

**RAIL PUBLIC REGISTER COPY**  
**REDACTED IN ACCORDANCE WITH FOIA 2000**

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**24 June 2018**

- (1) THE SECRETARY OF STATE FOR TRANSPORT**
- (2) DFT OLR HOLDING LIMITED**
- (3) LONDON NORTH EASTERN RAILWAY LIMITED**

**SERVICES AGREEMENT**  
relating to  
**East Coast Franchise**

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**THIS AGREEMENT** is dated 24 June 2018

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**");
- (2) <sup>1</sup>**DFT OLR HOLDINGS LIMITED (Company Number: 07141122)**, whose registered office is at Albany House 8<sup>th</sup> Floor, 94-98 Petty France, London SW1H 9EA ("**DOHL**"); and
- (3) <sup>2</sup>**LONDON NORTH EASTERN RAILWAY LIMITED (Company Number: 04659712)**, whose registered office is at East Coast House 25, Skeldergate, York, England, YO1 6DH ("**LNER**"),

**WHEREAS:**

- (A) East Coast Main Line Company Limited (Company Number: 04659708) ("**VTEC**") has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to the Previous Franchise Agreement.
- (B) The Secretary of State has a duty under section 30 of the Act to secure the continuity of the provision of passenger rail services in circumstances where the Previous Franchise Agreement terminates and no further franchise agreement has been entered into in respect of the passenger services formerly provided under this Agreement (the "**Section 30 Duty**").
- (C) The Previous Franchise Agreement is to terminate on 24 June 2018 and no further franchise agreement has been entered into in respect of the passenger services formerly provided under the Previous Franchise Agreement. In consequence the Secretary of State's Section 30 Duty has become effective.
- (D) DOHL is a wholly owned subsidiary of the Secretary of State which has been established for the purposes of undertaking, on behalf of the Secretary of State, the Section 30 Duty in respect of the franchise services formerly provided by VTEC under this Agreement. LNER is a wholly owned subsidiary of DOHL and will operate the Services in respect of which the Section 30 Duty applies.
- (E) The Secretary of State, DOHL and LNER have agreed that whilst this agreement does not constitute a franchise agreement (within the meaning of the Act) in order to ensure (so far as possible) that the Services are operated and managed in a manner consistent with how railway passenger services are provided by franchisees under franchise agreements it is appropriate for DOHL and LNER to provide the Services in accordance with the terms of this Agreement.

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<sup>1</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>2</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

## 1. INTERPRETATION

1.1 In this 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 Agreement;
- (c) references to **"Parties"** shall mean the Secretary of State, DOHL and LNER (and references to a **"Party"** shall mean the Secretary of State, DOHL or LNER as the context requires);
- (d) the words **"include"**, **"including"** and **"in particular"** are to be construed without limitation;
- (e) references to any **"person"** include its successors, transferees or assignees;
- (f) the words **"subsidiary"**, **"subsidiary undertaking"** and **"DOHL undertaking"**<sup>3</sup> each have the same meaning in this Agreement as in section 1162 of the Companies Act 2006;
- (g) references in any of the agreements comprising this Agreement to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;
- (h) references in any Schedule in any of the agreements comprising this 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 Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;

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<sup>3</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which the Secretary of State reasonably considers have an equivalent effect or are intended to fulfil the same function;
- (m) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;
- (n) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (o) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words **"notify"**, **"endorse"**, **"consent"**, **"approve"**, **"waive"**, **"certify"** or **"determine"** and other cognate expressions shall be construed accordingly;
- (p) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (q) references to LNER bidding for Train Slots or a Timetable shall mean the final action incumbent on LNER 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;
- (r) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger's Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;
- (s) references to **"railway passenger services"** are to be construed subject to section 40 of the Railways Act 2005;
- (t) references to the **"provision of railway passenger services"** include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner;
- (u) references in lower case letters to terms defined in clause 3 (*Definitions*) shall be construed, where relevant, as being references to the terms defined as such in a franchise agreement or relevant agreement made under section 30 of the Act or section 6 of the Railways Act 2005 with any other Train Operator;
- (v) references to sums of money being expended by LNER shall be to such sums exclusive of Value Added Tax;



- (w) **NOT USED;**
- (x) **NOT USED;**
- (y) wherever provision is made for a Party to **“procure”** or **“ensure”** the delivery of an obligation under this Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on that Party to deliver that obligation;
- (z) references to **“profit”** shall be construed as meaning profit before corporation tax, determined in accordance with GAAP; and
- (aa) <sup>4</sup>**references to “process” or “processing” or “processed” are to be construed in accordance with the Data Protection Legislation for the purposes of Schedule 1.5 (Information about Passengers), paragraph 9 of Schedule 13.1 (Apprenticeships), and paragraph 11 (Data Protection) of Schedule 17 (Confidentiality, Freedom of Information and Data Protection).**

1.2 Where there is a requirement on LNER to **“fully and effectively co-operate”** with one (1) or more other parties with regard to an objective, that requirement relates to the quality of co-operation to be provided by LNER taking into account and subject to the response of the other parties concerned. It does not indicate an obligation on LNER beyond co-operation, relating to the funding of detailed design and development of an infrastructure project, actual delivery or subsequent operation (including in each case performance cost and revenue effects). It does indicate that LNER 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 LNER reasonably considers in all of the circumstances to be an appropriate use of its resources and effective to achieve the relevant objective.

## 2. **AGREED DOCUMENTS**

- 2.1 References to documents **“in the agreed terms”** are references to documents initialled by or on behalf of the Secretary of State and LNER.
- 2.2 As at the date of this Agreement, the documents **“in the agreed terms”** are as follows:

<b>ABD</b>	Actual Benchmark Data;
<b>AFA</b>	Alliance Framework Agreement;
<sup>5</sup> <b>BTP</b>	<b>BTP Methodology</b>
<b>CFD</b>	Commuter Fares Document;
<b>CSSES</b>	Customer & Stakeholder Engagement Strategy;
<b>DSMI</b>	Data Site Monitor and Index;

<sup>4</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>5</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<b>DL</b>	Depot Lease;
<b>[Deleted<sup>6</sup>]</b>	<b>[Deleted]</b>
<b>LNER Budget</b>	LNER Initial Budget 2018
<b>PC</b>	Passenger's Charter;
<b>PFD</b>	Protected Fares Document;
<b>PSM</b>	Passenger Survey Methodology;
<b>RODA</b>	Relevant Operator Direct Agreement
<b>SAMP1</b>	Integrated Station Asset Management Policy;
<b>SAMP2</b>	Integrated Station Asset Management Plan;
<b>SCDP</b>	Station Social and Commercial Development Plan;
<b>SCM</b>	Station Condition Methodology
<b>SL(FRI)</b>	Station Lease (Full Repair and Insure);
<b>SL(ST)</b>	Station Lease (Standard Terms);
<b>STNRCS</b>	STNR Costs Schedule;
<b>STNRP</b>	STNR Programme;
<b>STNRRR</b>	STNR Reporting Requirements;
<b>STNRSOW</b>	STNR Scope of Work;
<b>STNRWI</b>	STNR Warranted Information;
<b>TP</b>	Train Plan;
<b>TSR 1.1</b>	Train Service Requirement (1.1);
<b>TSR 1.1a</b>	Train Service Requirement (1.1a); and
<b>TSR 2</b>	Train Service Requirement (2).

### 3. DEFINITIONS

3.1 In this 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 3 of Schedule 2.5 (Transport, Travel and Other Schemes);

<sup>6</sup> 25 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

<b>"2010 Nominal Ticket Sales"</b>	has the meaning given to it in paragraph 3 of Schedule 5.4 ( <i>Regulation of Fares Basket Values</i> );
<b>"2010 Ticket Revenue"</b>	has the meaning given to it in paragraph 4 of Schedule 5.4 ( <i>Regulation of Fares Basket Values</i> );
<b>"Access Agreement"</b>	has the meaning given to the term <b>"access agreement"</b> in section 83(1) of the Act;
<b>"Accessibility Panel"<sup>7</sup></b>	<b>has the meaning given to it in paragraph 8.1 (Accessibility Panel) of Schedule 4 (Accessibility and Inclusivity);</b>
<b>"Accessible Travel Policy"<sup>8</sup></b>	<b>means LNER's policy for accessible travel which LNER 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;</b>
<b>"ACoRP"</b>	means the Association of Community Rail Partnerships whose principle place of business is The Old Water Tower, Huddersfield Railway Station, St Georges Square, Huddersfield, HD1 1JF or any successor body whose purpose is to support Community Rail Partnerships;
<b>"Act"</b>	means the Railways Act 1993 (as modified, amended or replaced by the Transport Act 2000, the Railways Act 2005 and the Deregulation Act 2015) and any regulations or orders made thereunder;
<b>"Action Plan"</b>	has the meaning given to it in paragraph 26.2(a) of Schedule 7.1 ( <i>Operational Performance</i> );
<b>"Actual All Cancellations Performance Level"<sup>9</sup></b>	<b>has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Operational Performance);</b>
<b>"Actual Benchmark Data" or "ABD"</b>	means the document in the agreed terms marked <b>ABD</b> ;
<b>"Actual Consist Data"</b>	means information as to the type of individual vehicles of rolling stock in the Train Fleet which are actually used to form a train on any particular Passenger Service and the manner in which they are configured, which may or may not be the same as the Scheduled Consist Data for the same service;
<b>"Actual Passenger Demand"</b>	has the meaning given to it in paragraph 1.1 of Schedule 1.5 ( <i>Information about Passengers</i> );

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<sup>7</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>8</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>9</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<b>“Actual T-3 Performance Level”<sup>10</sup></b>	<b>has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Operational Performance);</b>
<b>“Actual T-15 Performance Level”<sup>11</sup></b>	<b>has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Operational Performance);</b>
<b>“Actual Train Mileage”</b>	means the actual train mileage operated during each Reporting Period by each train used in the provision of the Passenger Services (excluding any actual train mileage operated as a result of positioning or other movements of rolling stock vehicles outside the Timetable) and <b>“Actual Train Miles”</b> shall be construed accordingly;
<b>“Actuary”</b>	has the meaning given to it in the Pension Trust;
<b>“Additional Boxing Day Services”<sup>12</sup></b>	<b>has the meaning given to it in paragraph 2.1 (b) of Part 2 of Schedule 6.1 (Franchise Specific Obligations);</b>
<b>“Advance Purchase Train-specific Fares”</b>	has the meaning given to it under the Ticketing and Settlement Agreement;
<b>“Affiliate”</b>	means, <ul style="list-style-type: none"> <li>(a) in respect of any person (“A”): <ul style="list-style-type: none"> <li>(i) any person which A Controls or which Controls A; or</li> <li>(ii) any person which is Controlled by any other Affiliate of A;</li> </ul> </li> <li>(b) <b>NOT USED;</b></li> </ul> <p>and for the purpose of this definition Network Rail or NR shall not be construed as being an affiliate of the Secretary of State;</p>
<b>“Agreement”</b>	means clauses 1 to 18 and Schedules 1 to 17 including any Appendices and Annexes as varied from time to time;
<b>“All Cancellations”<sup>13</sup></b>	<b>means the sum of Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations relating to the Services as produced and/or published by Network Rail;</b>

<sup>10</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>11</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>12</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>13</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<b>“All Cancellation Figures”<sup>14 15</sup></b>	<b>means the moving annual average percentage published by Network Rail in respect of All Cancellation, rounded to two (2) decimal places;</b>
<b>“Alliance Framework Agreement”</b>	means the agreement in the agreed terms marked <b>AFA</b> , as amended from time to time with the prior consent of the Secretary of State in accordance with paragraph 2.3 of Schedule 6.4 ( <i>Alliances</i> );
<b>“Alternative NRPS”</b>	has the meaning given to such term in paragraph 2.6 of Schedule 7.2 (Customer Experience and Engagement);
<b>“Ancillary Service”</b>	means any service specified in paragraph 4 of Part 1 ( <i>Services</i> ) of Schedule 1.1 ( <i>Services and Service Development</i> );
<b>“Annual Audited Accounts”</b>	means the accounts of LNER which: <ul style="list-style-type: none"> <li>(a) comply with paragraph 9.5(b) of Schedule 11.2 (<i>Management Information</i>); and</li> <li>(b) are delivered to the Secretary of State by LNER in accordance with paragraph 9.4(b) of Schedule 11.2 (<i>Management Information</i>) and certified by LNER's auditors as true and fair;</li> </ul>
<b>“Annual All Cancellations Measure”<sup>16</sup></b>	<b>has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);</b>
<b>“Annual All Cancellations Table”<sup>17</sup></b>	<b>has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);</b>
<b>“Annual T-3 Measure”<sup>18</sup></b>	<b>has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);</b>
<b>“Annual T-3 Table”<sup>19</sup></b>	<b>has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);</b>
<b>“Annual T-15 Measure”<sup>20</sup></b>	<b>has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);</b>

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<sup>14</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>15</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>16</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>17</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>18</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>19</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>20</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<b>“Annual T-15 Table”<sup>21</sup></b>	<b>has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);</b>
<b>“Annual Target Performance Level”<sup>22</sup></b>	<p><b>where such term is used:</b></p> <p>(a) <b>in Schedule 7.1, has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);</b></p> <p><b>(b) in Schedule 8.2, has the meaning given to it in paragraph 1 of Schedule 8.2 (<i>Performance Review Provisions</i>);</b></p>
<b>“Annual Business Plan”</b>	means the plan to be provided by LNER to the Secretary of State in accordance with paragraph 10.2 of Schedule 11.2 ( <i>Management Information</i> );
<b>“Annual Management Accounts”</b>	<p>means the management accounts of LNER which:</p> <p>(a) comply with paragraph 9.5(a) of Schedule 11.2 (<i>Management Information</i>); and</p> <p>(b) are delivered to the Secretary of State by LNER in accordance with paragraph 9.4(a) of Schedule 11.2 (<i>Management Information</i>);</p>
<b>“Annual Season Ticket”</b>	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day on which it first comes into effect until (but excluding) the day which falls twelve (12) months after such day;
<b>“Apprenticeship”</b>	<p>means (as the context requires) an individual apprenticeship pursuant to:</p> <p>(a) an apprenticeship programme operated by LNER:</p> <p>(i) in connection with an apprenticeships framework listed on the Federation for Industry Sector Skills &amp; Standards’ “Frameworks Library” (as located at the date of this Agreement at: <a href="http://www.afo.sscalliance.org/frameworkslibrary/">http://www.afo.sscalliance.org/frameworkslibrary/</a>); and</p> <p>(ii) in compliance with the “Specification of Apprenticeship Standards for England” pursuant to the Apprenticeships, Skills, Children and Learning Act 2009; and/or</p>

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<sup>21</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>22</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (b) an apprenticeship programme operated by LNER pursuant to (and in accordance with applicable requirements of) such statutory apprenticeships system as may be introduced in replacement of, or in variation or addition to, the apprenticeships frameworks system described in paragraphs (a)(i) and (ii) above,

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

**“Apprenticeships Data Collection Form”**

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

**“Apprenticeships Requirement”**

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

**“Approved CCI Scheme”**

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

**“Asset Remaining Life”**

means the amount of the life of a Station Asset remaining before that asset can reasonably be expected to require replacement by a new asset (assessed on the assumption that the asset continues to receive reasonably appropriate repair and maintenance throughout its remaining life);

**“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 LNER, determine to be appropriate in the circumstances;

**“Azuma Marks”**

means:

- (a) registered trademark UK00003153687; and
- (b) the approved 'wave' livery design (as annexed to a letter dated 1 May 2018 from the Secretary of

State to the Previous Franchisee), but excluding the removable 'Virgin' brand element;

<b>"BAME"</b>	means Black, Asian and Minority Ethnic;
<b>"Bank"</b>	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;
<b>"Bank Holiday"</b>	means any day other than a Saturday or Sunday on which banks in the City of London are not open for business;
<b>"Benchmark"</b>	means any of the Cancellations Benchmark, the TOC Minute Delay Benchmark or the Short Formation Benchmark (as the context may require);
<b>"Boxing Day Services"<sup>23</sup></b>	<b>has the meaning given to it in paragraph 2.1 (a) of Part 2 of Schedule 6.1 (<i>Franchise Specific Obligations</i>);</b>
<b>"Brand Licence"</b>	means any licence between the Secretary of State (or any company wholly owned by the Secretary of State) and LNER in respect of any registered or unregistered trademarks;
<b>"Breach Notice"</b>	has the meaning given to it in clause 8 of this Agreement;
<b>"Breach Performance Level"</b>	has the meaning given to it in paragraph 1.1 of Schedule 7.1 ( <i>Operational Performance</i> );
<b>"British Transport Police"</b>	means the British Transport Police Authority and the British Transport Police Force created pursuant to section 18 and section 20 of the Railways and Transport Safety Act 2003 (or any successor or successors to its statutory policing functions);
<b>"BTP Methodology"<sup>24</sup></b>	<b>has the meaning given to it in paragraph 6.7 of Schedule 1.7 (<i>Stations</i>);</b>
<b>"Budget"</b>	means the document in the agreed terms marked " <b>LNER Budget</b> " being the budget agreed by the Secretary of State, DOHL and LNER in respect of the operation of the Services (as may be amended pursuant to paragraph 4 of Schedule 8.1 ( <i>Fixed Service Payment</i> ));

<sup>23</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>24</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.



<b>“Buildings Research Establishment Environmental Assessment Method” or “BREEAM”</b>	means the internationally recognised environmental assessment method and rating system for buildings developed by Building Research Establishment Limited or any other standard which is generally recognised as having replaced it;
<b>“Business Action Plan”</b>	means an action plan produced by LNER in relation to the delivery of any aspect of the Services (including in respect of any outcome anticipated by its Business Plan, in accordance with paragraph 10.2(c) of Schedule 11.2 ( <i>Management Information</i> ));
<b>“Business Continuity Plan” or “BCP”</b>	means a business continuity and disaster recovery plan (including a Force Majeure Events recovery plan) required to be produced, maintained and implemented by LNER in accordance with the requirements of paragraph 4 of Schedule 10.3 ( <i>Force Majeure and Business Continuity</i> );
<b>“Business Plan”</b>	means the Initial Business Plan or any Annual Business Plan, as the context requires, to be delivered in accordance with paragraphs 10.1 and 10.2 of Schedule 11.2 ( <i>Management Information</i> );
<b>“Cancellation”</b>	means a Passenger Service: <ul style="list-style-type: none"> <li>(a) which is included in the Enforcement Plan of the Day and which is cancelled for reasons attributed to LNER pursuant to its Track Access Agreement; or</li> <li>(b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day) for reasons attributed to LNER pursuant to its Track Access Agreement;</li> </ul>
<b>“Cancellations Benchmark”</b>	means any of the performance levels in respect of Cancellations and/or Partial Cancellations set out in the Cancellations Benchmark Table;
<b>“Cancellations Benchmark Table”</b>	has the meaning given to it in paragraph 1.1 of Schedule 7.1 ( <i>Operational Performance</i> );
<b>“Cancellations Figures”</b>	means the number of: <ul style="list-style-type: none"> <li>(a) Cancellations and Partial Cancellations; and</li> <li>(b) Network Rail Cancellations and Network Rail Partial Cancellations,</li> </ul> <p>in each case, relating to the Passenger Services operated in each Reporting Period;</p>

**“Capacity Mitigation Proposal”**

has the meaning given to it in paragraph 15.1 of Part 2 (*Service Development*) of Schedule 1.1 (*Services and Service Development*);

**“Cascaded Rolling Stock”**

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

**“CCI Amount”**

means the sum of £554,384 (pounds sterling five hundred and fifty-four thousand and three hundred and eighty-four) per Service Year within a CCI Period (reduced pro-rata in respect of any Service Year within a CCI Period of less than three hundred and sixty five (365) days) save that for each Service Year after the first Service Year, the amount shall be subject to adjustment as follows:

**CCI Amount x RPI****“CCI Period”<sup>25 26</sup>**

**means each of the following periods:**

- (a) Service Commencement Date to 31 March 2019;**
- (b) 1 April 2019 to 27 June 2020;**
- (c) 18 October 2020 to 16 October 2021;**
- (d) 17 October 2021 to 31 March 2022;**
- (e) 1 April 2022 to 31 March 2023; and thereafter**
- (f) each Service Year;**

**“CCI Programme”<sup>27</sup>**

**means a document accumulating and describing LNER’s Approved CCI Schemes for each CCI Period (as amended from time to time as permitted by paragraph 11.5(B) of Schedule 7.2);**

**“CCI Scheme”**

has the meaning given to it in paragraph 11.1 of Schedule 7.2 (*Customer Experience and Engagement*);

**“CCI Scheme Cost”**

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

**“CCI Scheme Revenue”**

means in respect of any CCI Scheme, the revenue earned by LNER from that CCI Scheme;

<sup>25</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>26</sup> 31 March 2021 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>27</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**“CCTV Guidance”<sup>28</sup>**

**means the Rail Delivery Group’s “National Rail & Underground Closed Circuit Television (CCTV)” guidance, the British Transport Police’s “Output requirements from CCTV Systems” guidance, Home Office’s “Surveillance Camera Code of Practice June 2013”, each as updated from time to time and any other guidance reasonably required by the Secretary of State;**

**“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;

**“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 LNER;
- (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,

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<sup>28</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

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

<b>“Child Price”</b>	means, in relation to any Fare, the amount charged or chargeable to a person under the age of 16 in respect of such Fare;
<b>“Closed Scheme Employees”</b>	has the meaning given to it in paragraph 3.2 of Schedule 16 (Pensions);
<b>“Closure”</b>	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;
<b>“Code of Practice”</b>	means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time (with the approval of the Disabled Persons Transport Advisory Committee) and published by the Secretary of State pursuant to section 71B of the Act and which is available at <a href="https://www.gov.uk/government/publications/accessible-railway-stations-design-standards">https://www.gov.uk/government/publications/accessible-railway-stations-design-standards</a> (or such other applicable web address that is adopted by the Secretary of State from time to time);
<b>“[Deleted<sup>29</sup>]”</b>	<b>[Deleted]</b>
<b>“Commercial Return”</b>	means where the CCI Scheme Revenue equals or exceeds the aggregate of the CCI Scheme Costs and the CCI Scheme Margin;
<b>“Committed Obligations” or “COs”</b>	means any of LNER's obligations listed in Part 1 ( <i>Committed Obligations</i> ) of Schedule 6.2 ( <i>Committed Obligations</i> ) or any other obligation of LNER expressed as a Committed Obligation under this Agreement;
<b>“Community Rail Network”<sup>30</sup></b>	<b>means the grassroots community network whose purpose is to support Community Rail Partnerships (previously known as the Association of Community Rail Partnerships) or any successor body;</b>
<b>“Community Rail Partnership”</b>	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;

<sup>29</sup> 25 June 2020 (Date of DOA) Contract deletion agreed by the Secretary of State and Franchisee.

<sup>30</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**“Community Rail Report”** has the meaning given to it in paragraph 2.6 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);

**“Community Rail Route”** means any Route in respect of which the Secretary of State determines that any relevant Community Rail Partnership has an interest;

**“Community Rail Strategy”** means the Community Rail Development Strategy (as may be updated from time to time) published in November 2004 and which provides a broad framework within which rural community routes can be put on an improved financial footing;

**“Commuter Fare”** means any:

- (a) Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket (and their equivalent ITSO products) between each London Station and any other such station or other Suburban Station; and
- (b) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) between each London Station; and
- (c) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) from each Suburban Station to each London Station (but not in the other direction); and
- (d) PAYG Peak Fare or PAYG Off-Peak Fare (and their equivalent ITSO products) between each London Station and any other such station (and the CPAY equivalent fares),

for which LNER 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, 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;

<b>"Commuter Fares Document" or "CFD"</b>	means the document in the agreed terms marked <b>CFD</b> as the same may be amended from time to time in accordance with Schedule 5.7 ( <i>Changes to Fares and Fares Regulation</i> );
<b>"Compulsory Inter-available Flow"</b>	has the meaning given to it in the Ticketing and Settlement Agreement;
<b>"Computer System"</b>	means computer hardware and computer software, including licensed third party software and data protocols;
<b>"Connection"</b>	means a connection (however described) between any of the Passenger Services provided by LNER and any other railway passenger service provided by LNER or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;
<b>"Connection Agreement"</b>	means any agreement entered into by LNER and Network Rail on or before the Service Commencement Date relating to the connection of a Depot to the relevant part of the network;
<b>"Contingency Plan"</b>	has the meaning given to it in paragraph 1(a)(iv) of Schedule 10.3 ( <i>Force Majeure and Business Continuity</i> );
<b>"Continuation Document"</b>	means any franchise agreement, direct award, interim franchise agreement or other arrangement pursuant to which LNER is required to provide services for the carriage of passengers by railway which is entered into by LNER in respect of some or all of the same Passenger Services by way of direct or indirect continuation of the arrangement currently in place under this Agreement;
<b>"Contract Manager"</b>	means a person appointed from time to time by LNER to fulfil certain duties including to manage this Agreement on behalf of LNER and to facilitate the performance by LNER of its obligations under this Agreement;
<b>"Control Centres"<sup>31</sup></b>	<b>means each integrated control centre, signalling centre, rail operating centre and other equivalent operational locations;</b>
<b>"Controlled Emission Toilet" or "CET"</b>	means a toilet fitted on a Rolling Stock Unit and which retains effluent in retention tanks such that effluent is not discharged on the rail tracks;

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<sup>31</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<b>“Controller”<sup>32</sup></b>	<b>has the meaning given to it in the Data Protection Legislation;</b>
<b>“Count Equipment”</b>	means any load-weigh, infrared, CCTV or other type of equipment as may from time to time be installed on any train in the Train Fleet for the purposes of (amongst other things) passenger counting, including that specified in paragraph 3 of Schedule 1.5 ( <i>Information about Passengers</i> );
<b>“COVID-19”<sup>33</sup></b>	<b>means the coronavirus disease 2019;</b>
<b>“CPAY”</b>	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;]
<b>“CPAY Agreement”</b>	means an agreement dated 30 July 2014 between Transport Trading Limited and train operators operating in London relating to the acceptance of certain contactless payment cards for “pay as you go” journeys in London;
<b>“Creating”</b>	has the meaning given to it in the Ticketing and Settlement Agreement and cognate expressions shall be construed accordingly;
<b>“CRM Data”</b>	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 LNER relating to: <ul style="list-style-type: none"> <li>(a) persons travelling on or purchasing tickets for travel on the Passenger Services or other services for the carriage of passengers by railway; or</li> <li>(b) use of the Mobile Communications Service by the persons referred to in limb (a) above;</li> </ul>
<b>“CRM Data Obligations”<sup>34</sup></b>	<b>has the meaning given to it in paragraph 4.4 of Schedule 1.5 (<i>Information about Passengers</i>);</b>
<b>“[Deleted]<sup>35</sup>”</b>	<b>[Deleted];</b>

<sup>32</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>33</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>34</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>35</sup> 25 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

<b>“CRM Processor”<sup>36</sup></b>	<b>means any Processor who, from time to time, is processing or has processed CRM Data on behalf of LNER;</b>
<b>“CRM System”</b>	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;
<b>“CRP Amount”</b>	means the sum of £66,526 (pounds sterling sixty-six thousand and five hundred and twenty-six) save that for each Service Year after the first Service Year, the amount shall be subject to adjustment as follows:  <b>CRP Amount x RPI</b>
<b>“Current Service Year”</b>	has the meaning given to it in paragraph 2.1 ( <i>Additional Compensation or Settlement Payments</i> ) of Schedule 8.2 ( <i>Profit Share Mechanism</i> );
<b>“Customer and Stakeholder Engagement Strategy” or “CSES”</b>	means the Customer and Stakeholder Engagement Strategy in the agreed terms marked <b>CSES</b> and any replacement Customer and Stakeholder Engagement Strategy revised in accordance with paragraph 9.3 ( <i>Customer and Stakeholder Engagement Strategy</i> ) of Schedule 7.2 ( <i>Customer Experience and Engagement</i> );
<b>“Customer Report”</b>	means a report in the format and providing the information specified in the Customer and Stakeholder Engagement Strategy published in accordance with paragraph 10.1 ( <i>Customer Report</i> ) of Schedule 7.2 ( <i>Customer Experience and Engagement</i> );
<b>“Dataset”</b>	means the data specified in Appendix 1 ( <i>Environmental Information</i> ) to Schedule 11.2 ( <i>Management Information</i> ) as the same may be amended from time to time by the Secretary of State (acting reasonably);
<b>“[Deleted]<sup>37</sup>”</b>	<b>[Deleted];</b>
<b>“[Deleted]<sup>38</sup>”</b>	<b>[Deleted];</b>
<b>“Data Protection Act”<sup>39</sup></b>	<b>means the Data Protection Act 2018;</b>
<b>“Data Protection Legislation”<sup>40</sup></b>	<b>means all Laws relating to data protection, the Processing of Personal Data and privacy in force from time to time including the Data Protection</b>

<sup>36</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>37</sup> 25 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

<sup>38</sup> 25 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

<sup>39</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>40</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.



**Act 2018, (for so long as and to the extent that the law of the European Union has legal effect in the United Kingdom) the GDPR, and, to extent that they are applicable, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications);**

<b>“Data Site Information”</b>	has the meaning given to it in paragraph 3.1 ( <i>Data Site Information</i> ) of Schedule 15.1 ( <i>Reletting Provisions</i> );
<b>“Data Site Monitor and Index” or “DSMI”</b>	has the meaning given to it in paragraph 3.1 ( <i>Data Site Information</i> ) of Schedule 15.1 ( <i>Reletting Provisions</i> );
<b>“Data Subject”<sup>41</sup></b>	<b>has the meaning given to it in the Data Protection Legislation;</b>
<b>“Delayed Cascade Mitigation Plan”</b>	has the meaning given to it in paragraph 3.9 of Schedule 2.2 ( <i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i> );
<b>“Delivery Timescales”</b>	has the meaning given to it in paragraph 2.1 of Schedule 13.3 ( <i>Mobile Communications Service</i> );
<b>“Departure Station”</b>	has the meaning given to it in paragraph 2.2 of Appendix 2 ( <i>Accessible Transport Arrangements</i> ) to Schedule 4 ( <i>Accessibility and Inclusivity</i> );
<b>“Depot”</b>	means a depot in respect of which LNER has entered into a Depot Lease;
<b>“Depot Access Conditions”</b>	has the meaning given to it in the relevant Access Agreement to which it relates;
<b>“Depot Lease” or “DL”</b>	means: <ul style="list-style-type: none"> <li>(a) any lease of a depot to which LNER is a party as at the Service Commencement Date; or</li> <li>(b) any other lease of a depot in relation to which LNER becomes the Facility Owner at any time during the Service Period;</li> </ul>
<b>“Derivative Output”</b>	means Intellectual Property Rights that are derived from or generated by the RPC Database or the Preliminary Database when querying such database (which includes, but is not limited to, the format of all reports and analysis);
<b>“Designated Employer”</b>	has the meaning given to it in the Pension Trust;

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<sup>41</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<b>“Destination Station”</b>	has the meaning given to it in paragraph 2.2 of Appendix 2 ( <i>Accessible Transport Arrangements</i> ) to Schedule 4 ( <i>Accessibility and Inclusivity</i> );
<b>“[Deleted]<sup>42</sup>”</b>	<b>[Deleted];</b>
<b>“Disabled Person”</b>	is a reference to a person who has a disability as defined in the EA;
<b>“Disabled Persons Transport Advisory Committee” or “DPTAC”</b>	means the committee with that name established under section 125 of the Transport Act 1985 and its statutory successors;
<b>“Discount Card”</b>	has the meaning given to it in the Ticketing and Settlement Agreement;
<b>“Discount Fare Scheme”</b>	has the meaning given to it in paragraph 3 of Appendix 1 ( <i>List of Transport, Travel and Other Schemes</i> ) to Schedule 2.5 ( <i>Transport, Travel and Other Schemes</i> );
<b>“Dispute Resolution Rules”</b>	means the procedures for the resolution of disputes known as <b>“The Railway Industry Dispute Resolution Rules”</b> , as amended from time to time in accordance with the terms thereof. The rules are available at <a href="http://accessdisputesrail.org/RIDR/RIDR Rules.pdf">http://accessdisputesrail.org/RIDR/RIDR Rules.pdf</a> (or such other applicable web address that is adopted from time to time);
<b>“Disputed Cancellation”</b>	means a Passenger Service: <ul style="list-style-type: none"> <li>(a) which is included in the Enforcement Plan of the Day and which is cancelled; or</li> <li>(b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day),</li> </ul> <p>in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and LNER pursuant to the Track Access Agreement;</p>
<b>“Disputed Partial Cancellation”</b>	means a Passenger Service which is included in the Enforcement Plan of the Day and which: <ul style="list-style-type: none"> <li>(a) misses a stop; or</li> <li>(b) completes fifty per cent (50%) or more, but less than one hundred per cent (100%) of its scheduled mileage as prescribed in the Enforcement Plan of the Day,</li> </ul>

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<sup>42</sup> 25 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

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

<b>“EA”</b>	means the Equality Act 2010;
<b>“EA Claim”</b>	has the meaning given to it in paragraph 3.1 of Schedule 4 ( <i>Accessibility and Inclusivity</i> );
<b>“EA Requirements”</b>	means the duties of a provider of services under sections 20(3), 20(5) and sections 20(9)(a) and 20(9)(b) in relation to section 20(4), of the EA;
<b>“EEA state”</b>	has the meaning given to it in clause 14.9 ( <i>Non-Discrimination</i> );
<b>“Emergency Events”</b>	has the meaning given to it in paragraph 1(e) of Schedule 10.3 ( <i>Force Majeure and Business Continuity</i> );
<b>“EMV”</b>	has the meaning given to it in paragraph 1.1 of Schedule 5.9 ( <i>Smart Ticketing</i> );
<b>“Enforcement Plan of the Day”</b>	<p>means the Plan of the Day except for any:</p> <ul style="list-style-type: none"> <li>(a) additions to such Plan of the Day of any railway passenger services which are not included in the Timetable;</li> <li>(b) omissions from such Plan of the Day of any Passenger Services included in the Timetable; and/or</li> <li>(c) rescheduling in such Plan of the Day of any Passenger Services from their scheduling in the Timetable,</li> </ul> <p>in each case:</p> <ul style="list-style-type: none"> <li>(i) as proposed by LNER in breach of its obligations in paragraph 4 of Schedule 1.2 (<i>Operating Obligations</i>); or</li> <li>(ii) as agreed by LNER in breach of its obligations in paragraph 3 of Schedule 1.2 (<i>Operating Obligations</i>);</li> </ul>
<b>“Environmental Impact Monitoring Report”</b>	has the meaning given to it in paragraph 15.2(a) of Schedule 11.2 ( <i>Management Information</i> );
<b>“Environmental Information Regulations”</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Regulations;

<b>“Equivalent Fare”</b>	has the meaning given to it in paragraph 6.1 of Schedule 5.7 ( <i>Changes to Fares and Fares Regulation</i> );
<b>“Equivalent Flow”</b>	has the meaning given to it in paragraph 6.1(b) of Schedule 5.7 ( <i>Changes to Fares and Fares Regulation</i> );
<b>“Ethernet”</b>	has the meaning given to it in paragraph 2.1 of Schedule 13.3 ( <i>Mobile Communications Service</i> );
<b>“Ethernet Backbone”</b>	has the meaning given to it in paragraph 2.1 of Schedule 13.3 ( <i>Mobile Communications Service</i> );
<b>“Evening Peak”</b>	means, in relation to any Passenger Service, the period between 1600 and 1859 (inclusive) during a Weekday or such other continuous three hour period between 1200 and 2359 (inclusive) as the Secretary of State may specify from time to time;
<b>“Evening Peak Service”<sup>43</sup></b>	<b>means a Passenger Service which departs from London King’s Cross in the Evening Peak;</b>
<b>“Excluded Data”</b>	has the meaning given to it in paragraph 15.1(a)(i) ( <i>Environmental Information</i> ) of Schedule 11.2 ( <i>Management Information</i> );
<b>“Expiry Date”<sup>44</sup></b>	<p><b>means the later of:</b></p> <p><b>(a) 01:59am on 25 June 2023 or such other earlier date as the Secretary of State may notify to DOHL and LNER; or</b></p> <p><b>(b) any such later date to which the Services Agreement is continued in accordance with clause 5.2; or</b></p> <p><b>(c) subject to compliance with Article 5(6) of Regulation 1370/2007, such other later date as the Secretary of State may notify to DOHL and LNER;</b></p>
<b>“Facility Owner”</b>	has the meaning given to the term facility owner in section 17(6) of the Act;
<b>“Fare”</b>	<p>means:</p> <p>(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</p>

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<sup>43</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>44</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person; and

- (b) for the purposes only of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) to Schedule 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; or
  - (iii) a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement); or
  - (iv) sold under the Pay As You Go Agreement utilising TTL smart media as defined in such agreement;

**"Fare Year"**

means the period from 1 January in any year to 31 December in the same year;

**"Fares Basket"**

means either the Commuter Fares Basket or the Protected Fares Basket;

**"Fares Document"**

means any of the Commuter Fares Document and/or the Protected Fares Document;

**"Fares Setting Round"**

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

**"Fares, Ticketing and Retail Trials"<sup>45</sup>**

**has the meaning given to it in Paragraph 1.1 of Schedule 5.10 (*Trials*);**

**"Final Service Year"**

means the Service Year ending on the last day of the Service Period;

**"Financial Action Plan"**

means any action plan produced by LNER pursuant to paragraph 9.2(b)(vi) of Schedule 11.2 (*Management*

<sup>45</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

*Information*), where the level of its financial performance specified in the Management Accounts is materially worse than forecast by LNER in its current Business Plan;

**“Financial Conduct Authority”**

means the UK Financial Conduct Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS and with company registered number 01920623 or such other regulatory body which may succeed or replace it from time to time;

**“Fixed Service Payment”**

means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 1 of part 1 of Schedule 8 of this Agreement;

**“Flow”**

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

**“Force Majeure Event”**

means any of the events described as such in paragraph 1 of Schedule 10.3 (*Force Majeure and Business Continuity*) where the conditions specified in paragraph 2 of Schedule 10.3 (*Force Majeure and Business Continuity*) are satisfied;

**“Franchise Data Breach”<sup>46</sup>**

**means any Personal Data Breach or any infringement of the rights afforded to a Data Subject under the Data Protection Legislation relating in whole or in part to CRM Data and/or Franchise Employees which is notified to or otherwise comes to the attention of the Information Commissioner (defined below) whether by way of LNER in its capacity as Controller, by any affected Data Subject, by any other person whatsoever, or in any other way, and which results in the Information Commissioner having any material engagement with LNER in respect of the same (which shall mean any correspondence, request, direction or other form of engagement with LNER in connection with a Personal Data Breach or the infringement of rights other than:**

- (a) **the Information Commissioner’s acknowledgement of receipt of the notification or of it otherwise having awareness of the Personal Data Breach or the infringement of rights;**
- (b) **the Information Commissioner’s first request for information following receipt of the notification or of it otherwise having**

<sup>46</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**awareness of the Personal Data Breach or the infringement of rights; and**

- (c) **(c) the Information Commissioner’s written confirmation that no action (whether formally or informally) shall be taken under the Data Protection Legislation in relation to the Personal Data Breach or the infringement of rights);**

**“Franchise Employee”**

means:

- (a) any employee of LNER from time to time; and
- (b) any other person who is an employee of any of its Affiliates or is an employee of any party to whom the Services or services which are in support of or ancillary to the Services have been subcontracted (at any tier) or delegated by LNER; 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 Service Period by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred;

**“Franchise Manager”**

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

**“Franchise Performance Meeting”**

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

**“Franchise Data Processor”<sup>47</sup>**

**means any Processor who, from time to time, is processing or has processed CRM Data and/or Personal Data relating to Franchise Employees on behalf of LNER;**

**“Franchise Sections”**

has the meaning given to it in paragraph 2 of Schedule 16 (*Pensions*);

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<sup>47</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<b>“Franchise Section Rules”</b>	has the meaning given to it in paragraph 4.2(a) of Schedule 16 ( <i>Pensions</i> );
<b>“Franchisee Access Station”</b>	means any station at which the Passenger Services call (other than any Station);
<b>“Freedom of Information Act”</b>	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to the Freedom of Information Act 2000;
<b>“GAAP”</b>	means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, <i>‘Financial Reporting Standards 100, 101 and 102’</i> , 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;
<b>“Geographical Area”<sup>48</sup></b>	<p><b>means that area of Great Britain bounded by a reasonably drawn line running through the railway stations at the following places (to the extent that LNER is from time to time operating the routes which service these railway stations in accordance with the TSR):</b></p> <ul style="list-style-type: none"> <li><b>(a) London King’s Cross</b></li> <li><b>(b) Peterborough</b></li> <li><b>(c) Newark North Gate</b></li> <li><b>(d) Lincoln Central</b></li> <li><b>(e) Doncaster</b></li> <li><b>(f) Selby</b></li> <li><b>(g) Hull</b></li> <li><b>(h) Brough</b></li> <li><b>(i) York</b></li> <li><b>(j) Middlesbrough</b></li> <li><b>(k) Thornaby</b></li> <li><b>(l) Darlington</b></li> <li><b>(m) Sunderland</b></li> <li><b>(n) Alnmouth</b></li> <li><b>(o) Berwick-Upon-Tweed</b></li> <li><b>(p) Dunbar</b></li> <li><b>(q) Edinburgh</b></li> <li><b>(r) Leuchars</b></li> <li><b>(s) Dundee</b></li> <li><b>(t) Arbroath</b></li> <li><b>(u) Montrose</b></li> <li><b>(v) Aberdeen</b></li> <li><b>(w) Inverness</b></li> <li><b>(x) Pitlochry</b></li> </ul>

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<sup>48</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.



- (y) Stirling
- (z) Glasgow Central
- (aa) Motherwell
- (bb) Haymarket
- (cc) Edinburgh
- (dd) Berwick-Upon-Tweed
- (ee) Newcastle
- (ff) Harrogate
- (gg) Shipley
- (hh) Skipton
- (ii) Keighley
- (jj) Bradford Forster Square
- (kk) Dewsbury
- (ll) Huddersfield
- (mm) Leeds
- (nn) Wakefield Westgate
- (oo) Doncaster
- (pp) Retford
- (qq) Grantham
- (rr) Stevenage
- (ss) London King's Cross

**“Good and Efficient Operator”<sup>49</sup>**

means a notional train operator, having the same commercial, regulatory and operational arrangements as LNER and being subject to the same operational circumstances (which shall recognise the extraordinary impact of COVID-19 and the requirement for operators to act in the national interest in response to COVID-19), which is a party to a services agreement on equivalent terms to the Services Agreement, with performance targets and standards equivalent to those set out in Schedule 7 (Performance Benchmarks) and Schedule 8.2 (Performance Review Provisions), which complies with its obligations under such services agreement and the Licences in a timely, efficient and economical manner and with the degree of skill, diligence, prudence and foresight which can be expected from a skilled and experienced train operator so that in this context costs and revenues are optimised in combination to the greatest extent reasonably practicable, adopting a reasonable balance in respect of short, medium and longer term consequences for the relevant services;

**“Gross Revenue”**

means, in relation to any period and any Fare, the gross revenue to LNER (or any relevant predecessor of LNER) 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;

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<sup>49</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<b>“Hot Standby”</b>	<p>means any rolling stock vehicle specified in the Train Plan which:</p> <ul style="list-style-type: none"> <li>(a) is operationally ready to provide the Passenger Services in the Timetable;</li> <li>(b) is not already assigned to the delivery of any Passenger Service in the Timetable; and</li> <li>(c) will only be used to deliver such Passenger Services if: <ul style="list-style-type: none"> <li>(i) a rolling stock vehicle scheduled to deliver such Passenger Services is unable to so deliver; and</li> <li>(ii) Actual Passenger Demand could only be met by the deployment in service of such rolling stock vehicle;</li> </ul> </li> </ul>
<b>“HS2 Limited”<sup>50</sup></b>	<b>means High Speed Two (HS2) Limited, a company registered in England with registered number 06791686 whose registered office is at 2 Snowhill, Queensway, Birmingham, B4 6GA or such other entity as may be appointed infrastructure manager in relation to the HS2 Network from time to time;</b>
<b>“HS2 Network”<sup>51</sup></b>	<b>means the network in respect of which HS2 Limited is the Facility Owner;</b>
<b>“HS2 Project”<sup>52</sup></b>	<b>means the project for the construction and development of a high speed railway from London to Birmingham, Manchester and Leeds known as “HS2” or “High Speed 2” and all related infrastructure works including the enabling works at London Euston Station;</b>
<b>“IEP Fleet”</b>	means the rolling stock described in Table 4 of Appendix 1 (The Composition of the Train Fleet) of Schedule 1.6 (The Rolling Stock);
<b>“[Deleted]<sup>53</sup>”</b>	<b>[Deleted];</b>
<b>“Independent Station”</b>	has the meaning given to it in paragraph 2.7 of Schedule 8.3 ( <i>Track Access Adjustments and Station Charge Adjustments</i> );

<sup>50</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>51</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>52</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>53</sup> 25 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

<b>“Independent Station Access Conditions”</b>	has the meaning given to it in the Access Agreement to which it relates;
<b>“Individual Station Charge Adjustment”</b>	has the meaning given to it in paragraph 2.2 of Schedule 8.3 ( <i>Track Access Adjustments and Station Charge Adjustments</i> );
<b>“Industrial Action”</b>	means any concerted action taken in connection with the employment of any employees of LNER or of any of the employees of persons listed in paragraphs 1(f)(i) to 1(f)(iii) of Schedule 10.3 ( <i>Force Majeure and Business Continuity</i> ) (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 LNER being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the Secretary of State;
<b>“Industry Schemes”</b>	has the meaning given to it in paragraph 4 of Schedule 13.1 ( <i>Rail Industry Initiatives and Co-operation</i> );
<b>“Information Commissioner”<sup>54</sup></b>	<b>has the same meaning as “Commissioner” in section 3 of the Data Protection Act;</b>
<b>“Initial Business Plan”</b>	means the business plan to be provided by LNER to the Secretary of State as described in paragraph 10.1 of Schedule 11.2 ( <i>Management Information</i> );
<b>“Initial Dataset”</b>	has the meaning given in paragraph 15.1(b) of Schedule 11.2 ( <i>Management Information</i> );
<b>“Initial Permanent Fare”</b>	has the meaning given to it in the Ticketing and Settlement Agreement;
<b>“Inspections”</b>	has the meaning given to it in paragraph 5.1 of Schedule 15.1 ( <i>Reletting Provisions</i> );
<b>“Institute of Asset Management”</b>	means The Institute of Asset Management, a company limited by guarantee, registered with company number 05056259 with registered office Woodlands Grange, Woodlands Lane, Bradley Stoke, Bristol, BS32 4JY or its successors;
<b>“Integrated Control Centres Implementation Plan”<sup>55</sup></b>	<b>means a detailed plan jointly produced between LNER, Network Rail and any other Train Operators</b>

<sup>54</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>55</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**setting out how and when they will implement the Integrated Control Centres Initiative;**

**“Integrated Control Centres Initiative”<sup>56</sup>**

**means measures and initiatives to improve performance outcomes between Network Rail and LNER through collaboration, co-location and unified policies such that an integrated and cost-efficient approach to operations is adopted at specified Control Centres;**

**“Integrated Station Asset Management Policy”**

means the document which in relation to Stations:

- (a) describes the LNER’s general maintenance and renewals principles and procedures that it shall apply;
- (b) contains clear and appropriate rules for when intervention works and actions shall be triggered specified by reference to station asset condition and levels of user satisfaction; and
- (c) contains an appropriate and effective approach for dealing with exceptional station asset renewals including those arising out of latent defects or exceptional adverse weather, environmental contamination or damage caused by third parties,

set out in the agreed terms marked **SAMP1** as this may be revised and amended pursuant to paragraph 1.3 of Schedule 1.7 (Stations);

**“Integrated Station Asset Management Plan”**

means the document which sets out in relation to Stations:

- (a) an initial priced Station maintenance and renewal plan in relation to each Service Year distinguishing between reactive and planned maintenance;
- (b) plans specifying how any other proposed enhancements will be delivered with milestones and a breakdown of costs;
- (c) an estimate of how the implementation of such plans will affect the condition of each Station in each Service Year;
- (d) details of how LNER shall efficiently maintain and update Station asset data (including condition

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<sup>56</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

measures) and hand over relevant policies, plans and records to a Successor Operator; and

- (e) details of LNER's plans for the management and handover of the Stations and related assets at the end of the Service Period including how LNER will work with Network Rail and a Successor Operator to ensure the continuity of its maintenance and renewals policy,

set out in the agreed terms marked **SAMP2** as this may be revised and amended pursuant to paragraph 1.3 of Schedule 1.7 (Stations);

**"Intellectual Property Rights"**

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

**"Intercity Express Project"**

means the programme for delivering new rolling stock for use by LNER pursuant to the provisions of the Train Availability and Reliability Agreement and the MARA;

**"Interest Rate"**

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

**"Inter-Operator Schemes"**

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

**"International Organisation for Standardisation"**

means the international standard setting body known as **"ISO"** or any such successor body;

**"Intervention"**

has the meaning given to it in clause 15.1 (e) (*Competition*);

**"ISO14001:2015"**

means the standard that is set by the International Organisation for Standardisation which specifies requirements for an environmental management system to enable an organization to develop and implement a policy and objectives which takes into account legal requirements and other requirements to

which the organization subscribes, and information about significant environmental aspects or any equivalent standard which is generally recognised as having replaced it;

**“ISO50001:2011”**

means the standard that is set by the International Organisation for Standardisation which specifies requirements for establishing, implementing, maintaining and improving an energy management system, whose purpose is to enable an organization to follow a systematic approach in achieving continual improvement of energy performance, including energy efficiency, energy use and consumption or any equivalent standard which is generally recognised as having replaced it;

**“ISO50001 Energy Review”**

means the Energy Review as defined in paragraph 4.4.3 of ISO50001:2011, or any same or similar review from an equivalent standard which is generally recognised as having replaced it;

**“ISO55001:2014”**

means the standard that is produced by the International Organisation for Standardisation which specifies requirements for an asset management system within the context of the organisation or any equivalent Standard which is generally recognised as having replaced it;

**“ISO 22301”**

means the standard that is set by the International Organisation for Standardisation which specifies requirements for the development, implementation, operation, monitoring, review and maintenance of a business continuity planning process, or any equivalent standard which is generally recognised as having replaced it;

**“ITSO”**

has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);]

**“ITSO Certified Smartmedia”**

has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);]

**“ITSO Operating Licence”**

has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);]

**“ITSO Smartmedia Ticketing Scheme”**

has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);]

**“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:

- (a) all directors (statutory or otherwise);

- (b) all managers with responsibility for a department/function within LNER's business;
- (c) all managers in the operations, commercial, personnel and public affairs departments or in each case their nearest equivalents;

**“Key Contract”**

means:

- (a) each agreement and contract listed in Appendix 1 (*List of Key Contracts*) to Schedule 14.3 (*Key Contracts*) as at the date of this Agreement; and
- (b) any other agreement, contract, licence or other arrangement to which LNER is a party or under which LNER is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3 (*Key Contracts*),

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

**“Key Personnel”**

means those persons identified by LNER in accordance with paragraph 3.1 of Schedule 11.2 (*Management Information*);

**“Know-How”**

means formulae, methods, plans, inventions, discoveries, improvements, processes, performance methodologies, techniques, specifications, technical information, tests, results, reports, component lists, manuals and instructions;

**“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 LNER may be required from time to time to hold under the Act or under the Railway

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

**“Light Maintenance Service”** means any service specified in paragraph 3 of Part 1 (*Services*) of Schedule 1.1 (*Services and Service Development*) which may be provided by LNER at the Depots and Stations;

**“Local Authority”** means:

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

**“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;

**“Maintenance Contract”** means any contract or arrangement to which LNER is a party, which includes the carrying out for LNER of any maintenance work (including light maintenance



services) or service provision in respect of rolling stock vehicles used by LNER 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 Services where Network Rail is the Facility Owner or becomes the Facility Owner during the Service Period;

**“Managed Station Area”**

means the premises comprising part or parts of a Managed Station to be occupied by LNER on or after the Service Commencement Date and to be used for or in connection with the provision of the Services;

**“Management Accounts”**

means, in relation to any Reporting Period, LNER's management accounts which:

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

**“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;

**“MARA”**

has the meaning given to such term in paragraph 1.2 of Schedule 6.3 (The IEP Provisions);

**“Marks”**

means such trade marks as LNER may apply to any Service Asset or other asset used by it under a Key Contract, which are applied on the expiry of the Service Period and are not the subject of a Brand Licence;

**“Minister of the Crown”**

has the meaning given to it in section 8(1) of the Minister of the Crown Act 1975;

**“Minimum Asset Remaining Life”**

means the minimum average length (as a percentage) of Station Assets set out in the Minimum Asset Remaining Life Table;

**“Minimum Asset Remaining Life Table”**

means the table in paragraph 1.10 of Part 3 of (Minimum Asset Remaining Life Table) of Schedule 6.2 (Franchise Specific Provisions);

**“Minor Works”**

has the meaning given to it in paragraph 2.7(a) of Schedule 4 (*Accessibility and Inclusivity*);

<b>“Minor Works' Budget”</b>	<p>means £332,630 (pounds sterling three hundred and thirty-two thousand and six hundred and thirty) for each Service Year allocated by LNER for the purpose of facilitating Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, save that:</p> <p>(a) for any Service Year which is shorter than twelve (12) months, the amount shall be reduced pro rata; and</p> <p>(b) for each Service Year after the first Service Year, the amount shall be subject to adjustment as follows:</p>
	<b>Minor Works' Budget x RPI;</b>
<b>“Minor Works' Programme”</b>	<p>means LNER's programme of Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, developed prior to the start of each Service Year pursuant to paragraph 2.7(b) of Schedule 4 (<i>Accessibility and Inclusivity</i>);</p>
<b>“Minutes Delay”</b>	<p>means the minutes of delay to the Passenger Services that are attributed to LNER 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;</p>
<b>“Modernising Retail”<sup>57</sup></b>	<p><b>has the meaning given to it in paragraph 1.1 of Schedule 5.11 (<i>Fares, Ticketing and Retail Reform</i>);</b></p>
<b>“Monthly Season Ticket”</b>	<p>means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls one (1) month after such day;</p>
<b>“Morning Peak”</b>	<p>means, in relation to any Passenger Service, the period between 0700 and 0959 (inclusive) during a Weekday or such other continuous three hour period between 0600 and 1159 (inclusive) as the Secretary of State may specify from time to time;</p>
<b>“Morning Peak Service”<sup>58</sup></b>	<p><b>means a Passenger Service which arrives at London King's Cross in the Morning Peak;</b></p>
<b>“National Community Rail Steering Group”</b>	<p>means the National Community Rail Steering Group administered by the Department for Transport, or such successor organisation;</p>

<sup>57</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>58</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<b>“National Rail Enquiry Scheme”</b>	means the telephone information scheme run by RDG, providing information to customers regarding rail journeys throughout the country;
<b>“National Rail Passenger Survey”</b>	means a passenger satisfaction survey in respect of the Services to be carried out by the Passengers' Council as described in paragraph 2 of Schedule 7.2 ( <i>Customer Experience and Engagement</i> ) and shall include any Alternative NRPS as referred to in paragraph 2.6 of Schedule 7.2 ( <i>Customer Experience and Engagement</i> );
<b>“National Rail Timetable”</b>	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;
<b>“Network Change”</b>	has the meaning given to it in the Network Code;
<b>“Network Code”</b>	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 applying to Network Rail or NR;
<b>“Network Rail”</b>	means in respect of: <ul style="list-style-type: none"> <li>(a) the network or any relevant facility: <ul style="list-style-type: none"> <li>(i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is 1 Eversholt Street, London NW1 2DN; and</li> <li>(ii) any successor in title to the network or any relevant railway facility; or</li> </ul> </li> <li>(b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);</li> </ul>
<b>“Network Rail Asset Management Policy”</b>	means the policy set by Network Rail for a holistic asset management approach that includes asset capability, asset performance and reporting, sustainability, asset whole-life cost modelling, forecasting and reporting, cost efficient asset management, and asset management to meet customer service requirements;
<b>“Network Rail Cancellation”</b>	means a Passenger Service: <ul style="list-style-type: none"> <li>(a) which is included in the Enforcement Plan of the Day and which is cancelled; or</li> <li>(b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent</li> </ul>

(50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day),

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

**“Network Rail Collateral Agreement”<sup>59</sup>**

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

**“Network Rail Data”**

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

**“Network Rail Partial Cancellation”**

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

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

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

**“Network Rail Strategic Business Plan”**

means the strategic business plan for England & Wales published by Network Rail from time to time;

**“New Insurance Arrangements”**

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

**“New Station”**

means:

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

<sup>59</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

this Agreement or otherwise) railway passenger services operated by LNER call;

<b>“Nominee”</b>	has the meaning given to it in paragraph 5.1 of Schedule 15.1 ( <i>Reletting Provisions</i> );
<b>“Non Fares Basket Fare”</b>	means a Fare that is designated as such by the Secretary of State pursuant to paragraph 2.1 of Schedule 5.3 ( <i>Allocation of Fares to Fares Baskets</i> ) and which has not been de-designated as such pursuant to paragraph 1.1 of Schedule 5.7 ( <i>Changes to Fares and Fares Regulation</i> );
<b>“Notified Fault”</b>	has the meaning given to it in paragraph 9.1 of Schedule 1.4 ( <i>Passenger Facing Obligations</i> );
<b>“NR”</b>	means Network Rail Limited (company number 04402220), Network Rail Infrastructure Limited (company number 2904587) whose registered offices are both at 1, Eversholt Street, London NW1 2DN or any Affiliate thereof from time to time;
<b>“NRPS Floor Level”</b>	has the meaning given to it in paragraph 1.1 of Schedule 7.2 ( <i>Customer Experience and Engagement</i> );
<b>“NRPS Performance Level”<sup>60</sup></b>	<b>has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);</b>
<b>“NRPS Performance Level Table”</b>	has the meaning given to it in paragraph 1.1 of Schedule 7.2 ( <i>Customer Experience and Engagement</i> );
<b>“NRPS Measure”</b>	has the meaning given to it in paragraph 1.1 of Schedule 7.2 ( <i>Customer Experience and Engagement</i> );
<b>“Off-Peak Passenger Service”</b>	means a Passenger Service that is not a Morning Peak Service or an Evening Peak service;
<b>“On Time”<sup>61</sup></b>	<b>means the percentage of recorded station stops called at within 59 seconds of the planned time relating to the Services as produced and/or published by Network Rail;</b>
<b>“On Time Figures”<sup>62 63</sup></b>	<b>means the moving annual average percentage published by Network Rail in respect of On Time, rounded to two (2) decimal places;</b>
<b>“Operating Assets”</b>	means all assets (including any Intellectual Property Rights or intangible assets) employed by LNER in the

<sup>60</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>61</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>62</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>63</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

	performance of LNER's obligations under this Agreement;
<b>"Original Rolling Stock"</b>	has the meaning given to it in paragraph 2.1(a) of Schedule 1.6 ( <i>The Rolling Stock</i> );
<b>"ORR"</b>	means the Office of Rail and Road established by section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;
<b>"Other Passenger Route Within the Geographical Area"<sup>64</sup></b>	<b>means any route which is not a Route but is a route in the Geographical Area over which a passenger train operator other than LNER operates passenger services included in the National Rail Timetable;</b>
<b>"Partial Cancellation"</b>	means a Passenger Service which is included in the Enforcement Plan of the Day and which: <ul style="list-style-type: none"> <li>(a) misses a stop; or</li> <li>(b) completes fifty per cent (50%) or more, but less than one hundred per cent (100%) of its scheduled mileage as prescribed in the Enforcement Plan of the Day,</li> </ul> in each case, for reasons which are attributed to LNER pursuant to its Track Access Agreement;
<b>"Participating Employer"</b>	has the meaning given to it in the Pension Trust;
<b>"Passenger Assistance"</b>	means the passenger assistance service provided by train operating companies and referred to by the ORR as <b>"Passenger Assist"</b> , as such service may be further described by the ORR from time to time at: <a href="http://orr.gov.uk/info-for-passengers/passengers-with-disabilities">http://orr.gov.uk/info-for-passengers/passengers-with-disabilities</a> (or such other applicable web address that is adopted by the ORR for these purposes from time to time);
<b>"Passenger Carrying Capacity"</b>	means, in relation to a Passenger Service, the capacity of the vehicles (as stated in Schedule 1.6 ( <i>The Rolling Stock</i> ) or determined by the Secretary of State in accordance with paragraph 3.4 of Schedule 1.6 ( <i>The Rolling Stock</i> )) from which the Passenger Service is formed;
<b>"Passenger Change Date"</b>	means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code;

<sup>64</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<b>“Passenger Services”</b>	means LNER's railway passenger services as specified in any Timetable and/or Plan of the Day including those railway passenger services which LNER may delegate or subcontract or otherwise secure through any other person from time to time in accordance with this Agreement;
<b>“Passenger Survey Methodology”</b>	has the meaning given to it in paragraph 2.4 of Schedule 7.2 ( <i>Customer Experience and Engagement</i> );
<b>“Passenger's Charter” or “PC”</b>	means LNER's service commitments to its passengers in the agreed terms marked <b>PC</b> , 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 ( <i>Passenger Facing Obligations</i> );
<b>“Passengers' Council”</b>	means the passengers' council established under section 19 of the Railways Act 2005 (as amended by The Passengers' Council (Non-Railway Functions) Order 2010). The Passengers' Council shall be generally known as <b>“Transport Focus”</b> from 30 March 2015;
<b>“Pay As You Go Agreement”</b>	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 smart media technology under the name <b>“Pay as You Go”</b> ;
<b>“PAYG Peak Fare”</b>	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;
<b>“PAYG Off-Peak Fare”</b>	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 LNER 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;
<b>“PAYG Zone”</b>	means the Stations within the <b>“PAYG Area”</b> (as such is defined in the PAYG Agreement) or otherwise included in part 1 (PAYG Acceptance) of schedule 3 (Operation of PAYG) of the Pay As You Go Agreement (as such is amended from time to time);
<b>“Payment Date”</b>	means the date for the payment of Fixed Service Payments in accordance with paragraph 2.3 of Schedule 8.1 ( <i>Fixed Service Payments</i> );
<b>“Peak”</b>	means the Morning Peak and the Evening Peak;

<b>“Peak Passenger Service”</b>	means, as the case may be, a Morning Peak Service or an Evening Peak Service;
<b>“Pension Trust”</b>	means the pension trust governing the Railways Pension Scheme;
<b>“Pensions Committee”</b>	has the meaning given to it in the Railways Pension Scheme;
<b>“Percentage Allocation”</b>	has the meaning given to it in the Ticketing and Settlement Agreement;
<b>“Performance Strategy Plan”</b>	means any joint plan, which LNER and Network Rail are party to, which has been designed to achieve the performance objectives set out in Part L of the Network Code (and/or other objectives related to train service reliability and punctuality as agreed by the parties);
<b>“Permanent Fare”</b>	has the meaning given to it in the Ticketing and Settlement Agreement;
<b>“Permitted Aggregate Increase” or “PAI”</b>	has the meaning given to it in paragraph 4.2 of Schedule 5.4 ( <i>Regulation of Fares Basket Values</i> );
<b>“Permitted Individual Increase” or “PII”</b>	has the meaning given to it in paragraph 2.2 of Schedule 5.5 ( <i>Regulation of Individual Fares</i> );
<b>“Personal Data”<sup>65</sup></b>	<b>has the meaning given to it in the Data Protection Legislation;</b>
<b>“Personal Data Breach”<sup>66</sup></b>	<b>has the meaning given to it in the Data Protection Legislation;</b>
<b>“[Deleted]<sup>67</sup>”</b>	<b>[Deleted]</b>
<b>“Plan”</b>	has the meaning given to it in paragraph 14.2 (c) of Schedule 13.1 ( <i>Rail Industry Initiatives and Co-operation</i> );
<b>“Plan of the Day”</b>	means, in relation to each day during the Service Term, the Passenger Services scheduled to be operated on that day through specification in the Timetable or as notified to LNER by Network Rail from time to time prior to 2200 on the previous day;
<b>“Planned Train Mileage”</b>	means the aggregate train mileage planned during each Reporting Period by each train used in the provision of the Passenger Services (excluding, any train mileage

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<sup>65</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>66</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>67</sup> 25 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.



