between each London Station; and (c) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) from each Suburban Station to each London Station (but not in the other direction); (d) PAYG Peak Fare or PAYG Off-Peak Fare (and their equivalent ITSO products) between each London Station and any other such station (and if and when CPAY is

introduced the CPAY equivalent Peak and Off-Peak fares); and

- (e) any Flexi Season Ticket that may be offered for unlimited travel between each London Station and any other such station or other station but which has restrictions on the permitted times of use or the volume of travel allowed. These restrictions may include permitting travel only on fewer than five days a week or outside Peak hours,

for which the Franchisee is entitled to be allocated all or part of the revenue therefrom pursuant to the Ticketing and Settlement Agreement;

“Commuter Fares Basket”

means the grouping of Commuter Fares:

- (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (b) for the purposes of regulating aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values);
- (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); and
- (d) set out in the Commuter Fares Document;

“Commuter Fares Document”

means the document in the agreed terms marked **CFD** as the same may be amended from time to time in accordance with clause 9.3 or Schedule 5.7 (Changes to Fares and Fares Regulation);

“Compulsory Inter-available Flow”

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

“Computer System”

means computer hardware and computer software, including licensed third party software and data protocols;

"Confidential Information"	has the meaning given to it in paragraph 1 of Schedule 17 (Confidentiality and Freedom of Information);
"Connection"	means a connection (however described) between any of the Passenger Services provided by the Franchisee and any other railway passenger service provided by it or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;
"consent"	has, for the purposes of paragraph 6 of Part 2 to Schedule 6.1 (Miscellaneous Provisions) only, the meaning given to it in paragraph 6.1 of Part 2 to Schedule 6.1 (Miscellaneous Provisions);
"Contingency Plan"	has the meaning given to it in paragraph 1(a)(iv) of Schedule 10.4 (Force Majeure);
"Continuity Side Letter"	means the letter from the Franchisee to the Secretary of State dated as of the date of this Franchise Agreement with title "RE: Continuity of Business as Usual";
"Contract Manager"	means a person appointed from time to time by the Franchisee to fulfil certain duties including to manage the Franchise Agreement on behalf of the Franchisee and to facilitate the performance by the Franchisee of its obligations under the Franchise Agreement;
"Control"	means, in respect of a person, that another person (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise): <ul style="list-style-type: none"> (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which Controls that person; (b) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person; (c) is the parent undertaking of that person or of any other person which Controls that person; or (d) possesses or is, or will be at a future date, entitled to acquire:

- (i) 30 per cent. or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;
- (ii) such part of the issued share capital of that person or any other person which controls that person as would, if the whole of the income of such person were distributed, entitle him to receive 30 per cent. or more of the amount so distributed; or
- (iii) such rights as would, in the event of the winding-up of that person or any other person which controls that person or in any other circumstances, entitle him to receive 30 per cent. or more of the assets of such person which would then be available for distribution,

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

"Control Period 5"

means the regulatory control period of Network Rail commencing on 1 April 2014 and expiring on 31 March 2019;

"Control Period 6"

means the regulatory control period of Network Rail commencing on 1 April 2019 and expiring on 31 March 2024;

"CPAY"

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

"Creating"

has the meaning given to it in the Ticketing and Settlement Agreement and cognate expressions shall be construed accordingly;

"CRM Data"

means Personal Data (including any or all of name, address, e-mail address and ticket purchasing history, credit and debit card details) collected by or on behalf of the Franchisee relating to persons travelling on or purchasing tickets for travel on the Passenger Services or

other services for the carriage of passengers by railway;

“CRM Data Processor”

means any Data Processor who, from time to time, is processing or has processed CRM Data on behalf of the Franchisee;

“CRM Obligations”

has the meaning given to it in paragraph 3.4 of Schedule 1.5 (Information about Passengers);

“CRM System”

means any system (whether a Computer System or otherwise) for the collection of CRM Data and/or onto which CRM Data is input, processed and/or held as such system may be amended or altered from time to time;

“Crossrail Business Transfer Agreement”

means a business transfer agreement between the Franchisee and the Crossrail Operator entered into pursuant to paragraph 3.5 of Schedule 6.2 (Great Western Franchise Specific Provisions) being substantially in the form set out at Appendix 1 to Schedule 6.2;

“Crossrail Operator”

means any person who is appointed to provide railway passenger services on the railway transport system to be constructed and maintained as specified in the Crossrail Act 2008 and to provide Crossrail Services to Reading;

“Crossrail Programme”

means the programme of planning, preparatory, construction, tunnelling, station building, rebuilding and enhancement and engineering activities and works and the procurement of rolling stock and other assets and equipment being undertaken for the purposes of building the east west cross London railway system specified in the Crossrail Act 2008 and the provision of Crossrail Services to Reading;

“Crossrail Services”

means the passenger services to be operated by the Crossrail Operator;

“Crossrail Stations”

means the following stations which are intended to transfer to the Crossrail Operator:

- (a) Acton Main Line;
- (b) Burnham;
- (c) Ealing Broadway;
- (d) Hanwell;
- (e) Hayes and Harlington;
- (f) Iver;

- (g) Langley;
- (h) Southall;
- (i) Taplow;
- (j) West Drayton; and
- (k) West Ealing;

“Crossrail Transfer Arrangements”

means the Crossrail Business Transfer Agreement and other agreements and documents ancillary thereto or reasonably required for the purpose of transferring the Crossrail Stations to the Crossrail Operator;

“Current Franchisee Year”

has the meaning given to it in paragraph 3.4(a) of Schedule 8.1 (Franchise Payments);

“Customer and Stakeholder Engagement Strategy”

means the Customer and Stakeholder Engagement Strategy in the agreed terms marked **CSES** and any replacement Customer and Stakeholder Engagement Strategy revised in accordance with paragraph 3.11 of Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Improvement Fund);

“Customer Report”

means a report in the format and providing the information specified in the Customer and Stakeholder Engagement Strategy and published in accordance with paragraph 3.2 of Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Improvement Fund);

“Data Controller”

has the same meaning as in the Data Protection Act;

“Data Processor”

has the same meaning as in the Data Protection Act;

“Data Protection Act”

means the Data Protection Act 1998 and any guidance issued from time to time by the Information Commissioner's Office;

“Dataset”

means Appendix 1 (Environmental Impact Monitoring Dataset) to Schedule 13 (Information and Industry Initiatives) as the same may be amended from time to time by the Secretary of State (acting reasonably);

“Data Site Information”

has the meaning given to it in paragraph 2.2(e) of Schedule 15.1 (Reletting Provisions);

“Data Subject”	has the same meaning as in the Data Protection Act;
“Default Performance Level”	means, in relation to a Benchmark for any Reporting Period, the numbers set out in column 3 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;
“Delayed Cascade Mitigation Plan”	has the meaning given to it in paragraph 2.7(c) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
“Delay Repay Compensation”³¹	means compensation payable to an Eligible Passenger by the Franchisee (subject to the validation and authentication of any such delay repay compensation claim by the Franchisee using the measures applicable from time to time including pursuant to paragraph 4.9 of Schedule 1.4 (Passenger Facing Obligations)) in circumstances where the Eligible Passenger’s journey in respect of which such Eligible Passenger holds a valid ticket is delayed by 15 minutes or more;
“Departure Station”	has the meaning given to it in paragraph 2(b) of Appendix 2 (Alternative Transport) to Schedule 4 (Persons with Disabilities and Disability Discrimination);
“Depot”	means a depot in respect of which the Franchisee has entered into a Depot Lease;
“Depot Lease”	means: <ul style="list-style-type: none"> (a) any lease of a depot to which the Franchisee is a party as at the Start Date; or (b) any other lease of a depot in relation to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;
“Designated Employer”	has the meaning given to it in the Pension Trust;
“Destination Station”	has the meaning given to it in paragraph 2(b) of Appendix 2 (Alternative Transport) to Schedule 4 (Persons with Disabilities and Disability Discrimination);

³¹ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

“Different Maintenance Activity”	has the meaning given to it in paragraph 7.13 of Schedule 6.1;
“Direct Agreement”	means any agreement made, or to be made, from time to time between the Secretary of State and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Secretary of State under Schedule 14.3 (Key Contracts);
“Disabled People’s Protection Policy”	means the Franchisee’s policy for the protection of persons with disabilities which the Franchisee is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations;
“Disabled Person”	is a reference to a person who has a disability as defined in the EA;
“Disaster”	means, other than those specified in paragraphs 1(a) or 1(b) of Schedule 10.4 (Force Majeure), any unplanned interruption or event which significantly prevents or impairs the ability of the Franchisee to provide the Franchise Services (in whole or in part) or the ability of the Franchisee to operate systems or equipment relevant to the provision of the Franchise Services (in whole or in part);
“Discount Card”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Discount Fare Scheme”	means: <ul style="list-style-type: none"> (a) each of the following discount fare schemes: <ul style="list-style-type: none"> (i) ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants therein; (i) ATOC Young Persons Railcard Scheme dated 23 July 1995 between the participants therein; and (ii) ATOC Senior Railcard Scheme dated 23 July 1995 between the participants therein; or (b) any other discount fare scheme approved from time to time by the Secretary of State for the purposes of Section 28 of the Act,

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

“Disputed Cancellation”

means a Passenger Service:

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

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

“Disputed Partial Cancellation”

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

- (a) misses a stop; or
- (b) completes 50 per cent. or more, but less than 100 per cent. of its scheduled journey as prescribed in the Enforcement Plan of the Day; or
- (c) arrives at its final destination scheduled in the Enforcement Plan of the Day more than 120 minutes late,

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

“Dispute Resolution Agreement”

means either:

- (a) the dispute resolution agreement to be entered into in accordance with paragraph 2.6(b)(i) of Schedule 6.3 (The IEP Provisions) by the TSP and the Franchisee; or
- (b) the dispute resolution agreement between the Franchisee and the TSP dated 31 January 2014 to be amended pursuant to the

provisions of paragraph 2.6(b)(ii) of Schedule 6.3 (The IEP Provisions);

"Dispute Resolution Rules"	means the procedures for the resolution of disputes known as "The Railway Industry Dispute Resolution Rules", as amended from time to time in accordance with the terms thereof;
"Disputes Secretary"	means the person appointed as Disputes Secretary from time to time in accordance with the Dispute Resolution Rules;
"Do Minimum Compensation Amount"³²	means the amount of compensation that would have been payable by the Franchisee to Eligible Passengers for delays and cancellations to their journey had Delay Repay Compensation not been introduced on the Franchise, such Do Minimum Compensation Amount to be calculated as set out in paragraph 2(c) of Appendix 4 of Schedule 8.1 (Franchise Payments);
"Do Minimum Cost"³³	means the operational costs that would have been incurred by the Franchisee in each Reporting Period falling within a DR Quarter for the processing of Eligible Passenger compensation claims for cancellations and delays to journeys had Delay Repay Compensation not been introduced on the Franchise, such Do Minimum Cost to be calculated as set out in paragraph 2(b) of Appendix 4 of Schedule 8.1 (Franchise Payments);
"DOTAS"	has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Obligations and Covenants);
"DR Claims Reimbursement"³⁴	means, in relation to a Reporting Period, the forecast DR Compensation to be paid by the Franchisee to Eligible Passengers in that Reporting Period as calculated pursuant to paragraph 7.3(a) of Schedule 8.1 (Franchise Payments);
"DR Claims Reimbursement Balancing Payment"³⁵	means the amounts payable by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee (as the case may be) as determined in accordance

³² 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³³ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁴ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁵ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

with paragraph 7.3 of Schedule 8.1 (Franchise Payments);

“DR Compensation Amount”³⁶

means the amounts payable as Delay Repay Compensation as set out in paragraph 4.8 of Schedule 1.4 (Passenger Facing Obligations));

“DR Deed”³⁷

means the deed of amendment to the Franchise Agreement dated 7 March 2019, entered into by the Secretary of State and the Franchisee and relation to the introduction and implementation of Delay Repay Compensation;

“DR Effective Date”³⁸

means the date upon which Eligible Passengers become entitled to claim Delay Repay Compensation being 1 April 2019;

“DR Eligible Fares”³⁹

means all Fares that are valid for travel on the Passenger Services other than Passenger’s Charter Discount Season Tickets so that DR Eligible Fares include Primary Product Types PG01-9 but exclude both Secondary Product Types SG18-21 and SG23-26;

“DR Operating Costs Balancing Payment”⁴⁰

means the amounts payable by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee (as the case may be) as determined in accordance with paragraph 7.2 of Schedule 8.1 (Franchise Payments);

“DR Operational Costs”⁴¹

means, in relation to any Reporting Period, the operational costs to be incurred in respect of the processing of Delay Repay Compensation claims;

“DR Quarter”⁴²

means each of the following:

- (a) the first to third Reporting Periods;
- (b) the fourth to sixth Reporting Periods; and

³⁶ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁷ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁸ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁹ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁰ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴¹ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴² 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

(c) the seventh to ninth Reporting Periods; and

(d) the tenth to thirteenth Reporting Periods,

in each case, in each Franchisee Year, provided that the first DR Quarter shall commence on 1 April 2019 and the last DR Quarter shall end on the last day of the Franchise Period;

"DR Quarterly Statements"⁴³ has the meaning given to it in paragraph 7.2 of Schedule 8.1 (Franchise Payments);

"Driver Proposal"⁴⁴ has the meaning given to it in paragraph 48.2 of Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);

"Driver Recruit"⁴⁵ has the meaning given to it in paragraph 47.1 of Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);

"EA" means the Equality Act 2010;

"EA Claim" has the meaning given to it in paragraph 3.1 of Schedule 4 (Persons with Disabilities and Disability Discrimination);

"EA Requirements" means the duties of a provider of services under Sections 20(3), 20(5) and Sections 20(9)(a) and 20(9)(b) in relation to 20(4) of the EA;

"Electrification Routes" means the following railway routes that are to be electrified pursuant to the Great Western Electrification Programme:

- (a) Reading to Didcot Parkway;
- (b) London Paddington to Reading;
- (c) London Paddington to Didcot Parkway;
- (d) London Paddington to Newbury via Reading;
- (e) Didcot Parkway to Oxford;
- (f) Twyford to Henley on Thames;

⁴³ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁴ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁵ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (g) Slough to Windsor;
- (h) London Paddington to Bath Spa;
- (i) London Paddington to Swindon;
- (j) London Paddington to Bristol Parkway;
- (k) Bath Spa to Bristol Temple Meads (platforms 13 and 15);
- (l) Bristol Parkway to Cardiff Central;
- (m) Cardiff Central to Swansea;
- (n) Bristol Temple Meads to Cardiff Central;
- (o) Bristol Temple Meads to Bristol Parkway;
- (p) Reading to Basingstoke; and
- (q) Bristol Temple Meads.

“Electric Rolling Stock”

means rolling stock within the Train Fleet capable of being powered from overhead line equipment and intended to be used on one or more Electrification Routes;

“Electrification Change Advance Works”⁴⁶

means the activities described in paragraph [22] of Schedule 6.2 (Great Western Franchise Specific Provisions);

“Eligible Passengers”⁴⁷

means those passengers who travel on the Passenger Services using DR Eligible Fares;

“Emergency Event”

has the meaning given to it in paragraph 1(e) of Schedule 10.4 (Force Majeure);

“EMV”

means contactless payment cards that conform to the international standards issued by EMV Co (owned by American Express, Discover, JCB, MasterCard, UnionPay and Visa) which manages, maintains and enhances the EMV 1 integrated circuit card specifications;

“Enforcement Plan of the Day”

means the Plan of the Day excluding any:

- (a) additions to such Plan of the Day of any railway passenger services

⁴⁶ **Date of contract insertion 27/04/2016 – Agreed by the Secretary of State and Franchisee.**

⁴⁷ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

which are not included in the Timetable;

- (b) omissions from such Plan of the Day of any Passenger Services included in the Timetable; and/or
- (c) rescheduling in such Plan of the Day of any Passenger Services from their scheduling in the Timetable,

in each case:

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

“Enhanced Gating Schemes” means each of the automatic wide ticket gates introduced at each of Bristol Parkway and Bristol Temple Meads Stations pursuant to paragraph 8 of Part 4 to Appendix 11 of the 2005 Franchise Agreement;

“Enhancement Fund” has the meaning given to it in paragraph 8 of Schedule 6.2 (Great Western Franchise Specific Provisions);

“Environmental Data Implementation Plan” has the meaning given in paragraph 18.1(e) of Schedule 13 (Information and Industry Initiatives);

“Environmental Information Regulations” means the Environmental Information Regulations 2004;

“Equivalent Fare” has the meaning given to it in paragraph 6.1 of Schedule 5.7 (Changes to Fares and Fares Regulation);

“Equivalent Flow” has the meaning given to it in paragraph 6.1(b) of Schedule 5.7 (Changes to Fares and Fares Regulation);

“ERTMS Enabled Network” has the meaning given to it in paragraph 10.1 (b)(iv) of Schedule 6.2 (Great Western Franchise Specific Provisions);

- “ERTMS Programme”** means the implementation of ERTMS on the routes specified in the Proposed ERTMS Implementation Plan;
- “Escrow Documents”** means those documents and other items referred to in paragraphs 1.1 and 1.2 of Schedule 9.2 (Identity of the Financial Model etc.);
- “Estimated Profit Stream”** means estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to paragraph 2.3 of Schedule 10.3 (Events of Default and Termination Events) is to occur until the Expiry Date as reasonably determined by the Secretary of State. In reasonably determining the Estimated Profit Stream the Secretary of State shall:
- (a) take into account all relevant circumstances and have due regard to the Financial Model, the profit and loss forecast in the Initial Business Plan and the most recent Annual Business Plan and the assumptions in the Record of Assumptions;
 - (b) use the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model;
 - (c) estimate profit:
 - (i) before taking into account:
 - (A) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits) and dividends and other distributions of profit;
 - (B) any taxation on profits including corporation tax;
 - (C) shares of the profit of any Affiliate of the Franchisee,

- except dividends received in cash;
- (D) non cash entries in respect of the Franchise Section and any other pension schemes to the extent connected with the Franchise, excluding accruals or prepayments of any normal pension contributions due; and
- (ii) after taking into account:
- (A) Franchise Payments;
- (B) all extraordinary and exceptional items, as defined under GAAP;
- (C) the Franchisee's normal pension contributions in relation to the Franchise Section and any other pension schemes to the extent connected with the Franchise;
- (D) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed the amount determined in accordance with the formula set out in paragraph (a)(iii) of the definition of "Relevant Profit" in paragraph 3 of Schedule 8.1

(Franchise Payments); and

(E) any sums capitalised in relation to maintenance expenditure on rolling stock or other capital equipment; and

(d) calculate amounts in real terms as at the date of the Change of Control and apply the prevailing discount rate per annum (in real terms) stated in HM Treasury’s “Green Book Appraisal Guidelines” (such rate being as at the date of the Franchise Agreement 3.5 per cent. per annum (in real terms));

“Estimated Revisions” has the meaning given to it in paragraph 9 of Schedule 9.1 (Financial and Other Consequences of Change);

“ETCS Infrastructure” means trackside infrastructure that allows suitably equipped rolling stock to operate under the control of the European Train Control System element of the European Rail Traffic Management System;

“Evening Peak” means, in relation to any Passenger Service, the period between 1600 and 1859 (inclusive) on a Weekday or such other continuous three hour period between 1200 and 2359 (inclusive) as the Secretary of State may specify from time to time;

“Events of Default” means any of the events set out in paragraph 2 of Schedule 10.3 (Events of Default and Termination Events);

“Excluded Data” has the meaning given in paragraph 18.1(a) of Schedule 13 (Information and Industry Initiatives);

[Deleted⁴⁸]

“Exeter Depot Funded Works”⁴⁹ means the works to be undertaken and other equipment to be installed described in Appendix 10 to Schedule 6.2 (Great

⁴⁸ 19 December 2017 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

⁴⁹ 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**Western Franchise Specific Provisions)
Exeter Depot Funded Works;**

“Exeter Depot Funded Works Anticipated Costs”⁵⁰ means the anticipated cost of the Exeter Depot Funded Works as at the date the Franchise Agreement is amended to include this provision of [REDACTED⁵¹] before taking into account any amount in respect of contingency and as such sum may be revised in accordance with paragraph 27.3 of Schedule 6.2 (Great Western Franchise Specific Provisions) and on the basis that the figure does not include [REDACTED⁵²] of costs which are to be met by Relevant Funding;

“Exeter Depot Funded Works Cap”⁵³ means the aggregate of the Exeter Depot Funded Works Anticipated Costs plus the Exeter Depot Funded Works Contingency Cap, being [REDACTED⁵⁴] as such sum may be revised in accordance with paragraph 27.3 of Schedule 6.2 (Great Western Franchise Specific Provisions);

“Exeter Depot Funded Works Contingency Cap”⁵⁵ means the amount in respect of contingency provision forecast to be required in relation to the Project as at the date the Franchise Agreement is amended to include this provision being [REDACTED⁵⁶] as such sum may be revised in accordance with paragraph 27.3 of Schedule 6.2 (Great Western Franchise Specific Provisions);

⁵⁰ 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵¹ 23 August 2018 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵² 23 August 2018 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵³ 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁴ 23 August 2018 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁵ 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁶ 23 August 2018 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**"Exeter Depot Funded Works means:
Costs"⁵⁷**

- (a) **the reasonable costs and disbursements incurred by the Franchisee directly in its delivery of the Exeter Depot Funded Works, such costs to be calculated on a time and materials basis; and**
- (b) **any reasonable third party costs and disbursements incurred directly by the Franchisee in carrying out the Exeter Depot Funded Works, as evidenced by the invoices or other evidence provided by the Franchisee to the Secretary of State pursuant to paragraph 27.5 of Schedule 6.2 (Great Western Franchise Specific Provisions),**

**disregarding costs to the extent met
by Relevant Funding;**

"Exeter Depot Funded Works Franchisee Cap"⁵⁸ means the aggregate of the Exeter Depot Funded Works Anticipated Costs plus the Exeter Depot Funded Works Franchisee Contingency as such sums may be increased in accordance with paragraph 27.3 of Schedule 6.2 (Great Western Franchise Specific Provisions);

"Exeter Depot Funded Works Franchisee Contingency"⁵⁹ means such part of the Exeter Depot Funded Works Contingency Cap as is released to the Franchisee and available for use in connection with the Exeter Depot Funded Works, as at the date the Franchise Agreement is amended to include this provision being [REDACTED⁶⁰] as such sum may be increased in accordance with

⁵⁷ 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁸ 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁹ 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁰ **23 August 2018 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

paragraph 27.3 of Schedule 6.2 (Great Western Franchise Specific Provisions);

“Exeter Depot Funded Works Initial Payment”⁶¹ means a payment of [REDACTED⁶²] in accordance with paragraph 27.4 of Schedule 6.2 (Great Western Franchise Specific Provisions);

“Exeter Depot Funded Works SoS Controlled Contingency”⁶³ means the amount of the Exeter Depot Funded Works Contingency Cap as it may be revised in accordance with paragraph 27.3 of Schedule 6.2 (Great Western Franchise Specific Provisions) less the Exeter Depot Funded Works Franchisee Contingency from time to time, being the part of the larger contingency amount from time to time released to the Franchisee and used or available for use by the Franchisee, with the value of the Exeter Depot Funded Works SoS Controlled Contingency as at the date the Franchise Agreement is amended to include this provision being [REDACTED⁶⁴]

“Exeter Depot Funded Works Work Plan”⁶⁵ means the work plan and timetable set out in Appendix 11 (Exeter Depot Funded Works Work Plan) to Schedule 6.2 (Great Western Franchise Specific Provisions);

[Deleted⁶⁶]

“Exeter Depot Capacity Requirement” has the meaning given to it in paragraph 19.1(a) of Schedule 6.2 (Great Western Franchise Specific Provisions);

“Exeter Depot Proposal” has the meaning given to it in in paragraph 19.2 of Schedule 6.2 (Great Western Franchise Specific Provisions);

“Existing Expenditure” has the meaning given to it in paragraph 2.8(c)(i) of Schedule 7.2 (National Rail

⁶¹ 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶² **23 August 2018 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁶³ 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁴ **23 August 2018 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁶⁵ 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁶ 19 December 2017 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

Passenger Surveys and Customer and Communities Improvement Fund);

“Expected HM Cost Saving Amount”

has the meaning given to it in paragraph 7.13 of part 1 to Schedule 6.1;

“Expiry Date”

means the later of:

- (a) 01.59 on 1 April 2019; or
- (b) any other time and date to which the Franchise Agreement is continued in accordance with paragraph 2 of Schedule 18 (Additional Reporting Periods);

“Facilitation Fee”

has the meaning given to it in paragraph 4.2 of Schedule 10.3 (Events of Default and Termination Events);

“Facility Owner”

has the meaning given to the term facility owner in Section 17(6) of the Act;

“Fare”

means:

- (a) the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person; and
- (b) for the purposes only of Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information and Monitoring) (inclusive) and the definitions of Commuter Fare, Protected Fare, Return Fare, Single Fare, Protected Weekly Season Ticket, Protected Return Fare and paragraph (b) of the definition of Season Ticket Fare, a Fare as defined under paragraph (a) that is:
 - (i) valid for a journey or journeys on the Passenger Services included in the Timetable or

other railway passenger services which are required to be included in another relevant Train Operator's passenger timetable by the Secretary of State;

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

(c)⁶⁷ **excluding any Fare as defined under paragraph (a) that is sold in respect of the HEx Services;**

"Fare Year"	means the period from 1 January in any year to 31 December in the same year;
"Fares Basket"	means either the Commuter Fares Basket or the Protected Fares Basket;
"Fares Document"	means any of the Commuter Fares Document and the Protected Fares Document;
"Fares Setting Round"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Financial Action Plan"	means any action plan produced by the Franchisee pursuant to paragraph 3.3(f) of Schedule 13 (Information and Industry Initiatives), where the level of its financial performance specified in the Management Accounts is worse than forecast by the Franchisee in its current Business Plan;
"Financial Conduct Authority"	means the UK Financial Conduct Authority with company registered number 01920623 or such other regulatory body which may succeed or replace it from time to time;
"Financial Model"	means the Franchisee's financial model in the agreed terms marked FM deposited with the Secretary of State on the date of the Franchise Agreement in accordance with Schedule 9.2 (Identity of the Financial Model etc.), as may be subsequently revised in accordance with

⁶⁷ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

	Schedule 9.2 (Identity of the Financial Model etc.);
"First Expenditure Franchisee Year"	has the meaning given to it in paragraph 2.8(c)(i) of Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Improvement Fund);
"First in Class Unit"	has the meaning given to it in paragraph 10.1(a)(i) of Schedule 6.2 (Great Western Franchise Specific Provisions);
"First Profit Share Threshold"	has the meaning given to it in paragraph 3 of Schedule 8.1 (Franchise Payments);
"Fitment"	has the meaning given to it in paragraph 3.1(a) of Schedule 9.3 (Secretary of State Risk Assumptions);
"Fitment Costs"	means the following costs incurred by the Franchisee: <ul style="list-style-type: none"> (a) the cost of the Fitment; (b) any costs associated with any requirement under any Rolling Stock Lease to obtain approval from a relevant rolling stock lessor to carry out the Fitment; (c) the reasonable costs properly incurred by the Franchisee in respect of staff training in relation to the Fitment; and/or (d) the reasonable cost of leasing additional rolling stock during the Fitment in order to comply with the Train Service Requirement or Service Level Commitment (as the case may be) in circumstances where the Franchisee would otherwise be unable to comply with the Train Service Requirement or Service Level Commitment (as the case may be) solely as a result of the Fitment;
"Fixed Cost"⁶⁸	means an amount in respect of fixed costs to be incurred by the Franchisee in each Reporting Period from and including the DR Effective Date for the processing of Delay

⁶⁸ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Repay Compensation claims, with those fixed costs being those which:

(a) do not vary by the number of claims processed in that Reporting Period;

(b) include the costs to be incurred by the Franchisee in complying with its obligations under paragraphs 4.9, 4.10 and 4.13 to 4.16 of Schedule 1.4 (Passenger Facing Obligations); and

(c) comprise of the following cost categories:

(i) Manager: Responsible for the day to day management of the DR processing centre;

(ii) Process supervisors: Responsible for the ensuring that process agent teams successfully and accurately process all Delay Repay Compensation claims received;

(iii) Fraud supervisor: Responsible for implementation of fraud detection routines, collating evidence, supporting prosecutions in line with contractual requirements. Also supervising a team of agents;

(iv) IT, Quality and MI: Ensuring availability of systems and ensuring review and reporting obligations within the Deed are met;

(v) Property: Temporary or long term accommodation for the DR Processing Team;

(vi) Audit: Delivery of assurance obligations as defined in the Deed,

with the amounts of the Fixed Costs as at the date of the DR Deed being as specified in respect of each such Reporting Period in paragraph 5 of Appendix 4 of Schedule 8.1 (Franchise Payment) as adjusted in accordance with paragraph 7.2(h) of Schedule 8.1 (Franchise Payments);

“Flow”

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

“Force Majeure Event”

means any of the events described as such in paragraph 1 of Schedule 10.4 (Force Majeure)

where the conditions specified in paragraph 2 of Schedule 10.4 (Force Majeure) are satisfied;

“Forecast Modified Revenue” means, in relation to any Reporting Period, the items specified in the definition of Modified Revenue, as most recently forecast for that Reporting Period pursuant to paragraph 3.4 of Schedule 13 (Information and Industry Initiatives);

“Forecast Operating Costs” means, in relation to any Reporting Period, the items specified in the definition of Actual Operating Costs, as most recently forecast for that Reporting Period pursuant to paragraph 3.4 of Schedule 13 (Information and Industry Initiatives) adjusted for any movement in creditors arising from any amounts that the Franchisee is at the date of the calculation of Forecast Operating Costs permitted to deem as being borrowed pursuant to clause 13.2.2 of the Funding Deed;

“Forecast Passenger Demand” means the forecast prepared by the Franchisee pursuant to paragraph 5.2 of Schedule 1.1 (Service Development) and paragraph 1.4 of Schedule 1.5 (Information about Passengers) in respect of:

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

for the period in respect of which the next Timetable is to apply;

“Franchise” means the rights proposed by the Secretary of State in the Request for Proposal to operate railway passenger services over the routes prescribed in paragraph 2.2 of Schedule 1.6 (Franchise Services);

“Franchise Agreement” means this agreement as amended from time to time;

“Franchise Assets” means the property, rights and liabilities designated as such pursuant to paragraph 1 of Schedule 14.4 (Designation of Franchise Assets)

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

“Franchise Documents”

means the:

- (a) Franchise Agreement;
- (b) Funding Deed;
- (c) collateral agreement regulating the rights and obligations of the parties in the event that a legal challenge is successfully raised as a result of the entering into of the Franchise Agreement;
- (d) Service Level Commitment; and
- (e) any other agreement entered into as part of the award of the Franchise as notified by the Secretary of State to the Franchisee as being required for publication;

“Franchise Employee”

means:

- (a) ⁶⁹**any employee of the Franchisee from time to time; including any employee which has transferred to the Franchisee in connection with the HEx Services Agreement;** and
- (b) any other person who is an employee of any of its Affiliates or is an employee of any party to whom the Franchise Services or services which are in support of or ancillary to the Franchise Services have been subcontracted (at any tier) or delegated by the Franchisee; and
- (c) in the case of (a) or (b), whose contract of employment would (subject to the exercise of such person’s right to object to the transfer) be transferred to a Successor Operator following the expiry of the Franchise Period by virtue of the operation of Law

⁶⁹ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

(including the Transfer of Undertakings (Protection of Employment) Regulations 2006) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred;

“Franchise Manager”	means a person appointed from time to time by the Secretary of State to fulfil certain duties including to manage the Franchise Agreement on behalf of the Secretary of State and to monitor the Franchisee’s performance of its obligations under the Franchise Agreement;
“Franchise Payment”	means, in relation to any Reporting Period, the amount determined in accordance with paragraph 1.1 of Schedule 8.1 (Franchise Payments);
“Franchise Performance Meeting”	means a meeting between the Secretary of State and the Franchisee to be held in accordance with paragraph 4 of Schedule 11 (Agreement Management Provisions);
“Franchise Period”	means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to Schedule 10 (Remedies, Termination and Expiry);
“Franchise Section”	has the meaning given to it in paragraph 1 of Schedule 16 (Pensions);
“Franchise Services”⁷⁰	means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Franchisee may provide or operate from time to time, including any of such services as the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement but, for the avoidance of doubt, excluding the HEx Services;
“Franchise Term”	means the period commencing on the Start Date and expiring on the Expiry Date;
“Franchisee Access Station”	means any station at which the Passenger Services call (other than any Station);

⁷⁰ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

"Franchisee ERTMS Plan"	has the meaning given to it in paragraph 10.1 (b)(ii) of Schedule 6.2 (Great Western Franchise Specific Provisions);
"Franchisee Year"	means any period of 12 months during the Franchise Period, beginning on 1 April and ending on 31 March, except that the first and last Franchisee Years may be for a period of less than 12 months and the first Franchisee Year shall begin on the Start Date and the last Franchisee Year shall end on the last day of the Franchise Period;
"Freedom of Information Act"	means the Freedom of Information Act 2000;
"Funding Deed"	means the deed to be entered into between the Secretary of State, the Franchisee and FirstGroup plc pursuant to clause 9.2 of the Franchise Agreement in the same terms as the document in the agreed terms marked "FD";
"Funded Works"⁷¹	means the works to be undertaken and other equipment to be installed described in Appendix 8 to Schedule 6.2 (Great Western Franchise Specific Provisions) Funded Works;
"Funded Works Cap"⁷²	means [REDACTED⁷³] as such sum may be revised in accordance with paragraph 26.3 of Schedule 6.2 (Great Western Franchise Specific Provisions);
"Funded Works Costs"⁷⁴	means: <ul style="list-style-type: none"> <li style="margin-left: 40px;">(c) the reasonable costs and disbursements incurred by the Franchisee directly in its delivery of the Funded Works, such costs to be calculated on a time and materials basis; and <li style="margin-left: 40px;">(d) reasonable third party costs and disbursements incurred directly by the Franchisee in

⁷¹ Date of contract insertion 18/09/2017 – Agreed by the Secretary of State and Franchisee

⁷² Date of contract insertion 18/09/2017 – Agreed by the Secretary of State and Franchisee

⁷³ **Date of Redaction – 03/10/2017 Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁷⁴ Date of contract insertion 18/09/2017 – Agreed by the Secretary of State and Franchisee

carrying out the Funded Works, as evidenced by the invoices or other evidence provided by the Franchisee to the Secretary of State pursuant to paragraph 26.4 of Schedule 6.2 (Great Western Franchise Specific Provisions);

- “Funded Works Work Plan”⁷⁵** means the work plan and timetable set out in Appendix 9 (Funded Works Work Plan) to Schedule 6.2 (Great Western Franchise Specific Provisions);
- “Future Use Agreement”** means the future use agreement dated 17 November 2014 between the Secretary of State (1), Porterbrook Leasing Mid Company Limited (2) and Porterbrook Leasing Company Limited (3);
- “GAAP”** means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, ‘Statements of Standard Accounting Practice’, ‘Financial Reporting Standards’, abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Conduct Authority, in each case, as amended from time to time;
- “General Anti-Abuse Rule”** has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Obligations and Covenants);
- “Grand Central Payment”** means the sum of £[REDACTED⁷⁶] to be invoiced on or after 1 May 2015 by Grand Central Railway Company Limited to the Franchisee under a side agreement to the Class 180 Sublease Agreement between Grand Central Railway Company Limited and the Franchisee of even date with this Franchise Agreement;
- “Great Western Electrification Programme”** means the route electrification programme and related infrastructure works being implemented

⁷⁵ Date of contract insertion 18/09/2017 – Agreed by the Secretary of State and Franchisee

⁷⁶ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

by Network Rail in relation to the Electrification Routes;

"Gross Revenue"

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

"HAL"⁷⁷

means Heathrow Airport Limited, a company registered in England and Wales with number 01991017 whose registered office is at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW;

"Halifax Abuse Principle"

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

"Handover Package"

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

"Heavy Maintenance Cost Reimbursement Payment"

means a payment adjustment made to Franchise Payments pursuant to paragraph 7.10 of part 1 to Schedule 6.1 (Committed Obligations and Related Provisions);

"HEOC"⁷⁸

means Heathrow Express Operating Company Limited, a company registered in England and Wales with company number 03145133 whose registered office is at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW;

"HEX Business Transfer Agreement"⁷⁹

means a business transfer agreement between the Franchisee and a Successor Operator to be entered into substantially in the form of Appendix 3 (Form of HEX Business Transfer Agreement) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Secretary of State may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such business

⁷⁷ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁸ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁹ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

transfer agreement between the Amendment Date and the date on which the HEx Business Transfer Agreement becomes effective;

"HExCost"⁸⁰	means "CRP" (as defined in Schedule 7 of the HEx Services Agreement);
"HEx Franchise Agreement DoA"⁸¹	means the deed of amendment to the Franchise Agreement dated 17 April 2018 between the Secretary of State and the Franchisee;
"HEx Outsourced Services"⁸²	means the provision of train crew, rolling stock and certain management services provided or to be provided by the Franchisee pursuant to the HEx Services Agreement;
"HEx Rolling Stock"⁸³	means the rolling stock vehicles operated by the Franchisee in the provision of the HEx Outsourced Services;
"HEx Services"⁸⁴	means the passenger train services between London Paddington station and the HEx Stations, in respect of which HEOC is the licensed passenger train operator;
"HEx Services Agreement"⁸⁵	means the agreement dated 17 April 2018 entered into between HAL, HEOC and the Franchisee relating to the provision of crew, rolling stock and management services in connection with the HEx Services;
"HEx Services Fare Revenue"⁸⁶	means revenue from Fares used or to be used on the HEx Services which the Franchisee is entitled to be allocated (whether all or part) pursuant to the Ticketing and Settlement Agreement;
"HEx Station"⁸⁷	means any station at Heathrow Airport;
"Hot Standby"	means any rolling stock vehicle specified in the Train Plan which:

⁸⁰ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸¹ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸² 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸³ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸⁴ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸⁵ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸⁶ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸⁷ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (a) is operationally ready to provide the Passenger Services in the Timetable;
- (b) is not already assigned to the delivery of any Passenger Service in the Timetable; and
- (c) will only be used to deliver such Passenger Services if:
 - (i) a rolling stock vehicle scheduled to deliver such Passenger Services is unable to so deliver; and
 - (ii) Actual Passenger Demand could only be met by the deployment in service of such rolling stock vehicle;

"HS2"	has the meaning given to it in paragraph 4.9(a)(xvi) of Schedule 6.2 (Great Western Franchise Specific Provisions);
"HS2 Project"	has the meaning given to it in paragraph 4.9(a)(xvi) of Schedule 6.2 (Great Western Franchise Specific Provisions);
⁸⁸"HS2 Project Activities"	<i>means the activities described in paragraph 25 of Schedule 6.2 (Great Western Franchise Specific Provisions);</i>
"HS2 Project Agreement"	has the meaning given to it in paragraph 9.5 of Schedule 6.2 (Great Western Franchise Specific Provisions);
⁸⁹"HST Short Form Project Activities"	<i>has the meaning given to it in paragraph 24 of Schedule 6.2 (Great Western Franchise Specific Provisions);</i>
"IEP Implementation Strategy"	means the strategy in the agreed terms marked IEP IS , as such strategy may be updated from time to time in accordance with paragraph 6 to Schedule 6.3 (The IEP Provisions);
"Incremental Output Statement Charge"	means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;

⁸⁸ Date of contract insertion 17/01/2017 – Agreed by the Secretary of State and Franchisee.

⁸⁹ Date of contract insertion 13/12/2016 – Agreed by the Secretary of State and Franchisee.

“Independent Station”	has the meaning given to it in paragraph 2.6 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);
“Independent Station Access Conditions”	has the meaning given to it in the Access Agreement to which it relates;
“Individual Station Charge Adjustment”	has the meaning given to it in paragraph 2 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);
“Industrial Action”	has the meaning given to it in paragraph 1(f) of Schedule 10.4 (Force Majeure);
“Industry Driver”⁹⁰	has the meaning given to it in paragraph 47.1 of Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);
“Industry Schemes”	has the meaning given to it in paragraph 10 of Schedule 13 (Information and Industry Initiatives);
“Infrastructure Project”	has the meaning given to it in paragraph 4 of Schedule 6.2 (Great Western Franchise Specific Provisions);
“Initial Business Plan”	means the business plan to be provided by the Franchisee to the Secretary of State as described in paragraph 2.1 of Schedule 13 (Information and Industry Initiatives);
“Initial Dataset”	has the meaning given in paragraph 18.1 of Schedule 13 (Information and Industry Initiatives);
“Initial Performance Bond”	means, subject to clause 9.2(a), the performance bond to be issued on or prior to the date of this Franchise Agreement by a Bond Provider which complies with the provisions of paragraph 4.2 of Schedule 12 (Financial Obligations and Covenants);
“Initial Period”	has the meaning given to it in paragraph 7.5 of Schedule 9.1 (Financial and Other Consequences of Change);
“Initial Permanent Fare”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Initial Sustainable Development Plan”	means the initial sustainable development plan referred to in paragraph 19.2 of Schedule 13 (Information and Industry Initiatives), such Initial Sustainable Development Plan to include (unless otherwise agreed with the Secretary of

⁹⁰ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

State) (i) key priority sustainable development areas and (ii) the targets associated with such key priority sustainable development areas;

“Integrated Transport Schemes”

means those schemes which relate to the integration of any form of transport with the Franchise Services;

“Intellectual Property Rights”⁹¹

means any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

“Interest Rate”

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

“Inter-Operator Schemes”

means:

- (a) each of the following schemes which relate to arrangements between the Franchisee and other participants in the railway industry:
 - (i) ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
 - (ii) Ticketing and Settlement Agreement;
 - (iii) ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
 - (iv) Travelcard Agreement dated 15 October 1995 between

⁹¹ 13 December 2017 – (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

London Regional Transport and the parties named therein;

(v) Through Ticketing (Non-Travelcard) Agreement between London Regional Transport and the parties named therein;

(vi) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein;

(vii) the Pay As You Go Agreement;

(viii) ⁹²**any scheme, agreement and/or contract, introduced on or about 1 September 2019, to enable 16 and 17 year olds to obtain a Child Price in respect of any Fare; and**

(b) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Franchise Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; and

(c) any Discount Fare Scheme;

“IPEMUs”

has the meaning given to it in paragraph 12(a) of part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);

“ITSO”

means (as the context may require) both:

(a) the non profit distributing organisation run by its members for the benefit of members and users of smartcards, supported by the Department for Transport (DfT); and

(b) the common specification it has created to enable the use of interoperable smartcards in transport and other areas;

⁹² 27 November 2019 – (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"IOP"	means ITSO on Prestige;
"IOP Acceptance Date"	means the date that IOP is accepted under the provisions of the IOP Agreement;
"IOP Agreement"	means an agreement between the Secretary of State and Transport for London for the acceptance of ITSO Certified Smartmedia;
"IOP London Products"	means ITSO products equivalent to products currently accepted, retailed or fulfilled under the Travelcard Agreement and the Through Ticketing (Non-Travelcard) Agreement;
"IRAD Change 1"⁹³	means that part of the Change as a consequence of the Base Assumptions as set out in the Original IRAD being incorrect which is settled under the IRAD Change 1 Deed of Amendment, as more particularly described in the IRAD Change 1 Deed of Amendment, the 2018 IRAD and the 2018 Record of Assumptions;
"IRAD Change 1 Deed of Amendment"⁹⁴	means the deed of amendment to this Agreement dated 15 February 2019 entitled Deed of Amendment (IRAD Change 1) relating to the Great Western Franchise Agreement dated 22 March 2015;
"IR Excluded Event Refund"⁹⁵	has the meaning given in the HEx Services Agreement;
"ITSO Certified Smartmedia"	means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded and which have been fully certified by ITSO;
"Key Contacts List"	means the list which contains the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business in respect of all directors (statutory or otherwise) and the managers with responsibility for a department/function within the Franchisee's business (and in particular managers in the operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents));

⁹³ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁹⁴ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁹⁵ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"Key Contract"

means:

- (a) each agreement and contract listed in the Appendix (List of Key Contracts) to Schedule 14.3 (Key Contracts) as at the date of the Franchise Agreement; and
- (b) any other agreement, contract, licence or other arrangement to which the Franchisee is a party or under which the Franchisee is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3 (Key Contracts),

⁹⁶but excluding the HEx Services Agreement and any such agreement, contract, licence or other arrangement which ceases, in accordance with the terms of the Franchise Agreement, to be designated as a Key Contract;

"Key Personnel"

means those persons identified by the Franchisee in accordance with paragraph 2.1 of Schedule 11 (Agreement Management Provisions);

"Law"

includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including those of the European Community, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act, the Transport Act, the Transport Safety Act 2003 and the Railways Act 2005);

"Lead Operator"

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

"Legislation"

means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Community, which has, in each case, the force of Law in the United Kingdom or any part of it, but excluding any order under Section 1 of the Transport and Works Act 1992;

"Licences"

means such licences and/or statements of national regulatory provisions granted or to be granted under applicable law as the Franchisee may be required from time to time to hold under the Act or under the Railway (Licensing of

⁹⁶ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

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

“Light Maintenance Service” means any service specified in paragraph 4 of Schedule 1.6 (Franchise Services) which may be provided by the Franchisee at the Depots and Stations;

“Local Authority” means:

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

specified by the Secretary of State from time to time;

“Lock-up Period”	has the meaning given to it in paragraph 3.2 of Schedule 12 (Financial Obligations and Covenants);
“London Station”	means any station served by the Railway Passenger Services in the Zones and any Zone to or from which a passenger may travel from or to such station;
“LTV Enhanced Gating Schemes”	means each of the automatic wide ticket gates introduced at each of Slough, Reading and Oxford Stations pursuant to paragraph 15 of Part 4 to Appendix 11 of the 2005 Franchise Agreement;
“LTV New Gating Schemes”	means each of the system of automatic ticket gates introduced at each of Didcot Parkway, Newbury, Gloucester, Cheltenham Spa and Taunton Stations pursuant to paragraph 14 of Part 4 to Appendix 11 of the 2005 Franchise Agreement;
“Maintenance Contract”	means any contract or arrangement to which the Franchisee is a party, which includes the carrying out for the Franchisee of any maintenance work (including light maintenance services) or service provision in respect of rolling stock vehicles used by the Franchisee in the provision of the Passenger Services or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles;
“Major Flow Operator”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Managed Station”	means any station used in connection with the provision of the Franchise Services where Network Rail is the Facility Owner or becomes the Facility Owner during the Franchise Period;
“Managed Station Area”	means the premises comprising part or parts of a Managed Station to be occupied by the Franchisee on or after the Start Date and to be used for or in connection with the provision of the Franchise Services;
“Management Accounts”	means, in relation to any Reporting Period, the Franchisee’s management accounts which: <ul style="list-style-type: none"> (a) comply with paragraph 3.9 of Schedule 13 (Information and Industry Initiatives); and

- (b) are required to be delivered to the Secretary of State by the Franchisee in accordance with paragraphs 3.2 and 3.3 of Schedule 13 (Information and Industry Initiatives);

"Management Fee"⁹⁷	has the meaning given in the HEx Services Agreement;
"Mandatory Modification"	means a modification or addition to any rolling stock vehicle which is required to be made under any applicable Law or any directive of the Rail Safety and Standards Board or any government authority;
"Manufacturer Events of Default Termination Right"⁹⁸	means the right given to the Franchisee jointly with the owner of the West of England Rolling Stock pursuant to Clause 18.1 of the West of England Manufacture and Supply Agreement to terminate such agreement in specified circumstances;
"MARA"	has the meaning given to such term in paragraph 2.1 of Schedule 6.3 (The IEP Provisions);
"Marks"	means such trademarks as the Franchisee may apply to any Primary Franchise Asset or other asset used by it under a Key Contract, which are applied on the expiry of the Franchise Period and are not the subject of a Brand Licence;
"Messing Facility"⁹⁹	means the additional depot messing facility to be formed and fitted out on the mezzanine floor of the new facility building which forms part of the Reading Wheel Lathe Facility, such messing facility being enabling works for the creation by the Franchisee of a break out area/kitchenette and two or three training rooms to be used as classroom space for EMU training in the current messing facility area at Reading Depot;
"Minimum Fleet Requirement Termination Right"¹⁰⁰	means the right given to the Franchisee jointly with the owner of the West of England Rolling Stock pursuant to Clause 20.1 of the West of England Manufacture and Supply Agreement to terminate such agreement if a minimum

⁹⁷ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁹⁸ **Date of contract insertion 27/07/2015 – Agreed by the Secretary of State and Franchisee.**

⁹⁹ **Date of contract insertion 29/05/2015 – Agreed by the Secretary of State and Franchisee.**

¹⁰⁰ **Date of contract insertion 27/07/2015 – Agreed by the Secretary of State and Franchisee.**

quantity of West of England Rolling Stock is not supplied by a specified date;

“Minor Works”

has the meaning given to it in paragraph 2.7(a) of Schedule 4 (Persons with Disabilities and Disability Discrimination);

“Minor Works’ Budget”

means £300,000 for each Franchisee Year allocated by the Franchisee for the purpose of facilitating Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, save that:

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

Minor Works Budget x RPI

where RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments);

“Minor Works’ Programme”

means the Franchisee’s programme of Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, developed prior to the start of each Franchisee Year pursuant to paragraph 2.7(b) of Schedule 4 (Persons with Disabilities and Disability Discrimination);

“Minutes Delay”

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

“Model Changes”

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

“Modified Revenue”

means:

- (a) the sum of:
 - (i) the Franchisee’s total revenue for the period being reviewed as stated in its profit and loss account;

- (A) including any amounts receivable from the Secretary of State, Network Rail and any interest;
 - (B) ¹⁰¹including any amounts receivable in the delivery of the HEx Services Agreement; but
 - (C) excluding the proportion of income recognised in the profit and loss account in relation to grants received in respect of capital expenditure; and
- (ii) the opening cash balance for the period being reviewed, excluding:
- (A) any cash held for the exclusive purpose of the provision of the Performance Bond; and
 - (B) the amount equivalent to:
 - (1) any cash that is held pursuant to any restrictive terms under any agreement and that, consequently, cannot be used for general operating purposes;

¹⁰¹ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

(2) any cash capable of being drawn down but not actually received,

including, in both cases, under any loan or funding agreement or arrangements (including the Funding Deed) entered into with an Affiliate of the Franchisee; and

(C) the amount of the opening season ticket liabilities which relate to Passenger Services yet to be delivered; and

(b) either:

(i) plus any reduction in total debtors over that period; or

(ii) less any increase in total debtors over that period,

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

“Monthly Season Ticket”

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

“Morning Peak”

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

“National Rail Enquiry Scheme”

means the telephone information scheme run by ATOC, providing information to callers regarding rail journeys throughout the country;

“National Rail Passenger Survey” or “NRPS”

means a passenger satisfaction survey in respect of the Franchise Services to be carried out by the Passengers’ Council as described in

paragraph 1 of Schedule 7.2 (Surveys and Customer and Communities Improvement Fund);

“National Rail Timetable”

means the passenger timetable published by Network Rail (currently twice per annum) specifying the timings and stopping patterns of all passenger railway services in Great Britain;

“Network Change”

has the meaning given to it in the Network Code;

“Network Change Compensation Claims”

has the meaning given to it in paragraph 10.4(a) of Schedule 6.2 (Great Western Franchise Specific Provisions);

“Network Code”

means the document known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement;

“Network Rail”

means in respect of:

- (a) the network or any relevant facility:
 - (i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is at 1 Eversholt Street, London NW1 2DN; and
 - (ii) any successor in title to the network or any relevant railway facility; or
- (b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);

“Network Rail Cancellation” means a Passenger Service:

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

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

“Network Rail Partial Cancellation”

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

- (a) misses a stop;
- (b) completes 50 per cent. or more, but less than 100 per cent. of its scheduled journey as prescribed in the Enforcement Plan of the Day; or
- (c) arrives at its final destination scheduled in the Enforcement Plan of the Day more than 120 minutes late,

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

“New Gating Schemes”

means the system of automatic ticket gates introduced at each of Exeter Central and Truro Stations pursuant to paragraph 7 to Part 4 of Appendix 11 of the 2005 Franchise Agreement;

“New Insurance Arrangements”

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

“New Results”

means, in relation to any Change, the following as restated in accordance with Schedule 9.1 (Financial and Other Consequences of Change) following a Run of the Financial Model in relation to that Change: the restated values of “FXD”, “VCRPI”, “VCAWE”, “PRPI”, “RRPI” and “ICRPI” to be specified for each Franchisee Year in the Appendix (Figures for Calculation of Annual Franchise Payments) to Schedule 8.2 (Annual Franchise Payments);

“New Rolling Stock Units”¹⁰²

means the 12 Class 387 rolling stock units which are to be fitted out to HEOC requirements and will be used to deliver the HEx Outsourced Services in accordance with the terms of the HEx Services Agreement;

“New Station”

means:

¹⁰² 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (a) a station not served by railway passenger services as at February 2003, but which has since that time been, or is subsequently, served by railway passenger services which have been, or are subsequently to be, included in the Timetable or in another relevant Train Operator’s timetable; and/or
- (b) ¹⁰³**if the Secretary of State requires, a station, other than a Station, at which, with the consent of the Secretary of State (whether by amendment to the Franchise Agreement or otherwise) railway passenger services operated by the Franchisee call other than a HEx Station;**

"New to Driving"¹⁰⁴

has the meaning given to it in paragraph 47.1 of Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);

"Non-Fares Basket Fare"

means a Fare that is designated as such by the Secretary of State pursuant to paragraph 2.1 of Schedule 5.3 (Allocation of Fares to Fares Baskets) and which has not been de-designated as such pursuant to paragraph 1.1 of Schedule 5.7 (Changes to Fares and Fares Regulation);

"NRPS Benchmark"

means in relation to any Franchisee Year, the benchmark relating to each NRPS Measure as set out in the relevant columns of the NRPS Benchmark Table;

"NRPS Measure"

means each of the 9 factors set out in the Passenger Survey Methodology and grouped as "station", "train", and "customer service";

"Occasion of Tax Non-Compliance"

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

"Off-Peak"

means, in relation to any Passenger Service, the period of time outside of the Peak;

"Old Results"

means in relation to any Change, the following as produced in accordance with Schedule 9.1 (Financial and Other Consequences of Change)

¹⁰³ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁰⁴ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

by or following the Run of the Financial Model in respect of the immediately preceding Change (or, in relation to the first Change only, the following as at the date hereof: the values of "FXD", "VCRPI", "VCAWE", "PRPI", "RRPI" and "ICRPI" to be specified for each Franchisee Year in the Appendix (Figures for Calculation of Annual Franchise Payments) to Schedule 8.2 (Annual Franchise Payments);

"Operating Assets"

has the meaning given to it in paragraph 1.1 of Schedule 14.2 (Maintenance of Operating Assets);

"Operational Model"

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

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

"Original IRAD"¹⁰⁵

means the IRAD in the agreed terms as established on signing of the Franchise Agreement and before taking account of any subsequent amendments;

"Original Rolling Stock"

has the meaning given to it paragraph 1.1(a) of Schedule 1.7 (Train Fleet);

"ORR"

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

"Other Compensation Schemes"¹⁰⁶

means those compensation schemes as particularly described in the Passenger's Charter and/or National Rail Conditions of Travel applicable immediately prior to the DR Effective Date and which entitle passengers to claim compensation from the Franchisee for delays or cancellations to their journeys;

"Parent"

means:

- (a) in the context of Schedule 10.3 (Events of Default and

¹⁰⁵ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁰⁶ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Termination Events) and paragraph 4 of Schedule 11 (Agreement Management Provisions), either FirstGroup plc (Company Number SC157176) or First Rail Holdings Limited (Company Number 05154485) (as the case may be); and

- (b) in the context of Schedule 13 (Information and Industry Initiatives) both of those persons;

“Partial Cancellation”

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

- (a) misses a stop;
- (b) completes 50 per cent. or more, but less than 100 per cent. of its scheduled journey as prescribed in the Enforcement Plan of the Day; or
- (c) arrives at its final destination scheduled in the Enforcement Plan of the Day more than 120 minutes late,

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

“Participating Employer”

has the meaning given to it in the Pension Trust;

“Passenger Carrying Capacity”

means, in relation to a Passenger Service, the capacity of the rolling stock vehicles (as stated in Schedule 1.7 (The Train Fleet) or determined by the Secretary of State in accordance with paragraph 2.4 of Schedule 1.7) from which the Passenger Service is formed;

“Passenger Change Date”

means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code;

“Passenger’s Charter Discount Season Tickets”¹⁰⁷

means Season Ticket Fares that are valid for a month or longer and which are valid for travel on a Season Ticket Charter Group or are subject to compensation under the passenger’s charter of another Train Operator;

¹⁰⁷ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"Passenger Services" ¹⁰⁸	means the Franchisee's railway passenger services as specified in any Timetable and/or Plan of the Day including those railway passenger services which the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement but, for the avoidance of doubt, excluding the HEx Services;
"Passenger Survey Methodology"	has the meaning given to such term in paragraph 1.4 of Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Improvement Fund);
"Passenger's Charter" ¹⁰⁹	means the Franchisee's service commitments to its passengers in the agreed terms marked PC, as amended or replaced from time to time with the prior written consent of the Secretary of State in accordance with paragraph 4 of Schedule 1.4 (Passenger Facing Obligations), which shall not apply in respect of the HEx Services;
"Passengers' Council"	means the passengers' council established under Section 19 of the Railways Act 2005;
"Payment Date"	means the date for the payment of Franchise Payments in accordance with paragraph 2.3 of Schedule 8.1 (Franchise Payments);
"Pay As You Go Agreement"	means an agreement dated 16 October 2009 between Transport Trading Limited and train operators operating in London enabling joint ticketing and the acceptance of each other's tickets using smartmedia technology under the name "Pay as You Go" or "PAYG" ;
"PAYG Off-Peak Fare"	means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time on Saturdays and Sundays and at such times as the Franchisee may designate on Mondays to Fridays (where such Fare need not be valid between 6.30am and 9.30am or between 4.00pm and 7.00pm but must be valid at all other times) and which may take into account the different directions of travel;

¹⁰⁸ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁰⁹ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

"PAYG Peak Fare"	means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time;
"PAYG Zone"	shall have the same meaning as "Zone" with the addition of the following stations: Rickmansworth; Carpenders Park; Chorleywood; Chalfont and Latimer; Amersham; Bushey; Watford Junction; and Watford High Street;
"Peak"	means the Morning Peak and the Evening Peak;
"Pension Trust"	means the pension trust governing the Railways Pension Scheme;
"Pensions Committee"	has the meaning given to it in the Railways Pension Scheme;
"Percentage Allocation"	has the meaning given to such term under the Ticketing and Settlement Agreement;
"Performance Bond"	means the performance bond to be provided to the Secretary of State in the form set out in either Part A or Part B (as the case may be) of Appendix 1 to Schedule 12 (Financial Obligations and Covenants), as replaced or amended from time to time in accordance with Schedule 12 (Financial Obligations and Covenants);
"Performance Calculation Year"	means a consecutive period of 13 Reporting Periods during the Franchise Period beginning on 1 April (that day inclusive) and ending on 31 March (that day inclusive) provided that <ul style="list-style-type: none"> (a) the first Performance Calculation Year shall be the period starting on the Start Date (that day inclusive) and ending on 31 March 2016 (that day inclusive); and

- (b) if the Franchise Term ends other than on 1 April the last Performance Calculation Year shall be the period from the last day of the previous Performance Calculation Year to the last day of the Franchise Period;

“Performance Strategy Plan” has the meaning given to it in the Network Code;

“Performance Adjustment Date” **Sum** means in the case of each Cancellations Performance Sum or TOC Minute Delay Performance Sum determined pursuant to paragraph 3 of Schedule 7.1 (Performance Benchmarks) and payable by the Secretary of State, the first Payment Date falling no less than seven days after that determination;

“Permanent Fare” has the meaning given to it in the Ticketing and Settlement Agreement;

“Permitted Aggregate Increase” has the meaning given to it in paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values);

“Permitted Individual Increase” has the meaning given to it in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares);

“Personal Data” has the same meaning as in the Data Protection Act and includes Sensitive Personal Data as defined therein;

“Personal Data Legislation” has the meaning given to it in paragraph 5.1 of Schedule 1.5 (Information about Passengers);

“Phase 1 Works” has the meaning given to it in paragraph 19.1(c)(i) of Schedule 6.2 (Great Western Franchise Specific Provisions);

“Placed in Escrow” means:

- (a) in respect of the Financial Model, delivery of the Financial Model:
 - (i) dated the date of the Franchise Agreement; and
 - (ii) adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and

- (iii) where Schedules 9.1 (Financial and Other Consequences of Change) and 9.2 (Identity of Financial Model etc.) apply, audited following a Run of the Financial Model and updated with any Revised Inputs; and
- (b) in respect of the Operational Model, delivery of:
 - (i) the Operational Model dated the date of the Franchise Agreement;
 - (ii) the Operational Model adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (iii) where Schedules 9.1 (Financial and Other Consequences of Change) and 9.2 (Identity of Financial Model etc.) apply, the inputs to the Financial Model derived therefrom following an audit of a Run of the Financial Model; and
- (c) in respect of the Record of Assumptions, delivery thereof,

each in accordance with Schedule 9.2 (Identity of the Financial Model etc.);

“Plan of the Day”

means, in relation to each day during the Franchise Term, the Passenger Services scheduled to be operated on that day through specification in the Timetable or as notified to the Franchisee by Network Rail from time to time prior to 2200 on the previous day;

“Planned Enhanced Depot Capacity”

means capacity at the Exeter Depot sufficient for:

- (a) if SLC3(a) applies, not less than 79 vehicles; and
- (b) if SLC3(b) applies, not less than 74 vehicles,

to be stabled and maintained overnight;

"Power of Attorney"	means the power of attorney granted by the Franchisee in favour of the Secretary of State in the agreed terms marked POA ;
"PPM"	means the public performance measure as produced and/or published by Network Rail and/or the ORR;
"PPM Figures"	means the moving annual average percentage published by Network Rail in respect of PPM;
"Preceding 13 Reporting Periods"	has the meaning given to it in paragraph 2.1 of Schedule 12 (Financial Obligations and Covenants);
"Preceding Year Ticket Price"	has the meaning given to it in paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);
"Previous Committed Obligations Investments"	has the meaning given to it in paragraph 3.2 of Part 1 to Schedule 6.1 (List of Committed Obligations);
"Previous Franchise Agreement"	means the franchise agreement dated 2 October 2013 and made between the Secretary of State and the Franchisee under which services equivalent to the Franchise Services (or a material proportion thereof) were provided by the Franchisee on or about the day prior to the Start Date;
"Previous Passenger Services"	means: <ul style="list-style-type: none"> (a) any railway passenger services operated under the Previous Franchise Agreement (as applicable) that are the same or substantially the same as any Passenger Service in terms of departure and arrival times and stopping patterns; and (b) if no such railway passenger service are found under paragraph (a) such other railway passenger services operated under the Previous Franchise Agreement (as applicable) which are similar in terms of departure and arrival times and stopping patterns to the Passenger Services as the Secretary of State may reasonably determine;
"Previous Performance Level"	means the level of performance actually achieved in relation to the Previous Passenger Services;

"Price"	means, in respect of any Fare, the price of such Fare before the deduction of any applicable discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5 to the Ticketing and Settlement Agreement;
"Primary Franchise Assets"	means: <ul style="list-style-type: none"> (a) the property, rights and liabilities of the Franchisee listed in the Appendix (List of Primary Franchise Assets) to Schedule 14.4 (Designation of Franchise Assets); and (b) any other property, rights and liabilities of the Franchisee which is or are designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets), <p>but excluding such property, rights or liabilities as may, in accordance with the terms of the Franchise Agreement, cease to be so designated;</p>
"Primary Product Types PG01-9"¹¹⁰	are those product types described in paragraph 2 of the Annex to Appendix 4 of Schedule 8.1 (Franchise Payments);
"Prior Train Operator"	has the meaning given to it in paragraph 2.5 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"Process"	has the same meaning as in the Data Protection Act 1998;
"Productive Driver"¹¹¹	has the meaning given to it in paragraph 47.1 of Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);
"Projected Revenue"	means the revenue in any Fare Year which is projected to be attributable to any Fare, determined in accordance with paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values);
"Property Lease"	means any Depot Lease, Managed Station Area Lease, any lease in respect of Shared Facilities or Station Lease and any agreement or lease of

¹¹⁰ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹¹¹ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

a similar or equivalent nature (whether in respect of any such facility or otherwise) which the Franchisee may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Franchise Services;

“Proposed ERTMS Implementation Plan”

means Network Rail’s plans for the implementation of the ERTMS Programme as more particularly described in the document in agreed terms marked **“ERTMSP”**;

“Protected Fare”

means a Protected Return Fare or a Protected Weekly Season Ticket;

“Protected Fares Basket”

means the grouping of Protected Fares:

- (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (b) for the purposes of regulating their aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values);
- (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); and
- (d) set out in the Protected Fares Document;

“Protected Fares Document”

means the document in the agreed terms marked **PFD**, as the same may be amended from time to time in accordance with clause 9.3 or Schedule 5.7 (Changes to Fares and Fares Regulation);

“Protected Proposal”

has the meaning given to it in paragraph 1.9 of Schedule 9.5 (Variations and Incentivising Beneficial Changes);

“Protected Return Fare”

means in respect of a Fare for a Flow:

- (a) for which there was a Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price or Child Price under the Ticketing and

Settlement Agreement, subject to the following additional rights and restrictions:

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

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

“Protected Weekly Season Ticket”

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

the extent that a Weekly Season Ticket for any such Flow is a Commuter Fare;

“Public Sector Operator”

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

“Qualifying Change”

means a Change which:

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

“Quality Percentage Performance Bonus”¹¹²

has the meaning given in Schedule 5 of the HEx Services Agreement;

“Quarterly Season Ticket”

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

¹¹² 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"Rail Safety and Standards Board"	means Rail Safety and Standards Board Limited, a company registered in England with registered number 04655675 whose registered office is at Block 2, Angel Square, 1 Torrens Street, London EC1V 1NY;
"Railway Group"	means the committee responsible for cross industry co-ordination in respect of rail safety legislation and industry safety standards chaired by the Rail Safety and Standards Board;
"Railway Operational Code"	has the meaning given to it in Condition H of the Network Code;
"Railway Passenger Services"	means, for the purposes of Schedule 5 (Fares) only, services for the carriage of passengers by railway which are provided by a person who is bound by the Ticketing and Settlement Agreement, or any part of it, and including the Franchisee and any other Train Operator from time to time;
"Railways Pension Scheme"	means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433);
"Reading Wheel Lathe Facility"¹¹³	means a wheel lathe facility to be constructed at Reading Depot which includes a new under-floor tandem wheel lathe, with a battery powered mule to move vehicles into position and other essential tools for the wheel lathe's operation, in a new facility building including staff mess, washing and locker facilities, tool room and mezzanine floor (where the Messing Facility will be located), together with associated works to provide the necessary track layout, make drainage alterations and relocate the train wash plant room, in each case consistent with the specification shared previously with the Secretary of State entitled " <i>Reading Wheel Lathe Description 21.05.2015</i> ";
"Reading Wheel Lathe Stage 2 Package"¹¹⁴	means activities approximating to NR GRIP 5 to GRIP 8 outputs to deliver the construction and bringing into operation of the Reading Wheel Lathe Facility by 10 December 2017¹¹⁵ , including the following activities:

¹¹³ **Date of contract insertion 29/05/2015 – Agreed by the Secretary of State and Franchisee.**

¹¹⁴ **Date of contract insertion 29/05/2015 – Agreed by the Secretary of State and Franchisee.**

¹¹⁵ **Date of contract change 17/01/2017 – Agreed by the Secretary of State and Franchisee.**

- (e) the appointment of one or more contractors to deliver the Reading Wheel Lathe Facility (together, as applicable, the "**Contractor**") and placement of order for the equipment and works required to construct and bring into operation the Reading Wheel Lathe Facility;
- (f) working with the Contractor to complete the design of the Reading Wheel Lathe Facility and to support the enabling of the works at the site;
- (g) construction of the Reading Wheel Lathe Facility including carrying out enabling works and installing the wheel lathe;
- (h) testing and acceptance of the Reading Wheel Lathe Facility following its installation, and related training of Franchisee Employees as necessary to support this; and
- (i) such other supporting works and provision of services, tools, plant and equipment as may be reasonably required to deliver the Reading Wheel Lathe Facility in operation on or before 11 December 2016 (subject to any retention and snagging activities which the parties acknowledge may continue after the new facility has commenced operation),

to the indicative timescales set out in the Stage 2 Package Work Plan;

"Reading Wheel Lathe Stage 2 Cap" ¹¹⁶ means [REDACTED¹¹⁷]

"Reading Wheel Lathe Stage 2 Payment" ¹¹⁸ means:

- (j) the reasonable costs and disbursements incurred by the Franchisee directly in its delivery of the Reading Wheel Lathe Stage 2 Package, such costs to be calculated on a time and materials basis in accordance with the rates set out in Appendix 2 (Stage 2 Package Day Rates) to Schedule 6.2 (Great Western Franchise Specific Provisions); and
- (k) any reasonable third party costs and disbursements incurred directly by the Franchisee in carrying out the Reading Wheel Lathe Stage 2 Package, as evidenced by the invoices or other evidence provided by the Franchisee to the Secretary of State pursuant to paragraph 20.2 of Schedule 6.2 (Great Western Franchise Specific Provisions)

excluding in the case of both (a) and (b) any costs directly associated with the fitting out of the Messing Facility, it being

¹¹⁶ Date of contract insertion 29/05/2015 – Agreed by the Secretary of State and Franchisee.

¹¹⁷ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹⁸ Date of contract insertion 29/05/2015 – Agreed by the Secretary of State and Franchisee.

acknowledged that such costs are recoverable by the Franchisee under paragraph 20.8 of Schedule 6.2 (Great Western Franchise Specific Provisions);

“Reconciliation Amount” has the meaning given to it in paragraph 9.9 of Schedule 9.1 (Financial and Other Consequences of Change);

“Record of Assumptions”¹¹⁹ means a document in the agreed terms marked ROA prepared by the Franchisee (and/or, where Schedule 9.1 (Financial and Other Consequences of Change) applies), as may be revised in accordance with Schedule 9 (Changes and Variations)) including by the 2018 Record of Assumptions with effect from the date of the IRAD Change 1 Deed of Amendment Placed in Escrow providing:

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

The Record of Assumptions contains two parts:

- (i) ROA(a) which shall apply until any date from which the Secretary of State instructs the Franchisee to complete the West of England Rolling Stock Procurement Process pursuant to paragraph 18 of Schedule 6.2 (Great

¹¹⁹ 15 February 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Western Franchise Specific Provisions); and

- (ii) **ROA(b), which shall apply from any date from which the Secretary of State instructs the Franchisee to complete the West of England Rolling Stock Procurement Process pursuant to paragraph 18 of Schedule 6.2 (Great Western Franchise Specific Provisions);**

“Redactions”	has the meaning given to it in paragraph 10.1 of Schedule 17 (Confidentiality and Freedom of Information);
“Reference Fare”	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);
“Reference Flow”	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);
“Reference Revenue”	means the aggregate Gross Revenue recorded by RSP as attributable to sales of all Commuter Fares or Protected Fares for the period of 12 months which ended 31 March 2010 or such other reference period as the Secretary of State may require pursuant to paragraph 3.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);
“Regulated Child Price”	means the Child Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);
“Regulated Price”	means the Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);
“Regulated Value”	means the Value of any Fares Basket that is permitted in any Fare Year, determined in accordance with paragraph 4.1 of Schedule 5.4 (Regulation of Fares Basket Values);
“Relevant Agreement”	means any Property Lease or Access Agreement in relation to any stations or network which may be used from time to time by the Franchisee in connection with the Franchise Services, as

replaced or amended from time to time. If and to the extent that:

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

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

"Relevant Class 387 Units"¹²⁰ means New Rolling Stock Units and the Additional 387 Units;

"Relevant Delay" has the meaning given to it in paragraph 2.5 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

"Relevant Funding" means funds made available to Network Rail for application to specified railway infrastructure projects;

"Relevant Operator Direct Agreement" means either:

- (a) the relevant operator direct agreement to be entered into in accordance with paragraph 2.6(a)(i) of Schedule 6.3 (The IEP Provisions) by the TSP and the Franchisee; or
- (b) the relevant operator direct agreement between the Franchisee and the TSP dated 31 January 2014 to be amended pursuant to the provisions of paragraph 2.6(a)(ii) of Schedule 6.3 (The IEP Provisions);

"Relevant Profit" has the meaning given to it in paragraph 3 of Schedule 8.1 (Franchise Payments);

¹²⁰ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

“Relevant Reporting Period”	has, for the purposes of paragraph 5.3 of Schedule 12 (Financial Obligations and Covenants) only, the meaning given to it in that paragraph;
“Relevant Rolling Stock”	has the meaning given to it in paragraph 2.5 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
“Relevant Tax Authority”	has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Obligations and Covenants);
“Relevant Term”	has the meaning given to it in paragraph 1.2(a) of Schedule 10.1 (Remedial Plans and Remedial Agreements);
“Remapped Franchisee”	means a Successor Operator in relation to one part of the Franchise Services;
“Remedial Agreement”	has the meaning given to it in paragraph 1.5 of Schedule 10.1 (Remedial Plans and Remedial Agreements);
“Remedial Plan”	has the meaning given to it in paragraph 1.2(b) of Schedule 10.1 (Remedial Plans and Remedial Agreements);
“Remedial Plan Notice”	has the meaning given to it in paragraph 1.1 of Schedule 10.1 (Remedial Plans and Remedial Agreements);
“Replacement Agreement”	means an agreement entered into as a replacement for any Relevant Agreement;
“Replacement Copy”	has the meaning given to it in paragraph 2.2(b) of Schedule 9.2 (Identity of the Financial Model etc.);
“Replacement Performance Bond”	means any performance bond issued or to be issued following the issue of the Initial Performance Bond by a Bond Provider to the Secretary of State which complies with the requirements of paragraph 4.2 of Schedule 12 (Financial Obligations and Covenants);
“Reporting Period”	means: <ul style="list-style-type: none"> (a) for the purposes of the Season Ticket Bond, any consecutive seven-day period or any other period, each within a Reporting Period (as defined in paragraph (b)) agreed in accordance with paragraph 5.12 of Schedule 12

(Financial Obligations and Covenants); or

- (b) for all other purposes, a period of 28 days, provided that:
 - (i) the first such period during the Franchise Period shall exclude any days up to but not including the Start Date;
 - (ii) the first and last such period in any Reporting Year may be varied by up to seven days by notice from the Secretary of State to the Franchisee;
 - (iii) each such period shall start on the day following the last day of the preceding such period; and
 - (iv) the last such period during the Franchise Period shall end at the end of the Franchise Period;

“Reporting Year” means a period normally commencing on 1 April in each calendar year, comprising 13 consecutive Reporting Periods;

“Request for Information” means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations;

“Request for Proposal” means the request for proposal issued by the Secretary of State as part of the procurement process pursuant to which the Franchise Agreement was entered into;

“Required Improvement” has the meaning given to it in paragraph 2.8 of Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Improvement Fund);

“Required Performance Improvement” has the meaning given to it in paragraph 3.7 of Schedule 7.1 (Performance Benchmarks);

“Retail Prices Index” means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics (as “**RPI**”) or, if such index shall cease to be published or there is, in the reasonable opinion of the Secretary of State, a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices

index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;

“Return Fare”

means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, a journey in each direction in Standard Class Accommodation between the stations and/or the zones for which such Fare is valid and which expires no earlier than 0200 on the day after the day of the outward journey or, if later, the time the relevant return journey may be completed if commenced before 0200;

“Revised Inputs”

has the meaning given to it in paragraph 4.2 of Schedule 9.1 (Financial and Other Consequences of Change);

“Rolling Stock Adviser”

has the meaning given to it in Paragraph 7.4 of part 1 to Schedule 6.1 (Committed Obligations and Related Provisions);

“Rolling Stock Lease”

means any agreement for the leasing of rolling stock vehicles to which the Franchisee is a party as at the Start Date and any agreement of a similar or equivalent nature (including, any agreement or arrangement for the subleasing, hiring, licensing or other use of rolling stock vehicles) to which the Franchisee is a party from time to time during the Franchise Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement provided that the Train Availability and Reliability Agreement shall not be a “Rolling Stock Lease” for the purposes of the Franchise Agreement;

“Rolling Stock Obligations”

has the meaning given to it in paragraph 7.4(a) of part 1 to Schedule 6.1 (Committed Obligations and Related Provisions);

“Rolling Stock Related Contract”

means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;

“Rolling Stock Unit”

means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Franchisee in the provision of the Passenger Services;

“Route”

means any route specified in the Timetable over which the Franchisee has permission to operate the Passenger Services pursuant to any Track Access Agreement;

"Route Efficiency Benefit Share Mechanism" or "REBS"	means the route-level efficiency benefit sharing mechanism introduced by the ORR in its determination for the control period commencing on 1 April 2014 or any similar arrangement under which the benefits of any outperformance (or downsides of failure to achieve efficiency targets) are to be shared between Network Rail and train operators at route level;
"RSP"	means Rail Settlement Plan Limited;
"Run of the Financial Model"	means an operation of the Financial Model with the Revised Inputs and which complies with the requirements of Schedule 9.1 (Financial and Other Consequences of Change);
"Safety Authorisation"	means the authorisation issued by the ORR under the Safety Regulations authorising the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Routes;
"Safety Certificate"	means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe operation on the Routes;
"Safety Regulations"	means The Railways and Other Guided Transport Systems (Safety) Regulations 2006;
"Saver Return Fare"	means a return fare which is shown as a saver fare in the fares manuals and systems of the RSP as at the date of such manuals;
"Scaling Obligations"¹²¹	has the meaning given to it in paragraph 7.2(i) of Schedule 8.1 (Franchise Payments);
"Scheduled Delivery Date"	has the meaning given to it in paragraph 16.1 of Schedule 6.2 (Great Western Franchise Specific Provisions);
"Season Ticket Bond"	means the season ticket bond to be provided to the Secretary of State in respect of the Franchisee's liabilities under certain Fares and Season Ticket Fares in the form set out in Appendix 2 (Form of the Season Ticket Bond) to Schedule 12 (Financial Obligations and

¹²¹ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Covenants) and such other bond as may replace it from time to time under Schedule 12 (Financial Obligations and Covenants);

"Season Ticket Charter Group"¹²²

means any of the following groups of passenger services as categorised in the Passenger's Charter and in respect of which holders of Passenger's Charter Discount Season Tickets are entitled to discounts on renewal of their Season Ticket Fares:

- (a) High Speed Services;**
- (b) London Thames Valley Services;**
- (c) Bristol Suburban Services;**
- (d) Devon Services;**
- (e) Plymouth and Cornwall Services; and**
- (f) South Wales – South Coast Services;**

"Season Ticket Fare"

means:

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

"Second Profit Share Threshold"

has the meaning given to it in paragraph 3 of Schedule 8.1 (Franchise Payments);

¹²² 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"Secondary Product Types SG18-21"¹²³	are those product types described in paragraph 3 of the Annex to Appendix 4 of Schedule 8.1 (Franchise Payments);
"Secondary Product Types SG23-26"¹²⁴	are those product types described in paragraph 4 of the Annex to Appendix 4 of Schedule 8.1 (Franchise Payments);
"Secretary of State Risk Assumptions"	means those assumptions set out in Schedule 9.3 (Secretary of State Risk Assumptions);
"Sector"¹²⁵	<p>means any of the following three sets of passenger services, as categorised in the Great Western Railway Performance Summary published on the GWR website as at the date of the DR Deed:</p> <p>(a) High Speed Services (HSS), which corresponds to the former First Great Western Passenger's Charter service groups;</p> <p>(b) London Thames Valley Services (LTV), which corresponds to the former First Great Western Link Passenger's Charter service groups; and</p> <p>(c) West Services, which corresponds to the former Wessex Trains Passenger's Charter service groups;</p>
"Security Breach"	has the meaning given to it in paragraph 5.3(c)(i) of Schedule 1.5 (Information about Passengers);
"Security Interest"	means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect;
"SEFT Deed"	means an agreement between the Secretary of State and the Franchisee specifying certain obligations in relation to equipment to be procured, installed, migrated, integrated and commissioned for the purposes of the South East Flexible Ticketing Programme;
"Service Group"	has the meaning given to it in the Passenger's Charter when used in relation to the Passenger's Charter, and when used in the Franchise Agreement it has the meaning given to it in the

¹²³ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹²⁴ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹²⁵ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Track Access Agreement, or as specified by the Secretary of State from time to time;

"Service Level Commitment"¹²⁶ means the service level commitment more particularly described in paragraph 1 of Schedule 1.1 (Service Development) as it may subsequently be amended or replaced in accordance with Schedule 1.1 (Service Development) and, for the avoidance of doubt, does not relate to the HEx Outsourced Services;

"Service Level Credit Adjustment"¹²⁷ has the meaning given in the HEx Services Agreement;

"Service Payment"¹²⁸ has the meaning given in the HEx Services Agreement;

"Service Payment Adjustment"¹²⁹ has the meaning given in the HEx Services Agreement; and

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

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

¹²⁶ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

¹²⁷ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹²⁸ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹²⁹ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (b) to:
- (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
 - (ii) prior to the attainment of the level of service specified in paragraph (b)(i), operate any reduced level of service agreed with Network Rail for the purpose of minimising such disruption pursuant to paragraph (a);
- (c) in accordance with the principles of service recovery set out in the ATOC "Approved Code of Practice: Contingency Planning for Train Service Recovery – Service Recovery 2009" or any document of a similar or equivalent nature; and
- (d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:
- (i) agreed at an initial and, where required, subsequent telephone conference between the Franchisee, Network Rail and any other affected Train Operator; and
 - (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of Network Rail,

and prevention or restriction of access to the track or a section of the track shall have the meaning given to that term in paragraph 1(a)(i) of Schedule 10.4 (Force Majeure);

"Settlement Proposal"

has the meaning given to it in paragraph 3.2 of Schedule 4 (Persons with Disabilities and Disability Discrimination);

"Shared Facilities"

means those facilities in respect of which the Franchisee and Network Rail carry out their respective activities concurrently;

"Short Form HSTs"¹³⁰	<i>has the meaning given to it in paragraph 24 of Schedule 6.2 (Great Western Franchise Specific Provisions);"</i>
"Significant Alterations"	<p>shall, in relation to any proposed new or amended Timetable, include alterations from the then current Timetable which result in, or are likely to result in:</p> <ul style="list-style-type: none"> (a) the addition or removal of railway passenger services; (b) changes to stopping patterns or destinations or origin; (c) changes of timings for first/last trains by more than ten minutes; (d) changes to clockface (or near clockface) service patterns (meaning the provision of railway passenger services at a specified time or times relative to the hour); and/or (e) significant changes to journey times and/or key connections at the Station or at other stations at which relevant railway passenger services call;
"Single Fare"	means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, on any one day, one journey in Standard Class Accommodation between the stations and/or the zones for which the Fare is valid;
"SIWW"¹³¹	<i>has the meaning given to it in paragraph 48.1 of Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);"</i>
"SLC (TDR - 387) Amendment"	has the meaning given to it in paragraph 5.13 of Schedule 1.1 (Service Development);
"Small and Medium-sized Enterprises ("SMEs")"	means any individual micro, small or medium sized enterprise meeting the requirements set out in EU Recommendation 2003/36 and broadly falling into one of three categories, based on a combination of:

¹³⁰ **Date of contract insertion 13/12/2016 – Agreed by the Secretary of State and Franchisee.**

¹³¹ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

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

The three categories are:

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

“South East Flexible Ticketing Programme”

means the government funded scheme to introduce smart cards for passengers travelling by rail in the south east of England;

“Sponsor”

has the meaning given to it in paragraph 5.2 of Schedule 6.2 (Great Western Franchise Specific Provisions);

“SLC (TDR) Amendment”

has the meaning given to it in paragraph 5.9 of Schedule 1.1 (Service Development);

“Spares”

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

“Specifically Included Change of Law”

has the meaning given to it in the definition of Change of Law;

“Specified Additional Rolling Stock”

has the meaning given to it in paragraph 1.1(b) of Schedule 1.7 (Train Fleet);

“Specified COPA Amount”

has the meaning given to it in paragraph 7.11 of part 1 to Schedule 6.1;

“Stage 2 Package Work Plan”

¹³²

means the work plan and timetable set out in Appendix 3 (Stage 2 Package Work Plan) to Schedule 6.2 (Great Western Franchise Specific Provisions);

“Stakeholder”

means the Passengers’ Council and any relevant Local Authority and organisations who can reasonably be considered to have a legitimate and proper interest in the Passenger Services including Community Rail Partnerships representing Community Rail Routes designated as such by the Secretary of State;

¹³² **Date of contract insertion 29/05/2015 – Agreed by the Secretary of State and Franchisee.**

"Standard Class Accommodation"

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

"Start Date"

means 02.00 on 20 September 2015;

"Station" ¹³³ ¹³⁴

means:

- (a) **any station in relation to which the Franchisee is a party to a Station Lease other than a HEx Station; or**
- (b) **any New Station at which the Franchisee becomes the Facility Owner other than a HEx Station;**

"Station Access Conditions"

has the meaning given to it in the relevant Station Lease or Access Agreement (as the case may be) to which it relates;

"Station Change"

has the meaning given to the term "Proposal for Change" under the Station Access Conditions;

"Station Charge Adjustment"

means any adjustment to payments under an Access Agreement determined in accordance with paragraph 2 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);

"Station Lease"

means:

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

¹³³ 06 December 2017 (Date of contract change letter) – Contract variation agreed by the Secretary of State and Franchisee

¹³⁴ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

"Station & Service Improvement Investment Amount"¹³⁵	has the meaning given to it in paragraph 46.1 of Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);
"Station Service"	means any service specified in paragraph 3 of Schedule 1.6 (Franchise Services) which may be provided by the Franchisee at the Stations;
"Station Sublease"	means a lease or sub lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator;
"Station Transfer Contracts"	means the Key Contracts in paragraphs 3.1 and 3.2 of a contract change letter from the Secretary of State to the Franchisee relating to the Previous Franchise Agreement, dated 28 March 2014 and relating to the transfer of Bristol Temple Meads and Reading Stations;
"STNR System"¹³⁶	has the meaning given to it Appendix 1 of Schedule 5.9;
"Stored Credit Balance"	means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium);
"Suburban Station"	means any station which is not a London Station and which is listed below or which is closer to London than (and on the same line as) the following stations: Shoeburyness, Southend Victoria, Southminster, Marks Tey (excluding Sudbury branch), Audley End (but not including Stansted Airport), Ashwell & Morden, Arlesey, Harlington, Bletchley (excluding Bedford branch), Aylesbury, Haddenham & Thame Parkway, Twyford (including Henley branch), Earley, Fleet, Alton, Whitley, Christ's Hospital, Brighton (excluding Coastway), Windsor & Eton Riverside, East Grinstead, Crowborough, Wadhurst, Paddock Wood (including the line between Strood and Paddock Wood), Maidstone East, Canterbury East, Margate;
"Successor Operator"	means a Train Operator succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Franchisee by the Secretary of State) the Franchisee in the provision or operation of all or any of the Franchise Services including, where the context

¹³⁵ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹³⁶ 13 December 2017 – (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

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

“Successor Operator Timetable”

has the meaning given to it in paragraph 8(a) of Schedule 14.1 (Maintenance of Franchise);

“Supplemental Agreement”

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

“Sustainable Development Plan”

means the plan to be prepared in accordance with paragraph 19.3 of Schedule 13 (Information and Industry Initiatives);

“Sustainable Development Strategy”

means the sustainable development strategy in the agreed terms marked **SDS**;

“TARA Operator Default”

has the same meaning as is given to the term “Operator Default” under the Train Availability and Reliability Agreement;

“Target Passenger Demand”

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

“Taxation”

means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of the Franchise Agreement and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere;

“Technical Support Contract”

means a contract for technical support to which the Franchisee is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;

“Tendering/Reletting Process”	means either of the processes described in paragraph 1.1 and 1.2 of Schedule 15.1 (Reletting Provisions);
“Termination Events”	has the meaning given to it in paragraph 3 of Schedule 10.3 (Events of Default and Termination Events);
“Termination Notice”	means a notice from the Secretary of State to the Franchisee terminating the Franchise Agreement following an Event of Default or a Termination Event in accordance with Schedule 10.2 (Termination and Expiry);
“Threshold Amount”	<p>means £[REDACTED¹³⁷] subject to indexation as follows:</p> <p>£[REDACTED¹³⁸] x RPI</p> <p>Where:</p> <p>RPI is ascertained as follows:</p> $\frac{CRPI}{ORPI}$ <p>where:</p> <p>CRPI means the Retail Prices Index published in the January immediately preceding the commencement of that Franchisee Year; and</p> <p>ORPI means the Retail Prices Index for January 2015, provided that, for the first Franchisee Year, RPI shall be one;</p>
“Through Ticketing (Non-Travelcard) Agreement”	means the agreement of that name referred to in paragraph (a)(v) of the definition of Inter-Operator Schemes;
“Ticketing and Settlement Agreement”	means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the Franchisee and the other Train Operators named therein, as amended from time to time with the approval of the Secretary of State;
“Timetable”	means the timetable which reflects the working timetable issued by Network Rail at the

¹³⁷ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹³⁸ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

conclusion of its timetable development process, containing the departure and arrival times of:

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

"Timetable Development Rights"

means all or any of the rights of the Franchisee under any Track Access Agreement to:

- (a) operate Passenger Services and ancillary movements by virtue of that Track Access Agreement;
- (b) deliver any required notification and/or declaration to Network Rail in respect of its intention to exercise any rights;
- (c) make or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Network Code;
- (d) surrender any Train Slots allocated to the Franchisee by Network Rail in accordance with the Network Code;
- (e) object to, make representations, appeal or withhold consent in respect of any actual or proposed act or omission by Network Rail; and
- (f) seek from Network Rail additional benefits as a condition to granting any consent to any actual or proposed act or omission by Network Rail;

"Timetable Score Percentage Bonus"¹³⁹ has the meaning given in Schedule 5 of the HEx Services Agreement.

"Timetabling and Train Planning Compliance Investigation"

has the meaning given to it in paragraph 2.1 of Schedule 1.2 (Operating Obligations);

¹³⁹ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"TOC Minute Delay Benchmark"	means any of the performance levels in respect of Minutes Delay attributable to the Franchisee set out in the TOC Minute Delay Benchmark Table;
"TOC Minute Delay Benchmark Table"	means the table set out in Part 1 of Appendix 2 (TOC Minute Delay Benchmark Table) to Schedule 7.1 (Performance Benchmarks);
"TOC Minute Delay Performance Sum"	means an amount determined in accordance with paragraph 3.3 of Schedule 7.1 (Performance Benchmarks);
"Total Actual Operating Costs"	means the sum of the Actual Operating Costs for the relevant Reporting Period and each of the 12 preceding Reporting Periods during the Franchise Term (or the sum of the Actual Operating Costs for the relevant Reporting Period and all of the Reporting Periods that have elapsed since the Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made);
"Total Forecast Modified Revenue"	means the sum of the Forecast Modified Revenue for each of the 13 Reporting Periods following the relevant Reporting Period (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, the remaining Reporting Periods);
"Total Forecast Operating Cost"	means the sum of the Forecast Operating Cost for each of the 13 Reporting Periods following the relevant Reporting Period (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, the remaining Reporting Periods);
"Total Modified Revenue"	means the sum of the Modified Revenue for the relevant Reporting Period and each of the 12 preceding Reporting Periods during the Franchise Term (or the sum of the Modified Revenue for the relevant Reporting Period and all of the Reporting Periods that have elapsed since the Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made);
"Track Access Adjustment"	means any adjustment to payments under a Track Access Agreement determined in accordance with paragraph 1 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);
"Track Access Agreement"	means each Access Agreement between Network Rail and the Franchisee which permits

the Franchisee to provide the Passenger Services on track operated by Network Rail;

“Train Availability and Reliability Agreement”

means either:

- (a) the train availability and reliability agreement to be entered into by the Franchisee and the TSP in accordance with the provisions of paragraph 3.1(a) of Schedule 6.3 (The IEP Provisions); or
- (b) the train availability and reliability agreement dated 31 January 2014 (as amended by a deed of amendment and restatement dated 4 February 2015) to be amended pursuant to the provisions of paragraph 3.1(b) of Schedule 6.3 (The IEP Provisions);

“Train Fleet”

means:

- (a) the rolling stock vehicles described in or required by Schedule 1.7 (The Train Fleet); and
- (b) any other rolling stock vehicles that the Secretary of State consents to in accordance with paragraph 2 of Schedule 1.7 (The Train Fleet) from time to time;

“Train Mileage”

means, in relation to any period, the aggregate train mileage covered during such period by each train used in the provision of the Passenger Services (excluding, any train mileage covered as a result of positioning or other movements of rolling stock vehicles outside the Timetable) and **“Train Miles”** shall be construed accordingly;

“Train Operator”

means a franchisee or franchise operator, either of which operate railway passenger services pursuant to a franchise agreement or a Public Sector Operator;

“Train Plan”

means the plan and/or diagram of the Franchisee for the operation of trains and train formations under the Timetable referred to in paragraph 3a. of the Continuity Side Letter and any other Train Plan developed in accordance with Schedule 1.1 (Service Development);

“Train Slots”

shall have the meaning given to it in the Network Code;

“Transfer Scheme”

means a transfer scheme made by the Secretary of State under Section 12 and Schedule 2 of the

Railways Act 2005 (or equivalent statutory provision) pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination), being substantially in the form of Appendix 1 (Form of Transfer Scheme) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Secretary of State may make thereto as a result of any change of Law affecting such transfer scheme or other change of circumstances between the date of the Franchise Agreement and the date on which such scheme is made;

“Transport Act”	means the Transport Act 2000;
“Transport Direct”	means the website offering free information for door to door travel for both public transport and car journeys around Great Britain;
“Transport for London” or “TfL”	means Transport for London as established under the Greater London Authority Act 1999;
“Transport Trading Limited” or “TTL”	means Transport Trading Limited (registered number 03914810) a wholly owned subsidiary of Transport for London;
“Travelcard Agreement”	means the agreement of that name referred to in paragraph (a)(iv) of the definition of Inter-Operator Schemes;
“Traveline”	means the telephone enquiry service providing information on all public transport across the United Kingdom;
“Trigger”¹⁴⁰	means the point at which the Franchisee is required to give a discount to passengers who hold Passenger’s Charter Discount Season Tickets on the renewal of their Passenger’s Charter Discount Season Ticket because the Franchisee has not met the punctuality and/or reliability targets as set out in the Passenger’s Charter and as applicable to that Season Ticket Charter Group;
“Trustee”	has the meaning given to it in paragraph 3.1 of Schedule 16 (Pensions);
“TSI”	means any Technical Standard for Interoperability with which the Franchisee is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;

¹⁴⁰ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

“TSP Force Majeure Event”	means the occurrence of the event specified in Paragraph (g) of the definition of Force Majeure Event under the Train Availability and Reliability Agreement but if and only to the extent that such event is not caused by the TSP or the Franchisee in its capacity as Operator under the Train Availability and Reliability Agreement;
“TSP”	means Agility Trains West Limited (company number 07930606) a company incorporated in England and Wales and whose registered address is at 7 th Floor, 40 Holborn Viaduct, London EC1N 2PB;
“Turnaround Time”	means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles;
“Turnover”	means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchisee from the sale of Fares and the receipt of Franchise Payments during such period;
“Underspend”	has the meaning given to it in paragraph 3.4 of Part 2 to Schedule 6.1 (Miscellaneous Provisions);
“Unspecified Additional Rolling Stock”	has the meaning given to it paragraph 1.3 of Schedule 1.7 (Train Fleet);
“Value”	means at any time the aggregate of the Projected Revenue of each Fare in a Fares Basket at that time;
“Value Added Tax”	means value added tax as provided for in the Value Added Tax Act 1994;
“Variable Cost”¹⁴¹	<p>is an amount in respect of the variable costs to be incurred by the Franchisee in each Reporting Period from and including the DR Effective Date for processing each Delay Repay Compensation claim, with those variable costs being those which:</p> <p>(a) exclude the costs already comprised in Fixed Costs;</p> <p>(b) comprise of the following costs:</p>

¹⁴¹ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

(i) **agents:** Individuals employed to process claims or other associated ad-hoc duties (e.g. post, photocopying etc);

(ii) **termination compensation @ 2Wks per person:** Payable to individuals upon completion of right-sizing/scaling obligation;

(iii) **transaction process cost:** External IT associated costs incurred for the processing of received claims;

(iv) **serviced office set up costs:** Cost directly invoiced by serviced office agent;

(v) **serviced office costs pp/pcm:** Directly attributable costs as invoiced by serviced office provider;

(vi) **IT and Other Office services:** Any direct attributable cost for the processing of received claims such as postage, printers, photocopiers etc;

(vii) **recruitment and training:** Any directly attributable costs for any employees directly associated with Delay Repay claims.;

(viii) **training materials:** Production of materials to support training; and

(ix) **fulfilment costs:** as defined Schedule 4 paragraph 2.5,

with the amount of the Variable Costs as at the date of the DR Deed being as specified in respect of each Reporting Period in the table in paragraph 6 of Appendix 4 of Schedule 8.1 (Franchise Payments) as adjusted from time to time in accordance with paragraphs 7.2(h) and 7.2(i)(D) of Schedule 8.1 (Franchise Payments).

“Variation”

means a variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 9.5 (Variations and Incentivising Beneficial Changes);

“Weekday”

means any day other than a Saturday, a Sunday or a Bank Holiday;

“Weekly Season Ticket”

means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until

(but excluding) the day which falls seven days after such day;

“West of England Manufacturer”¹⁴²

means Hitachi Rail Europe Limited;

“West of England Option Vehicles”

means up to 22 x 5 car and 7 x 9 car new bi-mode units proposed to be the subject of an option under the West of England Rolling Stock Procurement Process;

“West of England Rolling Stock”¹⁴³

means rolling stock to be delivered pursuant to the West of England Manufacture and Supply Agreement;

“West of England Rolling Stock Lease Agreement”

means a rolling stock lease agreement in relation to rolling stock to be leased by the Franchisee if the Secretary of State decides to instruct the Franchisee to proceed to complete the West of England Rolling Stock Procurement Process;

“West of England Rolling Stock Manufacture and Supply Agreement”

means a manufacture and supply agreement in relation to rolling stock to be leased by the Franchisee if the Secretary of State decides to instruct the Franchisee to proceed to complete the West of England Rolling Stock Procurement Process;

“West of England Rolling Stock Procurement Process”

means the process for the procurement of 22 x 5 car and 7 x 9 car new bi mode trains (with the option to acquire some or all of the West of England Option Vehicles) being undertaken by the Franchisee;

“West of England Rolling Stock Procurement Proposal”

means a document to be presented to the Secretary of State by the Franchisee confirming the outputs capable of being delivered by the West of England Rolling Stock Procurement Process including:

- (a) agreed form final drafts of the following documents:
 - (i) West of England Rolling Stock Manufacture and Supply Agreement;
 - (ii) West of England Rolling Stock Lease Agreement;

¹⁴² Date of contract insertion 27/07/2015 – Agreed by the Secretary of State and Franchisee.

¹⁴³ Date of contract insertion 27/07/2015 – Agreed by the Secretary of State and Franchisee.

- (iii) West of England Rolling Stock Train Service Agreement;
- (iv) any other agreement that would be required to be entered into by the Franchisee to complete the West of England Rolling Stock Procurement Process;
- (v) forms of direct agreement between relevant counterparties and the Secretary of State in forms in accordance with guidance provided by the Secretary of State,

in each case with written confirmation from the relevant counter party that they are in an agreed form capable of execution if the Secretary of State decides to instruct the Franchisee to proceed with the procurement;

- (b) full details of the financial basis of the proposal including the terms proposed by any person who has agreed to provide finance in relation to the rolling stock (including cash flows) information relating to capital allowances, a detailed justification of the Franchisee's proposed maintenance strategy for the relevant rolling stock and the Franchisee's analysis of the whole life costs of the relevant rolling stock;
- (c) confirmation from the Franchisee that:
 - (i) the West of England Rolling Stock Procurement Process has been conducted in accordance with relevant law;
 - (ii) if the Secretary of State instructs the Franchisee to proceed with the procurement then the trains so procured will be contracted for to a specification capable of

operating a Timetable compliant with SLC 3(b);

(iii) that the contracted date for acceptance of the complete rolling stock fleet that would be acquired pursuant to the West of England Rolling Stock Procurement Process is no later than the Passenger Change Date in December 2018;

(iv) no Section 54 undertaking or similar or equivalent commitment is required from the Secretary of State by any party as a pre condition for the completion of the West of England Rolling Stock Procurement Process; and

(d) where the lease and/or TSA costs are different to what is in the Financial Model so that there should be a Qualifying Change under paragraph 18.3(a) of Schedule 6.2 (Great Western Franchise Specific Provisions), full details of why the Franchisee believes that this is the case together with an indicative Run of the Financial Model showing the impact on Franchise Payments if the Secretary of State instructs the Franchisee to proceed with the procurement;

“West of England Train Service Agreement”

means a train service agreement in relation to the maintenance of the rolling stock to be leased by the Franchisee if the Secretary of State decides to instruct the Franchisee to proceed to complete the West of England Rolling Stock Procurement Process;

“Worcester HST Fuelling Facility”¹⁴⁴

means the fuelling facility to be constructed together with associated works at Worcester light maintenance depot consistent with the specification set out in Appendix 5 to Schedule 6.2 (Great Western Franchise Specific Provisions) as such specification may be

¹⁴⁴ **Date of contract insertion 26/11/2015 – Agreed by the Secretary of State and Franchisee.**

amended from time to time by agreement between the Franchisee and Secretary of State;

“Worcester HST Fuelling Facility Phase 1 Package”¹⁴⁵

means activities approximating to Network Rail GRIP 3 to 4 outputs to develop a design sufficient to enable the procurement of a main contractor with the appropriate level of skills and experience to construct and bring into operation the Worcester HST Fuelling Facility (including all necessary equipment and associated workings) by 9 December 2016, which activities shall include:

- a) finalisation of the “Outline Design” for the Worcester HST Fuelling Facility and associated works (Form 01) (including all appropriate environmental assessments);
- b) subject to NR approval of Form 01, procurement and appointment of a design consultant, using the Franchisee’s framework procurement process, to finalise the “Detailed Design” for the Worcester HST Fuelling Facility and associated works (Form 02);
- c) Network Rail asset protection activities and railway consents, engagement with the depot facility owner of the Worcester light maintenance depot (being London & Birmingham Railway Limited as at the date on which this provision was incorporated into the Franchise Agreement), to agree depot access and other arrangements necessary for the implementation of the proposed works, and any other third parties; and
- d) subject to Network Rail approval of Form 02, undertaking the procurement and selection of a preferred main design build contractor to construct and bring into operation the Worcester HST Fuelling Facility (but not awarding a contract to construct or obliging either party to proceed to delivery);

“Worcester HST Fuelling Facility Phase 2 Package”¹⁴⁶

means activities approximating to Network Rail Grip 5 to 8 outputs to deliver the construction and bringing into operation of the Worcester HST Fuelling Facility and associated works including the following activities:

¹⁴⁵ **Date of contract insertion 26/11/2015 – Agreed by the Secretary of State and Franchisee.**

¹⁴⁶ **Date of contract insertion 26/11/2015 – Agreed by the Secretary of State and Franchisee.**

- a) the appointment of one or more contractors to deliver the Worcester HST Fuelling Facility (together as applicable, the “**Contractor**”) and placement of orders for the equipment and works required to construct and bring into operation the Worcester HST Fuelling Facility;
- b) finalising Network Rail asset protection activities;
- c) concluding a depot access agreement with the depot facility owner of the Worcester light maintenance depot relating to use of the Worcester HST Fuelling Facility by the Franchisee;
- d) working with the selected contractor to complete the design of the Worcester HST Fuelling Facility and to support the enabling of the works at the site;
- e) contracting for the construction of the Worcester HST Fuelling Facility including carrying out enabling works and installing the fuelling facility;
- f) testing and acceptance of the Worcester HST Fuelling Facility following its installation, and related training of Franchisee and depot facility owner staff as necessary to support its operation; and
- g) such other supporting works and provision of services, tools, plant and equipment as may be reasonably required to deliver the Worcester HST Fuelling Facility into operation (subject to any retention and snagging activities which the parties acknowledge may continue after the facility has commenced operation)

with a view to it entering into operation as soon as reasonably practicable and in any event by 9 December 2016 (or such later date as may be agreed between the parties);

“Worcester HST Fuelling Facility Payment”¹⁴⁷

means:

- a) the reasonable costs and disbursements incurred by the Franchisee directly in its delivery of the Worcester HST Fuelling Phase 1 and Phase 2 Packages, such costs to be calculated on a time and materials basis in

¹⁴⁷ **Date of contract insertion 26/11/2015 – Agreed by the Secretary of State and Franchisee.**

accordance with the rates set out in Appendix 4 (Worcester HST Fuelling Facility Payments) to Schedule 6.2 (Great Western Franchise Specific Provisions); and

- b) any reasonable third party costs and disbursements incurred directly by the Franchisee in carrying out the Worcester HST Fuelling Phase 1 and Phase 2 Packages, as evidenced by invoices or other evidence provided by the Franchisee to the Secretary of State;

"Worcester HST Fuelling Facility Maximum Costs"¹⁴⁸

means [REDACTED¹⁴⁹] (or such increased sum as may be agreed between the Secretary of State and the Franchisee pursuant to paragraph 21.4(b) of Schedule 6.2 (Great Western Franchise Specific Provisions));

"Yield Management Data"

means data collected by or on behalf of the Franchisee for the purpose of or in connection with managing or setting the prices at which any tickets for travel on the Passenger Services are sold and/or any quotas and/or restrictions applying to such tickets including:

- (a) the number of passengers travelling upon any particular Passenger Service;
- (b) the ticket types held by such passengers;
- (c) the prices paid by such passengers for such tickets; and
- (d) the dates and/or times between which such tickets were made available to purchase at such prices;

"Yield Management System"

means any system (whether a Computer System or otherwise) for the collection of Yield Management Data and/or onto which Yield Management Data is input, processed and/or held as such system may be amended or altered from time to time; and

"Zone"

means a zone set out in the map in Schedule 2 of the Travelcard Agreement on the date such

¹⁴⁸ **Date of contract insertion 26/11/2015 – Agreed by the Secretary of State and Franchisee.**

¹⁴⁹ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

agreement came into effect or as amended by agreement with the Secretary of State.

3. COMMENCEMENT

3.1 The clauses of this Franchise Agreement and the following Schedules of this Franchise Agreement shall take effect and be binding upon each of the Secretary of State and the Franchisee immediately upon signature of this Franchise Agreement:

- (a) paragraph 2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
- (b) paragraph 2 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees);
- (c) paragraph 4.3 of Schedule 4 (Persons with Disabilities and Disability Discrimination);
- (d) Schedule 5.1 (Purpose, Structure and Construction);
- (e) Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (f) Schedule 5.7 (Changes to Fares and Fares Regulation);
- (g) paragraph 2 of Schedule 5.9 (ITSO Certified Smartmedia);
- (h) paragraph 10 of part 2 (Miscellaneous Provisions) of Schedule 6.1 (Committed Obligations and Related Provisions);
- (i) paragraphs 9, 16, 18 and 19 of Schedule 6.2 (Great Western Franchise Specific Provisions);
- (j) ***paragraph 3.3(a) of Schedule 6.3 (The IEP Provisions);¹⁵⁰***
- (k) Schedule 9 (Changes and Variations);
- (l) Schedule 10 (Remedies, Termination and Expiry);
- (m) paragraph 2 of Schedule 11 (Agreement Management Provisions);
- (n) paragraph 4 and paragraph 5.1 of Schedule 12 (Financial Obligations and Covenants);
- (o) paragraphs 1, 5, 6, 7 and 8 of Schedule 13 (Information and Industry Initiatives);
- (p) Schedule 14.3 (Key Contracts);
- (q) Schedule 17 (Confidentiality and Freedom of Information); and
- (r) Schedule 19 (Other Provisions).

¹⁵⁰ Date of contract insertion 03/07/2015 – Agreed by the Secretary of State and Franchisee.

3.2 The other provisions of this Franchise Agreement shall take effect and be binding upon the parties on and from the Start Date.

4. **TERM**

4.1 This Franchise Agreement shall terminate on the Expiry Date or on the date of any earlier termination pursuant to Schedule 10 (Remedies, Termination and Expiry).

5. **GENERAL OBLIGATIONS**

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

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

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

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

6. **RELATIONSHIP WITH PREVIOUS FRANCHISE AGREEMENTS**

6.1 Anything done or omitted to be done by the Franchisee under or in relation to or during the term of the 2005 Franchise Agreement or under the Previous Franchise Agreement shall be regarded for the purpose of this Franchise Agreement as if it had been done or omitted to be done by the Franchisee under or in relation to and (only to the extent necessary to give effect to this Clause) during the term of this Franchise Agreement.

6.2 Without limiting the generality of Clause 6.1 any breach or contravention of the 2005 Franchise Agreement or the Previous Franchise Agreement shall be a breach or contravention of this Franchise Agreement, in so far as necessary to ensure that the Secretary of State shall have the same rights under and in respect of this Franchise Agreement in respect of that breach or contravention as it would have had under or in respect of the 2005 Franchise Agreement or the Previous Franchise Agreement had the 2005 Franchise Agreement or the Previous Franchise Agreement continued in force.

6.3 The Secretary of State agrees that he will not take any action to terminate the Franchise Agreement in respect of any Events of Default which may have existed or been alleged to exist at the Start Date.

7. **COMPLIANCE WITH LAWS**

The Franchisee shall, during the Franchise Term with regard to its obligations to perform the Franchise Services, and at all times with regards to its other obligations under the Franchise Agreement, comply with such obligations in accordance with all applicable Laws.

8. ENTIRE AGREEMENT/WARRANTY

- 8.1 This Franchise Agreement contains all the terms which the parties have agreed in relation to the subject matter of this Franchise Agreement and supersedes all prior written or oral agreements, representations or understanding between the parties in relation to such subject matter.
- 8.2 The Franchisee hereby acknowledges that this Franchise Agreement has not been entered into wholly or partly in reliance on, nor has the Franchisee been given any warranty, statement, promise or representation other than as expressly set out in this Franchise Agreement. To the extent that any such warranties, statements, promises or representations have been given the Franchisee unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.
- 8.3 Nothing in this Clause 8 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.
- 8.4 The Franchisee hereby acknowledges and agrees with the Secretary of State (for himself and as trustee for each of the other persons referred to therein) to the disclaimer of liability which is contained in the section entitled "Important Notice" of the Request for Proposal.
- 8.5 The Franchisee represents and warrants to the Secretary of State subject only to the matters fairly disclosed to the Secretary of State in writing (and accepted by him) or expressly provided for under the terms of this Franchise Agreement that all information, representations or other matters of fact communicated in writing to the Secretary of State and/or his advisers by the Franchisee, its directors, officers, employees, servants or agents in connection with or arising out of the Franchisee's proposals in connection with entering into this Franchise Agreement were (at the date submitted to the Secretary of State) and remain, in all material respects true, accurate and not misleading.

9. AGREED PRE-START DATE ACTIONS

9.1 SLC 3(b)

- (a) The parties acknowledge that SLC3(b) was still under development by the Franchisee at the date of this Franchise Agreement.
- (b) The Franchisee shall deliver a draft of SLC3(b) to the Secretary of State by no later than 30 April 2015. Such draft shall be consistent with:
- (i) the principle that SLC3(b) shall be a development of SLC3(a) providing for improved outputs consequent upon the implementation of the West of England Rolling Stock Procurement Process; and
- (ii) the draft public timetables supplied by the Franchisee to the Secretary of State on 21 January 2015 with filenames "Dec18 T135A new 200115.doc" and "Dec18 T135 new 200115.doc".
- (c) The Franchisee and the Secretary of State shall act reasonably and in good faith in seeking to agree SLC3(b). If agreement is not reached by 31 May 2015 the Secretary of State shall have the right to reasonably determine it.

9.2 Funding Deed and Performance Bond

- (a) The Secretary of State has by way of derogation agreed that the obligation of the Franchisee to procure that there shall be a valid and effective Performance Bond in place from the date of the Franchise Agreement pursuant to paragraph 4.1 of Schedule 12 (Financial Obligations and Covenants) is deferred to an obligation to procure that there shall be a valid and effective Performance Bond in place and in the possession of the Secretary of State from no later than 17.00 on Tuesday 24 March 2015 and accordingly the Event of Default pursuant to paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events) shall only apply from 17.01 on Tuesday 24 March 2015.
- (b) The Franchisee shall by no later than 30 April 2015 deliver to the Secretary of State the Funding Deed executed by FirstGroup plc and the Franchisee, together with a legal opinion in a form reasonably acceptable to the Secretary of State confirming due execution of the Funding Deed by FirstGroup plc under the laws of Scotland.

9.3 Regulated Fares Issues

The Secretary of State and the Franchisee shall work together reasonably and in good faith for the purposes of:

- (a) amending the Commuter Fares Basket and the Protected Fares Basket to remove accumulated head room arising out of the previous operation of the "fares flex policy" so that both documents are appropriately rebased from the Start Date; and
- (b) resolving prior to the Start Date other inconsistencies in Fares Documents acknowledged by the parties in correspondence in relation to the Previous Franchise Agreement prior to the date of this Franchise Agreement.

9.4 Alliance Agreement

The Franchisee shall use all reasonable endeavours to work with Network Rail to establish an Alliance Agreement proposal for submission by the Start Date to the Secretary of State for approval under paragraph 11 of Schedule 13 (Information and Industry Initiatives).

9.5 Other agreed pre-Start Date actions

The Franchisee shall:

- (a) work with the Secretary of State pursuant to paragraph 2.2 of Schedule 5.9 (ITSO Certified Smartmedia) with a view to a SEFT Deed being concluded as soon as reasonably practicable after the date of this Franchise Agreement with a view to the South East Flexible Ticketing Programme becoming operational by the SEFT Operational Date or as soon as reasonably thereafter;
- (b) comply with its obligations under paragraph 18.1 of Schedule 6.2 (Great Western Franchise Specific Provisions) in relation to the presentation of a West of England Rolling Stock Procurement Proposal to the Secretary of State by no later than 30 May 2015; and

(c) **not used.**¹⁵¹

10. **GOVERNING LAW**

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

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

¹⁵¹ 19 December 2017 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

SEAL REF No.

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

)
)
)

Andrew Macdonald

Authenticated by authority of the
Secretary of State for Transport

SIGNED FOR AND ON BEHALF OF
FIRST GREATER WESTERN LIMITED

)
)

Director:

Dave Gausby

Director/Secretary:

Matthew Golton

SCHEDULE 1**Passenger Service Obligations**

Schedule 1.1:	Service Development
Schedule 1.2:	Operating Obligations
Schedule 1.3:	Not Used
Schedule 1.4:	Passenger Facing Obligations
Schedule 1.5:	Information about Passengers
Schedule 1.6:	Franchise Services
Schedule 1.7:	The Train Fleet

SCHEDULE 1.1**Service Development****1. Service Level Commitment - Purpose And Responsibility**

- 1.1 A Service Level Commitment is a minimum specification of the Passenger Services and capacity to be provided by the Franchisee.
- 1.2 The Service Level Commitment as at the date of the Franchise Agreement is comprised in the following, all in the agreed terms, marked as follows:
- (a) **SLC1** being the Service Level Commitment applicable from the Start Date until the Passenger Change Date in May 2017;
 - (b) **SLC2** being the Service Level Commitment applicable from the Passenger Change Date in May 2017 until the Passenger Change Date in December 2018;
 - (c) **SLC3(a)** being the Service Level Commitment applicable from the Passenger Change Date in December 2018 until the end of the Franchise Term if the Secretary of State does not instruct the Franchisee to proceed to complete the West of England Rolling Stock Procurement Process pursuant to paragraph 18 of Schedule 6.2 (Great Western Franchise Specific Obligations); and
 - (d) **SLC3(b)** being the Service Level Commitment:
 - (i) to be agreed (or determined by the Secretary of State) pursuant to **clause 9.1** of this Franchise Agreement; and
 - (ii) applicable from the Passenger Change Date in December 2018 until the end of the Franchise Term if the Secretary of State instructs the Franchisee to proceed to complete the West of England Rolling Stock Procurement Process pursuant to paragraph 18 of Schedule 6.2 (Great Western Franchise Specific Obligations),

and for the purpose of this Schedule 1.1, such Service Level Commitment shall remain in force unless and until amended or replaced pursuant to paragraph 9.6 of this Schedule 1.1. The Service Level Commitment does not in any way limit the Franchisee's obligations pursuant to paragraph 7 of this Schedule 1.1.

- 1.3 The Secretary of State and Franchisee agree that the replacements of:

- (a) SLC1 by SLC2; or
- (b) SLC2 by SLC3(a) or SLC3(b) (as applicable),

at the time and for the period specified in paragraph 1.2 shall not constitute a Change for the purposes of paragraph (e) of the definition of Change.

- 1.4 A Service Level Commitment may be expressed in whole or in part at any level of generality or to any level of detail the Secretary of State considers appropriate.

2. **Train Plan**

- 2.1 A Train Plan is the plan or diagram of the Franchisee for the operation of trains and train formations under the Timetable.
- 2.2 The Franchisee shall submit to the Secretary of State a Train Plan in respect of each Timetable in accordance with this Schedule 1.1.
- 2.3 In preparing any Train Plan, the Franchisee shall do so by reference to the timetable that it envisages operating in order to comply with the Service Level Commitment and paragraph 7 of this Schedule 1.1.
- 2.4 The Train Plan for the Timetable as at the Start Date is in the agreed terms marked **TP**.
- 2.5 Each Train Plan is to set out for each railway passenger service in the Timetable to which it relates:
- (a) its start point and departure time;
 - (b) its terminating point and arrival time;
 - (c) the number and class of rolling stock vehicles allocated to each such railway passenger service;
 - (d) the Passenger Carrying Capacity that each such railway passenger service, as formed, is to have;
 - (e) its Forecast Passenger Demand; and
 - (f) where this has been requested by the Secretary of State and is capable of calculation, the Actual Passenger Demand.
- 2.6 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.

3. **Not used.**

4. **Consultation on Significant Alterations to the Timetable**

- 4.1 Notwithstanding any consultation the Secretary of State might separately undertake in respect of any amended or new draft Service Level Commitment issued pursuant to paragraph 9, the Franchisee shall where:
- (a) it intends that any future Timetable shall contain Significant Alterations compared to the Timetable then in force otherwise than as a result of:
 - (i) changes arising out of a new or amended Service Level Commitment where such changes can reasonably be regarded as having been consulted upon as part of the consultation process related to such new or amended Service Level Commitment; or
 - (ii) restrictions of use proposed by Network Rail or due to its inability to secure the necessary Timetable Development Rights or due to the timetable otherwise able to be secured from Network Rail; and

- (b) such Significant Alterations are likely to have, in the reasonable opinion of the Franchisee, a materially adverse effect on:
- (i) ability of passengers using any station served by the Passenger Services to make journeys relating to work or education at reasonably convenient times; and/or
 - (ii) the trading prospects of commercial enterprises located in any community in which a station served by the Passenger Services is located in consequence of it being more difficult for customers or employees to access such commercial enterprises through travel on the Passenger Services,

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

For the avoidance of doubt the first Timetable to which these provisions applies is the Timetable with effect from the Passenger Change Date in December 2016.

4.2 In conducting any consultation under paragraph 4.1 the Franchisee shall:

- (a) after first providing a summary to the Secretary of State regarding the Significant Alterations in the future timetable as soon as reasonably practicable give all Stakeholders notice and consult them in respect of the changes to the Passenger Services specified in such summary;
- (b) 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 12 weeks to respond in relation to major proposed Timetable changes but that the Franchisee and the Secretary of State in appropriate circumstances may agree a different period);
- (c) after sending or receiving any correspondence in respect of such notice or consultation, provide the Secretary of State with copies of such correspondence;
- (d) take due account of such bodies' views that are submitted to the Franchisee in accordance with any guidance referred to in paragraph 4.2(f);
- (e) inform the Secretary of State of any material changes that it would expect there to be to such timetable if the views of such bodies were accommodated; and
- (f) comply with such reasonable requirements and guidance as the Secretary of State may notify to it from time to time in respect of giving notice to and consulting such stakeholders in accordance with this paragraph 4.2.

5. **Timetable Development Rights**

- 5.1 The Franchisee shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment and otherwise comply with its obligations under the Franchise Agreement (including under paragraph 7 of this Schedule 1.1).

- 5.2 Prior to exercising any Timetable Development Rights to secure a Timetable the Franchisee shall make an informed estimate of Forecast Passenger Demand and in doing so shall make reasonable assumptions based on available evidence and making proper use of recognised railway industry systems and forecasting tools as these may develop over the Franchise Period, with the estimate being in such format and to such level of disaggregation as the Secretary of State may reasonably require.
- 5.3 Subject to the remaining provisions of this paragraph 5, the Franchisee shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment and paragraph 7 of this Schedule 1.1 in accordance with its obligations under paragraph 11 of this Schedule 1.1.
- 5.4 Where the Franchisee proposes to exercise its Timetable Development Rights so that the Timetable in force after the relevant Passenger Change Date contains Significant Alterations to that in force prior to such Passenger Change Date the Franchisee shall, (without prejudice to its obligation to consult pursuant to paragraph 4) act reasonably with the intention of obtaining a Timetable which enables paragraphs 7.1(a) and 7.1(b) of this Schedule 1.1 to be achieved in relation to each Passenger Service in the Timetable to the greatest extent reasonably practicable. It is agreed that in acting reasonably the Franchisee shall take full and proper account of its estimation of Forecast Passenger Demand made pursuant to paragraph 5.2.
- 5.5 Unless the Secretary of State otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Service Level Commitment and paragraph 7 of this Schedule 1.1, exercise its rights under the Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights.
- 5.6 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 5.5, he may require the Franchisee to exercise its rights referred to in paragraph 5.5 in such manner as he reasonably considers appropriate in the circumstances, including:
- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights; and
 - (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR.
- 5.7 Subject to the Franchisee complying with its obligations under paragraph 5.5, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Service Level Commitment or paragraph 7 of this Schedule 1.1, to the extent that such failure is caused by:
- (a) the Franchisee's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Franchisee has exercised and, unless otherwise agreed by the Secretary of State, is continuing to exercise all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 5.1;

- (b) Network Rail exercising its flexing rights from time to time under the Track Access Agreement or the Network Code in respect of such Train Slots;
- (c) Network Rail exercising its other rights from time to time under the Track Access Agreement or the Network Code; or
- (d) the exercise by the ORR of its powers pursuant to Section 22C of the Act.

5.8 **Not used.**

5.9

- (a) If and to the extent that the Franchisee is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitment as a result of it not being able to obtain the timetable development rights that it requires for that purpose, then the Secretary of State shall (subject to paragraphs 5.9(b) and 5.9(c) below) issue to the Franchisee such amendments to the Service Level Commitment ("**SLC (TDR) Amendment**") as the Secretary of State considers necessary such that the Franchisee is able to secure a Timetable in compliance with the Service Level Commitment as amended by the SLC (TDR) Amendments 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 SLC (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 5.1; and
 - (ii) it is not relieved by paragraph 5.7 from liability for such failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Service Level Commitment.
- (c) Where the Secretary of State reasonably considers that the failure to secure a Timetable that enables the Franchisee to operate the Service Level Commitment 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 any SLC (TDR) Amendment shall not relieve the Franchisee of the obligation to comply with the Service Level Commitment to the extent that the Secretary of State determines that the failure is due to such default of the Franchisee and the Franchisee may be in contravention of the Franchise Agreement accordingly.

5.10 Following issue of any SLC (TDR) Amendment pursuant to paragraph 5.9 the Franchisee shall, unless otherwise agreed by the Secretary of State, continue to use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment without such SLC (TDR) Amendment.

5.11 Any SLC (TDR) Amendment issued pursuant to paragraph 5.9 shall:

- (a) unless otherwise required by the Secretary of State, cease to have effect on the date (if any) on which the first Timetable comes into effect after the Franchisee has obtained the Timetable Development Rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment without any such SLC (TDR) Amendment;
- (b) amount to a Change.
- 5.12 With effect from the date on which any SLC (TDR) Amendment ceases to have effect in accordance with paragraph 5.11:
- (a) the Service Level Commitment without such SLC (TDR) Amendment shall thereafter apply;
- (b) there shall be a further Change to the extent necessary so as, with effect from such date, to disapply the effect of the Change referred to in paragraph 5.11(b) in respect of such SLC (TDR) Amendment.
- 5.13 With effect from the Passenger Change Date in December 2018 if and to the extent that the Franchisee is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitment as a result of the maximum permissible speed that Class 387 Units within the Class 387 Entire Fleet are able to operate at over the Class 387 ETCS Route being limited to 100 mph in consequence of ETCS Infrastructure not being operational then the Secretary of State shall issue to the Franchisee such amendments to the Service Level Commitment ("**SLC (TDR - 387) Amendment**") as the Secretary of State considers necessary to permit the Franchisee to secure a Timetable in compliance with the Service Level Commitment in circumstances where there are such restrictions on the maximum permissible speed of Class 387 Units within the Class 387 Entire Fleet.
- 5.14 Any SLC (TDR - 387) Amendment issued pursuant to paragraph 5.13 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 Class 387 ETCS Route is fitted with operational ETCS Infrastructure.
- 5.15 If an SLC (TDR - 387) Amendment is issued pursuant to paragraph 5.13 because more than one of the Class 387 Routes is not fitted with operational ETCS Infrastructure and one or more but not all of such Class 387 Routes become so fitted then from the date that the first Timetable comes into effect after any relevant Class 387 Routes have been so fitted the Secretary of State shall issue an amended SLC (TDR - 387) Amendment. The amendments made to the SLC (TDR - 387) Amendment shall be those that the Secretary of State considers necessary to take into account the ability of Class 387 Units within the Class 387 Entire Fleet to operate at speeds in excess of 100 mph over those Class 387 Routes in relation to which the fitting of operational ETCS Infrastructure has been completed.
- 5.16 With effect from the date on which any SLC (TDR - 387) Amendment ceases to have effect in accordance with paragraph 5.14 the Service Level Commitment without such SLC (TDR) Amendment shall thereafter apply.
- 5.17 If the Franchise Term is extended pursuant to paragraph 2 of Schedule 18 (Additional Reporting Periods) so that the Franchisee is required to continue to operate the Passenger Services from the Passenger Change Date in December 2019 and subject to the Secretary of State being reasonably satisfied that the

Franchisee has used all reasonable endeavours to implement appropriate mitigating measures it shall be a Change if:

- (a) an SLC (TDR – 387) Amendment is in force or is issued in relation to any Timetable taking effect on or after the Passenger Change Date in December 2019; and
- (b) where there is a Change pursuant to sub paragraph 5.17(a):
 - (i) an SLC (TDR – 387) Amendment is amended pursuant to paragraph 5.15; or
 - (ii) an SLC (TDR – 387) Amendment ceases to have effect in accordance with paragraph 5.14.

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

6.1 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 5.3.

6.2 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 6.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 5.3.

6.3 The Franchisee shall:

- (a) keep the Secretary of State fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may, in the reasonable opinion of the Franchisee, have a material bearing on the ability of the Franchisee to deliver the Service Level Commitment through the Timetable or meet the requirements of paragraph 7 of this Schedule 1.1 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 6.3 and/or certification under paragraph 6.1 as soon as reasonably practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development Rights following Network Rail's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

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

7.1 **Capacity and Timetable Planning**

The Franchisee shall, in preparing its Timetable and Train Plan, unless the Secretary of State otherwise agrees, provide for the Passenger Carrying Capacity specified in the SLC and use all reasonable endeavours to:

- (a) provide for Passenger Carrying Capacity on each Passenger Service that meets as a minimum the Target Passenger Demand for that Passenger Service; and

- (b) provide passengers with a reasonable expectation of a seat:
 - (i) on boarding any Passenger Service during each Off-Peak; and
 - (ii) 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) any Passenger Service during each Peak.

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

If at the time it prepares its Timetable and/or Train Plan, having exercised all reasonable endeavours, the Franchisee is unable to prepare a Timetable and/or Train Plan having the Passenger Carrying Capacity and/or meeting the reasonable expectations referred to in paragraph 7.1, then the Timetable and/or the Train Plan shall specify the best allocation of Passenger Services and rolling stock vehicles to Passenger Services that is reasonably practicable with a view to:

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

Timetable and Train Plan

7.3

- (a) Subject to paragraph 7.3(b) the Franchisee shall in preparing its Timetable and its Train Plan take full and proper account of its calculation of Forecast Passenger Demand and use all reasonable endeavours to ensure that the Train Fleet is deployed in an optimal manner for the purposes of complying with its obligations under sub paragraphs 7.1 and 7.2 above.
- (b) The Franchisee shall in preparing its Timetable and Train Plan deploy the entire Train Fleet (excluding reasonable planning requirements for the allocation of Hot Standbys or other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reason agreed with the Secretary of State (such agreement not to be unreasonably withheld or delayed)) in delivering the Passenger Services:
 - (i) during each Peak; and
 - (ii) at such times during each Off Peak where such deployment of the entire Train Fleet is reasonably required to meet the

Franchisee's obligations pursuant to sub paragraphs 7.1 and 7.2 above.

Finalising the Train Plan

- 7.4 The Franchisee shall submit its Train Plan to the Secretary of State as soon as reasonably practicable after Network Rail has published the working timetable on which the Timetable is to be based.
- 7.5 The Secretary of State may notify the Franchisee of:
- (a) any respect in which he considers that the Train Plan does not comply with the requirements of this Schedule 1.1; and
 - (b) any revisions that he requires to address such non-compliance,
- and the Franchisee shall revise the Train Plan in accordance with the Secretary of State's requirements.
- 7.6 If the Franchisee considers that any of the revisions that the Secretary of State requires pursuant to paragraph 7.5(b) are not required for the Train Plan to comply with this Schedule 1.1 then:
- (a) it shall nevertheless make such revisions;
 - (b) it may subsequently refer the question as to whether such revisions were so required for resolution in accordance with such dispute resolution procedure as the parties may agree or, in the absence of agreement, in accordance with the Dispute Resolution Rules; and
 - (c) following determination of any such dispute, the parties shall take such steps as are required to give effect to such determination.

8. Capacity Mitigation Plan

8.1

- (a) Without prejudice to the obligation of the Franchisee to include in the Train Plan the capacity specified in the Service Level Commitment, if at any time the Franchisee is unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 7.1 (regardless of whether the Franchisee has used all reasonable endeavours to do so), the Secretary of State may serve a notice on the Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate such inability ("**Capacity Mitigation Plan**"). Such specification may, without limitation, include measures to be implemented by the Franchisee to:
 - (i) remedy the circumstances leading to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 7.1; and/or
 - (ii) minimise, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;

- (iii) ensure, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
- (iv) minimise, so far as is possible, the extent to which passengers are required to stand:
 - (A) on boarding any Passenger Service during each Off-Peak; and
 - (B) 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) any Passenger Service during each Peak,

in all such cases (unless the Secretary of State specifies to the contrary) taking into account both Actual Passenger Demand and Forecast Passenger Demand. Where the Secretary of State reasonably believes that future circumstances may lead to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 7.1 at any time within the next four years (including after the end of the Franchise Term) he shall have the right to serve notice on the Franchisee specifying those future circumstances and the date that the Franchisee should assume that they will arise from and requiring it to produce a Capacity Mitigation Plan to remedy or mitigate such future circumstances on the basis of assumptions provided by the Secretary of State.

- (b) The Capacity Mitigation Plan shall (unless the Secretary of State specifies to the contrary) include the Franchisee's informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require. Without limitation such specification may require the Franchisee to present options to address relevant issues through:
 - (i) alterations to the Service Level Commitment;
 - (ii) modification of rolling stock or the acquisition of additional or replacement rolling stock;
 - (iii) alterations to Fares; and/or
 - (iv) alterations or enhancements to any track, signalling, station, depot or other relevant railway infrastructure.
- (c) The Capacity Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
 - (i) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (ii) the implications (if any) for the Benchmarks; and
 - (iii) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

- (d) The Franchisee shall meet with the Secretary of State to discuss the Capacity Mitigation Plan and provide such further information or analysis and further iterations of the Capacity Mitigation Plan as the Secretary of State shall reasonably require.

9. **Franchisee Informed Opinion and new or amended Service Level Commitment**

9.1 As and when required, whether for the purposes of considering alterations to the Service Level Commitment or otherwise, the Franchisee shall provide to the Secretary of State:

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

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

9.3 On receipt of any such draft of a proposed amended or new Service Level Commitment the Franchisee shall provide to the Secretary of State if so requested:

- (a) its informed opinion with supporting reasons as to the impact of the proposed amended or new Service Level Commitment on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 7.1 of this Schedule;
 - (b) its informed opinion with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amended or new Service Level Commitment;
 - (c) its informed opinion with supporting reasons as to changes (if any) to the Benchmarks and/or the Annual Benchmarks;
 - (d) its informed opinion of the process to be required to implement the proposed amendment to the Service Level Commitment together with a plan for the implementation of the amendment to the Service Level Commitment (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such amended or new Service Level Commitment) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 10; and
 - (e) a draft of the Train Plan that it considers that the proposed amended or new Service Level Commitment would require.
- 9.4 There may be iterations of drafts of the proposed amended or new Service Level Commitment and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 9 in respect of all such iterations.
- 9.5 Processes contained in this paragraph 9 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 10.2.
- 9.6 The Secretary of State may, in accordance with any stipulation made under paragraph 10.2, issue to the Franchisee any amended or new Service Level Commitment that he requires the Franchisee to operate and notice of the changes (if any) to the Benchmarks and/or the Annual Benchmarks. Such amended or new Service Level Commitment will be issued within a reasonable period prior to the commencement of the timetable development process of Network Rail for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Service Level Commitment. In the absence of the Secretary of State issuing any amended or new Service Level Commitment the existing Service Level Commitment will remain in full force and effect. The degree of variation from any Service Level Commitment specified when the Franchise Agreement was entered into in respect of any particular period and brought about by any amended or new Service Level Commitment issued pursuant to this paragraph 9.6 shall (where relevant) be of a magnitude no greater than that contemplated in the Request for Proposal.
- 9.7 At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Service Level Commitment pursuant to paragraph 9.2, the Secretary of State shall also provide to the Franchisee his opinion of any changes (if any) that are required to the Benchmarks and/or the Annual Benchmarks.

9.8 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purposes of considering the effects of his proposed amended or new Service Level Commitment.

10. Procedure

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

10.2 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 timetable development) and that the Secretary of State may amend any such stipulation from time to time.

10.3 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 10.2.

10.4 Any stipulation by the Secretary of State pursuant to paragraph 10.2:

- (a) shall be at the reasonable discretion of the Secretary of State;
- (b) may contain procedural arrangements and timescales to be followed by the Franchisee in relation to other changes to the Franchise Services (pursuant to paragraph 1 of Schedule 9.5 (Variations and Incentivising Beneficial Changes) in conjunction with the Service Level Commitment; and
- (c) may provide for iterations of drafts of any amended or new Service Level Commitment, Train Plan or Timetable and for indicative Runs of the Financial Model in relation thereto.

10.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 10.2 shall have contractual effect between the Franchisee and the Secretary of State in accordance with the terms of such stipulation.

11. Obligations in relation to other Train Operators

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 or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).