	planned as a result of positioning or other movements of rolling stock vehicles outside the Timetable);
<b>“PPM” or “Public Performance Measure”</b>	means the public performance measure relating to the Franchise as produced and/or published by Network Rail;
<b>“Preceding Year Ticket Price”</b>	has the meaning given to it in paragraph 2.1 of Schedule 5.5 ( <i>Regulation of Individual Fares</i> );
<b>“Pre-condition”</b>	has the meaning given to it in paragraph 8.1 of Schedule 6.2 ( <i>Committed Obligations</i> );
<b>“Preliminary Database”</b>	means such database as may reasonably be put in place by the Secretary of State prior to making any RPC Database available to LNER, as part of the development of the RPC Database;
<b>“Previous Franchise Agreement”</b>	means a franchise agreement dated 9 December 2014 under which services equivalent to the Services (or a material proportion thereof) were provided by East Coast Main Line Company Limited on or about the day prior to the Service Commencement Date;
<b>“Previous Franchisee”</b>	means East Coast Main Line Company Limited with company number: 04659708 of 4 <sup>th</sup> Floor, Chancery Lane, London EC4A 1BL;
<b>“Previous Franchisee ITSO Smartmedia Ticketing Scheme”</b>	has the meaning given to it in paragraph 1.1 of Schedule 5.9 ( <i>Smart Ticketing</i> );
<b>“Previous Passenger Services”</b>	means: <ul style="list-style-type: none"> <li>(a) any railway passenger service operated under a Previous Franchise Agreement that is the same or substantially the same as any Passenger Service in terms of departure and arrival times and stopping patterns; and</li> <li>(b) if no such railway passenger service is found under paragraph (a) such other railway passenger service operated under a Previous Franchise Agreement which is similar in terms of departure and arrival times and stopping patterns to the Passenger Services as the Secretary of State may reasonably determine;</li> </ul>
<b>“Previous Performance Level”</b>	means the level of performance actually achieved in relation to the Previous Passenger Services;
<b>“Price”</b>	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 ( <i>Fares and Smart Ticketing</i> ) to the Ticketing and Settlement Agreement;
<b>"Principles of Inclusive Design"</b>	means planning, designing, building and managing places, while having due regard and a proportionate response to stakeholder views obtained through consultation or otherwise, so that they work better for everybody and reflect the diversity of the people who use them as embodied in the document published by the Commission for Architecture and the Built Environment in 2006 with the title <b>"The Principles of Inclusive Design"</b> (as revised from time to time");
<b>"Prior Train Operator"</b>	has the meaning given to it in paragraph 3.1 of Schedule 2.2 ( <i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i> );
<b>"Priority Station"</b>	has the meaning given to it paragraph 6.3 of Schedule 1.7 ( <i>Stations</i> );
<b>"PRM TSI"</b>	means the EU's Regulation (EU) No 1300/2014 of 18 November 2014 (as amended from time to time) on the technical specifications for interoperability relating to accessibility of the European Union's rail system for persons with disabilities and persons with reduced mobility;
<b>"Processor"<sup>68</sup></b>	<b>has the meaning given to it in the Data Protection Legislation;</b>
<b>"Projected Revenue"</b>	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 ( <i>Regulation of Fares Basket Values</i> );
<b>"Property Lease"</b>	means any Depot Lease, any lease in respect of a Managed Station Area, any lease in respect of Shared Facilities or any Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which LNER 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 Services;
<b>"Protected Fare"</b>	means a Protected Return Fare or a Protected Weekly Season Ticket;

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<sup>68</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**“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 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”  
or “PFD”**

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

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

- (b) for which there was no Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which LNER is entitled or obliged from time to time to set the Price under the Ticketing and Settlement Agreement,

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

**“Protected Weekly Season Ticket”**

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

**“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;

**“Quarterly Season Ticket”**

means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls three (3) months after such day;

**“Rail Delivery Group” or “RDG”**

means the Rail Delivery Group Limited (company number 08176197) (including any of its successors and assigns) whose principal place of business is at 2nd Floor, 200-202 Aldersgate Street, London EC1A 4HD, which is responsible for preserving and enhancing the benefits for passengers of Britain’s national rail network policy formulation and communications on behalf of the whole rail industry;

**“Rail Industry Sustainable Development Principles”**

means the principles which were published by the Rail Safety and Standards Board in February 2009 as amended from time to time;

**“Rail Safety and Standards Board” or “RSSB”**

means Rail Safety and Standards Board Limited, a company registered in England with registered number 04655675 whose registered office is at The Helicon, 4th Floor, One South Place, London, EC2M 2RB;

**“Rail Safety and Standards Board Sustainable Development Self-Assessment Framework”**

means the online self-assessment framework against the Rail Industry Sustainable Development Principles published by the Rail Safety and Standards Board;

**“Railway Group”**

means the committee responsible for cross industry co-ordination in respect of rail safety legislation and

	industry safety standards chaired by the Rail Safety and Standards Board;
<b>“Railway Operational Code”</b>	has the meaning given to it in Condition H of the Network Code;
<b>“Railway Passenger Services”</b>	means, for the purposes of Schedule 5 ( <i>Fares and Smart Ticketing</i> ) 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 LNER and any other Train Operator from time to time;
<b>“Railways Pension Scheme”</b>	means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433);
<b>“Reference Fare”</b>	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 ( <i>Changes to Fares and Fares Regulation</i> );
<b>“Reference Flow”</b>	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 ( <i>Changes to Fares and Fares Regulation</i> );
<b>“Reference Revenue”</b>	means the aggregate Gross Revenue recorded by RSP as attributable to sales of all Commuter Fares or Protected Fares for the period of twelve (12) months which ended 31 March 2010 or such other reference period as the Secretary of State may require pursuant to paragraph 3.1(a) of Schedule 5.7 ( <i>Changes to Fares and Fares Regulation</i> );
<b>“Regulated Child Price”</b>	means the Child Price that is permitted to be charged by LNER in respect of any Fare in any Fare Year as specified in paragraph 1.3 of Schedule 5.5 ( <i>Regulation of Individual Fares</i> );
<b>“Regulated Price”</b>	means the Price that is permitted to be charged by LNER in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 ( <i>Regulation of Individual Fares</i> );
<b>“Regulated Qualifications Framework”</b>	means the Regulated Qualifications Framework introduced by Ofqual on 1 October 2015 as located at the date of this agreement at <a href="https://www.gov.uk/find-a-regulated-qualification">https://www.gov.uk/find-a-regulated-qualification</a> ;
<b>“Regulated Value”</b>	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 ( <i>Regulation of Fares Basket Values</i> );
<b>“Regulation 1370/2007”</b>	means Regulation (EC) No 1370/2007 of the European parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70;

<b>“Regulations”</b>	has the meaning given to it in paragraph 1.2 of Schedule 2.5 ( <i>Transport, Travel and Other Schemes</i> );
<b>“Relevant Delay”</b>	has the meaning given to it in paragraph 3.1 of Schedule 2.2 ( <i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i> );
<b>“Relevant Operator Direct Agreement”</b>	means the agreement in the agreed terms marked <b>RODA</b> ;
<b>“Relevant Rolling Stock”</b>	has the meaning given to it in paragraph 3.1 of Schedule 2.2 ( <i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i> );
<b>“Reporting Period”</b>	means: <ul style="list-style-type: none"> <li>(a) <b>NOT USED</b>; or</li> <li>(b) for all other purposes, a period of twenty eight (28) days, provided that: <ul style="list-style-type: none"> <li>(i) the first such period during the Service Period shall exclude any days up to but not including the Service Commencement Date;</li> <li>(ii) the first and last such period in any Reporting Year may be varied by up to seven (7) days by notice from the Secretary of State to LNER;</li> <li>(iii) each such period shall start on the day following the last day of the preceding such period; and</li> <li>(iv) the last such period during the Service Period shall end at the end of the Service Period;</li> </ul> </li> </ul>
<b>“Reporting Year”</b>	means a period normally commencing on 1 April in each calendar year, comprising thirteen (13) consecutive Reporting Periods;
<b>“Return Fare”</b>	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 hours on the day after the day of the outward journey or, if later, the time the relevant return journey may be completed if commenced before 0200 hours;
<b>“Rolling Stock Lease”</b>	means any agreement for the leasing of rolling stock vehicles to which LNER is a party as at the Service Commencement 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 LNER is a party from time to time during the Service Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement;
<b>"Rolling Stock Related Contract"</b>	means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;
<b>"Rolling Stock Units"</b>	has the meaning given to it in paragraph 1(c) of Schedule 10.3 ( <i>Force Majeure and Business Continuity</i> );
<b>"ROSCO"</b>	means any company leasing rolling stock vehicles to LNER under a Rolling Stock Lease;
<b>"Route"</b>	means any route specified in the Timetable over which LNER has permission to operate the Passenger Services pursuant to any Track Access Agreement;
<b>"Route Efficiency Benefit Share (REBS) Mechanism" or "REBS Mechanism"</b>	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;
<b>"Route Map"<sup>69</sup></b>	<b>means a map (which may be a topological map) showing each of the Routes and each Other Passenger Route Within the Geographical Area meeting the requirements set out in paragraph 10 of Schedule 1.4 (Passenger Facing Obligations);</b>
<b>"RPC Database"</b>	means a database to be provided by the Secretary of State pursuant to and on the terms of paragraph 7.1 of Schedule 1.5 ( <i>Information about Passengers</i> ) containing rail passenger counts information and providing analytical reporting tools or such other functionality as the Secretary of State may decide from time to time;
<b>"RPI"</b>	means the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Service Year divided by the Retail Prices Index for January 2018 provided that, for the first Service Year, RPI shall be one;
<b>"Retail Prices Index"</b>	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

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<sup>69</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

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 LNER, determine to be appropriate in the circumstances;

<b>"RSP"</b>	means Rail Settlement Plan Limited;
<b>"RSPS3002"</b>	has the meaning given to it in paragraph 1.1 of Schedule 5.9 ( <i>Smart Ticketing</i> );
<b>"Safeguarding Strategy"</b>	means a safeguarding strategy to promote and enforce the principles and measures set out in the Safeguarding on Rail Audit and approved by the British Transport Police;
<b>"Safeguarding on Rail Audit"</b>	means the principles and measures to protect vulnerable children and adults at risk on rail transport, published by the British Transport Police (as amended or replaced from time to time);
<b>"Safety Authorisation"</b>	means the authorisation issued by the ORR under the Safety Regulations authorising LNER's safety management system (as defined in those regulations) and the provisions adopted by LNER to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Routes;
<b>"Safety Certificate"</b>	means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of LNER's safety management system (as defined in those regulations) and the provisions adopted by LNER to meet the requirements that are necessary to ensure safe operation on the Routes;
<b>"Safety Regulations"</b>	means the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended pursuant to the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2006);
<b>"Saver Return Fare"</b>	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;
<b>"Scheduled Consist Data"</b>	means information as to the type of individual vehicles of rolling stock that have been scheduled by LNER to form a train in the Train Fleet for any particular Passenger Service and the manner in which they are scheduled to be configured;
<b>"Season Ticket Fare"</b>	means: <ul style="list-style-type: none"> <li>(a) <b>NOT USED</b>; and</li> <li>(b) for all other purposes, a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an</li> </ul>



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;

<b>"Secretary of the Access Disputes Committee"</b>	means the person appointed as the secretary of the Access Disputes Committee from time to time;
<b>"[Deleted]<sup>70</sup>"</b>	<b>[Deleted];</b>
<b>"[Deleted]<sup>71</sup>"</b>	<b>[Deleted];</b>
<b>"Secure Stations Accreditation"<sup>72</sup></b>	<b>has the meaning given to it in paragraph 6.7 of Schedule 1.7 (Stations);</b>
<b>"Secure Stations Scheme"<sup>73</sup></b>	<b>has the meaning given to it in paragraph 6.7 of Schedule 1.7 (Stations);</b>
<b>"Security Breach"</b>	has the meaning given to it in paragraph 6.3(c)(i) of Schedule 1.5 ( <i>Information about Passengers</i> );
<b>"Security Interest"</b>	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;
<b>"Security in the Design of Stations Guidance"<sup>74</sup></b>	<b>means the "Security in Design of Stations (SIDOS)" Guidance published by the Secretary of State, the British Transport Police and the Centre for the Protection of National Infrastructure dated July 2012 as amended, updated or replaced from time to time, and/or any other relevant security guidance as reasonably directed by the Secretary of State;</b>
<b>"SEFT Station"</b>	has the meaning given to it in paragraph 1.1 of Schedule 5.9 ( <i>Smart Ticketing</i> );]
<b>"Service Assets"</b>	means the property, rights and liabilities of LNER used in the provision of the Services except as referred to in paragraph 1.2 of Schedule 14.4 (Service Assets).;
<b>"Service Commencement Date"</b>	means the date specified as such in a notice served by the Secretary of State under Clause 4;
<b>"Service Period"</b>	means the period from the Service Commencement Date to the Expiry Date;

<sup>70</sup> 25 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

<sup>71</sup> 25 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

<sup>72</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>73</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>74</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- “Service Term”** means the period commencing on the Service Commencement Date and expiring on the Expiry Date;
- “Service Year”** means any period of twelve (12) months during the Service Period, beginning on 1 April and ending on 31 March, except that the first and last Service Years may be for a period of less than twelve (12) months and the first Service shall begin on the Service Commencement Date and the last Service Year shall end on the last day of the Service Period;
- “Services”** means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as LNER may provide or operate from time to time, including any of such services as LNER may delegate or subcontract or otherwise secure through any other person from time to time in accordance with this Agreement;
- “Service Group”** has the meaning given to it in the Track Access Agreement or as specified by the Secretary of State from time to time;
- “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 LNER:
- (a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best possible level of service given such disruption, including by:
    - (i) keeping service intervals to reasonable durations;
    - (ii) keeping extended journey times to reasonable durations; and
    - (iii) managing any resulting overcrowding;
  - (b) to:
    - (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
    - (ii) prior to the attainment of the level of service specified in paragraph (b)(i) operate any reduced level of service agreed with 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 **“Approved Code of Practice: Contingency Planning for Train Service Recovery - Service Recovery 2013”** or any document of a similar or equivalent nature; and
- (d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:
  - (i) agreed at an initial and, where required, subsequent telephone conference between LNER, 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 10.3 (*Force Majeure and Business Continuity*);

**“Set”**

has the meaning given to it in paragraph 1 of Schedule 6.3 (The IEP Provisions)

**“Settlement Proposal”**

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

**“Shared Facilities”**

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

**“Short Formation Benchmark”**

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

**“Short Formation Benchmark Table”**

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

**“Short Formation Figures”**

means the number of Passenger Services in any Reporting Period formed with less than the Passenger Carrying Capacity specified in the Train Plan;

**“Significant Alterations”**

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:

- (a) the addition or removal of railway passenger services;

- (b) changes to stopping patterns or destinations or origin;
- (c) changes of timings for first/last trains by more than 10 minutes;
- (d) changes to clock face (or near clock face) 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 Stations or at other stations at which relevant railway passenger services call by more than 10 minutes;

**“Single Fare”**

means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, on any one (1) day, one (1) journey in Standard Class Accommodation between the stations and/or the zones for which the Fare is valid;

**“SKA Rating Standard”**

means the recognised environmental assessment tool known as **“SKA Rating”** for sustainable fit outs published by the Royal Institute of Chartered Surveyors;

**“Skills and Leadership Strategy”**

means the skills and leadership strategy of LNER required to be implemented pursuant to paragraph 9 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*) as it may be revised pursuant to such paragraph;

**“Small and Medium-sized Enterprises” or “SMEs”**

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

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

The three categories are:

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

<b>"Smart Media"</b> <sup>75</sup>	<b>means any of the following which can be used as part of a Smart Ticketing Scheme:</b>
	(a) <b>digital barcodes;</b>
	(b) <b>a barcode printed on paper either by customers (e.g. at home, office) or by franchisee staff at stations or on board trains;</b>
	(c) <b>ITSO Certified Smart Media;</b>
	(d) <b>contactless payment media (cEMVs);</b>
	(e) <b>Oyster (TfL's smartcard); and</b>
	(f) <b>any of the above formats stored and presented on a portable electronic device;</b>
<b>"Smart Ticketing Scheme"</b>	has the meaning given to it in paragraph 1.1 of Schedule 5.9 ( <i>Smart Ticketing</i> );
<b>"Spares"</b>	means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles;
<b>"Special Categories of Personal Data"</b> <sup>76</sup>	<b>has the meaning given to it in the Data Protection Legislation;</b>
<b>"Specified Additional Rolling Stock"</b>	has the meaning given in paragraph 2.1(b) of Schedule 1.6 ( <i>The Rolling Stock</i> );
<b>"Stakeholder"</b>	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;
<b>"Standard Class Accommodation"</b>	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

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<sup>75</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>76</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

it not been so reserved, it would have been available for use by such purchaser);

<b>“Standard Occupational Classification Codes”</b>	means the codes published in the Standard Occupational Classification 2010 as provided by the Office for National Statistics which can be found at <a href="https://www.ons.gov.uk/methodology/classificationsandstandards/standardoccupationalclassificationsoc/soc2010/soc2010volume2thestructureandcodingindex">https://www.ons.gov.uk/methodology/classificationsandstandards/standardoccupationalclassificationsoc/soc2010/soc2010volume2thestructureandcodingindex</a> ;
<b>“Standard of Repair”</b>	has the meaning given to such term in paragraph 1.4(a) of Schedule 1.7 (Stations);
<b>“Station”</b>	means: <ul style="list-style-type: none"> <li>(a) any station in respect of which LNER has entered into a Station Lease; or</li> <li>(b) any New Station at which LNER becomes the Facility Owner;</li> </ul>
<b>“Station Access Conditions”</b>	has the meaning given to it in the relevant Access Agreement to which it relates;
<b>“Station Asset”</b>	means each platform, footbridge, canopy or building located at a Station;
<b>“Station Change”</b>	has the meaning given to the term <b>Proposal for Change</b> under the Station Access Conditions;
<b>“Station Charge Adjustment”</b>	means any adjustment to payments under an Access Agreement determined in accordance with paragraph 2 of Schedule 8.3 ( <i>Track Access Adjustments and Station Charge Adjustments</i> );
<b>“Station Lease”</b>	means: <ul style="list-style-type: none"> <li>(a) any lease of a station that LNER is a party to as at the Service Commencement Date; or</li> <li>(b) a lease of any other station to which LNER becomes the Facility Owner at any time during the Service Period;</li> </ul>
<b>“Station Service”</b>	means any service specified in paragraph 2 of Part 1 ( <i>Services</i> ) of Schedule 1.1 ( <i>Services and Service Development</i> ) which may be provided by LNER at the Stations;
<b>“Station Social and Commercial Development Plan” or “SCDP”<sup>77</sup></b>	<b>means LNER's station social and commercial development plan, as such plan is agreed, and may be updated, each in accordance with the</b>

<sup>77</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**provisions of paragraph 3 of Schedule 1.7 (Stations);**

<b>"Station Stewardship Measure"</b>	means the measure for the calculation of station condition provided to LNER by ORR from time to time such measure at the Service Commencement Date being contained in Network Rail standard NR/ARM/M17PR;
<b>"Station Sublease"</b>	means a lease or sub lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator;
<b>"Stations Conditions Methodology"</b>	has the meaning given to it in paragraph 1.5(a) of Schedule 1.7 (Stations);
<b>"STNR Data"</b>	has the meaning given to it in Appendix 1 of Schedule 5.9 (Smart Ticketing);
<b>"STNR Project"</b>	has the meaning given to it in Appendix 1 of Schedule 5.9 (Smart Ticketing);
<b>"STNR Scope of Work"</b>	has the meaning given to it in Appendix 1 of Schedule 5.9;
<b>"STNR System"</b>	has the meaning given to it in Appendix 1 of Schedule 5.9 (Smart Ticketing);
<b>"Stored Credit Balance"</b>	means any monetary amount held by LNER which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium);
<b>"Subcontractor"</b>	has the meaning given to it in paragraph 7.3 (b) of Schedule 1.5 ( <i>Information about Passengers</i> );
<b>"Subsidiary Change Date"</b>	has the meaning given to it in Part D of the Network Code;
<b>"Suburban Station"</b>	means any station which is not a London Station and which is listed below or is closer to London than (and on the same line as) the following stations: <ul style="list-style-type: none"> <li>(a) Shoeburyness;</li> <li>(b) Southend Victoria;</li> <li>(c) Southminster;</li> <li>(d) Marks Tey (excluding Sudbury branch);</li> <li>(e) Audley End (but not including Stansted Airport);</li> <li>(f) Ashwell &amp; Morden;</li> <li>(g) Arlesey, Harlington;</li> <li>(h) Bletchley (excluding Bedford branch);</li> <li>(i) Aylesbury;</li> <li>(j) Haddenham &amp; Thame Parkway;</li> <li>(k) Twyford (including Henley branch);</li> <li>(l) Windsor &amp; Eton Riverside;</li> <li>(m) Earley;</li> <li>(n) Fleet;</li> <li>(o) Alton;</li> </ul>

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

<b>"Successor Operator"</b>	means a Train Operator succeeding or intended by the Secretary of State to succeed (and whose identity is notified to LNER by the Secretary of State) LNER in the provision or operation of all or any of the Services including, where the context so admits, LNER where it is to continue to provide or operate the Services following termination of this Agreement;
<b>"Successor Operator Timetable"</b>	has the meaning given to it in paragraph 2.1 of Schedule 14.1 ( <i>Maintenance of Franchise</i> );
<b>"Suicide Prevention Strategy"</b>	means the 'From Crisis to Care' strategy document for the period 2016-2019 (as amended or replaced from time to time) published by the British Transport Police;
<b>"Suicide Prevention Duty Holders' Group's 9 Point Plan"</b>	means the best practice plan established and published by the "cross-industry suicide prevention group", setting out nine deliverables aimed at suicide reduction (as amended or replaced from time to time);
<b>"Sustainable Development Strategy" or "SDS"</b>	means LNER's strategy for sustainable development for the Franchise as agreed or determined pursuant to paragraph 10.1(b) of Schedule 13.1 ( <i>Rail Industry Initiatives and Co-operation</i> ) including as a minimum: the matters listed in paragraph 10.1(a) of Schedule 13.1 ( <i>Rail Industry Initiatives and Co-operation</i> ), key aims, resources, risks and details of how sustainable development will be embedded in the governance of the Franchise and investment decisions (as revised from time to time);
<b>"Target Passenger Demand"</b>	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;
<b>"Target Performance Level"</b>	has the meaning given to it in paragraph 1.1 of Schedule 7.1 ( <i>Operational Performance</i> );
<b>"TDR Amendment"</b>	has the meaning given to it in paragraph 12.7 of Part 2 ( <i>Service Development</i> ) of Schedule 1.1 ( <i>Services and Service Development</i> );



<b>“Technical Support Contract”</b>	means a contract for technical support to which LNER is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;
<b>“Tendering/Reletting Process”</b>	means either of the processes described in paragraph 1.1 of Schedule 15.1 ( <i>Reletting Provisions</i> );
<b>“Third Party Data”</b>	means any information, data and materials that may be provided to the Secretary of State by any third party that relates to LNER and which the Secretary of State decides (in his absolute discretion) to add to the RPC Database;
<b>“Through Ticketing (Non-Travelcard) Agreement”</b>	means the agreement of that name referred to in paragraph 4.1(e) of Appendix 1 ( <i>List of Transport, Travel and Other Schemes</i> ) to Schedule 2.5 ( <i>Transport, Travel and Other Schemes</i> );
<b>“Ticketing and Settlement Agreement”</b>	means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, LNER and the other Train Operators named therein, as amended from time to time with the approval of the Secretary of State;
<b>“Time to 3 Minutes”<sup>78</sup></b>	<b>means the percentage of recorded station stops called at within three (3) minutes of the planned time relating to the Services as produced and/or published by Network Rail;</b>
<b>“Time to 15 Minutes”<sup>79</sup></b>	<b>means the percentage of recorded station stops called at within fifteen (15) minutes of the planned time relating to the Services as produced and/or published by Network Rail;</b>
<b>“Time to 3 Minutes Figures”<sup>80 81</sup></b>	<b>means the moving annual average percentage published by Network Rail in respect of Time to 3 Minutes, rounded to two (2) decimal places;</b>
<b>“Time to 15 Minutes Figures”<sup>82 83</sup></b>	<b>means the moving annual average percentage published by Network Rail in respect of Time to 15 Minutes, rounded to one (2) decimal places;</b>
<b>“Timetable”</b>	means the timetable which reflects the working timetable issued by Network Rail at the conclusion of its

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<sup>78</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>79</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>80</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>81</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>82</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>83</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

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 LNER 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 LNER 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 Planning Rules”**

has the meaning given to it in the Network Code;

**“Timetabled Services”<sup>84</sup>**

**means any particular Passenger Service characterised by the day of the week (including Saturday and Sunday), time of day, origin station and destination and calling pattern which is scheduled to operate (for example, the 11:16 service departing London King’s Cross to Newcastle on a Sunday etc.);**

**“Timetabling and Train Planning Compliance Investigation”**

has the meaning set out in paragraph 2.1 of Schedule 1.2 (*Operating Obligations*);

<sup>84</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<b>“TOC Minute Delay Benchmark”</b>	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Operational Performance);
<b>“TOC Minute Delay Benchmark Table”</b>	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Operational Performance);
<b>“Track Access Adjustment”</b>	means any adjustment to payments under a Track Access Agreement determined in accordance with paragraph 1 of Schedule 8.3 ( <i>Track Access Adjustments and Station Charge Adjustments</i> );
<b>“Track Access Agreement”</b>	means each Access Agreement between Network Rail and LNER which permits LNER to provide the Passenger Services on track operated by Network Rail;
<b>“Transfer Agreement”</b>	shall have the meaning given to such term in Clause 10.1;
<b>“Train Availability and Reliability Agreement” or “TARA”</b>	means the train service availability and reliability agreement to be entered into in accordance with the requirements of paragraph 2.17(a)(I) of Schedule 6.3;
<b>“Train Fleet”</b>	means: <ul style="list-style-type: none"> <li>(a) the rolling stock vehicles described in or required by Schedule 1.6 (<i>The Rolling Stock</i>); and</li> <li>(b) any other rolling stock vehicles the Secretary of State consents to in accordance with paragraph 3 of Schedule 1.6 (<i>The Rolling Stock</i>);</li> </ul>
<b>“Train Operator”</b>	means a franchisee or franchise operator, either of which operate railway passenger services pursuant to a franchise agreement or a Public Sector Operator;
<b>“Train Plan” or “TP”</b>	has the meaning given to it in paragraph 10 of Part 2 ( <i>Service Development</i> ) of Schedule 1.1 ( <i>Services and Service Development</i> );
<b>“Train Service Requirement” or “TSR”</b>	means the train service requirement more particularly described in paragraph 9 of Part 2 (Service Development) of Schedule 1.1 ( <i>Services and Service Development</i> ) as such train service requirement may subsequently be amended or replaced in accordance with Schedule 1.1 ( <i>Services and Service Development</i> );
<b>“Train Slots”</b>	has the meaning given to it in the Network Code;
<b>“Transport Act”</b>	means the Transport Act 2000;
<b>“Transport for London” or “TfL”</b>	means Transport for London as established under the Greater London Authority Act 1999;
<b>“Transport Infrastructure Skills Strategy”</b>	means the document of that name launched by the Department for Transport on 28 January 2016 (as located at the date of this Agreement at: <a href="https://www.gov.uk/government/publications/transport">https://www.gov.uk/government/publications/transport</a> );

[t-infrastructure-skills-strategy-building-sustainable-skills](#));

<b>“Travelcard Agreement”</b>	means the agreement of that name referred to in paragraph 4.1(d) of Appendix 1 ( <i>List of Transport, Travel and Other Schemes</i> ) to Schedule 2.5 ( <i>Transport, Travel and Other Schemes</i> );
<b>“Traveline”</b>	means the website available at: <a href="http://www.traveline.info">http://www.traveline.info</a> (or such other applicable address that is adopted from time to time) which is provided by the partnership of transport companies, local authorities and passenger groups which have come together to bring the information on routes and timers for door to door travel by bus, rail, tube, tram, coach and ferry around Great Britain;
<b>“TRH Score”<sup>85</sup></b>	<b>has the meaning given to it in paragraph 6.7 of Schedule 1.7 (<i>Stations</i>);</b>
<b>“Trustee”</b>	has the meaning given to it in paragraph 4.1 of Schedule 16 ( <i>Pensions</i> );
<b>“TSI”</b>	means any Technical Standard for Interoperability with which LNER is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;
<b>“Turnaround Time”</b>	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;
<b>“Turnover”</b>	means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to LNER from the sale of Fares, other revenue and the receipt of Fixed Service Payments during such period;
<b>“Underspend”</b>	has the meaning given to it in paragraph 3(a) of Part 2 ( <i>Special Terms related to the Committed Obligations</i> ) of Schedule 6.2 ( <i>Committed Obligations</i> );
<b>“Undisputed Cancellation”</b>	has the meaning given to it in paragraph 1.1 of Schedule 7.1 ( <i>Operational Performance</i> );
<b>“Undisputed Network Rail Cancellation”</b>	has the meaning given to it in paragraph 1.1 of Schedule 7.1 ( <i>Operational Performance</i> );
<b>“Undisputed Network Rail Partial Cancellation”</b>	has the meaning given to it in paragraph 1.1 of Schedule 7.1 ( <i>Operational Performance</i> );

<sup>85</sup> 25 June 2020 (Date of DOA) - Contract insertion agreed by the Secretary of State and Franchisee.

<b>"Undisputed Partial Cancellation"</b>	has the meaning given to it in paragraph 1.1 of Schedule 7.1 ( <i>Operational Performance</i> );
<b>"User"</b>	has the meaning given to it in the Station Access Conditions;
<b>"Value"</b>	means at any time the aggregate of the Projected Revenue of each Fare in a Fares Basket at that time;
<b>"Value Added Tax"</b>	means value added tax as provided for in the Value Added Tax Act 1994;
<b>"Weekday"</b>	means any day other than a Saturday, a Sunday or a Bank Holiday;
<b>"Weekly Season Ticket"</b>	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls seven (7) days after such day;
<b>"Yield Management Data"</b>	<p>means data collected by or on behalf of LNER 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:</p> <ul style="list-style-type: none"> <li>(a) the number of passengers travelling upon any particular Passenger Service;</li> <li>(b) the ticket types held by such passengers;</li> <li>(c) the prices paid by such passengers for such tickets; and</li> <li>(d) the dates and/or times between which such tickets were made available to purchase at such prices;</li> </ul>
<b>"Yield Management System"</b>	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
<b>"Zone"</b>	means a zone set out in the map in Schedule 2 of the Travelcard Agreement on the date such agreement came into effect or as amended by agreement with the Secretary of State.

**4. SERVICE COMMENCEMENT DATE**

4.1 The Secretary of State will notify DOHL and LNER in writing of the date from which the Secretary of State requires LNER to commence provision of the Services ("**Service Commencement Date**").

4.2 The Secretary of State may subsequently vary the Service Commencement Date by notice to DOHL and LNER.

## 5. TERM AND TERMINATION

5.1 This agreement shall commence on the Service Commencement Date and Terminate on the Expiry Date.

5.2 <sup>86</sup> **Without prejudice to the Secretary of State's other rights to amend or vary this Services Agreement (including the Expiry Date), the Secretary of State shall be entitled, at any time and on any number of occasions during the Service Period, to give notice to LNER and DOHL that the Services Agreement shall continue on the terms set out in the Services Agreement for any number of additional Reporting Periods (in aggregate up to 26 Reporting Periods following 25 June 2023) as the Secretary of State may stipulate in the Secretary of State's notice. Any notice given by the Secretary of State under this clause 5.2 will be served at least three (3) months prior to the date on which the Service Agreement would otherwise have expired.**

## 6. GENERAL OBLIGATIONS

6.1 DOHL undertakes to secure that LNER provides the Services subject to and in accordance with the terms and conditions of this Agreement and otherwise complies with its obligations, duties and undertakings under this Agreement (as amended from time to time in accordance with this Agreement or by agreement between LNER and the Secretary of State.

6.2 LNER shall perform its obligations under this 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.

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

6.4 LNER 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 Agreement.

6.5 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 Agreement.

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<sup>86</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

7. **NOT USED**8. **BREACH NOTICES**

8.1 <sup>87</sup>**If the Secretary of State is satisfied that LNER is contravening or is likely to contravene any provision of this Agreement the Secretary of State may serve written notice ("Breach Notice") upon LNER setting out:**

- (a) **the provision of this Agreement which the Secretary of State is satisfied that LNER is contravening or is likely to contravene;**
- (b) **the act or omissions which, in the Secretary of State's opinion, constitute or would constitute contraventions of such provision; and**
- (c) **the date and time of any meeting that the Secretary of State may require LNER to attend (which shall be at least five (5) Weekdays from the date the Breach Notice is served) to discuss the causes of the contravention and the measures to be implemented to: (i) remedy the contravention and/or (ii) prevent the occurrence of such contravention; and**

**the Secretary of State shall be entitled to request such information from LNER as the Secretary of State reasonably requires for the purposes of the operation of this clause 8. LNER shall provide the information within such time as the Secretary of State may reasonably specify for the purpose.**

8.2 <sup>88</sup>**LNER shall**

- (a) **ensure that representatives of LNER and representatives of DOHL (as may be specified by the Secretary of State) attend any meeting convened by the Secretary of State at the time and place stated in the Breach Notice (or at such other time and place as the Secretary of State and LNER may agree); and**
- (b) **at the meeting referred to in Clause 8.2(a), present such reports, plans and/or other information as the Secretary of State may specify pursuant to Clause 8.1.**

8.3 <sup>89</sup>**Following the issue of any Breach Notice or, if applicable following any meeting referred to in Clause 8.2, the Secretary of State may issue a further notice (a "Breach Remedial Notice") setting out the steps which the Secretary of State reasonably requires LNER to take in order to remedy or prevent the occurrence of any such contravention and the period within which the Secretary of State requires such steps to be taken.**

8.4 <sup>90</sup>**LNER shall comply with the terms of any Breach Remedial Notice except in circumstances where to do so would result in LNER being in breach of any legal or statutory duty. In those circumstances, LNER shall as soon as**

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<sup>87</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>88</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>89</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>90</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**reasonably possible, give notice to the Secretary of State and DOHL with details of the breach which would arise and comply with any reasonable instructions issued by the Secretary of State in those circumstances.**

- 8.5 <sup>91</sup>**The Secretary of State agrees that it is not Secretary of State’s intention that DOHL or LNER will in any circumstances be liable to the Secretary of State for any loss or damage caused by any breach of this Agreement or tortious act or omission or breach of statutory duty by DOHL or LNER in respect of the Services to the extent permitted by Law. All and any such liability as would, but for this clause, arise is expressly excluded provided that nothing in this Clause 8.5 shall restrict the ability of the Secretary of State to seek an order for specific performance of this Agreement.**

## 9. **COMPLIANCE WITH LAWS**

- 9.1 LNER shall at all times perform the Services and all its other obligations under this Agreement in accordance with all applicable Laws.

## 10. **TRANSFER OF PROPERTY RIGHTS AND LIABILITIES ON EXPIRY**

- 10.1 LNER agrees that on the termination of this Agreement it will, at the request of the Secretary of State, enter into an agreement in substantially the same form as the document set out in Schedule 15 or in such other form as the Secretary of State may prescribe (the “**Transfer Agreement**”) for the purposes of:

- (a) transferring to a Successor Operator all the property, rights and liabilities of LNER; and
- (b) determining the amounts to be paid in respect of such property, rights and liabilities so transferred to a Successor Operator under the Transfer Agreement.

- 10.2 LNER shall comply with its obligations under the Transfer Agreement.

- 10.3 The Secretary of State agrees, that if he requires LNER to enter into the Transfer Agreement, he shall impose an obligation on the Successor Operator to enter into the Transfer Agreement and comply with its obligations thereunder.

## 11. **DISPUTE RESOLUTION PROCEDURE**

### 11.1 **Disputes under this Agreement**

- (a) Wherever this Agreement provides that the Secretary of State may reasonably determine any matter, LNER may, unless this Agreement expressly provides otherwise, dispute whether a determination made by the Secretary of State is reasonable, but the Secretary of State's determination shall prevail unless and until it is agreed or found to have been unreasonable.
- (b) Where either Party is entitled, pursuant to the terms of this Agreement, to refer a dispute arising out of or in connection with this Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the Parties otherwise agree and subject to

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<sup>91</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.



any duty of the Secretary of State under section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.

- (c) Where, in the absence of an express provision in this Agreement entitling it to do so, either Party wishes to refer a dispute arising out of or in connection with this Agreement to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:
- (i) the Party seeking to refer to arbitration shall serve a written notice upon the other Party stating (i) the nature and circumstances of the dispute, (ii) the relief sought including, to the extent possible, an indication of any amount(s) claimed, and (iii) why it is considered that the dispute should be resolved by way of arbitration rather than litigation;
  - (ii) the other Party shall respond within twenty (20) Weekdays of service of the notice confirming whether or not referral of the dispute to arbitration is agreed. In the absence of any response, the referral to arbitration shall be deemed not to have been agreed;
  - (iii) in the event that the Parties agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with the Dispute Resolution Rules;
  - (iv) <sup>92</sup>**in the event that the Parties do not agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with clause 18 (*Governing Law and Jurisdiction*); and**
  - (v) nothing in this clause 11.1 shall preclude either Party from commencing, continuing or otherwise taking any step by way of litigation in pursuit of the resolution or determination of the dispute unless an agreement is reached to refer the dispute to arbitration.
- (d) The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the Parties or, in default of agreement, chosen by the Secretary of the Access Disputes Committee from a panel of persons agreed from time to time for such purposes between the Secretary of State and LNER or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any Party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

## 11.2 Disputes under other agreements

- (a) LNER 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 LNER's ability to comply with its obligations under this Agreement or on the provision of the Services and which have been submitted for resolution

<sup>92</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

either to the courts or to any other procedure for dispute resolution provided for under such agreements.

- (b) Such notification shall be made both:
- (i) at the time of such submission (and such notification shall include reasonable details of the nature of the dispute); and
  - (ii) at the time of the resolution of the dispute (whether or not subject to appeal) (and such notification shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).
- (c) LNER shall provide such further details of any dispute referred to in clause 11.1(d) (*Disputes under this Agreement*) as the Secretary of State may reasonably request from time to time.

### 11.3 Disputes under Schedule 8 (Payments) of this Agreement

The Parties shall comply with the terms of paragraph 4 of Schedule 8.1 (*Fixed Service Payments*) of this Agreement.

## 12. NOTICES

### 12.1 Notices

- (a) <sup>93</sup> <sup>94</sup> <sup>95</sup> **Any notice, notification or other communication under or in connection with the matters specified in Clause 8 or any dispute under or in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant Party at the address for service set out below, or to such other address in the United Kingdom as each Party may specify by notice in writing to the other Party:**

**Name:** The Department for Transport

**Address:** 33 Horseferry Road, London SW1P 4DR

**Email:** [REDACTED<sup>96</sup>]

**Attention:** Commercial Manager Intercity East Coast

**Name:** DfT OLR Holdings Limited

**Address:** Albany House 8<sup>th</sup> Floor, 94-98 Petty France, London, England, SW1H 9AE

<sup>93</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>94</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>95</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>96</sup> **22 September 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.**

**Email:** [REDACTED<sup>97</sup>]

**Attention:** Head of Franchise Resilience and Mobilisation Team

**Name:** London North Eastern Railway Limited

**Address:** East Coast House 25, Skeldergate, York, England, YO1 6DH

**Email:** [REDACTED<sup>98</sup>]

**Attention:** Head of Regulatory Compliance

(b) <sup>99</sup>Any other notice, notification or other communication including any Variations, derogations under or in connection with the Services Agreement shall be in writing and shall be delivered:

- (i) by email; or
- (ii) through the Secretary of State's contract management system,  
except that it shall be marked for the attention of the Commercial Manager Intercity East Coast or the Head of Regulatory Compliance.

## 12.2 Deemed Receipt

<sup>100</sup>Any such notice or other communication shall be deemed to have been received by the Party to whom it is addressed as follows:

- (a) if sent by hand or recorded delivery, when delivered; or
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three (3) Weekdays after posting unless otherwise proven; or
- (c) if sent by email, 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); or

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<sup>97</sup> 22 September 2020 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>98</sup> 22 September 2020 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>99</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>100</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (d) **if sent through the Secretary of State’s contract management system, an “actual date” confirmation in the audit log from the Secretary of State’s contract management system.**

**13. PAYMENTS FREE AND CLEAR**

13.1 Save as otherwise expressly provided under this Agreement or required by law, all sums payable under this Agreement shall be paid in full and without any set-off or any deduction or withholding including on account of any counter-claim.

**14. MISCELLANEOUS PROVISIONS**

**14.1 Waivers**

- (a) Any Party may at any time waive any obligation of any other Party owed to it under this Agreement and the obligations of the Parties hereunder shall be construed accordingly.
- (b) No waiver by any Party of any default by any other Party in the performance of such Party's obligations under this 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 this 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 this Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.
- (c) A waiver of any right or remedy under this Agreement or by law is only effective if given in writing by the Secretary of State.

**14.2 Time Limits**

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

**14.3 Partial Invalidity**

If any provision in this 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 this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

**14.4 Further Assurance**

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

**14.5 Rights of Third Parties**

- (a) A person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement except to the extent set out in this clause 14.5.
- (b) Any Successor Operator or potential Successor Operator nominated by the Secretary of State and notified to LNER and LNER for the purposes of this clause 14.5 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 clauses 14.5(c) and 14.5(d).
- (c) This Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of this Agreement, without the consent of any person nominated under clause 14.5(b).
- (d) The person nominated under clause 14.5(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 (1) year of the expiry of the Service 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 LNER which may constitute a contravention of Schedule 15 (Obligations Associated with Termination) or has been afforded a reasonable opportunity to indicate to LNER that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Secretary of State unless otherwise agreed).

**14.6 Secretary of State's Consent or Approval**

Where any provision of this 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 this Agreement.

**14.7 NOT USED****14.8 Arm's Length Dealings**

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

**14.9 Non-Discrimination**

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

- (a) of nationality, against a person who is a national of and established in an EEA state; or

- (b) that the goods to be supplied under the contract originate in another EEA state.

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

## 15. CONFIDENTIALITY

- 15.1 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 clauses 15.2 to 15.4 (inclusive), DOHL and LNER shall hold in confidence all documents, materials and other information, whether technical or commercial, arising under or pursuant to this Agreement (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 this Agreement) (all together the "**Confidential Information**") and shall not, except with the Secretary of State's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in this Agreement unless or until DOHL or LNER 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 this Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

### 15.2 Disclosure of Confidential Information

DOHL and/or LNER may disclose any data or information acquired by it under or pursuant to this Agreement or information relating to a dispute arising under this Agreement without the prior written consent of the Secretary of State if such disclosure is made in good faith:

- (a) <sup>101</sup> **to any Affiliate 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 clause 15.1;**
- (b) <sup>102</sup> **to any outside consultants or advisers engaged by it or on its behalf and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in clause 15.1**
- (c) 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 this Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;

<sup>101</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>102</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (d) <sup>103</sup> **to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in clause 15.1;**
- (e) to any of its directors, employees or officers, to the extent necessary to enable it to perform its obligations under this Agreement or to protect or enforce its rights under this Agreement; or
- (f) to the ORR, the Rail Passengers' Council or a Local Authority.

### 15.3 Service Development Information

<sup>104</sup> **Nothing in this clause 15 shall be deemed to prohibit, prevent or hinder, or render DOHL or LNER liable for, the disclosure by it to Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the 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) of this Agreement.**

### 15.4 Continuing Obligation

<sup>105</sup> **This clause 15 (and any other provisions necessary to give effect hereto) shall survive the termination of this Agreement.**

## 16. SUB CONTRACTING/ASSIGNMENT

- 16.1 Neither DOHL nor LNER may subcontract or delegate the provision of any of the Services which are to be provided under this Agreement without the prior written consent of the Secretary of State.
- 16.2 DOHL and LNER shall not without the prior written consent of the Secretary of State assign, or grant a Security Interest in or over, this Agreement or any part thereof or any benefit or interest or rights therein or thereunder

## 17 VARIATIONS IN WRITING

### 17.1 <sup>106</sup> **The terms of the Services Agreement may be varied:**

- (a) <sup>107</sup> **by the Secretary of State in relation to any aspects of the Services and any provision of the Services Agreement by notice in writing referring to this clause 17.1 and setting out the variation to the terms of the Services Agreement; and**
- (b) **otherwise by agreement in writing between the parties and signed by duly authorised representatives of the parties.**

<sup>103</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>104</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>105</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>106</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>107</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

17.2 The consent or approval of DOHL shall not be required for any variation or amendment of the rights or obligations of the Secretary of State and LNER under this Agreement.

18. **GOVERNING LAW AND JURISDICTION**

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



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

**SEAL REF No.**

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

)  
)  
)

[REDACTED<sup>108</sup>]

-----  
**Authenticated by authority of the  
Secretary of State for Transport**  
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SIGNED FOR AND ON BEHALF OF  
**DFT OLR HOLDINGS LIMITED**

)  
)  
)  
)

[REDACTED<sup>109</sup>]

**Director:**  
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**Director/Secretary:**

SIGNED FOR AND ON BEHALF OF  
**LONDON NORTH EASTERN RAILWAY**

)  
)  
)  
)

[REDACTED<sup>110</sup>]

**Director/Secretary**  
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**Director:**  
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<sup>108</sup> 27 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.

<sup>109</sup> 27 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.

<sup>110</sup> 27 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 1**

**PASSENGER SERVICE OBLIGATIONS**

Schedule 1.1:	Services and Service Development
	Part 1 –Services
	Part 2 – Service Development
Schedule 1.2:	Operating Obligations
Schedule 1.3:	<b>NOT USED</b>
Schedule 1.4:	Passenger Facing Obligations
Schedule 1.5:	Information about Passengers
Schedule 1.6:	The Rolling Stock
	Appendix 1: The Composition of the Train Fleet
Schedule 1.7:	Stations
	Appendix 1: List of Secure Stations Accreditation and Secure Car Parks Accreditation
	Appendix 2: Information about Station Improvement Measures
	Appendix 3: <b>NOT USED</b>
	Appendix 4: <b>NOT USED</b>

## Schedule 1.1

**Services and Service Development****Part 1 – Services****1. Services**

- 1.1 LNER may at all times during the Service Term provide and operate the Services specified in this Schedule 1.1. LNER is required to provide the Passenger Services that comply with the Train Service Requirement and (without prejudice to the other provisions of this Agreement) is permitted to provide other Services subject to the provisions of Part 1 of this Schedule 1.1.
- 1.2 LNER 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 Services.
- 1.3 Nothing in this Schedule 1.1 shall restrict any Affiliate of LNER from having an interest in or participating in any business or activity.
- 1.4 LNER shall not engage any Franchise Employee in any activity or business which it may not conduct or engage in under this Schedule 1.1.

**2. Station Services****2.1 The Station Services shall comprise:**

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

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

### 3. **Light Maintenance Services**

#### 3.1 Light Maintenance Services shall comprise:

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

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

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

### 4. **Ancillary Services**

LNER may carry out the following Ancillary Services

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials information or materials targeted at tourists and other leisure passengers (such as maps) or phone cards;
- (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 4(a) or which, if provided at a Station, would fall within paragraph 2 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;

- (c) <sup>111</sup>**NOT USED**
- (d) <sup>112</sup>**NOT USED**
- (e) <sup>113</sup>**NOT USED**
- (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 LNER on or before the date of this Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
- (g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
- (i) travel on any other train or light rail service;
  - (ii) travel on any aircraft;
  - (iii) travel on any shipping or ferry service;
  - (iv) travel on any bus; or
  - (v) attend any event or attraction or enter any location;
- (h) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on any such operator's trains;
- (i) the provision of information relating to railway passenger services within Great Britain to passengers through telephone, internet, mobile data services or other appropriate means;
- (j) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of LNER;
- (k) <sup>114</sup>**NOT USED**
- (l) the licensing or permitting of any other person (including an Affiliate of LNER) to carry out any activity or business, in connection with the provision of the Services, or otherwise, on any rolling stock vehicle operated by LNER, 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);

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<sup>111</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>112</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>113</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>114</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Services or complying with this Agreement, provided that it could not reasonably be carried out by or through an Affiliate of LNER;
- (n) the subleasing to any other person of the following property which is not comprised in a Station or Depot:
  - (i) East Coast House, 25 Skeldergate House, York, North Yorkshire, YO1 6DH;
- (o) the provision or operation of Charter Services, subject to the Planned Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent (2%) of the Planned Train Mileage of Passenger Services provided by LNER in such Reporting Period;
- (p) the provision of consultancy services reasonably ancillary to the provision of the other Services; and
- (q) any services or activity not falling within paragraphs 2, 3, 4(a) to 4(p) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding twenty five thousand pounds (£25,000) per annum in each Service Year , per item and in aggregate, two hundred and fifty thousand pounds (£250,000) per annum in each Service Year provided that in the second and each subsequent Service Year , these amounts will be increased by RPI.

**4.2 <sup>115</sup>Subject to obtaining the Secretary of State’s prior written consent (such consent not to be unreasonably withheld or delayed), LNER:**

- (a) may; and**
- (b) to the extent required in order to best serve the needs of passengers on railway passenger services within Great Britain from time to time, shall use all reasonable endeavours to,**

**carry out the following Ancillary Services:**

- (i) in any Reporting Period, the subleasing, hiring or licensing of the rolling stock vehicles used in the provision of the Passenger Services;**
- (ii) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of Franchise Employees;**
- (iii) 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):**

**(A) Aberdeen (Clayhills)**

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<sup>115</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (B) **Edinburgh (Craigentinny)**
- (C) **London (Bounds Green)**
- (D) **London (Ferme Park)**
- (E) **Leeds (Neville Hill)**

#### 4.3 <sup>116</sup>LNER:

- (a) **may; and**
- (b) **to the extent required in order to best serve the needs of passengers on railway passenger services within Great Britain from time to time, shall use reasonable endeavours to,**

**carry out the following Ancillary Services on an emergency basis; the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of LNER or the lending, hiring or contracting out of any employees of LNER or the provision of any other services to Network Rail or any other Train Operator.**

#### 5. **Royal Train**

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

#### 6. **Restrictions relating to Services**

- 6.1 <sup>117</sup>**In preparing its Timetable, LNER shall not without the prior written consent of the Secretary of State plan to operate Passenger Services other than those reasonably required to deliver the Train Service Requirement (including as amended by any TDR Amendment).**

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<sup>116</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>117</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- 6.2 It is acknowledged that a Passenger Service to be operated by LNER on the routes specified above in paragraph 6.1 may be operated throughout the route, on part of the route or any combination of the whole or part of any two or more of the routes specified above.
- 6.3 The Secretary of State may impose such conditions to his consent as he considers appropriate for the purpose of securing the continuity of the provision of the Services at the end of the Service Term.
- 6.4 LNER shall not during the Service 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 LNER's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

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

- 7.1 Except to the extent that the Secretary of State agrees otherwise, LNER shall not:
- (a) cease to operate;
  - (b) cease to secure the operation of; or
  - (c) propose to terminate the use of,
- any Station (or part of a Station) or any railway passenger service over a Route where such cessation or proposal might result in a Closure.
- 7.2 If any procedures are commenced under Part 4 of the Railways Act 2005 in relation to a Closure, LNER 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.

## 8. **Subcontracting any Passenger Services**

- 8.1 Subject to paragraph 8.2, LNER may not subcontract or delegate the provision of the Passenger Services without the prior written consent of the Secretary of State.
- 8.2 LNER 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) LNER 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) LNER 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) <sup>118</sup>**the Planned Train Mileage of the Passenger Services so delegated or subcontracted does not exceed five per cent (5%) of the Planned Train Mileage of LNER in any Reporting Period provided that, if as a result of the impact of COVID-19 it is not reasonably practicable to obtain the prior written consent of the Secretary of State to a higher percentage of the Planned Train Mileage being delegated or subcontracted in advance of subcontracting or delegating the provision of such Passenger Services, LNER may subcontract or delegate the provision of such Passenger Services provided that the Secretary of State receives notification of, and has not objected to, any such subcontracting or delegation; and**
  - (e) LNER continues to perform its obligations under this Schedule 1.1 in respect of any subcontracted or delegated services.
- 8.3 Any such subcontracting or delegation shall not relieve LNER from any of its obligations under this Agreement, including its obligations under this paragraph 8 and Schedule 14 (Preservation of Assets).

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<sup>118</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

## Part 2 – Service Development

### 9. Train Service Requirement - Purpose and Responsibility

- 9.1 This Part 2 of Schedule 1.1 sets out the obligations of the Franchise in relation to the acquisition of timetable development rights required for the purposes of securing a Timetable that complies with the Train Service Requirement and preparing a Train Plan consistent with the obligations of LNER and the provision of appropriate levels of passenger carrying capacity. It also provides for alteration of the Train Service Requirement by the Secretary of State. The Train Service Requirement does not in any way limit LNER's obligations pursuant to paragraph 14 of this Schedule 1.1.
- 9.2 The Train Service Requirement is the specification of the Passenger Services to be provided by LNER during the Service Term and LNER shall not without the Secretary of State's consent provide any other Passenger Services which are in addition to those specified in the Train Service Requirement.
- 9.3 The Train Service Requirement as at the date of this Agreement is comprised in the following, all in the agreed terms marked as follows:
- (a) TSR1.1 being the Train Service Requirement applicable from the Service Commencement Date until the Subsidiary Change Date in May 2019; and
  - (b) <sup>119</sup> **TSR1.1(a) being the Train Service Requirement applicable from the Subsidiary Change Date in May 2019 until the Passenger Change Date in December 2021; and**
  - (c) <sup>120</sup> **TSR2 being the Train Service Requirement applicable from the Passenger Change Date in December 2021 until the end of the Service Term.**
- 9.4 **NOT USED.**
- 9.5 For the purposes of this Schedule 1.1, the Train Service Requirement shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1.
- 9.6 The Train Service Requirement may be expressed in whole or in part at any level of generality or to any level of detail the Secretary of State considers appropriate.

### 10. Train Plan

- 10.1 Subject to paragraph 10.2, for the purposes of this Agreement, the **"Train Plan"** shall be the plan (including sub-plans) prepared by LNER for the operation of trains and train formations under the Timetable that best matches available capacity to Forecast Passenger Demand as amended from time to time during the Service Period in accordance with this Agreement.
- 10.2 For the purposes of Schedule 7 (*Operational Performance*), references to **"Train Plan"** shall be construed as the latest version of the Train Plan which includes any

<sup>119</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>120</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

amendments thereto pursuant to paragraphs 3, 4 and/or 5 of Schedule 1.2 (*Operating Obligations*):

- (a) where such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement;
  - (b) where such amendments proposed by LNER have prior approval from the Secretary of State; or
  - (c) where such amendments are requested by the Secretary of State.
- 10.3 LNER shall submit to the Secretary of State a Train Plan in respect of each Timetable in accordance with this Schedule 1.1.
- 10.4 In preparing any Train Plan, LNER shall do so by reference to the Timetable that it envisages operating in order to comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1.
- 10.5 Each Train Plan shall set out for each railway passenger service in the Timetable to which it relates:
- (a) its start point and departure time;
  - (b) its terminating point and arrival time;
  - (c) the number and class of rolling stock vehicles allocated to each such railway passenger service;
  - (d) the Passenger Carrying Capacity that each such railway passenger service, as formed, is to have; and
  - (e) its Forecast Passenger Demand and, where this has been requested by the Secretary of State and is capable of calculation, Actual Passenger Demand.
- 10.6 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.
- 10.7 From the Service Commencement Date, until the next Passenger Change Date LNER shall adopt as the Train Plan the document in the agreed terms marked **TP**. It is acknowledged that the Train Plan in the agreed terms marked **TP** shall be replaced from time to time during the Service Period in accordance with the provisions of paragraph 14.4.
- 11. Consultation on Significant Alterations to the Timetable**
- 11.1 Notwithstanding any consultation the Secretary of State might separately undertake in respect of any amended or new draft Train Service Requirement issued pursuant to paragraph 16, LNER shall where:
- (a) it intends that any future Timetable will contain Significant Alterations compared to the Timetable then in force; and
  - (b) such Significant Alterations are likely to have, in the reasonable opinion of LNER, a materially adverse effect on:

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

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

11.2 The first Timetable to which these provisions apply is the Timetable with effect from the Passenger Change Date with effect from the Passenger Change Date in May 2019.

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

- (a) as soon as reasonably practicable provide to the Secretary of State and all Stakeholders a comprehensive summary of the proposed changes from the Timetable then in force specifying the proposed Timetable changes, the reasons for them and the likely impact on passengers;
- (b) carry out the consultation in relation to such proposed changes using a reasonable range of communication channels (taking into account the scale of the proposed changes) and in a manner that can be reasonably expected to encourage responses from a broad range of affected Stakeholders;
- (c) give consultees such time as is reasonable under all the circumstances to respond (it being agreed that it shall normally be reasonable to give at least twelve (12) weeks to respond in relation to major proposed Timetable changes);
- (d) take due account of the responses of consultees;
- (e) within six (6) weeks of the close of the consultation (or such longer period as the Secretary of State may agree, such agreement not to be unreasonably withheld or delayed) publish a report containing a summary of the main issues raised by respondents (including quantitative analysis of the responses received), the reasoned response of LNER to them and notification of how LNER will now seek to exercise relevant Timetable Development Rights in the context of its obligation to take due account of the results of the consultation;
- (f) ensure that the published report is promptly provided to the Secretary of State and all respondents who submitted written responses to the consultation and published in a widely accessible form; and
- (g) ensure that the relevant Timetable Development Rights to implement the proposed Timetable change are not exercised prior to the publication of the report and exercise such Timetable Development Rights in the manner indicated in the report.

## 12. Timetable Development Rights

12.1 LNER shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and otherwise comply with its obligations under this Agreement (including under paragraph 14 of this Schedule 1.1).

12.2 Prior to exercising any Timetable Development Rights to secure a Timetable that complies with the Train Service Requirement LNER shall:

- (a) propose to the Secretary of State amendments to the then current Train Service Requirement for the purposes of optimising the delivery of railway passenger services relative to Target Passenger Demand (or for any other purpose as may be specified by LNER in such proposal). Any such proposal shall include:
  - (i) LNER's reasons why it believes that the proposed amendment to the railway passenger services is required;
  - (ii) LNER's informed opinion (with supporting reasons ) as to the changes to resources (and, if applicable, adjustments to Fixed Service Payments and/or the Benchmarks) which would be required in consequence of the proposed amendments;
  - (iii) any implications for Timetable Development Rights (including whether any additional timetable development rights would be required) as a consequence of the proposed amendments;
  - (iv) a draft of the Train Plan that it considers that the proposed amendment would require; and
  - (v) its informed opinion on the process required to obtain a Timetable compliant with such amended Train Service Requirement.

The Secretary of State shall give due consideration to any such proposal submitted by the LNER pursuant to this paragraph 12.2(a) but shall be under no obligation to make any change to the Train Service Requirement. If the Secretary of State agrees to the proposed amendment he shall issue an amended Train Service Requirement prior to the commencement of the timetable development process and such amended Train Service Requirement shall replace the then current Train Service Requirement; and

- (b) make an informed estimate of Forecast Passenger Demand and in doing so shall make reasonable assumptions based on available evidence (making proper use of recognised railway industry systems and forecasting tools as these may develop over the Service Period) with the estimate being in such format and to such level of disaggregation as the Secretary of State may reasonably require.

12.3 Subject to the remaining provisions of this paragraph 12, LNER shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1 in accordance with its obligations under paragraph 17 of this Schedule 1.1.

12.4 Where LNER 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 LNER shall (without prejudice to its obligation to consult pursuant to paragraph 11) act reasonably with the intention of obtaining a Timetable which enables:

- (a) paragraph 14.1(b); and
- (b) paragraph 14.1(c),

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

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

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

12.6 If the Secretary of State does not consider that LNER has taken sufficient steps under paragraph 12.5, he may require LNER to exercise its rights 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.

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

- (a) LNER's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that LNER has exercised and, unless otherwise agreed by the Secretary of State, is continuing to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.1 above;
- (b) Network Rail exercising its flexing rights from time to time under the 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.

## 12.8 TDR Amendments

- (a) If and to the extent that LNER is not able to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement as a result of it not being able to obtain the Timetable Development Rights that it requires for that purpose, the Secretary of State shall (subject to paragraphs 12.8(b) and 12.8(c) below) issue to LNER amendments to the Train Service Requirement ("**TDR Amendment**"). The amendments to the Train Service Requirement contained in the TDR Amendment shall be those that the Secretary of State considers necessary for the purposes of enabling LNER to secure a Timetable that is compliant with the Train Service Requirement by exercise of the Timetable Development Rights that LNER does have.
- (b) The Secretary of State shall have an unfettered discretion as to whether or not to issue a TDR Amendment in circumstances where LNER:
- (i) has failed to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.1; and
  - (ii) is not relieved by paragraph 12.7 above from liability for such failure to secure a Timetable that enables LNER to operate railway passenger services that comply with the Train Service Requirement.
- (c) LNER shall not be relieved from its obligations to obtain a Timetable that enables LNER to operate the Train Service Requirement by the issue of any TDR Amendment where the Secretary of State reasonably considers that such failure to secure a Timetable that enables LNER to operate the Train Service Requirement is partly due to the default of LNER in not properly complying with its obligations under this Agreement in relation to securing timetable development rights. Accordingly any TDR Amendment may be drafted so that it does not relieve LNER of the obligation to comply with the Train Service Requirement to the extent that the Secretary of State determines that the failure is due to such default of LNER and LNER may therefore be in contravention of this Agreement.

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

**12.10 <sup>121</sup> Any TDR Amendment issued pursuant to paragraph 12.8 shall:**

- (a) **unless otherwise required by the Secretary of State, cease to have effect on the date (if any) on which the first Timetable comes into effect after LNER has obtained the Timetable Development Rights to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without any such TDR Amendment; and**

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<sup>121</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.



- (b) amount to a variation of the Services Agreement under clause 17 (Variations in Writing) but if such TDR Amendment has been issued in consequence of Network Rail exercising the rights referred to in paragraphs 12.7(b) or 12.7(c) this shall not constitute a variation of the Services Agreement under clause 17 (Variations in Writing).

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

- (a) the Train Service Requirement without such TDR Amendment shall thereafter apply; and
- (b) the cessation of such TDR Amendment shall amount to a variation of the Services Agreement under clause 17 (Variations in Writing).

**12.12 <sup>122</sup>Development of Post-Franchise Timetables**

For the avoidance of doubt, LNER shall comply with its obligations in paragraph 2 of Schedule 14.1 (*Maintenance as a Going Concern*) with respect to securing suitable rights related to timetables that will be operated during any period falling wholly or partly after the expiry of the Service Term.

**12.11 [DELETED<sup>123</sup>].**

**13. Certification and Notification by LNER of Exercising Timetable Development Rights**

13.1 Before exercising any Timetable Development Right to bid for Train Slots, LNER shall provide a certificate addressed to the Secretary of State and signed by a statutory director of LNER confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 12.3.

13.2 If requested by the Secretary of State, LNER agrees to demonstrate to the reasonable satisfaction of the Secretary of State that LNER's certificate referred to in paragraph 13.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 12.3.

13.3 LNER 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 LNER, have a material impact on the ability of LNER to deliver the Train Service Requirement or meet the requirements of paragraph 14 of this Schedule 1.1 through the Timetable and shall, if required to do so by the Secretary of State, supply copies of any related correspondence to the Secretary of State; and
- (b) update any notification under this paragraph 13.3 and/or certification under paragraph 13.1 as soon as reasonably practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development

<sup>122</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>123</sup> 27 May 2021 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.



Rights following Network Rail's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

#### 14. **Planning to meet Target Passenger Demand**

##### 14.1 **Capacity and Timetable Planning**

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

##### 14.2 **Allocation of rolling stock where LNER unable to meet the capacity requirements**

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

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

##### 14.3 **Preparation of Timetable and Train Plan**

- (a) Subject to paragraph 14.3(b), LNER shall in preparing its Timetable and its Train Plan take full and proper account of its calculation of Forecast Passenger Demand and use all reasonable endeavours to ensure that the

Train Fleet is deployed in an optimal manner for the purposes of complying with its obligations under paragraphs 14.1 and 14.2 above.

- (b) LNER shall in preparing its Timetable and Train Plan deploy the entire Train Fleet (excluding reasonable planning requirements for the allocation of Hot Standbys or other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reason agreed with the Secretary of State (such agreement not to be unreasonably withheld or delayed)) in delivering the Passenger Services:
  - (i) during each Peak; and
  - (ii) at such times outside the Peak where such deployment of the entire Train Fleet is reasonably required to meet LNER's obligations pursuant to paragraphs 14.1 and 14.2 above.

#### 14.4 Finalising the Train Plan

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

#### 15. Capacity Mitigation Proposal

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

15.2 The Capacity Mitigation Proposal may, without limitation, include measures to be implemented by LNER to:

- (a) remedy the circumstances leading to LNER being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1; and/or
- (b) minimise, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
- (c) ensure, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and

- (d) minimise, so far as is possible, the extent to which passengers are required to stand:
- (i) on boarding any Off-Peak Passenger Service; and
  - (ii) twenty (20) minutes after boarding (or such other time period as the Secretary of State may stipulate) on any Peak Passenger Service,
- in all such cases (unless the Secretary of State specifies to the contrary) taking into account both Actual Passenger Demand and Forecast Passenger Demand.
- 15.3 Where the Secretary of State reasonably believes that future circumstances may lead to LNER being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1 at any time within the next four (4) years (including after the end of the Service Term) the Secretary of State shall have the right to serve notice on LNER specifying those future circumstances and the date that LNER should assume that they will arise from and requiring it to produce a Capacity Mitigation Proposal to remedy or mitigate such future circumstances on the basis of assumptions provided by the Secretary of State.
- 15.4 The Capacity Mitigation Proposal shall (unless the Secretary of State specifies to the contrary) include LNER'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 LNER to present options to address relevant issues through:
- (a) alterations to the Train Service Requirement;
  - (b) modification of rolling stock or the acquisition of additional or replacement rolling stock;
  - (c) alterations to Fares; and/or
  - (d) alterations or enhancements to any track, signalling, station, depot or other relevant railway infrastructure.
- 15.5 The Capacity Mitigation Proposal shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Fixed Service Payments;
  - (b) the implications (if any) for the Benchmarks and/or the Annual Benchmarks; and
  - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- 15.6 LNER shall meet with the Secretary of State to discuss the Capacity Mitigation Proposal and provide such further information or analysis and further iterations of the Capacity Mitigation Proposal as the Secretary of State shall reasonably require. If the Secretary of State decides that he wishes to implement any Capacity Mitigation Proposal (or any part thereof) this shall be by way of a Variation.

16. **New or amended Train Service Requirement by the Secretary of State and LNER Informed Opinion**
- 16.1 As and when required, whether for the purposes of considering alterations to the Train Service Requirement or otherwise, LNER shall provide to the Secretary of State:
- (a) its informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require in order to assist the Secretary of State's decision making on future train service requirements, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding;
  - (b) its informed opinion as to any changes to the current Train Service Requirement which:
    - (i) should be made in order to deliver an optimal range of railway passenger services relative to Target Passenger Demand; and
    - (ii) could be implemented and operated without additional resources or an adjustment to the Fixed Service Payments;
  - (c) its informed opinion as to any changes to the current Train Service Requirement which:
    - (i) would deliver an optimal range of railway passenger services relative to Target Passenger Demand; and
    - (ii) could only be implemented and operated with additional resources and/or an adjustment to the Fixed Service 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 LNER considers that each set of proposed changes would require.
- 16.2 Prior to issuing any amended or new Train Service Requirement the Secretary of State shall provide to LNER his draft of any proposed amended or new Train Service Requirement stating the date upon which he proposes that such amended or new Train Service Requirement should take effect along with the Secretary of State's views as to the changes (if any) that he proposes to make to the Benchmarks and/or the Annual Benchmarks.
- 16.3 On receipt of any such draft of a proposed amended or new Train Service Requirement LNER shall provide to the Secretary of State (if so requested) its informed opinion:
- (a) with supporting reasons as to the impact of the proposed amended or new Train Service Requirement on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 14.1 of this Schedule;

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

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

- 16.4 There may be iterations of drafts of the proposed amended or new Train Service Requirement and LNER shall to the extent required by the Secretary of State have the obligations described in this paragraph 16 in respect of all such iterations.
- 16.5 Processes contained in this paragraph 16 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2 of this Schedule 1.1.
- 16.6 The Secretary of State may, in accordance with any stipulation made under paragraph 17.2, issue to LNER any amended or new Train Service Requirement that he requires LNER to operate and notice of the amendments (if any) to the Benchmarks and/or Annual Benchmarks. Such amended or new Train Service Requirement will be issued prior to the commencement of the timetable development process of Network Rail for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Train Service Requirement.
- 16.7 In the absence of the Secretary of State issuing any amended or new Train Service Requirement the existing Train Service Requirement will remain in full force and effect.
- 16.8 At the same time as the Secretary of State provides LNER with a draft of any proposed amended or new Train Service Requirement pursuant to paragraph 16.1, the Secretary of State shall also provide to LNER his opinion of any amendments (if any) that are required to the Benchmarks and/or the Annual Benchmarks.
- 16.9 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purposes of considering the effects of his proposed amended or new Train Service Requirement.
- 17. Procedural Arrangements and Timescales**
- 17.1 LNER 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, LNER, Network Rail and others.

- 17.2 LNER 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 LNER for these purposes (which shall be consistent with any relevant standard railway industry processes for the development of the Timetable and the resultant Train Plan) and that the Secretary of State may amend any such stipulation from time to time.
- 17.3 The Secretary of State agrees to consult LNER as far as reasonably practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 17.2.
- 17.4 Any stipulation by the Secretary of State pursuant to paragraph 17.2:
- (a) shall be at the reasonable discretion of the Secretary of State;
  - (b) <sup>124</sup> **may contain procedural arrangements and timescales to be followed by LNER in relation to other changes to the Services (pursuant to clause 17 (Variations in Writing)) in conjunction with the Train Service Requirement; and**
  - (c) may provide for iterations of drafts of any amended or new Train Service Requirement, Train Plan or Timetable.
- 17.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2 shall have contractual effect between LNER and the Secretary of State in accordance with the terms of such stipulation.

## 18. **Obligations in relation to other Train Operators**

- 18.1 Subject to the terms of the Licences and any applicable Law, LNER 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 LNER; and
  - (c) a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated, first trains or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).

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<sup>124</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**19. Provisions relating to Access Agreements and Property Leases**

- 19.1 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under this 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, the Secretary of State may require LNER:
- (a) to exercise or refrain from exercising any or all of its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Secretary of State may specify; and/or
  - (b) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.
- 19.2 Except to the extent that the Secretary of State otherwise indicates from time to time, LNER shall notify the Secretary of State of its intention to enter into or amend any Access Agreement:
- (a) where the approval of the ORR is required under the Act, not less than ten (10) Weekdays before the submission to the ORR; and
  - (b) where no such approval is required, not less than ten (10) Weekdays prior to entering into such amendment or Access Agreement.
- 19.3 LNER shall comply with its obligations under any Access Agreement or any Property Lease to which it is a party from time to time:
- (a) to notify or consult with the Secretary of State on any matter or proposal relating to that Access Agreement or Property Lease; and
  - (b) which are contingent on a particular course of action being taken by the Secretary of State or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of the Secretary of State.
- 19.4 If and to the extent that:
- (a) the Secretary of State exercises his rights pursuant to paragraph 19.1;
  - (b) LNER's compliance with the Secretary of State's requirements pursuant to paragraph 19.1 would lead to the unavoidable consequence of LNER contravening any other terms of this Agreement or the occurrence of an Event of Default; and
  - (c) LNER duly complies with such requirements,
- no such contravention of this Agreement or Event of Default shall have occurred.

**20. The Timetable and Network Rail's Working Timetable**

- 20.1 Any specification of Passenger Services in the Train Service Requirement shall (unless the Secretary of State states to the contrary) be regarded as relating to how those Passenger Services are to be provided for in the National Rail Timetable that Network Rail publishes for passengers.
- 20.2 LNER shall ensure, for each period between two (2) consecutive Passenger Change Dates during the Service Term that the Timetable for such period is, in its

reasonable opinion, not materially different from the relevant working timetable issued by Network Rail.



## Schedule 1.2

**Operating Obligations****1. Daily Operating Obligations**

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

**2. Timetabling and Train Planning Compliance Investigation**

2.1 If the Secretary of State considers that LNER may have breached any of its obligations under any of paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (*Services and Service Development*) and/or paragraph 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 this Agreement or otherwise) have the right, by serving notice on LNER, to instigate an investigation of LNER's compliance with its obligations under paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (*Services and Service Development*) and paragraph 1 of this Schedule 1.2, including any differences between the Forecast Passenger Demand and the Actual Passenger Demand and any unreasonable assumptions about the timetables likely to be operated by other Train Operators made by LNER ("**Timetabling and Train Planning Compliance Investigation**").

2.2 Following the service of such a notice LNER shall:

- (a) provide such information as the Secretary of State may reasonably require for the purposes of determining if LNER has complied with its obligations under paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (*Services and Service Development*) and/or paragraph 1 of this Schedule 1.2 including evidence of:
  - (i) the steps taken by LNER 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) the extent to which LNER has operated on each day of the relevant Reporting Period each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service;
  - (iii) Forecast Passenger Demand and the way that it was calculated including all evidence taken into account and assumptions used (including any divergences from then existing industry modelling standards and the reasons for such divergences); and

- (iv) any assumptions about the timetables likely to be operated by other Train Operators made by LNER; and
  - (v) the alternative solutions considered by LNER 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 LNER to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of Schedule 1.1 (*Services and Service Development*) and fully co-operate with and provide all information needed to facilitate such audit.

### 2.3 **Contravention of this Agreement**

- (a) LNER shall be in contravention of this Agreement if following the completion by the Secretary of State of the Timetabling and Train Planning Compliance Investigation he concludes that LNER breached any of its obligations under any of paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (*Services and Service Development*) and/or paragraph 1 of this Schedule 1.2 including where LNER:
- (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 LNER.
- (b) Where the Secretary of State does conclude pursuant to paragraph 2.3(a) above that LNER has breached any relevant obligation LNER 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 2.2(b)).
- (c) The Secretary of State shall notify LNER if he concludes pursuant to paragraph 2.3(a) that LNER is in contravention of this 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 2 of Schedule 10.1 (*Procedure for remedying a Contravention of this Agreement*).

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

- 3.1 LNER 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 LNER, materially (having regard to both duration and scale) prejudice LNER's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan LNER shall explain in such notification the way in which, in its reasonable opinion, such omission or rescheduling may materially prejudice LNER's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan.
- 3.3 LNER 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 LNER 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 LNER, materially prejudice LNER's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan, LNER 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 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 LNER**

##### 4.1 <sup>125</sup>**LNER agrees, subject to paragraphs 4A and 4AA, 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.

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<sup>125</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

4.2 LNER shall submit to the Secretary of State an amended Train Plan in respect of each Timetable change proposal.

4A. <sup>126</sup>**Special Events**

**LNER shall use all reasonable endeavours to operate adequate railway passenger services to or from any special events which are not already provided for in the Plan of the Day to meet the passenger demand that is reasonably likely to arise from such special events and to ensure that the railway passenger services provided have an appropriate amount of passenger carrying capacity. LNER shall in meeting its obligations pursuant to this paragraph 4.3:**

- (a) consider amending the Plan of the Day through the omission, addition or rescheduling of Passenger Services; and**
- (b) seek to optimise the effective delivery of the Passenger Services as a whole with the provision of appropriate capacity in the context of the additional demand consequent upon a relevant special event.**

**4AA <sup>127</sup>COVID-19 Obligations**

**4AA.1 Subject to paragraph 4AA.5, if, in the opinion of LNER (acting reasonably), it would not be reasonably practicable to obtain the Secretary of State's consent prior to proposing any of the items referred to in paragraph 4.1(a), 4.1(b) or 4.1(c) to Network Rail, LNER shall be entitled to propose such items to Network Rail without the Secretary of State's prior consent, provided that LNER shall inform the Secretary of State of such proposals as soon as is reasonably practicable.**

**4AA.2 Subject to paragraph 4AA.5, LNER shall ensure that any proposals to Network Rail submitted pursuant to paragraphs 4.1 or 4AA.1:**

- (a) take full and proper account of the likely passenger demand (including a reasonable assessment of key workers) considering any known or anticipated impacts of COVID-19 (including without limitation any guidance published by Public Health England, and any Legislation, direction or instruction issued by any relevant local, governmental or other competent authority in the United Kingdom from time to time);**
- (b) utilise an appropriate number of Franchise Employees to support the likely passenger demand (as determined having taken into consideration the matters referred to in paragraph 4AA.2(a)); and**
- (c) ensure that the Train Fleet is deployed in an optimal manner taking account of all relevant circumstances, including the latest available official guidance relating to social distancing.**

**4AA.3 LNER shall use all reasonable endeavours to co-operate with other Train Operators in respect of LNER's proposals to Network Rail pursuant to**

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<sup>126</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>127</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**paragraphs 4.1 and 4AA.1 or any emergency timetables proposed by other Train Operators to ensure that a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated or first trains or last trains are involved, taking account of the likely fluctuations in passenger demand as a result of COVID-19 and the time needed to make any such Connection).**

**4AA.4 LNER shall use reasonable endeavours to take into account the requirements of operators of rail freight services in respect of LNER's proposals to Network Rail pursuant to paragraphs 4.1 and 4AA.1.**

**4AA.5 LNER acknowledges and agrees that the Secretary of State may, at any time, direct that all or any part of paragraphs 4AA.1 and/or 4AA.2 shall cease to apply. Any such direction by the Secretary of State shall have effect from such date as may be reasonably specified by the Secretary of State and, in such circumstances, the relevant parts of paragraph 4AA.1 and/or paragraph 4AA.2 and, where applicable, any references to the provisions of those provisions shall be deemed to be deleted.**

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

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

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

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

**6. Obligations of LNER 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, LNER 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 LNER'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 LNER 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, LNER 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 LNER having sufficient notice of such disruption to enable it to provide such publicity;
  - (d) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and
  - (e) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

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

- 7.1 Any obligation in this Schedule 1.2 on the part of LNER to use **"all reasonable endeavours"** shall (with the exception of paragraph 5 of this Schedule 1.2) include an obligation to:
- (a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in accordance with the Train Plan in ordinary operating conditions;
  - (b) take reasonable measures to avoid and/or reduce the impact of any disruption to the 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 LNER (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 LNER 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 LNER;
  - (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) <sup>128</sup> **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;**
  - (g) **failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction); and**
  - (h) <sup>129</sup> **the impact, and emerging projections relating to the likely or potential impact, from time to time, of COVID-19 on LNER's ability to provide the Passenger Services and/or the level of passenger demand or reasonably expected passenger demand for the Passenger Services.**
- 7.3 For the purpose of taking measures in respect of any disruption to the 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 Services;
    - (ii) similar services both by LNER and/or its predecessors; and
    - (iii) other services of a type similar to the Services; and
  - (b) to potential changes in circumstances which may affect those levels.

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<sup>128</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>129</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.



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

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

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

- (d) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 7.4(c)(i) and 7.4(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
- (e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the Parties;
- (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail in the Performance Strategy Plan and derived delivery plans and using reasonable endeavours to specify and develop such delivery plans;
- (g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains (and data collected from train systems), other facilities and/or information;
- (h) co-operating with Network Rail in other delay management initiatives and ongoing quarterly reviews of the Performance Strategy Plan;
- (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
- (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
- (k) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing LNER's rights under such Track Access Agreement.



- 7.5 LNER undertakes to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules.
- 7.6 To the extent not already provided for in this Agreement, LNER 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, LNER shall provide to the Secretary of State evidence of the steps taken by LNER in order to comply with its obligations under this paragraph 7.

## Schedule 1.3

<sup>130</sup>Ticket Collection and Ticketing

- 1. Revenue collection and protection against ticketless travel**
- 1.1 LNER shall, by no later than 13 November 2021, provide to the Secretary of State:**
  - (a) a report which measures the level of ticketless travel and fare evasion on the Passenger Services. The report shall include an analysis of its findings and shall detail:**
    - (i) where incidences of ticketless travel and fare evasion are greatest on the Routes;**
    - (ii) which stations (if any) have no or minimal revenue-protection measures; and**
    - (iii) LNER's opinion as to whether there is any correlation between such ticketless travel and fare evasion and high crime areas both within and outside the railway environment; and**
  - (b) a plan to reduce ticketless travel and fare evasion in a cost-effective manner. The plan shall include measurable targets for reducing incidences of ticketless travel and fare evasion for the remainder of the Service Term. The plan shall also contain the following elements:**
    - (i) the estimated costs and benefits of measures requiring material capital expenditure to reduce the level of ticketless travel and fare evasion in the thirteen (13) Reporting Periods following the date of the plan; and**
    - (ii) any operational initiatives not requiring material capital expenditure that might be undertaken to:**
      - (A) reduce the incidences of ticketless travel and fare evasion;**
      - (B) improve LNER's awareness of the incidences of ticketless travel and fare evasion; and**
      - (C) improve LNER's undertaking of the ways in which the incidences of ticketless travel and fare evasion can be reduced.**
- 1.2 LNER shall:**
  - (a) implement the plan to be provided in accordance with paragraph 1.1(b) and report in writing to the Secretary of State every three (3)**

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<sup>130</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**Reporting Periods on such implementation and any progress against such plan's targets;**

- (b) review such plan annually and make such revisions as are appropriate to further reduce in a cost-effective manner, incidences of ticketless travel and fare evasion over the remainder of the Service Term; and**
- (c) implement such revised plan and report to the Secretary of State in accordance with paragraph 1.2(a) as if such revised plan was referred to therein.**

## Schedule 1.4

**Passenger Facing Obligations****1. Publishing the Timetable****1.1 The First Timetable**

LNER shall publish on the Service Commencement Date:

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

**1.2 <sup>ii iii</sup> Timetable Revisions and Alterations**

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

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

**1.3 <sup>iv v</sup> In addition, LNER shall:**

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

- (b) **provide posters to the operators of Franchisee Access Stations, advising passengers of all Significant Alterations between any two (2) Passenger Change Dates to the Passenger Services which call at such Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limit provided for in paragraph 1.3(a).**

#### 1.4 **Other Train Operators' Timetables**

LNER 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 LNER the relevant information and materials in sufficient time for LNER 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 LNER.

#### 1.5 **National Rail Timetable and National Rail Enquiry Scheme**

LNER 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 LNER shall use all reasonable endeavours to procure that information in relation to:

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

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

## 2. **Communicating Late Timetable Changes**

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

2.2 Such information shall be provided by:

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

- (c) updating LNER's website.
- 2.3 LNER 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 LNER is unable to provide the information specified in paragraph 2.1 because the relevant revisions are made on an emergency basis, LNER 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 LNER 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 LNER as far in advance as is reasonably practicable.

## **2A. <sup>131</sup>Communicating Emergency Timetables**

### **2A.1 Subject to paragraph 2A.3, LNER shall publish:**

- (a) **any amendments to the Timetable made pursuant to paragraphs 3, 4, 5 or 6 of Schedule 1.2 as soon as reasonably practicable:**
- (i) **at each Station, by displaying the relevant information on information displays;**
  - (ii) **at each Franchisee Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station for the display of such relevant information on information displays;**
  - (iii) **on LNER's website;**
  - (iv) **via LNER's social media accounts (through which LNER shall in any event publish any such amendments to the Timetable no later than two (2) hours following agreement of such amendments); and**
  - (v) **via any other direct means of communication with passengers available to LNER, including but not limited to email and/or text messaging services; and**
- (b) **as far and as soon as is reasonably practicable, any emergency timetables of other Train Operator's 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:**

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<sup>131</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (i) **at each Station, by displaying the relevant information on information displays; and**
- (ii) **on LNER's website.**

**2A.2 To the extent that this paragraph 2A requires LNER to undertake activities that it would otherwise be obliged to perform pursuant to paragraphs 1.2, 1.3, 1.4, 1.6 and 2, and there are any discrepancies between the timescales or other requirements relating to such activities between this paragraph 2A and paragraphs 1.2, 1.3, 1.4, 1.6 or 2, the relevant requirements of this paragraph 2A shall take precedence over those in paragraph 1.2, 1.3, 1.4, 1.6 or 2 (as applicable).**

**2A.3 The Secretary of State may, at any time, direct that this paragraph 2A shall cease to apply and/or shall no longer take precedence over the timescales and/or the other requirements set out in paragraphs 1.2, 1.3, 1.4, 1.6 or 2 above. Any such direction shall have effect from such date as may be reasonably specified by the Secretary of State and, in such circumstances, the entirety of this paragraph 2A and any references to the provisions of this paragraph 2A shall be deemed to be deleted.**

### **3. Fares Selling Restrictions**

#### **3.1 *Restrictions on Sales***

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

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

#### **3.2 LNER 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 LNER 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 LNER sets a limit on the number of Protected Fares or Commuter Fares that may be used on any particular train, such limit shall be the greater of:

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

3.4 LNER shall not sell or offer to sell:

- (a) any Fare in respect of which the:
  - (i) Prices are regulated under Schedule 5.4 (*Regulation of Fares Basket Values*) and Schedule 5.5 (*Regulation of Individual Fares*), at prices that are greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 and Schedule 5.5; and
  - (ii) <sup>132</sup>**Child Prices are regulated under paragraph 1.3 of Schedule 5.5 (Regulation of Individual Fares) at prices that are no greater than fifty per cent (50%) of the Price of the relevant Fare;**
- (b) any Fare or Discount Card which has a validity of thirteen (13) or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.

### 3.5 **Agents of LNER**

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

- (a) for Fares in respect of which the:
  - (i) Prices are regulated under Schedule 5.4 (*Regulation of Fares Basket Values*) and Schedule 5.5 (*Regulation of Individual Fares*), sell or offer to sell at prices no greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 and Schedule 5.5; and
  - (ii) <sup>133</sup>**Not Used.**
- (b) for Fares in respect of which the Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (*LNER's Obligation to Create Fares*), sell or offer to sell such Fares to any person under the age of 16 for an amount

<sup>132</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>133</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.



which is no greater than fifty per cent (50%) of the Price of the relevant Fare; and

- (c) for all Fares:
- (i) do not sell or offer to sell any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld); and
  - (ii) comply with the provisions of paragraph 5 of Schedule 15.2 (*Last Twelve (12) or Thirteen (13) Months of Service Period and Other Conduct of Business Provisions*) to the extent they apply to the selling of Fares by LNER.

### 3.6 **Additional Ancillary Services**

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

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

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

LNER 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**

LNER shall:

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

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

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

LNER shall publicise its Passenger's Charter by:

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

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

4.4 LNER 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 LNER by such other Train Operator.

4.5 LNER 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***

LNER 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 LNER is legally obliged to do so);
- (b) use all reasonable endeavours to make passengers aware of their right to claim compensation pursuant to the Passenger's Charter including by:
  - (i) displaying the relevant information on trains and at Stations;
  - (ii) making appropriate announcements to passengers on trains and at Stations when the circumstances giving rise to that right occur;
  - (iii) making compensation claim forms readily available to passengers at Stations and on LNER's website; and
  - (iv) any other reasonable means to reflect future advancements in technology proposed in writing either by LNER or the Secretary of State and agreed by both Parties (acting reasonably); and
- (c) use all reasonable endeavours:

- (i) to comply with any other obligations, statements and representations; and
  - (ii) to meet any other standards or targets of performance,
- as are comprised in its Passenger's Charter from time to time.

## 5. **End to End Journeys and Cycles**

LNER 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). LNER shall permit the carriage of folding cycles on all Passenger Services and non-folding cycles wherever reasonably practicable.

## 6. **Statutory Notices**

If requested by the Secretary of State, LNER 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).

## 7. **Train and Station Cleaning**

LNER 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 LNER 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 LNER 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 Service Term.

## 8. **Publication of Performance Data**

- 8.1 LNER shall in accordance with paragraph 8.2 of this Schedule 1.4 (and in such format as the Secretary of State may reasonably require) publish on LNER's web site in relation to each Reporting Period during the Service Term the performance of LNER by reference to:
  - (a) Cancellations Figures;
  - (b) **NOT USED;**
  - (c) **NOT USED;**

- (d) **NOT USED;**
- (e) Short Formation Figures;
- (f) <sup>134</sup>**Time to 3 Minutes Figures;**
- (g) <sup>135</sup>**Time to 15 Minutes Figures;**
- (h) <sup>136</sup>**All Cancellations Figures; and**
- (i) <sup>137</sup>**On Time Figures.**

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

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

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

and the percentage that each such category of delayed Passenger Services represents of the total number of Passenger Services scheduled to be provided in the Plan of the Day during such Reporting Period; and
  - (ii) the number of Passenger Services formed with fewer passenger vehicles than specified in the Train Plan during such Reporting Period and the percentage that this represents of all Passenger Services scheduled in the Train Plan to be operated in that Reporting Period.

8.3 As part of each Customer Report to be provided (excluding the first (1<sup>st</sup>) Customer Report) by LNER pursuant to paragraph 10.1 of Schedule 7.2 (*Customer*

<sup>134</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>135</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>136</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>137</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

*Experience and Engagement*), LNER shall publish (in such format as the Secretary of State may reasonably require):

- (a) the mean average of each of the Cancellations Figures and the Short Formation Figures for the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report (or, in the case of the second (2<sup>nd</sup>) Customer Report, since the Service Commencement Date);
- (b) <sup>138</sup>**the latest Time to 3 Minutes Figures, Time to 15 Minutes Figures, All Cancellation Figures and On Time Figures for the last Reporting Period before publication of the relevant Customer Report**
- (c) from the third (3<sup>rd</sup>) Customer Report onwards, a summary comparison of the statistics produced pursuant to paragraphs 8.3 (a) and 8.3 (b) as against the equivalent statistics provided for the same Reporting Period(s) in the previous Service Year;
- (d) an update on the key activities undertaken by LNER to improve its performance in relation to the measures referred to in paragraphs 8.3 (a) and 8.3 (b); and
- (e) a summary of the key activities planned to be undertaken by LNER in the period in relation to which the next Customer Report will report to improve its performance in relation to the measures referred to in paragraphs 8.3 (a) and 8.3 (b).

## 9. Publication of Complaints and Faults Handling Data

9.1 As part of each Customer Report to be provided (excluding the first (1<sup>st</sup>) Customer Report) by LNER pursuant to paragraph 10.1 of Schedule 7.2 (Customer Experience and Engagement), LNER shall publish (in such format as the Secretary of State may reasonably require) in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the second (2<sup>nd</sup>) Customer Report, since the Service Commencement Date):

- (a) a summary of the data published by the ORR from time to time in relation to the handling of passenger complaints regarding LNER's operation of the Passenger Services;
- (b) details of the number of faults notified to LNER by passengers or station users through specified channels including the website of LNER (each a "**Notified Fault**") in each case identifying the total numbers of Notified Faults (by reference to whether such Notified Faults relate to rolling stock or stations), with such numbers further disaggregated by Service Group and broken down into relevant sub-categories of Notified Fault;
- (c) the mean average time taken by LNER:
  - (i) to resolve Notified Faults; and

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<sup>138</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (ii) where Notified Faults are not resolved within twenty (20) Weekdays, to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults; and
- (d) from the third (3<sup>rd</sup>) Customer Report onwards a summary comparison of:
  - (i) the mean average number of Notified Faults notified to LNER;
  - (ii) the mean average time taken by LNER to resolve Notified Faults; and
  - (iii) the mean average time taken by LNER, where Notified Faults have not been resolved within twenty (20) Weekdays to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults,

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

## 10. Route Maps

### 10.1 <sup>139</sup>LNER shall produce a Route Map which shall include as a minimum:

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

### 10.2 <sup>140</sup>The Route Map shall from 1 April 2022 include notes identifying:

- (a) in relation to any Other Passenger Route Within the Geographical Area with a principal destination point outside of the Geographical Area, such ultimate origin or ultimate destination point; and
- (b) those Routes over which services are also operated and such service is:
  - (i) operated by a passenger train operator other than LNER; and
  - (ii) run on a more frequent basis (as stated in the National Rail Timetable) than the Passenger Services.

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

- (a) to the Passenger Services, leading to a change in the routes falling within the definition of Route; or

<sup>139</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>140</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

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

10.4 <sup>141</sup>The Route Map shall at all times be displayed:

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

10.5 <sup>142</sup>LNER shall be regarded as having complied with the requirement of paragraph 10.1 if a map that meets the requirements of a Route Map is produced by a Local Authority or other relevant Stakeholder. The provisions of paragraphs 10.3 and 10.4 shall apply in relation to any such map.

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<sup>141</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>142</sup> 27 May 2021 (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 LNER shall, as and when reasonably requested by the Secretary of State (and, for these purposes, it shall not be unreasonable to make such a request at least twice yearly), provide information to the Secretary of State on the extent of the use by passengers of the Passenger Services. Without limitation to the generality of the foregoing, in particular and when so requested, LNER shall provide information relating to:

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

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

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

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

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



or the Preliminary Database (as appropriate), within one (1) calendar month of its collation; and

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

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

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

## 2. **Manual Passenger Counts**

2.1 The Secretary of State shall have the right to require LNER to carry out manual counts in relation to some or all of the Passenger Services at such times as may be required and in such manner (including as to levels of accuracy and the number of days) as may be specified from time to time by the Secretary of State including if, exceptionally, LNER is unable to comply with its obligations to provide data generated by the technology specified in paragraph 3.

2.2 The Secretary of State shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by 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 LNER shall pay to the Secretary of State the costs of any such audits.

3. **Technology for Obtaining the Information referred to in paragraph 1.2**
- 3.1 <sup>143</sup>**The technology to be used for the purpose of paragraph 1.2 shall be the infrared measurement system fitted to the IEP Fleet or other automated passenger counting equipment.**
- 3.2 **The technology to be used for the purposes of paragraph 1.2 shall be fitted to:**
- (a) **in the case of any brand new rolling stock which is admitted to the Train Fleet after 1 May 2021, one hundred per cent (100%) of it from the date that such rolling stock is properly admitted; and**
- (b) **in the case of all other rolling stock, to every vehicle comprised within no less than thirty-five per cent (35%) of such rolling stock units included in the Train Fleet from time to time in aggregate.**
- 3.3 **Without limiting the Secretary of State's rights under paragraph 1.1 of this Schedule 1.5, the technology specified in paragraph 3.1 above shall be used to provide counts in respect of, in any period of not less than twelve (12) weeks, at least two (2) of each of the Timetabled Services, and each count shall be carried out on each rolling stock unit comprising a particular train. LNER may only use a method of extrapolation and use extrapolated data to provide a reliable estimate of a full train's count with the Secretary of State's prior written approval of the use of extrapolated data and the method of extrapolation (such approval not to be unreasonably withheld or delayed). LNER shall comply with its obligation under this paragraph 3 from 21 May 2021, or in relation to any new rolling stock incorporated into the Train Fleet after that date, from the date(s) such rolling stock is incorporated into the Train Fleet.**
- 3.4 **The Parties acknowledge that the information supplied under paragraph 1.1 above, and any product of it created by the RPC Database or the Preliminary Database (as appropriate), may constitute Confidential Information to which Clause 15 (Confidentiality) applies.**
4. <sup>144</sup>**Customer Relationship Management (CRM) Data**
- 4.1 LNER shall ensure that any CRM System is the property of LNER or is licensed to LNER 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 LNER shall be:
- (a) obtained on terms such that LNER shall be the **Controller**<sup>145</sup> of such data; and
- (b) the property of LNER.

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<sup>143</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>144</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>145</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- 4.2 <sup>146</sup>In relation to any CRM Data obtained by or on behalf of LNER, LNER shall:
- (a) ensure that the CRM Data is collected and processed by or on behalf of LNER in accordance with the Data Protection Legislation;
  - (b) without prejudice to paragraph 4.2(a) ensure that the fairness principle of the Data Protection Legislation is satisfied including by issuing all relevant privacy notices in relation to its collection and processing of the CRM Data;
  - (c) without prejudice to paragraph 4.2(a) ensure that there is a lawful basis for its collection and processing of the CRM Data;
  - (d) without prejudice to paragraph 4.2(a) ensure that the principles of fairness and lawfulness are satisfied in particular in respect of the disclosure of the CRM Data to any Successor Operator and/or the Secretary of State such that the CRM Data may be processed by any Successor Operator for the same purposes as are relevant to the processing of the CRM Data by LNER; and
  - (e) without prejudice to paragraph 4.2(a) ensure that where consents are required under the Data Protection Legislation for the processing of the CRM Data by LNER and any Successor Operator (including in relation to marketing, sign up for notifications or general alerts, sign up for newsletters, and (as relevant) processing of Special Categories of Personal Data) all such consents are sought in such a way as to enable any Successor Operator to process the CRM Data for the same purposes as are relevant to the processing of it by LNER.
- 4.3 Any consent referred to in paragraph 4.2 shall be sought in such manner as shall from time to time be approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and shall be on terms such as shall permit, in each case in compliance with the Data Protection Act:
- (a) LNER to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and
  - (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 4.2.
- 4.4 <sup>147</sup>LNER shall:
- (a) disclose, publish, share, provide and otherwise make available the CRM Data to any person (including a Successor Operator or any participant involved with the re-letting of the Services); and
  - (b) provide access to any CRM System,

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<sup>146</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>147</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**in each case pursuant to the terms of the Services Agreement (together, the “CRM Data Obligations”<sup>148</sup>) to the extent that compliance with the CRM Data Obligations<sup>149</sup> is in accordance with the Data Protection Legislation.**

## 5. Yield Management Data

5.1 LNER shall ensure that any Yield Management Data and Yield Management System are the property of LNER or are licensed to LNER on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).

5.2 <sup>150</sup>**Not Used.**

5.3 <sup>151</sup>**LNER shall notify the Secretary of State in writing of the full names and registered office addresses of the entities which from time to time are hosting or storing any of the Yield Management Data, or which are otherwise holding within their possession or control any of the Yield Management Data, together with the location(s) in which the Yield Management Data is hosted, stored or otherwise held. In cases where the hosting, storage or holding of the Yield Management Data occurs in location(s) which are outside of the United Kingdom the notification shall include details of the relevant country(ies) or territory(ies).**

5.4 <sup>152</sup>**LNER hereby acknowledges that the Secretary of State legitimately wishes to have knowledge of the locations in which the Yield Management Data is hosted, stored or otherwise held from time to time (whether inside or outside of the United Kingdom) given that all such information would be relevant in the event of any transfer of the Services to a Successor Operator.**

6. <sup>153</sup>**Not Used.**

## 7. Rail Passenger Counts Database

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

- (a) use reasonable endeavours to set up and thereafter maintain the RPC Database;
- (b) use reasonable endeavours to populate the RPC Database with such Actual Passenger Demand information as LNER shall provide pursuant to LNER's obligations contained elsewhere in this Agreement and any other information that the Secretary of State shall desire; and

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<sup>148</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>149</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>150</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>151</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>152</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>153</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (c) use reasonable endeavours to provide LNER with log-in details to the RPC Database in order to allow LNER to access Actual Passenger Demand information that has been provided by LNER, any Network Rail Data, any Third Party Data and to generate reports from the RPC Database.
- 7.2 The RPC Database is not intended to be used as the sole basis for any business decision. The Secretary of State makes no representation as to the accuracy and/or completeness of:
- (a) any data or information contained in the RPC Database;
- (b) the raw Actual Passenger Demand information provided by LNER or any Network Rail Data or any Third Party Data (as inputted to the RPC Database by whatever means); or
- (c) any product of that Actual Passenger Demand information, Network Rail Data and/or Third Party Data.
- 7.3
- (a) The Secretary of State is not liable for:
- (i) any inaccuracy, incompleteness or other error in Actual Passenger Demand information, Network Rail Data, Third Party Data or product of the above provided to the Secretary of State by LNER, NR or a third party; or
- (ii) any failure of the RPC Database to achieve any particular business result for LNER. For the avoidance of doubt, it is the responsibility of LNER to decide the appropriateness of using the RPC Database to achieve its own business results; or
- (iii) any loss, destruction, corruption, degradation, inaccuracy or damage of or to the Actual Passenger Demand information following its submission to the RPC Database; or
- (iv) any loss or damage to the property or assets of LNER (tangible or intangible) as a result of a contravention of paragraph 7.1 of this Schedule 1.5; or
- (v) any indirect, special or consequential loss or damage.
- (b) The Secretary of State's total liability for the duration of this Agreement in respect of a contravention of its obligations under paragraph 7.1 of this Schedule 1.5 for all other heads of loss or damage which can lawfully be limited shall be limited to the extent to which the Secretary of State is successful in recovering the equivalent loss from such entity to whom the Secretary of State subcontracts its obligations under paragraph 7.1 of this Schedule 1.5 (the "**Subcontractor**"), subject to the following provisions:
- (i) if reasonably requested by LNER within three (3) months of incurring such loss or damage, the Secretary of State shall use reasonable endeavours to recover the equivalent losses from the Subcontractor;

- (ii) it shall not be reasonable for LNER to make a request pursuant to paragraph 7.3(b)(i) above if the value of LNER's losses does not exceed **[REDACTED<sup>154</sup>] x RPI**;
  - (iii) prior to accounting to LNER for any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b), the Secretary of State shall be entitled to deduct and retain any reasonable costs and expenses incurred in pursuing such a claim which he does not successfully recover from the Subcontractor; and
  - (iv) the Secretary of State shall be entitled to deduct from any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b) such sum as he reasonably deems appropriate to take account of the Secretary of State's actual or potential liability to other train operating companies pursuant to equivalent arrangements with them, with a view to distributing any sums received from the Subcontractor fairly between the various operators.
- (c) LNER shall use all reasonable endeavours to mitigate any losses incurred by LNER as a result of a contravention by the Secretary of State of his obligations contained in paragraph 7.1 of this Schedule 1.5.
- 7.4 The Parties acknowledge that it is intended that the RPC Database will also contain actual passenger demand information relating to franchisees other than LNER but a franchisee will have access only to information relating to its own franchise (in the case of LNER, via the log on details provided pursuant to paragraph 7.1(c)). For the avoidance of doubt, the licence granted at paragraph 8.6 shall only permit the usage of the RPC Database, Derivative Output and Intellectual Property Rights related to the Actual Passenger Demand information supplied by LNER.
- 7.5 Without prejudice to Schedule 14.4 (Service Assets), paragraphs 2.1 and 3 of Schedule 15.1 (Reletting Provisions), Schedule 15.4 (Provisions applying on and after Termination) or any other rights of the Secretary of State, LNER agrees that, following the expiry or termination by whatever means of this Agreement and any Continuation Document, the Secretary of State shall be entitled to allow access to LNER's Actual Passenger Demand information by way of granting access to that area of the RPC Database or otherwise to any future operator of the Passenger Services (whether or not in direct succession to LNER) or to such part of the Actual Passenger Demand information as relates to the part of the franchise which is being taken over by such future operator.
- 8. Intellectual Property Rights and General Provisions**
- 8.1 All Intellectual Property Rights in the RPC Database and Derivative Output shall at all times remain owned by the Secretary of State and to the extent that any rights in the RPC Database vest in LNER by operation of law, LNER hereby assigns such rights to the Secretary of State.
- 8.2 Subject to Schedule 15.4 (Provisions applying on and after Termination), all Intellectual Property Rights in the Actual Passenger Demand information will at all times remain owned by LNER and (subject as previously stated) to the extent that

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<sup>154</sup> **20 December 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.**

any rights in the Actual Passenger Demand information vest in the Secretary of State by operation of law, the Secretary of State hereby assigns such rights to LNER.

- 8.3 All Intellectual Property Rights in the Network Rail Data will at all times remain owned by the relevant NR entity and to the extent that any rights in the Network Rail Data vest in the Secretary of State or LNER by operation of law, the Secretary of State and/or LNER (as applicable) will enter into a separate agreement with the relevant Network Rail entity to assign such rights to it.
- 8.4 All Intellectual Property Rights in the Third Party Data will at all times remain owned by the third party from whom they have been obtained and to the extent that any rights in the Third Party Data vest in the Secretary of State or LNER by operation of law, the Secretary of State and/or LNER (as applicable) will enter into a separate agreement with the relevant Third Party to assign such rights to it.
- 8.5 Subject to Schedule 14.4 (Service Assets) and Schedule 15.4 (Provisions applying on and after Termination), each Party:
- (a) acknowledges and agrees that it shall not acquire or claim any title to any of the other Party's Intellectual Property Rights (or those of the other Party's licensors) by virtue of the rights granted to it under this Agreement or through its use of such Intellectual Property Rights; and
  - (b) agrees that it will not, at any time, do, or omit to do, anything which is likely to prejudice the other Party's ownership (or the other Party's licensors' ownership) of such Intellectual Property Rights.
- 8.6 The Secretary of State hereby grants, for the duration of the Service Period, LNER a non-exclusive, non-transferable licence to use:
- (a) the RPC Database;
  - (b) any Derivative Output; and
  - (c) all Intellectual Property Rights in the same,
- in the United Kingdom for the purposes of accessing the Actual Passenger Demand information by using the functionality of the RPC Database.
- 8.7 Without limiting any other rights the Secretary of State may have, LNER hereby grants the Secretary of State a perpetual, non-terminable, non-exclusive licence (which is transferable and/or capable of being sub-licensed in the circumstances set out in this paragraph 8.7) to use the Actual Passenger Demand information and all Intellectual Property Rights in the same:
- (a) by including them in the RPC Database; and/or
  - (b) by including them in the Preliminary Database; and/or
  - (c) whether included in the RPC Database, the Preliminary Database or in any other format for such purposes as he may reasonably require including for the purposes of assisting his decision making on train service requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding; and/or

- (d) to the extent permitted by the other provisions of this Agreement to share, disclose, or publish the same and transfer and/or sub-licence and permit the use and sharing, disclosing or publishing for the purposes it is shared or disclosed; and/or
- (e) to allow a future operator of the Passenger Services (whether or not in direct succession to LNER) to view and access such Actual Passenger Demand information (whether via the RPC Database or otherwise) as directly relates to the services that it will be running,

and such rights to use the Actual Passenger Demand information and all Intellectual Property Rights pursuant to this paragraph 8.7 shall continue following expiry or termination of this Agreement.

- 8.8 Paragraphs 7.2, 7.3, 8.1, 8.2 and 8.7 of this Schedule 1.5 shall continue in force after expiry or termination of this Agreement or any Continuation Document, together with any other provisions which expressly or impliedly continue in force after the expiry or termination of this Agreement or any Continuation Document.
- 8.9 The Parties intend that the provisions of The Contract (Rights of Third Parties) Act 1999 will apply to allow the relevant NR entity to rely on and enforce against a third party the provisions of paragraph 8.3 of this Schedule 1.5.



## Schedule 1.6

**The Rolling Stock****1. Purpose**

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

**2. The Composition/Deployment of the Train Fleet**

2.1 The Train Fleet consists of:

- (a) from the Service Commencement Date until the lease expiry dates referred to in Column 6 of Table 1 in Appendix 1 to this Schedule 1.6 the rolling stock vehicles set out in Table 1 in Appendix 1 to this Schedule 1.6 ("**Original Rolling Stock**") with the Passenger Carrying Capacity per unit referred to in Column 3 and Column 4 of Table 1 in Appendix 1 to this Schedule 1.6;
- (b) from the dates set out in Column 6 of Table 2 in Appendix 1 to this Schedule 1.6, until the lease expiry dates referred to in Column 7 of Table 2 in Appendix 1 to this Schedule 1.6 the rolling stock vehicles including new build or cascaded rolling stock ("**Specified Additional Rolling Stock**") set out in Table 2, in Appendix 1 to this Schedule 1.6 with the Passenger Carrying Capacity per unit referred to in Column 3 and Column 4 of Table 2;
- (c) <sup>155</sup>**from the relevant dates specified in paragraph 2.3, each Unspecified Additional Rolling Stock;**
- (d) in respect of each train set out in column 2 of Table 4, the maximum available Sets (as such term is defined in Schedule 6.3 (The IEP Provisions) of the Services Agreement) set out in column 1 of such table, with the capacity characteristics referred to in columns 3 and 4 of such table and:
  - (i) in respect of the first train in class by the dates referred to in column 5 of such table;
  - (ii) in respect of the last Set by the dates referred to in column 6 of such table; and
  - (iii) <sup>156</sup>**in accordance with the Scheduled Acceptance Date (as such term is defined in the MARA) for each Set not being the first train in class or the last Set,**

<sup>155</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>156</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

in each case 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, provided that a Set will only be accepted into service when the minimum number of Sets of the appropriate type (as set out in column 7 of Table 4) have achieved Acceptance (as such term is defined under the MARA).

**2.2 NOT USED.**

**2.3 <sup>157</sup>LNER shall by no later than:**

**(a) the date which is 39 months prior to each such date specified in Column 1 of Table 3 in Appendix 1 to this Schedule 1.6, enter into Rolling Stock Leases (subject to compliance with all other relevant provisions of this Agreement including in relation to Rolling Stock Related Contracts) in respect of; and**

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

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

2.4 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 or 3 in Appendix 1 to this Schedule 1.6 or as determined by the Secretary of State in accordance with paragraph 3.4 of this Schedule 1.6 (as applicable).

2.5 LNER shall procure that the rolling stock vehicles described in the Tables 1 or 2 or 3 in Appendix 1 to this Schedule 1.6, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services to the extent required by the Timetable and Train Plan during the periods referred to therein.

**3. Changes to the Train Fleet**

3.1 LNER shall maintain the composition of the Train Fleet during the Service Period, unless the Secretary of State otherwise agrees, such that there are no changes to the Train Fleet, including changes:

- (a) to the classes or types;
- (b) to the interior configurations; or
- (c) which may reduce the journey time capabilities,

of any rolling stock vehicles specified in the Train Fleet.

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<sup>157</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

3.2 **NOT USED.**

3.3 During the Service Period, LNER shall advise the Secretary of State of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of three (3) consecutive Reporting Periods or more.

3.4 If any change is made to the Train Fleet in accordance with this Schedule 1.6, the Secretary of State may, after consulting LNER, determine the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change. The Secretary of State shall notify LNER of his determination of any such Passenger Carrying Capacity.

3.5 <sup>158</sup>**The Secretary of State may request LNER to:**

- (a) **change the composition of the Train Fleet during the term of this Services Agreement;**
- (b) **sub-let some of its Train Fleet to another Train Operator or to sub-lease a Train Fleet from another Train Operator;**
- (c) **procure modifications to the Train Fleet and to manage any modification programme subject to payment of LNER's reasonable costs by the Secretary of State or a relevant third party; and/or**
- (d) **work in collaboration with the Secretary of State to identify and secure additional or replacement rolling stock vehicles during the term of this Services Agreement in which case the Secretary of State may require LNER to set the specification of such rolling stock, subject to the Secretary of State's prior written consent, (each being a "Rolling Stock Change"). LNER agrees and acknowledges that the number of Rolling Stock Changes that the Secretary of State may make is not limited.**

4. **Rolling Stock Testing and Commissioning**

4.1 LNER shall, to the extent reasonably requested by the Secretary of State and subject to payment of LNER's reasonable costs by the relevant third party, co-operate with any third party which the Secretary of State may specify (including a Successor Operator, a rolling stock vehicle manufacturer or Network Rail or the Secretary of State) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise).

4.2 The co-operation referred to in paragraph 4.1 shall not unreasonably disrupt the provision and operation of the 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;

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<sup>158</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (c) making Train Slots available for such purposes;
- (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
- (e) the delivery of rolling stock vehicles to specific locations.

5. **Controlled Emission Toilets**

5.1 **NOT USED.**

5.2 LNER shall ensure that the contents of the toilet retention tanks relating to each Controlled Emission Toilet fitted on rolling stock vehicles in accordance with the requirements of paragraph 5.1 are disposed of in a safe and hygienic manner at suitable facilities designed for these purposes including at Depots and stabling points.

5.3 **NOT USED.**

5.4 **NOT USED.**

6. **Baby Changing Facilities**

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

7. **Measurement of Traction Energy Usage**

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

7.2 **NOT USED.**

**APPENDIX 1 TO SCHEDULE 1.6<sup>159</sup>**

**The Composition of the Train Fleet**

**1. Original Rolling Stock**

**Note A:** Where in Column 6 both a Scheduled Lease Expiry Date and an Early Redelivery Date are specified in relation to one or more specified units (each being a "Specified Unit") the Lease Expiry Date for the Specified Units shall be the Early Redelivery Date provided that where any unit shown in Table 2 or Table 4 below as replacing any Specified Unit from the Early Delivery Date is delivered after the Early Redelivery Date such Specified Unit shall remain in the Train Fleet until the relevant Scheduled Lease Expiry Date or such earlier date as the Secretary of State acting reasonably may agree.

Table 1 (Original Rolling Stock)									
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease expiry date(s) (See Note A above)	
		Seats	Wheelchair spaces	Standing*	Seats	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)
IC225	30 sets comprising : 31 x Class 91 271 x Mk.IV 31 x Mk.IV DVT	398	2	131	128	1	Eversholt Rail	31 March 2020 <b>Note 1</b>	N/A
HST	10 sets comprising : 23 x Class 43 93 x MK. III HST	431	2	135	112	1ess	Angel Trains	<b>31 December 2019<sup>160</sup></b>	N/A

<sup>159</sup> Note to Bidders: To be completed by DfT based on the Bidders' proposal.

<sup>160</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Table 1 (Original Rolling Stock)									
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease expiry date(s) (See Note A above)	
		Seats	Wheelchair spaces	Standing*	Seats	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)
HST	3 sets comprising : 7 x Class 43 29 x Mk. III HST	431	2	135	112	1	Porterbrook	As set out in Rolling Stock Lease	N/A
HST	1 set comprising : 2 x Class 43 9 x Mk.III HST	443	1	138	111	1	Porterbrook	As set out in Rolling Stock Lease	N/A
HST	1 set comprising: 2 x Class 43 8 x Mk.III HST	367	1	119	111	1	Porterbrook	As set out in Rolling Stock Lease	

\* Standing capacity is assumed to be 25% of seating capacity

**Note 1:** The lease will expire on a phased basis, with the first three sets being taken off lease on 30 June 2019.

2. <sup>161</sup>Specified Additional Rolling Stock

Table 2 (Specified Additional Rolling Stock)										
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	Column 7	Column 8
Class of vehicle /unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease start date(s)	Lease expiry date(s)	Identity of any unit in Table 1 (Original Rolling Stock) intended to be replaced by the Specified Additional Rolling Stock and the date of replacement
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair spaces				
IC225	9 sets plus 6 spare CI91 vehicles comprising: 15 x Class 91 81 x Mk. IV 9 x Mk.IV DVT	398	2	131	128	1	Eversholt Rail	1 July 2020	31 July 2020	
IC225	7 sets plus 5 spare CI91 vehicles comprising: 12 x Class 91 63 x Mk.IV 7 x Mk.IV DVT	398	2	131	128	1	Eversholt Rail	1 August 2020	30 September 2020	
IC225	7 sets plus 3 spare CI91 vehicles comprising: 10 x Class 91 63 x Mk.IV 7 x Mk.IV DVT	398	2	131	128	1	Eversholt Rail	1 October 2020	31 May 2023 With option to extend to extend to 31 May 2024.	

<sup>161</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Table 2 (Specified Additional Rolling Stock)										
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	Column 7	Column 8
Class of vehicle /unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease start date(s)	Lease expiry date(s)	Identity of any unit in Table 1 (Original Rolling Stock) intended to be replaced by the Specified Additional Rolling Stock and the date of replacement
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair spaces				
IC225	Spare vehicles: 1 x Mk. IV 1 x Mk. IV DVT						Eversholt Rail	1 July 2020	31 May 2023 With option to extend to extend to 31 May 2024.	



**3. Unspecified Additional Rolling Stock**

Column 1 Date of introduction into revenue earning passenger service	Column 2 Number of vehicles in fleet and unit configuration	Column 3 Standard Class Passenger Carrying Capacity per unit			Column 4 First Class per unit		Column 5 Characteristics (e.g. minimum reliability, capability and quality such as CET, automated passenger counts or other characteristics of the rolling stock specified in the Operator's proposal)	Column 6 Identity of any unit in Table 1 (Original Rolling Stock) intended to be replaced by the Unspecified Additional Rolling Stock and the date of replacement
		Seated	Wheelchair spaces	Standing	Seats	Wheelchair spaces		
December 2025 Passenger Change Date	10 rolling stock units (comprising any number of vehicles) with a minimum length of 250m with an option for 5 additional such rolling stock units	No fewer than 490 fixed seats in 2+2 configuration	No fewer than 2	<b>Note 1</b>	No fewer than 100 fixed seats in 2+1 configuration	No fewer than 2	Traction system: 25kv AC OLE Electric Mode and Self-Power Mode  Maximum speed in 25 kV AC OLE mode: ≥ 127mph  Maximum speed in Self-Power Mode: ≥ 90mph  Reliability: not less than 30,000 MTIN.  Controlled Emission Toilets (CET)	All IC225 rolling stock  <b>Note 2</b>
							Passenger Information System (PIS)  Automatic Seat Reservation System  Automatic Passenger Counting System  Automatic Selective Door Operation (ASDO)  European Train Control System (ETCS)	

**Notes to Table 3:**

**Note 1:** Standing requirements to equate to four (4) passengers per m<sup>2</sup> of usable standing space where the mass of a passenger and luggage is 85 kg (mass of passenger only is 80 kg).

**Note 2:** Date of replacement remains under review.

**4. IEP Rolling Stock**

<b>Table 4 (IEP Rolling Stock)</b>						
<b>Column 1 Maximum available sets</b>	<b>Column 2 Type</b>	<b>Column 3 Seating Capacity First Class</b>	<b>Column 4 Seating Capacity Standard Class</b>	<b>Column 5 First train in class' scheduled acceptance date</b>	<b>Column 6 Last Set Acceptance Date</b>	<b>Column 7 Minimum sets to be accepted for entry into service</b>
10	9-car bi-mode	101	510	19 November 2018	21 February 2019	3
10	5-car electric	45	258	28 February 2019	16 May 2019	3
8	5-car bi-mode	45	258	23 May 2019	25 July 2019	3
26	9-car electric	101	510	19 August 2019	7 May 2020	2

**APPENDIX 2 TO SCHEDULE 1.6<sup>162</sup>**

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<sup>162</sup> 25 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

## Schedule 1.7

**Stations****1. Station Asset Management****1.1 Policies and Plans to deliver the Standard of Repair**

- (a) LNER shall implement and comply with the Integrated Station Asset Management Policy and Integrated Station Asset Management Plan in accordance with their terms (as they may be amended pursuant to paragraph 1.3) including for the purposes of meeting its obligations in relation to the Standard of Repair.
- (b) LNER shall maintain appropriate, accurate, readily accessible and transferable information about the Station assets, including their condition and function.
- (c) In preparing and revising the Integrated Station Asset Management Policy and Integrated Station Asset Management Plan, LNER shall consult ORR and the Secretary of State.
- (d) LNER shall provide to the Secretary of State such information as the Secretary of State may reasonably require for the purposes of monitoring the obligations of LNER in relation to Stations.
- (e) Information required to be provided under paragraph 1.1(d) shall be provided in such form and manner and at such times as the Secretary of State may reasonably require.
- (f) LNER shall calculate the Station Stewardship Measure (in accordance with standard "NR/ARM/M17PR" or such other standard as may be notified to LNER by ORR from time to time) in relation to each Station when ORR may reasonably require and as soon as reasonably practicable thereafter provide such information to ORR (with a copy to the Secretary of State). LNER shall co-operate with ORR in developing the Station Stewardship Measure during the Service Term.

**1.2 Independent audit**

At the Secretary of State's request, LNER shall commission and pay for an independent audit of any information submitted to the Secretary of State under paragraph 1.1(d) and shall provide a copy of the audit report to the Secretary of State.

**1.3 Revisions**

- (a) If at any time the Secretary of State considers that an Integrated Station Asset Management Policy does not adequately demonstrate how LNER will comply with the obligations in paragraph 1.4(a):
  - (i) the Secretary of State shall issue a notice requiring LNER to review and revise the Integrated Station Asset Management Policy and specifying the ways in which he considers it to be deficient; and

- (ii) LNER shall, within one month of the Secretary of State issuing such a notice, review, revise and republish the document in order to correct the deficiency notified.
- (b) By not more than three Reporting Periods and not less than one Reporting Period prior to the start of each Service Year LNER shall deliver to the Secretary of State an updated Integrated Station Asset Management Plan which shall:
- (i) be in substantially the same form as the immediately preceding Integrated Station Asset Management Plan (or such other form as the Secretary of State approves), revised to include information available to LNER as at the date of its delivery, describing LNER's planned station asset management activities for each Service Year during the remainder of the Service Term;
  - (ii) contain a statement of the differences between the updated Integrated Station Asset Management Plan and the immediately preceding Integrated Station Asset Management Plan delivered to the Secretary of State in accordance with the Services Agreement, together with an explanation of such differences;
  - (iii) contains a statement from a director that by acting in accordance with the revised Integrated Station Asset Management Plan LNER will continue to comply with obligations under paragraph 1.4(a) including by rectifying any identified failure to achieve the Standard of Repair.

#### 1.4 Station Maintenance Obligations

- (a) LNER shall ensure that the actual Asset Remaining Life (as a percentage) in relation to each of the Station Assets specified in Column 1 of the Minimum Asset Remaining Life Table is (on a basis aggregated across all relevant assets at all Stations) not less than the corresponding Minimum Asset Remaining Life specified in column 2 of the Minimum Asset Remaining Life Table (the "**Standard of Repair**").
- (b) Within 30 days of the start of each Service Year LNER shall deliver a written report to the Secretary of State that complies with the following requirements:
- (i) <sup>163</sup> **it has been prepared by a reputable firm of surveyors who have carried out inspections of the Stations for the purposes of the preparation of the report prior to the 20 December of the previous Service Year;**
  - (ii) it is addressed to the Secretary of State (but may also be addressed to other parties at the discretion of LNER);
  - (iii) contains a fair summary of the extent to which LNER has complied with its obligations to achieve the Standard of Repair during the preceding 12 months;

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<sup>163</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (iv) it contains the calculation of LNER (as a percentage) of the aggregate Asset Remaining Life of each Station Asset (in accordance with standard "NR/ARM/M17PR" or such other standard as may be notified to LNER by the Secretary of State from time to time);
- (v) it identifies separately those Stations where any Station Asset has an asset life that is less than:
  - (A) 55.3% in relation to platforms;
  - (B) 58.8% in relation to footbridges;
  - (C) 57.8% in relation to canopies; and
  - (D) 57.5% in relation to buildings at Stations;
- (vi) it contains a copy of the Station Stewardship Measure report issued by LNER to ORR and/or Network Rail; and
- (vii) it contains such other details as may be specified in writing by the Secretary of State from time to time.

1.5 It is agreed by the Secretary of State and LNER that:

- (a) the methodology to be adopted by the Secretary of State for the purposes of monitoring LNER's compliance with its obligations in paragraph 1.4(a) shall, subject to paragraph 1.4(b), be as described in the document in the agreed terms marked **SCM** (the "**Stations Conditions Methodology**");
- (b) the Stations Conditions Methodology can be amended by the Secretary of State; and
- (c) if, at any time during the Service Term, the Stations Conditions Methodology is amended as envisaged under paragraph 1.5(b) and the Secretary of State reasonably determines that it is appropriate to amend the Minimum Asset Remaining Life of any Station Assets to take account of the alteration to the Stations Conditions Methodology then the Secretary of State shall make such amendment to column 2 of the Minimum Asset Remaining Life Table as he reasonably considers appropriate to take account of the alterations to the Stations Conditions Methodology and such amendment shall have the potential to give rise to revisions to the Budget pursuant to paragraph 4 of Schedule 8.1 (Service Payments).

**1.6** <sup>164</sup> **LNER shall ensure that, without prejudice to its other obligations in this Schedule 1.7 with respect to each Integrated Station Asset Management Plan, the Integrated Station Asset Management Plan in relation to each Station shall include the following:**

- (a) the details of all maintenance, repair and renewal activity undertaken by LNER since 1 May 2021;**

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<sup>164</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (b) **the details of any maintenance, repair and renewal activity which LNER has not completed or not completed within the specified time frame set out in any Integrated Station Asset Management Plan together with reasons;**
- (c) **the details of the maintenance, repair and renewal activity undertaken since 1 May 2021, or planned, by Network Rail, any Local Authority, any Community Rail Partnership and any other relevant stakeholder, which LNER is aware of;**
- (d) **the assumptions that LNER has made about the current state and future degradation of assets at the Station at 1 May 2021 or, if an asset becomes an asset at the Station on a later date, the assumptions of LNER about the current state and future degradation of each relevant asset on the date that it becomes such an asset at the Station;**
- (e) **the details of under and over provision of assets at the Station at 1 May 2021 given current and projected future customer volumes and reasonable customer demands and planned enhancements or removals to accommodate changing customer volumes and reasonable customer demands;**
- (f) **the plans for improving the environmental performance of Stations, including where appropriate, plans for:**
  - (i) **energy metering and data management, including measurement and verification plans for measures adopted;**
  - (ii) **lighting and lighting controls;**
  - (iii) **heating and heating controls;**
  - (iv) **auxiliary power uses;**
  - (v) **other energy efficiency measures;**
  - (vi) **renewable energy generation;**
  - (vii) **water efficiency measures;**
  - (viii) **waste reduction;**
  - (ix) **identification of opportunities for recycling or reuse of assets; and**
  - (x) **identification of opportunities for local sourcing of assets and asset materials;**
- (g) **the plans to ensure that delivery of Station Services is resilient to, periods of extreme weather and minimises disruption to passengers;**
- (h) **the plans to ensure that maintenance, repair, renewal, enhancement and other building works to be carried out at such Stations is consistent with the Principles of Inclusive Design and the Security in the Design of Stations Guidance; and**

- (i) NOT USED.
2. NOT USED
3. <sup>165</sup>Station Social and Commercial Development Plan
- 3.1A By no later than 31 March 2022 LNER shall deliver to the Secretary of State for the Secretary of State's review and approval a draft of LNER's proposed station social and commercial development plan. The Secretary of State shall be entitled to direct amendments to the draft plan proposed by LNER as the Secretary of State may require. LNER shall make such amendments to the draft plan as the Secretary of State shall reasonably direct. Such plan as approved by the Secretary of State or otherwise amended by LNER on the direction of the Secretary of State shall become the then current version of the Station Social and Commercial Development Plan for the purposes of this Agreement.
- 3.1 LNER shall implement, resource and comply with the Station Social and Commercial Development Plan as it may be amended in accordance with this paragraph 3.
- 3.2 Any amendments to the Station Social and Commercial Development Plan must be agreed by the Secretary of State in accordance with this paragraph 3.
- 3.3 LNER shall revise the Station Social and Commercial Development Plan by no later than 1 April 2023 (and on each subsequent anniversary of this date) and shall submit it to the Secretary of State for review and approval. LNER shall ensure that each revised Station Social and Commercial Development Plan submitted to the Secretary of State shall comply with the following minimum requirements:
- (a) identify schemes to develop currently redundant or under-utilised station buildings and facilities for use by community groups and social enterprise organisation or for commercial development including schemes which sustain and enhance the viability of existing facilities at Stations or lead to the development of new facilities including through appropriate sub leasing of station buildings;
  - (b) appropriately reflect changed and developing circumstances to the extent relevant and appropriate
  - (c) appropriately reflect the outcome of the consultation which it is required to carry out pursuant to paragraph 4 below in relation to concerns, issues, opportunities and risks relating to the Stations and priorities for investment;
  - (d) effectively evaluate, prioritise and develop such schemes taking account of customer and community views expressed in the consultation carried out by LNER;

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<sup>165</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.



- (e) provide for the implementation of schemes specified pursuant to paragraph 3.3(a) above in accordance with a plan which allocates a priority between such schemes by reference to specified criteria and includes planned timescales for the delivery of relevant outputs; and
  - (f) be for a period of ten (10) years on the basis that it shall continue to be reviewed on a rolling annual basis.
- 3.4 Each updated version of the Station Social and Commercial Development Plan shall incorporate a schedule of revisions to the Station Social and Commercial Development Plan compared to the previous version and a brief summary of the rationale supporting each such revision.**
- 3.5 LNER shall ensure that the Station Social and Commercial Development Plan shall be updated so that following each update it continues to cover at least a period of ten (10) years from the date of the update.**
- 3.6 If:**
- (a) the Secretary of State approves an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 3.3, such document shall become the then current Station Social and Commercial Development Plan; or
  - (b) the Secretary of State does not approve an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 3.3, then LNER shall:
    - (i) make such amendments to it as the Secretary of State shall reasonably direct; and
    - (ii) provide such additional information as the Secretary of State may reasonably require.
- 4. <sup>166</sup>Consultations**
- 4.1 On or before the annual submission of the Station Asset Management Plan or the Station Social and Commercial Development Plan pursuant to the provisions of this Schedule 1.7, LNER shall conduct consultations with relevant Stakeholders (including the Community Rail Network, passengers, users of Stations, members of relevant local communities, Network Rail and the British Transport Police) in relation to the potential risks, opportunities and priorities for investment and operational efficiencies in relation to Stations. LNER shall act reasonably in determining the scope of the specification of such consultations including the Stations to be considered.**
- 5. NOT USED**

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<sup>166</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**6. Security at Stations**

- 6.1 LNER shall maintain for the duration of the Service Period the Secure Stations Accreditation for the Stations already achieved by the Train Operator under the Previous Franchise Agreement as set out in Appendix 1 to this Schedule 1.7.
- 6.2 <sup>167</sup>**LNER shall maintain for the duration of the Service Period the Park Mark scheme for the Stations set out in Appendix 1 to this Schedule 1.7.**
- 6.3 <sup>168</sup>**If at any time following 30 June 2021 the TRH Score for a Station increases by five per cent (5%) or more from the previous year's TRH Score for such Station, LNER shall:**
- (a) **in respect of a Station that does not have Secure Station Accreditation, notify the Secretary of State of such increase and, as soon as reasonably practicable, obtain Secure Station Accreditation for such Station and shall maintain the same throughout the Service Period; or**
- (b) **in respect of a Station that already has Secure Station Accreditation (either pursuant to paragraph 6.1 above, or because LNER has been required to obtain Secure Station Accreditation pursuant to paragraph 6.3(a) above), notify the Secretary of State of such TRH Score increase and the provisions of paragraph 6.4 shall apply.**
- 6.4 <sup>169</sup>**Upon the Secretary of State receiving notification pursuant to paragraph 6.3(b) above, the Secretary of State may, following consultation with the British Transport Police, revoke the Secure Station Accreditation for such Station.**
- 6.5 <sup>170</sup>**Where a Station loses its Secure Station Accreditation (whether pursuant to paragraph 6.4 or otherwise) LNER shall:**
- (a) **obtain Secure Station Accreditation for such Station as soon as reasonably practicable, in any event no later than twelve (12) months from and including the date of the loss of such Secure Station Accreditation; and**
- (b) **maintain such Secure Station Accreditation once obtained for the duration of the Service Period.**
- 6.6 <sup>171</sup>**NOT USED.**
- 6.7 <sup>172</sup>**In this paragraph 6:**

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<sup>167</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>168</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>169</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>170</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>171</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>172</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (a) **“BTP Methodology” means the document in the agreed terms marked BTP;**
- (b) **“Park Mark” means the certification scheme administered by the parking industry and which sets car park design and management safety standards for crime reduction within car parks;**
- (c) **“Secure Stations Accreditation” means Stations which have achieved accreditation under the Secure Stations Scheme;**
- (d) **“Secure Stations Scheme” means the certification scheme which is managed by the Department for Transport and British Transport Police and sets station design and management safety standards for crime reduction at railway stations; and**
- (e) **“TRH Score” means the threat, risk harm score for each Station calculated by the British Transport Police in accordance with the BTP Methodology at railway stations.**

7. <sup>173</sup>**NOT USED**

- 7.1 LNER shall at all times during the Service Period maintain records in relation to the measures taken by it to improve the Station environment at each of the Stations. Within three (3) months of the Service Commencement Date the Parties shall agree:
- (a) the nature of the information and the records referred to in this paragraph 7.1; and
  - (b) the format of such records and information.
- 7.2 LNER shall, subject to paragraph 7.3, provide to the Secretary of State the information set out in Appendix 2 to this Schedule 1.7:
- (a) within ten (10) months of the Service Commencement Date; and
  - (b) within six (6) months of the commencement of any subsequent Service Year.
- 7.3 When so requested by the Secretary of State, LNER shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
- (a) such level of disaggregation as is reasonably specified by the Secretary of State; and
  - (b) any particular Station as is reasonably specified by the Secretary of State.
- 7.4 The information to be provided by LNER to the Secretary of State within the timescales stipulated are set out in Appendix 2 to this Schedule 1.7.