12. Provisions relating to Access Agreements and Property Leases

12.1 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under the Franchise Agreement, or any other franchise agreement, or for the better achievement by him of any of his duties, functions and powers in relation to railways or the implementation of the Crossrail Programme and the operation of Crossrail Services by the Crossrail Operator the Secretary of State may require the Franchisee:

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

As at the date of this Franchise Agreement, the Secretary of State requires that the Franchisee refrain from exercising any or all of its rights under any Access Agreement or any Property Lease to apply for access rights that would be inconsistent with ensuring that between the Passenger Change Date in May 2018 and the Passenger Change Date in December 2019 the Crossrail Operator has unrestricted access to two platforms at London Paddington station of adequate length to accommodate a standard length train of the Crossrail Operator, to the extent necessary to allow Crossrail Services to operate. This direction shall not restrict any such exercise of rights being treated as a Change.

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

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

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

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

12.4 If and to the extent that:

- (a) the Secretary of State exercises his rights pursuant to paragraph 12.1; and

(b) the Franchisee's compliance with the Secretary of State's requirements pursuant to paragraph 12.1 would lead to the unavoidable consequence of the Franchisee contravening any other terms of the Franchise Agreement or the occurrence of an Event of Default; and

(c) the Franchisee duly complies with such requirements,

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

13. The Timetable and the Working Timetable

13.1 Any specification of railway passenger services in a Service Level Commitment shall (unless the Secretary of State states to the contrary) be regarded as relating to how those services are to be provided for in the National Rail Timetable that Network Rail publishes for passengers, and not how they are to be provided for in the working timetable that Network Rail issues to industry parties at the conclusion of its timetable development process.

13.2 Accordingly, the Franchisee's obligations specified in paragraph 5.3 shall be construed as an obligation to secure the requisite Train Slots in the working timetable to be issued by Network Rail at the conclusion of its timetable development process that will permit the Franchisee to operate railway passenger services that comply with the Service Level Commitment provided for in the relevant Timetable.

13.3 The Franchisee shall ensure, for each period between two consecutive Passenger Change Dates during the Franchise Term, that the Timetable for such period is, in its reasonable opinion, not materially different from the relevant working timetable issued by Network Rail at the conclusion of its timetable development process.

SCHEDULE 1.2

Operating Obligations

1. Daily Operating Obligations

- 1.1 The Franchisee agrees to use all reasonable endeavours to operate on each day of the Franchise Term each of its Passenger Services as are set out in the Plan of the Day for that day with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service. The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it has on any day of the Franchise Term failed to operate to a material extent each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service.
- 1.2 The Franchisee shall ensure that its performance in each Reporting Period, calculated as a moving annual average in accordance with Schedule 7.1 (Performance Benchmarks), does not exceed (that is, is neither equal to or worse than) each Breach Performance Level in respect of that Reporting Period. It shall be a contravention by the Franchisee of the terms of the Franchise Agreement if its performance exceeds (that is, is equal to or worse than) any Breach Performance Level in any Reporting Period.

2. Service Level Commitment and Capacity Compliance

- 2.1 If the Secretary of State considers that the Franchisee may have breached any of its obligations under paragraphs 5.1, 5.3, 5.4, 5.5, 7.1 and 7.2 of Schedule 1.1 (Service Development) or paragraph 1.1 of this Schedule 1.2, he shall (in addition to his right to obtain further information pursuant to paragraph 1.1 of Schedule 1.5 (Information about Passengers) and without prejudice to any other rights of the Secretary of State under the Franchise Agreement or otherwise) have the right, by serving notice on the Franchisee, to instigate an investigation of the Franchisee's compliance with its obligations under paragraphs 5.1, 5.3, 5.4, 5.5, 7.1 and 7.2 of Schedule 1.1 (Service Development) and paragraph 1.1 of this Schedule 1.2 ("**Timetabling and Train Planning Compliance Investigation**").

Following the service of such a notice the Franchisee shall:

- (a) provide such information as the Secretary of State may reasonably require for the purposes of determining if the Franchisee has complied with its obligations under paragraphs 5.1, 5.3, 5.4, 5.5, 7.1 and 7.2 of Schedule 1.1 (Service Development) and paragraph 1.1 of this Schedule 1.2 including:
- (i) evidence of the steps taken by the Franchisee to amend and/or enter into Access Agreements, exercise Timetable Development Rights and exercise its rights under the Track Access Agreement to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights;
 - (ii) evidence of the extent to which the Franchisee has operated on each day of the relevant Reporting Period each of its Passenger Services as are set out in the Plan of the Day for

that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service;

- (iii) Forecast Passenger Demand and the way that it was calculated including all evidence taken into account and assumptions used (including any divergences from then existing industry modelling standards and the reasons for such divergences); and
 - (iv) the alternative solutions considered by the Franchisee before finalising the Timetable and Train Plan and the reasons why any such alternative solutions were not adopted; and
- (b) permit the Secretary of State to carry out an audit of the extent to which the Timetable and Train Plan enables the Franchisee to operate railway passenger services that comply with the Service Level Commitment and paragraph 7 of Schedule 1.1 (Service Development) and fully co-operate with and provide all information needed to facilitate such audit.

2.2

- (a) The Franchisee shall be in contravention of the Franchise Agreement if following the completion by the Secretary of State of the Timetabling and Train Planning Compliance Investigation he concludes that the Franchisee breached any of its obligations under paragraphs 5.1, 5.3, 5.4, 5.5, 7.1 and 7.2 of Schedule 1.1 (Service Development) and paragraph 1.1 of this Schedule 1.2 including where the Franchisee:
- (i) failed to act reasonably in calculating Forecast Passenger Demand because it unreasonably assumed that there would be differences between Forecast Passenger Demand and Actual Passenger Demand at the time that the Forecast Passenger Demand calculation was made; or
 - (ii) made unreasonable assumptions about the timetables likely to be operated by other Train Operators serving some or all of the same stations as the Franchisee.
- (b) Where the Secretary of State does conclude pursuant to paragraph 2.2(a) above that the Franchisee has breached any relevant obligation the Franchisee shall pay to the Secretary of State the costs incurred by him in undertaking any Timetabling and Train Planning Compliance Investigation (including any audit pursuant to paragraph 2.1(b)).

- 2.3 The Secretary of State shall notify the Franchisee if he concludes pursuant to paragraph 2.2 that the Franchisee is in contravention of the Franchise Agreement and he may at his discretion, and entirely without prejudice to his other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 1.1 of Schedule 10.1 (Remedial Plans and Remedial Agreements).

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

- 3.1 The Franchisee shall notify the Secretary of State promptly after being notified by Network Rail that Network Rail has decided or proposes to:
- (a) omit from the Plan of the Day Passenger Services that are included in the Timetable; or
 - (b) reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable.
- 3.2 To the extent that any such decision or proposal may, in the reasonable opinion of the Franchisee, materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan the Franchisee shall explain in such notification the way in which, in its reasonable opinion, such omission or rescheduling may materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan.
- 3.3 The Franchisee agrees to supply to the Secretary of State from time to time, in the format required by the Secretary of State, such details of any actual or proposed omission or rescheduling of Passenger Services by Network Rail as the Secretary of State may reasonably require, including details of the steps which the Franchisee proposes to take pursuant to paragraph 3.4.
- 3.4 Where the actual or proposed omission or rescheduling of Passenger Services is one which may, in the reasonable opinion of the Secretary of State or the Franchisee, materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan, the Franchisee agrees (unless the Secretary of State specifically agrees otherwise) to exercise its rights under the Track Access Agreement (including the Network Code) to:
- (a) object (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR);
 - (b) make representations; and
 - (c) withhold consent,
- in respect of any actual or proposed omission or rescheduling of Passenger Services by Network Rail.
- 3.5 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 3.4, the Secretary of State may require the Franchisee to exercise its rights referred to in paragraph 3.4 in such manner as the Secretary of State may consider appropriate in the circumstances.
- 3.6 The provisions of this paragraph 3 shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than Network Rail, as those provisions apply to Network Rail.

4. Timetable changes proposed by the Franchisee

4.1 The Franchisee agrees, subject to paragraph 4.2, not to propose to Network Rail:

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

without the Secretary of State's prior consent.

4.2 The Franchisee shall use all reasonable endeavours to operate adequate railway passenger services to or from any special events which are not already provided for in the Plan of the Day to meet the passenger demand that is reasonably likely to arise from such special events and from the operation of such railway passenger services including through additions to and omissions from the Plan of the Day or rescheduling in the Plan of the Day where appropriate.

5. Timetable changes requested by the Secretary of State

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

- (a) the addition to the Plan of the Day of any railway passenger services that are not included in the Timetable. The Franchisee shall, following a request by the Secretary of State to operate additional railway passenger services under this paragraph 5(a), provide to the Secretary of State a train plan which complies with the requirements of paragraph 2.5 and 2.6 of Schedule 1.1 (Service Development);
- (b) the omission from the Plan of the Day of any Passenger Services that are included in the Timetable; and/or
- (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable.

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

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

- (a) without prejudice to any other provision of this Schedule 1.2, notify the Secretary of State promptly where such disruption would materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable or deliver the Timetable in accordance with the Train Plan;
- (b) co-operate with Network Rail and other Train Operators to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to ensure that such disruption

is not concentrated on a particular part of the network, except where such concentration either:

- (i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
 - (ii) is reasonably necessary as a result of the cause or the location of the disruption; and
- (c) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2.

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

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

7. **Obligation to use all reasonable endeavours**

7.1 Any obligation in this Schedule 1.2 on the part of the Franchisee to use all reasonable endeavours to operate railway passenger services shall include an obligation to:

- (a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in accordance with the Train Plan in ordinary operating conditions;
- (b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Franchise Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 7.2; and

- (c) actively manage the performance by Network Rail of its contractual relationship with the Franchisee (and provide appropriate management resources for this purpose) so as to secure the best performance reasonably obtainable from Network Rail by these means (including taking the steps referred to in paragraph 7.4), having regard to all the circumstances.

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

- (a) variations in weather and operating conditions (including Network Rail's infrastructure not being available for any reason), which may in either case include seasonal variations;
- (b) default by, or restrictions imposed by, suppliers to the Franchisee;
- (c) shortages of appropriately skilled or qualified Franchise Employees;
- (d) disputes with Franchise Employees;
- (e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
- (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew and the servicing or cleaning of any rolling stock vehicles; and
- (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction).

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

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

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

- (a) co-operating with Network Rail in the development, agreement and implementation of:
 - (i) a 5-year (rolling) Performance Strategy Plan; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Performance Strategy Plan;

- (b) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and the Franchisee from time to time;
- (c) undertaking regular reviews of:
 - (i) the most common and most detrimental causes of PPM attrition and delay to the Passenger Services; and
 - (ii) the ten causes of delay to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 7.4(c)(i)),

which have occurred during that defined review period (e.g. weekly / four weekly / quarterly) and which have been caused by the Franchisee, any other Train Operator, any other train operator licensed under the Act or Network Rail;
- (d) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 7.4(c)(i) and 7.4(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
- (e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the parties;
- (f) regularly monitoring (at least every Reporting Period) the delivery of commitments made by Network Rail in the Performance Strategy Plan and derived delivery plans and using reasonable endeavours to specify and develop such delivery plans;
- (g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains (and data collected from on train systems), other facilities and/or information;
- (h) co-operating with Network Rail in other delay management initiatives and ongoing quarterly reviews of the Performance Strategy Plan;
- (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
- (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
- (k) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing the Franchisee's rights under such Track Access Agreement.

7.5 The Franchisee undertakes to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules (as such term is defined under the Network Code).

7.6 To the extent not already provided for in the Franchise Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by Network Rail of

its obligations under any relevant agreement including, where appropriate or where requested by the Secretary of State, enforcing its rights against Network Rail under any such agreement.

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

SCHEDULE 1.3

Not Used

SCHEDULE 1.4**Passenger Facing Obligations****1. Publishing the Timetable ⁱ ⁱⁱ****The First Timetable**

1.1 The Franchisee shall publish on the Start Date:

(a) the Timetable:

(i) at each staffed Station, by making the relevant information available upon request and free of charge in one or more booklets or in other similar form;

(ii) at each Station, by displaying the relevant information on information displays;

(iii) at each Franchisee Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraphs 1.1(a)(i) and 1.1(a)(ii); and

(iv) on the Franchisee's website; and

(b) the timetables of other Train Operators at Stations, in accordance with paragraph 1.4.

Timetable Revisions and Alterations

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

(a) in the case of booklets, at least **two** ¹⁵² weeks before the changes come into effect;

(b) in the case of information displays, no later than the day before the changes come into effect;

(c) in the case of information provided to the operators of Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limits provided for in this paragraph 1.2; and

(d) in the case of the Franchisee's website, at least four weeks before the changes come into effect.

¹⁵² **Date of contract change 28/05/2015 – Agreed by the Secretary of State and Franchisee.**

1.3 In addition, the Franchisee shall:

- (a) subject to paragraph 1.4, display posters at each Station advising passengers of all significant alterations between any two Passenger Change Dates to railway passenger services calling at that Station, no later than four weeks in advance of the date on which the alterations come into effect; and
- (b) provide posters to the operators of Franchisee Access Stations, advising passengers of all significant alterations between any two Passenger Change Dates to the Passenger Services which call at such Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limit provided for in paragraph 1.3(a).

Other Train Operators' Timetables

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

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

National Rail Timetable and National Rail Enquiry Scheme

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

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

- (a) the Timetable; and
- (b) any significant alterations to the Timetable to take effect between any two Passenger Change Dates,

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

2. Late Timetable Changes

2.1 Save in respect of significant alterations, for which the provisions of paragraphs 1.3 and 1.6 shall apply, the Franchisee shall inform passengers, so far as possible on not less than seven days' prior notice, if it will be unable to operate its trains

in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.

2.2 Such information shall be provided by:

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

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

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

2.5 The Franchisee shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), passengers making enquiries regarding the Passenger Services are informed of the revised Timetable and any revised travel arrangements of the Franchisee as far in advance as is reasonably practicable.

3. **Fares Selling Restrictions**

3.1 **Restrictions on Sales**

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

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

3.2 The Franchisee shall procure that for any:

- (a) Protected Return Fare, Single Fare which is a Commuter Fare or Return Fare which is a Commuter Fare, each such Fare shall be offered for sale wherever and whenever any other Fare (not being a Season Ticket Fare)

for a journey between the same origin and destination stations is offered for sale; and

- (b) Protected Weekly Season Ticket or Season Ticket Fare which is a Commuter Fare, each such Fare shall be offered for sale at all staffed ticket offices at which Fares for a journey between the same origin and destination stations are sold and otherwise wherever and whenever any Season Ticket Fare is offered for sale,

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

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

- (a) the number of seats in Standard Class Accommodation on such train; and
- (b) the capacity of Standard Class Accommodation of the rolling stock vehicles comprising such train according to the tables set out in Schedule 1.7 (The Train Fleet).

3.4 The Franchisee shall not sell or offer to sell:

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

3.5 **Agents of the Franchisee**

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

- (a) for Fares in respect of which the:
 - (i) Prices are regulated under Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares), sell or offer to sell at prices no greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4

(Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares); and

- (ii) Child Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), sell or offer to sell at prices no greater than the Child Prices set for such Fares from time to time in accordance with Schedules 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares);
- (b) for Fares in respect of which the Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (Franchisee's Obligation to Create Fares), sell or offer to sell such Fares to any person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a 16 to 25 Railcard with no minimum fare (as amended or replaced from time to time) and whose purchase was made without condition; and
- (c) for all Fares:
 - (i) do not sell or offer to sell any Fare or Discount Card with a validity of 13 or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld); and
 - (ii) comply with the provisions of paragraph 3 of Schedule 15.2 (Last 12 or 13 Months of Franchise Period and other conduct of business provisions) to the extent they apply to the selling of Fares by the Franchisee.

3.6 **Additional Ancillary Services**

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

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

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

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

3.8 **Not used.**

4. **Passenger's Charter**

4.1 **Content**

The Franchisee shall:

- (a) publish its Passenger's Charter:

- (i) in substantially the same form as the document in agreed terms marked **PC**; and
 - (ii) in accordance with the requirements specified in paragraph 4.3;
- (b) ⁱⁱⁱreview the need for changes to the Passenger's Charter at least every three years, in consultation with the Passengers' Council, and shall submit a draft of any revisions to the Passenger's Charter that it wishes to propose, together with proof of such consultation, to the Secretary of State; and
- (c) state the date of publication clearly on the front cover of the Passenger's Charter.
- 4.2 The Franchisee may not change the Passenger's Charter without the Secretary of State's prior written consent (which is not to be unreasonably withheld).

4.3 ^{iv}**Publishing the Passenger's Charter**

The Franchisee shall publicise its Passenger's Charter by:

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

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

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

The Franchisee shall:

- (a) make all payments which passengers may reasonably expect to be made or provided from time to time under the terms of the Passenger's Charter (whether or not the Franchisee is legally obliged to do so); and

- (b) ¹⁵³use all reasonable endeavours to make Eligible Passengers aware of their right to claim compensation pursuant to the Passenger's Charter including by:
- (i) displaying the relevant information on trains and at Stations;
 - (ii) making appropriate announcements to passengers on trains and at Stations when the circumstances giving rise to the right occur, and in doing so shall ensure that for any such announcements delay is measured by reference to the Plan of the Day (and not, for the avoidance of doubt, by reference to the Timetable);
 - (iii) making compensation claim forms readily available to passengers at Stations and on the Franchisee's website; and
 - (iv) any other reasonable means to reflect future advancements in technology proposed in writing either by the Franchisee or the Secretary of State and agreed by both Parties (acting reasonably).

4.7 The Franchisee shall use all reasonable endeavours:

- (a) to comply with any other obligations, statements and representations; and
- (b) to meet any other standards or targets of performance, as are comprised in its Passenger's Charter from time to time.

4.8 ¹⁵⁴Amendments to the Passenger's Charter

(a) The Franchisee shall:

- (i) ¹⁵⁵by no later than the DR Effective Date (or such other date as may be agreed by the Secretary of State), amend its Passenger's Charter (and such other terms and conditions and other associated documents required to be amended in order to give effect to Delay Repay Compensation) to include a commitment to pay, from the DR Effective Date, to Eligible Passengers an amount that is equal to that specified in column 2 of the table below where such Eligible Passenger's journey is delayed by the number of minutes specified in column 1 of such table:

¹⁵³ 7 March 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁵⁴ 7 March 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁵⁵ 18 March 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

Column 1	Column 2
Minutes Delay	DR Compensation Amount
15 - 29	25% of the cost of a single ticket (or the appropriate percentage for season tickets and return tickets)
30 - 59	50% of the cost of a single ticket (or the appropriate percentage for season tickets and return tickets)
60 - 119	100% of the cost of a single ticket (or the appropriate percentage for season tickets and return tickets)
120 or more	100% of the cost of a single ticket (or the appropriate percentage for season tickets and return tickets)

Notes to table:

- **Compensation will be calculated with reference to the ticket used by the claimant Eligible Passenger for the relevant journey.**
 - **References to season tickets are restricted to weekly season tickets until and to the extent that the relevant monthly and longer season tickets are brought within the scope of Delay Repay Compensation.**
- (ii) **ensure that from the applicable DR Effective Date it pays to Eligible Passengers who submit a valid claim for Delay Repay Compensation, the applicable DR Compensation Amount due and payable in respect of such claim; and**
- (iii) **continue to pay to passengers who hold Passenger's Charter Discount Season Tickets the compensation amounts that are due to them in accordance with the terms of the Passenger's Charter.**

4.9 ¹⁵⁶**DR Validity Checks**

- (a) **The Franchisee shall, at all times, employ the measures which are introduced and implemented by the Franchisee as required pursuant to paragraph 4.9(b) below in order to minimise as far as reasonably practicable the number of fraudulent Delay Repay Compensation claims that are paid to claimants by the Franchisee.**
- (b) **The Franchisee shall by no later than the DR Effective Date introduce and implement each of the measures specified in Appendix 1 of this Schedule 1.4 for the purposes of complying with its obligations in paragraph 4.9(a).**
- (c) **For the purposes of monitoring compliance with its obligations in paragraph 4.9(a), the Franchisee shall for each DR Quarter undertake an audit of 1% or five hundred (500) DR Compensation claims processed during that DR Quarter (whichever is the lower) to assess the quality, robustness and effectiveness of the validity checks undertaken in relation such sample of claims (the "Quarterly Validity Check Audit"). The sample claims to be audited in each Quarterly Validity Check Audit shall be selected on a random basis and each Quarterly Validity Check Audit shall be carried out in accordance with the requirements of Clause 5.1 of the Franchise Agreement. The written results of each Quarterly Validity Check Audit shall be:**
- (i) certified by a statutory director as being undertaken in accordance with the requirements of this paragraph 4.9(c);**
 - (ii) be provided to the Secretary of State for his review, in such format as shall be prescribed by the Secretary of State and provided to the Franchisee from time to time, within 20 Weekdays from the date of each such Quarterly Validity Check Audit.**

4.10 ¹⁵⁷**Delay Repay Audits**

In addition to and without prejudice to the rights of the Secretary of State pursuant to paragraph 5 of Schedule 11 (Agreement Management Provisions), the Secretary of State may no more than once in each Franchisee Year following the DR Effective

¹⁵⁶ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁵⁷ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Date, require the Franchisee to procure, at its own cost, an independent auditor to review the Franchisee’s claims handling processes in relation to Delay Repay Compensation (including payment of DR Compensation Amounts and verification of the accuracy and completeness of any Claims Paid Statement and/or DR Quarterly Statement issued by the Franchisee to the Secretary of State at any time prior to or during the period of such audit). The Franchisee shall obtain the Secretary of State’s approval of the terms of reference and/or specification for such independent audit (including the identity of the independent auditor) prior to any procurement by the Franchisee of such independent auditor. As soon as reasonably practicable following the completion of such audit the Franchisee shall submit the audit report to the Secretary of State and take such actions as are necessary to implement any recommendations of such independent audit. If any audit concludes that a DR Quarterly Statement and/or Claims Paid Statement (as the case may be) issued by the Franchisee to the Secretary of State in a Reporting Period was in the reasonable opinion of the Secretary of State materially misleading or materially inaccurate then the Franchisee shall by way of adjustment to Franchise Payments, reimburse to the Secretary of State:

- (a) an amount that is equal to the overpayment of the DR Claims Reimbursement Balancing Payment and/or DR Operating Costs Balancing Payment (as the case may be) made by the Secretary of State to the Franchisee for that Reporting Period; and**
- (b) any additional costs that the Secretary of State has incurred as a consequence of any such materially misleading and/or materially inaccurate Claims Paid Statement and/or DR Quarterly Statement (as the case may be).**

4.11 ¹⁵⁸TfL Payment Data

The Franchisee shall use all reasonable endeavours to establish the commercial terms (if any) for an arrangement under which Transport for London would permit the Franchisee to have access to Oyster data and CPAY data as is reasonably necessary to allow for the electronic processing (including the authentication and validation) by the Franchisee of Delay Repay Compensation claims

¹⁵⁸ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

relating to journeys on the Passenger Services which have been paid for using Oyster or CPAY (the "TfL Payment Data") so as to make the process for the authentication and validation of such claims quicker and more cost efficient than was the case prior to the entry into such agreement with Transport for London. No later than three (3) months from the DR Effective Date the Franchisee shall report to the Secretary of State on the outcome of its discussions with Transport for London and, if the Franchisee establishes that such use of TfL Payment Data is feasible, shall provide to the Secretary of State a feasibility report detailing the costs and benefits of introducing such use of TfL Payment Data. Where following the receipt of such report the Secretary of State determines that the Franchisee should proceed with securing access to TfL Payment Data as contemplated by this paragraph 4.11, then:

- (a) the Franchisee shall use all reasonable endeavours to enter into an agreement with Transport for London; and
- (b) the Franchisee shall from the date of entry into such agreement and in accordance with any timescales established in that agreement for the implementation of such authentication and validation processes ensure that Delay Repay Compensation claims relating to journeys on the Passenger Services which have been paid for using Oyster or CPAY are processed electronically with a view to delivering the costs and benefits of introducing such use of TfL Payment Data as specified in respect of the option set out in the feasibility report referred to in this paragraph 4.11 as approved by the Secretary of State,

with it being acknowledged that in assessing the level of endeavours to be undertaken by the Franchisee relevant factors will include the funding available to the Franchisee to meet the costs of negotiating and entering into the relevant agreement (including the costs of implementing and operating the revised processes once the agreement is entered into).

4.12 ¹⁵⁹Other Train Operators

The Franchisee shall, by no later than three (3) months from the DR Effective Date, use all reasonable endeavours to agree and implement an arrangement with other Train Operators operating

¹⁵⁹ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

passenger services over the Routes, for the verification of Delay Repay Compensation claims in relation to Inter-available Fares (as such term is defined in the Ticketing and Settlement Agreement) to prevent passengers who hold such Inter-available Fares from claiming Delay Repay Compensation against both the Franchisee and such Train Operator in relation to the same journey.

4.13 ¹⁶⁰Management Reporting

- (a) The implementation programme as approved by the Secretary of State and which includes the processes and actions (including the dates for completion of such processes and actions) that are considered necessary by the Franchisee for the purposes of introducing Delay Repay Compensation by the DR Effective Date (the "DR Implementation Programme") is set out in the document in the agreed terms marked "DRIP". The Franchisee shall update the Secretary of State on a weekly basis (or, on such other interval as the Secretary of State may request) on progress being made by the Franchisee in the delivery of the DR Implementation Programme.
- (b) The Franchisee shall, within thirty (30) days after the end of each Reporting Period, provide to the Secretary of State for review at a Franchise Performance Meeting a report, in a format to be prescribed by the Secretary of State and provided to the Franchisee from time to time, which includes the following data (disaggregated by such delay time bands as may be specified by the Secretary of State (including by 15 to 29 minutes (inclusive), 30 to 59 minutes (inclusive), 60 to 119 minutes (inclusive) and over 120 minutes), by market type, ticket type, service group and by claim value):
- (i) an estimate of the number of Eligible Passengers who were eligible to claim Delay Repay Compensation in each of the Reporting Periods covered by such report. The method for the calculation of such estimate, which shall be performed on a consistent basis for each Reporting Period covered by such report) and shall be agreed by the Franchisee and Secretary of State by no later

¹⁶⁰ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

than the DR Effective Date (and on failure to agree shall be reasonably determined by the Secretary of State);

- (ii) the actual number of Eligible Passengers who claimed Delay Repay Compensation in the Reporting Periods covered by such report and the number and amount of such Delay Repay Compensation claims;
- (iii) the amount of Delay Repay Compensation claims paid by the Franchisee in each of the Reporting Periods covered by such report;
- (iv) for each of the Reporting Periods covered by such report, the number and amount of the Delay Repay Compensation claims made by passengers but which were not paid by the Franchisee;
- (v) the number and amount of potentially fraudulent Delay Repay Compensation claims (if any) that are identified and/or paid in each of the Reporting Periods covered by such report; and
- (vi) the Franchisee's performance in relation to the processing of claims against performance targets as may be agreed with the Secretary of State, to include aged claim analysis, number of claims processed automatically, number of claims processed with manual intervention, number of claims submitted by channel, number of claims submitted by ticketing media and number of claims paid by fulfilment method,

such report shall be signed by a statutory director of the Franchisee certifying that the data contained within the report is true, accurate and not misleading.

- (c) Any data provided by the Franchisee to the Secretary of State pursuant to paragraph 4.13(b) must be reported by mapping claims to the Reporting Period in which the entitlement by the passenger to claim Delay Repay Compensation first arose and not the Reporting Period in which the Delay Repay Compensation claim was made by the passenger.

- (d) In addition to the report required pursuant to paragraph 4.13(b) the Franchisee shall at the request of the Secretary of State by notice in writing provide, by no later than the date specified by the Secretary of State in any such notice, such information, analysis, records or documents in relation to Delay Repay Compensation as the Secretary of State may reasonably require including information relating to the performance of the Passenger Services, the details of Delay Repay Compensation claims made by passengers and the Delay Repay Compensation claims paid by the Franchisee (disaggregated by such delay time bands as may be specified by the Secretary of State (including by 15 to 29 minutes, 30 to 59 minutes, 60 to 119 minutes and over 120 minutes), by market type, ticket type, service group and by claim value).

4.14 ¹⁶¹Notification Requirements/Impacts on DR Claims Reimbursement

- (a) The Franchisee shall so far as possible before it may occur (and in any event as soon as reasonably practicable thereafter) notify the Secretary of State of any matters or events which may result in a material increase in the DR Claims Reimbursement and/or DR Operating Costs Balancing Payment payable by the Secretary of State in a Reporting Period, such events or matters to include any Variations or other proposed amendments to the Franchise Agreement after the DR Effective Date which, in the reasonable opinion of the Franchisee, would have a material impact on the DR Claims Reimbursement and/or DR Operating Costs Balancing Payment payable by the Secretary of State to the Franchisee.
- (b) Where in relation to any Reporting Period the Franchisee is required pursuant to paragraph 3.8 of Schedule 7.1 (Performance Benchmarks) to produce an action plan for the purposes of securing Required Performance Improvement, the Franchisee shall ensure that any such action plan produced by it for the purposes of complying with paragraph 3.8 of Schedule 7.1 (Performance Benchmarks) also takes into account any specific measures that would mitigate the impacts of its operational performance on the DR Claims Reimbursement and/or DR

¹⁶¹ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Operating Costs Balancing Payment payable by the Secretary of State.

- (c) **In addition to and without prejudice to its obligations under paragraph 4.2, the Franchisee shall consult with the Secretary of State prior to implementing any changes to its compensation arrangements (including any changes to its processing arrangements or modifications, replacement and/or enhancement of its systems) to the extent that any such changes would have an impact on the DR Claims Reimbursement and/or DR Operating Costs Balancing Payment payable by the Secretary of State. Except as otherwise agreed in writing by the Secretary of State or as specified in the Franchise Agreement, the Secretary of State shall not be liable to the Franchisee for any costs arising from any changes to the Franchisee’s compensation arrangements (including any changes to its processing arrangements or modifications, replacement and/or enhancement of its systems), such costs shall be borne entirely by the Franchisee.**
- (d) **The Franchisee shall not at any time during the Franchise Period create or vary, or promise to create or vary the compensation arrangements offered to passengers (including any Delay Repay Compensation) without first obtaining the prior written consent of the Secretary of State.**

4.15 ¹⁶²**Provision of Information for Benchmarking Purposes**

- (a) **Without prejudice and in addition to the Franchisee’s obligations under the Franchise Agreement (including under paragraph 4.13, paragraph 5 of Schedule 11 (Agreement Management Provisions) and Schedule 13 (Information and Industry Initiatives) and to assist the Secretary of State in conducting benchmarking and comparative analysis intended to improve the overall efficiency and cost effectiveness of compensation schemes offered by Train Operator across all franchises (the “Benchmarking and Comparative Analysis”) the Franchisee shall, at the request of the Secretary of State (and by the timescales specified in any such request) provide to the Secretary of State such information (including costs and**

¹⁶² 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

volume data) as he may reasonably require in relation to the implementation, operation, management and processing of Delay Repay Compensation.

- (b) The Franchisee acknowledges and agrees that any information supplied by the Franchisee to the Secretary of State pursuant to paragraph 4.15(a) shall, without prejudice to the rights of the Secretary of State pursuant to Schedule 17 (Confidentiality and Freedom of Information), be included in reports produced and published by the Secretary of State in relation to any Benchmarking and Comparative Analysis undertaken by the Secretary of State. The provisions of paragraph 3.2 of Schedule 17 (Confidentiality and Freedom of Information) shall apply in relation to the publication of any such reports that include information supplied by the Franchisee pursuant to paragraph 4.15(a). The Secretary of State agrees that any information supplied by the Franchisee to the Secretary of State pursuant to paragraph 4.15(a) shall be appropriately anonymised in any reports produced and published by the Secretary of State pursuant to this paragraph 4.15(b) such that it does not contain any references to the Franchisee or the names of its suppliers (including any information that can be easily attributed to the Franchisee).
- (c) In circumstances where the information supplied by the Franchisee pursuant to paragraph 4.15(a) is utilised in relation to a Benchmarking and Comparative Analysis, the Secretary of State shall, at the request of the Franchisee, provide to the Franchisee the results and outcomes of any such Benchmarking and Comparative Analysis.

4.16 ¹⁶³ Delay Repay Complaints Handling

- (a) The Franchisee shall procure that from the DR Effective Date its complaints handling procedure is amended as appropriate to reflect the introduction of Delay Repay Compensation.
- (b) Without prejudice to and in addition to its obligations under the Franchise Agreement and its Licence, the Franchisee shall comply with the terms of its complaints handling

¹⁶³ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

procedure as approved by the ORR in respect of any claims and/or complaints relating to Delay Repay Compensation.

4.17 ¹⁶⁴ **Review of Transitional Arrangements for Season Ticket Charter Groups**

- (a) **Within nine (9) months of the DR Effective Date the Secretary of State and the Franchisee shall undertake a review of each Season Ticket Charter Group to establish whether a Season Ticket Charter Group has been out of Trigger or is reasonable likely to be out of Trigger for a continuous period of three (3) Reporting Periods and if so whether it is appropriate to commence transitional arrangements for the purposes of ensuring that a Successor Operator will be in the position to offer Delay Repay Compensation to holders of Passenger's Charter Discount Season Tickets that are valid for use on Passenger Services comprised within such Season Ticket Charter Group from such date after the Franchise Period as notified to the Franchisee by the Secretary of State.**
- (b) **If the review contemplated in paragraph 4.17(a) establishes that it is appropriate for Delay Repay Compensation to be implemented by the Successor Operator in relation to a Season Ticket Charter Group after the Franchise Period then the Franchisee shall provide to the Secretary of State such information, reports and analysis as he may reasonably require for the purposes of assisting a Successor Operator to introduce and implement Delay Repay Compensation so that holders of Passenger's Charter Discount Season Tickets that are valid for use on Passenger Services comprised within such Season Ticket Charter Group become eligible to receive Delay Repay Compensation (in place of season ticket discounts) in respect of Passenger's Charter Discount Season Tickets purchased on or after the Franchise Period as notified to the Franchisee by the Secretary of State.**
- (c) **The provisions of paragraph 2.4 of Schedule 15.1 (Reletting Provisions) shall apply in relation to the reimbursement of expenses that may be incurred by the Franchisee in complying with its obligations under paragraph 4.17(b).**

¹⁶⁴ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

5. **Not Used.**

6. **Cycles**

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

7. **Train and station cleaning**

The Franchisee shall:

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

8. **Statutory Notices**

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

Appendix 1: Process for Fraud Prevention¹⁶⁵**Introduction**

The purpose of this Appendix is to specify the fraud prevention processes to be introduced and implemented by the Franchisee in accordance with the requirements of paragraph 4.9 of this Schedule 1.4 (Passenger facing Obligations).

For the prevention and detection of fraud, all claims for Delay Repay Compensation received by the Franchisee will be checked by or on behalf of the Franchisee as follows:

1. Ticket number and NLC duplicate check;
2. Duplicate ticket imaging (plus incomplete or obscured tickets);
3. Refund check on tickets;
4. Barrier use check (where data is available and applicable);
5. Cross checks for barcoded product data (e.g. Clipper data) (where data is available and applicable);
6. List of black listed customers;
7. Impossible journey claims per customer;
8. "Unlucky" customer check (too many claims);
9. Cross TOC checks/calculations as far as practicable possible; and
10. E-ticketing validation including Oyster Cards as far as practicably possible, where data is available and applicable.

For these purposes data will be treated as available where it is available to the Franchisee for use in checking the relevant claims in a manner which it is reasonably practicable to check in the context of the claims process.

¹⁶⁵ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 1.5

Information about Passengers

1. Passenger Numbers Information

1.1 The Franchisee shall, as and when reasonably requested by the Secretary of State, provide information to the Secretary of State on the extent of the use by passengers of the Passenger Services. In particular and when so requested, the Franchisee shall provide information relating to:

- (a) the number of passengers travelling in each class of accommodation:
 - (i) on each Passenger Service;
 - (ii) on each Route; and/or
 - (iii) at any station or between any stations;
 - (b) the times of the day, week or year at which passengers travel; and
 - (c) the type of Rolling Stock Unit used in each case,
- (together, "**Actual Passenger Demand**").

1.2 The Franchisee shall obtain the information specified in paragraph 1.1:

- (a) on each Passenger Service;
- (b) on each Route; and
- (c) at any station or between any stations,

by (where this is fitted on a particular class of rolling stock comprised in the Train Fleet) utilising the automatic passenger counting system or otherwise through manual counts. The Secretary of State acting reasonably shall have the right to obtain such other information that the Franchisee has which may provide a more detailed or accurate view of the extent of use by passengers of the Passenger Services including information about ingress and egress of passengers at ticket gates at Stations. Where an automatic passenger counting system has been fitted, the Franchisee shall ensure that such system remains operational and in good working order (subject to fair wear and tear and temporary non-availability due to accidental damage, vandalism, maintenance, repair or replacement activities) throughout the Franchise Period.

1.3 The Franchisee shall provide to the Secretary of State all of the information generated by the technology referred to in paragraph 1.2 above including the information specified in paragraph 1.1:

- (a) using such systems, in such a format and to such level of disaggregation as the Secretary of State may reasonably require including by directly inputting data into a database maintained by the Secretary of State;
- (b) at a frequency and within timescales that the Secretary of State may reasonably request pursuant to paragraph 1.1;

- (c) to the extent required by the Secretary of State, by providing the Secretary of State with direct remote access to the system used by the Franchisee to collect such information such that the Secretary of State is able to download such information; and
- (d) such information may be used by the Secretary of State for such purposes as he may reasonably require including for the purposes of assisting his decision making on future train service requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding.

1.4 At the same time as the Franchisee provides any information in accordance with paragraph 1.1, it shall (if the Secretary of State requests it to do so):

- (a) update any Forecast Passenger Demand accordingly in the same format and to the same level of disaggregation as the Secretary of State requires pursuant to paragraph 1.3(a); and
- (b) notify the Secretary of State of any such update.

1.5 **Manual Passenger Counts**

- (a) The Secretary of State shall have the right to require the Franchisee to carry out manual counts in relation to some or all of the Passenger Services at such times as may be required and in such manner (including as to levels of accuracy and the number of days) as may be specified from time to time by the Secretary of State.
- (b) The Franchisee shall supply the details of any such counts undertaken to the Secretary of State, as soon as reasonably practicable but within 6 weeks from the date of completion of such counts, in such form as the Secretary of State may stipulate including by directly inputting data into a database maintained by the Secretary of State.
- (c) The Secretary of State shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by him or otherwise). In the event that such audit reveals, in the reasonable opinion of the Secretary of State, a material error, or a reasonable likelihood of material error, in such counts, the Secretary of State may require the counts to be repeated or the results adjusted as he considers appropriate, and in these circumstances the Franchisee shall pay to the Secretary of State the costs of any such audits.

1.6 **Not Used.**

1.7 The Parties acknowledge that the information supplied under paragraph 1.1 above may constitute Confidential Information to which Schedule 17 (Confidentiality and Freedom of Information) applies.

2. **Not used.**

3. **CRM Data**

3.1 The Franchisee shall ensure that any CRM System is the property of the Franchisee or is licensed to the Franchisee on terms which have been approved by the

Secretary of State (such approval not to be unreasonably withheld or delayed) and that any CRM Data obtained by or on behalf of the Franchisee shall be:

- (a) obtained on terms such that the Franchisee shall be the Data Controller of such data; and
- (b) the property of the Franchisee.

3.2 In relation to any CRM Data obtained by or on behalf of the Franchisee, the Franchisee shall ensure or procure that at the same time as the Franchisee seeks consent to Process such CRM Data, the consent of the Data Subject is also sought to such CRM Data being disclosed to any Successor Operator and/or the Secretary of State and Processed by any Successor Operator for the same purposes as the Franchisee sought consent to Process such CRM Data.

3.3 Any consent referred to in paragraph 3.2 shall be sought in such manner as shall from time to time be approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and shall be on terms such as shall permit, in each case in compliance with the Data Protection Act:

- (a) the Franchisee to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and
- (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 3.2.

3.4 The Franchisee shall not be required to:

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

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

4. **Yield Management Data**

4.1 The Franchisee shall ensure that any Yield Management Data and Yield Management System are the property of the Franchisee or are licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).

4.2 If and to the extent that the collection, use and/or processing of any Yield Management Data is subject to the Data Protection Act then paragraphs 3.1(a), 3.2, 3.2 and 5 of this Schedule 1.5 shall apply in respect of Yield Management Data in the same way as they apply to CRM Data.

5. **Personal Data - General Provisions**

5.1 In respect of any Personal Data processed by the Franchisee, including CRM Data, the Franchisee agrees that it shall (i) comply with the Data Protection Act and all

other legislation relating to the protection and use of personal information (including the Privacy and Electronic Communications (EC Directive) Regulations 2003) (all such legislation collectively being the ("**Personal Data Legislation**") to the extent that such legislation applies to it and (ii) procure that its agents or sub-contractors shall do the same.

5.2 Pursuant to paragraph 5.1, the Franchisee agrees to comply with the Personal Data Legislation in respect of its Processing of CRM Data and in particular, but without limitation, the Franchisee shall:

- (a) ensure that CRM Data is Processed fairly and lawfully (in accordance with part 1 of Schedule 1 of the Data Protection Act);
- (b) ensure that CRM Data is obtained only for one or more specified and lawful purposes, and shall not be further Processed in any manner incompatible with that purpose or those purposes (in accordance with part 2 of Schedule 1 of the Data Protection Act); and
- (c) obtain and maintain all appropriate notifications as required under the Data Protection Act.

5.3 In accordance with its capacity as Data Controller of CRM Data and in accordance with the ensuing obligations under the Data Protection Act:

- (a) the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (i) prior to any disclosure of CRM Data to the CRM Data Processor, enter into written terms between itself and the Franchisee which are equivalent to those contained in this paragraph 5.3; and
 - (ii) Process CRM Data only on behalf of the Franchisee, only for the purpose(s) as defined by the Franchisee and only in accordance with instructions received from the Franchisee from time to time;
- (b) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times have in place appropriate technical and organisational measures against unauthorised or unlawful processing of CRM Data and against accidental loss or destruction of, or damage to, CRM Data and that such measures shall:
 - (i) reflect the level of harm, damage and/or distress that might be suffered by the Data Subject to whom the CRM Data relates in the event of a breach of the measures as set out herein; and
 - (ii) ensure that only authorised personnel have access to CRM Data and that any persons authorised to have access to CRM Data will respect and maintain all due confidentiality; and
 - (iii) (in the case of the CRM Data Processor) include compliance with a schedule of minimum security measures pursuant to the written terms between the Franchisee and the CRM Data Processor;

- (c) the Franchisee shall procure that any CRM Data Processor which it appoints shall:
- (i) promptly notify the Franchisee of any actual or suspected, threatened or 'near miss' incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access to the CRM Data or other breach of this paragraph 5.3(c) ("**Security Breach**") and, pursuant to this the Franchisee shall promptly notify the Secretary of State of all Security Breaches by itself or by the CRM Data Processor (the Franchisee hereby acknowledges that whilst the Secretary of State is not a Data Controller in respect of the CRM Data, the Secretary of State's legitimate interests given its duties under the Act may be affected in the event of a Security Breach and as such the Secretary of State wishes to be notified of the same); and
 - (ii) promptly provide the Franchisee on request with all reasonable information, assistance and co-operation in relation to its use of the CRM Data, including in relation to any audit by the Franchisee or by any person appointed on its behalf to permit an accurate and complete assessment of compliance with this paragraph 5;
- (d) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times take reasonable steps to ensure the reliability of its/their personnel who have access to the CRM Data and ensure they are aware of the obligations of the Franchisee or the CRM Data Processor (as appropriate) in relation to the same; and
- (e) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, not cause or permit the CRM Data to be transferred to any location outside the European Economic Area (as defined in the Data Protection Act or otherwise as appropriate) without the prior written permission of:
- (i) (in the case of the Franchisee) the Secretary of State; or
 - (ii) (in the case of any Data Processor appointed by the Franchisee) the Franchisee provided that the Franchisee shall not give any such consent without the prior written permission of the Secretary of State;

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

SCHEDULE 1.6

Franchise Services

1. Franchise Services

1.1 The Franchisee may at all times during the Franchise Term provide and operate the Franchise Services specified in this Schedule 1.6 and the Passenger Services.

1.2 ¹⁶⁶**HEx Outsourced Services shall not be considered a Passenger Service for the purposes of this Franchise Agreement.**

2. Restrictions relating to Franchise Services

2.1 The Franchisee shall not directly or indirectly, without the prior written consent of the Secretary of State, carry on any business or activity other than the provision and operation of the Franchise Services.

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

- (a) between Bristol Temple Meads and Severn Beach;
- (b) between Cardiff Central and Portsmouth Harbour via Westbury and Southampton;
- (c) between Crediton and Okehampton;
- (d) between Exeter and Barnstaple;
- (e) between Exeter and Exmouth;
- (f) between Liskeard and Looe;
- (g) between London Paddington and Bristol Temple Meads;
- (h) between London Paddington and Cheltenham Spa via Stroud and Gloucester;
- (i) between London Paddington and Hereford via Oxford and Worcester;
- (j) between London Paddington and Pembroke Dock via Swansea and Carmarthen;
- (k) between London Paddington and Penzance;
- (l) between Maidenhead and Marlow;
- (m) between Newton Abbot and Paignton;
- (n) between Par and Newquay;

¹⁶⁶ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (o) between Plymouth and Gunnislake;
- (p) between Reading and Basingstoke;
- (q) between Reading and Gatwick Airport via Guildford and Redhill;
- (r) between Slough and Windsor & Eton Central;
- (s) between Southampton and Brighton;
- (t) between St. Erth to St. Ives;
- (u) between Swindon and Westbury via Melksham;
- (v) between Truro and Falmouth Docks;
- (w) between Twyford and Henley;
- (x) between West Ealing and Greenford;
- (y) between Westbury and Weymouth via Castle Cary;
- (z) between Worcester and Taunton via Gloucester and Weston-super-Mare;
and
- (aa) if the Franchisee enters into a commitment with the relevant Sponsor (as defined in paragraph 5.2 of Schedule 6.2 (Great Western Franchise Specific Provisions)) to operate over the relevant route but not otherwise between Exeter St David's and Axminster.

2.3 The Secretary of State may impose such conditions to his consent as he considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the Franchise Term.

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

- (a) provide or operate any railway passenger services other than the Passenger Services or Charter Services;
- (b) operate any stations or light maintenance depots other than the Stations and Depots; or
- (c) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:
 - (i) Network Rail; or
 - (ii) owned directly or indirectly by another participant in the railway industry and the holding is incidental to the Franchisee's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

2.5 The Franchisee shall not engage any Franchise Employee in any activity or business which it may not conduct or engage in under this paragraph 2.

3. **Station Services**

3.1 The Station Services shall comprise:

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

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

4. **Light Maintenance Services**

4.1 Light Maintenance Services shall comprise:

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

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

4.2 Light Maintenance Services shall include the provision of any service which the Franchisee may provide, or may be required to provide, under any Access

Agreement in effect on the Start Date or as lawfully directed by the ORR from time to time.

5. Ancillary Services

The Franchisee may carry out the following Ancillary Services:

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials or phone cards;
- (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 5(a) or which, if provided at a Station, would fall within paragraph 3 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;
- (c) in any Reporting Period, the subleasing, hiring or licensing of up to ten per cent. of the rolling stock vehicles used in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock vehicles are sub-let, hired or licensed and the aggregate period of time for which they are used in the provision of the Passenger Services);
- (d) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:
 - (i) up to one per cent. of the number of Franchise Employees as at the Start Date, for over ninety per cent. of their normal working hours during such Reporting Period (including on a full-time basis); and
 - (ii) one per cent. of any other Franchise Employees as at the Start Date,

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 5(a) to 5(c) inclusive and 5(e) to 5(q) inclusive, or engaged in any other activity which is permitted under this Schedule 1.6;
- (e) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the following Depot(s), subject to the number of persons engaged or employed in such activity in aggregate across all relevant depots not exceeding by more than ten per cent. the number so engaged or employed on the Start Date:
 - (i) Bristol St. Philips Marsh;
 - (ii) Plymouth Laira;
 - (iii) Reading;

- (iv) Old Oak Common;
 - (v) Landore;
 - (vi) Exeter Depot; and
 - (vii) Penzance Long Rock;
- (f) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchisee on or before the date of the Franchise Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
- (g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (i) travel on any other train or light rail service;
 - (ii) travel on any aircraft;
 - (iii) travel on any shipping or ferry service;
 - (iv) travel on any bus; or
 - (v) attend any event or attraction or enter any location;
- (h) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on any such operator's trains;
- (i) the provision of telephone information relating to railway passenger services within Great Britain to passengers;
- (j) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (k) the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Franchisee or the lending, hiring or contracting out of any employees of the Franchisee or the provision of any other services to Network Rail or any other Train Operator on an emergency basis;
- (l) the licensing or permitting of any other person (including an Affiliate of the Franchisee) to carry out any activity or business, in connection with the provision of the Franchise Services, or otherwise, on any rolling stock vehicle operated by the Franchisee, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);
- (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with the

Franchise Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;

- (n) the subleasing to other Train Operators of train crew accommodation which is not comprised in a Station or Depot;
- (o) the provision or operation of Charter Services, subject to the Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent. of the scheduled Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;
- (p) the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services; and
- (q) any services or activity not falling within paragraphs 3, 4 or 5(a) to 5(p), subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding £25,000 per annum in each Franchisee Year, per item and in aggregate, £250,000 per annum in each Franchisee Year, provided that in the second and each subsequent Franchisee Year (if applicable), these amounts will be increased by "RPI", and "RPI" shall have the meaning given to it in Schedule 8.2 (Annual Franchise Payments).

6. Affiliates of the Franchisee

Nothing in this Schedule 1.6 shall restrict any Affiliate of the Franchisee from having an interest in or participating in any business or activity.

SCHEDULE 1.7¹⁶⁷**The Train Fleet****1. The Composition of the Train Fleet**

1.1 The Train Fleet consists of:

- (a) the rolling stock vehicles set out in Table 1 ("**Original Rolling Stock**") with the capacity characteristics referred to there, until the lease expiry dates referred to there;
- (b) from the dates set out in Table 2, the rolling stock vehicles ("**Specified Additional Rolling Stock**") set out in Table 2, with the capacity characteristics referred to there, until the lease expiry dates referred to there;
- (c) following any such lease expiry referred to in paragraph 1.1(a) or 1.1(b), substitute rolling stock vehicles having (unless otherwise agreed by the Secretary of State and subject to compliance with all other relevant provisions of this Franchise Agreement including in relation to Rolling Stock Related Contracts):
 - (i) at least the capacity specified in respect of the rolling stock vehicles being substituted;
 - (ii) reliability, capability and quality that is at least equal to the reliability, capability and quality of the rolling stock vehicles being substituted; and
 - (iii) an aggregate total capacity which is at least equal to the aggregate total capacity of the rolling stock vehicles being substituted or such higher amount of aggregate capacity as is specified by this Franchise Agreement;
- (d) Unspecified Additional Rolling Stock; and
- (e) in respect of each train set out in column 1 of Table 4, the number of Sets (as such term is defined in Schedule 6.3 (The IEP Provisions) of this Franchise Agreement) set out in column 2 of such table, with the capacity characteristics referred to in column 3 of such table and by the dates referred to in column 4 of such table (as such dates may be amended to reflect any extension to the relevant Scheduled Acceptance Dates (as such term is defined under the MARA) pursuant to Paragraph 1.7 of Part B of Schedule 2 of the MARA).

- 1.2 In addition to paragraph 1.1(c), the Franchisee may at any time substitute rolling stock vehicles for any Additional Rolling Stock provided that any such substitute rolling stock vehicles comply (unless otherwise agreed by the Secretary of State and subject to compliance with all other relevant provisions of this Franchise

¹⁶⁷ Date of contract change 27/01/2016 – Agreed by the Secretary of State and Franchisee.

Agreement including in relation to Rolling Stock Related Contracts) with paragraphs 1.1(a)(i), (a)(ii) and (a)(iii).

1.3 The Franchisee shall by no later than:

- (b) each relevant date specified in Table 3, introduce into revenue earning passenger service; and
- (b) the date which is 12 months prior to each such date, enter into Rolling Stock Leases (subject to compliance with all other relevant provisions of this Franchise Agreement including in relation to Rolling Stock Related Contracts) in respect of,

the quantum of rolling stock specified in column 2 of Table 3 and which (unless otherwise agreed by the Secretary of State) provides at least the minimum capacity specified in column 3 of Table 3 and has at least the minimum reliability, capability and quality characteristics referred to in column 4 of Table 3 ("**Unspecified Additional Rolling Stock**").

1.4 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 or as determined by the Secretary of State in accordance with paragraph 2.4 (as applicable).

1.5 Without limiting paragraph 2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases) or Schedule 14.3 (Key Contracts), the Franchisee shall, in respect of any Rolling Stock Lease which is to expire at any time during the Franchise Term, not less than one (1) year prior to such expiry date, enter into a new Rolling Stock Lease in respect of substitute rolling stock vehicles which meet the requirements of paragraph 1.1(c).

1.6 For the purposes of this Schedule 1.7 "**Additional Rolling Stock**" means Specified Additional Rolling Stock and Unspecified Additional Rolling Stock.

Table 1 (Original Rolling Stock)¹⁶⁸

Column 1	Column 2	Column 3				Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity of units				Owner/ Lessor	Lease expiry date(s)
		Seats	Standin g	Total	Standar d Class		
HST Note a	128 (2 Class 43 Power Cars + 8 Mk.III trailer vehicles per operational set)	522	92	614	458	First Rail Holdings / Angel / Porterbrook	04/19 (FRH); 04/19 (ATL); 04/19 (PBL)
HST (high capacity) Note a	152 (2 Class 43 Power Cars + 8 Mk.III trailer vehicles per operational set)	546	95	641	475	First Rail Holdings / Angel / Porterbrook	04/19 (FRH); 09/17 to 01/19(ATL); 09/17 (PBL)
HST (super high capacity) Note a	144 (2 Class 43 Power Cars + 8 Mk.III trailer vehicles per operational set)	575	101	676	504	First Rail Holdings / Angel / Porterbrook	04/19 (FRH); 09/17 to 01/19(ATL); 09/17 (PBL)
180 Note b	25 (5 car)	284	48	332	242	Angel	12/16
165 Note c & o	40 (2 car)	186 [post PRM 159]	59	245	170	Angel	04/19

¹⁶⁸ 15 February 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Column 1	Column 2	Column 3				Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity of units				Owner/ Lessor	Lease expiry date(s)
		Seats	Standin g	Total	Standar d Class		
165 Notes c	48 (3 car)	286 [post PRM 263]	97	383	270	Angel	04/19
166 Note c	63 (3 car)	259 [post PRM 244]	83	338	243	Angel	04/19
143	10 (2 car)	104	36	140	104	Porterbro ok	01/19
143 Note k	6 (2 car)	104	36	140	104	Primary Franchise Asset	Not applica ble
150/2 Note c	34 (2 car)	139 [post PRM 122, includ ing 14 tip-up seats]	49	188	139	Porterbro ok	04/19
150/1 Notes c & d	4 (2 car)	141	58	199	141	Angel Trains	01/18

Column 1	Column 2	Column 3				Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity of units				Owner/ Lessor	Lease expiry date(s)
		Seats	Standin g	Total	Standar d Class		
150/1 Note c & p	4 (2 car)	141	58	199	141	Angel Trains	01/19
150/1 Note c & p	14 (2 car)	141	58	199	141	Angel Trains	08/17
150/1 Note c & p	12 (2 car)	135	59	194	135	Angel Trains	08/17
150/2 Note c	4 (2 car)	147 [post PRM capac ity tbc]	49	196	147	Angel Trains	04/19
150/0 Note c	6 (3 car)	234 [post PRM capac ity tbc]	81	315	234	Angel Trains	04/19
150/2 Notes c, d & l	2 (2 car)	76 [post PRM capac ity tbc]	27	103	76	Angel Trains	04/19

Column 1	Column 2	Column 3				Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity of units				Owner/ Lessor	Lease expiry date(s)
		Seats	Standing	Total	Standard Class		
153	9 (1 car)	75	8	83	75	Angel	06/18
153	5 (1 car)	75	8	83	75	Porterbrook	04/19
158 Notes c & i	40 (2 car)	138 Incl 6 tip-up [post PRM 130 with no tip-ups]	14	152	140	Porterbrook	04/19
158 Note c	3 (3 car)	219 [post PRM 198]	22	241	219	Porterbrook	04/19
158 Note e	1 (2 car)	140	14	154	140	SWT	04/19
Mark III Note f	9 (3 vehicles in Sleeper set configuration)	107 [post PRM capacity tbc]	-	107	107	Porterbrook	04/19

Column 1	Column 2	Column 3				Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity of units				Owner/ Lessor	Lease expiry date(s)
		Seats	Standin g	Total	Standar d Class		
Mark III Sleepin g cars Note h	11 (in Sleeper set configuration)					Porterbro ok	04/19

Notes to Table 1¹⁶⁹

Table 1 applies subject to the following notes, and further detail is set out in the Record of Assumptions:

Note a: HST lease expiry date is not necessarily representative of the fleet withdrawal date; this is linked to the IEP stock delivery and will be formalised during the lease period shown to manage the transition from HSTs to IEP. In the case of Angel Trains Limited HSTs the scheduled lease expiry dates range from between 08/17 and 11/18 in respect to the vehicles being transferred to Abellio ScotRail, and 04/19 for the remaining vehicles, with early voluntary termination rights applying from September 2017 based on IEP and AT300 stock delivery. In the case of Porterbrook HSTs the lease expiry is 04/19 subject to voluntary termination rights from April 2018 based on IEP and AT300 stock delivery. It is further acknowledged that as part of the managed transition it is anticipated that there will be a period when up to 99 vehicles leave the Train Fleet but are retained in storage as a potential buffer protection if needed.

The HSTs will not be subject to a PRM related modification programme, save to the extent they become part of the Castle Class programme as referenced in Table 2 below.

Note b: The five Class 180 units (25 vehicles) will be subject to a sub-lease arrangement from Grand Central after the lease expiry date shown, with first withdrawn from service in May 2017 and the remaining four pending withdrawal from service linked to the IEP stock delivery.

Note c: These vehicles are subject to a PRM related modification programme and as such the seat numbers will be affected; the numbers shown

¹⁶⁹ 15 February 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

are pre-PRM modification, with post PRM seat numbers provided where known as at the date of the IRAD Change 1 Deed of Amendment.

- Note d:** Two of the Class 150/1 units have been reformed with one vehicle each from the Class 150/2 1 car units to operate semi-permanently as two 3 cars units; these will be reverted back to 2 car units after the 150/2 1 car units have gone through PRM modification and as at the date of the IRAD Change 1 Deed of Amendment this reversion has taken place.
- Note e:** The stock is on hire from South Western Railway.
- Note f:** This stock is for use in Sleeper configuration and is not required to be used other than in connection with Sleeper services. These vehicles are subject to refresh and PRM modifications during the Previous Franchise Agreement and this Franchise Agreement and this may affect the number of seats.
- Note g:** Not used
- Note h:** These vehicles are subject to refresh and PRM modifications during the Previous Franchise Agreement and this Franchise Agreement, although there will be no impact on the number of seats.
- Note i:** Eighteen Class 158 2 car units have been reformed to operate semi-permanently as twelve 3 car units; this number will reduce during the fleet cascade programme.
- Note j:** Not used.
- Note k:** In relation to Class 143 stock which are Primary Franchise Assets, it is acknowledged that it is not forecast to be required to be retained beyond 31 December 2019 and it is expected that from that date the Franchisee would agree with the Secretary of State terms under which it may cease to be a Primary Franchise Asset and be disposed of, without additional substitute rolling stock being required in line with the provisions of paragraph 10 of Schedule 14.4. It is also acknowledged that this does not bind the Franchisee to withdrawing the Primary Franchise Asset Class 143 stock at that stage and that if the Secretary of State's consent to this stock ceasing to be a Primary Franchise Asset is not sought by the Franchisee, in the absence of PRM modification or other dispensation, the stock will not remain in service beyond 31 December 2019.
- Note l:** Following the PRM work described in Note d, these two vehicles will be reformed together to create a single 2-car unit. See also Note d above.
- Note m:** It is noted that the characteristics of the Train Fleet may, from time to time, differ from those referred to in Table 1 throughout the duration of works, such as HST First-to-Standard Class Conversion and Reconfiguration and PRM Compliance, and will be updated periodically as the Fleet reaches a steady-state to reflect the actual characteristics of the Train Fleet at the time.

Note n: Where a lease expiry date is shown before 04/19, it is agreed that on lease expiry and save as expressly provided in these notes substitute rolling stock is not required in addition to the Specified Additional Rolling Stock and the rolling stock specified in Table 4.

Note o: The removal of eight standard class seats per 2 car Class 165 unit to permit luggage stacks to be fitted was approved by the Secretary of State on 10 November 2016.

Note p: The 26 Class 150/1 vehicles expiring at the end of August 2017 transfer to Arriva Rail North (ARN) on that date, at which point they are sub-leased back to GWR and are released; 6 vehicles in December 2017, 16 in February 2018 and 4 in March 2018. In addition the 4 Class 150/1 vehicles expiring in January 2018 are held on a similar sub-lease with ARN and are released; 2 in March 2018 and 2 in April 2018.

Table 2 (Specified Additional Rolling Stock)¹⁷⁰

Column 1	Column 2	Column 3	Column 4				Column 5	Column 6
Lease start date(s)	Class of vehicle	Number of vehicles and unit configuration	Capacity of units ⁶				Owner/Lessor	Lease expiry date(s)
			Seats	Standing	Total	Standard Class		
06/16 Note i Note iv	387	180 (4 car) Note v	223	126	349	223	Porterbrook	04/19
02/08/16	AT300 Notes ii and iii	110 (5 car)	326	-	326	290	Eversholt	04/19
02/08/16	AT300 Notes ii and iii	126 (9 car)	647	-	647	576	Eversholt	04/19
Note vi	HST (Castle Class)	24 (2 Class 43 Power Cars + 4 Mk.III trailer vehicles per operati	303	52	355	303	Angel Trains	04/19

¹⁷⁰ 15 February 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Column 1	Column 2	Column 3	Column 4				Column 5	Column 6
Lease start date(s)	Class of vehicle	Number of vehicles and unit configuration	Capacity of units ⁶				Owner/Lessor	Lease expiry date(s)
			Seats	Standing	Total	Standard Class		
		onal set)						
Note vi	HST (Castle Class)	20 (2 Class 43 Power Cars + 4 Mk.III trailer vehicles per operational set)	303	52	355	303	First Rail Holdings	04/20
TBC Note vii	769	76 (4 car)	TBC	TBC	TBC	TBC	Porterbrook	1 April 2020 Note vii

Notes for Table 2:¹⁷¹

Table 1 applies subject to the following notes, and further detail is set out in the ROA:

Note i: 45 Class 387 units (180 vehicles) are delivered in two distinct phases:

- 8 units delivered between July and September 2016; and
- 37 units delivered between December 2016 and October 2017.

Note ii: In respect of the AT300, standing figures are not provided and the total capacity is stated before taking account of standing passengers.

Note iii: In respect of the AT300, these are contracted by the Franchisee to be supplied and leased on the basis of provisional acceptance or qualified provisional acceptance being achieved at the rate of one unit a week, commencing 24 May 2018.

¹⁷¹ 15 February 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Note iv:^{172 173} Total seating capacity corrected to 223 to reflect the actual build capacity of the stock and Standard Class increased to 223 to reflect the Secretary of State's agreement of 26 January 2017 to there being no First Class accommodation.

Note v:¹⁷⁴ The Deed of Amendment of 17 April 2018 in respect of Heathrow services says that 12 units of the Class 387 ('New Rolling Stock Units') fleet will be converted to operate non-franchised Heathrow services, with the transition away from Franchise Services expected to be completed by 16 December 2019. In accordance with that Deed, Class 387 vehicles comprising two Additional Units (as defined in the Deed) may also be used from time to time to support the operation of non-franchised Heathrow Services.

Note vi:¹⁷⁵ The Castle Class HSTs are formed from original rolling stock listed in Table 1 and therefore represent modified original rolling stock rather than incremental, additional rolling stock. The lease start date for this stock is therefore the corresponding date for the relevant stock shown in Table 1, as the leases continue. The number of Castle Class Vehicles is the number of leased vehicles stated excluding power cars and spares. The seating capacity of the Castle Class sets is calculated including two wheelchair spaces but excluding tip-ups and the standing capacity is calculated on the basis of 17.4% of seats rounded down to the nearest whole seat.

Note vii:¹⁷⁶ The Deed of Amendment of 17 April 2018 in respect of Heathrow services says that the Class 769 trains "will be incorporated into the Train Fleet with effect from their being accepted on lease by the Franchisee under the Class 769 Rolling Stock Lease ...". As at the date of the IRAD Change 1 Deed of Amendment no Class 769 trains have yet been accepted so as to become incorporated into the Train Fleet.

Table 3 (Unspecified Additional Rolling Stock)

Column 1	Column 2	Column 3	Column 4
Date of introduction into revenue earning passenger service	Number of vehicles	Capacity⁶	Characteristics
-	-	-	-

¹⁷² 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁷³ 15 February 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁷⁴ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁷⁵ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁷⁶ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Table 4 (IEP Sets)¹⁷⁷

Train number	Maximum available Sets	Capacity of Sets			Scheduled Acceptance Date Note (i)
		First Class	Standard Class	Total	
Bi-Mode Half Sets					
Delivery Train 1 to 36 inclusive	32 (when all 36 are accepted)	36	290	326	25 May 2017 to 17 May 2018

Train number	Maximum available Sets	Capacity of Sets			Scheduled Acceptance Date Note (i)
		First Class	Standard Class	Total	
Bi-Mode Full Sets					
Delivery Train 37 to 57 inclusive	17 (when all 21 are accepted)	71	576	647	24 May 2018 to 15 October 2018

Notes for Table 4:¹⁷⁸

Note i: Further details of the Scheduled Acceptance Dates for individual Delivery Trains are set out in the IRAD.

2. Changes to the Train Fleet

2.1 Except to the extent permitted by paragraph 1.1(c) or 1.2, the Franchisee shall maintain the composition of the Train Fleet during the Franchise Term, unless the Secretary of State otherwise agrees, such that there are no changes to the Train Fleet, including changes:

- (a) to the classes or types;
- (b) to the interior configurations; or
- (c) which may reduce the journey time capabilities, of any rolling stock vehicles specified in the Train Fleet.

2.2 The Franchisee shall procure that the rolling stock vehicles described in the above Tables, with the capacity and other characteristics referred to there, are available

¹⁷⁷ 15 February 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁷⁸ 15 February 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

for deployment in the provision of the Passenger Services to the extent required by the Timetable and Train Plan during the periods referred to there.

- 2.3 During the Franchise Term, the Franchisee shall advise the Secretary of State of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of three consecutive Reporting Periods or more.
- 2.4 If any change is made to the Train Fleet in accordance with this Schedule 1.7, the Secretary of State may, after consulting the Franchisee, notify the Franchisee of the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change.

SCHEDULE 2**Assets, Leases, Third Parties, Other Franchise Operations and Schemes**

- Schedule 2.1: Asset Vesting and Transfer**
- Schedule 2.2: Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases**
- Schedule 2.3: Third Party Delivery of Passenger Services and Other Franchisees**
- Schedule 2.4: Other Franchise Operations**
- Schedule 2.5: Transport, Travel and Other Schemes**

SCHEDULE 2.1**Asset Vesting and Transfer****1. Property Leases**

- 1.1 The Franchisee shall not without the prior written consent of the Secretary of State (such consent not to be unreasonably withheld), whether generally or on a case-by-case basis:
- (a) enter into any new Property Lease; or
 - (b) effect any amendment to any Property Lease, except to the extent that the Franchisee is required to do so by virtue of any station or depot access conditions to which it is a party.
- 1.2 In respect of any new Property Leases with Network Rail, the Franchisee shall enter into such Property Leases:
- (a) with the intent that Section 31 of the Act shall apply to such leases; and
 - (b) in the agreed terms marked **SL** and **DL** (as appropriate).
- 1.3 In respect of any assignment or amendment of any Property Lease to which Section 31 of the Act applied on its grant, each of the Secretary of State and the Franchisee acknowledge that it is their intention that Section 31 of the Act shall continue to apply to such assigned or amended lease.
- 1.4 The Secretary of State shall have an unfettered right to refuse to consent to the Franchisee entering into a proposed Reading Depot Lease where the term of such proposed lease is for a period extending beyond six months after the end of the Franchise Term.

SCHEDULE 2.2**Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases****1. Novation of Access Agreements during the Franchise Term**

1.1 The Franchisee shall, to the extent so requested by the Secretary of State (other than on termination of the Franchise Agreement, for which the provisions of paragraph 1 of Schedule 15.4 (Provisions Applying on and after Termination) apply):

- (a) following receipt of a notice purporting to terminate any Access Agreement to which it is a party, in relation to such Access Agreement; or
- (b) following receipt of a notice purporting to terminate a Station Lease or Depot Lease in whole or in part or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, in relation to any Access Agreement under which it is a Facility Owner by virtue of such Station Lease or Depot Lease,

novate its interest under any such relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as he may direct.

1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

1.3 Such novation shall be on such terms as the Secretary of State may reasonably require, including:

- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither the Secretary of State nor his nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.

1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as he may direct, subject, to the extent applicable, to the

consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

- 1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. **Rolling Stock Related Contracts and insurance arrangements**

- 2.1 The Franchisee shall not:

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

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

- 2.1A The Franchisee shall supply a copy of all draft Rolling Stock Related Contracts and, immediately following execution, all executed Rolling Stock Related Contracts (including any agreement amending any Rolling Stock Related Contract) together with such other information or documentation relating to such Rolling Stock Related Contract and/or the relevant rolling stock as the Secretary of State may request (which may include offer letters (original and final), the terms proposed by any person providing finance in relation to the relevant rolling stock (including cash flows), any agreement (in whatever form) to which the Franchisee (or an Affiliate of the Franchisee) is a party and which relates to the relevant rolling stock, information relating to capital allowances, details of any changes in the terms (including rentals) on which the relevant rolling stock is proposed to be leased compared to the terms on which such rolling stock was previously leased, a detailed justification of the Franchisee's proposed maintenance strategy for the relevant rolling stock and/or the Franchisee's analysis of the whole life costs of the relevant rolling stock) to the Secretary of State.

- 2.1B Where the information or documentation so requested by the Secretary of State is not held by the Franchisee, the Franchisee shall use reasonable endeavours to obtain the relevant information or documentation from a third party (including any person from whom the Franchisee leases rolling stock).

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

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

2.3 **Not used.**

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

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

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

For the purpose of paragraph 2.5, paragraph 2.6 and paragraph 2.7:

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

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

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

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

2.6

- (a) Where the Secretary of State exercises his right pursuant to paragraph 2.5(b) to make Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period there shall be a Change and where this is a Qualifying Change, it shall be assumed that the period that the Prior Train Operator retains any Cascaded Rolling Stock shall not exceed ninety days and the only Revised Inputs shall be in relation to the difference between each of the rolling stock lease costs and variable track usage charge for the Cascaded Rolling Stock and the rolling stock lease

costs and variable track usage charge applicable in relation to whatever rolling stock is to be used by the Franchisee in place of the Cascaded Rolling Stock.

- (b) Where there is a Change pursuant to paragraph 2.6(a) and the period that the Prior Train Operator retains any Cascaded Rolling Stock is more than ninety days there shall be a further Change. Where such Change is a Qualifying Change the modifications to the methodology for calculating Revised Inputs provided for in paragraph 2.6(a) shall not apply.
- (c) Where there is a Change pursuant to paragraphs 2.6(a) or 2.6(b) and any such Change is a Qualifying Change there shall be a further Change (which shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change) on the date that the last Cascaded Rolling Stock ceases to be retained by the Prior Train Operator.

2.7

- (a) Where the Secretary of State exercises his right pursuant to paragraph 2.5(b) to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period the Franchisee shall not be liable for any failure to comply with its obligations under the Franchise Agreement to the extent that:
 - (i) such failure to comply arises directly as a result of the Franchisee being unable to use the Cascaded Rolling Stock; and
 - (ii) the Franchisee uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.
- (b) The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of any material risk that a Relevant Delay will occur. If a Relevant Delay does occur the Franchisee shall use all reasonable endeavours to mitigate the impact on the delivery of the Franchise Services of the unavailability of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.
- (c) If a Relevant Delay has occurred or the Secretary of State believes that there is a material risk that a Relevant Delay will occur he may serve a notice on the Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate the impact of the delayed availability of the Cascaded Rolling Stock ("**Delayed Cascade Mitigation Plan**"). Such specification may include measures to be implemented by the Franchisee to mitigate the direct or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
 - (i) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (ii) the implications (if any) for the Benchmarks; and

- (iii) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

The Franchisee shall meet with the Secretary of State to discuss the Delayed Cascade Mitigation Plan and provide such further information or analysis and further iterations of the Delayed Cascade Mitigation Plan as the Secretary of State shall reasonably require.

3. **Assignment of Property Leases during the Franchise Term**

3.1 The Franchisee shall (other than on termination of the Franchise Agreement, for which the provisions of paragraph 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.

3.2 Such assignment shall be on such terms as the Secretary of State may reasonably require, including:

- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
- (b) that neither the Secretary of State nor his nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 3.2(a), and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.

3.3 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 3.1 in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as he may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 3.2 shall apply to any such assignment.

3.4 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 3.

4. **Station and Depot Leases**

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

4.2 The Franchisee shall not:

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

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

5. Station Subleases

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

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

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

- (a) extend each Station Sublease on the same terms for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease); and
- (b) if such Station Sublease terminates (which for the purposes of this paragraph 5.2(b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sublease in respect of which the Franchisee was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease),

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

5.3 The Franchisee shall notify the Secretary of State immediately on it becoming aware of any event which might give the Franchisee a right to forfeit or terminate any Station Sublease. The Franchisee shall notify the Secretary of State if it wishes to forfeit or terminate any such Station Sublease but shall not (without the Secretary of State's prior written consent) effect such forfeiture or termination until the date which occurs three months after the date of such notice.

SCHEDULE 2.3**Third Party Delivery of Passenger Services and Other Franchisees****1. Subcontracting any Passenger Services**

- 1.1 Subject to paragraph 1.2, the Franchisee may not subcontract or delegate the provision of the Passenger Services without the prior written consent of the Secretary of State.
- 1.2 The Franchisee may subcontract or delegate the provision of the Passenger Services, provided that:
- (a) the Secretary of State receives prior written notice of any such subcontracting or delegation;
 - (b) the Franchisee continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;
 - (c) the Franchisee continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;
 - (d) the Train Mileage of the Passenger Services so delegated or subcontracted does not exceed 5 per cent. of the aggregate scheduled Train Mileage of the Franchisee in any Reporting Period; and
 - (e) the Franchisee continues to perform its obligations under Schedule 1.1 (Service Development) in respect of any subcontracted or delegated services.
- 1.3 Any such subcontracting or delegation shall not relieve the Franchisee from any of its obligations under the Franchise Agreement, including its obligations under this paragraph 1 and Schedule 14 (Preservation of Assets).

2. Other Franchisees

- 2.1 If the franchise agreement of another franchisee terminates or a railway administration order is made in respect of another franchisee, the Franchisee shall co-operate with any reasonable request of the Secretary of State to ensure:
- (a) that the services provided or operated by such other franchisee may continue to be provided or operated by any successor Train Operator or the railway administrator; and
 - (b) that the benefit of any arrangements between the Franchisee and such other franchisee which were designated as a key contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.
- 2.2 The benefit of any arrangements of the type referred to in paragraph 2.1(b) shall be provided on substantially the same terms as previously obtained by the

relevant franchisee, subject to paragraph 9 of Schedule 19 (Other Provisions) and paragraph 2.3, provided that the Secretary of State may exclude or modify any terms agreed or amended by such franchisee in the 12 months preceding the date on which such franchisee's franchise agreement was terminated or the date on which the relevant railway administration order was made which were, in the Secretary of State's reasonable opinion, to the material detriment of such franchisee's business. The benefit of such arrangements shall be provided for such period as the Secretary of State may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.

- 2.3 The Franchisee shall notify the Secretary of State of its intention to terminate any contract with any other Train Operator which is designated as a "Key Contract" under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.
- 2.4 If the franchise agreement of another franchisee terminates in contemplation of the entry into or entry into effect of a new franchise agreement with the same franchisee in respect of all or a material part of the relevant railway passenger services, the Franchisee shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.
- 2.5 References in this paragraph 2 to a franchisee include references to any franchise operator of that franchisee.

SCHEDULE 2.4**Other Franchise Operations****1. Rolling Stock Testing and Commissioning**

1.1 The Franchisee shall, to the extent reasonably requested by the Secretary of State and subject to payment of the Franchisee's reasonable costs by the relevant third party, co-operate with any third party which the Secretary of State may specify (including a Successor Operator, a rolling stock vehicle manufacturer, Network Rail or the Secretary of State) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise). Such co-operation shall not unreasonably disrupt the provision and operation of the Franchise Services and may include:

- (a) the movement of test trains within and around depots;
- (b) making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;
- (c) making Train Slots available for such purposes;
- (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
- (e) the delivery of rolling stock vehicles to specific locations.

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

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

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

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

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

3. Not Used.**4. Royal Train**

4.1 The Franchisee shall, if and to the extent requested by any person (including Rail Express Systems Limited) and subject to the payment by such person of any

reasonable costs of the Franchisee, co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them.

4.2 The provision of railway services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them may include:

- (a) running a "sweeper" train in front of the royal train;
- (b) having spare locomotives on standby as rescue traction; and/or
- (c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.

SCHEDULE 2.5

Transport, Travel and Other Schemes

1. **Not used.**
2. **Not used.**
3. **Not used.**
4. **Discount Fare Schemes**
 - 4.1 If the Secretary of State:
 - (a) effects, or proposes to effect, an amendment to a Discount Fare Scheme;
 - (b) introduces any new Discount Fare Scheme; or
 - (c) ceases to approve a Discount Fare Scheme,

for the purposes of Section 28 of the Act, such amendment, intended amendment, introduction or cessation of approval shall be a Change.
 - 4.2 The Secretary of State shall provide a reasonable opportunity to the Franchisee to make representations to him before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 4.1.
 - 4.3 The Franchisee shall supply to the Secretary of State, in respect of any Discount Fare Scheme referred to in paragraph 4.1, such information within such period as the Secretary of State may reasonably require for the purposes of determining the financial effect of any such amendment, intended amendment, introduction or cessation of approval.
5. **Inter-Operator Schemes**
 - 5.1 The Franchisee shall participate in and comply with its obligations under the terms of each of the Inter-Operator Schemes.
 - 5.2 Without limiting paragraphs 5.1 and 5.3, the Franchisee agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Secretary of State.
 - 5.3 The Franchisee shall not amend, or agree or propose to amend, any Inter-Operator Scheme other than in accordance with its terms.
 - 5.4 The Franchisee shall:
 - (a) provide reasonable notice to the Secretary of State of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which, in its opinion, is reasonably likely materially to affect the provision of the Franchise Services; and
 - (b) have regard to the Secretary of State's views in respect of any such proposal.

- 5.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Secretary of State in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

SCHEDULE 3

Not Used

SCHEDULE 4

Persons with Disabilities and Disability Discrimination

Schedule 4: Persons with Disabilities and Disability Discrimination

Appendix 1: Minor Works

Appendix 2: Alternative Transport

SCHEDULE 4**Persons with Disabilities and Disability Discrimination****1. Relationship with other obligations relating to persons with disabilities**

1.1 The Franchisee acknowledges that its obligations in this Schedule 4 are in addition to and do not limit its obligations to comply with:

- (a) the EA and any regulations imposed by it;
- (b) any applicable condition(s) in any of its Licences (including in respect of persons with disabilities); and
- (c) any other of the requirements of the Franchise Agreement.

1.2 This Schedule 4 sets out:

- (a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and
- (b) specific obligations of the Franchisee directed at meeting the needs of persons with disabilities.

2. Physical Alterations and Accessibility of Stations

2.1 In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by the Franchisee that:

- (a) there is limited funding available to the Secretary of State to assist franchisees and/or franchise operators with the carrying out of those works;
- (b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised with regard to where there is the greatest need and/or where physical alterations can have the greatest effect; and
- (c) the Secretary of State's national programme of works of physical alterations at stations addresses these issues in a structured way.

2.2 The Franchisee shall:

- (a) co-operate reasonably with and assist the Secretary of State in the development and furtherance by the Secretary of State of the programme described in paragraph 2.1(c) by providing to the Secretary of State:
 - (i) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and
 - (ii) advice as to the most economic way in which accessibility for Disabled Persons could, in the Franchisee's reasonable opinion, be improved at Stations;
- (b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that, where it would be advantageous to do so, having

regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and

- (c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through the Secretary of State pursuant to paragraph 2.5), including from Local Authorities, local development agencies and the Lottery Commission. The Franchisee shall notify the Secretary of State of:
 - (i) any such additional funding which it secures; and
 - (ii) the terms on which such additional funding has been granted.

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

2.4 If, during the Franchise Term:

- (a) the Franchisee has complied with its obligations in Section 20(4) and Section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station accessible to a Disabled Person to avoid a Disabled Person being placed at a substantial disadvantage by a physical feature at a Station) and its obligations in paragraph 2.7 concerning Minor Works; and
- (b) notwithstanding such compliance, the Franchisee reasonably considers it is still required to carry out or procure physical works of alteration at a Station in order to comply with the EA Requirements in respect of that Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,

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

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

- (a) the Secretary of State shall make such adjustment to the Franchise Payments; and
- (b) the Franchisee shall spend such additional funds:

- (i) in order to comply with the EA Requirements referred to in paragraph 2.4(b); and
- (ii) in accordance with any conditions the Secretary of State may notify the Franchisee of.

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

- (a) notifies the Secretary of State within seven days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and
- (b) complies with the Secretary of State's reasonable directions regarding the exercise of any rights the Franchisee may have in respect thereof,

the imposition of the increased access charges shall be a Change.

2.7 The Franchisee shall:

- (a) establish and manage the Minor Works' Budget to fund the carrying out of Minor Works. For the purposes of this paragraph 2.7, Minor Works means small scale physical alterations or additions to improve accessibility of Stations to Disabled Persons, not involving substantial works of construction or reconstruction. The Minor Works:
 - (i) may, but shall not necessarily include, the Minor Works described in Appendix 1 of this Schedule 4;
 - (ii) shall not include any works which Network Rail, the Franchisee or any other person has a separate obligation to carry out, except where:
 - (A) such obligation is an obligation of the Franchisee under the EA; or
 - (B) the inclusion of such works would lead to the acceleration of the timescale for their completion and the Secretary of State gives his consent pursuant to paragraph 2.7(a)(iii);
 - (iii) shall only include works other than those permitted by paragraphs 2.7(a)(i) and 2.7(a)(ii) with the prior consent of the Secretary of State; and
 - (iv) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of the Secretary of State;
- (b) as soon as reasonably practicable (and in any event within four months) after the Start Date and thereafter before the start of each Franchisee Year:

- (i) develop a Minor Works' Programme and consult with the Disabled Persons Transport Advisory Committee and relevant Passengers' Council in relation thereto;
 - (ii) in conjunction with its activities in paragraph 2.7(b)(i), and, consistent with its obligations under paragraph 2.2(b), liaise with Network Rail and other Train Operators as necessary with regard to the determination and implementation of each Minor Works' Programme; and
 - (iii) following the consultation and liaison described in paragraphs 2.7(b)(i) and 2.7(b)(ii), obtain the Secretary of State's prior approval (such approval not to be unreasonably withheld) of each Minor Works' Programme;
- (c) carry out or procure the carrying out of the Minor Works' Programme in each Franchisee Year and in doing so, spend at least the amount of the Minor Works' Budget for the relevant Franchisee Year in such Franchisee Year (unless otherwise agreed by the Secretary of State);
 - (d) report progress to the Secretary of State in determining and carrying out the Minor Works' Programme no less than once every three Reporting Periods; and
 - (e) co-operate, as the Secretary of State may reasonably require, with Network Rail or any other person seeking to carry out or procure Minor Works at the Stations or any other stations.

3. Dealing with Claims Relating to Stations

3.1 If the Franchisee receives notification of a claim under the EA in respect of any alleged non-compliance with the EA Requirements or otherwise in respect of any Station (an "**EA Claim**") then the Franchisee shall:

- (a) notify the Secretary of State within seven days of receiving notification of the EA Claim. The Franchisee shall at the same time notify the Secretary of State of any reasonable alternative methods of making services at the Station accessible to Disabled Persons that it has considered and/or put in place pursuant to Section 20(4) and Section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA;
- (b) if required by the Secretary of State, defend the EA Claim or any aspect of the EA Claim (which may include appealing the judgment). The Secretary of State will, subject to paragraph 3.4, pay the Franchisee's reasonable costs of:
 - (i) any defence or appeal required by the Secretary of State; and/or
 - (ii) compliance with the Secretary of State's instructions in accordance with paragraph 3.1(c); and
- (c) act in accordance with the reasonable instructions of the Secretary of State to defend the EA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of the Secretary of State) settle or enter into any compromise in relation to the EA Claim (or the relevant aspect of it), including by entering into mediation.

- 3.2 If, in the reasonable opinion of the Franchisee, it will be more cost effective to settle the EA Claim rather than act in accordance with the Secretary of State's requirement under paragraph 3.1, it shall produce for the Secretary of State's approval a settlement proposal, setting out the terms of the Franchisee's proposals to make an offer to the Disabled Person making the EA Claim and its reasons for making such offer (the "**Settlement Proposal**").
- 3.3 If the Secretary of State does not accept the Settlement Proposal and still requires the Franchisee to defend the EA Claim (or any aspect of it) then the Franchisee shall defend the EA Claim in accordance with paragraph 3.1.
- 3.4 If the Franchisee is required to defend an EA Claim where it has submitted a Settlement Proposal to the Secretary of State and an award is made in respect of the EA Claim in favour of the person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.5, the Secretary of State shall pay to the Franchisee:
- (a) the difference between such an award and the figure set out in the Settlement Proposal; and
 - (b) the further reasonable costs incurred or payable by the Franchisee in defending the EA Claim, to the extent that such costs have not already been paid by the Secretary of State under paragraph 3.1(b).
- 3.5 The Secretary of State shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, the Secretary of State, in his reasonable opinion, considers that the Franchisee has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.
4. **Specific additional obligations relating to persons with disabilities**
- 4.1 **Not used.**
- 4.2 The Franchisee shall establish and implement procedures necessary to:
- (a) record the making of reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities which are made through the Assisted Passenger Reservation System (or whatever system may replace it from time to time for the purposes of ORR Guidance on Disabled People's Protection Policies) and where the Franchisee is responsible for making the reservation and/or delivering the seating accommodation or assistance reserved. Any helpline established by the Franchisee for the purposes of making reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities shall be provided free of charge;
 - (b) record whether such seating accommodation and/or assistance is actually provided; and
 - (c) provide such records to the Secretary of State on his request.
- 4.3 Where the Franchisee's Disabled People's Protection Policy:
- (a) has been established before the date of the Franchise Agreement; and

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

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

- 4.4 The Franchisee shall comply with the requirements set out in Appendix 2 (Alternative Transport) of this Schedule 4 in respect of the provision of alternative means of transportation for persons with disabilities.

APPENDIX 1 TO SCHEDULE 4**Minor Works**

1. Providing additional signage, where it does not currently exist, to allow better way finding around the station by Disabled Persons.
2. Removing:
 - 2.1 thresholds (above 15 millimetres) which do not comply with the Code of Practice; or
 - 2.2 fewer than three steps,

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

APPENDIX 2 TO SCHEDULE 4**Alternative Transport**

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

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

and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.
4. The Franchisee's obligations under this Appendix are subject to:
 - (a) reasonable prior notice of the passenger's requirement for alternative transport; and
 - (b) the availability of suitable alternative transport (provided that the Franchisee has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such alternative transport).

SCHEDULE 5**Fares**

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

SCHEDULE 5.1**Purpose, Structure and Construction****1. Purpose of Schedule 5****Purpose of provisions relating to Creating Fares**

1.1 The purpose of Schedule 5.2 (Franchisee's Obligation to Create Fares) is to ensure that:

- (a) Commuter Fares and Protected Fares are Created in accordance with the Ticketing and Settlement Agreement; and
- (b) appropriate restrictions are placed on the Franchisee's ability to Create Fares.

Purpose of Fares Regulation

1.2 The purpose of Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information and Monitoring) (inclusive) is to provide for the regulation of Fares by the Secretary of State pursuant to Section 28 of the Act.

1.3 For the purpose of regulating Fares, each Fare that is to be regulated shall be allocated in accordance with this Schedule 5 to one of the following Fares Baskets:

- (a) the Commuter Fares Basket; or
- (b) the Protected Fares Basket.

1.4 The Secretary of State's regulation of Fares places a limit on the Price or Child Price of each Fare that is allocated by the Secretary of State to a Fares Basket. The limit on the Price or Child Price of each Fare is set by reference to:

- (a) the overall increase of the Prices and the Child Prices of all Fares in a Fares Basket; and
- (b) the individual increase in the Price or the Child Price of each Fare in a Fares Basket.

1.5 Subject to the more detailed provisions of Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares):

- (a) the overall increase of the Prices and the Child Prices of all Fares in a Fares Basket may not exceed the Retail Prices Index + k per cent per annum in respect of each Fare Year; and
- (b) the increase in the Price or the Child Price of any individual Fare in a Fares Basket may not exceed the Retail Prices Index + k + f per cent per annum in respect of each Fare Year; and
- (c) for the purpose of subparagraph (a) of this paragraph 1.5, "k" shall have the meaning ascribed to it in paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Value); and

(d) for the purpose of subparagraph (b) of this paragraph 1.5, "k" and "f" shall have the meaning ascribed to them in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares).

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

2. **Structure of Schedule 5**

2.1 Schedule 5.2 (Franchisee's Obligation to Create Fares) sets out or refers to the Franchisee's obligations to Create Fares.

2.2 Schedule 5.3 (Allocation of Fares to Fares Baskets) sets out the allocation of Fares to Fares Baskets.

2.3 Schedule 5.4 (Regulation of Fares Basket Values) sets out the limits applicable to the overall increase in Prices and Child Prices of all Fares in a Fares Basket.

2.4 Schedule 5.5 (Regulation of Individual Fares) sets out the limits applicable to the increase in the Price or Child Price of any individual Fare in a Fares Basket.

2.5 Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) sets out the consequences of the Franchisee exceeding:

(a) the Regulated Value of any Fares Basket; or

(b) the Regulated Price or Regulated Child Price of any Fare.

2.6 Schedule 5.7 (Changes to Fares and Fares Regulation) sets out the Secretary of State's ability to vary the foregoing provisions.

2.7 Schedule 5.8 (Fares Regulation Information and Monitoring) sets out Fares regulation information and monitoring provisions.

2.8 Schedule 5.9 (ITSO Certified Smartmedia) sets out provisions relating to the introduction of ITSO Certified Smartmedia.

3. **Construction**

References to "**Fare**"

3.1 For the purposes of:

(a) Schedule 5.2 (Franchisee's Obligation to Create Fares), Fare shall have the wide meaning given to it in paragraph (a) of that definition; and

(b) Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information and Monitoring) (inclusive), Fare shall have the narrow meaning given to it in paragraph (b) of that definition.

3.2 References in this Schedule 5 to a Fare shall, except to the extent the context otherwise requires, be construed as references to the Fare which is or can be Created by the Lead Operator for the Flow to which the Fare relates or, if such Flow is not a Compulsory Inter-available Flow, any Fare which the Franchisee has Created or can Create in respect of that Flow as the Secretary of State may specify.

Fares Documents

3.3 In the event that, in the Secretary of State's reasonable opinion, there is an immaterial inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2010 or the 2010 Nominal Ticket Sales:

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

the relevant Fares Document shall prevail.

3.4 In the event that, in the Secretary of State's reasonable opinion, there is a material inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2010 or the 2010 Nominal Ticket Sales:

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

this Schedule 5 shall prevail.

Setting of Child Prices

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

- (a) a Fare which is only valid for use by persons under the age of 16; or
- (b) a Fare which is valid for use:
 - (i) by any person at a price; and
 - (ii) by persons under the age of 16 at a discounted price relative to the price set pursuant to paragraph 3.5(b)(i).

New Stations

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

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

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

SCHEDULE 5.2**Franchisee's Obligation to Create Fares****1. Creation of Commuter Fares and Protected Fares**

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

2. Restrictions on Creation of Fares

2.1 The Franchisee shall set the Child Price for any Fare that it Creates so that that Fare may be purchased by or for a person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a 16 to 25 Railcard with no minimum fare (as amended or replaced from time to time) and whose purchase was made without condition.

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

SCHEDULE 5.3**Allocation of Fares to Fares Baskets****1. Allocation of Fares to Fares Baskets**

1.1 On or prior to the Start Date the Secretary of State shall allocate each Commuter Fare and each Protected Fare to the relevant Fares Basket in accordance with this Schedule 5.3.

1.2 Subject to paragraph 2, every Commuter Fare shall be allocated by the Secretary of State to the Commuter Fares Basket and every Protected Fare shall be allocated by the Secretary of State to the Protected Fares Basket.

2. Designation of Non-Fares Basket Fares

2.1 On or prior to the Start Date, the Secretary of State shall:

(a) separately (or in aggregate with other Fares of the same type in the opposite direction or for similar journeys that have the same Price or Child Price as the case may be) rank, in descending order according to their Gross Revenue for the period of 12 months which ended 31 March 2010:

(i) all Commuter Fares; and

(ii) all Protected Fares;

(b) aggregate, following such ranking:

(i) those Commuter Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent of the aggregate Reference Revenue of all Commuter Fares; and

(ii) those Protected Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent of the aggregate Reference Revenue of all Protected Fares; and

(c) designate, following such aggregation:

(i) those Commuter Fares referred to in paragraph 2.1(b)(i) as Non-Fares Basket Fares; and

(ii) those Protected Fares referred to in paragraph 2.1(b)(ii) as Non-Fares Basket Fares.

2.2 Without prejudice to the Secretary of State's right to require the content of a Fares Basket to change at any time prior to the Start Date, or, thereafter, prior to the commencement of any Fares Setting Round, pursuant to paragraph 1 of Schedule 5.7 (Changes to Fares and Fares Baskets), any Commuter Fare or Protected Fare that is also designated as a Non-Fares Basket Fare shall not be allocated to the relevant Fares Basket.

- 2.3 The Secretary of State may de-designate any Non-Fares Basket Fare pursuant to paragraph 1.1 of Schedule 5.7 (Changes to Fares and Fares Regulation).

SCHEDULE 5.4

Regulation of Fares Basket Values

1. Value of Fares Basket not to exceed Regulated Value

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

2. Value

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

3. Projected Revenue

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

$$P \times 2010 \text{ Nominal Ticket Sales}$$

where:

P is the Price or Child Price (as the case may be) of that Fare at that time; and

2010 Nominal Ticket Sales is the number of nominal ticket sales of that Fare for 2010, ascertained as follows

$$\frac{A}{B}$$

where:

A is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of 12 months which ended 31 March 2010; and

B is the Price or Child Price (as the case may be) for that Fare recorded by RSP in February 2010.

4. Regulated Value

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

$$2010 \text{ Ticket Revenue} \times \text{PPAI}$$

where:

2010 Ticket Revenue is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in that Fares Basket for the period of 12 months which ended 31 March 2010;

PPAI is:

(a) in respect of the Fare Year commencing 1 January 2011, the Permitted Aggregate Increase for that Fare Year; and

(b) in respect of each Fare Year commencing on or after 1 January 2012, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1 January 2011 (inclusively).

4.2 ¹⁷⁹ The Permitted Aggregate Increase in any Fare Year shall be an amount equal to:

$$PAI = \frac{(100 \times RPI) + k}{100}$$

where:

PAI is the Permitted Aggregate Increase in that Fare Year;

RPI is an amount equal to:

$$\frac{RPI_{-1}}{RPI_{-2}}$$

where:

RPI-1 is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and

RPI-2 is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1; and

k is equal to, subject to paragraph 5 of Schedule 5.7 (Change to Fares and Fares Regulation), 0 for the Fare Year commencing on 1 January 2014, 1 January 2015, 1 January 2016, 1 January 2017, 1 January 2018, 1 January 2019 and 1

¹⁷⁹ Date of contract change 01/01/2016 – Agreed by the Secretary of State and Franchisee.

January 2020 and is equal to +1 for any other Fare Year.

SCHEDULE 5.5

Regulation of Individual Fares

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

1.1 The Franchisee shall procure that the Price or Child Price (as the case may be) of:

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

in any Fare Year does not exceed the Regulated Price or Regulated Child Price (as the case may be) for such Fare in that Fare Year.

1.2 The Franchisee shall procure that the Price or Child Price (as the case may be) of any Season Ticket Fare shall be the same in both directions.

2. Regulated Price

2.1 ¹⁸⁰**The Regulated Price or the Regulated Child Price (as the case may be) for any Fare in any Fare Year shall be an amount equal to the greater of:**

- (a) **Preceding Year Ticket Price + £0.10p; and**
- (b) **ROUND (Preceding Year Ticket Price x PII)**

where:

Preceding Year Ticket Price

for the Fare Year commencing 1 January 2011, is the maximum Price or Child Price (as the case may be) for that Fare recorded by RSP in 2010 and, for any subsequent Fare Year, is the maximum Price or Child Price (as the case may be) recorded by RSP in the Fare Year preceding that Fare Year, provided that such maximum Price or Child Price (as the case may be) complied with the requirements of this Schedule 5. If such maximum Price or Child Price (as the case may be) did not so comply, then such maximum Price or Child Price (as the case may be) shall be the last Price or Child Price (as the case may be) recorded by RSP which did so comply; and

PII

is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2.

ROUND

if (Preceding Year Ticket Price x PII) ends in £0.05 or more (\geq £0.05), then (Preceding Year Ticket Price x PII) shall be rounded up to the nearest £0.10; or

¹⁸⁰ 27 November 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

if (Preceding Year Ticket Price x PII) ends in less than £0.05 (<£0.05), then (Preceding Year Ticket Price x PII) shall be rounded down to the nearest £0.10.

2.2 ¹⁸¹The Permitted Individual Increase in any Fare Year shall be determined in accordance with the following formula:

$$PII = \frac{(100 \times RPI) + k + f}{100}$$

where:

PII is the Permitted Individual Increase in that Fare Year;

RPI is an amount equal to:

$$\frac{RPI_{-1}}{RPI_{-2}}$$

where: RPI₋₁ is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and

RPI₋₂ is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI₋₁; and

k is equal to, subject to paragraph 5 of Schedule 5.7 (Change to Fares and Fares Regulation), 0 for the Fare Year commencing on 1 January 2014, 1 January 2015, 1 January 2016, 1 January 2017, 1 January 2018, 1 January 2019 and 1 January 2020 and is equal to +1 for any other Fare Year; and

f is equal to 0 for all Fare Years commencing on or after 1 January 2016.

2.3 Where:

(a) the Franchisee sets the Price or Child Price (as the case may be) of any Commuter Fare or Protected Fare in any Fare Year; and

(b) the Secretary of State reasonably determines that the Price or Child Price (as the case may be) of such Commuter Fare or Protected Fare was set solely for the purpose of increasing the value of the Preceding Year Ticket Price in the next Fare Year,

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

¹⁸¹ Date of contract change 01/01/2016 – Agreed by the Secretary of State and Franchisee.

3. Compulsory Inter-available Flows

Where the Franchisee:

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

the Franchisee shall not increase the Price or Child Price (as the case may be) of that Commuter Fare in the same Fares Setting Round without the consent of either the Secretary of State or each other Train Operator which provides railway passenger services for such Flow.

SCHEDULE 5.6**Exceeding the Regulated Value, Regulated Price or Regulated Child Price****1. Exceeding the Regulated Value**

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

- 1.4 If and to the extent that the circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not subsequently increase during that Fare Year, or any subsequent Fare Year, the Price or Child Price of any Commuter Fare in the Commuter Fares Basket which it is entitled to set pursuant to the terms of the Ticketing and Settlement Agreement, unless, following such increase, the Franchisee would, otherwise than under paragraph 1.3, comply with the provisions of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in relation to the Commuter Fares Basket.
- 1.5 Where circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not be required to reduce the Price or Child Price of any other Commuter Fare at any time during that Fare Year, or any subsequent Fare Year, where such Price or Child Price has previously been set in a Fares Setting Round.

2. Exceeding the Regulated Price or Regulated Child Price

- 2.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares):
- (a) it shall reduce the Price or Child Price of any relevant Fare at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares) from such date; and
 - (b) the Secretary of State may adjust Franchise Payments by an amount equivalent in his opinion to the sum of:
 - (i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the sale of Fares at Prices and/or Child Prices in excess of the relevant amounts permitted under Schedule 5.5 (Regulation of Individual Fares); and
 - (ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.
- 2.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 2.1:
- (a) shall not be a Change; and
 - (b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.

SCHEDULE 5.7**Changes to Fares and Fares Regulation****1. Changes to Fares Baskets**

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

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

the Secretary of State may de-designate any Non-Fares Basket Fare and include such Non-Fares Basket Fare in the relevant Fares Basket;
- (b) where any Commuter Fare for a Flow has been included in the Commuter Fares Basket, the Secretary of State may require the inclusion in the Commuter Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2010;
- (c) where any Protected Fare for a Flow has been included in the Protected Fares Basket, the Secretary of State may require the inclusion in the Protected Fares Basket of any Protected Return Fare or Protected Weekly Season Ticket that existed on that Flow in February 2003; and/or
- (d) where the Secretary of State changes the Reference Revenue and/or the Gross Revenue of any Fare pursuant to paragraph 3.1(a) and/or (b) then, in relation to the Fares Basket in which such Fare is or would be included, and without limiting paragraphs 1.1(a) to 1.1(c) inclusive, the Secretary of State may also:
 - (i) make any of the changes to such Fares Basket contemplated by this paragraph 1.1;
 - (ii) designate any Fare as a Non-Fares Basket Fare in accordance with the provisions (other than the requirement that such designation occurs on or prior to the Start Date) of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets); and/or
 - (iii) de-designate any Non-Fares Basket Fare and include such Non-Fares Basket Fare in the relevant Fares Basket.

- 1.2 The Secretary of State shall serve notice in writing on the Franchisee:
- (a) at any time prior to the Start Date; and
 - (b) thereafter, no later than the commencement of any Fares Setting Round, to require any Fare to be included in a Fares Basket or to designate any Fare as a Non-Fares Basket Fare pursuant to paragraph 1.1.
2. **Changes to the 2010 Nominal Ticket Sales**
- 2.1 The Franchisee may, in the event of any significant change to the pattern of travel on the Passenger Services during the Franchise Term, apply to the Secretary of State for the value of factors A and/or B in the formula for determining 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be adjusted to take account of such changes, such that:
- (a) the value of factor A is re-calculated by using the Gross Revenue in respect of the sales of the relevant Fares for the most recently completed period of 12 months ending 31 March; and/or
 - (b) the value of factor B is recalculated by using the Price or Child Price (as the case may be) of the relevant Fares recorded by RSP in the month of February during such period.
- 2.2 The Secretary of State shall act reasonably in relation to any such application but shall not under any circumstances be obliged to accept any such application in whole or in part. The Secretary of State shall be entitled to impose conditions upon any such acceptance, including conditions requiring that the value of both factors A and B are adjusted and/or that the value of the factors A and B are adjusted in respect of any or all Fares in the relevant Fares Basket.
3. **Changes to the Reference Revenue, Gross Revenue, 2010 Nominal Ticket Sales and/or 2010 Ticket Revenue**
- 3.1 The Secretary of State may, by notice in writing served on the Franchisee no later than the date of commencement of any Fares Setting Round, require:
- (a) the Reference Revenue of any Fares Basket to be calculated by reference to a different reference period for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) than the period of 12 months ended 31 March 2010; and/or
 - (b) the Gross Revenue of all Commuter Fares and Protected Fares to be re-calculated for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) by reference to a different reference period than the period of 12 months ended 31 March 2010; and/or
 - (c) the value of factor A in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be re-calculated in respect of any Fare by reference to a different reference period than the period of 12 months ended 31 March 2010; and/or
 - (d) the value of factor B in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket

Values) to be re-calculated in respect of any Fare by reference to a different reference date other than February 2010; and/or

- (e) the 2010 Ticket Revenue in respect of any Fares Basket to be re-calculated for the purpose of paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) by reference to a different reference period than the period of 12 months ended 31 March 2010.

3.2 Where, in accordance with paragraph 3.1(e), the 2010 Ticket Revenue in respect of any Fares Basket is re-calculated by reference to a different reference period, the value of "PPAI" in paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) shall be determined solely by reference to the product of the Permitted Aggregate Increase for each Fare Year beginning after the end of such reference period.

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

4. **Changes to Prices**

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

5. **Changes to Fares Regulation**

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

6. **Changes to Compulsory Inter-available Flows**

6.1 Where:

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

the Secretary of State may, as a condition of granting his consent to the abolition of the Reference Flow, by written notice to the Franchisee, require any Fare

Created in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in a Fares Basket (the "**Equivalent Fare**").

- 6.2 The Secretary of State shall not issue any such notice in respect of an Equivalent Fare unless the provisions of such notice have first been approved by the Ticketing and Settlement Scheme Council (as defined in the Ticketing and Settlement Agreement) or a delegate of such council.
- 6.3 The Price and Child Price of any Equivalent Fare in the first Fare Year in which it is to be introduced shall be no greater than the maximum permitted Price or Child Price in that Fare Year of the relevant Reference Fare, as if such Reference Fare had not been abolished.

7. **Change of Lead Operator/Major Flow Operator**

- 7.1 The Franchisee shall not without the Secretary of State's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.
- 7.2 The Franchisee shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Franchisee becoming the Lead Operator in respect of any Flow, the Secretary of State may without limiting paragraph 3, exercise his rights pursuant to paragraph 3 in relation to the relevant Fares Basket.
- 7.3 The Franchisee shall inform the Secretary of State if it ceases to be a Major Flow Operator in respect of any Flow.

8. **Changes to Fares Documents**

8.1 Following:

- (a) any allocation of Fares to any Fares Basket pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets); or
- (b) any subsequent adjustment thereof pursuant to this Schedule 5.7,

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

SCHEDULE 5.8**Fares Regulation Information and Monitoring****1. Information**

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

2. Monitoring

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

SCHEDULE 5.9**ITSO Certified Smartmedia****1. Smart Ticketing****1.1** The Franchisee shall:

- (a) join and comply with any ATOC approved smart ticketing related schemes;
- (b) develop an approach to the use of smart ticketing to facilitate the roll out of more flexible ticket types and demand management over time;
- (c) co-operate with Network Rail, the Crossrail Operator, other Train Operators, relevant local authorities, passenger transport executives, combined authorities created pursuant to the Local Democracy, Economic Development and Construction Act 2009 and TfL in relation to the provision, maintenance and operation of smart ticketing equipment, and in relation to proposals to:
 - (i) introduce new multi-modal fare schemes; and
 - (ii) convert any multi-modal fare schemes to use smart ticketing.

1.2 The Franchisee will co-operate with TfL, the Secretary of State, the Crossrail Operator and relevant Train Operators in making such reasonable changes to joint ticketing products as are reasonably required to permit TfL to generate sufficient additional revenue to meet the IOP operating and maintenance costs as set out in the IOP Agreement subject to:

- (a) TfL meeting the Franchisee's reasonable and demonstrable costs as agreed in advance by the Secretary of State that are directly associated with the changes to such joint ticketing products;
- (b) any necessary changes to, or derogations from, fares regulation being granted by the Secretary of State; and
- (c) the Franchisee not being obliged to make any payment or transfer of revenue to TfL to cover TfL's IOP operating and maintenance costs as defined in the scope of the IOP Agreement, except in the case of a change where the Franchisee has agreed to pay for all or part of TfL's operating and maintenance costs associated with that change.

1.3 In relation to any ITSO Certified Smartmedia ticketing scheme, the Franchisee shall

- (a) continue to provide, make available and promote (and where applicable effectively maintain) such a scheme (including any associated equipment and resources) for the Franchise Period; and
- (b) ensure that all scheme components (and any amendment, extension or replacement thereof) inherited, used or introduced by the Franchisee (whether on a permanent or a trial basis) are at all times compliant with:

- (i) version 2.1.4; and
 - (ii) version 02-00 of RSPS3002,
of the ITSO specification and the ITSO operating licence, or such subsequent versions as the Franchisee and the Secretary of State may agree; and
 - (c) ensure that any ITSO Certified Smartmedia readers introduced by the Franchisee (whether on a permanent or temporary basis) shall conform to EMV level 1 certification (hardware) and be capable of being upgraded whilst in operation to EMV level 2 (application).
- 1.4 The Franchisee shall undertake such actions as the Secretary of State may reasonably require in connection with the introduction of smart ticketing on the network. The Secretary of State will reimburse the reasonable costs incurred by the Franchisee in complying with any such requirement provided that:
- (a) prior to incurring such costs, the Franchisee has obtained the Secretary of State's approval of the same; and
 - (b) the Franchisee has not already recovered (or is able to recover) such costs through any Franchise Payment, pursuant to any other provision of this Franchise Agreement or pursuant to any other agreement between the Franchisee and the Secretary of State (including any SEFT Deed).
- 1.5 The Franchisee shall continue to allow passengers, at least to the same extent as on the Start Date, to print tickets in respect of the Passenger Services remotely.
2. **SEFT**
- 2.1 It is acknowledged that the Financial Model envisages the Franchisee being separately funded under a SEFT Deed between the Secretary of State and the Franchisee in respect of the Franchisee's capital and project management costs for the establishment of an ITSO ticketing system enabling smart tickets to be accepted at certain of the Stations in the south east of England, with the project entering into operation with effect from 30 June 2016 (the "**SEFT Operational Date**") and its operational costs thereafter being funded under the Franchise Agreement in accordance with the Financial Model.
- 2.2 The Franchisee shall work with the Secretary of State with a view to a SEFT Deed being concluded as soon as reasonably practicable after the date of this Franchise Agreement with a view to the South East Flexible Ticketing Programme becoming operational by the SEFT Operational Date or as soon as reasonably practicable thereafter. Both parties agree to use all reasonable endeavours to agree a SEFT Deed by no later than 30 June 2015 (or such later date as may be agreed).
- 2.3 Once the South East Flexible Ticketing Programme becomes operational on the Franchise, the Franchisee shall continue to deploy the equipment and systems purchased or upgraded pursuant to the SEFT Deed to operate the South East Flexible Ticketing Programme for the remainder of the Franchise Term.
- 2.4 If the South East Flexible Ticketing Programme does not become operational by the SEFT Operational Date or the Secretary of State having consulted with the Franchisee forms the view that the South East Flexible Ticketing Programme will not be operational by the SEFT Operational Date, or the Secretary of State in his absolute discretion notifies the Franchisee that the South East Flexible Ticketing

Programme is no longer to be implemented on the Great Western Franchise, it shall be a Change, with the adjustment to the Financial Model consequent on that Change being calculated with reference to the savings in operating costs reasonably able to be made by the Franchisee as a result of the delay or any decision not to proceed with the South East Flexible Ticketing Programme and it being a further Change when the South East Flexible Ticketing Programme then becomes operational, in each case with the only Revised Inputs to be:

- (a) **I_TOC Capex¹⁸²**
TOC Capex - retail investments rows 216 (HST) and 217 (New)
- (b) **I_Staff¹⁸³**
Staff Actual - Ave FTE
HQ Other row 238 (HST) and sum of rows 239 (New) and 240 (IRAD Change 1)
HQ Project staff at 2013/14 P13 row 248 (HST) and sum of rows 249 (New) and 250 (IRAD Change 1)
- (c) **I_Other Opex¹⁸⁴**
Contracted services - professional row 1067 (HST) and sum of rows 1068 (New) and 1069 (IRAD Change 1)
Marketing and comms - promotions row 1480 (HST) and sum of rows 1481 (New) and 1482 (IRAD Change 1)
Systems and comms - computer services row 1540 (HST) and sum of rows 1541 (New) and 1542 (IRAD Change 1).

3. ¹⁸⁵The provisions contained in Appendix 1 to Schedule 5.9 shall apply in respect of the implementation of smart ticketing arrangements for the purposes of the Franchise. The Franchisee and the Secretary of State shall each comply with their respective obligations comprised in that Appendix.

¹⁸² 15 February 2019 (Date of DOA) – Contract change agreed by the Secretary of State and Franchisee.

¹⁸³ 15 February 2019 (Date of DOA) – Contract change agreed by the Secretary of State and Franchisee.

¹⁸⁴ 15 February 2019 (Date of DOA) – Contract change agreed by the Secretary of State and Franchisee.

¹⁸⁵ 13 December 2017 – (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

APPENDIX 1 TO SCHEDULE 5.9 OF THE FRANCHISE AGREEMENT¹⁸⁶**1. Definitions**

In this Appendix the words and expressions defined in this paragraph 1 shall (unless the context requires otherwise) have the meanings there given to them below:

“Dependency Item” means an aspect of the STNR Scope of Work which is subject to a dependency on another train operator and/or RDG and/or TfL as listed in Appendix A of the STNR Scope of Work or the STNR Programme and reported on from time to time in the STNR Reporting Requirements;

“Optional STNR Outputs” means the outputs specified in the STNR Optional Outputs;

“Overpayment” has the meaning given to it in paragraph 6.8(b);

“RDG” means the Rail Delivery Group, the body responsible for discharging the functions of ATOC from 24 October 2016;

“Smart Ticket” has the meaning given to such term in the STNR Scope of Work;

“STNR Completion” means that:-

- (a) all aspects of the STNR System have been fully delivered, installed and commissioned in accordance with the requirements set out in the STNR Scope of Work;**
- (b) the testing and certification requirements set out in paragraph 6.2 of the STNR Scope of Work have been achieved; and**
- (c) all aspects of the STNR System are (subject to any applicable Dependency Item not then delivered by another train operator and/or RDG and/or TfL) available and functioning in public use;**

“STNR Cost Increase Request” has the meaning given in paragraph 7.6(b);

“STNR Costs” means the costs in respect of the delivery and performance by the Franchisee of the equipment, systems, works, services and outputs to be provided by the Franchisee in accordance with and by virtue of the STNR Scope of Work and this Appendix 1:-

- (a) the forecast amount of which are set out in the STNR Costs Schedule;**
- (b) which shall not include the cost of any activity which the Franchisee is already required to take and/or is undertaking prior to the Effective Date (such as but not limited to those identified in**

¹⁸⁶ 13 December 2017 – (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Annex A to the STNR Scope of Work as "Already met (via TOC Programme or other commitments)"; and

(c) including the STNR Operational Costs;

"STNR Costs Schedule" means the schedule, in the agreed terms, of forecast STNR Costs;

"STNR Milestone" means each milestone numbered in column 1 and described in column 2 of the STNR Milestone Programme;

"STNR Milestone Payment" means the applicable value for each STNR Milestone as set out in column 3 (headed "Value") of the STNR Milestone Payment Programme;

"STNR Milestone Programme" means the milestone programme in the agreed terms;

"STNR Milestone Tolerances" means the milestone tolerances specified in the STNR Costs Schedule;

"STNR Obligations" means the Franchisee's obligations in respect of the STNR Project pursuant to this Appendix 1;

"STNR Operational Costs" means in the case of the Franchisee its costs associated with continued operation of the STNR System whether before and/or after STNR Completion up to the end of the Franchise Period;

"STNR Optional Outputs" means the optional outputs in the agreed terms;

"STNR Payment Certificate" means a certificate to be issued by the Franchisee certifying:

- (a) completion (in accordance with the STNR Scope of Work) of a STNR Milestone; and/or**
- (b) the carrying out or completion in respect of a time period of operating activities associated with the STNR Project as more particularly described in the STNR Scope of Work and the STNR Costs Schedule;**

"STNR Programme" means the programme for the delivery and the implementation of the STNR System and delivery of the STNR Obligations as set out in the agreed terms;

"STNR Project Steering Committee" means the committee established by the Secretary of State and composed of his representatives, to oversee the implementation of the STNR Project or any such other person or body authorised by the Secretary of State for such purpose;

"STNR Project" means the project for implementing and operating an interoperable smart ticketing solution on the National Rail Network allowing passengers to make complete journeys on the National Rail Network using a smartcard as a ticket. For the purpose of this definition, "National Rail Network" has the meaning given to it in the National Conditions of Travel;

“STNR Quarter” means a period of 3 successive Reporting Periods provided that the first shall commence on 7 January 2018 and the last shall end on the last day of the Franchise Period or on the last day of the period of two years following the date of STNR Completion (whichever is the earlier);

“STNR Reporting Requirements” means the reporting requirements in respect of the STNR Project set out in the agreed terms;

“STNR Scope of Work” means the scope of works, services and activities in respect of the STNR Project set out in the agreed terms comprising:

- (a) **the generic specification for the STNR Project;**
- (b) **Annex A which lists those elements of the generic specification for the STNR Project as are to be delivered, performed and complied with by the Franchisee pursuant to this Appendix 1 and to the extent of any conflict or inconsistency between the generic specification and Annex A, Annex A shall take precedence;**
- (c) **Annex B which lists equipment to be procured, delivered, commissioned and put into use by the Franchisee pursuant to this Appendix 1; and**
- (d) **Annex C which lists software and/or other system upgrades to be procured, delivered, commissioned and put into use by the Franchisee pursuant to this Appendix 1;**

“STNR System” means collectively the IT systems (hardware and software) and associated services required to be operated by the Franchisee for a smart ticketing solution as detailed in the STNR Scope of Work, including without limitation those items referenced in Annex B and Annex C of the STNR Scope of Work but excluding elements of the IT systems to be operated by RDG, other train operators or third parties;

¹⁸⁷**“Target Date” means the target date for STNR Completion by or on 31 March 2020;**

¹⁸⁸ ¹⁸⁹**“Total Costs Amount” means [REDACTED¹⁹⁰], and**

“Underpayment” has the meaning given to it in paragraph 6.8(c).

2. **Implementation and operation of STNR System**

¹⁸⁷ 6 January 2020 – (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁸⁸ 19 November 2018 – (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁸⁹ 10 April 2019 – (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁹⁰**23 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

2.1 **Subject to paragraph 2.2, the Franchisee shall deliver and perform the equipment, systems, works, services and outputs set out in, and in all other respects comply with, the STNR Scope of Work.**

2.2 **In relation to each Dependency Item:-**

(a) **the Franchisee shall use all reasonable endeavours to deliver, perform and comply with that item notwithstanding the dependency on other train operators and/or RDG and/or TfL (as the case may be);**

(b) **“all reasonable endeavours” shall include:-**

(i) **complying with the corresponding requirements of the Franchisee in respect of the relevant Dependency Item, as listed in the STNR Reporting Requirements, to the extent the Franchisee’s ability to do so is not affected by failure or delay of another train operator and/or RDG and/or TfL (as the case may be); and**

(ii) **otherwise actively co-operating and engaging with the relevant other train operators and/or RDG and/or TfL as appropriate, including in establishing processes, business rules and necessary system changes in order to achieve the effective delivery of the Franchisee’s STNR Obligations and ensure the reciprocal operation of Smart Tickets,**

and it is acknowledged that the forecast amounts of the relevant STNR Costs contained in the STNR Costs Schedule include amounts to fund the Franchisee to carry out these activities;

(c) **the Franchisee shall be relieved from its obligation in paragraph 2.1 to the extent that it is unable to comply with the requirements of any Dependency Item to the extent that:-**

(i) **such failure by the Franchisee is directly due to the actions or omissions of the relevant train operator(s) and/or RDG and/or TfL in connection with the applicable Dependency Item;**

(ii) **the Franchisee has exercised all reasonable endeavours in accordance with this paragraph 2.2,**

and such relief shall continue until such time as the relevant train operator(s) and/or RDG and/or TfL have fulfilled the relevant Dependency Item, subject to the Franchisee using reasonable endeavours to seek rectification of such failure by the relevant train operator(s) and/or RDG and/or TfL (as applicable) and the Franchisee’s time for performance in respect of that Dependency Item and any affected STNR Milestone shall be extended for a period equal to the relevant train operator(s) and/or RDG’s and/or TfL’s delay.

2.3 **The Franchisee shall use all reasonable endeavours to ensure STNR Completion is achieved by no later than the Target Date.**

- 2.4 **Without prejudice to any other rights the Secretary of State may have in connection with any delay, the Franchisee shall:**
- (a) **pursuant to its reporting obligations in paragraph 5, notify the Secretary of State of any actual or foreseen material delay in performing its STNR Obligations and the reasons for such actual or foreseen delay, including where any such delay has been or is anticipated to be caused by another train operator and/or RDG and/or TfL; and**
 - (b) **continue to use all reasonable endeavours to achieve its STNR Obligations on a basis consistent with achieving the Target Date and otherwise as soon as reasonably practicable thereafter and for that purpose shall:-**
 - (i) **develop and implement such remedial measures as may be reasonably possible in the circumstances to avoid or mitigate those actual or foreseen delays; and**
 - (ii) **notify the Secretary of State of such proposed remedial measures.**
- 2.5 **The Franchisee shall, following STNR Completion, at all times during the Franchise Term be responsible for the ongoing operation, maintenance, upkeep and repair of the STNR System and, subject to the Dependency Items continuing to be available through the Franchisee's exercise of all reasonable endeavours, continue to make available the deliverables in accordance with, and comply in all respects with, the STNR Scope of Work throughout the Franchise Period.**
- 2.6 **The Franchisee shall use reasonable endeavours to support other train operators and RDG and TfL in the delivery of their respective obligations and activities with respect to the implementation of the STNR Project. In considering the scope of the Franchisee's obligation pursuant to this paragraph 2.6, due regard will be given to the need to avoid such supporting activities having an adverse impact on the Franchisee's STNR Obligations at any relevant time.**
3. **Further obligations in relation to items to be supplied**
- 3.1 **Subject to paragraph 3.2, the Franchisee warrants and shall procure that it has and retains full title in:**
- (a) **any constituent part to the STNR System and any other assets which are required to operate the STNR System from the date on which that part of the STNR System (or other assets) is delivered to the Franchisee and where applicable the relevant payment to be paid from the Secretary of State to the Franchisee for that part is made (provided always that this obligation shall not apply where the relevant part is an improvement to an asset which is leased to the Franchisee); and**
 - (b) **without limiting paragraph (a), any data processed or generated by the STNR System from the date of STNR Completion (to the extent that it is not third party owned data) provided always that this obligation shall not apply in relation to data processed or generated by the RDG back office system and in relation to data**

supplied to the RDG back office system which shall be subject to the terms of the agreements related to the use of the RDG back office system,

which shall be "Operating Assets" for the purposes of and as defined in Schedule 14.2 to the Franchise Agreement. It is acknowledged that the Secretary of State is entitled to retain title to any assets which are part of the STNR System which he free issues to the Franchisee. It is acknowledged that parts of the STNR System which are Franchise Assets may be designated as Primary Franchise Assets and that contracts or arrangements entered into by the Franchisee in relation to the STNR System may be designated as Key Contracts for the purposes of Schedule 14.4 and Schedule 14.3 respectively. For the purposes of the Transfer Scheme and the Supplemental Agreement, all assets forming part of the STNR System which are or have been funded by the Secretary of State shall have a nil value (but without prejudice to the operation of paragraph 5 of the Schedule to the Supplemental Agreement set out in Appendix 2 of Schedule 15.4 in respect of elements which are contracts, leases, licences or other equivalent arrangements). Nothing in this paragraph 3.1 shall require the Franchisee to breach any obligations it may have at law in relation to the processing, storing, use or retention of data.

3.2 The Franchisee shall:-

- (a) to the extent that it is agreed by the Secretary of State that the Franchisee is not required to have title to the same, obtain a non-exclusive, royalty free licence to use the Intellectual Property Rights in:-
- (i) all components of the STNR System (for the avoidance of doubt excluding leased assets); and
 - (ii) the database containing the data processed by the STNR System, but excluding the database which is part of the RDG back office arrangements,
- for the purposes of the performance of its obligations under this Appendix 1 and the carrying out of the Franchise Services; and
- (b) save as may otherwise be agreed with the Secretary of State, enter into an arrangement providing for the source code applicable to any software licensed in accordance with paragraph (a) to be placed in escrow and released as necessary to allow the Franchisee and any Successor Operator to continue to utilise the licensed items,

in each case such as to enable that licence and escrow arrangement to be Franchise Assets and be capable of transfer (on notice) to a Successor Operator. The Secretary of State shall be entitled to designate the same as Key Contracts in accordance with paragraph 3.1.

3.3 The Franchisee shall:

- (a) ensure where relevant that it provides to passengers (travelling on Passenger Services on Smart Tickets issued by the Franchisee) seat reservations either integrated with that Smart

Ticket or through separate media including e-mail or mobile app for the purposes of inspection by guards and ticket inspectors;

(b) **subject to the Secretary of State taking up the relevant Optional STNR Output, ensure that when Smart Tickets issued by the Franchisee for relevant Fares and with respect to specific flows become available to passengers on Passenger Services in accordance with the STNR Programme the availability of such Smart Ticket is promoted in line with the relevant Optional STNR Output which is taken up by the Secretary of State to passengers and potential passengers including through appropriate "launch events" in co-operation with the Secretary of State; and**

(c) **in co-ordination with its suppliers undertake all testing reasonably required for the delivery and satisfaction of its STNR Obligations and where necessary provide such test equipment as may be reasonably required to support RDG testing requirements in connection with the Franchise.**

3.4 **The Franchisee shall use reasonable endeavours to ensure that Season Ticket Fares for travel on the Passenger Services are renewed by passengers through the use of Smart Tickets from 1 June 2019 onwards (it being acknowledged that passengers will retain a choice to use paper tickets and that such use of Smart Tickets requires the availability of RDG Dependency Items).**

3.5 **The Franchisee agrees that in relation to third party owned data and data processed or generated by the RDG back office system referred to in paragraph 3.1(b) :**

(a) **if it has title to such data or a licence to access such data which allows it to share such data with the Secretary of State (which it shall use reasonable endeavours to obtain) it shall procure that the Secretary of State has appropriate access to such data the nature of such access being specified from time to time in the STNR Reporting Requirements as they may be revised by the Secretary of State not more than twice in each Franchisee Year; and**

(b) **where it does not have title to such data or a licence to access such data which allows it to share such data with the Secretary of State it shall use reasonable endeavours to provide the Secretary of State with access to the data on the same basis as described in paragraph (a) above.**

4. **No Impact on the Franchisee's other Franchise obligations**

The provisions of this Appendix 1 shall not in any way reduce or otherwise relieve the Franchisee from, the Franchisee's other obligations in this Franchise Agreement and without limitation the Franchisee shall continue to comply with the Committed Obligations.

5. **Reporting and auditing**

5.1 **The Franchisee shall submit to the Secretary of State for each Reporting Period within five (5) Weekdays of the end of the relevant Reporting Period:**

- (a) **the project progress report in the format set out in the STNR Reporting Requirements (the "Project Progress Report") provided that the Franchisee shall be entitled to complete and submit the "Go Live Take-Up Monitoring" element of the Project Progress Report either following the date of STNR Completion or otherwise when reasonably requested by the Secretary of State and for these purposes:-**
- (i) **the report shall provide information regarding take up over the period from the date of STNR Completion or since the provision of the last report giving take-up information (whichever is the later); and**
- (ii) **the Secretary of State shall give not less than five (5) Weekdays' notice of the request for the completion of the Go Live Take-Up Monitoring element; and**
- (b) **any other information that the Secretary of State reasonably requests in relation to the STNR Project from time to time.**

5.2 The Franchisee shall, as and when requested by the Secretary of State, provide such information as he may reasonably require in relation to:

- (a) **ticket sales and the medium upon which they are sold (including magnetic stripe and smart cards), including, where reasonable, data that may not be available in LENNON;**
- (b) **ticket usage by passengers of the Passenger Services (including data from databases of ticket usage, data collected from smart card readers, and gate-line data). This information may include any of the data fields collected, with the exception of information that can be used to identify individual passengers, railway employees or contractors working for the railway.**

5.3 The rights of the Secretary of State pursuant to paragraph 5.1(b) of Schedule 11 (Agreement Management Provisions) shall extend to all records, data, books of account and other information kept by or on behalf of the Franchisee relevant to the Franchisee's STNR Obligations. The remainder of paragraph 5 of Schedule 11 shall be interpreted accordingly.

6. Payments

6.1 In consideration of the performance by the Franchisee of the STNR Obligations and subject to the other terms of this paragraph 6, the Secretary of State agrees to pay to the Franchisee by way of adjustment to the Franchise Payments the lower of:

- (a) **the STNR Costs properly incurred; and**
- (b) **the Total Costs Amount.**

6.2 The Franchisee shall:-

- (a) **use its reasonable endeavours to minimise the STNR Costs; and**

- (b) not enter into arrangements with third parties in connection with its performance of the STNR Obligations which, in aggregate, commit the Franchisee to make payments in excess of the Total Costs Amount (including in the event of any early termination of any such arrangements in the circumstances described in paragraph 9.1 or otherwise) provided that this paragraph is without prejudice to the process described in paragraphs 7.5 to 7.10 (inclusive).

6.3 The Franchisee shall be entitled to apply for payment of:

- (a) each STNR Milestone Payment upon successful completion of the relevant STNR Milestone. Where and to the extent expressly stated in respect of a relevant STNR Milestone Payment to be the case in the STNR Milestone Programme, the Franchisee shall only be entitled to claim that STNR Milestone Payment in the order stated in the STNR Milestone Programme and may not claim that STNR Milestone Payment at any time sooner than the relevant Reporting Period for payment of that STNR Milestone as set out in column 4 of the STNR Milestone Programme; and
- (b) (without prejudice to the Franchisee's obligations in paragraph 2.3), where an STNR Milestone Payment comprises more than one component, and some but not all of the components are successfully completed, the proportionate part of the STNR Milestone Payment which relates to the components successfully completed, with the balance of the STNR Milestone Payment in respect of the components not completed being able to be applied for as those components are in turn successfully completed.

6.4 Each application for payment shall be accompanied with a STNR Payment Certificate signed by the Franchisee together with such supporting information as is stated in the STNR Scope of Work or (failing that) as the Secretary of State may reasonably require.

6.5 The Secretary of State shall not be obliged to make a STNR Milestone Payment if:

- (a) the Secretary of State has reason to believe that the relevant deliverables or activities applicable to that STNR Milestone have not been delivered or performed in accordance with the requirements of the STNR Milestone Programme or the STNR Scope of Work;
- (b) the Secretary of State considers that the information supplied in support of the relevant STNR Payment Certificate is incomplete or inaccurate; or
- (c) the amount claimed in the Franchisee's application for payment is in excess of the relevant STNR Milestone Payment.

6.6 Where the Secretary of State considers that the application for payment is incomplete or inaccurate or the Secretary of State disputes that the relevant deliverables or activities have been completed or performed, he shall promptly notify the Franchisee of his view. The Franchisee shall either:

- (a) **revise and resubmit its application to reflect the amount specified by the Secretary of State; or**
- (b) **revise the STNR Payment Certificate and provide additional supporting information or additional evidence that the deliverable or activity has been achieved or carried out, in which case, paragraphs 6.2 to 6.5 shall apply to such resubmitted STNR Payment Certificate; or**
- (c) **notify the Secretary of State that the Franchisee disputes the Secretary of State's view, in which case paragraph 10 shall apply.**

6.7 Any application for a STNR Milestone Payment approved in writing by the Secretary of State shall be paid by way of adjustment to Franchise Payments on the next Payment Date falling no less than seven (7) days after the date of such approval in writing by the Secretary of State.

6.8 At the end of each STNR Quarter, a reconciliation process shall apply as follows:

- (a) **within twenty (20) Weekdays of the end of the relevant STNR Quarter the Franchisee will provide such evidence to the Secretary of State as he may reasonably request of the level of STNR Costs incurred by the Franchisee in respect of any STNR Milestone Payment made by the Secretary of State in the preceding STNR Quarter;**
- (b) **in any case where the STNR Costs applicable to a STNR Milestone Payment as shown in the STNR Costs Schedule are less than the amount of STNR Milestone Payment actually paid by the Secretary of State ("Overpayment"), then the amount of the Overpayment shall be repaid to the Secretary of State by the Franchisee;**
- (c) **in any case where the STNR Costs applicable to a STNR Milestone Payment as shown in the STNR Costs Schedule are greater than the amount of the STNR Milestone Payment actually paid by the Secretary of State ("Underpayment"), then subject to such excess amount having been approved by the Secretary of State pursuant to either paragraph 7.1 or 7.1(c), the shortfall shall be paid to the Franchisee by the Secretary of State; and**
- (d) **any payments to be made pursuant to paragraphs 6.8(b) or 6.8(c) shall be made by way of adjustment to Franchise Payments on the next Payment Date falling no less than seven (7) days after the date upon which such Overpayment or Underpayment (as the case may be) is notified to the Franchisee by the Secretary of State except that where the date upon which such Overpayment or Underpayment (as the case may be) is notified to the Franchisee by the Secretary of State falls on or after the Franchise Period then any such Overpayment or Underpayment (as the case may be) shall be paid (as a debt) on or before the date falling thirty (30) days after the date of such notification.**

- (e) for the purposes of this clause STNR Costs shall be treated as incurred by the Franchisee where a contractual obligation in respect of payment of the relevant amount has arisen in or before the relevant STNR Quarter (notwithstanding the fact that the amount may not then have been invoiced or paid) and such amount shall provisionally be treated as paid for the purpose of that STNR Quarter's reconciliation process and be subject to monitoring in subsequent STNR Quarters until such time as the amount actually paid is known and it is able to be finally determined whether there is any Overpayment or Underpayment in respect of that amount.

6.9 If and as soon as the Franchisee becomes aware of any potential increase in STNR Costs such that actual STNR Costs may exceed the Total Costs Amount, the Franchisee shall notify the Secretary of State. The Franchisee shall provide all details as are reasonably available to it (or can be ascertained by it) as to:

- (a) the estimated additional costs that the Franchisee believes may need to be expended to deliver its STNR Obligations; and
- (b) an explanation as to why such cost increases are likely to occur together with proposed solutions to minimise or mitigate the additional costs (and any measures already taken in that respect) consistent with the Franchisee's obligations pursuant to paragraph 6.2.

6.10 For the purposes of calculating STNR Costs in respect of Franchise Employees engaged in the STNR Project and not already funded as referred to in paragraph 6.10, the charge rates set out in the STNR Costs Schedule shall be applied against confirmation of employees engaged in the STNR Project, with claims for recovery supported by timesheets as part of the reconciliation process each STNR Quarter. Notwithstanding any other provision in this Appendix, the Franchisee shall not be entitled to any payment or reimbursement in respect of any cost which it has already recovered (or is able to recover) through any other Franchise Payment or pursuant to any other provision of this Franchise Agreement, any other agreement between the Franchisee and the Secretary of State or any other arrangement or agreement with a third party.

6.11 Without limiting paragraph 6.10, the Franchisee shall not be entitled to reimbursement under paragraph 1.4 of Schedule 5.9 in respect of the performance of any STNR Obligations.

7. Amendments in respect of STNR

7.1 Subject to paragraph 7.2, the parties agree that the Franchisee's STNR Obligations may be amended by the Secretary of State (acting through the STNR Project Steering Committee) from time to time subject to:

- (a) the Secretary of State acting reasonably in connection with the nature and terms of any such amendment(s); and
- (b) the Secretary of State extending the Target Date and/or increasing the Total Costs Amount, to the extent agreed with the Franchisee (both parties acting reasonably) or in the absence of agreement, to the extent reasonably determined by the

Secretary of State as being necessary, in order to take into account such amendment(s); and

(c) the Franchisee's prior written agreement.