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<sup>173</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

8. **NOT USED**9. **Station Investment**

- 9.1 LNER shall at all times during the Service Term, co-operate with the Secretary of State and any third party nominated by the Secretary of State and notified to LNER in developing opportunities for financing investment at Stations and Franchisee Access Stations in order to improve the station environment at such stations.
- 9.2 In co-operating with the Secretary of State and/or any nominated third party in developing any such financing opportunities, LNER shall:
- (a) attend meetings with the Secretary of State and/or such third party to discuss such opportunities;
  - (b) provide LNER's opinion on those opportunities;
  - (c) review and comment on implementation timetables and programmes for any such opportunities; and
  - (d) where requested by the Secretary of State to do so use all reasonable endeavours to engage with Network Rail for the purposes of ascertaining the feasibility and costs of making amendments to any Station Leases in order to facilitate the implementation of those opportunities.

10. **Development at Stations**

- 10.1 LNER shall not, without the prior written consent of the Secretary of State:
- (a) enter into any lease, development agreement or any other agreement or arrangement in relation to any Station which can reasonably be regarded as providing any payment or benefit in any form to LNER.

11. <sup>174</sup>**Station Toilet Access**

- 11.1 **LNER shall ensure that access to toilet facilities at all Stations is provided free of charge.**

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<sup>174</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**APPENDIX 1 TO SCHEDULE 1.7****List of Stations and Car Parks with Secure Stations Accreditation and Secure Car Parks Accreditation****1. Secure Stations Accreditation**

Berwick-upon-Tweed

Darlington

Doncaster

**[Deleted<sup>175</sup>]**

Durham

Grantham

Newark North Gate

Newcastle

Peterborough

Retford

Wakefield Westgate

York

**2. Secure Car Parks Accreditation**

Darlington

**[Deleted<sup>176</sup>]**

Durham

Grantham

Newark North Gate

Newcastle

Peterborough

Retford

York

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<sup>175</sup> 10 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

<sup>176</sup> 10 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

**APPENDIX 2 TO SCHEDULE 1.7**

**NOT USED**

**APPENDIX 3 TO SCHEDULE 1.7****Minimum Asset Remaining Life Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Category of Station Asset</b>	<b>Minimum Asset Remaining Life (percentage amount calculated on an aggregate basis across all relevant assets at all Stations)</b>
Platforms	55.3%
Footbridges	58.8%
Buildings	57.5%
Canopies	57.8%

**APPENDIX 4 TO SCHEDULE 1.7**

**NOT USED**



**SCHEDULE 2**

**ASSETS, LEASES, OTHER FRANCHISEES 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:	Other Franchisees
Schedule 2.4:	<b>NOT USED</b>
Schedule 2.5:	Transport, Travel and Other Schemes
	Appendix 1: List of Transport, Travel and Other Schemes

## Schedule 2.1

**Asset Vesting and Transfer**

1. **NOT USED.**
2. **Vesting of Property Leases during the Service Term**
  - 2.1 LNER 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 LNER is required to do so by virtue of any station or depot access conditions to which it is a party.
  - 2.2 In respect of the new Property Leases specified in paragraph 2.3 or any other new Property Lease with Network Rail, LNER 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(FRI)**, **SL(ST)** and **DL** (as appropriate).
  - 2.3 LNER shall enter into the following leases with Network Rail:
    - (a) a lease of each Station, on or before the expiry of the Station Lease relating to each such Station (each such lease, once granted, shall be a Station Lease for the purposes of this Agreement);
    - (b) a lease of each Depot, on or before the expiry of the Depot Lease relating to each such Depot (each such lease, once granted, shall be a Depot Lease for the purposes of this Agreement);
    - (c) a supplemental lease relating to any Station or Depot, as soon as practicable following the successful completion of any procedure (including obtaining any requisite approval from the ORR) for including additional land within the demise of such Station or Depot (as the case may be) and each such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of this Agreement; and
    - (d) a lease of any Network Rail owned station or depot, which:
      - (i) the Secretary of State consents to or requires LNER to be a party to; and
      - (ii) LNER was not a party to on the date hereof, but which has been contemplated by this Agreement,

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

- 2.4 LNER shall not be in contravention of paragraph 2.3 if and to the extent that Network Rail refuses to enter into any leases specified therein.
- 2.5 In respect of any assignment or amendment of any Property Lease to which section 31 of the Act applied on its grant, each of the Secretary of State and LNER acknowledges that it is their intention that section 31 of the Act shall continue to apply to such assigned or amended lease.
- 2.6 LNER shall use all reasonable endeavours to ensure that any Station Lease that it enters into accurately records all fixtures and fittings in relation to such Station Lease.

**3. Terms of Station Leases**

- 3.1 It is acknowledged that the Station Leases in respect of:
- (a) all Stations, other than Newcastle station, York station any New Station, are on 99 year terms which include full repairing and insuring obligations and are in the agreed terms marked **SL(FRI)**; and
  - (b) Newcastle station and York Station are on the terms set out in the agreed terms marked **SL(ST)**.

## Schedule 2.2

**Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases****1. Novation of Access Agreements during the Service Term**

1.1 LNER shall, to the extent so requested by the Secretary of State (other than on termination of this 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 Network Rail Collateral Agreement<sup>177</sup>**) 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 Network Rail Collateral Agreement<sup>178</sup>** 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 LNER 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 contravention referred to in paragraph 1.3(a),

but shall not, unless LNER otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to LNER arising prior to the date of such novation.

1.4 LNER 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 LNER is also party, agree to the novation of the relevant Train

<sup>177</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>178</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

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 LNER shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require LNER 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 LNER 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 LNER or the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of this Agreement; or
- (c) amend or waive the terms of any Rolling Stock Related Contract,

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

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

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

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

- 2.4 LNER 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 Service Commencement Date; or
  - (b) enter into any new insurance arrangements after the Service Commencement Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services ("**New Insurance Arrangements**").
- 2.5 LNER 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 LNER, whether on a reciprocal basis or otherwise.

### 3. **Cascaded Rolling Stock and Delayed Cascade Mitigation Plan**

- 3.1 For the purpose of this paragraph 3:

**"Cascaded Rolling Stock"** means rolling stock proposed to be used by LNER 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 LNER;

**"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 LNER.

### 3.2 <sup>179</sup>**Without limiting paragraph 2.1 (Rolling Stock Related Contracts and Insurance Arrangements):**

- (a) **each Rolling Stock Lease entered into on or after 1 May 2021 must allow the Secretary of State to make a direction under paragraph 3.2(b) below, including allowing Cascaded Rolling Stock to be sub-leased to the Prior Train Operator; and**
- (b) **if a Relevant Delay occurs, the Secretary of State may in the Secretary of State's sole discretion direct LNER to make the Cascaded Rolling Stock available for use by the Prior Train Operator during such period as the Secretary of State may require, and LNER shall comply with such direction. Any such direction may include the Secretary of State requiring LNER to sublease the Cascaded Rolling Stock back to the Prior Train Operator and/or to delay the date on**

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<sup>179</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**which the Cascaded Rolling Stock is required to be delivered to LNER under such Rolling Stock Lease.**

- 3.3 **NOT USED.**
- 3.4 **NOT USED.**
- 3.5 **NOT USED.**
- 3.6 **NOT USED.**
- 3.7 Where the Secretary of State exercises his right pursuant to paragraph 3.1(b) to require LNER to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period, LNER shall not be liable for any failure to comply with its obligations under this Agreement to the extent that:
- (a) such failure to comply arises directly as a result of LNER being unable to use the Cascaded Rolling Stock; and
  - (b) LNER uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.
- 3.8 LNER 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 LNER shall use all reasonable endeavours to mitigate the impact on the delivery of the Services of the unavailability of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.
- 3.9 If a Relevant Delay has occurred or the Secretary of State believes that there is a material risk that a Relevant Delay will occur he may serve a notice on LNER 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 LNER to mitigate the direct or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Fixed Service Payments;
  - (b) the implications (if any) for the Benchmarks; and
  - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- 3.10 LNER shall meet with the Secretary of State to discuss the Delayed Cascade Mitigation Plan and provide such further information or analysis and further iterations of the Delayed Cascade Mitigation Plan as the Secretary of State shall reasonably require.
- 3.11 Where any rolling stock vehicles cease to be part of the Train Fleet but are acquired by another Train Operator for use in delivering passenger services LNER shall:
- (a) ensure that:

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

3A. <sup>180</sup>**Train Maintenance**

3A.1 **LNER shall procure that heavy maintenance of Train Fleet is undertaken in accordance with the standard expected of a competent, skilled and experienced train operator.**

3A.2 **LNER shall seek approval from the Secretary of State for any changes to the heavy maintenance regime for the Train Fleet where such change will result in any cost saving to LNER including the reduction of any lease payments for the relevant Rolling Stock (such approval not to be unreasonably withheld or delayed).**

4. **Assignment of Property Leases during the Service Term**

4.1 LNER shall (other than on termination of this 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.

4.2 Such assignment shall be on such terms as the Secretary of State may reasonably require, including:

- (a) that LNER 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

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<sup>180</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.



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 antecedent 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 contravention referred to in paragraph 4.2(a), and LNER 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.
- 4.3 LNER shall, on the occurrence of any of the circumstances specified in paragraph 4.1 in relation to any other Train Operator who is a party to a Property Lease to which LNER 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 4.2 shall apply to any such assignment.
- 4.4 LNER shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require LNER to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.
- 4A. <sup>181</sup>Where the Secretary of State requires LNER to sub-let some of its Train Fleet to another Train Operator under the terms of paragraph 3.5 of Schedule 1.6 (The Rolling Stock), then LNER shall:**
- (a) provide the sub-lessee with access to any applicable maintenance and mileage records;**
  - (b) give the sub-lessee reasonable access to the relevant rolling stock vehicles prior to the handover of such rolling stock vehicles to assist with the relevant handover in relation to both operation and maintenance;**
  - (c) use reasonable endeavours to offer the sub-lessee "knowledge transfer" sessions (including technical and operation support) to enable recipient engineers and operational personnel to learn from informed peers;**
  - (d) provide the sub-lessee all relevant information in relation to property arrangements at any Depot relevant to the sub-leased rolling stock vehicles (a "Relevant Depot"), including any stabling arrangements; and**
  - (e) procure such access to each Relevant Depot as the sub-lessee may reasonably require.**

## 5. Station and Depot Leases

- 5.1 LNER shall at all times enforce its rights under each Station Lease and Depot Lease.

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<sup>181</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

## 5.2 LNER 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 LNER 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 Service Term or if consent to the Closure of the relevant Station or Depot has been granted).

6. **Station Subleases**

## 6.1 Unless the Secretary of State agrees otherwise, LNER 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 this Agreement; and
- (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

## 6.2 If so requested by the Secretary of State, LNER 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 Service Term of the Train Operator who is the lessee under such Station Sublease); and
- (b) if such Station Sublease terminates (which for the purposes of this paragraph 6.2(b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sublease in respect of which LNER 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 Service Term of the Train Operator who is the lessee under such Station Sublease),

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

## 6.3 LNER shall notify the Secretary of State immediately on it becoming aware of any event which might give LNER a right to forfeit or terminate any Station Sublease. LNER shall notify the Secretary of State if it wishes to forfeit or terminate any such Station Sublease but shall not (without the Secretary of State's prior written consent) effect such forfeiture or termination until the date which occurs three (3) months after the date of such notice.

## Schedule 2.3

**Other Franchisees****1. Other Franchisees**

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

Schedule 2.4

**NOT USED**

## Schedule 2.5

**Transport, Travel and Other Schemes****1. Local Authority Concessionary Travel Schemes**

## 1.1 LNER shall:

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

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

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

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

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

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

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

## 1.4 The Secretary of State shall consult LNER before making any request of LNER to participate in any amended or new concessionary travel scheme pursuant to

paragraph 1.1(b) and shall allow LNER a reasonable opportunity to make representations to him with respect to any such participation.

- 1.5 LNER shall supply to the Secretary of State, in respect of any concessionary travel schemes referred to in paragraph 1.1(b), such information within such period as the Secretary of State may reasonably require for the purposes of determining whether or not LNER is or will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a consequence of its participation in any such scheme, and/or the obligations assumed by such Local Authority in connection therewith.
- 1.6 If the Secretary of State and LNER are unable to agree whether LNER will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations), the Secretary of State and LNER may resolve such dispute in accordance with the Dispute Resolution Rules.
2. **NOT USED.**
3. **Discount Fare Schemes**
- 3.1 If the Secretary of State:
- (a) effects, or proposes to effect, an amendment to a Discount Fare Scheme;
  - (b) introduces any new Discount Fare Scheme; or
  - (c) ceases to approve a Discount Fare Scheme,
- 3.2 The Secretary of State shall provide a reasonable opportunity to LNER to make representations to him before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 3.1.
- 3.3 LNER shall supply to the Secretary of State, in respect of any Discount Fare Scheme referred to in paragraph 3.1, such information within such period as the Secretary of State may reasonably require for the purposes of determining the financial effect of any such amendment, intended amendment, introduction or cessation of approval.
4. **Inter-Operator Schemes**
- 4.1 LNER shall participate in and comply with its obligations under the terms of each of the Inter-Operator Schemes.
- 4.2 Without limiting paragraphs 4.1 and 4.3, LNER agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Secretary of State.
- 4.3 LNER shall not amend, or agree or propose to amend, any Inter-Operator Scheme other than in accordance with its terms.
- 4.4 LNER shall:
- (a) provide reasonable notice to the Secretary of State of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it

receives notification and which, in its opinion, is reasonably likely to materially affect the provision of the Services; and

- (b) have regard to the Secretary of State's views in respect of any such proposal.

4.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Secretary of State in accordance with the terms thereof.

**APPENDIX 1 TO SCHEDULE 2.5****List of Transport, Travel and Other Schemes****1. Local Authority Concessionary Travel Schemes**

1.1 Each of the following schemes:

(a) Scotland

(i) Fife Council

Journeys between Inverkeithing and Kirkcaldy inclusive and journeys from these stations to Perth, Dundee and Edinburgh and between Dundee and Edinburgh/Haymarket.

(ii) Highland Council

Journeys between Inverness and Dalwhinnie inclusive and between these stations to Edinburgh including intermediate stations.

(iii) Strathclyde PTE

Journeys between Glasgow Central and Motherwell.

(b) England

(i) East Riding of Yorkshire Council

Journeys between Hull/Brough to Doncaster and York via Doncaster.

(ii) West Yorkshire Passenger Transport Authority

Journeys between Keighley/Bradford FS/Leeds/Wakefield.

**2. NOT USED.****3. Discount Fare Schemes**

3.1 Each of the following schemes:

(a) Disabled Persons Railcard Scheme dated 23 July 1995 between the participants therein;

(b) Young Persons Railcard Scheme dated 23 July 1995 between the participants therein; and

(c) Senior Railcard Scheme dated 23 July 1995 between the participants therein; or

(d) any other discount fare scheme approved from time to time by the Secretary of State for the purposes of section 28 of the Act,

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

**4. Inter-Operator Schemes**



- 4.1 Each of the following schemes which relate to arrangements between LNER and other participants in the railway industry:
- (a) Staff Travel Scheme dated 23 July 1995 between the participants named therein;
  - (b) Ticketing and Settlement Agreement;
  - (c) LRT Scheme dated 23 July 1995 between the participants named therein;
  - (d) Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
  - (e) Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 (as amended and restated) between London Regional Transport and the parties named therein;
  - (f) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein;
  - (g) the Pay As You Go Agreement;
  - (h) the CPAY Agreement;
  - (i) [Deleted<sup>182</sup>]
  - (j) <sup>183</sup> **any Discount Fare Scheme;**
  - (k) <sup>184</sup> **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**
  - (l) <sup>185</sup> **the Veterans Railcard scheme introduced on or about 11 November 2020 between the participants named therein.**

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<sup>182</sup> 14 August 2019 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

<sup>183</sup> 14 August 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>184</sup> 14 August 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>185</sup> 10 November 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**SCHEDULE 3**

**NOT USED**

**SCHEDULE 4**

**ACCESSIBILITY AND INCLUSIVITY**

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

## Schedule 4

**Accessibility and Inclusivity**

1. **Relationship with other obligations relating to persons with disabilities**
  - 1.1 LNER acknowledges that its obligations in this Schedule 4 are in addition to and do not limit its obligations to comply with:
    - (a) the EA and any regulations imposed by it;
    - (b) any applicable condition(s) in any of its Licences (including in respect of persons with disabilities); and
    - (c) any other requirements of this 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 LNER directed at meeting the needs of persons with disabilities.
  - 1.3 <sup>186</sup>
    - (a) **Subject to paragraph 1.3(c) below, it is acknowledged that LNER is subject to obligations regarding accessibility under the terms of its Licences (including under the form of its Accessible Travel Policy as approved from time to time by the ORR in connection with the requirements of its Licences) (the "Licence Accessibility Obligations").**
    - (b) **Where any matter included in this Schedule 4 is the subject of a Licence Accessibility Obligation, it is agreed that compliance with the Licence Accessibility Obligation shall take precedence over this Schedule 4 such that compliance with the Licence Accessibility Obligation shall be deemed to fulfil the obligation of LNER in respect of that matter under this Schedule 4 and any failure by LNER in respect of that matter shall be addressed under that Licence and not under this Services Agreement.**
    - (c) **Paragraph 1.3(a) shall have no application to paragraph 3 (Dealing with Claims relating to Stations).**
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 LNER 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;

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<sup>186</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (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 LNER shall:

- (a) co-operate reasonably with and assist the Secretary of State in the development and furtherance by the Secretary of State of the programme described in paragraph 2.1(c) by providing to the Secretary of State:
  - (i) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and
  - (ii) advice as to the most economical way in which accessibility for Disabled Persons could, in LNER's reasonable opinion, be improved at Stations;
- (b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and
- (c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through the Secretary of State pursuant to paragraph 2.5), including from Local Authorities, local development agencies and the National Lottery Commission. LNER 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, LNER 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 Service Term:

- (a) LNER 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 below concerning Minor Works; and
- (b) notwithstanding such compliance, LNER 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,

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

2.5 If LNER 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 Fixed Service 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 Fixed Service Payments in accordance with this paragraph 2.5 in any Service Year:

- (a) the Secretary of State shall make such adjustment to the Fixed Service Payments; and
- (b) LNER 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 LNER of.

2.6 <sup>187</sup>**If and to the extent LNER 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 LNER:**

- (a) **notifies the Secretary of State within seven (7) days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and**
- (b) **complies with the Secretary of State's reasonable directions regarding the exercise of any rights LNER may have in respect thereof,**

**the imposition of the increased access charges shall result in an adjustment to the Budget in accordance with the provisions of paragraph 4 of Schedule 8.1 (Franchise Payments) to reflect the amount of any such increased access charges.**

2.7 LNER 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

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<sup>187</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

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 (Minor Works) to this Schedule 4;
  - (ii) shall not include any works which Network Rail, LNER or any other person has a separate obligation to carry out, except where:
    - (A) such obligation is an obligation of LNER 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 (4) months) after the Service Commencement Date and thereafter before the start of each Service Year:
- (i) <sup>188</sup>**develop a Minor Works' Programme and consult with the Accessibility Panel 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 Service Year and in doing so, spend at least the amount of the Minor Works' Budget for the relevant Service Year in such Service Year (unless otherwise agreed by the Secretary of State);
- (d) report progress to the Secretary of State in determining and carrying out the Minor Works' Programme no less than once every three (3) Reporting Periods; and

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<sup>188</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (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 LNER 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 LNER shall:
- (a) notify the Secretary of State within seven (7) days of receiving notification of the EA Claim. LNER 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 LNER'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 LNER, 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 LNER'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 LNER to defend the EA Claim (or any aspect of it) then LNER shall defend the EA Claim in accordance with paragraph 3.1.
- 3.4 If LNER 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 LNER:
- (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 LNER 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 LNER 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 <sup>189</sup>**LNER shall establish and implement procedures necessary to:**

(a) **record the making of reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities which are made through the Passenger Assistance (or whatever service may replace it from time to time for the purposes of ORR's most recent guidance on Accessible Travel Policy);**

(b) **record whether such seating accommodation and/or assistance is actually provided, whether there has been a delay in providing such assistance at either departing, arrival or any interchange stations, and whether the journeys planned using Passenger Assistance have been completed successfully (e.g. by surveying a representative sample of users);**

(c) **provide such records to the Secretary of State on his request and publish a summary of the data in its Customer Report(s) and on the relevant section of LNER's website.**

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

##### 4.3 <sup>190</sup>**Where LNER's Accessible Travel Policy:**

(a) has been established before the date of this Agreement; and

(b) has not been revised and approved by the ORR to take into account the ORR's most recent published guidance on **Accessible Travel Policy**<sup>191</sup> as at the date of this Agreement,

LNER shall within six (6) months of the date of this Agreement revise its **Accessible Travel Policy**<sup>192</sup> such that it complies with that guidance, and obtain the ORR's approval of the revised version.

##### 4.4 <sup>193</sup>**By no later than 31 December 2021, LNER shall notify the Secretary of State of:**

<sup>189</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>190</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>191</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>192</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>193</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (a) **the extent to which it recorded the matters described in paragraphs 4.1(a) and 4.1(b) above (collectively referred to as the "Seating and Assistance Provisions"), as at the date of the notification; and**
- (b) **if and to the extent to which it did not previously record the Seating and Assistance Provisions, its assessment of the costs, practicalities and timescales involved in putting in place the necessary systems and processes to enable them to do so.**

**4.5** <sup>194</sup> **Following the notifications referred to in paragraph 4.4:**

- (a) **if LNER already records the Seating and Assistance Provisions, it shall continue to do so and shall provide the results of such records to the Secretary of State, and publish a summary of the data in its Customer Report(s) and on the relevant section of LNER's website; and**
- (b) **if LNER does not record the Seating and Assistance Provisions, then the Secretary of State may require them to establish and implement the necessary systems and processes by such date as the Secretary of State may reasonably specify (having regard to any assessment provided by LNER pursuant to paragraph 4.1 above), and with effect from such date, it shall record Seating and Assistance Provisions and shall provide the results of such records to the Secretary of State and publish a summary of the data in its Customer Report(s) and on the relevant section of LNER's website.**

**4.6** <sup>195</sup> **LNER shall promptly send to the Secretary of State a copy of:**

- (a) **each set of results of the surveys of Passenger Assistance users that LNER undertakes pursuant to its Accessible Travel Policy; and**
- (b) **any reports that LNER submits to ORR in connection with the effectiveness of, and satisfaction with, the Passenger Assistance service.**

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

**5.** <sup>196</sup> <sup>197</sup> **Annual Accessibility Update**

**5.1 The Parties acknowledge that LNER, pursuant to its Licence Accessibility Obligations, is required to submit reports from time to time to ORR in respect of accessibility matters, including, in relation to:**

- (a) **the activities undertaken by LNER to improve accessibility to the Services; and**

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<sup>194</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>195</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>196</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>197</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) the approach that LNER has taken to assessing the accessibility requirements of passengers pursuant to the requirements of the EA for example when making decisions about operations, design and service improvements; and
  - (c) the action(s) taken by LNER to remedy any failure (whether identified by LNER or ORR) to comply with LNER's Accessible Travel Policy or any other accessibility related obligation arising by pursuant to its Licence Accessibility Obligations.
- 5.2 LNER shall provide a copy of any report submitted to ORR pursuant to paragraph 5.1 to the Secretary of State within seven (7) days of it being submitted to ORR.
6. <sup>198</sup> **Accessibility Director and Accessibility Manager**
- 6.1 **By no later than 31 December 2020, LNER shall nominate:**
- (a) a director at board level; and
  - (b) an operational manager,
- each with specific responsibility for accessibility issues.**
- 6.2 **The responsibilities of the operational manager to be appointed in accordance with paragraph 6.1(b) shall include being accountable for LNER:**
- (a) meeting its Accessible Travel Policy requirements; and
  - (b) satisfying its obligations in respect of accessibility issues under the Services Agreement.
7. <sup>199</sup> **Passenger Assistance**
- 7.1 **From 31 December 2020 and thereafter throughout the Service Period, LNER shall proactively promote Passenger Assistance, in order to increase awareness of Passenger Assist and the assistance available from LNER to existing and potential customers, including by introducing and maintaining a communication campaign at stations, on passenger carrying vehicles within the Train Fleet and on social media platforms.**
- 7.2 **By no later than 31 December 2020, LNER shall undertake quarterly surveys to measure the satisfaction of, and feedback from passengers who have booked assistance.**
8. <sup>200</sup> **Accessibility Panel**

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<sup>198</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>199</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>200</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 8.1 From 31 December 2020, LNER shall establish a panel comprised of customers with a range of different types of disabilities (the “Accessibility Panel”).
- 8.2 The Accessibility Panel shall:
- (a) be consulted on infrastructure projects, operational and policy decisions that may have an impact on the needs of passengers with accessibility requirements;
  - (b) participate in the design of the enhanced disability awareness training referred to in paragraph 9 below, and the co-design of physical assets, electronic services and applications, and other services and facilities relating to accessibility as appropriate; and
  - (c) report to the board of LNER on a quarterly basis.
- 8.3 LNER shall consult with the Accessibility Panel on any Station Improvement Measures.
9. <sup>201</sup>Enhanced Disability Awareness Training
- 9.1 <sup>vii</sup> By no later than 28 June 2021, LNER shall introduce and deliver enhanced disability awareness training to all Franchise Employees in accordance with paragraph 9.3 which takes account of a wide range of impairments (including non-visible disabilities).
- 9.2 LNER shall deliver 'refresher' training in respect of the training referred to in paragraph 9.1 above to all Franchise Employees every year.
- 9.3 The content of the training referred to in paragraph 9.1 above shall comply with the requirements of the ORR's Accessible Travel Policy Guidance, and LNER shall involve Disabled People and/or groups representing Disabled People (which may include the Accessibility Panel) in the design and delivery of such enhanced disability awareness training.
10. <sup>202 203</sup>Social Media Engagement with Passengers with Disabilities
- 10.1 By no later than 31 July 2021, LNER shall develop and share with the Secretary of State a twelve (12) month plan describing how it shall increase its use of social media for the purpose of:
- (a) advising passengers with disabilities on matters, including:
    - (i) planned and/or unplanned disruptions to Passenger Services;
    - (ii) changes to Passenger Services in operation; and

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<sup>201</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>202</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>203</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (iii) rail replacement bus services;
  - (b) responding to queries and questions from passengers with disabilities and in a timely manner;
  - (c) receiving feedback and comments from passengers with disabilities; and
  - (d) promoting LNER's additional services for passengers with disabilities, including Passenger Assistance.
- 10.2 Subject to the Secretary of State's consent to the plan shared pursuant to paragraph 10.1 (such consent not unreasonably withheld or delayed), LNER shall implement this plan (the "Social Media Plan").**
- 10.3 By no later than 31 January 2022, LNER shall provide the Secretary of State with a report detailing the extent to which the Social Media Plan is achieving the purposes referred to in paragraph 10.1 and any proposed revisions to the Social Media Plan to help achieve those purposes.**
- 10.4 Any revision to the Social Media Plan proposed by LNER pursuant to paragraph 10.3 shall be subject to the consent of the Secretary of State before implementation (such consent not unreasonably withheld or delayed).**
- 11. <sup>204</sup> <sup>205</sup> Accessible Formats of Passenger Facing Information**
- 11.1 By no later than 1 October 2021 LNER shall ensure (and continue to ensure throughout the Service Term) that, if and to the extent reasonably practicable, passenger facing information (in whatever form or media) is presented or made available in a range of accessible formats, taking into account the requirements of Disabled People in relation to communication (such as passengers who use British Sign Language or "easy read").**
- 11.2 The Parties acknowledge that:**
- (a) the ORR licensing regime requires the publication of certain documents (the "Relevant Documents") in accessible formats; and
  - (b) insofar as the obligation in paragraph 11.1 above applies to the Relevant Documents, enforcement action is within the remit of the ORR and accordingly a failure to comply with paragraph 11.1 in respect of the Relevant Documents shall not be treated as a contravention of the Services Agreement (but LNER nevertheless acknowledges that it will remedy any such failure, as soon as practicable and in accordance with any directions as may be given by the ORR).

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<sup>204</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>205</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**12. <sup>206</sup>Diversity Impact Assessments**

**12.1 LNER shall, from 1 June 2021 and throughout the Service Term, ensure that it conducts a diversity impact assessment on all projects that will or may affect the interests of persons with protected characteristics (as defined under the EA 2010) carried out by LNER (except where in the reasonable opinion of LNER, the project is sufficiently completed such that a diversity impact assessment is not reasonably expected to materially influence the outcome of the project, in which case the requirement to conduct a diversity impact assessment in respect of that particular project shall not apply).**

**12.2 LNER shall take such steps as it considers appropriate (acting reasonably) in light of the conclusions of the diversity impact assessment to ensure that issues affecting people with protected characteristics (as defined under the EA 2010) are properly addressed in compliance with applicable Laws.**

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<sup>206</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**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 LNER 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.
12. <sup>207</sup> **Developing and adopting technological solutions to improve accessibility.**

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<sup>207</sup> 24 July 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**APPENDIX 2 TO SCHEDULE 4****Accessible Transport Arrangements**

1. References in this Appendix 2 to Schedule 4 (Accessibility and Inclusivity) to passengers are references to passengers with disabilities who are wheelchair users or otherwise severely mobility impaired.
2. Subject to paragraph 4, where:
  - 2.1 a passenger wants to travel on a Passenger Service; and
  - 2.2 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,

LNER shall provide accessible transport arrangements for that passenger in accordance with paragraph 3.
3. LNER shall provide accessible transport arrangements for the passenger referred to in paragraph 2:
  - 3.1 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;
  - 3.2 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
  - 3.3 to or from such other station as LNER 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. LNER's obligations under this Appendix 2 to Schedule 4 (Accessibility and Inclusivity) are subject to:
  - 4.1 reasonable prior notice of the passenger's requirement for accessible transport arrangements; and
  - 4.2 the availability of suitable accessible transport arrangements (provided that LNER has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such accessible transport arrangements).



**SCHEDULE 5**  
**FARES AND SMART TICKETING**

Schedule 5.1:	Purpose, Structure and Construction
Schedule 5.2:	LNER'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:	Smart Ticketing

## Schedule 5.1

**Purpose, Structure and Construction****1. Purpose of provisions relating to Creating Fares**

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

**1.2 Purpose of Fares Regulation**

(a) The purpose of Schedule 5.3 (Allocation of Fares to Fares Baskets) to Schedule 5.8 (Fares Regulation Information and Monitoring) (inclusive) is to provide for the regulation of Fares by the Secretary of State pursuant to section 28 of the Act.

(b) For the purpose of regulating Fares, each Fare that is to be regulated shall be allocated in accordance with this Schedule 5.1 to one of the following Fares Baskets:

- (i) the Commuter Fares Basket; or
- (ii) the Protected Fares Basket.

(c) The Secretary of State's regulation of Fares places a limit on:

- (i) the Price of each Fare that is allocated by the Secretary of State to a Fares Basket. The limit on the Price of each Fare is set by reference to:
  - (A) the overall increase of the Prices of all Fares in a Fares Basket;
  - (B) the individual increase in the Price of each Fare in a Fares Basket; and
- (ii) the Child Price of each Fare as specified in paragraph 1.3 of Schedule 5.5 (Regulation of Individual Fares).

(d) Subject to the more detailed provisions of Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares):

- (i) the overall increase of the Prices of all Fares in a Fares Basket may not exceed the Retail Prices Index + k per cent per annum in respect of each Fare Year; and
- (ii) the increase in the Price of any individual Fare in a Fares Basket may not exceed the Retail Prices Index + k per cent + f per cent per annum in respect of each Fare Year.

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

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

## 2. **Structure of Schedule 5**

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

## 3. **References to "Fare"**

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

## 4. **Fares Documents**

- 4.1 In the event that, in the Secretary of State's reasonable opinion, there is an immaterial inconsistency between the Fares or the maximum Price (as the case may be) for any Fare recorded by RSP in 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.

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

5. **Setting of Child Prices**

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

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

6. **New Stations**

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

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

Fares to or from any New Station, on such basis as he may, after consultation with LNER, 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

**LNER's Obligation to Create Fares**

**1. Creation of Commuter Fares and Protected Fare**

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

**2. Restrictions on Creation of Fares**

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

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

## Schedule 5.3

**Allocation of Fares to Fares Baskets****1. Allocation of Fares to Fares Baskets**

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

**2. Designation of Non Fares Basket Fares**

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

Schedule 5.4

<sup>208</sup> 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) LNER shall procure that the Value of a Fares Basket at any time in any Fare Year does not exceed its Regulated Value at that time.

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:

<b>P x 2010 Nominal Ticket Sales</b>				
<b>where:</b>				
<b>P</b>	<b>is the Price of that Fare at that time; and</b>			
<b>2010 Nominal Ticket Sales</b>	<b>is the number of nominal ticket sales of that Fare for 2010, ascertained as follows:</b>			
	$\frac{A}{B}$			
	<b>where:</b>			
	<table border="1"> <tr> <td><b>A</b></td> <td><b>is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of twelve (12) months which ended 31 March 2010; and</b></td> </tr> <tr> <td><b>B</b></td> <td><b>is the Price for that Fare recorded by RSP in February 2010.</b></td> </tr> </table>	<b>A</b>	<b>is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of twelve (12) months which ended 31 March 2010; and</b>	<b>B</b>
<b>A</b>	<b>is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of twelve (12) months which ended 31 March 2010; and</b>			
<b>B</b>	<b>is the Price for that Fare recorded by RSP in February 2010.</b>			

4. Regulated Value

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

<b>2010 Ticket Revenue x PPAI</b>	
<b>where:</b>	
<b>2010 Ticket Revenue</b>	<b>is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in that Fares Basket for the period of twelve (12) months which ended 31 March 2010;</b>

<sup>208</sup> 6 April 2021 (Date of DOV) – Contract variation agreed by the Secretary of State and Franchisee.

<b>PPAI</b>	<b>is:</b>	
	<b>where:</b>	
	<b>(a)</b>	at any time in the Fare Year commencing 1 January 2011, the Permitted Aggregate Increase for that Fare Year; and
	<b>(b)</b>	at any time in each Fare Year commencing on or after 1 January 2012 except during the period between 1 January 2021 and 28 February 2021 (inclusive), 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).
	<b>(c)</b>	at any time during the period between 1 January 2021 and 28 February 2021 (inclusive), the product of the Permitted Aggregate Increase for each Fare Year between the immediately preceding Fare Year and the Fare Year which begins on 1 January 2011 (inclusively).

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

<b>PAI =</b>	$PAI = \frac{(100 \times RPI) + k}{100}$
<b>where:</b>	
<b>PAI</b>	is the Permitted Aggregate Increase in that Fare Year;
<b>RPI</b>	is an amount equal to:
	$\frac{RPI - 1}{RPI - 2}$
	<b>where:</b>
<b>RPI-1</b>	is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and
<b>RPI-2</b>	is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1; and
<sup>209</sup> <b>k</b>	is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter.

<sup>209</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.





## Schedule 5.5

<sup>210</sup> Regulation of Individual Fares

1. **Price not to exceed Regulated Price or Regulated Child Price**
- 1.1 **LNER shall procure that the Price of:**
  - (a) each Commuter Fare included in the Commuter Fares Basket;
  - (b) each Protected Fare included in the Protected Fares Basket,

in any Fare Year does not exceed the Regulated Price for such Fare in that Fare Year.
- 1.2 **LNER shall procure that the Price of any Season Ticket Fare shall be the same in both directions.**
- 1.3 **LNER shall procure that the Child Price of each Fare in any Fare Year does not exceed fifty per cent (50%) of the Price for such Fare in that Fare Year.**
2. **Regulated Price**
- 2.1 <sup>211 212</sup> **The Regulated Price for any Fare at any time except during the period between 1 January 2021 and 28 February 2021 (inclusive) shall be an amount equal to the greater of:**

<b>(a) Preceding Year Ticket Price + £0.10; and</b>	
<b>(b) ROUND (Preceding Year Ticket Price x PII)</b>	
<b>where:</b>	
<b>Preceding Year Ticket Price</b>	<b>for the Fare Year commencing 1 January 2011, is the maximum Price for that Fare recorded by RSP in 2010 and, for any subsequent Fare Year, is the maximum Price recorded by RSP in the Fare Year preceding that Fare Year, provided that such maximum Price complied with the requirements of this Schedule 5 as it applied at the relevant time such maximum Price was recorded by RSP. If such maximum Price did not so comply, then such maximum Price shall be the last Price recorded by RSP which did so comply;</b>
<b>PII</b>	<b>is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2: and</b>

<sup>210</sup> 6 April 2021 (Date of DOV) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>211</sup> 14 August 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>212</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<b>ROUND</b>	<p>if (Preceding Year Ticket Price x PII), when rounded to two decimal places, results in a value ending in five pence to nine pence (inclusive), then (Preceding Year Ticket Price x PII) shall be rounded up to the nearest whole multiple of £0.10; or</p> <p>If (Preceding Year Ticket Price x PII), when rounded to two decimal places, results in a value ending in one pence to four pence (inclusive), then (Preceding Year Ticket Price x PII) shall be rounded down to the nearest whole multiple of £0.10.</p>
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The Regulated Price for any Fare at any time during the period between 1 January 2021 and 28 February 2021 (inclusive) shall be the Preceding Year Ticket Price.

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

<b>PII =</b>	$\frac{(100 \times RPI) + k + f}{100}$	
<b>where:</b>		
<b>PII</b>	<b>is the Permitted Individual Increase in that Fare Year;</b>	
<b>RPI</b>	<b>is an amount equal to:</b>	
	$\frac{RPI - 1}{RPI - 2}$	
	<b>where:</b>	
	<b>RPI-1</b>	<b>is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and</b>
	<b>RPI-2</b>	<b>is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1;</b>
<sup>213</sup> <b>k</b>	<b>is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter.</b>	
<b>f</b>	<b>is equal to zero (0).</b>	

**2.3 Where:**

**(a) LNER sets the Price of any Commuter Fare or Protected Fare in any Fare Year; and**

<sup>213</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

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

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

3. **Compulsory Inter available Flows**

3.1 **Where LNER:**

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

LNER shall not increase the Price of that Commuter Fare in the same Fares Setting Round without the consent of either the Secretary of State or each other Train Operator which provides railway passenger services for such Flow.

## Schedule 5.6

**Exceeding the Regulated Value, Regulated Price or Regulated Child Price****1. Exceeding the Regulated Value**

1.1 If LNER is in contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in respect of either the Commuter Fares Basket or the Protected Fares Basket:

- (a) it shall reduce the Price of Fares in the relevant Fares Basket at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) from such date; and
- (b) the Secretary of State may adjust Fixed Service Payments by an amount equivalent in his opinion to the sum of:
  - (i) any additional gross revenue accruing to LNER 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 Fixed Service Payments by the Secretary of State pursuant to paragraph 1.1:

- (a) **NOT USED**; and
- (b) shall be without prejudice to any other rights or remedies of the Secretary of State under this Agreement in respect of such contravention.

1.3 It shall not be a contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) if and to the extent that:

- (a) the Value of the Commuter Fares Basket exceeds its Regulated Value in any Fare Year;
- (b) such excess is caused by the Price of any relevant Commuter Fare being set pursuant to the terms of the Ticketing and Settlement Agreement by another person (other than an Affiliate); and
- (c) LNER does not have a reasonable opportunity, under any procedure for consulting or notifying Train Operators of alterations to the Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other Commuter Fares in the Commuter Fares Basket so as to avoid the Value of the Commuter Fares Basket exceeding its Regulated Value.

1.4 If and to the extent that the circumstances described in paragraph 1.3 prevail in any Fare Year, LNER shall not subsequently increase during that Fare Year, or any subsequent Fare Year, the Price of any Commuter Fare in the Commuter Fares Basket which it is entitled to set pursuant to the terms of the Ticketing and Settlement Agreement, unless, following such increase, LNER 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, LNER shall not be required to reduce the Price of any other Commuter Fare at any time during that Fare Year, or any subsequent Fare Year, where such Price has previously been set in a Fares Setting Round.
2. **Exceeding the Regulated Price or Regulated Child Price**
- 2.1 If LNER is in contravention of any of the provisions of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares):
- (a) it shall reduce the Price and/or Child Price (as the case may be) of any relevant Fare at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares) from such date; and
  - (b) the Secretary of State may adjust Fixed Service Payments by an amount equivalent in his opinion to the sum of:
    - (i) any additional gross revenue accruing to LNER 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 Fixed Service Payments by the Secretary of State pursuant to paragraph 2.1:
- (a) **NOT USED**; and
  - (b) shall be without prejudice to any other rights or remedies of the Secretary of State under this 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 Protected Fares Basket (as the case may be) to change in accordance with the following:

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

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

- (b) where any Commuter Fare for a Flow has been included in the Commuter Fares Basket, the Secretary of State may require the inclusion in the Commuter Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 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 paragraphs 3.1(a) and/or 3.1(b) then, in relation to the Fares Basket in which such Fare is or would be included, and without limiting paragraphs 1.1(a) to (c) inclusive, the Secretary of State may also:
  - (i) make any of the changes to such Fares Basket contemplated by this paragraph 1.1;
  - (ii) designate any Fare as a Non Fares Basket Fare in accordance with the provisions (other than the requirement that such designation occurs on or prior to the Service Commencement 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 LNER:

- (a) at any time prior to the Service Commencement 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 LNER may, in the event of any significant change to the pattern of travel on the Passenger Services during the Service 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 twelve (12) months ending 31 March 2010; and/or
- (b) the **value of factor B** is recalculated by using the Price of the relevant Fares recorded by RSP in the month of February during such period.

2.2 The Secretary of State shall act reasonably in relation to any such application but shall not under any circumstances be obliged to accept any such application in whole or in part. The Secretary of State shall be entitled to impose conditions upon any such acceptance, including conditions requiring that the **value of both factors A and B** are adjusted and/or are adjusted in respect of any or all Fares in the relevant Fares Basket.

## 3. **Changes to the Reference Revenue, Gross Revenue, 2010 Nominal Ticket Sales and/or 2010 Ticket Revenue**

3.1 The Secretary of State may, by notice in writing served on LNER no later than the date of commencement of any Fares Setting Round, require:

- (a) the Reference Revenue of any Fares Basket to be calculated by reference to a different reference period for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) than the period of twelve (12) months ended 31 March 2010; and/or
- (b) the Gross Revenue of all Commuter Fares and Protected Fares to be recalculated for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) by reference to a different reference period than the period of twelve (12) months ended 31 March 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 recalculated in respect of any Fare by reference to a different reference period than the period of twelve (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 twelve (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. <sup>214</sup>**Changes to Prices**

**4.1 LNER may from time to time submit proposals to the Secretary of State to increase any Prices beyond the levels permitted under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares.**

**4.2 The Secretary of State shall consider any such proposal and may (at the Secretary of State's sole discretion) require LNER to implement any such proposal 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 Service Term to alter the obligations of, and restrictions on, LNER under Schedule 5.1 (Purpose, Structure and Construction) to Schedule 5.8 (Fares Regulation Information and Monitoring) inclusive for any Fare Year, or part thereof (including alteration of the **value of "k"** under paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values) and/or paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares) and/or alteration of the **value of "f"** under paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares)).

6. **Changes to Compulsory Inter available Flows**

6.1 Where:

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

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

<sup>214</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

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

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

## 7. **Change of Lead Operator/Major Flow Operator**

7.1 LNER 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 LNER shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon LNER 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 LNER shall inform the Secretary of State if it ceases to be a Major Flow Operator in respect of any Flow.

## 8. **Changes to Fares Documents**

8.1 Following:

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

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

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

## 9. <sup>215 216</sup>**Overlapping Fares**

**9.1 Subject to paragraph 9.2, LNER shall, with respect to LNER Dedicated Fares offered on each Overlapping Flow immediately prior to the commencement of the Dual Operating Period, ensure that during the Dual Operating Period:**

**(a) each such LNER Dedicated Fare shall: (i) remain available at the same Price and/or Child Price (as the case may be) as it was available immediately prior to the commencement of the Dual Operating Period (subject to permitted increases in accordance with paragraph 9.1(a)(ii)); and (ii) not be increased in any Fare Year by**

<sup>215</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>216</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

more than  $RPI + k$  (and for these purposes "RPI" and "k" shall have the meaning given in paragraph 2.2 of Schedule 5.5); and

- (b) it continues to use ROSE to automatically set the number of seats available as LNER Dedicated Fares on each relevant Passenger Service, applying the same revenue optimisation strategy and ROSE inputs as it applied immediately prior to the commencement of the Dual Operating Period.
- 9.2 The restrictions in paragraph 9.1 shall not apply to any change (whether of the nature contemplated in paragraph 9.1 or otherwise) to a LNER Dedicated Fare which was initiated or introduced by LNER prior to, but which was only effective from a date on or following the commencement of, the Dual Operating Period.
- 9.3 By no later than 31 January 2022, LNER shall undertake a review and provide to the Secretary of State details of any Overlapping Flows. Thereafter and throughout the Service Term, LNER shall provide such further updates to that review as the Secretary of State may require and such updates shall be provided to the Secretary of State within timescales as are reasonably specified by the Secretary of State.
- 9.4 For the purposes of this paragraph 9:
- (a) "Dual Operating Period" means the period commencing at 02:00 on 1 March 2020 and expiring on the earlier to occur of: (a) either of LNER or Northern Trains Limited or both LNER and Northern Trains Limited ceasing to be a wholly owned subsidiary of the Secretary of State; or (b) either of Northern Trains Limited or LNER or both LNER and Northern Trains Limited ceasing to operate passenger services on an Overlapping Flow;
- (b) "LNER Dedicated Fare" means a Fare offered on an Overlapping Flow with a routing of "LNER Trains Only" or "LNER Only" (or equivalent designation), which entitles the purchaser to travel only on the passenger services operated by LNER;
- (c) "Northern Trains Limited" means Northern Trains Limited (company number 03076444); and
- (d) "Overlapping Flow" means any point to point Flow with respect to which passenger services are operated by both LNER and Northern Trains Limited
- (e) "ROSE" means the "Revenue Optimising Solution Engine" used by LNER to deliver its revenue optimisation strategy, or such replacement solution as it may use from time to time.

## Schedule 5.8

**Fares Regulation Information and Monitoring****1. Information**

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

**2. Monitoring**

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

**3. <sup>217</sup>Car Park Revenue****3.1A For the purposes of this paragraph 3:**

**“passenger revenue” means the sale of tickets of any type for the carriage of passengers by railway or otherwise arising out of LNER permitting any**

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<sup>217</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

person to be carried on the Passenger Services (including revenue allocated to LNER through the Ticketing and Settlement Agreement and pursuant to any multi-modal fares scheme, local authority concessionary travel scheme, inter operator scheme, discount fares scheme, the Pay As You Go Agreement, the CPAY Agreement or otherwise).

- 3.1** Where LNER sells Fares that incorporate car park tickets in the purchase price (each a "Combined Ticket"), LNER shall ensure that the revenue received from such sales is apportioned between passenger revenue and car park revenue so as to reflect the respective value of the Fare and the car park ticket.
- 3.2** Notwithstanding paragraph 3.1 of this Schedule 5.8, LNER shall notify the Secretary of State in writing of any proposals to:
- (a) introduce new Combined Tickets; and/or
  - (b) change the apportionment of revenue received from Combined Tickets between passenger revenue and car park revenue,
- (each a "Combined Ticket Notification").
- 3.3** Each Combined Ticket Notification shall be provided to the Secretary of State not less than thirty (30) days prior to the proposed implementation of the introduction or change that is the subject of the Combined Ticket Notification and shall include the following information:
- (a) details of the applicable Fare and car park ticket (including the origin, destination and type of Fare and the location of the car park) that comprise the Combined Ticket or that will comprise the proposed Combined Ticket (as applicable);
  - (b) a breakdown of how the existing Combined Ticket or proposed Combined Ticket revenue (as applicable) will be apportioned between passenger revenue and car park revenue; and
  - (c) the revenue that would have been derived from the Fare and car park ticket comprising the existing Combined Ticket or proposed Combined Ticket (as applicable) had they been sold separately.
- 3.4** The Secretary of State may consider whether the proposed apportionment between passenger revenue and car park revenue as set out in the Combined Ticket Notification is reasonable. Where the Secretary of State determines that such apportionment is not reasonable, the Secretary of State may amend such apportionment accordingly.
- 3.5** Within thirty (30) days of any request by the Secretary of State, LNER shall provide a report setting out:
- (a) the total sales of Combined Tickets;
  - (b) the information set out in paragraph 3.3 of this Schedule 5.8 in respect of such Combined Tickets; and
  - (c) any further information requested by the Secretary of State from time to time.

## Schedule 5.9

**Smart Ticketing**1. **Smart Ticketing**

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

- "EMV"** means contactless payment cards that conform to the international standards issued by EMVCo (owned by American Express, Discover, JCB, MasterCard, UnionPay and Visa) which manages, maintains and enhances the EMV1 integrated circuit card specifications;
- "ITSO"** means (as the context may require) both:
- (a) the non profit distributing organisation run by its members for the benefit of members and users of smartcards, supported by the Department for Transport ("**Dft**"); and
  - (b) the common specification such non-profit distributing organisation has created to enable the use of interoperable smartcards in transport and other areas;
- "ITSO Certified Smartmedia"** means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded which have been fully certified by ITSO;
- "ITSO Operating Licence"** means the licence granted to operators by ITSO which, among other things, permits them to issue ITSO-compliant cards and issue, sell and accept ITSO products;
- "ITSO Smartmedia Ticketing Scheme"** means a Smart Ticketing Scheme that utilises ITSO Certified Smartmedia;
- "Previous Franchisee ITSO Smartmedia Ticketing Scheme"** means any ITSO Smartmedia Ticketing Scheme operated by the Previous Franchisee prior to the Service Commencement Date;
- "RSPS3002"** means the RSP document with reference RSPS3002, version 02.01 re-published on 6 May 2015 which specifies standards for issuing, checking and validating rail products on ITSO Certified Smartmedia and defines the rail specific rules required to ensure interoperability across the rail network;

- “Smart Target”<sup>218</sup>**      **Media** means targets proposed by LNER or required by the Secretary of State for channel shift from magstripe tickets (orange paper tickets with a magnetic strip on the back) and journeys made on Passenger Services within the geographic boundary of the Rail Services area using Smart Media and contracted as set out in paragraph 1.9 of this Schedule 5.9;
- “Smart Scheme”<sup>219</sup>**      **Ticketing** means a scheme that uses Smart Media that can be fulfilled electronically. It must:
- (a) *either* provide passengers with an electronic way of buying (including at home, on the move or at stations), receiving or collecting and using their ticket; or identify that a passenger has entered and left the rail network at particular stations, and deducts the cost of the journey from their debit/credit card, pre-pay account or other permissible funding mechanism;
  - (b) evidence the purchase of a single or multiple Fare(s) for a passenger;
  - (c) provide management information that a journey is being/has been made to the relevant back office;

1.2 LNER shall:

- (a) join and comply with any RDG approved Smart Ticketing Schemes relevant to some or all of the Passenger Services;
- (b) fully and effectively co-operate with Network Rail, TfL, other Train Operators and relevant Local Authorities, including in relation to the provision any required equipment, to implement and operate Smart Ticketing Schemes; and
- (c) fully and effectively co-operate with TfL, other Train Operators and relevant Local Authorities in relation to proposals to apply Smart Ticketing Schemes to new or existing multi modal fares schemes including in the implementation of any smart card technology pursuant to any multi-modal fares schemes that it may participate in pursuant to its obligations under paragraph 2.1 of Schedule 2.5 (Transport, Travel and Other Schemes); and

<sup>218</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>219</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (d) prepare and submit a report to the Secretary of State in advance of each Franchise Performance Meeting (in such form as the Secretary of State may reasonably require) setting out:
- (i) the level of take-up and usage of Smart Ticketing Schemes by users of the Passenger Services, for each completed Reporting Period during the Service Term;
  - (ii) **NOT USED**; and
  - (iii) the steps that LNER is taking to increase take-up of Smart Ticketing Schemes operated by LNER and increase usage of Smart Ticketing Schemes by users of the Passenger Services,

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

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

- (a) it continues to provide, make available and promote (and where applicable effectively maintain) such ITSO Smartmedia Ticketing Scheme (including any associated infrastructure);
- (b) all components of the ITSO Smartmedia Ticketing Scheme (and any amendment, extension or replacement thereof) inherited, used or introduced by LNER (whether on a permanent or a trial basis) are at all times compliant with:
  - (i) version 2.1.4 of ITSO and the ITSO Operating Licence; and
  - (ii) the RSPS3002,
 or such subsequent versions as LNER and the Secretary of State may agree;
- (c) any ITSO Certified Smartmedia readers introduced by LNER (whether on a permanent or temporary basis) shall conform to EMV level 1 certification (Hardware) and be capable of being upgraded whilst in operation to EMV level 2 (Application);
- (d) it pays all costs of participating in the relevant ITSO Smartmedia Ticketing Scheme including the costs of maintaining all required scheme components to the standards specified in this Schedule 5.9; and
- (e) the RSP owned product set is used.

1.4 Where the Previous Franchisee was a participant in any RDG approved Smart Ticketing Scheme pursuant to the Previous Franchise Agreement, LNER shall take such action as may be required to ensure that it continues to participate in such Smart Ticketing Scheme from the Service Commencement Date without any disruption to the continuity of service received by passengers.

1.5 Without prejudice to its other obligations pursuant to this Schedule 5.9, LNER shall undertake such further actions as the Secretary of State may reasonably require in connection with the introduction of Smart Ticketing Schemes.



- 1.6 LNER may make proposals to the Secretary of State in relation to proposals for the implementation of innovative smart ticketing solutions.
- 1.7 The Secretary of State shall reimburse the reasonable costs incurred by LNER in complying with any such requirement of the Secretary of State pursuant to paragraph 1.5 subject to LNER obtaining the prior written approval of the Secretary of State to the incurring of any such cost and provided that LNER shall not have the right to be reimbursed any costs to the extent that:
- (a) it has already been reimbursed for such costs pursuant to any other provision of the Services Agreement or other arrangements with the Secretary of State; and/or
  - (b) it has the right or ability to recover such costs from any third party.
- 1.8 <sup>220</sup>LNER shall ensure that all Weekly Season Tickets, Monthly Season Tickets and Annual Season Tickets which are ordered through LNER's online retail channels or at ticket offices are, as the default option, offered to the customer on Smart Media.**
- 1.9 <sup>221</sup>LNER shall ensure within one (1) year following 1 May 2021 that a Smart Media Target of at least seventy-four per cent (74%) of all journeys are made by passengers using Smart Media.**
- 2. Smart Ticketing on National Rail Project**
- 2.1 The provisions contained in Appendix 1 of this Schedule 5.9 set out certain arrangements in respect of the implementation of the "Smart Ticketing on National Rail" project. LNER and the Secretary of State shall each be entitled to exercise their respective rights and shall comply with their respective obligations comprised in that Appendix.

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<sup>220</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>221</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**APPENDIX 1 TO SCHEDULE 5.9****1. Definitions**

1.1 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:

(a) Documents in agreed terms

**"STNR Costs Schedule"** means the schedule of costs as detailed in the document in the agreed terms marked **"STNRCS"**;

**"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 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:

(b) the generic specification for the STNR Project;

(c) Annex A which lists those elements of the generic specification for the STNR Project that are to be delivered, performed and complied with by LNER in accordance with Appendix 1 and to the extent of any conflict or inconsistency between the generic specification and Annex A, Annex A shall take precedence;

(d) Annex B which lists equipment to be procured, delivered, commissioned and put into use by LNER in accordance with this Appendix 1; and

(e) Annex C which lists software and/or other system upgrades to be procured, delivered, commissioned and put into use by LNER in accordance with this Appendix 1;

**"STNR Warranted Information"** means the schedule, in the agreed terms, of relevant information provided to the Secretary of State in relation to the STNR Project;

(b) Other definitions

**"Actual STNR Costs"** means:

(c) the actual costs (excluding the Actual STNR Operational Costs) reasonably and properly incurred by LNER in performing the STNR Obligations including in relation to the

delivery and performance by LNER of the equipment, systems, works, services and outputs to be provided by LNER in accordance with and by virtue of the STNR Scope of Work and this Appendix 1 (and/or Appendix 1 of Schedule 5.9 of the Previous Franchise Agreement) provided that such costs shall not include

(i) those identified in Annex A to the STNR Scope of Work as "Already met (via TOC Programme or other commitments)" or

(ii) **NOT USED**; and

(d) the Actual STNR Operational Costs;

**"Actual STNR Operational Costs"**<sup>222</sup>

**means the actual costs incurred by LNER in connection with operating and maintaining the STNR System on and from STNR Completion of a type identified in the STNR Costs Schedule provided that such costs shall be limited to those incurred during the period ending on the earlier to occur of the date which is twenty-four (24) months from STNR Completion and the date of expiry or termination of the Services Agreement;**

**"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;

**"Effective Date"**

means 24 June 2018;

**"Forecast STNR Costs"**

means:

(e) each of the forecast costs (excluding the Forecast STNR Operational Costs) to be incurred by LNER in performing the STNR Obligations as described and detailed in the STNR Costs Schedule including in relation to the delivery and performance by LNER of the equipment, systems, works, services and outputs to be provided by LNER in accordance with and by virtue of the STNR Scope of Work and this Appendix 1 provided that such costs shall not include those identified in Annex A to the STNR Scope of Work as "Already met (via TOC Programme or other commitments)"; and

<sup>222</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

	(f) the Forecast STNR Operational Costs;
<b>"Forecast STNR Operational Costs"</b>	means each of the forecast costs relating to the operation and maintenance of the STNR System on and from STNR Completion as described and detailed in the STNR Costs Schedule provided that such costs shall be limited to those incurred during the period ending on the earlier to occur of the date which is twenty-four (24) months from STNR Completion and the date of expiry or termination of the Services Agreement;
<b>"Maximum Total Amount"</b>	means [REDACTED <sup>223</sup> ] (as such amount may be adjusted from time to time in accordance with Appendix 1);
<b>"Overpayment"</b>	has the meaning given to it in paragraph 6.2(b)(i);
<b>"RDG"</b>	means the Rail Delivery Group, the body responsible for discharging the functions of ATOC from 24 October 2016;
<b>"Smart Ticket"</b>	has the meaning given to such term in the STNR Scope of Work;
<b>"STNR Completion"</b>	means that: <ul style="list-style-type: none"> <li>(g) all aspects of the STNR System that are expressly identified as being the responsibility of LNER in the STNR Scope of Work have been fully delivered, installed and commissioned in accordance with the requirements set out in Annexes A, B and C of the STNR Scope of Work;</li> <li>(h) the testing and certification requirements set out in paragraph 6.2 of the STNR Scope of Work have been achieved; and</li> <li>(i) all aspects of the STNR System that are expressly identified as being the responsibility of LNER in the STNR Scope of Work are available to function in public use;</li> </ul>
<b>"STNR Costs Report"</b>	has the meaning given to it in paragraph 6.2(a);
<b>"STNR Data"</b>	means all CRM Data, Yield Management Data and/or Actual Passenger Demand information processed or generated by the STNR System;

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<sup>223</sup> 21 June 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.

<b>"STNR Obligations"</b>	means the LNER's obligations in respect of the STNR Project pursuant to this Appendix 1;
<b>"STNR Reporting Period"</b>	<p>means any of the Reporting Periods specified in the STNR Costs Schedule, being the Reporting Periods in respect of which Forecast STNR Costs specified for such Reporting Period will be due and payable as specified in paragraph 6 provided that for the purpose of this definition and Appendix only, and for the purpose of giving effect to paragraph 1A and subject to paragraph 6.3(d):</p> <p>(j) "Reporting Period" shall include a "Reporting Period" as defined in the Previous Franchise Agreement; and</p> <p>(k) to the extent that the end of the term of the Previous Franchise Agreement and the commencement of the Services Agreement results in the final Reporting Period in the Previous Franchise Agreement and the first Reporting Period of the Services Agreement being less than 28 days (each a "Part Reporting Period"), that shall be disregarded for the purpose of this Appendix with the intention and effect that for the purpose of this Appendix, the Part Reporting Periods shall be aggregated and treated as a single Reporting Period;</p>
<b>"STNR Project"</b>	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;
<b>"STNR Project Steering Committee"</b>	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;
<b>"STNR Quarter"</b>	means a period of three (3) successive Reporting Periods provided that consistent with, and subject always to paragraph 1A and to paragraph 6.3(d), the first shall commence on the Service Commencement Date and the last shall end on the last day of the Service Period or on the last day of the period of two (2) years following the date of STNR Completion (whichever is the earlier);
<b>"STNR System"</b>	means collectively the IT systems (hardware and software) and collective functionality of the IT systems to deliver the requirements set out and as marked as a "yes" in column 5 in Annex A of the

STNR Scope of Work required for a smart ticketing solution as detailed in Annex B and Annex C of the STNR Scope of Work;

**“Target Date”** means the target date for STNR Completion as identified on the STNR Programme; and

**“Underpayment”** has the meaning given to it in paragraph 6.2(b)(ii).

2. **NOT USED.**

3. **Implementation and operation of STNR System**

2.1 Subject to paragraphs 2.2, 3.12, 3.17, 6.5, 6.6 and 9.1 LNER 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) LNER 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 mean:

(i) to the extent not prevented by the relevant Dependency Item, complying with the corresponding requirements of LNER in respect of the relevant Dependency Item, as listed in the STNR Reporting Requirements; and

(ii) otherwise actively co-operating and engaging with the relevant other train operators and/or RDG and/or TfL as appropriate, including to the extent reasonably possible in establishing processes, business rules and necessary system changes in order to achieve the effective delivery of LNER’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 forecast to fund LNER to carry out these activities;

(c) LNER 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 LNER is due to the actions or omissions of the relevant train operator(s) RDG and/or TfL in connection with the applicable Dependency Item; and

(ii) LNER has exercised all reasonable endeavours in accordance with this paragraph 2.2.

2.3 LNER shall use all reasonable endeavours to ensure STNR Completion is achieved by no later than the Target Date provided that LNER shall not be liable (and there shall not be a contravention of the Services Agreement) for any failure of STNR Completion to be achieved on or before the Target Date where such failure arises

from the non-delivery of a Dependency Item. For the purposes of this paragraph 2.3 "all reasonable endeavours" shall mean that LNER deploys internal and/or external resources and appoints and manages relevant suppliers with the objective of ensuring STNR Completion is achieved by no later than the Target Date provided that LNER shall not in any way be obliged to:

- (a) accept any terms proposed by a supplier that are unreasonable including any terms that (i) are financially or commercially onerous; (ii) are inconsistent with market practice in England for the relevant supply agreement; or (iii) are inconsistent with the anticipated scope of work or cost for the relevant supplier as set out in the STNR Scope of Work and STNR Costs Schedule; and/or
- (b) expend excessive or unreasonable amounts of management time and/or internal or external resources.

2.4 Without prejudice to any other rights the Secretary of State may have in connection with any delay, LNER shall:

- (a) pursuant to its reporting obligations in paragraph 5, notify the Secretary of State of any actual or foreseen 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) where an actual or foreseen delay to the STNR Project arises, continue to use all reasonable endeavours (as described in paragraph 2.3) to achieve its STNR Obligations as soon as reasonably practicable 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 LNER shall, following STNR Completion, at all times be responsible for the ongoing operation, maintenance, upkeep and repair of those elements of the STNR System for which it is responsible under the STNR Scope of Work and continue to make available those elements in accordance with, and subject to, the STNR Scope of Work throughout the remainder of the Service Period.

2.6 LNER shall use all 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 accordance with the interoperability requirements set out in the STNR Reporting Requirements provided that LNER shall not be liable (and there shall not be a contravention of the Services Agreement) for any failure to do so where such failure arises from the non-delivery of a Dependency Item. For the purposes of this paragraph 2.6 "all reasonable endeavours" shall mean that LNER:

- (a) deploys internal and/or external resources and appoints and manages relevant suppliers with the objective of supporting other train operators and RDG and TfL in the delivery of such obligations and activities;
- (b) otherwise actively co-operates and engages with the relevant other train operators and/or RDG and/or TfL as appropriate, including to the extent

reasonably possible in establishing processes, testing procedures, business rules and necessary system changes in order to support the effective delivery of such obligations and activities by such parties;

provided that LNER shall not in any way be obliged to:

- (c) accept any terms proposed by a supplier that are unreasonable including any terms that (i) are financially or commercially onerous; (ii) are inconsistent with market practice in England for the relevant supply agreement; or (iii) are inconsistent with the anticipated scope of work or cost for the relevant supplier as set out in the STNR Scope of Work and STNR Costs Schedule; and/or
- (d) expend excessive or unreasonable amounts of management time and/or internal or external resources.

### **3. Further obligations in relation to items to be supplied**

3.1 Subject to paragraph 3.2, LNER shall procure that it has and retains full title in:

- (a) those parts of the STNR System set out in Annex B and C of the STNR Scope of Work from the date on which that part of the STNR System is delivered to LNER; and
- (b) without limiting paragraph (a), any STNR Data processed or generated by the STNR System from the date of STNR Completion (except to the extent it is prevented by Law from doing so),

which shall be "Operating Assets" for the purposes of and as defined in Schedule 14.2 (Maintenance of Operating Assets).

3.2 LNER shall:

- (a) obtain a non-exclusive, royalty free licence to use the Intellectual Property in:
  - (i) those components of the STNR System set out in Annex B and C of the STNR Scope of Work for which title is not held by LNER; and
  - (ii) (except to the extent it is prevented by Law from doing so) the database containing the STNR Data processed by the STNR System,

for the purposes of the performance of its obligations under this Appendix 1 and the carrying out of the Services. LNER shall not be in breach of paragraph 3.2(a) (and there shall not be contravention of the Services Agreement) if LNER is unable to obtain a licence as described in paragraph 3.2(a) on reasonable commercial terms that are consistent with the terms generally available in the market in England for non-exclusive, royalty free licences of intellectual property, or on commercial terms that are consistent with its existing supply arrangements with such suppliers;

- (b) where requested by the Secretary of State, enter into an arrangement providing for the source code applicable to any software licensed relating to the Intellectual Property described in paragraph 3.2(a) to be placed in escrow and released as necessary to allow LNER and any Successor Operator to continue to utilise the licensed items in circumstances where the relevant supplier has become insolvent, entered into administration or events with



equivalent or similar effects. The Secretary of State and LNER shall in good faith seek to agree any proposed amendment to the STNR Costs Schedule and the Maximum Total Amount to reflect the additional costs properly and reasonably incurred by LNER and arising from any request by the Secretary of State under this paragraph 3.2(b) provided that LNER shall not be obliged to enter into any escrow arrangement unless and until any amendment to the STNR Costs Schedule and the Maximum Total Amount to reflect such additional costs has been agreed by the parties. LNER shall not be in breach of paragraph 3.2(b) (and there shall not be contravention of the Services Agreement) if LNER is unable to agree an escrow arrangement as described in paragraph 3.2(b) on reasonable commercial terms that are consistent with the terms generally available in the market in England for software escrow arrangements.

- 3.3 Subject to the requirements of any applicable Law LNER shall (unless it has the express prior written agreement of the Secretary of State to procure supplies of any component to the STNR System differently) procure supplies of any component to the STNR System from the suppliers referred to in the STNR Costs Schedule.
- 3.4 Subject to the requirements of paragraph 3.3, LNER shall use all reasonable endeavours to enter into contracts for the supply of all components to the STNR System by no later than the relevant dates set out in the STNR Programme. For the purposes of this paragraph 3.4 "all reasonable endeavours" shall mean that LNER deploys internal and/or external resources and enters into negotiations with the relevant supplier with the objective of seeking to agree a commercial arrangement for the supply of the relevant components for the purpose of delivering the relevant elements of the STNR Scope of Work by no later than the relevant dates set out in the STNR Programme provided that LNER shall not in any way be obliged to:
- (a) accept any terms proposed by a supplier that are unreasonable including any terms that (i) are financially or commercially onerous; (ii) are inconsistent with market practice in England for the relevant supply agreement; or (iii) are inconsistent with the anticipated scope of work or cost for the relevant supplier as set out in the STNR Scope of Work and STNR Costs Schedule; and/or
  - (b) expend excessive or unreasonable amounts of management time and/or internal or external resources in attempting to reach agreement with the relevant supplier.
- 3.5 LNER shall:
- (a) when Smart Tickets for relevant Fares and with respect to specific flows become available to passengers in accordance with the STNR Programme and subject to the Secretary of State providing additional funding ensure that the availability of Smart Tickets for relevant Fares is fully and effectively promoted to passengers and potential passengers including through appropriate "launch events" in co-operation with the Secretary of State; and
  - (b) in co-ordination with its suppliers undertake all testing 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 provided that LNER shall not be obliged to incur any capital expenditure with respect to such test equipment.

- 3.6 If LNER retails ITSO Season Tickets LNER shall use reasonable endeavours to ensure that Season Ticket Fares 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).

### **Key Contracts**

- 3.7 LNER acknowledges that the Secretary of State has the right pursuant to Schedule 14.3 (Key Contracts) of the Services Agreement to designate any contract or arrangement relating to the procurement or operation of the STNR System or any component of it and any STNR Data processed or generated by the STNR System (including any licence granted to LNER to use the STNR System and such STNR Data) as a Key Contract including:

- (a) The Ticket Keeper (TTK)
- (b) Parkeon
- (c) Scheidt & Bachmann (S&B)
- (d) RDG

- 3.8 LNER shall procure that (except to the extent that the Secretary of State agrees to the contrary) any contract or arrangement relating to the procurement or operation of the STNR System or any component of it ("Relevant STNR Contract") shall contain an option to extend its term by six (6) months beyond the end of the Service Term to enable such contracts to be novated or transferred to the Successor Operator ("STNR Contract Option") and LNER shall exercise any such STNR Contract Option if directed to do so by the Secretary of State.

- 3.9 **NOT USED.**

### **Dependant Contracts**

- 3.10 LNER shall use all reasonable endeavours to enter into supply contracts in respect of the STNR System with the following suppliers:

- (a) The Ticket Keeper (TTK)
- (b) Parkeon
- (c) Scheidt & Bachmann (S&B)
- (d) RDG

For the purposes of this paragraph 3.10 "all reasonable endeavours" shall mean that LNER deploys internal and/or external resources and enters into negotiations with the relevant supplier with the objective of seeking to agree a commercial arrangement for the supply of the relevant hardware, software or the performance of certain services (as applicable) for the purpose of delivering the elements of the STNR Scope of Work relevant to that supplier by the Target Date provided that LNER shall not in any way be obliged to:

- (e) accept any terms proposed by a supplier that are unreasonable including any terms that (i) are financially or commercially onerous; (ii) are inconsistent with market practice in England for the relevant supply

- agreement; or (iii) are inconsistent with the anticipated scope of work or cost for the relevant supplier as set out in the STNR Scope of Work and STNR Costs Schedule;
- (f) expend excessive or unreasonable amounts of management time and/or internal or external resources in attempting to reach agreement with the relevant supplier; and/or
  - (g) agree to any arrangement with a supplier that may result in the Maximum Total Amount being exceeded.
- 3.11 In the event that LNER has not been able to enter into a supply contract with a supplier in accordance with paragraph 3.10 above or the proposed terms of such supply contract is materially different to those envisaged as at the Effective Date (such event a "**change in circumstances**"), LNER shall notify the Secretary of State, and provide with such notification an explanation in reasonable detail as to the reasons for the change in circumstances. LNER shall provide the Secretary of State with such additional relevant information as he may reasonably require as soon as is reasonably practicable.
- 3.12 Following receipt of any notification and explanation pursuant to paragraph 3.11 the Secretary of State shall in his discretion:
- (a) amend LNER's STNR Obligations in accordance with paragraph 7.1 as is reasonably necessary to reflect the change in circumstances; and/or
  - (b) increase the Maximum Total Amount (and revise the STNR Costs Schedule accordingly) in accordance with paragraph 7.1 as is reasonably necessary to reflect the change in circumstances; or
  - (c) suspend the STNR Project by written notice to LNER; or
  - (d) terminate the STNR Project by written notice to LNER.
- 3.13 If the Secretary of State terminates the STNR Project in accordance with paragraph 3.12(c) above, the provisions of paragraph 9.2 shall apply.
- 3.14 The Secretary of State will act reasonably in exercising the discretions referred to in paragraphs 3.12(a) and 3.12(c) it being acknowledged that the Secretary of State's discretion pursuant to paragraph 3.12(b) above shall remain entirely unfettered.
- 3.15 Without prejudice to paragraphs 3.11 to 3.14 no later than ten (10) Weekdays following the completion by LNER of its negotiations with the last supplier, LNER shall update the STNR Scope of Work, the STNR Programme and the STNR Costs Schedule to reflect the arrangements that have been agreed with suppliers and submit such updated documents to the Secretary of State for approval.
- 3.16 No later than ten (10) Weekdays following the receipt of the updated documents pursuant to paragraph 3.15 the Secretary of State shall notify LNER whether he approves or objects to the updated STNR Scope of Work, STNR Programme and STNR Costs Schedule.

## 3.17 If the Secretary of State:

- (a) approves the updated STNR Scope of Work, STNR Costs Schedule and STNR Programme, those updated documents shall replace the corresponding documents in agreed terms from the date of such approval; or
- (b) objects to the updated STNR Scope of Work, STNR Costs Schedule and/or the STNR Programme the Secretary of State shall notify LNER of the reasons for its objections and LNER shall seek to agree appropriate amendments to the relevant supply contracts to redress those objections within ten (10) Weekdays. In the event that, notwithstanding the Supplier's compliance with its obligations under paragraphs 3.10 and 3.17(b), the parties have not agreed appropriate amendments to the relevant supply contracts, LNER shall notify the Secretary of State within ten (10) Weekdays and the Secretary of State shall:
  - (i) amend the LNER's STNR Obligations in accordance with paragraph 7.1 as is reasonably necessary to reflect the arrangements that have been agreed with suppliers; and/or
  - (ii) suspend the STNR Project by written notice to LNER; or
  - (iii) terminate the STNR Project by written notice to LNER.

3.18 If the Secretary of State terminates the STNR Project in accordance with paragraph 3.17(b)(iii) above, the provisions of paragraph 9.2 shall apply.

3.19 If the Secretary of State does not respond within the period set out in paragraph 3.16, LNER shall be entitled to act as if the Secretary of State has given his approval to the updated STNR Scope of Work, STNR Costs Schedule and STNR Programme and paragraph 3.17(a) shall apply.

#### 4. **No Impact on LNER's other obligations under the Services Agreement**

The provisions of this Appendix 1 shall not in any way reduce or otherwise relieve LNER from its other obligations in the Services Agreement and without limitation LNER shall continue to comply with the Committed Obligations.

#### 5. **Reporting and auditing**

5.1 On and from the first Reporting Period commencing after the Effective Date LNER shall (as applicable) submit to the Secretary of State for each Reporting Period within ten (10) Weekdays of the last day 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 LNER 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 ten (10) Weekdays' notice of the request for the completion of the Go Live Take-Up Monitoring element; and
  - (b) any other information which is in the possession or control of LNER that the Secretary of State reasonably requests in relation to the STNR Project from time to time.
- 5.2 LNER 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, smart cards, bank cards), including, where reasonable, STNR Data that may not be available in LENNON;
  - (b) ticket usage by passengers of the Passenger Services (including STNR Data from databases of ticket usage, STNR Data collected from smart card readers, and gate-line STNR Data). This information may include any of the STNR 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 6.1(b) of Schedule 11.2 (Management Information) shall extend to all records, STNR Data, books of account and other information relevant to the LNER's STNR Obligations. The remainder of paragraph 6 of Schedule 11.2 shall be interpreted accordingly.

## 6. Payments

- 6.1 In consideration of the performance by LNER of the STNR Obligations and subject to the other terms of this paragraph 6, the Secretary of State shall, on the next Payment Date falling no less than seven (7) days before the beginning of each STNR Reporting Period, pay to LNER by way of adjustment to Franchise Payments the Forecast STNR Costs specified in the STNR Costs Schedule to be payable in respect of such STNR Reporting Period.
- 6.2 At the end of each STNR Quarter, a reconciliation process shall apply as follows:
  - (a) within ten (10) Weekdays of the end of the relevant STNR Quarter LNER shall provide a report (together with such supporting evidence as the Secretary of State may reasonably request, such supporting evidence to include a requirement to provide, on an open book basis, such detailed evidence as the Secretary of State may reasonably require) showing the Actual STNR Costs incurred by LNER in each of the STNR Reporting Periods falling within that STNR Quarter (the "**STNR Costs Report**"). Each STNR Costs Report shall be accompanied by a certificate signed by a statutory director of LNER confirming that the information contained in the STNR Costs Report is true, accurate and not misleading in all material respects;
  - (b) where the STNR Costs Report shows (or the Secretary of State reasonably determines) that the aggregate Actual STNR Costs incurred in respect of all the STNR Reporting Periods falling within such STNR Quarter are:
    - (i) less than the aggregate of the Forecast STNR Costs paid by the Secretary of State to LNER in respect of the STNR Reporting Periods falling within such STNR Quarter ("**Overpayment**") then LNER shall be entitled to apply such Overpayment in performing its STNR

Obligations in subsequent STNR Quarters provided that if an Overpayment exists in the final STNR Quarter of the Service Period LNER shall pay to the Secretary of State the amount that is the difference between such aggregate Forecast STNR Costs paid, and the aggregate Actual STNR Costs incurred, in respect of the STNR Reporting Periods falling within such STNR Quarter;

- (ii) more than the aggregate of the Forecast STNR Costs paid by the Secretary of State to LNER in respect of the STNR Reporting Periods falling within such STNR Quarter ("**Underpayment**") then, subject to paragraph 6.3, the Secretary of State shall pay to LNER the amount that is the difference between such aggregate Forecast STNR Costs paid, and the aggregate Actual STNR Costs incurred, in respect of the STNR Reporting Periods falling within such STNR Quarter; and
  - (c) any payments to be made pursuant to paragraph 6.2(b) 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 any Overpayment or Underpayment (as the case may be) is notified to LNER by the Secretary of State.
- 6.3 If LNER at any time considers that it is reasonably likely that the total Actual STNR Costs to be incurred for all of the STNR Reporting Periods falling with an STNR Quarter are likely to exceed 110 per cent of the aggregate Forecast STNR Costs paid for all of such STNR Reporting Periods (such costs being "**Unplanned STNR Costs**") it shall provide to the Secretary of State:
- (a) confirmation of the amount by which such Actual STNR Costs are likely to exceed 110 per cent of such aggregate Forecast STNR Costs;
  - (b) an explanation as to why that is the case (with reasonable supporting information); and
  - (c) the reasonable measures that LNER is taking to reduce any increase in the Actual STNR Costs to be incurred in respect of the STNR Reporting Periods falling within such STNR Quarter,

together with any other information that the Secretary of State may reasonably require in order to satisfy himself that the Actual STNR Costs will be and are reasonably and properly incurred.

- 6.4 Where LNER notifies the Secretary of State in accordance with paragraph 6.4, the Secretary of State shall notify LNER within five (5) Weekdays as to whether he approves LNER incurring the Unplanned STNR Costs for the relevant STNR Quarter. If the Secretary of State:
- (a) notifies LNER within the specified time period that he approves LNER incurring the Unplanned STNR Costs for the relevant STNR Quarter, LNER shall continue to perform the STNR Obligations;
  - (b) notifies LNER within the specified time period that he objects to LNER incurring the Unplanned STNR Costs for the relevant Quarter, the Secretary of State shall:
    - (i) amend the LNER's STNR Obligations in accordance with paragraph 7.1 as is reasonably necessary to avoid LNER incurring the Unplanned STNR Costs; and/or

- (ii) suspend the STNR Project by written notice to LNER; or
- (iii) terminate the STNR Project by written notice to LNER; or
- (c) does not respond to LNER within the specified time period LNER shall be entitled to proceed as if the Secretary of State has approved LNER incurring the Unplanned STNR Costs.

6.5 If and as soon as LNER becomes aware of any potential increase in the Actual STNR Costs such that Actual STNR Costs are reasonably likely to exceed the Maximum Total Amount, LNER shall, within five (5) Weekdays of first becoming aware that Actual STNR Costs is reasonably likely to exceed the Maximum Total Amount, notify the Secretary of State. LNER shall provide all details as are reasonably available to it (or can be ascertained by it) as to:

- (a) the estimated additional costs that LNER 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 LNER's obligations pursuant to paragraph 6.3(c),

and within five (5) Weekdays of receiving such notification and details from the LNER, the Secretary of State shall:

- (c) amend the LNER's STNR Obligations in accordance with paragraph 7.1 to the extent reasonably necessary for LNER to be able to perform such modified STNR Obligations within the Maximum Total Amount; and/or
- (d) increase the Maximum Total Amount (and revise the STNR Costs Schedule accordingly) in accordance with paragraph 7.1 to the extent reasonably necessary for LNER to be able to perform the STNR Obligations; or
- (e) suspend the STNR Project by written notice to LNER; or
- (f) terminate the STNR Project by written notice to LNER,

and in any event LNER shall continue to use its reasonable endeavours to minimise the STNR Costs.

6.6 If the Secretary of State terminates the STNR Project in accordance with paragraph 6.6(f) above, the provisions of paragraph 9.2 shall apply.

6.7 LNER shall notify the Secretary of State as soon as reasonably practicable of incurring any Actual STNR Costs other than for items described and detailed in the STNR Costs Schedule.

## **7. Amendments in respect of STNR**

7.1 The parties may agree (each acting reasonably) amendments to LNER's STNR Obligations from time to time. It is acknowledged that the Secretary of State for the purposes of this paragraph shall act through the STNR Project Steering Committee.

7.2 **NOT USED.**



- 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 LNER of the amendment(s) to the STNR Obligations which he may wish to make;
  - (b) the Secretary of State shall invite LNER to comment as soon as reasonably practicable and in any event within fifteen (15) Weekdays on the proposed amendment(s) and may request LNER:
    - (i) to indicate LNER's view of the impact of the proposed amendment(s) on the Forecast 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) LNER shall comply with any reasonable request for information made by the Secretary of State pursuant to paragraphs 7.3(b)(i) and/or 7.3(b)(ii);
  - (d) the Secretary of State shall have regard to the response received from LNER in response to his invitation under paragraph 7.3(b) in considering any amendment(s).

**8. NOT USED**

**9. Termination or suspension**

9.1 If the Secretary of State reasonably believes that:

- (a) LNER 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 Maximum Total Amount and the Secretary of State does not agree (in its sole discretion) to increase the Maximum Total 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 by written notice to LNER.

9.2 If the Secretary of State exercises his rights of termination in accordance with paragraphs 3.12(d), 3.17(b)(iii), 6.5(b)(iii), 6.6(f) or 9.1:

- (a) LNER 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 LNER shall deliver up and transfer to the Secretary of State (or his nominee(s)) for no payment such of the following as he may reasonably request:
  - (i) any tangible assets comprised in the STNR System which are the responsibility of LNER to deliver and 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 Works;

- (ii) any licence and escrow agreement related to such 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);
- (c) **NOT USED**; 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; 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 3.12(c), 6.5(b)(ii), 6.6(e) or 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); and
  - (b) the Secretary of State shall be entitled by notice to LNER 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 Maximum Total Amount (and revises the STNR Costs Schedule accordingly):
    - (i) to the extent agreed with LNER (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 8.1.

Schedule 5 .10

**Trials<sup>224</sup>**

1. **Fares, Ticketing and Retail Trials**
  - 1.1 **In order to investigate improved fares and ticketing options for passengers, LNER shall, as requested by the Secretary of State, co-operate with the Secretary of State in the planning and proposed implementation and evaluation by LNER of trials in the Services area that relate to fares, ticketing and ticket retail reforms, including, but not limited to, single-leg pricing, part-time season tickets and smart based ticketing solutions (the "Fares, Ticketing and Retail Trials").**
  - 1.2 **The Parties shall agree or the Secretary of State may reasonably determine the form and scope of any Fares, Ticketing and Retail Trial and LNER shall implement that Fares, Ticketing and Retail Trial as agreed or determined.**

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<sup>224</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>225</sup> Schedule 5 .11**Fares, Ticketing and Retail Reforms****1. Definitions**

**1.1 For the purposes of this Schedule 5.11, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):**

**"FTR Co-operation Requirement"** has the meaning given to it in paragraph 2.1 of this Schedule 5.11;

**"Modernising Retail"** means the work in relation to modernising the retail of train tickets that is being developed pursuant to and in accordance with the 'Memorandum of Understanding for Modernising Retail' between the Secretary of State and the RDG dated 29 July 2020; and

**"Proposed Reform Activity"** has the meaning given to it in paragraph 2.2 of this Schedule 5.11.

**2. Fares, Ticketing and Retail Reform****2.1 LNER shall:**

**(a) co-operate with the Secretary of State as may be required from time to time in respect of the planning and/or development (as applicable) of industry reform with respect to Fares, ticketing and the retailing of tickets, including:**

**(i) co-operating and collaborating with other Train Operators and rail industry parties and other organisations in respect of such reforms; and**

**(ii) developing pilot schemes in respect of such reforms,**

**in each case, as directed by the Secretary of State; and**

**(b) co-operate and collaborate with the RDG, other Train Operators and other organisations as directed by the Secretary of State to develop Modernising Retail proposals to accelerate and facilitate a transition to online and pay-as-you-go retailing of tickets and the changes to industry retail operations enabled by such changes, including the ultimate withdrawal of "magstripe" paper tickets;**

**each a "FTR Co-operation Requirement".**

**2.2 If requested by the Secretary of State, LNER shall also bring forward specific and suitable proposals to implement any plans and/or proposals developed pursuant to a FTR Co-operation Requirement (a "Proposed**

<sup>225</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**Reform Activity”) which may be contracted pursuant to and in accordance with clause 17 (Variations in Writing).**

**2.3 When requested by the Secretary of State, LNER shall provide the Secretary of State its assessment of:**

- (a) any capital investment required to implement a Proposed Reform Activity;**
- (b) the cost of implementing a Proposed Reform Activity;**
- (c) any revenue impact associated with or caused by implementing a Proposed Reform Activity;**
- (d) estimates of significant change to passenger demand and/or patterns of travel that could be caused by a Proposed Reform Activity;**
- (e) any material change to LNER's assessment of any of the matters outlined in paragraphs (a) to (d) above,**

**in each case promptly and in any event within seven (7) Weekdays of having calculated the same (unless the Secretary of State directs otherwise) and accompanied by all supporting evidence to substantiate each such calculation or change.**

**2.4 LNER shall:**

- (a) continue undertaking any reform work related to a FTR Co-operation Requirement or other reform work requested or directed by the Secretary of State prior to 1 April 2021 in accordance with any programme schedule agreed between LNER and the Secretary of State (or in the absence of any such schedule, within such timescales as the Secretary of State may direct);**
- (b) commence undertaking and continue to undertake any FTR Co-operation Requirement requested or directed by the Secretary of State after 1 April 2021 promptly and in any event in accordance with any schedule agreed between LNER and the Secretary of State (or in the absence of any such schedule, within such timescales as the Secretary of State may direct).**

**2.5 LNER shall use all reasonable endeavours to:**

- (a) bring forward new proposals for implementing; and/or**
- (b) introduce and implement,**

**such amendments to the Ticketing and Settlement Agreement, the Pay As You Go Agreement, the CPAY Agreement and any other applicable industry agreements (including any successor arrangements or any other agreement between LNER and one or more other Train Operators, rail industry parties and other relevant organisations (including Transport for London) relating to ticketing, fares, fares settlement, the operation of discount schemes or any related matter) as may be directed by the Secretary of State from time to time.**

- 2.6 During the term of the Services Agreement, LNER shall not enter into any new arrangements or material amendments to existing arrangements for the delivery of Fares, ticketing or the retailing of tickets without the prior written consent of the Secretary of State.**
  
- 2.7 LNER shall promptly (and in any event within any timeframes specified by the Secretary of State) provide to the Secretary of State such information and data in relation to Fares, ticketing and the retail of tickets as the Secretary of State may require from time to time.**

**SCHEDULE 6**

**FRANCHISE SPECIFIC OBLIGATIONS AND COMMITTED OBLIGATIONS**

Schedule 6.1:	Franchise Specific Obligations
	Part 1: <b>NOT USED</b>
	Part 2: Mandatory Franchise Specific Obligations
	Part 3: Franchise Specific Obligations
Schedule 6.2:	Committed Obligations
	Part 1: List of Committed Obligations
	Part 2: Special Terms related to the Committed Obligations
Schedule 6.3:	<b>NOT USED</b>
Schedule 6.4:	Alliances
Schedule 6.5:	<b>NOT USED</b>
Schedule 6.6:	<b>NOT USED</b>

Schedule 6.1

**Franchise Specific Obligations**

**PART 1 - NOT USED**

<sup>226</sup>**Part 2 – Mandatory Franchise Specific Obligations**

1. **NOT USED**
2. **Boxing Day Services**
  - 2.1 **At least six (6) months prior to the Passenger Change Date occurring in December 2022, LNER shall:**
    - (a) **consult with passengers, user groups, Network Rail, other train operators licensed under the Act and who operate along the affected Routes and other relevant Stakeholders on the potential demand for passenger services on 26 December in each Service Year (“Boxing Day Services”); and**
    - (b) **prepare and submit a report to the Secretary of State which sets out its proposals for operating Boxing Day Services which are additional to those Passenger Services to be operated by LNER on 26 December in each Service Year pursuant to the relevant Train Service Requirement (the “Additional Boxing Day Services”). Such report shall include:**
      - (i) **LNER’s view on whether or not the operation of the Additional Boxing Day Services will be commercially viable;**
      - (ii) **the impact on Costs and Revenue (if any) if the Secretary of State (at the Secretary of State’s sole discretion) elects to vary the Train Service Requirement to require the provision of the Additional Boxing Day Services.**
  - 2.2 **Following the submission of the report required pursuant to paragraph 2.1(b) LNER shall:**
    - (a) **promptly respond to the Secretary of State’s reasonable queries in relation to such report (including the provision of such assistance as the Secretary of State may reasonably require in connection with the verification of any information contained in such report); and**
    - (b) **upon reasonable notice, attend any such meeting as the Secretary of State may reasonably require for the purposes of discussing the contents of such report.**
  - 2.3 **LNER shall have due regard to the outcomes and findings of the consultation referred to in paragraph 2.1(a) in proposing on which Routes, the Additional Boxing Day Services should operate if the Secretary of State (at the Secretary of State’s sole discretion) elects to vary the Train Service Requirement to require the provision of the Additional Boxing Day Services.**

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<sup>226</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.



**PART 3- [Deleted<sup>227</sup>]**

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<sup>227</sup> 10 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

## Schedule 6.2

**Committed Obligations****PART 1 – COMMITTED OBLIGATIONS****1. Working with Network Rail**

1.1 LNER shall from the Service Commencement Date and for the duration of the Service Term:

- (a) use all reasonable endeavours to integrate its performance activities with Network Rail London and North Eastern Route, including by:
  - (i) sharing performance data, including TRUST delay attribution data, Falcon fleet defect analysis, and GPS train positioning, with Network Rail;
  - (ii) developing the joint Integrated Performance Tracker (iPAT) to manage performance improvement schemes and track local 'Key Performance Indicators';
  - (iii) providing Network Rail with access to any other LNER performance systems and seeking to obtain access to any such Network Rail systems.
- (b) use all reasonable endeavours to participate fully in further phases to which it is invited of Network Rail's Industry Event Data (ITED) project to develop an industry-wide performance database and analytics tool;
- (c) maintain a real-time reporting tool to enable Franchise Employees to log information about delays via smart devices;
- (d) implement and maintain the 'Right Time, Right Way' strategy for the purposes of enhancing integration between LNER and Network Rail, empowering local action on performance issues, and developing a culture of continuous improvement. The 'Right Time, Right Way' strategy shall at a minimum deliver:
  - (i) weekly local control room meetings at 12 stations and depots, attended by relevant staff from LNER and Network Rail;
  - (ii) periodic Safety Management and Right Time (SMaRT) meetings at four locations across the route, attended by 'Right Time, Right Way Champions' from all operational roles and locations; and
  - (iii) weekly executive control room meetings attended by members, or representatives of, LNER's executive team.

**1.2 NOT USED**

1.3 With effect from the date on which CCTV equipment with the relevant capability is fitted by the provider of the relevant fleet, LNER shall offer Network Rail live streaming and instant replay of the forward-facing CCTV equipment on the IEP Fleet).

1.4 LNER shall incur expenditure by no later than 31 March 2019 in a minimum amount of [REDACTED<sup>228</sup>] on expanding Network Rail's 'Suicide Prevention Scheme' and invite other Train Operators whose services interface with LNER's business to contribute to the development of the scheme.

2. **Business Processes**

2.1 <sup>229</sup>LNER shall:

- (a) **from the Service Commencement Date and until 31 October 2019, maintain the 'BQF Committed to Excellence' certification achieved by the Previous Franchisee;**
- (b) **from 31 October 2019 and for the remainder of the Service Term, develop, implement and maintain an internal audit strategic plan consistent with the eight fundamental concepts of the European Foundation for Quality Management excellence model (the "Internal Audit Strategic Plan");**
- (c) **from 31 October 2019 and for the remainder of the Service Term, provide adequate (including management) resource for the purpose of achieving the obligations set out in this paragraph 2.1;**
- (d) **by no later than 28 February each year, undertake a review of the Internal Audit Strategic Plan and provide the Secretary of State with any proposed revisions to the Internal Audit Strategic Plan. The Secretary of State shall review LNER's proposed revisions to the Internal Audit Strategic Plan and shall propose to LNER any additional amendments within 30 days of LNER's submission of its proposed revisions;**
- (e) **notify the Secretary of State's whether, in relation to each of the Secretary of State's amendments, LNER either (i) accepts the amendment, or (ii) rejects the amendment and provide reasons for rejecting the amendment;**
- (f) **finalise the revised Internal Audit Strategic Plan each year within thirty (30) days of the Secretary of State's response in accordance with paragraph 2.1(d);**
- (g) **implement any revised Internal Audit Strategic Plan in accordance with its terms from the date it is finalised in accordance with paragraph 2.1(f); and**
- (h) **by 30 April each year, submit a report against the Internal Audit Strategic Plan summarising progress including an analysis of strategic and technological developments and response to emerging risks in its business.**

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<sup>228</sup> 21 June 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.

<sup>229</sup> 23 December 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

2.2 <sup>230</sup>LNER shall:

- (a) from the Service Commencement Date and until 31 December 2019, maintain the ISO44001 accreditation achieved by the Previous Franchisee;
- (b) by 31 March 2020 submit a plan to the Secretary of State detailing how it will achieve accreditation if at any time after 31 March 2020 LNER is engaged in a project which is capable of achieving ISO44001 accreditation (the "ISO44001 Plan"). The Secretary of State shall review the ISO440001 Plan and shall provide to LNER any amendments required by the Secretary of State by 31 May 2020;
- (c) agree the ISO44001 Plan with the Secretary of State as soon as reasonably practicable and in any event within thirty (30) days of the Secretary of State's response in accordance with paragraph 2.2(b);
- (d) notify the Secretary of State if at any time after 31 December 2019 LNER is engaged in a project which is capable of achieving ISO44001 accreditation; and
- (e) at the Secretary of State's reasonable request following (i) the ISO44001 Plan being agreed in accordance with paragraph 2.2(c), and/or (ii) LNER's notification in accordance with paragraph 2.2(d), comply with the ISO44001 Plan (if agreed in accordance with paragraph 2.2(c)) and use all reasonable endeavours to achieve ISO44001 accreditation.

## 2.3 By no later than 31 December 2018 shall produce a plan demonstrating how it shall achieve ISO270001 accreditation. LNER shall:

- (a) implement (or continue to implement) its ISO27001 accreditation implementation plan;
- (b) use all reasonable endeavours to achieve ISO27001 accreditation during the Service Term; and
- (c) when so requested by the Secretary of State, report to the Secretary of State on the progress of ISO27001 accreditation implementation.

From the date on which LNER achieves (or has achieved) its ISO27001 accreditation, it shall maintain that accreditation for the remainder of the Service Term.

3. **Rolling Stock - standby locomotives**

- 3.1 LNER shall ensure that from the Service Commencement Date and for the duration of the Service Term, it has the use of four (4) standby locomotives, crewed sufficiently to be available for operation between [REDACTED<sup>231</sup>]. From the Service

<sup>230</sup> 10 March 2020 (Date of Contract Change Letter) - Contract variation agreed by the Secretary of State and Franchisee.

<sup>231</sup> **21 June 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.**

Commencement Date until [REDACTED<sup>232</sup>], LNER shall ensure that the standby locomotives referred to in this paragraph 3.1 shall be class 67 locomotives.

3.2 [REDACTED<sup>233</sup>]

4. **ERTMS**

4.1 LNER shall, from the Service Commencement Date and for the duration of the Service Term employ, amongst others, suitably qualified professionals in the following roles:

- (a) a Head of ERTMS Project accountable for day-to-day management and delivery of the ECML Industry Plan;
- (b) an ERTMS Standards and Simulator Manager to update LNER's safety standards for the system integration of trainborne ETCS with line-side infrastructure;
- (c) a Traffic Management Project Manager to support industry traffic management work streams; and
- (d) an Operational Integration Manager accountable for developing changes to operational procedures required as a result of ERTMS deployment,

(together, the "**ERTMS Delivery Team**").

4.2 Throughout the Service Term, LNER shall ensure that members of the ERTMS Delivery Team support, as required, joint working with Network Rail and the Secretary of State and other key Stakeholders to develop an integrated, whole industry plan for the deployments of ERTMS, the IEP Fleet, and other products of the 'Digital Railway Programme' (being the railway industry's plan to deploy digital signalling and train control technology to (amongst other things) increase capacity on the UK's railway network) (the "**ECML Industry Plan**"), including:

- (a) supporting and developing the integrated ECML Industry Plan (including in relation to any required business cases);
- (b) supporting and developing National and Franchise Network specific concept of operations;
- (c) supporting and developing an integrated industry delivery plan for the Digital Railway Programme;
- (d) identifying supporting 'Key Performance Indicators' to track progress;
- (e) establishing high-level issues and risk registers; and

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<sup>232</sup> 21 June 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.

<sup>233</sup> 21 June 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.

- (f) attending, and providing input and support to, cross-industry governance forums.
- 4.3 LNER shall assist the Secretary of State and Network Rail with the 'ERTMS Industry Days' when requested by presenting an overview of ETCS level 2 (without line-side signalling) on the East Coast network.
5. **Depots**
- 5.1 **NOT USED.**
- 5.2 LNER shall employ eleven (11) full-time cleaners in addition to the 48 employed at Bounds Green and Craigentenny depots, for the period from the Service Commencement Date until LNER ceases to be the depot facility owner at Bounds Green and Craigentenny depots.
6. **Performance Improvement Measures**
- 6.1 <sup>234</sup>**From the Service Commencement Date and for the duration of the Service Term, LNER shall continue to employ twelve employees of LNER in the role of 'Station Delivery Managers' at major Stations including, as a minimum, London King's Cross, Leeds and Edinburgh.**
- 6.2 From the Service Commencement Date and for the duration of the Service Term, LNER shall maintain the P2 terminals in its train crew mess rooms.
- 6.3 From the Service Commencement Date and for the duration of the Service Term, LNER shall continue to make available and maintain the "ATOS messaging application" implemented by the Previous Franchisee (or any similar messaging tool with similar capabilities) in order that platform staff and train managers are able to manage and co-ordinate disabled passenger assistance and booked luggage and bicycles (on Stations and on the Train Fleet) through their smart devices.
- 6.4 Without prejudice to LNER's obligations under Schedule 10.3 (Force Majeure and Business Continuity), LNER shall incur no less than **[REDACTED<sup>235</sup>]** in each Service Year (pro-rated for any Service Year of less than 13 Reporting Periods) to deliver and maintain for the duration of the Service Term an overall service delivery overhaul package with, as a minimum, the following elements:
- (a) **[REDACTED<sup>236</sup>];**
- (b) overhaul contingency plans for degraded operations, including an overhaul of the control manual to provide full crew and stock working for all degraded operations (including thinning the service, stepping up trains for delayed inbound workings and turning trains short of their destination to avoid a line obstruction) on a train-by-train basis; and

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<sup>234</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>235</sup> **21 June 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.**

<sup>236</sup> **21 June 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.**

- (c) a review and overhaul of severe weather contingency plans including severe storms and snowfall. To include timetables split into three parts, in broad alignment to Network Rail's infrastructure segmentation: LNE South, LNE North (division at Doncaster) and Scotland, reflecting blanket speed restrictions, Network Rail's 'Key Route Strategy', reduced staffing requirements, and the crewing and provision of locomotives for line clearance and route proving duties as required.
- 6.5 As part of its overhaul of contingency plans referred to in paragraph 6.4(b) above, LNER shall:
- (a) maintain an industry-wide contingency timetable for services operating on the network;
- (b) offer Train Operators whose services interface with LNER's business the opportunity to include their services in LNER's industry-wide contingency timetable; and
- (c) **[REDACTED<sup>237</sup>]**
- 6.6 From the Service Commencement Date and for the duration of the Service Term, LNER shall:
- (a) provide CCTV footage from the Stations to the British Transport Police; and
- (b) **[REDACTED<sup>238</sup>]**
- 6.7 <sup>239</sup> **As soon as reasonably practicable following the publication of the Defect Reporting and Corrective Action System (DRACAS) Rail Industry Standard and for the remainder of the Service Term, LNER shall participate in a common DRACAS process for the East Coast network, in order to:**
- (a) **help identify and analyse faults across the track-to-train interface;**
- (b) **help provide a common forum for guiding analysis and diagnosis; and**
- (c) **help facilitate a fast acting process for reaching technical agreement on the diagnosis and proposed resolution of integration issues.**
- 6.8 LNER shall use all reasonable endeavours to procure that Network Rail carries out gauge clearance to/from Stockton Cut Junction to Middlesbrough in sufficient time to facilitate the introduction of additional services by the Passenger Change Date in May 2020.

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<sup>237</sup> **21 June 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.**

<sup>238</sup> **21 June 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.**

<sup>239</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

## 7. Station Enhancements

### CCTV

- 7.1 From the Service Commencement Date and for the duration of the Service Term, LNER shall maintain CCTV equipment with the following functionality at all Stations:
- (a) digital high-quality Internet Protocol CCTV cameras, which have high-resolution image functionality; and
  - (b) recording systems for CCTV with new hard drives that have sufficient capacity to retain 31 days of data.
- 7.2 LNER shall maintain 171 ticket vending machines providing CBE and CUI functionality which were installed by the Previous Franchise.
- 7.3 From the Service Commencement Date and for the duration of the Service Term, LNER shall maintain the additional information dissemination equipment installed by the Previous Franchisee under the Previous Franchise Agreement such that:
- (a) information screens at Doncaster and Peterborough shall provide coach formation indicators to assist passengers in finding the correct part of the train before they board;
  - (b) touch screens at all Stations shall provide real time information to passengers; and
  - (c) where installed, electronic information posters with interactive touchscreens shall provide real time information to passengers,
- each of which shall be capable of being updated in real time from the York ROC.
- 7.4 By 31 July 2019, LNER shall spend not less than [REDACTED<sup>240</sup>] on improving station facilities across all Stations, including but not limited to refurbishing station waiting facilities at Newark Northgate Station and the underpass at Durham Station.
- 7.5 From the Service Commencement Date and for the duration of the Service Term, LNER shall maintain at least 578 additional car park spaces across all Stations provided by the Previous Franchisee under the Previous Franchise Agreement.
- 7.6 LNER shall provide a fund of [REDACTED<sup>241</sup>] for the provision of electric charging points at Grantham and Peterborough Stations, and shall use all reasonable endeavours to attract third party funding of not less than [REDACTED<sup>242</sup>] for this

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<sup>240</sup> 21 June 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.

<sup>241</sup> 21 June 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.

<sup>242</sup> 21 June 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.



project. If LNER obtains third party funding of not less than [REDACTED<sup>243</sup>], LNER shall complete the installation of electric charging points at Grantham and Peterborough Stations by the expiry of the Service Term.

### Customer Zones

- 7.7 <sup>244</sup>LNER shall incur expenditure of at least [REDACTED<sup>245</sup>] by replacing ticket office environments at Berwick-upon-Tweed Station with a new open plan customer zones which deploy CBE (as defined in paragraph 17.4) ticket vending machines including new retail workstations and moving staff from behind glass screens and into the stations for face-to-face customer interaction by 31 March 2019.
- 7.8 <sup>246</sup>LNER shall:
- (a) use all reasonable endeavours to achieve all consents required to be able to undertake the works described in paragraph 7.8(c) [REDACTED<sup>247</sup>];
  - (b) if it has not secured the consents required by paragraph 7.8(a) by [REDACTED<sup>248</sup>], and if required by the Secretary of State to do so, develop proposal for alternative schemes to utilise some or all of the sum set out in paragraph 7.8(c) to deliver passenger benefits, taking into account any outputs specified by the Secretary of State. LNER will continue to comply with paragraph 7.8(a); and
  - (c) subject to paragraph 7.8(a), incur expenditure of at least [REDACTED<sup>249</sup>] by replacing the ticket office environments at York Station with new open plan customer zones which deploy CBE (as defined in paragraph 17.4) ticket vending machines including new retail workstations and moving staff from behind glass screens and

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<sup>243</sup> 21 June 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.

<sup>244</sup> 27 March 2019 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>245</sup> 21 June 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.

<sup>246</sup> 27 March 2019 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>247</sup> 21 June 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.

<sup>248</sup> 21 June 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.

<sup>249</sup> 21 June 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.

**into the stations for face-to-face customer interaction [REDACTED<sup>250</sup>].**

## 8. On Board Services

8.1 LNER shall, from the Service Commencement Date:

- (a) [REDACTED<sup>251</sup>]
- (b) maintain the strategy for managing catering supply during times of disruption implemented by the Previous Franchisee under the Previous Franchise Agreement such that, in accordance with the strategy:
  - (i) Emergency Supply Points (ESPs) at selected intermediate stations will be maintained;
  - (ii) Passenger Services will carry emergency supplies of water and snacks on-board;
  - (iii) clear service flow expectations will be kept under review,

and LNER shall implement such strategy in times of disruption. LNER may, with the consent of the Secretary of State, amend such strategy from time to time.

## 9. Service Standards

9.1 From the Service Commencement Date and for the duration of the Service Term, LNER shall maintain a Service Quality Management System with the following characteristics:

- (a) a minimum of 50 independent standards audits shall be conducted by an independent internal team across stations and on 100 train journeys per month using audit software on mobile handheld devices; and
- (b) customers shall be recruited by LNER to carry out 'Customer Experience Visits' on end to end journeys. Such visits will:
  - (i) involve a survey of customers' perceptions of service standards on the services offered by LNER;
  - (ii) originate from 14 stations that are manned by LNER's staff; and
  - (iii) occur five times a month from each station referred to in paragraph (ii) above.

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<sup>250</sup> 21 June 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.

<sup>251</sup> 21 June 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.

10. **Luggage Assistance**

10.1 [REDACTED<sup>252</sup>]

11. **Passenger's Charter**

11.1 From the Service Commencement Date and for the duration of the Service Term, LNER shall:

- (a) maintain an automated passenger assist service which allows customers to complete a request form electronically; and.
- (b) maintain an electronic version of the Passenger's Charter which is available through its customer app.

12. **Door to Door Experience**

12.1 From the Service Commencement Date and for the duration of the Service Term, LNER shall maintain the capabilities delivered by the Previous Franchisee under the Previous Franchise Agreement in order that:

- (a) car park season ticket holders continue to have access to an online personalised travel plan (**PTP**) and that the PTP system continues to provide routing information;
- (b) customers can continue to plan their home to station journey and station to destination journey by all modes through LNER's website and apps; and
- (c) staff at Doncaster and Peterborough are able to give advice on all transport options available to customers for their door-to-door journey.

12.2 From the Service Commencement Date and for the duration of the Service Term, LNER shall:

- (a) maintain a dedicated taxi booking website, available to customers;
- (b) ensure that a car sharing website will be available to customers which will allow customers to check whether anyone else is making a similar journey to them in order to facilitate car sharing;
- (c) ensure that car club vehicles which can be booked via LNER's website are available at the following stations from the dates specified;

Stations	Latest date for introductions
Durham, Wakefield Westgate	From the Service Commencement Date

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<sup>252</sup> **21 June 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.**

Peterborough, Doncaster	From the Service Commencement Date
Darlington, Newark Northgate, Berwick	1 January 2019

- (d) maintain all 320 additional cycle spaces installed by the Previous Franchisee at Stations pursuant to paragraph 17.2(e) of Part 1 of Schedule 6.1 (Committed Obligations) of the Previous Franchise Agreement;
- (e) maintain the secure bicycle storage compound at each of Doncaster, Durham, Newark North Gate and Peterborough Stations together with the related controlled access system, CCTV, lighting, shelter and secure fencing;
- (f) ensure that the secure compound at Darlington Station continues to accept LNER's smart card for use of the secure compound; and
- (g) maintain the bicycle storage facilities, including the related shelter, at Newark Northgate Station.

### 13. **SMEs**

13.1 From the Service Commencement Date and for the duration of the Service Term, LNER shall maintain the Small and Medium-sized Enterprises retail channel implemented by the Previous Franchisee under the Previous Franchise Agreement to facilitate:

- (a) direct retailing to SMEs through LNER's website, mobile site and mobile app; and
- (b) self-service access by SME representatives to journey planning, booking, their account area, free wi-fi access, carbon calculators and after-sales customer services such as automated Delay Repay.

### 14. **Security**

14.1 **[REDACTED<sup>253</sup>]**

### 15. **Franchise Employees**

15.1 Not Used.

15.2 Not Used.

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<sup>253</sup> **21 June 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.**

15.3 [REDACTED<sup>254</sup>]

15.4 [REDACTED<sup>255</sup>]

**15.5** <sup>256</sup>NOT USED

**Rest Day Working**

15.6 [REDACTED<sup>257</sup>]

15.7 [REDACTED<sup>258</sup>]

**Employee Engagement Survey**

15.8 <sup>259</sup>LNER shall:

- (a) **during March (or during such other month as the Secretary of State may agree) in each Service Year undertake an annual employee survey in order to measure and assess its plans and processes for employee engagement and performance; and**
- (b) **by no later than 30 September of each following Service Year (or during such other month as the Secretary of State may agree), undertake a 'bite-size' employee survey capturing an interim assessment of employee engagement and performance,**

**together the "Employee Satisfaction Surveys".**

15.9 LNER shall:

- (a) ensure that each Employee Satisfaction Survey is accessible to all Franchise Employees and use all reasonable endeavours to ensure that the level of responses to each Employee Satisfaction Survey is at least 75% of all Franchise Employees; and
- (b) ensure that as a minimum each Employee Satisfaction Survey contains the following statements (the "**Survey Required Statements**"):
  - (i) "I fully support LNER's values";

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<sup>254</sup> **21 June 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.**

<sup>255</sup> **21 June 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.**

<sup>256</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>257</sup> **21 June 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.**

<sup>258</sup> **21 June 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.**

<sup>259</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (ii) "LNER energises me to go the extra mile in my job";
- (iii) "I am proud to work for LNER";
- (iv) "I want to be working for LNER in one year's time",

and that Franchise Employees shall be given the options of "strongly disagree", "disagree", "neither agree nor disagree", "agree" or "strongly agree" in response to each of the Survey Required Statements.

15.10 <sup>260</sup>**No later than 21 June in each Service Year, LNER shall deliver to the Secretary of State a report setting out the results from each Employee Satisfaction Survey undertaken in the previous Service Year which shall contain the following data:**

- (a) **in respect of each Employee Satisfaction Survey undertaken in the previous Service Year, the percentage of Franchise Employees who responded "agree" or "strongly agree" to each of the Survey Required Statements;**
- (b) **in respect of each Employee Satisfaction Survey undertaken in the previous Service Year, the mean percentage of the Franchise Employees who responded "agree" or "strongly agree" to the Survey Required Statements;**
- (c) **in respect of all Employee Satisfaction Surveys undertaken in the previous Service Year, the mean percentage of the Franchise Employees who responded "agree" or "strongly agree" to the Survey Required Statements; and**
- (d) **the percentage of Franchise Employees who responded to each Employee Satisfaction Survey undertaken in the previous Service Year.**

15.11 By no later than eight (8) weeks following each Employee Satisfaction Survey, LNER shall make available the results of that survey to the Franchise Employees through the publication of the results (on a per question basis) by e-mail to all Franchise Employees and on LNER's internal platform.

15.12 **[REDACTED<sup>261</sup>]**

## 16. **Apprenticeships, Traineeship and Graduate placements**

16.1 <sup>262</sup>**LNER shall from the Service Commencement Date continue to employ one (1) full time employee (the "Driver Recruitment Researcher") for a period from the Service Commencement Date to the date falling 12 months from the date of commencement of the Driver Recruitment Researcher's employment. The Driver Recruitment Researcher's role shall be dedicated to researching, redeveloping and standardising driver recruitment and**

<sup>260</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>261</sup> **21 June 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.**

<sup>262</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**training across the rail industry. LNER shall spend no less than [REDACTED<sup>263</sup>] in employing the Driver Recruitment Researcher provided that such amount shall be reduced (pro rata) for any period of the Driver Recruitment Researcher's employment preceding the Service Commencement Date. By 21 May 2019, LNER shall also hold an industry-wide conference to share the findings and conclusion of the research conducted by the full time employee, and shall provide an invitation to the Secretary of State and any of his nominees to attend the conference.**

- 16.2 LNER shall, where appropriate and subject to the prior approval of the Secretary of State, implement the conclusions and recommendations from the research conducted by the full time employee appointed under paragraph 16.1.
- 16.3 With effect from 1 September 2018, LNER shall advertise a graduate scheme and with effect from 1 September 2019 shall introduce and maintain a graduate scheme, and shall offer a minimum of five (5) places on such scheme during each subsequent year of the Service Term. LNER shall ensure that the scheme combines a fixed-term full time contract, study for the BA (Hons) degree in business management at Manchester Metropolitan University (or an equivalent course at another university) and completion of units from the Institute of Railway Operators Certificate Programme.

## 17. **IT Improvements**

### **HR Systems**

- 17.1 From the Service Commencement Date and for the duration of the Service Term, LNER shall maintain the integrated human resources management system introduced by the Previous Franchisee under the Previous Franchise Agreement, such system continuing to provide:
- (a) a master database of Franchise Employees;
  - (b) a Franchise Employee self-service, manager self-service and e-payslips module;
  - (c) a recruitment portal, allowing internal and external applicants to apply and track progress of their applications;
  - (d) a flexible benefits module, permitting Franchise Employees to make choices as to their benefits;
  - (e) an e-learning module;
  - (f) a competency management system which stores a competency framework that is aligned to the rail industry's 'Rail Technical Strategy' and containing the competency profiles of all Franchise Employees and supply chain participants in relation to the technical, operational, management and leadership skills required for his or her role. LNER shall ensure that such system is capable of transferring data to the 'NSARE SkillsID' programme,

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<sup>263</sup> **21 June 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.**

so that any such Franchise Employee can use such records in applying for other roles in the UK rail industry;

- (g) a performance management module and line manager app, hosting performance review data and a link to a smart-device app used by line managers allowing managers to set objectives and track progress against them; and
- (h) a talent management module hosting talent management reviews and outcomes.

### **Customer Relationship Systems**

17.2 From the Service Commencement Date and for the duration of the Service Term, LNER shall maintain the CRM System titled the 'Customer Experience Management' system ("**CEM System**") delivered by the Previous Franchisee under the Previous Franchise Agreement. The CEM System shall continue to provide the following functionality:

- (a) enabling customer facing staff access to CRM Data (including customer contact, value and profile information) via handheld devices; and
- (b) creating links to information in separate systems from other sources in LNER's business (including but not limited to LNER's CBE booking engine, customer website and mobile app, Yield Management System, Tyrell control management system and customer feedback systems) in order to manage and analyse the data in the CEM System.

17.3 **NOT USED**

17.4 LNER shall maintain the centralised booking engine ("**CBE**") delivered by the Previous Franchisee under the Previous Franchise Agreement:

- (a) for ticket bookings on LNER's web and mobile channels; and
- (b) for ticket bookings on LNER's ticket vending machines.

17.5 The CBE shall continue to offer the following functionality:

- (a) a common user interface ("**CUI**") with improved journey planning and seat picker features across all LNER's self-service sales channels (including but not limited to LNER's website, mobile site, mobile app and ticket vending machines);
- (b) collection and connection of customer data (including booking history and preferences) across all of LNER's sales channels in order to provide a Single Customer View ("**SCV**");
- (c) Application Interface Programming ("**API**") technology to offer retail partners access to the CBE;
- (d) purchase by customers of:
  - (i) Season Ticket Fares and additional products through LNER's website and mobile app; and



- (ii) advance purchase tickets, car park tickets, tickets to or from any location on the Great Britain rail network from all of LNER's ticket vending machines;
  - (e) a simplified booking process through consistent, graphical representation of fares and information and personalised customer service across all LNER's retail channels, including:
    - (i) improving the display of tickets, times and fares and automatically showing when cheap fares are available and when the customer can buy the lowest fare (including providing calendar options for the cheapest tickets);
    - (ii) communicating the choices that are available and the relevant terms and conditions;
    - (iii) showing how crowded the train will be;
    - (iv) enabling the customer to choose a seat for their journey; and
    - (v) enabling the customer to download and store electronic tickets on a mobile device;

and
  - (f) a mobile app which includes pre- and post- booking tools.
- 17.6 LNER shall ensure that its web and mobile channels contain secure functionality enabling customers to access the following information:
- (a) a customer's transaction and journey history;
  - (b) details of any forthcoming journeys;
  - (c) details of the customer's Nectar loyalty scheme; and
  - (d) a customer's after-sales contacts (including refunds or complaints pending).
- 17.7 From the Service Commencement Date and for the duration of the Service Term, LNER shall maintain the smart devices issued to all station and on-board staff by the Previous Franchisee under the Previous Franchise Agreement. Such smart devices shall continue to contain the following tools to assist the provision of information to customers:
- (a) access to LNER's mobile website;
  - (b) journey planning information;
  - (c) operational mapping software, to provide real-time train movements;
  - (d) multi-modal information: in the form of links to Transport Direct, TfL and Cabfind mobile sites or equivalent sites;
  - (e) access to LNER's social media feeds, including the ability to share customer comments directly with Control during disruption; and
  - (f) unrestricted mobile internet access.

17.8 **NOT USED.**18. **Wi-Fi**

18.1 Subject to paragraph 18.2, LNER shall from the Service Commencement Date provide free wi-fi:

- (a) to First Class customers throughout their journey, and for at least the first 15 minutes of use by Standard Class customers;
- (b) to Standard Anytime ticket holders who have purchased their tickets through corporate sales channels; and
- (c) to all customers who book through LNER's website or mobile app.

18.2 From 31 May 2020, LNER shall provide free wi-fi to all passengers on all Passenger Services.

18.3 LNER shall provide customer and operational wi-fi at all Stations. In this respect, LNER shall ensure that at all Stations:

- (a) wi-fi will be free to all customers;
- (b) it segregates bandwidth to provide an operationally resilient network for staff.

19. **Digital Channels**

19.1 From the Service Commencement Date and for the duration of the Service Term, LNER shall continue to use social media engagement software which allows multiple users access to social media to improve the quality of customer information and support provided by York ROC via social media channels. LNER shall continue to display its social media response times on-line.

19.2 From the Service Commencement Date and for the duration of the Service Term, LNER shall maintain a customer website as delivered by the Previous Franchisee under the Previous Franchise Agreement which shall continue to include the following information tools:

- (a) service updates showing train time alterations, engineering works and special events;
- (b) a social media feed which also allows customers to sign into their account and communicate directly with the social media advisers;
- (c) live departures capable of being viewed as a list or in the form of a map;
- (d) a postcode journey planner;
- (e) capacity information; and
- (f) alternative route maps during disruption.

19.3 From the Service Commencement Date and for the duration of the Service Term, LNER shall provide to customers a user alert system driven by the CEM System capable of sending personalised messages to customer devices as delivered by the Previous Franchisee under the Previous Franchise Agreement. LNER shall ensure

that customers have the option to receive alerts as emails, text messages or push notifications, including:

- (a) train information changes;
- (b) ticket validity reminders;
- (c) personalised welcomes from train host;
- (d) destination countdowns; and
- (e) delay repay reminders.

## 20. Marketing

20.1 LNER shall incur expenditure of the following amounts on marketing relating to the business during the Service Term:

- (a) from the Service Commencement Date until [REDACTED<sup>264</sup>] - a minimum aggregate amount of [REDACTED<sup>265</sup>] per Service Year;
- (b) from 1 April 2019 until 31 March 2020 - a minimum aggregate amount of [REDACTED<sup>266</sup>];
- (c) from [REDACTED<sup>267</sup>] - a minimum aggregate amount of [REDACTED<sup>268</sup>] per Service Year (pro-rated where any Service Year is less than 13 Reporting Periods); and

LNER shall agree with the Secretary of State [REDACTED<sup>269</sup>] of the Service Commencement Date the minimum amount of the expenditure commitment set out in paragraph (a) above and the period during which such expenditure is to be incurred, in undertaking marketing activity to encourage customers to use digital tickets rather than paper tickets. The expenditure commitments set out in this paragraph 20.1 shall be reviewed as part of the quarterly Budget review required pursuant to paragraph 4 of Schedule 8.1 (Fixed Service payments).

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<sup>266</sup> 21 June 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.

<sup>267</sup> 21 June 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.

<sup>268</sup> 21 June 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.

<sup>269</sup> 21 June 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.

20.2 [REDACTED<sup>270</sup>]

21. **Revenue Protection**

21.1 From the Service Commencement Date and for the duration of the Service Term, LNER shall ensure that all on-board staff performing relevant customer facing revenue protection duties continue to be equipped with smart devices with the following functionality:

- (a) a CBE-supported sales app for selling tickets;
- (b) capable of being attached to a chip and pin device with a barcode and ITSO reader to process payments, with a wireless (Bluetooth enabled) printer to issue barcode-printed paper receipts;
- (c) the ability to issue unpaid fare notices and MG11s via an app; and
- (d) access to passenger information.

21.2 From the Service Commencement Date and for the duration of the Service Term, LNER shall maintain weekday gateline operating hours of 06:00 to 20:00 at King's Cross, Newcastle and all Stations with automatic ticket gates.

22. **Stations**

22.1 <sup>271</sup> **For the purposes of the Committed Obligations set out in paragraphs, 6.6, 7.1, 7.4 and 18.3 of this Part 1 to Schedule 6.2, references to "Stations" shall exclude Newcastle and York Stations.**

23. **Employability Skills Scheme**

23.1 From the Service Commencement Date and for the duration of the Service Term, LNER shall continue to employ on a full-time basis two (2) community engagement managers and one (1) community engagement apprentice who shall be responsible for LNER's employability skills scheme through:

- (a) the delivery of employability sessions (using Business in the Community 'Careers Lab' resources) in schools in the communities served by the Franchise;
- (b) the delivery of workshops (in collaboration with York University), focusing on science, technology, engineering and mathematics and using STEM Learning resources, in schools in the communities where the Services operate;
- (c) providing training and support to teachers on vocational opportunities in schools in the communities where the Services operate;

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<sup>270</sup> **21 June 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.**

<sup>271</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (d) working with parents to raise awareness of vocational opportunities in the railway industry; and
- (e) arranging work placements, job trials and apprenticeships for those in marginalised groups (including those not in education, employment or training, the homeless and ex-offenders).

#### 24. **Environmental Partnerships**

24.1 From the Service Commencement Date and for the duration of the Service Term, LNER shall continue to employ on a full-time basis an 'Environmental Partnerships Manager' who will be responsible for engaging with community groups and relevant stakeholders in identifying, implementing and thereafter overseeing renewable energy and recycling initiatives within the relevant communities where the Services operate.

#### 25. **Innovation Scheme Applications and Software**

25.1 LNER shall continue to develop and, if successfully developed and implemented, maintain and (as applicable) make available to customers and/or itself use for the duration of the Service Term, the following applications, software and tools developed by LNER pursuant to an Approved Innovation Scheme or such other application, software or tool having the same or substantially similar functionality and as may be approved by the Secretary of State:

- (a) the application known as 'Crew Call' which allows all crew members to use their smart devices to communicate with each other about on-board issues;
- (b) the 'SeatFrog' application which allows passengers to either submit bids to upgrade or instantly upgrade their tickets (from standard class to first class) prior to commencing their journey;
- (c) 'Tableau' software, being the software used to improve business intelligence and commercial awareness, focusing on data visualisation, dashboarding and data discovery;
- (d) the disruptions application which allows passengers to find up-to-date information and advice regarding service disruptions;
- (e) in respect of the Train Fleet in Table 1 of Schedule 1.6, McLaren seat sensors which enable LNER to give information to passengers regarding the available seating capacity inside each coach on a train service;
- (f) the software that analyses the causes of each sub-threshold delay using fleet GPS analysis to understand trends, impacts of decisions and to identify common delay locations;
- (g) the 'Oxygen Engage Delay Repay' software which enables customers to receive text codes for making Delay Repay claims;
- (h) the coasting decision tool, being the device that helps train planners and controllers determine the appropriate entry or exit speed during situations where there are issues with the overhead lines; and
- (i) any and all other applications, software, tools or other similar technology successfully developed and implemented by LNER pursuant to an Approved

Innovation Scheme (as defined and as approved under the Previous Franchise Agreement).

## 26. **Resolver Trial**

- 26.1 By no later than 31 December 2018, LNER shall have commenced a twelve (12) month pilot of a web based, independent customer complaints resolution process known as 'Resolver' (the "**Resolver Trial**"). Prior to commencement of the Resolver Trial, LNER shall consult with Transport Focus for the purposes of agreeing the metrics against which the outputs of the Resolver Trial are to be measured (the "**Resolver Trial Metrics**").
- 26.2 Following the conclusion of the consultation referred to in paragraph 26.1 and in any event by no later than 31 October 2018, LNER shall deliver its proposed Resolver Trial Metrics to the Secretary of State for his review. The Parties shall seek to agree the Resolver Trial Metrics by no later than 30 November 2018 and in the absence of agreement by such date the Secretary of State shall be entitled to determine the Resolver Trial Metrics that are to apply to the Resolver Trial within a reasonable period following 30 November 2018 but in any event by no later than 31 December 2018.
- 26.3 By no later than 31 January 2020, LNER shall provide a report to the Secretary of State detailing, with appropriate supporting evidence (which shall include feedback from Transport Focus), the success of the Resolver Trial against the Resolver Trial Metrics agreed or determined pursuant to paragraph 26.2. Following the conclusion of the Resolver Trial, the Secretary of State (in his discretion) may require LNER to, and LNER shall, continue to make the Resolver complaints resolution process available to passengers for the remainder of the Service Term.

## 27. **Family Ticket Trial**

- 27.1 By no later than 31 July 2018, LNER shall have commenced offering for sale Family Tickets [REDACTED<sup>272</sup>] (the "**Family Ticket Trial**").
- 27.2 By no later than the date falling twenty (20) weekdays after the end of the sixth (6<sup>th</sup>) Reporting Period in the second Service Year, LNER shall provide a report to the Secretary of State evidencing, to the Secretary of State's satisfaction, the Costs incurred and Revenue generated by the Family Ticket Trial. Following the conclusion of the Family Ticket Trial, the Secretary of State (in his discretion) may require LNER to, and LNER shall, continue to offer Family Tickets for sale (which may be subject to any additional conditions of offer prescribed by the Secretary of State in his sole discretion) for the remainder of the Service Term.
- 27.3 The Parties agree that the Secretary of State may during the Family Ticket Trial require any revision (including interim revisions) to the Budget pursuant to paragraph 4 of Schedule 8.1 (Fixed Service Payments) as he considers necessary for the purposes of advertising and promoting the Family Ticket Trial.
- 27.4 For the purposes of this paragraph 27, a "**Family Ticket**" shall mean a return Fare priced on a standardised basis allowing travel:

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<sup>272</sup> **21 June 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.**

- (a) for a minimum of one adult and one child and a maximum of two adults and four children travelling together;
- (b) any time on all Off-Peak Passenger Services and, where LNER reasonably considers there is sufficient capacity on such Passenger Services on selected Peak Passenger Services; and
- (c) in standard class or, where LNER reasonably considers that there is sufficient capacity on the Passenger Services to offer such tickets, in first class.

## 28. Railcards

- 28.1 LNER shall cooperate with the Secretary of State in developing the provision of a Discount Fare Scheme for persons aged 26-30.

## 29. Loyalty Scheme

29.1 [REDACTED<sup>273</sup>]

29.2 [REDACTED<sup>274</sup>]

29.3 [REDACTED<sup>275</sup>]

29.4 [REDACTED<sup>276</sup>]

## 30. <sup>277</sup>Update of 2020 RfP Response

### 30.1 The parties acknowledge that:

- (a) on 19 February 2020, the Secretary of State issued a request for proposal to LNER requesting LNER's proposals for the delivery of passenger services for the Intercity East Coast franchise for the period from 28 June 2020 up to 22 June 2025 (the "RfP");
- (b) on 23 March 2020 LNER delivered its response to the RfP to the Secretary of State (the "RfP Response");
- (c) notwithstanding the provisions of this paragraph 30, the Secretary of State may at any time during the Service Period issue a notice or notices to LNER in accordance with clause 17.1(a) of this Agreement

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<sup>273</sup> 21 June 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.