7.2 Amendments to the STNR Milestone Payments which are within STNR Milestone Tolerances may be agreed between the parties at any time in accordance with and subject to the procedure set out in the STNR Reporting Requirements.

7.3 If the Secretary of State is considering or wishes to propose amendment(s) to the STNR Obligations in accordance with paragraph 7.1, the following process shall apply (unless otherwise agreed by the parties):

(a) the Secretary of State shall notify the Franchisee of the amendment(s) to the STNR Obligations which he does or may wish to make;

(b) the Secretary of State shall invite the Franchisee to comment within not less than ten (10) Weekdays on the proposed amendment(s) and may request the Franchisee:-

(i) to indicate the Franchisee's view of the impact of the proposed amendment(s) on the STNR Costs and/or on the STNR Programme and the achievability of STNR Completion by the Target Date; and

(ii) to provide further information to assist the Secretary of State in considering amendment(s) to the STNR Obligations;

(c) the Franchisee shall comply with any reasonable request for information made by the Secretary of State pursuant to paragraphs (b)(i) and/or (b)(ii);

(d) the Secretary of State shall have regard to the response received from the Franchisee in response to his invitation under paragraph (b) in making any amendment(s) in accordance with paragraph 7.1.

7.4 The Franchisee may propose amendment(s) to the STNR Obligations at any time (including (but not so as to relieve the Franchisee of its obligations under paragraph 7.3(c)) variations to any amendment(s) proposed by the Secretary of State in accordance with paragraph 7.3(a)) but the Secretary of State shall not be obliged to agree to any such Franchisee proposed amendment(s).

7.5 Without prejudice to its obligations in paragraph 6.9, the Franchisee shall regularly and not less than once per STNR Quarter, provide the Secretary of State with a forecast of the STNR Costs required to deliver its STNR Obligations ("STNR Costs Forecast"). The Franchisee shall provide to the Secretary of State such additional information as he may reasonably require with regard to the STNR Costs Forecast.

7.6 In the event that the STNR Costs Forecast indicates the Franchisee believes that STNR Costs are likely to exceed the Total Costs Amount, or

the Secretary of State receives a notification in accordance with paragraph 6.9, the Secretary of State shall have the right to:

- (a) **suspend or terminate the STNR Project in respect of the Franchisee in accordance with paragraph 9.1; or**
- (b) **subject to paragraph 7.7, request that the Franchisee submits to it a request in writing to increase the Total Costs Amount for consideration by the STNR Project Steering Committee ("STNR Cost Increase Request"). Any STNR Cost Increase Request shall be accompanied by (i) a full description of the amount of the forecast increase in STNR Costs (in no less detail than the STNR Costs Schedule, and the underlying detail which underpinned the STNR Costs Schedule) and an explanation of the reasons why it thinks they are likely to be incurred if the STNR Project is continued and (ii) a description of all potential ways of minimising and mitigating such increase in STNR Costs and an explanation of how the STNR Cost Increase Request takes them into account.**

7.7 The Franchisee shall not be entitled to make an STNR Cost Increase Request:-

- (a) **if the Franchisee has not complied with its obligations pursuant to paragraphs 6.2; or**
- (b) **in respect of any STNR Cost in excess of the forecast amount for such costs contained in the STNR Cost Schedule incurred prior to notice being given of such excess in accordance with paragraph 6.8(a).**

7.8 The STNR Project Steering Committee shall consider the STNR Cost Increase Request and the STNR Project Steering Committee shall, on behalf of the Secretary of State, be entitled to request:

- (a) **any further or additional information as it may reasonably require in order to determine its opinion on the STNR Cost Increase Request; or**
- (b) **that the Franchisee proposes alternative solutions (which may include amendments to this Appendix 1, the STNR Scope of Work or the STNR Programme) without any (or a reduction, as it may specify) increase of the Total Costs Amount.**

Within ten (10) Weekdays (or such longer period as the STNR Project Steering Committee may allow having reasonable regard to the nature of the information requested) of such a request for further information, the Franchisee shall deliver to the STNR Project Steering Committee such additional information as reasonably requested by the STNR Project Steering Committee.

7.9 The STNR Project Steering Committee shall not be obliged to approve any such STNR Cost Increase Request and may in its absolute discretion, reject or accept STNR Cost Increase Requests or initiate an amendment in accordance with paragraph 7.1.

7.10 If:-

- (a) **the STNR Project Steering Committee rejects any STNR Cost Increase Request; and**
- (b) **no amendment is made in accordance with paragraph 7.1 or otherwise which has the effect of amending the STNR Obligations so as to be capable of being accommodated within the Total Costs Amount,**

then the Secretary of State shall suspend or terminate the STNR Project in respect of the Franchisee in accordance with paragraph 9.1.

- 7.11 **Without prejudice to the other provisions of this paragraph 7, the parties each acknowledge and agree that the STNR Scope of Work includes a statement of assumptions ("Statement of Assumptions") which have been made in relation to the STNR Project. Such Statement of Assumptions is not contractually binding notwithstanding its inclusion within the STNR Scope of Work. When considering a proposed amendment to the STNR Obligations or any STNR Cost Increase Request, the parties may have regard to the Statement of Assumptions but any such decision regarding an amendment to the STNR Obligations or any STNR Cost Increase Request is not required to be informed by or take into account the content of the Statement of Assumptions.**

8. Optional STNR Outputs

The Secretary of State may call any Optional STNR Output by serving written notice on the Franchisee at any time on or prior to the last date for the call of such Optional STNR Output and on the terms of such Optional STNR Output, in which case the terms of such Optional STNR Output, including the agreed adjustment to the Total Costs Amount, STNR Milestone Programme and STNR Costs Schedule (as applicable) shall apply and the Franchisee shall implement such Optional STNR Output in accordance with those terms.

9. Termination or suspension

9.1 If the Secretary of State reasonably believes that:

- (a) **the Franchisee will be unable to achieve STNR Completion by the Target Date; and/or**
- (b) **the STNR Obligations will not be able to be performed within the Total Costs Amount and the Secretary of State does not agree (in its sole discretion) to increase the Total Costs Amount**

then without prejudice to any other rights and remedies he may have, the Secretary of State shall be entitled to suspend or terminate the STNR Project in respect of the Franchisee by written notice to the Franchisee and he shall serve notice to suspend or terminate in the circumstances described in paragraphs 7.6(a) or 7.10.

9.2 If the Secretary of State exercises his rights of termination in accordance with paragraph 9.1:-

- (a) **the Franchisee shall take such reasonable steps as the Secretary of State may request in relation to the orderly close down of the STNR Project so as to preserve and retain as much value as**

reasonably possible from the activity which has been undertaken and expenditure incurred;

(b) without limiting paragraph 9.2(a) at the request of the Secretary of State the Franchisee shall deliver up and transfer to the Secretary of State (or his nominee(s)) for no payment such of the following as he may request:-

(i) any tangible assets comprised in the STNR System as have been funded by the Secretary of State pursuant to this Appendix 1 including without limitation the items referred to in Annex B to the STNR Scope of Work but excluding improvements to leased assets;

(ii) a licence of the type described in paragraph 3.2;

(iii) such other materials whatsoever developed or funded pursuant to this Appendix 1 or copies thereof (including software, plans and other project materials) which are in the possession or under the control of the Franchisee, but excluding improvements to leased assets;

(c) subject to the Franchisee:-

(i) having complied with and continuing to comply its obligations pursuant to paragraphs 6.2, 6.8(a) and 9.2(a) and (b); and

(ii) having provided such evidence in respect of the same in equivalent detail to that required in respect of any application for payment under paragraph 6,

the Franchisee shall be entitled to be reimbursed for:

(iii) any remaining STNR Costs incurred prior to the date of termination as have not yet been reimbursed with respect to the next following STNR Milestone that the Franchisee would have been entitled to apply for had termination not occurred provided that the Secretary of State shall not be obliged to make any payments which would result in a liability greater than the Total Costs Amount;

(iv) any costs under contracts with third parties on terms that have been pre-approved by the Secretary of State and incurred by the Franchisee in connection with its performance of the STNR Obligations, subject to the Franchisee taking all reasonable steps to minimise such costs; and

(v) any costs reasonably and properly incurred in fulfilling its obligations under paragraph 9.2, subject to the Franchisee taking all reasonable steps to minimise such costs; and

(d) **from the date of termination specified by the Secretary of State in his termination notice both parties shall be relieved of all further obligations under this Appendix 1:-**

(i) **except for their obligations pursuant to this paragraph 9.2 and to the continuation in force of such other provisions as shall expressly or impliedly continue in force notwithstanding such termination (including any claims for payment or application of the reconciliation process, each as specified in paragraph 6, in relation to any STNR Milestones applied for by the Franchisee (or, as applicable in the case of the reconciliation process, paid) up to the date of termination); and**

(ii) **provided that termination shall not relieve a party of liability for any prior breach of its obligations under this Appendix 1.**

9.3 **If the Secretary of State exercises his rights of suspension in accordance with paragraph 9.1 the terms of paragraph 9.2 shall apply (mutatis mutandis) except that:-**

(a) **the Secretary of State shall not be entitled to require the transfer of items described in paragraph 9.2(b);**

(b) **the Franchisee shall be entitled to continue being funded in respect of its Operating Costs reasonably and properly incurred during the period of the suspension as required by contractual obligations on the Franchisee or to maintain any elements of the STNR System and associated arrangements, subject to the Franchisee taking all reasonable steps to minimise such costs; and**

(c) **the Secretary of State shall be entitled by notice to the Franchisee to reverse the suspension at any time provided that (whether in the context of amendments to the STNR Obligations under paragraph 7.1 or otherwise) the Secretary of State also extends the Target Date and/or increases the Total Costs Amount:-**

(i) **to the extent agreed with the Franchisee (both parties acting reasonably); or**

(ii) **in the absence of agreement, to the extent reasonably determined by the Secretary of State as being necessary, in order to take into account of all the circumstances.**

9.4 **If the Secretary of State has served a notice of suspension, he shall be entitled subsequently to serve a notice to terminate under paragraph 9.1.**

10. **Escalation and disputes**

Any disputes that arise with respect to the STNR Project shall first be considered between the Contract Manager and the Franchise Manager on behalf of the Secretary of State. If no such resolution can be agreed within

fifteen (15) Weekdays the parties may, but shall not be obliged, to resolve the dispute in accordance with the Dispute Resolution Rules save for where any such dispute arises out of paragraph 6 of this Appendix, in which case, unless the parties otherwise agree, such dispute shall be resolved in accordance with the provisions of clause 10 (Governing Law) of this Franchise Agreement.

11. ¹⁹¹**ITSO on Android**
- 11.1. **The Franchisee shall run a trial of ITSO on Android (the "IoA trial")**
- 11.2. **As part of the IoA trial and subject to paragraph 11.4, the Franchisee shall deliver the following outputs ("IoA trial outputs"):**
- 11.2.1. **design changes to the native booking flow;**
- 11.2.2. **amendments to the Worldline WebTIS Application Programming Interface ("API");**
- 11.2.3. **amendments to the WebTIS fulfilment screens;**
- 11.2.4. **contractual arrangements with ITSO Ltd for using the ITSO Transit Hub for the trial;**
- 11.2.5. **detailed testing plans for the trial;**
- 11.2.6. **production of a list of clear output documents; and**
- 11.2.7. **development of outline customer experience use cases to assess the overall viability of the ITSO on Android Project solution.**
- 11.3. **The IoA trial outputs shall be delivered on or before 29th June 2018 or (in the event of a 3P dependency causing delay) as soon as reasonably practicable thereafter.**
- 11.4. **The following items are third party dependencies (a "3P Dependency") over which GWR have no control. The occurrence of a 3P dependency which results in a failure to deliver or delay in delivery of an IoA trial output shall not be a contravention of a term of this Franchise Agreement:**
- 11.4.1. **development of the virtual ticket on the Android platform wallet by Google; and**
- 11.4.2. **development of the ITSO Transit Hub by ITSO Ltd.**
- 11.5. **Subject to paragraph 11.9, where a 3P Dependency delays or prevents achievement of an IoA trial output or related milestone, the Franchisee shall:**
- 11.5.1. **notify the Secretary of State of the risk to the successful delivery of the IoA trial or related milestone; and**

¹⁹¹ 17 May 2018 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

11.5.2. **continue to use reasonable endeavours to achieve the relevant IoA Trial or related milestones**

to the extent it reasonably can and/or as soon as reasonably practicable following the fulfilment of the 3P Dependency and in the meantime shall be entitled to be reimbursed its costs, up to the value of the relevant milestone whilst using reasonable endeavours to keep costs to a minimum, disregarding (when judging fulfilment of the milestone) the extent to which delivery has been impeded by the failure or delay in fulfilment of the 3P Dependency.

- 11.6. **It is acknowledged that the Franchisee as part of the IoA Trial is not required to secure ownership or ongoing licences in respect of the intellectual property rights associated with the IoA Trial Outputs, development of the virtual ticket on Android platform wallet or the ITSO Transit Hub.**
- 11.7. **All delivery milestones for the IoA trial, including payment milestones, will have no effect on the STNR Programme (STNRP).**
- 11.8. **The Franchisee shall be reimbursed costs for the IoA trial as set out in the STNR Costs Schedule and STNR Milestone Programme.**
- 11.9. **Where in the reasonable opinion of the Secretary of State, the Franchisee will be unable to secure the achievement of an IoA trial output or related milestone as a result of a 3P Dependency delay, or the 3P consents or approvals cannot or are unlikely to be secured, the Secretary of State reserves the right to terminate the IoA trial output or related milestone in accordance with paragraph 9 of Appendix 1 of Schedule 5.9 (but applied just in relation to the relevant IoA trial output and not to the wider STNR Project and recognising that the Franchisee will not be required to provide any assets, licences or other materials which are inconsistent with the terms of the relevant IoA trial output or are not available as a consequence of the delay or non-availability of the relevant 3P Dependency, consents or approvals).**

SCHEDULE 6**Committed Obligations and Franchise Specific Obligations**

Schedule 6.1: Committed Obligations and Related Provisions

Schedule 6.2: Great Western Franchise Specific Provisions

Schedule 6.3: The IEP Provisions

SCHEDULE 6.1

Committed Obligations and Related Provisions

Part 1: List of Committed Obligations

Part 2: Miscellaneous Provisions

Part 1 to Schedule 6.1

List of Committed Obligations

1. Secure Stations Accreditation

- 1.1 The Franchisee shall, subject to paragraph 1.2, maintain throughout the Franchise Period the "Secure Stations Accreditation" achieved by the Train Operator at each of the Stations where Secure Stations Accreditation applies as at the date of this Franchise Agreement.
- 1.2 If Secure Stations Accreditation is lost at any Station due to either a change in the standards required to be achieved from those applying under the Previous Franchise Agreement or due to circumstances occurring which are outside the control of the Franchisee, then the Franchisee shall promptly report that fact to the Secretary of State and it shall use all reasonable endeavours to secure restoration of the Secure Stations Accreditation status as soon as reasonably practicable, reporting to the Secretary of State on the measures it is proposing to take to achieve that restoration.
- 1.3 For the avoidance of doubt, the commitments under this paragraph 1 shall cease to apply in respect of any station when it ceases to be a Station.

1A Application¹⁹²

The parties acknowledge and agree that the provisions of this Part 1 to Schedule 6.1 shall not apply to the HEx Outsourced Services.

2. Secure Car Park Accreditation

- 2.1 The Franchisee shall, subject to paragraph 2.2, maintain throughout the Franchise Period the "Secure Car Park Accreditation" achieved by the Train Operator at each of the Station car parks where Secure Car Park Accreditation applies as at the date of this Franchise Agreement.
- 2.2 If Secure Car Park Accreditation is lost at any Station car park due to either a change in the standards required to be achieved due to circumstances occurring which are outside the control of the Franchisee, then the Franchisee shall promptly report that fact to the Secretary of State and it shall use all reasonable endeavours to secure restoration of the Secure Car Park Accreditation status as soon as reasonably practicable, reporting to the Secretary of State on the measures it is proposing to take to achieve that restoration.
- 2.3 For the avoidance of doubt, the commitments under this paragraph 2 shall cease to apply in respect of any station car park when it ceases to be a Station car park.

3. Previous Committed Obligations under the 2005 Franchise Agreement

- 3.1 The Franchisee shall ensure that for the duration of the Franchise Term the Previous Committed Obligations Investments are properly maintained (allowing for reasonable wear and tear) and continue to be operational and effective in providing a service to passengers to the greatest extent reasonably practicable. The Franchisee may upgrade or replace (with an equivalent or better item) any

¹⁹² 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Previous Committed Obligations Investment, with that upgraded or replaced item then being treated as a Previous Committed Obligations Investment and the Franchisee being permitted to dispose of the item so replaced or upgraded. The Franchisee shall not be permitted to dispose of any Previous Committed Obligations Investment which has not been so replaced or upgraded without the consent of the Secretary of State (which if granted may be subject to conditions). It is agreed that it shall not be reasonably practicable to so maintain relevant Previous Committed Obligations Investments at Stations where relevant assets are properly removed, rendered inoperable or become the responsibility of another person pursuant to the requirements of any infrastructure enhancement project contemplated by Schedule 6.1 Part 1 (List of Committed Obligations) or Schedule 6.2 (Great Western Franchise Specific Provisions) of this Franchise Agreement or when a relevant station has ceased to be a Station with the consent of the Secretary of State. This paragraph 3 shall not affect the application of Schedule 14.2 (Maintenance of Operating Assets) and Schedule 14.5 (Dealing with Franchise Assets) insofar as the same apply to any such assets or equipment. The Franchisee shall seek to recover and make use of any such redundant assets or equipment which are Franchise Assets where it is reasonably practicable and cost effective to do so.

- 3.2 For the purposes of this paragraph 3, "**Previous Committed Obligations Investments**" means each of the following (which are investments made under the LTV New Gating Schemes, New Gating Schemes, Enhanced Gating Schemes, the LTV Enhanced Gating Schemes, paragraphs 2.5 to 2.7 (inclusive) of Part 1 to Appendix 11 of the 2005 Franchise Agreement and paragraph 9(c) of part 4 to Appendix 11 of the 2005 Franchise Agreement):
- (a) each of the additional automatic ticket gates introduced at Plymouth, Exeter St Davids, Paddington and Bath Spa Stations pursuant to paragraph 7.4 of part 1 to Appendix 11 of the 2005 Franchise Agreement;
 - (b) the automatic ticket gates at each of Didcot Parkway, Newbury, Gloucester, Cheltenham Spa and Taunton Stations;
 - (c) the automatic ticket gates at each of Exeter Central and Truro Stations, with the system at Exeter Central involving no fewer than six gates and with the system at Truro involving no fewer than five gates;
 - (d) the automatic wide ticket gates at each of Bristol Parkway and Bristol Temple Meads Stations;
 - (e) the automatic wide ticket gates at each of Slough, Reading and Oxford Stations;
 - (f) the assets and equipment comprised in the following security enhancements:
 - (i) 131 CCTV cameras at 32 Stations, including digital recording facilities;
 - (ii) a control centre to monitor substantially such CCTV on stations;
 - (iii) 358 Help Points;

- (g) the assets and equipment information enhancements installed or provided for use at the Stations between December 2010 and December 2011 comprising:
 - (i) 299 CIS monitors, flat screen 20 inch TFT, LED displays or equivalents;
 - (ii) 74 new flat screen 20 inch TFT, LED displays or equivalents; and
 - (iii) one hundred PDAs for use by customer facing staff;
 - (iv) WebCIS at 75 Help Points;
 - (v) WebCIS at 14 Help Points on the Severn Beach Line;
 - (vi) CIS, PA, and CCTV at Digby & Sowton Station;
 - (vii) CIS at Barnstaple Station;
 - (viii) CCTV at Radley Station;
 - (ix) WebCIS at 3 Help Points on the line between Barnstaple and Exeter St Davids;
 - (x) computer systems to provide train status content for WebCIS and 3-button Help Points;
- (h) 124 ticket vending machines installed between April 2006 and July 2008;
- (i) modern replacement ticket issuing machines that replaced APTIS machines at Station ticket offices between April 2006 to March 2008;
- (j) four ticket vending machines (with canopy and CCTV) located as follows:
 - (i) two at Exeter Central;
 - (ii) one at Truro;
 - (iii) one at Exmouth; and
- (k) automatic ticket gates at:
 - (i) Plymouth and Exeter St Davids introduced at these stations during the period April 2006 to September 2008;
 - (ii) Paddington main concourse platforms 10-14 and overbridge platforms 2 – 5 introduced at these stations during the period April 2006 to March 2008;
 - (iii) Bath Spa and Swindon introduced at these stations during the period April 2006 to March 2008.

4. **Previous Committed Obligations under the Previous Franchise Agreement**

The Franchisee and the Secretary of State are required under the Previous Franchise Agreement to comply with:

- (a) the obligations contained at paragraph 22 of Schedule 6.2 (Great Western Franchise Specific Provisions) of the Previous Franchise Agreement in relation to "HST reseating and reconfiguration"; and
- (b) the obligations contained at paragraph 9 of Schedule 6.1 (Committed Obligations) of the Previous Franchise Agreement in relation to "Kingham Car Park".

The Franchisee and the Secretary of State expect that all relevant obligations will have been completed by the Start Date. To the extent that they have not been completed the Secretary of State and the Franchisee agree that they will act reasonably and in good faith to ensure that such obligations are completed during the Franchise Term including by agreeing appropriate additional Committed Obligations (and related provisions) in the Franchise Agreement. In such circumstances the Franchisee and the Secretary of State agree that the general principle to be applied will be that the Franchisee shall continue to deliver the relevant Committed Obligations on the same commercial basis that it agreed to do so under the Previous Franchise Agreement and accordingly:

- (i) the risk profile of the Franchisee shall not be changed;
- (ii) the Franchisee shall not be entitled to any additional payments and there shall be no double counting of any sums or double payment to the Franchisee in consequence of relevant Committed Obligations being completed under the Franchise Agreement;
- (iii) there shall be a presumption that drafting contained in the Previous Franchise Agreement shall be replicated in the Franchise Agreement unless such drafting can reasonably be regarded as having been superseded by events that have occurred since the dates of the relevant deeds of amendment that incorporated it into the Previous Franchise Agreement or otherwise can reasonably be considered inappropriate to the circumstances in the context of the agreed general principle.

5. Stakeholder

5.1 The Franchisee shall contribute to the funding of Community Rail Partnerships designated as such on the date of this Franchise Agreement (including the equivalent body in respect of TransWilts, whether or not designated at that date) and in relation to routes over which Passenger Services are operated as follows in respect of the period from:

- (a) the Start Date to 31 March 2016, £[REDACTED¹⁹³];
- (b) 1 April 2016 to 31 March 2017, £[REDACTED¹⁹⁴];

¹⁹³ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁹⁴ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (c) 1 April 2017 to 31 March 2018, £[REDACTED¹⁹⁵];
- (d) 1 April 2018 to 31 March 2019, £[REDACTED¹⁹⁶]; and
- (e) (if the Secretary of State exercises his right to extend the Franchise Term under paragraph 2 of Schedule 18 (Additional Reporting Periods) for 13 Reporting Periods) 1 April 2019 to 31 March 2020, £[REDACTED¹⁹⁷] (it being acknowledged that such amount shall be reduced pro rata if the Secretary of State exercises his right to extend the Franchise Term under paragraph 2 of Schedule 18 (Additional Reporting Periods) for a period of less than 13 Reporting Periods).

5.2 The Franchisee shall:

- (a) publish an annual stakeholder report, the first by 31 May 2016 and subsequent reports on or before each subsequent 31 May during the Franchise Period;
- (b) hold an annual Community Rail Conference, the first by 30 June 2016 and subsequently on or before each subsequent 30 June during the Franchise Period;
- (c) hold an annual Stakeholder Conference, the first by 30 June 2016 and subsequently on or before each subsequent 30 June during the Franchise Period; and
- (d) hold an annual Local Authority and Local Enterprise Partnership event for local authorities, Welsh government and Local Enterprise Partnership representatives in the areas served by the Franchise Services the first during the first Franchisee Year, with subsequent conferences held one in each subsequent Franchisee Year.

5.3 The Franchisee shall provide funding to Passenger Focus of £[REDACTED¹⁹⁸] over the Franchise Term, to be applied towards:

- (a) employing an independent passenger link manager who will work with the Franchisee; and

¹⁹⁵ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁹⁶ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁹⁷ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁹⁸ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) undertaking additional NRPS work, including research into the area of the Franchise Services.

6. Gateline staffing

6.1 The Franchisee shall:

- (a) not during the Franchise Term make any significant reduction in the average overall number of hours during which automatic gatelines are staffed across all of the Stations provided with automatic gatelines, including the automatic gatelines staffed by the Franchisee at London Paddington and Ealing Broadway stations compared to the last six Reporting Periods of the Previous Franchise Agreement; and
- (b) continue to provide staff as are required (subject to the provisions of Part 2 of Schedule 6.1) to ensure the safe operation of the automatic ticket gates at each of London Paddington, Bristol Parkway, Bath, Reading, Swindon, Didcot Parkway, Newbury, Gloucester, Cheltenham Spa and Taunton stations for at least seven hours each Weekday, four hours each Saturday and two hours each Sunday,

subject in each case:

- (i) to any adjustment to take account of any station ceasing to be a Station with the consent of the Secretary of State where that adjustment is reasonably required as a consequence of that station ceasing to be a Station; and/or
- (ii) to any adjustment to take account of automatic gatelines at Ealing Broadway or London Paddington stations ceasing to be operated by the Franchisee; and/or
- (iii) to such adjustment as is required to take account of the introduction into operation of gatelines at Chippenham Station and at Newton Abbot Station respectively, on the basis that those gatelines will each be staffed to ensure safe operation for at least seven hours each Weekday, four hours each Saturday and two hours each Sunday; and/or
- (iv) to such adjustments as the Secretary of State may agree on application from the Franchisee in connection with any changes in operations (for example during major engineering works or to reflect changed priorities in revenue protection).

7. Train Fleet Maintenance

- 7.1 ¹⁹⁹**The Franchisee shall ensure that the Train Fleet (which for the purposes of this paragraph 7 only shall be deemed to include the Class 08 and Class 09 shunting locomotives listed in the Appendix to Schedule 14.4 (Designation of Franchise Assets) for so long as they are listed) is examined, maintained and repaired in accordance with the requirements on the Franchisee under the relevant Rolling Stock Leases (or where the Franchisee owns relevant rolling stock in a manner consistent with the proper maintenance of such rolling stock by reference to generally**

¹⁹⁹ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

accepted industry standards for maintaining such rolling stock assuming an asset life expiring on the earlier of the end of its assumed asset life and (where such stock is not compliant with the PRM TSI) 31 December 2019) and otherwise in a manner consistent with the obligations of the Franchisee under the Franchise Agreement including paragraph 1 of Schedule 14.2 (Maintenance of Operating Assets).

Forecast maintenance

7.2 ^{200 201} Without prejudice to paragraph 7.1 as at the date of the Franchise Agreement the Franchisee forecasts that:

(a) Not used

in relation to each of the vehicle types specified in Column A of Table 7.2 below, the Franchisee will carry out the maintenance and examination activities specified in Column B on the forecast number of vehicles specified in Column C (where the Franchise Term is not extended under Schedule 18 (Additional Reporting Periods)) or Column D (where the Franchise Period is extended for 13 Reporting Periods under Schedule 18) (with a reasonable adjustment where the Franchise Term is extended for less than 13 Reporting Periods).

Table 7.2^{202 203}

A	B	C	D
Vehicle type	Maintenance or exam activity	Forecast number of vehicles / exams (core)	Forecast number of vehicles / exams (core plus 13 Reporting Period extension)
HST Power car	E	71	82
HST Power car	F	39	40
HST Power car	G	26	30
HST Power car	QL4	106	107
HST Trailer car	C4	176	187

²⁰⁰ Date of contract change 13/12/2016 – Agreed by the Secretary of State and Franchisee.

²⁰¹ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

²⁰² Date of contract change 13/12/2016 – Agreed by the Secretary of State and Franchisee.

²⁰³ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

A	B	C	D
Vehicle type	Maintenance or exam activity	Forecast number of vehicles / exams (core)	Forecast number of vehicles / exams (core plus 13 Reporting Period extension)
HST Trailer car	C4D	166	166
HST Trailer car	C4 extension	385	387
HST Trailer car *	C6	185	185
HST Trailer car	Air Con	267	267
HST Trailer car	Skirts	157	157
Sleeper	C3	7	7
Sleeper Skirts	Skirts	5	5
Class 143	C4	15	15
Short Form HST Power Car **	HST Short Form Project Activities for power cars (as applicable)	24	24

Notes to Table 7.2²⁰⁴

**** The HST Trailer car C6 exams are inclusive of C6 activities undertaken as part of the HST Short Form Project Activities**

**** The number of vehicles on which HST Short Form Project Activities will be carried out is fixed at 24 as part of the arrangements between the Secretary of State and Franchisee for the funding of the HST Short Form Project Activities.**

It is agreed and acknowledged that the actual volume of maintenance or exam activity is liable to change for a wide range of reasons and a failure to carry out the forecast number of works set out in Column C or Column D of Table 7.2 shall (without prejudice to the rights of the Secretary of State pursuant to paragraph 7.1) not be a contravention of the Franchise Agreement, subject to any relevant

²⁰⁴ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

Heavy Maintenance Cost Reimbursement Payment required to be made under paragraph 7.7 being paid to the Secretary of State.

Reporting by the Franchisee

- 7.3 ^{205 206} Without prejudice to paragraph 1.4 of Schedule 14.2 (Maintenance of Operating Assets), the Franchisee shall provide a report to the Secretary of State within 3 months of the Start Date, and thereafter on a rolling basis every three Reporting Periods. Such report shall provide a comprehensive update on the Franchisee's progress with undertaking the heavy maintenance exams and other maintenance activities set out in the table at paragraph 7.2. Such report shall include the number and type of relevant exam and other maintenance activities undertaken on rolling stock vehicles (identified by vehicle painted number). In addition, with effect from the report covering the period to 31 March 2019, the Franchisee shall include in such report details (provided by vehicle painted number) of allowable other heavy maintenance costs as referred to in paragraph 7.14 carried out by it (or on its behalf) in respect of HST vehicles and Sleepers (including dilapidations activities carried out prior to handback or dilapidations costs incurred by it in respect of the handback of its HST vehicles following handback) over the period from 1 August 2017 (and in respect of repainting of 23 HST vehicles and Sleepers each as referred to in paragraph 7.14(d)(ii)(e) from the Start Date). The Franchisee shall provide such additional or supporting information as the Secretary of State may reasonably require in relation to such report.

Expert reports

- 7.4 ^{vi vii viii ix x xi xii xiii 207 208} By no later than 31 March 2019 the Franchisee and the Secretary of State acting reasonably and in good faith shall agree and appoint an independent rolling stock adviser ("Rolling Stock Adviser") who shall be a Vehicle Acceptance Body (as defined in Railway Group Standards) or otherwise suitably qualified as an engineering adviser on rolling stock condition and rolling stock repair and maintenance strategies. In the absence of agreement by 31 March 2019 the Secretary of State shall reasonably determine the identity of the Rolling Stock Adviser and direct that the Franchisee shall appoint him at a reasonable fee. The Franchisee shall be responsible for paying the fees and reasonable disbursements of the Rolling Stock Adviser. In respect of the appointment of the Rolling Stock Adviser:
- (a) ^{209 210} the Rolling Stock Adviser shall be requested to provide a report jointly addressed to the Franchisee and the Secretary of State setting out (i) a review of the quantum of maintenance works referred to in Table 7.2 carried out in the period from 1 April

²⁰⁵ **Date of contract change 13/12/2016 – Agreed by the Secretary of State and Franchisee.**

²⁰⁶ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

²⁰⁷ 21 December 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁰⁸ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

²⁰⁹ 21 December 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

²¹⁰ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

2017 up to 31 March 2019; (ii) the relevant allowable other heavy maintenance costs (as referred to in paragraph 7.14) actually incurred by the Franchisee in respect of its HST vehicles over the period from 1 August 2017 (and in respect of repainting of 23 HST vehicles and Sleepers each as referred to in paragraph 7.14(d)(ii)(e) from the Start Date) and the allowable other heavy maintenance costs (as referred to in paragraph 7.14) forecast to be incurred by the Franchisee in respect of its HST vehicles and Sleepers to the end of the Franchise Term, and (iii) an appropriate schedule of maintenance works (including both by volume and periodicity) that an efficient operator should undertake in the period commencing on 1 April 2019 and ending on 31 March 2020 to meet its obligations in respect of the Train Fleet under the Rolling Stock Leases, this Franchise Agreement and otherwise (including safety related obligations in respect of the Train Fleet) (the "Rolling Stock Obligations"), taking into account all applicable circumstances (including any Change circumstances). It is acknowledged that the report will relate only to HST rolling stock (and Sleepers as expressly specified) unless the Secretary of State (in his unfettered discretion) requires the Rolling Stock Adviser to also include within the scope of the report the other non-HST rolling stock referred to in Table 7.2. The Rolling Stock Adviser shall take into account, inter alia, the report provided under paragraph 7.4 of Part 1 of Schedule 6.1 of the Previous Franchise Agreement, the status of the Train Fleet as at the Start Date, the requirements for fleet availability to fulfil other requirements of the Franchise Agreement, the Secretary of State's schedule for the introduction of the IEP fleet from June 2017 and arrangements for the handback of vehicles during the Franchise Term (including in each case as such schedule and arrangements may have been modified from time to time) and all other applicable circumstances (including any Change circumstances);;

- (b) ^{211 212}the Rolling Stock Adviser's terms of engagement shall be reasonably agreed by both the Franchisee and the Secretary of State and shall require him to produce a report of his findings and conclusions by 31 May 2019 (or such later date as the Rolling Stock Adviser may determine to allow sufficient time for the completion of the work required to provide his report);
- (c) ²¹³the Franchisee shall act reasonably and in good faith and co-operate accordingly with the Rolling Stock Adviser for the purposes of fully and effectively facilitating him in the carrying out of the work required to produce his report. Accordingly, the Franchisee shall give him such access to rolling stock vehicles together with all relevant maintenance and repair records, maintenance strategies and plans and relevant Franchise Employees as he may reasonably require. Where any consents are required from rolling stock leasing companies the Franchisee shall procure such consents (where the rolling stock leasing company

²¹¹ 21 December 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

²¹² 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

²¹³ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

is First Rail Holdings Limited) or otherwise use all reasonable endeavours to obtain them. The Franchisee shall meet with the Rolling Stock Adviser to discuss such matters as the Rolling Stock Adviser may reasonably require; and

- (d) ^{214 215} the Secretary of State acting reasonably and in good faith shall meet with the Franchisee to discuss the findings of the report with a view to agreeing by no later than 31 July 2019 whether, taking into account such findings, there is a requirement to vary the terms of the Franchise Agreement to increase the forecast volume of any type of heavy maintenance exam or other heavy maintenance activity, or to add further heavy maintenance exams or other heavy maintenance activities, in addition to those set out in paragraph 7.2 at Table 7.2 and in paragraph 7.10, to meet the Franchisee's Rolling Stock Obligations. If such agreement cannot be reached the Secretary of State shall be entitled to reasonably determine amendments to the forecasts in the relevant table in paragraph 7.2 consistent with the Rolling Stock Adviser's report and vary the Franchise Agreement accordingly. Table 7.2 shall only be amended to reflect increases in the forecast volume of heavy maintenance exams or other heavy maintenance activities or the forecast addition of new categories of heavy maintenance exams or other heavy maintenance activities. Paragraph 7.13 shall apply in relation to different activity types. Any such variation of the terms of the Franchise Agreement shall not constitute a Change. For the avoidance of doubt where the increased volume proposed for one type of activity to be applied to specified vehicles means a corresponding reduction in the required volume of another type of activity to be applied in relation to the same vehicles (for example, where an increase in the number of C6 full exams carried out on HSTs means a corresponding reduction in the requirement for C6 descoped exams because the C6 full exam supersedes the need for C6 descoped exams) the amendments made shall address both the increases and reductions.
- (e) ²¹⁶ The Franchisee and the Secretary of State acknowledge and agree that any report produced by the Rolling Stock Adviser shall fall within the definition of "Data Site Information" pursuant to paragraph 2 of Schedule 15.1 (Reletting Provisions).

7.5 Not used.²¹⁷

Final HM Report²¹⁸

7.6

²¹⁴ 21 December 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

²¹⁵ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

²¹⁶ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

²¹⁷ 21 December 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

²¹⁸ 21 December 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (a) ^{219 220 221} **Three Reporting Periods before the end of the Franchise Term, the Franchisee shall report to the Secretary of State with reasonable supporting evidence:**
- (i) **the number and type of exams and maintenance activities as identified in the table in paragraph 7.2 (as varied under paragraph 7.4(c) or 7.4(d), if relevant) which have actually then been carried out during the Franchise Term, together with its forecast of the number of exams and activities which it expects to carry out by the end of the Franchise Term and its forecast of the amounts (if any) which may as a result be payable under paragraph 7.9; and**
 - (ii) **the relevant allowable other heavy maintenance costs (as referred to in paragraph 7.14) actually incurred by it over the period from 1 August 2017 and in respect of its repainting 23 HST vehicles and Sleepers as referred to in paragraph 7.14(d)(ii)(e) from the Start Date, together with its forecast of the allowable other heavy maintenance costs (as referred to in paragraph 7.14) forecast to be incurred by the Franchisee in respect of its HST vehicles and Sleepers to the end of the Franchise Term.**
- (b) ^{222 223 224} **By way of update to the report required under paragraph 7.6(a) or otherwise, the Franchisee shall provide a final report to the Secretary of State within 30 days of the end of the Franchise Term stating the number and type of exams and maintenance activities as identified in the table in paragraph 7.2 (as varied under paragraph 7.4(d) , if relevant) which have actually been carried out during the Franchise Term together with details of the relevant allowable other heavy maintenance costs (as referred to in paragraph 7.14) actually incurred by the Franchisee over the period from 1 August 2017 and in respect of repainting of 23 HST vehicles and Sleepers each as referred to in paragraph 7.14(d)(ii)(e) from the Start Date, together with reasonable supporting evidence. The report shall separately identify those exams and maintenance activities (if any) carried out in consequence of a variation under paragraph 7.4(d) and (if those works are not covered by modelled costs per activity contained in paragraph 7.10) its calculation of the reasonably incurred costs of such works certified by a statutory director of the Franchisee as providing a true and fair view. The report shall provide the Franchisee's calculation of the final amounts (if any) payable by the Franchisee to the Secretary of State under paragraph 7.9.**

²¹⁹ **Date of contract change 13/12/2016 – Agreed by the Secretary of State and Franchisee.**

²²⁰ 21 December 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

²²¹ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

²²² **Date of contract change 13/12/2016 – Agreed by the Secretary of State and Franchisee.**

²²³ 21 December 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

²²⁴ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

Heavy Maintenance Cost Reimbursement Payment

7.7 ²²⁵ ²²⁶In addition to any contravention of the Franchise Agreement pursuant to paragraph 7.1 a Heavy Maintenance Cost Reimbursement Payment may be payable if the modelled cost of the exams and other heavy maintenance activities set out in Column C or Column D of Table 7.2 actually delivered by the Franchisee during the Franchise Term is less than the amount of heavy maintenance funding provided for:

- (a) Not Used
- (b) [REDACTED²²⁷]

(the "Assumed Heavy Maintenance Funding"), subject to indexation by the Retail Prices Index (in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments) so that the whole of such amount is subject to indexation at the point when the Heavy Maintenance Cost Reimbursement Payment is calculated under paragraph 7.10. The Assumed Heavy Maintenance Funding sum is subject to adjustment in order to align with any amendment to the level of such funding made as a result of Qualifying Change.

7.8 ²²⁸If the Franchise Period ends before 01.59 on 1 April 2020 the value of the Assumed Heavy Maintenance Fund will be subject to reduction to reflect the extent to which such funding is not provided to the Franchisee under the Financial Model as a result of such early termination.

7.9 ²²⁹The Heavy Maintenance Cost Reimbursement Payment shall be payable by the Franchisee to the Secretary of State (as a debt) within 30 days of the report under paragraph 7.6(b) or (where paragraph 7.8 applies) determination of the relevant levels of exams and activities and otherwise in accordance with the terms of Schedule 8.1 (Franchise Payments).

The Heavy Maintenance Cost Reimbursement Payment shall be calculated on the basis of the following table and shall be an amount calculated as follows:

$$\text{HMCRP} = (\text{AHMF} + \text{SCA} - \text{HMCS}) - \text{SUMTOTAL} - \text{ALLHMC}^{230}$$

²²⁵ Date of contract change 13/12/2016 – Agreed by the Secretary of State and Franchisee.

²²⁶ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

²²⁷ 16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²²⁸ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

²²⁹ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

²³⁰ 15 February 2019 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

where:

HMRCP is the amount of the Heavy Maintenance Cost Reimbursement Payment provided that no amount shall be payable where that figure is negative;

AHMF is the applicable Assumed Heavy Maintenance Funding under paragraph 7.7 subject to adjustment under paragraph 7.8 in the event of an early termination;

HMCS is the amount of any Expected HM Cost Saving Amount repaid by the Franchisee (or not paid to the Franchisee or applied to alternative purposes to the Purpose) in consequence of paragraph 7.13 or any similar arrangements agreed between the Secretary of State and the Franchisee;

SUMTOTAL is the amount calculated on the basis of the table set out below, found by summing the product of the actual number of relevant exams or activities over the Franchise Period (A) and the modelled cost for each such exam or activity (C) as set out in that Table;

SCA is the Specified COPA Amount referred to in paragraph 7.11 plus any further amounts which the Secretary of State permits to be applied to the Purpose (including any amounts permitted to be applied to the Purpose under paragraph 7.12); and

ALLHMC²³¹ is the amount in respect of allowable other heavy maintenance costs calculated in accordance with paragraph 7.14.

Vehicle type	Maintenance or exam activity	Actual number of vehicles / exams or inputs over the Franchise Period – A	Modelled cost per activity - 15/16 prices £ C	SUMTOTAL= $\Sigma A \times C$
HST Power car	E	Figure to be confirmed after the end of the Franchise Period	[REDACTED ²³²]	To be calculated
HST Power car	F	Figure to be confirmed after the end	[REDACTED]	To be calculated

²³¹ 15 February 2019 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

²³² **16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Vehicle type	Maintenance or exam activity	Actual number of vehicles / exams or inputs over the Franchise Period – A	Modelled cost per activity - 15/16 prices £ C	SUMTOTAL= $\Sigma A \times C$
		of the Franchise Period		
HST Power car	G	Figure to be confirmed after the end of the Franchise Period	[REDACTED]	To be calculated
HST Power car	QL4	Figure to be confirmed after the end of the Franchise Period	[REDACTED]	To be calculated
HST Trailer car	C4	Figure to be confirmed after the end of the Franchise Period	[REDACTED]	To be calculated
HST Trailer car	C4D	Figure to be confirmed after the end of the Franchise Period	[REDACTED]	To be calculated
HST Trailer car	C4 Extension	Figure to be confirmed after the end of the Franchise Period	[REDACTED]	To be calculated
HST Trailer car	C6	Figure to be confirmed after the end of the Franchise Period	[REDACTED]	To be calculated
HST Trailer car	Air Con	Figure to be confirmed after the end of the Franchise Period	[REDACTED]	To be calculated

Vehicle type	Maintenance or exam activity	Actual number of vehicles / exams or inputs over the Franchise Period – A	Modelled cost per activity - 15/16 prices £ C	SUMTOTAL= ΣA x C
HST Trailer car	Skirts	Figure to be confirmed after the end of the Franchise Period	[REDACTED]	To be calculated
Sleeper	C3	Figure to be confirmed after the end of the Franchise Period	[REDACTED]	To be calculated
Sleeper	Skirts	Figure to be confirmed after the end of the Franchise Period	[REDACTED]	To be calculated
Class 143	C4	Figure to be confirmed after the end of the Franchise Period	[REDACTED]	To be calculated
²³³ Short Form HST Power Car*	HST Short Form Project Activities for power cars (as applicable)	24	[REDACTED] ²³⁴	[REDACTED] ²³⁵
		SUMTOTAL		

²³³ Date of contract insertion 13/12/2016 – Agreed by the Secretary of State and Franchisee.

²³⁴ Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²³⁵ Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

236 237Note

* **The number of vehicles on which the HST Short Form Project Activities will be carried out is fixed at 24 with the modelled costs as shown in the table (subject to indexation) as part of the arrangements between the Secretary of State and Franchisee for the funding of the HST Short Form Project Activities.**

The Modelled Cost per activity shall be subject to indexation (in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments) so that the whole of the relevant amount is subject to indexation at the point when the heavy Maintenance Cost Reimbursement Payment is calculated under paragraph 7.10.

- 7.10 **²³⁸The Secretary of State may at his reasonable discretion decide to waive his rights to receive any Heavy Maintenance Cost Reimbursement Payment. In deciding whether to waive such rights the Secretary of State may, but shall not be obliged to, take into consideration the circumstances which led to the Franchisee's failure to carry out the required number of maintenance works and any additional or alternative rolling stock activities or works undertaken.**

Committed Obligation Payment Adjustment under the Previous Franchise Agreement

- 7.11 **²³⁹Pursuant to paragraphs 7.7 to 7.11 of Part 1 of Schedule 6.1 of the Previous Franchise Agreement the Secretary of State has the right to receive a "Committed Obligation Payment Adjustment" (as defined in the Previous Franchise Agreement) if the Franchisee delivers fewer than a target number of exams and other heavy maintenance activities on rolling stock during the term of the Previous Franchise Agreement. The Franchisee and the Secretary of State have agreed that circumstances have arisen which mean that the Franchisee was unable to carry out all of the anticipated work on rolling stock and that the amount of the Committed Obligation Payment Adjustment is [REDACTED²⁴⁰] ("Specified COPA Amount"), being made up of the original base COPA of**

²³⁶ Date of contract insertion 13/12/2016 – Agreed by the Secretary of State and Franchisee.

²³⁷ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

²³⁸ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

²³⁹ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

²⁴⁰ 16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

[REDACTED²⁴¹] plus a balancing carry over amount of [REDACTED²⁴²] (none of which shall be subject to indexation). The Secretary of State has agreed that he will not require such amount to be paid to him on condition that the Franchisee applies the funds solely for the purpose of meeting its obligations in relation to the examination, maintenance and repair of rolling stock pursuant to paragraphs 7.1 and 7.2 above ("the Purpose") and is included in the value SCA for the purposes of calculation of the Heavy Maintenance Cost Reimbursement Payment.

Repayment or roll-forward of 'Heavy Maintenance Fund' underspend under the Previous Franchise Agreement

- 7.12 ²⁴³**Where and to the extent the amount of the 'Heavy Maintenance Fund' (as defined in the Previous Franchise Agreement) has not been applied to meet the costs of any additional heavy maintenance exams and activities required as a result of a variation under paragraph 7.4(d) of the Previous Franchise Agreement the Secretary of State when the amount not applied is known, as an alternative to requiring the Franchisee to repay all of such sum to him, shall not unreasonably withhold his consent to allowing the Franchisee to apply an amount equal to some or all of such amount in completing the additional heavy maintenance exams and activities commenced under the Previous Franchise Agreement which remain uncompleted, with any balance not so required at the Secretary of State's unfettered discretion either then being permitted to be applied for the Purpose (in which case it shall be included in the value SCA for the purposes of calculation of the Heavy Maintenance Cost Reimbursement Payment) and otherwise (where not so required) for such other purpose as may be agreed by the Secretary of State.**

Repayment of heavy maintenance funding and different activity types

- 7.13 ²⁴⁴**Without prejudice to the other provisions of this paragraph 7, if as a result of the findings of any report produced by the Rolling Stock Adviser (or otherwise) the Franchisee becomes aware that either materially different maintenance activities to what are forecast are being carried out on the HST fleet or a materially lower amount of heavy maintenance work is required than forecast pursuant to paragraph 7.2, it shall notify the Secretary of State as soon as reasonably practicable providing (in such form as the Secretary of State may reasonably require) details of the different maintenance activity ("Different Maintenance Activity") and/or the cost saving expected to arise as a result of the reduced amount of required heavy maintenance work ("Expected HM Cost Saving Amount").**

²⁴¹ **16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

²⁴² **16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

²⁴³ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

²⁴⁴ 15 February 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

In such circumstances the Secretary of State shall be entitled to direct the Franchisee as follows:

- (a) **in the case of a Different Maintenance Activity to establish an additional HST maintenance exam or activity for inclusion in the table in paragraph 7.10 with a modelled cost per activity in 2015/16 prices which is representative of the proper and reasonable average cost to the Franchisee of carrying out such exam or activity; and/or**
- (b) **in the case of an Expected HM Cost Saving Amount, to either:**
 - (i) **repay all or part of the Expected HM Cost Saving Amount to him; or**
 - (ii) **allow the Franchisee to apply an amount equal to some or all of the Expected HM Cost Saving Amount for such alternative purposes as the Secretary of State and the Franchisee may agree,**

provided that such repayment or alternative application will not be applied except to the extent that there is very high confidence that such sums will not be needed during the balance of the Franchise Term in any circumstances, so that the risk to the Franchisee in relation to the funding of the heavy maintenance which it will be required to carry out over the balance of the Franchise Term (as it may be extended) is not materially increased as a result;

and in each case the parties shall agree in good faith such amendments as may be required to this paragraph 7, including but not limited to the calculation of the Heavy Maintenance Cost Reimbursement Payment, to take account of such earlier repayment or reallocation of monies.

Allowable Other Heavy Maintenance Costs²⁴⁵

7.14 ²⁴⁶It is acknowledged that the consequences of the IRAD Base Assumptions being triggered include:

- (i) **requirements for some of the Train Fleet to be operated more intensively and over a longer time period than would have been the case in the absence of the Change;**
- (ii) **postponement to some train fleet heavy maintenance activities which would have been anticipated to be carried out as part of vehicle exams, including where due to displacement by other maintenance activities to support more intensive use of the fleet over a longer period or where required to maintain as much fleet availability as possible;**
- (iii) **reductions in the periods between trains being withdrawn from operational service and handed back to their owners, restricting or**

²⁴⁵ 15 February 2019 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

²⁴⁶ 15 February 2019 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

eliminating the time anticipated to be available to the Franchisee to address dilapidations prior to handback; and

- (iv) increased liabilities for dilapidations to vehicle owners in respect of dilapidations not corrected prior to vehicle handback.
- (b) The Financial Model includes provision in respect of anticipated dilapidations costs as further described in section 5.3.7 (Maintenance & Materials – Other Materials) of the Costs Model section of the 2018 Record of Assumptions (the elements in relation to the HST fleet being the "Dilapidations Provision").
- (c) The intention of the parties is that when HMCRP is calculated, it should be used to fund a relevant amount of other heavy maintenance costs ("allowable other heavy maintenance costs") calculated in accordance with this paragraph 7.14. For the avoidance of doubt the "allowable other heavy maintenance costs" will not include any maintenance or exam activities as referred to in Table 7.2 which are taken into account in the calculation of SUMTOTAL as referred to in paragraph 7.9.
- (d) The allowable other heavy maintenance costs shall be calculated as follows:
- (i) the Franchisee shall calculate the actual other heavy maintenance costs in respect of its HST fleet in the period from and including 1 August 2017, and in respect of its repainting of 23 HST vehicles and Sleepers as referred to in paragraph 7.14(d)(ii)(e) from the Start Date, up to and including the end of the Franchise Term (including dilapidations costs raised after the end of the Franchise Term for any vehicles handed back at the end of the Franchise Term) (the "relevant costs");
 - (ii) in respect of relevant costs:
 - (a) costs shall be excluded unless reasonably and properly incurred by the Franchisee and costs shall be excluded in relation to any maintenance or exam activity taken into account in the calculation of SUMTOTAL under paragraph 7.9 or otherwise separately funded by the Secretary of State;
 - (b) the Franchisee shall use all reasonable endeavours to mitigate the amount of the relevant costs, after taking into account operational requirements to keep the relevant vehicles in operation to the extent required to safeguard delivery of the Passenger Services, its capacity to undertake relevant works and associated handback activities and the requirements to comply with the terms of the relevant leases on the time for handback of vehicles;
 - (c) in respect of relevant costs incurred by the Franchisee prior to handback, only bought in materials and third party costs shall be taken into account (so that the Franchisee's own labour costs shall be disregarded);
 - (d) in respect of relevant costs charged to the Franchisee by vehicle lessors/owners, amounts shall be taken into account which are properly invoiced in accordance with the

relevant lease terms, subject to the Franchisee acting as a responsible lessee to exercise its entitlements under the lease terms to manage the invoiced amounts; and

- (e) the relevant costs shall include (subject to validation of the relevant amounts incurred) [REDACTED²⁴⁷] (not subject to indexation) in respect of the costs (excluding other additional authorised works) of repainting 23 HST vehicles and [REDACTED²⁴⁸] (not subject to indexation) in respect of Mark III sleeper corrosion and shot-blasting works conducted as part of the conversion of the Short Form HSTs where not separately funded by the Secretary of State,
 - (iii) The Dilapidations Provision shall be applied first to meet the relevant costs.
 - (iv) The amount of any relevant costs in excess of the amount of the Dilapidations Provision shall be the value of ALLHMC for the purposes of the calculation of HMCRP.
 - (e) If the amount of ALLHMC results in HMCRP having a negative value, the Franchisee shall be entitled to seek recovery of the amount of ALLHMC not funded by HMCRP as an element of Change under paragraph 1 of Schedule 9.3, but shall only be entitled to do so to the extent that it is established that the relevant costs were incurred as a consequence of the Base Assumptions being incorrect.
- 7.15 ²⁴⁹It is acknowledged that in addressing any further Change or Change mitigation impacts on the arrangements under this paragraph 7, the intent shall be to maintain (and not reduce) the level of available ALLHMC provision in respect of the relevant costs.

Rolling Stock

8. Driver Smart Enabled Mobile Devices

The Franchisee shall by 31 March 2016 develop and deploy a delay root cause capture app for use by traincrew with smart enabled mobile devices.

²⁴⁷ 16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁴⁸ 16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁴⁹ 15 February 2019 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

9. **Traincrew Management and Traffic Management Systems**

9.1 The Franchisee shall by 31 December 2016 complete implementation of a computerised decision tool to help improve traincrew management in times of disruption.

9.2 The Franchisee shall work with Network Rail to support the introduction of Network Rail's traffic management system by:

- (a) developing a transition plan for staff in working in the Franchisee's "control" function; and
- (b) making data on its stock and crew diagrams available to Network Rail to support development of a rolling stock and train crew traffic management system module,

in each case in line with Network Rail's timescales for introduction by it of the system, which, as at the date of the Franchise Agreement, is forecast to occur in 2017, but which is subject to change from time to time.

9.3 Where and to the extent Network Rail's traffic management system referred to in paragraph 9.2 is capable of being used by the Franchisee to replace the system adopted by the Franchisee under paragraph 9.1, the Franchisee may adopt the Network Rail system and then cease to be under any further obligation to maintain the system referred to in paragraph 9.1.

10. **Class 165 Fleet** ^{xiv}

10.1 The Franchisee shall procure that air cooling systems are fitted and operational throughout the passenger carrying spaces of each unit in its Class 165 rolling stock fleet with fitment carried out:

- (a) in respect of any unit to be cascaded to work in the Bristol area, using all reasonable endeavours to achieve this prior to its cascade and in any event fitting the equipment by 31 December 2017; and
- (b) ²⁵⁰**if not subject to a cascade to the Bristol area, at the same time as those units are subject to C6 or C6x overhauls and in any event by 31 March 2020.**

10.2 ²⁵¹**The Franchisee shall incur additional expenditure of [REDACTED²⁵²] to replace interior carpeting in the saloons, vestibules and luggage rack areas of each unit in its Class 166 rolling stock fleet by 31 March 2020.**

²⁵⁰ 20 December 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

²⁵¹ 20 December 2018 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁵² **23 April 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

11. **Not used.**²⁵³

12. **Rolling stock project feasibility studies**

The Franchisee shall carry out and present to the Secretary of State by 31 December 2015 initial feasibility studies in respect of each of the following potential projects, with any further implementation of the Projects being subject to a Variation:

- (a) proposals for the trial and, if successful, implementation of Independently Powered EMUs ("**IPEMUs**") on the route between Newbury and Bedwyn (including an assessment of the feasibility of through operation from London Paddington);
- (b) proposals for the trial and, if successful, implementation of IPEMUs on the route between Reading, Redhill and Gatwick Airport;
- (c) subject to initial examination confirming likely viability, proposals for the trial deployment and, if successful, implementation of converted former London Underground D78 rolling stock on one or more selected branch lines within the Franchise; and
- (d) proposals for an alternative rolling stock solution for services operating between Portsmouth and Cardiff.^{xv}

13. **Wi-Fi Fitment**

13.1 Where Wi-Fi is fitted to the Train Fleet, the Franchisee will provide access to Wi-Fi (subject to the coverage available and bandwidth restrictions) free of charge to both standard and first class passengers. It is acknowledged that as at the date of this Franchise Agreement this includes the Class 180s, Sleeper trains and relevant HST rolling stock.

13.2 The Franchisee shall procure that by 31 December 2017 commissioned and operational Wi-Fi is fitted to:

- (a) ²⁵⁴ **all Class 158s, 387s, 165s, 166s and 150/2s in the Train Fleet; and**
- (b) all Class 150/1s recorded in Schedule 1.7 (The Train Fleet) as to be in service with the Franchisee immediately before the Expiry Date.

13.3 The Franchisee shall procure that by 31 December 2018 commissioned and operational Wi-Fi is fitted to all Sets (as defined in Schedule 6.3).

14. **At Seat Power Fitment**

14.1 ²⁵⁵ **The Franchisee shall procure that modifications are made to all the Class 15x (other than the Class 153) and (where reasonably possible taking account of technical considerations) to all the Class 16x rolling stock which is identified in Schedule 1.7 (The Train Fleet) as to be retained in the Train Fleet throughout the Franchise Term, so that at seat power supplies are available at all passenger seats (excluding tip-up**

²⁵³ 21 December 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁵⁴ 21 December 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁵⁵ 20 December 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

seats) by 31 March 2020. It is acknowledged that such at seat power supplies may be by way of USB sockets where is it not reasonably practicable for the Franchisee to fit three pin power sockets due to power supply limitations on particular classes of rolling stock.

14.2 Where, for technical reasons, it is not reasonably possible for the Franchisee to comply with any of its obligations under paragraph 14.1 in relation to any of its Class 16x rolling stock it shall as soon as reasonably practicable notify the Secretary of State of such technical reasons and the provisions of paragraphs 3.4 and 3.5 of part 2 (Miscellaneous Provisions) of Schedule 6.1 (Committed Obligations and Related Provisions) will apply.

15. **PRM TSI Works**

15.1 The Franchisee shall, in respect of the vehicles in its Train Fleet which are recorded in Schedule 1.7 (The Train Fleet) as to be in service with the Franchisee immediately before the Expiry Date and are reasonably expected to continue in service beyond 31 December 2019, work with the relevant owners or lessors of those vehicles, where applicable using all reasonable endeavours to enforce any applicable lease terms, so that they are able to modify those vehicles to the extent necessary to be compliant with the Persons of Reduced Mobility Technical Specification for Interoperability ("**PRM TSI**") (taking account of any applicable derogations):

- (a) if the Franchise Period is not extended beyond 31 December 2019, by the end of the Franchise Period provided that at such date it will be permissible for some vehicles to remain unmodified if they are scheduled to be modified before 31 December 2019 pursuant to a reasonable programme of works reasonably capable of being completed by a Successor Operator by such date; or
- (b) (if the Franchise Period is extended to or beyond 31 December 2019) by 31 December 2019.

15.2 If the West of England Rolling Stock Procurement Proposal is instructed by the Secretary of State in accordance with paragraph 18 of Schedule 6.2, paragraph 15.1 shall cease to apply in respect of the HST vehicles in the Train Fleet.

15.3 The Franchisee shall ensure its train ramps at Stations are compliant, whether by purchasing new ramps or utilising existing ramps, with the PRM TSI by the earlier of the end of the Franchise Term and 31 December 2019.

Fares and Ticketing

16. **Fares and Ticket Retailing**

16.1 The Franchisee shall:

- (a) spend no less than £[REDACTED²⁵⁶] either to:

²⁵⁶ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (i) replace all Avantix II mobile devices by 31 July 2016, provided a suitable replacement mobile device can be procured and introduced into service to that timescale; or
 - (ii) if a suitable replacement mobile device cannot be so procured and introduced, the Franchisee having demonstrated that it has used all reasonable endeavours to pursue such procurement and introduction, use all reasonable endeavours to extend the service life of the existing Avantix II mobile devices until a suitable replacement mobile device can be procured and introduced into service; and
- (b) provide 10 new ticket vending machines (TVMs) at the following Stations (or such alternative Stations as the Franchisee may propose and the Secretary of State approve (such approval not to be unreasonably withheld)) by 31 December 2018:
- (i) St Erth;
 - (ii) Redruth;
 - (iii) Keynsham;
 - (iv) St Ives;
 - (v) Marlow;
 - (vi) Camborne;
 - (vii) Oldfield Park;
 - (viii) Evesham;
 - (ix) Cookham; and
 - (x) Moreton-in-Marsh.

Stations

17. CCIF schemes, cycle spaces and signage

- 17.1 The parties acknowledge that the Franchisee intends to promote investments, including the following, through CCIF during the Franchise Term:
- (a) the provision of additional cycle spaces at Stations for adoption as CCIF schemes; and
 - (b) the improvement of highway signage near Stations by proposing signage schemes for adoption as CCIF schemes;
 - (c) recommendations from the Travel Plans developed under paragraph 18.1; and
 - (d) the development of community retail offerings at Stations by proposing retail schemes for adoption as CCIF schemes.

17.2 The delivery of the investments referred to in paragraph 17.1 shall be subject to and in accordance with the CCIF provisions in paragraph 3 of Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Improvement Fund).

18. **Travel Plans**

18.1 During the Franchise Term, the Franchisee shall by 31 March 2017, in liaison with local authorities and other transport providers, develop Station travel plans for the following twenty Stations:

- (a) Oxford;
- (b) Bath Spa;
- (c) Slough;
- (d) Maidenhead;
- (e) Swindon;
- (f) Didcot Parkway;
- (g) Plymouth;
- (h) Exeter St David's;
- (i) Bristol Parkway;
- (j) Cheltenham Spa;
- (k) Exeter Central;
- (l) Windsor & Eton Central;
- (m) Chippenham;
- (n) Newbury;
- (o) Twyford;
- (p) Gloucester;
- (q) Taunton;
- (r) Truro;
- (s) Newton Abbot; and
- (t) Weston-super-Mare,

or such other substitute Stations as the Franchisee may propose and the Secretary of State approve.

18.2 The Station travel plans developed under paragraph 18.1 shall be taken into account by the Franchisee when considering proposals for CCIF schemes under paragraph 17 above and match funding under paragraph 43 below.

19. **Customer Ambassadors**

19.1 The Franchisee shall employ (on a full time equivalent basis) from the Start Date to the Expiry Date a total establishment number of at least 56 "customer ambassadors". The customer ambassadors will be deployed to provide assistance and support to passengers at the following stations and at other locations as the Franchisee may determine taking account of operational circumstances:

- (a) Bath Spa;
- (b) Bristol Parkway;
- (c) Bristol Temple Meads;
- (d) Exeter St David's
- (e) Gloucester;
- (f) Cheltenham Spa;
- (g) London Paddington;
- (h) Maidenhead;
- (i) Oxford;
- (j) Plymouth;
- (k) Reading;
- (l) Slough;
- (m) Cardiff Central;
- (n) Swansea; and
- (o) Swindon.

It is acknowledged that the special role of "customer ambassador" includes the championing of expected high standards for customer service among colleagues, being a highly visible presence and informed point of contact for passengers in special designated zones in Stations (especially during times of disruption) and challenging practices which do not promote or are detrimental to customer services standards.

19.2 The Secretary of State shall not unreasonably withhold consent to request by the Franchisee to revise the deployment of customer ambassadors to further improve services to passengers.

20. **Interactive Screens and Information Boards**

20.1 ²⁵⁷The Franchisee shall:

²⁵⁷ Date of contract change 02/08/2017 – Agreed by the Secretary of State and Franchisee

- (a) **Incur expenditure of at least [REDACTED²⁵⁸] to further develop its mobile application, in order to provide additional customer information and functionality, by 31 December 2017; and**
- (b) **Install a minimum of 15 new information boards at 12 stations by 31 December 2016.**

21. **CCTV**

The Franchisee shall incur expenditure of at least [REDACTED²⁵⁹] procuring additional CCTV capability at Stations (other than Crossrail Stations) by 31 March 2018.

22. **CIS, PA, Roving Microphones and Gateline PCs**

22.1 ^{xvi xvii} The Franchisee shall by 30 June 2017:

- (a) install Customer Information System screens (CIS) at seven Stations that do not currently have this facility and shall improve the coverage of CIS screens at three Stations that do currently have this facility;
- (b) enhance the public announcement system (PA) at three Stations;
- (c) install new roving microphones at 26 Stations; and
- (d) install new gateline PCs at 15 Stations.

For the avoidance of doubt, the assets to be procured and installed at Stations under paragraphs 20 to 22 are new assets which shall be incremental to the Previous Committed Obligations Investments and are not to be taken as being in replacement of any such assets.

23. **Station Lighting**

23.1 The Franchisee shall incur expenditure of:

- (a) £[REDACTED²⁶⁰]; or
- (b) if the Secretary of State instructs the Franchisee to proceed to complete the West of England Rolling Stock Procurement Process pursuant to

²⁵⁸ **Date of redaction 24/10/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

²⁵⁹ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

²⁶⁰ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

paragraph 18 of Schedule 6.2 (Great Western Franchise Specific Obligations), £[REDACTED²⁶¹],

on improvements to station lighting to support driver controlled operation at stations where the following of its Train Fleet are scheduled to call, with such works carried out in advance of the relevant Train Fleet being scheduled to call at the relevant stations in driver controlled operation:

- (i) the Sets (as defined in Schedule 6.3);
- (ii) Class 387; and
- (iii) **Not used**²⁶²
- (iv) Class 165 and 166.

23.2 To the extent that the Franchisee makes a saving from its planned expenditure under either paragraph 23.1(a) or 23.1(b) (as applicable in the circumstances) to provide lighting improvements necessary to enable driver controlled operation in accordance with paragraph 23.1, the Franchisee shall have the option to either:

- (a) with the consent of the Secretary of State allocate any unexpended amount of the sum provided for under paragraph 23.1(a) or 23.1(b) (as applicable in the circumstances) to other commitments to be identified by the Franchisee and agreed with the Secretary of State; or
- (b) pay the Secretary of State any unexpended amount of the sum provided for under paragraph 23.1(a) or 23.1(b) (as applicable in the circumstances).

Customer Services and Stakeholder

24. On Board Food and Drink

24.1 Consistent with the Franchisee's proposal dated October 2014 (as amended) the Franchisee shall throughout the Franchise Term diagram and use all reasonable endeavours to provide an on train food and drink service in accordance with the following specification:

- (a) a food and drink service:
 - (i) on all Passenger Services departing Cardiff, Exeter or Bristol for a timetabled arrival at London Paddington in the Morning Peak; and
 - (ii) all Passenger Services departing London Paddington in the Evening Peak and timetabled to call at Cardiff, Exeter or Bristol,

²⁶¹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁶² 21 December 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

in each case in respect of that portion of their journey between London Paddington and Cardiff, Exeter and Bristol (as the case may be);

- (b) ^{xviii} an at seat first class "Pullman" dining service to be provided on at least two Passenger Services in each direction each Weekday on either or both of the routes between London Paddington and Plymouth and between London Paddington and Cardiff;
- (c) a trolley-based food and drink service for standard class passengers on at least twenty Passenger Services selected by the Franchisee on each Weekday, with such service to be in place on such number of Passenger Services within three months of the Start Date and end when the last of the Sets (as defined in Schedule 6.3) are accepted into revenue earning service. This shall not require trolley services to be provided throughout the duration of each service;
- (d) a trolley-based catering service for standard and first class passengers on each Passenger Service operated by the Sets (as defined in Schedule 6.3) on the services referenced A1 to A4 (Inter City Great Western Main Line) and B (Inter City West of England). This shall not require trolley services to be provided throughout the duration of each service; and
- (e) on board food and drink facilities on all sleeper services.

For the avoidance of doubt, all catering trolleys and crockery acquired by the Franchisee for the purpose of the delivery of its obligations in this paragraph 24 (or other food and drink services) during the Franchise Term which are transferred to a Successor Operator at the end of the Franchise Period are subject to the nil value transfer provisions of paragraph 11 of Part 2 of Schedule 6.1.

25. **Social Media Information Provision**

The Franchisee shall provide during times of disruption a social media information service providing travel information and information on the disruption as the same becomes available to the Franchisee, with information made available through social media (including twitter and the Franchisee's website). This service shall be provided during times of disruption on a 24 hours a day basis.

People

26. **Investors in People**

- 26.1 The Franchisee shall maintain for the Franchise Term the Investors in People status that it has achieved as of the date of the Franchise Agreement.
- 26.2 If the Franchisee's Investors in People status is lost or downgraded during the Franchise Term the consequence shall be that the Franchisee shall analyse the reasons for the loss or downgrade and implement a plan to re-establish the required Investors in People status as soon as reasonably practicable.

27. **Training Plan**

- 27.1 The Franchisee shall design, implement and regularly review a training plan for its staff and contractors to develop their ability to effectively operate within their work environment.
- 27.2 The Training Plan shall include:

- (a) performance development training for all Franchisee managers with the objective of achieving consistent and reliable performance standards across the Franchise;
- (b) awareness and skills for all affected staff where they are required to change the types of trains on which they work during the Franchise Term;
- (c) employee relations training for senior leadership and management teams;
- (d) the opportunity for contractors to access relevant training opportunities provided by the Franchisee;
- (e) training customer-facing members of staff in how to manage information with customers during disruption; and
- (f) leadership and management training for management teams.

27.3 The Training Plan shall include:

- (a) analysis of the training required to be undertaken to enable the scheduled introduction into service of the new and cascaded trains to be introduced during the Franchise Term;
- (b) the plan for the delivery of training to meet those training needs to the relevant timescales;
- (c) a system of key performance indicators and a reporting regime designed to monitor required training levels; and
- (d) a record of progress towards delivery of that training.

28. **Not used.**

29. **Diversity**

In carrying out recruitment activities in fulfilment of its obligations under this Franchise Agreement, the Franchisee shall apply its diversity strategy and, if requested by the Secretary of State, provide within a reasonable time of any such request a report on the application of such strategy to recruitment activities during each Franchisee Year.

30. **Uniforms**

The Franchisee shall incur expenditure of at least £[REDACTED²⁶³] in relation to replacement of uniforms worn by Franchise Employees by 31 March 2018.

31. **Apprenticeships**

31.1 The Franchisee shall use all reasonable endeavours to:

²⁶³ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) have at least 40 apprentices at the Start Date (with it being recognised that those apprentices will progress through their apprenticeships rather than being required to be maintained as apprentices); and
- (b) recruit new apprentices at the rate of at least 15 each year.

CSR and Sustainability

32. Supplier Engagement

During the Franchise Term the Franchisee shall organise the delivery of a supplier engagement session on an annual basis from the Start Date and shall include in the objectives for the supplier engagement session the encouragement of efficiency and innovation and the use of apprentices.

33. ISO50001 (Energy Management)

The Franchisee shall achieve and maintain ISO50001 certification for the entire Franchise by 31 March 2016 ^{xix}.

34. Water Meters

The Franchisee shall ensure that by 31 December 2016 there are smart water meters, where reasonably practicable, at all Depots and Stations with mains water supplies.

35. SME - Stakeholder Report

Beginning with the Franchisee's 2015/16 annual stakeholder report, the Franchisee shall enable increased levels of transparency by reporting on SME usage in the Franchisee's annual stakeholder reports during the Franchise Term.

36. Job Seekers

36.1 During the Franchise Term the Franchisee shall continue to work with the Job Centre to issue discounted rail tickets to job-seekers who are using Franchise Services to attend interviews.

36.2 From the Start Date, the Franchisee shall incur expenditure at the rate of £[REDACTED²⁶⁴] per calendar year to assist the long-term unemployed through establishing and then implementing from 31 August 2016 programmes and initiatives including the following:

- (a) community work placements;
- (b) the Prince's Trust Get into Railways programmes;
- (c) work programme placements; and
- (d) employability skills mentoring.

²⁶⁴ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

37. **Energy consumption and carbon emissions**

The Franchisee shall have intelligent heating and lighting controls at 21 Stations by 31 December 2016.

38. **Waste**

38.1 Subject to paragraph 38.2, the Franchisee shall include in its Sustainable Development Plan targets the achievement of 75% recycling and 0% waste directly to landfill from non-hazardous waste streams by 31 March 2017.

- (i) The Franchisee shall report on progress against these targets in accordance with Schedule 13 of the Franchise Agreement and, if the targets are not met, shall supplement such reports with analysis of the reasons for the shortfall and revised plans to achieve the target measures as soon as reasonably practicable.

39. **xx xxi Energy Efficiency**

39.1 ^{265 266} **The Franchisee shall, by 31 January 2020, invest a total of £385,000 on the following projects:**

- (a) **invest no more than £200,000 to install Air Source Heat Pumps at 3 Stations; and**
- (b) **invest a minimum of £185,000 on sustainability projects at Cheltenham Station.**

Committed Investments

40. **Car Parking**

40.1 The Franchisee shall use all reasonable endeavours:

- (a) having regard to its ability to secure necessary match funding, to make necessary property arrangements and secure relevant consents and approvals; and
- (b) subject to paragraph 40.2 and paragraph 40.3(b),

to provide by 31 December 2017 at the Stations set out in the table below at least 2,100 additional car parking spaces (beyond the number of spaces provided at those Stations as at the date of this Franchise Agreement:

Station
Tiverton Parkway
Goring & Streatley
Didcot Parkway

²⁶⁵ 29 March 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

²⁶⁶ 21 December 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee

Gloucester
Castle Cary
Hanborough
Charlbury
Stroud
Taunton
Kemble

40.2 The Franchisee's commitment to the provision of additional car parking spaces is subject to where any land is to be acquired (whether on lease or otherwise), the approval of the Secretary of State to the relevant arrangements and (where required by the Secretary of State) the conclusion of a direct agreement between the Secretary of State and relevant third parties (which the Franchisee shall use all reasonable endeavours to secure).

40.3 Without prejudice to paragraph 45:

- (a) as part of each CI Report the Franchisee shall report to the Secretary of State details of all car parking spaces provided or reasonably expected to be provided by the Franchisee under this paragraph 40 relative to the forecast numbers and completion dates set out in paragraph 40.1 above;
- (b) to the extent that as at 31 December 2017 (or such earlier date as it may become reasonably aware of the same) the Franchisee cannot implement the target total number of car parking spaces set out in paragraph 40.1 or does not reasonably expect them to be able to be implemented and in connection with such shortfall makes a saving from its planned expenditure of £[REDACTED²⁶⁷] to provide all 2,100 spaces, the Franchisee shall have the option to either:
 - (i) with the consent of the Secretary of State, substitute an equivalent amount of additional car parking spaces at alternative locations during the Franchise Term; or
 - (ii) deal with any unexpended amount through the provisions of paragraph 45 so that it shall be allocated to one or more Additional CI Scheme or paid to the Secretary of State in accordance with the provisions of paragraph 45, with there being a corresponding agreed reduction in the number of additional spaces to be provided.

41. **St Erth Car Parking**

41.1 Without prejudice to its general obligations under paragraph 5 of Schedule 6.2 to work with Local Authorities, the Franchisee shall work with Cornwall Council with the objective of at least 650 additional car parking spaces (beyond the number of spaces provided at St Erth Station as at as at the date of this Franchise Agreement) being provided on land near to St Erth Station by 31 December 2017, and as part

²⁶⁷ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

of this initiative the Franchisee shall offer to provide at least £1,270,000 of match funding for a committed scheme delivering at least the required number of spaces.

41.2 Without prejudice to paragraph 45, in the event that:

- (a) the St Erth additional car parking scheme does not commence by 31 December 2016 or is not delivered by 31 December 2017; or
- (b) the Franchisee reasonably considers that the St Erth additional car parking scheme is unlikely to result in at least 650 additional car parking spaces by 31 December 2017; or
- (c) the St Erth additional car parking scheme is delivered with the Franchisee expending less than £1,270,000 by way of match funding or other support for the project,

the Franchisee shall, with the consent of the Secretary of State, allocate the unexpended amount of its £1,270,000 match fund to either a reduced St Erth additional car parking scheme or deal with any unexpended amount in accordance with the provisions of paragraph 45 so that it shall be allocated to one or more Additional CI Scheme or paid to the Secretary of State.

42. **Revenue Protection - Additional Gatelines**

42.1 The Franchisee shall spend a minimum of £[REDACTED²⁶⁸] in procuring the installation of automatic ticket gates which shall be enabled for barcode reading, ITSO and cEMV Level 1 certification at:

- (a) Chippenham station by **31 December 2017**²⁶⁹ and
- (b) Newton Abbot station by July 2017.

42.2 The Franchisee's obligations under paragraph 42.1 are subject to obtaining the required planning and other approvals (including where required utilities in relation to adequacy of power supplies, English Heritage and listed building consent) which the Franchisee shall use all reasonable endeavours to obtain. Without prejudice to paragraph 45, if the Franchisee is unable to do so at all or within a timescale which is consistent with the timescales in paragraph 42.1:

- (a) the Franchisee shall:
 - (i) as soon as reasonably practicable notify the Secretary of State; and
 - (ii) if requested by the Secretary of State propose alternative location(s) for the implementation of the relevant automatic ticket gates. If the Secretary of State (in his discretion) approves such location(s) then this paragraph 42 shall continue to apply with the substituted location(s) subject to such changes (if any) as may be

²⁶⁸ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁶⁹ Date of contract change 12/04/2016 – Agreed by the Secretary of State and Franchisee.

reasonably required in relation to timescales (such agreement not to be unreasonably withheld or delayed); and

- (b) if no obligation in relation to the installation of automatic ticket gates at any alternative location is reached or, following any such agreement there remains an amount of unallocated funding, the provisions of paragraph 45 shall apply so that relevant amounts shall be allocated to one or more Additional CI Scheme or paid to the Secretary of State in accordance with the provisions of paragraph 45.

43. **Station Development Match Fund**

- 43.1 The Franchisee shall establish a £3,530,000 Station Development Match Fund (£800,000 of which is planned to be used to support the proposed development of St Erth Station, which is additional to the St Erth car parking scheme referenced in paragraph 41) for deployment during the Franchise Term in providing match funding for the carrying out of developments at Stations, where additional funding is available from relevant third parties.
- 43.2 The Franchisee shall use best endeavours to promote and implement Station development schemes which make use of the Station Development Match Fund under paragraph 43.1.
- 43.3 By 31 December 2017 the Franchisee shall report to the Secretary of State details of the Station development projects which have been match funded or have been identified for match funding using the fund established under paragraph 43.1. If and to the extent the Franchisee has not been able to apply the Station Development Match Fund then unexpended amounts shall be dealt with through the provisions of paragraph 45 so that they shall be allocated to one or more Additional CI Scheme or paid to the Secretary of State.

44. **Station Access**

- 44.1 The Franchisee shall establish an Access Fund of £2,445,000 for deployment during the Franchise Term in providing match funding for the making of access improvements at Stations, where additional funding is available from relevant third parties. This funding shall be applied to schemes which are in addition to those funded by the "Access for All" bidding process.
- 44.2 The Franchisee shall use all reasonable endeavours to promote and implement station access improvement schemes which make use of the Access Fund under paragraph 44.1.
- 44.3 The Franchisee shall, at its sole discretion, have the option to allocate all or part of the Access Fund to access improvements at Stations even if match funding has not been secured.
- 44.4 The Franchisee shall use all reasonable endeavours to deploy the Access Fund on schemes to provide ramps at Nailsea and Backwell Station to make it suitable for use by Disabled Persons and to incorporate accessibility improvements into the new Didcot Parkway Station (Foxhall Road) car park footbridge, subject to:
- (a) securing all necessary consents (which it shall use all reasonable endeavours to secure); and

- (b) the costs of these schemes to the Franchisee not exceeding the funds available from the Access Fund (after taking into account any other schemes committed to be provided using any part of the Access Fund).

44.5 By 31 December 2017 the Franchisee shall report to the Secretary of State details of the access improvement projects which have been match funded or have been identified for match funding using the Access Fund established under paragraph 44.1. If and to the extent the Franchisee has not been able to apply the Access Fund then the provisions of paragraph 45 shall apply so that relevant monies are either allocated to one or more Additional CI Scheme or paid to the Secretary of State.

45. **Committed Investments – general provisions and Additional CI Schemes**

45.1 The Franchisee and the Secretary of State acknowledge that the component "CIA" in the Franchise Payments formula at paragraph 1.1 of Schedule 8.1 (Franchise Payments) and the related table in Appendix 3 to Schedule 8.1 (Franchise Payments) reflects Financial Model assumptions about the timing and profiling of expenditure by the Franchisee in delivering Committed Investments ("**CI Expenditure Assumptions**").

45.2 The Franchisee shall on each CI Report Date during the Franchise Term provide to the Secretary of State a report (a "**CI Report**") certified by a statutory director as being true and accurate identifying:

- (a) with regard to each Committed Investment and Additional CI Scheme and in relation to the period since the Start Date in relation to the first CI Report and since the last CI Report in relation to all subsequent CI Reports the amount of expenditure incurred by the Franchisee together with details of (i) how much of such monies have been received from third party match funding, and (ii) how such monies were applied and details of any variances from the CI Expenditure Assumptions;
- (b) in relation to each Committed Investment and Additional CI Scheme whether:
 - (i) the Franchisee considers that the anticipated allocated expenditure will not be required or is unlikely to be required including because any identified dependency on a third party whether for consents, third party funding or otherwise cannot be obtained or is unlikely to be obtained for any reason; or
 - (ii) the Franchisee is able (whether because of cost savings, additional match funding or otherwise), in respect of such Committed Investment or Additional CI Scheme, to achieve the stated objective of the Committed Investment or Additional CI Schemes without incurring the full amount of proposed expenditure identified,

together with in relation to any Committed Investment or Additional CI Scheme identified pursuant to paragraph 45.2(b)(i) or (ii), details of the costs it has incurred (excluding any third party funding) in complying with its obligations in relation to such Committed Investment or Additional CI Scheme and a reconciliation against the amount it had proposed to allocate (excluding any third party funding) so that there is identified in relation to each Committed Investment or Additional CI Scheme the

amount of funding capable of being allocated to an Additional CI Scheme or repaid to the Secretary of State ("**CI Underspend**");

- (c) in the second CI Report (and each subsequent CI Report thereafter), how the expenditure position in relation to Committed Investments and actual expenditure compared with the CI Expenditure Assumptions has changed in comparison to the position summarised in the immediately preceding CI Report; and
 - (d) the information required to be provided by the Franchisee pursuant to paragraph 40.3(a).
- 45.3 The Franchisee shall provide such additional information as the Secretary of State shall reasonably require for the purposes of verifying that the CI Report is true and accurate.
- 45.4 At each Franchise Performance Meeting:
- (a) the Franchisee shall report on variances from the CI Expenditure Assumptions, the status of the Committed Investments and any Additional CI Scheme, and shall provide an update to the Secretary of State on any Committed Investments or Additional CI Schemes identified pursuant to paragraph 45.2(b) which have been identified as giving rise to a CI Underspend; and
 - (b) without prejudice to the rights of the Secretary of State where the Franchisee has not complied with its obligations in relation to the delivery of any Committed Investment or Additional CI Scheme the Secretary of State and the Franchisee, acting reasonably, shall seek to identify and agree an additional scheme or schemes ("**Additional CI Scheme**") which would give rise to benefits to passengers using the Passenger Services to be funded using CI Underspend to be allocated to delivering such Additional CI Scheme and the drafting of a new Committed Obligation in relation to such Additional CI Scheme to be incorporated into this part 1 of Schedule 6.1 (Committed Obligations and Related Provisions) by way of Variation.
- 45.5 In circumstances where, despite having used reasonable endeavours pursuant to paragraph 45.4, the Parties fail to agree within three months of the date of the relevant Franchise Performance Meeting one or more Additional CI Schemes in relation to which the CI Underspend will be applied, the CI Underspend shall be repaid to the Secretary of State on the next Payment Date or such other date as the Secretary of State may specify.

46. ²⁷⁰**Station and Service Improvement Investment**

- 46.1 **The parties acknowledge that on 31 January 2019 the Franchisee provided to the Secretary of State a written proposal setting out its plans to invest up to [REDACTED²⁷¹] (in 2015/16 prices), (the "Station &**

²⁷⁰ 15 February 2019 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

²⁷¹ **16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Service Improvement Investment Amount") for deployment in the period from 1 January 2019 to 31 March 2020, in carrying out developments at Stations (including associated car parks) and delivering service improvements.

- 46.2 **The Franchisee shall not deploy any part of the Station & Service Improvement Investment Amount unless and until the proposal provided under Clause 46.1 (or relevant part thereof) has been approved by the Secretary of State in writing, or unless and until otherwise approved by the Secretary of State in writing.**
- 46.3 **Following receipt of any approval of the Secretary of State under paragraph 46.2:**
- (a) **the relevant investment obligations on the Franchisee under this paragraph 46 shall be treated as a Committed Investment; and**
 - (b) **the Franchisee shall use all reasonable endeavours to implement the relevant Station and service improvement schemes which make use of the Station & Service Improvement Investment Amount by 31 March 2020.**
- 46.4 **By 31 December 2019 the Franchisee shall report to the Secretary of State details of those Station and service improvement projects which have been funded or have been identified for funding using the Station & Service Improvement Investment Amount, and (where applicable) the amounts of any external match funding also secured. If and to the extent the Franchisee has not been able to apply the Station & Service Improvement Investment Amount or is not reasonably likely to have expended that amount by 31 March 2020, then amounts which have not been expended and are not reasonably required for projects being funded under this paragraph 46 shall be dealt with through the provisions of paragraph 45 so that they shall be allocated to one or more Additional CI Schemes or paid to the Secretary of State. Without prejudice to the provisions of paragraph 45, any amounts of the Station & Service Improvement Investment Amount which as at the end of the Franchise Term have not either been spent, committed to meet liabilities in relation to schemes incurred in the period to the end of the Franchise Term, allocated to an Additional CI Scheme, agreed by the Secretary of State to be rolled over to a subsequent direct award franchise or paid to the Secretary of State, shall be paid to the Secretary of State.**

47. ²⁷²**Driver Recruitment**

- 47.1 **The Franchisee will recruit drivers and achieve productive drivers over the period from 1 April 2018 to 31 March 2020, in accordance with the following table:**

Table 47.1

²⁷² 15 February 2019 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

	Between 1 April 2018 and 31 March 2019	Between 1 April 2019 and 31 March 2020	DA2 Total (by 31 March 2020)
Driver recruits			
New to Driving	107	152	259
Industry Driver	32	27	59
Aggregate Total Driver Recruits	-	-	318
Productive drivers			
New to Driving	64	96	160
Industry Driver	28	32	60
Aggregate Productive Drivers	-	-	220

Notes:

- (i) The Franchisee shall achieve a "driver recruit" when a driver employment offer has been made by the Franchisee and accepted by the recruit and a training start date is agreed, which start date shall be on or after 1 April 2018 and on or before 31 March 2020. Evidence of employment offers and training acceptances will be provided by the Franchisee to the Secretary of State in a manner that is compliant with the Data Protection Act 2018 and the General Data Protection Regulation 2016/679.
- (ii) An "Industry Driver" is a driver recruit who has within the six months previous to his/her training start date been employed by the Franchisee or another train operator (freight, passenger or other) and who is already signed as competent for at least one route on the UK rail network. A "New to Driving" recruit is any driver recruit who is not an Industry Driver.
- (iii) A driver recruit will be treated as a "productive driver" when he/she is signed for at least one Route and one traction type which operates on that Route, so that he/she is able to be diagrammed to operate Passenger Services on that Route.

47.2 The Franchisee will report to the Secretary of State each Reporting Period on progress against the requirements set out in Table 47.1 in relation to the "Driver recruit" and "Productive driver" measures (including the "New to Driving" and "Industry Driver" numbers for each measure). The Secretary of State may require the Franchisee to put in place appropriate remedial actions where there is a material shortfall in recruitment against these measures which is not consistent with use by the Franchisee of all

reasonable endeavours to achieve the aggregate totals of driver recruits and productive drivers by 31 March 2020.

47.3 If by 31 March 2020 the Franchisee has not achieved the aggregate driver recruitment requirement of 318 (the "Aggregate Driver Recruit Requirement"), the consequence shall be that a clawback payment will be made by the Franchisee to the Secretary of State at the rate of [REDACTED²⁷³] (not subject to indexation) per driver recruit shortfall below the Aggregate Driver Recruit Requirement. In calculating progress towards the Aggregate Driver Recruit Requirement and any associated clawback payment, Industry Driver recruits in excess of 59 will be disregarded but all New to Driving recruits will be counted.

47.4

(a) Subject to paragraphs 47.4(b) and 47.4(c), if by 31 March 2020 the Franchisee has not achieved the aggregate productive drivers requirement of 220 (the "Aggregate Productive Drivers Requirement"), the consequence shall be that a clawback payment will be made by the Franchisee to the Secretary of State at the rate of [REDACTED²⁷⁴] (not subject to indexation) per productive driver shortfall below the Aggregate Productive Drivers Requirement.

(b) In calculating progress towards the Aggregate Productive Drivers Requirement and any associated clawback payment, Industry Driver productive drivers in excess of 60 will be disregarded but all New to Driving productive drivers will be counted.

(c) If at the end of the Franchise Period the Franchisee has achieved 192 or more productive drivers counting towards the Aggregate Productive Drivers Requirement (in accordance with paragraphs 47.4(a) and 47.4(b)):

(i) the Franchisee shall notify the Secretary of State with reasonable supporting evidence of the number of driver recruits in training who are reasonably forecast to become productive drivers within four Reporting Periods after the end of the Franchise Period, separately identifying which of those driver recruits are Industry Drivers and which are New to Driving;

(ii) where the Franchisee is not continuing as the operator of the Franchise with effect from the end of the Franchise Period, the number of such driver recruits reasonably forecast to become productive drivers within four Reporting Periods of the end of the

²⁷³ 16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁷⁴ 16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Franchise Period, as agreed between the parties or reasonably determined by the Secretary of State, shall be added to the number of productive drivers achieved during the period from 1 April 2018 to the end of the Franchise Period, up to a maximum of 28 (with no more than 8 of those to be Industry Drivers);

- (iii) **where the Franchisee is continuing as the operator of the Franchise with effect from the end of the Franchise Period, the Franchisee shall notify the Secretary of State of the number of driver recruits who have become productive drivers in the four Reporting Periods following the end of the Franchise Period and the Secretary of State shall then recalculate the clawback payment in accordance with paragraph 47.4(a), but based on the number of drivers becoming productive drivers over the period between 1 April 2018 and the date falling at the end of four Reporting Periods after the end of the Franchise Period and the Secretary of State shall then promptly repay to the Franchisee the amount by which the recalculated clawback payment is less than the clawback payment paid by the Franchisee to the Secretary of State under paragraph 47.4(a).**

47.5 Any drivers who transfer to the Franchisee from Heathrow Express Operating Company Limited by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006) as a result of matters contemplated by the HEx Services Agreement shall not be treated as "driver recruits" or "productive drivers" for the purpose of this paragraph 47.

47.6 In the event of early termination of the Franchise, the shortfalls referred to at paragraphs 47.3 and 47.4(a) above and any associated clawback payments will be calculated as at the date of termination of the Franchise, provided that the Aggregate Driver Recruit Requirement and the Aggregate Productive Drivers Requirement will each be adjusted on a pro rata basis in line with the recruitment programme.

47.7 The parties agree that the clawback payments under paragraph 47.3 and paragraph 47.4(a) shall be the Franchisee's only liability in relation to a failure to achieve the numbers of driver recruits and productive drivers as required under this paragraph 47 and any such failure shall not be treated as a contravention of the Franchise Agreement.

48. ²⁷⁵Other Driver Obligations

Sunday in the Working Week

48.1 The Franchisee will secure a Sunday in the working week ("SIWW") deal by the end of the Franchise Term and ensure that SIWW is part of the terms and conditions for all of its drivers, with effect on and from no later than 1 April 2020.

48.2 To the extent the Franchisee proposes changes in terms and conditions and/or salary increases related to achieving SIWW that are consistent with

²⁷⁵ 15 February 2019 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

its driver modernisation proposal submitted on 13 March 2018 (the "Driver Proposal"), including the proposed 4% of base salary uplift (with effect from 1 April 2020), and/or any other or amended negotiating parameters agreed between the Franchisee and the Secretary of State from time to time, and for which the Secretary of State's consent is required under Schedule 15.2 of the Franchise Agreement, the Secretary of State agrees that it will not withhold its consent to those changes.

- 48.3 If the Franchisee wishes to formally propose to all or any of the trades unions changes in terms and conditions and/or salary increases related to achieving SIWW that are inconsistent with the Driver Proposal and/or any other or amended negotiating parameters agreed between the Franchisee with the Secretary of State from time to time, the Franchisee shall first consult with the Secretary of State and seek his consent to those changes.
- 48.4 If the Franchisee fails to secure a SIWW deal by the end of the Franchise Term in accordance with paragraph 48.1, then the Franchisee will repay to the Secretary of State the amount of [REDACTED²⁷⁶] (not subject to indexation), provided that this amount shall be reduced by such amount up to [REDACTED²⁷⁷] (not subject to indexation) as the Secretary of State (acting reasonably) considers appropriate having regard to the efforts made by the Franchisee to secure an SIWW deal and taking account of any circumstances in which the Secretary of State may have withheld consent to proposals by the Franchisee to help secure an SIWW deal. The parties agree that payment under this paragraph 48.4 shall be the Franchisee's only liability in relation to a failure to secure the SIWW deal and that such failure shall not be treated as a contravention of the Franchise Agreement.

Miscellaneous Driver provisions

- 48.5 Following IRAD Change 1, the Franchisee shall not be entitled to make any further claims (under IRAD Change 2 or otherwise) in respect of drivers (related to the number of drivers, salary and benefits or otherwise) in connection with any further change to the Base Assumptions, as amended and restated as part of IRAD Change 1.
- 48.6 The Franchisee shall be liable during the Franchise Term in the normal way for any increases in employer contributions it is required to make under the Railways Pension Scheme arising from the changes to terms and conditions and salary increases that are agreed with its employees in connection with the matters referred to in its Driver Proposal, and shall not be entitled to recover any such contributions from the Secretary of State under IRAD Change 1, further Change processes or otherwise. This shall not affect any

²⁷⁶ 16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁷⁷ 16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

liability that the Secretary of State may have in relation to any relevant Variations or restructuring which he may propose.

- 48.7 The Franchisee shall not be entitled to any protection under Schedule 8.3 of the Franchise Agreement in relation to any Industrial Action that may arise as a consequence of the matters referred to in this paragraph 48.**

Part time working

- 48.8 The Franchisee will carry out a feasibility study considering part time working options for its drivers, to be delivered to the Secretary of State by 31 March 2019. The feasibility study shall take into account relevant implications of the introduction of part time working, including any impacts on time required for training.**

Part 2 to Schedule 6.1**Miscellaneous Provisions****1. Application**

This Part 2 of this Schedule 6.1 sets out further terms which apply to the Committed Obligations set out in Part 1 (List of Committed Obligations) to this Schedule 6.1 and the references to Committed Obligations in this Part 2 of this Schedule 6.1 are only to the Committed Obligations in Part 1 (List of Committed Obligations) of this Schedule 6.1.

2. Continuation of availability**2.1**

- (a) Save as expressly provided in this Schedule 6.1, the Franchisee shall maintain facilities, activities or other matters established in accordance with its Committed Obligations throughout the remainder of the Franchise Term.
- (b) The provisions of this paragraph 2.1 shall apply in relation to each Committed Obligation regardless of whether or not such Committed Obligation specifically provides for the Franchisee to maintain throughout the Franchise Term the facilities, activities or other matters established in accordance with such Committed Obligation.

2.2 The Franchisee shall be treated as maintaining the relevant facilities, activities or other matters which are the subject of the Committed Obligations notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement activities, or temporary staff absence, subject in each case to the Franchisee taking all reasonable steps to keep any such period of temporary non-availability to a minimum.

2.3 Where Part 1 (List of Committed Obligations) to this Schedule 6.1 includes a commitment regarding staffing or particular appointments the Franchisee plans to make:

- (a) the obligation of the Franchisee applies, but shall not be regarded as being contravened by:
 - (i) temporary absences (for example for sickness or holiday); or
 - (ii) temporary non-fulfilment of a relevant post whilst the Franchisee is recruiting for that post, subject to the Franchisee using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable; and
- (b) the Franchisee's rights and obligations in relation to the numbers or deployment of its other staff remain unaffected.

3. **Expenditure commitments**

Annual Expenditure

3.1 Where Part 1 (List of Committed Obligations) to this Schedule 6.1 provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee, that amount:

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

Expenditure Commitments in real amounts

3.2 All expenditure commitments set out in Part 1 (List of Committed Obligations) to this Schedule 6.1, to the extent they have not already been incurred by the Franchisee, shall be indexed by the Retail Prices Index (in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments)).

Expenditure by Network Rail

3.3 All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 1 (List of Committed Obligations) to this Schedule 6.1 to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

Underspends

3.4 Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, the Franchisee is able to achieve that stated objective without incurring the full amount referred to in that Committed Obligation, whether because of cost savings or otherwise, the Franchisee shall notify the Secretary of State, together with a statement of the costs it has incurred (excluding any third party funding) in delivering the relevant obligations and a reconciliation against the amount it had committed to spend (excluding any third party funding) ("**Underspend**").

3.5 The Parties shall, acting reasonably, seek to agree an additional scheme or schemes which would give rise to benefits to passengers using the Passenger Services to be funded using the Underspend and, once agreed, the Franchisee shall apply such Underspend in the delivery of the agreed scheme(s). In circumstances only where, despite having used reasonable endeavours, the Parties fail to agree an additional scheme in relation to which the Underspend will be applied, such Underspend shall be repaid to the Secretary of State as soon as reasonably practicable.

3.6 Paragraphs 3.4 and 3.5 shall not apply in relation to the Committed Investments, in relation to which paragraph 45 of part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions) applies.

4. **Liaison And Co-Operation**

Where the Franchisee is committed to liaison and co-operation under Part 1 (List of Committed Obligations) to this Schedule 6.1, it shall participate actively in the

relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Franchisee reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

5. **Nature Of Commitment**

- 5.1 Any commitment in terms of Part 1 (List of Committed Obligations) to this Schedule 6.1 shall be in addition to any obligation of the Franchisee elsewhere in this Franchise Agreement and nothing in this Schedule 6.1 shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Franchise Agreement.
- 5.2 Save as expressly provided in Part 1 (List of Committed Obligations) to this Schedule 6.1, each Committed Obligation is a separate obligation from any other Committed Obligation and satisfaction of or steps taken towards the satisfaction of one Committed Obligation will not amount to or contribute towards satisfaction of any other Committed Obligation.
- 5.3 Where in Part 1 (List of Committed Obligations) to this Schedule 6.1, references are made to particular manufacturers or suppliers of equipment or services, the Franchisee may fulfil its relevant commitment by using reasonable equivalents.
- 5.4 Each commitment under this Schedule 6.1 shall come to an end on expiry of the Franchise Term for whatever reason, save in respect of any accrued payments owed pursuant to Part 3 (Late/Non-Completion of Committed Obligations) to this Schedule 6.1 but not yet paid.

6. **Consents**

- 6.1 Where, in delivering a Committed Obligation, the Franchisee is required to obtain one or more consents, the Franchisee shall use all reasonable endeavours to obtain such consents. If the Franchisee is unable to obtain the relevant consent or the proposed terms upon which the relevant consent would be granted would, in the reasonable opinion of the Franchisee, be likely to prejudice the financial and/or commercial viability of delivering the Committed Obligation, the Franchisee may apply to the Secretary of State for the approval referred to in paragraph 6.2. For the purposes of this paragraph 6, the expression "**consent**" shall mean those approvals, authorisations, consents, derogations, exemptions, licences, permissions, and registrations which are required by Law or any contract to which the Franchisee is a party, to be obtained by the Franchisee in connection with the delivery of a Committed Obligation.
- 6.2 The Secretary of State's approval for the purposes of this paragraph 6.2 is his approval for the Franchisee to modify the relevant Committed Obligation so as to deliver a scheme which would give rise to benefits to passengers using the Passenger Services similar to (but not necessarily the same as) those benefits which would have arisen if the Franchisee delivered the relevant Committed Obligation. The modifications to the relevant Committed Obligation shall be agreed between the Franchisee and the Secretary of State or failing such agreement shall be reasonably determined by the Secretary of State. The approval of the Secretary of State may not be unreasonably withheld.
- 6.3 If the Secretary of State gives his approval pursuant to paragraph 6.2 in respect of a Committed Obligation, then to the extent that the Franchisee delivers the modified Committed Obligation by the date agreed between the Franchisee and the Secretary of State, or failing such agreement by the date reasonably

determined by the Secretary of State, the Franchisee shall not be in breach of the Franchise Agreement.

7. Review Of Compliance

7.1 Progress with Committed Obligations shall be considered and discussed at Franchise Performance Meetings and the Franchisee shall ensure that progress with Committed Obligations is included in the Periodic Update Reports provided in accordance with paragraph 4.6 of Schedule 11.

7.2 In addition to its obligation under paragraph 7.1 the Franchisee shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as the Secretary of State may reasonably request.

7.3 This paragraph 7 shall not apply in relation to the Committed Investments, in relation to which paragraph 45 of part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions) applies.

8. Late Completion Or Non-Delivery Of Committed Obligations

If the Franchisee fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in Part 1 (List of Committed Obligations) to this Schedule 6.1, such late, partial or non-delivery shall constitute a contravention of the Franchise Agreement.

9. Reasonable endeavours

Where in respect of any Committed Obligation the Franchisee is obliged to use all reasonable endeavours or reasonable endeavours to do or procure that something is done by a specified date then, without prejudice to any other rights the Secretary of State may have (whether under the Franchise Agreement or otherwise) in respect of any contravention arising if the same is not achieved by such specified date, the Franchisee shall consult with the Secretary of State and if required by the Secretary of State shall continue to use all reasonable endeavours or reasonable endeavours (as applicable) to do or procure that the relevant thing is done as soon as reasonably practicable thereafter.

10. Incurring cost in relation to Committed Obligations during the term of the Previous Franchise Agreement

10.1 The Secretary of State and the Franchisee acknowledge and agree that:

(a) this Franchise Agreement has been entered into prior to the expiry of the Previous Franchise Agreement and that there may be circumstances in which the efficient and cost effective delivery of the Committed Obligations described in Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions) in a manner which reasonably mitigates risk and/or delivers benefits to passengers could be enhanced if the Franchisee commenced some relevant works prior to the expiry of the Previous Franchise Agreement and the Start Date of this Franchise Agreement;

(b) such timing and/or amount of expenditure is not anticipated by the Financial Model or the "financial model" as defined in the Previous Franchise Agreement and it could accordingly have a distorting impact on profit share payments under both the Previous Franchise Agreement and

this Franchise Agreement which both the Franchisee and the Secretary of State agree must be avoided; and

- (c) the Franchisee shall be permitted to incur such expenditure prior to the expiry of the Previous Franchise Agreement on the basis described in paragraph 10.2 below.

10.2 The Franchisee shall be permitted to incur expenditure relating to the delivery of the Committed Obligations described in Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions) if it reasonably believes that this is likely to have the effect of materially improving the efficient and cost effective delivery of Committed Obligations and/or provide reasonable mitigation against relevant risk in relation to the delivery of such Committed Obligations and/or delivers benefits to passengers. The Secretary of State agrees that works to deliver the car park improvements at Kemble pursuant to paragraph 40 of part 1 of Schedule 6.1 can be commenced by the Franchisee prior to the Start Date subject to the Franchisee complying at all times with the provisions of this paragraph 10.

10.3 The Franchisee shall within 17 days of the end of each Reporting Period falling during the term of the Previous Franchise Agreement provide to the Secretary of State a report certified as being accurate by a statutory director identifying in relation to each Committed Obligation if the Franchisee has incurred any expenditure during that Reporting Period and, if so, why it has done so by reference to the criteria referred to in sub paragraph 10.2 and the amount of such expenditure in the Reporting Period. The Franchisee shall provide such additional information as the Secretary of State shall reasonably require for the purposes of verifying that such expenditure has been properly incurred and accurately reported.

10.4 In calculating the profit share pursuant to paragraph 3 of Schedule 8.1 (Franchise Payments) of the Previous Franchise Agreement amounts reported to the Secretary of State pursuant to paragraph 10.3 (which for these purposes shall include the Grand Central Payment) shall be deemed not to have been costs incurred during the term of the Previous Franchise Agreement and accordingly "relevant profit" (as defined in paragraph 3 of Schedule 8.1 Franchise Payments of the Previous Franchise Agreement) and any profit share payment to the Secretary of State shall be unaffected by such payments made by the Franchisee and the Previous Franchise Agreement shall be deemed to be amended accordingly.

10.5 In calculating profit share pursuant to paragraph 3 of Schedule 8.1 (Franchise Payments) amounts reported to the Secretary of State pursuant to paragraph 10.3 (which for these purposes shall include the Grand Central Payment) shall be deemed to have been incurred by the Franchisee during the first Franchisee Year and shall accordingly be taken into account for the purposes of the first Franchisee Year in calculating Relevant Profit (as defined in paragraph 3 of Schedule 8.1 Franchise Payments) and any profit share payment to the Secretary of State.

10.6 In assessing expenditure by the Franchisee on Committed Obligations, amounts reported to the Secretary of State pursuant to paragraph 10.2 shall be taken into account, notwithstanding they were incurred prior to the Start Date.

11. Nil value transfer

Unless the Secretary of State gives a contrary direction all Franchise Assets acquired by the Franchisee pursuant to its obligations under part 1 (List of

Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions) shall be designated as Primary Franchise Assets and (to the extent that they are not liabilities) shall transfer to a Successor Operator at a nil value.

12 GWR Performance Report and Plan^{278 279}

12.1 The Franchisee has established and agreed with the Secretary of State the GWR Performance Report and Plan.

12.2 The purpose of the GWR Performance Report and Plan is to provide analysis of the performance of the Franchise Services, identify reasons for any shortcomings and identify short, medium and long term actions and initiatives to improve performance on a basis consistent with the obligations of the Franchisee under the Franchise Agreement and having regard to available resources and funding and other relevant circumstances applying at the time. In preparing its actions and initiatives, the Franchisee shall place an emphasis on improving performance on the routes performing worst.

12.3 The Franchisee shall review and update the GWR Performance Report and Plan every two weeks with effect from 14 May 2018 and supply a copy of the updated version to the Secretary of State. The updated plans shall be prepared on a basis consistent in terms of coverage and detail with the initial GWR Performance Report and Plan, unless otherwise agreed with the Secretary of State.

12.4 Representatives of the Franchisee and the Secretary of State shall meet every two weeks with effect from 14 May 2018 (or at such other frequency as the Secretary of State may agree and recognising that meetings may be conducted by telephone conference call) in order to review the latest version of the GWR Performance Report and Plan.

12.5 The Franchisee shall take into account reasonable written comments and recommendations of the Secretary of State with regard to the GWR Performance Report and Plan.

12.6 The Franchisee shall use all reasonable endeavours to implement the actions and initiatives set out as to be performed on the part of the Franchisee in the GWR Performance Report and Plan, as revised and updated from time to time, but subject to any applicable dependencies or other terms set out in it and having regard to any extenuating circumstances.

12.7 Without prejudice to other obligations on the Franchisee under the Franchise Agreement, if there is any failure on the part of the Franchisee to deliver any element of a GWR Performance Report and Plan then this shall be addressed through the process of review and revision of the GWR Performance Report and Plan and, in the absence of a persistent failure of its obligations under paragraph 1.6, such failure shall not be treated as a contravention.

²⁷⁸ 14 May 2018 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁷⁹ 1 March 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 6.2**Great Western Franchise Specific Provisions****1. British Transport Police Accommodation**

1.1 The Franchisee shall give due consideration to any request by the British Transport Police to provide suitable accommodation (including additional or alternative accommodation) or facilities at Stations to enable the British Transport Police to effectively perform the services owed to the Franchisee under any contract or arrangement entered into between the British Transport Police and the Franchisee.

1.2 The Franchisee shall:

- (a) work in partnership with the British Transport Police to assess and review regularly the security and crime risk at all Stations and across the franchise generally;
- (b) work with the British Transport Police to:
 - (i) reduce crime on the railway;
 - (ii) reduce minutes lost to police-related disruption; and
 - (iii) increase passenger confidence with personal security on train and on station; and
- (c) co-operate with the British Transport Police to provide the British Transport Police with access to records and/or systems maintained by the Franchisee which relate to lost property to enable the British Transport Police to have access to such information when dealing with items reported to them as lost. The Franchisee shall consult with the British Transport Police as to its requirements in relation to such records and/or systems and shall ensure that the British Transport Police has access to such records and/or systems within 12 months of the Start Date.

1.3 The Franchisee shall consult with the British Transport Police in relation to plans to develop any part of the land within a Property Lease which could affect staff or customers and give the British Transport Police an opportunity to advise on and/or provide comments on any opportunities for the enhancement of safety and reduction in crime.

2. Long term planning for mitigation of adverse weather conditions

2.1 The Franchisee shall fully and effectively co-operate with Network Rail, Local Authorities and the Environment Agency, and shall co-operate as reasonably appropriate with other relevant third parties, for the purpose of mitigating the impact on the delivery of the Passenger Services of adverse weather conditions including storms, precipitation, high seas and flooding.

2.2 Pursuant to its obligations under paragraph 2.1, the Franchisee shall engage throughout the Franchise Period in sensible and prudent contingency and long term risk mitigation planning in consultation with Network Rail, Local Authorities, the Environment Agency and all other relevant third parties.

3. Crossrail

3.1 For the purpose of facilitating the continued effective and efficient operation of the Crossrail Stations after they transfer to the Crossrail Operator the Franchisee shall:

- (a) from the Start Date implement such financial reporting systems as are reasonably required by the Secretary of State for the purpose of identifying the costs associated with the operation of the Crossrail Stations from the date specified by the Secretary of State;
- (b) ensure that the Crossrail Stations and all Franchise Assets and systems of whatever nature used for the purposes of the Franchise Services at the Crossrail Stations are capable of being transferred in an efficient and cost effective manner to the Crossrail Operator on the date for such transfer (including by ensuring that all systems used in relation to the Crossrail Stations are capable of immediate, complete and effective separation from the systems of the Franchisee from the date of transfer of the Crossrail Stations without cost to the Crossrail Operator and in a manner that does not compromise their effectiveness when they are used by the Crossrail Operator after such transfer);
- (c) efficiently and effectively plan, project manage and implement station transfers in relation to the Crossrail Stations in accordance with the timescales of the Crossrail Programme as they might be varied from time to time including, without limitation, by making all necessary arrangements for the transfer of relevant Franchise Employees to the Crossrail Operator and the separation of ticket retailing and information distribution and broadcast systems, IT servers and networks;
- (d) engage in such "shadow running" and testing of systems, services and operational plans as the Secretary of State may reasonably specify in advance of the commencement of operation of the Crossrail Services by the Crossrail Operator for the purposes of assisting the effective delivery of the Crossrail Programme and the efficient handover of the Crossrail Stations to the Crossrail Operator;
- (e) act fairly, reasonably and in good faith for the purpose of agreeing:
 - (i) a fair and equitable reorganisation of the business of providing the Franchise Services from the Crossrail Stations in advance of the transfer of the Crossrail Stations to the Crossrail Operator; and
 - (ii) a consequent fair and reasonable transfer of relevant assets and resources in relation to the Crossrail Stations to the Crossrail Operator.

3.2 The Franchisee shall fully and effectively co-operate with the Secretary of State in connection with the commencement of the operation of the Crossrail Services by the Crossrail Operator (including, without limitation, through the transfer of the Crossrail Stations). Accordingly if so requested by the Secretary of State the Franchisee shall:

- (a) provide the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) with such information, reports and analysis as the Secretary of State (or any of his advisers, employees,

representatives, nominees or agents) may reasonably require. This may include without limitation:

- (i) operational and financial information, data, reports and analysis (including driver, other train crew and rolling stock diagrams, health and safety and environmental information, information about Franchise Employees employed in relation to the carrying out of the Franchise Services from the Crossrail Stations, information about relevant real property and Network Rail charges and performance data);
 - (ii) terms and conditions of relevant Franchise Employees and human resources policies;
 - (iii) upon reasonable notice, attending meetings with the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) in relation to the commencement of operation of the Crossrail Services by the Crossrail Operator;
 - (iv) reviewing and commenting on the implementation of timetables and programmes relating to the commencement of the operation of the Crossrail Services by the Crossrail Operator; and/or
 - (v) any other relevant information as the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) may reasonably specify from time to time;
- (b) provide upon reasonable notice access to the Crossrail Stations and other related facilities to the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) including access accompanied by representatives of bidders seeking to become the Crossrail Operator and their advisers, provided that such access shall not interfere in any material way with the performance by the Franchisee of its obligations in connection with the Franchise Services.

3.3 The Franchisee shall comply with the reasonable requirements of the Secretary of State in relation to:

- (a) the commencement of operation of the Crossrail Services by the Crossrail Operator; and
- (b) the implementation of all aspects of the Crossrail Programme (including through co-operation with Network Rail, the Crossrail Operator, Crossrail Limited and TfL as directed by the Secretary of State) where such implementation involves an interface with any railway infrastructure used in relation to the Franchise Services or is otherwise related to the Franchise Services.

The Franchisee's obligations pursuant to this paragraph 3.3 shall include:

- (i) upon reasonable notice, attending meetings with the Secretary of State, TfL, Network Rail, the Crossrail Operator and other relevant bodies specified by the Secretary of

State to discuss and provide an opinion on any relevant issues;

- (ii) providing information, data, reports and analysis reasonably required by the Secretary of State in relation to assessing the implications of the commencement of the operation of Crossrail Services by the Crossrail Operator or relevant aspects of the implementation of the Crossrail Programme including the transfer of the Crossrail Stations; and
- (iii) reviewing and commenting on implementation timetables and programmes for the commencement of the operation of the Crossrail Services by the Crossrail Operator, the transfer of the Crossrail Stations or relevant aspects of the implementation of the Crossrail Programme.

3.4 The Franchisee shall fully and actively participate in good faith as a skilled and experienced train operator in risk reviews initiated by the Secretary of State or (if directed by the Secretary of State) TfL relating to the implementation of the Crossrail Programme and the transfer of the Crossrail Services to a Crossrail Operator in the manner directed by the Secretary of State. The Franchisee shall develop risk mitigation plans as reasonably required by the Secretary of State pursuant to such risk reviews.

3.5 The Franchisee:

- (a) shall complete the Crossrail Transfer Arrangements on the Passenger Change Date in December 2017 (or such other date as the Secretary of State shall specify) including by entering into the Crossrail Business Transfer Agreement; and
- (b) shall not without the prior written permission of the Secretary of State enter into any contracts, agreements or arrangements in relation to the Crossrail Stations where such contracts are not capable of being terminated on the Passenger Change Date in December 2017.

3.6 The Franchisee shall:

- (a) fully and effectively cooperate:
 - (i) with Network Rail for the purposes of facilitating the efficient achievement of the enhancement and rebuilding programme at all relevant stations served by the Passenger Services and affected by the Crossrail Programme (including without limitation London Paddington) in accordance with the timescales for the Crossrail Programme as they might be varied from time to time and act reasonably in relation to Station Change and Network Change processes including through reasonable cooperation with TfL, Rail for London and/or the Crossrail Operator; and
 - (ii) prior to the transfer of the Crossrail Stations to the Crossrail Operator, with TfL, Rail for London and/or the Crossrail Operator in relation to the implementation of Station

Change and Network Change processes in respect of the Crossrail Stations. Any such cooperation shall include:

- (A) prior to providing a response to Network Rail or any other proposer of such Station Change, consulting TfL, Rail for London and the Crossrail Operator in relation to any Station Change process which impacts on any of the Crossrail Stations; and
 - (B) taking into account the reasonable views of TfL, Rail for London and/or the Crossrail Operator in relation to any response that the Franchisee provides to Network Rail (or any other proposer of such Station Change) in relation to any such Station Change;
- (b) fully and effectively cooperate with the Secretary of State, TfL, Network Rail, Rail for London, the Crossrail Operator and other relevant bodies specified by the Secretary of State for the purpose of developing and implementing plans for the enhancement and rebuilding of relevant stations served by the Passenger Services (including without limitation London Paddington) in connection with the Crossrail Programme;
- (c) from the commencement of the operation of passenger services by the Crossrail Operator at Maidenhead, Slough, Twyford and Reading stations (in respect of Reading, to the extent it is reasonably able, recognising that the Franchisee is not the operator of Reading Station) retail and load both ITSO and Oyster products and (subject to conclusion of relevant negotiations in relation to "contactless technology") support the agreement proposed to be entered into in relation to such contactless technology;
- (d) prior to the transfer of the Crossrail Stations to the Crossrail Operator not change the:
- (i) net number of Franchise Employees employed at the Crossrail Stations (including Franchise Employees whose duties extend to other stations) by more than 5% (whether by increase or decrease) from the net number at the Start Date without the prior consent of the Secretary of State;
 - (ii) terms and conditions of Franchise Employees employed at the Crossrail Stations (including Franchise Employees whose duties extend to other stations) except where such changes are made to the terms and conditions of all Franchise Employees of the relevant grade or category or are a result of a properly conducted promotion process without the prior consent of the Secretary of State;
- (e) after the Passenger Change Date in December 2016 not change the identity of the Franchise Employees employed at the Crossrail Stations (including Franchise Employees whose duties extend to other stations) other than for reasonable business reasons unconnected to the transfer of the Crossrail Stations to the Crossrail Operator without the prior consent of the Secretary of State;

- (f) consult with the Secretary of State in relation to any proposals that it may have to change the number, terms and conditions or (after the Passenger Change Date in December 2016) the identity of Franchise Employees employed at the Crossrail Stations (in all cases including Franchise Employees whose duties extend to other stations);
- (g) take no actions or steps which is or are designed, directly or indirectly to prevent, prejudice, or frustrate:
 - (i) the transfer of the Crossrail Stations to the Crossrail Operator (including by acting in a manner that unreasonably increases the liability transferring to the Crossrail Operator pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006); or
 - (ii) the implementation of the Crossrail Programme;
- (h) fully and effectively co-operate with the Crossrail Operator in relation to train planning, timetabling and platforming arrangements for the purpose of ensuring the efficient operation of passenger services by the Crossrail Operator; and
- (i) fully and effectively cooperate with the Crossrail Operator from the date that the Crossrail Stations transfer to it for the purpose of ensuring, subject to the terms of the relevant station access agreements, that the passengers using trains operated by the Crossrail Operator receive throughout the remainder of the Franchise Term a consistently high level of customer service and experience at both the Crossrail Stations and Slough, Maidenhead, Twyford and Reading stations (in respect of Reading, to the extent it is reasonably able, recognising that the Franchisee is not the operator of Reading Station) and accordingly the Franchisee shall make Franchise Employees engaged in customer facing activities at Slough, Maidenhead, Twyford and Reading stations available for training and briefing in common customer service and experience standards specified by the Crossrail Operator, and (ii) ensure (subject as provided in paragraph 2.3(a) of part 2 to Schedule 6.1, as if this obligation was included in Part 1 to Schedule 6.1) that Slough, Maidenhead, Twyford and Reading stations are staffed with at least one Franchisee Employee from the first train in each day to the last train in each day in order to support the provision of such customer service and experience standards.

3.7 The Franchisee shall permit train drivers employed by the Crossrail Operator to travel in the cabs of its trains for the purpose of route learning.

3.8 The Secretary of State shall have the right to notify the Franchisee that specified rights of the Secretary of State pursuant to this paragraph 3 shall be exercisable by TfL on his behalf and the Franchisee shall be required to act and perform its obligations accordingly. In the event such notification has been given and the Franchisee believes that:

- (a) there is any conflict between instructions received from TfL and instructions received from the Secretary of State; or
- (b) instructions received from TfL are inconsistent with the terms of this Franchise Agreement,

the Franchisee shall notify the Secretary of State forthwith identifying the conflict or inconsistency. The Franchisee shall act in accordance with instructions received from the Secretary of State in relation to any such matter. The Franchisee shall not be liable for any failure to act in accordance with the instructions of TfL where such a conflict or inconsistency is established to the extent that such failure was a consequence of such conflict or inconsistency.

- 3.9 In connection with the installation and maintenance of certain equipment at Slough, Maidenhead, Twyford and Reading stations for the purposes of the operation of the Crossrail Services (including in relation to driver controlled operation) the Franchisee shall (in respect of Reading, to the extent it is reasonably able, recognising that the Franchisee is not the operator of Reading Station) grant reasonable access to such stations to TfL, Rail for London or the Crossrail Operator and co-operate in relation to such installation and maintenance.
- 3.10 It is confirmed that paragraph 4.2 of Schedule 16 (Pensions) shall apply to any transfer of Franchise Employees to the Crossrail Operator in connection with the Crossrail Transfer Arrangements or other commencement of the Crossrail services. Accordingly and without limitation the Secretary of State shall ensure that the Franchisee has no liability for any pensions top-up amount payable on any such transfer of a Franchise Employee or any decrease in value of any Franchise Section (as defined in Schedule 16) as a result of any increase in transfer value applied on the transfer of any such Franchise Employee.
- 3.11 The Secretary of State shall consult with the Franchisee and consider any representations made to it by the Franchisee prior to approving:
- (a) any change to the Franchisee's position as lead operator under the Ticketing and Settlement Agreement in respect of the flows between Paddington Station and each of Reading, Twyford, Maidenhead and Slough Stations (the "**Relevant Flows**"); or
 - (b) any material change to fares structures that affect such Relevant Flows,
- in circumstances where the Secretary of State's prior consent is required to such change, provided always that any decision to provide consent shall in all cases remain at the Secretary of State's sole discretion.

4. **The Infrastructure Projects**

- 4.1 The Franchisee shall from the Start Date until the completion of each Infrastructure Project engage constructively with all relevant parties responsible for the delivery of such Infrastructure Project with the intention of assisting its timely, efficient and cost effective completion.
- 4.2 To the extent that any Infrastructure Project leads to the Franchisee having rights under railway industry procedures (including Network Change and Station Change) the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of such Infrastructure Project and the Franchisee shall not unreasonably raise any objection under any railway industry procedure (including Network Change or Station Change) and any reasonable objections shall be raised by the Franchisee in accordance with the relevant railway industry procedures. It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of the Infrastructure Projects and their implementation on passengers and the Franchise Services, while recognising the need for the Infrastructure Projects to be able to be undertaken in a reasonable manner.

- 4.3 The Secretary of State and the Franchisee each acknowledge that the Financial Model includes limited funding and compensation only in respect of elements of the delivery of the Infrastructure Projects. Accordingly and subject to avoiding any double recovery:
- (a) the Secretary of State requires the Franchisee to secure funding and compensation in relation to its compliance with paragraph 4.1 and participation in the delivery of the Infrastructure Projects and the impact of the Infrastructure Projects on the Franchise in accordance with railway industry procedures, including Network Change and Station Change as applicable; and
 - (b) the Franchisee is not restricted or prevented from exercising its rights under those industry procedures to secure such funding and compensation.
- 4.4 Where and to the extent the relevant Franchise Employees or resources are funded as contemplated by paragraph 4.3, the Franchisee shall throughout the Franchise Term allocate such appropriate Franchise Employees and other relevant resource as is reasonably required for the purposes of complying with its obligations in relation to all of the Infrastructure Projects pursuant to both this Franchise Agreement and the Access Agreements to which it is a party.
- 4.5 Where the Secretary of State notifies the Franchisee that an Infrastructure Project is sponsored by him the Franchisee shall fully and effectively co-operate with the Secretary of State in the development and amendment of the specification of such Infrastructure Project in accordance with the reasonable requirements of the Secretary of State. The Franchisee may be required to provide its opinion, as a skilled and experienced train operator, on the operational and commercial impacts (including rolling stock implications) of the proposed specification and any amendment to it and the benefits and disbenefits of different options to achieve the output specification required by the Secretary of State.
- 4.6 The Franchisee shall on or before each Infrastructure and Rolling Stock Review Date provide a detailed report complying with the reasonable requirements of the Secretary of State describing progress in relation to matters relating to each Infrastructure Project and identifying and quantifying so far as the Franchisee is reasonably able the emerging risk position in relation to each such Infrastructure Project as it affects passengers and the Franchise Services. The Franchisee shall provide such additional information as the Secretary of State shall reasonably request and if requested by the Secretary of State it shall develop such alternative and contingency plans as the Secretary of State may reasonably require for the purpose of mitigating relevant risk and ensuring that the adverse impacts on passengers and the Franchise Services of any relevant risk arising is mitigated to the greatest extent reasonably practicable.
- 4.7 **Restriction of use planning and the obligations of the Franchisee under Schedule 1.1 (Service Development), Schedule 1.2 (Operating Obligations) and Schedule 6.2 (Great Western Franchise Specific Provisions) of the Franchise Agreement**
- (a) Where the Franchisee is required to make decisions in relation to how it exercises its rights under railway industry procedures where for the purpose of delivering any Infrastructure Project Network Rail proposes to take restrictions of use or otherwise take steps that could have adverse impacts on the delivery of the Franchise Services the Franchisee shall:

- (i) act reasonably in all the circumstances (taking full account of the best interests of passengers and its obligations under this paragraph 4 of Schedule 6.2 (Great Western Franchise Specific Provisions)) and consistently with its duty under clause 5.1 of the Franchise Agreement;
 - (ii) in so acting seek to achieve a reasonable balance between avoiding excessive short term disruption to Franchise Services and ensuring that any relevant Infrastructure Project (or number of related Infrastructure Projects) is delivered in an efficient way so that the outputs of such Infrastructure Project are delivered within the planned timescale and budget and that overall disruption to Franchise Services over the life of the relevant Infrastructure Project (or number of related Infrastructure Projects) is reduced as far as reasonably practicable; and
 - (iii) in so acting seek to achieve a reasonable balance between the continued operation of through train services and the use of alternative transport modes (it being acknowledged that, as far as reasonably practicable, through train services are to be utilised in preference to alternative transport modes).
- (b) Where and to the extent the Franchisee is acting in accordance with its obligations pursuant to paragraph 4.7(a) above it shall (subject always to paragraph 4.7(c) and paragraph 4.7(d) below) be permitted to engage in discussions with Network Rail in relation to restrictions of use development and planning and accordingly in such discussions make informal proposals or counter proposals in relation to omissions, additions or rescheduling of Passenger Services within the Engineering Access Statement, the Timetable Planning Rules, Possession Strategy Proposals, the Timetable, the Train Plan or the Plan of the Day (as applicable) and to reflect the outcomes of such informal proposals and discussions in its Access Proposals provided that such proposals or counter proposals:
- (i) are consistent with the continued ability of passengers to make journeys in the Franchise area; and
 - (ii) would not if implemented alter, amend or impede the application of the established industry arrangements in relation to the payment of compensation to the Franchisee or a Successor Operator in relation to restrictions of use under any Access Agreement, Network Change or otherwise.
- (c) This paragraph 4.7 is entirely without prejudice to the provisions of paragraph 4 of Schedule 1.2 (Operating Obligations) and the parties agree that following any discussion with Network Rail of the type referred to in paragraph 4.7(a) above it shall be the responsibility of Network Rail to propose the omission of any Passenger Services from the Plan of the Day or the rescheduling of any Passenger Service in the Plan of the Day so that the provisions of paragraph 3 of Schedule 1.2 (Operating Obligations) apply.
- (d) Acting in accordance with its obligations pursuant to paragraph 4.7(a) above the Franchisee may make proposals in writing to the Secretary of

State as to how it believes that it should act for the purposes of complying with its obligations:

- (i) under Schedule 1.1 (Service Development) in relation to securing Timetable Development Rights, or the exercise of its rights under the Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail; or
- (ii) under paragraphs 7 and 8 of Schedule 14.1 (Maintenance of Franchise) in relation to a post-Franchise timetable.

Such a proposal may seek a derogation from certain specified obligations under Schedule 1.1 (Service Development) where the Franchisee believes this is reasonable and appropriate in the context of its obligations under paragraph 4.7(a) above. Any such proposal shall be as detailed and complete as is reasonably practicable in the circumstances identifying the reasons for each aspect of the proposal and the forecast consequent costs and benefits for the Franchisee and the delivery of relevant Infrastructure Projects. The Franchisee shall discuss the proposal with the Secretary of State and provide such further information as the Secretary of State shall reasonably require. The Secretary of State acting reasonably shall give due consideration to the proposal of the Franchisee.

4.8 Programme of Communication

- (a) The Franchisee shall fully and effectively co-operate with Network Rail for the purpose of agreeing and delivering a comprehensive, accurate and readily understandable programme of communication to stakeholders and potential passengers in relation to the Infrastructure Projects ("**Programme of Communication**"), reflecting the state of knowledge of such matters at the time of publication and to a level of detail appropriate for stakeholders and passengers. The Franchisee shall fully and effectively co-operate with Network Rail for the purpose of ensuring that the Programme of Communication is regularly updated as required to ensure it remains accurate as the delivery of Infrastructure Projects develops, with updates provided at least with each summer and winter timetable. The Programme of Communication shall deal with matters of reasonable concern to stakeholders and passengers including through providing information in relation to:
 - (i) short, medium and long term impacts on the Passenger Services of planned restrictions of use (including "blockades"), arrangements for bus substitution and diversion, cancellation and rescheduling of Passenger Services;
 - (ii) arrangements for handling unplanned relevant alterations to the Passenger Services including as a result of overrunning restrictions of use;
 - (iii) the purpose of relevant changes to the Passenger Services in the context of the works required to deliver the Infrastructure Projects; and

- (iv) the benefits to be delivered by the Infrastructure Projects and the dates from which such benefits are likely to be delivered.
- (b) The Programme of Communication shall use all reasonable channels of communication including notices at stations and on ticketing vending machine screens and passenger information screens, media advertising, announcements on stations and trains, briefings to Stakeholders, the circulation of leaflets and the use of appropriate "social media" platforms.
- (c) If so required by the Secretary of State the Franchisee shall consult with him in relation to the Programme of Communication and any amendments to it.
- (d) The Secretary of State and the Franchisee each acknowledge that no funding and compensation in respect of the Programme of Communication is included in the Financial Model. Accordingly:
 - (i) the Secretary of State requires the Franchisee to use all reasonable endeavours to secure funding and compensation in relation to its compliance with paragraphs 4.8(a) and 4.8(b) above in accordance with railway industry procedures, including Network Change and Station Change as applicable;
 - (ii) the Franchisee is not restricted or prevented from exercising its rights under those industry procedures to secure such funding and compensation; and
 - (iii) subject to the Franchisee's compliance with its obligation to exercise all reasonable endeavours under paragraph 4.8(d)(i) above, it is recognised that the nature and extent of the Franchisee's cooperation in the Programme of Communication will depend on the funding and compensation which it is able to secure through the relevant railway industry procedures.
- (e) Without prejudice to the provisions of paragraph 4.8(a) above, where and to the extent the relevant resources are funded as contemplated by paragraph 4.8(d) above, the Franchisee shall throughout the Franchise Term allocate such relevant resource as is reasonably required for the purposes of complying with its obligations in relation to the Programme of Communication and related communication obligations pursuant to this paragraph 4.8 and railway industry procedures including Network Change and Station Change as applicable.

4.9 For the purposes of this paragraph 4:

- (a) **"Infrastructure Project"** means any of the following infrastructure projects:
 - (i) Great Western Electrification Programme (as this may be amended and varied from time to time);
 - (ii) the programme of infrastructure improvements to increase capacity and improve performance in and around Reading, including improvements at Reading Station;

- (iii) the redevelopment of the Depot located at Reading;
- (iv) the installation of the 25kV wiring on the freight route from Southampton Port to Reading via Basingstoke connecting to existing wiring via Didcot to the West Midlands and via Oxford, Bletchley and Bedford to the Midland main line;
- (v) the gauge enhancement of the Great Western main line;
- (vi) the capacity improvements on the route between Southampton and the West Coast Main Line;
- (vii) the re-signalling programme on the Great Western route including through the implementation of the European Train Control System;
- (viii) the programme to increase capacity, route availability and higher line speeds on the Oxford corridor and at Oxford Station;
- (ix) the programme of infrastructure improvements to reduce journey times, and increase service frequency of trains in and around Bristol including the proposed remodelling of Bristol Temple Meads Station;
- (x) the provision of a turn back facility at the Station located at Hereford;
- (xi) the implementation of the scheme known as "Heathrow Airport – Access from London and from the West" as more particularly described in the high level output statement published by the Department for Transport on 16 July 2012;
- (xii) the project known as "East West Rail" for the rebuilding of a railway route between Oxford and Bletchley and the reintroduction of passenger services following reopening;
- (xiii) infrastructure works to the Paddington approaches and remodelling works;
- (xiv) infrastructure enhancements and alterations to support the Intercity Express Programme;
- (xv) Crossrail works between Paddington and Maidenhead and Reading (inclusive);
- (xvi) the project known as "HS2 Project" for the construction and development of a proposed high speed railway from London to Birmingham and the north known as "HS2" or "High Speed Two" and all related infrastructure works (including but not limited to enabling works at Old Oak Common);
- (xvii) main line re-signalling works between Totnes and Penzance; and
- (xviii) such other infrastructure enhancement projects which impact on the routes over which the Passenger Services are

operated and which are required to be delivered in consequence of a high level output specification or the operation of the high level output specification change process as are notified to the Franchisee by the Secretary of State from time to time.

5. Co-operation with third party promoted franchise schemes

5.1 The Franchisee shall fully and effectively co-operate with Devon County Council and Network Rail and act reasonably and in good faith in its engagement with them in relation to the Bere Alston - Tavistock line reopening project and the proposal to operate the Tavistock to Plymouth Passenger Services (being the railway passenger services to be provided between Tavistock and Plymouth if the Tavistock to Bere Alston route is reopened). The obligation to co-operate pursuant to this paragraph 5.1 shall include the Franchisee carrying out in a timely manner all the activities and actions reasonably required to be carried out or taken by a Train Operator which is the principal operator of passenger services over a new railway route.