<sup>274</sup> 21 June 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.

<sup>275</sup> 21 June 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.

<sup>276</sup> 21 June 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.

<sup>277</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

requiring LNER to implement any part or parts of the RfP Response as the Secretary of State may specify; and

- (d) without prejudice to the Secretary of State's rights in clause 17.1(a) of this Agreement, the Secretary of State reserves the right pursuant to the process set out in this paragraph 30, to incrementally require LNER at any time during the Service Period to update and implement any aspect of the RfP Response together with any other initiative as may be specified by the Secretary of State.

**30.2 The Secretary of State shall at any time and on any number of occasions be entitled to issue a notice to LNER (the "RfP Update Notice"):**

- (a) requiring LNER to update either (i) the entirety of the RfP Response; or (ii) any part or aspect of the RfP Response as such part or aspect may be specified by the Secretary of State in the RfP Update Notice; and
- (b) specifying any amendments or additions (including any changes in policy requirements) to the RfP that LNER will be required to take account of in preparing any update to the RfP Response.

**30.3 Within 42 days of receiving the Secretary of State's RfP Update Notice (or such longer time period as the Secretary of State may specify), LNER shall deliver to the Secretary of State an updated RfP Response (the "Updated RfP Response"). LNER shall ensure that any Updated RfP Response:**

- (a) contains updates to the RfP Response (or only updates to those aspects or parts of the RfP Response as specified in the RfP Update Notice) in accordance with the requirements of the RfP Update Notice;
- (b) contains clear, supporting evidence for the proposed removal of or change or amendment to any plans or initiatives contained in the RfP Response (including evidence as to cost savings, revenue generation and/or other benefits to passengers using the Passenger Services); and
- (c) does not include any new or additional plans or initiatives (from those contained in the RfP Response) unless requested by the Secretary of State in the RfP Update Notice.

**30.4 Following receipt of the Updated RfP Response, the Secretary may at any time and on any number of occasions:**

- (a) request LNER to deliver any additional or further information regarding any aspect of the Updated RfP Response as the Secretary of State may require;
- (b) require LNER to make any changes or alterations to any aspect of the Updated RfP Response and resubmit the Updated RfP Response in such timescales as the Secretary of State may specify; and/or
- (c) require LNER to implement any initiative or initiatives contained in the Updated RfP Response by issuing a notice or notices varying the terms of this Agreement in accordance with clause 17.1(a) of this Agreement.



- 30.5 **For the avoidance of doubt, the Secretary of State shall be entitled to:**
- (a) **defer any decision on the implementation of any initiative contained in any Updated RfP Response for any period of time as the Secretary of State may require;**
  - (b) **request the further update of the RfP Response or Updated RfP Response (or any part or aspect of the same) at any time and on any number of occasions and the provisions of paragraphs 30.2 to 30.4 shall apply to such update of the RfP Response of Updated RfP Response (as the case may be).**

31. <sup>278</sup> <sup>viii</sup> <sup>279</sup> **Wavelength**

**31.1 For the purpose of this paragraph 31:**

- (a) **“Wavelength Programme” means the programme of work being developed by the rail industry which involves collecting a wide range of information about the customer experience by tracking, amongst other things, LNER’s performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities.**
- (b) **“Wavelength Survey” means the weekly survey relating to the Passenger Services (in such form as may be agreed from time to time), which is undertaken as part of the Wavelength Programme to monitor, amongst other things, LNER’s performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities.**

**31.2 Unless otherwise directed by the Secretary of State, LNER shall:**

- (a) **fully and effectively engage with the Wavelength Programme;**
- (b) **subject to the relevant information being made available to LNER via the Wavelength portal, provide to the Secretary of State by no later than seven (7) Weekdays following the end of each Reporting Period, a report setting out the results of the Wavelength Survey undertaken during that Reporting Period, such results to be presented in such aggregated or disaggregated format as the Secretary of State may specify from time to time; and**
- (c) **subject to the relevant information being made available to LNER via the Wavelength portal, provide to the Secretary of State by no later than fourteen (14) Weekdays following the end of each quarter, a report detailing:**
  - (i) **how LNER has used the full range of Wavelength Programme insights (including the analysis of data received through the Wavelength Survey) to implement and/or invest in:**

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<sup>278</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>279</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (A) customer-focused initiatives; and/or
  - (B) tangible benefits or improvements for customers; and
- (ii) whether such initiatives, benefits or improvements referred to in paragraph 31.2(c)(i) of this part 1 of this Schedule 6.2 have:
- (A) resulted in any improvement in the Wavelength Survey scores collected to date; and/or
  - (B) any other improvements or benefits to LNER.

### 32. <sup>280</sup>Flexible Ticket Product

**32.1 LNER shall, by 15 May 2021 be capable of making available (no later than the date falling fourteen (14) days (or such longer period as the Secretary of State may specify) following the Secretary of State notifying LNER in writing to make the same available, the "Flexible Ticket Commencement Date") to passengers commuting to work on a part-time basis a flexible ticket product (the "Flexible Ticket"), by creating Fares which shall:**

- (a) be valid for use for a period of four weeks from a start date nominated by the holder at the time of purchase of the Flexible Ticket (the "Flexible Ticket Validity Period") and sold in multiples of eight (8);
- (b) be capable of use:
  - (i) on any Flow in respect of which LNER is entitled to create a Fare under the terms of the Ticketing and Settlement Agreement and a Weekly Season Ticket has been purchased at any time in the twenty-four months immediately prior to 1 March 2021, save where:
    - (A) such Flow is wholly within Zones 1-6;
    - (B) such Flow is a cross London flow (being a Flow on which the holder of a Cross London Ticket is permitted to travel);
    - (C) such Flow is a Flow on which the holder of an Inter-Available Fare is permitted to travel on the passenger services operated by any of the Train Operators from time to time of the Wales and Borders, Merseyrail or Scotrail franchises (or any successor Train Operator of such passenger services) provided that, to the extent there is in effect an agreement between LNER and such Train Operator for the use of Flexible Tickets on the passenger services operated by such Train Operator, the foregoing provisions of this paragraph 32.1(b)(i)(C) shall not apply, and LNER shall use all

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<sup>280</sup> 1 March 2021 (Date of DOV) – Contract insertion agreed by the Secretary of State and Franchisee.

reasonable endeavours to enter into such an agreement with each such Train Operator; or

- (D) the Secretary of State, acting reasonably, agrees in writing that the Flexible Ticket does not need to be capable of use on a particular Flow,

(each such flow being a "Relevant Flow"); and

- (ii) only:

- (A) by persons having attained the age of sixteen years; and

- (B) in respect of travel in Standard Class Accommodation;

- (c) entitle the holder to make an unlimited number of journeys in either direction (a flexi-season ticket) on the Passenger Services and the passenger services of other Train Operators on a Relevant Flow on any one (1) day during the Flexible Ticket Validity Period, and where a Flexible Ticket is used on any such day it shall entitle the holder to travel on such Relevant Flow until 04:29 hours on the immediately following day;

- (d) unless otherwise agreed by the Secretary of State, be available to purchase through online channels only and be priced midway between the Price of an anytime day return and twenty per cent (20%) of the Price of a Weekly Season Ticket (in each case in respect of the relevant Flow) in accordance with the following formula:

$$\text{FST} = (\text{ADR} + (7\text{DS}/5)) / 2$$

where:

FST = the Price of a Fare comprised in a Flexible Ticket available in respect of a particular Flow;

ADR = the Price of an anytime day return in respect of such Flow, provided that:

- (i) where the Price of an anytime day return in respect of such Flow is subject to differential pricing, the Price of the Fare available for travel in the Peak shall be used for these purposes; and
- (ii) where no anytime day return is available in respect of such Flow, the Price of a Fare for an equivalent return journey on such Flow shall be used for these purposes, being the Price of an anytime open return or (if no such Fare is available) the Price of an open standard return or (if no such Fare is available) the Price of two anytime singles;

7DS = the Price of a Weekly Season Ticket in respect of such Flow,

(references to Prices of tickets above being to the Price of such ticket on the date of commencement of the Flexible Ticket Validity Period) provided always that:

- (i) FST, and the product of any calculation of twenty per cent (20%) of 7DS or eighty-seven point five per cent (87.5%) of ADR in accordance with paragraphs (ii) and (iii) below respectively, shall:
    - (A) (if ending in £0.05 or more) be rounded up to the nearest £0.10; and
    - (B) (if ending in less than £0.05) be rounded down to the nearest £0.10;
  - (ii) FST shall (save to the extent such outcome arises solely as a result of any rounding in accordance with the provisions of paragraph (i) above) never be less than 20% of 7DS (and any calculation made in accordance with the preceding formula which would otherwise result in FST being less than 20% of 7DS shall be deemed to result in FST being an amount equal to 20% of 7DS, rounded in accordance with the provisions of paragraph (i) above);
  - (iii) FST shall (save to the extent such outcome arises solely as a result of any rounding in accordance with the provisions of paragraph (i) above) never be less than 87.5% of ADR (and any calculation made in accordance with the preceding formula which would otherwise result in FST being less than 87.5% of ADR shall be deemed to result in FST being an amount equal to 87.5% of ADR, rounded in accordance with the provisions of paragraph (i) above); and
  - (iv) FST shall not be discounted to the purchaser pursuant to any Local Authority Concessionary Travel Scheme, Multi-Modal Scheme, Discount Fare Scheme or Inter-Operator Scheme (each as set out in Appendix 1 to Schedule 2.5 (Transport, Travel and Other Schemes)) or otherwise provided that FST shall be discounted pursuant to either the 16-17 Saver railcard scheme or the Job Centre Plus Travel Discount card scheme;
- (e) be enabled by LNER within the retail control service operated by Rail Settlement Plan Limited (the "RCS") for fulfilment on ITSO Certified Smartmedia and barcode enabled media by any person entitled to retail the same in accordance with the Ticketing and Settlement Agreement, save that LNER shall be obliged to enable Flexible Tickets for fulfilment on ITSO Certified Smartmedia only (and not on barcode enabled media) where:
- (i) either or both of the origin and destination stations on the Relevant Flow on which the Flexible Ticket entitles the holder to travel are operated by or on behalf of any of TfL (including any franchisee or concessionaire thereof) or the Train Operators of any of the c2c, South Eastern or Merseyrail franchises; and

- (ii) **barcode enabled media is not accepted by the operator at such station;**
  - (f) **(subject to prior approval in writing from the Secretary of State to incur any associated costs to enable the same) be retailed by LNER on ITSO Certified Smartmedia or (save where sub-paragraphs 32.1(e)(i) and (ii) above apply) barcode enabled media, or both, and LNER shall retail all similar and equivalent products created and enabled for fulfilment within RCS by other Train Operators on ITSO or (to the extent enabled for fulfilment within RCS on such media) barcode enabled media, or both;**
  - (g) **not include a Travelcard when offered for sale;**
  - (h) **offer additional benefits of convenience, including greater flexibility of use, than a Weekly Season Ticket; and**
  - (i) **include such other characteristics as the Secretary of State, acting reasonably, may notify LNER in writing from time to time.**
- 32.2 In addition to the obligations set out at paragraph 32.1, LNER shall take such other action in connection with the Flexible Ticket as the Secretary of State, acting reasonably, may notify LNER in writing from time to time, including such actions as the Secretary of State may require in order for LNER to:**
- (a) **promote and market the Flexible Ticket to potential users; and**
  - (b) **make the Flexible Ticket available to users without independent access to smart media or barcode enabled devices in such manner as the Secretary of State, acting reasonably, may from time to time approve or instruct.**
- 32.3 Where, prior to the deadline specified in sub-paragraph 32.1, LNER already makes available a flexible season ticket or flexible carnet product that is similar or equivalent to the Flexible Ticket described in sub-paragraph 32.1 (either pursuant to LNER's other obligations under this Services Agreement or otherwise), the Secretary of State may notify LNER in writing that by continuing to offer that product, subject to making such adjustments to it and taking such other action as the Secretary of State, acting reasonably, shall specify, LNER shall be deemed to have complied with its obligation in sub-paragraph 32.1. In the absence of such notification LNER shall cease to offer such other similar or equivalent flexible products prior to the Flexible Ticket Commencement Date.**
- 32.4 The Secretary of State and LNER shall undertake a review of the Flexible Ticket during the period falling six to nine months from Flexible Ticket Commencement Date (or such later period as the Secretary of State may notify LNER in writing), following which the Secretary of State, acting reasonably, may instruct LNER to make such alterations to the product as he considers necessary. LNER may also propose to the Secretary of State such alterations to the Flexible Ticket as LNER considers necessary, specifying its reasons for the same and the Secretary of State may, in his absolute discretion, permit LNER to make such alterations to the Flexible Ticket, subject to any adjustments required by the Secretary of State. LNER shall from time to time provide the Secretary of State with such information as the Secretary of State may reasonably request in writing.**

**32.5** If at any time the Secretary of State, acting reasonably, considers that the Flexible Ticket offered pursuant to sub-paragraphs 32.1 to 32.4 should be altered in any way, he may instruct LNER to alter the product and LNER shall comply with that instruction.

**33.** <sup>281</sup>Infrastructure Projects

**33.1** For the purposes of this paragraph 33:

(a) "Infrastructure Project" shall mean any of:

- (i) the major upgrade to the East Coast Main Line (the "East Coast Upgrade") comprising:
  - (A) new track layout and renewal of track, signalling and overhead line equipment on the approaches to King's Cross Station;
  - (B) the construction of a new track for the Great North Eastern Line under the East Coast Main Line at Werrington;
  - (C) the construction of a new platform and track alignment at Stevenage;
  - (D) the upgrade and increase of electrical power supply to the East Coast Main Line;
- (ii) any other project (excluding the East Coast Upgrade) involving the upgrade to, enhancement of or improvement to the infrastructure forming any part of the East Coast Main Line; and
- (iii) such other projects as the Secretary of State may designate as an Infrastructure Project from time to time.

**33.2** LNER shall from 1 May 2021 until completion of each Infrastructure Project engage constructively with all relevant parties responsible for the delivery of such Infrastructure Project with the intention of assisting its timely, efficient and effective completion.

**33.3** To the extent that any Infrastructure Project leads to LNER having rights under railway industry procedures (including Network Change and Station Change) LNER shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of such Infrastructure Project and LNER 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 LNER in accordance with the relevant railway industry procedures. It is acknowledged that LNER may make reasonable objections with a view to mitigating the impact of the Infrastructure Projects and their implementation on passengers and the

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<sup>281</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**Services, while recognising the need for the Infrastructure Projects to be able to be undertaken in a reasonable manner.**

- 33.4 LNER shall throughout the Service Term allocate such appropriate Franchise Employees and other relevant resource as is reasonably required for the purposes of complying with its obligations in relation to all of the Infrastructure Projects pursuant to both the Services Agreement and the Access Agreements to which it is a party.**
- 33.5 LNER shall provide within ten (10) Weekdays of the end of each Reporting Period a detailed report complying with the reasonable requirements of the Secretary of State describing progress in relation to matters relating to each Infrastructure Project and identifying and quantifying so far as LNER is reasonably able the emerging risk position in relation to each such Infrastructure Project as it affects passengers and the Services. LNER 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 Services of any relevant risk arising is mitigated to the greatest extent reasonably practicable.**

## PART 2 - SPECIAL TERMS RELATED TO THE COMMITTED OBLIGATIONS

<sup>282</sup>**This Part 2 of Schedule 6.2 sets out further provisions which shall apply to the Committed Obligations contained in this Services Agreement and these provisions shall be construed as supplemental to the related provisions set out in Part 1 of this Schedule 6.2 and elsewhere in this Services Agreement.**

### 1. Continuation of Availability

1.1 Where LNER is obliged under this Schedule 6.2 to provide, implement or install something (whether a service, facility or otherwise) LNER shall ensure that once the same is provided, implemented or installed that it continues to be provided and made available (and where relevant, effectively maintained) for the remainder of the Service Period unless the contrary is expressly stated.

1.2 Where Part 1 to Schedule 6.2 (Committed Obligations) includes a commitment:

- (a) regarding the maintenance of certain facilities or activities or other similar analogous matters which are the subject of the Committed Obligations, LNER shall not be regarded as having contravened the relevant obligation due to any temporary non-availability of the facility or activity (as the case may be) due to accidental damage or vandalism or maintenance, repair or replacement activities; or
- (b) regarding staffing requirements or particular appointments LNER is required to make and maintain, the obligation of LNER 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 LNER is recruiting for that post

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

### 2. Expenditure Commitments

#### 2.1 Annual Expenditure

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

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

#### 2.2 Expenditure Commitments in real amounts

All expenditure commitments set out in Part 1 to Schedule 6.2 (Committed Obligations), to the extent they have not already been incurred by LNER, shall be

<sup>282</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.



indexed by the Retail Prices Index (in the same way as variable costs are indexed in Appendix 1 (Annual Fixed Service Payments) to Schedule 8.1 (Fixed Service Payments)).

### 2.3 **Expenditure by Network Rail**

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

## 3 **Underspend**

- (a) Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, LNER 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, LNER shall notify the Secretary of State, together with a statement of the costs it has incurred (excluding any third party funding) in delivering the relevant obligations and a reconciliation against the amount it had committed to spend (excluding any third party funding) ("**Underspend**").
- (b) The Parties shall, acting reasonably, seek to agree an additional scheme or schemes which would give rise to benefits to passengers using the Passenger Services to be funded using one or more Underspends and, once agreed, LNER shall apply such relevant Underspend in the delivery of the agreed scheme(s). In circumstances only where, despite having used reasonable endeavours the Parties fail to agree an additional scheme in relation to which relevant Underspend will be applied, the aggregate amount of unallocated Underspend shall be repaid to the Secretary of State as soon as reasonably practicable.

## 4. **Nature of Commitment**

- 4.1 Any commitment in terms of Part 1 to Schedule 6.2 (Committed Obligations) shall be in addition to any obligation of LNER elsewhere in this Agreement and nothing in this Schedule 6.2 (Committed Obligations) shall limit or restrict an obligation imposed on LNER elsewhere in this Agreement.
- 4.2 Save as expressly provided in Part 1 to Schedule 6.2 (Committed Obligations), each Committed Obligation is a separate obligation from any other Committed Obligation and satisfaction of or steps taken towards the satisfaction of one Committed Obligation will not amount to or contribute towards satisfaction of any other Committed Obligation.
- 4.3 <sup>283</sup> **Where in Part 1 to Schedule 6.2 (Committed Obligations), references are made to particular:**

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<sup>283</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (a) **manufacturers or suppliers of equipment or services, LNER may fulfil its relevant commitment by using reasonable equivalents; or**
- (b) **stakeholders, LNER may fulfil its relevant commitment with reference to reasonable successor bodies to the relevant stakeholder.**

## 5. **Review of Compliance**

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

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

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

## 7. **Specimen Schemes**

- 7.1 LNER may propose to undertake an Alternative Scheme in place of a Specimen Scheme. Any such Alternative Scheme must:
  - (a) be intended to deliver as a minimum the relevant Specimen Scheme Output;
  - (b) require LNER to incur expenditure of no less than the expenditure which LNER is committed to incur in relation to the relevant Specimen Scheme; and
  - (c) deliver at least an equivalent level of benefits (whether to passengers, the Secretary of State, the wider rail industry or otherwise) as the Specimen Scheme.
- 7.2 If LNER wishes to propose an Alternative Scheme, LNER will provide the Secretary of State with such details of the Alternative Scheme as the Secretary of State may reasonably require.
- 7.3 If the Secretary of State approves (such approval not to be unreasonably withheld or delayed) such Alternative Scheme then it shall replace the relevant Specimen Scheme and Part 1 to Schedule 6.2 (Committed Obligations) shall be amended accordingly.
- 7.4 For the avoidance of doubt, if LNER does not propose or the Secretary of State does not approve an Alternative Scheme then LNER shall remain obliged to deliver the relevant Specimen Scheme in accordance with Part 1 to Schedule 6.2 (Committed Obligations).

## 8. **Third Party Consents, Agreement and Conditions**

- 8.1 A Committed Obligation may be expressed to be conditional upon the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consent and/or entering into any agreement or arrangement with a third

party) ("**Pre-condition**"). Where a Committed Obligation is subject to a Pre-condition and, despite having used all reasonable endeavours, LNER is not able to satisfy such Pre-condition within such timescales (if any) as are required to enable LNER to deliver such Committed Obligation in accordance with its terms then the Secretary of State and LNER shall agree (or on failure to agree, the Secretary of State shall reasonably determine) such modifications to such Committed Obligation as may be necessary to allow LNER 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 LNER had delivered such Committed Obligation.

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

**9. NOT USED**

**10. Obligations on Delivery of a Committed Obligation**

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

## Schedule 6.3

**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 meanings when used herein; and

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 East Coast 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;

**"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 3.3(d) of this Schedule 6.3;

**"Dispute Resolution Agreement"** means the dispute resolution agreement in the form set out in Schedule 14 of the Train Availability and Reliability Agreement to be acceded to by the Franchise Operator;

**"East Coast 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;

**"East Coast Relevant Approvals"** means all Relevant Approvals required in relation to the East Coast IEP Network;

**"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;

<b>"Full Set"</b>		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;
<b>"Great Operator"</b>	<b>Western</b>	means First Greater Western Limited (Company Number 05113733) or any successor operator from time to time in relation to some or to all of the railway passenger services operated by it;
<b>"Half Set"</b>		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;
<b>"IEP Network"</b>		means the routes specified in Appendix F to Schedule 1 of the MARA;
<b>"MARA Variation"</b>		has the meaning given to the term "Variation" under the MARA;
<b>"Operator Rights"</b>	<b>MARA</b>	means those rights in the MARA which are expressed to be exercisable by or for the benefit of the LNER;
<b>"Pension Amount"</b>		has the meaning given to such term under the Train Availability and Reliability Agreement;
<b>"Relevant Operator"</b>		has the meaning given to such term in the MARA;
<b>"Set"</b>		means a Half Set or a Full Set;
<b>"Type"</b>		has the meaning given to such term under the MARA;
<b>"Type Acceptance"</b>		means the acceptance of a Type of Set pursuant to Paragraph 2 of Part A of Schedule 2 of the MARA; and
<b>"Unpaid Payments"</b>	<b>TARA</b>	has the meaning given to it in paragraph 4.2 of this Schedule 6.3.

## 2. The MARA Provisions

- 2.1 By an agreement dated 24 July 2012 (the "**MARA**") the Secretary of State appointed the TSP to design, build, own and maintain the Sets to be operated by LNER on the East Coast IEP Network for the purposes of providing certain of the Passenger Services. The TSP shall make the Sets available to LNER in accordance with the terms of the Train Availability and Reliability Agreement.
- 2.2 LNER acknowledges that the MARA provides for certain rights which are expressed to be exercised, and certain obligations which are expressed to be performed, by LNER in its capacity as Relevant Operator. Accordingly LNER shall:

- (a) 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;
- (b) where the Secretary of State has agreed under the terms of the MARA to procure that certain steps are taken or obligations performed by LNER, take those steps and perform those obligations promptly upon request; and
- (c) 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.

2.3 LNER 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 LNER in its capacity as Relevant Operator respectively.

2.4 **NOT USED.**

2.5 At the request of the Secretary of State or the TSP (as the case may be) from time to time, LNER shall:

- (a) review, consult and provide written 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 meetings) arising under or in connection with the MARA including 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 under or in connection with the MARA including the Approvals Plan and the Training Plan; and
- (c) provide such materials and information in the possession and control of LNER as the Secretary of State may consider reasonably necessary for the purposes of complying with his obligations or exercising his rights under the MARA and/or where necessary to enable the Secretary of State to comply with his obligations under the MARA.

#### **LNER Obligations under the RODA**

2.6 LNER agrees and undertakes to:

- (a) observe and comply with all the conditions and properly perform all the obligations which are expressed to apply to it under the Relevant Operator Direct Agreement; and
- (b) 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.

#### **Other agreements**

2.7 Except with the prior written consent of the Secretary of State, LNER agrees and undertakes not to vary, agree to vary, waive performance of, terminate or in any

way deal with or agree to change the terms of any Depot Access Agreement in respect of a depot in relation to which LNER is the depot facility owner.

2.8 **NOT USED.**

2.9 **NOT USED.**

2.10 The Secretary of State shall notify LNER of any amendment to the MARA which has the effect of requiring LNER to perform, or incur any liability in respect of, any obligations in addition to or in excess of the obligations assumed by LNER in its capacity as Relevant Operator under the MARA (as at the date of the Previous Franchise Agreement) and, if applicable, under the Relevant Operator Direct Agreement (the "**Additional Obligations**"). At the direction of the Secretary of State, LNER 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 LNER performing the Additional Obligations.

#### **Pre Acceptance/Acceptance Processes**

2.11 LNER 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 any of the Final Acceptance Conditions. In these circumstances LNER 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 in accordance with the MARA. LNER shall provide 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 the TSP's consent to the issue of the Qualified Acceptance Certificate.

#### **Acceptance Issues**

2.12 Where:

- (a) the existence of an Acceptance Issue is the sole cause of the Secretary of State not being required under the terms of the MARA to issue a Type Acceptance Certificate or Qualified Type Acceptance Certificate; and
- (b) the Secretary of State considers (following consultation with LNER, the TSP and/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 East Coast IEP Network subject to one or more operating restrictions; and
- (c) the Secretary of State proposes (following consultation with LNER and the TSP and/or any other person as the Secretary of State may deem necessary) operating restrictions in respect of the relevant Type of Set (including implementing speed restrictions for certain parts of the East Coast IEP Network or agreeing actions by LNER 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) LNER shall modify the Diagrams and the Dispatch Requirements in respect of such Type of Set in the manner proposed by the Secretary of State; and
- (ii) LNER 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.

2.13 If:

- (a) an Acceptance Certificate is issued in respect of a Type of Set in the circumstances described in paragraph 2.12 of Schedule 6.3; and
- (b) LNER is able to demonstrate to the satisfaction of the Secretary of State that LNER will not be able to comply with the Train Service Requirement or meet the **NRPS Performance Level**<sup>284</sup> or any Benchmark (each a Condition) solely as a result of the operation of the Type of Set in accordance with the operating restrictions specified in the Acceptance Certificate for the period that such operating restriction is in place,

the Secretary of State agrees that such non-compliance shall not constitute a breach of such Condition of the Agreement.

#### **Set Retention Amounts**

2.14 Where LNER is required to make any payment in accordance with paragraph 8 of Part A of Schedule 2 to the MARA, LNER shall pay the required amount into such bank account as may be notified by the Secretary of State to LNER from time to time.

#### **Operator MARA Rights**

2.15 If the TSP fails to:

- (a) permit the exercise by LNER, or prevents LNER from exercising any Operator MARA Rights in accordance with the MARA; and/or
- (b) comply with its obligations under the MARA in respect of any Operator MARA Rights,

and such failure has a material adverse effect on LNER's ability to comply with its obligations under this Schedule 6.3 (a "**MARA Non-Compliance**") in circumstances where LNER has no entitlement to relief and no right to claim against the TSP under the RODA or the Train Availability and Reliability Agreement in respect of any such MARA Non-Compliance, LNER shall deliver promptly after the occurrence of any such MARA Non-Compliance, a written notice to the Secretary of State ("**MARA Notice**") specifying full details of the relevant Operator MARA Rights and the related MARA Non-Compliance and the material adverse effect that such

<sup>284</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.



failure has on the LNER's ability to comply with its obligations under this Schedule 6.3.

- 2.16 Subject to LNER indemnifying the Secretary of State against all claims, losses, damages and third party costs arising out of any action taken by the Secretary of State as a consequence of the MARA Non-Compliance and receipt of the MARA Notice, the Secretary of State shall, unless the Secretary of State believes, in his sole discretion, that:

- (a) LNER's request is frivolous or vexatious; or
- (b) LNER is entitled to claim against the TSP under the RODA or the Train Availability and Reliability Agreement in respect of the MARA Non-Compliance,

take such reasonable steps as he deems appropriate in order to seek the granting by the TSP to LNER of those Operator MARA Rights specified in the MARA Notice and/or compliance by the TSP with those obligations under the MARA in respect of the Operator MARA Rights in accordance with the MARA.

### 2.17 **Entry into the Relevant IEP Documents**

LNER shall on the date of this Agreement:

- (a) enter into:
  - (i) the Train Availability and Reliability Agreement in substantially the same terms as the Train Availability and Reliability Agreement in the agreed terms marked TARA;
  - (ii) the Relevant Operator Direct Agreement in in substantially the same terms as the Relevant Operator Direct Agreement in the agreed terms marked RODA; and
- (b) accede to the Dispute Resolution Agreement by executing the form of the Relevant Operator Deed of Adherence attached to Appendix D of the form of Dispute Resolution Agreement set out in Schedule 13 of the MARA.

## 3. **TARA Provisions**

### 3.1 LNER agrees and undertakes to:

- (a) enforce its rights under the Train Availability and Reliability Agreement;
- (b) observe and comply with all the conditions and obligations which are expressed to apply to it under the Train Availability and Reliability Agreement;
- (c) 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), within such period as the Secretary of State shall specify;

- (d) take all steps as may be required to terminate the Train Availability and Reliability Agreement in accordance with its terms as the Secretary of State may direct from time to time; and
- (e) except with the prior consent of the Secretary of State, not vary (except as permitted by Schedule 12 of the Train Availability and Reliability Agreement), agree to vary, waive performance of, terminate nor in any way deal with or agree to change the terms of the Train Availability and Reliability Agreement.

### 3.2 **NOT USED.**

### 3.3 <sup>285</sup>**Without prejudice to any other requirement in the Services Agreement (including, without limitation, the provisions of Schedule 11 (Agreement Management Provisions) and Schedule 13 (Information and Industry Initiatives)) LNER shall:**

- (a) **provide promptly to the Secretary of State such information as may be requested by the Secretary of State in connection with the Train Availability and Reliability Agreement;**
- (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 Reports issued under the TARA; and**
- (d) **where LNER 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 report to the Secretary of State its findings in relation to such Compliance Audit.**

3.4 Notwithstanding the Secretary of State's rights under the MARA, if the Secretary of State suffers a loss in respect of which LNER is indemnified in respect of the same loss by the TSP under Schedule 8 of the Train Reliability and Availability Agreement, LNER shall, at the request of the Secretary of State, make a claim against the TSP for such loss and to the extent that LNER recovers such amount (or any part of such amount) from the TSP, LNER shall pay that amount to the Secretary of State within 5 Business Days of receipt of such amount (or such longer period as the Secretary of State may specify).

## 4. **Step-in/Step-out Processes**

### 4.1 **NOT USED.**

4.2 Unless otherwise directed by the Secretary of State, the LNER shall exercise its rights under paragraph 1.8 of Schedule 11 of the Train Availability and Reliability Agreement to withhold payment to the TSP of the portion of the TARA Payments relating to the Services that are affected by any Required Actions (the "**Unpaid**

<sup>285</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**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 LNER in accordance with paragraph 1.7 of Schedule 11 of the Train Availability and Reliability Agreement. LNER shall on the next Payment Date following any exercise of such rights reimburse to the Secretary of State an amount equal to the Unpaid TARA Payments.

4.3 **NOT USED.**

4.4 LNER shall consult the Secretary of State prior to issuing any notification pursuant to paragraph 2.2 of Schedule 11 to the TARA in relation to the cessation of any Required Action thereunder, and LNER shall not issue any such notification without the Secretary of State’s prior written consent.

5. **Pension Issues**

5.1 The Secretary of State shall reimburse to LNER an amount that is equal to the Top Up Amount that LNER 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 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 LNER 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 LNER and the TSP in accordance with the terms of the Train Availability and Reliability Agreement; and
- (b) any reimbursement by the Secretary of State pursuant to this paragraph 5.1 shall be made by way of adjustment to the Fixed Franchise Payments on the next Payment Date following the date on which LNER pays such Top Up Amount to the Receiving Scheme (whether directly or through the Franchise Section).

5.2 LNER 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.

5.3 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 LNER within 20 business days of being so requested by the TSP), execute and deliver to the TSP the relevant Flexible Apportionment Arrangement within 30 business days of such request by the TSP.

5.4 For the purposes of the definition of “**Operator Actuary**” under the Train Availability and Reliability Agreement LNER shall appoint as actuary such person as the Secretary of State shall direct.

6. **[Deleted<sup>286</sup>]**

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<sup>286</sup> 25 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

## Schedule 6.4

### Alliances

#### 1. Co-operation with Network Rail

##### 1.1 General Co-operation

Without prejudice to the LNER's obligations in paragraph 5, LNER shall use all reasonable endeavours to work with Network Rail to identify ways in which co-operation between LNER and Network Rail can be enhanced, costs can be reduced and closer working and alignment of incentives can improve value for money within the parameters of this Agreement.

##### 1.2 Sharing of information with Network Rail

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

#### 2. Compliance with the Alliance Framework Agreement

2.1 LNER shall enter into the Alliance Framework Agreement with Network Rail (in the agreed terms marked AFA or as otherwise approved by the Secretary of State) by the Service Commencement Date.

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

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

#### 3. Termination of the Alliance Framework Agreement

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

3.2 LNER shall notify the Secretary of State if:

(a) it receives a termination notice from Network Rail under the Alliance Framework Agreement within one (1) Weekday of the date of receipt of such termination notice;

(b) Network Rail takes any steps to terminate the Alliance Framework Agreement or warned in writing to terminate the Alliance Framework Agreement within one (1) Weekday of becoming aware such steps have

been taken or receipt of any notice threatening to terminate the Alliance Framework Agreement;

- (c) LNER considers (acting reasonably) that it may have taken an action or omitted to take an action which could constitute a material or persistent breach of the Alliance Framework Agreement.

#### 4. **Reporting on the Alliance Agreement**

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

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

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

#### 5. **Working with Network Rail**

5.1 In order to ensure the successful introduction of the IEP Fleet, LNER shall fully and effectively co-operate with Network Rail and any other relevant stakeholders (including the TSP (as defined in accordance with paragraph 1.1 of Schedule 6.3 (The IEP Provisions)), the ECML Programme Board and IEP Delivery Board) for the purposes of taking transparent and collective responsibility to manage the LNER's obligations and work-streams under the Alliance Framework Agreement.

5.2 Where requested to do so by the Secretary of State, LNER shall chair the meetings of any planning boards convened in connection with the remodelling of King's Cross Station.

5.3 LNER shall work collaboratively with Network Rail to ensure that disruption to passengers during the remodelling of King's Cross is minimised to the greatest extent possible.

5.4 LNER shall continue to collaborate with Network Rail to reduce the number of incidents disrupting the Passenger Services, caused as a result of pantographs impacting the overhead line electrics.

5.5 LNER shall ensure its performance team is allocated to key geographic locations to co-ordinate its activities with Network Rail.

#### 6. **Amendments to the Alliance Framework Agreement**

6.1 LNER shall use all reasonable endeavours to agree with Network Rail as soon as reasonably practicable following the Service Commencement Date (and in any event by no later than six (6) months from the Service Commencement Date) amendments to the Alliance Framework Agreement requiring LNER and Network Rail to:

- (a) use all reasonable endeavours to agree a series of easily understandable customer-facing metrics (the "**Alliance Performance Metrics**") for the purposes of generating a balanced scorecard which shall clearly and transparently set out, on an annual basis, the level of performance against the Alliance Performance Metrics (the "**Balanced Scorecard**"); and
  - (b) within three (3) months of date on which the Alliance Framework Agreement is amended in accordance with this paragraph 6, begin measuring, and for the remainder of the Service Term continue to measure, performance against the Alliance Performance Metrics.
- 6.2 <sup>ix 287</sup> **LNER shall, within four (4) weeks of the end of each twelve (12) month period during which the Alliance Performance Metrics are measured, publish a Balanced Scorecard in respect of that period through the LNER's customer-facing channels, including LNER's website.**

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<sup>287</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Schedule 6.5

**NOT USED**

Schedule 6.6

**NOT USED**



## 288 Schedule 6.7

**SERVICE SPECIFIC OBLIGATIONS**

- 1. Development, Design and Implementation of Future Initiatives**
- 1.1 LNER shall, at the request of the Secretary of State, fully and effectively co-operate with the Secretary of State in connection with the development, design, and implementation of future initiatives which, in the opinion of the Secretary of State (acting reasonably) are likely to:**
- (a) improve outcomes for passengers on any or all parts of the railway network;**
  - (b) improve cost-efficiency and/or reduce costs in relation to any or all parts of the railway network;**
  - (c) generate additional revenue for all or part of the railway network; or**
  - (d) deliver any other benefits or support any government policy objective,**
- (each a "Future Initiative").**
- 1.2 The Secretary of State may from time to time (and at all times acting reasonably) issue a notice to LNER specifying any assistance that the Secretary of State requires from LNER in relation to the development, design and/or implementation of a Future Initiative and the date by when any deliverable required pursuant to this paragraph 1.2 must be undertaken or delivered (a "Future Initiative Notice" or "FIN"). Without limiting the foregoing, a Future Initiative Notice may, but shall not be required to, request LNER to, among other things:**
- (a) prepare and submit to the Secretary of State a proposal or proposals in relation to achieving any of the outcomes described in paragraphs 1.1(a) to 1.1(d) of this part 1 of this Schedule 6.7;**
  - (b) prepare and submit to the Secretary of State an implementation plan and cost and revenue forecasts in relation to the relevant Future Initiative;**
  - (c) prepare and submit to the Secretary of State any relevant data, reports, feasibility studies, business cases or other information that is held by LNER or which LNER can reasonably be expected to obtain;**
  - (d) identify, develop, design, assess and/or advise on options or proposals for delivering specified outputs or outcomes in connection with a Future Initiative, including undertaking or commissioning feasibility studies; developing implementation plans; analysing financial, operational, practical and other impacts and risks;**

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<sup>288</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

developing business cases; reviewing and commenting on documents; and participating in meetings or other discussions; and

- (e) collaborate and co-operate with the Secretary of State, Network Rail, other Train Operators, industry bodies and other relevant third parties to undertake any of the above activities jointly.

**1.3 The Secretary of State may (acting reasonably) issue to LNER:**

- (a) any number of FINs in relation to a Future Initiative; and
- (b) FINs in relation of any number of Future Initiatives at any given time.

**1.4 The Secretary of State may at any time, by proposing a variation pursuant to clause 17 (Variations in Writing) of the Services Agreement, require LNER to develop, design and/or implement any changes to the Services or any provision of the Services Agreement in connection with a Future Initiative.**

**1.5 In consultation with the Secretary of State, LNER shall assign a Franchise Employee with appropriate seniority to oversee and facilitate LNER's compliance with its obligations pursuant to this paragraph 1 (a "LNER FI Contact"). LNER shall confirm the identity of such LNER FI Contact to the Secretary of State by no later than as soon as reasonably practicable after 1 May 2021 and in any event by 30 May 2021.**

**1.6 The LNER FI Contact shall act as LNER's primary point of contact with the Secretary of State in relation to all matters contemplated by this paragraph 1.**

**1.7 LNER shall procure that the LNER FI Contact shall be supported from time to time by such other Franchisee Employees as shall be reasonably required to ensure LNER's compliance with this paragraph 1.**

**1.8 NOT USED.**

**2. Incentive Regimes**

**2.1 LNER shall, as required by the Secretary of State, fully and effectively co-operate with the Secretary of State to design, develop and (as applicable) implement and provide to the Secretary of State such data as the Secretary of State may require in relation to potential new incentive regimes (which may be used in future contracts with Train Operators and/or may be introduced into the Services Agreement by means of a variation pursuant to clause 17, including designing:**

- (a) new models for assessing customer satisfaction and sentiment;
- (b) new measures of performance;
- (c) alternative cost or other financial incentive mechanisms;
- (d) a regime for assessing service quality standards delivered by LNER; and/or

- (e) a regime for assessing LNER's performance in relation to deterring and preventing ticketless travel.

**2.2 LNER's obligations pursuant to paragraph 2.1 above may include:**

- (a) developing, reviewing and/or commenting on proposals in relation to such new incentive regimes;
- (b) providing advice on the feasibility, costs and other implications of any such proposals made by the Secretary of State;
- (c) attending meetings to discuss such proposals and any related matters; and
- (d) supporting the Secretary of State in preparing to implement such new incentive mechanisms, including by collecting and providing relevant data to the Secretary of State in accordance with any requirements specified by the Secretary of State from time to time.

**3. Improvement Initiatives**

**3.1 In this paragraph 3:**

**"LNER Initiatives"** means any Improvement Initiatives which are identified by LNER and which relate specifically to the Services.

**"Further Industry Initiatives"** means any Improvement Initiatives (other than Specified Industry Initiatives) which are intended to secure improvements on a railway industry wide basis.

**"Improvement Initiatives"** means any measures or initiatives which may apply to any aspect of the railway industry which are intended to secure improvements in relation to passenger outcomes, cost-efficiency and/or environmental outcomes or otherwise support the achievement of government policy objectives, including any LNER Initiatives, Specified Industry Initiatives and Further Industry Initiatives.

**"Specified Industry Initiatives"** means such Improvement Initiatives which are intended to secure improvements on a railway industry wide basis as the Secretary of State and/ or Network Rail may, from time to time, notify LNER, which may include (but shall not be limited to) measures or initiatives in relation to:

- (a) improving level crossing safety and risk mitigation;
- (b) prevention of suicide, trespass and vandalism on the railway;
- (c) improving track worker safety;
- (d) promoting decarbonisation and other environmental improvements;
- (e) improving passenger information including during perturbation;
- (f) the reopening of disused or freight-only railway routes to passenger services;
- (g) Network Rail's long-term strategy and planning activities;

- (h) reforming the manner in which train service requirements are specified by funders and procurers; and
- (i) East Coast Main Line Steering Group (ESG) for May 2022 Timetable.

**3.2 Subject to paragraph 3.4, LNER shall:**

- (a) proactively identify, develop, assess the business case for and implement LNER Initiatives.
- (b) co-operate and collaborate with, any or all of, the Secretary of State, Network Rail, Train Operators, freight operators, railway industry bodies and any other relevant third parties (as may be applicable), to jointly plan, develop and fully participate in the implementation of Specified Industry Initiatives; and
- (c) proactively co-operate and collaborate with, any or all of, the Secretary of State, Network Rail, Train Operators, freight operators, railway industry bodies and any other relevant third parties (as may be applicable), to jointly identify, plan, develop and fully participate in the implementation of Further Industry Initiatives.

**3.3 For the purposes of paragraphs 3.2(b) and 3.2(c), LNER's obligation to co-operate and collaborate may require LNER to use all reasonable endeavours to support the planning, development and implementation of the relevant Improvement Initiative in a manner satisfactory to the Secretary of State. In particular, this may require LNER to:**

- (a) provide advice to, or otherwise share its expertise with, the Secretary of State or Network Rail, including inputting into the business case for the relevant Improvement Initiative;
- (b) collect, analyse, share and/or report on certain information and data as may be necessary to inform the relevant Improvement Initiative;
- (c) attend and participate in relevant meetings or workshops in relation to the relevant Improvement Initiative;
- (d) implement such actions as may be agreed with relevant stakeholders in respect of the relevant Improvement Initiative, unless such actions cannot reasonably be expected to be implemented by LNER taking account of the resources available to it and what could reasonably be expected of a competent and efficient operator; and
- (e) collaborate with, and respond to requests from, relevant stakeholders in respect of the relevant Improvement Initiative, unless such collaboration or responses (as the case may be) cannot reasonably be expected of LNER taking account of the resources available to it and what could reasonably be expected of a competent and efficient operator.

**3.4 Notwithstanding any other provision of this paragraph 3, if LNER reasonably considers that pursuing the implementation of any Improvement Initiative or otherwise actioning any requests in connection**

**with the planning, development or implementation of any Improvement Initiative would, or is reasonably likely to, result in:**

- (a) it incurring additional costs, over and above those a Good and Efficient Operator would incur; or**
- (b) in the case of Specified Industry Initiatives or Further Industry Initiatives, it being required to increase its staffing resources,**

**it shall notify the Secretary of State of the same and shall not proceed unless (i) the Secretary of State so directs or gives consent for it to do so or (ii) such additional staffing resources or costs were contemplated when the Secretary of State agreed or reasonably determined LNER's most recent Business Plan and Budget. If the Secretary of State directs or gives consent in relation to an Improvement Initiative pursuant to this paragraph 3.4, LNER shall plan, develop or implement (as applicable) such Improvement Initiative in accordance with the Secretary of State's instructions.**

**3.5 Any notice issued pursuant to paragraph 3.4 shall include:**

- (a) details of the proposed Improvement Initiative;**
- (b) LNER's assessment of the wider benefits for passengers, the wider economy, the environment and others;**
- (c) LNER's assessment of any financial or other benefits to Network Rail or other industry parties; and**
- (d) LNER's reasonable estimate of the associated cost or staffing requirements (as applicable).**

**4. One Team Stations Initiative**

**4.1 In this paragraph 4:**

**"NR Managed Stations" means each station which is served by Passenger Services and where Network Rail is the Station Facility Owner.**

**"One Team Stations Implementation Plan" means a detailed plan jointly produced between Network Rail and LNER setting out how and when they will implement the One Team Stations Initiative.**

**"One Team Stations Initiative" means measures and initiatives to promote a 'one team' culture and approach between Network Rail and LNER through collaborative working, unified policies and organisational delivery models such that customers are not able to distinguish between Network Rail and Franchisee Employees at NR Managed Stations, resulting in improved passenger and cost efficiency outcomes.**

**4.2 During the Service Term, LNER shall, including as may be requested by the Secretary of State or Network Rail, consult, co-ordinate and co-operate with Network Rail and other Train Operators (as applicable) in respect of the planning, development and implementation of the One Team Stations Initiative.**

- 4.3** Subject always to paragraph 4.7, LNER shall use all reasonable endeavours to agree a One Team Stations Implementation Plan with Network Rail by 1 October 2021 and shall update this as necessary for consistency with the One Team Stations Initiative from time to time.
- 4.4** If LNER and Network Rail fail to agree a One Team Stations Implementation Plan in accordance with paragraph 4.3, LNER shall promptly notify the Secretary of State and LNER agrees that it shall accept such One Team Stations Implementation Plan as the Secretary of State may specify (acting reasonably and having due regard to the information provided by LNER in its notice). In any notice issued to the Secretary of State pursuant to this paragraph 4.4, LNER shall include reasonable details of the points of difference between LNER and Network Rail, together with its reasons for not accepting any proposal made by Network Rail.
- 4.5** In developing the One Team Stations Initiative pursuant to paragraph 4.2, LNER shall collaborate and cooperate with Network Rail and, where applicable, any other Train Operators to identify and assess the business case for any alternative operational delivery models, including joint management structures designed to improve customer service, operations and cost efficiency.
- 4.6** As soon as practicable following agreement of any One Team Stations Implementation Plan under paragraph 4.3 or otherwise following any instructions from the Secretary of State in accordance with paragraph 4.4, LNER shall take such action as may be necessary to discharge its obligations under this plan and shall promptly notify the Secretary of State of any material failure to discharge such obligations.
- 4.7** If LNER reasonably considers that any provision of this paragraph 4 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).
- 5. Integrated Control Centres Initiative**
- 5.1** During the Service Term, LNER shall, where required to do so in accordance with this Services Agreement or where requested to do so by the Secretary of State or Network Rail, consult, co-ordinate and co-operate with Network Rail and other Train Operators (as applicable) in respect of the planning, development and/or implementation (as applicable) of the Integrated Control Centres Initiative at such Control Centres as the Secretary of State or Network Rail may specify.
- 5.2** If required to do so in accordance with paragraph 5.1, and subject always to paragraph 5.6, LNER shall use all reasonable endeavours to agree an Integrated Control Centres Implementation Plan with Network Rail within such timescale as the Secretary of State or Network Rail may reasonably specify and shall update this as necessary for consistency with the Integrated Control Centres Initiative from time to time.
- 5.3** If LNER and Network Rail fail to agree an Integrated Control Centres Implementation Plan in accordance with paragraph 5.2, LNER shall

promptly notify the Secretary of State and LNER agrees that it shall accept such Integrated Control Centres Implementation Plan as the Secretary of State may specify (acting reasonably and having due regard to the information provided by LNER in its notice). In any notice issued to the Secretary of State pursuant to this paragraph 5.3, LNER shall include reasonable details of the points of difference between LNER and Network Rail, together with its reasons for not accepting any proposal made by Network Rail.

**5.4** If required to do so in accordance with paragraph 5.1, LNER shall collaborate and cooperate with Network Rail and, where applicable, any other Train Operators to:

(a) identify any alternative operational delivery models which could be developed and implemented to promote an integrated approach to joint control at any Control Centres; and

(b) assess the business case for the industry (as a whole) for implementing any such proposals.

**5.5** As soon as practicable following agreement of any Integrated Control Centres Implementation Plan under paragraph 5.2 or otherwise following any instructions from the Secretary of State in accordance with paragraph 5.3, LNER shall take such action as may be necessary to discharge its obligations under this plan and shall promptly notify the Secretary of State of any material failure to discharge such obligations.

**5.6** If LNER reasonably considers that any provision of this paragraph 5 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).

**5.7** NOT USED

**5.8** NOT USED

**6.** Co-operation

**6.1** In this paragraph 6:

“Delay Attribution Principles and Rules” means the version of the document known as the Delay Attribution Principles and Rules referenced in the Network Code;

“Performance Improvement Management System” means the rail industry framework for the management of performance risks;

“Reactionary Minutes Delay” means the minutes of delay to the Passenger Services that are attributed as ‘Reactionary Delay’ in accordance with the Delay Attribution Principles and Rules, disregarding any minutes of delay that are imputed to Passenger Services that were cancelled; and



**“RM3P” means the ‘Risk Management Maturity Model for Performance’ system to monitor and manage operational performance within the rail industry.**

**6.2 LNER shall work fully and effectively with Network Rail as required to:**

- (a) analyse Reactionary Minutes Delay and develop and deliver performance improvement plans to address areas of underperformance, focusing on improving Timetable robustness and contingency planning;**
- (b) record, monitor and reduce sub-threshold delay;**
- (c) implement industry best practice approaches to improving performance, including, if requested by the Secretary of State, the deployment of the RM3P and the Performance Improvement Management System; and**
- (d) review ‘TRUST Delay Codes’ (as set out in the Delay Attribution Principles and Rules) and identify opportunities to improve the delay attribution process set out in the Delay Attribution Principles and Rules.**

**7. Operational Planning**

**7.1 In this paragraph 7:**

**“Event Steering Groups” has the meaning given to it in the Network Code.**

**“Required Establishment” means the number of train crew required in order to operate the Passenger Services, which in the case of drivers shall be calculated in accordance with the Rail Delivery Group’s “Guidance Note on Driver Establishment Calculation (December 2013)” and otherwise in accordance with an equivalent methodology.**

**“Train Crew Numbers Data” has the meaning given to it in paragraph 7.3.**

**7.2 LNER shall consult, co-ordinate and co-operate with Network Rail and any relevant Train Operators in respect of the planning, development and implementation of proposals to support the continuous improvement of train timetabling and train planning functions. Amongst other things, this shall include developing improvements to:**

- (a) the quality of LNER’s and Network Rail’s timetable planning activities, through, amongst other things:**
  - (i) adequate resourcing of train planning and diagramming activities for both rolling stock and traincrew;**
  - (ii) collaborative working between LNER’s and Network Rail or other Train Operators’ planning teams;**
  - (iii) the timely sharing of plans for rolling stock and traincrew, including ancillary moves;**



- (iv) **timely sharing of rolling stock characteristics required to support timetable simulation and performance modelling; and**
- (v) **an increased focus on the advance development of major timetable changes, including through Event Steering Groups;**
- (b) **the robustness and resilience of LNER's and Network Rail's train plans through collaborative working, to ensure jointly developed train regulation policies, contingency and service recovery plans including but not limited to data in relation to, and plans for:**
  - (i) **diversionary route availability (including traincrew knowledge and rolling stock clearance); and**
  - (ii) **traincrew flexibility (including route and traction knowledge, and spare cover).**

**7.3 LNER shall, as soon as reasonably practicable following any request, provide Network Rail with such information as it may reasonably request, including:**

- (a) **information in relation to current and projected future numbers of train crew employed, in aggregate and in respect of each individual train crew depot or link, and distinguishing in each case between different types of train crew and between fully qualified individuals and trainee (the "Train Crew Numbers Data"); and**
- (b) **a comparison of the Train Crew Numbers Data against LNER's most recent assessment of the current and expected future Required Establishment in each case.**

## **8. Infrastructure Projects**

**LNER shall, throughout the Service Term, consult, co-ordinate and co-operate with Network Rail and any relevant Train Operators in respect of the planning, development and/or implementation (as applicable) of such renewals, enhancements and associated possessions as Network Rail may notify to LNER. In particular, the parties shall work collaboratively to:**

- (a) **identify opportunities to coordinate and combine the delivery of infrastructure enhancements and planned renewals; and**
- (b) **plan possessions,**

**in each case, in such manner as achieves the optimum compromise between outcomes for passengers and cost-efficiency for the railway industry as a whole.**

## **9. Sharing Data with Network Rail**

### **9.1 In this paragraph 9:**

**"Financial and Commercial Data" means financial and commercial data and information in respect of:**

- (a) the number of passengers using the Passenger Services, including as may be sourced from MOIRA, Lennon, passenger counts, yield management data and gate line data; and
- (b) operating costs.

**“NR Data Sharing Objectives”** means the aims and objectives of data sharing as may be agreed between LNER and Network Rail and documented in the NR Data Sharing Strategy, including for the purposes of improving the planning and delivery of the day to day operational activities, supporting business planning, supporting train planning, informing service change and timetabling proposals, planning access and possessions, assessing the railway industry business case for specified proposals and to support strategic planning.

**“NR Data Sharing Strategy”** means the data sharing strategy to be developed in accordance with paragraph 9.2, as may be updated from time to time.

**“Operational Data”** means data and information in relation to the day to day operation of the passenger services including in relation to traincrew diversionary route and traction knowledge, Train Plan, rolling stock configuration, stock and crew diagrams and fleet reliability data.

**9.2** By no later than 30 September 2021, LNER shall, jointly with Network Rail, develop and use all reasonable endeavours to agree a strategy, which sets out the basis on which LNER will, subject to any guidance or instructions that the Secretary of State may provide or issue from time to time, share specified operational, financial and commercial data and information with Network Rail. As a minimum, the strategy will include:

- (a) the agreed NR Data Sharing Objectives;
- (b) the types of data to be shared by LNER and Network Rail (including Operational Data and Financial and Commercial Data);
- (c) the format and frequency of the data sharing;
- (d) how LNER and Network Rail intend to receive, use and safely store the data;
- (e) approach to cost-sharing and apportionment in respect of the data sharing; and
- (f) approach to overcoming any confidentiality or other restrictions in respect of data sharing or storage which may arise (including as matter of law).

**9.3** If LNER:

- (a) is unable to agree the NR Data Sharing Strategy with Network Rail by 30 September 2021; or
- (b) reasonably considers that any proposal pursuant to this paragraph 9 requires, or is likely to require, it to do anything inconsistent with acting as a Good and Efficient Operator,

it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with such guidance or directions as the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).

**9.4** LNER shall use all reasonable endeavours to implement the NR Data Sharing Strategy in accordance with its terms, and shall continue to consult, collaborate and co-operate with Network Rail to agree any reasonable amendments or updates to the NR Data Sharing Strategy from time to time.

**9.5** LNER shall propose and use all reasonable endeavours to agree with Network Rail suitable amendments to the NR Data Sharing Strategy to ensure compliance with any guidance or instructions issued or provided by the Secretary of State from time to time.

**9.6** LNER shall not unreasonably withhold or delay its consent to any amendments which Network Rail may reasonably propose to the NR Data Sharing Strategy, provided that LNER shall not agree to any amendments which would not be in compliance with any guidance the Secretary of State may provide or issue from time to time.

**9.7** Notwithstanding any other term of this paragraph 9, LNER shall not be required to do anything which would put it in breach of any obligation on LNER arising under applicable Law or the terms of its Licences.

## **10. Sharing on-train data with Network Rail**

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

**10.2** LNER shall, if so requested by Network Rail, provide advice to Network Rail on the feasibility, costs and associated practicalities of providing Network Rail with access to real-time (or near-real-time) footage from on-train forward-facing CCTV systems.

## **11. Station Accessibility Data Collection**

LNER shall comply with any reasonable request by the Secretary of State in connection with the development and implementation of a station accessibility data collection which may include (but shall not be limited to):

- (a) supporting the Secretary of State in developing and designing the methodology for data collection;
- (b) completing questionnaires and/or using reasonable endeavours to procure that the relevant station Facility Owner completes the relevant questionnaire;

- (c) providing information in relation to Station accessibility and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such information; and
- (d) providing access to Stations to facilitate accessibility data collection and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such access,

in each case, in a timely manner.

## 12. Compensation

Save with the prior written consent (such consent not to be unreasonably withheld or delayed) of the Secretary of State, LNER shall not:

- (a) enter into any new agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers' compensation claims;
- (b) materially amend, vary or waive the terms of any existing agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers' compensation claims;
- (c) extend the term of any agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers' compensation claims; or
- (d) make any material change to LNER's system(s) relating to the receipt or processing of passengers' compensation claims.

## 13. TD Academy

### 13.1 In this paragraph 13 of Schedule 6.7:

"TD Academy Board" means the board of the TD Academy.

"TD Academy Objectives" means:

- (i) improving the consistency and quality of driver training;
- (ii) improving and increasing driver training throughout with the objective of eliminating the shortage of drivers;
- (iii) improving driver skills and qualifications, including through increased uptake of the Train Driver Apprenticeship (Level 3) (as supported by the Institute for Apprenticeships and Technical Education);
- (iv) improving, increasing and promoting diversity of drivers in the industry in accordance with the Approved D&I Strategy;
- (v) providing information to the TD Academy Board for assurance on training quality to stakeholders; and

(vi) promoting synergies, efficiencies and consistency through collaboration between TD Academy Stakeholders on driver training programmes and initiatives,

(each, a "TD Academy Objective").

"TD Academy Plan" has the meaning given to it in paragraph 13.3(b), including as updated from time to time.

"TD Academy Stakeholders" means LNER, the Secretary of State, Train Operators, the RDG, any other relevant rail industry bodies and any other stakeholders which the Secretary of State may notify LNER of from time to time.

"Train Driver Academy" or "TD Academy" means the scheme to promote driver training programmes (including through online learning platforms) which was originally established by the RDG in 2019, including as it may be amended, supplemented or replaced from time to time."

**13.2 During the Service Term, LNER shall consult, co-ordinate and co-operate with the TD Academy Stakeholders as appropriate (or as may be required by the Secretary of State) from time to time in respect of the planning, development and/or implementation (as applicable) of the Train Driver Academy and/or in connection with promoting the TD Academy Objectives.**

**13.3 By no later than 30 November 2021, LNER shall provide the Secretary of State with a report:**

(a) setting out how it is currently engaging with the TD Academy and/or promoting the TD Academy Objectives; and

(b) how it intends to engage with the TD Academy and/or promote the TD Academy Objectives during the Service Term, including its proposed timing for achieving any key milestones (the "TD Academy Plan"), together with an assessment of the costs and practicalities involved in implementing the TD Academy Plan.

**13.4 Following the report referred to in paragraph 13.2, LNER shall implement its TD Academy Plan and shall promptly notify the Secretary of State of any material departures or failure to do so.**

**13.5 The Secretary of State may, from time to time:**

(a) recommend specified changes to LNER's TD Academy Plan as it considers reasonable to promote the achievement of the TD Academy Objectives; and

(b) direct LNER to comply with and or implement instructions which the Secretary of State considers necessary to promote the achievement of the TD Academy Objectives.

**13.6 LNER shall:**

(a) take account of, and update its TD Academy Plan in respect of, any Secretary of State recommendations pursuant to paragraph 13.5(a) and implement its TD Academy Plan (as amended); and

- (b) **implement and or comply with any Secretary of State instructions pursuant to paragraph 13.5(b) and update its TD Academy Plan accordingly.**

**13.7 During the Service Term, LNER shall not enter into any new contracts or other arrangements which may materially adversely affect LNER's ability to comply with this paragraph 13, without the prior written consent of the Secretary of State.**

**14. Co-operation**

**14.1 LNER agrees to co-ordinate and co-operate with other Train Operators, Network Rail and other rail industry bodies, to ensure the continuation of Passenger Services across the network in a co-ordinated manner, and in line with the priorities and directions, as may be set out by the Secretary of State from time to time, including:**

- (a) **co-ordinating with other Train Operators to ensure consistency of coverage to all communities across the national network, including changes to Services to assist where other Train Operators are unable to fully perform their own Services;**
- (b) **assisting altered or additional freight services to operate on the national rail network and, where appropriate, enabling certain essential goods (such as medical equipment or other urgent items) to be carried on Passenger Services; and**
- (c) **continuing where possible and appropriate to enforce any agreements with third parties to deliver quality and value for money.**

**14.2 LNER agrees to co-operate with the Secretary of State in an open and transparent manner, which shall include an obligation on LNER to disclose to the Secretary of State anything which the Secretary of State would reasonably expect notice of in connection with the matters arising under this Services Agreement.**

**SCHEDULE 7**  
**PERFORMANCE BENCHMARKS**

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Schedule 7.1

**Operational Performance**

**1. Definitions, Track Access Agreement and Notice of Performance Results**

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

**“Actual All Cancellations Performance Level”<sup>289</sup>** means, in respect of a Service Year, the All Cancellations Figures most recently published by Network Rail for that Service Year in relation to LNER provided that where a Service Year is less than thirteen (13) Reporting Periods then the Actual All Cancellations Performance Level for that Service Year shall be as determined pursuant to paragraph 24.2 of this Schedule 7.1;

**“Actual T-3 Performance Level”<sup>290</sup>** means, in respect of a Service Year, the T-3 Figures most recently published by Network Rail for that Service Year in relation to LNER provided that where a Service Year is less than thirteen (13) Reporting Periods then the Actual T-3 Performance Level for that Service Year shall be as determined pursuant to paragraph 24.2 of this Schedule 7.1;

**“Actual T-15 Performance Level”<sup>291</sup>** means, in respect of a Service Year, the T-15 Figures most recently published by Network Rail for that Service Year in relation to LNER provided that where a Service Year is less than thirteen (13) Reporting Periods then the Actual T-15 Performance Level for that Service Year shall be as determined pursuant to paragraph 24.2 of this Schedule 7.1;

**“Annual All Cancellations Measure”<sup>292</sup>** means, for each Service Year the benchmark specified in the Annual All Cancellations Table for that Service Year, provided that where a Service Year is less than thirteen (13) Reporting Periods then the Annual All Cancellations Measure for that Service Year shall be as determined

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<sup>289</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>290</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>291</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>292</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.



pursuant to paragraph 23.1 (h) of this Schedule 7.1;

**“Annual All Cancellations Table”<sup>293 294</sup>**

means, the table set out in Part 2(A) of Appendix 8 (Annual All Cancellations Measures) of this Schedule 7.1;

**“Annual T-3 Measure”<sup>295 296</sup>**

means, for each Service Year the benchmark specified in the Annual T-3 Table for that Service Year, provided that where a Service Year is less than thirteen (13) Reporting Periods then the Annual T-3 Measure for that Service Year shall be as determined pursuant to paragraph 23.1 (f) of this Schedule 7.1;

**“Annual T-3 Table”<sup>297</sup>**

means the table set out in Part 2(A) of Appendix 6 (Annual T-3 Measures) of this Schedule 7.1;

**“Annual T-15 Measure”<sup>298 299</sup>**

means, for each Service Year the benchmark specified in the Annual T-15 Table for that Service Year, provided that where a Service Year is less than thirteen (13) Reporting Periods then the Annual T-15 Measure for that Service Year shall be as determined pursuant to paragraph 23.1 (g) of this Schedule 7.1;

**“Annual T-15 Table”<sup>300</sup>**

means, the table set out in Part 2(A) of Appendix 7 (Annual T-15 Measures) of this Schedule 7.1;

**“Annual Target Performance Level”<sup>301</sup>**

means, in relation to:

- (a) **Not Used;**
- (b) **Not Used;**
- (c) **Not Used;**

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<sup>293</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.  
<sup>294</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.  
<sup>295</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.  
<sup>296</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.  
<sup>297</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.  
<sup>298</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.  
<sup>299</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.  
<sup>300</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.  
<sup>301</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (d) **Not Used;**
- (e) **an Annual T-3 Measure for any Service Year, the number set out in Column 2 (Annual Target Performance Level) of the Annual T-3 Table for that Service Year;**
- (f) **an Annual T-15 Measure for any Service Year, the number set out in Column 2 (Annual Target Performance Level) of the Annual T-15 Table for that Service Year; or**
- (g) **an Annual All Cancellations Measure for any Service Year, the number set out in Column 2 (Annual Target Performance Level) of the Annual All Cancellations Table for that Service Year;**

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

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

**“Cancellation”** means a Passenger Service:

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

<b>“Cancellations Benchmark Table”</b>	means the table set out in Part 1 ( <i>Cancellations Benchmark Table</i> ) of Appendix 1 ( <i>Cancellations Benchmarks and Annual Cancellations Benchmarks</i> ) of Schedule 7.1 ( <i>Operational Performance</i> );
<b>“Performance Improvement Plan”</b>	has the meaning given to the term in paragraph 18.6 of this Schedule 7.1;
<b>“Performance Improvement Proposal”</b>	has the meaning given to the term in paragraph 18.3(b) of this Schedule 7.1;
<b>“Previous Passenger Services”</b>	means: <ul style="list-style-type: none"> <li>(a) any railway passenger services operated under a Previous Franchise Agreement that is the same or substantially the same as any Passenger Service in terms of departure and arrival times and stopping patterns; and</li> <li>(b) if no such railway passenger service is found under paragraph (a) such other railway passenger services operated under a Previous Franchise Agreement which is similar in terms of departure and arrival times and stopping patterns to the Passenger Services as the Secretary of State may reasonably determine;</li> </ul>
<b>“Previous Performance Level”</b>	means the level of performance actually achieved in relation to the Previous Passenger Services;
<b>“Short Formation Benchmark”</b>	means any of the performance levels in respect of the Passenger Carrying Capacity operated in delivering the Passenger Services as set out in the Short Formation Benchmark Table;
<b>“Short Formation Benchmark Table”</b>	means the table set out in Part 1 (Short Formation Benchmark Table) of Appendix 3 (Short Formation Benchmarks);
<b>“Target Performance Level”</b>	means, in relation to a Benchmark for any Reporting Period, the number set out in the relevant column of the Cancellations Benchmark Table, the Short Formation Benchmark Table and the TOC Minute Delay Benchmark Table (as the case may be) and in the row of the applicable table for that Reporting Period;
<b>“TOC Minute Delay Benchmark”</b>	means any of the performance levels in respect of Minutes Delay attributable to LNER set out in the TOC Minute Delay Benchmark Table;

<b>“TOC Minute Delay Benchmark Table”</b>	means the table set out in Part 1 ( <i>TOC Minute Delay Benchmark Table</i> ) of Appendix 2 ( <i>TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks</i> ) to Schedule 7.1 ( <i>Operational Performance</i> );
<b>“Undisputed Cancellation”</b>	means a Cancellation that is not a Disputed Cancellation;
<b>“Undisputed Network Rail Cancellation”</b>	means a Network Rail Cancellation that is not a Disputed Cancellation;
<b>“Undisputed Network Rail Partial Cancellation”</b>	means a Network Rail Partial Cancellation that is not a Disputed Partial Cancellation; and
<b>“Undisputed Partial Cancellation”</b>	means a Partial Cancellation that is not a Disputed Partial Cancellation.