5.2 The Franchisee shall fully and effectively co-operate with relevant Local Authorities and/or other interested bodies (each being a "**Sponsor**") and with Network Rail and act reasonably and in good faith in its engagement with each of them in relation to the following third party promoted franchise schemes:

(a) **Bodmin Parkway to Bodmin General**

establishment of regular Franchise Services over the heritage railway between Bodmin General and Bodmin Parkway. The Franchisee will work with Cornwall Council and other relevant bodies to explore the potential for this with an initial feasibility study to be produced by 31 March 2016;

(b) **MetroWest (formerly Bristol Metro)**

(i) development and delivery of the "MetroWest Phase 1" and "MetroWest Phase 2" propositions, to create a 'metro' style, frequent service proposition on routes into and across Bristol eventually serving the Bristol travel to work area between Yate, Bath Spa, Weston Super Mare and Severn Beach;

(ii) reopening of the Portishead line to passengers and delivery of a half-hourly service in each direction on the "Severn Beach Line", in combination with hourly services in each direction on a reopened "Henbury Line", including the potential opening of a new station at either Ashley Down or Horfield/Constable Road; and

(iii) the potential opening of new stations at Portway Park & Ride, Ashton Gate and Saltford,

The target completion date for MetroWest Phase 1 is the Passenger Change Date in May 2019. The Sponsor of MetroWest is the "West of England Partnership". As regards the potential opening of the new stations, the Sponsors are Bristol City Council for Portway Park & Ride, Ashley Down, Horfield/Constable Road and Bath and North East Somerset Council for Saltford;

(c) **Devon Metro**

to the extent not already delivered pursuant to the Service Level Commitment:

- (i) development and delivery of the "Devon Metro Phase 1" propositions from the Passenger Change Date occurring in December 2017 (SLC2), involving the provision in each direction of half hourly 'clockface' services between Exmouth and Paignton via Exeter. This will expand on the current Exeter / Newton-Abbot to Paignton Interreg-funded incremental service as part of an overall 'metro' proposition on routes into and across Exeter, from Barnstaple, Okehampton and Axminster, a 7 day timetable on local services, selected train lengthening, one train per hour between Exeter and Bristol, and opening of new stations at Cranbrook, Newcourt, Marsh Barton and Edginswell; and
- (ii) development and delivery of the "Devon Metro Phase 2" proposition of two trains per hour in each direction from Exeter to Honiton (or Axminster) from the Passenger Change Date in December 2018 (SLC3(a) or SLC3(b) (as applicable)),

The Sponsors of Devon Metro are Devon County Council and Torbay Council. As regards the potential opening of the new stations the Sponsors are Devon County Council for Cranbrook and Newcourt, Devon County Council and the Heart of the South West Local Enterprise Partnership for Marsh Barton and Torbay Council and the Heart of the South West Local Enterprise Partnership for Edginswell;

(d) **Increased branch line services with less than hourly frequency**(i) **Cornish branch lines**

provision of a minimum of an hourly, integrated timetable on all Cornish branch lines to permit reasonable connections with the main line Passenger Services (it being acknowledged that discussions in relation to the delivery of certain enhancements to the Looe Valley line summer service pattern have commenced during the term of the Previous Franchise Agreement). The target completion date is the Passenger Change Date in December 2018 and the Sponsor is Cornwall Council;

(ii) **Henley branch line**

an increase in the number of Sunday services operating on the Henley branch line, where commercially and operationally viable. The target completion date is as soon as reasonably practicable;

(e) **Development of new stations and station reopening**(i) **Edginswell new station**

creation of a new station at Edginswell pursuant to the "Heart of the South West: Growth Deal 2014" announced in July 2014. The target completion date is December 2017 and the Sponsors are Torbay Council and the Heart of the South West Local Enterprise Partnership;

(ii) **Corsham station**

reopening of Corsham station as set out in the "Swindon and Wiltshire Strategic Economic Plan". The target completion date is 2020 and the Sponsor is Wiltshire Council;

(iii) **Worcestershire Parkway new station**

creation of a new "Worcestershire Parkway" station. The target completion date is May 2017 and the Sponsor is Worcestershire County Council;

(iv) **Reading Green Park new station**

creation of a new "Reading Green Park" station. The target completion date is December 2018 and the Sponsor is Reading Borough Council; and

(v) **Marsh Barton new station**

creation of a new "Marsh Barton" station. The target completion date is December 2017 and the Sponsors are Devon County Council and the Heart of the South West Local Enterprise Partnership;

(f) **Other schemes**

(i) **West Cornwall Interchange**

completion of various works at St Erth Station (including the remodelling of the St Ives bay platform). The target completion date is 1 April 2017 and the Sponsors are Cornwall Council and Cornwall and Isles of Scilly Local Enterprise Partnership; and

(g) **Local Growth Fund Schemes**

- (i) the design and delivery of Local Growth Fund supported schemes, including Penzance, Truro and Paddington sleeper lounge works, Truro car park works, Penzance platform 4 canopy works, installation of Wi-Fi at Cornish stations, Dorking Deepdene station works, Marlow-Maidenhead branch station works, Didcot Parkway car park works and works affecting the stations at Langley, Burnham Iver, Taplow and Chippenham and/or their environs.

5.3 The obligation to co-operate pursuant to this paragraph 5 shall include the Franchisee carrying out in a timely manner all the activities and actions reasonably

required to be carried out or taken by a Train Operator which is the principal operator of passenger services over a new railway route.

- 5.4 Where instructed to do so by the Secretary of State the Franchisee shall co-operate in good faith with the Secretary of State, Network Rail and any relevant Sponsor in relation to any scheme to reopen or divert any rail route.
- 5.5 The Franchisee shall fully and effectively co-operate with the Secretary of State, Network Rail and any relevant Sponsor to assess the commercial and operational viability of additional station calls which such third parties wish to sponsor.
- 5.6 The Franchisee shall co-operate in good faith with any relevant Sponsor that seeks to promote a scheme for the provision of additional, varied and/or enhanced Passenger Services including by attending meetings and contributing to feasibility schemes and project plans and liaising with relevant industry participants including Network Rail. This paragraph does not oblige the Franchisee to incur any cost in the actual provision of revised Passenger Services.
- 5.7 The Franchisee shall at all times during the Franchise Term fully and effectively co-operate with the Secretary of State, Network Rail, any Local Authority or any relevant third party in the development of plans and proposals to enhance existing stations and open New Stations. The obligation to co-operate pursuant to this paragraph 5 shall include the Franchisee carrying out in a timely manner all the activities and actions reasonably required to be carried out or taken by a Train Operator who is the facility owner at a station including attending meetings with the Secretary of State, Network Rail, a Local Authority or a relevant third party (as the case may be), review and comment on the implementation timetables and programmes for the development of a New Station and use reasonable endeavours to achieve any necessary amendments to any Station Lease or enter into new station leases as may be required for the purposes of the development and implementation of any such New Station.

6. **REBS**

Where participation in a Route Efficiency Benefit Share Mechanism is made available to the Franchisee under a Track Access Agreement, the Franchisee must elect not to participate in such mechanism for all of its routes. Should the Franchisee for any reason fail to comply with this requirement and participate in such a mechanism, then the Secretary of State reserves the right to fully recover from the Franchisee any financial benefits paid to it under the mechanism and the Franchisee agrees that the Secretary of State shall be entitled to receive details of those benefits from Network Rail or any other relevant party.

7. **Possible use of unspent amounts**

It is acknowledged that pursuant to the 2005 Franchise Agreement and the Previous Franchise Agreement certain amounts not actually spent which were expected to be spent may at the unqualified discretion of the Secretary of State become available to deliver enhancements and improvements with an appropriate business case pursuant to the Franchise Agreement as an alternative to them being repaid to the Secretary of State. Without prejudice to such unqualified discretion of the Secretary of State the Franchisee may propose potential enhancements and improvements supported by a business case.

8. **Enhancement Fund**

If during the Franchise Term, the Secretary of State sets up a fund for the enhancement of any assets used in relation to the Franchise Services, set up by the Secretary of State or funded through the Network Rail regulatory asset base and approved by the Secretary of State, (an "**Enhancement Fund**"), the Franchisee shall develop plans for appropriate enhancements, apply for funding from such Enhancement Fund and if such application is successful either deliver such enhancements if and to the extent the Franchisee is able to undertake such delivery during the Franchise Term or commence delivery and make arrangements consistent with transfer to a Successor Operator to complete after the end of the Franchise Term. The Franchisee shall liaise in good faith with the Secretary of State for the purposes of considering potential enhancements and their suitability for delivery by means of funding from an Enhancement Fund.

9. **The HS2 Project**

9.1 Without prejudice to the generality of its obligations in respect of the Infrastructure Projects under paragraph 4 of this Schedule 6.2, the Franchisee shall in good faith:

- (a) co-operate and engage constructively with Network Rail, the Secretary of State, HS2 Ltd, TfL, Heathrow Airport Limited and/or any other third party relevant to the HS2 Project with the intention of assisting the timely, efficient and cost effective delivery of the HS2 Project; and
- (b) participate actively in planning for the HS2 Project to be implemented in a way which provides the best overall solution for the network by minimising disruption to Passenger Services and leading and delivering excellent and comprehensive communication with customers whilst maximising value for money to the taxpayer by minimising overall industry costs of the HS2 Project,

in each case taking into account the Secretary of State's and HS2 Limited's objective of the Franchisee ceasing to operate, wholly or partially, at Old Oak Common depot by the Passenger Change Date in December 2016.

9.2 The parties acknowledge that the Secretary of State is seeking, through the Hybrid Bill being considered by Parliament at the date of this Franchise Agreement, to secure powers to construct HS2. The HS2 Project anticipates a new interchange station being built at Old Oak Common ("**OOC**"), and the expeditious relocation of the Franchisee's operations at OOC is a key requirement to enable HS2 Ltd to maintain its construction programme to ensure HS2 Phase 1 services commence operations from 2026. The current construction programme for the new HS2 interchange station at OOC requires the Franchisee's operations at Old Oak Common Depot to be relocated by the Passenger Change Date in December 2016 in advance of the site being made available to Network Rail to decommission its railway assets.

9.3 Notwithstanding the above, and subject to paragraph 9.4, as at the date of this Franchise Agreement the Financial Model assumes that the Franchisee shall cease to be the Facility Owner at Old Oak Common Depot by the Passenger Change Date in December 2018 and accordingly the Franchisee shall cease to be the Facility Owner by such date.

9.4 The parties acknowledge that there are ongoing works and planning discussions being carried out between the Secretary of State, the Franchisee, HS2 Ltd, Network Rail and other relevant third parties to identify a series of interventions

and the potential creation of alternative facilities to enable the Franchisee to cease its operations at Old Oak Common Depot, wholly or partially, by the Passenger Change Date in December 2016 or as soon as reasonably practicable thereafter to support the meeting of the objective set out in paragraph 9.2 while mitigating the impact on passengers and the Franchise Services of the Franchisee relocating its operations from the Old Oak Common Depot before the Passenger Change Date in December 2018 (subject to the Secretary of State's rights to amend the Franchise Services in accordance with other provisions of this Franchise Agreement). It is further acknowledged that:

- (a) under the Previous Franchise Agreement, the Franchisee has given commitments and been provided with funding and compensation in respect of elements of the following works to facilitate the potential vacation of the Old Oak Common Depot in advance of the Passenger Change Date in December 2018:
 - (i) "Stage 1" of works in respect of the procurement of a new wheel lathe facility at Reading Depot;
 - (ii) an HST fuelling point at Worcester Depot;
 - (iii) the Sleeper Depot Works (as defined in paragraph 17.2 of this Schedule 6.2 (Great Western Franchise Specific Provisions)), it being acknowledged that such works have been funded from third party sources;
 - (iv) feasibility studies in relation to options covering all or part of the HST maintenance, HST stabling, Class 180 and Class 08 maintenance and stabling and day time stabling and train care of the sleeper train in support of the vacation of the Old Oak Common Depot site;
 - (v) provision of replacement stabling at West Ealing; and
 - (vi) initial assessment of options for the Heathrow Express fleet to move from the Old Oak Common Depot; but
- (b) to the extent that the Franchisee is requested to carry out further activities and works, and to incur additional costs, to enable its ceasing to operate, wholly or partially, at Old Oak Common Depot by the Passenger Change Date in December 2016 (or by such other date prior to the Passenger Change Date in December 2018), it is intended that the Committed Obligations and funding and compensation arrangements related to such activities and works shall be agreed by way of Variation to the Previous Franchise Agreement and/or this Franchise Agreement (as applicable) at the relevant time. As at the date of this Franchise Agreement, such Variations are expected to include "Stage 2" of works in respect of the procurement of a new wheel lathe facility at Reading Depot.

9.5 Notwithstanding paragraph 11 of Schedule 13 (Information and Industry Initiatives), where the Franchisee is considering entering into an alliance or cooperation agreement with Network Rail, HS2 Limited and/or any other relevant third party in relation to the HS2 Project or the Franchisee or an Affiliate is considering entering into an agreement to provide services (including consultancy services) in relation to the HS2 Project (an "**HS2 Project Agreement**") the Franchisee shall provide such information, updates and reports on the progress of its negotiation of any HS2 Project Agreement as the Secretary of State may

reasonably require and meet with the Secretary of State to discuss the progress of the negotiations when reasonably requested to do so.

- 9.6 On reaching agreement in principle with Network Rail or HS2 Limited (and/or any other third party to the HS2 Project Agreement) on the terms of any HS2 Project Agreement the Franchisee shall present the draft HS2 Project Agreement to the Secretary of State for approval and shall not enter into (and shall procure that no Affiliate shall enter into) any such agreement without the prior written consent of the Secretary of State (which shall not be unreasonably withheld or delayed). The parties acknowledge that it shall be reasonable for the Secretary of State to withhold his consent to a draft HS2 Project Agreement where such agreement would result in the Franchisee being compensated for a matter which it is already compensated for under industry mechanisms or this Franchise Agreement.

10. **ERTMS Programme**

10.1

(a) The Franchisee shall:

- (i) from the Start Date until completion of the implementation of the ERTMS Programme co-operate in good faith with the relevant third parties involved in the implementation of the ERTMS Programme (including Network Rail and the relevant rolling stock providers) with the intention of ensuring its timely, efficient and cost effective completion and, in particular assisting in the development and implementation of the programme for the design and fitment of the relevant ERTMS equipment on the first rolling stock unit of each class of rolling stock comprised in the Train Fleet and used for the purposes of operating the Passenger Services on the ERTMS Enabled Network (the "**First in Class Unit**") and the testing and commissioning of such equipment on each First in Class Unit. It is acknowledged by the Secretary of State and the Franchisee that Network Rail is responsible for the capital costs for the design and fitment of the relevant ERTMS equipment on each First in Class Unit;
- (ii) prepare and submit a plan to the Secretary of State within six months of the Start Date (and keep such plan under review and provide an updated plan to the Secretary of State on a quarterly basis) which addresses how it will deliver those activities for the implementation of the ERTMS Programme for which it is responsible including:
- (A) the training of Franchise Employees who are drivers and other relevant Franchise Employees;
- (B) the obtaining of such approvals and consents as may be required for the retro fitment of the relevant equipment to the other rolling stock units (other than the First In Class Units) comprised in the Train Fleet as are to be used for the operation of the Passenger Services on the ERTMS Enabled Network (the "**Affected Train Fleet**");

- (C) the installation, testing and commissioning of the relevant ERTMS equipment on each unit comprised in the Affected Train Fleet; and
 - (D) the maintenance of any such ERTMS equipment fitted on the Affected Fleet and the First in Class Units,
- (the "**Franchisee ERTMS Plan**").

Any Franchisee ERTMS Plan prepared by the Franchisee pursuant to this paragraph shall be prepared on the basis that is consistent with the Proposed ERTMS Implementation Plan;

- (iii) implement the Franchisee ERTMS Plan in accordance with its terms; and
 - (iv) following the implementation of ERTMS on any part of the routes specified in the Proposed ERTMS Implementation Plan (the "**ERTMS Enabled Network**") co-operate, in good faith, with Network Rail, the lessors of the Affected Train Fleet and the First in Class Units and other relevant third parties, with a view to ensuring the on-going efficient operation of the Passenger Services operated on the ERTMS Enabled Network including by working together with Network Rail, the lessors of the Affected Train Fleet and the other relevant third parties to resolve any compatibility issues that may arise between the train borne equipment and the trackside equipment.
- (b) If at any time the Secretary of State (acting reasonably) is satisfied that the Franchisee has not complied or is not likely to comply with its obligations in this paragraph 10.1 he may at his discretion, and entirely without prejudice to his other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 1.1 of Schedule 10.1 (Remedial Plans and Remedial Agreements).

10.2 The Franchisee shall at the request of the Secretary of State provide to him (as soon as reasonably practicable and in any event within five Weekdays following the receipt by the Franchisee of any such request) such information (including progress reports and the latest Franchisee ERTMS Plan as at the date of such request) as the Secretary of State may reasonably require in relation to the implementation of the ERTMS Programme including for the purposes of:

- (a) satisfying himself that:
 - (i) the Franchisee ERTMS Plan is robust and deliverable; and
 - (ii) the implementation of the ERTMS Programme is being undertaken in accordance with the Proposed ERTMS Implementation Plan; and
- (b) reporting on progress in relation to matters relating to the implementation of the ERTMS Programme (including progress on the implementation of the Franchisee ERTMS Plan).

The Franchisee shall, upon reasonable notice, attend any such meeting as the Secretary of State may reasonably require for the purposes of discussing and explaining the Franchisee ERTMS Plan (including progress on the implementation of such plan).

- 10.3 Within one year following the implementation of ERTMS on the ERTMS Enabled Network, the Franchisee shall carry out with Network Rail a detailed review of track side failures since the implementation of ERTMS on the ERTMS Enabled Network and submit such report to the Secretary of State in such format as the Secretary of State may (acting reasonably) specify.
- 10.4 The Franchisee shall use all reasonable endeavours to ensure that any Track Access Agreement that it enters into with Network Rail reflects the following principles:
- (a) there will be no right for the Franchisee to claim compensation from Network Rail under Condition G.2 of the Network Code in relation to the direct or indirect consequences of any and all impacts on the Passenger Services due to the implementation of the ERTMS Programme except in the circumstances provided in paragraph 10.4(b) ("**Network Change Compensation Claims**"); and
 - (b) the Franchisee will have the right to claim under Condition G.2 of the Network Code for any additional costs it incurs where there is a material change to the actual implementation plans (including the relevant timescales for the delivery of such plans) adopted by Network Rail in respect of the ERTMS Programme when compared to the plans as specified in the Proposed ERTMS Implementation Plan except where such material change is wholly attributable to the actions or inactions of the Franchisee.
- 10.5 If and to the extent that the Track Access Agreement entered into by the Franchisee does not reflect any of the principles set out in paragraph 10.4 including as a result of:
- (a) the Franchisee not being able to obtain the ORR's approval to any such terms; or
 - (b) the Franchisee not complying with its obligations under paragraph 10.4 and entirely without prejudice to the other rights the Secretary of State may have under the Franchise Agreement consequent upon a contravention by the Franchisee of the provisions of paragraph 10.4,
- then the Franchisee shall immediately pay to the Secretary of State (as a debt), an amount equal to any amounts received by the Franchisee from Network Rail in respect of any Network Change Compensation Claim(s) other than any Network Change Compensation Claim(s) in the circumstances described in paragraph 10.4(b). Any amounts payable by the Franchisee to the Secretary of State pursuant to this paragraph 10.5 shall be paid on the next Payment Date following receipt by the Franchisee of any such amounts from Network Rail or where no such Payment Date exists shall be paid within 30 days of receipt by the Franchisee of any such amounts from Network Rail.
- 10.6 Notwithstanding the other provisions of this paragraph and subject to any subsequent variation to the Train Fleet, it is acknowledged that:

- (a) during the Franchise Period the only rolling stock in the Train Fleet falling within the definition of Affected Train Fleet is the Class 387 Entire Fleet together with:
 - (i) where the Secretary of State does not instruct the Franchisee to proceed to complete the West of England Rolling Stock Procurement Process pursuant to paragraph 18 of Schedule 6.2 (Great Western Franchise Specific Obligations), the HST sets which in those circumstances are to remain in the Train Fleet to the end of the Franchise Term; and
 - (ii) where the Secretary of State does instruct the Franchisee to proceed to complete the West of England Rolling Stock Procurement Process pursuant to paragraph 18 of Schedule 6.2 (Great Western Franchise Specific Obligations), the new trains procured pursuant to the West of England Rolling Stock Procurement Process; and
- (b) the Franchisee is not responsible for the fitment of ERTMS to any other rolling stock in the Train Fleet.

11. Preparation for Remapping

- 11.1 If instructed to do so by the Secretary of State the Franchisee shall fully and effectively co-operate in good faith with the Secretary of State in relation to any proposal to remap any part of the Franchise Services including by preparing feasibility studies to any specification provided by the Secretary of State.
- 11.2 The Franchisee shall comply with the reasonable requirements of the Secretary of State in relation to the proposed transfer of any Franchise Services to a Remapped Franchisee. The Franchisee's obligations pursuant to this paragraph 11 shall include:
 - (a) upon reasonable notice, attending meetings with the Secretary of State to discuss and provide an opinion on any relevant issues;
 - (b) providing information, data, reports and analysis reasonably required by the Secretary of State in relation to assessing the implications of the proposed transfer of any such Franchise Services to a Remapped Franchisee; and
 - (c) reviewing and commenting on implementation timetables and programmes for the proposed transfer of any such Franchise Services to a Remapped Franchisee.
- 11.3 Without prejudice to the provisions of Schedule 15.1 (Reletting Provisions) it is acknowledged that it is anticipated that any implementation of remapping required to be undertaken during the Franchise Period (for example, by way of undertaking a reorganisation to support remapping) would be subject to a Variation.

12. Severn Beach Line Fares

In accordance with the results of a review carried out by the Franchisee pursuant to an obligation under the Previous Franchise Agreement and agreed by the Secretary of State, and save to the extent already carried out under the Previous Franchise Agreement or as may be requisite in the light of changing circumstances, the Franchisee shall as soon as reasonably practicable or to a timescale agreed

with the Sponsor of the MetroWest project reprice Fares in relation to journeys on the Severn Beach Line. The Secretary of State acknowledges that some amendment to the regulated Fares regime may be required and that repricing will be subject to the necessary changes being made to the regime.

13. **Anticipated Variations and other changes**

13.1 Pursuant to the rights of the Secretary of State under the Franchise Agreement including paragraph 1.1 of Schedule 9.5 (Variations and Incentivising Beneficial Changes) and otherwise the Franchisee acknowledges that the following matters may require amendment to the Franchise Agreement during the Franchise Term:

- (a) the implementation of a "single leg pricing" trial in respect of the London Paddington to Chippenham route, provided that the terms of such trial shall be agreed in good faith between the parties prior to the Start Date with it being at the Secretary of State's absolute discretion as to whether or not such trial shall proceed;
- (b) the implementation of any of the potential rolling stock projects referred to in paragraph 12 of part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);
- (c) if pursuant to paragraph 9 of Schedule 6.2 (Great Western Franchise Specific Projects) the Franchisee is requested to carry out further activities and works, and to incur additional costs, to enable its ceasing to operate, wholly or partially, at Old Oak Common Depot by the Passenger Change Date in December 2016 (or by such other date prior to the Passenger Change Date in December 2018);
- (d) any implementation of remapping required to be undertaken during the Franchise Period pursuant to paragraph 11 of Schedule 6.2 (Great Western Franchise Specific Provisions); and
- (e) any implementation of a revised Passenger's Charter including "delay repay" passenger compensation provisions (or such other passenger compensation provisions as may be proposed by the Secretary of State) pursuant to paragraph 4.8 of Schedule 1.4 (Passenger Facing Obligations).

14. **Heathrow Connect**

14.1 The Franchisee shall enter into a Track Access Agreement (or extend an existing Track Access Agreement) in respect of the timetabled Heathrow Connect services up to the Passenger Change Date in May 2018, unless otherwise directed by the Secretary of State.

14.2 The Franchisee shall not without the prior written permission of the Secretary of State enter into any contracts, agreements or operational arrangements in relation to the Heathrow Connect services (including any Track Access Agreement) where such contracts, agreements or operational arrangements are not:

- (a) terminable by the Franchisee on the Passenger Change Date in May 2018; and
- (b) at the Franchisee's option, capable of being extended beyond the Passenger Change Date in May 2018 for a period up to and including the Expiry Date,

provided that the Secretary of State will not unreasonably withhold consent to such arrangements where the Franchisee has used all reasonable endeavours to secure as long an extension option as it is reasonably able up to the Expiry Date.

- 14.3 The Secretary of State shall have the right at any time up to and including the Passenger Change Date in May 2018 to direct the Franchisee to either terminate or extend any contract, agreement or operational arrangement in relation to the Heathrow Connect services pursuant to paragraph 14.2(a) or 14.2(b) (as applicable). Without prejudice to any Change arising out of an amendment to the Service Level Commitment pursuant to paragraph 9.6 of Schedule 1.1 (Service Development), any direction by the Secretary of State pursuant to this paragraph 14.3 shall not be a Change for the purposes of this Franchise Agreement.

15. **Exercise of break rights in Stations Transfer Contracts**

The Franchisee agrees that it shall, if requested by the Secretary of State, exercise its right to terminate all or any of the Station Transfer Contracts provided that it shall not be required to do so unless the Secretary of State first agrees to the consequences of such exercise being treated as a Qualifying Change and any applicable adjustments to Franchise Payments being made accordingly.

16. **Class 387 Units**

Entry into the Class 387 Lease and related agreements

- 16.1 In accordance with the provisions of Table 2 of Schedule 1.7 (The Train Fleet) the Class 387 Units shall be leased by the Franchisee and become part of the Train Fleet from the date specified in Table 2 in relation to each relevant Class 387 Unit (the "**Scheduled Delivery Date**"). Accordingly the Franchisee shall on or before **15 May 2015**^{280 xxii xxiii} (or such earlier or later date as the Secretary of State may direct) enter into:

- (a) a lease with Porterbrook Leasing Company Limited, such lease:
- (i) to provide for the leasing of each Class 387 Unit to commence simultaneously with the termination of the leasing of each such Class 387 Unit under the Class 387 TSGN Lease;
 - (ii) to be in the same form as the Class 387 TSGN Lease except for amendments that are necessary to correct any fact, matter or thing that is incorrect on the face of the Class 387 TSGN Lease in relation to the identity of, address and contact details of the Franchisee; and
 - (iii) to have a scheduled expiry date of 19 September 2021, (the "**Class 387 Lease**");
- (b) a maintenance reserve agreement with Porterbrook Leasing Company Limited, such maintenance reserve agreement to be in the same form as the Class 387 Maintenance Reserve Agreement except for amendments that are necessary to correct any fact, matter or thing that is incorrect on

²⁸⁰ **Date of contract change 30/04/2015 – Agreed by the Secretary of State and Franchisee.**

the face of the Class 387 TSGN Lease in relation to the identity of, address and contact details of the Franchisee;

- (c) a letter agreement with Porterbrook Leasing Company Limited, Porterbrook Leasing Mid Company Limited, Govia Thameslink Railway Limited ("**GTRL**") and Bombardier Transportation UK Limited such letter agreement to, at least, provide for:
- (i) the assignment in equity of the benefit of certain provisions of the Class 387 MSA from GTRL to the Franchisee; and
 - (ii) the novation of the future rights and liabilities of GTRL under the Class 387 MSA to the Franchisee immediately upon the date on which the last Class 387 Unit is delivered to the Franchisee under the Class 387 Lease,

the agreements referred to in paragraphs 16.1(a) and (b), together with the Class 387 MSA, being the "**Relevant Class 387 Documents**" (and "**Relevant Class 387 Document**" shall mean any of them).

Obligations in relation to the transfer and deployment of the Class 387 Units

- 16.2 The Franchisee shall ensure that it makes appropriate arrangements to ensure that its Depots are equipped and staffed by suitably skilled Franchise Employees to enable the Class 387 Units to be effectively maintained and, where required, repaired in accordance with engineering good practice and the recommendations of the manufacturer and consistently with the effective delivery of the Passenger Services.
- 16.3 The Franchisee shall fully and effectively cooperate with GTRL, the Secretary of State and the owner of the Class 387 Units for the purposes of facilitating an efficient transfer of the Class 387 Units to the Franchisee in accordance with planned timescales.
- 16.4 The Franchisee shall fully and effectively co-operate with Network Rail for the purposes of ensuring that:
- (a) relevant Depots are equipped with operational over head line equipment to planned timescales; and
 - (b) appropriate stabling facilities for the Class 387 Units are completed in accordance with relevant plans in relation to the Great Western Electrification Programme.
- 16.5
- (a) The Franchisee acknowledges that the Class 387 Units are to be deployed over newly electrified routes and that it will be necessary to ensure that:
 - (i) newly installed overhead line equipment is properly tested and compatible with the traction and other equipment of the Class 387 Units;
 - (ii) that the Class 387 Units achieve all required approvals and consents to enable them to operate in passenger carrying service over relevant routes over which the Passenger Services operate or may be diverted.

- (b) Accordingly the Franchisee shall:
- (i) take all of the steps necessary to meet its obligations in relation to such matters (including by complying with the requirements of "Railway Group Standard GE/RT8270 Issue 2 – Assessment of Compatibility of Rolling Stock and Infrastructure" and any amended or replacement requirements and obtaining "vehicle change" pursuant to its Track Access Agreement); and
 - (ii) fully and effectively co-operate with Network Rail for the purposes of facilitating Network Rail meeting its relevant obligations.
- (c) Accordingly the Franchisee shall ensure that it allocates a reasonably appropriate number of suitably trained Franchise Employees to the delivery of relevant tasks and actions.

Transfer or termination of the Relevant Class 387 Documents at the end of the Franchise Term

16.6 The Secretary of State and the Franchisee acknowledge that the Class 387 Lease will have a scheduled expiry date falling after the Expiry Date.

16.7 Accordingly, the Secretary of State shall have the right, exercisable at any time prior to the Expiry Date by notice in writing to the Franchisee, to require the Franchisee to:

- (a) either:
- (i) terminate the Class 387 Lease and the associated maintenance reserve agreement referred to in paragraph 16.1(b), such terminations to take effect as at the Expiry Date; or
 - (ii) enter into novation agreements for the purposes of transferring the Franchisee's future rights and future obligations under each of the Class 387 Lease and the associated maintenance reserve agreement referred to in paragraph 16.1(b) to a Train Operator nominated by the Secretary of State, such novations to take effect as at the Expiry Date; and
- (b) enter into a novation agreement for the purposes of transferring the Franchisee's future rights and future obligations under the Class 387 MSA to a Train Operator nominated by the Secretary of State, such novation to take effect as at the Expiry Date,

and any novation pursuant to paragraph 16.7(a)(ii) or 16.7(b) shall be on such terms as the Secretary of State may reasonably require, including that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation under any agreement that is to be novated pursuant to any of paragraph 16.7(a)(ii) or 16.7(b) or any liability in respect of any act or omission under or in relation to any such agreement (except to the extent that the relevant transferee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation).

17. **Cornwall Rail Improvements Package**

17.1 This paragraph 17 relates to the arrangements relating to the Cornwall Rail Improvements Package under paragraph 8 of Part 1 to Schedule 6.1 of the Previous Franchise Agreement, with terms defined in the Previous Franchise Agreement having the same meanings in this paragraph unless the context otherwise requires.

17.2 In this paragraph 17, unless the context otherwise requires:

"Baseline Sleeper Works"	means the works referenced in paragraph 7 of Part 1 of Schedule 6.1 to the Previous Franchise Agreement for the carrying out of C3 exam and vehicle skirt overhaul activities in relation to Mark III Sleeper vehicles;
"Cornwall Council"	means the Cornwall Council whose principal address is at New County Hall, Treyew Road, Truro, Cornwall, TR1 3AY;
"Cornwall Rail Improvements Package"	means the package together comprising the Long Rock Works, the Night Riviera Upgrade and the Signalling Upgrade Works;
"Long Rock Depot"	means the maintenance depot known as Long Rock depot which is leased by Network Rail to the Franchisee pursuant to a Depot Lease dated 18 October 2013 and more particularly identified in the Depot Specific Annexes with ORR reference DSA/09/06/95/01;
"Long Rock Enhanced Capabilities"	means a proposal to enhance the facilities at the Long Rock Depot over and above the Sleeper Depot Works to support a future aspiration for the Franchisee or a Successor Operator to operate half-hourly local services;
"Long Rock Grant Funding Agreement"	means the Grant Funding Agreement made between Cornwall Council and the Franchisee in respect of the Long Rock Works dated 19 September 2014;
"Long Rock Works"	means the Sleeper Depot Works and the Long Rock Enhanced Capabilities;
"Night Riviera Grant Funding Agreement"	means the Grant Funding Agreement made between Cornwall Council and the Franchisee in respect of the Night Riviera Upgrade dated 19 September 2014;
"Night Riviera Upgrade"	means a reconfigured and upgraded café, upgraded cabins and refreshed external livery and branding for the Sleeper, which is a distinct further upgrade to the Baseline Sleeper Works;
"Old Oak Common"	means the maintenance depot known as Old Oak Common depot which is leased by Network Rail to

the Franchisee pursuant to a Depot Lease dated 18 October 2013 and more particularly identified in the Depot Specific Annexes with ORR reference DSA/09/05/95/01;

"Signalling Upgrade Works"

means a scheme to accelerate the replacement of signalling between Totnes and Penzance which would deliver increased capacity and potential journey time improvements to Cornwall;

"Sleeper"

means the Class 57 locomotives and sleeper carriages operated by the Franchisee serving Cornwall;

"Sleeper Depot Works"

means the minimum incremental works required to provide alternative facilities and associated equipment to allow the relocation of the Sleeper maintenance operation from OOC to Long Rock Depot; and

"Umbrella Agreement"

means the Umbrella Agreement made between the Secretary of State, Cornwall Council and the Franchisee in respect of the Cornwall Rail Improvements Package dated 19 September 2014.

- 17.3 Where during the Franchise Term the Franchisee undertakes planning relevant to the operation of the Sleeper from ²⁸¹**10 December 2017**, the Franchisee shall plan to transfer the maintenance of the Sleeper (up to and including Level 4) to Long Rock Depot from no later than ²⁸²**10 December 2017**, with the transfer subject to completion of the Sleeper Depot Works and to take place under the terms of the Franchise Agreement.
- 17.4 The Parties acknowledge and agree that paragraph 17.3 is limited to maintenance of the Sleeper at Old Oak Common and does not address stabling and day stabling and related activities for the Sleeper at Old Oak Common or other activities carried out by the Franchisee at Old Oak Common (any planning and implementation of the transfer of which will be subject to separate agreement between the Franchisee (or relevant Successor Operator) and the Secretary of State as contemplated by paragraph 9 of this Schedule 6.2).
- 17.5 The Franchisee shall comply with:
- (a) the Long Rock Grant Funding Agreement; and
 - (b) the Night Riviera Grant Funding Agreement.
- 17.6 The Franchisee shall seek to agree with Network Rail that the increased renewal costs of the enhanced Long Rock Depot are not applied by Network Rail until the start of Control Period 6, with such agreement including how the assets from the

²⁸¹ **Date of contract change 17/01/2017 – Agreed by the Secretary of State and Franchisee.**

²⁸² **Date of contract change 17/01/2017 – Agreed by the Secretary of State and Franchisee.**

Long Rock Works will be taken onto the Network Rail Regulatory Asset base, with future renewals and maintenance funded from Control Period 6 onwards.

- 17.7 The Franchisee shall ensure that any and all contracts entered into in support of its obligations under paragraph 17 (or existing contracts that are extended, amended or under which options are exercised in support of meeting such obligations, as the case may be) can be freely transferred (by way of a Transfer Scheme or otherwise) to a Successor Operator without the relevant counterparty having a right to terminate such contract or to charge any fee or other amount in respect of such transfer, so that any outstanding works can be completed following the end of the Franchise Period. For the avoidance of doubt, this shall include that the Successor Operator is entitled to receive goods, services and information that have already been paid for by the Franchisee prior to the date of such transfer.
- 17.8 Where the Franchisee is proposing to enter into any contract in connection with the Long Rock Works which may be required to be designated as a Primary Franchise Asset in accordance with clause 15.2 of the Umbrella Agreement, then (without prejudice to its obligations under paragraph 8.5 of part 1 to Schedule 6.1 (List of Committed Obligations) of the Previous Franchise Agreement) the Franchisee shall keep the Secretary of State reasonably informed in advance of the terms of that contract and take account of the reasonable requirements of the Secretary of State notified to the Franchisee in relation to that contract for the purposes of its being so designated.
- 17.9 It is acknowledged that in accordance with clause 16.2 of the Umbrella Agreement further contracts placed by the Franchisee for delivery of the Long Rock Works and related asset protection agreements with Network Rail may be designated as Primary Franchise Assets, identified as subject to a commitment not to de-designate and added to the table in the Appendix to Schedule 14.4.
- 17.10 It is acknowledged for the purposes of paragraph 7 of Schedule 14.3 of the Franchise Agreement that the operation of the Long Rock Grant Funding Agreement and the Night Riviera Grant Funding Agreement in accordance with their terms in relation to reporting, approval of specifications and operation of the funding mechanism (including updating of forecasts, reporting of actual expenditure and claiming of expenditure) shall not be treated as amendments requiring the prior consent of the Secretary of State. This is without prejudice to the obligations of regular reporting on the Franchisee under paragraph 8.5 of Part 1 of Schedule 6.1 of the Previous Franchise Agreement.
18. **West of England Rolling Stock**
- 18.1 The Franchisee shall use all reasonable endeavours to progress the West of England Rolling Stock Procurement Process in accordance with relevant law with the intention of presenting a West of England Rolling Stock Procurement Proposal to the Secretary of State as soon as reasonably possible and in any event by no later than 30 May 2015 ^{xxiv}.
- 18.2 The Franchisee shall provide such further or additional information as the Secretary of State may reasonably require for the purposes of considering the West of England Rolling Stock Procurement Proposal and shall meet with the Secretary of State for discussion purposes as he shall reasonably require.

18.3 If before **31 July 2015**²⁸³ (or such other date as the Secretary of State and the Franchisee may agree) the Secretary of State in his unfettered discretion decides to instruct the Franchisee to proceed to complete the West of England Rolling Stock Procurement Process then:

- (a) there shall be a Qualifying Change under which the only Revised Inputs shall be:

Settings

Cell F206 - select from drop down list

- Base with HST
- Base with New Trains

and following the revision to these inputs the Run of the Financial Model to generate the New Results shall be made selecting the active model option entitled "Base with New Trains" following the instructions set out in section 1.2.4 (Options) of the instruction manual to the Financial Model;

- (b) the Franchisee shall, on a basis consistent with the West of England Rolling Stock Procurement Proposal presented under paragraph 18.3(a) as it may be amended by agreement during the process to secure the approval of the Secretary of State, enter into:
- (i) the West of England Rolling Stock Manufacture and Supply Agreement;
 - (ii) the West of England Rolling Stock Lease Agreement; and
 - (iii) the West of England Train Service Agreement,

together with such other agreements as may be required to implement the completion of the West of England Rolling Stock Procurement Process and use all reasonable endeavours to ensure that the relevant counterparties do likewise;

- (c) the Franchisee shall use all reasonable endeavours to procure that relevant counterparties enter into such Direct Agreements as the Secretary of State shall reasonably require in such form as the Secretary of State shall reasonably require (it being acknowledged by the Franchisee that the entering into of such Direct Agreements is a precondition of the implementation of the West of England Rolling Stock Procurement Process);
- (d) Schedule 1.7 (The Train Fleet) of the Franchise Agreement shall be updated to reflect the changes to the Train Fleet consequent on the leasing by the Franchisee of rolling stock to be delivered pursuant to the West of England Rolling Stock Procurement Process and the early termination of leases in relation to all HST rolling stock; and
- (e) the Secretary of State shall be entitled to make reasonable variations to this Franchise Agreement for the purposes of:
- (i) imposing new committed obligations and other provisions consistent with the Franchisee's role in ensuring delivery of the

²⁸³ **Date of contract change 30/06/2015 – Agreed by the Secretary of State and Franchisee.**

new rolling stock pursuant to the West of England Rolling Stock Procurement Process;

- (ii) ensuring consequential changes consistent with the active model option entitled "Base with New Trains" within the Financial Model are made where reasonably required to reflect the fact of replacement of HSTs by the new rolling stock being procured pursuant to the West of England Rolling Stock Procurement Process; and
- (iii) ensuring that the Franchisee does not obtain any net financial benefit if there is a delay to the delivery of any new rolling stock to be delivered pursuant to the West of England Rolling Stock Procurement Process,

and any such variations shall not constitute a Change pursuant to paragraph 1 of Schedule 19 (Other Provisions).

- 18.4 If the West of England Rolling Stock Procurement Proposal is not instructed by the Secretary of State and implemented by **31 July 2015**²⁸⁴ (or such later date as the Secretary of State and Franchisee agree) it shall lapse and the Franchise Agreement will continue unchanged on the basis set out as at the date of this Franchise Agreement.
- 18.5 ²⁸⁵ ***The Franchisee shall not without the Secretary of State's prior written consent give its consent under clause 4.1(b) of the West of England Rolling Stock Manufacture and Supply Agreement to the service of notice by the Owner to require the Manufacturer to manufacture, test, certify, warrant and commission and sell to the Owner the Option Units. The Secretary of State's consent under this paragraph and the consequent exercise by the Owner of its option right shall be a Change to the extent that the Option Units are to be leased to the Franchisee (it being acknowledged that such exercise of such option and the resultant Change may be part of an Infrastructure and Rolling Stock Action Programme under Schedule 9.4). In this paragraph 18.5, the terms "Option Units", "Owner" and "Manufacturer" have the meanings given in the West of England Rolling Stock Manufacture and Supply Agreement.***
- 18.6 ²⁸⁶ ***The Franchisee shall promptly after receipt of any correspondence or other communication (written or oral) which gives rise to any reasonable expectation of there being a Challenge (or an intention to pursue a Challenge), give written notice to the Secretary of State of such Challenge (or potential Challenge) including (i) details of the proposed claimant(s); and (ii) to the extent known to the Franchisee, the grounds of such Challenge, and include with such notice copies of any relevant correspondence (suitably redacted to comply with any duties of confidentiality to which the Franchisee may be subject). This shall include any such correspondence or other communication as has been received***

²⁸⁴ Date of contract change 30/06/2015 – Agreed by the Secretary of State and Franchisee

²⁸⁵ Date of contract change 27/07/2015 – Agreed by the Secretary of State and Franchisee

²⁸⁶ Date of contract insertion 30/06/2015 – Agreed by the Secretary of State and Franchisee

by the Franchisee prior to the date on which this paragraph was incorporated into the Franchise Agreement.

For the purposes of this paragraph, "Challenge" means any legal challenge or other complaint, by any natural person or legal entity, claiming a breach of procurement legislation (or any other applicable law) in respect of the West of England Rolling Stock Procurement Process.

18.7 Novation of the West of England Rolling Stock Manufacture and Supply Agreement and West of England Train Service Agreement on Termination of the Franchise Agreement ²⁸⁷

- (a) **To the extent so requested by the Secretary of State on termination of the Franchise Agreement the Franchisee shall novate such interest as it may have (if any) under the West of England Rolling Stock Manufacture and Supply Agreement and/or the West of England Train Service Agreement to the Secretary of State or as he may direct.**
- (b) **Any such novation shall be on such terms as the Secretary of State may reasonably require, including:**
 - (i) **that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and**
 - (ii) **that neither the Secretary of State nor his nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 18.7(b)(i),**

but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.

18.8 Manufacturer Events of Default Termination Rights and Termination Rights prior to all Units being Accepted Units ²⁸⁸

- (a) **The Franchisee shall keep the Secretary of State fully informed of progress in relation to the performance by the West of England Manufacturer of its obligations pursuant to the West of England Rolling Stock Manufacture and Supply Agreement. In particular the Franchisee shall keep the Secretary of State updated on**

²⁸⁷ **Date of contract insertion 27/07/2015 – Agreed by the Secretary of State and Franchisee.**

²⁸⁸ **Date of contract insertion 27/07/2015 – Agreed by the Secretary of State and Franchisee.**

progress in relation to compliance with the anticipated delivery schedule of West of England Rolling Stock and risk that a Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Rights will become exercisable prior to the date upon which all of the West of England Rolling Stock that has been ordered has been Accepted. In the absence of significant unforeseen adverse developments (in which case the Franchisee shall keep the Secretary of State promptly informed), the Franchisee may keep the Secretary of State so informed through the regular reporting contemplated at paragraph 4.6 of this Schedule 6.2.

- (b) ***The Franchisee shall consult with the Secretary of State if the Minimum Fleet Requirement Termination Right has become exercisable or is likely to become exercisable or if any Manufacturer Events of Default Termination Right has become exercisable or is likely to become exercisable prior to the date upon which all of the West of England Rolling Stock which has been ordered has been Accepted. The Franchisee shall not exercise the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right prior to the date upon which all of the West of England Rolling Stock that has been ordered has achieved Accepted Unit status without the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed).***
- (c) ***If the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right has arisen or the Secretary of State believes that there is a material risk that the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right may arise he may serve a notice on the Franchisee requiring it to produce a draft of a plan to a reasonable specification provided with the notice to mitigate the direct or indirect impact of the exercise of the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right ("Termination Mitigation Plan"). The draft Termination Mitigation Plan shall be provided with a reasonably detailed analysis taking account of the circumstances backed by relevant data and assumptions of:***
- (i) ***all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;***
 - (ii) ***the implications (if any) for the Benchmarks; and***
 - (iii) ***the likely impact of options within it for existing and future passenger journeys and journey opportunities.***

The Franchisee shall meet with the Secretary of State to discuss the Termination Mitigation Plan and provide such further information or analysis and further iterations of the draft Termination Mitigation Plan as the Secretary of State shall reasonably require. The Secretary of State and the Franchisee shall use all reasonable endeavours to agree the terms of the

Termination Mitigation Plan and in the absence of agreement the Secretary of State shall have the right to reasonably determine such terms.

- (d) **If the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right is exercised prior to the date upon which all of the West of England Rolling Stock that has been ordered has achieved Accepted Unit status the Secretary of State shall have the right to require the Franchisee to comply with the Termination Mitigation Plan as agreed or as reasonably determined by the Secretary of State.**
- (e) **The exercise of the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right prior to the date upon which all of the West of England Rolling Stock that has been ordered has achieved Accepted Unit status and any exercise by the Secretary of State of his right to require the Franchisee to implement a Termination Mitigation Plan shall be a Change which shall be a Qualifying Change if the consequences of a Qualifying Change would be financially beneficial to the Secretary of State (meaning that there would be an overall increase in Franchise Payments payable by the Franchisee to the Secretary of State or an overall decrease in Franchise Payments payable by the Secretary of State to the Franchisee as the case may be). There shall be no Change if the consequences of a Qualifying Change under this paragraph would be financially beneficial to the Franchisee (meaning that there would be an overall increase in Franchise Payments payable by the Secretary of State to the Franchisee or an overall decrease in Franchise Payments payable by the Franchisee to the Secretary of State as the case may be).**

18.9 **Treatment of Project Costs** ²⁸⁹

This paragraph 18.9 refers to project costs (including legal fees, project management costs, mobilisation and other professional fees) incurred or to be incurred by the Franchisee in connection with the West of England Rolling Stock Procurement Process and the introduction into service of the rolling stock vehicles to be acquired pursuant to it (all together the "Project Costs"), which will be funded to the level of £[REDACTED²⁹⁰] by the Owner under the West of England Rolling Stock Lease Agreement and to the extent in excess of that amount are at the Franchisee's cost. It is agreed that the Project Costs and the payments received by the Franchisee from the Owner under the West of England Rolling Stock Lease Agreement in respect of the Project Costs will not be taken into account for the purposes of the calculation of Relevant Profit under the Previous Franchise Agreement, even where incurred or received during the Franchise Term of the Previous Franchise Agreement. It is further agreed that those Project Costs and payments received from the Owner shall be

²⁸⁹ **Date of contract insertion 27/07/2015 – Agreed by the Secretary of State and Franchisee.**

²⁹⁰ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

taken into account in the calculation of Relevant Profit under the Franchise Agreement, including in respect of the calculation of Relevant Profit for the first Franchisee Year where incurred or received before the Start Date under this Franchise Agreement.

19. **Not used.**²⁹¹

20 **Reading Wheel Lathe Stage 2**²⁹²

20.1 The Franchisee shall:

- (a) continue to maintain a project team to lead and procure the delivery of the Reading Wheel Lathe Stage 2 Package through to completion of that package; and
- (b) carry out the Reading Wheel Lathe Stage 2 Package activities in accordance with the Stage 2 Package Work Plan to the extent falling due during the Franchise Term,

it being acknowledged that the Reading Wheel Lathe Stage 2 Package activities commenced prior to the Start Date during the term of the Previous Franchise Agreement on the terms of paragraph 27 of Schedule 6.2 (Great Western Franchise Specific Provisions) of such franchise agreement.

20.2 As soon as reasonably practicable following the end of each Reporting Period, the Franchisee shall provide to the Secretary of State a report setting out the actual costs that it has incurred in or before that Reporting Period in carrying out the Reading Wheel Lathe Stage 2 Package activities which have not previously been recovered (whether under this Franchise Agreement or the Previous Franchise Agreement) and any supporting evidence that the Secretary of State may reasonably require that such costs have been properly incurred by the Franchisee including timesheets and invoices for any third party costs.

20.3 The Franchisee undertakes that in determining its recovery of management costs for the Reading Wheel Lathe Stage 2 Package activities, it shall ensure that such recovery is determined in a way that ensures that the Franchisee does not receive multiple payments for the same time of any particular individual or contractor (including legal and accounting advisers) spent on different activities required to be undertaken by the Franchisee under this Franchise Agreement or the Previous Franchise Agreement, and that the Franchisee will act reasonably in allocating or apportioning costs as between different activities. The Secretary of State shall be entitled to request such evidence as he reasonably requires to verify that the Franchisee has complied with this paragraph 20.3.

20.4 The Franchisee shall notify the Secretary of State if it forms the view that the costs that it will incur in performing its obligations under this paragraph 20 (together with those costs already incurred and recovered under paragraph 27 of Schedule 6.2 (Great Western Franchise Specific Provisions) of the Previous Franchise Agreement but excluding any costs directly associated with the fitting out of the Messing Facility) are in aggregate reasonably likely to exceed the Reading Wheel Lathe Stage 2 Cap or if there

²⁹¹ 19 December 2017 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

²⁹² **Date of contract insertion 29/05/2015 – Agreed by the Secretary of State and Franchisee.**

are any other emerging issues which affect the delivery of the Reading Wheel Lathe Stage 2 Package. In such circumstances, the Secretary of State shall meet with the Franchisee in good faith to discuss whether the Franchisee should stop carrying out the Reading Wheel Lathe Stage 2 Package or if the Reading Wheel Lathe Stage 2 Cap should be increased. Where the Parties cannot agree to increase or remove the Reading Wheel Lathe Stage 2 Cap, the Franchisee shall be under no obligation to continue to perform its obligations under this paragraph 20 but shall prepare a report detailing the activities that have been completed or partially completed by the date at which the parties did not agree to increase the Reading Wheel Lathe Stage 2 Cap together with the costs reasonably expected to be incurred in terminating any contracts or commitments properly and reasonably entered into in contemplation of the Reading Wheel Lathe Stage 2 Package activities and reinstating and making good the site of the Reading Wheel Lathe Facility. The reasonable costs of such termination, reinstatement and making good which are properly incurred by the Franchisee shall be recoverable as costs under this paragraph 20.

- 20.5 Within 30 days of the end of the first Reporting Period of the Franchise Term and within 30 days of the end of each subsequent Reporting Period, the Franchisee shall provide to the Secretary of State a payment request setting out the reasonable incremental costs that it has incurred in that Reporting Period in connection with its obligations under this paragraph 20 (other than costs directly associated with the fitting out of the Messing Facility).
- 20.6 On the first Payment Date to occur seven days or more after the date on which the Franchisee provides to the Secretary of State a payment request under paragraph 20.5 (or where there is no such Payment Date, within 30 days of the date on which the relevant payment request is received), the Secretary of State shall pay to the Franchisee by way of adjustment to the relevant Franchise Payment the Reading Wheel Lathe Stage 2 Payment in respect of the amount set out in that payment request, provided that such payment shall not, in aggregate with all other payments made under this paragraph 20.6 and paragraph 27.6 of Schedule 6.2 (Great Western Franchise Specific Provisions) of the Previous Franchise Agreement, exceed the Reading Wheel Lathe Stage 2 Cap (as it may be increased or unless it is removed, in each case as referred to in paragraph 20.4).
- 20.7 The Franchisee shall ensure that any and all contracts entered into in support of its obligations under paragraph 20.1 (or existing contracts that are extended, amended or under which options are exercised in support of meeting such obligations, as the case may be) can be freely transferred (by way of a Transfer Scheme or otherwise) to a Successor Operator without the relevant counterparty having a right to terminate such contract or to change any fee or other amount in respect of such transfer, so that any outstanding works can be completed following the end of the Franchise Period. For the avoidance of doubt, this shall include that the Successor Operator is entitled to receive goods, services and information that have already been paid for by the Franchisee prior to the date of such transfer.
- 20.8 The Franchisee shall be entitled to issue a supplementary payment request under paragraph 20.5 in respect of any reasonable incremental costs incurred by the Franchisee in the relevant Reporting Period directly in connection with the fitting out of the Messing Facility (this being "setting up accommodation" for the purposes of paragraph 23.3(b) of Schedule 6.2 (Great Western Franchise Specific Provisions) of the Previous Franchise

Agreement). In the event that such a supplementary payment request is issued:

- (a) it shall be clearly marked as "Messing Facility";
- (b) paragraphs 20.2 and 20.3 shall apply mutatis mutandis in relation to any such payment request; and
- (c) on the first Payment Date to occur seven days or more after the date on which the Franchisee provides to the Secretary of State the payment request, the Secretary of State shall pay to the Franchisee by way of adjustment to the relevant Franchise Payment the amount set out in that payment request, provided that such payment shall not, in aggregate with all Driver Training Payment, Engineering Training Payment and EMU Development Payment amounts (each as defined and paid under the Previous Franchise Agreement) exceed a maximum of £[REDACTED²⁹³].

20.9 It is acknowledged that:

- (a) the groundworks, trackworks, and buildings which are undertaken, made or constructed as part of the Reading Wheel Lathe Facility will become the property of Network Rail as lessor of the Reading Depot;
- (b) the elements of the Reading Wheel Lathe Facility which do not become the property of Network Rail (which elements for the avoidance of doubt will include the wheel lathe machine) will be Franchise Assets with effect from title to those assets passing to the Franchisee; and
- (c) the elements of the Reading Wheel Lathe Facility which are Franchise Assets (including the wheel lathe machine) are subject to the obligations on maintenance under Schedule 14.2 (Maintenance of Operating Assets).

20.10 On the date on which each of the wheel lathe machine, swarf extractor tool and battery powered mule which is part of the Reading Wheel Lathe Facility becomes a Franchise Asset:

- (a) that wheel lathe machine, swarf extractor tool and battery powered mule respectively shall be deemed (and shall be) designated as a Primary Franchise Asset pursuant to paragraph 3 of Schedule 14.4 (Designation of Franchise Assets) and the Secretary of State shall commit not to de-designate it as a Primary Franchise Asset without the prior written consent of the Franchisee; and
- (b) the Supplemental Agreement shall be deemed (and shall be) amended with the effect that that wheel lathe machine, swarf extractor tool and battery powered mule respectively shall transfer to a Successor Operator at nil value.

²⁹³ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

21 Worcester HST Fuelling Facility ²⁹⁴

21.1 The Franchisee shall:

- (a) establish and maintain a project team to lead and procure the development and delivery of the Worcester HST Fuelling Facility Phase 1 Package and the Worcester HST Fuelling Facility Phase 2 Package; and
- (b) use all reasonable endeavours to carry out the Worcester HST Fuelling Facility Phase 1 Package activities and the Worcester HST Fuelling Facility Phase 2 Package activities with a view to the Worcester HST Fuelling Facility entering into operation as soon as reasonably practicable and in any event by 9 December 2016 (or such later date as may be agreed between the parties)

Provided that:

- (i) the Secretary of State may at any time, following consultation with the Franchisee, notify the Franchisee that the Worcester HST Fuelling Facility is no longer required, in which case the Franchisee shall take such steps as are reasonably required to cease work on the Worcester HST Fuelling Facility, taking appropriate steps in compliance with any applicable obligations to make good and/or restore and leave safe the site, safely realising or disposing of any materials and terminating any contracts entered into by it in connection with the development and delivery of the Worcester HST Fuelling Facility. The Franchisee shall use all reasonable endeavours to mitigate the costs and liabilities associated with any such cessation. To the extent such costs have not already been recovered under this paragraph 21, the Secretary of State shall reimburse to the Franchisee its costs reasonably and properly incurred in connection with any such cessation, with such payments made on the next Franchise Payment Date falling at least seven days after the later of the service of notice of cessation under this paragraph 21.(i) and the provision of the information required under paragraph 21.8 and/or any further information required under paragraph 21.2(c); and
- (ii) the Franchisee and the Secretary of State shall consult together concerning the ongoing requirement for the Worcester HST Fuelling Facility before the Franchisee progresses from the Worcester HST Fuelling Facility Phase 1 Package to the Worcester HST Fuelling Facility Phase 2 Package, recognising that this may provide an opportunity for the Secretary of State (taking into account the views of the Franchisee) to confirm the requirement or otherwise to postpone or cancel the requirement. If the Secretary of State's decision is to cancel, then the provisions of paragraph 21.1(i) shall apply. It is recognised that any decision to postpone may also have implications on costs and the delivery schedule which would need to be taken into account in the Worcester HST Fuelling Facility Phase 2 Package, the timescale for its delivery and the Worcester HST Fuelling Facility Maximum Costs. Accordingly where there is a decision to postpone, the provisions of paragraph 21.2 shall be applied in relation to the Worcester HST Fuelling Facility Phase 2 Package, the timescale for its delivery and the Worcester HST Fuelling Facility Maximum Costs as amended by the decision.

21.2 The Franchisee shall:

²⁹⁴ **Date of contract insertion 26/11/2015 – Agreed by the Secretary of State and Franchisee.**

- (a) use all reasonable endeavours to undertake as soon as reasonably practicable such steps comprised in the Worcester HST Fuelling Facility Phase 1 Package as the Franchisee considers are reasonably required before embarking on the Worcester HST Fuelling Facility Phase 2 Package (such steps being the "**Phase 1 essential steps**");
- (b) notify the Secretary of State once it considers that either (i) it has succeeded in undertaking the Phase 1 essential steps; or (ii) it has not succeeded, or is not likely to succeed, in undertaking the Phase 1 essential steps, which shall include where having sought to undertake the Worcester HST Fuelling Facility Phase 1 Package it concludes (acting reasonably) that it will not be able to complete Phase 2 through the exercise of all reasonable endeavours by 9 December 2016 for costs which in aggregate across the Worcester HST Fuelling Facility Phase 1 Package and the Worcester HST Fuelling Facility Phase 2 Package do not exceed the Worcester HST Fuelling Facility Maximum Costs; and
- (c) provide the Secretary of State with such information as he may reasonably require in connection with the undertaking of the Worcester HST Fuelling Facility Phase 1 Package or Worcester HST Fuelling Phase 2 Package or any notice provided under paragraph 21.2(b).
- 21.3 Once the Franchisee has notified the Secretary of State under paragraph 21.2(b)(i) that the Phase 1 essential steps have been successfully undertaken, the Franchisee shall use all reasonable endeavours to implement the Worcester HST Fuelling Facility Phase 2 Package as soon as reasonably practicable and by no later than 9 December 2016 (or such later date as the parties may agree).
- 21.4²⁹⁵ Where the Franchisee serves a notice under paragraph 21.2(b)(ii):
- (a) the Franchisee shall propose either or both (i) a decrease in the scope of the Worcester HST Fuelling Facility Phase 2 Package that would enable it to undertake the works without exceeding the Worcester HST Fuelling Facility Maximum Costs or (ii) an increase to the Worcester HST Fuelling Facility Maximum Costs, for consideration by the Secretary of State; and
- (b) the Secretary of State and the Franchisee shall seek to agree (acting reasonably) a revision to the Worcester HST Fuelling Facility Maximum Costs or to the scope of the Worcester HST Fuelling Facility Phase 2 Package and the Franchise Agreement shall be amended accordingly; or
- (c) where such agreement cannot be reached, the Franchisee shall cease to be under any further obligation to carry out either the Worcester HST Fuelling Facility Phase 1 Package or the Worcester HST Fuelling Facility Phase 2 Package.
- 21.5 The parties agree that use of "all reasonable endeavours" on the part of the Franchisee in the context of paragraph 21.2 and paragraph 21.3 shall include as a minimum (and not be limited to):
- (a) once having entered into new contracts or the amendment, extension or exercise of options under existing contracts to procure the goods and services required to complete the Worcester HST Refuelling Facility, the Franchisee's exercise of all relevant rights under those contracts to secure

²⁹⁵ **Date of contract change 27/04/2016 – Agreed by the Secretary of State and Franchisee.**

the due performance of the counterparties' obligations in accordance with the terms of the relevant contract(s);

- (b) the use of reasonable endeavours to find replacement suppliers in the event of a termination of any of the original supply arrangements; and
- (c) the dedication of such management time and resources as are reasonably required to manage the implementation of the Worcester HST Refuelling Facility.

21.6 Where the Franchisee serves notice under paragraph 21.2(b)(ii) and the parties fail to reach agreement as contemplated by paragraph 21.4(b) so that the Worcester HST Fuelling Facility Phase 2 Package does not apply:

- (a) as soon as reasonably practicable after service of such notice and the parties' failure to reach agreement, the Franchisee shall provide to the Secretary of State a statement of the total costs reasonably and directly incurred by the Franchisee on the Worcester HST Fuelling Facility Phase 1 Package (including design activities carried out prior to service of such notice) (the "**Phase 1 Costs**") along with such further information and evidence in respect of such costs as the Secretary of State may request in accordance with paragraph 21.2(c); and
- (b) to the extent such costs have not already been recovered under this paragraph 21, the Secretary of State shall pay such reimbursement to the Franchisee on the next Franchise Payment Date falling at least seven days after the later of the service of notice under paragraph 21.2(b)(ii) and the provision of the information required under paragraph 21.8 and/or any further information required under paragraph 21.2(c).

21.7 The Franchisee shall ensure that any and all contracts entered into (or existing contracts that are extended, amended or under which options are exercised, as the case may be) in support of its obligation in connection with fulfilment of the Worcester HST Fuelling Facility Phase 1 Package and/or the Worcester HST Fuelling Facility Phase 2 Package can be freely transferred to a Successor Operator without the relevant counterparty having a right to terminate such contract or to change any fee or other amount in respect of such transfer, so that any outstanding works can be completed following the end of the Franchise Period.

21.8 As soon as reasonably practicable following the end of each Reporting Period, the Franchisee shall provide to the Secretary of State a report setting out the actual costs that it has incurred in or before that Reporting Period in carrying out the Worcester HST Fuelling Facility Phase 1 Package activities and/or the Worcester HST Fuelling Facility Phase 2 Package activities which have not previously been recovered (including costs incurred prior to the Start Date, subject to the provisions of paragraph 10 of Part 2 to Schedule 6.1 (Committed Obligations), which the parties agree shall apply to the obligations in this paragraph 21 as if they were Committed Obligations) and any supporting evidence that the Secretary of State may reasonably require that such costs have been properly incurred by the Franchisee, including timesheets and invoices for any third party costs.

21.9 The Franchisee undertakes that in determining its recovery of management costs for the Worcester HST Fuelling Facility Phase 1 Package and Worcester HST Fuelling Facility Phase 2 Package activities it shall ensure that such recovery is determined in a way that ensures that the Franchisee does not receive multiple payments for the same time of any particular individual or contractor (including legal and accounting advisors) spent on different activities required to be undertaken by the

Franchisee under this Agreement during the Franchise Period and that the Franchisee will act reasonably in apportioning costs as between different activities. The Secretary of State shall be entitled to request such evidence as he reasonably requires to verify that the Franchisee has complied with this paragraph 21.9.

21.10 Within 30 days of the end of the first Reporting Period after the date on which this paragraph 21 is inserted into the Franchise Agreement and within 30 days of the end of each subsequent Reporting Period, the Franchisee shall provide to the Secretary of State a payment request setting out the reasonable incremental costs that it has incurred in that Reporting Period in connection with its obligations under this paragraph 21.

21.11 On the first Payment Date to occur seven days or more after the date on which the Franchisee provides to the Secretary of State a payment request under paragraph 21.10 (or where there is no such Payment Date, within 30 days of the date on which the relevant payment request is received), the Secretary of State shall pay to the Franchisee by way of adjustment to the relevant Franchise Payment an amount in respect of the Worcester HST Fuelling Facility Payment and as set out in that payment request, provided that such payment shall not when aggregated with all other such payments as referred to in this paragraph 21.11 exceed the Worcester HST Fuelling Facility Maximum Costs.

22 **Schedule 9.4 Support Activities** ²⁹⁶

22.1 In this paragraph 22, except where the context otherwise requires, the following words and expressions shall have the following meanings:

"Electrification Change Advance Works" means the activities described in Part A of Appendix 6 to this Schedule 6.2, which are additional to works already envisaged and provided for elsewhere in this Franchise Agreement (including at paragraph 4.6 of Schedule 6.2 and paragraph 3.4 of Schedule 9.4), together with such other additional activities as the parties may agree in writing from time to time to be included within the scope of such activities, subject to any notice served by the Secretary of State from time to time under paragraph 22.2(i) to require the removal or cessation of all or any of those activities; and

"Electrification Change Advance Works Maximum Costs" means £[REDACTED²⁹⁷] or such increased sum as the parties may from time to time agree in writing for this purpose.

22.2 The Franchisee shall:

- (a) use all reasonable endeavours to carry out Electrification Change Advance Works in accordance with the timescales agreed between the parties from time to time and otherwise as soon as reasonably practicable consistent with the timescales which are agreed; but
- (b) not be required to incur any costs in connection with the Electrification Change Advance Works, which are not already covered by existing provisions within the Franchise Agreement, in excess of the Electrification Change

²⁹⁶ **Date of contract insertion 27/04/2016 – Agreed by the Secretary of State and Franchisee.**

²⁹⁷ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Advance Works Maximum Costs, as from time to time agreed between the parties.

Provided that:

- (i) the Secretary of State may at any time, following consultation with the Franchisee, notify the Franchisee that the Electrification Change Advance Works (or any of them) are no longer required, in which case the Franchisee shall take such steps as are reasonably required to cease work on the Electrification Change Advance Works (or the relevant parts of them), taking appropriate steps in compliance with any applicable obligations to terminate any contracts entered into by it in connection with Electrification Change Advance Works. The Franchisee shall use all reasonable endeavours to mitigate the costs and liabilities associated with any such cessation. To the extent such costs have not already been recovered under this paragraph 22, the Secretary of State shall reimburse to the Franchisee its costs reasonably and properly incurred in connection with any such cessation, with such payments made on the next Franchise Payment Date falling at least seven days after the later of the service of notice of cessation under this paragraph 22.2 (i) and the provision of the information required under paragraph 22.2; and
- (ii) subject to and to the extent that the funding of the costs of the Electrification Change Advance Works is under this paragraph 22 and not under Schedule 9.4 (so there is no double recovery of costs by the Franchisee), this paragraph 22 is without prejudice to the ongoing operation of Schedule 9.4 and is intended to be taken into account and further inform the operation of the processes provided for in Schedule 9.4.

22.2 The Franchisee shall provide the Secretary of State with such information as he may reasonably require from time to time in connection with the Electrification Change Advance Works or any notice provided under paragraph 22.1(i).

22.3 As soon as reasonably practicable following the end of each Reporting Period, the Franchisee shall provide to the Secretary of State a report setting out the actual costs that it has incurred in or before that Reporting Period in carrying out the Electrification Change Advance Works which have not previously been recovered (including costs incurred prior to the date of amendment of the Franchise Agreement to include this paragraph) and any supporting evidence that the Secretary of State may reasonably require that such costs have been properly incurred by the Franchisee, including timesheets and invoices for any third party costs. The charge rates set out in Part B of Appendix 6 (Electrification Change Advance Works) to Schedule 6.2 shall be applied. The Secretary of State shall review the report and within five Weekdays of receipt advise the Franchisee of any costs which it disputes. Following the expiry of the five Weekdays the Franchisee may present a payment request to the Secretary of State for the undisputed amounts included in the draft and the parties shall discuss together with a view to settling any disputed amounts in accordance with paragraph 22.5. Any unresolved disputed amounts may be referred to dispute in accordance with paragraph 2 of Schedule 19 (*Other Provisions*). Disputed amounts when and to the extent agreed, settled or determined may be included in a further payment request to the Secretary of State.

22.4 The Franchisee undertakes that in determining its recovery of management costs for the Electrification Change Advance Works, it shall ensure that such recovery is determined in a way that ensures that the Franchisee does not receive multiple payments for the same time of any particular individual or contractor (including legal and accounting advisors) spent on different activities required to be

undertaken by the Franchisee under this Agreement during the Franchise Period and that the Franchisee will act reasonably in apportioning costs as between different activities. The Secretary of State shall be entitled to request such evidence as he reasonably requires to verify that the Franchisee has complied with this paragraph 22.4.

- 22.5 After the expiry of the five Weekdays after the submission of its report under paragraph 22.3 in respect of any Reporting Period, the Franchisee shall provide to the Secretary of State a payment request setting out the costs that it has incurred in or before that Reporting Period in line with its relevant report under paragraph 22.3, but excluding any amounts disputed by the Secretary of State and not agreed, settled or determined.
- 22.6 On the first Payment Date to occur seven days or more after the date on which the Franchisee provides to the Secretary of State a payment request under paragraph 22.5 or (in respect of disputed amounts which are agreed, settled or determined) paragraph 22.3 (or where there is no such Payment Date, within 30 days of the date on which the relevant payment request is received), the Secretary of State shall pay to the Franchisee by way of adjustment to the relevant Franchise Payment an amount in respect of the Electrification Change Advance Works as set out in that payment request, provided that such payment in respect of Electrification Change Advance Works (and not taking account of costs incurred as a result of service of any notice under paragraph 22.2(i)) shall not when aggregated with all other such payments as referred to in this paragraph 22.6 exceed the Electrification Change Advance Works Maximum Costs.

23.²⁹⁸ GLOUCESTER CAR PARK DOCUMENTS

- 23.1** *The Franchisee shall notify the Secretary of State when it enters into the Agreement for Lease relating to land on the south western side of Great Western Road, Gloucester between (1) the Council of the City of Gloucester and (2) the Franchisee.*
- 23.2** *On the first Payment Date to occur more than seven days after the notification under paragraph 23.1, the Secretary of State shall pay to the Franchisee [REDACTED²⁹⁹] in respect of the Franchisee's funding costs in respect of the Gloucester Car Park Documents (as defined in the Appendix to Schedule 14.4 of the Franchise Agreement (List of Primary Franchise Assets)) up to and including 31 March 2019. This is the GCPFC element of Franchise Payments payable under paragraph 23.2 as referenced in paragraph 1.1 of Schedule 8.1 (Franchise Payments).*
- 23.3** *If the term of the Franchise Agreement is extended beyond 1 April 2019, then on the first Payment Date to occur after that date the Secretary of State shall pay the Franchisee an amount calculated as follows in respect of the Franchisee's funding costs in respect of the Gloucester Car Park Documents from 1 April 2019 up to and including the end of the last Reporting Period:*

²⁹⁸ **Date of contract insertion 26/09/2016 – Agreed by the Secretary of State and Franchisee.**

²⁹⁹ **Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

$$GCPFC_2 = [\text{REDACTED}^{300}] \times (RPN/13) \times (7/100)$$

where:

GCPFC₂ is the value of GCPFC payable under paragraph 23.3 as referenced in paragraph 1.1 of Schedule 8.1 (Franchise Payments); and

RPN is the number of Reporting Periods scheduled to occur from and including 1 April 2019 up to and including the last Reporting Period.

24³⁰¹ HST SHORT FORM PROJECT ACTIVITIES

24.1 In this paragraph 24, except where the context otherwise requires, the following words and expressions shall have the following meanings:

"HST Short Form Project Activities" means all engineering works relating to the modification of Short Form HSTs so that they are compliant with the PRM TSI (including fitment of power operated doors and controlled emission toilets and related work arising), together with appropriate C6 activities to be carried out at the same time as such engineering work, and all ancillary activities carried out by or on behalf of the lessors of the Short Form HSTs and which are directly connected to the project to modify the Short Form HSTs including the obtaining of necessary intellectual property rights and the provision of project management services;

"Lease Variation" means a lease variation to a rolling stock lease in respect of Short Form HSTs which addresses HST Short Form Project Activities;

"Short Form HSTs" means 11 HSTs in 2 + 4 car formation plus four spare trailer vehicles and two spare power cars, of which six sets and three spare trailer vehicles are leased to the Franchisee by Angel Trains Limited and five sets plus one spare trailer vehicle and two spare power cars are leased to the Franchisee by First Rail Holdings Limited.

24.2

- (a) ***The Franchisee shall enter into a Lease Variation with First Rail Holdings Limited and use all reasonable endeavours to enter into a Lease Variation with Angel Trains Limited in relation to the Short Form HSTs leased by each such lessor on terms approved by the Secretary of State and which include arrangements in relation to the carrying out of the HST Short Form Project Activities on the Short Form HSTs.***
- (b) ***Where and to the extent a Lease Variation concluded by the Franchisee with First Rail Holdings Limited or Angel Trains Limited provides that any changes to a Framework Agreement or Task Form pursuant to which the HST Short Form Project Activities are to be carried out in relation to the Short Form HSTs covered by that Lease***

³⁰⁰ Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁰¹ Date of contract insertion 13/12/2016 – Agreed by the Secretary of State and Franchisee.

Variation requires the consent of the Franchisee, the Franchisee shall not consent to any such variation which is a material variation without the prior consent of the Secretary of State. For the purposes of this paragraph 24.2(b), a variation shall be regarded as a material variation where any of the following apply:

(i) it is reasonably forecast to result in costs exceeding the Total SFPA Forecast Cost (as referred to in paragraph 24.3) or in any delay to the programme for the HST Short Form Project Activities;

(ii) it will result in any variation in the number of vehicles subject to the HST Short Form Project Activities;

(iii) it will result in any degradation of the output specification for the HST Short Form Project Activities (it being acknowledged that the consent of the Secretary of State shall not be required for minor adjustments to the specification for individual Vehicles that are required in order to achieve the agreed outputs (including PRM TSI compliance)); or

(iv) it will result in the carrying out of any additional works not reasonably required in connection with achieving PRM TSI compliance or the conduct of C6 exams.

The provisions of this paragraph 24.2(b) are without prejudice to the obligations on the Franchisee to report on such changes as part of quarterly reporting under paragraph 24.5 and the parties' rights to request a variation under paragraph 24.6.

- (c) The Franchisee shall use all reasonable endeavours to exercise its rights under the Lease Variations and to cooperate with the owners of the Short Form HSTs with a view to minimising the costs under the Lease Variations of the HST Short Form Project Activities and (without prejudicing its rights under the arrangements in relation to the HST Short Form Project Activities) to achieve acceptance of the modified Short Form HSTs in accordance with (or as soon as reasonably practicable after) the dates provided therefor in the programme under the relevant Lease Variation.**

24.3 In respect of the HST Short Form Project Activities, the Secretary of State has paid the Franchisee [REDACTED³⁰²] in 2016/17 prices on 21 November 2016 in connection with a letter of intent dated 14 November 2016 in relation to the Short Form HST Project Activities (which sum is being applied towards funding a 35% advance payment on the HST Short Form Project Activities in respect of the Short Form HSTs owned by First Rail Holdings Limited) and the Secretary of State shall in addition pay the Franchisee in accordance with paragraph 24.4 the following amounts:

- (a) in connection with the second payment under the Lease Variation with First Rail Holdings Limited, [REDACTED³⁰³] (in 2016/17 prices,**

³⁰² Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁰³ Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has

which is towards funding the balance of the 35% advance payment on the HST Short Form Project Activities in respect of the Short Form HSTs owned by First Rail Holdings Limited, and the IPR costs and project management fees of First Rail Holdings Limited);

- (b) *in connection with the signing of the Lease Variation with Angel Trains Limited, [REDACTED³⁰⁴] (in 2016/17 prices, which is funding a 35% advance payment on the HST Short Form Project Activities in respect of the Short Form HSTs owned by Angel Trains Leasing Limited); and*
- (c) *[REDACTED³⁰⁵] in 2015/16 prices and subject to indexation by the Retail Prices Index (in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments) in respect of payments under the Lease Variations to fund the balance of the HST Short Form Project Activities (which equates to [REDACTED³⁰⁶] in 2016/17 prices),*

with these amounts together being the "SoS SFPA Funding". It is acknowledged that the forecast total cost of the HST Short Form Project Activities as at 5 December 2016 is [REDACTED³⁰⁷] in 2016/17 prices (the "Total SFPA Forecast Cost"), with the balance of funding made up of a fixed 24 HST Short Form Project Activities for power cars (as referred to in paragraph 7 of part 1 of Schedule 6.1 (Committed Obligations and Related Provisions)) of [REDACTED³⁰⁸] in 2016/17 prices and a forecast 34 HST Trailer car, C6 activities (as referred to in the same paragraph 7) in respect of Short Form HST Trailer cars of [REDACTED³⁰⁹] in 2016/17 prices (with this balance being together the "GWR SFPA Funding").

decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁰⁴ **Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³⁰⁵ **Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³⁰⁶ **Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³⁰⁷ **Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³⁰⁸ **Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³⁰⁹ **Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

24.4 The Secretary of State shall:

- (a) *subject to confirmation that the Lease Variation with First Rail Holdings Limited has been signed on terms requiring such payment, on or before a date which is the later of seven days after the Franchisee's request and three Working Days before the date payment is due under the relevant Lease Variation between First Rail Holdings Limited and the Franchisee, pay to the Franchisee in cleared funds [REDACTED³¹⁰], in 2016/17 prices in respect of the amount referred to in paragraph 24.3(a);*
- (b) *subject to confirmation that the Lease Variation with Angel Trains Limited has been signed on terms requiring such payment, on or before a date which is the later of seven days after the Franchisee's request and three Working Days before the date payment is due under the relevant lease variation between Angel Trains Limited and the Franchisee, pay to the Franchisee in cleared funds [REDACTED³¹¹], in 2016/17 prices in respect of the amount referred to in paragraph 24.3(b); and*
- (c) *include with the Franchise Payments to be made in respect of each of the following Reporting Periods an amount towards the further funding of the HST Short Form Project Activities as set out below, which amounts are subject to indexation by the Retail Prices Index (in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments) and which shall form the "SFHSTPA" component of the Franchise Payment:*

Reporting Period	SFHSTPA Amount (£) before indexation in 15/16 prices
Period 13 yr 16/17	[REDACTED ³¹²]
Period 2 yr 18/19	[REDACTED]
Period 4 yr 18/19	[REDACTED]
Period 5 yr 18/19	[REDACTED]
Period 6 yr 18/19	[REDACTED]
Period 7 yr 18/19	[REDACTED]
Period 8 yr 18/19	[REDACTED]
Period 10 yr 18/19	[REDACTED]

³¹⁰ Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³¹¹ Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³¹² Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Period 11 yr 18/19	[REDACTED]
Following completion of the HST Short Form Project Activities*	As calculated in accordance with paragraph 24.7 (not subject to further indexation).

***If the Expiry Date occurs prior to the completion of the HST Short Form Project Activities, a final payment will be calculated in accordance with paragraph 24.7 (not subject to further indexation).**

24.5 Every reporting quarter (which shall have the same meaning as defined in paragraph 18.8 of Schedule 13 (Information and Industry Initiatives)) which occurs on or after the date on which this paragraph is incorporated into the Franchise Agreement up until the last reporting quarter of the Franchise Term or (if earlier) the reporting quarter following acceptance of the last of the HST Short Form Vehicles following the carrying out of the HST Short Form Project Activities on that Vehicle (the "final report"), the Franchisee shall report to the Secretary of State (to the extent that it has not already done so) on progress with the Short Form HST Project Activities, including an account of:

- (a) **where it has not yet been concluded, the progress being made towards conclusion of the Lease Variation with Angel Trains Limited;**
- (b) **the costs incurred by it in accordance with the terms of the Lease Variations in respect of the Short Form HST Project Activities (taking into account any repayments received in connection with the Short Form HST Project Activities but subject as provided in paragraph 24.8);**
- (c) **the number of Short Form HST Trailer cars which have undergone or are forecast to undergo C6 activities as part of the Short Form HST Project Activities (at a cost per activity in accordance with the table at paragraph 7.9 of Part 1 of Schedule 6.1) and the number of power cars on which HST Short Form Project Activities have been undertaken or are forecast to be undertaken (at a cost per activity in accordance with the table at paragraph 7.9 of Part 1 of Schedule 6.1);**
- (d) **its forecast of the costs expected to be incurred by it in accordance with the terms of the Lease Variations in completing the Short Form HST Project Activities (taking into account any repayments receivable in connection with the Short Form HST Project Activities);**
- (e) **a quantification and explanation of any variance between the Total SFPA Forecast Cost and any revised forecast as at the date of the relevant report, together with, if applicable, a description of the actions taken by the Franchisee to mitigate any additional costs; and**
- (f) **if the Franchise is due to terminate or expire before completion of the Short Form HST Project Activities, any liability the Franchisee may have under the Lease Variations in relation to the incomplete works.**

The Secretary of State shall be entitled to request such further information and evidence in relation to the HST Short Form Project Activities as he may reasonably require and the Franchisee shall provide such information to the Secretary of State as soon as reasonably practicable after any such request.

24.6 *If, at any time, the total of the costs incurred at that time together with the Franchisee's forecast of the remaining costs expected to be incurred by the Franchisee under the Lease Variations in connection with the Short Form HST Project Activities shows a variance from the Total SFPA Forecast Cost (as from time to time updated where a variation is made in accordance with this paragraph 24.6) of more than [REDACTED³¹³], then either party may request a variation to the payment table in paragraph 24.4, such that the payments contracted to be made in accordance with paragraph 24.4 are adjusted in a fair and reasonable way so that the SoS SFPA Funding plus the GWR SFPA Funding equates to the revised Total SFPA Forecast Cost in a manner which minimises any cash flow disadvantage to the Franchisee, but assumes the Franchisee will use all reasonable endeavours to mitigate its liability to such costs. In default of agreement the Secretary of State shall be entitled (acting reasonably) to specify the amount of the adjustment to the SoS SFPA Funding. It is acknowledged that either party may apply this paragraph 24.6 including where the Lease Variation with Angel Trains Limited is not concluded by 31 January 2017 (or such later date as the parties may agree in writing).*

24.7 *The final report shall calculate the amount of any balancing payment required between the parties, calculated as follows:*

$$BP = ASFPAC - (GWRSFPA + SoSSFPA)$$

where:

BP *is the amount of the balancing payment to be made;*

ASFPAC *is the aggregate of the actual amounts paid or payable by the Franchisee to Angel Trains Limited and First Rail Holdings Limited under the Lease Variations in respect of the Short Form HST Project Activities, taking into account any refunds or repayments to which the Franchisee is entitled but subject as provided in paragraph 24.8;*

GWRSFPA *is the actual amount of funding provided by the Franchisee via paragraph 7 of part 1 of Schedule 6.1 (Committed Obligations and Related Provisions), in respect of the following:*

- (a)** *HST Short Form Project Activities for 24 power cars; and*
- (b)** *HST Trailer car, C6 activities in respect of such number of HST Trailer cars as actually receive a*

³¹³ **Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

C6 exam as part of the HST Short Form Project Activities,

with the values for each activity calculated in accordance with the Table in paragraph 7.9 of part 1 of Schedule 6.1; and

SoSSFPA is the actual amount of the total funding received by the Franchisee from the Secretary of State as referred to in paragraph 24.3 and paragraph 24.4 (as it may be amended under paragraph 24.6),

so that:

(i) where BP has a positive value, the value of SFHSTPA for the next Franchise Payment to occur more than seven days later shall be the amount of BP, and if there is no such next Franchise Payment the Secretary of State shall within 30 days of the final report pay to the Franchisee the amount of BP; and

(ii) where BP has a negative value, the value of SFHSTPA for the next Franchise Payment to occur more than seven days later shall be the amount of BP (shown as a negative value) and if there is no such next Franchise Payment the Franchisee shall within 30 days of the final report pay to the Secretary of State the amount of BP.

Any unresolved difference may be referred to dispute in accordance with paragraph 2 of Schedule 19 (Other Provisions) and when agreed, settled or determined shall be paid in accordance with this paragraph.

24.8 It is acknowledged that in making forecasts for paragraph 24.6 or final report calculations for the purposes of paragraph 24.7, no account shall be taken of any liquidated damages or warranty or other damages payments which may be payable to or by the Franchisee in connection with the Short Form HST Project Activities (without prejudice to any liability to make payments being taken into account as part of a Change under Schedule 9.4 where delayed release of Short Form HSTs by the Franchisee is a consequence of a relevant Change event) or of any costs incurred or payments received by the Franchisee otherwise than under the Lease Variations in connection with the HST Short Form Project Activities (without prejudice to how such costs or payments may be taken into account as part of any Change). For the purposes of the final report calculations, where there is an early termination of the Franchise, there shall be taken into account any liability which the Franchisee may have under the under clause 16.3.7 of the rolling stock lease in respect of the Short Form HSTs leased to the Franchisee by First Rail Holdings Limited and under any corresponding provision of the rolling stock lease in respect of the Short Form HSTs leased to the Franchisee by Angel Trains Limited in connection with the HST Short Form Project Activities, subject to the Franchisee using all reasonable endeavours to mitigate any such costs or liabilities.

24.9 It is acknowledged that this paragraph 24 is without prejudice to the further operation of the Change provisions (including Schedule 9.4) if following the date of its incorporation into the Franchise Agreement there are Further Relevant Changes that prevent the Franchisee fulfilling its obligations in connection with HST Short Form Activities or require further amendment to the HST Short Form Project Activities.

25³¹⁴ HS2 Project Activities

25.1 *In this paragraph 25, except where the context otherwise requires, the following words and expressions shall have the following meanings:*

"HS2 Project Activities" means the activities described in Appendix 7 to this Schedule 6.2, which are additional to works already envisaged and provided for elsewhere in this Franchise Agreement (including at paragraphs 4, 9 and 20 of Schedule 6.2 and paragraph 3 of Schedule 9.4), together with such other additional activities as the parties may agree in writing from time to time to be included within the scope of such activities, subject to any notice served by the Secretary of State from time to time under paragraph 25.2(i) to require the removal or cessation of all or any of those activities;

"HS2 Project Costs" means costs, losses or liabilities which are suffered or incurred by the Franchisee in connection with or as a consequence of the HS2 Project Activities and which are not already covered by existing provisions within the Franchise Agreement except insofar as they arise as a result of the Franchisee's negligence or any breach of the terms of this Franchise Agreement;

"HS2 Project Transition and Opex Activities" means the activities described from time to time in Section 1 (Operational Expenditure Activities) of Appendix 7;

"HS2 Project Capex Activities" means the activities described from time to time in Section 2 (Capital Expenditure Activities) of Appendix 7;

"HS2 Project Activities Maximum Costs" means £9,753,247 or such increased sum as the parties may from time to time agree in writing for this purpose;

"Phase 1 Package" means those activities listed in the column with title "Phase 1" in Section 2 of Appendix 7; and

"Phase 2 Package" means those activities listed in the column with title "Phase 2" in Section 2 of Appendix 7.

25.2 The Franchisee shall:

- (a) use all reasonable endeavours to carry out HS2 Project Activities in accordance with the timescales agreed between the parties from time to time and otherwise as soon as reasonably practicable consistent with the timescales which are agreed;*
- (b) in carrying out HS2 Project Activities and in accordance with paragraph 9.1(b) of Schedule 6.2, participate actively in maximising value for money to the taxpayer by minimising overall industry costs of the HS2 Project; but*
- (c) not be required to incur any HS2 Project Costs, in excess of the HS2 Project Activities Maximum Costs.*

³¹⁴ Date of contract insertion 17/01/2017 – Agreed by the Secretary of State and Franchisee.

Provided that:

- (i) **the Secretary of State may at any time, following consultation with the Franchisee, notify the Franchisee that the HS2 Project Activities (or any of them) are no longer required, in which case the Franchisee shall take such steps as are reasonably required to cease work on the HS2 Project Activities (or the relevant parts of them), taking appropriate steps in compliance with any applicable obligations to terminate any contracts entered into by it in connection with the relevant HS2 Project Activities. The Franchisee shall use all reasonable endeavours to mitigate the costs and liabilities associated with any such cessation. To the extent such costs and liabilities have not already been recovered under this paragraph 25, the Secretary of State shall reimburse to the Franchisee its costs and liabilities reasonably and properly incurred in connection with any such cessation, with such payments made on the next Franchise Payment Date falling at least seven days after the later of the service of notice of cessation under this paragraph 25.2(i) and the provision of the information required under paragraph 25.3; and**
- (ii) **subject to and to the extent that the funding of the costs of the HS2 Project Activities is under this paragraph 25 and not under Schedule 9 (so there is no double recovery of costs by the Franchisee), this paragraph 25 is without prejudice to the ongoing operation of Schedule 9 and is intended to be taken into account and further inform the operation of the processes provided for in Schedule 9.**

25.3 The Franchisee shall provide the Secretary of State with such information as he may reasonably require from time to time in connection with the HS2 Project Activities or any notice provided under paragraph 25.2(i).

25.4 The Franchisee shall:

- (a) **use all reasonable endeavours to undertake such steps comprised in the Phase 1 Package for each separate HS2 Project Capex Activity for which a Phase 1 Package is specified in Appendix 7 (each a "Phased Activity") as the Franchisee considers are reasonably required before embarking on the Phase 2 Package for that Phased Activity or as are specified in respect of that activity in Appendix 7 (such steps being the "Phase 1 essential steps");**
- (b) **notify the Secretary of State once it considers that in relation to any separate Phased Activity either (i) it has succeeded in undertaking the Phase 1 essential steps; or (ii) it has not succeeded, or is not likely to succeed, in undertaking the Phase 1 essential steps, which shall include where having sought to undertake the relevant Phase 1 Package it concludes (acting reasonably) that it will not be able to complete Phase 2 through the exercise of all reasonable endeavours, within any agreed timescales for HS2 Project Costs which in aggregate across the HS2 Project Activities do not exceed the HS2 Project Activities Maximum Costs; and**
- (c) **provide the Secretary of State with such information as he may reasonably require in connection with the undertaking of the relevant Phase 1 Package or Phase 2 Package or any notice provided under paragraph 25.4(b) or paragraph 25.6.**

25.5 The Franchisee shall notify the Secretary of State as soon as it is reasonably satisfied that the Phase 1 essential steps are likely to be

satisfied and the expected date on which that will happen. Once the Franchisee has notified the Secretary of State under paragraph 25.4(b)(i) that the Phase 1 essential steps have been successfully undertaken in relation to a Phased Activity, and the Secretary of State has notified the Franchisee that he approves the Franchisee progressing to implement the Phase 2 Package, the Franchisee shall use all reasonable endeavours to implement the corresponding Phase 2 Package in accordance with any agreed timescales (or by such later date as the parties may agree). The Franchisee shall not proceed to implement any Phase 2 Package for a Phased Activity without the prior consent of the Secretary of State. The Secretary of State acknowledges that any delay in the granting of consent may impact the timing of HS2 Project Activities and associated HS2 Project Costs and the Franchisee shall use all reasonable endeavours to mitigate any such delay in the event that it occurs.

25.6 *Where the Franchisee serves a notice under paragraph 25.4(b)(ii) or if the Franchisee notifies the Secretary of State in relation to any HS2 Project Activity which is not a Phased Activity that it will not be able to complete that activity through the exercise of all reasonable endeavours, within any agreed timescales for HS2 Project Costs which in aggregate across the HS2 Project Activities do not exceed the HS2 Project Activities Maximum Costs:*

- (a) the Franchisee shall propose either or both (i) a decrease in the scope of the HS2 Project Activities that would enable it to undertake the works without exceeding the HS2 Project Activities Maximum Costs or (ii) an increase to the HS2 Project Activities Maximum Costs, for consideration by the Secretary of State; and*
- (b) the Secretary of State and the Franchisee shall seek to agree (acting reasonably) a revision to the HS2 Project Activities Maximum Costs or to the scope of the HS2 Project Activities (acknowledging that in order to reach an agreement, the Secretary of State may require the Franchisee to propose an alternative proposal e.g. a decrease in scope where an increase in costs had been originally proposed) and the Franchise Agreement shall be amended accordingly; or*
- (c) where such agreement cannot be reached, the Franchisee shall cease to be under any further obligation to carry out the relevant activity in the Phase 1 Package or the Phase 2 Package for the relevant Phased Activity or to carry out further the relevant HS2 Project Activity (where it is not a Phased Activity).*

25.7 *Where the Franchisee serves notice under paragraph 25.4(b)(ii) or paragraph 25.6 and the parties fail to reach agreement as contemplated by paragraph 25.6 so that the relevant Phase 2 Package does not apply or the other HST Project Activity does not continue:*

- (a) as soon as reasonably practicable after service of such notice and the parties' failure to reach agreement, the Franchisee shall provide to the Secretary of State a statement of the total HS2 Project Costs reasonably and directly incurred by the Franchisee on the relevant Phase 1 Package (in the case of a Phased Activity) or generally in relation to any HS2 Project Activity which is not a Phased Activity (including design activities carried out prior to service of such notice) (in either case, the "Phase 1 Costs") along with such further information and evidence in respect of such HS2 Project Costs as the Secretary of State may request in accordance with paragraph 25.4(c); and*

(b) to the extent such HS2 Project Costs have not already been recovered under this paragraph 25, the Secretary of State shall pay such reimbursement to the Franchisee on the next Franchise Payment Date falling at least seven days after the later of the service of notice under paragraph 25.4(b)(ii) and the provision of the information required under paragraph 25.7 and/or any further information required under paragraph 25.4(c).

25.8 As soon as reasonably practicable following the end of each Reporting Period, the Franchisee shall provide to the Secretary of State a report setting out the actual HS2 Project Costs that it has incurred in or before that Reporting Period in carrying out the HS2 Project Activities which have not previously been recovered (including costs incurred prior to the date of amendment of the Franchise Agreement to include this paragraph and offsetting any cost reductions arising from the HS2 Project Activities, including but not limited to reduced lease costs at Old Oak Common, when compared with the Financial Model and which have not already been taken into account in the Financial Model or any other Change) and any supporting evidence that the Secretary of State may reasonably require that such HS2 Project Costs have been properly incurred by the Franchisee, including timesheets and invoices for any third party costs. The charge rates set out in Part B of Appendix 6 (Electrification Change Advance Works) to Schedule 6.2 shall be applied subject to indexation (in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments)). The Secretary of State shall review the report and within five Weekdays of receipt advise the Franchisee of any HS2 Project Costs which it disputes. Following the expiry of the five Weekdays the Franchisee may present a payment request to the Secretary of State for the undisputed amounts included in the report and the parties shall discuss together with a view to settling any disputed amounts. Any unresolved disputed amounts may be referred to dispute in accordance with paragraph 2 of Schedule 19 (Other Provisions). Disputed amounts when and to the extent agreed, settled or determined may be included in a further payment request to the Secretary of State. If required by the Secretary of State, the Franchisee shall meet with the Secretary of State once each Reporting Period to review the costs report provided under this paragraph and the costs of this meeting shall be recoverable as HS2 Project Costs, except insofar as HS2 Project Costs are disputed which are unreasonable or clearly unsubstantiated. This is without prejudice to the regular programme reporting which will be undertaken between the parties under the Old Oak Common Depot Vacation Cooperation Agreement between The Secretary of State, Network Rail, High Speed Two (HS2) Ltd and the Franchisee dated 22 January 2016 as it may be amended from time to time in accordance with that agreement.

25.9 The Franchisee undertakes that in determining its recovery of management costs for the HS2 Project Activities, it shall ensure that such recovery is determined in a way that ensures that the Franchisee does not receive multiple payments for the same time of any particular individual or contractor (including legal and accounting advisors) spent on different activities required to be undertaken by the Franchisee under this Agreement during the Franchise Period and that the Franchisee will act reasonably in apportioning costs as between different activities. The Secretary of State shall be entitled to request such evidence as he reasonably requires to verify that the Franchisee has complied with this paragraph.

25.10 *After the expiry of the five Weekdays after the submission of its report under paragraph 25.8 in respect of any Reporting Period, the Franchisee shall provide to the Secretary of State a payment request setting out the HS2 Project Costs that it has incurred in or before that Reporting Period in line with its relevant report under paragraph 25.8, but excluding any amounts disputed by the Secretary of State and not agreed, settled or determined.*

25.11 *On the first Payment Date to occur seven days or more after the date on which the Franchisee provides to the Secretary of State a payment request under paragraph 25.8 (or where there is no such Payment Date, within 30 days of the date on which the relevant payment request is received), the Secretary of State shall pay to the Franchisee by way of adjustment to the relevant Franchise Payment an amount in respect of the HS2 Project Activities as set out in that payment request, provided that such payment in respect of HS2 Project Activities shall not when aggregated with all other such payments made to the Franchisee as referred to in this paragraph 25 (and not taking account of costs incurred as a result of service of any notice under paragraph 25.2(i)) exceed the HS2 Project Activities Maximum Costs.*

25.12 *If:*

- (a)** *in accordance with the terms of the Old Oak Common Depot Vacation Cooperation Agreement between The Secretary of State, Network Rail, High Speed Two (HS2) Ltd and the Franchisee dated 22 January 2016 it is agreed that the Exit Plan established and defined under that agreement is to be varied; or*
- (b)** *the Franchisee or the Secretary of State identify any activity not described in Appendix 7 but which the Secretary of State agrees is required to be undertaken (or not) by the Franchisee in connection with the HS2 Project which are additional to works already envisaged and provided for elsewhere in this Franchise Agreement (including at paragraphs 4, 9 and 20 of Schedule 6.2 and paragraph 3 of Schedule 9.4), then*

either the Franchisee or the Secretary of State may require that Appendix 7 is amended to take account of any such activities which may be required (or not) by the Secretary of State to be undertaken by the Franchisee. The Secretary of State and the Franchisee shall work together in good faith promptly to amend Appendix 7 and the HS2 Project Activities Maximum Costs (if required) to take account of any such change and the Secretary of State shall not unreasonably withhold his consent to the inclusion of such additional HS2 Project Activities required to be undertaken by the Franchisee.

26 **Funded Works**³¹⁵

26.1 **The Franchisee shall:**

- (a)** **continue to maintain a project team to lead and procure the delivery of the Funded Works through to completion of that package; and**

³¹⁵ Date of contract insertion 18/09/2017 – Agreed by the Secretary of State and Franchisee

- (b) use all reasonable endeavours to complete the Funded Works in accordance with the Funded Works Work Plan.

26.2 Every reporting quarter (as defined in paragraph 18.8 of Schedule 13 (*Information and Industry Initiatives*)) which occurs on or after the date on which this paragraph is incorporated into the Franchise Agreement up until the last reporting quarter or (if earlier) the reporting quarter following completion of the Funded Works (the "final report"), the Franchisee shall report to the Secretary of State (to the extent that it has not already done so) on progress with the Funded Works, including an account of:

- (a) the progress being made towards meeting the milestones set out in the Funded Works Work Plan and completion of the Funded Works;
- (b) the Funded Works Costs incurred by it;
- (c) its forecast of the Funded Works Costs expected to be incurred by it in completing the Funded Works; and
- (d) if the Franchise terminates or expires before completion of the Funded Works, any liability the Franchisee may have in relation to the Funded Works.

The Secretary of State shall be entitled to request such further information and evidence in relation to the Funded Works as he may reasonably require.

26.3 The Franchisee shall notify the Secretary of State if it forms the view that the costs that it will incur in performing its obligations under this paragraph 26 are in aggregate reasonably likely to exceed the Funded Works Cap or if there are any other emerging issues which significantly affect the delivery of the Funded Works. In such circumstances, the Secretary of State shall meet with the Franchisee in good faith to discuss whether the Franchisee should stop carrying out the Funded Works when the Funded Works Cap is reached (including taking into account activities and reasonable costs related to termination and making good) or if the Funded Works Cap should be increased. Where the Parties cannot agree to increase or remove the Funded Works Cap or to limit the Funded Works to what can be delivered within the Funded Works Cap, the Franchisee shall be under no obligation to continue to perform its obligations under this paragraph 26 to the extent this would involve activities or expenditure in excess of the Funded Works Cap but shall prepare a report detailing the activities that have been completed or partially completed or are expected to be completed by the date the Funded Works Cap is reached, taking into account the costs reasonably expected to be incurred in terminating any contracts or commitments properly and reasonably entered into in contemplation of the Funded Works activities and reasonable costs associated with making good the sites where the Funded Works are being carried out. The reasonable costs of such termination and making good which are properly incurred by the Franchisee shall be recoverable as

Funded Works Costs under this paragraph 26 subject to the Funded Works Cap not being exceeded.

- 26.4 As soon as reasonably practicable following the end of each Reporting Period finishing on or after the date of amendment of the Franchise Agreement to include this paragraph), the Franchisee shall provide to the Secretary of State a report setting out the actual Funded Works Costs that it has incurred in or before that Reporting Period in carrying out the Funded Works which have not previously been recovered (including costs incurred prior to the date of amendment of the Franchise Agreement to include this paragraph) and any supporting evidence that the Secretary of State may reasonably require that such Funded Works Costs have been properly incurred by the Franchisee, including as applicable timesheets in respect of the Franchisee's internal management costs and invoices for any third party costs. In respect of time costs incurred directly by the Franchisee the charge rates set out in Part B of Appendix 6 (Electrification Change Advance Works) to Schedule 6.2 shall be applied subject to indexation (in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments)). The Secretary of State shall review the report and within five Weekdays of receipt advise the Franchisee of any Funded Works Costs which it disputes. Following the expiry of the five Weekdays the Franchisee may present a payment request to the Secretary of State for the undisputed amounts included in the report and the parties shall discuss together with a view to settling any disputed amounts. Any unresolved disputed amounts may be referred to dispute in accordance with paragraph 2 of Schedule 19 (*Other Provisions*). Disputed amounts when and to the extent agreed, settled or determined may be included in a further payment request to the Secretary of State. If required by the Secretary of State, the Franchisee shall meet with the Secretary of State once each Reporting Period to review the costs report provided under this paragraph and the costs of this meeting shall be recoverable as Funded Works Costs, except insofar as Funded Works Costs are disputed which are unreasonable or clearly unsubstantiated. This is without prejudice to the regular programme of reporting which will be undertaken between the parties under paragraph 26.2.**
- 26.5 After the expiry of the five Weekdays after the submission of its report under paragraph 26.4 in respect of any Reporting Period, the Franchisee shall provide to the Secretary of State a payment request setting out the Funded Works Costs that it has incurred in or before that Reporting Period in line with its relevant report under paragraph 26.4, but excluding any amounts disputed by the Secretary of State and not agreed, settled or determined.**
- 26.6 On the first Payment Date to occur seven days or more after the date on which the Franchisee provides to the Secretary of State a payment request under paragraph 26.5 (or where there is no such Payment Date, within 30 days of the date on which the relevant payment request is received), the Secretary of State shall pay to the Franchisee by way of adjustment to the relevant Franchise Payment an amount in respect of the Funded Works as**

set out in that payment request (such amount being referenced as the component "FWP" in paragraph 1.1 of Schedule 8.1 (Franchise Payments)), provided that such payment in respect of Funded Works shall not when aggregated with all other such Funded Works Payments made to the Franchisee as referred to in this paragraph 26 exceed the Funded Works Cap.

26.7 It is acknowledged that in making forecasts for paragraphs 26.2 and 26.3 and calculating actual Funded Works Costs:

- (a) no account shall be taken of any liquidated damages or warranty or other damages payments which may be payable to or by the Franchisee in connection with the Funded Works (without prejudice to any liability to make payments being taken into account as part of a Change under Schedule 9.4 where a consequence of a relevant Change event) or of any costs incurred or payments received by the Franchisee otherwise than in connection with the Funded Works (without prejudice to how such costs or payments may be taken into account as part of any Change);**
- (b) there shall be taken into account any liability which the Franchisee may have in connection with the Funded Works, subject to the Franchisee using all reasonable endeavours to mitigate any such costs or liabilities; and**
- (c) calculations shall treat contractual retentions as actually incurred by the Franchisee and as qualifying to be taken into account as part of FWP notwithstanding that the date for payment has not yet fallen due.**

26.8 It is acknowledged that this paragraph 26 is without prejudice to the further operation of the Change provisions (including Schedule 9.4) if following the date of its incorporation into the Franchise Agreement there are further Change consequences or Infrastructure and Rolling Stock Action Programmes which prevent the Franchisee fulfilling its obligations in connection with Funded Works or require further amendment to the Funded Works.

26.9 The Franchisee undertakes that in determining its management costs for the Funded Works activities, it shall ensure that such recovery is determined in a way that ensures that the Franchisee does not receive multiple payments for the same time of any particular individual or contractor (including legal and accounting advisers) spent on different activities required to be undertaken by the Franchisee under this Franchise Agreement, and that the Franchisee will act reasonably in allocating or apportioning costs as between different activities. The Secretary of State shall be entitled to request such evidence as he reasonably requires to verify that the Franchisee has complied with this paragraph 26.9.

26.10 It is acknowledged that the works which are undertaken, made or constructed as part of the Funded Works will become the property of Network Rail as lessor of the relevant Depots.

27 Exeter Depot Funded Works³¹⁶**27.1 The Franchisee shall:**

- (a) continue to maintain a project team to lead and procure the delivery of the Exeter Depot Funded Works through to completion of that package; and
- (b) use all reasonable endeavours to complete the Exeter Depot Funded Works in accordance with the Exeter Depot Funded Works Work Plan.

27.2 Every reporting quarter (as defined in paragraph 18.8 of Schedule 13 (*Information and Industry Initiatives*)) which occurs on or after the date on which this paragraph is incorporated into the Franchise Agreement up until the last reporting quarter or (if earlier) the reporting quarter following completion of the Exeter Depot Funded Works (the "final report"), the Franchisee shall report to the Secretary of State (to the extent that it has not already done so) on progress with the Exeter Depot Funded Works, including an account of:

- (a) the progress being made towards meeting the milestones set out in the Exeter Depot Funded Works Work Plan and completion of the Exeter Depot Funded Works;
- (b) the Exeter Depot Funded Works Costs incurred by it;
- (c) its forecast of the Exeter Depot Funded Works Costs expected to be incurred by it in completing the Exeter Depot Funded Works;
- (d) the extent to which the Exeter Depot Funded Works Costs incurred or forecast to be incurred by it are part of the Exeter Depot Funded Works Anticipated Costs or part of the Exeter Depot Funded Works Contingency;
- (e) having regard to the risk register maintained by the Franchisee in respect of the Exeter Depot Funded Works, the forecast requirement for the Exeter Depot Funded Works Franchisee Contingency over the next two reporting quarters; and
- (f) if the Franchise terminates or expires before completion of the Exeter Depot Funded Works, any liability the Franchisee may have in relation to the Exeter Depot Funded Works.

The Secretary of State shall be entitled to request such further information and evidence in relation to the Exeter Depot Funded Works as he may reasonably require.

³¹⁶ 19December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

27.3 The Franchisee shall notify the Secretary of State if it forms the view that the costs that it will incur in performing its obligations under this paragraph 27 are in aggregate reasonably likely:

- (a) to require an increase in the Exeter Depot Funded Works Franchisee Contingency over the next two reporting quarters in order to maintain a prudent level of contingency for the project; and/or**
- (b) exceed the aggregate of the Exeter Depot Funded Works Franchisee Cap; and/or**
- (c) exceed the Exeter Depot Funded Works Cap; and/or**
- (d) if there are any other emerging issues which significantly affect the delivery of the Exeter Depot Funded Works.**

In such circumstances, the Secretary of State shall meet with the Franchisee in good faith to discuss whether:

- (i) the Exeter Depot Funded Works Franchisee Contingency should be increased to maintain a prudent level of contingency in relation to the project; or**
- (ii) the Exeter Depot Funded works should be re-scoped to eliminate or reduce the amount by which the Exeter Depot Funded Works Costs exceed the Exeter Depot Funded Works Franchisee Cap (including taking into account prudent contingencies and activities and reasonable costs related any such re-scoping and any costs of termination and making good and also taking into account the wider impacts of any re-scoping on the Franchise Services (including any further Change which may result));**
- (iii) the Franchisee should stop carrying out the Exeter Depot Funded Works when the aggregate is reached of the Exeter Depot Funded Works Franchisee Cap (including taking into account prudent contingencies and activities and reasonable costs related to termination and making good); or**
- (iv) the Exeter Depot Funded Works Cap should be increased or removed (with associated adjustments to the Exeter Depot Funded Works Contingency Cap and the Exeter Depot Funded Works Franchisee Contingency).**

It is acknowledged that it is expected that the Secretary of State would not unreasonably delay or withhold consent to an increase in the Exeter Depot Funded Works Franchisee Contingency and the Exeter Depot Funded Works Franchisee Contingency Cap which did not require an increase in the Exeter Depot Funded Works Cap in circumstances where the increase was associated with

contingencies arising in the proper performance by the Franchisee of its role in connection with the Exeter Depot Funded Works. Where the Parties cannot agree to increase the Exeter Depot Funded Works Franchisee Contingency and Cap and (where also required) to increase or remove the Exeter Depot Funded Works Cap or to limit the Exeter Depot Funded Works to what can be delivered within the aggregate of the Exeter Depot Funded Works Franchisee Cap, the Franchisee shall be under no obligation to continue to perform its obligations under this paragraph 27 to the extent this would involve activities or expenditure in excess of the aggregate of the Exeter Depot Funded Works Franchisee Cap (including taking into account prudent contingencies and activities and reasonable costs related to termination and making good). The Franchisee shall prepare a report detailing the activities that have been completed or partially completed or are expected to be completed by the date the Exeter Depot Funded Works Franchisee Cap is reached, taking into account prudent contingencies and the costs reasonably expected to be incurred in terminating any contracts or commitments properly and reasonably entered into in contemplation of the Exeter Depot Funded Works activities and reasonable costs associated with making good the sites where the Exeter Depot Funded Works are being carried out. The reasonable costs of such re-scoping, termination and making good which are properly incurred by the Franchisee shall be recoverable as Exeter Depot Funded Works Costs under this paragraph 27.

- 27.4** On the second Payment Date to occur after completion of the Deed pursuant to which this paragraph is incorporated into the Franchise Agreement, the Secretary of State shall pay to the Franchisee [REDACTED³¹⁷] by way of adjustment to the relevant Franchise Payment an amount in respect of the Exeter Depot Funded Works Initial Payment (such amount to be requested by the Franchisee and included in the first instalment of EDWP as referenced in paragraph 1.1 of Schedule 8.1 (Franchise Payments) and at paragraph 27.7).
- 27.5** As soon as reasonably practicable following the end of each Reporting Period finishing on or after the date of amendment of the Franchise Agreement to include this paragraph), the Franchisee shall provide to the Secretary of State a report setting out the actual Exeter Depot Funded Works Costs that it has incurred in or before that Reporting Period in carrying out the Exeter Depot Funded Works which have not previously been recovered (including costs incurred prior to the date of amendment of the Franchise Agreement to include this paragraph) and any supporting evidence that the Secretary of State may reasonably require that such Exeter Depot Funded Works Costs have been properly incurred by the Franchisee,

³¹⁷ 23 August 2018 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

including as applicable timesheets in respect of the Franchisee's internal management costs and invoices for any third party costs. In respect of time costs incurred directly by the Franchisee the charge rates set out in Part B of Appendix 6 (Electrification Change Advance Works) to Schedule 6.2 shall be applied subject to indexation (in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments)). The Secretary of State shall review the report and within five Weekdays of receipt advise the Franchisee of any Exeter Depot Funded Works Costs which it disputes. Following the expiry of the five Weekdays the Franchisee may present a payment request to the Secretary of State for the undisputed amounts included in the report and the parties shall discuss together with a view to settling any disputed amounts. Any unresolved disputed amounts may be referred to dispute in accordance with paragraph 2 of Schedule 19 (*Other Provisions*). Disputed amounts when and to the extent agreed, settled or determined may be included in a further payment request to the Secretary of State. If required by the Secretary of State, the Franchisee shall meet with the Secretary of State once each Reporting Period to review the costs report provided under this paragraph and the costs of this meeting shall be recoverable as Exeter Depot Funded Works Costs, except insofar as Exeter Depot Funded Works Costs are disputed which are unreasonable or clearly unsubstantiated. This is without prejudice to the regular programme of reporting which will be undertaken between the parties under paragraph 27.2.

27.6 (a) After the expiry of the five Weekdays after the submission of its report under paragraph 27.5 in respect of any Reporting Period, the Franchisee shall provide to the Secretary of State a payment request subject to paragraphs 27.6(b) and 27.6(c) setting out the Exeter Depot Funded Works Costs that it has incurred in or before that Reporting Period in line with its relevant report under paragraph 27.5, but excluding any amounts disputed by the Secretary of State and not agreed, settled or determined.

(b) Where and to the extent the aggregate of the actual Exeter Depot Funded Works Costs incurred by the Franchisee fall between (i) the Exeter Depot Funded Works Franchisee Cap and (ii) the Exeter Depot Funded Works Franchisee Cap minus the Exeter Depot Funded Works Initial Payment the Franchisee shall draw down against the Exeter Depot Funded Works Initial Payment and not make a payment request (so avoiding any double recovery for the Franchisee).

(c) Where following completion of the Exeter Depot Funded Works or (if earlier) termination or expiry of the Franchise, the aggregate of the Exeter Depot Funded Works Costs incurred by the Franchisee is less than the Exeter Depot Funded Works Franchisee Cap, an adjustment will be made to the final instalment of EDFWP in favour of the Secretary of State equal to the amount of that part of the Exeter Depot Funded Works Initial Payment not drawn down by the

Franchisee under 27.6(b) or utilised by the Franchisee in funding Exeter Depot Funded Works Costs but not replaced by payments of EDFWP.

27.7 On the first Payment Date to occur seven days or more after the date on which the Franchisee provides to the Secretary of State a payment request under paragraph 27.6 (or where there is no such Payment Date, within 30 days of the date on which the relevant payment request is received), the Secretary of State shall pay to the Franchisee by way of adjustment to the relevant Franchise Payment an amount in respect of the Exeter Depot Funded Works as set out in that payment request (such amount being referenced as the component "EDFWP" in paragraph 1.1 of Schedule 8.1 (Franchise Payments)), provided that:

- (a) the first such payment shall include an amount in respect of the Exeter Depot Funded Works Initial Payment; and
- (b) such payment to the Franchisee in respect of the Exeter Depot Funded Works shall not when aggregated with all other such Exeter Depot Funded Works Payments made to the Franchisee as referred to in this paragraph 27 (including the Exeter Depot Funded Works Initial Payment) exceed the Exeter Depot Funded Works Franchisee Cap.

27.8 It is acknowledged that in making forecasts for paragraphs 27.2 and 27.3 and calculating actual Exeter Depot Funded Works Costs:

- (a) no account shall be taken of any liquidated damages or warranty or other damages payments which may be payable to or by the Franchisee in connection with the Exeter Depot Funded Works (without prejudice to any liability to make payments being taken into account as part of a Change under Schedule 9.4 where a consequence of a relevant Change event) or of any costs incurred or payments received by the Franchisee otherwise than in connection with the Exeter Depot Funded Works (without prejudice to how such costs or payments may be taken into account as part of any Change);
- (b) there shall be taken into account any liability which the Franchisee may have in connection with the Exeter Depot Funded Works, subject to the Franchisee using all reasonable endeavours to mitigate any such costs or liabilities;
- (c) there shall be taken into account any funds actually received by the Franchisee from the Network Rail Depot and Stabling Fund in relation to the Exeter Depot Funded Works, which the Franchisee will use reasonable endeavours to claim and which (if received after the relevant costs have been funded by the Secretary of State and not otherwise been taken into account in the calculation of the Exeter Depot Funded Works Costs) shall be applied to fund such other element of the Exeter Depot Funded Works Costs or other

improvements as the Secretary of State may agree in writing and (in the absence of such agreement, including where the Secretary of State requests otherwise) shall be accounted for by the Franchisee to the Secretary of State by way of refund of the funding by the Secretary of State of the relevant part of the Exeter Depot Funded Works Costs to which such funds relate (so that the Franchisee does not make any double recovery and such funds which are refunded remain available to be drawn down again under this paragraph 27); and

(d) calculations shall treat contractual retentions as actually incurred by the Franchisee and as qualifying to be taken into account as part of EDFWP notwithstanding that the date for payment has not yet fallen due.

27.9 It is acknowledged that this paragraph 27 is without prejudice to the further operation of the Change provisions (including Schedule 9.4) if following the date of its incorporation into the Franchise Agreement there are further Change consequences or Infrastructure and Rolling Stock Action Programmes which prevent the Franchisee fulfilling its obligations in connection with Exeter Depot Funded Works or require further amendment to the Exeter Depot Funded Works or if in accordance with paragraph 27.3 the Exeter Depot Funded Works are curtailed without all being completed.

27.10 The Franchisee undertakes that in determining its management costs for the Exeter Depot Funded Works activities, it shall ensure that such recovery is determined in a way that ensures that the Franchisee does not receive multiple payments for the same time of any particular individual or contractor (including legal and accounting advisers) spent on different activities required to be undertaken by the Franchisee under this Franchise Agreement, and that the Franchisee will act reasonably in allocating or apportioning costs as between different activities. The Secretary of State shall be entitled to request such evidence as he reasonably requires to verify that the Franchisee has complied with this paragraph 27.10.

27.11 It is acknowledged that the works which are undertaken, made or constructed as part of the Exeter Depot Funded Works will become the property of Network Rail as lessor of the relevant Depots.

27.12 The Franchisee shall ensure that any and all contracts entered into in support of its obligations under paragraph 27.1 (or contracts that are extended, amended or under which options are exercised in support of meeting such obligations, as the case may be) can be freely transferred (by way of Transfer Scheme or otherwise) to a Successor Operator without the relevant counterparty having the right to terminate such contract or change any fee or other amount in respect of such transfer, so that outstanding works can be completed following the end of the Franchise Period. For the avoidance of doubt, this shall include that the Successor Operator is

entitled to receive goods, services and information that have already been paid for by the Franchisee prior to the date of such transfer.

27.13 The Secretary of State shall at the Franchisee's request not unreasonably withhold his consent to the designation as Primary Franchise Assets subject to a commitment not to de-designate of such contracts as the Franchisee may reasonably propose to enter into in connection with the undertaking of the Exeter Depot Funded Works, with a view to ensuring that a Successor Operator would take over the Exeter Depot Funded Works if the Franchise Term were to end prior to their completion. It is acknowledged that promptly following its being entered into, the Franchisee shall request that the construction contract in relation to the Exeter Depot Funded Works (which is a NEC 3 Engineering and Construction Contract (Option A) with a Schedule of Amendments to be entered into by (1) the Franchisee and (2) HOCHTIEF(UK) Construction Limited) is designated as a Primary Franchise Asset in accordance with this paragraph and that the Secretary of State will then accordingly designate that construction contract as a Primary Franchise Asset which may not be de-designated.

27.14 The Franchisee shall at the Secretary of State's request work with the Secretary of State to explore opportunities for any element of the Exeter Depot Funded Works carried out in the period after 31 March 2019 to be funded as part of Control Period 6 funding arrangements.

APPENDIX 1 TO SCHEDULE 6.2

[TEMPLATE] Crossrail Business Transfer Agreements

Dated

20[•]

(1) [GREAT WESTERN FRANCHISEE]

(2) [CROSSRAIL CONCESSIONAIRE]

BUSINESS TRANSFER AGREEMENT

Regarding the Crossrail Stations, Crossrail Services and certain Franchisee Employees and Franchise Assets relating to the Crossrail Programme

THIS AGREEMENT is made on

20[•]

BETWEEN:

- (1) **[GREAT WESTERN FRANCHISEE]**, (company registration no. [•]) whose registered office is at [•] ("**Transferor**"); and
- (2) **[CROSSRAIL CONCESSIONAIRE]**, (company registration no. [•]) whose registered office is at [•] ("**Transferee**").

BACKGROUND

- (A) The Transferor is currently the Facility Owner (as such term is defined under the Railways Act 1993 (as amended and supplemented from time to time including by the Railways Act 2005)) at the Crossrail Stations and has for these purposes entered into leases in respect of the Crossrail Stations with Network Rail.
- (B) The Transferee has been appointed to provide railway passenger services on the railway transport system constructed and maintained as specified in the Crossrail Act 2008.
- (C) The Transferor has agreed to transfer the operation of each of the Crossrail Stations to the Transferee with the effect that from the date of such transfer the Transferee will become the Facility Owner at the each of the Crossrail Stations in place of the Transferor.
- (D) This Agreement sets out the terms on which the Transferor is to cease being and the Transferee is to become the Facility Owner of each of the Crossrail Stations.

OPERATIVE CLAUSES

1. INTERPRETATION

In this Agreement:

- 1.1 the following expressions have the following meanings unless inconsistent with the context:

"Bank Holiday"	means any day other than a Saturday or Sunday on which banks in the City of London are not open for business;
"Business"	the operation of the Crossrail Stations and all associated activities;
"Business Assets"	all property, rights and assets of the Business to be sold to the Transferee pursuant to this Agreement including those described in clause 2.1 but excluding the Excluded Assets;
"Business Contracts"	all Contracts entered into by or on behalf of the Transferor which are unperformed (wholly or

partly) as at the Transfer Date as listed in **Schedule 3**;

"CA 2006"	the Companies Act 2006, as amended;
"Completion"	completion of the sale and purchase of the Business Assets in accordance with clause 4 ;
"Confidential Information"	all know how and information (howsoever stored) in relation to the Business which is not publicly known;
"Consideration"	the aggregate consideration for the sale of the Business Assets as provided in clause 3 ;
"Consultation Regulations"	means the Collective Redundancies and Transfer of Undertaking (Protection of Employment) (Amendment) Regulations 1995, the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1999 and the Information and Consultation of Employees Regulations 2004;
"Continuing Tenancies"	means the tenancies relating to each of the Crossrail Stations brief details of which are set out in Part 2 of Schedule 5 ;
"Crossrail Stations"	means each of the stations listed in Part1 of Schedule 5 ;
"Customer Advances"	all amounts paid to the Transferor before the Transfer Date in respect of goods or services to be supplied by the Business to a customer under any Contract after the Transfer Date;
"Employees"	the persons employed in the Business immediately before the Transfer Date, as listed in Schedule 1, whose contracts of employment after the Transfer Date will be or are deemed effected between the Transferee and such persons under regulation 4 of the Regulations;
"Employment Costs"	all salaries, wages, commissions, bonuses, all statutory contributions, holiday pay (including payment for accrued but untaken holiday), national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other employment costs of the Employees;
"Encumbrance"	any mortgage, charge, pledge, lien, assignment by way of security, option, restriction, claim, right of pre-emption, right of first refusal, third party right or interest, other encumbrance or

security interest of any kind, or other preferential arrangement having similar effect;

"Estimated Purchase Price"	has the meaning ascribed to it in clause 3.1 ;
"Existing Station Access Agreements"	means the station access agreements brief details of which are set out in Part 4 of Schedule 5 ;
"Excluded Assets"	any and all assets of the Transferor other than the Business Assets;
"Liabilities"	all costs, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought;
"Long Stop Date"	means <i>[insert date]</i> ;
"Meter Readings"	the meter readings to be undertaken at Completion in accordance with paragraph 4 of Schedule 6 ;
"Net Asset Statement"	means the statement to be drawn up pursuant to clause 3.2 ;
"Net Asset Value"	means the aggregate of the amounts of the Business Assets as shown in the Net Asset Statement;
"Network Rail"	means Network Rail Infrastructure Limited a company registered in England with registered number 02904587 whose registered office is at Kings Place, 90 York Way, London N1 9AG;
"ORR"	Office of Rail Regulation;
"Property"	means each of the Crossrail Stations as particularly described in Part 1 of Schedule 5 and each and every part of such property;
"Records"	all the Transferor's books and records relating to the Business, the Business Assets and the Employees (including personnel files) as listed in Schedule 4 excluding those relating to the Excluded Assets and any records that the Transferor is required by law to retain
"the Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006
"SACs"	the Station Access Conditions
"Station Access Conditions"	in respect of each Crossrail Station:

- (a) the National Station Access Conditions 1996 (England and Wales); and
- (b) the annexes relating to such Crossrail Station

as each is modified from time to time in respect of such Crossrail Station with the approval of the ORR;

“Tangible Assets”

those items listed in **Schedule 2**;

“Terminating Tenancies”

means the tenancies relating to each of the Stations, brief details of which are set out in **Part 3 of Schedule 5**;

“Trade Credits”

all amounts owing to trade creditors by the Transferor in connection with the Business as at the Transfer Date in respect of goods or services supplied to the Transferor before the Transfer Date (whether or not invoiced and whether or not then due and payable);

“Trade Debts”

all amounts owing to the Transferor by trade debtors in connection with the Business as at the Transfer Date in respect of goods or services supplied by the Transferor before the Transfer Date (whether or not invoiced and whether or not then due and payable);

“Transfer Date”

01:59 on *[insert date]*;

“Transferee’s Group”

any of the following from time to time: the Transferee, its subsidiary undertakings and any parent undertaking of the Transferee and all other subsidiary undertakings of any parent undertaking of the Transferee and **“member of Transferee’s Group”** will be construed accordingly;

“Transferor’s Group”

any of the following from time to time: the Transferor, its subsidiary undertakings, any parent undertaking of the Transferor and all other subsidiary undertakings of any parent undertaking of the Transferor and “a member of the Transferor’s Group” will be construed accordingly;

“Transferor Prepayments”

all amounts paid by the Transferor before the Transfer Date in respect of goods or services to be supplied to the Transferee under any Contract with a supplier after the Transfer Date;

“VAT”

Value Added Tax;

- "VATA"** Value Added Tax Act 1994;
- "Weekday"** means any day other than a Saturday, a Sunday or a Bank Holiday;
- 1.2 references to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified, replaced, re-enacted or consolidated and in force from time to time prior to Completion and any subordinate legislation made under the relevant statute or statutory provision (as so modified, replaced, re-enacted or consolidated) in force prior to Completion;
- 1.3 references to a person includes a reference to any individual, firm, company, corporation or other body corporate, government, state or agency of a state or any unincorporated association, joint venture or partnership (whether or not having a separate legal personality);
- 1.4 references to the masculine, feminine or neuter gender respectively include the other genders and references to the singular include the plural and vice versa;
- 1.5 references to clauses and Schedules are to clauses of and Schedules to this Agreement, and references to paragraphs are to paragraphs in the Schedule in which such references appear;
- 1.6 the Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement;
- 1.7 the headings in this Agreement will not affect its interpretation;
- 1.8 any phrase introduced by the term **"include"**, **"including"**, **"in particular"** or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term;
- 1.9 references to a **"subsidiary undertaking"** or **"parent undertaking"** are to be construed in accordance with section 1162 CA 2006;
- 1.10 references to documents **"in the agreed terms"** are references to documents initialled by or on behalf of the Transferor and the Transferee; and
- 1.11 **"Party"** means party to this Agreement.
- 2. SALE AND PURCHASE**
- 2.1 The Transferor will sell and transfer, or procure the sale and transfer, with full title guarantee (unless otherwise specified in this Agreement) to the Transferee and the Transferee will buy as at the Transfer Date the Business as a going concern together with the following assets:
- (a) the Tangible Assets;
 - (b) the benefit (subject to the burden) of the Business Contracts; and
 - (c) the Records.
- 2.2 Each of the Business Assets will be sold and bought free from any Encumbrance and with all rights attached to it unless otherwise specified in this Agreement.

- 2.3 Subject to the matters fairly disclosed to the Transferee, the Transferor warrants that each of the Business Assets is legally and beneficially owned by the Transferor, free from any Encumbrance or any claim to, or Contract to grant, any Encumbrance.
- 2.4 Except as otherwise provided in this Agreement:
- (a) beneficial ownership and risk in each of the Business Assets in respect of which beneficial ownership is to pass to the Transferee will pass to the Transferee on Completion;
 - (b) title to all Business Assets in respect of which beneficial ownership is to pass to the Transferee which can be transferred by delivery will pass on delivery and such delivery will be deemed to take place at Completion; and
 - (c) the Transferor will be a trustee for the Transferee in respect of the Business Assets until they have been actually delivered and/or, in the case of Business Assets not capable of transfer by delivery, transferred or assigned to the Transferor.
- 2.5 Notwithstanding any other provision of this Agreement, the Excluded Assets are excluded from the sale and purchase under this Agreement.

3. **CONSIDERATION**

3.1 The consideration for the sale of the Business Assets will be the sum of £[•] as determined by the Secretary of State (in consultation with the Transferor and the Transferee) on or before the date of this Agreement (the "**Estimated Purchase Price**") which shall be paid in immediately available funds by the Transferee to the Transferor on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be in accordance with **clause 3.3**).

3.2 **Determination of the Purchase Price**

- (a) The Transferor shall procure that, as soon as reasonable practicable and in any event no later than [two] calendar months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the amount of each Business Asset as at the Transfer Date.
- (b) The Net Asset Statement shall be :
 - (i) drawn up on the following basis:
 - (ii) price for goodwill shall be one pound (£1);
 - (iii) the Tangible Assets and any other Business Asset shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry;
- (c) prepared on such basis as would enable the Transferor's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the provisions of this **clause (b)**;

- (d) presented, initially as a draft, to the Transferee immediately following its preparation for review in conjunction with its auditors; and
- (e) if the Transferor and the Transferee have failed to agree the Net Asset Statement within [four] weeks following presentation of the initial draft as required in **clause 3.2(b)(ii)**, then either party may refer the matter to be settled in accordance with **clause 11**.

3.3 If the Purchase Price exceeds or is less than the Estimated Purchase Price, the Transferor shall pay to the Transferee or the Transferee shall pay to the Transferor (as the case may be), in either case within [fourteen] days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3.4 All amounts expressed in this Agreement as being payable by the Transferee are expressed exclusive of any VAT which may be chargeable.

4. **COMPLETION**

4.1 Completion is conditional on those items set out below ("**the Conditions**") having been satisfied or (if appropriate) waived:

- (a) the Transferor terminating the lease with Network Rail in respect of each of the Crossrail Stations and the Transferee entering into a lease with Network Rail in relation to each of the Crossrail Stations (or such other arrangements between Network Rail and the Transferee as are appropriate in the circumstances);
- (b) the Transferor's licence being amended to delete the Property and the Transferee's licence being amended to include the Property;
- (c) the Transferor terminating the Terminating Tenancies;
- (d) to the extent applicable, the Transferor terminating the Existing Station Access Agreements and the Transferee entering into new station access agreements with Users (as defined in the SACs) in relation to the Crossrail Stations; and
- (e) if applicable, the Transferor and the Transferee entering into a deed of novation in the agreed terms with the relevant Counterparty to the following Contracts with effect from Completion:

[Insert details of novating contracts if relevant].

4.2 The Parties will use their respective reasonable endeavours to procure that each of the conditions set out in **clause 4.1** are satisfied as soon as practicable and in any event that evidence of satisfaction is given to the other before the Transfer Date.

4.3 The Transferor will give evidence (in a form reasonably satisfactory to the Transferee) of satisfaction of the Condition set out in **clause 4.1(c)** and (in relation to the Transferor) **clauses 4.1(a), 4.1(b), 4.1(d) and 4.1(e)**, such evidence to be given as soon as possible and in any event within five Weekdays of their satisfaction. The Transferee will give evidence (in a form reasonably satisfactory to the Transferor) of satisfaction of the Conditions set out in **clauses**

- 4.1(a), 4.1(b), 4.1(d) and 4.1(e)** such evidence to be given as soon as possible and in any event within five Weekdays of their satisfaction.
- 4.4 If either Party becomes aware of any fact or matter that prejudices the satisfaction of a Condition, then such Party will promptly inform the other Party as soon as reasonably practicable.
- 4.5 If a Condition has not been waived or satisfied and evidence of satisfaction given in accordance with **clause 4.3** on or before the Long Stop Date (or such later date as may be agreed between the Transferor and the Transferee), this Agreement will automatically terminate.
- 4.6 Upon termination of this Agreement pursuant to **clause 4.5** the following provisions will apply:
- (a) the Transferee will return to the Transferor all information (and all copies of such information) which has been supplied to the Transferee or their advisers by the Transferor or its advisers before such date;
 - (b) the Transferee will destroy all reports, analyses, studies and other document prepared by it or its advisers which contain or otherwise reflect information supplied to it or its advisers by the Transferor and its advisers; and
 - (c) each of the Parties' further rights and obligations under this Agreement (with the exception of **clauses 4.6, 11, 12, 13 and 21**) shall cease immediately on termination, but termination does not affect the Parties' accrued rights and obligations at the date of termination.
- 4.7 Pending Completion, the Transferor will procure that the Business is carried on in the ordinary course so as to maintain that Business as a going concern and the Transferor undertakes that it will not, without the prior written consent of the Transferee:
- (a) alter (whether to take effect prior to, on or after the Transfer Date) any of the terms of employment or engagement of any of the Employees or promise or make any representation that any such terms shall be altered;
 - (b) terminate or take any steps to terminate the contract of employment of, or dismiss (constructively or otherwise) any of the Employees;
 - (c) enter into or take any steps to enter into (whether to take effect prior to, on or after the Transfer Date) any new employment contract or promise or make any representation to any person that such a contract will be entered into;
 - (d) alter or agree to alter (whether to take effect prior to, on or after the Transfer Date) any of the terms of the Continuing Tenancies or take any action which would, or would be likely to, cause the Continuing Tenancies to terminate; or
 - (e) dispose of or create any Encumbrance over the Business Assets.
- 4.8 At Completion, the Transferor and the Transferee will comply with the provisions of **Schedule 6**.

4.9 [Following Completion, the Transferor shall provide certain transitional services to the Transferee on the terms set out in **Schedule 7.**] [*Delete if not applicable*]

5. **VALUE ADDED TAX**

5.1 In this **clause 5**:

"Special Provisions Order" means the Value Added Tax (Special Provisions) Order 1995

"HMRC" means HM Revenue & Customs.

5.2 All amounts expressed in this Agreement as being payable by the Transferee are expressed to be exclusive of VAT which may be chargeable and the Transferee agrees to pay to the Transferor in addition to such amounts, any VAT for which the Transferor is liable to account to HMRC in respect of any supply made by the Transferor to the Transferee under or in connection with this Agreement within five Weekdays of production of a valid VAT invoice by the Transferor.

5.3 The Parties intend that section 49 VATA and Article 5 Special Provisions Order will apply to the transfer of the Business Assets and the Transferor and the Transferee will each use all reasonable endeavours to secure that pursuant to the provisions referred to above the sale of the Business Assets is treated as neither a supply of goods nor a supply of services for the purposes of VAT but as the transfer of a business as a going concern. Provided always that nothing in this **clause 5.3** shall require the Transferor to request a review of any determination by HMRC or any notification by HMRC that section 49 VATA and Article 5 Special Provisions Order does not apply to the transfer of Business Assets in whole or in part.

5.4 The Transferor represents, warrants and undertakes to the Transferee that it is duly and properly registered for the purposes of VAT.

5.5 The Transferee represents, warrants and undertakes to the Transferor that;

- (a) it is duly and properly registered for the purposes of VAT; and
- (b) that it will use the Business Assets to carry on the same kind of business as that carried on with those assets by the Transferor (whether or not as part of any existing business of the Transferee).

5.6 The Transferor will preserve the VAT records relating to the Business Assets required to be maintained in accordance with paragraph 6(1) Schedule 11 VATA and any regulations made under that section. The Transferee will indemnify the Transferor against the Transferor's proper and reasonable costs incurred in complying with the Transferor's obligations under section 49(5) VATA.

5.7 If HMRC notify the Transferor in writing that they do not agree that the sale of the Business Assets (or any part of them) pursuant to this Agreement falls within section 49 VATA and Article 5 Special Provisions Order, the Transferor will forthwith on receipt of such notification or on Completion (whichever is the later) issue to the Transferee a valid VAT invoice in respect of the sale of the Business Assets (or the relevant part of them). The Transferee will within five Weekdays of receipt of such invoice pay to the Transferor the VAT charged on the sale of the Business Assets (or the relevant part of them) in addition to the Consideration.