1.2 **NOT USED.**

1.3 The Cancellations Benchmarks are set out in the table in Part 1 of Appendix 1 (*Cancellations Benchmarks and Annual Cancellations Benchmarks*) to this Schedule.

1.4 **NOT USED.**

1.5 The TOC Minute Delay Benchmarks are set out in the table in Part 1 of Appendix 2 (*TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks*) to this Schedule.

1.6 **NOT USED.**

1.7 The Short Formation Benchmarks are set out in the table in Part 1 of Appendix 3 (*Short Formation Benchmarks and Annual Short Formation Benchmarks*) to this Schedule 7.1.

1.8 **NOT USED.**

1.9 **NOT USED.**

1.10 **NOT USED.**

1.10A <sup>302</sup> **The Annual T-3 Measure is set out in the table in Part 2(A) of Appendix 6 (Annual T-3 Measures) to this Schedule 7.1.**

1.10B <sup>303</sup> **The Annual T-15 Measure is set out in the table in Part 2(A) of Appendix 7 (Annual T-15 Measures) to this Schedule 7.1.**

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<sup>302</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>303</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

1.10C <sup>304</sup>**The Annual All Cancellations Measure is set out in the table in Part 2(A) of Appendix 8 (Annual All Cancellations Measures) to this Schedule 7.1.**

1.11 **NOT USED.**

1.12 **Track Access Agreement**

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

1.13 **NOT USED.**

1.14 **Notice of Performance Results**

As soon as reasonably practicable after the end of each Reporting Period and each Service Year (as the case may be), the Secretary of State shall notify LNER of the results of the calculations performed pursuant to this Schedule 7.1.

2. **Reporting Requirements**

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

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<sup>304</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**PART 1 – NON-FINANCIAL ENFORCEMENT REGIME**

**3. Cancellation Calculation: Value of A**

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

**4. NOT USED.**

**5. <sup>305</sup> Changes to Benchmarks and/or Annual Benchmarks**

**5.1 By no later than three Reporting Periods prior to the end of each Service Year, LNER may give notice to the Secretary of State of any events or circumstances having occurred during that Service Year which LNER reasonably considers will have a material effect on LNER's ability to satisfy the requirements of any Benchmarks and/or Annual Benchmarks (whether in terms of increasing or reducing LNER's ability to satisfy such requirements).**

<sup>305</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**5.2 Any notice referred to in paragraph 5.1 shall be accompanied by a report setting out LNER’s evidence to support its notice.**

**5.3 The Secretary of State may, at any time, and in the Secretary of State’s absolute discretion, revise the relevant Benchmarks and/or Annual Benchmarks, to the extent that the Secretary of State considers (in the Secretary of State’s absolute discretion) that such revision is necessary to hold constant the risk of LNER failing to satisfy the requirements of that Benchmark and/or Annual Benchmark. Unless and until the Secretary of State makes any revision to the Benchmarks and/or Annual Benchmarks under this paragraph 5.3, the Benchmarks and/or Annual Benchmarks will remain unamended.**

**6. Cancellation of Calculations**

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

<b>Table 2</b>	
$\frac{A+E}{13}$	
<b>where:</b>	
<b>A</b>	has the meaning given to it in paragraph 3 in respect of that Reporting Period; and
<b>E</b>	is the sum of the values of A in each of the twelve (12) Reporting Periods preceding that Reporting Period.

**7. NOT USED.**

**8. NOT USED.**

**9. NOT USED.**

**10. NOT USED**

**11. NOT USED**

**12. TOC Minute Delay Calculations**

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

<b>Table 3</b>	
$\frac{MD_{SRP}}{H_{SRP}}$	
<b>where:</b>	
<b>MD<sub>SRP</sub></b>	is the sum of Minutes Delay that are attributable to LNER:
	(a) in that Reporting Period; and
	(b) in each of the twelve (12) Reporting Periods immediately preceding that Reporting Period; and

<b>H<sub>SRP</sub></b>	is ascertained as follows:	
	<b><math>\frac{V}{1000}</math></b>	
	<b>where:</b>	
	<b>V</b>	is the sum of Actual Train Mileage:
	(a) in that Reporting Period; and	
	(b) in each of the twelve (12) Reporting Periods immediately preceding that Reporting Period.	

13. **NOT USED.**

14. **NOT USED.**



15. **Short Formations**

15.1 **NOT USED.**

15.2 **Short Formation Calculation: Value of A<sub>SF</sub>**

<b>Table A</b>		
<b>A<sub>SF</sub></b>	=	$\frac{B_{SF}}{C_{SF}} \times 100$
<b>where:</b>		
<b>B<sub>SF</sub></b>	is the total number of Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than that specified for each such Passenger Service in the Train Plan disregarding, if LNER has complied with paragraph 17.1 ( <i>Service Recovery Plans and Force Majeure</i> ) of this Schedule 7.1, any such Passenger Services which were operated in that way as a result of:	
	(a) LNER's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event; and	
<b>C<sub>SF</sub></b>	is the total number of Passenger Services scheduled to be operated in that Reporting Period disregarding, if LNER has complied with paragraph 17.1 ( <i>Service Recovery Plans and Force Majeure</i> ) of this Schedule 7.1, any such Passenger Service operated with less Passenger Carrying Capacity than that specified for each such Passenger Service in the Train Plan as a result of:	
	(a) LNER's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event.	

15.3 **NOT USED**

15.4 **Periodic Short Formation Calculations (from 24 June 2018)**

For each Reporting Period occurring during the period commencing on or after 24 June 2018 and expiring on 22 June 2019, the Secretary of State shall calculate LNER's performance against the Short Formation Benchmark in accordance with the following formula:

<b>Table B</b>	
$\frac{A_{SF} + E_{SF}}{n}$	
<b>where:</b>	
<b>A<sub>SF</sub></b>	has the meaning given to it in paragraph 15.2 in respect of that Reporting Period;
<b>E<sub>SF</sub></b>	is the sum of the values of <b>A<sub>SF</sub></b> in each of the twelve (12) Reporting Periods immediately preceding that Reporting Period; and
<b>n</b>	is the number of Reporting Periods that have elapsed since 24 June 2018.

**15.5 Short Formation Calculations (From Date of Introduction of IEP)**

For each Reporting Period occurring during period on or after 23 June 2019 the Secretary of State shall calculate a moving annual average of LNER's performance against the Short Formation Benchmark in accordance with the following formula:

<b>Table D</b>	
$\frac{A_{SF} + E_{SF}}{13}$	
<b>where:</b>	
<b>A<sub>SF</sub></b>	has the meaning given to it in paragraph 15.2 in respect of that Reporting Period; and
<b>E<sub>SF</sub></b>	is the sum of the values of <b>A<sub>SF</sub></b> in each of the twelve (12) Reporting Periods immediately preceding that Reporting Period.

**15.6 NOT USED.**

15.7 For the purposes of the calculations to be undertaken by the Secretary of State pursuant to paragraphs 15.2 to 15.5:

- (a) if and to the extent that any Passenger Service is operated in excess of the Passenger Carrying Capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded; and
- (b) any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.

**16. Calculations**

16.1 <sup>306</sup>**The Secretary of State shall perform the calculations referred to in paragraphs 6, 12, 15.4 and 15.5 rounded to two (2) decimal places with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).**

16.2 For so long as fewer than 13 Reporting Periods have elapsed following the Service Commencement Date the Secretary of State shall for the purposes of performing the calculations referred to in paragraphs 6, 12 and 15 assume performance at the

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<sup>306</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Previous Performance Levels in respect of the relevant Reporting Periods (up to a maximum of 12 Reporting Periods) that precede the Service Commencement Date.

**17. Service Recovery Plans and Force Majeure**

17.1 LNER shall, within eight (8) weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such other period as may be agreed by the Secretary of State), submit to the Secretary of State all the comprehensive records (as more particularly described in the "*Approved Code of Practice 2013*" or any document of a similar equivalent nature) which relate to the implementation of such Service Recovery Plan during that Reporting Period.

17.2 <sup>307</sup>**In performing the calculations pursuant to paragraph to paragraph 12 the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event..**

**18. Consequences for Poor Performance – Benchmarks**

18.1 LNER shall ensure that its performance in each Reporting Period as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, is **not equal to or worse than** each Breach Performance Level in respect of each such Reporting Period.

18.2 **NOT USED.**

18.3 If in any Reporting LNER's performance, as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, is **equal to or worse than** any Breach Performance Level relating to a Benchmark in respect of that Reporting Period, then:

(a) a contravention of this Agreement shall occur and the Secretary of State may serve a Breach Notice in accordance with the provisions of clause 8 (Breach Notices); and

(b) LNER shall submit a proposal to the Secretary of State setting out the steps proposed for the purposes of securing or facilitating compliance with the contravention. The steps to be proposed by LNER pursuant to that paragraph are those which ensure that LNER's performance against the relevant Benchmark will be **equal to or better than** the Target Performance Level relating to such Benchmark (the "**Performance Improvement Proposal**").

18.4 Any Performance Improvement Proposal shall as a minimum specify tangible action points and indicate in the case of action point:

(a) how that action will contribute to ensure that LNER's performance against the relevant Benchmark will be **equal to or better than** the Target Performance Level relating to such Benchmark;

(ii) where such action is to be implemented;

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<sup>307</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (iii) when such action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing action, the Performance Improvement Plan shall include specific review dates;
- (iv) how performance of the action is to be measured; and
- (v) identify the additional expenditure required for the implementation of each such action.

18.5 The Secretary of State shall be entitled to:

- (a) request further information from LNER with respect to its Performance Improvement Proposal, and LNER shall submit such further information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or
- (b) propose amendments to the Performance Improvement Proposal and the parties shall agree the amendments to the Performance Improvement Proposal, in which case paragraph 18.6 shall apply; or
- (c) accept the Performance Improvement Proposal, in which case paragraph 18.6 shall apply; or
- (d) not accept the Performance Improvement Proposal, in which case LNER shall not be obliged to undertake any further action with respect to its Performance Improvement Proposal.

18.6 The Performance Improvement Proposal as agreed by the parties or accepted by the Secretary of State in accordance with paragraph 18.5, shall be referred to as the "**Performance Improvement Plan**". LNER shall implement the Performance Improvement Plan in accordance with its terms and the provisions of paragraph 4 of Schedule 8.1 (Franchise Payments) shall apply in order to adjust the Budget to reflect the additional expenditure stated in the Performance Improvement Plan.

**PART 2 – REPORTING<sup>308</sup>**

- 19. **NOT USED.**
- 20. **NOT USED.**
- 21. **NOT USED.**
- 22. **NOT USED.**
- 23. <sup>309</sup>**Determination for Service Years that are less than thirteen Reporting Periods.**
- 23.1 **Where a Service Year is less than thirteen Reporting Periods, the Secretary of State will perform the following calculations for the purposes of determining the Annual T-3 Measure, the Annual T-15 Measure and the Annual All Cancellations Measure relating to that Service Year:**
  - (d) **NOT USED.**
  - (e) **NOT USED.**
  - (f) **NOT USED.**
  - (g) **NOT USED.**
  - (h) **NOT USED.**
  - (i) **in respect of the Annual T-3 Measure for that Service Year:**

<b>Table X3</b>	
$\frac{\Sigma A_{XT3}}{XY}$	
<b>Where:</b>	
$\Sigma A_{XT3}$	<p><b>is ascertained as follows:</b></p> <ul style="list-style-type: none"> <li><b>(i) NOT USED; or</b></li> <li><b>(ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Service Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD;</b></li> <li><b>(iii) NOT USED; and</b></li> </ul>
<b>XY</b>	<b>is the number of Reporting Periods in that Service Year.</b>

<sup>308</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>309</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

(j) in respect of the Annual T-15 Measure for that Service Year:

<b>Table X15</b>	
$\frac{\Sigma A_{XT15}}{XY}$	
<b>Where:</b>	
$\Sigma A_{XT15}$	is ascertained as follows: (i) NOT USED; or (ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Service Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD; (iii) NOT USED; and
$XY$	is the number of Reporting Periods in that Service Year.

(k) in respect of the Annual All Cancellations Measure for that Service Year:

<b>Table XAC</b>	
$\frac{\Sigma A_{XAC}}{XY}$	
<b>Where:</b>	
$\Sigma A_{XAC}$	is ascertained as follows: (i) NOT USED; or (ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Service Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Service Year as more particularly set out in the document in the agreed terms marked ABD; (iii) NOT USED; and
$XY$	is the number of Reporting Periods in that Service Year.

24. <sup>310</sup>Determination for Service Years that are less than thirteen Reporting Periods

24.1 NOT USED.

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<sup>310</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

24.2 **Where a Service Year is less than thirteen (13) Reporting Periods, LNER will perform the following calculations for the purposes of determining the Actual T-3 Performance Level, Actual T-15 Performance Level and Actual All Cancellations Performance Level relating to that Service Year:**

(a) **in respect of the Actual T-3 Performance Level for that Service Year:**

<b>Table Z3</b>	
$\frac{\Sigma A_{ZT3}}{XY}$	
<b>where:</b>	
$\Sigma A_{ZT3}$	<b>is the sum of the figures published by Network Rail in respect of Time to 3 Minutes in respect of LNER for each Reporting Period in that Service Year; and</b>
$XY$	<b>is the number of Reporting Periods in that Service Year.</b>

(b) **in respect of the Actual T-15 Performance Level for that Service Year:**

<b>Table Z15</b>	
$\frac{\Sigma A_{ZT15}}{XY}$	
<b>where:</b>	
$\Sigma A_{ZT15}$	<b>is the sum of the figures published by Network Rail in respect of Time to 15 Minutes in respect of LNER for each Reporting Period in that Service Year; and</b>
$XY$	<b>is the number of Reporting Periods in that Service Year.</b>

(c) **in respect of the Actual All Cancellations Performance Level for that Service Year:**

<b>Table ZAC</b>	
$\frac{\Sigma A_{ZAC}}{XY}$	
<b>where:</b>	
$\Sigma A_{ZAC}$	<b>is the sum of the figures published by Network Rail in respect of All Cancellations in respect of LNER for each Reporting Period in that Service Year; and</b>
$XY$	<b>is the number of Reporting Periods in that Service Year.</b>

25. **NOT USED.**

26. **NOT USED.**

27. <sup>311</sup>**Reporting of Actual Performance Levels**

<sup>311</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**LNER shall within 10 Weekdays of the end of each Service Year provide to the Secretary of State a report setting out:**

- (a) the Actual T-3 Performance Level for that Service Year as against the Annual Target Performance Level for the Annual T-3 Measure in that Service Year; and**
- (b) the Actual T-15 Performance Level for that Service Year as against the Annual Target Performance Level for the Annual T-15 Measure in that Service Year; and**
- (c) the Actual All Cancellations Performance Level for that Service Year as against the Annual Target Performance Level for the Annual All Cancellation Measure in that Service Year**

**28. NOT USED.**

**29. NOT USED.**



**PART 3 – MISCELLANEOUS PROVISIONS**

30. <sup>312</sup> **Allocation of Disputed Cancellations/Disputed Partial Cancellations**

For the purpose of performing the calculations referred to in paragraph 6 the Secretary of State shall allocate any Disputed Cancellations and/or Disputed Partial Cancellations between LNER and Network Rail at the end of a Reporting Period in the following ratio of:

<b>Table 24</b>	
<b>F: G</b>	
where:	
<b>F</b>	is:
	(a) for the purposes of the calculations specified in paragraph 6 (Cancellation Calculations during the Subsequent Reporting Stage), the total number of Undisputed Cancellations and/or Undisputed Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to LNER) during such twelve (12) preceding Reporting Periods; and
<b>G</b>	is:
	(c) for the purposes of paragraph 6 (Cancellation Calculations during the Subsequent Reporting Stage), the total number of Undisputed Network Rail Cancellations and/or Undisputed Network Rail Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.

31. <sup>313</sup> **Allocation of Disputed Minutes Delay**

Where the attribution of any Minutes Delay is in dispute between Network Rail and LNER at the end of a Reporting Period the Secretary of State shall, for the purpose of performing the calculations referred to in paragraph 12, allocate any disputed Minutes Delay between LNER and Network Rail in the ratio of:

<b>Table 25</b>
<b>FF: GG</b>

<sup>312</sup> 10 June 2020 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

<sup>313</sup> 10 June 2020 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

<b>where:</b>	
<b>FF</b>	<p><b>is:</b></p> <p>for the purposes of the calculations specified in paragraph 12 (TOC Minute Delay Calculations during the Subsequent Reporting Stage), the total number of undisputed Minutes Delay, in each case, from the twelve (12) preceding Reporting Periods that are attributable to LNER including any disputed attributions which were resolved or determined (and attributed to LNER) during such twelve (12) preceding Reporting Periods; and</p>
<b>GG</b>	<p><b>is:</b></p> <p>for the purposes of the calculations specified in paragraph 12 (TOC Minute Delay Calculations during the Subsequent Reporting Stage), the total number of undisputed Minutes Delay, in each case from the twelve (12) preceding Reporting Periods that are attributable to Network Rail including any disputed attributions which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.</p>

**Appendix 1 to Schedule 7.1 - Cancellations Benchmarks**

**PART 1 - CANCELLATIONS BENCHMARK TABLE (ENFORCEMENT REGIME)**

**1. Start of the Franchise**

The Reporting Period in the cells entitled **"Year 1, Period 4"** shall be the first Reporting Period of the first Service Year of the Service Period.

Column 1		Column 2		Breach Performance Level
Year		Service Year	Period	% Cancelled
From	To			
2018	2019	1	4	0.99
2018	2019	1	5	0.99
2018	2019	1	6	0.99
2018	2019	1	7	0.99
2018	2019	1	8	0.99
2018	2019	1	9	0.99
2018	2019	1	10	0.99
2018	2019	1	11	0.99
2018	2019	1	12	0.99
2018	2019	1	13	0.99
2019	2020	2	1	0.99
2019	2020	2	2	0.99
2019	2020	2	3	0.99
2019	2020	2	4	0.99
2019	2020	2	5	0.99
2019	2020	2	6	0.99
2019	2020	2	7	0.99
2019	2020	2	8	0.99
2019	2020	2	9	0.98
2019	2020	2	10	0.98
2019	2020	2	11	0.98
2019	2020	2	12	0.98
2019	2020	2	13	0.98
2020	2021	3	1	0.98
2020	2021	3	2	0.97

<sup>314</sup> Reporting Period/ Rail Year		<sup>315</sup> Target Performance Level	<sup>316</sup> Breach Performance Level
		(% Cancelled)	(% Cancelled)
Year 3, Period 3	2020/21	-	0.97
Year 3, Period 4	2020/21	1.96	2.31
Year 3, Period 5	2020/21	1.90	2.25
Year 3, Period 6	2020/21	1.82	2.17
Year 3, Period 7	2020/21	1.75	2.10
Year 3, Period 8	2020/21	1.70	2.05
Year 3, Period 9	2020/21	1.63	1.98
Year 3, Period 10	2020/21	1.56	1.91
Year 3, Period 11	2020/21	1.53	1.88
Year 3, Period 12	2020/21	1.44	1.79
Year 3, Period 13	2020/21	1.36	1.71
Year 4, Period 1	2021/22	1.30	1.65
Year 4, Period 2	2021/22	1.24	1.59
Year 4, Period 3	2021/22	1.19	1.54
Year 4, Period 4	2021/22	1.15	1.50
Year 4, Period 5	2021/22	1.11	1.46
Year 4, Period 6	2021/22	1.08	1.43
Year 4, Period 7	2021/22	1.06	1.41
Year 4, Period 8	2021/22	1.03	1.38
Year 4, Period 9	2021/22	1.02	1.37
Year 4, Period 10	2021/22	1.01	1.36
Year 4, Period 11	2021/22	1.01	1.36
Year 4, Period 12	2021/22	1.01	1.36
Year 4, Period 13	2021/22	1.01	1.36
Year 5, Period 1	2022/23	1.01	1.36
Year 5, Period 2	2022/23	1.00	1.35
Year 5, Period 3	2022/23	1.00	1.35

<sup>314</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>315</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>316</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>314</sup> Reporting Period/ Rail Year		<sup>315</sup> Target Performance Level	<sup>316</sup> Breach Performance Level
		(% Cancelled)	(% Cancelled)
Year 5, Period 4	2022/23	1.00	1.35
Year 5, Period 5	2022/23	1.00	1.35
Year 5, Period 6	2022/23	0.99	1.34
Year 5, Period 7	2022/23	0.99	1.34
Year 5, Period 8	2022/23	0.99	1.34
Year 5, Period 9	2022/23	0.99	1.34
Year 5, Period 10	2022/23	0.99	1.34
Year 5, Period 11	2022/23	0.98	1.33
Year 5, Period 12	2022/23	0.98	1.33
Year 5, Period 13	2022/23	0.98	1.33
Year 6, Period 1	2023/24	0.97	1.32
Year 6, Period 2	2023/24	0.96	1.31
Year 6, Period 3	2023/24	0.96	1.31
<b>Extension Period</b>			
Year 6, Period 4	2023/24	0.95	1.30
Year 6, Period 5	2023/24	0.94	1.29
Year 6, Period 6	2023/24	0.94	1.29
Year 6, Period 7	2023/24	0.93	1.28
Year 6, Period 8	2023/24	0.92	1.27
Year 6, Period 9	2023/24	0.91	1.26
Year 6, Period 10	2023/24	0.91	1.26
Year 6, Period 11	2023/24	0.90	1.25
Year 6, Period 12	2023/24	0.89	1.24
Year 6, Period 13	2023/24	0.89	1.24
Year 7, Period 1	2024/25	0.89	1.24
Year 7, Period 2	2024/25	0.89	1.24
Year 7, Period 3	2024/25	0.89	1.24
Year 7, Period 4	2024/25	0.89	1.24
Year 7, Period 5	2024/25	0.89	1.24
Year 7, Period 6	2024/25	0.89	1.24
Year 7, Period 7	2024/25	0.89	1.24
Year 7, Period 8	2024/25	0.89	1.24

<sup>314</sup> Reporting Period/ Rail Year		<sup>315</sup> Target Performance Level	<sup>316</sup> Breach Performance Level
		(% Cancelled)	(% Cancelled)
<b>Year 7, Period 9</b>	<b>2024/25</b>	<b>0.89</b>	<b>1.24</b>
<b>Year 7, Period 10</b>	<b>2024/25</b>	<b>0.89</b>	<b>1.24</b>
<b>Year 7, Period 11</b>	<b>2024/25</b>	<b>0.89</b>	<b>1.24</b>
<b>Year 7, Period 12</b>	<b>2024/25</b>	<b>0.89</b>	<b>1.24</b>
<b>Year 7, Period 13</b>	<b>2024/25</b>	<b>0.89</b>	<b>1.24</b>
<b>Year 8, Period 1</b>	<b>2025/26</b>	<b>0.89</b>	<b>1.24</b>
<b>Year 8, Period 2</b>	<b>2025/26</b>	<b>0.89</b>	<b>1.24</b>
<b>Year 8, Period 3</b>	<b>2025/26</b>	<b>0.89</b>	<b>1.24</b>

**PART 2(A) – NOT USED**

**PART 2(B) – NOT USED**



**Appendix 2 to Schedule 7.1 - TOC Minute Delay Benchmarks**

**PART 1 - TOC MINUTE DELAY BENCHMARK TABLE (ENFORCEMENT REGIME)**

**1. Start of the Franchise**

The Reporting Period in the cells entitled **"Year 1, Period 4"** shall be the first Reporting Period of the first Service Year of the Service Period.

Column 1		Column 2		Breach Performance Level
Year		Service Year	Period	(relevant Minutes Delay/1000 Actual Train Miles)
From	To			
2018	2019	1	4	8.30
2018	2019	1	5	8.29
2018	2019	1	6	8.29
2018	2019	1	7	8.28
2018	2019	1	8	8.28
2018	2019	1	9	8.27
2018	2019	1	10	8.27
2018	2019	1	11	8.26
2018	2019	1	12	8.25
2018	2019	1	13	8.25
2019	2020	2	1	8.23
2019	2020	2	2	8.21
2019	2020	2	3	8.19
2019	2020	2	4	8.17
2019	2020	2	5	8.15
2019	2020	2	6	8.13
2019	2020	2	7	8.11
2019	2020	2	8	8.09
2019	2020	2	9	8.07
2019	2020	2	10	8.05
2019	2020	2	11	8.03
2019	2020	2	12	8.00
2019	2020	2	13	7.98
2020	2021	3	1	7.98
2020	2021	3	2	7.97

<sup>317</sup> Reporting Period/ Rail Year		<sup>318</sup> Target Performance Level	<sup>319</sup> Breach Performance Level
		relevant Minutes Delay/1000 Train Miles	relevant Minutes Delay/1000 Train Miles
Year 3, Period 3	2020/21	-	7.97
Year 3, Period 4	2020/21	7.10	9.32
Year 3, Period 5	2020/21	6.90	9.12
Year 3, Period 6	2020/21	6.70	8.92
Year 3, Period 7	2020/21	6.70	8.92
Year 3, Period 8	2020/21	6.51	8.73
Year 3, Period 9	2020/21	6.32	8.54
Year 3, Period 10	2020/21	6.11	8.33
Year 3, Period 11	2020/21	6.07	8.29
Year 3, Period 12	2020/21	5.77	7.99
Year 3, Period 13	2020/21	5.65	7.87
Year 4, Period 1	2021/22	5.48	7.70
Year 4, Period 2	2021/22	5.31	7.53
Year 4, Period 3	2021/22	5.17	7.39
Year 4, Period 4	2021/22	5.05	7.27
Year 4, Period 5	2021/22	4.93	7.15
Year 4, Period 6	2021/22	4.81	7.03
Year 4, Period 7	2021/22	4.74	6.96
Year 4, Period 8	2021/22	4.61	6.83
Year 4, Period 9	2021/22	4.48	6.70
Year 4, Period 10	2021/22	4.32	6.54
Year 4, Period 11	2021/22	4.20	6.42
Year 4, Period 12	2021/22	4.11	6.33
Year 4, Period 13	2021/22	4.03	6.25
Year 5, Period 1	2022/23	3.99	6.21
Year 5, Period 2	2022/23	3.94	6.16
Year 5, Period 3	2022/23	3.90	6.12

<sup>317</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>318</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>319</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>317</sup> Reporting Period/ Rail Year		<sup>318</sup> Target Performance Level	<sup>319</sup> Breach Performance Level
		relevant Minutes Delay/1000 Train Miles	relevant Minutes Delay/1000 Train Miles
Year 5, Period 4	2022/23	3.86	6.08
Year 5, Period 5	2022/23	3.82	6.04
Year 5, Period 6	2022/23	3.78	6.00
Year 5, Period 7	2022/23	3.74	5.96
Year 5, Period 8	2022/23	3.70	5.92
Year 5, Period 9	2022/23	3.66	5.88
Year 5, Period 10	2022/23	3.65	5.87
Year 5, Period 11	2022/23	3.64	5.86
Year 5, Period 12	2022/23	3.63	5.85
Year 5, Period 13	2022/23	3.63	5.85
Year 6, Period 1	2023/24	3.60	5.82
Year 6, Period 2	2023/24	3.57	5.79
Year 6, Period 3	2023/24	3.55	5.77
<b>Extension Period</b>			
Year 6, Period 4	2023/24	3.52	5.74
Year 6, Period 5	2023/24	3.49	5.71
Year 6, Period 6	2023/24	3.47	5.69
Year 6, Period 7	2023/24	3.44	5.66
Year 6, Period 8	2023/24	3.41	5.63
Year 6, Period 9	2023/24	3.39	5.61
Year 6, Period 10	2023/24	3.36	5.58
Year 6, Period 11	2023/24	3.33	5.55
Year 6, Period 12	2023/24	3.31	5.53
Year 6, Period 13	2023/24	3.28	5.50
Year 7, Period 1	2024/25	3.28	5.50
Year 7, Period 2	2024/25	3.28	5.50
Year 7, Period 3	2024/25	3.28	5.50
Year 7, Period 4	2024/25	3.28	5.50
Year 7, Period 5	2024/25	3.28	5.50
Year 7, Period 6	2024/25	3.28	5.50
Year 7, Period 7	2024/25	3.28	5.50
Year 7, Period 8	2024/25	3.28	5.50

<sup>317</sup> Reporting Period/ Rail Year		<sup>318</sup> Target Performance Level	<sup>319</sup> Breach Performance Level
		relevant Minutes Delay/1000 Train Miles	relevant Minutes Delay/1000 Train Miles
Year 7, Period 9	2024/25	3.28	5.50
Year 7, Period 10	2024/25	3.28	5.50
Year 7, Period 11	2024/25	3.28	5.50
Year 7, Period 12	2024/25	3.28	5.50
Year 7, Period 13	2024/25	3.28	5.50
Year 8, Period 1	2025/26	3.28	5.50
Year 8, Period 2	2025/26	3.28	5.50
Year 8, Period 3	2025/26	3.28	5.50

**PART 2(A) – NOT USED**

**PART 2(B) – NOT USED**

**Appendix 3 to Schedule 7.1 - Short Formation Benchmarks**

**PART 1 - SHORT FORMATION BENCHMARK TABLE (ENFORCEMENT REGIME)**

**1. Start of the Franchise**

The Reporting Period in the cells entitled **"Year 1, Period 4"** shall be the first Reporting Period of the first Service Year of the Service Period.

Column 1		Column 2		Column 4
Year		Service Year	Period	Breach Performance Level
From	To			(% Short Formed)
2018	2019	1	4	1.34%
2018	2019	1	5	1.33%
2018	2019	1	6	1.31%
2018	2019	1	7	1.26%
2018	2019	1	8	1.24%
2018	2019	1	9	1.23%
2018	2019	1	10	1.20%
2018	2019	1	11	1.18%
2018	2019	1	12	1.14%
2018	2019	1	13	1.10%
2019	2020	2	1	1.07%
2019	2020	2	2	1.04%
2019	2020	2	3	1.03%
2019	2020	2	4	1.03%
2019	2020	2	5	1.03%
2019	2020	2	6	1.03%
2019	2020	2	7	1.04%
2019	2020	2	8	1.03%
2019	2020	2	9	1.03%
2019	2020	2	10	1.01%
2019	2020	2	11	1.00%
2019	2020	2	12	0.98%
2019	2020	2	13	0.96%
2020	2021	3	1	0.95%
2020	2021	3	2	0.93%

<sup>320</sup> Reporting Period/ Rail Year		<sup>321</sup> Target performance level (%)	<sup>322</sup> Breach performance level (%)
Year 3, Period 3	2020/21	0.00	0.93
Year 3, Period 4	2020/21	0.00	3.00
Year 3, Period 5	2020/21	0.00	3.00
Year 3, Period 6	2020/21	0.00	3.00
Year 3, Period 7	2020/21	0.00	3.00
Year 3, Period 8	2020/21	0.00	3.00
Year 3, Period 9	2020/21	0.00	2.80
Year 3, Period 10	2020/21	0.00	2.75
Year 3, Period 11	2020/21	0.00	2.70
Year 3, Period 12	2020/21	0.00	2.65
Year 3, Period 13	2020/21	0.00	2.60
Year 4, Period 1	2021/22	0.00	2.55
Year 4, Period 2	2021/22	0.00	2.50
Year 4, Period 3	2021/22	0.00	2.44
Year 4, Period 4	2021/22	0.00	2.38
Year 4, Period 5	2021/22	0.00	2.32
Year 4, Period 6	2021/22	0.00	2.26
Year 4, Period 7	2021/22	0.00	2.19
Year 4, Period 8	2021/22	0.00	2.13
Year 4, Period 9	2021/22	0.00	2.07
Year 4, Period 10	2021/22	0.00	2.02
Year 4, Period 11	2021/22	0.00	1.97
Year 4, Period 12	2021/22	0.00	1.92
Year 4, Period 13	2021/22	0.00	1.87
Year 5, Period 1	2022/23	0.00	1.82
Year 5, Period 2	2022/23	0.00	1.77
Year 5, Period 3	2022/23	0.00	1.72
Year 5, Period 4	2022/23	0.00	1.66
Year 5, Period 5	2022/23	0.00	1.61
Year 5, Period 6	2022/23	0.00	1.55
Year 5, Period 7	2022/23	0.00	1.50
Year 5, Period 8	2022/23	0.00	1.44
Year 5, Period 9	2022/23	0.00	1.38
Year 5, Period 10	2022/23	0.00	1.34
Year 5, Period 11	2022/23	0.00	1.28
Year 5, Period 12	2022/23	0.00	1.22
Year 5, Period 13	2022/23	0.00	1.17

<sup>320</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>321</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>322</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.



<sup>320</sup> Reporting Period/ Rail Year		<sup>321</sup> Target performance level (%)	<sup>322</sup> Breach performance level (%)
Year 6, Period 1	2023/24	0.00	1.11
Year 6, Period 2	2023/24	0.00	1.06
Year 6, Period 3	2023/24	0.00	1.00
<b>Extension Period</b>			
Year 6, Period 4	2023/24	0.00	1.00
Year 6, Period 5	2023/24	0.00	1.00
Year 6, Period 6	2023/24	0.00	1.00
Year 6, Period 7	2023/24	0.00	1.00
Year 6, Period 8	2023/24	0.00	1.00
Year 6, Period 9	2023/24	0.00	1.00
Year 6, Period 10	2023/24	0.00	1.00
Year 6, Period 11	2023/24	0.00	1.00
Year 6, Period 12	2023/24	0.00	1.00
Year 6, Period 13	2023/24	0.00	1.00
Year 7, Period 1	2024/25	0.00	1.00
Year 7, Period 2	2024/25	0.00	1.00
Year 7, Period 3	2024/25	0.00	1.00
Year 7, Period 4	2024/25	0.00	1.00
Year 7, Period 5	2024/25	0.00	1.00
Year 7, Period 6	2024/25	0.00	1.00
Year 7, Period 7	2024/25	0.00	1.00
Year 7, Period 8	2024/25	0.00	1.00
Year 7, Period 9	2024/25	0.00	1.00
Year 7, Period 10	2024/25	0.00	1.00
Year 7, Period 11	2024/25	0.00	1.00
Year 7, Period 12	2024/25	0.00	1.00
Year 7, Period 13	2024/25	0.00	1.00
Year 8, Period 1	2025/26	0.00	1.00
Year 8, Period 2	2025/26	0.00	1.00
Year 8, Period 3	2025/26	0.00	1.00

**PART 2(A) – NOT USED**

**PART 2(B) – NOT USED**

**Appendix 4 to Schedule 7.1 - NOT USED**

**Appendix 5 to Schedule 7.1 - NOT USED**

**Appendix 6 to Schedule 7.1**<sup>323</sup>

**Annual T-3 Measure**

**PART 1 – NOT USED**<sup>324</sup>

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<sup>323</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>324</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**PART 2(A) – ANNUAL T-3 TABLE<sup>325</sup>**

<b>Column 1</b>	<b>Column 2</b>
<b>Performance Calculation Year</b>	<b>Annual Target Performance Level T-3 (%)</b>
<b>Year 3, Period 13</b>	<b>68.80</b>
<b>Year 4, Period 13</b>	<b>70.00</b>
<b>Year 5, Period 13</b>	<b>71.00</b>
<b>Year 6, Period 13</b>	<b>72.00</b>
<b>Year 7, Period 13</b>	<b>73.50</b>
<b>Year 8, Period 3</b>	<b>73.50</b>

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<sup>325</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**PART 2(B) – NOT USED**<sup>326</sup>

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<sup>326</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.



**Appendix 7 to Schedule 7.1<sup>327</sup>**

**Annual T-15 Measure**

**PART 1 – NOT USED<sup>328</sup>**

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<sup>327</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>328</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**PART 2(A) – ANNUAL T-15 TABLE<sup>329</sup>**

<b>Column 1</b>	<b>Column 2</b>
<b>Performance Calculation Year</b>	<b>Annual Target Performance Level T-15 (%)</b>
<b>Year 3, Period 13</b>	<b>94.10</b>
<b>Year 4, Period 13</b>	<b>95.00</b>
<b>Year 5, Period 13</b>	<b>95.10</b>
<b>Year 6, Period 13</b>	<b>95.60</b>
<b>Year 7, Period 13</b>	<b>95.60</b>
<b>Year 8, Period 3</b>	<b>95.60</b>

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<sup>329</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**PART 2(B) – NOT USED<sup>330</sup>**

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<sup>330</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**Appendix 8 to Schedule 7.1<sup>331</sup>**

**Annual All Cancellations Measures**

**PART 1 – NOT USED<sup>332</sup>**

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<sup>331</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>332</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**PART 2(A) – ANNUAL ALL CANCELLATIONS TABLE<sup>333</sup>**

<b>Column 1</b>	<b>Column 2</b>
<b>Performance Calculation Year</b>	<b>Annual Target Performance Level All Cancellations (%)</b>
<b>Year 3, Period 13</b>	<b>3.25</b>
<b>Year 4, Period 13</b>	<b>2.70</b>
<b>Year 5, Period 13</b>	<b>2.40</b>
<b>Year 6, Period 13</b>	<b>2.30</b>
<b>Year 7, Period 13</b>	<b>2.10</b>
<b>Year 8, Period 3</b>	<b>2.10</b>

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<sup>333</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**PART 2(B) – NOT USED**<sup>334</sup>

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<sup>334</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

## Schedule 7.2

**Customer Experience and Engagement<sup>335</sup>****1. Definitions**

1.1 For the purposes of this Schedule 7.2 (*Customer Experience and Engagement*) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

**“Alternative NRPS”** has the meaning given to such term in paragraph 2.6 of Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Investment Scheme);

**“NRPS Floor Level”** means;

(a) in respect of the Stations, Trains and Customer Services NRPS Measure, a performance level equal to 3.0% below the NRPS Performance Level for that NRPS Measure; and

(b) in respect of the Dealing with Delays NRPS Measure, a performance level equal to 4.0% below the NRPS Performance Level for that NRPS Measure.

**“NRPS 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 not lower than the related NRPS Performance Level;<sup>336</sup>

**“NRPS Improvement Plan”** has the meaning given to it in paragraph 4.4 of this Schedule 7.2;

**“NRPS Improvement Proposal”** has the meaning given to it in paragraph 4.6 of this Schedule 7.2;

**“NRPS Performance Level”** means in relation to any Performance Year, each of the performance levels relating to each NRPS Measure as set out in the relevant columns of the NRPS Performance Level Table;

**“NRPS Performance Level Table”** means the table set out in Appendix 1 (NRPS Performance Level Table) of this Schedule 7.2 (Customer Experience and Engagement);

**“NRPS Measure”** means each of the factors set out in the Passenger Survey Methodology and grouped as

<sup>335</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>336</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**Stations, Trains, Customer Services and Dealing with Delays;**

[DELETED<sup>337</sup>]

[DELETED]

**"Sustainable Development Strategy"<sup>338</sup>**

means LNER's strategy for sustainable development for the Franchise as agreed pursuant to paragraph 10.1(b) of Schedule 13.1 (Rail Industry Initiatives and Co-operation) including as a minimum: key aims, resources, risks and details of how sustainable development will be embedded in the governance of the Franchise and investment decisions (as revised from time to time);

**2. Conduct of National Rail Passenger Surveys**

**2.1 LNER agrees with the Secretary of State that:**

- (a) the Passengers' Council may measure the level of passenger satisfaction with the 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) LNER 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) LNER shall co-operate with the Passengers' Council (in such manner as the Passengers' Council may reasonably request or as the Secretary of State may reasonably direct) in order to enable the Passengers' Council to carry out National Rail Passenger Surveys; and**
- (e) the Passengers' Council and/or the Secretary of State may, from time to time, publish the results of each National Rail Passenger Survey.**

**2.2 The Secretary of State shall ensure or shall procure that:**

- (a) the findings of any National Rail Passenger Survey are made available by the Passengers' Council to LNER 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 LNER to comply with its obligations under paragraph 2.3; and**

<sup>337</sup> 27 May 2021 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

<sup>338</sup> 24 July 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.



- (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.
- 2.3 LNER shall, as soon as reasonably practicable after such information is made available to LNER in accordance with paragraph 2.2, publicise its performance against the NRPS Performance Levels<sup>339</sup> by including such information in its Customer Report and displaying such information at all of the Stations and on its website.
- 2.4 It is agreed by LNER that, subject to paragraph 2.5, the methodology to be adopted by the Passengers' Council in conducting any such National Rail Passenger Survey shall be as described in the document in the agreed terms marked PSM (the "Passenger Survey Methodology");
- 2.5 If:
- (a) at any time during the Service 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) Secretary of State reasonably determines that in consequence a revision to the NRPS Performance Level<sup>340</sup> is required in order to hold constant the risk of LNER failing to satisfy the NRPS Performance Level,<sup>341</sup>
- then the Secretary of State shall make such revisions to such NRPS Performance Levels<sup>342</sup> as he reasonably considers appropriate to hold constant such risk.
- 2.6 <sup>343</sup>If:
- (a) National Rail Passenger Surveys are replaced by an alternative survey; or
- (b) the Secretary of State after consultation with LNER, reasonably determines that an alternative passenger survey would be more appropriate,

then in each case the provisions of this Schedule 7.2 and/or the relevant provisions of Schedule 8.2 relating to the results of National Rail Passenger Surveys shall apply in respect of any alternative survey (the "Alternative NRPS") and for these purposes Passengers' Council shall be

<sup>339</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>340</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>341</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>342</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>343</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

replaced with such other entity that is responsible for conducting such Alternative NRPS.

### 3. NRPS Performance Level

3.1 <sup>344</sup>It is agreed by the Secretary of State and LNER that, subject to paragraph 2.6, the results of the National Rail Passenger Survey(s) published by the Passengers' Council in any Service Year should be used to determine LNER's performance against the NRPS Performance Levels for that Service Year. If in any Service Year the Passengers' Council has <sup>345</sup>:

- (a) published only one (1) National Rail Passenger Survey in that Service Year then the performance of LNER against the NRPS Performance Levels shall be measured against the results of such National Rail Passenger Survey; or
- (b) published more than one (1) National Rail Passenger Survey in that Service Year then the performance of LNER against the NRPS Performance Levels shall be measured against the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that Service Year; or
- (c) not published any National Rail Passenger Survey in that Service Year then the performance of LNER against the NRPS Performance Levels shall be measured against the results of the most recently published National Rail Passenger Survey.

### 4. Performance Review

4.1 <sup>346</sup>For each Service Year the Secretary of State shall determine LNER's performance against each NRPS Performance Level by comparing:

- (a) if only one (1) National Rail Passenger Survey has been published by Passengers' Council in that Service Year, the results of such National Rail Passenger Survey against the NRPS Intermediate Performance applicable in respect of that Service Year; or
- (b) if more than one (1) National Rail Passenger Survey has been published by Passengers' Council in that Service Year, the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that Service Year against the NRPS Performance Levels applicable in respect of that Service Year; or
- (c) if no National Rail Passenger Survey has been published by the Passengers' Council in that Service Year, the results of the most recently published National Rail Passenger Survey against the NRPS Performance Levels applicable in respect of that Service Year.

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<sup>344</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>345</sup> 25 June 2020 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

<sup>346</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- 4.2 For the purposes of undertaking the comparison pursuant to paragraph 4.1, the results referred to in paragraph 4.1(a), paragraph 4.1(b) or paragraph 4.1(c) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).
- 4.3 <sup>347</sup>If, following the Secretary of State's determination pursuant to any of paragraphs 4.1(a), 4.1(b) or 4.1(c) (as the case may be), the results show that the level of customer satisfaction in respect of any NRPS Measure is at or below the NRPS Performance Level for such measure then the Secretary of State shall be entitled to request from LNER a plan in order to secure an NRPS Improvement. In making such a request the Secretary of State may, in his discretion, reasonably determine the scope of a plan to secure an NRPS Improvement, including such key performance indicators and measurable targets as the Secretary of State may reasonably require for the purposes of monitoring compliance with that plan. For the avoidance of doubt, a score for an NRPS Measure which is less than the NRPS Performance Level for that NRPS Measure shall not of itself constitute a breach or contravention of the Service Agreement.
- 4.4 Within 15 Weekdays of the Secretary of State's request (or such longer period as may be agreed by the Secretary of State) pursuant to paragraph 4.3, LNER shall, prepare and deliver to the Secretary of State its proposal (the "NRPS Improvement Proposal") for achieving an NRPS Improvement which shall:
- (a) comply with any reasonable determination made by the Secretary of State in relation to the scope of any plan to be produced by LNER pursuant to paragraph 4.3;
  - (b) contain specific tangible actions points and indicate in the case of each action point:
    - (i) how that action will contribute to meeting the relevant NRPS Measure;
    - (ii) where the action is to be implemented;
    - (iii) the proposed timescales for implementing such action and where any action is expressed to be ongoing, proposed review dates; and
    - (iv) how LNER proposes to measure the performance of the action; and
  - (c) the additional expenditure associated with each action.
- 4.5 The Secretary of State shall be entitled to:
- (d) request further information from LNER with respect to its NRPS Improvement Proposal, and LNER shall submit such further

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<sup>347</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or

- (e) propose amendments to the NRPS Improvement Proposal and the parties shall agree the amendments to the NRPS Improvement Proposal, in which case paragraph 4.6 shall apply; or
- (f) accept the NRPS Improvement Proposal, in which case paragraph 4.6 shall apply; or
- (g) not accept the NRPS Improvement Proposal, in which case LNER shall not be obliged to undertake any further action with respect to its NRPS Improvement Proposal.

4.6 The NRPS Improvement Proposal as agreed by the parties or accepted by the Secretary of State in accordance with paragraph 4.5, shall be referred to as the "NRPS Improvement Plan". LNER shall implement the NRPS Improvement Plan in accordance with its terms and the provisions of paragraph 4 of Schedule 8.1 (Franchise Payments) shall apply in order to adjust the Budget to reflect the additional expenditure stated in the NRPS Improvement Plan.

5. NOT USED

6. NOT USED

7. NOT USED

8. NOT USED

9. Customer and Stakeholder Engagement Strategy

9.1 LNER shall:

- (a) undertake and complete a review of its Customer and Stakeholder Engagement Strategy within 6 months of the Service Commencement Date and thereafter in each Service Year; 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 Service Year.

9.2 The aim of such review shall be to update the Customer and Stakeholder Engagement Strategy to reflect lessons learned in the period since the previous review of the Customer and Stakeholder Engagement Strategy 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).

9.3 LNER shall undertake consultations from time to time as required with:

- (a) passengers, potential passengers, Stakeholders and other users of the rail network; and

- (b) <sup>348</sup> persons who are protected by a Accessible Travel Policy;
- (c) persons with other protected characteristics within the meaning of the EA,

for the purposes of the Customer and Stakeholder Engagement Strategy, the Customer Report and the CCI Scheme.

9.4 [Deleted<sup>349</sup>]

## 10. Customer Report

10.1 LNER shall, in accordance with the requirements of paragraph 10.2 and paragraph 10.3 below, publish a Customer Report in such readily accessible formats as the Secretary of State may reasonably require (including in booklet or other similar hard copy formats, in electronic formats (such as on LNER's website, through social media channels and by email)), in each case in accordance with the Customer and Stakeholder Engagement Strategy and the provisions of paragraph 8 (Publication of Performance Data), paragraph 9 (Publication of Complaints and Faults Handling Data) of Schedule 1.4 (Passenger Facing Obligations) and paragraph 16 of Schedule 11.2 (Management Information).

10.2 LNER shall publish a Customer Report as follows:

- (a) in respect of the first (1<sup>st</sup>) Service Year:
  - (i) where such Service Year is less than seven (7) Reporting Periods, LNER shall only be required to publish a Customer Report for that Service Year by no later than the Service Commencement Date; or
  - (ii) where such Service Year is less than thirteen (13) Reporting Periods but equal to or more than seven (7) Reporting Periods, LNER shall be required to publish two (2) Customer Reports in that Service Year, the first Customer Report to be published by no later than the Service Commencement Date and the second Customer Report to be published before the end of that first Service Year; and
- (b) in respect of each subsequent Service Year, LNER shall be required to publish a Customer Report at least twice in that Service Year provided that where any such subsequent Service Year is less than thirteen (13) Reporting Periods LNER shall be required to publish a Customer Report only once in respect of that Service Year.

10.3 Without prejudice to the obligations of LNER as specified in each of paragraphs 12.1 and 12.3 of this Schedule 7.2, paragraphs 8.3 and 9 of Schedule 1.4 (*Passenger Facing Obligations*) and paragraph 16 of Schedule 11.2 (*Management Information*), the Secretary of State and LNER acknowledge and agree that in respect of each Service Year to which

<sup>348</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>349</sup> 10 June 2020 (Date of DOA) Contract deletion agreed by the Secretary of State and Franchisee.

the provisions of paragraph 10.2(b) apply, the first Customer Report to be published for that Service Year shall be prepared in respect of the first six (6) Reporting Periods of that Service Year and the second Customer Report to be published for that Service Year shall be prepared in respect of the last seven (7) Reporting Periods of that Service Year .

11. **Customer and Communities Investment (CCI) Scheme**
- 11.1 <sup>350</sup>Unless otherwise agreed by the Secretary of State no later than three (3) months prior to the start of each CCI Period LNER shall provide to the Secretary of State details of those initiatives, works or proposals (each a "CCI Scheme") which LNER proposes to undertake in that CCI Period in order to resolve or mitigate issues raised with LNER through the consultations as carried out pursuant to paragraph 8 (*Consultations*). LNER shall use all reasonable endeavours to propose, in respect of each CCI Period, CCI Schemes with an aggregate projected CCI Scheme Shortfall of not less than the aggregate of the CCI Amount for each Service Year in the relevant CCI Period.
- 11.2 In relation to each CCI Scheme proposed by LNER pursuant to paragraph 11.1 LNER shall provide:
- (a) details of the specific issues which that CCI Scheme is intended to resolve or mitigate (including how those issues have been identified) and how that CCI Scheme will resolve or mitigate those issues; and
  - (b) fully worked up details of the CCI Scheme sufficient to enable the Secretary of State to evaluate the same, including:
    - (i) a timetable for the implementation of that CCI Scheme, setting out the proposed commencement and completion date of such CCI Scheme and any other key dates and milestones;
    - (ii) details of the projected CCI Scheme Cost; and
    - (iii) details of the projected CCI Scheme Revenue.
- 11.3 LNER shall provide the Secretary of State with such further information in relation to any CCI Scheme proposed by LNER pursuant to paragraph 11.1 as the Secretary of State may reasonably require.
- 11.4 A CCI Scheme proposed by LNER pursuant to paragraph 11.1 shall not be an Approved CCI Scheme unless and until approved by the Secretary of State pursuant to this paragraph 11.4. Without limitation, the Secretary of State may withhold his approval to any proposed CCI Scheme which:
- (a) has not been identified and/or developed in accordance with the Customer and Stakeholder Engagement Strategy;

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<sup>350</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) **is not designed to resolve or mitigate issues raised with LNER through the consultations referred to in paragraph 8;**
- (c) **has a completion date falling later than the end of the relevant CCI Period;**
- (d) **is projected to generate a Commercial Return or in relation to which the Secretary of State considers the CCI Scheme Costs (or any part of them) to be too high or disproportionate to the benefits accruing from the CCI Scheme;**
- (e) **LNER is otherwise funded to undertake; or**
- (f) **in the opinion of the Secretary of State, amounts to actions or steps which LNER is otherwise obliged to take or which any competent train operator should be taking in relation to the operation of the Franchise.**

**11.5** <sup>351</sup>**LNER shall undertake the Approved CCI Schemes described in the CCI Programme for each CCI Period.**

**11.5A** **No later than the start of each CCI Period, LNER shall produce a CCI Programme which includes all the Approved CCI Schemes which it plans to undertake in the following CCI Period and provide the CCI Programme to the Secretary of State.**

**11.5B** **A CCI Programme may be varied at any time by agreement in writing between the parties.**

**11.6 NOT USED.**

**11.7 NOT USED.**

**11.8 NOT USED.**

**11.9 NOT USED.**

## **12. Customer Service and Satisfaction Data**

**12.1** **As part of each Customer Report (but excluding the first (1<sup>st</sup>) Customer Report published pursuant to paragraph 10.2(a) of this Schedule 7.2) to be provided by LNER pursuant to paragraph 10.1 of this Schedule 7.2, LNER shall publish (in such format as the Secretary of State may reasonably require) details of LNER'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**

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<sup>351</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.



- (b) <sup>352</sup>performance by reference to such benchmarks as may be agreed between LNER and the ORR as part of LNER's Accessible Travel Policy in respect of the Passenger Assistance service operated by LNER,

in each case in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the second (2<sup>nd</sup>) Customer Report, since the Service Commencement Date, along with (from the third (3<sup>rd</sup>) Customer Report onwards) a comparison with the relevant statistics or results (as applicable) provided for the same Reporting Periods in the previous Service Year.

- 12.2 <sup>353</sup>LNER shall publish on its website (in such format as the Secretary of State may reasonably require):

- (a) within twenty (20) Weekdays of the publication of each National Rail Passenger Survey carried out by the Passengers' Council during the Service Term, details of the scores achieved by LNER in such National Rail Passenger Survey, including the scores achieved in respect of passengers' 'overall satisfaction'; and
- (b) within twenty (20) Weekdays of the publication of the last National Rail Passenger Survey to be carried out by the Passengers' Council during any Service Year, details of the scores achieved by LNER in respect of each NRPS Performance Level, as calculated in accordance with paragraph 4 of this Schedule 7.2.

- 12.3 <sup>354</sup>LNER shall ensure that the scores achieved in relation to the NRPS Performance Levels, published by it pursuant to paragraph 12.1, are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable NRPS Performance Levels were achieved, along with:

- (a) from the third (3<sup>rd</sup>) Customer Report onwards, a comparison with the scores that were achieved against the NRPS Performance Levels for the same Reporting Periods in the previous Service Year, accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise;
- (b) details of any remedial work either:
- (i) planned by LNER to occur in the period in relation to which the next Customer Report will report to improve LNER's performance in relation to achieving and exceeding the NRPS Performance Levels; or
- (ii) undertaken by LNER 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 (1<sup>st</sup>)

<sup>352</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>353</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>354</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.



**Customer Report, since the Service Commencement Date, for the purposes of improving LNER's performance in relation to achieving and exceeding the NRPS Performance Levels; and**

- (c) **details of any other initiatives planned to be implemented by LNER to improve passenger experience.**

12.4 **LNER shall ensure that a summary of the then current Customer Report is made available at all staffed Stations (in such format as the Secretary of State may reasonably require) and that such summary includes instructions to enable passengers to locate and obtain a full copy of the applicable Customer Report.**

**APPENDIX 1 TO SCHEDULE 7.2<sup>355 356</sup>  
NRPS Performance Level Table**

Table 1						
Year		Service Year	NRPS PERFORMANCE LEVEL (NPL)			
From	To		NRPS MEASURE STATION (S) (%)	NRPS MEASURE TRAINS (T) (%)	NRPS MEASURE CUSTOMER SERVICES (C) (%)	NRPS MEASURE DEALING WITH DELAYS (D) (%)
2018	2019	Year 1	80.00	81.00	79.50	64.50
2019	2020	Year 2	80.00	81.50	80.50	64.50
2020	2021	Year 3	80.00	81.50	81.50	64.50
2021	2022	Year 4	80.00	83.00	81.50	64.50
2022	2023	Year 5	80.00	83.50	82.00	64.50
<b>EXTENSION PERIOD</b>						
2023	2024	Year 6	80.00	84.00	82.00	64.50
2024	2025	Year 7	80.00	84.00	82.00	64.50
2025	2026	Year 8	80.00	84.00	82.00	64.50

<sup>355</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>356</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**APPENDIX 2 TO SCHEDULE 7.2<sup>357</sup>**  
**NOT USED**

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<sup>357</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**Schedule 7.3  
NOT USED**

**SCHEDULE 8**

**PAYMENTS**

Schedule 8.1:	Fixed Service Payments
	Appendix 1: Fixed Service Payments
	Appendix 2: <b>NOT USED</b>
Schedule 8.1A:	<b>NOT USED</b>
Schedule 8.2:	<b>NOT USED</b>
Schedule 8.3:	<b>NOT USED</b>
Schedule 8.4:	<b>NOT USED</b>
Schedule 8.5:	<b>NOT USED</b>
Schedule 8.6:	<b>NOT USED</b>

## Schedule 8.1

**Fixed Service Payments**1. **Definitions**

The following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

**"Actual Costs"** means the actual Costs of LNER in the relevant period;

**"Actual Revenue"** means the actual Revenue of LNER in the relevant period;

**"Budgeted Costs"** means the Costs budgeted to be incurred by LNER in each Reporting Period falling within a Quarter and specified in the then current Budget;

**"Cash Balance"** LNER's cash balance excluding:

(a) the amount equivalent to:

(i) any cash that is held pursuant to any restrictive terms under any agreement and that, consequently, cannot be used for general operating purposes;

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

including, in both cases, under any loan available to LNER under the Working Capital Facility Agreement;

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

**"Costs"** means costs and expenses stated in LNER's profit and loss account but excluding:-

(a) Service Payments;

(b) corporation tax and any deferred tax charge in the LNER's profit and loss account; and

(c) any accounting transaction included in the Management Accounts, Annual Management Accounts or Annual Audited Accounts but which does not require LNER to make a cash payment including notional pensions accounting adjustments;

**"Forecasted Revenue"** means the Revenue forecasted to be generated by LNER in each Reporting Period and specified in the then current Budget;

**“FSP Quarter”**

means, in respect of each Service Year, each of the following three (or four, as the case may be) Reporting Periods:

- (a) the first to third Reporting Periods;
- (b) the fourth to sixth Reporting Periods; and
- (c) the seventh to ninth Reporting Periods; and
- (d) the tenth to thirteenth Reporting Periods,

provided that:

- (i) the first FSP Quarter shall commence on the Start Date;
- (ii) each FSP Quarter shall start on the day following the last day of the preceding FSP Quarter; and
- (iii) the last FSP Quarter shall end at the end of the Service Period;

**“Revenue”**

means the gross total revenue of LNER received or receivable as stated in LNER’s profit and loss account but excluding:

- (a) Service Payments;
- (b) any accounting transaction included in the Management Accounts, Quarterly Accounts, Annual Management Accounts or Annual Audited Accounts but which does not result in LNER receiving a cash payment including notional pensions accounting adjustments and the accounting impact of financial instructions revaluations; and

**“Working Capital Facility Agreement”**

has the meaning given to it in paragraph 5 of this Schedule 8.1 (Fixed Service Payment).

**2 Service Payments**

2.1 The Fixed Service Payment payable by LNER to the Secretary of State for any Reporting Period falling within the first FSP Quarter shall be an amount equal to that specified in the second column of the Table below for that Reporting Period:

Column 1	Column 2
<b>FSP Quarter 1</b>	<b>Fixed Service Payment</b> [REDACTED <sup>358</sup> ]
24 June 2018 to 21 July 2018 (Reporting Period 1)	[REDACTED]
22 July 2018 to 18 August 2018 (Reporting Period 2)	
19 August 2018 to 15 September 2018 (Reporting Period 3)	

2.2 The Fixed Service Payment payable by LNER to the Secretary of State or the Secretary of State to LNER (as the case may be) for any Reporting Period following the first FSP Quarter shall be determined as specified in paragraph 4.1.

2.3 The Parties agree that:

- (a) where the Fixed Service Payment (value of **PSP<sub>FSP</sub>**) as determined pursuant to paragraph 2.2 is **a positive number**, the Secretary of State shall pay that amount to LNER on the Payment Date for that Reporting Period;
- (b) where the Fixed Service Payment (value of **PSP<sub>FSP</sub>**) as determined pursuant to paragraph 2.2 is **a negative number**, LNER shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period.

**3. Payment of Franchise Payments**

3.1 The Secretary of State shall notify LNER, no less than seven (7) days prior to the end of each Reporting Period, of the amount of the Service Payment payable in respect of that Reporting Period.

3.2 Each such notification shall set out in reasonable detail how the Service Payment has been calculated.

3.3 <sup>359</sup>**From the Service Commencement Date until 13 December 2020 the Payment Date for a Reporting Period shall be the last Weekday of that Reporting Period. From 13 December 2020 the Payment Date for a Reporting Period shall be the first Weekday of that Reporting Period.**

3.4 Each Service Payment shall be payable by LNER or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 3.1 on the Payment Date of the Reporting Period to which it relates.

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<sup>358</sup> **21 June 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.**

<sup>359</sup> 10 December 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.



- 3.5 Each Service Payment shall be made:
- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
  - (b) so that cleared funds are received in that account on or before the due date for payment.

**Interest**

3.6 If either LNER or the Secretary of State fails to pay any amount to the other on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.

3.7 If the amount of any Service Payment is agreed or determined to be incorrect and:

- (a) either LNER or the Secretary of State has made a payment to the other which is greater than it would have made if the amount of the Service Payment had been correct, then the recipient shall repay the excess within three (3) Weekdays of the agreement or determination; or
- (b) either LNER or the Secretary of State has made a payment to the other which is less than it would have made if the amount of the Service Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three (3) Weekdays of the agreement or determination,

together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Service Payment was paid until the date on which such excess amount or shortfall is paid.

**Disputes under Schedule 8**

3.8 If either LNER or the Secretary of State disputes the amount of a Service Payment, the dispute shall, unless LNER and the Secretary of State otherwise agree, be resolved in accordance with the provisions of clause 18 (Governing Law and Jurisdiction) of the Service Agreement. Any such dispute shall not affect the obligation of either party to pay a Service Payment notified in accordance with this Schedule 8.1.

**No Double Recovery**

3.9 Neither Party shall be entitled to recover (by way of an adjustment to Service Payments or otherwise) more than once in respect of the same amount.

**Force Majeure and Payments**

3.10 Following the occurrence of a Force Majeure Event, the payment of Service Payments shall continue to be calculated in accordance with this Schedule 8.1 (Fixed Service Payments).

**4. Fixed Service Payments after the First FSP Quarter and Revisions to the Budget**

**Fixed Service Payments after the first FSP Quarter**

- 4.1 Immediately following the date of completion of the revisions to the then current Budget for each FSP Quarter pursuant to paragraph 4.2, the Secretary of State and LNER shall, using the Budgeted Costs and Forecasted Revenues as specified in the revised Budget for the calculate the Fixed Service Payments that will be payable by LNER to the Secretary of State or Secretary of State to LNER (as the case may be) for each Reporting Period falling within the next FSP Quarter as follows:

<b>PSP<sub>FSP</sub> =</b>	<b>(BC<sub>FSP</sub> - FR<sub>FSP</sub>)</b>
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Where:

<b>BC<sub>FSP</sub></b>	means the Budgeted Costs for the relevant Reporting Period falling within that FSP Quarter. BC <sub>FSP</sub> may only be a positive number.
<b>FR<sub>FSP</sub></b>	means the Forecasted Revenue for the relevant Reporting Period falling within that FSP Quarter. FR <sub>FSP</sub> may only be a positive number; and

- 4.2 <sup>360</sup>**Within twenty (20) Weekdays after the third (3<sup>rd</sup>), sixth (6<sup>th</sup>) and ninth (9<sup>th</sup>) Reporting Periods in each Service Year, LNER shall deliver to the Secretary of State:**

- (a) its proposed revisions (if any) to the then current Budget for the remaining Reporting Periods of the Service Year; and
- (b) a full and detailed explanation for the proposed revisions

and the Parties may agree (or in the absence of agreement the Secretary of State shall reasonably determine) whether revisions are to be made, and (if so) the revisions to be made, and the date from which the revised Budget shall take effect. If the date from which the revised Budget is to take effect is such that a retrospective adjustment is required to be made to the Services Payment payable in relation to any FSP Quarter then such adjustment will be made by adjustment to the next Service Payment falling more than 7 (seven) days later than the date upon which the revisions to the Budget are to take effect pursuant to this paragraph 4.2.