5.8 The Transferee undertakes to indemnify the Transferor in respect of any liability of the Transferor to pay HMRC any interest, penalty or surcharge by reason of the late payment of any VAT charged on the sale of the Business Assets (or any part of them) pursuant to the provisions of this Agreement provided that the Transferee shall only be liable to indemnify the Transferor in respect of such interest, penalty or surcharge where the VAT charged on the sale of the Business Assets (or any part of them) arises as a result of the breach by the Transferee of its warranties in **clause 5.5**.

6. LIABILITIES AND APPORTIONMENTS

6.1 All expenditure, overheads and outgoings in respect of the Business or Business Assets and all payments received in respect of the Business or Business Assets which, in each case, cover a period both before and after the Transfer Date will be apportioned on a time basis so that such part of the relevant expenditure or payment received attributable to a period up to and including the Transfer Date will be borne by, or for the benefit of, the Transferor and such part of the relevant expenditure or payment received attributable to the period after the Transfer Date will be borne by, or for the benefit of, the Transferee.

6.2 The Transferor will pay to the Transferee an amount equal to all the Customer Advances and the Transferee will pay to the Transferor an amount equal to all the Transferor Prepayments.

6.3 The Transferor will prepare a statement of adjustments setting out the net balance payable by either the Transferee or the Transferor to the other in accordance with **clauses 6.1** and **6.2** and will submit such statement to the Transferee within 14 days of Completion. Such statement shall take into account the Meter Readings. The Transferee and the Transferor will then seek to agree such statement and the net balance payable pursuant to this clause will be paid within 14 days of this statement being agreed or determined or on such other date as the Transferee and the Transferor agree. Any payments pursuant to **clause 6.1** not included in such statement of adjustments but subsequently made or received by the Transferor or the Transferee will be apportioned in accordance with **clause 6.1** and any claim for reimbursement will be made by notice in writing supported by copy documentation evidencing the amount of the same and the calculation of the apportionment. All sums due will be paid within ten Weekdays of a receipt of a notice of apportionment save where there is a dispute as to the amount to be paid in which case the matter may be dealt with in accordance with **clause 11**.

6.4 To the extent that any payment is made to the Transferor after Completion in respect of the performance by the Transferee of any Contract with a customer or generally in relation to the carrying on of the Business by the Transferee after Completion, the Transferor will receive the same as trustee for the Transferee and will account to the Transferee for the same as soon as reasonably practicable and in any event within seven Weekdays following receipt.

6.5 The Transferor shall indemnify and keep indemnified the Transferee against all Liabilities (save for any Liability which the Transferee has expressly agreed to assume pursuant to this Agreement) which may arise:

- (a) as a result of any breach by the Transferor of any Contract (including without limitation, any Continuing Tenancy) prior to the Transfer Date; and

- (b) otherwise in connection with the ownership of the Business Assets or the carrying on of the Business prior to the Transfer Date.
- 6.6 The Transferee shall indemnify and keep indemnified the Transferor against all Liabilities (save for any Liability which the Transferor has expressly agreed to retain pursuant to this Agreement) which may arise:
- (a) as a result of any breach by the Transferee of any Contract (including without limitation, any Continuing Tenancy) after the Transfer Date; and
- (b) otherwise in connection with the ownership of the Business Assets or the carrying on of the Business on or after the Transfer Date.
- 6.7 In respect of any claim arising prior to the Transfer Date under any policy of insurance maintained by the Transferor in relation to the Business or the Crossrail Stations:
- (a) it is agreed that the Transferor or its insurers shall be responsible for the resolution of such claims without liability for the Transferee; and
- (b) the Transferor undertakes that it has taken reasonable measures to address the root cause of any incident giving rise to such a claim.
7. **BUSINESS CONTRACTS**
- 7.1 Subject to the provisions of **clause 6** and the other provisions of this **clause 7**, the Transferee will with effect from the Transfer Date assume the obligations of the Transferor, and become entitled to the benefits of the Transferor, under the Business Contracts.
- 7.2 The Transferor hereby assigns to the Transferee with effect from the Transfer Date all its rights, title and interest under or pursuant to all the Business Contracts which are capable of assignment without the consent of other parties.
- 7.3 In so far as a Business Contract cannot be transferred without the consent of a third party or a novation agreement:
- (a) this Agreement does not constitute an assignment or an attempted assignment of the Business Contract if such assignment or attempted assignment would constitute a breach of the Business Contract;
- (b) the Transferor will, as requested by the Transferee, use its reasonable endeavours (with the co-operation of the Transferee) to procure such consent or novation.
- 7.4 Subject to **clause 7.5**, unless and until such consent or novation is obtained:
- (a) the Transferor will hold the benefit of such Business Contracts upon trust for the Transferee absolutely and will account to the Transferee for any sums received by the Transferor in relation thereto without any deduction or withholding of any kind; and
- (b) the Transferee will, as the Transferor's agent, perform all the obligations of the Transferor under such Business Contract for the period from the Transfer Date; and

- (c) the Transferor will do each act or thing reasonably requested of it by the Transferee to enable performance of the Business Contract by the Transferee and to provide for the Transferee the benefits of the Business Contract (including its rights of enforcement) provided that the Transferee indemnifies the Transferor in full against all costs (including legal costs) and expenses incurred.

7.5 If any consent or novation is not obtained within sixty days after Completion and the provisions set out in this **clause 7** do not enable the full benefit of a Business Contract to be enjoyed by the Transferee then the Transferor will be entitled by notice in writing to the Transferee to inform the Transferee of the Transferor's intent to terminate the relevant Business Contract or to exclude the same from the Business Assets. **[Delete if not applicable].**

8. EMPLOYEES

8.1 The Transferor shall perform and discharge its obligations in relation to the Employees which arise up to and including the Transfer Date.

8.2 The Transferor and the Transferee acknowledge that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, pursuant to the Regulations the contracts of employment between the Transferor and the Employees (except in so far as such contracts relate to any occupational pension scheme as defined in Regulation 10 of the Regulations) will have effect from and including the Transfer Date, which shall be the "time of transfer" under the Regulations, as if originally made between the Transferee and the Employees.

8.3 All Employment Costs in respect of the period:

- (a) up to the Transfer Date (whether or not due for payment at that date) will be borne by the Transferor;
- (b) on and from the Transfer Date will be borne by the Transferee,

and will if necessary be apportioned on a time basis between the Transferee and the Transferor.

8.4 The Transferor shall indemnify the Transferee against all Liabilities arising out of or in connection with:

- (a) any claim by any Employee arising from his employment with the Transferor or the termination of that employment (howsoever arising) prior to the Transfer Date;
- (b) the non-payment or underpayment of Employment Costs in respect of any period prior to the Transfer Date; and
- (c) any claim by any Employee, trade union, elected employee representative or staff association in respect of all or any of the Employees arising from any failure by the Transferor to comply with any legal obligation to any such Employee, trade union, representative or staff association or with regulations 13 or 14 of the Regulations or with any provision of the Consultation Regulations.

- 8.5 The Transferee shall indemnify the Transferor against Liabilities arising out of or in connection with:
- (a) any claim by any Employee arising from his employment with the Transferee or the termination of that employment (howsoever arising) after the Transfer Date;
 - (b) the non-payment or under-payment of Employment Costs in respect of the period commencing after the Transfer Date;
 - (c) any claim arising as a result of the Transferee's failure to comply with section 258 of the Pensions Act 2004 as transferee;
 - (d) any claim by any Employee arising from a change or anticipated change to that Employee's terms and conditions of employment by the Transferee, whether such claim is brought before, on or after the Transfer Date, including any claim pursuant to regulation 4(9) of the Regulations; and
 - (e) any claim by any Employee or representative of any Employee pursuant to regulation 13 of the Regulations, to the extent that such claim arises out of any failure by the Transferee to comply with its obligations under regulation 13(4) of the Regulations.
- 8.6 The Transferee shall make such pension provisions in respect of the Employees as comply with its obligations under sections 257 and 258 Pensions Act 2004 and the Regulations and, for the avoidance of doubt, shall have no other Liability to the Transferor in respect of the provision of pension benefits to any Employee.
- 8.7 [The Transferor shall provide such information and co-operation as may be necessary to enable the Transferee to establish a section under the Shared Cost Arrangement of the Railways Pension Scheme in which Employees who are protected employees may participate immediately following the Transfer Date in order that the Transferee may comply with its obligations to such protected employees under the Railways Pensions (Protection and Designation of Schemes) Order 1994. The Transferor will procure that a transfer payment is made to the [\[Crossrail Section\]](#)³¹⁸ from the GW Section in accordance with the Railway Pensions (Protection and Designation of Schemes) Order 1994.
- 8.8 Where either Party (the "**Indemnifying Party**") is obliged to indemnify the other (the "**Indemnified Party**") under this clause, the Parties will co-operate fully with each other in relation to the Liability and save as required by law, the Indemnified Party will not settle a claim without the prior written consent of the Indemnifying Party, such consent not to be unreasonably withheld or delayed.
9. **STATION DILAPIDATIONS**
- 9.1 ***[Provisions regarding station dilapidations to be included]***
10. **RECORDS AND ACCESS**
- 10.1 Without prejudice to any other provision of this Agreement, the Transferee and its agents will be entitled for a period of three years from the date of this Agreement

³¹⁸ Note to Franchisee - Reference to be confirmed at the time of entry into this business transfer agreement.

on giving reasonable notice to the Transferor to have access during normal business hours and to take copies (at its own expense) of any books, documents or other records (including computer records) in the Transferor's possession relating exclusively to the Business or the Business Assets and which have not been delivered to the Transferee.

- 10.2 The Transferor and its agents will, where necessary for the completion of its accounts or tax returns or for dealing with any claims or disputes relating to the use of the Business Assets or the carrying on of the Business up to the Transfer Date, be entitled for a period of six years from Completion on giving reasonable notice to the Transferee to have access during normal business hours and to take copies of (at its own expense) any of the Records which were delivered to the Transferee pursuant to this Agreement.

11. DISPUTES

- 11.1 In the event of any dispute, either Party shall be entitled to call an extraordinary meeting of the Parties designated representatives who are responsible for the administration of this Agreement, which, in the case of the Transferee, shall be [X] and in the case of the Transferor shall be [X], (the "**Designated Representatives**") for any purpose including resolving a dispute, by service of five Weekdays' written notice on the other Party. The Parties shall negotiate in good faith to resolve such dispute. If the dispute cannot be resolved by the Designated Representatives at or within ten Weekdays of such meeting, either Party may refer the matter for resolution to the [Managing Director of the Transferee] and [Managing Director of the Transferor] who shall discuss the matter in good faith with the intention of settling the dispute as soon as reasonably possible.

- 11.2 If any dispute cannot be settled by negotiation in accordance with **clause 11.1** above, the Parties, in good faith, may, by agreement, seek to resolve that dispute through mediation under the auspices of a mediator. The mediator shall be selected by mutual agreement and, in the case of any dispute relating to financial matters (including, without limitation, any dispute relating to apportionment pursuant to **clauses 6 or 8** (a "**Financial Dispute**") shall be a qualified accountant of good standing. Failing agreement within fourteen days after a request by one Party to the other, a mediator shall be chosen at the request of either Party by the President for the time being of the Law Society or, in the case of a Financial Dispute, by the President of the Institute of Chartered Accountants in England and Wales, who in each case shall be requested to choose a suitably qualified and experienced mediator for the dispute in question. If the dispute is not resolved by mediation within thirty days of the appointment of the mediator (or such other period as the Parties may agree), or if one of the Parties will not participate in the mediation, the dispute shall be resolved in accordance with the Rail Industry Dispute Resolution Rules.

12. CONFIDENTIALITY

- 12.1 This Agreement and any Confidential Information disclosed by one Party to the other hereunder shall be confidential to the Party both before and after the Transfer Date and neither Party shall make any disclosure in relation to or permit any announcement or publication to be made concerning this Agreement or its terms, either in whole or in part, or any comment or statement relating to this Agreement except:

- (a) to the ORR, the Department for Transport or Transport for London; or

- (b) with the prior written consent of the other as to the form and content of any such announcement, publication, statement or comment, such consent not to be unreasonably withheld or delayed; or
- (c) as far as may be necessary for the prompt performance of its obligations under this Agreement; or
- (d) in connection with any dealing or proposed dealing with its interest; or
- (e) without prejudice to **clause 12.1(a)** above, for the purposes of obtaining any regulatory or government authorisation, approval or consent; or
- (f) as required by law or any relevant stock exchange or if ordered to do so by a court of competent jurisdiction, HM Revenue and Customs; or
- (g) to a member of the Transferor's Group or the Transferee's Group upon obtaining from such Party an undertaking of confidentiality equivalent to that contained in this **clause 12.1**; or
- (h) to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in this **clause 12.1**; or
- (i) to any lenders, security trustee, bank or other financial institution (and their advisers) from which such party is seeking or obtaining finance upon obtaining from each such person an undertaking of confidentiality equivalent to that contained in this **clause 12.1**; or
- (j) to the directors, officers and employees of such Party.

12.2 If either Party seeking to disclose a document or information can demonstrate to the reasonable satisfaction of the other that any such document, material or information is in the public domain through no breach of **clause 12.1** then to the extent that it is in the public domain this obligation shall cease but without prejudice to any claim by either party in respect of any prior breach.

13. COSTS

Except where expressly stated otherwise, each Party will bear such Party's own costs and expenses relating to the negotiation, preparation and implementation of this Agreement.

14. INTEREST

If any Party becomes liable to pay (the "**Paying Party**") any sum pursuant to this Agreement, whether a liquidated sum or by way of damages or otherwise, the Paying Party will be liable to pay interest on such sum from the due date for payment at the annual rate of four per cent above the base lending rate from time to time of *[name of Bank]*, accruing on a daily basis until payment is made, whether before or after any judgment.

15. NOTICES

15.1 Any notice or other communication given in connection with this Agreement will be in writing and will be delivered personally or sent by pre-paid first class post (or air mail if overseas) or by fax to the recipient's address set out at **clause 15.3**

in this Agreement or to any other address which the recipient has notified in writing to the sender received not less than seven (7) Weekdays before the notice was despatched.

15.2 A notice or other communication is deemed given:

- (a) if delivered personally, upon delivery at the address provided for in this clause; or
- (b) if sent by pre-paid first class post, on the second Weekday after posting it; or
- (c) if sent by email, when confirmation of its transmission has been received by the sender,

provided that, if it is delivered personally or sent by fax on a day which is not a Weekday or after 4 p.m. on a Weekday, it will instead be deemed to have been given or made on the next Weekday.

15.3 The addresses referred to in **clause 15.1** are:

Transferor

To: [NAME]
 Address: [DETAILS]
 For the attention of: [NAME]
 Email: [NUMBER]
[Copy to:] []

Transferee

To: [NAME]
 Address: [DETAILS]
 For the attention of: [NAME]
 Email: [NUMBER]
[Copy to:] []

16. **ASSIGNMENT**

16.1 Save as provided in **clause 16.2**, neither Party may assign the benefit of, and/or any of its rights under, this Agreement without the prior consent of the other Party.

16.2 The Transferee may assign the benefit of, and any of its rights under, this Agreement to another member of the Transferee Group and the Transferor may assign the benefit of, and any of its rights under, this Agreement to another member of the Transferor Group.

17. FURTHER ASSURANCE

- 17.1 Each Party will (at their own cost) do, or procure the doing of, all acts and things and execute, or procure the execution of, all documents as the other party reasonably considers necessary to give full effect to the terms of this Agreement.

18. RIGHTS OF THIRD PARTIES

The Parties do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

19. ENTIRE AGREEMENT

- 19.1 This Agreement and the documents referred to in it constitute the entire agreement between the Parties and supersede and replace any previous agreement, understanding, undertaking, representation, warranty or arrangement of any nature whatsoever between the parties relating to the subject matter of this Agreement.
- 19.2 The Parties acknowledge and agree that in entering into this Agreement, and the documents referred to in it, they have not relied on, and will have no remedy in equity, contract, tort, under the Misrepresentation Act 1967 or otherwise in respect of, any representation other than as set out in this Agreement and each document referred to in it.
- 19.3 The only remedy available to the Parties in respect of this Agreement and the documents referred to in it is for breach of contract and, for the avoidance of doubt, neither party will have the right to rescind this Agreement or the documents referred to in it for breach of contract, negligent or innocent misrepresentation or otherwise.
- 19.4 Nothing in this clause will have the effect of limiting or restricting any liability of the Parties arising as a result of any fraudulent misrepresentation.

20. GENERAL

- 20.1 Unless otherwise provided, any outstanding obligation contained in this Agreement will remain in force notwithstanding Completion.
- 20.2 Failure or delay by any Party in exercising any right or remedy under this Agreement will not in any circumstances operate as a waiver of it, nor will any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right or remedy.
- 20.3 Any waiver of any breach of, or any default under, any of the terms of this Agreement will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this Agreement.
- 20.4 No variation of this Agreement will be valid unless it is in writing and signed by or on behalf of each party to this Agreement.
- 20.5 Nothing in this Agreement will have the effect of limiting or restricting any liability of the Transferor in respect of a claim arising as a result of any fraud by or on behalf of Transferor.

21. GOVERNING LAW AND JURISDICTION

- 21.1 This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by English law.
- 21.2 The courts of England and Wales will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement (including (without limitation) in relation to any non-contractual obligations). The Parties irrevocably agree to submit to that jurisdiction.

22. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when executed and delivered will be an original.

SCHEDULE 1
The Employees

[To be inserted]

SCHEDULE 2
Tangible Assets

[To be inserted]

SCHEDULE 3

The Business Contracts

[To be inserted]

SCHEDULE 4

Records

[To be inserted]

SCHEDULE 5**Part 1****The Property**

Each of the following Crossrail Stations:

[Details to be added]

Part 2**The Continuing Tenancies**

[Details to be added]

Part 3**The Terminating Tenancies**

[Details to be added]

Part 4**The Existing Station Access Agreements**

[Details to be added]

Appendix 2 to Schedule 6.2 (Great Western Franchise Specific Provisions) ³¹⁹**Reading Wheel Lathe Stage 2 Payment**

- 1 The Reading Wheel Lathe Stage 2 Payment in respect of any Reporting Period shall be calculated based on the time incurred by the Franchisee during the relevant Reporting Period.
- 2 Time incurred by Franchisee Employees will be charged at the following day rates:

Level	Day Rate (exc VAT)
Director (Affiliate)	[REDACTED ³²⁰]
Director (FGW)	[REDACTED ³²¹]
Senior Manager	[REDACTED ³²²]
Middle Manager	[REDACTED ³²³]
	Day Rates to be increased by the Retail Prices Index in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments)

The day rates in paragraph 2 are exclusive of any out of pocket expenses incurred by the Franchisee. Any out of pocket expenses incurred by the Franchisee shall be recoverable at cost

- 3 Time incurred by non-Franchisee Employees shall be charged at the cost incurred by the Franchisee.

³¹⁹ **Date of contract insertion 29/05/2015 – Agreed by the Secretary of State and Franchisee.**

³²⁰ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³²¹ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³²² **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³²³ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Appendix 3 to Schedule 6.2 (Great Western Franchise Specific Provisions) ³²⁴**Stage 2 Package Work Plan**

Milestone Description (Wheel Lathe Supplier)	Milestone Description (D&B Contractor)	Indicative Completion Date
Assembly	Design complete	Dec-15
	Site set up and Enabling Works complete	Jul-16
Factory Acceptance Testing		Aug-16
Installation & Training		Oct-16
Site Acceptance Testing	Building complete; Permanent Way complete	Nov-16
Retention/Snagging	Handback and Close Out	Dec-16
	Retention/Snagging	Dec 2016- Nov 2017

³²⁴ **Date of contract insertion 29/05/2015 – Agreed by the Secretary of State and Franchisee.**

Appendix 4 to Schedule 6.2 (Great Western Specific Franchise Provisions) ³²⁵**Worcester HST Fuelling Facility Payment**

1. The element of the Worcester HST Fuelling Facility Payment in respect of any Reporting Period in respect of time incurred by Franchise Employees shall be calculated based on the following day rates:

Level	Day Rate (exc VAT)
Director (Affiliate)	[REDACTED ³²⁶]
Director (FGW)	[REDACTED ³²⁷]
Senior Manager	[REDACTED ³²⁸]
Middle Manager	[REDACTED ³²⁹]
	Day Rates to be increased by the Retail Price Index in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments).

The day rates in paragraph 1 are exclusive of any out of pocket expenses incurred by the Franchisee. Any out of pocket expenses incurred by the Franchisee shall be recoverable at cost.

2. Time incurred by non-Franchisee Employees shall be charged at the cost incurred by the Franchisee.

³²⁵ **Date of contract insertion 26/11/2015 – Agreed by the Secretary of State and Franchisee.**

³²⁶ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³²⁷ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³²⁸ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³²⁹ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Appendix 5 to Schedule 6.2 (Great Western Specific Franchise Provisions) ³³⁰**Worcester HST Fuelling Facility Specification**

1. Creation of new fuelling bays to enable the simultaneous re-fuelling of HST power cars.
2. The fuelling bays require bunding sufficient to capture potential spillages. Bunding shall be connected to the existing interceptor tank.
3. Each fuelling bay (including the existing DMU servicing road) shall be partially covered by a canopy in order to provide protection from foul weather. Cladding shall be designed to minimise or contain unwanted noise.
4. Alterations to the fuel system as required to improve reliability and enable the flow rates needed to fuel HSTs. The fuel delivery system shall be connected to the existing fuel tanks.
6. Suitable walking routes shall be provided to access the fuel point / servicing areas, where these are not available.
7. Suitable lighting as required along walking routes and in the areas where the work is undertaken.
8. Training for sufficient staff at the depot in relevant competencies to undertake servicing on HSTs. The Franchisee will manage fault rectification via the Technical Riding Inspector already stationed at Worcester overnight. The principle agreement is for the operator of the depot to provide labour for the basic 'S' exam under the terms of a depot access agreement with the Franchisee as beneficiary.
9. Site drainage shall be examined for the revised servicing facility and necessary works in connection with the refuelling facility undertaken.
10. Storage of light repair items.
11. Accommodation for staff at the Worcester light maintenance depot of an appropriate level and in an appropriate location to take account of the changes to the depot being made as part of the Worcester HST Fuelling Facility project.
12. The depot protection system shall be reviewed and updated where necessary for the new operation to accommodate HST servicing.

³³⁰ **Date of contract insertion 26/11/2015 – Agreed by the Secretary of State and Franchisee.**

Appendix 6 to Schedule 6.2 (Great Western Specific Franchise Provisions) ³³¹**Part A: Electrification Change Advance Works Specification**

The Electrification Change Advance Works requires the establishment and maintenance of a project team to undertake the following activities, which are over and above the input and co-operation provided for elsewhere under the terms of the Franchise Agreement.

1. Identify appropriate, and workable, contingency timetable options;
2. Identify fleet contingency plan(s), work with the Secretary of State to evaluate the options and create the business cases needed to support investment decisions;
3. Assist the Secretary of State in negotiating and planning fleet cascade interventions;
4. Develop appropriate contingency stabling and maintenance arrangements;
5. Undertake liaison and negotiation needed, including those with other train operators, Network Rail, rolling stock leasing companies and rolling stock manufacturers and maintainers to agree the contingency arrangements and to help negotiate best value terms for the Secretary of State;
6. Proactively engage with other parties, including Network Rail, Agility Trains West Limited, Crossrail and HS2 as needed to help ensure that major project interfaces and objectives are protected and that the impact of electrification delays are reasonably minimised through appropriate programme planning;
7. Carry out the modelling (including in relation to performance, revenue and crowding, crew and rolling stock and other financial modelling) required to be able to assess the financial effects of the contingency arrangements and to evaluate options and proposals;
8. Carry out evaluation activities in relation to the all bi-mode variation;
9. Undertake review, assessment and liaison to consider and evaluate the consequences of developing the Exeter Depot solution no longer being on a single site; and
10. Any other activities that are agreed to be undertaken by the project team as required by the Secretary of State.

Part B: Electrification Change Advance Works Payment Rates

1. The costs of the Electrification Change Advance Works in respect of any Reporting Period in respect of time spent by employees of the Franchisee or any of its Affiliates shall be recoverable at the following day rates:

³³¹ **Date of contract insertion 27/04/2016 – Agreed by the Secretary of State and Franchisee.**

Level	Day Rate (exc VAT)
Director (Affiliate)	[REDACTED ³³²]
Director (FGW)	[REDACTED]
Senior Manager	[REDACTED]
Middle Manager	[REDACTED]

The day rates in this paragraph 1:

- a) are exclusive of any out of pocket expenses incurred by the Franchisee. Any reasonable out of pocket expenses incurred by the Franchisee shall be recoverable at cost, and
 - b) shall be indexed in accordance with the Retail Price Index ("RPI") on 1 April 2016 and on 1 April of each subsequent year (the "adjustment date"), such indexation to be determined by multiplying the relevant cost rate (where applicable, as it has previously been indexed) by the percentage increase in RPI published for the 12 month period with the November immediately preceding the relevant adjustment date.
2. Costs and expenses incurred by the Franchisee in respect of persons who are not employees of the Franchisee or its Affiliates working on the Electrification Change Advance Works shall be recoverable at the cost properly and reasonably incurred by the Franchisee.
 3. All the other costs and expenses not covered by paragraphs 1 or 2 above, incurred by the Franchisee in respect of the Electrification Change Advance Works shall be recovered at the proper and reasonable cost incurred by the Franchisee.
 4. The first relevant Reporting Period in respect of which the Electrification Change Advance Works payment may be claimed is Period 10 of 2015/16.

³³² Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Appendix 7 to Schedule 6.2 (Great Western Specific Franchise Provisions) ³³³**HS2 Project Activities Specification****Section 1 - HS2 Project Transition and Opex Activities****Transition Activities**

Activity Name	Activity	Relevant Predecessor Event*
Programme Management	<p>Including but not limited to:</p> <p>Liaison with and engagement with the wider industry to facilitate vacation of OOC depot.</p> <p>Programme Management including preparation of and tracking against plans, risk and issue registers, cost controls and reporting. Attendance at industry meetings and internal governance meetings. Responding to external events insofar as and to the extent that they impact the vacation of OOC depot or other related activities included in this Appendix 7 insofar as these activities are relevant to the vacation of OOC depot (e.g. delays to electrification or introduction of IEP), evaluating impacts and cooperating with the industry to determine appropriate responses and solutions.</p> <p>Ensuring compliance with standards and contracts; notification and cost reporting in accordance with paragraph 25 of Schedule 6.2.</p>	Not applicable
Business Planning	<p>Making sure that activities to support GWR passenger services and franchise obligations consider the impact of the vacation of HS2, including but not limited to timetable planning; maintenance planning; staff transition.</p> <p>Setting out requirements for and procedures for changed working operations at the depot and other locations</p>	Not applicable
Management of phased withdrawal	Management, HR support and training to support the incremental workload of moving out of OOC earlier than December 2018 and to ensure that the transition to new ways of working is managed smoothly and that staff are aware of the new arrangements. This extends	The vacation of Area 1,2 and 3

³³³ Date of contract insertion 17/01/2017 – Agreed by the Secretary of State and Franchisee.

Activity Name	Activity	Relevant Predecessor Event*
	to Control staff in Swindon and staff at other depots in addition to staff based at OOC.	
GWR maintenance of services at OOC	Activities to ensure that the site can continue to deliver the relevant amount of services at any time, as agreed in the Exit Plan and subject to the requirements of the fleet.	The vacation of Area 1,2 and 3
Liaison and approval for NR alteration of depot facilities and plant to allow phased withdrawal	For example, Facilitation and supervision of visits by NR, HS2 and their contractors Review and approval of NR proposal for relocation of compressors, power sources and tanking lines, lighting and utilities to allow continued operation of the depot through the staged withdrawal.	The vacation of Area 1,2 and 3
Liaison and approval for alteration of access routes to stabling roads	Review and approval of Network Rail plans and method statements, for example, for slewing of track to permit continued access to stabling roads during changes to the depot. Negotiation of access to the GWR depot lands via the Heathrow Express depot and the current HST Emergency Exit, including cost and liabilities associated with use of the alternative access.	c.
Train washing	Planning for and making alternative arrangements for train washing when the carriage wash machine is not available and delivering such train washing.	d.
Sleeper Transition – Cornwall	Migration of the activities, materials, building fit out and tooling required to carry out maintenance on the Sleeper Train vehicles following the delivery of the depot facilities to allow such work to be performed there. This does not include the design and construction of the Long Rock depot facilities, which have been separately funded.	e.
Sleeper Transition – London end	Provision of facilities to support activity required to allow Sleeper Train to be serviced in the London/Thames Valley area following Old Oak Common partial and full vacation including migration or supply of the materials, tooling, accommodation	f.
Liaison and engagement with DfT-led work to identify an alternative Underframe Cleaning Facility in the London Area	Contributing to DfT led work defining requirements for the industry infrastructure and negotiating the required permissions and contractual arrangements for GWR use of the	h.

Activity Name	Activity	Relevant Predecessor Event*
	agreed facility, including cost and liabilities associated with use of the alternative access.	
West Ealing project interface, fit out and mobilisation	Engagement with Network Rail delivery team; internal programme management and commercial negotiation. Migration of the activities, materials, facility fit out and tooling required to carry out cleaning and servicing of vehicles following the delivery of the facilities to allow such work to be performed there.	i.
Liaison, engagement and approvals with Network Rail-led work to provide stabling at Paddington Station	Defining requirements for infrastructure and negotiating the required permissions and contractual arrangements	k.
Liaison, engagement and approvals with Network Rail-led work to provide a continued ability to carry out the reverse Z move	Activities to allow reverse Z moves to take place (and continue to take place) in accordance with the Relevant Predecessor Event.	l. (Phase 1) e. (Phase 2 and Phase 3) d. (Phase 4)
Safety validation	Work to develop and fulfil of all applicable safety requirements and certifications, including those for the safety management of change	m. (Phase 1) c. (Phase 2 and Phase 3) b. (Phase 4)
Legal and Commercial Agreements	Carrying out the legal and commercial activities necessary for the lease to be surrendered and for all contracts related to the depot to be amended or terminated and for new contracts to be put in place for example for track and depot access, including cost and liabilities associated with alternative agreements.	n.(Phase 1) d. (Phase 2 and 3) c. (Phase 4)

Note: * This column is included for information from the Old Oak Common Depot Vacation Cooperation Agreement between the Secretary of State, Network Rail, High Speed Two (HS2) Ltd and the Franchisee dated 22 January 2016: please see that agreement for further information concerning Relevant Predecessor Events. In respect of each activity, Relevant Predecessor Event e. applies in respect of Phase 2 and Phase 3.

Opex Activities

Activity Name	Activity	Relevant Predecessor Event*
Franchisee alteration of depot facilities and plant to allow phased withdrawal	Additional operational and maintenance costs in connection with alterations of depot facilities and plant, including staff if required	The vacation of Area 1,2 and 3
West Ealing operational and maintenance costs	Operational and maintenance costs including lease payments, maintenance and repair contracts but excluding staff (other than	i.

Activity Name	Activity	Relevant Predecessor Event*
	incremental costs as a result of acceleration of moves of staff earlier than December 2018)	
Penzance additional operational and maintenance costs	Additional operational and maintenance costs including lease payments maintenance and repair contracts but excluding staff	e.
London end sleeper facility operational and maintenance costs	Operational and maintenance costs including lease or depot access payments, maintenance and repair contracts, including staff	f.
Paddington operational and maintenance costs	Additional operational and maintenance costs in connection with increased stabling of trains in Paddington station, including staff	k.
Mileage related costs	Fuel, traincrew, maintenance, lease costs and all other costs incurred as a result of additional mileage for units which would have otherwise used OOC.	The vacation of Area 1,2 and 3
OOC Station development	Cooperation and collaboration on all aspects of HS2 OOC station development including the impact on the Great Western mainline railway.	Not applicable
Other activities	Such other transition and opex activities in connection with the HS2 Project as the parties may from time to time agree in writing, as set out in the definition of "HS2 Project Activities".	

Note: * This column is included for information from the Old Oak Common Depot Vacation Cooperation Agreement between the Secretary of State, Network Rail, High Speed Two (HS2) Ltd and the Franchisee dated 22 January 2016: please see that agreement for further information concerning Relevant Predecessor Events. In respect of each activity, Relevant Predecessor Event e. applies in respect of Phase 2 and Phase 3.

For the avoidance of doubt Reading Wheel Lathe additional lease rentals costs under paragraph 20 of Schedule 6.2 and costs of relocation of depot staff from Old Oak Common to Reading Depot (in respect of the wheel lathe operations) or West Ealing (other than incremental costs as a result of acceleration of moves of staff earlier than December 2018) are not included in the HS2 Project Costs as allowance for them is already made in the Franchise Agreement or Financial Model. If the London end sleeper facility is located at Reading Depot, then the costs of relocation of depot staff from Old Oak Common to Reading Depot in connection with that facility will be included in the HS2 Project Costs .

Section 2 - HS2 Project Capex Activities

Activity Name	Activity	Phase 1 (where relevant)	Phase 2 (where relevant)	Relevant Predecessor Event*
Alteration of depot facilities and plant to allow phased withdrawal, including depot facilities in sheds and accommodation and depot facilities which are portable or in yard.	Relocation or purchase and installation of various assets required to operate the depot services, including storage, IT and portable effluent equipment. (Equipment might be leased.)	Not applicable		The vacation of Area 1,2 and 3
Alternative approach to washing the train	Equipment required to operate the servicing of sleepers at an alternative London end location.	Not applicable		d.
HMF removal	Removal of the Heavy Maintenance Facility and associated equipment and infrastructure	Not applicable		The vacation of Area 1
London End Sleeper Facilities	Provision, design and installation of facilities to support activity required to allow Sleeper Train to be serviced in the London area including accommodation.	Design and price.	Deliver.	f.
Paddington facilities	(Note: it is anticipated facilities would be provided by Network Rail, see Transition Activities Table in section 1)	Not applicable		k.

Activity Name	Activity	Phase 1 (where relevant)	Phase 2 (where relevant)	Relevant Predecessor Event*
Moving out		Not applicable		The vacation of Area 1,2 and 3
Other activities	Such other capex activities in connection with the HS2 Project as the parties may from time to time agree in writing, as set out in the definition of "HS2 Project Activities" .			

Note: * This column is included for information from the Old Oak Common Depot Vacation Cooperation Agreement between the Secretary of State, Network Rail, High Speed Two (HS2) Ltd and the Franchisee dated 22 January 2016: please see that agreement for further information concerning Relevant Predecessor Events. In respect of each activity, Relevant Predecessor Event e. applies in respect of Phase 2 and Phase 3.

Appendix 8 to Schedule 6.2 (Great Western Franchise Specific Provisions)³³⁴**Funded Works**

The Funded Works comprise the following, together with reasonably necessary ancillary or associated works:

- (a) **Penzance Longrock Depot: installation of 415v shore supplies and Ad-blue additive storage and supply;**
- (b) **Laira Depot: modification of all four roads in the servicing shed to include CET, fuelling and Ad-blue provision. Fume extraction to be included on two dedicated roads. Water tanking facilities to be included (including potable water). Installation of additional coolant and lube oil points to the extent required. Electrical shore supplies to service intermediate positioned Short Form HSTs and adaptation of the shore supplies to cater for AT300s;**
- (c) **Bristol St.Phillips Marsh depot: installation of a fume extraction system on roads A & B in HST Shed. Installation of additional fuelling points on roads A & B service apron in the HST Shed. Installation of additional CET modules including integrated tanking facility and supporting plant equipment on roads A & B service apron in the HST Shed. Installation of additional oil and coolant points to serve both north and south sides of roads A & B in the HST Shed. Relocation of the heavy lift jacks in the HST Shed. These works will also support the DMU cascade to Bristol SPM depot; and**
- (d) **Exeter New Yard: adaptation of the shore supplies to cater for AT300s;**
- (e) **Penzance Station: adaptation of the shore supplies to cater for AT300s; and**
- (f) ³³⁵**Exeter Depot: installation of three dual-output shore supplies to cater for AT300s and Short Form HSTs;**
- (g) ³³⁶**Laira Train Maintenance Depot: installation of dual-output shore supplies (8 & 10 road) to cater for AT300s and Short Form HSTs;**
- (h) ³³⁷**Penzance Long Rock Maintenance Depot: additional ad-blue and CET support capability for 9-car IET trains; and**

³³⁴ Date of contract insertion 18/09/2017 – Agreed by the Secretary of State and Franchisee.

³³⁵ 01 March 2019 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

³³⁶ 11 February 2020 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

³³⁷ 11 February 2020 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

- (i) ³³⁸**Penzance Long Rock Maintenance Depot: development of GRIP3 detailed design proposals for 3 x 9-car IET stabling.**

³³⁸ 11 February 2020 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

Appendix 9 to Schedule 6.2 (Great Western Franchise Specific Provisions)³³⁹

Funded Works Work Plan

	Milestone Description	Indicative Completion Date
Laira/SPM	Contract Award	September 2017
Penzance Long Rock	Design Approval	October 2017
Shore supply adaptation (Penzance Station and Exeter New Yard)	Option selection	October 2017
Shore supply adaptation	Contract Award	December 2017
Laira/SPM	Design Approval	December 2017
Penzance Long Rock	Construction Complete	January 2018
Penzance Long Rock	Testing/Commissioning and Handback complete	January 2018
Shore supply adaptation	Design Approval	February 2018
Laira/SPM	Construction Complete	April 2018

³³⁹ Date of contract insertion 18/09/2017 – Agreed by the Secretary of State and Franchisee.

Laira/SPM	Testing/Commissioning and Handback complete	April 2018
Laira/SPM	Project Complete	May 2018
Shore supply adaptation	Construction complete	June 2018
Shore supply adaptation	Testing/Commissioning and Handback complete	July 2018
[Deleted³⁴⁰]		
³⁴¹ Exeter Depot shore supply adaption	Construction complete	February 2020
³⁴² Exeter Depot shore supply adaption	Testing/Commissioning and Handback complete	February 2020
[Deleted³⁴³]		
³⁴⁴ Laira Depot Shore Supply	Construction Complete	February 2020
³⁴⁵ Laira Depot Shore Supply	Testing/commissioning and handback complete	March 2020
³⁴⁶ Penzance Long Rock Depot additional ad-blue and CET capability	Construction Complete	February 2020
³⁴⁷ Penzance Long Rock Depot additional ad-blue and CET capability	Testing/commissioning and handback complete	March 2020

³⁴⁰ 01 March 2019 (Date of Contract Change Letter) – Contract deletion agreed by the Secretary of State and Franchisee.

³⁴¹ 01 March 2019 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁴² 01 March 2019 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁴³ 11 February 2020 (Date of Contract Change Letter) – Contract deletion agreed by the Secretary of State and Franchisee.

³⁴⁴ 11 February 2020 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁴⁵ 11 February 2020 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁴⁶ 11 February 2020 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁴⁷ 11 February 2020 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁴⁸ Funded Works	Project close out activities complete, including completion of feasibility and design studies	March 2020
------------------------------------	--	-------------------

³⁴⁸ 11 February 2020 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

Appendix 10 to Schedule 6.2 (Great Western Franchise Specific Provisions)
Exeter Depot Funded Works³⁴⁹

The Exeter Depot Funded Works comprise the following, together with reasonably necessary ancillary or associated works:

- Extension of the maintenance depot boundary onto land known as the Wessex Estate adjacent to the eastern boundary of the existing depot, and onto the Waggoners Way site immediately to the north of the existing depot on the other side of Station Road;
- Construction of new 3-road maintenance depot facilities on the Wessex Estate land (2 no. 5-car service roads in shed and 1 no. 3-car heavy maintenance road with jacking capability);
- New drivers' footbridge connection into St Davids Station;
- New Carriage Wash Plant;
- New CET plant;
- Modification to existing Under Frame Cleaning facility (roof installation);
- Construction of new staff accommodation for train crew and maintenance staff;
- Telecoms (non-operational and operational), including removal of legacy telecom assets and re-routing into new system;
- Construction of a new fluids farm and delivery facility to serve the new maintenance depot facilities on the Waggoners' Way site;
- Alterations / enhancements / works to existing facilities within the existing maintenance depot boundary, including decamping of existing accommodations.

³⁴⁹ 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Appendix 11 to Schedule 6.2 (Great Western Franchise Specific Provisions)**Exeter Depot Funded Works Work Plan**³⁵⁰

Task	Start	End
GRIP 6 Construction Phase	01/03/2018	31/05/2019 or as soon as practical thereafter
Commissioning	01/05/2019	31/05/2019 or as soon as practical thereafter
Taking into Use	31/05/2019 or as soon as practical thereafter	-
Completion	31/05/2020 or as soon as practical thereafter	-

³⁵⁰ 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 6.3**The IEP Provisions****1. Definitions and Interpretation**

1.1 In this Schedule 6.3, except where the context otherwise requires words and expressions defined in the Train Availability and Reliability Agreement shall have the same meaning when used herein.

1.2 In this Schedule 6.3, except where the context otherwise requires, the following words and expressions shall have the following meanings:

“Acceptance Certificate” has the meaning given to such term under the MARA;

“Acceptance Issues” means in respect of a Type of Set, that any compatibility issue set out in Annex B of Appendix C to Schedule 1 of the MARA is subsisting on the Great Western IEP Network as at the date on which the TSP presents a Set of such Type for Type Acceptance;

“Additional Obligations” has the meaning given to it in paragraph 2.10 of this Schedule 6.3;

“Ancillary Variation” means any merely technical or administrative change to the MARA and/or Train Availability and Reliability Agreement that does not have any material adverse effect on the costs, revenues or overall risk profile of the Franchisee;

“Approvals Plan” means the TSP’s plan for obtaining all Relevant Approvals including any required Derogations in relation to each Set, developed and implemented in accordance with Appendix E to Schedule 1 of the MARA;

“Compliance Audit” has the meaning given to it in paragraph 3.5 of this Schedule 6.3;

“Design Process” has the meaning given to it in paragraph 2.4 of this Schedule 6.3;

“East Coast Operator” means East Coast Main Line Company Limited (Company Number 04659708) or any successor operator from time to time in relation to some or to all of the railway passenger services operated by it;

"Final Acceptance"	means the final acceptance of any Set pursuant to Paragraph 5 of Part A of Schedule 2 of the MARA;
"Final Acceptance Conditions"	means the conditions in respect of Final Acceptance set out in Paragraph 5.2 of Part A of Schedule 2 of the MARA;
"Fleet"	means the fleet of Sets described in Appendix C to Part A of Schedule 2 of the MARA;
"Full Set"	means any Set consisting of more than seven Vehicles but fewer than or equal to twelve Vehicles to be delivered by the TSP pursuant to the MARA and identified in Appendix C to Part A of Schedule 2 of the MARA, including any replacement ordered pursuant to Part I of Schedule 6 of the MARA;
"GWR External Livery Specification"³⁵¹	means the document "GWR IEP Paint Specification V1.docx" set out in Annex 1;
"GWR External Livery Specification (Paint)"³⁵²	means the specification for the painting of the Sets set out in the GWR External Livery Specification;
"GWR External Livery Specification (Vinyls)"³⁵³	means the specification for the application of vinyl decals to the Sets described in the GWR External Livery Specification;
"Great Western IEP Network"	means the sections of the IEP Network set out in the table in Part 1 of Appendix F of Schedule 1 of the MARA;
"Great Western Relevant Approvals"	means all Relevant Approvals required in relation to the Great Western IEP Network;
"Half Set"	means any Set consisting of fewer than eight Vehicles to be delivered by the TSP pursuant to the MARA and identified in Appendix C to Part A of Schedule 2 of the MARA, including any replacement ordered pursuant to Part I of Schedule 6 of the MARA;

³⁵¹ 20 January 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁵² 20 January 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁵³ 20 January 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"IEP Network"	means the routes specified in Appendix F to Schedule 1 of the MARA;
"Installation Programme"	has the meaning given to it in paragraph 3.7(b) of this Schedule 6.3;
"Liveried Set"³⁵⁴	means any part of the Train Fleet to which all or part of the GWR External Livery Specification or any similar livery and/or marks have been applied, including any rolling stock vehicles which become part of the Train Fleet at a date beyond the date of signature of this Deed;
"MARA"	has the meaning given to such term in paragraph 2.1 of this Schedule 6.3;
"MARA Effective Date"	means 24 July 2012;
"MARA Variation"	has the meaning given to the term "Variation" under the MARA;
"Relevant Operator"	has the meaning given to such term in the MARA;
"Relevant Operator Equipment"	means any equipment, information and communications technologies (including hardware, software, networks and peripherals) and fixtures relating to: <ul style="list-style-type: none"> (e) an electronic point of sale system; and/or (f) a wireless internet connection system;
"Set"	means a Half Set or a Full Set;
"T37/38 Kitchen Vehicles"³⁵⁵	means the vehicles containing the kitchens in each of Set T37 and Set T38;
"Train User Review Group"	means each of the following: <ul style="list-style-type: none"> (a) passenger user design review group (to consider issues such as interior practicalities (including seat design, including comfort));

³⁵⁴ 20 January 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁵⁵ 20 January 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (i) driver design review group (to consider issues such as cab and facilities);
- (ii) other train staff user design review group (to consider issues such as catering facilities (including trolley storage facilities) train guard facilities, train dispatch, cleaning and control and communication); and
- (iii) interior design style review group (to consider issues such as interior aesthetics (including seat design, including comfort));

"Type"	has the meaning given to such term under the MARA;
"Type Acceptance"	means the acceptance of a Type of Set pursuant to Paragraph 2 of Part A of Schedule 2 of the MARA; and
"Unpaid TARA Payments"	has the meaning given to it in paragraph 4.2 of this Schedule 6.3.

The MARA Provisions

- 1.3 By an agreement dated 24 July 2012 (as amended from time to time including by a deed of amendment and restatement dated 31 January 2014 and a second deed of amendment and restatement dated 4 February 2015) (the "**MARA**") the Secretary of State appointed the TSP to design, build, own and maintain the Sets to be operated by the Franchisee on the Great Western IEP Network for the purposes of providing certain of the Passenger Services. The TSP shall make the Sets available to the Franchisee in accordance with the terms of the Train Availability and Reliability Agreement.
- 1.4 The Franchisee acknowledges that the MARA provides for certain rights which are to be exercised, and certain obligations which are to be performed, by the Franchisee in its capacity as Relevant Operator under the MARA. Accordingly the Franchisee shall:
- (i) exercise such rights and perform such obligations promptly with all reasonable skill, care, diligence and safety, in accordance with good industry practice and in compliance with Applicable Laws and Standards;
 - (ii) where the Secretary of State is required under the terms of the MARA to procure that certain steps are taken or obligations performed by the Relevant Operator, take those steps and perform those obligations promptly upon request by the Secretary of State or the TSP; and

- (iii) co-operate with the Secretary of State and the TSP and act reasonably and in good faith in and about the exercise of such rights and the performance of such obligations (including those referred to in paragraph 2.2(b)).

The performance by the Franchisee of its obligations under this paragraph 2 shall not amount to a Change.

- 1.5 The Franchisee acknowledges that the relationship between the Secretary of State and the Relevant Operator under the MARA is not one of principal and agent and that nothing in the MARA nor any other Project Document (as defined in the MARA) shall create, or be construed as creating, a relationship of principal and agent between the Secretary of State and the Franchisee in its capacity as Relevant Operator respectively.
- 1.6 The MARA sets out the process (the "**Design Process**") for developing and completing the design of the Sets. It is acknowledged by the Franchisee that:
- (a) the Design Process (including the establishment of the Train User Review Groups) will have commenced and may have been finalised prior to the date of the Franchise Agreement; and
 - (b) the design for the Sets will also be used for the purposes of the supply and construction of new fleet of high speed trains for operation by the East Coast Operator. The Franchisee hereby:
 - (i) confirms its agreement to any aspect of the design of the Sets that have been approved or agreed by the Secretary of State or any person acting on his behalf prior to the date of the Franchise Agreement;
 - (ii) agrees to co-operate with the East Coast Operator in the carrying out of its obligations and the exercise of its rights as provided for under the MARA including in relation to its participation in the Design Process; and
 - (iii) agrees:
 - (A) if any Train User Review Group has been set up prior to the date of the Franchise Agreement, to continue to maintain (at its own cost) such Train User Review Group for the duration of the Design Process (or for such other time period as may be required by the Secretary of State) and to ensure that, to the extent relevant and reasonably practicable, such Train User Review Group is representative of the User Population (as such term defined in the MARA); or
 - (B) if any Train User Review Group has not been set up prior to the date of the Franchise Agreement, to establish (at its own cost) and maintain for the duration of the Design Process (or for such other time period as may be required by the Secretary of State) each such Train User Review Group within the timescales required under the MARA and to ensure that each such Train User Review Group so

established is, to the extent relevant and reasonably practicable, representative of the User Population.

- 1.7 At the request of the Secretary of State or the TSP (as the case may be) the Franchisee shall:
- (a) review and provide comments to the Secretary of State, within such timescales as may be stipulated by the Secretary of State, in respect of any matter (including documents, reports and minutes of meeting) arising under or in connection with the MARA including the Design Process, the Approvals Plan and the Training Plan;
 - (b) upon receipt of reasonable notice by the Secretary of State or the TSP attend all meetings arranged by the Secretary of State or the TSP for the discussion of matters connected with the MARA including the Design Process, the Approvals Plan and the Training Plan; and
 - (c) provide such materials and information in the possession and control of the Franchisee as the Secretary of State may consider reasonably necessary for the purposes of complying with his obligations or exercising his rights under the MARA.
- 1.8 On or before the Start Date the Franchisee shall as directed by the Secretary of State:
- (a) either:
 - (i) execute the Relevant Operator Direct Agreement with the TSP in the same form as the relevant operator direct agreement between the Franchisee and the TSP dated 31 January 2014, as such agreement exists as at the date of execution of the replacement Relevant Operator Direct Agreement; or
 - (ii) execute a deed of amendment to the relevant operator direct agreement between the Franchisee and the TSP dated 31 January 2014 extending its term; and
 - (b) either:
 - (i) execute the Dispute Resolution Agreement in the same form as the dispute resolution agreement between the Franchisee and the TSP dated 31 January 2014, as such agreement exists as at the date of execution of the replacement Dispute Resolution Agreement; or
 - (ii) execute a deed of amendment to the dispute resolution agreement between the Franchisee and the TSP dated 31 January 2014 extending its term.

Franchisee Obligations under the MARA/RODA and Indemnity

- 1.9 The Franchisee agrees and undertakes to:
- (a) observe and comply with all the conditions and obligations on its part as set out in the Relevant Operator Direct Agreement;

- (b) properly perform all the obligations on its part as set out in the Relevant Operator Direct Agreement; and
 - (c) act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights under the Relevant Operator Direct Agreement.
- 1.10 Subject to paragraph 2.9, the Franchisee shall indemnify and hold harmless the Secretary of State from and against all Losses suffered or incurred by the Secretary of State arising under or in connection with:
- (a) any failure by the Franchisee to comply with the provisions of paragraph 2.2 or paragraph 2.6 (as the case may be);
 - (b) any claim by the TSP against the Secretary of State under the MARA to the extent that the Secretary of State reasonably determines that such claim is (in whole or in part) attributable to any negligent or improper act or omission by the Franchisee in or about the exercise of its rights or any negligent or improper performance of its obligations under the RODA and/or those rights expressed to be exercised and obligations expressed to be performed by the Franchisee under the MARA.
- 1.11 Without prejudice to the Secretary of State's right under the Act and Schedule 10 (Remedies, Termination and Expiry), the Franchisee's total liability (whether in contract, tort (including negligence), breach of statutory duty or otherwise) to the Secretary of State under paragraph 2.8 shall in no circumstances exceed ten million pounds (£10,000,000) x RPI. The Secretary of State hereby agrees that if he exercises his rights under:
- (a) Section 57A of the Act to impose a penalty; or
 - (b) Section 55 to require that a sum not exceeding 10 percent of turnover is paid by the Franchisee;
- in each case, in respect of any contravention by the Franchisee of the provisions of paragraph 2.6 the amount of such penalty or sum (as the case may be) shall be reduced to take account of any amounts already paid by the Franchisee to the Secretary of State under paragraph 2.8 such that the aggregate amount payable by the Franchisee for a breach of paragraph 2.6 whether in contract, tort (including negligence) breach of statutory duty or otherwise and under any of Section 55 or Section 57A (as the case may be) of the Act for any breach of paragraph 2.6 shall not at any time during the Franchise Period exceed ten million pounds (£10,000,000) x RPI. For the purposes of this paragraph 2.9. For the purposes of this paragraph 2.9 RPI shall have the meaning given to such term in Schedule 8.2 (Annual Franchise Payments).
- 1.12 The Secretary of State shall notify the Franchisee of any amendment to the MARA which has the effect of requiring the Franchisee to perform or incur any liability in respect of any obligations in excess of the obligations assumed by the Franchisee in its capacity as Relevant Operator under the MARA (as at the date of the Franchise Agreement) and, if applicable, under the Relevant Operator Direct Agreement (the "**Additional Obligations**"). At the direction of the Secretary of State, the Franchisee shall make such amendments to the Relevant Operator Direct Agreement and/or the Train Availability and Reliability Agreement (as may be applicable) as may be required for the purposes of the Franchisee assuming the Additional Obligations. Any such direction by the Secretary of State shall be deemed to be a Change but only to the extent that such assumption of the

Additional Obligations would result in the Franchisee incurring additional costs or liabilities (that is, over and above the costs and liabilities it would have incurred had the amendment to the MARA not been made).

Pre Acceptance/Acceptance Processes

- 1.13 The Franchisee agrees and undertakes to:
- (a) in respect of any Great Western Relevant Approvals or Derogations which as a matter of law or industry standard only an operator of rolling stock may apply for, carry out or procure the carrying out (at its own costs) of such activities for which it is responsible under the Approvals Plan;
 - (b) by the Actual Acceptance Date of the first Set in the Fleet, amend its Safety Management System (in so far as it relates to the maintenance and operation of the Sets) as required by law or industry standard to allow for the operation of the Sets in passenger service and the maintenance of the Sets and to the extent required, obtain a revised Safety Certificate to reflect the revised Safety Management System; and
 - (c) co-operate with the TSP to develop the Training (which for these purposes shall include providing appropriate information as to the level of competence of the Franchisee's trainers, drivers and other employees) and carry out all of the activities for which it is responsible under the Training Plan.
- 1.14 The Franchisee shall immediately notify the Secretary of State if in respect of any Set:
- (a) it is of the view that such Set has not satisfied the Final Acceptance Conditions. In these circumstances the Franchisee shall provide a copy to the Secretary of State (at the same time as such written statement is issued to the TSP) of any written statement it provides to the TSP and which sets out the reasons why it believes that such Set has not satisfied any of the Final Acceptance Conditions; or
 - (b) it intends to issue a Qualified Acceptance Certificate in relation to such Set. The Franchisee shall ensure that it provides to the Secretary of State (at the same time as such letter is issued to the TSP) a copy of any letter it issues to the TSP for the purposes of obtaining its consent to the issue of the Qualified Acceptance Certificate.

Acceptance Issues

- 1.15 Where:
- (a) the existence of an Acceptance Issue is the sole cause of the Secretary of State not being able to issue a Type Acceptance Certificate or Qualified Type Acceptance Certificate; and
 - (b) the Secretary of State considers (following consultation with the Franchisee, the TSP or any other person as the Secretary of State may deem necessary) that despite the existence of such Acceptance Issue the relevant Type of Set is capable of operating effectively in revenue earning service on the Great Western IEP Network subject to one or more operating restrictions; and

- (c) the Secretary of State proposes (following consultation with the Franchisee and the TSP and/or any other person the Secretary of State may deem necessary) operating restrictions in respect of the relevant Type of Set (including, if appropriate and without limitation, implementing speed restrictions for certain parts of the Great Western IEP Network or agreeing appropriate actions by the Franchisee under its Safety Management System) and modifications to the Diagrams in respect of the relevant Type of Set and modifications to the Dispatch Requirements in respect of that Type of Set to reflect such modifications to the Diagrams (which shall in each case, in all other respects comply with the requirements of the Train Availability and Reliability Agreement),
- (i) the Franchisee shall modify the Diagram and the Dispatch Requirements in respect of such Type of Set in the manner proposed by the Secretary of State. Any such modification by the Franchisee shall be a Change; and
 - (ii) the Franchisee hereby agrees that it shall not withhold the issue of any Acceptance Certificate (or qualify any Acceptance Certificate) in respect of such Type of Set solely because of one or more Acceptance Issues in respect of which operating restrictions have been recorded in a Certificate of Temporary Specific Infrastructure Acceptance Conditions.
- (d) a Qualifying Change has occurred pursuant to paragraph 2.13(c)(i) and:
- (i) the relevant Acceptance Issues are no longer subsisting (as evidenced by the TSP and the Secretary of State having countersigned an amended Certificate of Temporary Specific Infrastructure Acceptance Conditions in respect of each Type of Set); and/or
 - (ii) the Franchisee is entitled to operate each Set of such Type free and clear of any operating restrictions pertaining to the relevant Acceptance Issues (but at all times in accordance with the terms of the Train Availability and Reliability Agreement relating to such Set),

a further Change (which for these purposes shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change) shall occur. The Franchisee shall promptly on receipt of the amended Certificate of Temporary Specific Infrastructure Acceptance Conditions as countersigned by the Secretary of State and the TSP modify the Diagrams and the Dispatch Requirements in respect of the relevant Type of Set to reflect the fact that the relevant Acceptance Issues are no longer subsisting and that any operating restrictions pertaining to such Acceptance Issues are no longer in force.

1.16 Where the Secretary of State's Representative (as defined in the MARA) has issued to the TSP a Qualified Type Acceptance Certificate following a failure by the TSP to comply with one of the following Requirements in respect of any Set presented for Type Acceptance:

- (a) clause TS 1798 (Vehicle - Track Impact) of the Train Technical Specification;

- (b) clause TS 200 (Energy efficiency) of the Train Technical Specification; or
- (c) the Actual Type Weight of the relevant Set is at least 5 tonnes more than the Target Type Weight in respect of a Set of such Type,

(the "**Relevant Criteria**")

there shall be a Change, only insofar as such Qualified Type Acceptance Certificate relates to one or more of the Relevant Criteria and to the extent that the costs of the Franchisee have been increased as a direct consequence of such Set not being in compliance with such Relevant Criteria. There shall be a further Change at such time as the Secretary of State issues a Type Acceptance Certificate in respect of the Set or the TSP otherwise remedies such matters that caused the failure of the Set to meet any or all of the Relevant Criteria.

The parties agree that where a Change is triggered under this paragraph 2.13B, the only Revised Inputs shall be:

(i) **I_Infrastructure³⁵⁶**

VTAC - IEP Electric row 1043 (HST) and sum of rows 1044 (New) and 1045 (IRAD Change 1)

VTAC - IEP bi-mode electric row 1053 (HST) and sum of rows 1054 (New) and 1055 (IRAD Change 1)

VTAC - IEP bi-mode diesel row 1063 (HST) and sum of rows 1064 (New) and 1065 (IRAD Change 1)

IEP Full Diesel row 1235 (IRAD Change 1)³⁵⁷

EC4T - IEP Electric row 1731 (HST) and sum of rows 1732 (New) and 1733 (IRAD Change 1)

EC4T - IEP bi-mode electric row 1741 (HST) and sum of rows 1742 (New) and 1743 (IRAD Change 1)

(ii) **I_Other OPEX³⁵⁸**

Fuel - IEP Bi-mode diesel row 2486 (HST) and sum of rows 2487 (New) and 2488 (IRAD Change 1)

IEP Full Diesel row 2658 (IRAD Change 1)³⁵⁹

Set Retention Amounts

- 1.17 Where the Franchisee is required to make any payment in accordance with paragraph 8 of Part A of Schedule 2 to the MARA, the Franchisee shall pay the required amount into such bank account as may be notified by the Secretary of State to the Franchisee from time to time.

TARA Provisions

- 1.18 On or before the Start Date the Franchisee shall as directed by the Secretary of State either:

³⁵⁶ 15 February 2019 (Date of DOA) – Contract change agreed by the Secretary of State and Franchisee.

³⁵⁷ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁵⁸ 15 February 2019 (Date of DOA) – Contract change agreed by the Secretary of State and Franchisee.

³⁵⁹ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (a) execute the Train Availability and Reliability Agreement with the TSP in the same form as the train availability and reliability agreement between the Franchisee and the TSP dated 31 January 2014 (as amended), as such agreement exists as at the date of execution of the replacement Train Availability and Reliability Agreement; or
- (b) execute a deed of amendment to the train availability and reliability agreement between the Franchisee and the TSP dated 31 January 2014 (as amended) extending its term and otherwise amending it as required by the Secretary of State.

1.19 The Franchisee agrees and undertakes to:

- (a) observe and comply with all the conditions and obligations on its part under the Train Availability and Reliability Agreement;
- (b) agree and take all steps which may be required to implement any amendment to the Train Availability and Reliability Agreement as the Secretary of State may direct from time to time (including any amendments consequential upon the implementation of a MARA Variation required by the Secretary of State);
- (c) take all steps as may be required to terminate the Train Availability and Reliability Agreement as the Secretary of State may direct from time to time; and
- (d) except as permitted by Schedule 12 of the Train Availability and Reliability Agreement or as may otherwise be permitted by the Secretary of State, not vary, agree to vary, waive performance of, terminate or in any way deal with or change the terms of the Train Availability and Reliability Agreement without the prior consent of the Secretary of State.

1.20 Subject to paragraph 3.4, it shall be a Qualifying Change if:

- (a) ***the Secretary of State directs the Franchisee to agree and implement an amendment to, or to terminate, the Train Availability and Reliability Agreement pursuant to paragraph 3.2(b) or 3.2(c) of this Agreement or pursuant to paragraph 3.2(b) or 3.2(c) of Schedule 6.3 (The IEP Provisions) of the Previous Franchise Agreement*** ³⁶⁰;
- (b) the Train Availability and Reliability Agreement automatically terminates on the date of termination of the MARA as contemplated by paragraph 1(b) of Part D of Schedule 10 of the Train Availability and Reliability Agreement; or
- (c) the Franchisee enters into a new Train Availability and Reliability Agreement in the circumstances contemplated by paragraph 1.1(a)(ii) of Appendix A to Part D of Schedule 6 to the MARA.

1.21 The parties acknowledge and agree that: it shall not be a Change if any Ancillary Variation is made to the Train Availability and Reliability Agreement during the Franchise Term.

³⁶⁰ **Date of contract change 03/07/2015 – Agreed by the Secretary of State and Franchisee.**

- 1.22 Without prejudice to any other requirement in the Franchise Agreement the Franchisee shall:
- (a) immediately notify the Secretary of State as soon as it becomes aware of the likely occurrence or occurrence (as the case may be) of a TSP Default;
 - (b) at the same time as it receives the same from the TSP, provide copies to the Secretary of State of any Performance Reports and minutes in respect of any Performance Review Meeting;
 - (c) promptly on request by the Secretary of State, provide the Secretary of State with copies of any TSP Transition Progress Reports and/or Operator Transition Progress Reports issued under the Train Availability and Reliability Agreement; and
 - (d) where the Franchisee exercises its rights under Paragraph 7 of Part A of Schedule 4 of the Train Availability and Reliability Agreement to monitor the compliance by the TSP with its obligations thereunder (the "Compliance Audit"), as soon as reasonably practicable after undertaking any such Compliance Audit provide an update to the Secretary of State of its findings in relation to such Compliance Audit.

Relevant Operator Equipment

- 1.23 If the Franchisee wishes to install any Relevant Operator Equipment on any Set then it shall, at least six months before the Scheduled Acceptance Date of the first Set in the Fleet, notify the TSP in writing and provide details of the Relevant Operator Equipment that the Franchisee wishes the TSP to install and the Set or Sets that are affected.
- 1.24 Within 20 Weekdays of receipt of any notification pursuant to paragraph 3.6, the Secretary of State, the Franchisee and the TSP shall seek to agree (and on any failure to agree such matter shall be resolved in accordance with the process set out in the Dispute Resolution Agreement):
- (a) the scope of the works the Franchisee requires the TSP to undertake;
 - (b) an installation programme (which shall be in accordance with paragraph 3.8 and shall ensure that the installation of the Relevant Operator Equipment in respect of any Set is complete by the Actual Acceptance Date of such Set) (the "Installation Programme"); and
 - (c) the amount to be paid by the Franchisee for the installation works, and the timing of such payment.
- 1.25 The Installation Programme shall be such programme as is reasonable in the circumstances assuming that:
- (a) the TSP is not required in order to undertake the installation to employ additional resource beyond that already employed by the Manufacturer or sub-contracted by the Manufacturer for the purposes of installing Relevant Operator Equipment; and
 - (b) the Installation Programme does not affect the performance by the TSP of its obligations under the MARA, including the delivery of the Sets for Acceptance in accordance with the Testing, Commissioning and Acceptance Plan,

and the Secretary of State and the Franchisee (together with the TSP and the Manufacturer as required by the MARA) shall consult and cooperate with a view to agreeing and completing the Installation Programme.

1.26 The Franchisee shall:

- (a) provide to the TSP the Relevant Operator Equipment that it wishes the TSP to install;
- (b) provide to the TSP detailed installation instructions relating to the Relevant Operator Equipment;
- (c) have in place any consents, approvals, permissions, authorisations, acceptances, certifications, licences, exemptions, filings, registrations, notarisations, declarations and other matters required in relation to the installation and/or operation of the Relevant Operator Equipment on the Sets; and
- (d) provide to the TSP any other information as the TSP may reasonably request,

in each case in accordance with the Installation Programme.

1.27 Notwithstanding the Secretary of State's rights under the MARA, if the Secretary of State suffers a loss in respect of which the Franchisee is indemnified in respect of the same loss by the TSP under Schedule 8 of the Train Availability and Reliability Agreement, the Franchisee shall, at the request of the Secretary of State, make a claim against the TSP for such loss and to the extent that the Franchisee recovers such amount (or any part of that amount) from the TSP, the Franchisee shall pay that amount to the Secretary of State on the next Payment Date falling no less than 7 days following the date of receipt of such amount provided that if any such amounts are received on or after the Franchise Period then such amounts shall be paid (as a debt) by the Franchisee to the Secretary of State within 30 days of receipt of such amount.

Step-in/Step-out Processes

1.28 If with the consent of the Secretary of State the Franchisee exercises its rights of step-in, in accordance with the provisions of Paragraph 1 of Schedule 11 of the Train Availability and Reliability Agreement then such exercise of its step-in rights shall constitute a Change. If a Qualifying Change as contemplated in this paragraph 4.1 occurs then in agreeing or determining the Revised Inputs in respect of such Change it shall be assumed, in circumstances where the provisions of 1.9 of Schedule 11 of the Train Availability and Reliability Agreement applies, that any payments to be made by the Franchisee to the TSP in respect of the period of such step-in shall be an amount that is equal to the TARA Payments that the TSP would receive if the TSP was providing the Services that are affected by the Required Action less an amount that is equal to the reasonable and proper costs incurred by the Franchisee as a result of taking the Required Action.

1.29 Unless as may otherwise be directed by the Secretary of State, the Franchisee shall exercise its rights under Paragraph 1.8 of Schedule 11 of the Train Availability and Reliability Agreement to cease to pay to the TSP the portion of the TARA Payments relating to the Services that are affected by any Required Actions (the "**Unpaid TARA Payments**") during any Step-In Period if at any time during such Step-In Period it is entitled to do so because the TSP has not complied with its obligations to provide reasonable assistance to the Franchisee in accordance with

Paragraph 1.7 of Schedule 11 of the Train Availability and Reliability Agreement. The Franchisee shall on the next Payment Date following any exercise of such rights reimburse to the Secretary of State an amount that is equal to the Unpaid TARA Payments.

- 1.30 If a Qualifying Change contemplated in paragraph 4.1 occurs and the Franchisee and the Secretary of State agree (or the Secretary of State reasonably determines) at any time following the exercise by the Franchisee of its step-in rights pursuant to Paragraph 1 of Schedule 11 of the Train Availability and Reliability Agreement that a Step-Out Notice should be served on the TSP then there shall be a further Change (which for these purposes shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change) on the date that such Step-Out Notice is so served on the TSP.
- 1.31 The Franchisee shall consult the Secretary of State prior to issuing any notification pursuant to paragraph 2.2 of Schedule 11 to the Train Availability and Reliability Agreement in relation to the cessation of any Required Action thereunder, and the Franchisee shall not issue any such notification without the Secretary of State's prior written consent.

Pension Issues

- 1.32 The Secretary of State shall pay to the Franchisee an amount that is equal to the Top Up Amount that the Franchisee is required, pursuant to Paragraph 1.20 of Appendix A to Part E of Schedule 1 of the Train Availability and Reliability Agreement, to pay (and actually pays) to the Receiving Scheme (whether directly or through the Franchise Section) for and in respect of the Relevant Protected Persons and Relevant Indefeasible Rights Members. It is acknowledged and agreed by the Secretary of State and the Franchisee that:
- (a) any such Top Up Amount is to be as calculated by the Scheme Actuary in accordance with the terms of the Actuaries' Letter and as verified by the Franchisee and the TSP in accordance with the terms of the Train Availability and Reliability Agreement; and
 - (b) any payment by the Secretary of State pursuant to this paragraph 4.4 shall be made by way of adjustment to Franchise Payments on the next Payment Date falling no less than seven days from the date immediately preceding the date upon which the Franchisee pays such Top Up Amount to the Receiving Scheme (whether directly or through the Franchise Section).
- 1.33 The Franchisee shall ensure that it pays each Pension Amount to the TSP on the basis and as determined pursuant to the terms of the Train Availability and Reliability Agreement and the Actuaries' Letter.
- 1.34 For the purposes of Paragraph 1.46 of Appendix A to Part E of Schedule 1 to the Train Availability and Reliability Agreement, provided that the provisions of Paragraph 1.45 of Appendix A to Part E of Schedule 1 to the Train Availability and Reliability Agreement have been complied with, the Secretary of State shall (provided that he has received notice from the Franchisee within 20 Weekdays of being so requested by the TSP), execute and deliver to the TSP the relevant Flexible Apportionment Arrangement within 30 Weekdays of such request by the TSP.

- 1.35 For the purposes of the definition of “**Operator Actuary**” under the Train Availability and Reliability Agreement the Franchisee shall appoint as actuary such person as the Secretary of State shall direct.

Simulator

- 1.36 The Franchisee shall to the extent not already delivered under the Previous Franchise Agreement procure the delivery to it of two simulators for use in connection with the introduction and ongoing operation of the Sets.
- 1.37 On the date of acquisition of the simulators referred to in paragraph 5.1:
- (a) such simulators shall be deemed (and shall be) designated as Primary Franchise Assets pursuant to paragraph 3 of Schedule 14.4 (Designation of Franchise Assets); and
 - (b) the Supplemental Agreement shall be deemed (and shall be) amended with the effect that such simulators transfer to a Successor Operator at nil value.
- 1.38 It is acknowledged that the Previous Franchise Agreement includes a provision at paragraph 4 of Schedule 6.3 for the Franchisee to pay the Secretary of State or a Successor Operator (as the Secretary of State may direct) in respect of each simulator which has not been delivered to the Franchisee by the Expiry Date under the Previous Franchise Agreement a sum equal to:
- (a) £[REDACTED³⁶¹]; less
 - (b) such reasonable costs that the Franchisee may incur in procuring the simulators and as may be supported by such evidence of these costs as the Secretary of State may reasonably request.
- 1.39 It is further acknowledged that:
- (a) any failure to procure the delivery of the relevant simulators during the term of the Previous Franchise Agreement shall not be a contravention of the Previous Franchise Agreement where the cause of the failure was, in the reasonable opinion of the Secretary of State, outside the reasonable control of the Franchisee including as a result of a breach or default of the TSP in circumstances where the Franchisee has used all reasonable endeavours to enforce relevant rights against it; and
 - (b) recognising the commitment undertaken by the Franchisee under paragraph 5.1, where and to the extent the simulators are not procured during the Previous Franchise Agreement and the Start Date is achieved under this Franchise Agreement, the Franchisee shall be permitted to retain the sum referred to in paragraph 5.3, rather than being required to pay it to the Secretary of State.

2. IEP Implementation Strategy

³⁶¹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 2.1 Within three months of the Start Date (and at three monthly intervals thereafter), the Franchisee shall review its IEP Implementation Strategy and, provided that the Secretary of State approves any updates to the IEP Implementation Strategy, the Franchise Operator shall provide a copy of such updated strategy to the Secretary of State.
- 2.2 The Franchisee shall use all reasonable endeavours to implement the IEP Implementation Strategy in accordance with its terms.
3. **GWR External Livery**³⁶²
- 3.1 **³⁶³The parties acknowledge that the Secretary of State has procured a variation (the "Livery Variation (Paint)") to the MARA and the TARA:**
- (a) **the Train Technical Description for twenty one Full Sets comprising of nine car Class 801 vehicles (being Sets T37 to T57 (inclusive)) except for the T37/38 Kitchen Vehicles have been amended to provide for an external livery in accordance with the GWR External Livery Specification (Paint), such that they were painted prior to Acceptance in accordance with the GWR External Livery Specification (Paint);**
- (b) **there is no requirement for the reversion of the Livery Variation (Paint) during or at the end of the Franchise Agreement or afterwards for which the Franchisee is otherwise liable;**
- (c) **a new limb has been added to paragraph 2.11 of Part A (TARA Payments) of Schedule 5 (Payment) of the TARA under which the Franchisee was committed to pay as a lump sum [REDACTED³⁶⁴], (excluding VAT) to the TSP upon execution of the Livery Variation (Paint), which sum has now been paid by the Franchisee; and**
- (d) **there has been no other change to the MARA or TARA as a consequence of the Livery Variation (Paint).**
- 3.2 **³⁶⁵It is acknowledged that the Livery Variation (Paint) did not give rise to a Change.**

³⁶² 20 January 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁶³ 20 January 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁶⁴**18 March 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³⁶⁵ 20 January 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 7**Performance Benchmarks**

- Schedule 7.1: Performance Benchmarks**
- Appendix 1: Cancellations Benchmarks and Annual Cancellation Benchmarks**
- Part 1: Cancellations Benchmark Table**
- Part 2: Annual Cancellations Benchmark Table**
- Part 3: Annual Cancellations Payment Table**
- Appendix 2: TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks**
- Part 1: TOC Minute Delay Benchmark Table**
- Part 2: Annual TOC Minute Delay Benchmark Table**
- Part 3: Annual TOC Minute Delay Payment Table**
- Schedule 7.2: National Rail Passenger Surveys and Customer and Communities Improvement Fund**
- Appendix 1: NRPS Benchmark Table**

SCHEDULE 7.1**Performance Benchmarks****1 Benchmarks and Annual Benchmarks****Location and amendment of Benchmarks and Annual Benchmarks**

- 1.1 The Cancellations Benchmarks are set out in the table in Part 1 (Cancellations Benchmark Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) to this Schedule 7.1.
- 1.2 The Annual Cancellations Benchmarks are set out in the table in Part 2 (Annual Cancellations Benchmark Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) to this Schedule 7.1.
- 1.3 The TOC Minute Delay Benchmarks are set out in the table in Part 1 (TOC Minute Delay Benchmark Table) of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule 7.1.
- 1.4 The Annual TOC Minute Delay Benchmarks are set out in the table in Part 2 (Annual TOC Minute Delay Benchmark Table) of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule 7.1.
- 1.5 The Secretary of State may at any time after a Charging Review vary, on giving not less than 3 months' notice in writing, any of the Benchmarks and/or the Annual Benchmarks to reflect the Secretary of State's reasonable view of the performance trajectory set as part of such Charging Review. Where the Secretary of State exercises his right pursuant to this paragraph 1.5, the relevant Benchmark Tables and/or Annual Benchmark Tables shall be deemed to have been amended accordingly.

2 Information Provisions**Cancellations Benchmarks and Annual Cancellations Benchmarks**

- 2.1 At the end of each Reporting Period, the Franchisee shall, in accordance with the relevant requirements of Appendix 3 (Operational Information) to Schedule 13 (Information and Industry Initiatives), report to the Secretary of State:
- (a) the total number of Cancellations and Partial Cancellations in that Reporting Period;
 - (b) the total number of Disputed Cancellations and Disputed Partial Cancellations in that Reporting Period;
 - (c) the total number of Network Rail Cancellations and Network Rail Partial Cancellations in that Reporting Period;
 - (d) the total number of Disputed Cancellations and Disputed Partial Cancellations from the 12 preceding Reporting Periods for which the attribution remains in dispute; and
 - (e) the total number of Disputed Cancellations and Disputed Partial Cancellations for which the disputed attribution has been resolved since the Franchisee's last

report pursuant to this paragraph 2.1 (including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee).

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

$$\frac{A + D}{13}$$

where:

A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where:

B is the total number of Cancellations or Partial Cancellations of Passenger Services in that Reporting Period, on the basis that:

- (a) each Cancellation shall count as 1;
- (b) each Partial Cancellation shall count as 0.5; and
- (c) any Cancellations or Partial Cancellations during that Reporting Period which were caused by:
 - (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
 - (ii) the occurrence or continuing effect of a Force Majeure Event,

shall, if the Franchisee has complied with paragraph 4, be disregarded in determining such total number of Cancellations and Partial Cancellations;

C is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of the Day of that Reporting Period, disregarding, if the Franchisee has complied with paragraph 4.1 of this Schedule 7.1, any Cancellations or Partial Cancellations during that Reporting Period which were caused by:

- (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event; and

D is the sum of the values of A in each of the 12 preceding Reporting Periods.

- 2.3 At the end of each Performance Calculation Year the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Annual Cancellations Benchmark in accordance with the following formula:

$$\text{ACTUAL}_c = \frac{\sum A}{B}$$

where:

ACTUAL_c is the moving annual average of the Franchisee’s performance against the Annual Cancellations Benchmark for that Performance Calculation Year;

∑A is the sum of the values of A as determined in accordance with paragraph 2.2 for each Reporting Period in that Performance Calculation Year; and

B is in respect of a Performance Calculation Year consisting of 13 Reporting Periods, 13 and in respect of a Performance Calculation Year consisting of less than 13 Reporting Periods, the number of Reporting Periods in such Performance Calculation Year.

2.4 Where there are any Disputed Cancellations and/or Disputed Partial Cancellations at the end of a Reporting Period and/or a Performance Calculation Year (as applicable) the Secretary of State shall, for the purpose of performing the calculations referred to in paragraphs 2.2 and/or 2.3 allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the Franchisee and Network Rail in the proportions of:

A to B

where

A is the total number of undisputed Cancellations and/or Partial Cancellations (that is, which are not Disputed Cancellations or Disputed Partial Cancellations) from the 12 preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Franchisee) during such 12 preceding Reporting Periods; and

B is the total number of undisputed Network Rail Cancellations and/or Network Rail Partial Cancellations (that is, which are not Disputed Cancellations or Disputed Partial Cancellations) from the 12 preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to Network Rail) during such 12 preceding Reporting Periods.

TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks

2.5 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 (Operational Information) to Schedule 13 (Information and Industry Initiatives), report to the Secretary of State:

- (a) the total number of Minutes Delay:
 - (i) in that Reporting Period attributable to the Franchisee;
 - (ii) in that Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee;
 - (iii) from the 12 preceding Reporting Periods for which the attribution remains in dispute; and

- (iv) from the 12 preceding Reporting Periods for which disputed attributions have been resolved or determined since the Franchisee's last report pursuant to this paragraph 2.5, and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination; and
- (v) ³⁶⁶**With effect from Reporting Period 12 and notwithstanding the other provisions of this Schedule 7.1 and Appendix 3 (Operational Information) to Schedule 13 (Information and Industry Initiatives), for the purposes of this Schedule 7.1 and that Appendix Minutes Delay shall be calculated excluding any which are attributed to, or reactionary delays as a consequence of, fleet failures affecting Full Sets, Half Sets, coupled Half Sets and/or AT300 Units (together "Excluded Minutes Delay"). For these purposes matters shall be considered to be "fleet failures" where they are attributed in accordance with Schedule 8 of the Track Access Agreement to the Franchisee under any of the following delay codes under the Delay Attribution Principles and Rules which are separately agreed in writing by the Secretary of State with the Franchisee to be designated as fleet failure delay codes for the purposes of this paragraph, as such designation may from time to time be amended so as more accurately to reflect the category of fleet failures by agreement between the Secretary of State and the Franchisee or (in the absence of such agreement in response to a request by the Secretary of State) as reasonably determined by the Secretary of State. When the Franchisee reports to the Secretary of State on the Minutes Delay for any Reporting Period under this Schedule 7.1 or that Appendix 3, it shall separately report for information purposes only on the Excluded Minutes Delay in relation to that Reporting Period. For the avoidance of doubt, Excluded Minutes Delay shall not include Minutes Delay affecting Full Sets, Half Sets, coupled Half Sets and/or AT300 Units which are the consequence of circumstances which are not due to fleet failures (for example where the delay is due to errors in operation by train crew).**

(b) the aggregate Train Mileage operated in that Reporting Period.

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

$$\frac{A}{D}$$

where:

A is the sum of the number of Minutes Delay that are attributable to the Franchisee:

- (a) in such Reporting Period; and
- (b) in the 12 preceding Reporting Periods;

³⁶⁶ 1 March 2019 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

D is ascertained as follows:

$$\frac{B}{1000}$$

where:

B is the sum of the actual Train Mileage operated by the Franchisee:

- (a) in such Reporting Period; and
- (b) in the 12 preceding Reporting Periods.

2.7 At the end of each Performance Calculation Year the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Annual TOC Minute Delay Benchmark in accordance with the following formula:

$$\text{ACTUAL}_{\text{MD}} = \frac{\text{AA}}{\text{AD}}$$

where:

ACTUAL_{MD} is the Franchisee's performance against the Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

AA is the sum of the number of Minutes Delay that are attributable to the Franchisee in each Reporting Period in that Performance Calculation Year; and

AD is ascertained as follows:

$$\frac{AB}{1000}$$

where:

AB is the sum of the actual Train Mileage operated by the Franchisee in each Reporting Period in that Performance Calculation Year.

2.8 In performing the calculation pursuant to paragraph 2.6 and/or 2.7, the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

2.9 Where the attribution of any Minutes Delay is in dispute between Network Rail and the Franchisee at the end of a Reporting Period the Secretary of State shall, for the purpose of performing the calculation referred to in paragraph 2.6 and/or 2.7, allocate any disputed Minutes Delay between the Franchisee and Network Rail in the proportions of:

A to B

where:

A is the total number of undisputed Minutes Delay from the 12 preceding Reporting Periods that are attributable to the Franchisee including any disputed

attributions which were resolved or determined during such 12 preceding Reporting Periods; and

B is the total number of undisputed Minutes Delay from the 12 preceding Reporting Periods that are attributable to Network Rail including any disputed attributions which were resolved or determined during such 12 preceding Reporting Periods.

2.10 The Franchisee agrees with the Secretary of State to comply with the requirements of the Track Access Agreement in respect of Minutes Delay attribution.

2.11 For as long as fewer than 13 Reporting Periods have elapsed following the Start Date, the Secretary of State shall, for the purposes of performing the calculations referred to in paragraphs 2.2 and 2.6 assume performance at the Previous Performance Level in respect of the relevant Reporting Periods (up to a maximum of the 12 Reporting Periods) that precede the Start Date.

Calculations

2.12 The Secretary of State shall perform the calculations referred to in paragraphs 2.2, 2.3, 2.6, 2.7, 2.9 and 3 rounded to two decimal places, with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

Notice of Performance Results

2.13 As soon as reasonably practicable after the end of each Reporting Period and each Performance Calculation Year, the Secretary of State shall notify the Franchisee of the results of the calculations performed pursuant to this paragraph 2.

2.14 **Not used.**

3 Performance Sum Payments

3.1 At the end of each Performance Calculation Year the Secretary of State shall, in accordance with this paragraph 3, calculate the Cancellations Performance Sum and the TOC Minute Delay Performance Sum payable by the Secretary of State to the Franchisee or required to be incurred by the Franchisee (as the case may be).

3.2 Cancellations Performance Sum

Where for any Performance Calculation Year, the Franchisee performance in relation to the Annual Cancellations Benchmark as calculated pursuant to paragraph 2.3 (that is, the value of ACTUAL_C) is:

(a) less than (that is, better than) or equal to the Annual Target Performance Level for that Annual Cancellations Benchmark and is less than (that is, better than) or equal to the Annual Cap Performance Level for such Annual Cancellations Benchmark, in each case for that Performance Calculation Year, then the Cancellations Performance Sum in respect of that Performance Calculation Year shall, subject to paragraph 3.6, be payable by the Secretary of State to the Franchisee and shall be an amount calculated as follows:

$$(\text{TARGET}_C - \text{CAP}_C) \times \text{PBP}_C$$

where:

TARGET_c is the Annual Target Performance Level relating to that Annual Cancellations Benchmark for that Performance Calculation Year;

CAP_c is the Annual Cap Performance Level relating to that Annual Cancellations Benchmark for that Performance Calculation Year;

PBP_c is, in respect of any Performance Calculation Year, an amount calculated as follows:

$PBP_c \times RPI$

where:

PBP_c is where the Actual CaSL Performance Level is:

- (i) less than (that is better than) or equal to the Annual CaSL Target Performance Level for that Performance Calculation Year, the amount specified for that Performance Calculation Year in row 1 ("Amount of PBP_c "With Multiplier"") of the table in Part 3 (Annual Cancellations Payment Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) to this Schedule 7.1; and
- (ii) more than (that is worse than) the Annual CaSL Target Performance Level for that Performance Calculation Year, the amount specified for that Performance Calculation Year in row 2 ("Amount of PBP_c "Without Multiplier"") of the table in Part 3 (Annual Cancellation Payment Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) to this Schedule 7.1.

RPI is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Performance Calculation Year divided by the Retail Prices Index for January 2015 (provided that for the first Performance Calculation Year RPI shall be one);

- (b) less than (that is, better than) or equal to the Annual Target Performance Level for that Annual Cancellations Benchmark but more than (that is, worse than) the Annual Cap Performance Level for that Annual Cancellations Benchmark, in each case for that Performance Calculation Year, then the Cancellations Performance Sum in respect of that Performance Calculation Year shall subject to paragraph 3.6 be payable by the Secretary of State to the Franchisee and shall be an amount calculated as follows:

$(TARGET_c - ACTUAL_c) \times PBP_c$

where:

TARGET_c has the meaning given to it in paragraph 3.2(a);

ACTUAL_c has the meaning given to it in paragraph 2.3; and

PBP_c has the meaning given to it in paragraph 3.2(a);

- (c) more than (that is, worse than) the Annual Target Performance Level for that Annual Cancellations Benchmark but less than (that is, better than) the Annual Floor Performance Level for that Annual Cancellations Benchmark, in each case for that Performance Calculation Year, then the Cancellations Performance Sum in respect of that Performance Calculation Year shall be required to be incurred

by the Franchisee in accordance with paragraph 3.7 and shall subject to paragraph 3.6 be an amount calculated as follows:

$$(\text{ACTUAL}_C - \text{TARGET}_C) \times \text{PPP}_C$$

where:

ACTUAL_C has the meaning given to it in paragraph 2.3;

TARGET_C has the meaning given to it in paragraph 3.2(a);

PPP_C is, in respect of any Performance Calculation Year, an amount calculated as follows:

$$\text{PPP}_C \times \text{RPI}$$

where

PPP_C where the Actual CaSL Performance Level is:

- (i) more than (that is worse than) the Annual CaSL Target Performance Level for that Performance Calculation Year, the amount specified for that Performance Calculation Year in row 3 ("Amount of PPP_C "With Multiplier"") of the table in Part 3 (Annual Cancellations Payment Table) of Appendix 1 (Cancellation Benchmarks and Annual Cancellations Benchmarks) to this Schedule 7.1; or
- (ii) less than (that is better than) or equal to the Annual CaSL Target Performance Level for that Performance Calculation Year, the amount specified for that Performance Calculation Year in row 4 ("Amount of PPP_C "Without Multiplier"") of the table in Part 3 (Annual Cancellations Payment Table) of Appendix 1 (Cancellation Benchmarks and Annual Cancellations Benchmarks) to this Schedule 7.1;

RPI has the meaning given to it in paragraph 3.2(a); and

- (d) more than (that is, worse than) or equal to the Annual Floor Performance Level for that Annual Cancellations Benchmark for that Performance Calculation Year then the Cancellations Performance Sum in respect of that Performance Calculation Year shall be required to be incurred by the Franchisee in accordance with paragraph 3.7 and shall subject to paragraph 3.6 be an amount calculated as follows:

$$(\text{FLOOR}_C - \text{TARGET}_C) \times \text{PPP}_C$$

where:

FLOOR_C is the Annual Floor Performance Level relating to that Annual Cancellations Benchmark for that Performance Calculation Year;

TARGET_C has the meaning given to it in paragraph 3.2(a); and

PPP_C has the meaning given to it in paragraph 3.2(c).

3.3 TOC Minute Delay Performance Sum

Where for any Performance Calculation Year, the Franchisee's performance in relation to the Annual TOC Minute Delay Benchmark as calculated pursuant to paragraph 2.7 (that is, the value of $ACTUAL_{MD}$) is:

- (a) less than (that is, better than) or equal to the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark and is less than (that is, better than) or equal to the Annual Cap Performance Level for such Annual TOC Minute Delay Benchmark, in each case for that Performance Calculation Year, then the TOC Minute Delay Performance Sum in respect of that Performance Calculation Year shall be payable by the Secretary of State to the Franchisee and shall subject to paragraph 3.6 be an amount calculated as follows:

$$(TARGET_{MD} - CAP_{MD}) \times PBP_{MD}$$

where:

$TARGET_{MD}$ is the Annual Target Performance Level relating to that Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

CAP_{MD} is the Annual Cap Performance Level relating to that Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

PBP_{MD} is, in respect of any Performance Calculation Year, an amount calculated as follows:

$$PBP_{MD} \times RPI$$

where:

PBP_{MD} is, where the Actual PPM Performance Level is:

- (i) more than (that is, better than) or equal to the Annual PPM Target Performance Level for that Performance Calculation Year, the amount specified for that Performance Calculation Year in row 1 ("Amount of PBP_{MD} "With Multiplier"") of the table in Part 3 (Annual TOC Minute Delay Payment Table) of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule 7.1; and
- (ii) less than (that is worse than) the Annual PPM Target Performance Level for that Performance Calculation Year, the amount specified for that Performance Calculation Year in row 2 ("Amount of PBP_{MD} "Without Multiplier"") of the table in Part 3 (Annual TOC Minute Delay Payment Table) of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule 7.1;

RPI is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Performance Calculation Year divided by the Retail Prices Index for January 2015 (provided that for the first Performance Calculation Year RPI shall be one);

- (b) less than (that is, better than) or equal to the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark but more than (that is, worse

than) the Annual Cap Performance Level for that Annual TOC Minute Delay Benchmark, in each case for that Performance Calculation Year, then the TOC Minute Delay Performance Sum in respect of that Performance Calculation Year shall be payable by the Secretary of State to the Franchisee and shall subject to paragraph 3.5 be an amount calculated as follows:

$$(\text{TARGET}_{\text{MD}} - \text{ACTUAL}_{\text{MD}}) \times \text{PBP}_{\text{MD}}$$

where:

$\text{TARGET}_{\text{MD}}$ has the meaning given to it in paragraph 3.3(a);

$\text{ACTUAL}_{\text{MD}}$ has the meaning given to it in paragraph 2.7; and

PBP_{MD} has the meaning given to it in paragraph 3.3(a);

- (c) more than (that is, worse than) the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark but less than (that is, better than) the Annual Floor Performance Level for that Annual TOC Minute Delay Benchmark, in each case for that Performance Calculation Year, then the TOC Minute Delay Performance Sum in respect of that Performance Calculation Year shall be required to be incurred by the Franchisee in accordance with paragraph 3.6 and shall subject to paragraph 3.7 be an amount calculated as follows:

$$(\text{ACTUAL}_{\text{MD}} - \text{TARGET}_{\text{MD}}) \times \text{PPP}_{\text{MD}}$$

where:

$\text{ACTUAL}_{\text{MD}}$ has the meaning given to it in paragraph 2.7;

$\text{TARGET}_{\text{MD}}$ has the meaning given to it in paragraph 3.3(a);

PPP_{MD} is, in respect of any Performance Calculation Year, an amount calculated as follows:

$$\text{PPP}_{\text{MD}} \times \text{RPI}$$

where

PPP_{MD} is, where the Actual PPM Performance Level is:

- (i) less than (that is worse than) the Annual PPM Target Performance Level for that Performance Calculation Year, the amount specified for that Performance Calculation Year in row 3 ("Amount of PPP_{MD} "With Multiplier"") of the table in Part 3 (Annual TOC Minute Delay Payment Table) of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule 7.1; and
- (ii) more than (that is better than) or equal to the Annual PPM Target Performance Level for that Performance Calculation Year, the amount specified for that Performance Calculation Year in row 4 ("Amount of PPP_{MD} "Without Multiplier"") of the table in Part 3 (Annual TOC Minute Delay Payment Table) of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule 7.1;

RPI has the meaning given to it in paragraph 3.3(a); and

- (d) more than (that is, worse than) or equal to the Annual Floor Performance Level for that Annual TOC Minute Delay Benchmark for that Performance Calculation Year then the TOC Minute Delay Performance Sum in respect of that Performance Calculation Year shall be required to be incurred by the Franchisee in accordance with paragraph 3.7 and shall subject to paragraph 3.6 be an amount calculated as follows:

$$(\text{FLOOR}_{\text{MD}} - \text{TARGET}_{\text{MD}}) \times \text{PPP}_{\text{MD}}$$

where:

FLOOR_{MD} is the Annual Floor Performance Level relating to that Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

$\text{TARGET}_{\text{MD}}$ has the meaning given to it in paragraph 3.3(a); and

PPP_{MD} has the meaning given to it in paragraph 3.3(c).

3.4 Not used.

- 3.5 For the purpose of the calculations referred to in this paragraph 3, each of the Annual Cap Performance Level, the Annual Target Performance Level and the Annual Floor Performance Level will be specified as an absolute number not as a percentage (i.e. 1.5% equals 1.5).

3.6 The maximum amount:

- (a) payable by the Secretary of State by way of Cancellations Performance Sum and TOC Minute Delay Performance Sum shall, in respect of any Performance Calculation Year, be limited to an aggregate amount of £1,000,000 x RPI (where RPI has the meaning given to it in paragraph 3.2(a)); and
- (b) to be incurred as expenditure by the Franchisee by way of Cancellations Performance Sum and TOC Minute Delay Performance Sum, shall, in respect of any Performance Calculation Year, be limited to an aggregate amount of £1,000,000 x RPI (where RPI has the meaning given to it in paragraph 3.2(a)),

provided that in respect of any Performance Calculation Year of less than 13 Reporting Periods each of the maximum amounts calculated in accordance with paragraphs 3.6(a) and 3.6(b) shall be multiplied by the number of whole Reporting Periods in the relevant Performance Calculation Year and then divided by 13.

The Secretary of State shall be entitled to set off any liability for payment under this Schedule 7.1 against any sum owed to it by the Franchisee under this Schedule 7.1.

- 3.7 Where following calculation of the Cancellations Performance Sum or the TOC Minute Delay Performance Sum, the Franchisee is required to incur expenditure, the Franchisee shall incur expenditure equal to the amount of the Cancellations Performance Sum and/or the TOC Minute Delay Performance Sum due from the Franchisee in order to secure:

- (a) where the Franchisee is obliged to incur expenditure equal to the amount of the Cancellations Performance Sum, an improvement in the Franchisee's performance against the Annual Cancellations Benchmark so that such level is

equal to or less (that is better) than the Annual Target Performance Level for the Annual Cancellations Benchmark; and/or

- (b) where the Franchisee is obliged to incur expenditure equal to the amount of the TOC Minute Delay Performance Sum, an improvement in the Franchisee's performance against the Annual TOC Minute Delay Benchmark so that such level is equal to or or less (that is better) than the Annual Target Performance Level for the Annual TOC Minute Delay Benchmark,

or, in each case, as the Secretary of State may otherwise direct (the "**Required Performance Improvement**").

3.8 Without limiting paragraph 3.7, on each occasion that the Franchisee becomes obliged to incur expenditure equal to the amount of the Cancellations Performance Sum and/or the TOC Minute Delay Performance Sum to secure a Required Performance Improvement, the Franchisee shall produce an action plan which is consistent with its obligations under paragraph 3.7. and in compliance with the following provisions:

- (a) the Franchisee shall (1) produce, (2) obtain the Secretary of State's approval of, and (3) commence the implementation of the action plan within three months after the notification of the results of calculations in accordance of paragraph 2.11;
- (b) the action plan will contain specific tangible action points and indicate in the case of each action point:
 - (i) how that action will contribute to achieving the Required Performance Improvement;
 - (ii) where the action is to be implemented;
 - (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the plan shall include specific review dates; and
 - (iv) how performance of the action is to be measured; and
- (c) the action plan will identify the amount of the Cancellations Performance Sum and/or the TOC Minute Delay Performance Sum associated with each action.

3.9 The Franchisee shall, except to the extent otherwise agreed by the Secretary of State in advance, implement each action plan referred to in paragraph 3.7 in accordance with its terms.

3.10 It is acknowledged by the Franchisee that the approval or lack of approval by the Secretary of State of each action plan as contemplated in paragraph 3.8(a) shall not relieve the Franchisee of its obligations under this Schedule 7.1 or any other provisions of the Franchise Agreement.

3.11 Each Cancellations Performance Sum and TOC Minute Delay Performance Sum calculated pursuant to paragraphs 3.2 and 3.3 (respectively) in respect of any Performance Calculation Year payable by the Secretary of State to the Franchisee shall, subject to paragraph 3.12, be paid by way of adjustment to Franchise Payments on the Performance Sum Adjustment Date.

- 3.12 Upon the termination of this Franchise Agreement:
- (a) the Franchisee shall pay to the Secretary of State, by way of adjustment to Franchise Payments, an amount equivalent to the amount of any Cancellations Performance Sum and/or TOC Minute Delay Performance Sum due from the Franchisee and which it has not yet incurred as at the end of the Franchise Period; or
 - (b) the Secretary of State shall pay to the Franchisee, by way of adjustment to Franchise Payments, an amount equivalent to the amount of any Cancellation Performance Sum and/or TOC Minute Delay Performance Sum payable by the Secretary of State in respect of the final Performance Calculation Year.

4 Consequences for Poor Performance

- 4.1 The Franchisee shall procure that in each Reporting Period the moving annual average of:
- (a) Cancellations and Partial Cancellations (calculated in accordance with paragraph 2.2 of this Schedule 7.1) does not exceed (that is, is neither equal to nor worse than) the Breach Performance Levels and the Default Performance Levels specified in the cells relating to each such Reporting Period in the Cancellations Benchmark Table; and
 - (b) the Minutes Delay occurring in respect of the Passenger Services which are attributable to the Franchisee (including in accordance with paragraph 2.9 of this Schedule 7.1) per 1000 Train Miles actually operated (calculated in accordance with paragraph 2.5 of this Schedule 7.1) does not exceed (that is, is neither equal to nor worse than) the Breach Performance Levels and the Default Performance Levels specified in the cells relating to such Reporting Period in the TOC Minute Delay Benchmark Table.
- 4.2 Certain consequences of the Franchisee's performance exceeding (that is, equalling or being worse than) the Breach Performance Levels and Default Performance Levels relating to each Benchmark are set out in Schedule 10 (Remedies, Termination and Expiry).

Submission of Records Relating to the Implementation of a Service Recovery Plan

- 4.3 The Franchisee shall, within eight weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such other period as may be agreed by the Secretary of State), submit to the Secretary of State all the comprehensive records (as more particularly described in the relevant paragraph of the Service Recovery Plan) which relate to the implementation of such Service Recovery Plan during that Reporting Period.

5 Determination of the Annual Benchmarks for Performance Calculation Years that are shorter than 13 Reporting Periods

- 5.1 Where a Performance Calculation Year (other than the first Performance Calculation Year in relation to which no adjustment is required) is shorter than 13 Reporting Periods, the Secretary of State will perform the following calculations for the purposes of determining the Annual Cancellations Benchmark and the Annual TOC Minute Delay Benchmark for that Performance Calculation Year:

- (a) in respect of the Annual Cancellations Benchmark, the Annual Cap Performance Level, the Annual Target Performance Level, the Annual Floor Performance Level and the Annual CASL Performance Level for that Performance Calculation Year they shall be determined by reference to the relevant figure specified in respect of the final Reporting Period of the relevant Performance Calculation Year in the table set out in Part 2 of Appendix 3 (that is, for illustration purposes only, if the Performance Calculation Year ends in the second Reporting Period of the third Franchisee Year then for the Annual Cancellations Benchmark the Annual Cap Performance Level shall be 0.43%, the Annual Target Performance Level shall be 0.57%, the Annual Floor Performance Level shall be 0.72% and the Annual CASL Target Performance Level shall be 2.46% being the figures specified in the row "2017/18 P02" of the table in part 2 of Appendix 3);
- (b) in respect of the Annual TOC Minute Delay Benchmark, the Annual Cap Performance Level, the Annual Target Performance Level, the Annual Floor Performance Level and the Annual PPM Target Performance Level for that Performance Calculation Year they shall be determined by reference to the figure specified in respect of the final Reporting Period of the relevant Performance Calculation Year in the table set out in Part 1 of Appendix 3 (that is, for illustration purposes only, if the Performance Calculation Year ends in the second Reporting Period of the third Franchisee Year then for the Annual TOC Minute Delay Benchmark, the Annual Cap Performance Level shall be 10.01, the Annual Target Performance Level shall be 11.78, the Annual Floor Performance Level shall be 13.54 and the Annual PPM Target Performance Level shall be 91.24% being the figures specified in the row "2017/18 P02" of the table in part 1 of Appendix 3);
- (c) the actual performance of the Franchisee against the relevant Annual Benchmark for that Performance Calculation Year shall be calculated as a moving annual average of the Franchisee's performance against the Annual Benchmark by reference to the actual performance of the Franchisee in respect of the final Reporting Period of that Performance Calculation Year and the 12 Reporting Periods preceding such final Reporting Period; and
- (d) the amount of each of the Cancellations Performance Sum and/or TOC Minute Delay Performance Sum in respect of the Performance Calculation Year calculated in accordance with paragraph 3 and this paragraph shall be pro-rated to reflect the reduced length of the Performance Calculation Year by multiplying the amount specified in the Annual Cancellation Payment table in Part 3 of Appendix 1 and the Annual TOC Minute Delay Payment Table in part 3 of Appendix 2 (as the case may be) in respect of the relevant Performance Calculation Year by the number of whole Reporting Periods in that relevant Performance Calculation Year and then dividing the product of such multiplication by 13.

5.2 The Franchisee and the Secretary of State acknowledge that the tables in Appendix 3 of Schedule 7.1 as at the date of the Franchise Agreement had not been checked and verified by the Secretary of State for accuracy and consistency with the agreed commercial principles. The Secretary of State shall within seven days of the date of the Franchise Agreement confirm in writing to the Franchisee that either such tables:

- (a) are agreed; or
- (b) are not agreed specifying the reasons why.

Where the Secretary of State does not agree the tables he and the Franchisee shall use all reasonable endeavours to reach reasonable agreement on their contents in

accordance with the agreed commercial principles within 10 days. In the event agreement cannot be reached within such period the Secretary of State shall have the right to reasonably determine the values in such tables.

6 Network Rail Claim

6.1 The Franchisee shall not include in any claim for compensation from Network Rail under Schedule 8 of the Track Access Agreement any amounts to compensate the Franchisee for any loss suffered or costs incurred as a result of the Franchisee:

- (a) not being entitled to receive from the Secretary of State, in respect a Performance Calculation Year, the amounts specified in respect of such Performance Calculation Year in:
 - (i) row 1 ("Amount of PBP_c "With Multiplier"") or row 2 ("Amount of PBP_c "Without Multiplier"") of the table in Part 3 (Annual Cancellations Payment Table) of Appendix 1 (Cancellations Benchmark and Annual Cancellations Benchmark) of Schedule 7.1 (Performance Benchmarks) for; or
 - (ii) row 1 ("Amount of PBP_{MD} "With Multiplier"") or row 2 ("Amount of PBP_{MD} "Without Multiplier"") of the table in Part 3 (Annual TOC Minute Delay Payment Table) of Appendix 2 (Annual TOC Minute Delay Benchmark Table) of Schedule 7.1 (Performance Benchmarks); and
- (b) being required to incur in a Performance Calculation Year, the amount specified in respect of such Performance Calculation Year in:
 - (i) row 3 ("Amount of PPP_c "With Multiplier"") or row 4 ("Amount of PPP_c "Without Multiplier"") of the table in Part 3 (Annual Cancellations Benchmark Table) of Appendix 1 (Cancellations Benchmark and Annual Cancellations Benchmark) of Schedule 7.1 (Performance Benchmarks); or
 - (ii) row 3 ("Amount of PPP_{MD} "With Multiplier"") or row 4 ("Amount of PPP_{MD} "Without Multiplier"") of the table in Part 3 (Annual TOC Minute Delay Payment Table) of Appendix 2 (Annual TOC Minute Delay Benchmark Table) of Schedule 7.1 (Performance Benchmarks).

Without prejudice to the Secretary of State's rights under Schedule 10 (Remedies, Termination and Expiry), if the Franchisee receives compensation from Network Rail in respect of the losses and costs referred to in this paragraph 6.1, the Franchisee shall pay such compensation received to the Secretary of State within five Weekdays of receipt.

APPENDIX 1 TO SCHEDULE 7.1^{367 368}
Cancellations Benchmarks and Annual Cancellations Benchmarks

Part 1 – Cancellations Benchmark Table

Reporting Period	Breach Performance Level	Default Performance Level
	(% Cancelled)	(% Cancelled)
2015/16 P07	0.74%	0.77%
2015/16 P08	0.74%	0.77%
2015/16 P09	0.74%	0.77%
2015/16 P10	0.74%	0.77%
2015/16 P11	0.74%	0.77%
2015/16 P12	0.74%	0.77%
2015/16 P13	0.74%	0.77%
2016/17 P01	0.74%	0.77%
2016/17 P02	0.74%	0.77%
2016/17 P03	0.74%	0.77%
2016/17 P04	0.74%	0.77%
2016/17 P05	0.74%	0.77%
2016/17 P06	0.74%	0.77%
2016/17 P07	0.74%	0.77%
2016/17 P08	0.74%	0.77%
2016/17 P09	0.74%	0.77%
2016/17 P10	0.74%	0.77%
2016/17 P11	0.74%	0.77%
2016/17 P12	0.74%	0.76%
2016/17 P13	0.73%	0.76%
2017/18 P01	0.72%	0.75%

³⁶⁷ Date of contract change 17/10/2017 – Agreed by the Secretary of State and Franchisee

³⁶⁸ 14 May 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

Reporting Period	Breach Performance Level	Default Performance Level
	(% Cancelled)	(% Cancelled)
2017/18 P02	0.72%	0.75%
2017/18 P03	0.71%	0.74%
2017/18 P04	0.70%	0.73%
2017/18 P05	0.69%	0.72%
2017/18 P06	1.06%	1.10%
2017/18 P07	1.06%	1.10%
2017/18 P08	1.06%	1.10%
2017/18 P09	1.06%	1.10%
2017/18 P10	1.06%	1.10%
2017/18 P11	1.06%	1.10%
2017/18 P12	1.06%	1.10%
2017/18 P13	1.06%	1.10%
2018/19 P01	1.06%	1.10%
2018/19 P02	1.06%	1.10%
2018/19 P03	1.06%	1.10%
2018/19 P04	1.06%	1.10%
2018/19 P05	1.06%	1.10%
2018/19 P06	1.06%	1.10%
2018/19 P07	1.06%	1.10%
2018/19 P08	1.06%	1.10%
2018/19 P09	1.06%	1.10%
2018/19 P10	1.06%	1.10%
2018/19 P11	1.06%	1.10%
2018/19 P12	1.06%	1.10%
2018/19 P13	1.06%	1.10%
2019/20 P01	1.06%	1.10%

Reporting Period	Breach Performance Level	Default Performance Level
	(% Cancelled)	(% Cancelled)
2019/20 P02	1.06%	1.10%
2019/20 P03	1.06%	1.10%
2019/20 P04	1.06%	1.10%
2019/20 P05	1.06%	1.10%
2019/20 P06	1.06%	1.10%
2019/20 P07	1.06%	1.10%
2019/20 P08	1.06%	1.10%
2019/20 P09	1.06%	1.10%
2019/20 P10	1.06%	1.10%
2019/20 P11	1.06%	1.10%
2019/20 P12	1.06%	1.10%
2019/20 P13	1.06%	1.10%

START OF THE FRANCHISE

The Reporting Period in the cells entitled "2015/16 P07" shall be the first Reporting Period of the first Performance Calculation Year in the Franchise Term.

Part 2 – Annual Cancellations Benchmark Table

Column 1	Column 2	Column 3	Column 4	Column 5
Performance Calculation Year	Annual Cap Performance Level (% Cancelled)	Annual Target Performance Level (% Cancelled)	Annual Floor Performance Level (% Cancelled)	Annual CASL Target Performance Level (%)
2015/16	0.43%	0.58%	0.72%	2.72%
2016/17	0.44%	0.58%	0.73%	2.47%
2017/18	0.38%	0.50%	0.63%	2.37%
2018/19	0.33%	0.44%	0.55%	2.27%
2019/20	0.33%	0.44%	0.55%	2.26%

Part 3 – Annual Cancellations Payment Table

Performance Calculation Year	2015/16	2016/17	2017/18	2018/19	2019/20
Amount (£) of PBP_c "With Multiplier"	4,493,616*	4,447,551*	3,810,196*	5,870,272*	6,587,889*
Amount (£) of PBP_c "Without Multiplier"	2,765,302*	2,736,954*	2,344,736*	3,612,475*	4,054,086*
Amount (£) of PPP_c "With Multiplier"	8,987,232*	8,895,102*	10,341,150*	11,738,130*	11,737,325*
Amount (£) of PPP_c "Without Multiplier"	5,530,604*	5,473,909*	6,363,785*	7,223,465*	7,222,969*

* provided that in respect of any Performance Calculation Year of less than 13 Reporting Periods **PBP_c** and/or **PPP_c** (as applicable) shall be multiplied by the number of whole Reporting Periods in the relevant Performance Calculation Year and then divided by 13.

APPENDIX 2 TO SCHEDULE 7.1^{369 370}
TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks

Part 1 – TOC Minute Delay Benchmark Table

Reporting Period	Breach Performance Level	Default Performance Level
	(relevant Minutes Delay/1000 Train Miles)	(relevant Minutes Delay/1000 Train Miles)
2015/16 P07	14.13	15.97
2015/16 P08	14.09	15.93
2015/16 P09	14.06	15.89
2015/16 P10	14.04	15.87
2015/16 P11	14.00	15.83
2015/16 P12	13.97	15.79
2015/16 P13	13.94	15.76
2016/17 P01	13.93	15.75
2016/17 P02	13.92	15.74
2016/17 P03	13.91	15.72
2016/17 P04	13.89	15.70
2016/17 P05	13.87	15.68
2016/17 P06	13.86	15.67
2016/17 P07	13.85	15.66
2016/17 P08	13.84	15.64
2016/17 P09	13.83	15.63
2016/17 P10	13.80	15.60
2016/17 P11	13.76	15.56
2016/17 P12	13.72	15.51
2016/17 P13	13.66	15.45

³⁶⁹ Date of contract change 17/10/2017 – Agreed by the Secretary of State and Franchisee

³⁷⁰ 14 May 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

Reporting Period	Breach Performance Level	Default Performance Level
	(relevant Minutes Delay/1000 Train Miles)	(relevant Minutes Delay/1000 Train Miles)
2017/18 P01	13.61	15.38
2017/18 P02	13.54	15.31
2017/18 P03	13.47	15.22
2017/18 P04	13.37	15.11
2017/18 P05	13.24	14.97
2017/18 P06	20.34	21.23
2017/18 P07	20.34	21.23
2017/18 P08	20.34	21.23
2017/18 P09	20.34	21.23
2017/18 P10	20.34	21.23
2017/18 P11	20.34	21.23
2017/18 P12	20.34	21.23
2017/18 P13	19.16	22.55
2018/19 P01	19.16	22.55
2018/19 P02	19.16	22.55
2018/19 P03	19.16	22.55
2018/19 P04	19.16	22.55
2018/19 P05	19.16	22.55
2018/19 P06	19.16	22.55
2018/19 P07	19.16	22.55
2018/19 P08	19.16	22.55
2018/19 P09	19.16	22.55
2018/19 P10	18.97	22.33
2018/19 P11	18.68	21.99
2018/19 P12	18.35	21.60

Reporting Period	Breach Performance Level	Default Performance Level
	(relevant Minutes Delay/1000 Train Miles)	(relevant Minutes Delay/1000 Train Miles)
2018/19 P13	17.92	21.09
2019/20 P01	17.59	20.70
2019/20 P02	17.25	20.31
2019/20 P03	16.92	19.91
2019/20 P04	16.59	19.52
2019/20 P05	16.25	19.13
2019/20 P06	15.92	18.73
2019/20 P07	15.58	18.34
2019/20 P08	15.25	17.95
2019/20 P09	14.92	17.56
2019/20 P10	14.58	17.16
2019/20 P11	14.25	16.77
2019/20 P12	13.91	16.38
2019/20 P13	13.58	15.98

START OF THE FRANCHISE

The Reporting Period in the cells entitled "2015/16 P07" shall be the first Reporting Period of first Performance Calculation Year in the Franchise Term.

Part 2 – Annual TOC Minute Delay Benchmark Table

Column 1	Column 2	Column 3	Column 4	Column 5
Performance Calculation Year	Annual Cap Performance Level (relevant Minutes Delay per 1000 train miles)	Annual Target Performance Level (relevant Minutes Delay per 1000 train miles)	Annual Floor Performance Level (relevant Minutes Delay per 1000 train miles)	Annual PPM Target Performance Level
2015/16	10.21	12.01	13.81	90.14%
2016/17	10.10	11.88	13.66	91.24%
2017/18	9.07	10.68	12.28	91.39%
2018/19	7.76	9.13	10.50	91.72%
20/19/20	7.58	8.92	10.26	91.74%

Part 3 – Annual TOC Minute Delay Payment Table

Performance Calculation Year	2015/16	2016/17	2017/18	2018/19	2019/20
Amount (£) of PBP_{MD} "Without Multiplier"	222,011*	224,426*	249,790*	292,183*	299,021*
Amount (£) of PBP_{MD} "With Multiplier"	360,769*	364,692*	405,908*	474,797*	485,908*
Amount (£) of PPP_{MD} "Without Multiplier"	444,023*	448,851*	499,579*	584,366*	598,041*
Amount (£) of PPP_{MD} "With Multiplier"	721,537*	729,384*	811,816*	949,594*	971,817*

* provided that in respect of any Performance Calculation Year of less than 13 Reporting Periods **PBP_{MD}** and/or **PPP_{MD}** (as applicable) shall be multiplied by the number of whole Reporting Periods in the relevant Performance Calculation Year and then divided by 13.

Appendix 3 to Schedule 7.1

**Numbers for determining Annual Benchmarks for Franchisee Years
(other than the first Franchisee Year) shorter than 13 Reporting Periods**

Part 1– TOC Minute Delay Benchmark Table (periodic)				
Column 1	Column 2	Column 3	Column 4	Column 5
Performance Calculation Year (less than 13 period extension)	Annual Cap Performance Level (relevant Minutes Delay per 1000 train miles)	Annual Target Performance Level (relevant Minutes Delay per 1000 train miles)	Annual Floor Performance Level (relevant Minutes Delay per 1000 train miles)	Annual PPM Target Performance Level (%)
2015/16 P07	10.21	12.01	13.81	90.14%
2015/16 P08	10.21	12.01	13.81	90.14%
2015/16 P09	10.21	12.01	13.81	90.14%
2015/16 P10	10.21	12.01	13.81	90.14%
2015/16 P11	10.21	12.01	13.81	90.14%
2015/16 P12	10.21	12.01	13.81	90.14%
2015/16 P13	10.21	12.01	13.81	90.14%
2016/17 P01	10.25	12.05	13.86	91.06%
2016/17 P02	10.25	12.05	13.86	91.06%
2016/17 P03	10.25	12.05	13.86	91.06%
2016/17 P04	10.25	12.05	13.86	91.06%
2016/17 P05	10.25	12.05	13.86	91.06%
2016/17 P06	10.25	12.05	13.86	91.06%
2016/17 P07	10.24	12.04	13.85	91.08%
2016/17 P08	10.23	12.03	13.84	91.10%
2016/17 P09	10.22	12.02	13.83	91.13%
2016/17 P10	10.20	12.00	13.80	91.15%
2016/17 P11	10.17	11.97	13.76	91.18%
2016/17 P12	10.14	11.93	13.72	91.20%
2016/17 P13	10.10	11.88	13.66	91.24%
2017/18 P01	10.06	11.83	13.61	91.24%
2017/18 P02	10.01	11.78	13.54	91.24%
2017/18 P03	9.95	11.71	13.47	91.25%
2017/18 P04	9.88	11.62	13.37	91.26%

2017/18 P05	9.79	11.52	13.24	91.28%
2017/18 P06	9.71	11.43	13.14	91.30%
2017/18 P07	9.62	11.32	13.02	91.31%
2017/18 P08	9.53	11.21	12.89	91.32%
2017/18 P09	9.41	11.08	12.74	91.34%
2017/18 P10	9.34	10.99	12.64	91.35%
2017/18 P11	9.24	10.87	12.50	91.37%
2017/18 P12	9.15	10.77	12.38	91.38%
2017/18 P13	9.07	10.68	12.28	91.39%
2018/19 P01	8.98	10.56	12.15	91.42%
2018/19 P02	8.90	10.47	12.04	91.45%
2018/19 P03	8.78	10.33	11.88	91.47%
2018/19 P04	8.63	10.15	11.67	91.51%
2018/19 P05	8.47	9.96	11.46	91.55%
2018/19 P06	8.36	9.84	11.32	91.57%
2018/19 P07	8.25	9.71	11.17	91.59%
2018/19 P08	8.16	9.60	11.04	91.61%
2018/19 P09	8.07	9.49	10.91	91.64%
2018/19 P10	7.99	9.40	10.81	91.68%
2018/19 P11	7.90	9.29	10.69	91.70%
2018/19 P12	7.82	9.20	10.58	91.71%
2018/19 P13	7.76	9.13	10.50	91.72%
2019/20 P01	7.71	9.07	10.43	91.73%
2019/20 P02	7.68	9.03	10.39	91.73%
2019/20 P03	7.65	9.00	10.35	91.74%
2019/20 P04	7.64	8.99	10.34	91.74%
2019/20 P05	7.63	8.97	10.32	91.74%
2019/20 P06	7.62	8.96	10.30	91.75%
2019/20 P07	7.60	8.95	10.29	91.75%
2019/20 P08	7.60	8.94	10.28	91.75%
2019/20 P09	7.59	8.93	10.27	91.75%
2019/20 P10	7.59	8.93	10.27	91.75%
2019/20 P11	7.59	8.92	10.26	91.74%
2019/20 P12	7.58	8.92	10.26	91.75%
2019/20 P13	7.58	8.92	10.26	91.74%

Part 2 – Cancellations Benchmark Table (periodic)

Column 1	Column 2	Column 3	Column 4	Column 5
Performance Calculation Year (less than 13 period extension)	Annual Cap Performance Level (% Cancelled)	Annual Target Performance Level (% Cancelled)	Annual Floor Performance Level (% Cancelled)	Annual CASL Target Performance Level (%)
2015/16 P07	0.43%	0.58%	0.72%	2.72%
2015/16 P08	0.43%	0.58%	0.72%	2.72%
2015/16 P09	0.43%	0.58%	0.72%	2.72%
2015/16 P10	0.43%	0.58%	0.72%	2.72%
2015/16 P11	0.43%	0.58%	0.72%	2.72%
2015/16 P12	0.43%	0.58%	0.72%	2.72%
2015/16 P13	0.43%	0.58%	0.72%	2.72%
2016/17 P01	0.44%	0.59%	0.74%	2.50%
2016/17 P02	0.44%	0.59%	0.74%	2.50%
2016/17 P03	0.44%	0.59%	0.74%	2.50%
2016/17 P04	0.44%	0.59%	0.74%	2.50%
2016/17 P05	0.44%	0.59%	0.74%	2.50%
2016/17 P06	0.44%	0.59%	0.74%	2.50%
2016/17 P07	0.44%	0.59%	0.74%	2.50%
2016/17 P08	0.44%	0.59%	0.74%	2.50%
2016/17 P09	0.44%	0.59%	0.74%	2.49%
2016/17 P10	0.44%	0.59%	0.74%	2.49%
2016/17 P11	0.44%	0.59%	0.74%	2.48%
2016/17 P12	0.44%	0.59%	0.74%	2.48%
2016/17 P13	0.44%	0.58%	0.73%	2.47%
2017/18 P01	0.43%	0.58%	0.72%	2.47%
2017/18 P02	0.43%	0.57%	0.72%	2.46%
2017/18 P03	0.43%	0.57%	0.71%	2.45%
2017/18 P04	0.42%	0.56%	0.70%	2.45%
2017/18 P05	0.42%	0.55%	0.69%	2.44%
2017/18 P06	0.41%	0.55%	0.69%	2.43%
2017/18 P07	0.41%	0.54%	0.68%	2.42%
2017/18 P08	0.40%	0.53%	0.67%	2.41%
2017/18 P09	0.40%	0.53%	0.66%	2.40%
2017/18 P10	0.39%	0.52%	0.65%	2.39%

2017/18 P11	0.39%	0.51%	0.64%	2.39%
2017/18 P12	0.38%	0.51%	0.64%	2.38%
2017/18 P13	0.38%	0.50%	0.63%	2.37%
2018/19 P01	0.37%	0.50%	0.62%	2.36%
2018/19 P02	0.37%	0.49%	0.61%	2.35%
2018/19 P03	0.36%	0.49%	0.61%	2.35%
2018/19 P04	0.36%	0.48%	0.60%	2.33%
2018/19 P05	0.35%	0.47%	0.59%	2.32%
2018/19 P06	0.35%	0.47%	0.58%	2.32%
2018/19 P07	0.35%	0.46%	0.58%	2.31%
2018/19 P08	0.34%	0.46%	0.57%	2.31%
2018/19 P09	0.34%	0.46%	0.57%	2.30%
2018/19 P10	0.34%	0.45%	0.56%	2.28%
2018/19 P11	0.34%	0.45%	0.56%	2.27%
2018/19 P12	0.33%	0.45%	0.56%	2.27%
2018/19 P13	0.33%	0.44%	0.55%	2.27%
2019/20 P01	0.33%	0.44%	0.55%	2.27%
2019/20 P02	0.33%	0.44%	0.55%	2.27%
2019/20 P03	0.33%	0.44%	0.55%	2.27%
2019/20 P04	0.33%	0.44%	0.55%	2.27%
2019/20 P05	0.33%	0.44%	0.55%	2.27%
2019/20 P06	0.33%	0.44%	0.55%	2.26%
2019/20 P07	0.33%	0.44%	0.55%	2.26%
2019/20 P08	0.33%	0.44%	0.55%	2.26%
2019/20 P09	0.33%	0.44%	0.55%	2.26%
2019/20 P10	0.33%	0.44%	0.55%	2.26%
2019/20 P11	0.33%	0.44%	0.55%	2.26%
2019/20 P12	0.33%	0.44%	0.55%	2.26%
2019/20 P13	0.33%	0.44%	0.55%	2.26%

SCHEDULE 7.2**National Rail Passenger Surveys and Customer and Communities Improvement Fund****1. Conduct of National Rail Passenger Surveys**

1.1 The Franchisee agrees with the Secretary of State that:

- (a) the Passengers' Council may measure the level of passenger satisfaction with the Franchise Services through National Rail Passenger Surveys;
- (b) the Passengers' Council shall determine how, when (normally twice per annum) and where National Rail Passenger Surveys are to be carried out;
- (c) the Franchisee shall grant access on trains or at stations to the Passengers' Council (or its representatives and agents) to carry out National Rail Passenger Surveys;
- (d) the Franchisee shall co-operate with the Passengers' Council (in such manner as the Passengers' Council may reasonably request or as the Secretary of State may reasonably direct) in order to enable the Passengers' Council to carry out National Rail Passenger Surveys; and
- (e) the Passengers' Council and/or the Secretary of State may, from time to time, publish the results of each National Rail Passenger Survey.

1.2 The Secretary of State shall or shall procure that:

- (a) the findings of any National Rail Passenger Survey are made available by the Passengers' Council to the Franchisee within a reasonable period of time after the completion of each such survey and shall use all reasonable endeavours to procure that those findings are made available in a timely manner to enable the Franchisee to comply with its obligations under paragraph 1.3; and
- (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

1.3 The Franchisee shall, as soon as reasonably practicable after such information is made available to the Franchisee in accordance with paragraph 1.2, publicise its performance against the NRPS Benchmarks by including such information in its Customer Report and displaying such information at all of the Stations and on its website.

1.4 It is agreed by the Franchisee that, subject to paragraph 1.5, the methodology to be adopted by the Passengers' Council in conducting any such National Rail Passenger Survey shall be as described in the document in the agreed terms marked **PSM** (the "**Passenger Survey Methodology**").

- 1.5 If:
- (a) at any time during the Franchise Term the methodology adopted in conducting any National Rail Passenger Survey is, in the reasonable opinion of the Secretary of State, materially inconsistent with the Passenger Survey Methodology; and
 - (b) the Secretary of State reasonably determines that in consequence a revision to the NRPS Benchmark is required in order to hold constant the risk of the Franchisee failing to satisfy the NRPS Benchmark,

then the Secretary of State shall make such revisions to such NRPS Benchmarks as he reasonably considers appropriate to hold constant such risk.

- 1.6 If the Passengers' Council ceases to undertake National Rail Passenger Surveys then the relevant National Rail Passenger Survey for the purposes of this Schedule 7.2 shall be such other passenger survey as the Secretary of State may, after consultation with the Franchisee, reasonably determine to be appropriate in the circumstances (the "**Alternative NRPS**"). The provisions of this Schedule 7.2 shall apply in respect of any Alternative NRPS and for these purposes Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NRPS.

2. NRPS Benchmarks

- 2.1 ³⁷¹**It is agreed by the Secretary of State and the Franchisee that, subject to paragraph 1.6, the results of the National Rail Passenger Survey(s) carried out by the Passengers' Council in any Franchisee Year (other than the results of any National Rail Passenger survey carried out in respect of the HEx Services) shall be used to determine the Franchisee's performance against the NRPS Benchmarks for that Franchisee Year. Any passenger survey carried out in respect of the HEx Services shall be disregarded for the purposes on this Schedule 7.2. If in any Franchisee Year the Passengers' Council has conducted:**

- (a) only one National Rail Passenger Survey in that Franchisee Year then the performance of the Franchisee against the NRPS Benchmarks shall be measured against the results of such National Rail Passenger Survey; or
- (b) more than one National Rail Passenger Survey in that Franchisee Year then the performance of the Franchisee against the NRPS Benchmarks shall be measured against the average of the results of all of the National Rail Passenger Surveys conducted by the Passengers' Council in that Franchisee Year.

Performance Results/Required Remedial Actions

- 2.2 For each Franchisee Year the Secretary of State shall determine the Franchisee's performance against each NRPS Benchmark by comparing:
- (a) if only one National Rail Passenger Survey has been published by Passengers' Council in that Franchisee Year, the results of such National Rail Passenger Survey against the NRPS Benchmarks applicable in respect of that Franchisee Year; or

³⁷¹ 17 April 2018 (date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) if more than one National Rail Passenger Survey has been published by Passengers' Council in that Franchisee Year, the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that Franchisee Year against the NRPS Benchmarks applicable in respect of that Franchisee Year.

For the purposes of undertaking the comparison pursuant to this paragraph 2.2, the results referred to in paragraph 2.2(a) or paragraph 2.2(b) (as the case may be) shall be rounded up to one decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).

- 2.3 If, following the Secretary of State's determination pursuant to any of paragraphs 2.2(a) or 2.2(b) (as the case may be), the results show that the level of customer satisfaction in respect of any NRPS Measure is below the NRPS Benchmark for such measure then:
- (a) the Franchisee shall, unless the Secretary of State shall otherwise direct, incur Additional Expenditure in order to secure the Required Improvement; or
 - (b) if the Secretary of State so requires, a sum equivalent to the Additional Expenditure reasonably required to secure the Required Improvement shall be added to the CCIF Amount for the relevant period;
- 2.4 Without limiting paragraph 2.3, on each occasion that the Franchisee becomes obliged to incur Additional Expenditure to secure a Required Improvement, the Franchisee shall produce an action plan which is consistent with its obligations under paragraph 2.3 and in compliance with the following provisions:
- (a) the Franchisee shall (1) produce, (2) obtain the Secretary of State's approval of, and (3) commence the implementation of the action plan within three months after the date on which the results of such National Rail Passenger Survey which triggered the requirement for the Required Improvement were published or otherwise made available to the Franchisee pursuant to paragraph 1.2;
 - (b) the action plan will contain specific tangible action points and indicate in the case of each action point:
 - (i) how that action will contribute to meeting the NRPS Measure;
 - (ii) where the action is to be implemented;
 - (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the plan shall include specific review dates; and
 - (iv) how performance of the action is to be measured; and
 - (c) the action plan will identify the Additional Expenditure associated with each action.
- 2.5 The Franchisee shall, except to the extent otherwise agreed by the Secretary of State in advance, implement each action plan referred to in paragraph 2.4 in accordance with its terms.

2.6 It is acknowledged by the Franchisee that the approval or lack of approval by the Secretary of State of each action plan as contemplated in paragraph 2.4(a) shall not relieve the Franchisee of its obligations under this Schedule 7.2 or any other provisions of the Franchise Agreement.

2.7 Upon the termination of this Franchise Agreement the Franchisee shall pay to the Secretary of State, by way of adjustment to Franchise Payments, an amount equivalent to the amount of any Additional Expenditure that the Franchisee is committed to incur pursuant to paragraph 2.3 and which it has not yet incurred as at the end of the Franchise Period.

2.8 For the purposes of this Schedule 7.2:

"Additional Expenditure" means, in respect of a single NRPS Measure, up to £111,000 save that:

- (a) for any Franchisee Year which is shorter than 13 Reporting Periods, the applicable amount shall be reduced pro rata;
- (b) for each Franchisee Year (other than the first Franchisee Year) the Additional Expenditure applicable in relation to such Franchisee Year shall be determined as follows:

AD x RPI

where:

AD is £111,000; and

RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments); and

- (c) such additional expenditure shall be additional to:
 - (i) any sums provided for expenditure in respect of the same or similar commitments in the Business Plan for the Franchisee Year (the **"First Expenditure Franchisee Year"**) in which the obligation to incur Additional Expenditure under paragraph 2.3 first arises (the **"Existing Expenditure"**), and in any subsequent Franchisee Year, shall be in addition to the amount of the Existing Expenditure as increased by an amount equivalent to any increase in the Retail Prices Index between the beginning of the First Expenditure Franchisee Year and the beginning of that subsequent Franchisee Year; and
 - (ii) without limiting the preceding paragraph 2.8(c)(i), any expenditure made or to be made by the Franchisee for the purposes of complying with the provisions of Schedule 1 (Passenger Service Obligations), Schedule 4 (Persons with Disabilities and Disability Discrimination), Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions) and Schedule 7 (Performance Benchmarks);
- (d) the Additional Expenditure in any Franchise Year shall not exceed £1,000,000.

“Required Improvement” means an improvement in the level of customer satisfaction for the relevant NRPS Measure as measured by a National Rail Passenger Survey so that such level is equal to or higher than the related NRPS Benchmark.

3. **Customer and Communities Improvement Fund**

3.1 ³⁷²**The Franchisee shall undertake consultations with passengers, potential passengers and other users of the rail network in accordance with and shall otherwise comply with the Customer and Stakeholder Engagement Strategy. Such consultations shall exclude the HEx Services.**

3.2 The Franchisee shall:

- (a) by no later than 1 April 2016 ^{xxv}; and
- (b) thereafter at least twice each Franchisee Year,

publish the Customer Report in such readily accessible formats as the Secretary of State may reasonably require (including in booklet or other similar hard copy formats, in electronic formats (such as on the Franchisee’s website, through social media channels and by email)), in each case in accordance with the Customer and Stakeholder Engagement Strategy and the provisions of paragraph 20 of Schedule 13 (Information and Industry Initiatives).

The Secretary of State and the Franchisee acknowledge and agree that, as regards the Customer Reports to be published by the Franchisee pursuant to paragraph 3.2(b) above, the first Customer Report of each Franchisee Year shall be prepared in respect of the first six Reporting Periods of that Franchisee Year and the second Customer Report of each Franchisee Year shall be prepared in respect of the last seven Reporting Periods of that Franchisee Year. This pattern of Reporting shall be continued in subsequent Franchisee Years.

3.3 No later than 3 months prior to the start of the CCIF Period the Franchisee shall provide to the Secretary of State details of those initiatives, works or proposals (each a **“CCIF Scheme”**) which the Franchisee proposes to undertake in that CCIF Period in order to resolve or mitigate issues raised with the Franchisee through the consultation referred to in paragraph 3.1. The Franchisee shall use all reasonable endeavours to propose, in respect of each CCIF Period, CCIF Schemes with an aggregate projected CCIF Scheme Shortfall of not less than the aggregate of the CCIF Amount for each Franchisee Year in the relevant CCIF Period.

3.4 In relation to each CCIF Scheme proposed by the Franchisee pursuant to paragraph 3.3 the Franchisee shall provide:

- (a) details of the specific issues which that CCIF Scheme is intended to resolve or mitigate (including how those issues have been identified) and how that CCIF Scheme will resolve or mitigate those issues; and
- (b) fully worked up details of the CCIF Scheme sufficient to enable the Secretary of State to evaluate the same, including:

³⁷² 17 April 2018 (date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (i) a timetable for the implementation of that CCIF Scheme, setting out the proposed commencement and completion date of such CCIF Scheme and any other key dates and milestones;
- (ii) details of the projected CCIF Scheme Cost; and
- (iii) details of the projected CCIF Scheme Revenue.

3.5 The Franchisee shall provide the Secretary of State with such further information in relation to any CCIF Scheme proposed by the Franchisee pursuant to paragraph 3.3 as the Secretary of State may reasonably require.

3.6 **³⁷³A CCIF Scheme proposed by the Franchisee pursuant to paragraph 3.3 shall not be an Approved CCIF Scheme unless and until it has been approved by the Secretary of State pursuant to this paragraph 3.6 (such consent not to be unreasonably withheld or delayed) after which it will be included in the CCIF Programme for that CCIF Period Without limitation, the Secretary of State may withhold his approval to any proposed CCIF Scheme which:**

- (a) ***has not been identified and/or developed in accordance with the Customer and Stakeholder Engagement Strategy;***
- (b) ***is not designed to resolve or mitigate issues raised with the Franchisee through the consultation referred to in paragraph 3.1;***
- (c) ***has a completion date falling later than the end of the relevant CCIF Period;***
- (d) ***is projected to generate a Commercial Return or in relation to which the Secretary of State considers the CCIF Scheme Costs (or any part of them) to be too high or disproportionate to the benefits accruing from the CCIF Scheme;***
- (e) ***the Franchisee is otherwise funded to undertake; or***
- (f) ***in the opinion of the Secretary of State, amounts to actions or steps which the Franchisee is otherwise obliged to take or which any competent train operator should be taking in relation to the operation of the Franchise.***

3.7 **³⁷⁴The Franchisee shall undertake the Approved CCIF Schemes described in the CCIF programme for each CCIF Period.**

3.7A **³⁷⁵A CCIF Programme may be varied at any time by agreement in writing between the parties, provided that paragraphs 3.8 to 3.10 shall continue to apply.**

3.8 Paragraph 3.10 will apply if:

³⁷³ Date of contract change 25/01/2017 – Agreed by the Secretary of State and Franchisee.

³⁷⁴ Date of contract change 25/01/2017 – Agreed by the Secretary of State and Franchisee.

³⁷⁵ Date of contract insertion 25/01/2017 – Agreed by the Secretary of State and Franchisee.

- (a) the aggregate projected CCIF Scheme Shortfall in respect of all Approved CCIF Schemes for any CCIF Period is less than the aggregate of the CCIF Amount for each Franchisee Year in that CCIF Period; or
- (b) subject to paragraph 3.9 in any CCIF Period, in the Secretary of State's reasonable opinion, the aggregate of the actual CCIF Scheme Shortfall incurred by the Franchisee during that CCIF Period upon Approved CCIF Schemes is less than the aggregate of the CCIF Amount for each Franchisee Year in that CCIF Period,

in each case the underspend against the aggregate CCIF Amount being the "**CCIF Underspend**".

3.9 If:

- (a) the amount of the CCIF Scheme Costs actually incurred by the Franchisee in relation to any Approved CCIF Scheme exceed the projected CCIF Scheme Costs notified to the Secretary of State pursuant to paragraph 3.4 for such Approved CCIF Scheme, then the amount of the excess shall not amount to CCIF Scheme Cost; or
- (b) in the Secretary of State's reasonable opinion, the amount of the CCIF Scheme Revenue actually earned by the Franchisee in relation to any Approved CCIF Scheme is less than the projected CCIF Scheme Revenue notified to the Secretary of State pursuant to paragraph 3.4 for such Approved CCIF Scheme then, for the purposes of paragraph 3.8(b) the actual CCIF Scheme Revenue shall be deemed to be the projected CCIF Scheme Revenue.

3.10 Where this paragraph 3.10 applies the Secretary of State may require the Franchisee to pay all or part of the CCIF Underspend to the Secretary of State unless the Secretary of State specifies otherwise.

3.11 The Franchisee shall:

- (a) undertake and complete a review of its Customer and Stakeholder Engagement Strategy within 6 months of the Start Date and on each anniversary thereafter for the remainder of the Franchise Term; and
- (b) provide the Secretary of State with any proposed revisions to the Customer and Stakeholder Engagement Strategy arising out of such review by no later than the end of each such Franchisee Year

to update the Customer and Stakeholder Engagement Strategy to reflect lessons learned in the period since the Start Date or the previous review of the Customer and Stakeholder Engagement Strategy (as applicable) and to ensure that the Customer and Stakeholder Engagement Strategy achieves effective passenger engagement. Any revisions to the Customer and Stakeholder Engagement Strategy shall require the consent of the Secretary of State (such consent not to be unreasonably withheld or delayed).

3.12 Any Franchise Asset arising as a result of an Approved CCIF Scheme shall be designated as a Primary Franchise Asset and shall not be de-designated as such. Any such Primary Franchise Asset which falls to be valued in accordance with the Supplemental Agreement shall (with the exception of liabilities) be valued at nil.

**APPENDIX 1 TO SCHEDULE 7.2
NRPS Benchmark Table**

	NRPS BENCHMARK		
	STATION	TRAIN	CUSTOMER SERVICE
Long Distance			
2015/16	70.63	72.76	70.52
2016/17	71.88	73.26	71.52
2017/18	73.38	75.26	73.52
2018/19	73.88	79.26	75.02
2019/20	74.38	83.26	75.52
Thames Valley			
2015/16	63.19	67.03	60.05
2016/17	64.19	68.78	61.05
2017/18	65.69	71.78	63.05
2018/19	67.19	75.05	64.55
2019/20	67.69	76.03	65.05
West			
2015/16	67.92	64.54	66.49
2016/17	68.67	65.04	67.24
2017/18	69.67	68.04	68.49
2018/19	70.92	70.04	69.99
2019/20	71.42	70.54	71.99

SCHEDULE 8**Payments****Schedule 8.1: Franchise Payments****Appendix 1: Profit Share Thresholds****Appendix 2: Components of AFA and DFR****Schedule 8.2: Annual Franchise Payments****Appendix: Figures for the Calculation of Annual Franchise payments****Schedule 8.3: Miscellaneous Payment Provisions****Schedule 8.4 Track Access Adjustments and Station Charge Adjustments**

SCHEDULE 8.1**Franchise Payments****1. Franchise Payments**

1.1 The Franchise Payment for any Reporting Period shall be an amount equal to:

$$\begin{aligned} \text{£FP} = & \text{PFP} + \text{TAA} + \text{SCA} + \text{CPS} + \text{TMDPS} + \text{TUA} + \text{CIA} + \text{TARABR} + \text{HMBP} + \\ & \text{RWLD}^{376} + \text{WFFDP}^{377} + \text{ECAW}^{378} + \text{SFHSTPA}^{379} + \text{HS2PA}^{380} + \\ & \text{FWP}^{381} + \text{EDFWP}^{382} + \text{GCPFC}^{383} + \text{STNRP}^{384} + \text{DRoc} + \text{DR}_{\text{BP}} + \text{DR}_{\text{CR}} \\ & + \text{DR}_{\text{CRBP}}^{385} \end{aligned}$$

where:

£FP means the Franchise Payment for that Reporting Period;

PFP means $\left(\frac{\text{RPD}}{\text{FYD}} \times \text{AFP} \right)$

where:

RPD means the number of days in that Reporting Period;

FYD is equal to 365, or if February 29th falls during the Franchisee Year in which the Reporting Period falls, 366 provided that for the Franchisee Year commencing on the Start Date and ending on 31 March 2016, FYD shall be deemed to be the number of days during the period from the Start Date to 31 March 2016 (inclusive);

³⁷⁶ **Date of contract change 29/05/2015 – Agreed by the Secretary of State and Franchisee.**

³⁷⁷ **Date of contract change 26/11/2015 – Agreed by the Secretary of State and Franchisee.**

³⁷⁸ **Date of contract change 27/04/2016 – Agreed by the Secretary of State and Franchisee.**

³⁷⁹ **Date of contract insertion 13/12/2016 – Agreed by the Secretary of State and Franchisee.**

³⁸⁰ **Date of contract insertion 17/01/2017 – Agreed by the Secretary of State and Franchisee.**

³⁸¹ **Date of contract insertion 18/09/2017 – Agreed by the Secretary of State and Franchisee.**

³⁸² 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁸³ **Date of contract insertion 26/09/2016 – Agreed by the Secretary of State and Franchisee.**

³⁸⁴ 13 December 2017 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

³⁸⁵ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- AFP means the Annual Franchise Payment for the Franchisee Year in which that Reporting Period occurs, as determined in accordance with Schedule 8.2 (Annual Franchise Payments);
- TAA means any Track Access Adjustment to be made on that Reporting Period's Payment Date;
- SCA means any Station Charge Adjustment to be made on that Reporting Period's Payment Date;
- CPS means any Cancellations Performance Sum payable by the Secretary of State to the Franchisee on that Reporting Period's Payment Date (which shall only be a positive number);
- TMDPS means any TOC Minute Delay Performance Sum payable by the Secretary of State to the Franchisee on that Reporting Period's Payment Date (which shall only be a positive number);
- TUA means the sum of any payment to be made by the Secretary of State to the Franchisee pursuant to paragraph 4.5 of Schedule 6.3 (The IEP Provisions) (which shall only have a positive value);
- CIA means the sum of any payment to be made by the Secretary of State to the Franchisee on that Reporting Period's Payment Date under paragraph 4 of this Schedule 8.1 (Franchise Payments) (which shall only be a positive number);
- TARABR means the sum of any payment to be made by the Secretary of State to the Franchisee pursuant to paragraph 5 of this Schedule 8.1 (Franchise Payments) (which shall only be a positive number);
- HMBP means the sum of any payment to be made by the Secretary of State to the Franchisee pursuant to paragraph 6 of this Schedule 8.1 (Franchise Payments) (which shall only be a positive number);
- RWLD³⁸⁶ means the Reading Wheel Lathe Stage 2 Payment (if any) to be made to the Franchisee on that Reporting Period's Payment Date;***
- WFFDP³⁸⁷ means the Worcester HST Fuelling Facility Payment (if any) to be made to the Franchisee on that Reporting Period's Payment Date;***
- ECAW³⁸⁸ means the payment in respect of the Franchisee's costs and expenses in respect of the Electrification Change Advance Works (if any) to be made to the Franchisee on that Reporting Period's Payment Date in accordance with paragraph 22 of Schedule 6.2;***

³⁸⁶ Date of contract change 29/05/2015 – Agreed by the Secretary of State and Franchisee.

³⁸⁷ Date of contract change 26/11/2015 – Agreed by the Secretary of State and Franchisee.

³⁸⁸ Date of contract change 27/04/2016 – Agreed by the Secretary of State and Franchisee.

SFHSTPA³⁸⁹ means the payment in respect of the Franchisee's costs and expenses in respect of the HST Short Form Project Activities (if any) to be made to the Franchisee on that Reporting Period's Payment Date in accordance with paragraph 24 of Schedule 6.2;

HS2PA³⁹⁰ means the payment in respect of the Franchisee's costs and expenses in respect of the HS2 Project Activities (if any) to be made to the Franchisee on the Reporting Period's Payment Date in accordance with paragraph 25 of Schedule 6.2;

FWP³⁹¹ means the Funded Works Payment (if any) to be made to the Franchisee on that Reporting Period's Payment Date;

EDFWP³⁹² means the Exeter Depot Funded Works Payment (if any) to be made to the Franchisee on that Reporting Period's Payment Date;

GCPFC³⁹³ means the payment in respect of the Franchisee's funding costs in respect of the Gloucester Car Park Documents payable in respect of any relevant Reporting Period (if any) to be made to the Franchisee on that Reporting Period's Payment Date in accordance with paragraph 23.2 or paragraph 23.3 of Schedule 6.2 (Great Western Franchise Specific Provisions);

STNRP³⁹⁴ means any payments to be made pursuant to paragraphs 6.7 and/or 6.8 to Appendix 1 of Schedule 5.9 (ITSO Certified Smartmedia);

DRoc³⁹⁵ means the forecast DR Operational Costs as calculated pursuant to paragraph 7.2(a) of this Schedule 8.1 to be made on that Reporting Period's Payment Date;

DRBP³⁹⁶ means the aggregate of the DR Operating Costs Balancing Payment (if any) payable by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee (as the case may be) on that Reporting Period's Payment Date (which could be a positive number (where the payment is due from the

³⁸⁹ Date of contract insertion 13/12/2016 – Agreed by the Secretary of State and Franchisee.

³⁹⁰ Date of contract insertion 17/02/2017 – Agreed by the Secretary of State and Franchisee.

³⁹¹ Date of contract insertion 18/09/2017 – Agreed by the Secretary of State and Franchisee.

³⁹² 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁹³ Date of contract insertion 26/09/2016 – Agreed by the Secretary of State and Franchisee.

³⁹⁴ 13 December 2017 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

³⁹⁵ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁹⁶ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Secretary of State) or a negative number (where the payment is due from the Franchisee));

DR^{CR}³⁹⁷ means the forecast DR Claims Reimbursement as calculated pursuant to paragraph 7.3 of this Schedule 8.1 to be made on that Reporting Period's Payment Date; and

DR^{CRBP}³⁹⁸ means the aggregate DR Claims Reimbursement Balancing Payment (if any) payable by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee on that Reporting Period's Payment Date (which could be a positive number (where the payment is due from the Secretary of State) or a negative number (where the payment is due from the Franchisee)).

1.2 Where a Franchisee Year starts or ends during a Reporting Period, £FP and PFP shall be determined as if references in paragraph 1.1 to a Reporting Period were to each of the separate sections of two such Reporting Periods which fall either side of such Franchisee Year start or end, and the Franchise Payment for such Reporting Period shall be the sum of £FP as determined for each such section of such Reporting Period.

1.3 The parties agree that:

- (a) each of £FP, TAA and SCA may be a positive or negative number;
- (b) where £FP is a positive number, the Secretary of State shall pay that amount to the Franchisee on the Payment Date for that Reporting Period; and
- (c) where £FP is a negative number, the Franchisee shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period.

2. **Payment of Franchise Payments**

2.1 The Secretary of State shall notify the Franchisee, no less than seven days prior to the end of each Reporting Period, of the amount of the Franchise Payment payable in respect of that Reporting Period.

2.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.

2.3 The **Payment Date** for a Reporting Period shall be the last Weekday of that Reporting Period.

2.4 Each Franchise Payment shall be payable by the Franchisee or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.

³⁹⁷7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁹⁸7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 2.5 Each Franchise Payment shall be made:
- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
 - (b) so that cleared funds are received in that account on or before the due date for payment.
- 2.6 If either party disputes the amount of a Franchise Payment, the dispute shall, unless the parties otherwise agree, be resolved in accordance with the provisions of **Clause 10** (Governing Law) of this Franchise Agreement. Any such dispute shall not affect the obligation of either party to pay a Franchise Payment notified in accordance with this paragraph 2.
- 2.7 If either party fails to pay any amount to the other party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.
- 2.8 If the amount of any Franchise Payment is agreed or determined to be incorrect and:
- (a) either party has made a payment to the other party which is greater than it would have made if the amount of the Franchise Payment had been correct, then the recipient shall repay the excess within three Weekdays of the agreement or determination; or
 - (b) either party has made a payment to the other party which is less than it would have made if the amount of the Franchise Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three Weekdays of the agreement or determination,
- together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Franchise Payment was paid until the date on which such excess amount or shortfall is paid.

3. Profit Share

- 3.1 For the purposes of this paragraph 3:

"First Profit Share Threshold" means an amount in respect of any Franchisee Year determined as follows:

$$(FPST \times RPI + HP^{399}) \times (NRP/ENRP)$$

where:

FPST is the amount prescribed for these purposes in paragraph 1 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 in respect of the relevant Franchisee Year;

³⁹⁹ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

HP⁴⁰⁰	means HEx Profit in respect of the relevant Franchisee Year;
RPI	has the meaning given to it in Schedule 8.2 (Annual Franchise Payments);
NRP	means the whole number of Reporting Periods in that Franchisee Year; and
ENRP	means the expected number of Reporting Periods in that Franchisee Year being 13 except for the first Franchisee Year which is 7.

⁴⁰¹"HEx Management Fee" means the management fee payable by HAL to the Franchisee pursuant to clause 10 of the HEx Services Agreement;

⁴⁰²"HEx Profit" means, in respect of any Franchisee Year, the amount calculated in accordance with paragraph 3.1A of this Schedule 8.1;

"Second Profit Share Threshold" means an amount in respect of any Franchisee Year determined as follows:

$$(SPST \times RPI + HP^{403}) \times (NRP/13)$$

where:

SPST	is the amount prescribed for these purposes in paragraph 2 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 in respect of the relevant Franchisee Year;
HP⁴⁰⁴	means HEx Profit in respect of the relevant Franchisee Year;
RPI	has the meaning given to it in Schedule 8.2 (Annual Franchise Payments);
NRP	means the whole number of Reporting Periods in that Franchisee Year; and
ENRP	means the expected number of Reporting Periods in that Franchisee Year being 13 except for the first Franchisee Year which is 7.

⁴⁰⁰ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁰¹ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁰² 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁰³ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁰⁴ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁰⁵“**Relevant Profit**” means, subject to paragraph 3.4, in respect of any Franchisee Year, the total profit of the Franchisee for that Franchisee Year calculated by applying the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model, including for the avoidance of doubt the HEx Profit:

- (a) after taking into account in respect of that Franchisee Year:
- (i) Franchise Payments, excluding any payments made by the Secretary of State to the Franchisee under paragraph 4 of this Schedule 8.1 (Franchise Payments); and
 - (ii) the Franchisee's normal pension contributions in relation to the Franchisee Sections and any other pension schemes to the extent connected with the Franchise, together with any pension payment associated with the TUA element of the Franchise Payment or required to be made in connection with the Crossrail Transfer Arrangements or associated transfers of employees to the Crossrail Operator; and
 - (iii) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed an amount to be determined as follows:

AFA x RPI

where:

AFA is the amount specified in respect of each Franchisee Year in column 2 of the table set out in paragraph 1 of Appendix 2 to this Schedule 8.1 (Franchise Payments) provided that if the Secretary of State exercises his right to extend the Franchise Agreement pursuant to Schedule 18 (Additional Reporting Periods):

- (1) for 13 Reporting Periods, AFA for the Franchisee Year which commences on 1 April 2019 shall be the amount specified in column 2 of the table set out in paragraph 1 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.1 for the period referred to as “Year 5 (up to 13 Reporting Periods extension)”;
- (2) for less than 13 Reporting Periods, AFA for the Franchisee Year which

⁴⁰⁵ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

commences on 1 April 2019 shall be equal to $A \times (B/13)$ where:

A means the amount specified in column 2 of the table set out in paragraph 1 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.1 for the period referred to as "Year 5 (up to 13 Reporting Periods extension)"; and

B means the number of Reporting Periods in the Franchisee Year which commences on 1 April 2019 (as extended pursuant to Schedule 18 (Additional Reporting Periods)); and

RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments); and

- (iv) any sums payable by or to the Franchisee pursuant to the terms of the Supplemental Agreement; and
 - (v) any capital expenditure to the extent that it is recognised as an operating cost in the Annual Audited Accounts and any depreciation on capital expenditure that is recognised as an expense in the Annual Audited Accounts, unless the depreciation policy and assumptions used in the Annual Audited Accounts are different to those set out in the Record of Assumptions and applied through the Financial Model, in which case an adjustment should be made to take account of the depreciation which would have been charged had the policy and assumptions set out in the Record of Assumptions been applied for the relevant Franchisee Year but so that no account shall be taken pursuant to this sub paragraph (v) of any capital expenditure relating to Committed Investments, any Additional CI Scheme and any related depreciation; and
- (b) before taking into account in respect of that Franchisee Year:
- (i) any taxation on profits including corporation tax;
 - (ii) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;
 - (iii) non cash entries in respect of the Franchise Section and any other pension schemes to the extent connected with the Franchise, excluding accruals or prepayments of any normal pension contributions due;
 - (iv) any payment made by the Franchisee consequent upon any breach or contravention of the Franchise Agreement and/or its Licence (including as a consequence of any penalty payment paid or payable pursuant to Section 57A of the Railways Act 1993);

- (v) any profit share payments payable to the Secretary of State in relation to any Franchisee Year;
- (vi) fees, remuneration and pension contributions in respect of any statutory director and officers of the Franchisee in excess of an amount to be determined as follows:

$DFR \times RPI$

where:

DFR is the amount specified in respect of each Franchisee Year in column 2 of the table set out in paragraph 2 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.1 provided that if the Secretary of State exercises his right to extend the Franchise Agreement pursuant to Schedule 18 (Additional Reporting Periods):

(1) for 13 Reporting Periods, DFR for the Franchisee Year which commences on 1 April 2019 shall be the amount specified in column 2 of the table set out in paragraph 2 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.1 for the period referred to as "Year 5 (up to 13 Reporting Periods extension)";

(2) for less than 13 Reporting Periods, DFR for the Franchisee Year which commences on 1 April 2019 shall be equal to $A \times (B/13)$ where:

A means the amount specified in column 2 of the table set out in paragraph 2 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.1 for the period referred to as "Year 5 (up to 13 Reporting Periods extension)"; and

B means the number of Reporting Periods in the Franchisee Year which commences on 1 April 2019 (as extended pursuant to Schedule 18 (Additional Reporting Periods)); and

RPI has the meaning given to it Schedule 8.2 (Annual Franchise Payments)

- (vii) all liabilities arising prior to the Start Date or in consequence (directly or indirectly) of the Franchisee being a party to the Previous Franchise Agreement or the 2005 Franchise Agreement including those liabilities identified in the final annual financial statements and annual audited accounts prepared by the Franchisee in relation to the final franchisee year under the Previous Franchise Agreement. Such liabilities shall not include liabilities in relation to the Franchise Services arising after the start of the Franchise Term pursuant to agreements or arrangements entered into prior to the start of the Franchise Term;

- (viii) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits);
- (ix) all extraordinary and exceptional items, as defined under the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model;
- (x) any capital expenditure in relation to Committed Investments and any Additional CI Scheme to the extent that it is recognised as an operating cost in the Annual Audited Accounts and any depreciation on capital expenditure with regard to each Committed Investment and Additional CI Scheme that is recognised as an expense in the Annual Audited Accounts;
- (xi) any payments made by the Secretary of State to the Franchisee under paragraph 4 of this Schedule 8.1 (Franchise Payments) or any repayments with regard to CI Underspend made by the Franchisee to the Secretary of State pursuant to paragraph 45.5 of part 1 to Schedule 6.1 (List of Committed Obligations); and
- (xii) ⁴⁰⁶**any payment made to the Franchisee under or with reference to the value of GCPFC as referenced in paragraph 1.1 of Schedule 8.1 (Franchise Payments) and any payment made to the Franchisee under or with reference to the Supplemental Agreement in respect of the right, liabilities, title and interest of the Franchisee in the Gloucester Car Park Documents and the property the subject of the Gloucester Car Park Documents as referenced in the table at paragraph 5 of the Schedule to the Supplemental Agreement (Net Asset Statement) and which is calculated in accordance with the formula as provided for such matters in that table.**

3.1A ⁴⁰⁷**HEx Profit in respect of any relevant Franchisee Year shall be calculated in accordance with the following formula:**

HMF – HMFD

where:

HMF means the HEx Management Fee, any Quality Percentage Performance Bonus, any Timetable Score Percentage Bonus and any amount payable to the Franchisee pursuant to clause 23.1 of the HEx Services Agreement for the relevant Franchisee Year; and

HMFD means any Service Payment Adjustments, IR Excluded Event Refunds and any amount payable by the Franchisee pursuant to clause 25.1 of the HEx Services Agreement in respect of the relevant Franchisee Year.

⁴⁰⁶ **Date of contract change 26/09/2016 – Agreed by the Secretary of State and Franchisee.**

⁴⁰⁷ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 3.2 If the Annual Audited Accounts in respect of any Franchisee Year show that the Relevant Profit for that Franchisee Year exceeds the First Profit Share Threshold then the Franchisee shall pay to the Secretary of State:
- (a) [REDACTED⁴⁰⁸] of Relevant Profit in excess of the First Profit Share Threshold but less than or equal to the Second Profit Share Threshold; and
 - (b) [REDACTED⁴⁰⁹] of Relevant Profit in excess of the Second Profit Share Threshold.
- 3.3 Subject to paragraphs 3.5 and 3.6 below, payments due under paragraph 3.2 shall be paid as part of the Franchise Payment for the first Reporting Period falling 30 or more days after delivery of the Annual Audited Accounts by the Franchisee to the Secretary of State under paragraph 3.8 of Schedule 13 (Information and Industry Initiatives) or if there is no such Reporting Period, within 30 days of the date of such delivery.
- 3.4
- (a) If in any Franchisee Year (or any period of 12 consecutive months after the end of the Franchise Period) (the "**Current Franchisee Year**") the Franchisee receives a compensation or other settlement payment of at least £200,000 × RPI arising from a single claim or series of related claims which relate wholly or partly to costs, losses or expenses (including loss of revenue) arising in any other Franchisee Year or Franchisee Years, then the Franchisee shall notify the Secretary of State of such payment as soon as reasonably practicable and for the purposes of this paragraph 3 and notwithstanding its other terms:
 - (i) the payment which relates to such other Franchisee Year shall be attributed to that other Franchisee Year and not treated as received in the Current Franchisee Year;
 - (ii) where and to the extent any payments under this paragraph 3 in respect of any other Franchisee Year would have been made or would have been higher had that amount actually been received in that other Franchisee Year, the Franchisee shall pay a reconciliation amount to the Secretary of State within 30 days after delivery of the Annual Audited Accounts that relate to the Current Franchisee Year by the Franchisee to the Secretary of State under paragraph 3.8 of Schedule 13 (Information and Industry Initiatives) or, if there is no further requirement on the Franchisee to deliver Annual Audited Accounts following the end of the Franchise Period, within 30 days of the Franchisee receiving the relevant payment; and

⁴⁰⁸ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁰⁹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (iii) RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments).
- (b) Where the Secretary of State reasonably considers that in calculating Relevant Profit any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) he shall be entitled to require it to be accounted for on such other basis as he may reasonably determine and notify to the Franchisee provided that the Secretary of State shall not be entitled pursuant to this paragraph to alter the accounting policies of the Franchisee from those set out in the Record of Assumptions and applied through the Financial Model.
- (c) Without prejudice to paragraph 3.4(a) where the Annual Audited Accounts in relation to any previous Franchisee Year are subject to adjustment or restatement the Secretary of State shall have a discretion to require the recalculation of Relevant Profit for the relevant Franchisee Year and to require that the Franchisee shall pay to the Secretary of State the amount which is the difference between the profit share actually paid to the Secretary of State pursuant to paragraph 3.2 and the amount that would have been paid had the Relevant Profit been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts. Any payment due to the Secretary of State shall be paid by the Franchisee within 30 days of the Secretary of State notifying the Franchisee that he requires a payment to be made pursuant to this paragraph.
- (d) ⁴¹⁰ ⁴¹¹***In assessing the level of payments to Affiliates for the purposes of sub-paragraph (a)(iii) of the definition of "Relevant Profit" there shall be disregarded any payments to Affiliates which are:***
- (i) costs of the Franchisee relating to Electrification Change Advance Works which are funded in accordance with paragraph 22 of Schedule 6.2 ((Great Western Franchise Specific Provisions) to the Franchise Agreement; or***
- (ii) in respect of HST Short Form Project Activities which are paid to First Rail Holdings Limited in accordance with paragraph 24 of that Schedule 6.2 (whether those payments are made from SoS SFPA Funding or GWR SFPA Funding, as referred to in that paragraph 24); or***
- ⁴¹²***(iii) any amounts reasonably and properly paid to any Affiliate on arm's length, good faith terms in connection with the delivery of services to process Delay Repay Compensation in connection with the Franchise Services whether during or after the end of the Franchise Period, including any such amounts in respect of mobilisation to enable the processing of Delay Repay Compensation, the processing of Delay Repay Compensation***

⁴¹⁰ **Date of contract insertion 27/04/2016 – Agreed by the Secretary of State and Franchisee.**

⁴¹¹ **Date of contract change 13/12/2016 – Agreed by the Secretary of State and Franchisee.**

⁴¹² 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

claims, the payment of Delay Repay Compensation, any restructuring of arrangements as part of any Right Sizing/Scaling Review or in connection with termination of such services after the end of the Franchise Period.

- 3.5 The Franchisee shall, within 10 days after delivery of any Annual Audited Accounts under paragraph 3.8 of Schedule 13 (Information and Industry Initiatives), deliver to the Secretary of State a report identifying:
- (a) the amount of total profit and the adjustments made in the calculation of Relevant Profit pursuant to paragraph 3.1;
 - (b) any items falling under paragraph 3.4(a), including details of the allocation across Franchisee Years of such items;
 - (c) any adjustments or restatements made in relation to the Annual Audited Accounts in respect of any previous Franchisee Year; and
 - (d) ⁴¹³ **the amount of the HEx Profit,**

and shall provide such additional information, records or documents as the Secretary of State may reasonably require in relation to such matters (including an unqualified written report from the Franchisee's auditors addressed to the Secretary of State which confirms that any such report gives a true and fair view of the matters contained within it including the amount of total profit and the adjustments made in the calculation of Relevant Profit).

- 3.6 Any profit share payment pursuant to paragraph 3.2 to be made in respect of the final Franchisee Year shall be determined in accordance with this paragraph 3 but shall be paid within 30 days of the Secretary of State giving written notice to the Franchisee of the amount of such profit share payment.
- 3.7 If the Franchisee fails to provide the Annual Audited Accounts for the final Franchisee Year within four Reporting Periods of the expiry of the final Franchisee Year pursuant to paragraph 3.8 of Schedule 13 (Information and Industry Initiatives), the Secretary of State shall be entitled (but not obliged) to determine any Profit Share Adjustment in accordance with this paragraph 3 but by reference to any relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year-to-date Management Accounts or in the Annual Management Accounts.

4. **Committed Investments Amount**

- 4.1 The Secretary of State shall on the Payment Date in respect of each Reporting Period referenced in Appendix 3 (Committed Investments Amount) to this Schedule 8.1 (Franchise Payments) pay to the Franchisee an amount calculated as follows:

$$\text{CIA} = \text{BCIA} \times \text{RPI}$$

where:

CIA means the amount payable in respect of the relevant Reporting Period;

⁴¹³ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

BCIA means the amount stated in respect of the relevant Reporting Period in the table in Appendix 3 (Committed Investments Amount) to this Schedule 8.1 (Franchise Payments); and

RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments).

5. TARA Business Rates

5.1 The Secretary of State shall on the Payment Date in respect of each Reporting Period pay to the Franchisee an amount equal to the amount of the Business Rates payable by the Franchisee during that Reporting Period (pursuant to paragraph 3.1 of Part D (Reimbursable Charges) of Schedule 6 (Performance Regime) of the TARA (as referred to in paragraph 3.1 of Schedule 6.3 (The IEP Provisions) as it may be amended from time to time).

5.2 The Franchisee shall promptly inform the Secretary of State of any notification of Business Rates which it receives under paragraph 3.2 of that Schedule 6 of the TARA, together with details or copies of such further records, information and/or documents as it may be provided under paragraph 3.3 of that Schedule 6.

5.3 If the amount of Business Rates in respect of any Reporting Period is not known at least 7 days prior to the Payment Date for the Reporting Period to which it relates, then that amount shall be paid as part of the Franchise Payment on the Payment Date which first occurs at least seven days after the amount of those Business Rates is known by the Franchisee and notified to the Secretary of State (or where there is no such date, within 30 days of the amount being so notified).

5.4 The Franchisee shall:

(a) use all reasonable endeavours in accordance with the terms of the TARA to obtain any available rebate of Business Rates payable by the Franchisee pursuant to paragraph 3.1 of Part D (Reimbursable Charges) of Schedule 6 (Performance Regime) of the TARA (as referred to in paragraph 3.1 of Schedule 6.3 (The IEP Provisions) as it may be amended from time to time); and

(b) pay any rebate obtained by it pursuant to paragraph 5.4(a) above to the Secretary of State on the next Payment Date (or on such other date as the Secretary of State may reasonably require).

6. Heavy Maintenance Balancing Payment

6.1 Where:

(a) the West of England Rolling Stock Procurement Proposal referred to in paragraph 18 of Schedule 6.2 is not exercised; and

(b) the Secretary of State exercises his right to extend the Franchise under Schedule 18 for less than 13 Reporting Periods,

the Secretary of State shall make a payment, the Heavy Maintenance Balancing Payment, to the Franchisee on the Payment Date in respect of each Reporting Period commencing with the Reporting Period starting on 1 April 2019 calculated as follows:

$$\text{HMBP} = \text{THMF} \times (366 - \text{EFPY}) / 366 \times \text{RPD} / \text{EFPY}$$

where

HMBP is the Heavy Maintenance Balancing Payment to be made in respect of the Reporting Period;

THMF is the difference at the relevant time between the amount applicable under paragraph 7.7(a)(i) of part 1 to Schedule 6.1 and the amount applicable under paragraph 7.7(a)(ii) of part 1 to Schedule 6.1, with both amounts subject to the same indexation in accordance with Schedule 8.2;

EFPY is the total number of days in the Reporting Periods comprised in the extension of the Franchise Term beyond 1 April 2019 through the exercise of rights under Schedule 18; and

RPD is the number of days in the Reporting Period.

6.2 No Heavy Maintenance Balancing Payment applies to any Reporting Period ending on or before 31 March 2019 or if the Franchise Term is extended for 13 Reporting Periods under Schedule 18 or if the West of England Rolling Stock Procurement Proposal referred to in paragraph 18 of Schedule 6.2 is exercised.

7. DR repayments⁴¹⁴

7.1 ⁴¹⁵DR Mobilisation Costs

(a) **Pursuant to a letter agreement dated 21 November 2018 as such letter was extended by the letter agreement dated 21 December 2018 (together to be the "Letter Agreements") the Franchisee and the Secretary of State recorded their agreement whereby in consideration of the Franchisee agreeing to carry out the Required First Stage Mobilisation Activities and the Extension Activities (as each such term is defined in the Letter Agreements) the Secretary of State shall as specified in the Letter Agreements reimburse to the Franchisee such costs as are properly and reasonably incurred by the Franchisee in undertaking the Required First Stage Mobilisation Activities and the Extension Activities. It is agreed that the terms of the Letter Agreements (and in particular paragraph 5 of the letter agreement dated 21 November 2018 and paragraph 8 of the letter agreement dated 21 December 2018) shall continue to apply as between the Secretary of State and the Franchisee as if the respective terms of the Letter Agreements were set out in this paragraph 4.1. It is acknowledged that the 'Staff Recruitment Costs' included in the 21 December 2018 letter**

⁴¹⁴ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴¹⁵ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

agreement of [REDACTED⁴¹⁶] represented a cost that was included in the planned DR Operational Costs rather than the mobilisation costs. To ensure appropriate financial reconciliation the Fixed Costs for Year 5 Period 1 in Schedule 2 Paragraph 5 have been set to [REDACTED⁴¹⁷].

- (b) In relation to the Franchisee's costs for undertaking the remaining mobilisation activities (that is other than the Required First Stage Mobilisation Activities and the Extension Activities) the Secretary of State shall pay to the Franchisee:
- (i) the sum of [REDACTED⁴¹⁸] which shall be paid to the Franchisee by way of adjustment to the Franchise Payment on the next Payment Date falling no less than 7 days after the date of the certificate to be issued by the Franchisee to the Secretary of State (such certificate to be signed by a statutory director of the Franchisee) confirming that the Franchisee has commenced delivery of the mobilisation requirements set out in the document in agreed terms marked "DR Mobilisation Requirements" for the implementation of the Delay Repay Compensation scheme; and
 - (ii) the sum of [REDACTED⁴¹⁹] which shall be paid to the Franchisee by way of adjustment to the Franchise Payment on the next Payment Date falling no less than 7 days after the DR Effective Date.

⁴¹⁶16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴¹⁷16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴¹⁸16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴¹⁹16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

7.2 ⁴²⁰Reimbursement of DR Operational Costs

(a) In each Reporting Period following the DR Effective Date the forecast DR Operational Costs shall be calculated as follows:

$$DR_{oc} = ((E_c \times A) + F) - CF_{cost}$$

where:

DR_{oc}	is the forecast DR Operational Costs to be paid by the Secretary of State to the Franchisee for that Reporting Period;
E_c	is the estimated number of Delay Repay Compensation claims forecast to be processed for the relevant Reporting Period, such estimated number of Delay Repay Compensation claims for that Reporting Period being as set out in Column 2 of the table in paragraph 1 of Appendix 4 of this Schedule 8.1;
A	is the Variable Cost for that Reporting Period;
F	is the Fixed Cost for that Reporting Period; and
CF_{cost}	is the estimated operational cost that would have been incurred by the Franchisee in that Reporting Period for the processing of passenger compensation claims for delays and cancellations (excluding the costs for processing claims in respect of monthly and longer season tickets) had Delay Repay Compensation not been introduced on the Franchise, such estimated operational cost for each Reporting Period being as set out in Column 2 of the table in paragraph 2(a) of Appendix 4 of this Schedule 8.1.

(b) Within ten (10) Weekdays after the end of each DR Quarter the Franchisee shall provide to the Secretary of State a statement specifying:

⁴²⁰ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (i) the actual number of Delay Repay Compensation claims processed in each Reporting Period falling in that DR Quarter;
- (ii) the value attributed in each Reporting Period falling within that DR Quarter to each of the ticket types and each of the service groups as derived from the ticketing system known as LENNON which are required for the calculation of the Do Minimum Cost for that DR Quarter;
- (iii) the PPM for each of the Sectors;
- (iv) the Do Minimum Cost for each Reporting Period falling in that DR Quarter; and
- (v) its calculation of the aggregate DR Operating Costs Balancing Payment for each Reporting Period in that DR Quarter,

in each case, together with a written confirmation from a statutory director of the Franchisee certifying that such statement is true, accurate and not misleading (the "DR Quarterly Statement").

- (c) The Franchisee shall at the same time upon which it provides the first DR Quarterly Statement to be issued to the Secretary of State as required pursuant to paragraph 7.2(b), provide to the Secretary of State information (together with such other supporting information as may be reasonably required by the Secretary of State) relating to the internal processes (including the spreadsheet used for the purposes of calculating the Do Minimum Cost) which are used by the Franchisee for the purposes of collating the data and information and making the calculations set out in each DR Quarterly Statement to be provided to the Secretary of State pursuant to paragraph 7.2(b).
- (d) Following any update, revision or changes to the Franchisee's internal processes referred to in paragraph 7.2(c), the Franchisee shall, together with the DR Quarterly Statement to be issued to the Secretary of State immediately following any such update, revision or changes to such internal processes, provide to the Secretary of State information and data relating to any such updates, revisions or changes.
- (e) The DR Operating Costs Balancing Payment for each DR Quarter shall be calculated as follows:

$$DR_{BP} = ((NC_C \times A) + F - ACF_{Cost}) - QDR_F$$

where:

DR_{BP}	is the DR Operating Costs Balancing Payment for that DR Quarter;
QDR_F	is the sum of DR_{oc} for each of the Reporting Periods in that DR Quarter as calculated in accordance with paragraph 7.2(a);
NC_C	is the sum of the actual number of Delay Repay Compensation claims processed for each Reporting Period falling within that DR Quarter;
A	is as defined in paragraph 7.2(a);
F	is as defined in paragraph 7.2(a); and
ACF_{Cost}	is the Do Minimum Cost for that DR Quarter, being the aggregate of the Do Minimum Cost in respect of each Reporting Period in that DR Quarter;

- (f) **The Franchisee shall pay to the Secretary of State a DR Operating Costs Balancing Payment where in respect of a DR Quarter DR_{BP} is a negative number and the Secretary of State shall pay to the Franchisee a DR Operating Costs Balancing Payment where in respect of a DR Quarter DR_{BP} is a positive number.**
- (g) **The DR Operating Costs Balancing Payments in respect of a DR Quarter shall be made on the Payment Date of the Reporting Period immediately following the DR Quarter to which they relate and, if there is no such Reporting Period, within 30 days after the end of the relevant DR Quarter.**
- (h) **Right Sizing/Scaling of the Variable Cost and the Fixed Cost**
 - (i) **Within six (6) months from the DR Effective Date the Secretary of State and the Franchisee shall undertake a review of the Variable Cost and the Fixed Cost for the purposes of:**
 - (A) **identifying, amongst others, any efficiencies and cost savings which should result in a**

reduction in operating costs forming part of the Variable Cost and the Fixed Cost;

- (B) verifying that the Franchisee has complied the Scaling Obligations and if not agreeing (or on failure to agree the Secretary of State reasonably determining) the amount of deduction that would be applied to the DR Operational Costs following the Right Sizing Review to reflect the amount that would have been payable by the Secretary of State to the Franchisee had the Franchisee complied with its Scaling Obligations as contemplated in paragraph 7.2(i)(D); and**
- (C) increasing the accuracy of the estimated number of claims for the purposes of component E_c in paragraph 7.2(a) of this Schedule 8.1 and the amounts for the purposes of the component of D_{CR} in paragraph 7.3(a) of this Schedule 8.1, (the "Right Sizing/Scaling Review").**
- (ii) For the purposes of ensuring that information required for undertaking the Right Sizing/Scaling Review is maintained by the Franchisee, the Franchisee shall comply with each of the obligations specified in Appendix 5 of this Schedule 8.1.**
- (iii) The Right Sizing/Scaling Review shall be undertaken based on the principles set out in Appendix 6 of this Schedule 8.1.**
- (iv) If following the Right Sizing/Scaling Review the Franchisee and the Secretary of State agree (or on failure to agree, the Secretary of State reasonably determines) that:**
- (A) cost savings have been achieved in relation to any aspect of the costs forming part of the Variable Cost or Fixed Costs; and/or**
- (B) the estimated number of claims for the purposes of the component E_c in paragraph 7.2(a) of this Schedule 8.1 have been understated or overstated by fifteen per cent (15%) or more; and/or**

(C) the Franchisee has failed to demonstrate to the reasonable satisfaction of the Secretary of State that it has complied with its Scaling Obligations and any cost savings realised following a review as contemplated in paragraph 7.2(i) has been passed through to the Secretary of State,

then the Franchisee and the Secretary of State shall agree (or on failure to agree, the Secretary of State shall reasonably determine) the revised Variable Cost and Fixed Cost to apply in respect of each of the Reporting Periods following the Right Sizing/Scaling Review. From the date that the revised Variable Cost and Fixed Cost is agreed by the Franchisee and the Secretary of State (or on failure to agree, is reasonably determined by the Secretary of State) the Variable Cost and Fixed Cost for the relevant Reporting Periods as set out in the table in paragraphs 5 and 6 of Appendix 4 of Schedule 8.1 shall be replaced by the revised Variable Cost and Fixed Cost as so agreed or reasonably determined.

(v) Following the Right Sizing/Scaling Review the estimated number of claims and the forecast amounts of DCR set out in the tables in parts 1 and 2 of Appendix 4 of Schedule 8.1 shall be restated in respect of the Reporting Periods following the Right Sizing/Scaling Review with the revised estimated number of claims and the forecast amounts of DCR for such Reporting Periods as agreed by the Secretary of State and the Franchisee (or on failure to agree, as reasonably determined by the Secretary of State) in accordance with the principles set out in Appendix 6 of this Schedule 8.1.

(vi) When considering efficiencies and cost savings for the purposes of the Right Sizing/Scaling Review, due account shall be taken of any costs that are reasonably and properly incurred or required to be incurred in order to implement or realise those savings or efficiencies and which have not otherwise been funded by the Secretary of State. Subject to the Franchisee demonstrating to the reasonable satisfaction of the Secretary of State how such costs incurred or required to be incurred translate to a reduction in the Variable Costs and/or Fixed Cost, the revised Variable Cost and Fixed Cost shall be established on a basis which provides for the funding of

those costs in respect of any savings or efficiencies actually delivered or which the Secretary of State requires the Franchisee to pursue.

(i) Scaling Obligations

- (A)** It is acknowledged that the Variable Cost as at the DR Effective Date has been calculated on the assumption that the Franchisee will process no less than six hundred thousand (600,000) Delay Repay Compensation claims in each Franchisee Year. It is recognised that the Variable Costs may vary if the actual number of claims is more or less than this number and having regard to the degree of variability in the number of claims throughout the Franchisee Year.
- (B)** In preparation for the Right Sizing/Scaling Review, following the DR Effective Date the Franchisee shall review the staff and fulfilment costs in relation to the processing of Delay Repay Compensation claims for the purposes of informing the Right Sizing Scaling Review regarding what staff and fulfilment costs are appropriate for the purposes of ensuring an efficient use of staff and costs relative to the number of Delay Repay Compensation claims processed or anticipated to be processed by the Franchisee in the subsequent Reporting Periods following the Right Sizing/Scaling Review. The Franchisee shall use all reasonable endeavours to ensure that any efficiencies and/or cost savings that can be or are realised following the review as contemplated under this paragraph 7.2(i)(B) are notified to the Secretary of State as part of the Right Sizing/Scaling Review, so that they may be taken into account as part of that review (the "Scaling Obligations").
- (C)** The review as contemplated in paragraph 7.2(i)(b) shall be conducted by the Franchisee in accordance with the principles set out in Appendix 6 of this Schedule 8.1.
- (D)** Where during the Right Sizing/Scaling Review the Franchisee fails to demonstrate to the reasonable satisfaction of the Secretary of State that it has complied with its Scaling Obligations and that any cost savings realised as part of the exercise of the Scaling Obligations have been passed through to the Secretary of State then in agreeing or reasonably determining the amount of the

Variable Cost that would apply for the Reporting Periods following the Right Sizing/Scaling Review the Secretary of State shall apply a deduction to the Variable Costs that represents an amount that would have been payable had the Franchisee complied with its Scaling Obligations.

7.3 ⁴²¹ **DR Claims Reimbursement**

- (a) **The DR Claims Reimbursement for each Reporting Period commencing from the DR Effective Date shall be determined as follows:**

$$DR_{CR} = D_{CR} - CF_{CR}$$

where:

DR_{CR}	is the DR Claims Reimbursement for that Reporting Period;
D_{CR}	is the amount prescribed for these purposes in Column 2 of the table in paragraph 3 of Appendix 4 to Schedule 8.1 for each Reporting Period specified in the corresponding row in Column 1 of such table, subject to adjustment in accordance with paragraph 7.2(h) and 7.2(i); and
CF_{CR}	is the amount prescribed for these purposes in Column 2 of the table in paragraph 4 of Appendix 4 to Schedule 8.1 for each Reporting Period specified in the corresponding row in Column 1 of such table being the amount of passenger compensation that would have been payable by the Franchisee to Eligible Passengers for delays and cancellations to their journey had Delay Repay Compensation not been introduced on the Franchise.

- (b) **Within ten (10) Weekdays after the end of each DR Quarter the Franchisee shall provide to the Secretary of State a statement specifying:**

- (i) **the actual Delay Repay Compensation paid to Eligible Passengers in respect of each Reporting Period falling within that DR Quarter; and**

⁴²¹ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (ii) **Do Minimum Compensation Amount for each Reporting Period falling within that DR Quarter;**
- (iii) **the value attributed in each Reporting Period falling within that DR Quarter to each of the ticket types and each of the Carrier Sub Divisions as derived from the ticketing system known as LENNON which are required for the calculation of the Do Minimum Cost for that DR Quarter;**
- (iv) **the PPM for each of the Sectors; and**
- (v) **its calculation of the DR Claims Reimbursement Balancing Payment for each relevant Reporting Period falling within that DR Quarter,**

together with a written confirmation from a statutory director of the Franchisee certifying that such statement is true, accurate and not misleading (the "Claims Paid Statement").

- (c) **The Franchisee shall at the same time upon which it provides the first Claims Paid Statement to be issued to the Secretary of State as required pursuant to paragraph 7.3(b), provide to the Secretary of State information (together with such other supporting information as may be reasonably required by the Secretary of State) relating to the internal processes (including the spreadsheet used for the purposes of calculating the Do Minimum Compensation Amount) which are used by the Franchisee for the purposes of collating the data and information and making the calculations set out in each Claims Paid Statement to be provided to the Secretary of State pursuant to paragraph 7.3(b).**
- (d) **Following any update, revision or changes to the Franchisee's internal processes referred to in paragraph 7.3(c), the Franchisee shall, together with the Claims Paid Statement to be issued to the Secretary of State immediately following any such update, revision or changes to such internal processes, provide to the Secretary of State information and data relating to any such updates, revisions or changes.**
- (e) **Following receipt of a Claims Paid Statement in respect of each Reporting Period falling within a DR Quarter, the Secretary of State shall calculate the DR Claims Reimbursement Balancing Payment for that DR Quarter as follows:**

$$\text{DR}_{\text{CRP}} = (\text{D}_{\text{CA}} - \text{CF}_{\text{CA}}) - \text{QDR}_{\text{CR}}$$

where:

DR_{CRP}	is the DR Claims Reimbursement Balancing Payment for that DR Quarter;
QDR_{CR}	is the sum of DR_{CR} for each of the Reporting Periods in that DR Quarter as calculated in accordance with paragraph 7.3(a);
D_{CA}	is the sum of the actual Delay Repay Compensation paid to Eligible Passengers for each of the Reporting Periods falling within that Quarter as specified in the Claims Paid Statement; and
CF_{CA}	is the Do Minimum Compensation Amount for that DR Quarter, being the aggregate of the Do Minimum Compensation Amount in respect of each Reporting Period in that DR Quarter.

- (f) The Franchisee shall pay to the Secretary of State a DR Claims Reimbursement Balancing Payment where in respect of a DR Quarter DR_{CRP} is a negative number and the Secretary of State shall pay to the Franchisee a DR Claims Reimbursement Balancing Payment where in respect of a DR Quarter DR_{CRP} is a positive number.
- (g) DR Claims Reimbursement Balancing Payments in respect of a DR Quarter shall be made on the Payment Date of the Reporting Period immediately following the DR Quarter to which they relate and, if there is no such Reporting Period, within 30 days after the end of the relevant DR Quarter.

7.4 ⁴²²Schedule 8 Claims under the Track Access Agreement

- (a) The Franchisee agrees that it shall not make any claim for compensation from Network Rail whether under Schedule 8 of the Track Access Agreement or otherwise in relation to Delay Repay Compensation claims and/or costs.
- (b) Without prejudice to the other rights the Secretary of State may have under the Franchise Agreement consequent upon a contravention by the Franchisee of the provisions of paragraph

⁴²² 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

7.4(a), if the Franchisee makes a claim for Delay Repay Compensation in contravention of the provisions of paragraph 7.4(a) then the Franchisee shall immediately pay to the Secretary of State (as a debt), an amount equal to any amounts received by the Franchisee from Network Rail in respect of any Delay Repay Compensation claim(s). Any amounts payable by the Franchisee to the Secretary of State pursuant to this paragraph 7.4(b) shall be paid on the next Payment Date following receipt by the Franchisee of any such amounts from Network Rail or where no such Payment Date exists shall be paid within 30 days of receipt by the Franchisee of any such amounts from Network Rail.

7.5 ⁴²³Delay Repay Compensation costs and liabilities after the end of the Franchise Period

- (a) This paragraph 7.5 applies where at the end of the Franchise Period the Successor Operator does not assume liability at nil cost to the Franchisee for the processing and fulfilment of Delay Repay Compensation in relation to claims received after the end of the Franchise Period in relation to circumstances arising during the Franchise Period (the "Run-Off DR Claims").**
- (b) Where this paragraph 7.5 applies and subject to any alternative instructions from the Secretary of State, the Franchisee shall use all reasonable endeavours before the end of the Franchise Period to negotiate terms with the Successor Operator consistent with the terms of this paragraph 7 for the Successor Operator to process and fulfil the Run-Off DR Claims and charge the Franchisee the costs of such processing and fulfilment.**
- (c) The Franchisee shall not conclude terms with the Successor Operator in relation to the Run-Off DR Claims without the consent of the Secretary of State (which shall not be unreasonably withheld or delayed). In the absence of agreement with the Successor Operator for the processing of the Run-Off DR Claims the Franchisee shall be entitled to make alternative arrangements for the necessary processing and fulfilment of the Run-Off DR Claims.**
- (d) In respect of each railway reporting period after the end of the Franchise Period until the Run-Off DR Claims are satisfied, the Franchisee shall report to the Secretary of State together with**

⁴²³ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

such supporting information as the Secretary of State may reasonably require:

- (i) the costs to the Franchisee in respect of the railway reporting period of processing and fulfilling the Run-Off DR Claims (the "Actual Run-Off Costs"); and**
 - (ii) the amount in respect of the corresponding run-off period of processing costs and compensation that would have been incurred and/or payable by the Franchisee to Eligible Passengers for delays and cancellations to their journey had Delay Repay Compensation not been introduced on the Franchise, such amount to be calculated as specified in paragraphs 2(b) and 2(c) of Appendix 4 to Schedule 8.1 (the "Counterfactual Run-Off Costs").**
- (e) Where the Actual Run-Off Costs exceed the Counterfactual Run-Off Costs, the Franchisee shall present a claim to the Secretary of State for the amount of the difference and the Secretary of State shall pay that amount to the Franchisee within 30 days of receipt of the claim.**

APPENDIX 1 TO SCHEDULE 8.1

Profit Share Thresholds

1. The prescribed amounts for the component of FPST for the relevant Franchisee Year and for the purposes of the definition of First Profit Share Threshold are as set out in the table below:

Franchisee Year	First Profit Share Threshold amount ^{424 425 426}
Year 1 (Part Year)	[REDACTED ⁴²⁷]
Year 2	[REDACTED]
Year 3	[REDACTED]
Year 4	[REDACTED]
Year 5 (Up to 13 Reporting Periods extension)	[REDACTED]

⁴²⁴ **Date of contract change 09/03/2016 – Agreed by the Secretary of State and Franchisee.**

⁴²⁵ 4 February 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴²⁶ 15 February 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴²⁷ **16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

2. The prescribed amounts for the component of SPST for the relevant Franchisee Year and for the purposes of the definition of Second Profit Share Threshold are as set out in the table below:

Franchisee Year	Second Profit Share Threshold amount ^{428 429 430}
Year 1 (Part Year)	[REDACTED ⁴³¹]
Year 2	[REDACTED]
Year 3	[REDACTED]
Year 4	[REDACTED]
Year 5 (Up to 13 Reporting Periods extension)	[REDACTED]

⁴²⁸ **Date of contract change 09/03/2016 – Agreed by the Secretary of State and Franchisee.**

⁴²⁹ 4 February 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴³⁰ 15 February 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴³¹ **16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

APPENDIX 2 TO SCHEDULE 8.1**Components of AFA and DFR**

1. The amounts for the purposes of the component of AFA in paragraph 3(a)(iii) of Schedule 8.1 (Franchise Payments) are set out in the table below:

Franchisee Year	Component of AFA ^{432 433 434}
Year 1 (Part Year)	[REDACTED] ⁴³⁵
Year 2	[REDACTED]
Year 3	[REDACTED]
Year 4	[REDACTED]
Year 5	[REDACTED]
(Up to 13 Reporting Periods extension)	

⁴³² **Date of contract change 09/03/2016 – Agreed by the Secretary of State and Franchisee.**

⁴³³ 4 February 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴³⁴ 15 February 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴³⁵ **16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

2. The amounts for the purposes of the component of DFR in paragraph 3.1(b)(vi) of Schedule 8.1 (Franchise Payments) are set out in the table below:

Franchisee Year	Component of DFR
Year 1 (Part Year)	[REDACTED ⁴³⁶]
Year 2	[REDACTED ⁴³⁷]
Year 3	[REDACTED ⁴³⁸]
Year 4	[REDACTED ⁴³⁹]
Year 5 (Up to 13 Reporting Periods extension)	[REDACTED ⁴⁴⁰]

⁴³⁶ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴³⁷ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴³⁸ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴³⁹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁴⁰ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 3 TO SCHEDULE 8.1⁴⁴¹**Committed Investments Amount**

1. The amounts for the purposes of the component BCIA in paragraph 4 of Schedule 8.1 (Franchise Payments) are set out in the table below:

Franchisee Year Reporting Period	Committed Investments Amount £
Year 1 (2015/2016, Part Year)	
Railway Reporting Period 7	[REDACTED ⁴⁴²]
Railway Reporting Period 10	[REDACTED]
Year 2 (2016/2017)	
Railway Reporting Period 1	[REDACTED]
Railway Reporting Period 4	[REDACTED]
Railway Reporting Period 7	[REDACTED]
Railway Reporting Period 10	[REDACTED]
Year 3 (2017/2018)	
Railway Reporting Period 1	[REDACTED]
Railway Reporting Period 4	[REDACTED]
Railway Reporting Period 7	[REDACTED]
Railway Reporting Period 10	[REDACTED]
Year 4 (2018/2019)	
Railway Reporting Period 1	[REDACTED]
Railway Reporting Period 4	[REDACTED]
Railway Reporting Period 7	[REDACTED]
Railway Reporting Period 10	[REDACTED]

⁴⁴¹ 4 February 2020 (Date of contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁴² **18 March 2020 (Date of Redactions Approval) where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Franchisee Year Reporting Period	Committed Investments Amount £
Up to 13 Reporting Periods extension	
Railway Reporting Period 1	[REDACTED]
Railway Reporting Period 4	[REDACTED]
Railway Reporting Period 7	[REDACTED]
Railway Reporting Period 10	[REDACTED]

APPENDIX 4 TO SCHEDULE 8.1⁴⁴³

1. The estimated number of claims for the purposes of the component of E_c in paragraph 7.2(a) of Schedule 8.1 (Franchise Payments):

Column 1		Column 2
Franchisee Year/ Reporting Period		Estimated Number of Delay Repay Compensation Claims
Year 5	Period 1	54,885
	Period 2	54,885
	Period 3	54,885
	Period 4	54,885
	Period 5	54,885
	Period 6	54,885
	Period 7	54,885
	Period 8	54,885
	Period 9	54,885
	Period 10	54,885
	Period 11	54,885
	Period 12	54,885
	Period 13	54,885

- 2a. The estimated amount of counterfactual operating costs that would have been paid for the purposes of the component of CF_{Cost} in paragraph 7.2(a) of Schedule 8.1 (Franchise Payments):

Column 1		Column 2
Franchisee Year/ Reporting Period		Estimated Amount of CF_{Cost}
Year 5	Period 1	[REDACTED ⁴⁴⁴]
	Period 2	[REDACTED]
	Period 3	[REDACTED]
	Period 4	[REDACTED]
	Period 5	[REDACTED]
	Period 6	[REDACTED]
	Period 7	[REDACTED]
	Period 8	[REDACTED]
	Period 9	[REDACTED]
	Period 10	[REDACTED]
	Period 11	[REDACTED]
	Period 12	[REDACTED]
	Period 13	[REDACTED]

⁴⁴³ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁴⁴ 16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

2b. **The Do Minimum Cost for each Reporting Period shall be calculated as follows:**

$$\text{HSS ACF}_{\text{Cost}} + \text{LTV ACF}_{\text{Cost}} + \text{West ACF}_{\text{Cost}}$$

where:

HSS ACF_{Cost}	is calculated as follows:	
	HSS FP_A x HSS J_A x HSS RF x HSS FUF x HSS CFCR x HSS ACF	
	where:	
	HSS FP_A means:	100% - the PPM for the Sector referred to in paragraph (a) of the definition of Sector, with the result expressed as a decimal number between 0 and 1;
	HSS J_A means:	The number of passenger operating journeys attributed to each of the ticket types and the Carrier Subdivision specified below: ticket types: Primary Product Types PG01-9 but excluding both Secondary Product Types SG18-21 and SG23-26; and Carrier Subdivision: High Speed Services (HSS).
	HSS RF is:	the assumed rejection factor and has the value of 1.04
	HSS FUF is:	the assumed follow up factor and has the value of 1.21
	HSS CFCR is:	the parameter that relates to the ratio of claims and passenger operating journeys and has the value of 0.0087; and
HSS ACF is:	the assumed operating cost per claim and has the value of [REDACTED⁴⁴⁵]	

⁴⁴⁵16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

LTV ACF_{Cost}	is calculated as follows:	
	LTV FP_A x LTV J_A x LTV RF x LTV FUF x LTV CFCR x LTV ACF	
	where:	
	LTV FP_A means:	100% - the PPM for the Sector referred to in paragraph (b) of the definition of Sector, with the result expressed as a decimal number between 0 and 1;
	LTV J_A means:	the number of passenger operating journeys attributed to each of the ticket types and the Carrier Subdivision specified below: ticket types: Primary Product Types PG01-9 but excluding both Secondary Product Types SG18-21 and SG23-26; and Carrier Subdivision: London Thames Valley (LTV).
	LTV RF is:	the assumed rejection factor and has the value of 1.04
	LTV FUF	the assumed follow up factor and has the value of 1.21
	LTV CFCR	the parameter that relates to the ratio of claims and passenger operating journeys and has the value of 0.0012
LTV ACF	the assumed operating cost per claim and has the value of [REDACTED⁴⁴⁶]	
West ACF_{Cost}	is calculated as follows:	
	West FP_A x West J_A x West RF x West FUF x West CFCR x West ACF	

⁴⁴⁶16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

	where:	
West	FP_A	100% - the PPM for the Sector referred to in paragraph (c) of the definition of Sector, with the result expressed as a decimal number between 0 and 1;
means:		
West J_A means:		the number of passenger operating journeys attributed to each of the ticket types and the Carrier Subdivision specified below: ticket types: Primary Product Types PG01-9 but excluding both Secondary Product Types SG18-21 and SG23-26; and Carrier Subdivision: West Services (West).
West RF is:		the assumed rejection factor and has the value of 1.04
West FUF		the assumed follow up factor and has the value of 1.21
West CFCR		the parameter that relates to the ratio of claims and passenger operating journeys and has the value of 0.0016
West ACF		the assumed operating cost per claim and has the value of [REDACTED⁴⁴⁷]

2c. The Do Minimum Compensation Amount for each Reporting Period shall be calculated as follows:

$$\text{HSS CF}_{CA} + \text{LTV CF}_{CA} + \text{West CF}_{CA}$$

where:

	is calculated as follows:
--	----------------------------------

⁴⁴⁷**16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

HSS CF_{CA}	HSS FP_A x HSS R_A x HSS CFCL	
	where:	
	HSS FP_A means:	100% - the PPM for the Sector referred to in paragraph (a) of the definition of Sector, with the result expressed as a decimal number between 0 and 1;
	HSS R_A means:	the earnings attributed to each of the ticket types and the Carrier Subdivision specified below: ticket types: Primary Product Types PG01-9 but excluding both Secondary Product Types SG18-21 and SG23-26; and Carrier Subdivision: High Speed Services (HSS)
	HSS CFCL is:	the parameter that relates to the ratio of compensation and earnings and has the value of 0.0220
LTV CF_{CA}	is calculated as follows:	
	LTV FP_A x LTV R_A x LTV CFCL	
	where:	
	LTV FP_A means:	100% - the PPM for the Sector referred to in paragraph (a) of the definition of Sector, with the result expressed as a decimal number between 0 and 1;
LTV R_A means:	the earnings attributed to each of the ticket types and the Carrier Subdivision specified below: ticket types: Primary Product Types PG01-9 but excluding both Secondary Product Types SG18-21 and SG23-26; and	

		Carrier Subdivision: London Thames Valley (LTV)
	LTV CFCL	the parameter that relates to the ratio of compensation and earnings and has the value of 0.0074
West CF_{CA}	is calculated as follows:	
	West FP_A x West R_A x West CFCL	
	where:	
	West FP_A means:	100% - the PPM for the Sector referred to in paragraph (a) of the definition of Sector, with the result expressed as a decimal number between 0 and 1;
West R_A means:	the earnings attributed to each of the ticket types and the Carrier Subdivision specified below: ticket types: Primary Product Types PG01-9 but excluding both Secondary Product Types SG18-21 and SG23-26; and Carrier Subdivision: West Services (West)	
	West CFCL	the parameter that relates to the ratio of compensation and earnings and has the value of 0.0112

3. The amounts for the purposes of the component of D_{CR} in paragraph 7.3(a) of Schedule 8.1 (Franchise Payments):

Column 1		Column 2
Franchisee Year/ Reporting Period		Estimated Amount of D_{CR}
Year 5	Period 1	[REDACTED⁴⁴⁸]
	Period 2	[REDACTED]
	Period 3	[REDACTED]
	Period 4	[REDACTED]

⁴⁴⁸16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Column 1		Column 2
Franchisee Year/ Reporting Period		Estimated Amount of D _{CR}
	Period 5	[REDACTED]
	Period 6	[REDACTED]
	Period 7	[REDACTED]
	Period 8	[REDACTED]
	Period 9	[REDACTED]
	Period 10	[REDACTED]
	Period 11	[REDACTED]
	Period 12	[REDACTED]
	Period 13	[REDACTED]

4. The amounts of estimated counterfactual compensation that would have been paid for the purposes of the component of CF_{CR} in paragraph 7.3(a) of Schedule 8.1 (Franchise Payments):

Column 1		Column 2
Franchisee Year/ Reporting Period		Estimated Amount of CF _{CR}
Year 5	Period 1	[REDACTED ⁴⁴⁹]
	Period 2	[REDACTED]
	Period 3	[REDACTED]
	Period 4	[REDACTED]
	Period 5	[REDACTED]
	Period 6	[REDACTED]
	Period 7	[REDACTED]
	Period 8	[REDACTED]
	Period 9	[REDACTED]
	Period 10	[REDACTED]
	Period 11	[REDACTED]
	Period 12	[REDACTED]
	Period 13	[REDACTED]

- 5 The Fixed Cost for the purposes of the component of F in paragraph 7.2 of Schedule 8.1 (Franchise Payments):

Column 1		Column 2
Franchisee Year/ Reporting Period		Fixed Cost (F)
Year 5	Period 1	[REDACTED ⁴⁵⁰]
	Period 2	[REDACTED]
	Period 3	[REDACTED]
	Period 4	[REDACTED]
	Period 5	[REDACTED]
	Period 6	[REDACTED]

⁴⁴⁹16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁵⁰16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Column 1		Column 2
Franchisee Year/ Reporting Period		Fixed Cost (F)
	Period 7	[REDACTED]
	Period 8	[REDACTED]
	Period 9	[REDACTED]
	Period 10	[REDACTED]
	Period 11	[REDACTED]
	Period 12	[REDACTED]
	Period 13	[REDACTED]

6. The Variable Cost for the purposes of the component of A in paragraph 7.2 of Schedule 8.1 (Franchise Payments):

Column 1		Column 2
Franchisee Year/ Reporting Period		Variable Cost (A)
Year 5	Period 1	[REDACTED ⁴⁵¹]
	Period 2	[REDACTED]
	Period 3	[REDACTED]
	Period 4	[REDACTED]
	Period 5	[REDACTED]
	Period 6	[REDACTED]
	Period 7	[REDACTED]
	Period 8	[REDACTED]
	Period 9	[REDACTED]
	Period 10	[REDACTED]
	Period 11	[REDACTED]
	Period 12	[REDACTED]
	Period 13	[REDACTED]

⁴⁵¹16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

ANNEX TO APPENDIX 4⁴⁵²

1. **This Annex sets out the description of the:**
 - 1.1 **Primary Product Types PG01-9 that are the relevant ticket types for the purposes of calculating the Do Minimum Cost and the Do Minimum Compensation Amount in paragraphs 2b and 2c of Appendix 4; and**
 - 1.2 **Secondary Product Types SG18-21 and Secondary Product Types SG23-26 are the ticket types that are excluded from the calculation of Do Minimum Cost and the Do Minimum Compensation Amount in paragraphs 2b and 2c of Appendix 4.**
2. **Primary Product Types PG01-9 are as follows:**

Primary Product Type	PG Code
First Full	PG01
First Reduced	PG02
First Reduced AP	PG03
First Season	PG04
Standard Full	PG05
Standard Reduced	PG06
Standard Reduced AP	PG07
Standard Season	PG08
Non Specific PPG	PG99
Other (Sleeper Supplements and Weekend First only)	PG09

3. **Secondary Product Types SG18-21 are:**

Secondary Product Type	SG Code
First Seasons <90day	SG18
First Seasons 91-180	SG19
First Season 180-359	SG20
First Seasons Annual	SG21

⁴⁵² 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

4. **Secondary Product Types SG23-26 are:**

Secondary Product Type	SG Code
STD Seasons <90days	SG23
STD Seasons 91-180	SG24
STD Seasons 180-359	SG25
STD Seasons Annual	SG26

APPENDIX 5 TO SCHEDULE 8.1⁴⁵³**Right Sizing/Scaling Obligations**

The intention of the Right-Sizing/Scaling Review is to ensure that the Franchisee's costs for each of the Reporting Periods following a Right Sizing/Scaling Review is appropriate to the volumes of claims being received relative to the then applicable Variable Cost and the then applicable Fixed Cost.

For the purposes of ensuring that information requisite for the carrying out of the Right Sizing/Scaling Review is maintained by the Franchisee, the Franchisee shall comply with the obligations set out below:

1. Processing Staff:

- (a) It is acknowledged that the Franchisee will give more complex cases to more experienced and capable (and higher paid) staff. That being the case, the Franchisee should maintain records for each member of staff, showing hours worked and claims processed each day, as well as their pay rates.**
- (b) This data should be used to produce reports for each Reporting Period to show:**
 - (i) Volumes of claims received and processed, split by complex/simple (website)/simple (other), by day;**
 - (ii) Number of claims processed per hour; and**
 - (iii) Efficiency, defined as the number of productive hours divided by the number of paid hours.**
- (c) A similar exercise shall be carried out with regard to follow up complaints, appeals and cases of fraud. For all these a simple categorisation of the cause should be recorded to aid targeted action.**
- (d) The Franchisee shall use this information to propose permanent and temporary staff numbers, based on minimum and maximum volumes, and improvements to the system to reduce the number of complaints. The Franchisee may take into account in such proposals forecast seasonal variations in the volumes of claims.**

2. The Franchisee shall keep a record of rejections and their reason and produce a report by Period. The Franchisee shall amend the number of

⁴⁵³ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- expected rejections to match the reported average. The Franchisee shall use the rejection reports to determine whether changes to instructions to claimants, automatic validations, or other methods might reduce the number of rejections.
3. From the third complete Reporting Period after the DR Effective Date (to allow bedding-in), the Franchisee shall ensure that each manager of the team processing Delay Repay Compensation claims complete weekly timesheets, showing the team activity by 0.25 hours. This should list general activities, such as recruitment, training, report creation, etc. This information shall be used by the Franchisee to determine whether changes should be made, for example, by outsourcing activities, creating part-time posts, combining roles, or other actions, in order to reduce the overhead costs.
 4. The Franchisee shall keep a record of all staff, showing date of hiring, date of leaving and reason for leaving, by Period. This information should be used to produce an indicative turnover rate and the requirement for future recruitment and training. The Franchisee shall also consider how turnover might be lowered by changing the recruitment processes.
 5. The Franchisee shall propose permanent offices based on the staff numbers arrived at above as specified in the preceding paragraphs, including space to cover for peak volumes. Provision for future growth in claims shall be subject to the prior approval of the Secretary of State.
 6. The Franchisee shall keep a record of all property costs and all information technology and other office costs for the serviced offices, supported by copy invoices.
 7. The Franchisee shall provide a detailed breakdown of proposed set up and running costs for the property and benchmark these against the serviced office costs to demonstrate that it represents an economically efficient solution.
 8. The Franchisee shall provide a report of internal audits undertaken during the initial four periods, showing sample size, issues found, time taken and any conclusions/actions arising from the audit. The Franchisee shall propose a future audit plan, based on an assessment of the outputs of such report.
 9. The Franchisee shall keep a record of all information technology and other office costs, supported by copy invoices. The Franchisee shall propose future budget, on a cost per head basis, constructed around a value for money analysis.

10. **The Franchisee shall review the movement of fulfilment over the initial Reporting Periods and identify trends. The Franchisee shall review the methods of increasing digital compensation as a means of minimising fulfilment costs and propose a change in the weightings going forward to reflect this.**
11. **The Franchisee shall keep a record of third party processing costs, including electronic processing cost, supported by copy invoices. The Franchisee shall propose future budget, on a cost per claim basis, constructed around a value for money analysis, that shall take into account any setup or other non-recurring costs included in the first six months.**
12. **It is acknowledged that appropriate account or adjustment may be required in respect of the first Reporting Period to take account of the costs incurred throughout that Reporting Period in anticipation of the DR Effective Date and the fact that it is a part period for the purposes of processing DR Compensation Claims.**

APPENDIX 6 TO SCHEDULE 8.1⁴⁵⁴**Right Sizing/Scaling Review Principles**

1. **The principles for the Right Sizing/Scaling Review to be undertaken by the parties as contemplated in paragraph 7.2(h) of Schedule 8.1 are set out below:**

Right Sizing Principles

- 1.1 **All cost items will need to be allocated into the following categories:**
 - (b) **Fixed – Will not change; and**
 - (b) **Variable – Change based on number of claims or complaints or staff or other variable as appropriate.**
- 1.2 **Variable costs should be tied to what they vary by, such as members of staff or number of claims. They should be related using an appropriate formula (such as Number of Staff = Claims/x). This formula will apply to both increases and decreases. Any bandings of variable costs should be included by providing different formulas for the appropriate bands.**
- 1.3 **The formulas should be reviewed to include assumptions for:**
 - (c) **efficiency of staff for processing different types of claims and complaints;**
 - (b) **split of method of input;**
 - (c) **split of fulfilment;**
 - (d) **complaints to Claims ratio;**
 - (e) **rejections %;**
 - (f) **costs per head (e.g. wages, IT, training);**
 - (g) **costs per claim – processing; and**
 - (h) **staff turnover.**
- 1.4 **Any “variable contingency” should be included in a wash-up mechanism.**
2. **For the purposes of assessing the Scaling Obligations the following shall apply:**

⁴⁵⁴ 7 March 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 2.1 **Processing Staff will be scaled on the basis of 1 average FTE per 22k claims per annum, as per the following formula:**

$$\text{Staff} = \text{Roundup} (\text{Claims} / (11000 * p / 13), 0) / 2$$

- 2.2 **where p is the number of periods (note that this formula is designed to round up to the nearest 0.5 Full Time Equivalent and that this will be an average over the number of periods reviewed)**

- 2.3 **There will be a fixed complement of five, being a Manager, a Fraud Manager and IT, Quality and MI specialists. In addition, there will be Process Supervisors in relation to number of Processing Staff. The number will be based on the formula:**

$$\text{Supervisors} = \text{Rounddown} (\text{Staff}/12, 0)$$

- 2.4 **Recruitment & Training is assumed to cost £2k per head and Staff Turnover is expected to be c.20% per annum. Annual costs will therefore be based on the following formula:**

$$\text{Recruitment \& Training} = \text{Rounddown} ((\text{Staff} * 120\%) + \text{Managers}, 0) * 2000$$

- 2.5 **Fulfilment costs are charged per valid claim. The fulfilment costs are based on a weighted average of the potential fulfilment methods:**

Method	% of Claims	Cost of Method
Cheque	[REDACTED ⁴⁵⁵]	[REDACTED ⁴⁵⁶]
BACS	[REDACTED]	[REDACTED]
Card	[REDACTED]	[REDACTED]
NRV	[REDACTED]	[REDACTED]
<i>Total/Average</i>	[REDACTED]	[REDACTED]

⁴⁵⁵16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁵⁶16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 2.6 **The Franchisee will collect data on fulfilment methods and adjust the % weightings to match the actual volumes received. The Franchisee will further record the splits of card payments between Mastercard and Visa to arrive at an accurate blended rate for card payments.**

SCHEDULE 8.2**Annual Franchise Payments****1. Annual Franchise Payments**

The Annual Franchise Payment for any Franchisee Year is an amount equal to:

$$\text{AFP} = \text{FXD} + (\text{VCRPI} \times \text{RPI}) + (\text{VCAWE} \times \text{AWE}) + (\text{PRPI} \times \text{RPI}) + (\text{RRPI} \times \text{RPI}) + (\text{ICRPI} \times \text{RPI})$$

where:

AFP equals the Annual Franchise Payment in the relevant Franchisee Year;

FXD means the figure shown in respect of the relevant Franchisee Year in column 2 of the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2;

VCRPI means the figure shown in respect of the relevant Franchisee Year in column 3 of the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2;

RPI is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for January 2015 provided that, for the first Franchisee Year, RPI shall be one;

VCAWE means the figure shown in respect of the relevant Franchisee Year in column 4 of the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2;

AWE is the quotient of the Average Weekly Earnings for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Average Weekly Earnings for January 2015, provided that, for the first Franchisee Year, AWE shall be one;

PRPI means the figure shown in respect of the relevant Franchisee Year in column 5 of the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2;

RRPI means the figure shown in respect of the relevant Franchisee Year in column 6 of the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2 (and which shall always be expressed as a negative number); and

ICRPI means the figure shown in respect of the relevant Franchisee Year in column 7 of the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2 (Annual Franchise Payments) (and which shall always be expressed as a negative number).

APPENDIX TO SCHEDULE 8.2

Figures for Calculation of Annual Franchise Payments^{457 458 459 460 461}
[REDACTED⁴⁶²]

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Franchise Year	FXD (£)	VCRPI (£)	VCAWE (£)	PRPI (£)	RRPI (£) (numbers in parentheses are negative amounts)	ICRPI (£) (numbers in parentheses are negative amounts)
Year 1 (Part)	[REDACTED]	[REDACTED]	Not used	[REDACTED]	[REDACTED]	[REDACTED]
Year 2	[REDACTED]	[REDACTED]	Not used	[REDACTED]	[REDACTED]	[REDACTED]
Year 3	[REDACTED]	[REDACTED]	Not used	[REDACTED]	[REDACTED]	[REDACTED]
Year 4	[REDACTED]	[REDACTED]	Not used	[REDACTED]	[REDACTED]	[REDACTED]
Year 5 (Up to 13 Reporting Periods extension)	[REDACTED]	[REDACTED]	Not used	[REDACTED]	[REDACTED]	[REDACTED]

⁴⁵⁷ Date of contract change 09/03/2016 – Agreed by the Secretary of State and Franchisee.

⁴⁵⁸ Date of contract change 09/03/2016 – Agreed by the Secretary of State and Franchisee.

⁴⁵⁹ Date of contract change 09/03/2016 – Agreed by the Secretary of State and Franchisee.

⁴⁶⁰ 4 February 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁶¹ 15 February 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁶² **16 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

SCHEDULE 8.3**Miscellaneous Payment Provisions**

The Secretary of State, in his discretion, may at any time decide to reimburse or ameliorate net losses of the Franchisee arising from Industrial Action (however caused and of whatever nature) in circumstances where the Franchisee has demonstrated to the satisfaction of the Secretary of State that it has taken all reasonable steps to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, the Franchisee has taken all reasonable steps to mitigate its effects.

SCHEDULE 8.4

Track Access Adjustments and Station Charge Adjustments

1. Track Access Adjustments

- 1.1 The Track Access Adjustment to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

$$\text{TAA} = (\text{GCA} - \text{W}) \times \frac{\text{RPD}}{\text{FYD}}$$

where:

TAA means the Track Access Adjustment to be made in that Reporting Period;

GCA is the value of "GC" for the Franchisee Year in which the Reporting Period falls under Part 3A of Schedule 7 of the Track Access Agreement;

W is the value of "Wt" for the Franchisee Year in which the Reporting Period falls under Part 2 of Schedule 7 of the Track Access Agreement;

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Franchisee Year in which that Reporting Period falls,

except that, where a Reporting Period falls during two Franchisee Years, TAA shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Track Access Adjustment to be made in that Reporting Period shall reflect the sum of TAA as determined for each such period.

- 1.2 ⁴⁶³**Subject to paragraph 1.2A, the Franchisee shall notify the Secretary of State upon becoming aware that any Track Access Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise its rights under the Track Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for "Wt" or "GC" under Parts 2 or 3A of Schedule 7 of the Track Access Agreement.**
- 1.2A ⁴⁶⁴**No Track Access Adjustment calculated in respect of any Track Access Agreement to the extent relating to the HEx Outsourced Services shall result in an amendment to the Franchise Payment.**

⁴⁶³ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁶⁴ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 1.3 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the value of W and GCA under paragraph 1.1.
- 1.4 If no value is ascertained for W or GCA prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Track Access Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, adjustment shall be made to reflect the full Track Access Adjustment for such Reporting Period.
- 1.5 The values of W and GCA when used in the computation in paragraph 1.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under Sections 24 to 26 of the Value Added Tax Act 1994.
- 1.6 References in this paragraph 1 to "Wt" and "GC" and Parts 2 and 3A of Schedule 7 of the Track Access Agreement shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any Track Access Agreement as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function, as "Wt" or "GC" and Parts 2 or 3A of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Start Date.

2. **Station Charge Adjustment**

- 2.1 The Station Charge Adjustment to be made in respect of any Reporting Period shall be the aggregate of the Individual Station Charge Adjustments as determined in accordance with the following formula for each Station and each other Franchisee Access Station:

$$ISCA = L \times \frac{RPD}{FYD}$$

where:

ISCA means the Individual Station Charge Adjustment for the relevant station for that Reporting Period;

L is the value of "Lt" for the Franchisee Year in which the Reporting Period falls under:

- (a) if the relevant station is not an Independent Station, Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)" relating to such station; or
- (b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station,

in each case, to the extent that value represents an amount payable to or by Network Rail or any other relevant Facility Owner by or to the Franchisee on its own behalf under the relevant Access Agreement (excluding any amount payable to Network Rail by the

Franchisee in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of a Station);

- RPD means the number of days in that Reporting Period; and
- FYD means the number of days in the Franchisee Year in which that Reporting Period falls except that, where a Reporting Period falls during two Franchisee Years, the Station Charge Adjustment shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Station Charge Adjustment for such Reporting Period shall be the sum of the Station Charge Adjustment as determined for each such period.
- 2.2 ⁴⁶⁵**Subject to paragraph 2.2A, the Franchisee shall notify the Secretary of State upon becoming aware that any Station Charge Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise such rights as it may have under any Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for "Lt" under any relevant Access Agreement.**
- 2.2A ⁴⁶⁶**No Station Charge Adjustment calculated in respect of any HEx Station shall result in an amendment to the Franchise Payment.**
- 2.3 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the value of "L" under paragraph 2.1.
- 2.4 If no value is ascertained for "L" prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.
- 2.5 The value of "L" when used in the computation in paragraph 2.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under Sections 24 to 26 of the Value Added Tax Act 1994.
- 2.6 For the purposes of this paragraph 2, "**Independent Station**" shall mean, at any time, any station of which Network Rail is the Facility Owner at that time.
- 2.7 References in this paragraph 2 to "Lt", Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)" and Condition 42.3 of the Independent Station Access Conditions shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions,

⁴⁶⁵ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁶⁶ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

of any relevant station access conditions as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function as, "Lt", and Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)" and Condition 42.3 of the Independent Station Access Conditions which are in effect on the Start Date.

SCHEDULE 9**Changes and Variations**

- Schedule 9.1: Financial and Other Consequences of Change**
- Appendix 1: Summary Flow Chart**
- Appendix 2: Agreement or Determination of Revised Inputs**
- Annex to Appendix 2: Incentivising Long Term Investment**
- Schedule 9.2: Identity of the Financial Model etc.**
- Schedule 9.3: Secretary of State Risk Assumptions**
- Schedule 9.4: Specified Infrastructure and Rolling Stock Change**
- Schedule 9.5: Variations and Incentivising Beneficial Changes**

SCHEDULE 9.1**Financial and Other Consequences of Change****1 Purpose and Application of Schedule**

1.1 This Schedule 9.1 sets out:

- (a) the circumstances in which the occurrence of a Change will result in an adjustment to the Franchise Payments and/or the Benchmarks and/or the Annual Benchmarks whenever in Schedule 9 reference is made to "adjustment to Franchise Payments" such reference shall be construed to include (unless the context otherwise requires) the restatement of the values FPST and SPST as specified in respect of each Franchisee Year in paragraphs 1 and 2 (respectively) of Appendix 1 to Schedule 8.1 (Franchisee Payments) ("**Profit Share Components**"); and
- (b) the process by which that adjustment to the Franchise Payments and/or the Benchmarks and/or the Annual Benchmarks will be determined and effected; and
- (c) provisions dealing with the responsibility for costs incurred by the Franchisee in connection with any audit of the Run of the Financial Model and its results.

1.2 Schedule 9.2 (Identity of the Financial Model etc.) contains provisions dealing with the Financial Model which are relevant to the operation of this Schedule 9.1.

1.3 This Schedule 9.1 shall apply in relation to a Change where:

- (a) there are good reasons for considering that that Change will be a Qualifying Change or, with other Changes, part of an Aggregated Qualifying Change; and
- (b) the required notice(s) has/have been given in accordance with paragraph 1.4 (or the parties have agreed that this Schedule 9.1 will apply and there should be a Run of the Financial Model and/or a review of the Benchmarks and/or the Annual Benchmarks even though the required notices have not been given).

1.4 The notice requirements are that:

- (a) subject to paragraph 1.4(b), a party must have notified the other that it considers that the Change will be a Qualifying Change and that it requires a Run of the Financial Model and/or a review of the Benchmarks and/or the Annual Benchmarks in respect of that Change:
 - (i) within six months of the notification or agreement of that Change if it is a Variation pursuant to paragraph 1.1 of Schedule 9.5 (Variations and Incentivising Beneficial Changes); or
 - (ii) within six months of becoming aware of it, if it is any other type of Change; and
- (b) in the case of an Aggregated Qualifying Change, a party must have notified the other:

- (i) after an individual Change occurs, within the time limits stated in 1.4(a)(i) or 1.4(a)(ii), that it reserves the right to count that Change towards an Aggregated Qualifying Change; and
- (ii) within six months of the occurrence of the last Change which that party considers will trigger an Aggregated Qualifying Change, that the party requires a Run of the Financial Model and/or a review of the Benchmarks and/or the Annual Benchmarks in respect of the Changes comprised in that Aggregated Qualifying Change. The notice must identify each of the Changes included in the Aggregated Qualifying Change.

1.5 References in the remainder of this Schedule 9.1 and in Schedule 9.2 (Identity of the Financial Model etc.) to a "**Change**" are to a Change in respect of which the requirements in paragraph 1.3 have been satisfied.

1.6 Appendix 1 (Summary Flow Chart) to this Schedule 9.1 contains a flow chart summary of the process described in this Schedule 9.1. This is for guidance only and if there are any inconsistencies between this flow chart and any other of the contents of Schedule 9 (Changes and Variations), the latter shall apply.

2 Timescales

2.1 Where this Schedule 9.1 applies, any resulting restatement of the Annual Franchise Payment Components, the Profit Share Components and/or the Benchmarks and/or the Annual Benchmarks (as applicable) shall be made in accordance with this Schedule:

- (a) where it is reasonably practicable to do so, at least three Reporting Periods prior to the Change; or
- (b) where the timescale in 2.1(a) is not reasonably practicable, as soon as reasonably practicable after that.

2.2 If paragraph 2.1(b) applies and it is not reasonably practicable for the restatement of the Annual Franchise Payment Components and the Profit Share Components to be made before the Change occurs, then paragraph 9 (Estimated Revisions) shall apply.

3 How any adjustments to Franchise Payments will be established

3.1 The adjustments, if any, to the Franchise Payments to be made in respect of any Change shall be established by:

- (a) establishing those Model Changes and/or Revised Inputs required to take account of the Change; then
- (b) applying those Model Changes and/or Revised Inputs to the Financial Model before performing a Run of the Financial Model to generate the New Results; then
- (c) restating the Annual Franchise Payment Components and the Profit Share Components, by, in each case, substituting the New Results for the Old Results (so that, to the extent that the New Results and the Old Results are different, this will result in an adjustment to the Franchise Payments),

⁴⁶⁷in each case, subject to and in accordance with the terms more particularly described in this Schedule 9.1 including without limitation paragraph 3.2.

- 3.2 ⁴⁶⁸The impact of any Change on the HEx Outsourced Services shall not be taken into account in determining any adjustments to the Franchise Payments. Where any Change may affect the provision of the HEx Outsourced Services by the Franchisee, it shall be reasonable for the responses to the Change in relation to the Franchise Services to be on the basis that the provision of the HEx Outsourced Services continues in accordance with the HEx Services Agreement, while recognising that the Change will not include adjustments in respect of impacts of the Change on the HEx Outsourced Services themselves.

4 How Model Changes and/or Revised Inputs will be established

- 4.1 The parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs and (if any) the Model Changes.

4.2 **Revised Inputs** means:

- (a) the data that the Financial Model utilised in order to produce the Old Results, as such data is recorded in the Financial Model released by the Secretary of State pursuant to either of paragraphs 2.1(d) or 2.2 of Schedule 9.2 (Identity of the Financial Model etc.) for the purposes of the Run of the Financial Model; but
- (b) amended, whether by way of increase, reduction or other alterations to such data, (if at all) only as the parties may agree or the Secretary of State may reasonably determine is required by the provisions of Appendix 2 to this Schedule 9.1 in respect of a Change.

- 4.3 **Model Changes** means: any changes that the parties may agree or the Secretary of State may reasonably determine are required to the Financial Model and/or the Operational Model, as released by the Secretary of State pursuant to either of paragraphs 2.1(d) or 2.2 of Schedule 9.2 (Identity of the Financial Model etc.), for the purposes of the Run of the Financial Model, as a consequence of and in order to give effect to the Revised Inputs.

- 4.4 The Secretary of State shall provide a written statement of the Revised Inputs and any Model Changes to the Franchisee for the purposes of paragraph 6 promptly after they have been agreed or determined.

- 4.5 The Secretary of State and the Franchisee agree that in relation to any Change there shall be no Revised Inputs in relation to the following cells in the Financial Model:

I_Other OPEX⁴⁶⁹

Contingency row 1650 (HST) and sum of rows 1651 (New) and 1652 (IRAD Change 1)

⁴⁶⁷ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁶⁸ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁶⁹ 15 February 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

5 Changes to Benchmarks and/or the Annual Benchmarks

- 5.1 This paragraph 5 shall apply if either party has given notice to the other that it considers that a Change has or will have, in that party's reasonable opinion, a material effect on the risk of the Franchisee failing to satisfy the requirements of any Benchmark and/or Annual Benchmark (whether in terms of increasing or reducing that risk).
- 5.2 Any notice pursuant to paragraph 5.1 shall be given as soon as reasonably practicable and in any event before the parties have agreed or the Secretary of State has reasonably determined the Revised Inputs in respect of the Change.
- 5.3 Where this paragraph 5 applies, the relevant Benchmarks and/or the Annual Benchmarks shall be revised to the extent that such revision is reasonably considered to be appropriate to hold constant the risk of the Franchisee failing to satisfy the requirements of that Benchmark and/or Annual Benchmark. The parties shall agree or the Secretary of State shall reasonably determine any such revision(s).
- 5.4 For the purposes of any revision to the Benchmarks and/or the Annual Benchmarks under this paragraph 5, regard may be had to:
- (a) any relevant assumptions in the Record of Assumptions; and/or
 - (b) the contents of an Operational Model; and/or
 - (c) any other information

to the extent they are relevant to the consideration of whether a revision is reasonably considered to be appropriate to take account of the Change.

6 Run of the Financial Model following agreement or determination of the Revised Inputs and Model Changes

- 6.1 When the Revised Inputs and Model Changes (if any) are agreed or determined there shall be a Run of the Financial Model.
- 6.2 The Run of the Financial Model shall be performed after making any Model Changes and utilising the Revised Inputs and shall be performed by:
- (a) the Franchisee promptly on receiving notification of the Revised Inputs and any Model Changes from the Secretary of State pursuant to paragraph 4.4 or within such period of time as the Secretary of State shall reasonably determine; or
 - (b) the Secretary of State if the Franchisee fails to do so. In these circumstances, the Franchisee shall reimburse to the Secretary of State the Secretary of State's costs of performing the Run of the Financial Model.
- 6.3 The party that performs the Run of the Financial Model pursuant to paragraph 6.2 shall provide the non performing party with a reasonable opportunity to be in attendance and shall promptly notify such other party of the New Results.
- 6.4 Where there is more than one Change, Runs of the Financial Model in respect of such Changes shall (unless otherwise agreed or the Secretary of State reasonably determines) be undertaken in the order in which such Changes occur. For this purpose, the order of occurrence will be determined by reference to the earliest date from which the Franchise Payments are reasonably expected to require adjustment as a result of the restatement of the Annual Franchise Payment

Components triggered by a Change. This will be as agreed between the parties or in the absence of agreement be reasonably determined by the Secretary of State.

7 Certification or Audit of the New Results

7.1 The Secretary of State, as soon as reasonably practicable after receiving or generating the New Results pursuant to paragraph 6.2, shall either:

- (a) certify to the Franchisee his approval of the New Results; or
- (b) notify the Franchisee that he requires the Run of the Financial Model and its results to be audited by an independent auditor appointed by the Secretary of State with the approval (not to be unreasonably withheld) of the Franchisee.

7.2 For purposes of paragraph 7.1, the requirement for an audit is one that requires the auditor either to certify:

- (a) that the New Results have been produced by applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4); or
- (b) the New Results themselves, by itself applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4).

7.3 The parties shall procure that any auditor is, as soon as reasonably practicable after his appointment, able to discharge the audit requirements.

7.4 The results as certified by the Secretary of State pursuant to paragraph 7.1 or by the auditor pursuant to paragraph 7.2 shall be final and binding on the parties, except in the case of manifest error.

7.5 The Secretary of State may stipulate (on or before the date on which the Secretary of State approves or the auditor certifies the results of the Run of the Financial Model) in respect of a Change that the restated Annual Franchise Payment Components are to apply for a limited period of time only (the "**Initial Period**"), with provision thereafter, if appropriate, for a further Run of the Financial Model with new Revised Inputs and/or Model Changes based on information available at that time.

8 Restatement of Annual Franchise Payment Components, the Profit Share Components and/or Benchmarks and/or the Annual Benchmarks

8.1 When the New Results have been certified by the Secretary of State or the auditor in accordance with paragraph 7 then if:

- (a) there is any difference between the Old Results and the New Results; and
- (b) the New Results are such that the Change:
 - (i) meets the criteria for a Qualifying Change; or
 - (ii) with other Changes meets the criteria for an Aggregated Qualifying Change

the Annual Franchise Payment Components and the Profit Share Components shall be restated in the amounts of the New Results; and

- (c) if any changes to the Benchmarks and/or the Annual Benchmarks have been agreed or determined in accordance with paragraph 5, the Benchmarks and/or the Annual Benchmarks shall be restated to give effect to those changes.

8.2 Subject to paragraph 8.3, the restatement of the Annual Franchise Payment Components and the Profit Share Components shall have effect on and from the date on which the Secretary of State or the auditor certifies the results of the Run of the Financial Model.

8.3 If and to the extent that:

- (a) the application of the New Results in respect of the then current or any earlier Franchisee Year would, result in any change to the amount of any payments already made between the Secretary of State and the Franchisee; and
- (b) that change in payments is not already taken into account in any Reconciliation Amount payable pursuant to paragraph 9.9,

then a reconciliation payment shall be paid by the Franchisee or the Secretary of State (as the case may be). The payment shall be made on the first Payment Date which falls more than seven days after agreement or determination of the amount of the reconciliation payment required (or if there is no such Payment Date, within 14 days after such agreement or determination).

9 Estimated Revisions

9.1 This paragraph 9 applies where there is or is to be a Change before there is a Run of the Financial Model in respect of it. It provides a mechanism for interim adjustments in Franchise Payments pending the final agreement or determination of those adjustments under this Schedule.

9.2 Where this paragraph 9 applies, the Secretary of State shall make the Estimated Revisions described in paragraph 9.3:

- (a) if the Franchisee requests the Secretary of State to do so at the same time as requesting a Run of the Financial Model in respect of the Change under paragraph 1.4; or
- (b) if the Secretary of State otherwise agrees or chooses (in his discretion) to do so.

9.3 The estimated revisions are the Secretary of State's estimates of the New Results which will apply once the process in paragraphs 4 to 8 of this Schedule 9.1 has been completed in respect of the Change (the "**Estimated Revisions**"). For the avoidance of doubt, Revised Inputs are not made in order to generate or take account of the Estimated Revisions.

9.4 The estimates referred to in paragraph 9.3 will be such estimates as the Secretary of State, acting reasonably, makes having regard to the time and the information available to him at the time the estimates fall to be made provided always that it is acknowledged that:

- (a) the purpose of the estimates is to enable some provision to be made in respect of adjustments to the Annual Franchise Payment Components and

the Profit Share Components before full information about the Change is available and/or full consideration of the nature and extent of Revised Inputs and/or Model Changes has been undertaken;

- (b) it may not be reasonably practicable in all circumstances for the Secretary of State to take into account in such an estimate all actual or potential impacts of a Change. Where the Secretary of State is aware that there are any such actual or potential impacts which he has not taken into account, he shall notify the Franchisee of them when notifying the Estimated Revisions pursuant to paragraph 9.2; and
 - (c) the Secretary of State shall be entitled to adjust any Estimated Revision notified pursuant to paragraph 9.2 to the extent he reasonably considers appropriate if at any time:
 - (i) the Secretary of State becomes aware of any new or revised information which would, if it had been available to him at the time he made his original estimate, have resulted in him making a different Estimated Revision; and
 - (ii) it is reasonable to revise the Estimated Revision having regard to the likely period of delay prior to the Run of the Financial Model in respect of the relevant Change.
- 9.5 In the circumstances described in paragraph 9.2 and paragraph 9.4(c) the Annual Franchise Payment Components and the Profit Share Components shall be restated in the amounts and values of the Estimated Revisions, and Franchise Payments shall be paid accordingly until the Run of the Financial Model has taken place and its results have been put into effect.
- 9.6 The Secretary of State shall use all reasonable endeavours to notify the Franchisee of the Estimated Revisions required by paragraph 9.2 at least two Reporting Periods before he considers the Change is likely to occur. If, having exercised all reasonable endeavours, the Secretary of State cannot provide two Reporting Periods' notice, he shall provide such notification as soon as reasonably practicable afterwards.
- 9.7 The restatement of the Annual Franchise Payment Components and the Profit Share Components referred to in paragraph 9.5 shall have effect on and from:
- (a) the date on which the Secretary of State notifies the Franchisee of the Estimated Revisions; or
 - (b) such other date as the Secretary of State, acting reasonably, may notify the Franchisee as the date on which the Secretary of State considers the Estimated Revisions should reasonably take effect, consistent with the matters taken into account by the Secretary of State in estimating the Estimated Revisions.
- 9.8 No estimate made by the Secretary of State pursuant to this paragraph 9 shall prejudice the Secretary of State's subsequent determination of any Revised Input or Model Change pursuant to paragraph 4.
- 9.9 Subject to paragraph 9.10, where adjustments to Franchise Payments (including for these purposes any profit share payments pursuant to paragraph 3 of Schedule 8.1 (Franchise Payments) have resulted from the operation of paragraph 9.5. then, as soon as reasonably practicable after the certification of the New Results following the related Run of the Financial Model, the parties shall agree or the Secretary of

State shall reasonably determine the difference (the "**Reconciliation Amount**") between:

- (a) the total amount of Franchise Payments (including for these purposes the profit share payments pursuant to paragraph 3 of Schedule 8.1 (Franchise Payments)) paid or to be paid to which adjustments have been made pursuant to the operation of paragraph 9.5; and
- (b) the total amount of the Franchise Payments (including for these purposes the profit share payments pursuant to paragraph 3 of Schedule 8.1 (Franchise Payments)), as determined by that Run of the Financial Model, in respect of the same period as the period over which the adjusted Franchise Payments (including for these purposes the profit share payments) referred to in paragraph 9.9(a) have been paid/or are to be paid.

9.10 If a Change is agreed or determined not to be a Qualifying Change or not to be part of an Aggregated Qualifying Change with or without any Run of the Financial Model having been performed, the Reconciliation Amount shall be the total amount of the adjustments to Franchise Payments (including the profit share payments referred to in paragraph 9.9) which have resulted from the operation of paragraph 9.5.

9.11 The Reconciliation Amount shall be paid:

- (a) by the Franchisee to the Secretary of State where the Estimated Revisions resulted in an overpayment of Franchise Payments by the Secretary of State to the Franchisee or an underpayment of Franchise Payments and/or profit share payments pursuant to paragraph 3 of Schedule 8.1 (Franchise Payments) by the Franchisee to the Secretary of State compared with:
 - (i) the amount of the Franchise Payments (including for these purposes the profit share payments pursuant to paragraph 3 of Schedule 8.1 (Franchise Payments)) described in paragraph 9.9(b); or
 - (ii) where paragraph 9.10 applies, the amount of the unrestated Franchise Payments (including for these purposes the profit share payments pursuant to paragraph 3 of Schedule 8.1 (Franchise Payments)) over the same period; and
- (b) by the Secretary of State to the Franchisee where the Estimated Revisions resulted in an underpayment of Franchise Payments by the Secretary of State to the Franchisee or an overpayment of Franchise Payments and/or profit share payments pursuant to paragraph 3 of Schedule 8.1 (Franchise Payments) by the Franchisee to the Secretary of State compared with:
 - (i) the amount of the Franchise Payments (including for these purposes the profit share payments pursuant to paragraph 3 of Schedule 8.1 (Franchise Payments)) described in paragraph 9.9(b); or
 - (ii) where paragraph 9.10 applies, the amount of the unrestated Franchise Payments (including for these purposes the profit share payments pursuant to paragraph 3 of Schedule 8.1 (Franchise Payments)) over the same period.

In either case, such payment shall be made on the first Payment Date after agreement or determination (or if none, within 14 days after such agreement or determination).

10 Information

The Franchisee shall promptly, having regard to the other timescales anticipated in this Schedule 9.1, provide to the Secretary of State such information as the Secretary of State may request for the purpose of enabling the Secretary of State to exercise his rights and comply with his obligations pursuant to this Schedule 9.1.

11 Costs

11.1 This paragraph deals with the costs incurred by the Franchisee in connection with any audit required by the Secretary of State pursuant to paragraph 7.

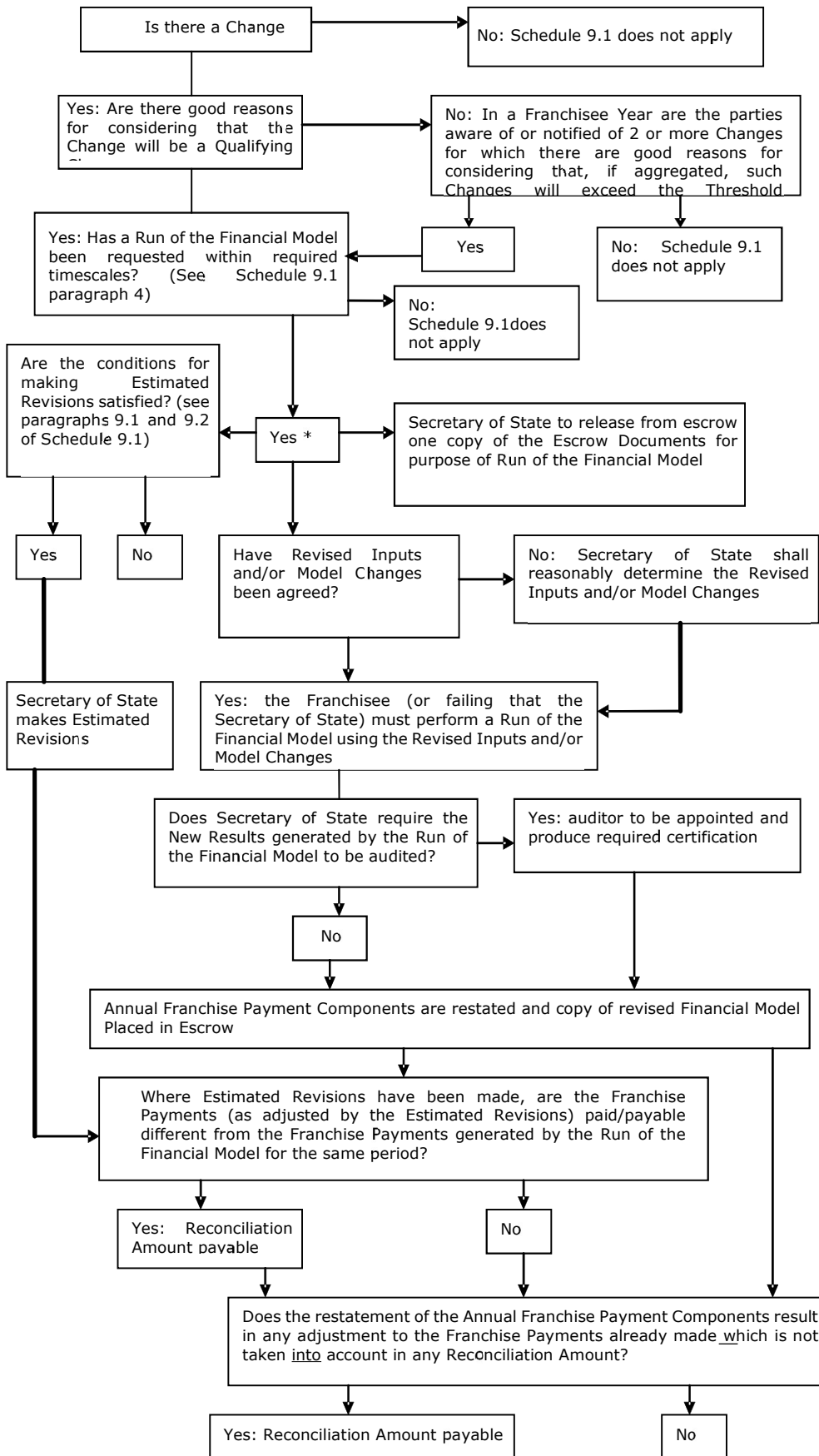
11.2 The costs of any audit required under paragraph 7.1(b) shall be met by the Secretary of State subject to the following:

- (a) the costs of the audit shall be met entirely by the Franchisee:
 - (i) **Not used**; and
 - (ii) in the case of a Change falling within any of the following subparagraphs within the definition of Change:
 - (A) an event set out in any Secretary of State Risk Assumption specified in Schedule 9.3 (Secretary of State Risk Assumptions);
 - (B) any of the circumstances set out in paragraphs 2.1, 2.3, 3.9 or 3.10 of Schedule 9.4 (Specified Infrastructure and Rolling Stock Change); and
 - (C) a Charge Variation; and
- (b) where paragraph 11.2(a) does not apply, the Secretary of State shall only be responsible for the reasonable costs of the Franchisee in connection with the audit, and the Franchisee shall comply with the Secretary of State's reasonable directions in connection with the audit which may include a requirement for a competitive tender for the appointment of the auditor.

APPENDIX 1 TO SCHEDULE 9.1

SUMMARY FLOW CHART

This summary is for guidance only. If there are any inconsistencies with the other contents of SCHEDULE 9.1 or 9.2(including any Appendix), those other contents shall apply.



* Note: that in these circumstances, either party may serve notice (before Revised Inputs in respect of the Change are agreed or determined) that it considers a Change has or will have a material effect on the risk of the Franchisee failing to satisfy the requirements of a Benchmark - See Schedule 9 paragraph 5.

APPENDIX 2 TO SCHEDULE 9.1**Agreement or Determination of Revised Inputs**

- 1** The parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs that are required in respect of a Change:
- (a) on the basis of the general adjustments and/or assumptions referred to in paragraph 2;
 - (b) on the basis of the assumptions in the Record of Assumptions as added to and/or amended (if at all) in accordance with paragraph 3;
 - (c) so as to provide for Traction Electricity Charges in accordance with paragraph 4;
 - (d) so as to provide for profit in accordance with paragraph 5; and
 - (e) so as to give effect to the provisions of paragraph 6 in relation to indexation, provided that if there is any inconsistency between the assumptions in the Record of Assumptions described in paragraph 1(b) above and any other of the requirements of this paragraph 1, those other requirements shall prevail, unless the Secretary of State (acting reasonably) otherwise elects.

2 General Adjustments/Assumptions

- 2.1** Revised Inputs are to be agreed between the parties or reasonably determined by the Secretary of State on the basis that:
- (a) any increase in costs relating to a Change; and/or
 - (b) any reduction in revenues relating to a Change,
- that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be disregarded.
- 2.2** Revised Inputs are to be agreed between the parties or reasonably determined by the Secretary of State on the basis that:
- (a) any reduction in costs relating to a Change; and/or
 - (b) any increase in revenues relating to a Change,
- that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be taken into account.
- 2.3** Revised Inputs are also to be agreed between the parties or reasonably determined by the Secretary of State on the basis that:
- (a) the Franchisee will use all reasonable endeavours to:
 - (i) reduce any costs that may arise or income that may be foregone; and

- (ii) increase any revenue that may arise and avoid any cost that may be avoided,

as a consequence of a Change; and

- (b) any requirement for borrowing in respect of Capital Expenditure by the Franchisee is dealt with in accordance with paragraph 2 of Schedule 9.5 (Variations and Incentivising Beneficial Changes).

2.4 Where and as directed to do so by the Secretary of State (acting reasonably) the Franchisee shall undertake one or more competitive tendering exercises for the purposes of ascertaining the likely level of any costs relating to a Change which are relevant to a Revised Input.

3 Assumptions in the Record of Assumptions

3.1 The parties shall (unless to do so would be contrary to paragraph 2) agree or the Secretary of State shall reasonably determine Revised Inputs that are in accordance with the assumptions that are contained in the Record of Assumptions, as added to or modified pursuant to paragraph 3.2 or paragraph 3.3.

3.2 Where the Secretary of State reasonably considers that the assumptions contained in the Record of Assumptions are ambiguous or that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the Record of Assumptions, the parties shall agree or the Secretary of State shall reasonably determine the assumptions or additional assumptions to be utilised for this purpose.

3.3 Where the Secretary of State reasonably considers that:

- (a) a Change is likely to result in an increase in either or both of the costs of the Franchisee and the revenues of the Franchisee; and
- (b) an assumption relevant to the Change contained in the Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient franchisee,

then the parties shall agree or the Secretary of State shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient franchisee.

4 Traction Electricity Charges

4.1 This paragraph 4 applies only in relation to Charge Variations.

4.2 In agreeing or determining Revised Inputs, no adjustment shall be made in respect of a Charge Variation to the extent that Charge Variation relates, directly or indirectly and however it may be effected, to the Traction Electricity Charge payable by the Franchisee pursuant to any Track Access Agreement. For this purpose (and subject to **clause 1.1(I)** of this Franchise Agreement), the Traction Electricity Charge is the component of the Track Charges (as defined in the Track Access Agreement) identified as such in any Track Access Agreement or any similar arrangement under which the Franchisee pays for traction current consumed by rolling stock vehicles operated by or on behalf of the Franchisee.

5 Revised Input for Profit

5.1 Where:

- (a) a Change is forecast to result in an increase to the Franchisee's revenue in a Franchisee Year, the parties shall agree or the Secretary of State shall reasonably determine Revised Inputs in relation to profit that provide for an increase in the amount of profit in any Franchisee Year equal to **[REDACTED⁴⁷⁰]** of the forecast increase in revenue for that Franchisee Year; and/or
- (b) a Change is forecast to result in a reduction in the Franchisee's revenue in a Franchisee Year, the parties shall agree or the Secretary of State shall reasonably determine Revised Inputs in relation to profit that provide for a decrease in the amount of profit in any Franchisee Year equal to the lower of:
 - (i) the percentage specified in paragraph 5.1(a); or
 - (ii) the average profit margin percentage in the current Business Plan for the remaining Franchise Term,

of the forecast reduction in revenue for that Franchisee Year.

5.2 In agreeing or determining Revised Inputs in relation to profit in respect of any Change, the parties or the Secretary of State shall effect such change (if any) in the amount attributable to profit in paragraph 5.1(a) as they agree or the Secretary of State reasonably determines to reflect:

- (a) the risk for the Franchisee in continuing to operate the Franchise on the terms of the Franchise Agreement after and as a result of the Change; and
- (b) the likelihood of:
 - (i) material benefit from such Change arising after expiry of the Franchise Term; and
 - (ii) material detriment from such Change arising prior to the expiry of the Franchise Term.

5.3 In agreeing or determining Revised Inputs for the purposes of any Protected Proposal, the parties or the Secretary of State shall effect such change (if any) to the amount attributable to profit as they agree or the Secretary of State reasonably determines:

- (a) fairly rewards the Franchisee for proposing the Protected Proposal; and
- (b) reasonably incentivises the Franchisee to propose further Protected Proposals, by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the Protected Proposal.

5.4 The Annex (Incentivising Long Term Investment) to this Appendix 2 sets out the Secretary of State's guidance on how he approaches incentivising long term investment.

⁴⁷⁰ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

6 Indexation

In agreeing or determining Revised Inputs, the parties shall apply the following principles in connection with indexation. For each relevant item of data in the Financial Model in respect of which a Revised Input is agreed or determined to be required:

- (a) the parties shall agree or the Secretary of State shall reasonably determine, having regard to the particular facts of the Change, the base date at which that item is priced; and
- (b) that item shall be deflated by reference to the original base date and index (if any) relevant to that item in the Financial Model.

7 Route Efficiency Benefit Share Mechanism

No Revised Inputs will be made to reflect:

- (a) any amount payable by or to the Franchisee in respect of REBS; or
- (b) any change in the basis on which REBS is calculated or is to be paid (including any change which may require amounts in respect of REBS to be payable by as well as payable to the Franchisee).

8 Cancellations Performance Sum and TOC Minute Delay Performance Sum

In agreeing or determining Revised Inputs, no adjustment shall be made to the Financial Model to reflect any change in the amount of the Cancellations Performance Sum or the TOC Minute Delay Performance Sum payable by the Secretary of State or to be incurred by the Franchisee arising from the exercise by the Secretary of State of his rights pursuant to paragraph 1.5 of Schedule 7.1 (Performance Benchmarks). For example if prior to such exercise the Franchisee would have been entitled to receive a Cancellations Performance Sum of £100 for a particular level of performance against the Annual Cancellations Benchmark and after such exercise the Franchisee would only be entitled to receive a Cancellations Performance Sum of £50 for achieving the same level of performance, no adjustment shall be made to the Financial Model to reflect this.

ANNEX TO APPENDIX 2 TO SCHEDULE 9.1**Incentivising Long Term Investment**

This Appendix sets out the Secretary of State's guidance on how he approaches incentivising long term investment.

- 1 The Secretary of State wishes to encourage the Franchisee to:
 - (a) improve the efficiency;
 - (b) reduce the cost; and
 - (c) enhance the revenue earning potential of the delivery of services to passengers,from the commencement of the Franchise, through the Franchise Term and into the successor franchises.
- 2 It is recognised however, that the Franchise Term may be perceived to be a barrier to undertaking investment or change programmes where:
 - (a) the time scale for implementation limits the benefit to the Franchisee; or
 - (b) the business case for such investment or change has a payback period longer than the Franchise Term.
- 3 In this context investment or change may be considered to encompass:
 - (a) capital investments undertaken solely by the Franchisee;
 - (b) capital investments undertaken by the Franchisee in association with others;
 - (c) total or partial substitution of certain train services by bus services where an enhanced service level could be provided for reduced cost or where the provision of bus services improves the overall capacity of the network or delivers other benefits;
 - (d) changes in working practices of the Franchisee's employees;
 - (e) changes in the contracted roles and responsibilities between the Franchisee and its major suppliers; and
 - (f) operational changes.
- 4 Accordingly, the Franchisee is encouraged to propose schemes that seek to achieve the objectives set out in paragraph 1 for consideration by the Secretary of State during the Franchise Term.
- 5 In considering the Franchisee's proposals for any investment or change proposed to be undertaken, the Secretary of State will recognise:
 - (a) the capital cost and proposed payment profile;
 - (b) legitimate costs of the Franchisee in developing, procuring, delivering and project managing the project;

- (c) the life of any capital assets and the duration of the benefits stream arising;
- (d) the remaining Franchise Term and the projected payback period;
- (e) the benefits associated with undertaking the investment early rather than waiting until the Franchise is re-let;
- (f) the risks of cost overrun or under performance of the projected benefits;
- (g) a profit element for undertaking the project commensurate with the risks of the proposed project; and
- (h) alternative benefit sharing arrangements which could be based on:
 - (i) a capital lump sum when the expenditure is incurred;
 - (ii) an enhanced Franchise Payment over the Franchise Term;
 - (iii) a balloon payment on expiry of the Franchise which allocates a proportion of future benefits to the Franchisee;
 - (iv) an ongoing payment if the benefits materialise after the Franchise Term; and/or
 - (v) any combination of any of paragraphs 5(h)(i) to 5(h)(iv) inclusive.

6 In evaluating the Franchisee's proposals for any investment or change proposed to be undertaken and to enable best value for money to be obtained from third party financiers, the Secretary of State shall also give consideration to the appropriateness of the provision, by the Secretary of State, of an undertaking (or other form of comfort) pursuant to Section 54 of the Act.

SCHEDULE 9.2**Identity of the Financial Model etc.****1 Franchisee's Obligations**

- 1.1 The Franchisee shall deliver two copies of each of the Financial Model, the Operational Model and the Record of Assumptions (each such copy in electronic format on CD ROM) together with hard format copies of the output template of the Financial Model in the format set out in the document in agreed terms marked **FF** (the "**Escrow Documents**") to the Secretary of State in the agreed form, accompanied by a notice that those Escrow Documents are to be Placed in Escrow.
- 1.2 The Franchisee shall deliver two copies of the Escrow Documents in accordance with paragraph 1.1 of this Schedule 9.2:
- (a) on the date of the Franchise Agreement;
 - (b) within seven days of the Start Date, but updated only as strictly necessary for any elapsed time between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (c) within seven days of any approval or audit of a Run of the Financial Model as provided for in paragraph 7 of Schedule 9.1 (Financial and Other Consequences of Change), but updated with the Revised Inputs and any Model Changes.
- 1.3 The Franchisee shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:
- (a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
 - (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and
 - (c) if required by the Secretary of State, a certificate from independent auditors approved by the Secretary of State, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.2(a) or (as the case may be) is in accordance with paragraphs 1.2(b) or 1.2(c)

2 Secretary of State's Obligations

- 2.1 The Secretary of State shall:
- (a) within three days following receipt, acknowledge receipt to the Franchisee of any version of the Escrow Documents delivered to him for the purposes of being Placed in Escrow;
 - (b) save as provided under paragraph 2.1(c), store each copy of the Escrow Documents in a different physical location from any other copy of each such document and use all reasonable endeavours to ensure that each copy of

the Escrow Documents is at all times kept in a safe and secure environment. In so doing the Secretary of State shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of the Franchise Agreement;

- (c) notify the Franchisee if he becomes aware at any time during the term of the Franchise Agreement that any copy of the Escrow Documents or part thereof stored in a particular location has been lost, damaged or destroyed. In such an event, the Secretary of State shall be permitted to create a new copy of the Escrow Documents or part thereof from the other copy Placed in Escrow and shall within seven days notify the Franchisee accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a "complete and accurate" copy has been made. Following the making of such a new copy of the Escrow Documents, the Secretary of State shall retain all copies of the Escrow Documents in accordance with paragraph 2.1(b);
- (d) within seven days of receipt of a notice from the Franchisee stating that the Escrow Documents are required for the purposes of a Run of the Financial Model in relation to any Change, or should the Secretary of State himself so decide that the Escrow Documents are required by the Franchisee or by the Secretary of State for such purposes release one copy of the Escrow Documents accordingly and retain one copy of the Escrow Documents in escrow in accordance with paragraph 2.1(b);
- (e) maintain a record of any release of any copy of any version of the Escrow Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Escrow Documents are released;
- (f) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Escrow Documents; and
- (g) not be liable for any loss, damage or destruction caused to the Franchisee arising from any loss of, damage to or destruction of the Escrow Documents.

2.2 If the Franchisee fails to perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (Financial and Other Consequences of Change) or fails to return the copy of the Escrow Documents released pursuant to paragraph 2.1(d):

- (a) such failure to perform or to return the released copy to the Secretary of State shall be a contravention of the Franchise Agreement;
- (b) the Secretary of State may release the other copy of the Escrow Documents Placed in Escrow and take a copy thereof (the "**Replacement Copy**") in order that the Secretary of State may perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (Financial and Other Consequences of Change);
- (c) once copied, the second copy of the Escrow Documents released pursuant to this paragraph 2.2 shall be Placed in Escrow; and
- (d) once the Run of the Financial Model has been approved or audited as provided for in paragraph 7 of Schedule 9.1 (Financial and Other Consequences of Change), two copies of the Replacement Copy shall also be Placed in Escrow.

- (e) Nothing in this Schedule 9.2 shall prevent the Secretary of State or the Franchisee each retaining for their working use one or more copies of any of the Escrow Documents Placed in Escrow provided that no such working copy shall (unless otherwise explicitly agreed by the parties) be regarded as a copy released from Escrow for the purposes of this Schedule 9.2 or any Run of the Financial Model.

3 Errors in Escrow Documents

3.1 Any feature of the Escrow Documents which is in the reasonable opinion of the Secretary of State an error will be addressed as follows:

- (a) if rectification of such an error would (as the case may be) over the Franchise Term result in a net increase in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net decrease in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified provided that there shall not be a restatement of the values of the Annual Franchise Payment Components and the Profit Share Components;
- (b) if rectification of such an error would (as the case may be) over the Franchise Term result in a net decrease in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net increase in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified and the values of the Annual Franchise Payment Components and the Profit Share Components shall be restated where appropriate;
- (c) a record of the error shall be noted in the Record of Assumptions and, if applicable, the Financial Model; and
- (d) as soon as reasonably practicable after the date of the rectification of the error, the Franchisee shall (unless otherwise agreed by the Secretary of State) deliver to the Secretary of State a certificate from independent auditors approved by the Secretary of State confirming that the error has been rectified as required by this paragraph 3 and is now in the required form in accordance with paragraph 1.2(a), 1.2(b) or 1.2(c) as the case may be.

SCHEDULE 9.3**Secretary of State Risk Assumptions****1. Interrelated infrastructure delivery and rolling stock related risks**

The parties acknowledge the provisions of Schedule 9.4 in respect of risks related to the Great Western Electrification Programme, IEP delivery and the cascade of Class 387 Units to the Franchisee.

2. Crossrail

It shall be a Change if all of the Crossrail Stations do not transfer to the Crossrail Operator on the Passenger Change Date in December 2017.

3. ERTMS

3.1 It shall be a Change if:

- (a) the Proposed ERTMS Implementation Plan is amended by the Secretary of State or Network Rail (other than where the Proposed ERTMS Implementation Plan is amended for a reason wholly attributable to any action or inaction of the Franchisee) and the Franchisee is required to retrofit ERTMS equipment to the rolling stock units set out in Table 1 of Schedule 1.7 (The Train Fleet) prior to the lease expiry date applicable to such rolling stock units specified in Table 1 of Schedule 1.7 (The Train Fleet) as at the Start Date (the Fitment); and
- (b) the Franchisee is able to demonstrate to the satisfaction of the Secretary of State that the compensation the Franchisee is entitled to recover from Network Rail under the Network Code in respect of the Fitment Costs is less than the Fitment Costs.

4. Adjustment to the Class 387 Spares and Special Tool Rent

4.1 It shall be a Qualifying Change if following the preparation of a Revised MSST Rent Cash Flow as contemplated in Part 3 of Schedule 1 of the Class 387 Lease (as such term is defined in paragraph 16.1(a) of Schedule 6.2 (Great Western Franchise Specific Provisions)) there is a difference between the Assumed MSST Rent and the Actual MSST Rent. For the purposes of this paragraph 4:

- (a) **"Assumed MSST Rent" means the amount payable by the Franchisee under the Class 387 Lease for the leasing of the MSST Equipment as such amount is specified in cells:**

I_RS charges⁴⁷¹

Class 387 - Motor Additional Units row 8074 (HST) and sum of rows 8057 (New) and 8076 (IRAD Change 1)

Class 387 - Trailer Additional Units row 8114 (HST) and sum of rows 8115 (New) and 8116 (IRAD Change 1)

Class 387 - Motor New Units row 8346 (IRAD Change 1)⁴⁷²

Class 387 - Trailer New Units row 8356 (IRAD Change 1)⁴⁷³

⁴⁷¹ 15 February 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁷² 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁷³ 15 February 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

of the Financial Model applicable at the date of the Franchise Agreement;

- (b) **"Actual MSST Rent"** means the actual amount payable by the Franchisee under the Class 387 Lease for the leasing of the MSST Equipment following any adjustments to such amounts as contemplated in Part 3 of Schedule 1 of the Class 387 Lease; and
- (c) each of **"MSST Equipment"** and **"Revised MSST Rent Cash Flow"** have the meaning given to each such term in Schedule 1 of the Class 387 Lease.

5. Termination or novation of the Class 387 Lease

5.1 It shall be a Qualifying Change if:

- (a) the Secretary of State does not direct the Franchisee to:
 - (i) either:
 - (A) terminate the Class 387 Lease and the associated maintenance reserve agreement referred to in paragraph 16.1(b) pursuant to paragraph 16.7(a)(i) of Schedule 6.2 (Great Western Franchise Specific Provisions); or
 - (B) novate the Class 387 Lease and associated maintenance reserve agreement referred to in paragraph 16.1(b) pursuant to paragraph 16.7(a)(ii); or
 - (ii) enter into a novation of the Class 387 MSA pursuant to paragraph 16.7(b) of Schedule 6.2 (Great Western Franchise Specific Provisions); or
- (b) notwithstanding a direction from the Secretary of State to the Franchisee to novate either:
 - (i) the Relevant Class 387 Documents pursuant to paragraph 16.7(a)(ii) and 16.7(b) of Schedule 6.2 (Great Western Franchise Specific Provisions); or
 - (ii) the Class 387 MSA pursuant to paragraph 16.7(b) of Schedule 6.2 (Great Western Franchise Specific Provisions),

a relevant third party signatory to any required novation agreement does not execute such novation agreement so as to permit the novation of the applicable Relevant Class 387 Document to take effect as at the Expiry Date; or

- (c) the Class 387 Lease is terminated on a date falling earlier than 1 April 2019 (or such later date to which the Franchise Agreement is extended pursuant to paragraph 2 of Schedule 18 (Additional Reporting Periods)) as a consequence of the Secretary of State exercising his rights under the Future Use Agreement to notify the "Lessor" (as such term is defined under the Class 387 Lease) to terminate the Class 387 Lease.

5.2 Where paragraph 5.1(a) or (b) applies:

- (a) in applying Schedule 9 and on the basis that:
- (i) the termination of the Franchise Agreement will trigger an event of default under the Class 387 Lease resulting in the "Lessor" terminating the Class 387 Lease; or
 - (ii) (in the absence of such termination by the "Lessor") the Franchisee will seek to reduce any costs that may arise as a consequence of it continuing to be a party to the Class 387 Lease beyond 1 April 2019 (or such later date to which the Franchise Agreement is extended pursuant to paragraph 2 of Schedule 18 (Additional Reporting Periods)) by requesting a termination of the Class 387 Lease,
- which, in each case, will result in the Franchisee incurring lease termination payments in accordance with clause 22.4 of the Class 387 Lease (such payments being as calculated under Schedule 2 of the Class 387 Lease) ("**Lease Termination Payments**"); then
- (b) the only Revised Inputs which shall be taken into account as if incurred by the Franchisee in the final Reporting Period of the Franchise Term shall be:
- (i) any Lease Termination Payments actually paid by the Franchisee to the "Lessor" as a direct consequence of the termination of the Class 387 Lease by the Franchisee after the Franchise Period (in the absence of any direction by the Secretary of State to so terminate); and
 - (ii) such other reasonable and proper costs actually incurred by the Franchisee (demonstrated by the provision of supporting information, invoices and such other cost information as the Secretary of State may reasonably request) during the period from 1 April 2019 (or such later date to which the Franchise Agreement is extended pursuant to paragraph 2 of Schedule 18 (Additional Reporting Periods)) until such a time as the Franchisee achieves termination of the Class 387 Lease as a direct consequence of the Franchisee continuing to be a party to the Class 387 Lease beyond 1 April 2019 (or such later date to which the Franchise Agreement is extended pursuant to paragraph 2 of Schedule 18 (Additional Reporting Periods)); and
- (c) the Franchisee shall use all reasonable endeavours to achieve termination of the Class 387 Lease on or as soon as reasonably practicable after the end of 1 April 2019 (or such (or such later date to which the Franchise Agreement is extended pursuant to paragraph 2 of Schedule 18 (Additional Reporting Periods))).

6. **No Double Recovery**

The Franchisee shall not be entitled to recover (by way of Qualifying Change or otherwise) more than once in relation to the same loss suffered by it.

SCHEDULE 9.4⁴⁷⁴**Specified Infrastructure and Rolling Stock Change**

In this Schedule 9.4, except where the context otherwise requires, the following words and expressions shall have the following meanings:

“Assumptions”	means as the context requires any of the Infrastructure Assumptions, Rolling Stock Assumptions and Depot and Stabling Assumptions specified in paragraphs 1 – 3 (inclusive) of the IRAD;
“Base Assumption”	means as the context requires any of the Base Infrastructure Assumptions, Base Rolling Stock Assumptions and Base Depot and Stabling Assumptions specified in paragraphs 4 – 6 (inclusive) of the IRAD;
“Base Depot and Stabling Assumption”	means any of the assumptions in respect of Base Exeter Depot Assumptions, Base EMU stabling assumptions, Base AT300 and Short Form HST depot works and Base IET depot and stabling availability contained in paragraph 6 of the IRAD as amended and restated at the date of the IRAD Change 1 Deed of Amendment or, where any relevant Change occurs pursuant to paragraph 3.9 of this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change), the revised Base Depot and Stabling Assumptions contained in the amended and restated IRAD by reference to which such a Change occurred;
“Base Infrastructure Assumption”	means any of the assumptions in respect of Base Great Western Electrification Programme Assumptions, Base Electrification Traction Current Assumptions, Base Intercity Express Train Assumptions – Gauging, shore supply, ASDO balise and platform works, Base EMU Assumptions – platform extension and balise works, Base Class 16x Structure Gauge Clearance Assumptions, Base DMU Assumptions – platform extension works, Base Bedwyn Turnback Extension Assumptions and Base North Downs Line Assumptions contained in paragraph 4 of the IRAD as amended and restated at the date of the IRAD Change 1 Deed of Amendment or, where any relevant Change occurs pursuant to paragraph 3.9 of this Schedule 9.4 (Specified Infrastructure and

⁴⁷⁴ 15 February 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

“Base Rolling Stock Assumption”	<p>Rolling Stock Change), the revised Base Infrastructure Assumptions contained in the amended and restated IRAD by reference to which such a Change occurred;</p> <p>means any of the assumptions in respect of Base IEP Availability Assumptions, Base Intercity Express Train Capability Assumptions, Base Class 387 Availability and Capability Assumptions, Base 2+4 HST Availability Assumptions and Base Class 143 DMU Assumptions contained in paragraph 5 of the IRAD as amended and restated at the date of the IRAD Change 1 Deed of Amendment or, where any relevant Change occurs pursuant to paragraph 3.9 of this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change), the revised Base Rolling Stock Assumptions contained in the amended and restated IRAD by reference to which such a Change occurred;</p>
“Depot and Stabling Assumption”	<p>means any of the assumptions in respect of Exeter Depot Assumptions, EMU stabling assumptions, AT300 and Short Form HST depot works and IET depot and stabling availability contained in paragraph 3 of the IRAD as amended and restated at the date of the IRAD Change 1 Deed of Amendment or, where any relevant Change occurs pursuant to paragraph 3.9 of this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change), the revised Depot and Stabling Assumptions contained in the amended and restated IRAD by reference to which such a Change occurred;</p>
“Original Base Class 16x Route Clearance Assumptions”	<p>means the Base Class 16x Route Clearance Assumptions contained in paragraph 2.1 of the Original IRAD as it existed at the date of the Franchise Agreement or, where any relevant Change occurs pursuant to paragraph 3.9 of this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change), the revised Base Class 16x Route Clearance Assumptions contained in the amended and restated IRAD by reference to which such a Change occurred;</p>

“Original Base Class 387 Assumptions”

means the Base Class 387 Assumptions contained in paragraph 2.2 of the Original IRAD as it existed at the date of the Franchise Agreement or, where any relevant Change occurs pursuant to paragraph 3.9 of this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change), the revised Base Class 387 Assumptions contained in the amended and restated IRAD by reference to which such a Change occurred;

“Original Base Electrification Traction Current Assumptions”

means the Base Electrification Traction Current Assumptions contained in paragraph 2.5 of the Original IRAD as it existed at the date of the Franchise Agreement or, where any relevant Change occurs pursuant to paragraph 3.9 of this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change), the revised Base Electrification Traction Current Assumptions contained in the amended and restated IRAD by reference to which such a Change occurred;

“Original Base Exeter Depot Assumptions”

means the Base Exeter Depot Assumptions contained in paragraph 2.6 of the Original IRAD as it existed at the date of the Franchise Agreement or, where any relevant Change occurs pursuant to paragraph 3.9 of this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change), the revised Base Exeter Depot Assumptions contained in the amended and restated IRAD by reference to which such a Change occurred;

“Original Base Great Western Electrification Programme Assumptions”

means the Base Great Western Electrification Programme Assumption contained in paragraph 2.3 of the Original IRAD as it existed at the date of the Franchise Agreement or, where any relevant Change occurs pursuant to paragraph 3.9 of this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change), the revised Base Great Western Electrification Programme Assumptions contained in the amended and restated IRAD by reference to which such a Change occurred;

“Original Base IEP Availability Assumptions”

means the Base IEP Availability Assumptions contained in paragraph 2.4 of the Original IRAD as it existed at the date of the Franchise Agreement or, where any relevant Change occurs pursuant to paragraph 3.9 of this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change), the revised Base IEP Availability

	Assumptions contained in the amended and restated IRAD by reference to which such a Change occurred;
“Original Class 16x Route Clearance Assumptions”	means the assumptions set out in paragraph 1.1 of the Original IRAD in relation to the dates that gauge clearance works are required to enable Class 16x units to be used on specified Routes in the west of England;
“Original Class 387 Assumptions”	means the assumptions set out in paragraph 1.2 of the Original IRAD in relation to the dates on which Class 387 electric multiple units within the Class 387 Cascade Fleet are to be made available by the lessor to become part of the Train Fleet;
“Original Electrification Traction Current Assumptions”	means the assumptions set out in paragraph 1.5 of the Original IRAD in relation to the absence of speed restrictions and line capacity reductions consequent upon insufficiency of electric traction current from overhead line equipment installed on each Electrification Route pursuant to the Great Western Electrification Programme;
“Original Exeter Depot Assumptions”	means the assumptions set out in paragraph 1.6 of the Original IRAD in relation to the redevelopment of Exeter Depot;
“Original Great Western Electrification Programme Assumptions”	means the assumptions set out in paragraph 1.3 of the Original IRAD in relation to the planned completion dates for electrification works pursuant to the Great Western Electrification Programme on each of the Electrification Routes;
“Original IEP Availability Assumptions”	means the assumptions set out in paragraph 1.4 of the Original IRAD in relation to the dates that Qualified Acceptance or Final Acceptance will be achieved by the TSP in relation to specified numbers of Bi Mode Sets and Electric Sets;
“Infrastructure Assumption”	means any of the assumptions in respect of Great Western Electrification Programme Assumptions, Electrification Traction Current Assumptions, Intercity Express Train Assumptions – Gauging, shore supply, ASDO balise and platform works, EMU Assumptions – platform extension and balise works, Class 16x Structure Gauge Clearance Assumptions, DMU Assumptions – platform extension works, Bedwyn Turnback Extension Assumptions and North Downs Line Assumptions contained

	<p>in paragraph 1 of the IRAD as amended and restated at the date of the IRAD Change 1 Deed of Amendment or, where any relevant Change occurs pursuant to paragraph 3.9 of this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change), the revised Infrastructure Assumptions contained in the amended and restated IRAD by reference to which such a Change occurred;</p>
<p>“Infrastructure and Rolling Stock Action Programme”</p>	<p>has the meaning given to it in paragraph 3.4(b) of this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change);</p>
<p>“Infrastructure and Rolling Stock Review Date”</p>	<p>means the date falling 5 Weekdays prior to each Franchise Review Meeting together with any additional interim dates as may be agreed between the parties;</p>
<p>“IRAD”</p>	<p>means the document in agreed terms marked “IRAD” as it may subsequently be amended or restated in accordance with paragraphs 3.4(a) or 3.5 of this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change), including by the 2018 IRAD. Each amendment and restatement of the document shall be updated as necessary to state:</p> <ul style="list-style-type: none"> (d) the then applicable Assumptions; and (e) the then applicable Base Assumptions; and
<p>“IRAD Review”</p>	<p>has the meaning given to it in paragraph 3.1 of this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change).</p>
<p>“Original IRAD”</p>	<p>means the IRAD as originally established at the date of the Franchise Agreement before any amendment and restatement under this Schedule 9.4;</p>
<p>“Rolling Stock Assumption”</p>	<p>means any of the IEP Availability Assumptions, Intercity Express Train Capability Assumptions, Class 387 Availability and Capability Assumptions, 2+4 HST Availability Assumptions and Class 143 DMU Assumptions contained in paragraph 2 of the IRAD as amended and restated at the date of the IRAD Change 1 Deed of Amendment or, where any relevant Change occurs pursuant to paragraph 3.9 of this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change), the revised Rolling Stock Assumptions</p>

contained in the amended and restated IRAD by reference to which such a Change occurred;

1 ⁴⁷⁵Background and commercial principles

The Secretary of State and the Franchisee acknowledge and agree that:

- 1.1 the Original Base Class 16x Route Clearance Assumptions, Original Base Class 387 Assumptions, Original Base Electrification Traction Current Assumptions, Original Base Great Western Electrification Programme Assumptions, Original Base IEP Availability Assumptions and Original Base Exeter Depot Assumptions as at the date of this Franchise Agreement are aligned with the wider rail industry planning assumptions at such date in relation to the delivery of Network Rail infrastructure outputs in CP5 and their integration with train operator activities, this being the most up-to-date position reasonably capable of being reflected in such assumptions at such date;
- 1.2 one or more of the Original Class 16x Route Clearance Assumptions, Original Class 387 Assumptions, Original Electrification Traction Current Assumptions, Original Great Western Electrification Programme Assumptions, Original IEP Availability Assumptions and Original Exeter Depot Assumptions may cease to be correct in circumstances which involve complex and interrelated infrastructure and rolling stock change, the consequences of which may require mitigating action to be taken during the Franchise Term;
- 1.3 one of the reasons that the Franchisee has been appointed by the Secretary of State to operate the Franchise Services is that it is a skilled and experienced train operator with the ability to manage these circumstances in a way that is, so far as is reasonably practicable, consistent with the efficient and effective delivery of railway infrastructure and rolling stock projects in accordance with planned timescales and budgets;
- 1.4 there are risk areas that are within the control of the Franchisee (and in accordance with the provisions of Regulation 1370/2007 this has been taken into account in agreeing the amount of Franchise Payments) but it is also the case that successful delivery of infrastructure and rolling stock projects is materially dependent on third parties including Network Rail and the TSP and other external factors which the Franchisee has limited or no ability to control;
- 1.5 accordingly in this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change) and the relevant provisions of Schedule 6.2 (Great Western Franchise Specific Provisions) the parties have sought to allocate risk between them and establish a process for mitigating risks that materialise or are likely to materialise on a reasonable and good faith basis in accordance with the following general principles:
 - (a) regular and effective reporting by the Franchisee;

⁴⁷⁵ 15 February 2019 (Date of DOA) – Contract change agreed by the Secretary of State and Franchisee.

- (b) regular and effective discussion and engagement between the parties leading to appropriate decision making;
- (c) effective risk management and the taking of appropriate risk mitigation actions on a timely basis;
- (d) review of, and where appropriate adjustment to, agreed risk mitigation actions in response to developing circumstances; and
- (e) the use of rail industry regulated compensation mechanisms under Access Agreements and the Network Code in appropriate circumstances and the provision of appropriate Change adjustments under the Franchise Agreement whilst at the same time avoiding any multiple compensation to the Franchisee in relation to the same losses or excessive compensation including where applicable by way of retrospective adjustment through Franchise Payments or otherwise where it subsequently becomes apparent that the Franchisee has received multiple compensation in relation to the same loss or excessive compensation.

2 ⁴⁷⁶Change to Base Assumptions

- 2.1 Subject to paragraph 2.2 below it shall be a Change if and whenever any of the Base Assumptions is incorrect.
- 2.2 If there is a Change pursuant to paragraph 2.1 and the Secretary of State reasonably determines that this is caused by any unreasonable action or inaction of the Franchisee or the Franchisee not acting in accordance with its obligations pursuant to clause 5.1 of the Franchise Agreement the Secretary of State shall have the right to require that:
- (a) where the Franchisee is wholly and exclusively responsible for such circumstances arising there shall be no Change; or
 - (b) where the Franchisee is partly responsible for such circumstances arising if there is a Qualifying Change then the impacts of relevant actions or inactions of the Franchisee, or its not acting in accordance with its obligations pursuant to clause 5.1 of the Franchise Agreement, shall not be taken into account in such Qualifying Change to the extent that to do so would be to compensate the Franchisee in relation to adverse impacts for which it was responsible.
- 2.3 Where there is a Change pursuant to paragraph 2.1 there will be a further Change, when the circumstances giving rise to the Change are resolved such that the relevant output that is the subject of the Change is then fully delivered.
- 2.4 The Franchisee and the Secretary of State acknowledge the potential interrelationships between the Assumptions, including that:
- (a) the use of Class 387 Units and Electric Sets depends upon completion of relevant sections of the Great Western Electrification Programme and that the performance of Bi Mode Sets in delivering

⁴⁷⁶ 15 February 2019 (Date of DOA) – Contract change agreed by the Secretary of State and Franchisee.

the Passenger Services will be adversely affected by non-completion of relevant sections of the Great Western Electrification Programme;

- (b) the proposed cascade of Class 16x Units to operate Passenger Services in the west of England is dependent upon the completion of route clearance works, the initiation of the cascade by the delivery of relevant Electric Rolling Stock, the completion of relevant parts of the Great Western Electrification Programme required to enable it to be operated and the availability of required depot and stabling facilities at Exeter Depot;**
- (c) the ability of the Franchisee to utilise the outputs of the Great Western Electrification Programme to deliver the Passenger Services in accordance with the Service Level Commitment depends upon:**
 - (i) Class 387 Units having been made available for it to lease and the TSP being able to make an appropriate number of Sets available to it from relevant dates;**
 - (ii) the overhead line equipment installed on each Electrification Route pursuant to the Great Western Electrification Programme supplying sufficient levels of electric traction current to allow the Franchisee to operate the relevant Electric Rolling Stock at the applicable permissible line speeds without any limitation in relation to line capacity in both cases in consequence of an insufficiency of electric traction current from overhead line equipment.**

2.5 Accordingly it is agreed by the parties that where there is one or more Qualifying Changes pursuant to paragraph 2.1, 2.3 and/or 3.9 and there is an interrelationship between that Qualifying Change and any other such Qualifying Change then:

- (a) Model Changes and Revised Inputs shall be established and applied to the Financial Model, Runs of the Financial Model shall be performed and any Estimated Revisions shall be made in an appropriately co-ordinated way to take proper account of such interrelationships; and**
- (b) the Franchisee shall not be entitled to recover more than once in relation to the same loss suffered by it.**

2.6 In assessing whether any matters under this Schedule 9.4 give rise to a Change which is a Qualifying Change it shall be permissible in relation to any Base Assumption to take into account all actions in an Infrastructure and Rolling Stock Action Programme relating to such Base Assumption, triggers of such Base Assumption and amendments to such Base Assumption.

2.7 Where pursuant to paragraph 2.1 of this Schedule 9.4 there is a Change which is a Qualifying Change and the Franchisee is acting in accordance with its obligations to mitigate the impact of relevant circumstances the Secretary of State will act reasonably in considering any request for a derogation from the requirements of this Franchise Agreement arising out of such circumstances or any request for consent to take any reasonable mitigating action.

2.8 The parties acknowledge the applicability of paragraph 19.4 of Schedule 6.2 (Great Western Franchise Specific Provisions) where there is a Change pursuant to paragraph 2.1 in relation to the Base Exeter Depot Assumptions which are part of the Base Depot and Stabling Assumptions.

3 ⁴⁷⁷Infrastructure and Rolling Stock Assumptions Reviews

3.1 Not less than three nor more than six weeks prior to each Infrastructure and Rolling Stock Review Date (and otherwise in accordance with such timescales as the parties may agree in relation to any interim Infrastructure and Rolling Stock Review Date) the Franchisee shall deliver to the Secretary of State a written review of each of the Assumptions in paragraph 1 to 3 (inclusive) of the IRAD including its latest forecast for achievement of the Assumptions based on the reasonable knowledge of the Franchisee with appropriate supporting information (the "IRAD Review"). The IRAD Review shall identify in relation to each Assumption in paragraphs 1 to 3 (inclusive) of the IRAD:

- (a) whether the Franchisee remains reasonably confident that the Assumption will be met; and**
- (b) if the Franchisee does not remain reasonably confident that the Assumption will be met:**
 - (i) whether there are any steps which may be taken by the Franchisee to increase to a reasonable level its confidence that the Assumption will be met, with an assessment of the relevant implications of such steps;**
 - (ii) where it is reasonably able to provide the same, its forecast for when the Assumption is likely to be met, identifying any material concerns or conditions and any changes from any forecast previously provided;**
 - (iii) what a revised Assumption should reasonably be in order for the Franchisee to be reasonably confident that it will be met, with reasons and supporting information (to the extent reasonably available to the Franchisee) including (where an amendment to the relevant existing Base Assumption is proposed) an estimate by the Franchisee of the nature and extent of any Change which would be involved in amending and restating the relevant Base Assumption to reflect such revised Assumption; and**
 - (iv) how likely it is that any such forecast or revised Assumption will require further revision in future and what the probable parameters of such further revision are expected to be with reasons and supporting information (taking into account the information reasonably available to the Franchisee at the time),**

it being acknowledged that the Franchisee shall be permitted to weight its review towards Assumptions which are falling due first or in respect of which there are material concerns or which in its reasonable opinion require attention or which the Secretary of State

⁴⁷⁷ 15 February 2019 (Date of DOA) – Contract change agreed by the Secretary of State and Franchisee.

otherwise requests are given priority attention in the relevant IRAD Review, as the case may be.

The IRAD Review shall also include:

- (x) a report on progress against any Infrastructure and Rolling Stock Action Programme already established under paragraph 3.4 and not then completed;
- (y) identification (taking into account the information reasonably available to the Franchisee at the time) of any changes or anticipated changes to the forecasts or assumptions on which actions in the Infrastructure and Rolling Stock Action Programme have been based or other developments which it considers should be taken into account; and
- (z) any proposals for an Infrastructure and Rolling Stock Action Programme to be established or (where one already exists) revised, together with an estimate by the Franchisee of the nature and extent of any Change which would be involved in amending and restating the Infrastructure and Rolling Stock Action Programme.

3.2 Where in the context of carrying out any IRAD Review from time to time the Franchisee believes that any matter relevant to an Assumption will be delayed beyond the end of the Franchise Term (as it may be extended pursuant to paragraph 2 of Schedule 18 (Additional Reporting Periods)) the Franchisee shall provide its reasonable and informed view (based on the information reasonably available to it) of the likely implications of this for the Successor Operator and the Secretary of State. The Franchisee shall actively engage with the TSP, Network Rail, lessors and lessees of rolling stock planned to be cascaded to the Franchisee and other relevant parties for the purpose of ensuring each IRAD Review is as accurate as reasonably practicable under the circumstances.

3.3 The Franchisee shall:

- (a) provide such additional information as the Secretary of State shall reasonably request in relation to the contents of each IRAD Review; and
- (b) meet with the Secretary of State to discuss the contents of each IRAD Review.

3.4 The Secretary of State and the Franchisee shall use reasonable endeavours to agree within two months of an Infrastructure and Rolling Stock Review Date (or by such other date as the parties may agree):

- (a) an amended and restated IRAD including updating, as appropriate, the Assumptions by reference to then prevailing circumstances and taking proper account of the interrelationships between them;
- (b) as appropriate, a programme of actions ("Infrastructure and Rolling Stock Action Programme") intended to mitigate the impacts of any forecasts for or material changes to any of the Assumptions taking into account the interrelationships between them and their interrelationship with other Infrastructure Projects (including the

HS2 Project), the importance attached to ensuring that relevant outputs are delivered in accordance with relevant programmes and the overriding duties of the Secretary of State in relation to the proper expenditure of public monies. The Infrastructure and Rolling Stock Action Programme shall record any material forecasts or assumptions on which proposed mitigations are based in order to help identify aspects of the mitigation which may require review if those forecasts or assumptions prove incorrect or are otherwise subject to change.

- 3.5** Following each Infrastructure and Rolling Stock Review Date after the first, any then existing Infrastructure and Rolling Stock Action Programme shall be amended and restated to take account of any latest or updated forecasts, changes to Assumptions and the latest programme with effect from the date that a further Infrastructure and Rolling Stock Action Programme is agreed or reasonably determined by the Secretary of State.
- 3.6** In the event that the Secretary of State and the Franchisee fail to agree an amended or restated IRAD or Infrastructure and Rolling Stock Action Programme the Secretary of State shall have the right to reasonably determine them (or to determine that no amendments shall be made, or no Infrastructure and Rolling Stock Action Programme shall be put in place, as the case may be). Where the Secretary of State declines to include within an Infrastructure and Rolling Stock Action Programme any action proposed by the Franchisee, the failure of the Franchisee to take that action shall not be regarded as a failure on the part of the Franchisee to act reasonably to mitigate any Qualifying Change pursuant to paragraph 2.1.
- 3.7** It shall be a term of the Franchise Agreement that the Franchisee shall use all reasonable endeavours to comply with any Infrastructure and Rolling Stock Action Programme.
- 3.8** In connection with the establishment of any amended and restated IRAD and/or any Infrastructure and Rolling Stock Action Programme the Franchisee and the Secretary of State acting reasonably shall consider and to the extent possible reach agreement upon the likelihood that any Change will occur pursuant to paragraph 2.1.
- 3.9** Following consideration by him pursuant to paragraph 3.8 and discussion with the Franchisee and without prejudice to the occurrence of a Change at the latest when the relevant facts are not in accordance with the relevant Base Assumption, the Secretary of State shall have the right (but not the obligation) to require that a Change shall have occurred in consequence of the relevant Base Assumption being different to the corresponding Assumption in the relevant amended and restated IRAD. In such circumstances:
- (i)** the Secretary of State and the Franchisee shall agree and (in the absence of agreement) the Secretary of State shall reasonably determine an adjusted Base Assumption to be included in the amended and restated IRAD;
 - (ii)** the difference between the relevant Base Assumption as it existed before the amended and restated IRAD and the relevant adjusted Base Assumption included in the amended and restated IRAD shall be a Change;

- (iii) the Change provisions of paragraph 2.1 shall remain in force on the basis that (subject to any further application of this paragraph 3.9) any Change pursuant to paragraph 2.1 shall be assessed when the relevant actual position is known by reference to the adjusted Base Assumptions in the amended and restated IRAD; and
- (iv) this process may be repeated on subsequent IRAD Reviews.

3.10 Where the Franchisee is required to implement an Infrastructure and Rolling Stock Action Programme or any revised Infrastructure and Rolling Stock Action Programme and the relevant impacts of such implementation are not addressed in any Change pursuant to paragraphs 2.1 and 3.9 or otherwise then the requirement for the Franchisee to implement an Infrastructure and Rolling Stock Action Programme (or the revision to that programme) shall be a Change and the provisions of paragraph 9 "Estimated Revisions" of Schedule 9.1 (Financial and Other Consequences of Change) shall apply where appropriate. If the implementation of an Infrastructure and Rolling Stock Action Programme gives rise to any other Change (for example in consequence of a change to the Service Level Commitment) leading to there being more than one Qualifying Change it is agreed that Model Changes and Revised Inputs shall be established and applied to the Financial Model and Runs of the Financial Model shall be performed in a co-ordinated way to take proper account of relevant interdependencies.

3.11 Where the Secretary of State reasonably determines that the requirement to implement an Infrastructure and Rolling Stock Action Programme is caused by any unreasonable action or inaction of the Franchisee or the Franchisee not acting in accordance with its obligations pursuant to clause 5.1 of the Franchise Agreement the Secretary of State shall have the right to require that:

- (a) where the Franchisee is wholly and exclusively responsible for such circumstances arising there is no Change; or
- (b) where the Franchisee is partly responsible for such circumstances arising, then if there is any Qualifying Change the impacts of relevant actions or inactions of the Franchisee, or its not acting in accordance with its obligations pursuant to clause 5.1 of the Franchise Agreement, shall not be taken into account in such Qualifying Change to the extent that to do so would be to compensate the Franchisee in relation to adverse impacts that it was responsible for.

3.12 The Franchisee and the Secretary of State acknowledge and agree that any revised Assumptions in an amended and restated IRAD may include dates that only fall within the Franchise Term if the Secretary of State exercises his rights pursuant to paragraph 2 of Schedule 18 (Additional Reporting Periods) to extend the Franchise Term by up to thirteen Reporting Periods (so may be on or after 1st April 2019 but not after the latest date to which the Franchise Term can be extended to). It is acknowledged that this will not lead to the Franchisee acquiring any liability arising after the end of the Franchise Term.

3.13 It is acknowledged that circumstances may arise on short notice with a short term impact between Infrastructure and Rolling Stock Review Dates which increase the likelihood of a Change occurring pursuant to paragraph

2.1 or which are otherwise related to the Assumptions and may lead to adverse impacts on the delivery of the Franchise Services. In such cases the parties will expeditiously discuss such circumstances and possible mitigations. The Secretary of State and the Franchisee may following such discussions agree mitigating actions and, where appropriate, related financial adjustments. Proper account shall be taken of any such mitigating actions and related financial adjustments in subsequent Infrastructure and Rolling Stock Action Programmes and Changes pursuant to paragraphs 2.1, 3.9 or 3.10.

- 4** ⁴⁷⁸Use of rail industry compensation mechanisms and rights of the Secretary of State in relation to multiple or excessive compensation in relation to relevant losses
- 4.1** The Secretary of State and the Franchisee acknowledge that railway industry procedures including Station Change and Network Change are designed to compensate train operators fairly in relation to rail infrastructure disruption and changes and agree that the Franchisee should pursue any relevant rights to obtain compensation in a reasonable way so that, where relevant, any Qualifying Change pursuant to this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change) shall assume that the Franchisee has been or will be paid such compensation.
- 4.2** The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of circumstances which mean that it has been, may have been or is likely to be compensated more than once or excessively in relation to the same adverse financial impact in connection with any matter pertaining to the Assumptions. For these purposes a compensation claim properly made under railway industry procedures including Station Change and Network Change shall not be regarded as excessive but without prejudice to the rights of the Secretary of State if the Franchisee has in consequence of such a claim received multiple compensation with regard to the same loss. Such notification shall identify the relevant circumstances and quantify the potential excess compensation. If requested by the Secretary of State the Franchisee shall provide such further information in relation to relevant circumstances as the Secretary of State may reasonably require.
- 4.3** Where the Secretary of State believes that the Franchisee has been or may be compensated more than once or excessively in relation to the same adverse financial impact in respect of any matter pertaining to the Assumptions the Secretary of State shall, except where the circumstances have been notified to the Secretary of State by the Franchisee pursuant to paragraph 4.1 above, identify the relevant circumstances and quantify the potential excess compensation. Where the circumstances have been notified to the Secretary of State by the Franchisee pursuant to paragraph 4.1 above, the Secretary of State shall confirm that he agrees with the Franchisee's view of the circumstances and the amount of the potential excess compensation or notify the Franchisee of any different view that he may have with reasons.
- 4.4** The Franchisee shall be entitled to make representations to the Secretary of State in relation to any Secretary of State notification pursuant to paragraph 4.3 above. The parties shall discuss any representations made in good faith with the intention of agreeing whether or not there has been any excess compensation of the Franchisee and, if so, how much the relevant

⁴⁷⁸ 15 February 2019 (Date of DOA) – Contract change agreed by the Secretary of State and Franchisee.

amount is. In the event that agreement cannot be reached within twenty Weekdays the Secretary of State shall have the right to reasonably determine whether there has been excess compensation and, if so, the amount of such excess compensation.

- 4.5 Where the amount of any excess compensation of the Franchisee is agreed or reasonably determined there shall be an adjustment to the Franchise Payment due in relation to the Reporting Period after that in which relevant agreement was reached or the Secretary of State made his determination or, where agreement or determination occurs after the end of the Franchise Period, by way of a direct payment from the Franchisee to the Secretary of State. Such adjustment shall be of an amount equal to the amount of excess compensation received by the Franchisee as agreed or reasonably determined by the Secretary of State and not otherwise repaid by the Franchisee.

5 ⁴⁷⁹IEP terms

- 5.1 In this Schedule 9.4 (Specified Infrastructure and Rolling Stock Change) and the Infrastructure and Rolling Stock Assumptions Document "Final Acceptance" and "TSP" shall have the same meaning as defined in Schedule 6.3 (The IEP Provisions) and "Bi-Mode Sets", "Electric Sets" and "Qualified Acceptance" shall have the same meaning as defined under the MARA (as such term is defined in paragraph 2.1 of Schedule 6.3 (The IEP Provisions)).

⁴⁷⁹ 15 February 2019 (Date of DOA) – Contract change agreed by the Secretary of State and Franchisee.

SCHEDULE 9.5**Variations and Incentivising Beneficial Changes****1 Variations and Incentivising Beneficial Changes**

- 1.1 The terms of the Franchise Agreement may be varied as follows but not otherwise:
- (a) by the Secretary of State as contemplated (where relevant) in the Request for Proposal in relation to:
 - (i) any aspect of the Franchise Services; and/or
 - (ii) any provision of the Franchise Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the Franchisee referring to this paragraph 1.1(a) and setting out the variation to the terms of the Franchise Agreement; and
 - (b) in relation to any other provision of the Franchise Agreement, by agreement in writing between the parties to that effect,

(each a "**Variation**").
- 1.2 Without prejudice to the Secretary of State's rights under paragraph 1.1(a), the terms of each of:
- (a) **clause 4** (Term) of this Franchise Agreement;
 - (b) Schedules 8 (Payments), 9 (Changes and Variations), 10 (Remedies, Termination and Expiry), 12 (Financial Obligations and Covenants), 14 (Preservation of Assets), 18 (Additional Reporting Periods) and Schedule 19 (Other Provisions); and
 - (c) the definitions set out at **clause 2** (Definitions) of this Franchise Agreement insofar as such affect the respective rights and obligations of the Secretary of State and the Franchisee pursuant to the provisions referred to at 1.2(a) and 1.2(b) above,

shall not be varied at any time other than in accordance with the terms of the Franchise Agreement or with the agreement of the parties.
- 1.3 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.
- 1.4 The Secretary of State may:
- (a) issue, revise and withdraw from time to time procedures that he requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and

- (b) require the Franchisee to provide any information that the Secretary of State reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).
- 1.5 Procedures issued pursuant to paragraph 1.4 may provide for indicative iterations of Runs of the Financial Model in relation to one or more Changes that the Secretary of State is considering and may also provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the Financial Model.
- 1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the parties in accordance with their terms.
- 1.7 The Franchisee may notify the Secretary of State of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:
- (a) the timescale for doing so;
 - (b) the effect (if any) on the timing of the performance of its other obligations under the Franchise Agreement;
 - (c) the impact of effecting the proposed Variation on the provision of the Franchise Services and the Franchisee's proposals as to how to minimise such impact; and
 - (d) the financial consequences of implementing the Variation proposed by the Franchisee in terms of the Revised Inputs that the Franchisee considers the Variation would require.
- 1.8 The Secretary of State shall be under no obligation to consider a Variation proposed by the Franchisee but if he wishes to do so, he shall do so pursuant to paragraph 1.1 of this Schedule 9.5.
- 1.9 Where the Franchisee proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of the Franchisee through costs saving measures (a "**Protected Proposal**"), the Secretary of State may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of his own without complying with the provisions of paragraph 5 of Appendix 2 (Agreement or Determination of Revised Inputs) to Schedule 9.1 (Financial and Other Consequences of Change).
- 1.10
- (a) The Franchisee and the Secretary of State acknowledge that the Franchisee may during the Franchise Term identify actions that could be taken by the Franchisee to achieve savings and improved financial performance and that such actions may if implemented give rise to a Change under the terms of this Franchise Agreement which, if it is a Qualifying Change, will give a financial benefit to the Secretary of State. It is further acknowledged that it is appropriate for the Franchisee to seek to identify such actions for the purposes of improving the cost effective delivery of railway passenger services.
 - (b) To incentivise the Franchisee to seek to identify such actions it is agreed that the Franchisee may approach the Secretary of State with a proposal to take an action that would constitute a Change on the basis that if such a Change occurred and was a Qualifying Change in agreeing or determining Revised Inputs the parties or the Secretary of State would effect such change (if any)

to the amount attributable to profit as they agree or the Secretary of State reasonably determines:

- (i) fairly rewards the Franchisee for proposing the Change; and
 - (ii) reasonably incentivises the Franchisee to propose further Changes that achieve savings and/or improved financial performance by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the relevant Change.
- (c) The Secretary of State shall have an unfettered discretion as to whether or not to agree such a proposal but if he does so agree and a Qualifying Change in consequence occurs then in agreeing or determining Revised Inputs the provisions referred to in sub paragraph 1.10(b) above shall apply.

2 Capital Expenditure

Capital Expenditure Threshold

2.1 The Franchisee shall notify the Secretary of State promptly if it reasonably expects that a Change to which paragraph 1 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of one per cent. of its annual Turnover as disclosed by its latest available Annual Audited Accounts and, when so notified, the Secretary of State shall either:

- (a) withdraw the Change;
- (b) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (c) direct the Franchisee to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in the Franchisee failing to comply with the financial covenants contained in Schedule 12 (Financial Obligations and Covenants).

Franchisee to Seek Finance

2.2 If the Secretary of State elects to require the Franchisee to use all reasonable endeavours as described in paragraph 2.1(c) then the Franchisee shall:

- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to the Franchisee and the Parent;
- (b) if it is unable to raise funding, provide the Secretary of State with all information the Secretary of State may reasonably require in relation to the efforts made by the Franchisee and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), the Franchisee shall provide to the Secretary of State letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if the Secretary of State so requires, arrange and attend meetings with them for the Secretary of State to discuss those reasons; and

- (d) if funding is not available, or is not available on terms that the Secretary of State considers to be commercial terms or at rates which are consistent with market conditions at that time the Secretary of State may:
 - (i) withdraw the Change; or
 - (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

Treatment of Borrowings in Revised Inputs

- 2.3 In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 2, the Franchisee shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

Meaning of Capital Expenditure

- 2.4 The expression **Capital Expenditure** when used in this Schedule 9.5 refers to the nature of the expenditure incurred by the Franchisee and, accordingly, does not include expenditure incurred under operating leases.

Schedule 9.6⁴⁸⁰**Franchising of the Heathrow Express Services****1. SECRETARY OF STATE INSTRUCTION**

1.1 The Secretary of State may, subject to paragraph 1.3, at any time instruct that the Franchisee operates the HEx Services as part of the Passenger Services (the " HEx Services Change"). The Secretary of State's request will include, as a minimum:

- (a) the date from which the HEx Services are to run;**
- (b) the amendments required to the Service Level Commitment;**
- (c) changes to the Fleet Tables to make provision for any additional rolling stock required to accommodate a Change to the Service Level Commitment,**

and may include any other provision that the Secretary of State may reasonably require for the purposes of effecting the HEx Services Change.

1.2 Subject to paragraph 2.6 below, the HEx Services Change shall be a Qualifying Change.

1.3 The Franchisee shall not be required to start operating the HEx Services unless:

- (a) the Railways (Heathrow Express) (Exemptions) Order 1994 has been repealed; and**
- (b) the HEx Services Agreement has been terminated.**

1.4 The Parties agree that the HEx Services Change shall be processed in accordance with the principles set out in paragraph 2 of Schedule 9.6.

2. PROCESS FOR AGREEING THE HEATHROW EXPRESS SERVICES QUALIFYING CHANGE

2.1 The provisions of Schedule 9 (Changes and Variations) of this Agreement shall apply to the Heathrow Change, except to the extent amended by the principles set out in this paragraph 2.

2.2 The Parties shall for a period of 12 weeks from the date of the Secretary of State's instruction in paragraph 1.1 (the "Initial Period") seek to agree whether or not the HEx Services Change should be made on the basis that the Franchisee will assume the revenue risk associated with the HEx Service without any form of revenue protection from the Secretary of State (the "Revenue Risk Option"). The Parties agree to negotiate in good faith for the Initial Period and to devote reasonable, appropriately senior resources to such negotiation.

2.3 By no later than the end of the Initial Period either party may notify the other that it is no longer prepared to continue negotiation on the Revenue Risk Option in which case paragraph 2.4 shall apply.

⁴⁸⁰ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 2.4 **Without prejudice to paragraph 2.5, the parties will seek to process the HEx Services Change on the following principles:**
- (a) **The HEx Services will, subject to the principles below, become fully integrated Franchise Services and the rights and obligations of the Secretary of State and the Franchisee under this Agreement shall apply to the HEx Services on the same basis as they apply to any other Franchise Services;**
 - (b) **To the extent the HEx Services Change includes services or elements of services which were previously performed under the HEx Services Agreement, the Revised Input and/or Model Changes related to those services shall be the cost charged or to be charged for future Reporting Periods under the HEx Services Agreement in relation to those services or elements of services, as appropriate, adjusted as may be applicable to the extent that there are fewer services.**
 - (c) **To the extent the HEx Services Change includes services or elements of services which were not previously performed under the HEx Services Agreement (the "New Services"), the parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs and/or Model Change related to those services or elements of services.**
- 2.5 **If the parties cease to negotiate the Revenue Risk Option pursuant to paragraph 2.3, the parties will seek to process the HEx Services Change on the following principles (in addition to the principles set out in paragraph 2.4)**
- (a) **The Parties will agree or the Secretary of State will reasonably determine new committed obligations to ensure the Franchise is obliged to perform services for which it is receiving remuneration pursuant to the HEx Services Change.**
 - (b) **The Parties will agree or the Secretary of State will determine new bespoke Annual Benchmarks for the HEx Services which will operate independently of the Annual Benchmarks for the rest of the Franchise Services.**
 - (c) **The HEx Services Fare Revenue shall be payable directly to the Secretary of State as part of the Franchise Payment and consequential amendments to Schedule 8.1 (Franchise Payments) will be made to effect this.**
 - (d) **The Franchisee shall control the price of Fares related to the HEx Services. The increase in any type of Fare related to the HEx Services may not exceed the Retail Prices Index + k per cent per annum in respect of each Fare Year, unless previously agreed with the Secretary of State in writing.**
 - (e) **The Franchisee will be entitled to a profit margin in respect of the HEx Services at the percentage rate for the Management Fee applying under the HEx Services Agreement which shall be applied to the costs base for the HEx Services with effect from the HEx Services Change taking effect.**

- 2.6 **The Revised Inputs for the HEx Services Change will take into account the position on revenue risk as agreed between the parties or determined by the Secretary of State pursuant to paragraphs 2.1 – 2.4 above.**

SCHEDULE 10**Remedies, Termination and Expiry**

Schedule 10.1: Remedial Plans and Remedial Agreements

Schedule 10.2: Termination and Expiry

Schedule 10.3: Events of Default and Termination Events

Schedule 10.4: Force Majeure

Schedule 10.5: Liability

SCHEDULE 10.1**Remedial Plans and Remedial Agreements****1. Remedies for Contraventions of the Franchise Agreement**

- 1.1 If the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene any term of the Franchise Agreement he may serve a notice on the Franchisee requiring it to propose such steps as the Franchisee considers appropriate for the purpose of securing or facilitating compliance with the term in question (a "**Remedial Plan Notice**").

Contents of Remedial Plan Notices

- 1.2 Each Remedial Plan Notice shall specify the following:
- (a) the term or terms of the Franchise Agreement that the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene (each a "**Relevant Term**"); and
 - (b) the time period within which the Secretary of State requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with any Relevant Term (a "**Remedial Plan**").

Contents of Remedial Plans

- 1.3 If the Secretary of State issues a Remedial Plan Notice, the Franchisee shall submit a Remedial Plan to the Secretary of State within the period specified in such Remedial Plan Notice.
- 1.4 Each Remedial Plan shall set out:
- (a) the Relevant Term which has caused a Remedial Plan to be required;
 - (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
 - (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and
 - (d) the time period within which the Franchisee proposes to implement those steps.

Remedial Agreements

- 1.5 If the Secretary of State is satisfied that the matters referred to in paragraph 1.4(c) and 1.4(d) are appropriate (with or without further modification as the parties may agree) he may require the Franchisee to enter into a supplemental agreement (the "**Remedial Agreement**") with the Secretary of State to implement those matters.
- 1.6 It is a term of the Franchise Agreement that the Franchisee (at its own cost) complies with the Remedial Agreement in accordance with its terms.

Effect of Force Majeure Event

- 1.7 Without prejudice to the operation of paragraph 3.2 of Schedule 10.4 (Force Majeure), the following provisions shall apply in relation to Force Majeure Events affecting performance of a Remedial Agreement:
- (a) the Franchisee shall give written notice to the Secretary of State promptly after it becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchisee's ability to comply with a Remedial Agreement within the period specified therein;
 - (b) each notice submitted in accordance with paragraph 1.7(a) shall state the extent or likely extent of the relevant Force Majeure Event and, in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Franchisee considers it likely to occur;
 - (c) the Franchisee shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
 - (d) subject to the Franchisee having complied with its obligations under paragraphs 1.7(a) to 1.7(c) (inclusive) the Franchisee shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with any Remedial Agreement.

Occurrence of a Contravention

- 1.8 Following the occurrence of a contravention of the Franchise Agreement, the Secretary of State may at his option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Franchisee's performance of any relevant obligations until such time as the Franchisee demonstrates, to the Secretary of State's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the Franchise Agreement.
- 1.9 The Franchisee shall co-operate fully with the Secretary of State in relation to the monitoring referred to in paragraph 1.8.
- 1.10 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11 (Agreement Management Provisions).
- 1.11 The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out such monitoring.

SCHEDULE 10.2**Termination and Expiry****1. Termination Notices**

1.1 The Secretary of State may, on and at any time after the occurrence of:

- (a) (subject to paragraphs 1.2 and 1.3) an Event of Default which:
 - (i) is unremedied or continuing; and
 - (ii) the Secretary of State considers to be material; or
- (b) a Termination Event specified in paragraph 3.1(a) of Schedule 10.3 (Events of Default and Termination Events) which is unremedied or continuing; or
- (c) a Termination Event specified in any of paragraphs 3.1(b) to 3.1(d) of Schedule 10.3 (Events of Default and Termination Events),

terminate the Franchise Agreement by serving a Termination Notice on the Franchisee. The Franchise Agreement shall terminate with effect from the date specified in any such Termination Notice.

1.2 The Secretary of State may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the period has expired within which the Franchisee is required to deliver to the Secretary of State the Remedial Plan specified in such Remedial Plan Notice.

1.3 The Secretary of State may not serve a Termination Notice in respect of an Event of Default for which the Franchisee is implementing a Remedial Agreement in accordance with its terms.

2. Consequences of Termination or Expiry

2.1 Upon termination of the Franchise Agreement (whether through default or effluxion of time or otherwise) the obligations of the parties shall cease except for:

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

2.2 Nothing in this paragraph 2 shall prevent the Secretary of State from bringing an action against the Franchisee in connection with the termination of the Franchise Agreement prior to the expiry of the Franchise Term.

SCHEDULE 10.3

Events of Default and Termination Events

1. Provisions Relating to Events of Default

Contravention

- 1.1 The occurrence of an Event of Default shall constitute a contravention of the Franchise Agreement by the Franchisee.

Notification of Event of Default

- 1.2 The Franchisee shall notify the Secretary of State as soon as reasonably practicable on, and in any event within 24 hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Franchisee shall take such action or steps as the Secretary of State may require to remedy any Event of Default or potential Event of Default.

Consequences of Event of Default

- 1.3 On the occurrence of an Event of Default, the provisions of Schedule 10.1 (Remedial Plans and Remedial Agreements) shall apply.

2. Events of Default

Each of the following is an Event of Default:

Insolvency

2.1

- (a) **Administration:** Any step being taken by any person with a view to the appointment of an administrator to the Franchisee or the Parent or any Bond Provider;
- (b) **Insolvency:** Any of the Franchisee or the Parent or Bond Provider stopping or suspending or threatening to stop or suspend payment of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph the words "it is proved to the satisfaction of the court that" in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;
- (c) **Arrangements with Creditors:** The directors of the Franchisee or the Parent or any Bond Provider making any proposal under Section 1 of the Insolvency Act 1986, or any of the Franchisee or the Parent or any Bond Provider proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or, in the reasonable

opinion of the Secretary of State, a material part of (or of a particular type of) its debts;

- (d) **Security Enforceable:** Any expropriation, attachment, sequestration, execution or other enforcement action or other similar process affecting any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent or any Bond Provider, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Franchisee, the Parent or any Bond Provider with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee or the Parent or any Bond Provider ceasing or threatening to cease to carry on all or, in the reasonable opinion of the Secretary of State, a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Secretary of State before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Franchisee under Sections 60 to 62 of the Act; and
- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 2.1,

subject, in the case of any relevant event occurring in relation to a Bond Provider where no such other Event of Default has occurred and is unremedied or continuing at such time, to a period of 20 Weekdays having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

Non-payment

- 2.2 The Franchisee failing to pay to the Secretary of State any amount due under the Franchise Agreement within 28 days of the due date for such payment.

Change of Control

- 2.3 Otherwise than in accordance with a prior consent of the Secretary of State given under paragraph 4 of this Schedule 10.3, a change occurring in the identity of any one person, or two or more persons acting by agreement, who may Control the Franchisee on and from the date of the Franchise Agreement and during the Franchise Term, which shall include a person, or two or more persons acting by agreement, ceasing to Control the Franchisee at any time during the Franchise Term, whether or not any other person Controls the Franchisee at the same time (any such change a "**Change of Control**") and for the purposes of this paragraph 2.3, two or more persons shall be deemed to be acting by agreement in relation to the Franchisee if, assuming the Franchisee was a target company as defined in the Companies Act 2006, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

Revocation of Licence

- 2.4 Revocation of any Licence required to be held by the Franchisee in order to comply with its obligations under the Franchise Agreement.

Safety Certificate and Safety Authorisation

- 2.5 The Safety Certificate and/or Safety Authorisation of the Franchisee being withdrawn or terminated.

Passenger Service Performance

- 2.6 The Franchisee's performance in relation to any Benchmark exceeds (that is, is equal to or worse than) the Default Performance Level for that Benchmark for:
- (a) any three consecutive Reporting Periods;
 - (b) any four Reporting Periods within a period of 13 consecutive Reporting Periods; or
 - (c) any five Reporting Periods within a period of 26 consecutive Reporting Periods.

Remedial Agreements and Enforcement Orders

2.7

- (a) Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is reasonably considered by the Secretary of State to be material.
- (b) Non-compliance by the Franchisee with:
 - (i) a provisional order;
 - (ii) a final order;
 - (iii) a penalty; or
 - (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order,

in each case made by the Secretary of State under the Act.
- (c) Non-compliance by the Franchisee with any enforcement notice issued to it by the Secretary of State pursuant to Section 120 of the Act.

2.8 **Not used.**

Financial Ratios

- 2.9 Breach by the Franchisee of either or both of the financial ratios specified in paragraph 2 of Schedule 12 (Financial Obligations and Covenants).

Breach of Law

2.10

- (a) It is unlawful for the Franchisee to provide all or, in the reasonable opinion of the Secretary of State, a material part of the Passenger Services or to operate all or, in the reasonable opinion of the Secretary of State, a

material number of the Stations or Depots (except to the extent not required so to do under the Franchise Agreement).

- (b) The Franchisee or any of the directors or senior managers of the Franchisee being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Franchise Services.
- (c) The Franchisee being, in the reasonable opinion of the Secretary of State, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the Franchisee makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 2.10(c) until such appeal has been determined to be unsuccessful.

Contravention of Other Obligations

2.11 The occurrence of the following:

- (a) the Franchisee contravening to an extent which is reasonably considered by the Secretary of State to be material any one or more of its obligations under the Franchise Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.3 other than this paragraph 2.11);
- (b) the service by the Secretary of State on the Franchisee of a written notice specifying:
 - (i) such contravention; and
 - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Franchisee is required to so remedy; and
- (c) the Franchisee contravening such obligation or obligations again to an extent which is reasonably considered by the Secretary of State to be material or permitting the contravention to continue or, if the contravention is capable of remedy, failing to remedy such contravention within such period as the Secretary of State has specified in the notice served pursuant to paragraph 2.11(b)(ii).

Non-membership of Inter-Operator Schemes

2.12 The Franchisee ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

Bonds

2.13

- (a) Any Performance Bond or Season Ticket Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for any Bond Provider to perform its obligations thereunder;

- (b) A failure by the Franchisee to procure the provision to the Secretary of State of a Performance Bond (or Performance Bonds provided pursuant to paragraph 4.9 of Schedule 12 (Financial Obligations and Covenants)) which individually or in aggregate fulfil the requirements of Schedule 12 (Financial Obligations and Covenants); or
- (c) A failure by the Franchisee to procure the provision to the Secretary of State of a Season Ticket Bond which fulfils the requirements of Schedule 12 (Financial Obligations and Covenants).

Key Contracts

- 2.14 Termination of any Key Contract, or the failure by the Franchisee to take all reasonable steps to enter into an appropriate replacement contract prior to the scheduled expiry date of any Key Contract, except where requested by the Secretary of State or to the extent that the Franchisee has demonstrated to the reasonable satisfaction of the Secretary of State that for the duration of the Franchise Term:
- (a) it is no longer necessary for it to be party to such Key Contract; or
 - (b) it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

Rolling Stock Leases

- 2.15 A failure by the Franchisee to enter into a new Rolling Stock Lease in accordance with paragraph 1.5 of Schedule 1.7 (The Train Fleet) in respect of substitute rolling stock vehicles which meet the requirements of paragraph 1.1(c) and/or 1.2 (as applicable) of Schedule 1.7 (The Train Fleet).

Train Availability and Reliability Agreement

- 2.16 Termination of the Train Availability and Reliability Agreement due to the occurrence of a TARA Operator Default.

Funding Deed

- 2.17 A failure by the Franchisee to deliver to the Secretary of State the Funding Deed executed by FirstGroup plc and the Franchisee, together with a legal opinion in a form reasonably acceptable to the Secretary of State confirming due execution of the Funding Deed by FirstGroup plc under the laws of Scotland, by 30 April 2015.
- 2.18 A failure by the Franchisee or FirstGroup plc to comply with their respective obligations under the Funding Deed.

3. Termination Events

- 3.1 The Secretary of State may terminate the Franchise Agreement in accordance with Schedule 10.2 (Termination and Expiry) if:
- (a) any Force Majeure Event continues with the effect of preventing the Franchisee from delivering wholly or mainly the Passenger Services for more than six consecutive months; or
 - (b) the warranty given by the Franchisee pursuant to paragraph 6 of Schedule 12 (Financial Obligations and Covenants) is materially untrue; or

- (c) the Franchisee commits a material breach of its obligation to notify the Secretary of State of any Occasion of Tax Non-Compliance as required by paragraph 6.2(a) of Schedule 12 (Financial Obligations and Covenants); or
 - (d) the Franchisee fails to provide details of proposed mitigating factors as required by paragraph 6.2(a) of Schedule 12 (Financial Obligations and Covenants) which in the reasonable opinion of the Secretary of State, are acceptable,
- (each a "**Termination Event**").

4. **Facilitation Fee**

- 4.1 The Franchisee may, at any time, apply in writing to the Secretary of State for his consent to a Change of Control (as such term is defined pursuant to paragraph 2.3).
- 4.2 The Secretary of State may require the Franchisee to pay a fee in consideration of the grant of such consent (the "**Facilitation Fee**").
- 4.3 The Secretary of State may require the Franchisee to pay an additional fee in respect of the staff, professional and other costs incurred by the Secretary of State in connection with the Franchisee's application (the "**Administration Fee**"). The Administration Fee shall be payable whether or not the Secretary of State consents to the proposed Change of Control.
- 4.4 On or after submitting such application to the Secretary of State, the Franchisee will provide, and will procure that the seller and the buyer provide, the Secretary of State with such documentation and information as the Secretary of State may require to assess such application and the amount of the Facilitation Fee. Without limiting paragraphs 4.9 or 4.10, it shall be deemed to be reasonable for the Secretary of State to delay or withhold consent to the Change of Control where any such documentation is not provided.
- 4.5 The Facilitation Fee shall be a sum equal to the greater of:
 - (a) one million pounds sterling (£1,000,000); or
 - (b) where the Estimated Profit Stream is greater than the Bid Profit Stream 5% of the difference between the Bid Profit Stream and the Estimated Profit Stream.
- 4.6 The Administration Fee shall be determined by the Secretary of State on the basis of:
 - (a) the aggregate time spent by officials within the Secretary of State's Department on matters relating to such application;
 - (b) the Secretary of State's hourly scale rates for such officials, as varied from time to time; and
 - (c) the aggregate costs and disbursements, including where applicable VAT and professional costs, incurred by the Secretary of State in connection with such application.

- 4.7 Any determination by the Secretary of State for the purposes of paragraphs 4.5 or 4.6 shall in the absence of manifest error be final and binding as between the Secretary of State and the Franchisee (but without prejudice to the requirement of the Secretary of State to reasonably determine the Estimated Profit Stream).
- 4.8 Any consent by the Secretary of State to a Change of Control may be given subject to such conditions as the Secretary of State sees fit and the Franchisee shall, as applicable, comply with, and/or procure that the seller and/or the buyer comply with, any such conditions.
- 4.9 The Secretary of State shall have absolute discretion as to the grant of consent to any Change of Control and may accordingly refuse such consent for any reason he sees fit.
- 4.10 The Secretary of State shall have no liability whatever to the Franchisee in respect of any refusal of consent to a Change of Control, any delay in providing such consent, or any condition of such consent.

SCHEDULE 10.4

Force Majeure

1. Force Majeure Events

The following events shall constitute Force Majeure Events, subject to the conditions specified in paragraph 2 being satisfied:

- (a) ⁴⁸¹ ⁴⁸² **the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail or any other Facility Owner (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station but excluding any track which is required to deliver the HEx Outsourced Services but which is not required to deliver the Franchise Services). For the purposes of this paragraph 1:**
- (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Franchisee is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1(a)(i) and (ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
 - (iv) **"Contingency Plan"** means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of Network Rail, or such other contingency or recovery plan as the Secretary of State may agree from time to time;
- (b) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail or any Facility Owner (other than a Facility Owner which is an Affiliate of the Franchisee) from entering or leaving:
- (i) ⁴⁸³ **any station or part thereof (excluding any prevention or restriction from gaining access to any section or part**

⁴⁸¹ Date of contract change 31/07/2017 – Agreed by the Secretary of State and Franchisee

⁴⁸² 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁸³ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

of track running into, through or out of a station) other than any HEx Station; or

- (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
- (c) any of the following events occurs:
 - (i) a programme of Mandatory Modifications commences;
 - (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
 - (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,

and, in each case, the greater of two Rolling Stock Units and ten per cent. of all rolling stock vehicles used by the Franchisee in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;

- (d) ⁴⁸⁴ **the Franchisee prevents or restricts the operation of any train (other than any HEx Rolling Stock) on safety grounds provided that:**
 - (i) the Franchisee has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
 - (ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;
- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion (together "**Emergency Events**") or the act of any government instrumentality (including the ORR but excluding the Secretary of State) in so far as the act of government instrumentality directly relates to any of the Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1(e) by reason of:
 - (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;

⁴⁸⁴ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
 - (iii) an act of God which results in the Franchisee or its agents or subcontractors being prevented or restricted by Network Rail from gaining access to any relevant section or part of track; and
- (f) ⁴⁸⁵ **any strike or other Industrial Action (other than any strike or Industrial Action to the extent in connection with the HEx Services Agreement and/or the HEx Outsourced Services) by any or all of the employees of the Franchisee or any or all of the employees of:**
- (i) Network Rail;
 - (ii) the operator of any other railway facility; or
 - (iii) any person with whom the Franchisee has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Franchisee in the provision of the Franchise Services,
- or if the agents or sub-contractors of any such person listed in paragraphs 1(f)(i) to (iii) and for the purposes of this paragraph Industrial Action shall include any concerted action taken in connection with the employment of such employees (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial Industrial Action, to the Franchisee being able to demonstrate the occurrence of such unofficial Industrial Action to the reasonable satisfaction of the Secretary of State; and
- (g) a TSP Force Majeure Event occurs but only to the extent that such TSP Force Majeure Event prevents the TSP from carrying out its obligations under the Train Availability and Reliability Agreement.

2. **Conditions to Force Majeure Events**

- 2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:
- (a) in relation to an event occurring under paragraph 1(a), that event has continued for more than 12 consecutive hours;
 - (b) the Franchisee notifies the Secretary of State within two Weekdays of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:
 - (i) the occurrence or likely occurrence of the relevant event; and

⁴⁸⁵ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (ii) the effect or the anticipated effect of such event on the Franchisee's performance of the Passenger Services;
- (c) at the same time as the Franchisee serves notification on the Secretary of State under paragraph 2.1(b), it informs the Secretary of State of the steps taken and/or proposed to be taken by the Franchisee to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;
- (d) the relevant event did not occur as a result of:
 - (i) any act or omission to act by the Franchisee or its agents or subcontractors, save that in respect of the occurrence of Industrial Action in accordance with paragraph 1(f), the provisions of paragraph 2.2 apply; or
 - (ii) the Franchisee's own contravention of, or default under, the Franchise Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) the Franchisee used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event; and
- (f) the Franchisee shall, to the extent reasonably so requested by the Secretary of State, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1(f) occurs as a result of an act or omission to act by the Franchisee or its agents or subcontractors;
 - (b) the Secretary of State reasonably believes that it was reasonable for the Franchisee, its agents or subcontractors (as the case may be) so to act or omit to act; and
 - (c) the other conditions specified in paragraph 2.1 have been satisfied,
- such occurrence shall be a Force Majeure Event.

2.3 ⁴⁸⁶**This Schedule 10.4 shall not apply in respect of any failure by the Franchisee to comply with its obligations in the HEx Services Agreement.**

⁴⁸⁶ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

3. **Consequences of Force Majeure Events**

On Obligations

- 3.1 The Franchisee shall not be responsible for any failure to perform any of its obligations under the Franchise Agreement, nor shall there be any contravention of the Franchise Agreement if and to the extent that such failure is caused by any Force Majeure Event.
- 3.2 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six consecutive months, it shall be a Termination Event in accordance with paragraph 3.1(a) of Schedule 10.3 (Events of Default and Termination Events).

3.3 **Business Continuity**

First BCP

- (a) Within 1 month following the Start Date the Franchisee shall produce and provide to the Secretary of State a written Business Continuity Plan in respect of the Franchise Services and the people, facilities and assets used to provide them, that is adequate to minimise the effect of and deal promptly and efficiently with any Disaster which will as a minimum:
- (i) reflect the degree of skill, care, foresight and prudence which can reasonably be expected from a highly experienced and competent operator of railway passenger services;
 - (ii) use what the industry would (at the relevant time) regard as the best generally accepted processes, techniques and materials; and
 - (iii) comply with all Laws.

Obligation to Maintain the BCP

- (b) The Franchisee shall, at all times, maintain and comply with the Business Continuity Plan, and ensure that it is, at all times, able to implement the Business Continuity Plan immediately upon an event occurring which the Business Continuity Plan is expressed to cover, or reasonably can be expected to cover.
- (c) The Franchisee shall update the Business Continuity Plan at least once during each Franchisee Year.
- (d) The Franchisee will, on request, provide a copy of the Business Continuity Plan to the Secretary of State and will provide to the Secretary of State any other information that the Secretary of State may reasonably require in relation thereto.
- (e) Nothing in this paragraph 3 will relieve the Franchisee from its obligations under this Franchise Agreement to create, implement and operate the Business Continuity Plan. Accordingly, if a Force Majeure Event affecting the Franchisee occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, or would have been had the Franchisee and/or Business Continuity Plan complied with this paragraph 3.3, then paragraph 3.1 will only apply to that Force Majeure Event to the

extent that the impacts of that Force Majeure Event would have arisen even if the Business Continuity Plan had complied with paragraph 3.3 and had been fully and properly implemented and operated in accordance with paragraph 3.3 and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

On Payments

- 3.4 Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue unaffected.

SCHEDULE 10.5

Liability

1. Exclusion of Liability

Liability with respect to Passengers and Third Parties

- 1.1 The Franchisee hereby acknowledges that the Secretary of State will not be responsible for the actions of the Franchisee or any Affiliate of the Franchisee and that, except as expressly provided in the Franchise Agreement, the Franchisee shall provide and operate the Franchise Services at its own cost and risk without recourse to the Secretary of State or government funds or guarantees.
- 1.2 ⁴⁸⁷**The Franchisee, on demand, shall hold the Secretary of State fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Secretary of State in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the Franchise Services and/or the HEx Outsourced Services which is caused or contributed to by the Franchisee, any Affiliate of the Franchisee, or any employee, agent, contractor or sub-contractor of the Franchisee or of any Affiliate of the Franchisee. For the avoidance of doubt this indemnity does not include any specific liability which the Secretary of State has to the Franchisee or which the Secretary of State has to HAL or HEOC in connection with the HEx Outsourced Services.**

Liability of the Secretary of State

- 1.3 Neither the Secretary of State nor any of his officers, agents or employees shall in any circumstances be liable to the Franchisee for any loss or damage caused by the negligent exercise of any powers reserved to the Secretary of State under the Franchise Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Secretary of State under the Franchise Agreement. The Franchisee may not recover from the Secretary of State or any of his officers, agents, or employees any amount in respect of loss of profit or consequential loss.
- #### 2. Review or Monitoring by the Secretary of State
- 2.1 The Secretary of State may for his own purposes (whether under the Franchise Agreement or under any other arrangement or otherwise and whether before or after the date of the Franchise Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchisee under the Franchise Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Secretary of State during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either party from or reduce or otherwise affect the obligations of such party under the Franchise Agreement.
- 2.2 The exercise by or on behalf of the Secretary of State of (or, as the case may be, any failure to exercise) any of his functions, rights or obligations in respect of any

⁴⁸⁷ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

review or monitoring process shall not in any way impose any liability, express or implied, on the Secretary of State to any other party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Secretary of State of an express provision of the Franchise Agreement and the Secretary of State does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable either party to comply with its obligations under the Franchise Agreement.

SCHEDULE 11

Agreement Management Provisions

1. **Not used.**
2. **Identification of Key Personnel and Provision of Organisation Chart**
 - 2.1 The Franchisee shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Franchisee in the performance of the Franchise Agreement. This shall include but not be limited to the following persons:
 - (a) a managing director whose role will include the overall management of the operation of the Franchise Services;
 - (b) a train service delivery manager, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1 (Performance Benchmarks);
 - (c) a safety manager, whose role will include responsibility for ensuring that the Franchisee complies with its legal obligations in relation to the Franchise Services including the Safety Certificate; and
 - (d) a finance manager, whose role will include responsibility in relation to the Financial Model.
 - 2.2 On or before the Start Date the Franchisee shall provide to the Secretary of State an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update such chart (and provide a copy to the Secretary of State promptly thereafter) as and when any changes occur.
3. **Not used.**
4. **Franchise Performance Meetings**
 - 4.1
 - (a) ⁴⁸⁸**The parties shall hold a Franchise Performance Meeting (which shall, if requested by the Secretary of State, also relate to the HEx Outsourced Services) at least once in every quarter (or such other interval as the Secretary of State may notify to the Franchisee in writing) at a time and location notified to the Franchisee by the Secretary of State, it being acknowledged by the parties that the intention is for the Franchisee and Secretary of State to meet each Reporting Period during the Franchise Term.**
 - (b) **Not used.**
 - (c) **Not used.**
 - (d) **Not used.**

⁴⁸⁸ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (e) The Franchisee shall ensure that each of its representatives at all Franchise Performance Meetings have full power and authority delegated to them by the Franchisee to act and to make binding decisions on behalf of the Franchisee and shall include such directors and/or senior managers of the Franchisee and the Parent as the Secretary of State may require.

4.2 **Not used.**

4.3 **Not used.**

4.4 ⁴⁸⁹**The Franchisee shall prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably request including, if requested by the Secretary of State, in relation to the HEx Outsourced Services. The Franchisee's obligations under this paragraph 4.4 are subject to the Franchisee receiving at least 28 days' notice of the requirement to prepare and present any such report.**

4.5 ⁴⁹⁰**No comment or failure to comment nor any agreement or approval, implicit or explicit by the Secretary of State at such meetings will relieve the Franchisee of any of its obligations under the Franchise Agreement or the HEx Services Agreement.**

4.6 **Periodic Update Reports**

- (a) In addition to the obligation at paragraph 4.4 above, the Franchisee shall prepare and submit to the Secretary of State a periodic report in each Reporting Period containing such information as the Secretary of State may reasonably specify upon commencement of this Franchise Agreement or from time to time in accordance with paragraph 4.6(b) for the previous quarter, or such other period as may be reasonably required and disaggregated to the extent that the Secretary of State shall require).
- (b) The Franchisee's obligations under this paragraph 4.6 are subject to the Franchisee receiving at least 28 days' notice of any amendments required and any additions to the contents of such report.

5. **Right of Assessment or Inspection**

5.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and his representatives and advisers:

- (a) to inspect and copy any records referred to in Schedule 13 (Information and Industry Initiatives) and the Secretary of State may verify any such records; and
- (b) ⁴⁹¹**to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services and the HEx Outsourced Services.**

5.2 The Franchisee shall make available to the Secretary of State, his representatives and advisers the information referred to in paragraph 5.1 and grant or procure the

⁴⁸⁹ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁹⁰ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁹¹ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

grant of such access (including to or from third parties) as the Secretary of State, his representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 5.2 shall include an obligation on the Franchisee to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 5.1 is kept by or on behalf of the Franchisee.

- 5.3 The Secretary of State, his representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.
- 5.4 If any inspection reveals that information previously supplied to the Secretary of State was, in the reasonable opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchisee's obligations under the Franchise Agreement which the Secretary of State considers to be material, the costs of any such inspection shall be borne by the Franchisee.

SCHEDULE 12

Financial Obligations and Covenants

Schedule 12:

Financial Obligations and Covenants

Appendix 1: Form of Performance Bond

Appendix 2: Form of Season Ticket Bond

SCHEDULE 12**Financial Obligations and Covenants****1. Obligations**

Except to the extent that the Secretary of State may otherwise agree from time to time, the Franchisee shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;
- (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph 1(d) or to an employee in the ordinary course of its business);
- (c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Franchise Services; or
- (d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank.

2. Financial Ratios**2.1** The Franchisee covenants that as at the end of each Reporting Period during the Franchise Term:

- (a) the ratio of its Modified Revenue to its Actual Operating Costs during the Preceding 13 Reporting Periods of the Franchise Term (or, prior to the end of the thirteenth such Reporting Period, during all preceding Reporting Periods) will equal or exceed the ratio of 1.050:1; and
- (b) the ratio of its Forecast Modified Revenue to its Forecast Operating Costs for the next 13 Reporting Periods (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, for all such remaining Reporting Periods) will equal or exceed the ratio of 1.050:1.

For the purposes of this paragraph 2 "**Preceding 13 Reporting Periods**" means the Reporting Period just ended and (subject as provided in paragraph 2.1(a)) the preceding 12 Reporting Periods of the Franchise Term.

2.2 If:

- (a) in respect of any Reporting Period, the Franchisee fails pursuant to paragraph 3.3(b) of Schedule 13 (Information and Industry Initiatives) to provide a statement of calculation of performance against the covenants set out in paragraph 2.1(b) for each of the next 13 Reporting Periods (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, for all such remaining Reporting Periods) following any such Reporting Period; or

- (b) the Secretary of State reasonably considers that any particular item of Forecast Modified Revenue or Forecast Operating Cost used for the purposes of determining the Franchisee's performance against the covenants set out in paragraph 2.1(b) has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance),

then the Secretary of State may:

- (i) in the circumstances referred to in paragraph 2.1(a) above reasonably determine the ratio of the Forecast Modified Revenue and Forecast Operating Cost on the basis of information available to him; or
- (ii) in the circumstances referred to in paragraph 2.2(b) above require any such particular item of Forecast Modified Revenue or Forecast Operating Cost to be adjusted in a manner which is fair and reasonable and, so far as reasonably determinable, on the basis on which such particular item of Forecast Modified Revenue or Forecast Operating Cost should have been accounted for by the Franchisee as reasonably determined by the Secretary of State,

in either case after having exercised his rights under paragraph 3.12 of Schedule 13 (Information and Industry Initiatives) to the extent that he considers appropriate in the circumstances for the purpose of making any such reasonable determination.

3. **Breach of Financial Ratios**

3.1 The Franchisee shall not during any Lock-up Period, do any of the following without the Secretary of State's consent:

- (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchisee, without the prior written consent of the Secretary of State;
- (b) pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan; or
- (c) make payment under any intra-group borrowings.

3.2 **Lock-up Period** means any period from the time when either of the ratios referred to in paragraphs 2.1(a) and 2.1(b) falls below the ratio of 1.070:1 until the time at which the Secretary of State is satisfied that the relevant ratio is again at or above the ratio of 1.070:1.

3.3 Failure by the Franchisee at any time to comply with either of the ratios referred to in paragraph 2.1 shall be an Event of Default under paragraph 2.9 of Schedule 10.3 (Events of Default and Termination Events).

4. **Performance Bond**

4.1 The Franchisee shall procure that there shall be a valid and effective Performance Bond in place with effect from the date of the Franchise Agreement, and the

Franchisee shall procure that there is a valid and effective Performance Bond in place:

- (a) throughout the Franchise Period; and
- (b) for a period that is the later of the date that:
 - (i) is seven Reporting Periods after the end of the Franchise Period; and
 - (ii) if so requested by the Secretary of State after the end of the Franchise Period, such date as is the earlier of (x) the date falling one month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under the Supplemental Agreement, (y) one year and seven Reporting Periods after the end of the Franchise Period, and (z) such earlier date as the Secretary of State may reasonably agree.

The provisions of this paragraph 4.1 shall survive the termination of the Franchise Agreement.

4.2 Each Performance Bond shall:

- (a) be substantially in the form set out in Part A of Appendix 1 (Form of Initial Performance Bond) to this Schedule 12 in relation to the first Performance Bond provided by the Franchisee and substantially in the form set out in Part B of Appendix 1 (Form of Performance Bond) to this Schedule 12 in relation to any subsequent Performance Bond provided by the Franchisee;
- (b) be issued by a Bond Provider;
- (c) subject to paragraph 4.3 (e) have a value of £[REDACTED⁴⁹²]; and
- (d) have a minimum duration of three years except that:
 - (i) where a Performance Bond is to be renewed during the Franchise Term and the period of time from the date from which such Performance Bond is to be put in place until the date seven Reporting Periods after the end of the Franchise Term is less than three years the duration of such Performance Bond shall be from the date of such renewal until the date seven Reporting Periods after the end of the Franchise Term; and
 - (ii) where there is a requirement to renew the Performance Bond after the end of the Franchise Period pursuant to paragraph 4.1(b)(ii) the duration of the Performance Bond shall be until the date one year and seven Reporting Periods after the end of the Franchise Period or such earlier date as the Secretary of State may agree pursuant to paragraph 4.1(b)(ii)

⁴⁹² Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Provision of Replacement Performance Bond

4.3

- (a) The Franchisee may, if the Passenger Services are provided by the Franchisee from the Start Date, at any time afterwards replace the then current Performance Bond at any time.
- (b) Subject to paragraph 4.3(d) below the Franchisee shall replace each Performance Bond at least six months prior to its scheduled expiry with a Replacement Performance Bond.
- (c) If at any time the Secretary of State reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Secretary of State may require the Franchisee within 20 Weekdays to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State.
- (d) Where the Franchisee is required by the Secretary of State after the end of the Franchise Period to replace any Performance Bond to meet its obligation to procure that there shall be a valid and effective Performance Bond in place until the later of the dates referred to in paragraph 4.1(b)(ii) the Franchisee shall replace such Performance Bond at least one month prior to its scheduled expiry.
- (e) Where the Secretary of State requires a Performance Bond to be replaced under paragraph 4.1(b)(ii), at the request of the Franchisee the Secretary of State shall consider and, if he considers it appropriate direct, that the value of the Performance Bond shall be less than the amount otherwise required under paragraph 4.4, having regard to the scale of the issues then outstanding concerning the determination of the Purchase Price (as defined in any Supplemental Agreement) under the Supplemental Agreement.

Amount of Replacement Performance Bond

- 4.4 The value of any Replacement Performance Bond shall subject to paragraph 4.3(e) be £[REDACTED⁴⁹³].

Demands under the Performance Bond

4.5

- (a) The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
 - (i) that the Franchise Agreement has:
 - (A) either terminated or expired and, in either case, in circumstances where there are liabilities or

⁴⁹³ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

obligations outstanding from the Franchisee to the Secretary of State; and/or

- (B) terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 3.1(b) to 3.1(d) of Schedule 10.3 (Event of Default and Termination Events) in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the Franchise;
 - (ii) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act;
 - (iii) the occurrence of an Event of Default:
 - (A) under paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) in relation to the Performance Bond; or
 - (B) under paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events); or
 - (C) under paragraph 2.17 of Schedule 10.3 (Events of Default and Termination Events),

whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;
 - (iv) that the Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement;
 - (v) that the Franchisee has failed to provide a replacement Performance Bond complying with this paragraph 4 at least six months prior to the scheduled expiry of the existing Performance Bond; or
 - (vi) the Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c).
- (b) If the Secretary of State makes a demand under the Performance Bond, he shall, within a reasonable period, account to the Franchisee for the proceeds of such Performance Bond less the amount of the losses, liabilities, costs or expenses which, in the reasonable opinion of the Secretary of State, the Secretary of State or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer including as a result of:
- (i) early termination of the Franchise Agreement; and/or
 - (ii) any failure by the Franchisee to perform or comply with any of its obligations to the Secretary of State under the

Franchise Agreement or to a Successor Operator under the Supplemental Agreement.

- (c) Nothing in paragraph (b) shall oblige the Secretary of State to account to the Franchisee for the proceeds of such Performance Bond in the circumstances described in paragraphs 4.5(a)(iii), (v) or (vi) until such time as the Franchisee has procured a replacement Performance Bond which complies with the requirements of paragraph 4.

Characteristics of Performance Bond Provider

- 4.6 In determining whether a Bond Provider under any replacement Performance Bond is acceptable, the Secretary of State may exercise his discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.
- 4.7 The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.

Provision of more than one Performance Bond

- 4.8 The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Performance Bond by providing up to three valid and effective Performance Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 4.4. With the exception of the value of each individual Performance Bond the provisions of the Franchise Agreement in relation to the Performance Bond shall be deemed to apply separately in relation to each such Performance Bond. Where more than one Performance Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under some or all of such Performance Bonds and the extent to which he accounts for the proceeds of each such Performance Bond in accordance with the provisions of paragraph 4.5(b).

5. Season Ticket Bond

Provision of Season Ticket Bond

- 5.1 The Franchisee shall procure that, for each Franchisee Year throughout the Franchise Term and during the relevant call period specified in clauses 4 and 5 of the Season Ticket Bond, there shall be in place a valid and effective Season Ticket Bond substantially in the form of Appendix 2 (Form of Season Ticket Bond) to this Schedule 12. The Franchisee shall deliver the first Season Ticket Bond to the Secretary of State by 17:00 on Wednesday 16th September 2015.

Provision of Replacement Season Ticket Bond

- 5.2 No later than one Reporting Period before the expiry of each Bond Year, the Franchisee shall provide to the Secretary of State (or procure that the Secretary of State receives) a Season Ticket Bond for the following Bond Year:
- (a) substantially in the form of Appendix 2 (Form of Season Ticket Bond) to this Schedule 12 (or in any other form acceptable to the Secretary of State in his discretion);
- (b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and

(c) in an amount determined in accordance with paragraph 5.3.

Amount of Season Ticket Bond

5.3 The amount of any Season Ticket Bond shall vary for each Reporting Period during the Bond Year to which the Season Ticket Bond relates in accordance with the following formula:

$$STBA = STL \times \frac{((RPI \times 100) + k)}{100} \times Z$$

where:

STBA equals the amount of the Season Ticket Bond in the relevant Reporting Period;

STL equals, in respect of such Reporting Period:

(a) the maximum amount which would be payable by the Franchisee in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) and the rights and liabilities of the Franchisee relating to an obligation of carriage under the terms of any Season Ticket Fares which were transferred under a Transfer Scheme relating to that Supplemental Agreement to a Successor Operator at that time; and

(b) the Stored Credit Balance which would be held by the Franchisee

if the Franchise Agreement were to terminate on any day during the Reporting Period (the '**Relevant Reporting Period**') falling 13 Reporting Periods before such Reporting Period,

provided that for these purposes only:

(i) Season Ticket Fares shall mean any Season Ticket Fare which expires more than seven days after it first comes into effect;

(ii) the Start Date shall be assumed, where relevant, to have occurred before the commencement of the Relevant Reporting Period; and

(iii) if STL cannot reasonably be determined at the time at which the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond (including because the Relevant Reporting Period has not yet occurred), the Relevant Reporting Period shall be the Reporting Period falling 26 Reporting Periods before the Reporting Period in the relevant Bond Year,

RPI equals the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined at the time the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond divided by the Retail Prices Index for the month falling 12 months before such month;

- k has the value attributed to it in Schedule 5 (Fares) for the Fare Year in which the Reporting Period in the relevant Bond Year falls; and
- Z equals +1 or, if the Relevant Reporting Period falls 26 Reporting Periods before such Reporting Period, an amount equal to:

$$\frac{(\text{RPI} \times 100) + k}{100}$$

where RPI and k are determined for the 12 months and the Fare Year preceding the 12 months and the Fare Year for which RPI and k are respectively determined above.

- 5.4 The Franchisee shall supply to the Secretary of State, not later than three Reporting Periods before the end of each Bond Year, its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the Secretary of State may request in connection therewith.
- 5.5 The Franchisee and the Secretary of State shall endeavour to agree the amount of such Season Ticket Bond by no later than two Reporting Periods before the end of each Bond Year. If the parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond Year, the matter shall be resolved in accordance with the Dispute Resolution Rules.
- 5.6 If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year has not been agreed two Reporting Periods before the end of the preceding Bond Year, then, until the amount is agreed or determined in accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the Secretary of State.
- 5.7 The Secretary of State and the Franchisee may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time.

Demands under the Season Ticket Bond

- 5.8
- (a) The Season Ticket Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
- (i) that the Franchise Agreement has terminated or expired;
- (ii) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act; or
- (iii) that an Event of Default:
- (A) under paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) in relation to the Season Ticket Bond; or

- (B) under paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Events),

has occurred (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).

- (b) If the Secretary of State makes a demand under the Season Ticket Bond, he shall account to the Franchisee for the proceeds of such Season Ticket Bond remaining following settlement of all liabilities or obligations of the Franchisee in respect of any Season Ticket Fares and/or Stored Credit Balance that may be transferred or is transferred whether under a Transfer Scheme (or otherwise) to a Successor Operator.

Characteristics of Season Ticket Bond Provider

- 5.9 In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Secretary of State may exercise his discretion and shall not be obliged to accept a Bond Provider accepted under any previous Season Ticket Bond.
- 5.10 The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.
- 5.11 The Secretary of State agrees that, subject to receipt of a Season Ticket Bond in an amount determined in accordance with paragraph 5.3 in respect of any Bond Year, he shall release the relevant Bond Provider from any liability under the Season Ticket Bond provided in relation to the preceding Bond Year on the expiry of such Bond Year, provided that no Event of Default has occurred and is unremedied or continuing.

Meaning of Reporting Period

- 5.12 References in this paragraph 5 to a Reporting Period shall be construed, where the Franchisee so requests and the Secretary of State consents (such consent not to be unreasonably withheld), to be references to each consecutive seven-day period (or such other period as may be agreed) during such Reporting Period. The Franchisee may only make such a request in respect of a maximum of two Reporting Periods in each Bond Year and only where the amount of the Season Ticket Bond over any such period would, in the reasonable opinion of the Franchisee, differ materially if determined by reference to such seven-day periods.

6. Tax Compliance

- 6.1 The Franchisee represents and warrants that as at the Start Date, it has notified the Secretary of State in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.
- 6.2 If, at any point during the Franchise Term, an Occasion of Tax Non-Compliance occurs, the Franchisee shall:
- (a) notify the Secretary of State in writing of such fact within 5 Weekdays of its occurrence; and
- (b) promptly provide to the Secretary of State:

- (i) details of the steps which the Franchisee is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Secretary of State may reasonably require.

6.3 For the purposes of this paragraph 6 (Tax Compliance), the following defined terms shall have the following meanings:

"DOTAS" means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

"General Anti-Abuse Rule" means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others;

"Occasion of Tax Non-Compliance" means:

- (a) any tax return of the Franchisee submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Franchisee under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the

General Anti-Abuse Rule or the Halifax Abuse Principle;

(ii) the failure of an avoidance scheme which the Franchisee was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

(b) any tax return of the Franchisee submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion; and

“Relevant Tax Authority”

means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Franchisee is established.

APPENDIX 1 TO SCHEDULE 12

Part A

[TEMPLATE] Form of Initial Performance Bond

Dated

20[.]

[BOND PROVIDER]

Initial Performance Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

To: Secretary of State for Transport
 33 Horseferry Road
 London
 SW1P 4DR
 (the "**Secretary of State**")

You have entered into:

- a) a franchise agreement dated 2 October 2013 (the "**Previous Franchise Agreement**") with First Greater Western Limited (the "**Franchisee**") which is due to expire on 20 September 2015 at 01:59; and
- b) an interim franchise agreement dated [_____] (the "**Franchise Agreement**") with the Franchisee which is due to expire at 01:59 on [•], subject to any later date to which it is extended in accordance with its terms,

under which the Franchisee will provide certain railway passenger services (together the "**Franchise Agreements**").

The Franchise Agreements require you to receive a duly executed performance bond in the amount of £[INSERT] (*pounds sterling* [INSERT]) (the "**Bond Value**") to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreements and any applicable Supplemental Agreement under either of the Franchise Agreements (together the "**Supplemental Agreements**").

Accordingly:

This duly executed performance bond (the "**New Performance Bond**") shall from the date of its execution replace and supersede the Performance Bond number [INSERT NUMBER] provided to you in respect of the Previous Franchise Agreement and last amended by a deed executed by us on [INSERT DATE] (the "**Original Performance Bond**").

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in clause 2 hereof) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value at the date of occurrence of the Call Event. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:

- (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Performance Bond; and

- (b) notwithstanding anything contained herein, our liability hereunder shall expire on the earlier of:
- (i) the date falling six months after the date on which any railway administration order is made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993; and
 - (ii) where the Previous Franchise Agreement has been terminated or expires and the Franchise Agreement has either not been entered into or has been terminated before the Start Date under the Franchise Agreement, the later of:
 - (A) the date falling one month after the determination of the Purchase Price (as defined in the Supplemental Agreement under the Previous Franchise Agreement) under the Supplemental Agreement under the Previous Franchise Agreement; and
 - (B) the date falling seven Reporting Periods after the end of the Franchise Period (as defined in the Previous Franchise Agreement); and
 - (C) the end of the Franchise Term (as defined in the Previous Franchise Agreement); and
 - (iii) where the Previous Franchise Agreement has been terminated or expires and the Franchise Agreement has either not been entered into or has been terminated before the Start Date under the Franchise Agreement, [insert date that is 7 Reporting Periods after the Franchise Term (as defined in the Previous Franchise Agreement)] [INSERT DATE];
 - (iv) where the Previous Franchise Agreement has been terminated or expires and the Franchise Agreement has been entered into and remains in force at its Start Date the later of:
 - (A) the date falling one month after the determination of the Purchase Price (as defined in the Supplemental Agreement under the Franchise Agreement) under the Supplemental Agreement under the Franchise Agreement; and
 - (B) the date falling seven Reporting Periods after the end of the Franchise Period (as defined in the Franchise Agreement); and
 - (C) the end of the Franchise Term (as defined in the Franchise Agreement); and
 - (v) where the Previous Franchise Agreement has been terminated or expired and the Franchise Agreement has been entered into and remains in force at its Start Date, [INSERT DATE]⁴⁹⁴

⁴⁹⁴ **Note to Franchisee - To be at least three years from the date of the Performance Bond.**

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value or less, after which date this undertaking shall be void whether returned to us or not.

2. **Call Event** means, in this Performance Bond, any of:

- (a) the termination (otherwise than by expiry) of the Previous Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- (b) the expiry of the Previous Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State and the Franchise Agreement has either not been entered into or has been terminated before the Start Date under the Franchise Agreement;
- (c) the termination of the Previous Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the Great Western franchise;
- (d) the termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- (e) the termination of the Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraph 3.1(b) to 3.1(d) of Schedule 10.3 (Events of Default and Termination Events) in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the Great Western franchise;
- (f) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;
- (g) the occurrence of an Event of Default under either Franchise Agreement in respect of:
 - (i) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) of the relevant Franchise Agreement in relation to the Performance Bond; or
 - (ii) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events) of the relevant Franchise Agreement; or
 - (iii) under paragraph 2.17 of Schedule 10.3 (Events of Default and Termination Events),
whether or not the relevant Franchise Agreement is, or is to be, terminated as a result thereof;
- (h) the failure by the Franchisee to perform or comply with its obligations under any applicable Supplemental Agreement under either of the Franchise Agreements;

- (i) the failure by the Franchisee to provide the Secretary of State with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (Financial Obligations and Covenants) of the relevant Franchise Agreement at least six months prior to the scheduled expiry of the existing Performance Bond; or
- (j) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.8 of Schedule 12 (Financial Obligations and Covenants) of the Previous Franchise Agreement or 4.3(c) of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement.
3. This undertaking is made to you, your successors and your assigns, subject to written notice of assignment being given to us.
4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under either Franchise Agreement or any applicable Supplemental Agreements or any other circumstances that might operate as a release of a guarantor at law or in equity.
5. You may make demand or give notice to us under this Performance Bond in writing by hand, by post or by courier to us as follows:
- Address: [Bond Provider's address]
6. References in this Performance Bond to the Franchise Agreements and the Supplemental Agreements are to the Franchise Agreements and any Supplemental Agreements as amended from time to time.
7. Where used in this Performance Bond, capitalised terms have the same meanings as in the respective Franchise Agreements.
8. This Performance Bond shall be governed by and construed in accordance with the laws of England and Wales.
- Executed as a deed this [day and month] of [year].

SCHEDULE TO THE INITIAL PERFORMANCE BOND**SPECIMEN DEMAND NOTICE**

To: [name and address of Bond Provider]
[date of demand notice]

We refer to the performance bond issued by you on [date of Performance Bond] (the "**Performance Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and [name of Franchisee] (the "**Franchisee**") on [Franchise Agreement signature date].

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [date of occurrence of Call Event]: [delete as appropriate].

[the termination (otherwise than by expiry) of the Previous Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;]

[the expiry of the Previous Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State and the Franchise Agreement has either not been entered into or has been terminated before the Start Date under the Franchise Agreement;]

[the termination of the Previous Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the Great Western franchise;]

[the termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;]

[the termination of the Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraph 3.1(b) to 3.1(d) of Schedule 10.3 (Events of Default and Termination Events) in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the Great Western franchise;]

[the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;]

[the occurrence of an Event of Default under either Franchise Agreement in respect of:

- (i) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) of the relevant Franchise Agreement in relation to the Performance Bond; or
- (ii) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events) of the relevant Franchise Agreement; or
- (iii) under paragraph 2.17 of Schedule 10.3 (Events of Default and Termination Event,

whether or not the relevant Franchise Agreement is, or is to be, terminated as a result thereof;]

[the failure by the Franchisee to perform or comply with its obligations under any applicable Supplemental Agreement under either of the Franchise Agreements;]

[the failure by the Franchisee to provide the Secretary of State with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (Financial Obligations and Covenants) of the relevant Franchise Agreement at least six months prior to the scheduled expiry of the existing Performance Bond;]

[the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.8 of Schedule 12 (Financial Obligations and Covenants) of the Previous Franchise Agreement or 4.3(c) of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement.]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value (being the sum of [INSERT IN NUMBERS AND WORDS] or [INSERT IN NUMBERS AND WORDS]), whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[account details to which Performance Bond monies to be paid into]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of
Secretary of State for Transport

Part B

[TEMPLATE] Form of Performance Bond

Dated

20[.]

[BOND PROVIDER]

Performance Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(the "**Secretary of State**")

We are informed that you have entered into a franchise agreement dated [_____] (the "**Franchise Agreement**") with [*name of Franchisee*] (the "**Franchisee**") under which the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed performance bond in the amount of [*To be populated in for the duration of the Bond in accordance with 4.4*] (the "**Bond Value**") to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in clause 2 hereof) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:
 - (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Performance Bond; and
 - (b) notwithstanding anything contained herein, our liability hereunder shall expire on the earlier of:
 - (i) the date falling six months after the date on which any railway administration order is made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993; and
 - (ii) the later of:
 - (A) the date falling one month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under each relevant Supplemental Agreement; and

- (B) the date falling seven Reporting Periods after the end of the Franchise Period; and
- (C) the end of the Franchise Term; and
- (iii) [date],⁴⁹⁵

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value or less, after which date this undertaking shall be void whether returned to us or not.

2. **Call Event** means, in this Performance Bond, any of:

- (a) the termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- (b) the termination of the Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of such type as described in any of paragraphs 3.1(b) or 3.1(d) (as the case may be) of Schedule 10.3 (Events of Default and Termination Events) in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the Great Western franchise;
- (c) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;
- (d) the occurrence of an Event of Default under the Franchise Agreement in respect of:
 - (i) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement in relation to the Performance Bond; or
 - (ii) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement, whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;
- (e) the failure by the Franchisee to perform or comply with its obligations under any Supplemental Agreement;
- (f) the failure by the Franchisee to provide the Secretary of State with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement at least six months prior to the scheduled expiry of the existing Performance Bond; or
- (g) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the

⁴⁹⁵ **Note to Franchisee - Such date to be at least three years after the date of the Bond.**

Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement.

3. This undertaking is made to you, your successors and your assigns.
4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
5. You may make demand or give notice to us under this Performance Bond in writing by hand or facsimile transmission to us as follows:

Address: [Bond Provider's address]

Facsimile Number: [Bond Provider's fax number]
6. References in this Performance Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and any Supplemental Agreement as amended from time to time.
7. Where used in this Performance Bond, capitalised terms have the same meanings as in the Franchise Agreement.
8. This Performance Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [day and month] of [year].

SCHEDULE TO THE PERFORMANCE BOND**SPECIMEN DEMAND NOTICE**

To: [name and address of Bond Provider]
[date of demand notice]

We refer to the performance bond issued by you on [date of Bond] (the "**Performance Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and [name of Franchisee] (the "**Franchisee**") on [Franchise Agreement signature date].

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [date of occurrence of Call Event]: [delete as appropriate].

[The Franchise Agreement has [terminated/expired] on [date of termination/expiry] in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State.]

[The Franchise Agreement has terminated solely as a consequence of the occurrence of one or more Events of Default on [date of termination] in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with the termination of the Great Western franchise.]

[A railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993.]

[That an Event of Default under the Franchise Agreement has occurred under:

[(a) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement in relation to the Performance Bond; or]

[(b) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement.]]

[The Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement.]

[The Franchisee has failed to provide a replacement Performance Bond (as described in the Franchise Agreement) complying with paragraph 4 of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement at least six months prior to the scheduled expiry of the existing Performance Bond.]

[The Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement.]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[account details to which Performance Bond monies to be paid into]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of
Secretary of State for Transport

APPENDIX 2 TO SCHEDULE 12

[TEMPLATE] FORM OF SEASON TICKET BOND

Dated

20[.]

[BOND PROVIDER]

Season Ticket Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(the "**Secretary of State**")

Whereas:

We are informed that you have entered into a franchise agreement dated [_____] (the "**Franchise Agreement**") with [name of Franchisee] (the "**Franchisee**") under which the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed season ticket bond to secure the performance by the Franchisee of and its compliance with certain of its obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in Schedule 1 and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in **clause 2**) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value (as defined in **clause 3**). All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:
 - (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value on the date of occurrence of the Call Event stated in your written demand on us; and
 - (b) you may only call on us (whether on one or more occasions) in relation to one Call Event, such Call Event to be determined by reference to the first written demand which is received by us in the form set out in Schedule 1.
2. Call Event means, in this Season Ticket Bond, any of:
 - (a) the termination or expiry of the Franchise Agreement;
 - (b) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act; or
 - (c) the occurrence of an Event of Default under paragraph 2.13(a) (in relation to a Season Ticket Bond) or 2.13(c) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).

3. Bond Value shall mean, in respect of any date, the amount specified in Schedule 2 as being the value of this Season Ticket Bond for such date (provided that for these purposes the date of occurrence of the Call Event specified in **clause 2(c)** shall be deemed to be the last date for which a Bond Value is assigned under Schedule 2 of this Season Ticket Bond).
4. Notwithstanding anything contained herein, but subject to **clause 5**, our liability hereunder in respect of any Call Event shall expire no later than the end of the Franchise Term and:
- (a) in relation to a Call Event specified in **clauses 2(a)** and **2(b)**, at noon (London time) on the date falling three business days after the date of occurrence of such Call Event (business day being a day on which banks are open for business in the City of London); and
 - (b) in relation to any other Call Event, on the day falling one month after the last date for which a Bond Value is assigned under Schedule 2 of this Season Ticket Bond,

unless you notify us in writing prior to the relevant expiry time that the relevant Call Event has occurred (whether or not you call on us at the same time under this Season Ticket Bond).

5. If you do notify us under **clause 4** our liability shall expire on:
- (a) if the Call Event in respect of which you may call on us under this Season Ticket Bond is the termination of the Franchise Agreement, the date falling one month after the determination of the Purchase Price (as defined in the Supplemental Agreement) under each relevant Supplemental Agreement;
 - (b) if the Call Event in respect of which you may call on us under this Season Ticket Bond is the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993, the date falling three months after the making of such railway administration order; or
 - (c) if the Call Event in respect of which you may call on us under this Season Ticket Bond is the occurrence of an Event of Default under paragraph 2.13(a) (in relation to a Season Ticket Bond) or paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof), the date falling one month after your notification to us under **clause 4**,

except, in each case, in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before the relevant date, after which date this undertaking shall be void whether returned to us or not.

6. This undertaking is made to you, your successors and your assigns.
7. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.

8. You may make demand or give notice to us under this Season Ticket Bond in writing by hand or facsimile transmission to us as follows:

Address: [Bond Provider's address]

Facsimile Number: [Bond Provider's fax number]

9. References in this Season Ticket Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and the Supplemental Agreement as amended from time to time and terms defined therein shall have the same meaning in this Season Ticket Bond.
10. Where used in this Season Ticket Bond, capitalised terms have the same meanings as in the Franchise Agreement.
11. This Season Ticket Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [day and month] of [year].

SCHEDULE 1 TO THE SEASON TICKET BOND**SPECIMEN DEMAND NOTICE**

To: [Name and address of Bond Provider]
[date of demand notice]

We refer to the season ticket bond issued by you on [date of Bond] (the "**Season Ticket Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and [name of Franchisee] (the "**Franchisee**") on [Franchise Agreement signature date].

We hereby notify you that the following Call Event (as defined in the Season Ticket Bond) occurred on [date of occurrence of Call Event]: [delete as appropriate].

[The Franchise Agreement [terminated][expired] on [date of [termination][expiry]].

[A railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993.]

[An Event of Default occurred under paragraph 2.13(a) (in relation to a Season Ticket Bond) or paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement.]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[account details to which Bond monies to be paid into]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of
Secretary of State for Transport

SCHEDULE 2 TO THE SEASON TICKET BOND**BOND VALUE**

Call Event occurring in Reporting Period	Bond Value
1	[Insert Amount]
2	[Insert Amount]
3	[Insert Amount]
4	[Insert Amount]
5	[Insert Amount]
6	[Insert Amount]
7	[Insert Amount]
8	[Insert Amount]
9	[Insert Amount]
10	[Insert Amount]
11	[Insert Amount]
12	[Insert Amount]
[Dates to be specified]	

SCHEDULE 13

Information and Industry Initiatives

Schedule 13

Information and Industry Initiatives

Appendix 1: Environmental Impact Monitoring Dataset

Appendix 2: Key Assets

Appendix 3: Operational Information

SCHEDULE 13**Information and Industry Initiatives****1. General Information****Corporate Information**

1.1 The Franchisee shall provide the following information to the Secretary of State on or before the Start Date and shall notify the Secretary of State of any change to such information within 21 days of such change:

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names; and
- (f) to the best of the Franchisee's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than 20 per cent. of the votes at general meetings of the Franchisee.

1.2 The Franchisee shall inform the Secretary of State of any material change or proposed material change in its business (including the employment or the termination of employment of any Key Personnel, the termination of any Key Contract and any litigation or other dispute which may have a material effect on its business) and any material change in or restructuring of the capitalisation or financing of the Franchisee or the Parent.

Operational and Performance-related Information to be provided by the Franchisee

1.3 The Franchisee shall provide to the Secretary of State the information specified in the Appendices to this Schedule 13 at the times specified therein.

1.4 The Appendices to this Schedule 13 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

Maintenance of Records

1.5 ⁴⁹⁶**The Franchisee shall maintain true, up to date and complete records of all of the information required to be provided by the Franchisee under the Franchise Agreement and the HEx Services Agreement.**

1.6 Each record required to be maintained by the Franchisee in accordance with this Schedule 13 shall be held for a period of six years following the date on which such record was required to be created.

⁴⁹⁶ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- 1.7 References to records in this Schedule 13 shall include records maintained under any previous franchise agreement to the extent that such records relate to the Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure).
- 1.8 The Franchisee shall not be responsible for any records maintained under any previous franchise agreement, as referred to in paragraph 1.7, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 1.5.

Information to Passengers' Council and Local Authorities

- 1.9 The Franchisee shall comply with any reasonable requests and guidance issued by the Secretary of State from time to time in respect of the provision of information to and co-operation and consultation with the Passengers' Council and Local Authorities.

2. Business Plans

Initial Business Plan

- 2.1 On or before the Start Date, the Franchisee shall deliver to the Secretary of State its Initial Business Plan, describing its planned activities for each Franchisee Year during the Franchise Term, which shall include:
- (a) a description as to how the Franchisee will be able to meet its obligations under the Franchise Agreement for the Franchise Term, supported by operational plans demonstrating this;
 - (b) details of any investments proposed to be made or procured by the Franchisee in relation to the Franchise Services during the Franchise Term;
 - (c) a summary of the Franchisee's plans for marketing and developing the Franchise Services; and
 - (d) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the first 13 Reporting Periods following the Start Date, together with a list of assumptions on the basis of which each such forecast has been prepared.

2.2 Not used.

Annual Business Plans

- 2.3 The Franchisee shall, at all times during the Franchise Term, provide to the Secretary of State any annual business plan (in written or electronic form) that it provides to its Parent (or any other document or documents which individually or collectively can reasonably be considered to be an annual business plan) in relation to a Franchisee Year (other than the first Franchisee Year) and which describes the Franchisee's planned activities for such Franchisee Year or describes the manner in which the Franchisee will meet its obligations under the Franchise Agreement in respect of that Franchisee Year (the "**Annual Business Plan**").

- 2.4 Any such Annual Business Plan shall be provided to the Secretary of State within one month of submission of same to the Parent. Where the Franchisee does not produce an annual business plan it shall notify the Secretary of State of all the periodic plans that it does produce and:
- (a) the Secretary of State shall be entitled to copies of such periodic plans as he shall reasonably determine; and
 - (b) any such periodic plans shall be deemed to be Annual Business Plans for the purposes of this paragraph 2.4.
- 2.5 The Franchisee shall, at the same time as it submits the Annual Business Plan to the Secretary of State in accordance with paragraph 2.3 (or to the extent that no Annual Business Plan is submitted to the Parent in any Franchisee Year, not more than three Reporting Periods and not less than one Reporting Period prior to the start of each Franchisee Year), provide to the Secretary of State a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in the relevant Franchisee Year and each subsequent Franchisee Year of the Franchise Term.
- 2.6 **Not used.**
- 2.7 The Franchisee shall not be relieved of any of its obligations under the Franchise Agreement as a result of any comment or failure to comment by the Secretary of State on any Business Plan or any agreement with or approval, implicit or explicit, of any Business Plan by the Secretary of State at any time.
- 2.8 The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
- (a) timetable and service pattern development;
 - (b) Station facility improvement;
 - (c) performance management improvement;
 - (d) customer service improvement; and
 - (e) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- 2.9 The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.
- 2.10 Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which he may impose.
3. **Financial And Operational Information**
- Accounting Records**
- 3.1 The Franchisee shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under

Section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period.

Reporting Period Financial Information

3.2 The Franchisee shall deliver to the Secretary of State, within two weeks of the end of each Reporting Period:

- (a) **⁴⁹⁷Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date together with a statement, in a format to be agreed with the Secretary of State, identifying in respect of the HEx Outsourced Services the Service Payments receivable (identifying the Management Fee element) and any Service Payment Adjustment or IR Excluded Event Refunds for the period (provided that where details of Service Payment Adjustments or IR Excluded Event Refunds are not then available, they shall be reported once the relevant details become available).**
- (b) written confirmation that the Management Accounts, to the best of the knowledge information and belief of the board of directors of the Franchisee, contain a true and accurate reflection of the current assets and liabilities of the Franchisee (including contingent assets or liabilities and known business risks and opportunities) and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further information that the Secretary of State shall reasonably require in relation thereto; and
- (c) in circumstances where the Franchisee was in a Lock-up Period during such Reporting Period written confirmation from a statutory director of the Franchisee that the Franchisee has complied with the restrictions applicable during a Lock-up Period pursuant to paragraph 3 of Schedule 12 (Financial Obligations and Covenants).

3.3 The Management Accounts shall also set out:

- (a) sufficient information to enable the Secretary of State to calculate Actual Operating Costs and Modified Revenue on a cumulative basis for the previous thirteen Reporting Periods;
- (b) the ratio of the Franchisee's:
 - (i) Total Modified Revenue to its Total Actual Operating Costs; and
 - (ii) Total Forecast Modified Revenue to its Total Forecast Operating Costs,

together with supporting information showing how the Franchisee has calculated such ratios including a breakdown of the Modified Revenue, Forecast Modified Revenue, Actual Operating Cost and Forecast Operating Costs for each of the Reporting Periods used for the purposes of the calculation of the ratios pursuant to this paragraph 3.3(b);

⁴⁹⁷ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (c) a comparison of the Franchisee's performance during such period against the forecast provided by the Franchisee in the then current Business Plan;
- (d) a comparison of the Franchisee's cumulative performance during the Franchisee Year in which such period occurs against the forecast referred to in paragraph 3.3(c);
- (e) a detailed statement and explanation of any material difference between such Management Accounts and the forecast referred to in paragraph 3.3(c); and
- (f) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Secretary of State, materially worse than forecast by the Franchisee in its current Business Plan, the Secretary of State may require the Franchisee to prepare and submit to him, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan.

Quarterly Financial Information

- 3.4 Within four weeks after the end of the third, sixth, ninth and twelfth Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (a) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 2.1(d), for each of the following 13 Reporting Periods; and
 - (b) a statement of calculation demonstrating the Franchisee's performance against each of the financial covenants in paragraph 2 of Schedule 12 (Financial Obligations and Covenants) at the beginning of each Reporting Period and a forecast of performance against such covenants for each of the following 13 Reporting Periods.
- 3.5 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.

Annual Financial Information

- 3.6 Within three weeks of the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State its Annual Management Accounts for that Franchisee Year.
- 3.7 The Franchisee shall deliver to the Secretary of State:
- (a) in respect of any Franchisee Year other than the final Franchisee Year, its Annual Financial Statements for that Franchisee Year within three Reporting Periods of the end of that Franchisee Year; and
 - (b) in respect of the final Franchisee Year, its Annual Financial Statements for the period from the start of that Franchisee Year to the end of the

Franchise Period within three Reporting Periods of the end of the Franchise Period,

each together with a reconciliation to the Management Accounts for the same period.

- 3.8 Within four Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (a) certified true copies of its annual report and Annual Audited Accounts for that Franchisee Year, together with copies of all related directors' and auditors' reports. The auditors' report shall certify that the accounting for any annual performance related bonuses paid to the directors and managers as referred to in paragraph 3.1(b)(vi) of Schedule 8.1 (Franchise Payments) provides a true and fair view; and
 - (b) a reconciliation to the Management Accounts for the same period; and
 - (c) a statement from the Franchisee's auditors confirming compliance with the financial covenants in paragraph 2 of Schedule 12 (Financial Obligations and Covenants); and
 - (d) ⁴⁹⁸ **Management Accounts for the Franchisee Year, setting out a cashflow statement, profit and loss account and balance sheet for the Franchisee Year in respect of the Franchise Agreement;**
 - (e) ⁴⁹⁹ **a statement, in a format to be agreed with the Secretary of State, identifying, in respect of the HEx Outsourced Services, Service Payments receivable (identifying the Management Fee element) and any Service Payment Adjustment and IR Excluded Event Refunds for the period.**

Accounting Standards and Practices

- 3.9 Each set of Management Accounts and Annual Management Accounts shall:
- (a) be in the formats set out in the document in the agreed terms marked **FF** 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 each of the profit and loss account, the cashflow projection and the balance sheet contained in the Financial Model Placed in Escrow on the date of the Franchise Agreement.
- 3.10 Each set of Annual Financial Statements and Annual Audited Accounts shall:

⁴⁹⁸ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁹⁹ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (a) save as stated in the notes thereto, be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
- (b) together with those notes and subject to any qualifications contained in any relevant auditors' report, give a true and fair view of:
 - (i) the state of affairs, profits and financial condition of the Franchisee for the period covered by such accounts; and
 - (ii) the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee, such revenue to be disaggregated by reference to revenue derived by the Franchisee from the sale of tickets, income received from Network Rail pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement and other income (including car park revenue) or to such other level of disaggregation as may be notified to the Franchisee by the Secretary of State from time to time) derived by the Franchisee in respect of that Franchisee Year.

Parent Accounts

- 3.11 The Franchisee shall, upon the request of the Secretary of State, promptly deliver to, or procure delivery to, the Secretary of State, certified true copies of the annual reports and audited accounts of the Parent, together with copies of all related directors' and auditors' reports. If the Parent is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the Parent shall be delivered to the Secretary of State.

Secretary of State Audit of calculations provided pursuant to paragraph 3.3(b) of Schedule 13 (Information and Industry Initiatives)

- 3.12 Without prejudice to paragraph 2.2 of Schedule 12 (Financial Obligations and Covenants) or to any other rights of the Secretary of State under the Franchise Agreement, the Secretary of State and his representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to the statement of calculations required by paragraph 3.3(b) of this Schedule 13 and any other matter in connection with the Franchisee's obligations under paragraph 2 of Schedule 12 (Financial Obligations and Covenants).
- 3.13 The Franchisee shall make available to the Secretary of State and his representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 3.12. If any audit carried out pursuant to paragraph 3.12 reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts (but only in so far as such accounts relate to the statement of calculations required by paragraph 3.3(b)) then the Secretary of State may exercise its rights as described in paragraphs 2.2(b)(i) or 2.2(b)(ii) of Schedule 12 (Financial Obligations and Covenants) and the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 1.11 of Schedule 10.1 (Remedial Plans and Remedial Agreements).

4. **Safety Information**

Safety

- 4.1 The Franchisee shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.
- 4.2 ⁵⁰⁰**The Franchisee shall notify the Secretary of State as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from ORR (including in respect of the HEx Outsourced Services). Immediately upon receipt of such notification or notice, the Franchisee shall provide the Secretary of State with a copy of such notification or notice.**
- 4.3 The Franchisee shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

5. **Further Information**

- 5.1 The Franchisee shall:
- (a) deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as he may request within such period as he may reasonably require and which relate to or are connected with the Franchisee's performance of the Franchise Agreement; and
 - (b) procure that each Affiliate of the Franchisee complies with paragraph 5.1(a) in respect of any information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of its obligations under the Franchise Agreement.
- 5.2 The information referred to in paragraph 5.1(a) shall include:
- (a) any agreement, contract or arrangement to which the Franchisee is a party in connection with any rolling stock vehicles used in the operation of the Passenger Services including the Train Availability and Reliability Agreement;
 - (b) in so far as the Franchisee has or is able to obtain the same, any other agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock vehicles;
 - (c) any agreement for the manufacture or supply of any rolling stock vehicles; or
 - (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.
- 5.3 The Secretary of State may require the Franchisee to provide:

⁵⁰⁰ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (a) the information required to be provided under this Schedule 13 more frequently than set out in this Schedule 13;
- (b) the information required to be provided under this Schedule 13, or, in the Secretary of State's discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise; and
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time.

6. **Contraventions of the Franchise Agreement**

- 6.1 The Franchisee shall notify the Secretary of State, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Franchisee of any provision of the Franchise Agreement. This includes where the Franchisee is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.
- 6.2 The Franchisee shall deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, the Franchise Agreement.

7. **Information from Third Parties**

- 7.1 The Franchisee shall, if the Secretary of State so requests, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Franchisee which is or are maintained by third parties and to which the Secretary of State is entitled to have access, or of which the Secretary of State is entitled to receive a copy under the Franchise Agreement.
- 7.2 The Franchisee shall, if the Secretary of State so requests, procure the provision by RSP to the Secretary of State of such information, data and records as the Franchisee is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.
- 7.3 The obligations of the Franchisee under this Schedule 13 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that he has received the relevant information directly from any other person (including Network Rail or RSP). The Franchisee shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.
- 7.4 The Franchisee shall promptly advise the Secretary of State of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the Franchisee, materially affect the continuity of any of the records that are provided pursuant to this Schedule 13. Any such advice shall include an assessment of the materiality of the relevant change.

8. **Compatibility of Information**

- 8.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under the Franchise Agreement shall be provided, if so requested by the Secretary of State, in a form compatible with the Secretary of State's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraph 9.
- 8.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under the Franchise Agreement will not result in any infringement of any third party intellectual property rights to which its systems or such information, data or records may be subject.

9. **Development of Industry Systems**

The Franchisee shall actively co-operate, in a manner consistent with it being a responsible Train Operator of the Franchise, with Network Rail, the Secretary of State, ORR and all other relevant railway industry bodies and organisations in relation to the development of anything that can reasonably be considered to be a railway industry system including systems in relation to the attribution of train delay, the allocation of revenue and the collection and dissemination of industry wide information.

10. **Co-operation with Various Schemes**

The Franchisee shall co-operate (in good faith) with the Secretary of State, the relevant Local Authority and/or any other affected railway industry parties in the development and the implementation of initiatives relating to its participation in Integrated Transport Schemes, multi-modal fares schemes, Traveline and Transport Direct (the "**Industry Schemes**"), where such Industry Schemes relate to the Franchise.

11. **Cooperation with Network Rail and Alliancing**

- 11.1 The Franchisee shall use all reasonable endeavours to work with Network Rail to identify ways in which co-operation between the Franchisee and Network Rail can be enhanced, costs can be reduced and closer working and alignment of incentives can improve value for money within the parameters of this Franchise Agreement.
- 11.2 Where the Franchisee considers pursuant to its obligations under paragraph 11.1 above that it is appropriate to enter into an Alliance Agreement with Network Rail it may make a proposal for the Secretary of State to consider. The Franchisee agrees that any such proposal (unless otherwise agreed by the Secretary of State) shall:
- (a) be for the purposes of improved delivery of some or all of the following:
- (i) the efficient and cost effective operation of some or all of the network over which the Passenger Services operate;
 - (ii) the efficient and cost effective maintenance of some or all of the network over which the Passenger Services operate;
 - (iii) the efficient and cost effective renewal of some or all of the network over which the Passenger Services operate;

- (iv) the efficient and cost effective delivery of some or all enhancement projects on the network over which the Passenger Services operate; and
 - (v) such other infrastructure enhancement projects as may be agreed by the Franchisee and Network Rail and approved by the Secretary of State during the Franchise Term; and
- (b) be on terms which are commercially fair and reasonable so that:
 - (i) the incentives of the Franchisee and Network Rail are more effectively aligned in a way that gives a reasonable expectation that the matters subject to the alliance will be delivered in a more efficient and effective way;
 - (ii) the financial and operational risk of the Franchisee arising out of the operation of the Franchise is not unreasonably increased (including through the agreement of appropriate limitations of liability); and
 - (iii) the Secretary of State has rights to require the termination of the Alliance Agreement in appropriate circumstances including so that the term of the alliance is aligned with the Franchise Term and liabilities do not accrue to any Successor Operator.
- 11.3 The Franchisee shall provide such information, updates and reports on the progress of its negotiation with Network Rail as the Secretary of State shall reasonably require and meet with the Secretary of State to discuss the progress of the negotiations when reasonably requested to do so.
- 11.4 On reaching agreement in principle with Network Rail on the terms of an Alliance Agreement the Franchisee shall present the draft Alliance Agreement to the Secretary of State for approval and shall not enter into any such agreement without the prior written consent of the Secretary of State (which he shall have an unfettered discretion to withhold).
- 11.5 The Franchisee agrees that any approval of an Alliance Agreement shall (without prejudice to the unfettered discretion of the Secretary of State to refuse to consent to such an alliance) be conditional upon:
 - (a) the Secretary of State being satisfied that such Alliance Agreement is consistent with the provisions of paragraph 11.2 above;
 - (b) the Franchisee agreeing to a fair and reasonable allocation of the gain from such alliance being passed to the Secretary of State (whether through profit share or otherwise) consistent with the role of the Secretary of State in funding the railway network (which it is agreed shall be at least 25 per cent. of the gain from the alliance that is not allocated to Network Rail); and
 - (c) the Franchisee entering into a deed of amendment to the Franchise Agreement in a form reasonably determined by the Secretary of State.
- 11.6 **Not used.**
- 11.7 References in this paragraph 11 to an "**Alliance Agreement**" are to a separate written agreement between Network Rail and the Franchisee (and possibly but not

necessarily others) which establishes or amends or terminates arrangements of an alliancing nature which address all or any of the matters referred to in paragraph 11.2. An agreement shall not be treated as an "**Alliance Agreement**" if it is:

- (a) an Access Agreement or Property Lease or Service Recovery Plan or entered into in accordance with the National Stations Improvement Programme or the Access for All programme;
- (b) entered into under arrangements contemplated by, or to which it is required to be a party under, a Licence, an Access Agreement, Property Lease, Service Recovery Plan, the Network Code, the Independent Station Access Conditions, the National Station Access Conditions or the Railway Operational Code;
- (c) entered into as contemplated or permitted by paragraph 7 of Schedule 1.2 (Operating Obligations), paragraph 1.5 of Schedule 1.4 (Passenger Facing Obligations), paragraph 5 of Schedule 1.6 (Franchise Services), paragraph 1 of Schedule 2.4 (Other Franchise Operations), paragraph 2 of Schedule 4 (Persons with Disabilities and Disability Discrimination), paragraphs 9 or 14 of this Schedule 13 (Information and Industry Initiatives), or paragraph 2 of Schedule 15.4 (Provisions Applying on and after Termination); or
- (d) confirmed by the Secretary of State on application by the Franchisee not to be an Alliance Agreement,

provided that (subject as may be agreed under paragraph 11.7(d)) in the event that such an agreement does require any amendment to the terms of this Franchise Agreement it shall be treated as an Alliance Agreement.

- 11.8 Where participation in a route efficiency benefit share mechanism is made available to the Franchisee under a Track Access Agreement as a consequence of a Charging Review after the Start Date, the Franchisee must elect not to participate in such mechanism for all of its routes. Should the Franchisee for any reason fail to comply with this requirement and participate in such a mechanism, then the Secretary of State reserves the right to fully recover from the Franchisee any financial benefits paid to it under the mechanism and the Franchisee agrees that the Secretary of State shall be entitled to receive details of those benefits from Network Rail or any other relevant party.

12. **Sustainable Construction**

For construction projects (including building refurbishment or fit out):

- (a) which are either being funded by the Franchisee or in respect of which the Franchisee has design responsibility; and
- (b) in respect of which the total capital cost exceeds £250,000 (indexed by the Retail Prices Index in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments)),

the Franchisee shall use reasonable endeavours to achieve at least an "excellent" rating from an accredited assessor using Building Research establishment environmental assessment methodology (or an equivalent recognised standard) at both the design stage and the post-construction stage unless the Secretary of State (acting reasonably) agrees that the relevant project is not of a suitable scale

or type to be so assessed and the Franchisee shall provide to the Secretary of State such information in relation to any construction project as the Secretary of State may reasonably request.

13. Environmental Management and Sustainability Accreditation

The Franchisee shall, by no later than the date which is 18 months after the Start Date, attain and, at all times thereafter, maintain accreditation pursuant to ISO14001 and ISO50001 or equivalent standards.

14. Community Rail Partnerships

The Franchisee shall, at the request of the Secretary of State, co-operate with the Secretary of State, Network Rail, the 'Association of Community Rail Partnerships', the relevant Community Rail Partnership and/or any other person as the Secretary of State may nominate in the development of the Secretary of State's initiatives in relation to options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route.

15. Station Investment

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

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

- (a) attend meetings with the Secretary of State and/or such third party to discuss such opportunities;
- (b) provide the Franchisee's opinion on those opportunities;
- (c) review and comment on implementation timetables and programmes for any such opportunities; and
- (d) use all reasonable endeavours to achieve any necessary amendments to any Station Leases in order to facilitate the implementation of those opportunities.

16. Small and Medium-sized Enterprises

16.1 The Franchisee shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Franchise Services.

16.2 By no later than 31 January in each year (and within one month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of SMEs used by the Franchisee in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

17. **Apprenticeships**

17.1 The Franchisee shall at all times keep accurate and complete records of the training and apprenticeships offered by the Franchisee and/or its immediate UK-based supply chain in delivering the Franchise Services.

17.2 By no later than 31 January in each year (and within one month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of training and apprenticeships offered by the Franchisee and/or its supply chain in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

18. **Environmental impact monitoring, data collection and contractual targets**

18.1 The Franchisee shall, by no later than 3 months after the Start Date, provide a report to the Secretary of State setting out:

- (a) which measures included in the Dataset the Franchisee is unable to provide, despite using reasonable endeavours to do so ("**Excluded Data**");
- (d) for each item of Excluded Data, the technical, operational or commercial reason why the Franchisee is unable to provide the Excluded Data; and
- (e) a plan ("**Environmental Data Implementation Plan**") detailing, in relation to each item of Excluded Data, the actions which the Franchisee would need to take in order to be able to provide such Excluded Data, the Franchisee's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Franchisee would be able to begin providing such Excluded Data to the Secretary of State.

The dataset, excluding any measures which the Secretary of State agrees, acting reasonably, that the Franchisee is, despite using reasonable endeavours, unable to provide, shall be referred to as the "**Initial Dataset**".

18.2 The Secretary of State may require:

- (a) the Franchisee to implement the Environmental Data Implementation Plan in whole or in part; and/or
- (b) the Franchisee to take such other actions as, in the reasonable opinion of the Secretary of State, would enable the Franchisee to provide any item of Excluded Data,

following which the relevant item of Excluded Data will form part of the Initial Dataset.

18.3 Where the Franchisee is:

- (a) undertaking works, whether at a station or depot or in respect of rolling stock;
- (b) procuring rolling stock; or
- (c) taking any other action which could enable the Franchisee to provide any item of Excluded Data in a cost effective manner,

the Franchisee will use reasonable endeavours to do so in a manner which would enable the Franchisee to provide any relevant item of Excluded Data (and any item of Excluded Data which the Franchisee becomes able to provide as a result will, with effect from the date on which the Franchisee becomes able to provide the same, form part of the Initial Dataset).

- 18.4 With effect from the date which is 3 months after the Start Date, the Franchisee shall measure, collect and provide to the Secretary of State in accordance with this paragraph 18, that data included on the Initial Dataset so as to allow the Secretary of State and the Franchisee to understand the current environmental performance of the Franchise and any potential for improvement in terms of environmental impact.
- 18.5 The Franchisee may, in its discretion, measure and collect additional data provided that the minimum required Initial Dataset is adhered to and the Franchisee will co-operate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.
- 18.6 The Franchisee shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated quarterly or annual (as applicable) usage figure to the Secretary of State for each reporting quarter or Franchisee Year (as applicable).
- 18.7 The Franchisee shall submit to the Secretary of State a report setting out the result of the of the data collection required by paragraph 18 within four weeks following the end of each (i) reporting quarter during the Franchise Period and (ii) Franchisee Year (as applicable).
- 18.8 For the purpose of this paragraph 18 "**reporting quarters**" are 1st April to 30th June, 1st July to 30th September, 1st October to 31st December and 1st January to 31st March. The first reporting quarter of the Franchise Period for the purpose of the report shall begin on the Start Date and end on the last day of the reporting quarter in which the Start Date falls, and the final quarter shall end on the last day of the Franchise Period.
- 18.9 The Franchisee shall submit the report required by paragraph 18.7 above to the Secretary of State in such format as the Secretary of State may (acting reasonably) from time to time specify. Such report will include the actual quarterly or annual results (as applicable).

19. **Sustainability**

- 19.1 The Franchisee shall at all times comply with the Sustainable Development Strategy.
- 19.2 By no later than three months after the Start Date the Franchisee shall submit the Initial Sustainable Development Plan to the Secretary of State. By no later than six months following the Start Date, the Franchisee shall consult with the Rail Safety and Standards Board, and such other Stakeholders as agreed between the Secretary of State and the Franchisee (or, in the absence of agreement, such Stakeholders as the Secretary of State shall determine) on the Initial Sustainable Development Plan in order to finalise (i) the key priority sustainable development areas specified in the Initial Sustainable Development Plan and (ii) the targets associated with such key priority sustainable development areas.
- 19.3 The Franchisee shall revise the Initial Sustainable Development Plan to reflect such consultation and the Franchisee shall propose and agree a final version of the

sustainable development plan with the Rail Safety and Standards Board and the Secretary of State by not later than 12 months after the Start Date. Such agreed plan shall be the Sustainable Development Plan for the purposes of the Franchise Agreement, provided that in the absence of agreement between the parties the Sustainable Development Plan shall be the plan determined by the Secretary of State (acting reasonably).

- 19.4 The Franchisee shall 1 year after the Sustainable Development Plan is agreed in accordance with paragraph 19.3 above, and annually thereafter, provide to the Secretary of State a report showing:
- (a) progress against the targets in key priority sustainable development areas;
 - (b) progress on development of staff to ensure they have the skills and knowledge required to deliver a sustainable franchise;
 - (c) proposed revisions to the Sustainable Development Plan (such revisions to include those revisions reflecting feedback and advice from stakeholders, and which have been consulted on with Rail Safety and Standards Board).
- 19.5 Subject to the Secretary of State consenting to such amendments to the Sustainable Development Plan, such revised Sustainable Development Plan shall be the Sustainable Development Plan for the purposes of the Franchise Agreement.
- 19.6 On request by the Secretary of State, the Franchisee shall publish (in such form as the Secretary of State may reasonably determine):
- (a) all or any part of its Sustainable Development Strategy; and/or
 - (b) all or any of the information described in paragraphs 19.4(a), 19.4(b) and/or 19.4(c).

20. **Publication of data**

Performance Data

- 20.1 The Franchisee shall in accordance with paragraph 20.2 (and in such format as the Secretary of State may reasonably require) publish on the Franchisee's web site in relation to each Reporting Period during the Franchise Term the performance of the Franchisee by reference to:
- (a) the Cancellations Benchmarks;
 - (b) PPM Figures; and
 - (c) CaSL Figures.

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

- 20.2 The Franchisee shall ensure that the data published by it pursuant to paragraph 20.1 shall in each case:

- (a) be shown in relation to all Passenger Services and also disaggregated by reference to Service Groups;
- (b) include details of:
 - (i) the number of Passenger Services operated by the Franchisee during each relevant Reporting Period which are late in arriving at their final scheduled destination in the Plan of the Day:
 - (A) by between thirty minutes and fifty nine minutes;
 - (B) by between sixty minutes and one hundred and nineteen minutes; and
 - (C) by one hundred and twenty minutes or more,
 and the percentage that each such category of delayed Passenger Services represents of the total number of Passenger Services scheduled to be provided in the Plan of the Day during such Reporting Period;
 - (ii) the number of Passenger Services formed with fewer vehicles than specified in the Train Plan during such Reporting Period and the percentage that this represents of all Passenger Services scheduled to be operated in that Reporting Period.

20.3 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 3.2 of Schedule 7.2, the Franchisee shall publish (in such format as the Secretary of State may reasonably require):

- (a) the mean average of the statistics required to be published pursuant to paragraph 20.1 in relation to each of the Cancellations Benchmarks, PPM Figures and CaSL Figures for the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first Customer Report, since the Start Date;
- (b) from the third Customer Report onwards a summary comparison of the mean average of the statistics provided pursuant to paragraph 20.3(a) as against the equivalent mean average statistics provided for the same Reporting Periods in the previous Franchisee Year;
- (c) an update on the key activities undertaken by the Franchisee to improve its performance in relation to achieving and exceeding its targets in relation to the Cancellations Benchmarks, PPM Figures and CaSL Figures during the period referred to in paragraph 20.3(a); and
- (d) a summary of the key activities planned to be undertaken by the Franchisee in the period in relation to which the next Customer Report will report to improve its performance in relation to achieving it targets in relation to and exceeding the Cancellations Benchmarks, PPM Figures and CaSL Figures.

Customer Service and Satisfaction Data

20.4 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 3.2 of Schedule 7.2, the Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of the Franchisee's:

- (a) level of adherence to scheduled ticket office opening hours at Stations (so that the Customer Report shows, as a percentage, the proportion of scheduled ticket office opening hours not delivered aggregated across all ticket offices at all Stations); and
- (b) performance by reference to such benchmarks as may be agreed between the Franchisee and the ORR as part of the Franchisee's Disabled People's Protection Policy in respect of the Passenger Assistance service operated by the Franchisee,

in each case in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first Customer Report, since the Start Date, along with (from the third Customer Report onwards) a comparison with the relevant statistics or results (as applicable) provided for the same Reporting Periods in the previous Franchisee Year.

20.5 Within 20 Weekdays of the publication of each National Rail Passenger Survey carried out by the Passengers' Council during the Franchise Term, the Franchisee shall publish on its web site (in such format as the Secretary of State may reasonably require) details of:

- (a) the scores achieved by the Franchisee in such National Rail Passenger Survey in respect of each NRPS Measure; and
- (b) the scores achieved by the Franchisee in such National Rail Passenger Survey in respect of passengers' "overall satisfaction".

20.6 The Franchisee shall ensure that the NRPS scores published by it pursuant to paragraph 20.5 are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable NRPS scores were achieved, along with:

- (a) from the third Customer Report onwards, a comparison with the NRPS scores achieved for the same Reporting Periods in the previous Franchisee Year accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise;
- (b) a comparison against the applicable NRPS Benchmarks for the Reporting Periods in question accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise;
- (c) details of any remedial work either:
 - (i) planned by the Franchisee to occur in the period in relation to which the next Customer Report will report to improve the Franchisee's performance in relation to achieving and exceeding the NRPS Benchmarks (for instance, the planned application of Additional Expenditure); or
 - (ii) undertaken by the Franchisee during the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first Customer Report, since the Start Date, for the purposes of improving the Franchisee's performance in relation to achieving and exceeding the NRPS Benchmarks (for instance, the planned application of Additional Expenditure); and

(d) details of any other initiatives planned to be implemented by the Franchisee to improve passenger experience.

20.7 The Franchisee shall also ensure that copies of the Customer Report are available on application made by phone or in writing.

APPENDIX 1 TO SCHEDULE 13**Environmental Impact Monitoring Dataset**

Environmental Impact Monitoring Dataset SUBJECT (UNIT)		GRANULARITY	REGULARITY
TRACTION	EC4T (kWh)	Breakdown per distinct fleet – metered	4-week period
	EC4T (kWh)	Breakdown per distinct fleet - unmetered	4-week period
	Gas-oil (litres)	Breakdown per distinct fleet	4-week period
NONTRACTION	Electricity (kWh)	Total	4-week period or monthly
	Gas (kWh)	Total	4-week period or monthly
	Gas-oil (litres)	Total	4-week period or monthly
CARBON	Scope 1 emissions (tonnes)	Total	Annual
	Scope 2 emissions (tonnes)	Total	Annual
	Embodied carbon in new infrastructure projects over £250,000	Total	Per project
WATER	Mains Water consumption (m3)	Total	Annual
	Water recycling initiatives	Narrative	Annual
WASTE	Waste generated (tonnes)	Total	Annual
	Waste recycled (tonnes)	Total	Annual
	Waste subject to other recovery (tonnes)	Total	Annual
	Waste to landfill (tonnes)	Total	Annual
	Hazardous waste	Total	Annual
ENVIRONMENTAL MANAGEMENT SYSTEM	Enforcement/information Notices	Total	Annual
	Environmental fines or prosecutions	Total	Annual
	Environmental incidents reported through EMS	Total	Annual
	Environmental training records % personnel briefed/trained	Total	Annual

APPENDIX 2 TO SCHEDULE 13**Key Assets****1. Information About Assets Used In The Franchise**

The Franchisee shall at all times during the Franchise Term maintain (and shall provide copies to the Secretary of State when requested to do so from time to time) records covering the following information:

- (a) for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:
 - (i) the progress and completion of all work described in the maintenance schedules and manuals;
 - (ii) all operating manuals (including any safety related regulations); and
 - (iii) all permits, licences, certificates or other documents required to operate such asset; and
- (b) a printed or electronic list of all assets owned by the Franchisee from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items).

APPENDIX 3 TO SCHEDULE 13**Operational Information**

1. **Information about the Performance of the Franchisee**
 - 1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under the Franchise Agreement, covering the areas and the information described in this Appendix 3. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
 - 1.2 The Franchisee shall, subject to paragraph 1.3, provide to the Secretary of State the information set out in the following tables at the frequency specified in the column of each such table headed "When information to be provided".
 - 1.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
 - (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
 - (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.
 - 1.4 The following key shall apply to the table in this Appendix 3:
 - A = Information to be provided on or before any Passenger Change Date;
 - B = Information to be provided for every Reporting Period within 17 days of the last day of each Reporting Period; and
 - C = Information to be provided annually within 10 days of the last day of each Franchisee Year.

Table 1 Operational Information

Information to be provided	Information (format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day	[number]	B

Information to be provided	Information (format)	When information to be provided
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations for the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Disputed Cancellations and Disputed Partial Cancellations from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 2.1 of Schedule 7.1 (Performance Benchmarks) including whether each relevant Disputed Cancellation and/or Disputed Partial	[minutes]	B

Information to be provided	Information (format)	When information to be provided
Cancellation was attributed to Network Rail or to the Franchisee		
<p>Where there is a difference between the Timetable and the Plan of the Day on any day the following:</p> <p>(a) the fact of such difference (together with an annotation showing whether the difference was initiated by Network or the Franchisee); and</p> <p>(b) the number of:</p> <p>(i) Passenger Services affected; and</p> <p>(ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day</p>	[number]	B
<p>Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day:</p> <p>(a) the fact of such difference; and</p> <p>(b) the number of:</p> <p>(i) Passenger Services affected; and</p> <p>(ii) Cancellations or Partial Cancellations which would have arisen if the Plan of the Day had been the same as the Enforcement Plan of the Day</p>		
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B

Information to be provided	Information (format)	When information to be provided
Capacity ^{xxvi}		
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Minutes Delay and Punctuality		
Number of Minutes Delay attributable to the Franchisee	[minutes]	B
Number of Minutes Delay attributable to Network Rail	[minutes]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay for the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 2.5 of Schedule 7.1 (Performance Benchmarks) and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination	[minutes]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[minutes]	
Train Mileage		
Aggregate Train Mileage scheduled in the Timetable	[mileage]	A

Information to be provided	Information (format)	When information to be provided
Aggregate Train Mileage operated	[mileage]	B
Year to Date Loaded Train Miles (millions)	[mileage]	B

SCHEDULE 14**Preservation of Assets**

Schedule 14.1:	Maintenance of Franchise
Schedule 14.2	Maintenance of Operating Assets
Schedule 14.3	Key Contracts
	Appendix: List of Key Contracts
Schedule 14.4	Designation of Franchise Assets
	Appendix: List of Primary Franchise Assets
Schedule 14.5	Dealings with Franchise Assets

SCHEDULE 14.1

Maintenance of Franchise

Maintenance as going concern

1. **⁵⁰¹The Franchisee shall maintain and manage the business of providing the Franchise Services and the HEx Outsourced Services so that, to the greatest extent possible and practicable:**
 - (a) **the Franchisee is able to perform its obligations under the Franchise Agreement and the HEx Services Agreement;** and
 - (b) **a Successor Operator would be able to take over the business of providing the Franchise Services and the HEx Outsourced Services immediately at any time.**

2. **⁵⁰²The Franchisee's obligation under paragraph 1 shall include an obligation to ensure that any computer and information technology systems of the Franchisee shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a stand alone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of the Franchise Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for the Franchisee to obtain consent to such arrangements relating to sharing computer and information technology systems from the Secretary of State). This obligation does not apply in relation to computer and information technology systems of, or provided by, HAL and/or HEOC which are shared or made available to the Franchisee in connection with its performance of the HEx Services Agreement.**

3. The Franchisee shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Primary Franchise Assets for such purpose.

4. **⁵⁰³The Franchisee shall maintain and manage the business of providing the Franchise Services and the HEx Outsourced Services on the basis that such business will be transferred, in the manner contemplated under the Franchise Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator.**

5. The Franchisee shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period.

6. The Franchisee shall comply with all reasonable requirements of the Secretary of State to obtain or maintain the property and rights that a Successor Operator

⁵⁰¹ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁰² 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁰³ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period.

Post-Franchise timetables

7. Both prior to and following the selection of a Successor Operator (whether a franchisee or otherwise and whether or not subject to the satisfaction of any conditions), the Franchisee shall:
 - (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State; and
 - (b) take such steps as may reasonably be requested by the Secretary of State,

⁵⁰⁴**so as to ensure the continuity of, and orderly handover of control over of the Franchise Services and the HEx Outsourced Services.**
8. The steps that the Secretary of State may reasonably request the Franchisee to take pursuant to paragraph 6 include:
 - (a) participating in any timetable development process that takes place during the Franchise Period, but which relates to any timetable period applying wholly or partly after the expiry of the Franchise Term ("**Successor Operator Timetable**"), including bidding for and securing any Successor Operator Timetable, whether or not:
 - (i) the Successor Operator has been identified; or
 - (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
 - (b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Franchise Period;
 - (c) assisting the Secretary of State or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or
 - (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Franchisee shall not be required to enter into any such Access Agreement unless the Secretary of State has first provided to it confirmation in writing that he will include that Access Agreement in any Transfer Scheme pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination).

⁵⁰⁴ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 14.2

Maintenance of Operating Assets

1. Operating Assets

- 1.1 ⁵⁰⁵The Franchisee shall maintain, protect and preserve the assets (including any intellectual property or intangible assets employed in the performance of its obligations under the Franchise Agreement and the HEx Services Agreement (the "Operating Assets") in good standing or good working order, subject to fair wear and tear.
- 1.2 ⁵⁰⁶The Franchisee shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred under the Transfer Scheme or (in the case of Operating Assets used in the HEx Outsourced Services and not otherwise transferred under the Transfer Scheme) or the HEx Business Transfer Agreement at the end of the Franchise Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Franchise Services and the HEx Outsourced Services (as relevant).
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Franchisee shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Franchisee shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under the Franchise Agreement.
- 1.4 The Secretary of State may at any time require the Franchisee to provide to the Secretary of State a schedule specifying the condition of any asset or class of assets that he specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Secretary of State may reasonably require. If the parties are unable to agree the content of such schedule of condition, either party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Franchisee shall comply with the Secretary of State's requirements in respect of such schedule of condition.
- 1.5 The Franchisee shall keep vested in it at all times during the Franchise Period all Franchise Assets designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets) as it may require in order to comply with:
- (a) the Licences;
 - (b) any contracts of employment with Franchise Employees;
 - (c) any relevant Fares;
 - (d) any Key Contracts; and
 - (e) any applicable safety legislation regulations or safety standards and the Safety Certificate,

⁵⁰⁵ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁰⁶ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

in order to ensure that the Secretary of State may designate such assets as Primary Franchise Assets.

2. **Brand Licences And Branding**

Brand Licences

2.1 The Franchisee shall comply with its obligations under each of the Brand Licences.

Branding

2.2 Subject to any applicable obligations or restrictions on the Franchisee (including the terms of the Rolling Stock Leases), the Franchisee may apply registered or unregistered trademarks (including company names, livery and other distinctive get-up) to any assets owned or used by it in the operation and provision of the Franchise Services.

(a) Subject to paragraphs 2.2(c) and 2.2(g), the Franchisee may:

(i) in respect of unregistered Marks, provide or procure the provision of an irrevocable undertaking to any relevant Successor Operator to the effect that neither it nor the owner of the Marks will enforce such rights as it may have or may in the future have in respect of such Marks against such Successor Operator and its successors; and

(ii) in respect of registered Marks, grant or procure the grant of an irrevocable licence to use such Marks to such Successor Operator and its successors.

(b) Any such licence or undertaking under paragraph 2.2(a) shall be in such form as the Secretary of State shall reasonably require except that the terms of any such licence and, to the extent appropriate, any such undertaking shall accord with the provisions of paragraph 8.3 of Schedule 15.4 (Provisions Applying on and after Termination).

(c) Subject to paragraph 2.2(g), to the extent that:

(i) the Franchisee does not provide a relevant undertaking or licence in accordance with paragraph 2.2(a);

(ii) the Secretary of State considers the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the Marks are applied; or

(iii) the Franchisee has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the Secretary of State prior to the expiry of the Franchise Period,

then the Franchisee shall pay to the relevant Successor Operator such amount as may be agreed between the Franchisee and such Successor Operator, as being the reasonable cost (including any Value Added Tax for which credit is not available under Sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the Secretary of State. Such amount shall not in any event

exceed the cost to the Successor Operator of replacing such Marks with its own. If the Franchisee and the relevant Successor Operator fail to agree such cost within 28 days of the expiry of the Franchise Period, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.

- (d) The amount to be paid to a Successor Operator under paragraph 2.2(c) may include the reasonable cost of:
- (i) removing or covering Marks from the exterior of any rolling stock vehicle;
 - (ii) removing or covering interior indications of the Marks including upholstery and carpets;
 - (iii) replacing or covering all station or other signs including bill boards; and
 - (iv) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the Franchise Services.
- (e) The Franchisee shall, in addition to making a payment under paragraph 2.2(c) grant or procure the grant of a licence or undertaking complying with paragraphs 2.2(a) and 2.2(b) except that such licence shall only be for such period as may be agreed between the Franchisee and the Successor Operator as being reasonably required by the Successor Operator to remove the Marks from all relevant assets without causing excessive disruption to the operation of services similar to the Franchise Services provided by such Successor Operator. If such period cannot be agreed, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.
- (f) The Secretary of State shall determine at or around the end of the Franchise Period, and after consultation with the Franchisee, the maximum liability of the Franchisee under paragraph 2.2(c) and the maximum length of licence or undertaking under paragraph 2.2(e);
- (g) The provisions of paragraphs 2.2(a) to 2.2(f) shall not apply to the extent that the relevant asset is not to be used by a Successor Operator in the provision of services similar to the Franchise Services. The Secretary of State shall notify the Franchisee as soon as he becomes aware of whether or not any such asset is to be so used.

Non-designation of New Brands

- 2.3 The Secretary of State agrees not to designate as a Primary Franchise Asset any registered or unregistered trademark which is developed by the Franchisee.

GWR Marks and GWR External Livery⁵⁰⁷

⁵⁰⁷ 20 January 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 2.4 ⁵⁰⁸Notwithstanding paragraph 2.3 of Schedule 14.2 (Maintenance of Operating Assets), it is acknowledged that the Franchisee's registered trade mark number UK00003064468 and any unregistered trademark rights (if any) which the Franchisee may have in relation to the GWR External Livery Specification (or any similar external livery) or the GWR / Great Western Railway brand are each a Franchise Asset which shall be designated by the Secretary of State as Primary Franchise Assets with effect from the date of this Deed and which, if transferred to a Successor Operator at the end of the Franchise Period, shall do so at nil value.
- 2.5 ⁵⁰⁹In the event that either:
- (a) the registered and unregistered marks (if any) as referred to in paragraph 2.4 are transferred to a Successor Operator at the end of the Franchise Period; or (in the absence of such transfer)
 - (b) the Franchisee offers a Successor Operator and its successors an irrevocable undertaking and licence in respect of such marks in accordance with paragraph 2.2(a) of Schedule 14.2 (Maintenance of Operating Assets),
- the Franchisee shall not be required by the Secretary of State or that Successor Operator to cover or remove those marks or "Great Western" or "Great Western Railway" marks or otherwise cover or remove any part of the GWR External Livery Specification (Vinyls) (or any similar livery) from any of the Liveried Sets or other assets which is to be used by that Successor Operator or to pay that relevant Successor Operator to undertake any such covering or removal from (i) those Sets or (ii) any of the Train Fleet or any other assets to be retained or used by that Successor Operator.
- 2.6 ⁵¹⁰Paragraphs 2.4 and 2.5 above do not affect ownership of marks associated with the Parent (such as "FirstGroup" or the "flying f" logo) or the obligations of the Franchisee in connection with the covering or removal of such marks at the end of the Franchise (including the "a FirstGroup company" decals which are part of the GWR External Livery Specification).

⁵⁰⁸ 20 January 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁰⁹ 20 January 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵¹⁰ 20 January 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 14.3**Key Contracts****1. Key Contracts**

1.1 The provisions of this Schedule 14.3 apply to all contracts designated as Key Contracts from time to time.

1.2 The Key Contracts as at the date of the Franchise Agreement are set out in the Appendix (List of Key Contracts) to this Schedule 14.3. The Franchisee shall, in respect of any category of agreement, contract, licence or other arrangement which, by virtue of the provisions of this paragraph 1.2, is a Key Contract and to which the Franchisee, as at date of the Franchise Agreement, is not already a party:

- (a) inform the Secretary of State from time to time of any such agreement, contract, licence or other arrangement which it may be intending to enter into; and
- (b) the provisions of paragraph 5.1 shall apply in respect of any such agreement, contract, licence or other arrangement.

1.3 Without prejudice to the provisions of paragraphs 2, 3 and 4 of this Schedule 14.3, the Appendix (List of Key Contracts) to this Schedule 14.3 shall be amended as considered necessary from time to time to take account of any:

- (a) designation by the Secretary of State of any actual or prospective agreement, contract, licence or other arrangement or any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary pursuant to paragraph 2 of this Schedule 14.3; or
- (b) de-designation by the Secretary of State of any Key Contract pursuant to paragraph 3 of this Schedule 14.3; or
- (c) re-designation by the Secretary of State pursuant to paragraph 4 of this Schedule 14.3.

2. Designation of Key Contracts

2.1 Where the Secretary of State considers that it is reasonably necessary for securing the continued provision of the Franchise Services or the provision of services similar to the Franchise Services by a Successor Operator in accordance with the Franchise Agreement, he may make a designation pursuant to paragraph 2.2.

2.2 The Secretary of State may at any time, by serving notice on the Franchisee, designate as a Key Contract:

- (a) any actual or prospective agreement, contract, licence or other arrangement; and/or
- (b) any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary,

with effect from the date specified in such notice.

- 2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Franchisee or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

3. **De-Designation of Key Contracts**

The Secretary of State may at any time, by serving a notice on the Franchisee, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. **Re-Designation of Key Contracts**

The Secretary of State may at any time, by serving notice on the Franchisee, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

5. **Direct Agreements**

- 5.1 Unless the Secretary of State otherwise agrees, or unless directed to do so by the ORR, the Franchisee shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

- (a) is a Train Operator; or
- (b) has entered into a Direct Agreement with the Secretary of State in respect of that prospective Key Contract, providing on a basis acceptable to the Secretary of State, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;
 - (ii) termination or expiry of the Franchise Agreement; or
 - (iii) the making of a railway administration order in respect of the Franchisee.

- 5.2 Where the Secretary of State designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Franchisee is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Franchisee is already a party to a contract, licence or other arrangement which, by virtue of the Secretary of State's designation or re-designation, is classified in such category,

the Franchisee shall use all reasonable endeavours to assist the Secretary of State in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

- 5.3 The Franchisee shall pay to the Secretary of State an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the

Secretary of State under the provisions of any Direct Agreement and which may be notified to the Franchisee as a result of, or in connection with:

- (a) any breach by the Franchisee of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the Franchisee against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. Emergencies

Where any emergency may arise in connection with the provision and operation of the Franchise Services, the Franchisee:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist the Secretary of State in entering into the same;
- (c) shall promptly inform the Secretary of State of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as the Secretary of State may request.

7. No Amendment

The Franchisee shall not without the prior consent of the Secretary of State (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

8. Replacement of Key Contracts

The Franchisee shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter into an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Secretary of State in relation to such replacement contract.

9. Termination of Key Contracts

The Franchisee shall, to the extent so requested by the Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.

APPENDIX TO SCHEDULE 14.3**List of Key Contracts**

The following items have as at the date of the Franchise Agreement been agreed between the parties to be Key Contracts:

1. any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner;
2. any Property Lease;
3. any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 of Schedule 1.7 (The Train Fleet);
4. any contract for the maintenance and renewal works at Stations including any framework delivery contracts for the provision of building and civil engineering works, mechanical and electrical works at Stations;
5. any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services;
6. any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees));
7. any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
8. any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services;
9. any contract or arrangement for the supply of spare parts or Spares;
10. any contract or arrangement for the maintenance of track and other related infrastructure;
11. any licences of Marks to the Franchisee;
12. any licence of any CRM System or Yield Management System;
13. any contract or arrangement for the provision or lending of Computer Systems (other than the CRM System and Yield Management System) used by the Franchisee for the delivery of the Franchise Services;

14. agreement in respect of services provided at Reading Station made between Network Rail (1) and the Franchisee (2);
15. agreement concerning the management of Reading Station car park and compensation for new arrangements at Reading and Bristol Temple Meads stations made between Network Rail (1) and the Franchisee (2); and
16. agreement in respect of services provided at Bristol Temple Meads Station made between Network Rail (1) and the Franchisee (2).
17. ⁵¹¹**Any contract or arrangement for the procurement or operation of the STNR System or any component of it and any contract or arrangement for the procurement, licensing, processing or generation of data processed or generated by the STNR System (including Intellectual Property Rights (or licence to use the same) associated with the STNR System and such data).**
18. ⁵¹²**Any contract or arrangement for the procurement, implementation, processing and/or operation of Delay Repay Compensation (including Intellectual Property Rights (or licence to use the same) relating to Delay Repay Compensation).**

⁵¹¹ 13 December 2017 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

⁵¹² 7 March 2019 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 14.4**Designation of Franchise Assets****1. Franchise Assets**

- 1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Franchisee from time to time during the Franchise Period shall be designated as Franchise Assets and shall constitute Franchise Assets for the purposes of Section 27(11) of the Act.
- 1.2 The rights and liabilities of the Franchisee in respect of the following items shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of Section 27(11) of the Act:
- (a) any contracts of employment;
 - (b) the Franchise Agreement and any Transfer Scheme or Supplemental Agreement;
 - (c) the Ticketing and Settlement Agreement;
 - (d) any sums placed on deposit with a bank or other financial institution;
 - (e) such other property, rights and liabilities as the Franchisee and the Secretary of State may agree from time to time or as the Secretary of State may de-designate as Franchise Assets under paragraph 10.2; and
 - (f) any Rolling Stock Leases.

2. Primary Franchise Assets

- 2.1 The following property, rights and liabilities shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the following dates:
- (a) the property, rights and liabilities listed as such in the Appendix (List of Primary Franchise Assets) to this Schedule 14.4 (which constitute Primary Franchise Assets agreed between the parties as at the date of the Franchise Agreement), on the Start Date;
 - (b) any additional property, rights and liabilities designated under paragraph 3 during the Franchise Period, on the date of such designation;
 - (c) any property or right which is vested in the Franchisee and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
 - (d) the rights and liabilities of the Franchisee under any Key Contract designated under paragraph 5, on the date of such designation;

- (e) the rights and liabilities of the Franchisee in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation;
- (f) any CRM Data and/or Yield Management Data and, to the extent that any CRM System and/or Yield Management System is the property of the Franchisee, such CRM System and/or Yield Management System on the later of the Start Date and:
 - (i) in relation to CRM Data or Yield Management Data, the date on which such CRM Data or Yield Management Data (as applicable) is collected; or
 - (ii) in relation to any such CRM System or Yield Management System, the date on which such CRM System or Yield Management System is created,

save, in relation to CRM Data and Yield Management Data, any data in respect of which the Data Subject has not consented to such data being disclosed and Processed by any Successor Operator and/or the Secretary of State; and
- (g) any licence of any CRM System and/or Yield Management System, on the date of such licence.

3. **Designation of Additional Primary Franchise Assets**

The Secretary of State may at any time and from time to time during the Franchise Period, by serving notice on the Franchisee, designate any or all of the Franchise Assets as Primary Franchise Assets. Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation. On or before designation of any Franchise Asset as a Primary Franchise Asset, the Secretary of State may agree not to subsequently de-designate such Primary Franchise Asset without the prior written consent of the Franchisee. If the Secretary of State so agrees, the notice designating the relevant Franchise Asset as a Primary Franchise Asset shall state that the Secretary of State shall not de-designate such Primary Franchise Asset without the prior written consent of the Franchisee.

4. **Designation during last 12 Months of Franchise Period**

If the Secretary of State designates a Franchise Asset as a Primary Franchise Asset under paragraph 3 at any time during the last 12 months of the Franchise Period then, within 28 days of such designation, the Secretary of State may de-designate such Primary Franchise Asset by serving notice on the Franchisee provided that, in relation to any Primary Franchise Asset in respect of which the Secretary of State agreed pursuant to paragraph 3 that he would not de designate without the prior written consent of the Franchisee, such consent has been obtained. Such de-designation shall take effect upon delivery of such notice.

5. **Designation of Key Contracts as Primary Franchise Assets**

The Secretary of State shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Franchise Asset at any time during the Franchise Period by serving notice on the Franchisee. Such designation shall take effect from delivery of such notice.

6. **Designation of Fares and Discount Cards**

The Secretary of State may designate any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchisee. Such designation shall take effect from delivery of such notice.

7. **Rights and Liabilities**

The Secretary of State, in designating the rights and liabilities of the Franchisee (whether under a particular contract or other arrangement) as a Primary Franchise Asset may, in his discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

8. **Disputes over Designation**

8.1 The Franchisee may object in writing to the Secretary of State to any designation pursuant to paragraph 3 or 4.

8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Franchisee's opinion, reasonably necessary to secure the continued provision of the Franchise Services by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or to facilitate the transfer to such Successor Operator of the provision of the Franchise Services at such time.

8.3 Any such objection may only be made within 28 days of a designation made more than 12 months prior to the end of the Franchise Period or 14 days of a designation made during the last 12 months of the Franchise Period.

8.4 The Secretary of State shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Franchisee regarding the use of the relevant Primary Franchise Asset otherwise than in the provision and operation of the Franchise Services.

8.5 If the Franchisee's objection cannot be resolved by agreement within a period of 14 days from the date of submission of that objection, the Franchisee may refer the dispute for resolution in accordance with the Dispute Resolution Rules.

8.6 Any body duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or otherwise facilitating the transfer of the provision of the Franchise Services at such time, and accordingly whether or not they should cease to be so designated.

8.7 If any dispute as to any designation pursuant to paragraph 3 remains outstanding on the expiry of the Franchise Period, then such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant Franchise Assets shall continue to be designated as Primary Franchise Assets on and after the expiry of the Franchise Period.

9. **Provision of Information to the Secretary of State**

- 9.1 The Franchisee shall provide such information as the Secretary of State may reasonably require in order to satisfy the Secretary of State that any Franchise Assets which are to be designated as Primary Franchise Assets after the Start Date under this Schedule 14.4 will at the time of such designation be vested in the Franchisee. Such information may include details of any Security Interests over such property, rights and liabilities.
- 9.2 The Franchisee shall further provide such information as to the property, rights and liabilities of the Franchisee as the Secretary of State may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Secretary of State within such timescale as the Secretary of State may reasonably require.

10. **De-Designation of Franchise Assets and Primary Franchise Assets**

- 10.1 The Secretary of State and the Franchisee may agree in writing at any time during the Franchise Period that a Franchise Asset shall cease to be so designated as a Franchise Asset or that a Primary Franchise Asset shall cease to be so designated as a Primary Franchise Asset, and the relevant Franchise Asset or Primary Franchise Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.
- 10.2 The Secretary of State may in addition at any time during the Franchise Period, by serving notice on the Franchisee, cause a Franchise Asset which is not a Primary Franchise Asset to cease to be so designated as a Franchise Asset. Such Franchise Asset shall cease to be so designated on the date specified in such notice.
- 10.3 The Secretary of State may in addition, at any time during the Franchise Period, by serving notice on the Franchisee, cause a particular Primary Franchise Asset to cease to be designated as such provided that, in relation to any Primary Franchise Asset in respect of which the Secretary of State agreed pursuant to paragraph 3 that he would not de designate without the prior written consent of the Franchisee, such consent has been obtained. Such Primary Franchise Asset shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Asset, no later than one year prior to the expiry of the Franchise Term.

11. **Amendment of the Appendix to this Schedule 14.4**

The Appendix (List of Primary Franchise Assets) to this Schedule 14.4 shall be amended as the Secretary of State considers necessary or desirable from time to time to take account of designation and de-designation of Primary Franchise Assets pursuant to this Schedule 14.4.

12. **Spares**

The obligation of the Franchisee to maintain, preserve and protect Primary Franchise Assets under this Schedule 14.4 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Franchise Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchisee for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

APPENDIX TO SCHEDULE 14.4

List of Primary Franchise Assets

Description of Primary Franchise Asset	Commitment not to de-designate
<p>⁵¹³The following Shunting Locomotives:</p> <p>(a) Class 08: 08836;</p> <p>(b) Class 08: 08822;</p> <p>(c) Class 08: 08641;</p> <p>(d) Class 08: 08644; and</p> <p>(e) Class 08: 08645.</p>	
<p>The following railway vehicles:</p> <p>(a) ADB 787 133 4 Wheeled Wagon – Power Units Plymouth Laira Depot;</p> <p>(b) Class 143 unit: 143617;</p> <p>(c) Class 143 unit: 143618; and</p> <p>(d) Class 143 unit: 143619.</p>	
<p>The rights and liabilities of the Franchisee under the Computer Services Agreement between SEMA UK Limited and Thames Trains Limited dated 1 April 1995.</p>	
<p>The rights and liabilities of the Franchisee under the agreement between First Greater Western Limited and Bombardier Transportation UK Limited for the supply of T&RS Components Overhauls dated 31 May 2006.</p>	
<p>The rights and liabilities of the Franchisee under (i) an agreement in respect of services provided at Reading Station made between Network Rail (1) and the Franchisee (2); and (ii) an agreement in respect of services provided at Bristol Temple Meads Station made between Network Rail (1) and the Franchisee (2), dated 1 April 2014.</p>	Yes
<p>The rights and liabilities of the Franchisee under the Enhanced Service Support Agreement between the Franchisee (1) and Wiltshire Council (2) dated 21 November 2013.</p>	

⁵¹³ 1 August 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

Description of Primary Franchise Asset	Commitment not to de-designate
[DELETED ⁵¹⁴]	[DELETED]
Umbrella Agreement	Yes
Long Rock Grant Funding Agreement	Yes
Night Riviera Grant Funding Agreement	Yes
⁵¹⁵ <i>The contract between Knorr-Bremse RailService (UK) Limited and the Franchisee dated 27 June 2014 for the Baseline Sleeper Works, which includes a priced option that has been exercised by the Franchisee in respect of the Night Riviera Upgrade</i>	Yes
Land Lease in respect of Kingham Station car park extension	Yes
⁵¹⁶ <i>Those elements of the Reading Wheel Lathe Facility which are not the property of Network Rail, including the wheel lathe machine, swarf extractor tool and battery powered mule.</i>	Yes
⁵¹⁷ <i>All the right, liabilities, title and interest of the Franchisee in:</i> <i>(a) Agreement for Lease relating to land on the south western side of Great Western Road, Gloucester between (1) the Council of the City of Gloucester and (2) the Franchisee (the "Gloucester Car Park Agreement for Lease"); and, once the Lease has been entered into,</i> <i>(b) Lease relating to land on the south western side of Great Western Road, Gloucester between (1) the Council of the City of Gloucester and (2) the Franchisee; and, once the Option under the Agreement for Lease to purchase the land has been exercised,</i> <i>(c) the freehold land on the south western side of Great Western Road, Gloucester which has been acquired by the Franchisee and is subject to the provisions of:</i> <i>(i) a Planning Clawback Deed between (1) The Secretary of State for Communities and Local</i>	Yes

⁵¹⁴ 14 March 2016 (Date of Contract Change Letter) – Contract deletion agreed by the Secretary of State and Franchisee.

⁵¹⁵ 27 January 2016 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁵¹⁶ 27 January 2016 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵¹⁷ 29 September 2016 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

Description of Primary Franchise Asset	Commitment not to de-designate
<p>Government and (2) The Council of the City of Gloucester; and</p> <p>(ii) a Turning Overage Deed between (1) The Secretary of State for Communities and Local Government and (2) The Council of the City of Gloucester,</p> <p>(all together the "Gloucester Car Park Documents").</p>	
<p>⁵¹⁸Bristol Temple Meads station - Brompton Dock - situated in main station car park.</p>	N
<p>⁵¹⁹Bristol Temple Meads station – Public Pumps – two pumps on platform 3 alongside the main cycle racks toward the British Transport Police offices.</p>	N
<p>⁵²⁰Oxford station - Brompton Dock – adjacent to main cycle park at front of station concourse to the left on the station approach road.</p>	N
<p>⁵²¹Oxford station - Bike Repair & Hire Point – adjacent to main cycle park at front of station concourse near the access ramp.</p>	N
<p>⁵²²Oxford station - Public Pump – adjacent to main cycle park at front of station concourse to the left on the station approach road.</p>	N
<p>⁵²³Reading station – Brompton Dock – adjacent to Rail Air lounge at front of station in Blagrove Street.</p>	N
<p>⁵²⁴Exeter St Davids station – Public Pump – situated on platform 1 (north end).</p>	N

⁵¹⁸ 18 January 2017 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

⁵¹⁹ 18 January 2017 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

⁵²⁰ 18 January 2017 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

⁵²¹ 18 January 2017 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

⁵²² 18 January 2017 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

⁵²³ 18 January 2017 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

⁵²⁴ 18 January 2017 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

Description of Primary Franchise Asset	Commitment not to de-designate
525 <i>Exeter St Davids station – Cycle Parking (double deck) – situated under the canopy on platform 1 (southern end).</i>	N
526 <i>Exeter St Davids station – Cycle Parking (double deck) and shelter – situated in the staff enclosure behind platform 1.</i>	N
527 <i>Exeter St Davids station – Brompton Dock – situated in the main car park at the front of station just off Bonhay Road/ Isambard Parade.</i>	N
528 <i>Exeter Central station – Cycle Parking and Shelter – situated on platform 1.</i>	N
529 <i>Digby & Sowton station – Cycle Parking and Shelter (two bays) – situated in the station car park.</i>	N
530 Hayle Railway Station – Cycle Parking and Shelter (two bays)- situated in station car park next to Platform 1 and main cycle shelter next to Platform 2.	N
531 Exmouth Railway Station – Cycle Parking and Shelter (double deck) - situated on the single platform.	N
532 Exmouth Railway Station - Cycle Hire Point (Brompton Dock) – situated on the single platform.	N
533 Henley-on-Thames Railway Station – Cycle Parking and Shelter (double deck) – situated outside of the single platform, next to the station buildings near the station car park on Station road.	N

525 18 January 2017 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

526 18 January 2017 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

527 18 January 2017 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

528 18 January 2017 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

529 18 January 2017 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

530 19 December 2017 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee

531 19 December 2017 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee

532 19 December 2017 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee

533 19 December 2017 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee

Description of Primary Franchise Asset	Commitment not to de-designate
⁵³⁴ Henley-on-Thames Railway Station – Cycle Hire Point (Brompton Dock) – situated at the exit of the single platform, near the single deck cycle racks next to the station platform near the station car park on Station road.	N
⁵³⁵ The following Leases in respect of additional car parking spaces at Kemble Station: 1. Lease relating to land adjoining Station Road, Kemble, Gloucestershire with Kemble Farms Limited; and 2. Lease relating to land for use as a footpath at Tavern Inn, Station road, Kemble, Gloucestershire with Arkell’s Brewery Limited.	Y
⁵³⁶ The following Leases and Deed of Easement in respect of additional car parking spaces at Tiverton Parkway Station: 1. Lease relating to railway station car park, [REDACTED ⁵³⁷], Sampford Peverell, Tiverton, Devon; and 2. Lease relating to railway station car park [REDACTED ⁵³⁸], Sampford Peverell, Tiverton, Devon. Together with the Deed of Easement relating to land at Tiverton Parkway, Tiverton, Devon.	Y
⁵³⁹ The following Lease in respect of additional car parking spaces at Hanborough Station: 1. Lease relating to land on the south side of Main Road, Long Hanborough. West Oxfordshire.	Y

⁵³⁴ 19 December 2017 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee

⁵³⁵ 02 June 2017 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee

⁵³⁶ 02 June 2017 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee

⁵³⁷**Date of redaction 30/06/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵³⁸**Date of redaction 30/06/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵³⁹ 02 June 2017 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee

Description of Primary Franchise Asset	Commitment not to de-designate
<p>⁵⁴⁰the Basic Asset Protection Agreement dated 17th January 2017 between Network Rail and the Franchisee relating to Exeter LMD Expansion (GRIP stage 4 and Early Contractor Involvement)</p> <p>the Asset Protection Agreement dated 19th December 2017 between Network Rail and the Franchisee (the "APA");</p> <p>agreement for lease relating to land at and adjoining Exeter Depot dated 19th December 2017 between (1) Network Rail and (2) the Franchisee;</p>	Yes (in respect of all contracts referenced in this cell)
<p>⁵⁴¹All the right, liabilities, title and interest of the Franchisee in the freehold land to the east of Castle Cary Station registered with HM Land Registry under Title No [REDACTED⁵⁴²] (all together the "Castle Cary Additional Car Park Land")</p>	Yes
<p>⁵⁴³all the right, title and interest of the Franchisee in (i) those parts of the STNR System funded by the Secretary of State as part of the STNR Project (including those elements set out in Annexes B and C of the STNR Scope of Work); (ii) any Intellectual Property Rights (or licence to use the same) associated with those parts of the STNR System; and (iii) all data processed or generated by the STNR System (it being acknowledged that pursuant to the Supplemental Agreement set out in Appendix 2 of Schedule 15.4 all such assets shall be valued at nil).</p>	
<p>⁵⁴⁴All the right, liabilities, title and interest of the Franchisee in the Lease relating to the car park to the south of Westbury station approach Westbury between Square Bay (Westbury) LLP and First Greater Western Limited dated 28 February 2019.</p>	Yes
<p>⁵⁴⁵All the right, liabilities, title and interest of the Franchisee in:</p>	nil

⁵⁴⁰ 19 December 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁴¹ 12 December 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁴² **29 May 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁵⁴³ 13 December 2017 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁴⁴ 4 July 2019 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁴⁵ 4 July 2019 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

Description of Primary Franchise Asset	Commitment not to de-designate
<p>1. Supplemental Agreement relating to Newbury Multi Storey Carpark, between Network Rail Infrastructure Limited, and First Greater Western Limited, and West Berkshire District Council, dated 29 March 2019;</p> <p>2. Agreement for the management of Newbury Station Car Park, between Network Rail Infrastructure Limited, and First Greater Western Limited, and West Berkshire District Council, dated 29 March 2019</p> <p>(all together the "Newbury Station Car Park Documents")</p>	
<p>⁵⁴⁶ All the right, liabilities, title and interest of the Franchisee in:</p> <p>1. Umbrella Agreement relating to the St. Erth Multi Modal Transport Hub, Cornwall between Network Rail Infrastructure Limited and the Cornwall Council and First Greater Western Limited, dated 11 November 2018;</p> <p>2. Northern Car Park Lease relating to the St. Erth Multi Modal Transport Hub, Cornwall between the Cornwall Council and First Greater Western Limited, dated 11 November 2018; and</p> <p>3. Southern Car Park Lease relating to the St. Erth Multi Modal Transport Hub, Cornwall between the Cornwall Council and First Greater Western Limited, dated 11 November 2018.</p> <p>(all together the "St. Erth Multi Modal Transport Hub Documents")</p>	nil
<p>⁵⁴⁷ All the right, liabilities, title and interest of the Franchisee in the agreement between the First Greater Western Limited and Taunton Deane Borough Council dated 11 March 2019 relating to an unsecured term loan facility not exceeding [REDACTED⁵⁴⁸], for redevelopment works at Taunton Railway Station.</p>	Yes

⁵⁴⁶ 4 July 2019 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁴⁷ 4 July 2019 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁴⁸ **21 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude**

Description of Primary Franchise Asset	Commitment not to de-designate
<p>⁵⁴⁹ all the rights, title and interest of the Franchisee in any Computer System, other system or asset owned or used by the Franchisee procurement, implementation, processing and/or operation of Delay Repay Compensation (including any Intellectual Property Rights (or licence to use the same) relating to such Computer System, other system or asset) and all data whatsoever relating to Delay Repay Compensation processed or generated by such Computer System, such other system or otherwise (it being acknowledged that pursuant to the Supplemental Agreement set out in Appendix 2 of Schedule 15.4 all right, title and interest shall be valued at nil).</p>	
<p>⁵⁵⁰ Any unregistered trademark rights (if any) which the Franchisee may have in relation to the GWR External Livery Specification (or any similar external livery, including as may be applied to Liveried Sets) but excluding any marks associated with the Parent (such as "FirstGroup" or the "flying f" logo or the "a FirstGroup company" decals which are part of the GWR External Livery Specification).</p>	
<p>⁵⁵¹ Registered trade mark number UK00003064468 and any unregistered trademark rights (if any) which the Franchisee may have in relation to the GWR / Great Western Railway brand as applied to rolling stock vehicles, including without limitation stations, depots, equipment and fittings at stations /depots, staff uniforms, timetables/publicity/marketing material (whether physical or in IT format), novelties, souvenirs and road vehicles, but excluding any marks associated with the Parent (such as "FirstGroup" or the "flying f" logo or the "a FirstGroup company" decals which are part of the GWR External Livery Specification).</p>	

the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁴⁹ 7 March 2019 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁵⁰ 20 January 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁵¹ 20 January 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 14.5**Dealing with Franchise Assets****1. Assets not Designated as Primary Franchise Assets**

1.1 This paragraph 1 relates to any Franchise Assets that are property or rights and are not designated as Primary Franchise Assets.

1.2 For the purposes of Section 27(3) of the Act, the Secretary of State consents to the Franchisee:

- (a) transferring or agreeing to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets; and
- (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Franchise Assets.

2. Liabilities not Designated as Primary Franchise Assets

2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Franchise Assets.

2.2 For the purposes of Section 27(3) of the Act, the Secretary of State consents to the Franchisee entering into any agreement under which any such liability is released or discharged, or transferred to another person.

3. Franchise Assets and Primary Franchise Assets

3.1 This paragraph 3 relates to Franchise Assets (whether or not designated as Primary Franchise Assets) which are property or rights.

3.2 The Secretary of State hereby consents to the installation of Spares which have been designated as Primary Franchise Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.

3.3 For the purposes of Section 27(3) of the Act, the Secretary of State hereby consents to the Franchisee creating or agreeing to create any Security Interest over any of these Franchise Assets to the extent that the terms of any such Security Interest provided that:

- (a) if the relevant Franchise Asset becomes the subject of a transfer scheme made under Section 12 and Schedule 2 of the Railways Act 2005, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;
- (b) if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with the Franchise Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
- (c) such Security Interest shall not be enforced or enforceable until the date on which such Franchise Asset ceases to be designated as a Franchise Asset.

4. **Prohibition on Other Security Interests**

The Franchisee shall not create or agree to create a Security Interest over any Franchise Asset except on the terms permitted under paragraph 3.3.

5. **Miscellaneous**

The Franchisee shall promptly inform the Secretary of State of any Security Interest arising at any time over any of its property or rights and shall provide the Secretary of State with such information in relation thereto as he may reasonably require.

SCHEDULE 15**Obligations Associated with Termination**

Schedule 15.1:	Reletting Provisions
Schedule 15.2	Last 12 or 13 Months of Franchise Period
Schedule 15.3	Handover Package
	Appendix: Form of Handover Package
Schedule 15.4	Provisions Applying on and after Termination
	Appendix 1: Form of Transfer Scheme
	Appendix 2: Form of Supplemental Agreement

SCHEDULE 15.1

Reletting Provisions

1. Reletting of Franchise

1.1 ⁵⁵²**The Franchisee acknowledges that the Secretary of State may wish, at or before the expiry of the Franchise Period, either to invite persons to tender for the right to provide all or some of the Passenger Services under a franchise agreement and/or the HEx Outsourced Services or alternatively to enter into a franchise agreement in respect of all or some of the Passenger Services and/or the HEx Outsourced Services without having gone through a tendering process.**

1.2 The Franchisee further acknowledges that the Secretary of State has in certain circumstances a duty under Section 30 of the Act to secure the continued provision of the Passenger Services on expiry or termination of the Franchise Agreement. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under Schedule 1.6 (Franchise Services), Schedule 14 (Preservation of Assets) and this Schedule 15.

2. Preparation for Reletting

2.1 ⁵⁵³**The Franchisee shall, if so requested by the Secretary of State, provide the Secretary of State and his representatives and advisers with access to officers, the Franchise Employees and all books, records and other materials kept by or on behalf of the Franchisee in connection with the Franchise Services and/or the HEx Outsourced Services (including electronic or magnetic records, any CRM System and any Yield Management System) for the purpose of assisting such representatives and advisers:**

- (a) ⁵⁵⁴**to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Franchise Services and/or the HEx Outsourced Services;**
- (b) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
- (c) ⁵⁵⁵**to enter into any franchise agreement or other agreement (including any agreement entered into by the Secretary of State in fulfilment of his duties under section 30 of the Act) relating to services equivalent to any of the Franchise Services and/or the HEx Outsourced Services, without undergoing a tendering process,**

⁵⁵² 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁵³ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁵⁴ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁵⁵ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

provided that the exercise of such access rights by the Secretary of State and his representatives and advisers shall not unduly interfere with the continuing provision and operation of the Franchise Services and/or the HEx Outsourced Services by the Franchisee.

2.2

- (a) The Franchisee shall make available to the Secretary of State and his representatives and advisers such Data Site Information (as defined at paragraph 2.2(e)) as they shall reasonably require in connection with the matters referred to in paragraph 2.1.
- (b) The Franchisee shall prepare and present such information in such manner (including in disaggregated form) as the Secretary of State may require, and shall provide such assistance as the Secretary of State may require in connection with the verification of such information.
- (c) The Franchisee shall provide such confirmation in relation to the accuracy of:
 - (i) the contents of the documents referred to in paragraph 2.1; and
 - (ii) any Data Site Information uploaded to such electronic data site as the Secretary of State may require pursuant to paragraph 2.2(d)

in each case, as the Secretary of State shall require from time to time.

- (d) The Franchisee shall upload such Data Site Information as the Secretary of State may require to such electronic data site as he may specify and shall make a sufficient number of appropriate staff available for that purpose. The Franchisee shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Secretary of State). For the avoidance of doubt, the Data Site Information required by the Secretary of State under this paragraph may cover the entire Franchise Period or any part of it.
- (e) **"Data Site Information"** means information relating to any of the following:
 - (i) the Franchise or the Franchisee, any Affiliate of the Franchisee or their respective businesses (including their audited and management accounts, asset registers and contract lists);
 - (ii) past and present demand for the Franchise Services or any similar services (including passenger count data, Yield Management Data and CRM Data));
 - (iii) information required to be provided by the Franchisee pursuant to Schedule 1.5 (Information about Passengers);
 - (iv) the total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee) received or which the Franchisee expects to receive during the Franchise Period;

- (v) the Franchisee's safety authorisation, safety certificate or safety management system (in each case as defined in the Safety Regulations);
- (vi) any other safety matter;
- (vii) the arrangements contained within the Railways Pension Scheme, the Pension Trust, the Franchise Section, or any other pension arrangement in respect of employees of the Franchisee or employees of any person who was a franchisee in relation to a previous franchise agreement;
- (viii) the management structure of the Franchisee's business (including organograms and any planned changes);
- (ix) employees and contractors (including details of responsibilities, job title, remuneration, grade, qualifications and any other personnel records);
- (x) terms and conditions of employment and human resources policies;
- (xi) public and working timetables;
- (xii) driver, other train crew and rolling stock diagrams;
- (xiii) rolling stock (including train and vehicle miles, restrictions of use, fleet examinations and servicing, fleet performance, casualty data and any relevant reports);
- (xiv) any station (including any leases, documents of title, maintenance arrangements, station facilities, plans and contingency or security plans relating to any station);
- (xv) health and safety and environmental information;
- (xvi) copies of contracts (including Access Agreements, policies of insurance, property, rolling stock and other leases, catering contracts, contracts for outsourced services, and rolling stock maintenance and spares contracts);
- (xvii) Network Rail charges and requirements (including rules of the route/plan);
- (xviii) any information technology system (hardware or software) used or owned by the Franchisee or any Affiliate of the Franchisee (including any software licences);
- (xix) performance data;
- (xx) customer service (including staffing levels, call volumes and opening hours);
- (xxi) fares and fares baskets;

- (xxii) relationships with stakeholders (including minutes of meetings with unions, Passenger Transport Executives, local authorities or Transport for London); or
- (xxiii) any other matter which the Secretary of State may specify from time to time,

and in this paragraph 2.2(e) the term "**employee**" includes any person engaged by the Franchisee pursuant to a contract of personal service.

(f) The Franchisee shall:

- (i) comply with its obligations under paragraph 2.1 or this paragraph 2.2 promptly and in any case in accordance with any reasonable timetable with which the Secretary of State requires the Franchisee by notice in writing to comply; and
- (ii) where the Secretary of State raises with the Franchisee any query in relation to any Data Site Information, make a full and substantive response to such query within 5 Weekdays. Such response shall include any further information requested by the Secretary of State in relation to such query; and
- (iii) nominate a person to whom:
 - (A) all queries or requests for information pursuant to paragraph 2.2(f)(ii);
 - (B) requests for access to premises pursuant to paragraph 4; and
 - (C) requests for access to employees,

shall be addressed and who shall be responsible for complying with any such queries or requests for information and such requests for access to employees and premises. The Franchisee shall notify the Secretary of State (his representatives and advisers) of the name and contact details of such person.

2.3 ⁵⁵⁶**In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of the Franchise Services and the HEx Outsourced Services (whether or not together with other railway passenger services) at or following the end of the Franchise Period, the Franchisee agrees and acknowledges that the Secretary of State may require:**

- (a) that the Franchisee provides the Secretary of State with additional information and reports and analysis in respect of such Service Groups as the Secretary of State may specify. This may include:

⁵⁵⁶ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (i) information relating to the operational and financial performance of the Franchisee in relation to such Service Groups; and
 - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
- (b) ⁵⁵⁷ **subject to paragraph 2.4, that the Franchisee reorganises the business of providing the Franchise Services and/or the HEx Outsourced Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Franchise Services and/or the HEx Outsourced Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:**
- (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or
 - (ii) ⁵⁵⁸ **entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Franchise Service and/or the HEx Outsourced Services within that Service Group;** and
- (c) that the Franchisee uploads Data Site Information to more than one data site.
- 2.4 Subject to paragraph 2.5, the Secretary of State shall reimburse any reasonable out-of-pocket expenses that the Franchisee may incur in complying with its obligations under this paragraph 2.
- 2.5 Without prejudice to any other rights the Secretary of State may have (under the Franchise Agreement or otherwise) in respect of any contravention by the Franchisee of its obligations under this paragraph 2, if the Secretary of State is of the reasonable opinion that the Franchisee does not have sufficient resources to enable its compliance with its obligations under this paragraph 2 he may:
- (a) require the Franchisee (at its own cost) to employ; or
 - (b) after notification to the Franchisee, employ,
- such suitable additional resource as may be required to ensure that the Franchisee can comply with its obligations under this paragraph 2. The Franchisee shall reimburse to the Secretary of State, by way of adjustment to Franchise Payments, any proper costs (including staff costs) incurred by him in the employment of any such additional resource pursuant to paragraph 2.5(b).
- 2.6 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 2.5, the Secretary of State shall allow the Franchisee a reasonable opportunity to make representations to him concerning the exercise by the

⁵⁵⁷ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁵⁸ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Secretary of State of his rights under paragraph 2.5 but the Secretary of State shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 2.5.

3. **Non-Frustration of Transfer to Successor Operator**

3.1 The Franchisee shall take no action or steps which is or are designed, directly or indirectly:

(a) ⁵⁵⁹to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Franchise Services and/or the HEx Outsourced Services at the end of the Franchise Period to a Successor Operator (provided that this shall not restrict or prevent the Franchisee from exercising its rights or fulfilling its obligations under the HEx Services Agreement in relation to the termination of the HEx Services Agreement); or

(b) to avoid, frustrate or circumvent any provision of the Franchise Agreement (including in particular the provisions of Schedule 14 (Preservation of Assets) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

3.2 Subject to the restrictions set out in paragraph 3.1 and the other provisions of the Franchise Agreement, the Franchisee may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

4. **Inspection Rights at premises used for the provision of the Franchise Services**

4.1 ⁵⁶⁰Without limiting any other rights of the Secretary of State under the Franchise Agreement and subject to paragraph 4.2, the Franchisee shall, if so requested by the Secretary of State, permit the Secretary of State (or his nominee, which for these purposes shall include potential Successor Operators including potential bidders who have expressed an interest in tendering for the right and obligation to operate any or all of the Franchise Services and/or the HEx Outsourced Services) to have such access to premises owned or occupied by the Franchisee or any of its Affiliates (including Stations and Depots and which for these purposes shall include any premises used in connection with the provision of the Franchise Services and/or the HEx Outsourced Services by the Franchisee or any of its Affiliates) as the Secretary of State may reasonably require in connection with any Tendering/Reletting Process including for the purposes of inspecting such premises (including the taking of inventories) and undertaking such surveys as may be necessary or desirable for the purposes of ascertaining the condition of any such premises.

4.2 ⁵⁶¹The Secretary of State shall use reasonable endeavours to ensure that any access rights required pursuant to paragraph 4.1 shall be undertaken so as not to unduly interfere with the continuing provision and operation

⁵⁵⁹ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁶⁰ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁶¹ 17 April 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

of the Franchise Services and/or the HEx Outsourced Services by the Franchisee.

SCHEDULE 15.2**Last 12 or 13 Months of Franchise Period and other conduct of business provisions****1. Last 12 or 13 Month Period**

1.1 Where reference is made in the Franchise Agreement to the last 12 or 13 months of the Franchise Period, such period shall be deemed to commence on the earliest of the following dates:

- (a) the date which is 12 or 13 months, as the case may be, prior to the Expiry Date or if the actual date of expiry of the Franchise Period is known the date which is 12 or 13 months prior to that date;
- (b) the date on which the Secretary of State notifies the Franchisee that such period of 12 or 13 months shall be deemed to commence on the grounds that the Secretary of State reasonably considers that an Event of Default may occur within the following 12 months; or
- (c) the date on which the Secretary of State notifies the Franchisee that such period of 12 or 13 months shall be deemed to commence on the grounds that the Secretary of State considers it reasonably likely that the Franchise Agreement will be terminated by agreement between the parties within such period.

1.2 Any such period (which may be longer or shorter than 12 or 13 months, as the case may be) shall expire on the Expiry Date or, if earlier:

- (a) in the case of periods commencing under paragraph 1.1(b) or (c), the date falling 12 or 13 months after the date of any notice under paragraph 1.1(b) or (c); or
- (b) such earlier date as the Secretary of State may determine.

2. Franchise Employees**Terms of Employment of Existing Employees**

2.1 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld), vary or purport or promise to vary the terms or conditions of employment of any Franchise Employee (in particular, the Franchisee shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:

- (a) takes effect in the last 12 months of the Franchise Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the following formula:

$$\frac{\text{MAWE} + \text{JAWE} + \text{SAWE} + \text{DAWE}}{4}$$

4

where:

MAWE is the change in the Average Weekly Earnings between March in the preceding 12 months and the corresponding March one year before, expressed as a percentage;

JAWE is the change in the Average Weekly Earnings between June in the preceding 12 months and the corresponding June one year before, expressed as a percentage;

SAWE is the change in the Average Weekly Earnings between September in the preceding 12 months and the corresponding September one year before, expressed as a percentage; and

DAWE is the change in the Average Weekly Earnings between December in the preceding 12 months and the corresponding December one year before, expressed as a percentage;

- (b) wholly or partly first takes effect after the end of the Franchise Period;
- (c) results in any such employment not being terminable by the Franchisee or other relevant employer within six months of the expiry of the Franchise Period;
- (d) relates to a payment or the provision of a benefit triggered by termination of employment;
- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Franchise Period; or
- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the Franchisee.

It is agreed that the Franchisee will be permitted to make a decrease in the remuneration of any Franchise Employee that takes effect in the last 12 months of the Franchise Period without first obtaining the consent of the Secretary of State in circumstances where such decrease is in the ordinary course of business and when aggregated with any other variation which takes effect during such period, represents a decrease in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the formula contained in paragraph 2.1(a) where a calculation pursuant to such formula gives rise to a negative percentage. In any other circumstances the prior consent of the Secretary of State will be required to any decrease in the remuneration of a Franchise Employee in the last 12 months of the Franchise Period.

- 2.2 Without limiting the foregoing, the Franchisee shall consult the Secretary of State as soon as reasonably practicable in any circumstances in which the Secretary of State's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for the Secretary of State to withhold his consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided the Secretary of State:

- (a) makes an overall increase in Franchise Payments equal to the amount of the direct net losses suffered by the Franchisee on the days when the Passenger Services are affected by Industrial Action taken by the Franchise Employees which is a consequence of a refusal by the Secretary of State to agree to the variation or addition; and
- (b) agrees that, to the extent that the Franchisee would otherwise be in contravention of the Franchise Agreement as a consequence of the Industrial Action referred to in this paragraph 2.2, no such contravention shall have occurred, save where such contravention relates to safety requirements.

2.3 The expression "**promise to vary**" when used in paragraph 2.1 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining the Secretary of State's consent).

Terms of Employment of New Employees

2.4 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any Franchise Employee where the employment of such Franchise Employee by the Franchisee or such other relevant employer may commence on or after the Start Date if and to the extent that:

- (a) such terms or conditions are, in the reasonable opinion of the Franchisee, materially different from the terms or conditions of employment of equivalent or nearest equivalent Franchise Employees at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent Franchise Employees already employed by the Franchisee by way of variation to their terms or conditions of employment, the Franchisee would be in contravention of paragraph 2.1.

Changes in Numbers and Total Cost of Employees

2.5 Subject to and excluding any increase in the remuneration of Franchise Employees permitted under paragraph 2.1, the Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State (which shall not be unreasonably withheld) increase or decrease in the last 12 months of the Franchise Period the number of Franchise Employees such that:

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

in each case, by more than five per cent. during such period of 12 months provided that where the last 12 months or 13 months of the Franchise Period has been deemed to have commenced under paragraph 1.1 and the period of the restriction contemplated by this paragraph 2.5 lasts longer than 12 months such restriction shall apply in respect of the longer period.

2.6 For the purposes of paragraph 2.5, where the Financial Model or Record of Assumptions forecasts a change in the number of Franchise Employees in the relevant period the permitted 5% margin shall be applied after taking account of the forecast level of change.

3. Fares

Reduction in Prices of Fares

3.1

- (a) During the last 13 months of the Franchise Period the Franchisee shall not, without the prior written consent of the Secretary of State (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the Franchise Period for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement of such 13 month period or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.
- (b) Paragraph 3.1(a) shall not prevent the Franchisee from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:
 - (i) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the commencement of such 13 month period and to which the purchaser would have been entitled before the commencement of such period;
 - (ii) presenting a Discount Card issued by another train operator;
 - (iii) the Passenger's Charter or the passenger's charter of any other train operator; or
 - (iv) any relevant conditions of carriage.
- (c) The Franchisee shall procure that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with the provisions of paragraph 3.1(a) to the extent that such provisions apply to the selling of Fares by the Franchisee.

Percentage Allocations

3.2

- (a) Except to the extent that the Secretary of State may consent from time to time (such consent not to be unreasonably withheld), the Franchisee shall not, in the last 13 Reporting Periods of the Franchise Period, take any action or step which may result in its Percentage Allocation (as defined in the Ticketing and Settlement Agreement) in respect of any Rail Product (as defined in the Ticketing and Settlement Agreement) being reduced.

- (b) The Franchisee shall notify the Secretary of State before taking any such action or step in the last 13 Reporting Periods of the Franchise Period and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take such action as the Secretary of State may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

Restrictions in respect of Sale of Advance Purchase Train-specific Fares

3.3

- (a) It is acknowledged that the Franchisee will make available for sale prior to the end of the Franchise Period Advance Purchase Train-specific Fares which are valid for travel after the end of the Franchise Period.
- (b) In making such Advance Purchase Train-specific Fares available for purchase the Franchisee shall not change its commercial practice in terms of the number of such Advance Purchase Train-specific Fares made available or the Passenger Services on which they are valid for use when compared with its previous commercial practice in respect of Advance Purchase Train-specific Fares valid for travel prior to the end of the Franchise Period.
- (c) The Franchisee will be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of the Franchisee's practice in addressing such seasonal factors in the corresponding period in the previous year.

4. **Inter-Operator Schemes**

Voting on Scheme Councils

- 4.1 Subject to paragraph 4.6, during the last 12 months of the Franchise Period the Franchisee shall give the Secretary of State reasonable notice of:
- (a) any meeting of:
- (i) a scheme council of an Inter-Operator Scheme on which the Franchisee is represented; or
- (ii) a scheme management group of any Inter-Operator Scheme:
- (A) in which the Franchisee has a permanent position; or
- (B) where the Franchisee employs a member of such group;
- (b) the resolutions to be voted upon at any such meeting; and
- (c) the Franchisee's voting intentions.
- 4.2 Subject to paragraph 4.3, the Franchisee shall vote at any such meeting in the manner required by the Secretary of State.

Successor Operator

- 4.3 Where the Franchisee has been notified by the Secretary of State that a Successor Operator has been selected (whether a franchisee or otherwise and whether or not such selection is conditional), the Franchisee shall give such Successor Operator reasonable notice of:
- (a) any meeting referred to in paragraph 4.1(a);
 - (b) any resolutions to be voted upon at any such meeting where such resolutions might reasonably be considered to affect the interests of such Successor Operator; and
 - (c) the Franchisee's voting intentions.
- 4.4 The Franchisee shall discuss with the Successor Operator in good faith with a view to agreeing the way the Franchisee should vote on the resolutions referred to in paragraph 4.3(b). In the absence of any agreement, the Franchisee shall, as soon as reasonably practicable thereafter, having regard to the deadline for voting on such resolutions, refer the matter to the Secretary of State for determination.
- 4.5 The Secretary of State shall reasonably determine the way the Franchisee should vote on any resolutions referred to him in accordance with paragraph 4.4, having regard to the transfer of the Franchise Services as a going concern at the end of the Franchise Period.
- 4.6 Where paragraph 4.3 applies, the Franchisee shall vote at any meeting referred to in paragraph 4.1(a) in accordance with any agreement pursuant to paragraph 4.4 or determination pursuant paragraph 4.5.

SCHEDULE 15.3**Handover Package****1. Handover Package Status****1.1** The Franchisee shall:

- (a) on or before the Start Date, provide to the Secretary of State:
 - (i) the Handover Package; and
 - (ii) a letter in a form approved by and addressed to the Secretary of State confirming the details of any insurer providing insurance to the Franchisee and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Secretary of State, a Successor Operator or its agent on demand;
- (b) maintain the Handover Package and update it at least every three Reporting Periods; and
- (c) in respect of the information required pursuant to paragraph 1.1(a)(ii), supply revised information and/or letters to the Secretary of State as and when required in order to ensure that such information and letters remain accurate and up to date.

1.2 The Franchisee shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Franchise Period.

1.3 The Franchisee shall also ensure that the Key Contacts List is provided to the Secretary of State within 24 hours of the receipt of any Termination Notice.

2. Director's Certificate

Once in each Franchisee Year, the Franchisee shall provide to the Secretary of State a certificate signed by a nominated and duly authorised director of the Franchisee, addressed to the Secretary of State, which confirms that the Handover Package contains the information and objects specified in the Appendix (Form of Handover Package) to this Schedule 15.3 and that such information is accurate as at the date of the certificate.

APPENDIX TO SCHEDULE 15.3**Form of Handover Package****1. Property**

A list of all property owned, leased, operated or occupied by the Franchisee which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

2. Contracts

A printed or electronic list (in a format acceptable to the Secretary of State) of all contracts (sales, purchases or otherwise including leases and licences) between the Franchisee and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of the Franchisee and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Secretary of State.

3. Systems

A list of the electronic systems in use by the Franchisee, together with the name, office address and telephone number of the Franchisee's Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.

4. Daily Operations

A printed or electronic list (in a format acceptable to the Secretary of State) of all assets owned or operated by the Franchisee, together with their location.

5. Insurance

A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Franchisee, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

6. Safety

A complete copy of the Safety Certificate and full details of the Franchisee's safety management system in place to support the Safety Certificate.

SCHEDULE 15.4**Provisions Applying on and after Termination****1. Novation of Access Agreements on Termination of the Franchise Agreement**

1.1 The Franchisee shall, to the extent so requested by the Secretary of State on termination of the Franchise Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as he may direct.

1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

1.3 Such novation shall be on such terms as the Secretary of State may reasonably require, including:

(a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and

(b) that neither the Secretary of State nor his nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.

1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as he may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. Co-Operation with Successor Operator

2.1 In order to ensure the continuity of, and an orderly handover of control over, the Franchise Services, the Franchisee shall co-operate with:

- (a) where a Successor Operator has been appointed, such Successor Operator; or
- (b) where a Successor Operator has not been so appointed, the Secretary of State,

and shall take such steps as may be reasonably requested by the Secretary of State in connection therewith.

2.2 In satisfaction of its obligations under paragraph 2.1, the Franchisee shall:

- (a) **Not used;**
- (b) make appropriately skilled and qualified Franchise Employees reasonably available to attend such meetings with the Secretary of State, the Successor Operator, Network Rail, any rolling stock lessor and/or and other relevant third party as are reasonably required in order to determine:
 - (i) those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:
 - (A) Access Agreements;
 - (B) Property Leases;
 - (C) agreements in relation to Shared Facilities;
 - (D) Rolling Stock Leases;
 - (E) Rolling Stock Related Contracts; and
 - (F) any other Key Contract;
 - (G) the Train Availability and Reliability Agreement and the Relevant Operator Direct Agreement; and
 - (ii) without prejudice to the Secretary of State's rights under this Schedule 15.4, those rights and liabilities as may be specified in any Transfer Scheme.

3. **Transfer of Primary Franchise Assets**

Option Arrangements

3.1

- (a) The Secretary of State hereby grants to the Franchisee the right to require the Secretary of State to make, and the Franchisee hereby grants to the Secretary of State the right to make, a Transfer Scheme in accordance with Section 12 and Schedule 2 of the Railways Act 2005 for the transfer of any or all Primary Franchise Assets on the expiry of the Franchise Period.
- (b) On or within 14 days before the expiry of the Franchise Period:

- (i) either party may serve notice on the other party specifying the Primary Franchise Assets to be transferred; and
 - (ii) the other party may (within such timescale) serve a subsequent notice specifying any additional Primary Franchise Assets to be transferred.
- (c) The Secretary of State may (and shall if required by the Franchisee) make one or more such Transfer Schemes for the transfer of the Primary Franchise Assets specified in any such notice within 14 days after service of such notice (except in relation to any such Primary Franchise Assets which are, in accordance with Schedule 14.4 (Designation of Franchise Assets), de-designated as such prior to the end of the Franchise Period).
- (d) Any Franchise Assets or Primary Franchise Assets which are not so transferred shall cease to be designated as such 14 days after service of such notice.

Supplemental Agreement

- 3.2 Without prejudice to the duties, powers, rights and obligations of the Secretary of State under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on the Franchisee and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. The Franchisee shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.
- 3.2A ⁵⁶² **At or around the time that a Transfer Scheme is made and the Supplemental Agreement is entered into and, unless the HEx Services Agreement has then already come to an end without being replaced by a replacement HEx Services Agreement to which the Successor Operator is a party:**
- (a) **the Franchisee shall enter into an agreement substantially in the form of the HEx Business Transfer Agreement which is to take effect at the end of the Franchise Period and shall comply with its obligations thereunder; and**
 - (b) **the Secretary of State shall procure that the Successor Operator shall also enter into the HEx Business Transfer Agreement.**
- 3.2B ⁵⁶³ **At or around the time that a Transfer Scheme is made and the Supplemental Agreement is entered into and, unless the HEx Services Agreement has then already come to an end in advance of the termination or expiry of the Franchise Agreement, the Secretary of State shall, subject to clause 3.2C, procure that any Successor Operator enters into an agreement with HEOC, which shall be on substantially the same terms as the HEx Services Agreement, subject to any necessary amendments relating to the Successor Operator's:**

⁵⁶² 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁶³ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (a) track access rights;
- (b) employment strategies;
- (c) rolling stock strategies; and
- (d) depot strategies,

provided that such strategies are designed to deliver the same level of service which is required under the HEx Services Agreement and the fees payable by HEOC shall remain the same under the replacement agreement including that they shall continue to be subject to indexation.

3.2C ⁵⁶⁴ **For the avoidance of doubt, where the Successor Operator is the same entity as the Franchisee, the Management Agreement will continue in full force and effect in accordance with its terms.**

Payment of Estimated Transfer Price

3.3

- (a) The Secretary of State may require the Franchisee to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to the Franchisee, on the day on which the Transfer Scheme comes into force such sum as the Secretary of State may determine should be so paid having regard to:
 - (i) his estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise Assets being transferred under the relevant Transfer Scheme;
 - (ii) his estimate of any other sums likely to be paid thereunder;
 - (iii) the financial condition of the Franchisee and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
 - (iv) such other matters as the Secretary of State may consider appropriate.
- (b) The Franchisee shall pay to any such transferee the sum determined by the Secretary of State in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

Possession of Franchise Assets

3.4 On the coming into force of a Transfer Scheme, the Franchisee shall deliver up to the Secretary of State (or his nominee) possession of the Primary Franchise Assets transferred under such Transfer Scheme.

⁵⁶⁴ 17 April 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

4. **Associated Obligations on Termination**

Assistance in Securing Continuity

4.1

- (a) In order to facilitate the continuity of the Franchise Services on expiry of the Franchise Period, the Franchisee shall take such steps, both before and after the expiry of the Franchise Period, as the Secretary of State may reasonably require, to assist and advise any Successor Operator in providing and operating the Franchise Services.
- (b) In particular, the Franchisee shall provide any Successor Operator with such records and information relating to or connected with the Franchise Services as the Secretary of State may reasonably require (other than confidential financial information but including all records relating to the Franchise Employees).

Access

- 4.2 On the expiry of the Franchise Period, the Franchisee shall grant the Secretary of State and his representatives such access as the Secretary of State may reasonably request to any property owned, leased or operated by the Franchisee at such time, for the purpose of facilitating the continued provision of the Franchise Services.

Key Contracts

4.3

- (a) The Franchisee shall provide such assistance to any Successor Operator as the Secretary of State may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).
- (b) In satisfaction of its obligations under paragraph 4.3(a), the Franchisee shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Franchisee to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Franchise Period.

Change of Name

- 4.4 The Franchisee shall cease to use any trademarks which are licensed to the Franchisee under any of the Brand Licences forthwith upon expiry of the Franchise Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

Property Leases

4.5

- (a) The Franchisee shall, on the expiry of the Franchise Period, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where

applicable to the agreement of any other party to such Property Lease or the ORR.

- (b) Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
 - (i) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (ii) that neither the Secretary of State nor his nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.5(b)(i), and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- (c) The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.5(a) in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as he may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.5(b) shall apply to any such assignment.
- (d) The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. **Actions required immediately on Handover**

- 5.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State:
 - (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Franchisee is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and
 - (b) information concerning any contract necessary for the continued operation of the Franchise where a procurement or bidding process has been initiated.
- 5.2 The Franchisee agrees that the Secretary of State or his agents may have access to and use free of charge any information contained in any Computer System or

in hard copy format as he sees fit (for the purposes of continuing the operation of the Franchise Services).

6. **Maintenance Records**

The Franchisee shall immediately on expiry of the Franchise Period provide to the Secretary of State:

- (a) records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;
- (b) records of the status of the maintenance of any lifting equipment;
- (c) a list of any deferred maintenance; and
- (d) records of the status of the maintenance of any depot or station which is a Franchise Asset,

including the extent of completion of examinations and the modification status of each such rolling stock vehicle

7. **Ticketing Arrangements**

The Franchisee shall provide immediately on expiry of the Franchise Period a statement certifying:

- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
- (b) the extent of any outstanding claims with ticketing settlement agencies;
- (c) refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
- (d) commissions owed and/or due.

8. **Franchisee's Intellectual Property**

8.1

- (a) On the expiry of the Franchise Period, the Franchisee will grant to any Successor Operator licences of any intellectual property which:
 - (i) is owned by or licensed to the Franchisee;
 - (ii) was not owned by or licensed to it immediately prior to the Start Date;
 - (iii) has not been designated as a Primary Franchise Asset;
 - (iv) does not represent or constitute a Mark; and
 - (v) may, in the reasonable opinion of the Secretary of State, be necessary for any Successor Operator to operate the Franchise

Services on an efficient and economic basis after the expiry of the Franchise Period.

- (b) When agreeing the terms on which intellectual property is to be licensed to it, the Franchisee shall use all reasonable endeavours to ensure that such terms include the right to sub-license such intellectual property in accordance with this paragraph 8.1. The Franchisee shall not enter into a licence that does not include such a provision without first obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld).

8.2

- (a) Any such licence shall be granted to the relevant Successor Operator for such period as the Secretary of State may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Franchise Services and shall be free of charge and royalty-free for a period of one month or less.
- (b) If such licence is for a period in excess of one month, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such intellectual property. If the Franchisee and the relevant Successor Operator are unable to agree such royalty, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.

8.3 Any such licence shall be in such form as the Secretary of State shall reasonably determine and shall:

- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Franchise Services and will not provide for any right to use such intellectual property for any other purpose (including its marketing or exploitation for any other purpose);
- (b) be terminable on material breach by the Successor Operator;
- (c) contain an indemnity from the Franchisee to the effect that to the best of its knowledge and belief it owns the relevant intellectual property or has the right to license it and the licensing of it and the subsequent use of the intellectual property will not infringe any third party intellectual property rights; and
- (d) require the Successor Operator, to the extent that it relates to any trademarks, to use such trademarks in such manner as may reasonably be required by the Franchisee provided that it shall not be reasonable for the Franchisee to require any such trademark to be used in a manner materially different from its use during the Franchise Period.

9. Information about Passengers

The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State and/or his nominee:

- (a) passenger numbers information specified in paragraph 1 of Schedule 1.5 (Information about Passengers), in such format and to such level of

disaggregation as the Secretary of State and/or his nominee may reasonably require; and

- (b) the CRM Data and Yield Management Data.

APPENDIX 1 TO SCHEDULE 15.4**[TEMPLATE] Form of Transfer Scheme**

Dated _____ 20[•]

**TRANSFER SCHEME
OF
THE SECRETARY OF STATE FOR TRANSPORT
MADE PURSUANT TO SCHEDULE 2 OF THE RAILWAYS ACT 2005**

**IN FAVOUR OF
[SUCCESSOR OPERATOR]**

**IN RESPECT OF
CERTAIN PROPERTY, RIGHTS AND LIABILITIES
OF
[FRANCHISEE]**

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

TRANSFER SCHEME

Whereas:

- (A) [Franchisee] (the "Transferor") has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "Secretary of State") dated [_____] (the "Franchise Agreement").
- (B) The Franchise Agreement terminated or is to terminate on [_____] and [Successor Operator] (the "Transferee") is to continue the provision of all or part of such services or the operation of all or some of such stations and light maintenance depots under a new franchise agreement or in connection with the performance or exercise of the duties and powers of the Secretary of State to secure the provision of such services or the operation of such stations or light maintenance depots.
- (C) Certain property, rights and liabilities of the Transferor which were designated as franchise assets for the purpose of the Franchise Agreement are to be transferred to the Transferee under a transfer scheme made by the Secretary of State under Section 12 and Schedule 2 of the Railways Act 2005.

The Secretary of State, in exercise of the powers conferred on him by Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. Definitions and Interpretation

In this Transfer Scheme functions has the meaning ascribed to it in the Railways Act 2005 and relevant enactment has the meaning ascribed to it in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. Transfer of Property, Rights and Liabilities

With effect from [_____] the property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. Statutory Functions

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the functions of the Transferor under any relevant enactments if and to the extent that any such relevant enactment:

- (a) relates to any property which is to be transferred by this Transfer Scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

4. Supplemental Agreement

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Franchise Agreement) on the coming into force of this Transfer Scheme.

This Transfer Scheme is made by the Secretary of State on [____].

THE CORPORATE SEAL
OF THE SECRETARY OF
STATE FOR TRANSPORT
IS HEREUNTO AFFIXED:



.....
Authenticated by authority of the
Secretary of State for Transport

SCHEDULE TO THE TRANSFER SCHEME

[List relevant Franchise Assets to be transferred to Successor Operator]

APPENDIX 2 TO SCHEDULE 15.4**[TEMPLATE] Form of Supplemental Agreement**

Dated _____ 20[•]

[OUTGOING FRANCHISEE]

and

[SUCCESSOR OPERATOR]**SUPPLEMENTAL AGREEMENT**

to the transfer scheme dated [•] made
by the Secretary of State for Transport in respect of
certain property rights and liabilities of
[OUTGOING FRANCHISEE]

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

This Supplemental Agreement is made on [_____] 20[____]

BETWEEN

[*OUTGOING FRANCHISEE*] whose registered office is at [*registered office*] (the "**Transferor**"); and

[*SUCCESSOR OPERATOR*] whose registered office is at [*registered office*] (the "**Transferee**").

WHEREAS

- (A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "**Secretary of State**") dated [_____] (the "**Franchise Agreement**").
- (B) The Franchise Agreement terminated or is to terminate on [_____] and the Transferee has been selected by the Secretary of State to continue the provision of all or part of such services pursuant either to a franchise agreement with the Secretary of State or arrangements made with the Secretary of State in connection with the Secretary of State's duties and powers.
- (C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Secretary of State on [_____] under Section 12 and Schedule 2 of the Railways Act 2005 (the "**Transfer Scheme**").
- (D) This Agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

IT IS AGREED THAT

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 The following words and expressions shall have the following meaning:

"**Business**" means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

"**Credit**" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"**Debit**" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"**Estimated Completion Payment**" has the meaning ascribed to that term in **clause 2.1**;

"**Net Asset Statement**" means the statement to be drawn up pursuant to **clause 2.2**;

"Net Asset Value" means the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement agreed or determined pursuant to **clause 2.2**;

"Purchase Price" has the meaning ascribed to that term in **clause 2.1**;

"Relevant Contract Liabilities" means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement;

"Relevant Debits and Credits" means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of Clause 11-33 of the Ticketing and Settlement Agreement;

"Relevant Employee Liabilities" means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Employees" means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Franchise Assets" means such of the property, rights and liabilities that are legally or beneficially owned by the Transferor and which are or are to be transferred to the Transferee under the Transfer Scheme;

"Reporting Accountants" means such firm of accountants as may be selected by agreement between the parties within four weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State upon the request of either party;

"Season Ticket Fare" means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

"Stored Credit Balance" means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (stored in any medium);

"Taxation" comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

"TOGC" has the meaning assigned to that term in **clause 6.2**;

"Transfer Date" means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

"Transferring Assets and Liabilities" has the meaning assigned to that term in **clause 2.1**; and

"Undisclosed Employee" has the meaning assigned to that term in **clause 7.1(d)**.

Construction and Interpretation

1.2 In this Agreement terms and expressions defined in the Franchise Agreement shall have the same meaning and the terms "contract of employment", "collective agreement", "employee representatives" and "trade union" shall have the same meanings respectively as in the Transfer Regulations.

2. Transfer Price

Amount and Payment

2.1 The price for the transfer of:

- (a) the Relevant Franchise Assets;
- (b) the Relevant Contract Liabilities;
- (c) the Relevant Debits and Credits; and
- (d) the Relevant Employee Liabilities,

(together the **"Transferring Assets and Liabilities"**) shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value (the **"Purchase Price"**). The sum of £[amount], as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement (the **"Estimated Completion Payment"**) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement, on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be) in accordance with **clause 2.5**.

Net Asset Statement

2.2 The Transferee shall procure that, as soon as practicable and in any event not later than two months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

- 2.3 The Net Asset Statement shall be:
- (a) drawn up in the manner described in the Schedule;
 - (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the Schedule; and
 - (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.
- 2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

Adjustment of Price

- 2.5 If the Purchase Price exceeds or is less than the Estimated Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within 14 days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. References to the Reporting Accountants

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed, provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within 14 days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;
- (b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion.

If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;

- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference;
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any manifest error discovered within 14 days of the issue of their decision) be conclusive and binding (and in accordance with clause 3(g) below) and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise; and
- (g) without prejudice to clauses 3(a) to 3(f) above, either party may, prior to or during the course of the reference to the Reporting Accountants, seek a declaration from the court on a relevant point of law, including but not limited to a point of legal interpretation. Upon such application for a declaration being issued and served all applicable time limits relative to the reference to the Reporting Accountant shall be stayed pending the outcome of such application (including any appeal). The Reporting Accountants are bound to make their determination in a manner consistent with the findings of the Court.

4. **WARRANTY**

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

5. **INTEREST**

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. **VALUE ADDED TAX**

- 6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern ("**TOGC**") and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.
- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be

chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.

- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in **clause 6.3** to be incorrect then, without prejudice to the Transferee's obligation under **clause 6.4** to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within 30 days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.
- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, **clauses 6.3 to 6.6** inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.
- 6.8 **Not used.**
- 6.9 All of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- (a) preserve those records in such manner and for such periods as may be required by law; and
 - (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. **EMPLOYEES**

Transfer Regulations

- 7.1 The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:
- (a) the contract of employment of each of the Relevant Employees (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the "time of transfer" under the Transfer Regulations and the Transferee shall employ

each such Relevant Employee on the terms of those contracts of employment (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;

- (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;
- (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:
- (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
- (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in **clause 7.4**;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Secretary of State under Schedule 15.3 (Handover Package) of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the "**Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):

- (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
- (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his employment following the Transfer Date; and
- (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of **clauses 7.1(b)** and **7.1(c)**; and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

Transferee's Indemnities

- 7.2 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:
- (a) any substantial change in the working conditions of the Relevant Employees to his or her detriment or any of them occurring on or after the Transfer Date;
 - (b) the change of employer occurring by virtue of the Transfer Regulations and/or the Franchise Agreement being significant and detrimental to any of the Relevant Employees;
 - (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
 - (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under the Secretary of State of any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

- 7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

Details of Relevant Employees

- 7.4 Without prejudice to the Transferor's duties under the Transfer Regulations, the Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:
- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
 - (b) terms and conditions of employment of each such person;
 - (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
 - (d) dismissals of Relevant Employees or termination of employment effected within 12 months prior to the Transfer Date including the Transfer Date;
 - (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
 - (f) all strikes or other Industrial Action taken by any Relevant Employee within 12 months prior to the Transfer Date including the Transfer Date.
- 7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

8. MISCELLANEOUS PROVISIONS

Variations in Writing

- 8.1 No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

Partial Invalidity

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

Further Assurance

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

Notices

8.4 Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

(a) in the case of the Transferor to [name of Transferor] at:

[address]

Attention: [name]

(b) in the case of the Transferee to [name of Transferee] at:

[address]

Attention: [name]

8.5 Any such notice or other communication shall be delivered by hand or sent by courier or prepaid first class post. If sent by courier such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two Weekdays from the time of posting.

Counterparts

8.6 This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

Third Parties

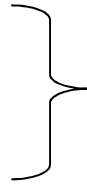
8.7 This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

Governing Law

8.8 This Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

SIGNED FOR AND ON
BEHALF OF THE
[TRANSFEROR]



DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF THE
[TRANSFeree]



DIRECTOR:

DIRECTOR/SECRETARY:

SCHEDULE TO THE SUPPLEMENTAL AGREEMENT

Net Asset Statement

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B} + E$$

where:

- C equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:
- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;
 - (b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
 - (c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
 - (d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);
- D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);
- $\frac{A}{B}$ equals
- (e) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);

(f) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or

(g) in the case of any other Fare, zero; and

E equals, if $\frac{A}{B}$ is greater than zero:

the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

2. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.

3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B}$$

where:

C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and

$\frac{A}{B}$ equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Start Date, zero,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) relate to a period after the Transfer Date.
5. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand column of the following table, which shall be valued on the basis specified in the right hand column of the following table:

RIGHTS AND LIABILITIES	VALUE
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability
Notwithstanding any of the foregoing, any liability to make repayments under	Nil

RIGHTS AND LIABILITIES	VALUE
------------------------	-------

any facility letter agreement between First Rail Holdings Limited and First Greater Western Limited entered into in accordance with paragraph 22.20 of Schedule 6.2 to the Previous Franchise Agreement, where the Payment Date (as such term was defined in the Previous Franchise Agreement) for the repayment falls after the Transfer Date (as such term was defined in the Previous Franchise Agreement) (even where this relates to a drawdown received by the Transferor prior to the Transfer Date (in each case, as such terms were defined in the Previous Franchise Agreement)).

Notwithstanding any of the foregoing, in relation to the Night Riviera Grant Funding Agreement and the Long Rock Grant Funding Agreement, in respect of:

(a) rights to receive grant funding after the Transfer Date in respect of costs and liabilities (including management fees) incurred by the Transferor in respect of or relating to the period prior to the Transfer Date, the liability for which is retained by the Transferor;

(b) funding received by the Transferor prior to the Transfer Date in respect of:

(i) costs and liabilities where the obligation to bear such costs or discharge such liability is transferred to the Transferee or otherwise not incurred by the Transferor and required to be repaid by the Transferee to Cornwall Council,

(ii) management fees to the extent applicable to the period after the Transfer Date; and

(c) other rights and liabilities (if any) (excluding rights and liabilities valued under paragraphs 1 to 4).

All the right, liabilities, title and interest of the Franchisee in:

(a) Agreement for Lease relating to land on the south

In respect of (a), the Transferee shall pay the Transferor an amount corresponding to the grant funding entitled to be received by the Transferee after the Transfer Date in respect of costs and liabilities funded by those agreements (including management fees) to the extent relating to the period prior to the Transfer Date, the costs or liability for which is retained by the Transferor.

In respect of (b), the Transferor shall pay the Transferee an amount corresponding to the amount of funding received by the Transferor in respect of:

(i) costs and liabilities where the obligation to bear such costs or discharge such liability is (x) transferred to the Transferee or otherwise (y) not incurred by the Transferor and required to be repaid by the Transferee to Cornwall Council,

(ii) management fees to the extent applicable to the period after the Transfer Date.

In respect of (c), nil by either party.

The Transferor shall pay the Franchisee an amount calculated as follows:

GCPA = LLC + FAC

RIGHTS AND LIABILITIES	VALUE
<p><i>western side of Great Western Road, Gloucester between (1) the Council of the City of Gloucester and (2) the Franchisee (the "Gloucester Car Park Agreement for Lease"); or, (once the lease has been entered into);</i></p>	<p><i>where</i></p> <p><i>GCPA is the amount payable under the Supplemental Agreement in respect of the Gloucester car park; and</i></p>
<p><i>(b) Lease relating to land on the south western side of Great Western Road, Gloucester between (1) the Council of the City of Gloucester and (2) the Franchisee; or (where the Option under the Agreement for Lease to purchase the land has been exercised);</i></p>	<p><i>LLC is the leasehold land acquisition cost of [REDACTED⁵⁶⁶];</i></p> <p><i>FAC is the freehold land acquisition cost of [REDACTED⁵⁶⁷] (provided that if at the time of transfer the freehold has not been acquired FAC shall be [REDACTED⁵⁶⁸]).</i></p>
<p><i>(c) the freehold land on the south western side of Great Western Road, Gloucester which has been acquired by the Franchisee and is subject to the provisions of:</i></p>	
<p><i>(i) a Planning Clawback Deed between (1) The Secretary of State for Communities and Local Government and (2) The Council of the City of Gloucester; and</i></p>	
<p><i>(ii) a Turning Overage Deed between (1) The Secretary of State for Communities and Local Government and (2) The Council of the City of Gloucester.</i></p>	

⁵⁶⁶ Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁶⁷ Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁶⁸ Date of redaction 18/07/2017 - Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

RIGHTS AND LIABILITIES	VALUE
------------------------	-------

(all together the "Gloucester Car Park Documents").⁵⁶⁵

⁵⁶⁹ All the right, liabilities, title and interest of the Franchisee in the Lease relating to the car park to the south of Westbury station approach Westbury between Square Bay (Westbury) LLP and First Greater Western Limited dated 28 February 2019.

nil

⁵⁷⁰ All the right, liabilities, title and interest of the Franchisee in:

nil

1. Supplemental Agreement relating to Newbury Multi Storey Carpark, between Network Rail Infrastructure Limited, and First Greater Western Limited, and West Berkshire District Council, dated 29 March 2019;

2. Agreement for the management of Newbury Station Car Park, between Network Rail Infrastructure Limited, and First Greater Western Limited, and West Berkshire District Council, dated 29 March 2019

(all together the "Newbury Station Car Park Documents")

⁵⁷¹ All the right, liabilities, title and interest of the Franchisee in:

nil

(a) Umbrella Agreement relating to the St. Erth Multi Modal Transport Hub, Cornwall between Network Rail Infrastructure Limited

⁵⁶⁵ Date of contract insertion 26/09/2016 – Agreed by the Secretary of State and Franchisee.

⁵⁶⁹ 4 July 2019 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁷⁰ 4 July 2019 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁷¹ 4 July 2019 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

RIGHTS AND LIABILITIES	VALUE
------------------------	-------

and the Cornwall Council and First Greater Western Limited, dated 11 November 2018;

(b) Northern Car Park Lease relating to the St. Erth Multi Modal Transport Hub, Cornwall between the Cornwall Council and First Greater Western Limited, dated 11 November 2018; and

(c) Southern Car Park Lease relating to the St. Erth Multi Modal Transport Hub, Cornwall between the Cornwall Council and First Greater Western Limited, dated 11 November 2018.

(all together the "St. Erth Multi Modal Transport Hub Documents")

⁵⁷²All the right, liabilities, title and interest of the Franchisee in the agreement between the First Greater Western Limited and Taunton Deane Borough Council dated 11 March 2019 relating to an unsecured term loan facility not exceeding [REDACTED⁵⁷³], for redevelopment works at Taunton Railway Station. nil

6. CRM Data and Yield Management Data shall be valued at nil.
7. The Stored Credit Balance held by the Franchisee at the Transfer Date shall be valued at the monetary amount so held.
8. [The following assets shall be valued at nil:

[all assets which the 2005 Franchise Agreement, the Previous Franchise Agreement and the Franchise Agreement require to be transferred to a Successor

⁵⁷² 4 July 2019 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁷³ **21 August 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Operator at nil value, including pursuant to paragraph 11 of part 2 to Schedule 6.1 of the Franchise Agreement, and further including:

- 8.1 each of the New Gating Schemes, Enhanced Gating Schemes, LTV Gating Schemes and LTV Enhanced Gating Schemes and any related equipment and assets acquired by the Franchisee pursuant to its obligations under part 4 to Appendix 11 of the 2005 Franchise Agreement;
- 8.2 *[list the number of spare seats (if any) in relation to the LTV Former Buffet Vehicles];*
- 8.3 *[list the number and asset reference numbers of the additional portable Avantix machines, portable ticket machines and ticket vending machines with canopy and CCTV procured as part of the HLOS project];*
- 8.4 *[list the number of CCTV, help points, CIS monitors, 74 new flat screen 20 inch LED displays, PDAs, and rolling stock modifications which would be a lessee part for the purposes of the lease (such as CCTV fitted to the class 16x) procured as part of the HLOS project];*
- 8.5 *List:*⁵⁷⁴
 - (a) all of the long lead items purchased as contemplated under paragraph 15.2(c)(iii) of Appendix 13A of the 2005 Franchise Agreement;
 - (b) all other assets of the Franchisee funded by the Secretary of State under the HST2 SoSRA and acquired pursuant to the programme of base C6 overhauls for the 14 HST sets (as defined in Appendix 13A of the 2005 Franchise Agreement); and
- 8.6 [the IEP driver simulators purchased pursuant to the Previous Franchise Agreement.]
- 8.7 ***the wheel lathe machine, swarf extractor tool and battery powered mule at Reading depot.***⁵⁷⁵
9. Any ITSO equipment (including smartcard and ITSO Certified Smartmedia readers and ITSO database) and any Intellectual Property Rights associated with that ITSO equipment transferred from the Transferor to the Transferee pursuant to the Transfer Scheme shall (to the extent fully funded under a SEFT Deed or the Franchise Agreement at the date of transfer) be valued at nil.
10. The valuation of the rights and liabilities of the Franchisee under the Enhanced Service Support Agreement between the Franchisee (1) and Wiltshire Council (2) dated 21 November 2013 (the "**ESSA Contract**") shall:
 - 10.1 include the amount of the Compensation Excess (as defined in the ESSA Contract) that the Franchisee has agreed to pay to the Successor Operator; and
 - 10.2 otherwise be valued on the basis specified in paragraph 5 above.
11. ⁵⁷⁶ **All the right, liabilities, title and interest of the Franchisee in the freehold land to the east of Castle Cary Station registered with HM Land Registry under Title No [REDACTED⁵⁷⁷] (all together the "Castle Cary**

⁵⁷⁴ **Note to Franchisee - Needs also to take into account assets relating to HST reseating and reconfiguration, sleeper conversion work etc.**

⁵⁷⁵ **Date of contract insertion 27/01/2016 – Agreed by the Secretary of State and Franchisee.**

⁵⁷⁶ 12 December 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁷⁷ **9 May 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the**

Additional Car Park Land") shall be transferred to the Transferee for the fixed sum of [REDACTED⁵⁷⁸] payable by the Transferee to the Transferor.

12. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.
13. ⁵⁷⁹**All the right, title and interest of the Franchisee in each of (i) those constituent parts of the STNR System funded by the Secretary of State as part of the STNR Project (including those elements set out in Annexes B and C of the STNR Scope of Work (but excluding any which are improvements to assets leased to the Franchisee or which are contracts, leases, licences or other equivalent arrangements); (ii) any Intellectual Property Rights (excluding licences) associated with those parts of the STNR System; and (iii) all data processed or generated by the STNR System, shall be valued at nil. (This is without prejudice to any rights specified in the Franchise Agreement of the Franchisee to payment in respect of any parts of the STNR System which are not funded by the Secretary of State as part of the STNR Project (for example in relation to existing equipment which is upgraded as part of the STNR Project, which shall be valued excluding the upgrade).**
14. ⁵⁸⁰**All:**
- (i) the rights, title and interest of the Franchisee in each of (i) any Computer System, other system and/or assets funded by the Secretary of State;
 - (ii) any Intellectual Property Rights (excluding licences) associated with such Computer System, other system and/or assets; and
 - (iii) all data processed or generated by such Computer System and/or other system,

In each case, relating to the implementation, processing or operation of Delay Repay Compensation, shall be valued at nil.

text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁷⁸9 May 2019 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁷⁹13 December 2017 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

⁵⁸⁰7 March 2019 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

APPENDIX 3 TO SCHEDULE 15.4⁵⁸¹

Form of HEx Business Transfer Agreement

⁵⁸¹ 17 April 2018 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee.

Official-Sensitive- Commercial	Page 735 of 778	APPENDIX 3 SCHEDULE 15.4
--------------------------------	-------------------------------	-----------------------------

Dated

20[●]

(1) [GREAT WESTERN FRANCHISEE]

(2) [SUCCESSOR OPERATOR]

BUSINESS TRANSFER AGREEMENT

Regarding the HEx Outsourced Services

THIS AGREEMENT is made on 20[•]

BETWEEN:

- (3) **[GREAT WESTERN FRANCHISEE]**, (company registration no. [•]) whose registered office is at [•] ("**Transferor**"); and
- (4) **[SUCCESSOR OPERATOR]**, (company registration no. [•]) whose registered office is at [•] ("**Transferee**").

BACKGROUND

- (A) The Transferor has been providing train crew, rolling stock and certain management services to Heathrow Airport Limited ("**HAL**") and Heathrow Express Operating Company Limited ("**HEOC**") in accordance with an agreement dated **[insert date]** between the Transferor, HAL and HEOC (the "**HEx Services Agreement**").
- (B) The HEx Services Agreement terminated or is to terminate on **[insert date]** and the Transferee has been appointed by the Secretary of State as the Successor Operator of the Franchise and will enter into a services agreement relating to the HEx Outsourced Services on substantially the same terms as the HEx Services Agreement.
- (C) The Transferor has agreed to transfer all Tangible Assets, Business Contracts and Records required by the Transferee for the purposes of delivering the HEx Outsourced Services to the extent that such Tangible Assets, Business Contracts and Records have not or will not transfer to the Transferee pursuant to the Transfer Scheme (the "**Transfer**").
- (D) This Agreement sets out the terms on which the Transfer is to take place.

OPERATIVE CLAUSES

1. INTERPRETATION

In this Agreement:

1.1 the following expressions have the following meanings unless inconsistent with the context:

- "Bank Holiday"** means any day other than a Saturday or Sunday on which banks in the City of London are not open for business;
- "Business"** the operation of the HEx Outsourced Services and all associated activities;
- "Business Assets"** all property, rights and assets of the Business to be sold to the Transferee pursuant to this

Agreement including those described in **clause 2.1** but excluding the Excluded Assets;

"Business Contracts" all Contracts entered into by or on behalf of the Transferor which are unperformed (wholly or partly) as at the Transfer Date as listed in **Schedule 3**;

"CA 2006" the Companies Act 2006, as amended;

"Confidential Information" all know how and information (howsoever stored) in relation to the Business which is not publicly known;

"Consideration" the aggregate consideration for the sale of the Business Assets as provided in **clause 3**;

"Consultation Regulations" means the Collective Redundancies and Transfer of Undertaking (Protection of Employment) (Amendment) Regulations 1995, the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1999 and the Information and Consultation of Employees Regulations 2004;

"Customer Advances" all amounts paid to the Transferor before the Transfer Date in respect of goods or services to be supplied by the Business to a customer under any Contract after the Transfer Date;

"Employees" the persons employed in the Business immediately before the Transfer Date, as listed in Schedule 1, whose contracts of employment after the Transfer Date will be or are deemed effected between the Transferee and such persons under regulation 4 of the Regulations, which shall not include those persons whose contracts of employment have transferred to the Franchisee as a result of the operation of the Transfer Scheme;

"Employment Costs" all salaries, wages, commissions, bonuses, all statutory contributions, holiday pay (including payment for accrued but untaken holiday), national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other employment costs of the Employees;

"Encumbrance" any mortgage, charge, pledge, lien, assignment by way of security, option, restriction, claim, right of pre-emption, right of first refusal, third party right or interest, other encumbrance or

security interest of any kind, or other preferential arrangement having similar effect;

"Estimated Purchase Price" has the meaning ascribed to it in **clause 3.1**;

"Excluded Assets" any and all assets of the Transferor other than the Business Assets;

"HEX Outsourced Services" means the provision of train crew, rolling stock and certain management services provided or to be provided by the Franchisee pursuant to the HEx Services Agreement;

"Liabilities" all costs, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought;

"Net Asset Statement" means the statement to be drawn up pursuant to **clause 3.2**;

"Net Asset Value" means the aggregate of the amounts of the Business Assets as shown in the Net Asset Statement;

"Network Rail" means Network Rail Infrastructure Limited a company registered in England with registered number 02904587 whose registered office is at Kings Place, 90 York Way, London N1 9AG;

"ORR" Office of Rail Regulation;

"Records" all the Transferor's books and records relating to the Business, the Business Assets and the Employees (including personnel files) as listed in **Schedule 4** excluding those relating to the Excluded Assets and any records that the Transferor is required by law to retain

"the Regulations" the Transfer of Undertakings (Protection of Employment) Regulations 2006;

"Tangible Assets" those items listed in **Schedule 2**;

"Transfer Date" 01:59 on *[insert date]*;

"Transferee's Group" any of the following from time to time: the Transferee, its subsidiary undertakings and any parent undertaking of the Transferee and all other subsidiary undertakings of any parent undertaking of the Transferee and **"member of Transferee's Group"** will be construed accordingly;

“Transferor’s Group” any of the following from time to time: the Transferor, its subsidiary undertakings, any parent undertaking of the Transferor and all other subsidiary undertakings of any parent undertaking of the Transferor and **“a member of the Transferor’s Group”** will be construed accordingly;

“Transferor Prepayments” all amounts paid by the Transferor before the Transfer Date in respect of goods or services to be supplied to the Transferee under any Contract with a supplier after the Transfer Date;

“VAT” Value Added Tax;

“VATA” Value Added Tax Act 1994;

“Weekday” means any day other than a Saturday, a Sunday or a Bank Holiday;

1.2 references to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified, replaced, re-enacted or consolidated and in force from time to time prior to Transfer Date and any subordinate legislation made under the relevant statute or statutory provision (as so modified, replaced, re-enacted or consolidated) in force prior to the Transfer Date;

1.3 references to a person includes a reference to any individual, firm, company, corporation or other body corporate, government, state or agency of a state or any unincorporated association, joint venture or partnership (whether or not having a separate legal personality);

1.4 references to the masculine, feminine or neuter gender respectively include the other genders and references to the singular include the plural and vice versa;

1.5 references to clauses and Schedules are to clauses of and Schedules to this Agreement, and references to paragraphs are to paragraphs in the Schedule in which such references appear;

1.6 the Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement;

1.7 the headings in this Agreement will not affect its interpretation;

1.8 any phrase introduced by the term **“include”**, **“including”**, **“in particular”** or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term;

1.9 references to a **“subsidiary undertaking”** or **“parent undertaking”** are to be construed in accordance with section 1162 CA 2006;

1.10 references to documents **“in the agreed terms”** are references to documents initialled by or on behalf of the Transferor and the Transferee; and

1.11 **“Party”** means party to this Agreement.

2. **SALE AND PURCHASE**

2.1 The Transferor will sell and transfer, or procure the sale and transfer, with full title guarantee (unless otherwise specified in this Agreement) to the Transferee and the Transferee will buy as at the Transfer Date the following assets (to the extent that they have not already transferred or will not transfer to the Transferee pursuant to the Transfer Scheme):

- (a) the Tangible Assets;
- (b) the benefit (subject to the burden) of the Business Contracts; and
- (c) the Records.

2.2 Each of the Business Assets will be sold and bought free from any Encumbrance and with all rights attached to it unless otherwise specified in this Agreement.

2.3 Subject to the matters fairly disclosed to the Transferee, the Transferor warrants that each of the Business Assets is legally and beneficially owned by the Transferor, free from any Encumbrance or any claim to, or contract to grant, any Encumbrance.

2.4 Except as otherwise provided in this Agreement:

- (a) beneficial ownership and risk in each of the Business Assets in respect of which beneficial ownership is to pass to the Transferee will pass to the Transferee on the Transfer Date;
- (b) title to all Business Assets in respect of which beneficial ownership is to pass to the Transferee which can be transferred by delivery will pass on delivery and such delivery will be deemed to take place on the Transfer Date; and
- (c) the Transferor will be a trustee for the Transferee in respect of the Business Assets until they have been actually delivered and/or, in the case of Business Assets not capable of transfer by delivery, transferred or assigned to the Transferor.

2.5 Notwithstanding any other provision of this Agreement, the Excluded Assets are excluded from the sale and purchase under this Agreement.

3. **CONSIDERATION**

3.1 The consideration for the sale of the Business Assets will be the sum of £[●] as determined by the Secretary of State (in consultation with the Transferor and the Transferee) on or before the date of this Agreement (the "**Estimated Purchase Price**") which shall be paid in immediately available funds by the Transferee to the Transferor on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be in accordance with **clause 3.3**).

3.2 **Determination of the Purchase Price**

- (a) The Transferor shall procure that, as soon as reasonable practicable and in any event no later than [two] calendar months following the Transfer

Official-Sensitive- Commercial	Page 741 of 778	APPENDIX 3 SCHEDULE 15.4
--------------------------------	-------------------------------	-----------------------------

Date, there shall be drawn up a statement showing a true and fair view of the amount of each Business Asset as at the Transfer Date.

- (b) The Net Asset Statement shall be :
 - (i) drawn up on the basis that the Tangible Assets and any other Business Assets shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry;
 - (ii) prepared on such basis as would enable the Transferor’s auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the provisions of this **clause 3.2(b)**; and
 - (iii) presented, initially as a draft, to the Transferee immediately following its preparation for review in conjunction with its auditors.
- (c) If the Transferor and the Transferee have failed to agree the Net Asset Statement within **[four]** weeks following presentation of the initial draft as required in **clause 3.2(b)(iii)**, then either party may refer the matter to be settled in accordance with **clause 11**.

3.3 If the Purchase Price exceeds or is less than the Estimated Purchase Price, the Transferor shall pay to the Transferee or the Transferee shall pay to the Transferor (as the case may be), in either case within **[fourteen]** days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3.4 All amounts expressed in this Agreement as being payable by the Transferee are expressed exclusive of any VAT which may be chargeable.

4. **VALUE ADDED TAX**

4.1 In this **clause 5**:

“Special Provisions Order” means the Value Added Tax (Special Provisions) Order 1995

“HMRC” means HM Revenue & Customs.

4.2 All amounts expressed in this Agreement as being payable by the Transferee are expressed to be exclusive of VAT which may be chargeable and the Transferee agrees to pay to the Transferor in addition to such amounts, any VAT for which the Transferor is liable to account to HMRC in respect of any supply made by the Transferor to the Transferee under or in connection with this Agreement within five Weekdays of production of a valid VAT invoice by the Transferor.

4.3 The Parties intend that section 49 VATA and Article 5 Special Provisions Order will apply to the transfer of the Business Assets and the Transferor and the Transferee will each use all reasonable endeavours to secure that pursuant to the provisions

referred to above the sale of the Business Assets is treated as neither a supply of goods nor a supply of services for the purposes of VAT but as the transfer of a business as a going concern. Provided always that nothing in this **clause 4.3** shall require the Transferor to request a review of any determination by HMRC or any notification by HMRC that section 49 VATA and Article 5 Special Provisions Order does not apply to the transfer of Business Assets in whole or in part.

4.4 The Transferor represents, warrants and undertakes to the Transferee that it is duly and properly registered for the purposes of VAT.

4.5 The Transferee represents, warrants and undertakes to the Transferor that;
(a) it is duly and properly registered for the purposes of VAT; and
(b) that it will use the Business Assets to carry on the same kind of business as that carried on with those assets by the Transferor (whether or not as part of any existing business of the Transferee).

4.6 The Transferor will preserve the VAT records relating to the Business Assets required to be maintained in accordance with paragraph 6(1) Schedule 11 VATA and any regulations made under that section. The Transferee will indemnify the Transferor against the Transferor's proper and reasonable costs incurred in complying with the Transferor's obligations under section 49(5) VATA.

4.7 If HMRC notify the Transferor in writing that they do not agree that the sale of the Business Assets (or any part of them) pursuant to this Agreement falls within section 49 VATA and Article 5 Special Provisions Order, the Transferor will forthwith on receipt of such notification or on the Transfer Date (whichever is the later) issue to the Transferee a valid VAT invoice in respect of the sale of the Business Assets (or the relevant part of them). The Transferee will within five Weekdays of receipt of such invoice pay to the Transferor the VAT charged on the sale of the Business Assets (or the relevant part of them) in addition to the Consideration.

4.8 The Transferee undertakes to indemnify the Transferor in respect of any liability of the Transferor to pay HMRC any interest, penalty or surcharge by reason of the late payment of any VAT charged on the sale of the Business Assets (or any part of them) pursuant to the provisions of this Agreement provided that the Transferee shall only be liable to indemnify the Transferor in respect of such interest, penalty or surcharge where the VAT charged on the sale of the Business Assets (or any part of them) arises as a result of the breach by the Transferee of its warranties in **clause 4.5**.

5. LIABILITIES AND APPORTIONMENTS

5.1 All expenditure, overheads and outgoings in respect of the Business or Business Assets and all payments received in respect of the Business or Business Assets which, in each case, cover a period both before and after the Transfer Date will be apportioned on a time basis so that such part of the relevant expenditure or payment received attributable to a period up to and including the Transfer Date will be borne by, or for the benefit of, the Transferor and such part of the relevant expenditure or payment received attributable to the period after the Transfer Date will be borne by, or for the benefit of, the Transferee.

- 5.2 The Transferor will pay to the Transferee an amount equal to all the Customer Advances and the Transferee will pay to the Transferor an amount equal to all the Transferor Prepayments.
- 5.3 The Transferor will prepare a statement of adjustments setting out the net balance payable by either the Transferee or the Transferor to the other in accordance with **clauses 5.1** and **5.2** and will submit such statement to the Transferee within 14 days of the Transfer Date. The Transferee and the Transferor will then seek to agree such statement and the net balance payable pursuant to this clause will be paid within 14 days of this statement being agreed or determined or on such other date as the Transferee and the Transferor agree. Any payments pursuant to **clause 5.1** not included in such statement of adjustments but subsequently made or received by the Transferor or the Transferee will be apportioned in accordance with **clause 5.1** and any claim for reimbursement will be made by notice in writing supported by copy documentation evidencing the amount of the same and the calculation of the apportionment. All sums due will be paid within ten Weekdays of a receipt of a notice of apportionment save where there is a dispute as to the amount to be paid in which case the matter may be dealt with in accordance with **clause 9**.
- 5.4 To the extent that any payment is made to the Transferor after the Transfer Date in respect of the performance by the Transferee of any Contract with a customer or generally in relation to the carrying on of the Business by the Transferee after the Transfer Date, the Transferor will receive the same as trustee for the Transferee and will account to the Transferee for the same as soon as reasonably practicable and in any event within seven Weekdays following receipt.
- 5.5 The Transferor shall indemnify and keep indemnified the Transferee against all Liabilities (save for any Liability which the Transferee has expressly agreed to assume pursuant to this Agreement) which may arise:
 - (a) as a result of any breach by the Transferor of any Contract prior to the Transfer Date; and
 - (b) otherwise in connection with the ownership of the Business Assets or the carrying on of the Business prior to the Transfer Date.
- 5.6 The Transferee shall indemnify and keep indemnified the Transferor against all Liabilities (save for any Liability which the Transferor has expressly agreed to retain pursuant to this Agreement) which may arise:
 - (a) as a result of any breach by the Transferee of any Contract after the Transfer Date; and
 - (b) otherwise in connection with the ownership of the Business Assets or the carrying on of the Business on or after the Transfer Date.
- 5.7 In respect of any claim arising prior to the Transfer Date under any policy of insurance maintained by the Transferor in relation to the Business:
 - (a) it is agreed that the Transferor or its insurers shall be responsible for the resolution of such claims without liability for the Transferee; and
 - (b) the Transferor undertakes that it has taken reasonable measures to address the root cause of any incident giving rise to such a claim.

6. BUSINESS CONTRACTS

6.1 Subject to the provisions of clause 5 and the other provisions of this clause 6, the Transferee will with effect from the Transfer Date assume the obligations of the Transferor, and become entitled to the benefits of the Transferor, under the Business Contracts.

6.2 The Transferor hereby assigns to the Transferee with effect from the Transfer Date all its rights, title and interest under or pursuant to all the Business Contracts which are capable of assignment without the consent of other parties.

6.3 In so far as a Business Contract cannot be transferred without the consent of a third party or a novation agreement:

- (a) this Agreement does not constitute an assignment or an attempted assignment of the Business Contract if such assignment or attempted assignment would constitute a breach of the Business Contract;
- (b) the Transferor will, as requested by the Transferee, use its reasonable endeavours (with the co-operation of the Transferee) to procure such consent or novation.

6.4 Subject to clause 6.5, unless and until such consent or novation is obtained:

- (a) the Transferor will hold the benefit of such Business Contracts upon trust for the Transferee absolutely and will account to the Transferee for any sums received by the Transferor in relation thereto without any deduction or withholding of any kind; and
- (b) the Transferee will, as the Transferor’s agent, perform all the obligations of the Transferor under such Business Contract for the period from the Transfer Date; and
- (c) the Transferor will do each act or thing reasonably requested of it by the Transferee to enable performance of the Business Contract by the Transferee and to provide for the Transferee the benefits of the Business Contract (including its rights of enforcement) provided that the Transferee indemnifies the Transferor in full against all costs (including legal costs) and expenses incurred.

6.5 If any consent or novation is not obtained within sixty days after the Transfer Date and the provisions set out in this clause 6 do not enable the full benefit of a Business Contract to be enjoyed by the Transferee then the Transferor will be entitled by notice in writing to the Transferee to inform the Transferee of the Transferor’s intent to terminate the relevant Business Contract or to exclude the same from the Business Assets. **[Delete if not applicable]**.

7. EMPLOYEES

7.1 The Transferor shall perform and discharge its obligations in relation to the Employees which arise up to and including the Transfer Date.

7.2 The Transferor and the Transferee acknowledge that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, pursuant to the Regulations the contracts of employment between the Transferor and the Employees (except in so far as such

contracts relate to any occupational pension scheme as defined in Regulation 10 of the Regulations) will have effect from and including the Transfer Date, which shall be the "time of transfer" under the Regulations, as if originally made between the Transferee and the Employees.

7.3 All Employment Costs in respect of the period:

- (a) up to the Transfer Date (whether or not due for payment at that date) will be borne by the Transferor;
- (b) on and from the Transfer Date will be borne by the Transferee,

and will if necessary be apportioned on a time basis between the Transferee and the Transferor.

7.4 The Transferor shall indemnify the Transferee against all Liabilities arising out of or in connection with:

- (a) any claim by any Employee arising from his employment with the Transferor or the termination of that employment (howsoever arising) prior to the Transfer Date;
- (b) the non-payment or underpayment of Employment Costs in respect of any period prior to the Transfer Date; and
- (c) any claim by any Employee, trade union, elected employee representative or staff association in respect of all or any of the Employees arising from any failure by the Transferor to comply with any legal obligation to any such Employee, trade union, representative or staff association or with regulations 13 or 14 of the Regulations or with any provision of the Consultation Regulations.

7.5 The Transferee shall indemnify the Transferor against Liabilities arising out of or in connection with:

- (a) any claim by any Employee arising from his employment with the Transferee or the termination of that employment (howsoever arising) after the Transfer Date;
- (b) the non-payment or under-payment of Employment Costs in respect of the period commencing after the Transfer Date;
- (c) any claim arising as a result of the Transferee's failure to comply with section 258 of the Pensions Act 2004 as transferee;
- (d) any claim by any Employee arising from a change or anticipated change to that Employee's terms and conditions of employment by the Transferee, whether such claim is brought before, on or after the Transfer Date, including any claim pursuant to regulation 4(9) of the Regulations; and
- (e) any claim by any Employee or representative of any Employee pursuant to regulation 13 of the Regulations, to the extent that such claim arises out of any failure by the Transferee to comply with its obligations under regulation 13(4) of the Regulations.

- 7.6 The Transferee shall make such pension provisions in respect of the Employees as comply with its obligations under sections 257 and 258 Pensions Act 2004 and the Regulations and, for the avoidance of doubt, shall have no other Liability to the Transferor in respect of the provision of pension benefits to any Employee.
- 7.7 The Transferor shall provide such information and co-operation as may be necessary to enable the Transferee to establish a section under the Shared Cost Arrangement of the Railways Pension Scheme in which Employees who are protected employees may participate immediately following the Transfer Date in order that the Transferee may comply with its obligations to such protected employees under the Railways Pensions (Protection and Designation of Schemes) Order 1994.
- 7.8 Where either Party (the "**Indemnifying Party**") is obliged to indemnify the other (the "**Indemnified Party**") under this clause, the Parties will co-operate fully with each other in relation to the Liability and save as required by law, the Indemnified Party will not settle a claim without the prior written consent of the Indemnifying Party, such consent not to be unreasonably withheld or delayed.

8. RECORDS AND ACCESS

- 8.1 Without prejudice to any other provision of this Agreement, the Transferee and its agents will be entitled for a period of three years from the date of this Agreement on giving reasonable notice to the Transferor to have access during normal business hours and to take copies (at its own expense) of any books, documents or other records (including computer records) in the Transferor's possession relating exclusively to the Business or the Business Assets and which have not been delivered to the Transferee.
- 8.2 The Transferor and its agents will, where necessary for the completion of its accounts or tax returns or for dealing with any claims or disputes relating to the use of the Business Assets or the carrying on of the Business up to the Transfer Date, be entitled for a period of six years from the Transfer Date on giving reasonable notice to the Transferee to have access during normal business hours and to take copies of (at its own expense) any of the Records which were delivered to the Transferee pursuant to this Agreement.

9. DISPUTES

- 9.1 In the event of any dispute, either Party shall be entitled to call an extraordinary meeting of the Parties designated representatives who are responsible for the administration of this Agreement, which, in the case of the Transferee, shall be [X] and in the case of the Transferor shall be [X], (the "**Designated Representatives**") for any purpose including resolving a dispute, by service of five Weekdays' written notice on the other Party. The Parties shall negotiate in good faith to resolve such dispute. If the dispute cannot be resolved by the Designated Representatives at or within ten Weekdays of such meeting, either Party may refer the matter for resolution to the [Managing Director of the Transferee] and [Managing Director of the Transferor] who shall discuss the matter in good faith with the intention of settling the dispute as soon as reasonably possible.
- 9.2 If any dispute cannot be settled by negotiation in accordance with **clause 9.1** above, the Parties, in good faith, may, by agreement, seek to resolve that dispute through mediation under the auspices of a mediator. The mediator shall be selected by mutual agreement and, in the case of any dispute relating to financial

matters (including, without limitation, any dispute relating to apportionment pursuant to **clause 5** (a "**Financial Dispute**") shall be a qualified accountant of good standing. Failing agreement within fourteen days after a request by one Party to the other, a mediator shall be chosen at the request of either Party by the President for the time being of the Law Society or, in the case of a Financial Dispute, by the President of the Institute of Chartered Accountants in England and Wales, who in each case shall be requested to choose a suitably qualified and experienced mediator for the dispute in question. If the dispute is not resolved by mediation within thirty days of the appointment of the mediator (or such other period as the Parties may agree), or if one of the Parties will not participate in the mediation, the dispute shall be resolved in accordance with the Rail Industry Dispute Resolution Rules.

10. **CONFIDENTIALITY**

10.1 This Agreement and any Confidential Information disclosed by one Party to the other hereunder shall be confidential to the Party both before and after the Transfer Date and neither Party shall make any disclosure in relation to or permit any announcement or publication to be made concerning this Agreement or its terms, either in whole or in part, or any comment or statement relating to this Agreement except:

- (a) to the ORR, [Network Rail,] the Department for Transport or Transport for London; or
- (b) with the prior written consent of the other as to the form and content of any such announcement, publication, statement or comment, such consent not to be unreasonably withheld or delayed; or
- (c) as far as may be necessary for the prompt performance of its obligations under this Agreement; or
- (d) in connection with any dealing or proposed dealing with its interest; or
- (e) without prejudice to **clause 10.1(a)** above, for the purposes of obtaining any regulatory or government authorisation, approval or consent; or
- (f) as required by law or any relevant stock exchange or if ordered to do so by a court of competent jurisdiction, HM Revenue and Customs; or
- (g) to a member of the Transferor’s Group or the Transferee’s Group upon obtaining from such Party an undertaking of confidentiality equivalent to that contained in this **clause 10.1**; or
- (h) to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in this **clause 10.1**; or
- (i) to any lenders, security trustee, bank or other financial institution (and their advisers) from which such party is seeking or obtaining finance upon obtaining from each such person an undertaking of confidentiality equivalent to that contained in this **clause 10.1**; or
- (j) to the directors, officers and employees of such Party.

10.2 If either Party seeking to disclose a document or information can demonstrate to the reasonable satisfaction of the other that any such document, material or information is in the public domain through no breach of **clause 10.1** then to the extent that it is in the public domain this obligation shall cease but without prejudice to any claim by either party in respect of any prior breach.

11. **COSTS**

Except where expressly stated otherwise, each Party will bear such Party’s own costs and expenses relating to the negotiation, preparation and implementation of this Agreement.

12. **INTEREST**

If any Party becomes liable to pay (the **“Paying Party”**) any sum pursuant to this Agreement, whether a liquidated sum or by way of damages or otherwise, the Paying Party will be liable to pay interest on such sum from the due date for payment at the annual rate of four per cent above the base lending rate from time to time of *[name of Bank]*, accruing on a daily basis until payment is made, whether before or after any judgment.

13. **NOTICES**

13.1 Any notice or other communication given in connection with this Agreement will be in writing and will be delivered personally or sent by pre-paid first class post (or air mail if overseas) or by fax to the recipient’s address set out at **clause 12.3** in this Agreement or to any other address which the recipient has notified in writing to the sender received not less than seven (7) Weekdays before the notice was despatched.

13.2 A notice or other communication is deemed given:

- (a) if delivered personally, upon delivery at the address provided for in this clause; or
- (b) if sent by pre-paid first class post, on the second Weekday after posting it; or
- (c) if sent by email, when confirmation of its transmission has been received by the sender,

provided that, if it is delivered personally or sent by fax on a day which is not a Weekday or after 4 p.m. on a Weekday, it will instead be deemed to have been given or made on the next Weekday.

13.3 The addresses referred to in **clause 13.1** are:

Transferor

To: *[NAME]*

Address: *[DETAILS]*

For the attention of: *[NAME]*

Email: **[NUMBER]**
 [Copy to:] []

Transferee

To: **[NAME]**
 Address: **[DETAILS]**
 For the attention of: **[NAME]**
 Email: **[NUMBER]**
 [Copy to:] []

14. ASSIGNMENT

- 14.1 Save as provided in **clause 14.2**, neither Party may assign the benefit of, and/or any of its rights under, this Agreement without the prior consent of the other Party.
- 14.2 The Transferee may assign the benefit of, and any of its rights under, this Agreement to another member of the Transferee Group and the Transferor may assign the benefit of, and any of its rights under, this Agreement to another member of the Transferor Group.

15. FURTHER ASSURANCE

- 15.1 Each Party will (at their own cost) do, or procure the doing of, all acts and things and execute, or procure the execution of, all documents as the other party reasonably considers necessary to give full effect to the terms of this Agreement.

16. RIGHTS OF THIRD PARTIES

The Parties do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

17. ENTIRE AGREEMENT

- 17.1 This Agreement and the documents referred to in it constitute the entire agreement between the Parties and supersede and replace any previous agreement, understanding, undertaking, representation, warranty or arrangement of any nature whatsoever between the parties relating to the subject matter of this Agreement.
- 17.2 The Parties acknowledge and agree that in entering into this Agreement, and the documents referred to in it, they have not relied on, and will have no remedy in equity, contract, tort, under the Misrepresentation Act 1967 or otherwise in respect of, any representation other than as set out in this Agreement and each document referred to in it.
- 17.3 The only remedy available to the Parties in respect of this Agreement and the documents referred to in it is for breach of contract and, for the avoidance of

doubt, neither party will have the right to rescind this Agreement or the documents referred to in it for breach of contract, negligent or innocent misrepresentation or otherwise.

17.4 Nothing in this clause will have the effect of limiting or restricting any liability of the Parties arising as a result of any fraudulent misrepresentation.

18. **GENERAL**

18.1 Failure or delay by any Party in exercising any right or remedy under this Agreement will not in any circumstances operate as a waiver of it, nor will any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right or remedy.

18.2 Any waiver of any breach of, or any default under, any of the terms of this Agreement will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this Agreement.

18.3 No variation of this Agreement will be valid unless it is in writing and signed by or on behalf of each party to this Agreement.

18.4 Nothing in this Agreement will have the effect of limiting or restricting any liability of the Transferor in respect of a claim arising as a result of any fraud by or on behalf of Transferor.

19. **GOVERNING LAW AND JURISDICTION**

19.1 This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by English law.

19.2 The courts of England and Wales will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement (including (without limitation) in relation to any non-contractual obligations). The Parties irrevocably agree to submit to that jurisdiction.

20. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when executed and delivered will be an original.

SCHEDULE 1

The Employees

[To be inserted, as they relate to the HEx Outsourced Services and are not otherwise transferred under or in connection with the Transfer Scheme]

SCHEDULE 2

Tangible Assets

[To be inserted, as they relate to the HEx Outsourced Services and are not otherwise transferred under or in connection with the Transfer Scheme]

SCHEDULE 3

The Business Contracts

[To be inserted, as they relate to the HEx Outsourced Services and are not otherwise transferred under or in connection with the Transfer Scheme]

SCHEDULE 4

Records

[To be inserted, as they relate to the HEx Outsourced Services and are not otherwise transferred under or in connection with the Transfer Scheme]

SCHEDULE 16

Pensions

1. Franchise Section

The Franchisee shall participate in and continue to be the Designated Employer in relation to the First Great Western Shared Cost Section of the Railway Pension Scheme (the "**Franchise Section**") in respect of the Franchise Services. Subject to paragraphs 2 and 3.2(d) membership of a Franchise Section will be offered to each employee of a Franchisee only.

2. Closed Schemes

2.1 Subject to any requirements of Her Majesty's Revenue and Customs, the Franchisee shall take any necessary steps (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the British Railways Superannuation Fund or the BR (1974) Pension Fund in accordance with their terms during the Franchise Period.

2.2 For the purposes of this paragraph 2, "**Closed Scheme Employees**" means such of the employees of the Franchisee who were, immediately prior to the commencement of their employment with the Franchisee, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

3. Variations in benefits, contributions and investment

3.1 If a Franchisee is considering making a proposal that falls within the scope of paragraphs 3.2(a) to 3.2(g) inclusive, it shall promptly consult with the Secretary of State in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Franchise Section, the Trustee of the Railways Pension Scheme (the "**Trustee**"), or to any trade union. The Franchisee must otherwise consult in good time with the Secretary of State in relation to any proposal falling within the scope of paragraphs 3.2(a) to 3.2(g) inclusive.

3.2 Separately and in addition to complying with its obligations under paragraph 3.1, the Franchisee shall not, without the prior written consent of the Secretary of State (which may be given on such terms and subject to such conditions as the Secretary of State thinks fit):

(a) restructure or change the composition of the earnings of employees of the Franchisee in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the Rules applicable to any Franchise Section or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any Franchise Section, including varying or providing different or additional benefits under that Franchise Section or promising to do so, unless this change:

(i) is required by Law; or

(ii) only affects benefits payable in respect of past service of members of that Franchise Section and on or prior to the effective date of the change the Franchisee pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on that Franchise Section; or

- (iii) would not lead to substantial changes in the funding of any Franchise Section and is the result of the normal application of that Franchise Section' Rules in the ordinary day to day running of the business of the Franchise, for example, where individual employees are, from time to time promoted or transferred to higher paid or different employment which has a different composition of earnings;
 - (b) make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the Franchise Section unless the change is required by Law;
 - (c) provide retirement, death or life assurance benefits in respect of any of its employees other than under any Franchise Section or as provided in paragraph 2;
 - (d) omit to provide the above-mentioned benefits in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the Franchisee shall not under this Schedule 16 be obliged for the purposes of the Franchise Agreement to offer such benefits to any employee employed on a fixed term contract of 12 months or less;
 - (e) take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under any Franchise Section, including exercising any discretion allowed to the Franchisee as Designated Employer arising out of any actuarial valuation of a Franchise Section, and varying or providing different or additional benefits under the Franchise Section in respect of future service, unless such action is required by Law;
 - (f) close a Franchise Section to new members; or
 - (g) take (or omit to take) any action which could result in any Franchise Section being wound up, in whole or in part.
- 3.3 The Franchisee shall consult with the Secretary of State on:
- (a) any proposal made by the Trustee to change the statement of investment principles applicable to any Franchise Section; and
 - (b) any proposal to alter the rate of contributions payable by the Franchisee or its employees under a new schedule of contributions for the Franchise Section.
- 3.4 With respect to any proposal falling within the scope of paragraph 3.3(a) or 3.3(b), the Franchisee shall also consult with the Trustee on the basis of any response it receives from the Secretary of State in relation to any such proposal.
4. **Funding liabilities**
- 4.1 The Franchisee shall pay the employer contributions required under the schedule of contributions applicable to each Franchise Section (or either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates) in respect of the Franchise Term subject to the provisions of paragraph 4.2 below.

4.2 Where, during the Franchise Term, Franchise Services are aggregated or disaggregated by the Secretary of State (for example, as a result of remapping) and, as a consequence, a Franchise Section of which the Franchisee is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Secretary of State shall ensure that the Franchisee has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise Section' technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above the Secretary of State shall have no liability for any future deterioration in the funding levels of the Franchise Section linked to such transfer in or out of members.

5. Discharge of obligations

5.1 The Secretary of State may at any time during the Franchise Term seek information from the Trustee with a view to satisfying himself that the Franchisee and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to any Franchise Section.

5.2 The Franchisee shall, at its expense, promptly provide such information in relation to any Franchise Section, including actuarial advice and information, as the Secretary of State may from time to time request and shall authorise and consent to the Trustee doing so.

5.3 The Franchisee shall, in respect of the Franchise Term, use all reasonable endeavours to provide to the Secretary of State:

- (a) within one month of the expiry of each Franchisee Year; and
- (b) at other times as soon as practicable following a request by the Secretary of State,

a certificate signed by the Trustee in relation to the Franchise Section stating either that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme, including its obligation to contribute to the Franchise Section or, if it has not so complied, stating the extent to which it has not done so. Where the certificate is given pursuant to paragraph 5.3(a), it shall cover the relevant Franchisee Year. Where the certificate has been given pursuant to paragraph 5.3(b), it shall cover such period as the Secretary of State shall specify.

5.4 If the Trustee does not certify under paragraph 5.3 in relation to the Franchise Section that the Franchisee has fully complied with its obligations under the Railways Pension Scheme or if the Secretary of State otherwise reasonably considers that the Franchisee has not complied with such obligations, the Secretary of State may adjust Franchise Payments payable under Schedule 8 (Payments) by an amount which is, in his opinion, no greater than the amount of any contribution that the Franchisee has thereby failed to make or avoided making.

5.5 The Secretary of State may, under paragraph 5.4, continue to make such adjustments to Franchise Payments payable under Schedule 8 (Payments) until such time as he reasonably determines that the relevant contributions have been made in full by the Franchisee. Following that determination, any amounts so withheld by the Secretary of State shall become payable (without interest) on the next day on which a Franchise Payment becomes payable under Schedule

8 (Payments), being a day which falls no less than seven days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that the Secretary of State has not so determined within four weeks after the expiry of the Franchise Period, the Franchisee's right to receive the amount so withheld under the Franchise Agreement shall lapse and the Secretary of State shall not be obliged to pay such amount.

6. **Termination of Franchise**

The Secretary of State shall at the end of the Franchise Period ensure that the Franchisee has no liability for any deficit in the Franchise Section (other than for contributions due and payable by the Franchisee to the Franchise Section for any period prior to the end of the Franchise Term) and shall have no right to benefit from any surplus which may exist in the Franchise Section. For the avoidance of doubt, this paragraph 6 shall apply where the Franchise Services are either aggregated or disaggregated (for example, as a result of remapping).

7. **Definitions**

Unless otherwise defined in the Franchise Agreement, terms used in this Schedule 16 shall have the meanings given to them in the Railways Pension Scheme.

SCHEDULE 17

Confidentiality and Freedom of Information

1. Confidentiality

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 8 and 10 of this Schedule 17 inclusive, each party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement) (all together the "**Confidential Information**") and shall not, except with the other party's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in the Franchise Agreement unless or until the recipient party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the Franchise Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. Disclosure of Confidential Information

2.1 Each party may disclose any data or information acquired by it under or pursuant to the Franchise Agreement or information relating to a dispute arising under the Franchise Agreement without the prior written consent of the other party if such disclosure is made in good faith:

- (a) to any Affiliate of such party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (b) to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (f) to any director, employee or officer of such party, to the extent necessary to enable such party to perform its obligations under the Franchise

Agreement or to protect or enforce its rights under the Franchise Agreement; or

(g) by the Franchisee, to the ORR, Passengers' Council or a Local Authority.

2.2 The Secretary of State may disclose the Confidential Information of the Franchisee:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Secretary of State or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Secretary of State (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in paragraph 2.2(a) of this Schedule 17 (including any benchmarking organisation) for any purpose relating to or connected with this Franchise Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Franchise Agreement, including but not limited to its right of audit, assessment or inspection pursuant to paragraph 5 of Schedule 11 (Agreement Management Provisions) and its rights pursuant to Schedule 15.1 (Reletting Provisions);
- (f) on a confidential basis to a proposed successor, transferee or assignee of the Secretary of State in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Franchise Agreement; or
- (g) on a confidential basis to a Local Authority or other relevant Stakeholder to the extent that the Secretary of State (acting reasonably) deems such disclosure necessary or appropriate for the purposes of the development and/or implementation of any proposal promoted by (or on behalf of) such Local Authority or other relevant Stakeholder in relation to the provision of additional, varied and/or extended Passenger Services, introduction of new stations or enhancements to Stations or other infrastructure schemes which impact on the Franchise,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Secretary of State under this paragraph 2.2 of this Schedule 17.

2.3 For the purposes of paragraph 2.2, the following defined terms shall have the following meanings:

"Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and

amended from time to time by the Office for National Statistics:

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

3. **Publication of Certain Information**

3.1 Notwithstanding the provisions of paragraph 1, the Secretary of State may publish (whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as he sees fit, the following (irrespective of whether the same was provided to the Secretary of State by the Franchisee or a third party):

- (a) any or all of the Franchise Documents provided that the Secretary of State will, prior to publishing the same, redact from any Franchise Document any information contained therein which the Secretary of State and the Franchisee agree or failing which the Secretary of State determines, in his absolute discretion, is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations;
- (b) the amount of any Franchise Payments payable under the Franchise Agreement and the aggregate amount of Franchise Payments paid in each year under the Franchise Agreement;
- (c) such information as the Secretary of State may consider reasonably necessary to publish in connection with the performance of his functions in relation to any Closure or proposed Closure;
- (d) the amount of any payments by the Franchisee under the Passenger's Charter;
- (e) such information (including CRM Data and Yield Management Data) as may reasonably be required in connection with any Tendering/Reletting Process or the retendering or reletting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (f) any reports and accounts delivered to him under Schedule 13 (Information and Industry Initiatives) including any analyses, statistics and other information derived from such reports and accounts;

- (g) the results of any monitoring or measurement of the performance of the Franchisee in the provision of the Franchise Services (including any information provided under Schedule 11 (Agreement Management Provisions));
- (h) the results, on a Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (Information about Passengers);
- (i) the results of any survey under Schedule 7.2 (National Rail Passenger Survey);
- (j) the results of any assessment or inspection under Schedule 11 (Agreement Management Provisions);
- (k) details of the Franchisee's plans and performance in respect of safety;
- (l) **Not used;**
- (m) such information as the Secretary of State may reasonably require to include in his annual report in respect of the Franchisee provided that, in preparing that report, the Secretary of State shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of Section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Secretary of State; and
- (n) such information as the Secretary of State may reasonably require to publish at or around the expiry or possible termination of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services.

3.2 Without prejudice to any other provision of this Schedule 17, the Secretary of State may publish any other information relating to the Franchisee if he has previously notified the Franchisee and the Franchisee does not demonstrate to the reasonable satisfaction of the Secretary of State within 14 days of such notification that the publication of such information would, in the reasonable opinion of the Franchisee, be materially detrimental to its business. If the Franchisee attempts so to demonstrate to the Secretary of State but he is not so satisfied, the Secretary of State shall allow seven more days before publishing the relevant information.

4. **Service Development Information**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render either party liable for, the disclosure by either party to Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, Passengers' Council and/or any Local Authority of any information relating to the development of the Service Level Commitment in accordance with Schedule 1.1 (Service Development).

5. **Publication by Secretary Of State**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Secretary of State liable for, the disclosure of any information by the Secretary of State to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the

Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of his functions.

6. Provision of Information to the ORR

The Franchisee hereby authorises the Secretary of State to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Secretary of State in relation to the Franchisee under the Franchise Agreement.

7. Disclosure by Comptroller and Auditor General

The parties recognise that the Comptroller and Auditor General may, in pursuance of his functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those Acts and which a party to the Franchise Agreement would not be able to disclose otherwise than under this Schedule 17.

8. Continuing Obligation

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of the Franchise Agreement, irrespective of the reason for termination.

9. Freedom of Information – General Provisions

9.1 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that the Secretary of State is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly the Franchisee shall and shall procure that its agents and subcontractors shall assist and co-operate with the Secretary of State to enable the Secretary of State to comply with his information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations.

9.2 The Franchisee shall and shall procure that its agents and subcontractors shall:

- (a) transfer to the Secretary of State any Requests for Information received by the Franchisee (or its agents or subcontractors) as soon as practicable and in any event within two Weekdays of receiving any such Request for Information;
- (b) provide the Secretary of State with a copy of all information in its (or their) possession or power in the form that the Secretary of State requires within five Weekdays of the Secretary of State's request (or within such other period as he may specify); and
- (c) provide all necessary assistance as reasonably requested by the Secretary of State to enable him to respond to any Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or regulation 5 of the Environmental Information Regulations as applicable.

9.3 The Secretary of State shall be responsible for determining in his absolute discretion, and notwithstanding any other provision in the Franchise Agreement or any other agreement, whether Confidential Information (as such term is defined

in paragraph 1 of this Schedule 17) and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.

9.4 The Franchisee shall not and shall procure that its agents and subcontractors shall not respond directly to any Request for Information unless expressly authorised to do so by the Secretary of State.

9.5 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in the Franchise Agreement the Secretary of State may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning the Franchisee and/or its agents and subcontractors:

- (a) in certain circumstances without consulting the Franchisee (or its agents and/or subcontractors where applicable); or
- (b) following consultation with the Franchisee and having taken its views into account (and the views of its agents and/or subcontractors where applicable),

provided always that where applicable the Secretary of State shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give the Franchisee advance notice or failing that to draw the disclosure to the Franchisee's attention after any such disclosure.

10. Redactions

10.1 Subject to paragraph 9, by no later than the date which is:

- (a) 4 weeks after the date of this Franchise Agreement (in respect of the Franchise Documents referred to in paragraphs (a) to (d) of the definition thereof);
- (b) 30 days of notification by the Secretary of State to the Franchisee of another agreement that is required for publication (in respect of the Franchise Documents referred to in paragraph (e) of the definition thereof); and
- (c) 30 days after the date of any document varying the terms of any Franchise Document,

the Franchisee will provide to the Secretary of State details of any provisions of the Franchise Documents or any such variation which the Franchisee believes are exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act ("**Redactions**").

10.2 For each such Redaction the Franchisee should specify:

- (a) the exact text of the Franchise Document or variation that the Franchisee proposes is redacted;
- (b) whether the Franchisee proposes that the Redaction applies in relation to the publication of the relevant Franchise Document or variation on the

website of the Department for Transport, on the register required to be maintained by the Secretary of State pursuant to Section 73 of the Act or on both such website and such register; and

- (c) the reasons why the Franchisee believes that the proposed Redaction is justified in accordance with the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act.

10.3 The Secretary of State shall consult with the Franchisee in relation to the Franchisee's proposed Redactions (provided that the same are provided to the Secretary of State in accordance with paragraph 10.1). If the Secretary of State and the Franchisee are unable to agree upon any proposed Redaction, the Secretary of State shall be entitled to determine, in his absolute discretion, whether or not to make such proposed Redaction. If the Franchisee does not provide its proposed Redactions to the Secretary of State in accordance with paragraph 10.1, the Franchisee shall be deemed to have consented to publication of the relevant document without any Redactions.

SCHEDULE 18

Additional Reporting Periods

1. **Expiry Date**

Subject to paragraph 2, the Franchise Agreement shall expire at 01.59 on 1 April 2019.

2. **Continuation for up to additional thirteen Reporting Periods**

If the Secretary of State gives notice to the Franchisee by no later than 23:59 on 21 December 2018, the Franchise Agreement shall continue after the date on which the Franchise Agreement is due to expire in accordance with paragraph 1 on the terms set out in the Franchise Agreement for not less than one and not more than thirteen Reporting Periods as the Secretary of State may stipulate.

3. **Key Contracts**

The Franchisee shall enter into any and all Key Contracts which are necessary for the Franchise Agreement to continue or be extended in accordance with this Schedule 18.

SCHEDULE 19

Other Provisions

1. Rights Cumulative

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

2. Disputes

Disputes under the Franchise Agreement

- 2.1 Wherever the Franchise Agreement provides that the Secretary of State may reasonably determine any matter, the Franchisee may, unless the Franchise Agreement expressly provides otherwise, dispute whether a determination made by the Secretary of State is reasonable, but the Secretary of State's determination shall prevail unless and until it is agreed or found to have been unreasonable.
- 2.2 Where either party is entitled, pursuant to the terms of the Franchise Agreement, to refer a dispute arising out of or in connection with the Franchise Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the parties otherwise agree and subject to any duty of the Secretary of State under Section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.
- 2.3 Where, in the absence of an express provision in the Franchise Agreement entitling it to do so, either party wishes to refer a dispute arising out of or in connection with the Franchise Agreement to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:
- (a) the party seeking to refer to arbitration shall serve a written notice upon the other party stating (i) the nature and circumstances of the dispute, (ii) the relief sought including, to the extent possible, an indication of any amount(s) claimed, and (iii) why it is considered that the dispute should be resolved by way of arbitration rather than litigation;
 - (b) the other party shall respond within 20 Weekdays of service of the notice confirming whether or not referral of the dispute to arbitration is agreed. In the absence of any response, the referral to arbitration shall be deemed not to have been agreed;
 - (c) in the event that the parties agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with the Dispute Resolution Rules;
 - (d) in the event that the parties do not agree to refer to arbitration then it shall be resolved or determined in accordance with **Clause 10** (Governing Law) of this Franchise Agreement; and

- (e) nothing in this paragraph 2.3 shall preclude either party from commencing, continuing or otherwise taking any step by way of litigation in pursuit of the resolution or determination of the dispute unless an agreement is reached to refer the dispute to arbitration.

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

Disputes under Other Agreements

2.5 The Franchisee shall notify the Secretary of State of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the Franchisee's ability to comply with its obligations under the Franchise Agreement or on the provision of the Franchise Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.

2.6 Such notification shall be made both:

- (a) at the time of such submission (and such notification shall include reasonable details of the nature of the dispute); and
- (b) at the time of the resolution of the dispute (whether or not subject to appeal) (and such notification shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).

2.7 The Franchisee shall provide such further details of any dispute referred to in paragraph 2.5 as the Secretary of State may reasonably request from time to time.

3. Notices

3.1

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

Name: The Department for Transport

Address: 33 Horseferry Road, London SW1P 4DR

E-mail: franchise.notices@dft.gsi.gov.uk

Attention: The manager – Great Western Franchise

Name: First Greater Western Limited

Address: Milford House, 1 Milford Street, Swindon, Wiltshire, SN1 1HL

E-mail: mark.hopwood@firstgroup.com

Attention: Managing Director

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

- (i) in accordance with paragraph 3.1(a); or
- (ii) by electronic data transfer,

except that it shall be marked for the attention of the Contract Manager or the Franchise Manager (as the case may be).

Deemed Receipt

3.2 Any notice or other communication issued pursuant to paragraph 3.1 shall be deemed to have been received by the party to whom it is addressed as follows:

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

4. Assignment

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

5. Set Off

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

5.2 Notwithstanding paragraph 5.1 the Secretary of State shall be entitled to set-off against any amounts payable by him under the Franchise Agreement:

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

- (b) any monetary penalty payable under the Act.

6. Miscellaneous Provisions

Waivers

6.1

- (a) Either party may at any time waive any obligation of the other party under the Franchise Agreement and the obligations of the parties hereunder shall be construed accordingly.
- (b) No waiver by either party of any default by the other party in the performance of such party's obligations under the Franchise Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under the Franchise Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under the Franchise Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.

Time Limits

- 6.2 Where in the Franchise Agreement any obligation of a party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or best endeavours to secure a particular result within such time limit) that obligation shall be deemed to continue after the expiry of such time limit if such party fails to comply with that obligation (or secure such result, as appropriate) within such time limit.

Partial Invalidity

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

Further Assurance

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

Rights of Third Parties

6.5

- (a) A person who is not a party to the Franchise Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Franchise Agreement except to the extent set out in this paragraph 6.5.
- (b) Any Successor Operator or potential Successor Operator nominated by the Secretary of State and notified to the Franchisee for the purposes of

this paragraph 6.5 may enforce and rely on the provisions of Schedule 15 (Obligations Associated with Termination) to the same extent as if it were a party but subject to paragraphs 6.5(c) and 6.5(d).

- (c) The Franchise Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of the Franchise Agreement, without the consent of any person nominated under paragraph 6.5(b).
- (d) The person nominated under paragraph 6.5(b) shall only be entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination) to the extent determined by the Secretary of State (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination), any legal proceedings in relation thereto must be commenced within one year of the expiry of the Franchise Period and any such person shall not be entitled to enforce or rely on Schedule 15 (Obligations Associated with Termination) to the extent that it has consented to any particular act or omission of the Franchisee which may constitute a contravention of Schedule 15 (Obligations Associated with Termination) or has been afforded a reasonable opportunity to indicate to the Franchisee that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Secretary of State unless otherwise agreed).

Secretary of State's Consent or Approval

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

7. Enforcement Costs

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

8. Currency

If at any time the Bank of England or other competent monetary authority of the United Kingdom or competent organ of H. M. Government of the United Kingdom recognises the Euro as lawful currency and tender of the United Kingdom, the Secretary of State may, by reasonable notice to the Franchisee and the Franchisee may by reasonable notice to the Secretary of State, elect that all payment obligations arising under the Franchise Agreement shall be denominated and/or constituted in Euros on the basis that all outstanding amounts and obligations previously denominated and/or constituted in pounds sterling shall be translated into Euros at the exchange rate applied or recognised by the United Kingdom

authority or organ which granted recognition of the Euro for the purpose of such translation on the date on which it granted recognition of the Euro.

9. **Arm's Length Dealings**

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

10. **Non discrimination**

- (a) The Franchisee will not discriminate in seeking offers in relation to, or in awarding, a contract for the purchase or hire of goods on the grounds:
- (i) of nationality, against a person who is a national of and established in a relevant State; or
 - (ii) that the goods to be supplied under the contract originate in another relevant State.
- (b) For the purpose of this paragraph, "**relevant State**" has the meaning given in the Public Contracts Regulations 2006.

Derogations Page

ⁱ By virtue of a derogation the Secretary of State has granted the Franchise operator a derogation against the publication requirements of Schedule 1.4, Paragraph 1 – Publishing the Timetable.

Start date: 16/05/2016 End date: 11/12/2016

ⁱⁱ By virtue of a derogation the Secretary of State has granted the Franchisee a derogation against the publication requirements of Schedule 1.4, Paragraph 1 – Publishing the Timetable, from the December 2018 and May 2019 Passenger Change Date.

Original Due Date: December 2018

Revised Due Date May 2019

ⁱⁱⁱ 22 November 2018 (Date of Derogation Letter) The Secretary of State has granted the Franchisee a derogation against the requirements of Schedule 1.4 Paragraph 4.1(b) – The Passenger’s Charter.

Original Due Date: 19/11/2018

Revised Due Date: 26/11/2018

^{iv} 22 November 2018 (Date of Derogation Letter) The Secretary of State has granted the Franchisee a derogation against the requirements of Schedule 1.4 Paragraph 4.3 – Publishing the Passenger’s Charter.

Original Due Date: 19/11/2018

Revised Due Date: 26/11/2018

^v 1 March 2019 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 5.2(d) to Schedule 6.1 so that the deadline for the Local Authority and Local Enterprise Partnership Event can be extended from 31 March 2019 to 20 May 2019.

Original Due Date: 31 March 2019

Revised Due Date: 20 May 2019

^{vi} 01 January 2017 (Date of Derogation Letter) - By virtue of a derogation the Secretary of State has granted the Franchisee a derogation against the requirements of paragraph 7.4 of Schedule 6.1, to appoint a Rolling Stock Advisor by 31 December 2016. The completion date has been extended, by 3 months, to 31 March 2017.

For the avoidance of doubt, this derogation also extends to the provision of the Rolling Stock Advisor’s reports and other related obligations set out in sub-paragraphs 7.4 (a) to (e) by 3 months.

Original Due Date: 31 December 2016

Revised Due Date: 31 March 2017

^{vii} 31 March 2017 (Date of Derogation Letter) - The Secretary of State has granted a further derogation against the requirements of paragraph 7.4 of Schedule 6.1, in respect of appointment of a Rolling Stock Advisor by 31 December 2016.

Original Due Date: 31 December 2016

Revised Due Date: 30 June 2017

viii 30 June 2017 (Date of Derogation Letter) - The Secretary of State has granted a further derogation against the requirements of paragraph 7.4 of Schedule 6.1, in respect of appointment of a Rolling Stock Advisor by 31 December 2016.

Original Due Date: 31 December 2016
Revised Due Date: 30 September 2017

ix 28 September 2017 (Date of Derogation Letter) - The Secretary of State has granted a further derogation against the requirements of paragraph 7.4 of Schedule 6.1, in respect of appointment of a Rolling Stock Advisor by 31 December 2016.

Original Due Date: 31 December 2016
Revised Due Date: 31 December 2017

x 27 December 2017 (Date of Derogation Letter) - The Secretary of State has granted a further derogation against the requirements of paragraph 7.4 of Schedule 6.1, in respect of appointment of a Rolling Stock Advisor by 31 December 2016.

Original Due Date: 31 December 2016
Revised Due Date: 31 March 2018

xi 29 March 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a further derogation against the requirements of paragraph 7.4 of Schedule 6.1 of the Franchise Agreement in respect of appointment of a Rolling Stock Advisor by 31 December 2016.

Original Due Date: 31 December 2016
Revised Due Date: 30 June 2018

xii 14 June 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a further derogation against the requirements of paragraph 7.4 of Schedule 6.1 of the Franchise Agreement in respect of appointment of a Rolling Stock Advisor by 31 December 2016.

Original Due Date: 31 December 2016
Revised Due Date: 30 September 2018

xiii 18 September 2018 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a further derogation against the requirements of paragraph 7.4 of Schedule 6.1 of the Franchise Agreement in respect of appointment of a Rolling Stock Advisor by 31 December 2016.

Original Due Date: 31 December 2016
Revised Due Date: 31 December 2018

xiv By virtue of a derogation the Secretary of State has granted the Franchise operator a derogation against the provisions of Schedule 6.1, Paragraph 10 Class 165 Fleet, until such time as the negotiations relating to Schedule 9.4 have been concluded and any resulting contract change processed.

Start date: 10/12/2015 End date: tbd

xv By virtue of a derogation the Secretary of State has granted the Franchise operator a derogation against the scheduled date for presentation of a feasibility study in respect of

proposals for an alternative rolling stock solution for services operating between Portsmouth and Cardiff. The derogation against the obligation in paragraph 12d of Part 1 to Schedule 6.1 of the Franchise Agreement will apply until 31 January 2016.

Start date: 23/12/2015 End date: 31/01/2016

xvi Date of Derogation – 30/06/2017 - By virtue of a derogation the Secretary of State has granted the Franchisee a derogation against the requirements of Schedule 6.1, Part 1, paragraph 22.1 regarding the installation of customer information screens (CIS). PA Systems, gateline PC's and roving microphones. by 3 months, to 30 September 2017.

Start date: 30/06/2017 End date: 30/09/2017

xvii 28 September 2017 (Date of Derogation Letter) - The Secretary of State has granted a further derogation against the requirements of Paragraph 22.1 Schedule 6.1 regarding the installation of customer information screens (CIS). PA Systems, gateline PC's and roving microphones.

Original Due Date: 30/06/2017

Revised Due Date: 31/12/2017

xviii 30 March 2020 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 24.1(b) to Schedule 6.1 (Customer Services and Stakeholder) in response to COVID-19.

Original Due Date: 18 March 2020

Revised Due Date: 4 May 2020

xix By virtue of a derogation the Secretary of State has granted the Franchise operator a derogation against the requirements of Paragraph 33 of Part 1 to Schedule 6.1, to achieve and maintain ISO50001 certification (Energy Management) for the entire Franchise by 31 March 2016. The completion date has been extended, by one year, to 31 March 2017.

Start date: 31/03/2016 End date: 31/03/2017

xx Date of derogation – 31/03/2017 - By virtue of a derogation the Secretary of State has granted the Franchise operator a derogation against the requirements of Schedule 6.1, part 1, paragraph 39 in relation to the installation of Air Source Heat Pumps at 43 locations.

Start date: 31/03/2017 End date: 31/03/2018

xxi Date of derogation – 31/03/2017 - By virtue of a derogation the Secretary of State has granted the Franchise operator a derogation against the requirements of Schedule 6.1, part 1, paragraph 39 to carry out Voltage Optimisation at 10 locations.locations.

Start date: 31/03/2017 End date: 31/12/2017

xxii By virtue of a derogation the Secretary of State has granted the Franchise operator a derogation against the provisions of Schedule 6.2, Paragraph 16.1, regarding the scheduled date to enter into a lease of the Class 387 Units with Porterbrook Leasing Company Limited. The derogation will apply until 24 April 2015.

Start Date: 17/04/2015 End date: 24/04/2015

xxiii By virtue of a derogation the Secretary of State has granted the Franchise operator a second derogation against the provisions of Schedule 6.2, Paragraph 16.1, regarding the scheduled date to enter into a lease of the Class 387 Units with Porterbrook Leasing Company Limited. The derogation will apply until 30 April 2015.

Start Date: 24/04/2015 End date: 30/04/2015

xxiv By virtue of a derogation the Secretary of State has granted the Franchise operator a derogation of one month against the date by which GWR must present a West of England Rolling Stock Procurement Proposal to the Secretary of State. The derogation will apply against the provisions of Paragraph 18.1 of Schedule 6.2 to the Franchise Agreement until 30 June 2015.

Start Date: 30/05/2015 End date: 30/06/2015

xxv By virtue of a derogation the Secretary of State has granted the Franchise operator a derogation against the requirements of paragraph 3.2(a) to Schedule 7.2 of the Franchise Agreement in respect of the publication by GWR of a Customer Report by 1 April 2016. This reflects the fact that GWR is unable to include all the relevant data from Period 13 in the report within such a tight timescale.

Start date: 01/04/2016 End date: 29/04/2016

xxvi By virtue of a derogation the Secretary of State has granted the Franchise operator a derogation against the reporting requirements of Appendix 3 to Schedule 13, Capacity, for the remainder of the current Franchise Term.

Start date: 03/12/2015 End date: End of Franchise Term