**Provisions applying to all revisions**

- 4.3 Each revision to the Budget shall (unless the Parties otherwise agree):
- (a) adopt the same format and structure as the original version in agreed terms (or where the preceding version has included any changes from that format and structure expressly agreed by the Parties for this purpose) from the preceding version;
  - (b) make no assumptions or include any costs, revenue or other adjustments which are not consistent with the definition of Costs and

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<sup>360</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Revenue (except as may be otherwise expressly agreed by the Parties for that purpose);

- (c) adopt the same accounting principles and standards as the original version (as these may be expressly varied by agreement between the Parties for this purpose or, in the case of accounting standards, as these may be reasonably revised by the Secretary of State to take account of changes to GAAP in the United Kingdom); and
  - (d) otherwise facilitate easy comparison with the definitions of Costs and Revenue and with the information reported in the Management Accounts, Annual Management Accounts and the Audited Annual Accounts.
- 4.4 Each time it is agreed or determined that the Budget is to be revised, the Secretary of State shall be entitled to:-
- (a) make the agreed or determined revisions to the Budget himself (or procure this is done on his behalf) and provide copies of those revised documents to LNER; or
  - (b) require LNER to provide the agreed or determined revisions to the Budget for approval by the Secretary of State, which LNER shall do and provide revised versions to the Secretary of State within such time as the Secretary of State shall specify for this purpose.
- 4.5 LNER shall provide the Secretary of State with all further information as he may request from time to time for the purposes of the operation of this paragraph 4, within such time as he may reasonably specify for that purpose.
- 4.6 The Parties shall at all times act in good faith, reasonably and in a timely manner in the interpretation and application of the provisions for agreeing revisions to the Budget.

## 5. Working Capital Facility

- 5.1 It is acknowledged by the Secretary of State and LNER that:
- (a) the Working Capital Facility Agreement dated on or about the date hereof has been entered into between the Secretary of State, DOHL and LNER (the "**Working Capital Facility Agreement**"); and
  - (b) LNER shall be entitled to make a demand under the Working Capital Facility Agreement if in any Reporting Period:
    - (i) the available Cash Balance in that Reporting Period is below **[REDACTED<sup>361</sup>]**; or

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<sup>361</sup> 20 December 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.

- (ii) LNER reasonably believes that its available Cash Balance will fall below **[REDACTED<sup>362</sup>]** at the end of the Reporting Period immediately following that Reporting Period.

5.2 Any amounts that LNER draws down under the Working Capital Facility Agreement shall be repaid as specified therein.

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<sup>362</sup> **20 December 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 1 TO SCHEDULE 8.1**

**NOT USED**

**APPENDIX 2 TO SCHEDULE 8.1**

**NOT USED**

Schedule 8.1a

**NOT USED**

<sup>363</sup>Schedule 8.2**Performance Review Provisions****1A. Definitions**

The following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

<b>"Acceptable Insight Rating"</b>	has the meaning given in paragraph 4 of Appendix 2 (Scorecard Criteria) of this Schedule 8.2;
<b>"Actual Revenue"</b>	means LNER's actual annual Revenue during a Performance Assessment Period as calculated in accordance with the Business Plan applicable to that Performance Assessment Period;
<b>"All Cancellations Benchmark Range"</b>	means for each Performance Assessment Period the range between (and inclusive of) the values specified for 'All Cancellations' in the Business Plan applicable to that Performance Assessment Period;
<b>"Annual Cancellations Benchmark Range"</b>	means for each Performance Assessment Period the range between (and inclusive of) the values specified for 'Annual Cancellations' in the Business Plan applicable to that Performance Assessment Period;
<b>"Annual Short Formations Benchmark Range"</b>	means for each Performance Assessment Period the range between (and inclusive of) the values specified for 'Annual Short Formations' in the Business Plan applicable to that Performance Assessment Period;
<b>"Annual T-3 Benchmark Range"</b>	means for each Performance Assessment Period the range between (and inclusive of) the values specified for 'Annual T-3' in the Business Plan applicable to that Performance Assessment Period;
<b>"Annual T-15 Benchmark Range"</b>	means for each Performance Assessment Period the range between (and inclusive of) the values specified for 'Annual T-15' in the Business Plan applicable to that Performance Assessment Period;
<b>"Annual TOC Minute Delay Benchmark Range"</b>	means for each Performance Assessment Period the range between (and inclusive of) the values specified for 'All TOC Minute Delay' in the Business Plan applicable to that Performance Assessment Period;

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<sup>363</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.



<b>“Applicable Costs Target”</b>	means the annual costs target for the applicable Performance Assessment Period as set out in the Business Plan for that Performance Assessment Period;
<b>“Applicable Revenue Target”</b>	means the annual Revenue target for the applicable Performance Assessment Period as set out in the Business Plan for that Performance Assessment Period;
<b>“Benchmark Levels”</b>	means: <ul style="list-style-type: none"> <li>(a) the Annual Cancellations Benchmark Range;</li> <li>(b) the Annual TOC Minute Delay Benchmark Range;</li> <li>(c) the Annual Short Formations Benchmark Range;</li> <li>(d) the Annual T-3 Benchmark Range;</li> <li>(e) the Annual T-15 Benchmark Range;</li> <li>(f) the All Cancellations Benchmark Range;</li> </ul>
<b>“Business Plan Delivery Score”</b>	means the score attributable to LNER’s performance in delivering the Business Plan with respect to the relevant Performance Assessment Period, including time and delivery of expected outputs specified in the Business Plan;
<b>“Business Plan Quality Score”</b>	means the score attributable to the extent to which LNER’s Business Plan for the Service Year immediately following the applicable Performance Assessment Period meets the Secretary of State’s requirements and demonstrates innovation and ambition;
<b>“Collaboration Score”</b>	means the score measuring LNER’s effectiveness in collaborating with Network Rail, the Secretary of State and applicable stakeholders;
<b>“Customer Satisfaction Scorecard A”</b>	means the methodology applicable to the calculation of the Customer Satisfaction Score as set out in paragraph 3 of Appendix 2 to this schedule 8.2;
<b>“Customer Satisfaction Scorecard B”</b>	means the methodology applicable to the calculation of the Customer Satisfaction Score as set out in paragraph 4 of Appendix 2 to this schedule 8.2;
<b>“Customer Satisfaction Score”</b>	means the score measuring LNER’s effectiveness in delivering high levels of satisfaction and positive sentiment amongst users of the Passenger Services;

<b>“Evidence Report”</b>	has the meaning given to it in paragraph 2.1 of Schedule 8.2 (and “Evidence Reports” shall be construed accordingly);
<b>“Financial Performance – Target Cost Score”</b>	means the score measuring LNER’s effectiveness in minimising costs and meeting applicable costs targets as specified in the Business Plan;
<b>“Financial Performance – Target Revenue Score”</b>	means the score measuring LNER’s effectiveness in meeting levels of Revenue as specified in the Business Plan;
<b>“Good Insight Rating”</b>	has the meaning given in paragraph 4 of Appendix 2 (Scorecard Criteria) of this Schedule 8.2;
<b>“NRPS Expected Range”</b>	means, in relation to the LNER’s Overall NRPS Score, the range between (and inclusive of) the values in relation to performance as set out in the Business Plan;
<b>“NRPS Measure”</b>	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (Customer Experience and Engagement);
<b>“Operational Performance Scores”</b>	means the scores measuring LNER’s effectiveness in delivering punctual and reliable journeys and in providing an appropriate amount of passenger-carrying capacity, which shall comprise sub-component scores in relation to each Benchmark Level;
<b>“Overall NRPS Score”</b>	means the mean average of all of the results from the National Rail Passenger Surveys applicable to the Service Year to which the Performance Assessment Period relates for all NRPS Measures;
<b>“Performance Assessment Component”</b>	means each of the following components which shall be individually assessed to calculate the: <ul style="list-style-type: none"> <li>(a) Operational Performance Scores;</li> <li>(b) Service Quality Standards Score;</li> <li>(c) Customer Satisfaction Score;</li> <li>(d) Financial Performance – Total Costs Score;</li> <li>(e) Financial Performance – Total Revenue Score;</li> <li>(f) Business Plan Quality Score;</li> <li>(g) Business Plan Delivery Score;</li> </ul>

**(h) Collaboration Score;**

**“Performance Assessment Period Review”** means a review carried out (or to be carried out) with respect to a Performance Assessment Period in accordance with Schedule 8.2;

**“Performance Assessment Period Review Checklist”** means, in respect of a Performance Assessment Period Review, a checklist completed (or, as the case may be, to be completed) with respect to Performance Assessment Components to which the Scorecard Methodology is applicable, substantially in the form of that set out in Appendix 1 (Performance Assessment Period Review Checklist) of Schedule 8.2;

**“Performance Assessment Period Review Meeting”** means, in respect of a Performance Assessment Period Review, a meeting held between the Parties to discuss the performance of LNER during the relevant Performance Assessment Period;

**“Performance Assessment Period”** means:

- (a) the period commencing on 1 April 2021 and ending on 1 April 2022 at 01:59; and
- (b) each subsequent period of thirteen Reporting Periods commencing on 1 April at 02:00, subject to any agreed longer or shorter period as directed by the Secretary of State;

**“Performance Assessment Period Scorecard”** means, in respect of a Performance Assessment Period, a scorecard completed (or, as the case may be, to be completed) by the Secretary of State with respect to all performance Assessment Components to which the Scorecard Methodology is applicable, in accordance with paragraph 6 (Performance Assessment Period Review Scoring) of Schedule 8.2;

**“QTM Assessment Components”** means those Performance Assessment Components which the Secretary of State notifies to LNER pursuant to paragraph 7.4 of this Schedule 8.2 are to be measured by a Scorecard Criterion which applies a solely quantitative methodology;

**“Revenue”** shall have the meaning given to it in Schedule 8.1 (Fixed Service Payments);

**“Scorecard Criterion”** means each criterion set out in Appendix 2 (Scorecard Criteria) of Schedule 8.2, in

respect of which LNER’s performance is measured in relation to a Performance Assessment Period and for which a score shall be awarded in the Performance Assessment Period Scorecard (and “Scorecard Criteria” means the plural of Scorecard Criterion);

**“Scorecard Methodology”** means in relation to a Performance Assessment Component the methodology set out in Appendix 3 (Scorecard Methodology) of Schedule 8.2;

**“Service Quality Performance Score”** means the score measuring LNER’s effectiveness in delivering high-quality provision of facilities, services, customer care and other outputs that affect passengers’ satisfaction and sentiment; and

**“Wavelength Customer Promises”** means each of the ‘customer promises’, being customer-focused initiatives and key commitments intended to benefit customers as identified in the Wavelength Programme.

**Purpose of the Performance Assessment Period Review**

- 1.1** The purpose of a Performance Assessment Period Review is for the Secretary of State to undertake a review of LNER’s performance in relation to all Performance Assessment Components to which, in each case, the Scorecard Methodology is applicable, over the course of the relevant Performance Assessment Period.
- 1.2** The Secretary of State shall carry out a Performance Assessment Period Review with respect to each Performance Assessment Period.
- 1.3** At each periodic Franchise Performance Meeting, the Parties shall discuss and review:
  - (a)** without prejudice to the Secretary of State’s right to determine each score that LNER will achieve in accordance with Appendix 2 (Scorecard Criteria), LNER’s progress against the Scorecard Criteria; and
  - (b)** the evidence to be included within an Evidence Report for the Reporting Period to which that Franchise Performance Meeting relates and/or for any other Reporting Period.
- 1.4** Each Performance Assessment Period Review shall be carried out in accordance with the process set out in this Schedule 8.2.

**2. Evidence Report**

- 2.1** In advance of each Franchise Performance Meeting, the Secretary of State shall provide LNER with a report detailing the information and evidence that the Secretary of State considers to be relevant to the Performance Assessment Period Review and the assessment of LNER’s performance

against the Scorecard Criteria (each, an "Evidence Report"). Each Evidence Report shall contain only new information and evidence and shall not repeat the information and evidence that was included in a previous Evidence Report, except if that information and evidence has changed.

- 2.2** LNER shall, following receipt of an Evidence Report, notify the Secretary of State of any information or evidence, in addition to that set out in the Evidence Report, which LNER considers to be relevant to the Performance Assessment Period Review and the assessment of the LNER's performance against the Scorecard Criteria.
- 2.3** The Secretary of State shall, following receipt of a notice pursuant to paragraph 2.2 of Schedule 8.2, provide written confirmation to LNER of whether the Secretary of State considers such information or evidence to be relevant to the Performance Assessment Period Review and, where the Secretary of State considers such information or evidence to be relevant, the Secretary of State shall either amend the relevant Evidence Report to include such information or evidence or include the information or evidence in the next, or any subsequent, Evidence Report.
- 2.4** The Parties acknowledge and agree that the Evidence Report is not intended to be the final record of all information or evidence in respect of the Reporting Period to which the Franchise Performance Meeting relates and the Parties shall be entitled to agree, at or in advance of any subsequent Franchise Performance Meeting, that additional evidence relating to such Reporting Period may be added to that, or any subsequent, Evidence Report.
- 3. Notice of Performance Assessment Period Review Meeting**
- 3.1** The Secretary of State shall notify LNER of the date, time and location for the relevant Performance Assessment Period Review Meeting (or, where the Secretary of State considers that more than one Performance Assessment Period Review Meeting is necessary, each Performance Assessment Period Review Meeting) by no later than the end of the relevant Performance Assessment Period, provided always that any Performance Assessment Period Review Meeting shall take place no earlier than the last day in the relevant Performance Assessment Period and no later than sixty (60) days after the end of the relevant Performance Assessment Period.
- 3.2** Nothing in this Schedule 8.2 shall prevent the Parties from discussing any matter relevant to a Performance Assessment Period Review outside of any Performance Assessment Period Review Meeting.
- 4. Performance Assessment Period Review Checklist**
- 4.1** Not less than thirty (30) days prior to the end of the relevant Performance Assessment Period, the Secretary of State, acting reasonably, shall notify LNER in writing of any additional evidence or information that LNER is required to submit at the same time as the completed Performance Assessment Period Review Checklist.
- 4.2** Not less than fifteen (15) days prior to the end of each Performance Assessment Period, LNER shall notify the Secretary of State in writing of any evidence or information in addition to that set out in the Performance Assessment Period Review Checklist, each Evidence Report or the

information notified to LNER by the Secretary of State in accordance with paragraph 4.1 of this Schedule 8.2, which LNER considers to be relevant for the Performance Assessment Period Review. The Secretary of State shall, within ten (10) days of receiving such notice, provide written confirmation to LNER of whether the Secretary of State considers such matters to be relevant to the Performance Assessment Period Review.

**4.3** As soon as reasonably practicable after the end of each Performance Assessment Period, and in any event no later than ten (10) days after the end of the relevant Performance Assessment Period, LNER shall deliver to the Secretary of State a duly completed copy of the Performance Assessment Period Review Checklist in respect of that Performance Assessment Period.

**4.4** The Performance Assessment Period Review Checklist delivered by LNER pursuant to paragraph 4.3 of this Schedule 8.2 shall include written commentary from LNER in respect of the Performance Assessment Period covering:

- (a) each of the matters listed in the Performance Assessment Period Review Checklist;
- (b) the evidence and information included in the Evidence Reports;
- (c) any other matter notified by the Secretary of State to LNER pursuant to paragraph 4.1 of this Schedule 8.2; and
- (d) any other matter which the Secretary of State has confirmed as relevant for the Performance Assessment Period Review in accordance with paragraph 4.2 of this Schedule 8.2.

**4.5** The Secretary of State shall provide LNER with:

- (a) a written commentary on the completed Performance Assessment Period Review Checklist and the evidence and information included in the Evidence Reports (including any commentary provided by LNER under paragraph 4.4 of this Schedule 8.2); and
- (b) any evidence or information additional to that:
  - (i) contained in the Evidence Reports; or
  - (ii) contained in or submitted by LNER at the same time as the Performance Assessment Period Review Checklist (in accordance with paragraph 4.1 of this Schedule 8.2),

which the Secretary of State has used or intends to use to assess LNER's performance,

in each case, no later than ten (10) days prior to the relevant Performance Assessment Period Review Meeting.

## **5. Performance Assessment Period Review Meeting**

**5.1** The Performance Assessment Period Review Meeting shall take place at the date, time and location notified by the Secretary of State to LNER in

accordance with paragraph 3.1 of this Schedule 8.2 and shall be attended by representatives of each of the Secretary of State and LNER.

**5.2 LNER shall ensure that the representatives of LNER at the Performance Assessment Period Review Meeting include such:**

- (a) appropriate and qualified personnel of LNER;**
- (b) directors and/or senior managers of LNER; and**
- (c) directors and/or senior managers of DOHL,**

**as the Secretary of State may reasonably require.**

**5.3 At the Performance Assessment Period Review Meeting, the Parties shall discuss LNER's performance by reference to the Performance Assessment Period Review Checklist and each Evidence Report, together with any supporting commentary, documents or evidence submitted by LNER to the Secretary of State pursuant to paragraphs 4.3 and 4.4 of this Schedule 8.2 and any commentary and/or information provided by the Secretary of State to LNER in accordance with paragraph 4.5 of this Schedule 8.2.**

**6. Performance Assessment Period Review Scoring**

**6.1 The Secretary of State may take such steps as the Secretary of State considers (acting reasonably) to be necessary or appropriate to take into consideration any representations or evidence provided by Network Rail and/or any other relevant third party to the extent relevant to the Scorecard Criteria, including:**

- (a) procuring views or evidence from Network Rail and/or other relevant stakeholders;**
- (b) directing LNER to procure such views or evidence, which shall be submitted with LNER's own information and evidence pursuant to paragraph 2 (Evidence Report) of this Schedule 8.2; and/or**
- (c) subject to any requirements in relation to confidentiality, sharing extracts (on an anonymised or redacted basis, if required) of evidence supplied by LNER with Network Rail and/or other relevant stakeholders.**

**6.2 The Secretary of State shall provide to LNER, no later than seventy (70) days after the end of the relevant Performance Assessment Period, a duly completed Performance Assessment Period Scorecard setting out the LNER's performance in each of the Scorecard Criteria and any other assessment criteria implemented pursuant to this Schedule 8.2 for the Performance Assessment Period.**

**6.3 LNER shall be scored three (3), two (2) or one (1) in relation to the Scorecard Criteria with respect to each Performance Assessment Component to which the Scorecard Methodology is to be applied and, in relation to any other assessment criteria implemented pursuant to this Schedule 8.2, shall be assessed or scored (as applicable) in accordance with such assessment criteria.**



- 6.4 Scores in the Performance Assessment Period Scorecard shall be awarded by the Secretary of State having regard to the matters set out in the Performance Assessment Period Scorecard. One single, integer, overall score shall be awarded in relation to each Scorecard Criterion. Other than with respect to any QTM Assessment Components that may apply, such score will be based on the Secretary of State's assessment of LNER's performance in respect of that Scorecard Criterion and taking into account, as applicable:**
- (a) each Evidence Report;**
  - (b) the Performance Assessment Period Review Checklist provided to the Secretary of State by LNER in accordance with paragraphs 4.3 and 4.4 of this Schedule 8.2;**
  - (c) any commentary provided to LNER by the Secretary of State in accordance with paragraph 4.5 of this Schedule 8.2;**
  - (d) any discussions between LNER and the Secretary of State at the Performance Assessment Period Review Meeting(s); and**
  - (e) any representations or evidence provided by Network Rail and/or any other relevant third party pursuant to paragraph 6.1 of this Schedule 8.2.**
- 6.5 The Performance Assessment Period Review shall be complete once the Secretary of State has sent a duly completed Performance Assessment Period Scorecard to LNER in accordance with paragraph 6.2 of this Schedule 8.2.**
- 6.6 If LNER:**
- (a) is operating at a level that would, or would likely, be scored "one (1)"; or**
  - (b) has received a score of "one (1)",**
- in relation to any of the Scorecard Criteria during a Performance Assessment Period, then the Secretary of State reserves the right to require LNER to submit a proposal to the Secretary of State setting out the steps proposed by LNER to ensure that LNER will, within such timescales as may be specified by the Secretary of State, be operating at a level that would be scored at least "two (2)" against the relevant Scorecard Criteria (the "Assessment Improvement Proposal").**
- 6.7 Any Assessment Improvement Proposal shall as a minimum specify tangible action points and indicate in the case of an action point:**
- (a) how the action will contribute to ensure that LNER's performance against the relevant Scorecard Criteria will be scored at least "two (2)" against the relevant Scorecard Criteria;**
  - (b) where such action is to be implemented;**
  - (c) when such action is to be commenced and by when it is to be implemented (having regard to any timescales as may be specified by the Secretary of State for these purposes) provided always that**



where any action is expressed to be an ongoing action the Assessment Improvement Proposal shall include specific review dates;

- (d) how performance of the action is to be measured; and
- (e) identify the additional expenditure required for the implementation of each such action.

**6.8 The Secretary of State shall be entitled to:**

- (a) request further information from LNER with respect to its Assessment Improvement Proposal, and LNER shall submit such further information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or
- (b) propose amendments to the Assessment Improvement Proposal and the parties shall agree the amendments to the Performance Improvement Proposal, in which case paragraph 6.9 shall apply; or
- (c) accept the Performance Improvement Proposal, in which case paragraph 6.9 shall apply; or
- (d) not accept the Performance Improvement Proposal, in which case LNER shall not be obliged to undertake any further action with respect to its Assessment Improvement Proposal.

**6.9 The Assessment Improvement Proposal as agreed by the parties or accepted by the Secretary of State in accordance with paragraph 6.8, shall be referred to as the "Assessment Improvement Plan". LNER shall implement the Assessment Improvement Plan in accordance with its terms and the provisions of paragraph 4 of Schedule 8.1 (Franchise Payments) shall apply in order to adjust the Budget to reflect the additional expenditure stated in the Assessment Improvement Plan.**

**7. Determining QTM Targets and changes to the Scorecard Criterion**

**7.1 The Secretary of State shall propose by no later than 1 February falling prior to the start of the relevant Performance Assessment Period:**

- (a) the Benchmark Levels;
- (b) the Applicable Revenue Target;
- (c) the Applicable Costs Target;
- (d) the NRPS Expected Range; and
- (e) the targets applicable to any QTM Assessment Components (where a quantitative scorecard methodology is to apply in accordance with paragraph 7.5);

(the "QTM Targets") as applicable to the relevant Performance Assessment Period.

**7.2 The parties shall seek to agree the QTM Targets or, if the Parties are unable to agree such QTM Targets by 28 February falling prior to the start of the**

relevant Performance Assessment Period, the Secretary of State may reasonably determine the applicable QTM Targets.

- 7.3** The Business Plan applicable to the relevant Performance Assessment Period shall include the applicable QTM Targets as agreed or determined in accordance with paragraph 7.2.
- 7.4** The Secretary of State shall, at the same time as the Secretary of State proposes the QTM Targets in accordance with paragraph 7.1, notify LNER as to whether Customer Satisfaction Scorecard A or Customer Satisfaction Scored B is to apply in determining the Customer Satisfaction Score.
- 7.5** The Secretary of State shall, in accordance with Clause 17.1(a), be entitled to revise and/or replace the Scorecard Criterion in relation to the Performance Assessment Components applicable to the:

- (a) Financial Performance – Total Costs Score;
- (b) Financial Performance – Total Revenue Score;

by way of including a quantitative scorecard methodology (as determined by the Secretary of State) with respect to such Performance Assessment Components.

**APPENDIX 1 TO SCHEDULE 8.2****Performance Assessment Period Review Checklist**

1. **Not Used**
2. **Customer Satisfaction**
- 2.1 **Checklist for Customer Satisfaction Scorecard A**

If Customer Satisfaction Scorecard A is to apply in accordance with paragraph 7.4 of Schedule 8.2, a report on how LNER has improved customer satisfaction, including (but not limited to):

- (a) a summary of customer feedback obtained during the Performance Assessment Period, including insights gathered through the Wavelength Programme, National Rail Passenger Survey (if available), complaints, feedback from passengers using the Passenger Assist service, other surveys where relevant, social media and any other relevant sources;
- (b) a summary of how LNER has used these customer insights to identify and address customer needs, and to deliver the Wavelength Customer Promises;
- (c) a summary of how LNER has collaborated with persons with disabilities and their representative bodies in particular, and how this has directly improved outcomes for such passengers; and
- (d) the results of any research or assessments undertaken by Transport Focus, the ORR or any other independent bodies which demonstrate LNER's compliance with any of the Scorecard Criteria.

- 2.2 **Checklist for Customer Satisfaction Scorecard B**

If Customer Satisfaction Scorecard B is to apply in accordance with paragraph 7.4 of Schedule 8.2, a report on how LNER has used insights to improve customer satisfaction, including:

- (a) LNER's calculation of the Overall NRPS Score applicable to the relevant Performance Assessment Period;
- (b) a summary of customer feedback obtained during the Performance Assessment Period, including insights gathered through the Wavelength Programme, complaints, feedback from passengers using the Passenger Assist service, other surveys where relevant, social media and any other relevant sources;
- (c) a summary of how LNER has used these customer insights and National Rail Passenger Survey results to identify and address customer needs, and to deliver the Wavelength Customer Promises;
- (d) a summary of how LNER has collaborated with persons with disabilities and their representative bodies in particular, and how this has directly improved outcomes for such passengers; and

- (e) the results of any research or assessments undertaken by Transport Focus, the ORR or any other independent bodies which demonstrate LNER's compliance with any of the Scorecard Criteria.

### 3. Service Quality Standards

A report on the service quality standards delivered by LNER, including:

- (a) Not Used;
- (b) tables, charts and other data (as appropriate) showing, for the Performance Assessment Period:
  - (i) delivery of Station and train cleans against the planned programme;
  - (ii) level of adherence to staffing rosters;
  - (iii) a summary of the availability of key assets such as Station and train toilets and ticket vending machines, and the length of time taken to remedy any faults; and
  - (iv) a summary of how LNER has provided consistently accurate, timely and relevant information to customers at stations, on rolling stock used to deliver the Passenger Services and online (including via relevant social media, mobile apps and websites, as appropriate);
- (c) a summary of passenger complaints about service quality and how these were addressed;
- (d) an explanation of the level of performance achieved during the Performance Assessment Period in respect of each of the above and the underlying drivers of that performance, including evidence of the impacts of any significant actions LNER has undertaken during the Performance Assessment Period to improve performance; and
- (e) the results of any research or assessments undertaken by Transport Focus, the ORR or any other independent bodies which demonstrate LNER's compliance with any of the Scorecard Criteria.

### 4. Financial Performance

#### 4.1 Total Revenue

With respect to the Total Revenue Performance Assessment Component, LNER shall deliver a report detailing the extent to which LNER has acted as a Good and Efficient Operator with respect to maximising Revenue, including evidence of:

- (a) a comparison of Actual Revenue as against the Applicable Revenue Target;
- (b) the actions which LNER has taken to meet the Applicable Revenue Targets set out in the Business Plan applicable to the relevant Performance Assessment Period including any mitigating actions to

address any forecast shortfall in Revenue as compared to the Applicable Revenue Target.

#### 4.2 Total Cost

With respect to the Total Cost Performance Assessment Component, LNER shall deliver a report detailing the extent to which LNER has acted as a Good and Efficient Operator in reducing Cost, including evidence of:

- (a) a comparison of Actual Costs as against the Applicable Cost Target;
- (b) the actions which LNER has taken to meet the Applicable Cost Targets set out in the Business Plan applicable to the relevant Performance Assessment Period including any mitigating actions to address any forecast increase in Actual Cost as compared to the Applicable Cost Target.

### 5. Business Management

#### 5.1 Business Plan Quality

- (a) A report detailing LNER's performance in working with the Secretary of State, Network Rail and (where requested by the Secretary of State) other parties to develop and agree the Business Plan with respect to the Service Year immediately following the Performance Assessment Period which is the subject of the Performance Assessment Period Review.
- (b) The draft Business Plan provided by LNER in response to the Secretary of State's requirements to be included in the Business Plan (as notified by the Secretary of State to LNER), and the final agreed or determined Business Plan, in each case with respect to the Service Year following the relevant Performance Assessment Period.

#### 5.2 Business Plan Delivery

- (a) A report detailing LNER's performance in delivering the Business Plan with respect to the Service Year corresponding to the relevant Performance Assessment Period which is the subject of the Performance Assessment Period Review, including evidence of:
  - (i) delivery to time and delivery of the expected outputs and outcomes specified in the Business Plan;
  - (ii) Not Used;
  - (iii) any risk mitigation or other measures LNER has taken in order to protect passenger outcomes, financial sustainability or other public policy objectives where any expected outputs specified in the Business Plan have not been achieved
- (b) The report should not address any issues otherwise reflected in the Service Quality Standards Scorecard Criteria, Customer Satisfaction Scorecard Criteria, Operational Performance Scorecard Criteria, Collaboration Scorecard Criteria or Financial Performance Scorecard Criteria.

### 5.3 Collaboration

**A report detailing LNER's delivery of the Collaboration Performance Assessment Component over the relevant Performance Assessment Period which is the subject of the Performance Assessment Period Review, including evidence of:**

- (a) the delivery to time and delivery of the expected outputs and outcomes specified in the Business Plan;**
- (b) performance against each of the relevant expected outputs specified in the Business Plan with respect to the Collaboration Performance Assessment Component;**
- (c) examples of where positive collaborative behaviours have improved working relationships with Network Rail, the Secretary of State, other operators, suppliers and other industry partners;**
- (d) how LNER's collaborative behaviours and capabilities have supported the delivery of a "one-industry" approach to delivering a high-quality service for all users of the railway, maximised value for money for taxpayers, and maximised the railway's contribution to meeting local and regional priorities and objectives;**
- (e) the organisation's overall approach to developing, embedding and continuing to improve a collaborative culture.**

## APPENDIX 2 TO SCHEDULE 8.2

### Scorecard Methodology

#### 1. Operational Performance

##### 1.1 One (1): Below acceptable standard

- (a) LNER's performance in relation the Annual Cancellations Benchmark Range as calculated pursuant to Appendix 3 of this Schedule 8.2 for the relevant Performance Assessment Period is higher than (i.e. worse than) the Annual Cancellations Benchmark Range for that Performance Assessment Period;
- (b) LNER's performance in relation to the Annual TOC Minute Delay Benchmark Range as calculated pursuant to Appendix 3 of this Schedule 8.2 for the relevant Performance Assessment Period is higher than (i.e. worse than) the Annual TOC Minute Delay Benchmark Range for that Performance Assessment Period;
- (c) LNER's performance in relation to the Annual Short Formations Benchmark Range as calculated pursuant to Appendix 3 of this Schedule 8.2 for the relevant Performance Assessment Period is higher than (i.e. worse than) the Short Formations Benchmark Range for that Performance Assessment Period;
- (d) LNER's performance in relation to each of the Annual T-3 Benchmark Range as calculated pursuant to paragraph 24.2(a) of Schedule 7.1 for the relevant Performance Assessment Period is lower than (i.e. worse than) the Annual T-3 Benchmark Range for that Performance Assessment Period;
- (e) LNER's performance in relation to each of the Annual T-15 Benchmark Range as calculated pursuant to paragraph 24.2(b) of Schedule 7.1 for the relevant Performance Assessment Period is lower than (i.e. worse than) the Annual T-15 Benchmark Range for that Performance Assessment Period; and
- (f) LNER's performance in relation to each of the All Cancellations Benchmark Range as calculated pursuant to paragraph 24.2(c) of Schedule 7.1 for the relevant Performance Assessment Period is higher than (i.e. worse than) the All Cancellations Benchmark Range for that Performance Assessment Period.

##### 1.2 Two (2): Acceptable

- (a) LNER's performance in relation to the Annual Cancellations Benchmark Range as calculated pursuant to Appendix 3 of this Schedule 8.2 for the relevant Performance Assessment Period is within the Annual Cancellations Benchmark Range for that Performance Assessment Period;
- (b) LNER's performance in relation to the Annual TOC Minute Delay Benchmark Range as calculated pursuant to Appendix 3 of this Schedule 8.2 for the relevant Performance Assessment Period is within the Annual TOC Minute Delay Benchmark Range for that Performance Assessment Period;

- (c) **LNER's performance in relation to the Annual Short Formations Benchmark Range as calculated pursuant to Appendix 3 of this Schedule 8.2 for the relevant Performance Assessment Period is within the Short Formations Benchmark Range for that Performance Assessment Period;**
- (d) **LNER's performance in relation to the Annual T-3 Benchmark Range as calculated pursuant to paragraph 24.2(a) of Schedule 7.1 for the relevant Performance Assessment Period is within the Annual T-3 Benchmark Range for that Performance Assessment Period;**
- (e) **LNER's performance in relation to the Annual T-15 Benchmark Range as calculated pursuant to paragraph 24.2(b) of Schedule 7.1 for the relevant Performance Assessment Period is within the Annual T-15 Benchmark Range for that Performance Assessment Period;**
- (f) **LNER's performance in relation to the All Cancellations Benchmark Range as calculated pursuant to paragraph 24.2(c) of Schedule 7.1 for the relevant Performance Assessment Period is within the All Cancellations Benchmark Range for that Performance Assessment Period.**

### **1.3 Three (3): Good**

- (a) **LNER's performance in relation to the Annual Cancellations Benchmark Range as calculated pursuant to Appendix 3 of Schedule 8.2 for the relevant Performance Assessment Period is lower than (i.e. better than) the Annual Cancellations Benchmark Range for that Performance Assessment Period;**
- (b) **LNER's performance in relation to the Annual TOC Minute Delay Benchmark Range as calculated pursuant to Appendix 3 of Schedule 8.2 for the relevant Performance Assessment Period is less than (i.e. better than) the Annual TOC Minute Delay Benchmark Range for that Performance Assessment Period;**
- (c) **LNER's performance in relation to the Annual Short Formations Benchmark Range as calculated pursuant to Appendix 3 of Schedule 8.2 for the relevant Performance Assessment Period is less than (i.e. better than) the Annual Short Formations Benchmark Range for that Performance Assessment Period;**
- (d) **LNER's performance in relation to the Annual T-3 Benchmark Range as calculated pursuant to paragraph 24.2(a) of Schedule 7.1 for the relevant Performance Assessment Period is more than (i.e. better than) Annual T-3 Benchmark Range for that Performance Assessment Period;**
- (e) **LNER's performance in relation to the Annual T-15 Benchmark Range as calculated pursuant to paragraph 24.2(b) of Schedule 7.1 for the relevant Performance Assessment Period is more than (i.e. better than) the Annual T-15 Benchmark Range for that Performance Assessment Period; and**
- (f) **LNER's performance in relation to the All Cancellations Benchmark Range as calculated pursuant to paragraph 24.2(c) of Schedule 7.1**



**for the relevant Performance Assessment Period is less than (i.e. better than) the All Cancellations Benchmark Range for that Performance Assessment Period.**

## **2. Service Quality Standards**

### **2.1 One (1): Below acceptable standard**

**LNER has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".**

### **2.2 Two (2): Acceptable**

**(a) LNER has taken a proactive approach to managing service quality for all customers, with appropriate plans and processes in place that have been generally effective in:**

**(i) providing information on rolling stock used to deliver the Passenger Services (where appropriate), online and at stations at which the Passenger Services call that is accurate, timely and easy for customers to understand, taking account of the needs of different customers and which covers (but is not limited to):**

**(A) the timetable being operated;**

**(B) planned and unplanned disruption;**

**(C) fares, ticketing and retail;**

**(D) passenger rights (including compensation and redress);**

**(E) the availability of station and train facilities;**

**(F) the accessibility of stations, trains, and other customer-facing services; and**

**(G) (when appropriate) COVID-19 Guidance and Regulation;**

**(ii) ensuring that all customer contact surfaces are cleaned regularly and keeping Stations and rolling stock used to deliver the Passenger Services free from litter, dirt and other unhygienic substances;**

**(iii) ensuring that all Stations, rolling stock used to deliver the Passenger Services and online services have been staffed as required to provide a visible, helpful, accessible and proactive customer-facing service; and**

**(iv) maintaining all Station and train facilities so that they are fully functional, available for use and presented in good condition, with any non-availability of facilities for repair or maintenance being kept to the minimum necessary.**

- (b) LNER has regularly and at an appropriate frequency monitored compliance with those plans and processes and has taken prompt remedial action when they have been found not to be working.

### 2.3 Three (3): Good

LNER has fully met the criteria for a "two (2)" and in addition:

- (a) LNER's plans and processes described in paragraph 2.2(a) of this Appendix 2 to Schedule 8.2 have been particularly robust, such that there have been very few, if any, repeated or systemic failures to:

- (i) provide timely, accurate and relevant information in the manner described in paragraph 2.2(a)(i) of this Appendix 2 to Schedule 8.2;
- (ii) undertake cleaning activities and maintain high levels of cleanliness at Stations and on rolling stock used to deliver the Passenger Services;
- (iii) staff Stations, rolling stock used to deliver the Passenger Services and online services to provide a proactive and accessible customer-facing service; and
- (iv) maintain Station and train facilities so that they are fully functional and well-presented,

that have been due to factors and/or incidents within the reasonable control of LNER.

- (b) LNER's plans and processes for managing service quality standards have been particularly thorough and, as a result, any potential issues have consistently been identified and resolved in a swift and effective manner. Any actual issues have also been few in number and low in impact, and LNER has taken prompt and effective remedial action when they have occurred.

## 3. Customer Satisfaction – Scorecard A

### 3.1 One (1): Below acceptable standard

LNER has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

### 3.2 Two (2): Acceptable

- (a) LNER has taken a proactive approach to customer satisfaction for customers by:

- (i) achieving improvements across all passenger groups or markets served by the Rail Services; and
- (ii) improving the experience during perturbation, including caring for customers when things go wrong.

- (b) LNER has used some survey results and other relevant data and information to review customer needs and the extent to which they

are being met (including, but not limited to, Wavelength Programme and National Rail Passenger Survey data, where available). Where needs are not being met, LNER has (where consistent with the requirement to act as a Good and Efficient Operator, or where the Secretary of State has otherwise consented) taken action to address them, and these actions have demonstrably resulted in meaningful improvements in outcomes for customers including in relation to the Wavelength Customer Promises and in relation to disabled passengers and other passengers with accessibility needs (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Service Term or in the long term).

### 3.3 Three (3): Good

LNER has fully met the criteria for a "two (2)" and in addition:

- (a) LNER's plans and processes for managing customer experience have been particularly thorough and, as a result, any potential issues have consistently been identified and resolved in a swift and effective manner. Any actual issues have also been few in number and low in impact, and LNER has taken prompt and effective remedial action when they have occurred.
- (b) LNER has regularly used a range of different survey results and other relevant data and information (when possible) to review customer needs and the extent to which they are being met (including Wavelength Programme and National Rail Passenger Survey data, where available), and the prompt actions taken to address those needs have demonstrably resulted in substantial improvements in outcomes for customers, including in relation to each of the Wavelength Customer Promises and in relation to disabled passengers and other passengers with accessibility needs.

## 4. Customer Satisfaction – Scorecard B

### 4.1 LNER will achieve an Acceptable Insight Rating where:

- (a) LNER has used some survey results and other relevant data and information to review customer needs and the extent to which they are being met (including, but not limited to, Wavelength Programme and National Rail Passenger Survey data, where available). Where needs are not being met, LNER has (where consistent with the requirement to act as a Good and Efficient Operator, or where the Secretary of State has otherwise consented) taken action to address them, and these actions have demonstrably resulted in meaningful improvements in outcomes for customers including in relation to the Wavelength Customer Promises and in relation to disabled passengers and other passengers with accessibility needs (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Service Term or in the long term).

### 4.2 LNER will achieve a Good Insight Rating where

- (a) LNER's plans and processes for managing customer experience have been particularly thorough and, as a result, any potential issues

have consistently been identified and resolved in a swift and effective manner. Any actual issues have also been few in number and low in impact, and LNER has taken prompt and effective remedial action when they have occurred; and

- (b) LNER has regularly used a range of different survey results and other relevant data and information (when possible) to review customer needs and the extent to which they are being met (including Wavelength Programme and National Rail Passenger Survey data, where available), and the prompt actions taken to address those needs have demonstrably resulted in substantial improvements in outcomes for customers, including in relation to each of the Wavelength Customer Promises and in relation to disabled passengers and other passengers with accessibility needs.

#### 4.3 One (1): Below acceptable standard

LNER has:

- (a) not achieved an Acceptable Insight Rating or a Good Insight Rating; and/or
- (b) has achieved an Overall NRPS Score lower than the NRPS Expected Range.

#### 4.4 Two (2): Acceptable

LNER has achieved:

- (a) an Acceptable Insight Rating; and
- (b) an Overall NRPS Score within the NRPS Expected Range.

#### 4.5 Three (3): Improving

(a) Either LNER has achieved:

- (i) an Acceptable Insight Rating; and
- (ii) an Overall NRPS Score higher than the NRPS Expected Range; or

(b) LNER has achieved:

- (i) a Good Insight Rating; and
- (ii) an Overall NRPS Score within the NRPS Expected Range.

#### 4.6 Four (4): Good

LNER has achieved:

- (a) a Good Insight Rating; and
- (b) an Overall NRPS Score higher than the NRPS Expected Range.

#### 5. Financial Performance – Total Cost

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**5.1 One (1): Below acceptable standard**

**LNER has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".**

**5.2 Two (2): Acceptable**

**LNER has consistently acted as a Good and Efficient Operator and has been effective in optimising the financial prospects of its business over the short, medium and long term by driving continuous improvement in cost efficiency and in doing so:**

**(a) LNER has:**

- (i) worked collaboratively within the industry to identify innovation, technological advances and other key enablers of cost efficiency;**
- (ii) established and updated a long-term plan for continuous cost efficiency improvement, taking advantage of key enablers;**
- (iii) put in place appropriate internal processes which have been effective in managing LNER's expenditure across all areas of the business, so as to improve efficiency and guard against unnecessary or excessive spend; and**
- (iv) implemented such further actions as may have been directed by the Secretary of State with a view to controlling costs,**

**while also continuing to incur such expenditure as is reasonably necessary to meet LNER's obligations under this Services Agreement and to protect the long-term financial interests of the UK rail industry both during the Service Term and in the longer term, and to the extent that there are any specific instances where LNER has not fully complied with requirements described above, such instances have been few in number and limited in impact, and LNER has taken prompt and effective remedial action following any such instances.**

**5.3 Three (3): Good**

**LNER has fully met the criteria for a "two (2)" and in addition has:**

- (a) achieved the Applicable Costs Target; or**
- (b) has failed by only reasonable margins to achieve the Applicable Cost Target and has demonstrated that it has taken appropriate action to address unexpected changes in circumstances during the year in a cost efficient manner.**

**6. Financial performance – Total Revenue****6.1 One (1): Below acceptable standard**

**LNER has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".**

**6.2 Two (2): Acceptable**

**LNER has consistently acted as a Good and Efficient Operator and has been effective in optimising the financial prospects of its business over the short, medium and long term by driving the recovery and future growth of passenger demand and revenue and in doing so (where appropriate within the limits arising from COVID-19 Guidance and Regulation) LNER has:**

**(a)**

- (i) worked with industry partners as appropriate to take a cross-industry approach to promoting rail travel;**
- (ii) as part of developing the Business Plan for the coming year:
 
  - (A) undertaken an analysis of market trends and identified opportunities to grow revenue; and**
  - (B) planned value for money initiatives accordingly; and****
- (iii) implemented such further actions as may have been directed by the Secretary of State with a view to promoting demand and revenue growth;**

**(b) LNER has:**

- (i) taken effective action to promote rail as a safe mode of transport and to raise public awareness of the steps taken by LNER and the wider rail industry to minimise public health risks;**
- (ii) delivered any value for money initiatives, as included within the agreed Business Plan, to drive and accommodate recovery and growth in patronage,**

**and to the extent that there are any specific instances where LNER has not fully complied with requirements (i) and (ii) above, such instances have been few in number and limited in impact, and LNER has taken prompt and effective remedial action following any such instances,**

**6.3 Three (3): Good**

**LNER has fully met the criteria for a "two (2)" and in addition has (where appropriate within the limits arising from COVID-19 Guidance and Regulation):**

- (a) as part of developing the Business Plan for the coming year:
 
  - (i) identified market changes, trends and potential opportunities for maximizing revenue across all relevant markets; and**
  - (ii) planned a comprehensive range of value for money initiatives to maximise revenue accordingly; and****
- (b) identified emerging market trends during the year and optimised delivery to maximise passenger revenue opportunities.**

**7. Business Plan Quality****7.1 One (1): Below acceptable standard**

**LNER has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".**

**7.2 Two (2): Acceptable****(a) The draft Business Plan submitted by LNER:**

- (i) includes expected outputs that cover all of the principal actions LNER is proposing to take and that are specific, measurable and described clearly; and**
- (ii) substantially meets the requirements of the Secretary of State as set out in the requirements to be included in the Business Plan as notified by the Secretary of State to LNER.**

**(b) The Parties agree the Business Plan without the Secretary of State determining any material matters.****(c) During the development and finalisation of the Business Plan, LNER:**

- (i) worked effectively with the Secretary of State, Network Rail and (where requested by the Secretary of State) other parties to refine and agree the Secretary of State's requirements and the Business Plan where necessary;**
- (ii) responded in a timely way to requests from the Secretary of State for clarification and further information.**

**7.3 Three (3): Good**

**LNER has fully met the criteria for a "two (2)" and in addition:**

**(a) The final agreed Business Plan demonstrates innovation and ambition through high quality, credible and affordable proposals that deliver substantial improvement in passenger outcomes or other public policy over the coming year.****(b) The proposals covered in (a):**

- (i) have wider benefits beyond the Service Term or for the wider rail industry; and**
- (ii) are supported by credible delivery plans and clear, robust analysis of the financial and practical consequences, associated risks and other implications.**

**8. Business Plan Delivery****8.1 One (1): Below acceptable standard**

**LNER has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".**

**8.2 Two (2): Acceptable**

- (a) **LNER has delivered most of the expected outputs on time and with the outputs and outcomes specified in the Business Plan.**
- (b) **Not Used.**
- (c) **Where any expected output specified in the Business Plan has not been met, LNER has demonstrated that:**
  - (i) **this was primarily due to factors outside its control; and**
  - (ii) **LNER has implemented mitigating actions to protect passenger outcomes, financial sustainability or other public policy objectives.**

**8.3 Three (3): Good**

**LNER has fully met the criteria for a "two (2)" and in addition:**

- (a) **has delivered all or nearly all expected outputs on time and with the expected outputs and outcomes specified in the Business Plan;**
- (b) **has delivered better outcomes from some of the expected outputs specified in the Business Plan than was anticipated in the Business Plan;**
- (c) **Not Used; and**
- (d) **where any expected output specified in the Business Plan has not been met, LNER has implemented mitigating actions or alternative initiatives (where consistent with the requirement to act as a Good and Efficient Operator, or where the Secretary of State has otherwise consented) to deliver better passenger outcomes, financial sustainability or other public policy objectives and to learn lessons for the future.**

**8.4 The scorecard will not take into account any issues otherwise reflected in the Service Quality Standards Scorecard Criteria, Customer Satisfaction Scorecard Criteria, Operational Performance Scorecard Criteria, Collaboration Scorecard Criteria, Financial Performance Scorecard Criteria.**

**9. Collaboration****9.1 One (1): Below acceptable standard**

**LNER has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".**

**9.2 Two (2): Acceptable**

- (a) **LNER has delivered most of the expected outputs in relation to collaborative working on time and with the outputs and outcomes specified in the Business Plan.**
- (b) **Not Used.**



- (c) **LNER has demonstrated some examples where its collaborative behaviour has improved outcomes for users, value for money or the railway's contribution to local and regional priorities and objectives.**

**9.3 Three (3): Good**

**LNER has fully met the criteria for a "two (2)" and in addition:**

- (a) **has demonstrated leadership in improving collaborative behaviours and developing competencies and capabilities through all levels of the business;**
- (b) **has embedded good practice and experience in collaborative behaviour into its business to provide long-term benefits through sustained higher performance;**
- (c) **has delivered all or nearly all expected outputs in relation to collaborative working on time and with the outputs and outcomes specified in the Business Plan;**
- (d) **has delivered better outcomes from some of the expected outputs specified in the Business Plan (in relation to collaborative working) than was anticipated in the Business Plan;**
- (e) **Not Used; and**
- (f) **where any expected output specified in the Business Plan has not been met, LNER has implemented mitigating actions or alternative initiatives (where consistent with the requirement to act as a Good and Efficient Operator, or where the Secretary of State has otherwise consented) to deliver better passenger outcomes, financial sustainability or other public policy objectives and to learn lessons for the future.**

**APPENDIX 3 TO SCHEDULE 8.2**

**Calculation of the Benchmarks**

**1. Calculation of the Benchmarks**

**1.1 For the purposes of determining the Operational Performance Score, the Secretary of State shall at the end of each Performance Assessment Period calculate LNER's performance against the:**

**Annual Cancellations Benchmark Range in accordance with the following formula:**

Table 1		
ACTUAL <sub>c</sub>	=	$\frac{\sum A}{X}$
where:		
$\sum A$	is the sum of the values of A (A being as defined in paragraph 3 in Schedule 7.1 (Operational Performance) for each of the Reporting Periods in that Performance Assessment Period; and	
X	(a) in respect of a Performance Assessment Period consisting of thirteen (13) Reporting Periods equals, 13; or  (b) in respect of a Performance Assessment Period consisting of less than thirteen (13) Reporting Periods, the number of Reporting Periods in such Performance Assessment Period.	

**the Annual TOC Minute Delay Benchmark Range in accordance with the following formula:**

Table 2		
ACTUAL <sub>MD</sub>	=	$\frac{AA}{AD}$
where:		
AA	is the sum of the number of Minutes Delay that are attributable to LNER in each Reporting Period in that Performance Assessment Period; and	
AD	is ascertained as follows:	
	(d)	$\frac{AB}{1000}$
	where:	

	<b>AB</b>	is the sum of the Actual Train Mileage in each Reporting Period in that Performance Assessment Period.
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**the Annual Short Formations Benchmark Range in accordance with the following formula:**

<b>Table 3</b>		
<b>ACTUAL<sub>SF</sub></b>	<b>=</b>	$\frac{\sum A_{SF}}{X}$
<b>where:</b>		
$\sum A_{SF}$		is the sum of the values of $A_{SF}$ ( $A_{SF}$ being as defined in paragraph 15.2 of Schedule 7.1) for each of the Reporting Periods in that Performance Assessment Period; and
<b>X</b>		(a) in respect of a Performance Assessment Period consisting of thirteen (13) Reporting Periods equals, 13; or  (b) in respect of a Performance Assessment Period consisting of less than thirteen (13) Reporting Periods, the number of Reporting Periods in such Performance Assessment Period.

- 1.2 For the purposes of the calculations to be undertaken by the Secretary of State pursuant to paragraph 1.1(c):**
  - (a) if and to the extent that any Passenger Service is operated in excess of the Passenger Carrying Capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded; and**
  - (b) any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.**
  
- 2. For the purpose of the calculations referred to in this paragraph 1, each of the outputs from those calculations will be specified as an absolute number not as a percentage (i.e. one point five per cent (1.5%) equals 1.5).**

**SCHEDULE 8.3**

**NOT USED**

**SCHEDULE 8.4**

**NOT USED**

**SCHEDULE 8.5**

**NOT USED**

**SCHEDULE 8.6**

**NOT USED**

**SCHEDULE 9****NOT USED**

Schedule 9.1:	<b>NOT USED</b>
Schedule 9.1A:	<b>NOT USED</b>
Schedule 9.2:	<b>NOT USED</b>
Schedule 9.3:	<b>NOT USED</b>
Schedule 9.4:	<b>NOT USED</b>
Schedule 9.5:	<b>NOT USED</b>



Schedule 9.1

**NOT USED**

Schedule 9.1A

**NOT USED**

Schedule 9.2

**NOT USED**

Schedule 9.3

**NOT USED**

Schedule 9.4

**NOT USED**

Schedule 9.5

**NOT USED**

**SCHEDULE 10****FORCE MAJEURE AND BUSINESS CONTINUITY**

Schedule 10.1:	<b>NOT USED</b>
Schedule 10.2:	<b>NOT USED</b>
Schedule 10.3:	Force Majeure and Business Continuity
Schedule 10.4:	<b>NOT USED</b>

Schedule 10.1

**NOT USED**



Schedule 10.2

**NOT USED**

## Schedule 10.3

**Force Majeure and Business Continuity****1. Definition of Force Majeure Events**

The following events shall constitute **"Force Majeure Events"**, subject to the conditions specified in paragraph 2 being satisfied:

- (a) LNER or any of its agents or subcontractors is prevented or restricted by Network Rail (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:
  - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
  - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which LNER is prevented or restricted from operating a train on such section or part of track;
  - (iii) references in paragraphs 1(a)(i) and 1 (a) (ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
  - (iv) **"Contingency Plan"** means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of Network Rail, or such other contingency or recovery plan as the Secretary of State may agree from time to time;
- (b) LNER 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 LNER) from entering or leaving:
  - (i) any station or part thereof (excluding any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
  - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
- (c) any of the following events occurs:
  - (i) a programme of Mandatory Modifications commences;
  - (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or

- (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,

and, in each case, the greater of two (2) Rolling Stock Units and ten (10) per cent of all rolling stock vehicles used by LNER in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event. For the purposes of this paragraph 1(c) **"Rolling Stock Units"** means the smallest number of rolling stock vehicles which are normally comprised in a train used by LNER in the provision of the Passenger Services;

- (d) LNER prevents or restricts the operation of any train on safety grounds provided that:
  - (i) LNER has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
  - (ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;
- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion (together **"Emergency Events"**) or the act of any government instrumentality (including the ORR but excluding the Secretary of State) in so far as the act of government instrumentality directly relates to any of the Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1(e) by reason of:
  - (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
  - (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
  - (iii) an act of God which results in LNER 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) any strike or other Industrial Action by any or all of the employees of LNER 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 LNER 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 LNER in the provision of the Services,

or of the agents or sub-contractors of any such person listed in paragraphs 1(f)(i) to 1(f)(iii).

## 2. **Conditions to Force Majeure Events**

2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

- (a) in relation to an event occurring under paragraph 1 (a), that event has continued for more than twelve (12) consecutive hours;
- (b) LNER notifies the Secretary of State within two (2) Weekdays of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:
  - (i) the occurrence or likely occurrence of the relevant event; and
  - (ii) the effect or the anticipated effect of such event on LNER's performance of the Passenger Services;
- (c) at the same time as LNER 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 LNER 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 LNER 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) LNER's own contravention of, or default under, this Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) LNER 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) LNER 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 LNER or its agents or subcontractors;
- (b) the Secretary of State reasonably believes that it was reasonable for LNER, its agents or subcontractors (as the case may be) so to act or omit to act; and

(c) the other conditions specified in paragraph 2.1 have been satisfied, such occurrence shall be a Force Majeure Event.

### 3. **Consequences of Force Majeure Events**

3.1 LNER shall not be responsible for any failure to perform any of its obligations under this Agreement, nor shall there be any contravention of this 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 LNER from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months, it shall be a Termination Event in accordance with paragraph 2.1 (*Definition of Termination Events*) of Schedule 10.2 (*Events of Default and Termination Events*).

### 4. **Business Continuity**

#### 4.1 **Obligation to Produce a BCP**

(a) Within one (1) month following the Service Commencement Date LNER shall produce and provide to the Secretary of State a written Business Continuity Plan in respect of the Services and the people, facilities and assets used to provide them which is consistent with the requirements of ISO 22301.

(b) Within one (1) month of the end of each Service Year LNER shall provide to the Secretary of State a certificate addressed to the Secretary of State and signed by a statutory director of LNER confirming that the Business Continuity Plan is consistent with the requirements of the ISO 22301.

#### 4.2 **No Relief under Force Majeure**

(a) Nothing in paragraph 3 (Consequences of Force Majeure Events) will relieve LNER from its obligations under this Agreement to create, implement and operate the Business Continuity Plan.

(b) If a Force Majeure Event affecting LNER occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, then paragraph 3.1 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if:

(i) LNER had complied with this paragraph 4; and

(ii) the Business Continuity Plan had been fully and properly implemented and operated in accordance with this paragraph 4 and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

Schedule 10.4

**NOT USED**

**SCHEDULE 11**

**FRANCHISE PERFORMANCE MEETINGS AND MANAGEMENT INFORMATION**

Schedule 11.1:	Franchise Performance Meetings
Schedule 11.2:	Management Information
	Appendix 1: Environmental Information
	Appendix 2: Operational Information
	Appendix 3: Summary of Reporting and Other Requirements

## Schedule 11.1

**Franchise Performance Meetings****1. Franchise Performance Meetings**

- 1.1 The Parties shall hold a Franchise Performance Meeting at least once in every Reporting Period (or such other interval as the Secretary of State may notify to LNER in writing) at a time and location notified to LNER by the Secretary of State.
- 1.2 LNER shall ensure that:
- (a) the representatives of LNER at a Franchise Performance Meeting and shall include such directors and/or senior managers of LNER as the Secretary of State may require; and
  - (b) <sup>364</sup>**representatives of DOHL (which shall include such directors and/or senior managers of DOHL as the Secretary of State may require) attend a Franchise Performance Meeting at least once every quarter.**
- 1.3 LNER shall prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably request. LNER's obligations under this paragraph 1.3 are subject to LNER receiving at least twenty eight (28) days' notice of the requirement to prepare and present any such report.
- 1.4 No comment or failure to comment nor any agreement or approval, implicit or explicit by either Party at a Franchise Performance Meeting will relieve a party of its obligations, constitute a waiver of an obligation or otherwise vary the terms of this Agreement. The terms of this Agreement shall only be capable of waiver or variation in writing in accordance with clause 14.1 (Waivers) and clause 17 (Variations in Writing).

**2. <sup>365</sup>Contract Management System**

- 2.1 **LNER shall, no later than the Service Commencement Date and thereafter throughout the Service Term:**
- (a) **use the contract management system which the Secretary of State uses to manage the delivery of the obligations under the Services Agreement; and**
  - (b) **use the contract management system to administer any variations to the Services Agreement after the Service Commencement Date.**

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<sup>364</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>365</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.



## Schedule 11.2

**Management Information****1. Corporate Information**

1.1 LNER shall provide the following information to the Secretary of State on the Service Commencement Date and shall notify the Secretary of State of any change to such information within twenty one (21) days of such change:

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names; and
- (f) to the best of LNER's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than twenty per cent (20%) of the votes at general meetings of LNER.

1.2 LNER shall inform the Secretary of State of any:

- (a) material change or proposed material change in its business;
- (b) material change in or restructuring of the capitalisation or financing of LNER; and
- (c) litigation or other dispute which may have a material effect on its business.

For the purposes of paragraph 1.2(a), a material change or proposed material change shall include the employment or the termination of employment of any Key Personnel or the termination of any Key Contract.

**2. Information about Assets used in the Franchise**

LNER shall at all times during the Service 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 Service 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

- (iv) a printed or electronic list of all assets owned by LNER from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items).

### 3. Identification of Key Personnel and Provision of Organisation Chart

3.1 LNER shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by LNER in the performance of this 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 Services;
- (b) a train service delivery director, whose role will include responsibility for ensuring compliance by LNER with Schedule 7.1 (*Operational Performance*);
- (c) a safety director, whose role will include responsibility for ensuring that LNER complies with its legal obligations in relation to the Services including the Safety Certificate; and
- (d) a finance director, whose role will include responsibility in relation to the Budget review process.

3.2 <sup>366</sup>**LNER shall nominate a board level director of LNER (or at the Secretary of State's discretion, a board level director of DOHL<sup>367</sup> or any appropriate Affiliate) within fourteen (14) Weekdays of the date of this Agreement. Such board level director's responsibilities shall include overseeing, at a strategic level, LNER's interface with the Secretary of State in relation to sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of LNER in connection with LNER's compliance with relevant instructions issued by the Secretary of State under section 119 of the Act from time to time. Such board level director shall be identified by job title in the organisation chart referred to in paragraph 3.3 and shall be deemed part of the Key Personnel.**

3.3 <sup>368</sup>**On or before the Service Commencement Date LNER shall provide to the Secretary of State the schedule of Key Personnel and the organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update such schedule and organisation chart (and provide copies to the Secretary of State promptly thereafter) as and when any changes occur.**

### 4. Operational Performance Information

4.1 LNER shall provide to the Secretary of State the information specified in Appendix 2 (Operational Performance Information) to this Schedule 11.2 at the times specified therein.

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<sup>366</sup> 10 June 2020 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

<sup>367</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>368</sup> 10 June 2020 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

## 5. Maintenance of Records

- 5.1 LNER shall at all times create and maintain true, up to date and complete records, books and other materials relating to the:
- (a) operation and maintenance of Service Assets; and
  - (b) operation of the Services; and
  - (c) financial performance of the business.

in each case, in exercising that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would reasonably be expected from a prudent and leading Train Operator and in order to fulfil the requirements of this Agreement including in relation to maintenance of the business as a going concern in accordance with paragraph 1 of Schedule 14.1 (Maintenance as a going concern).

- 5.2 Unless otherwise agreed by the Secretary of State, all records, books and materials required to be maintained by LNER in accordance with this Schedule 11.2 shall be held in a form that is capable of audit for a period of not less than six (6) years following the Expiry Date or the date of any earlier termination of this Agreement.
- 5.3 References to records, books and materials in this Schedule 11.2 shall include records, books and materials maintained under any Previous Franchise Agreement to the extent that such records relate to services equivalent to the Services and LNER has access to them (which it shall use all reasonable endeavours to secure). Notwithstanding the requirements of paragraphs 5.2 and 5.4, LNER shall only be required to hold such records, books and materials created under any Previous Franchise Agreement for a period of six (6) years following the date of this Agreement.
- 5.4 LNER shall not be responsible for any records, books or materials maintained under any Previous Franchise Agreement, as referred to in paragraph 5.3, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records, books or materials are not true, complete and up to date, LNER shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records, books or materials in accordance with paragraph 5.1.

## 6. Right to Inspect

- 6.1 LNER 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 this Schedule 11.2 and the Secretary of State may verify any such records; and
  - (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of LNER and/or its auditors and any assets used by LNER in connection with the Services.
- 6.2 LNER shall make available to the Secretary of State, his representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, his representatives and advisers shall reasonably require in connection therewith. The obligation of LNER under this paragraph 6.2 shall include an obligation on LNER to grant or procure the grant of such access to premises (including third party

premises) where the information referred to in paragraph 6.1 is kept by or on behalf of LNER.

- 6.3 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.
- 6.4 If any inspection reveals that information previously supplied to the Secretary of State was, in the reasonable opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of LNER's obligations under this Agreement which the Secretary of State considers to be material, the costs of any such inspection shall be borne by LNER.

## 7. **Information to the Passengers' Council and Local Authorities**

LNER shall comply with any reasonable requests and guidance issued by the Secretary of State from time to time in respect of the provision of information to and co-operation and consultation with the Passengers' Council and Local Authorities.

## 8. **Periodic Update Reports**

- 8.1 LNER shall prepare and submit to the Secretary of State a periodic report in each Reporting Period which shall:
- (a) contain updates on LNER's progress in complying with its Committed Obligations together with any other information as the Secretary of State may specify from time to time;
  - (b) relate to the period preceding the date of the report, unless another period is reasonably required by the Secretary of State; and
  - (c) be disaggregated to the extent required by the Secretary of State.
- 8.2 Where, as part of the periodic report referred to in paragraph 8.1, the Secretary of State requires LNER to provide information and/or details in addition to those required pursuant to paragraph 8.1, LNER shall ensure that the periodic report includes such additional information and/or details subject to LNER having received at least twenty eight (28) days' notice of the additional information and/or details required by the Secretary of State.

## 9. **Financial Information**

### 9.1 **Accounting Records**

LNER shall prepare and at all times during the Service Term maintain true, up to date and complete accounting records as are required to be kept under section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period.

### 9.2 **Reporting Period Financial Information**

- (a) LNER shall deliver to the Secretary of State, within ten (10) Weekdays of the end of each Reporting Period:

- (i) Management Accounts for such Reporting Period, setting out a cash flow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Service Year to date;
  - (ii) written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of LNER, contain a true and accurate reflection of the current assets and liabilities of LNER (including contingent assets or liabilities and known business risks and opportunities) and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further information that the Secretary of State shall reasonably require in relation; and
  - (iii) **NOT USED;**
  - (iv) **NOT USED.**
- (b) The Management Accounts shall also set out:
- (i) **NOT USED;**
  - (ii) **NOT USED;**
  - (iii) a comparison of LNER's financial performance during such period against the forecast provided by LNER in the then current Business Plan;
  - (iv) a comparison of LNER's cumulative financial performance during the Service Year in which such period occurs against the forecast referred to in paragraph 9.2(b)(iii);
  - (v) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Management Accounts and the forecast referred to in paragraph 9.2(b)(iii);
  - (vi) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Secretary of State, materially worse than forecast by LNER in its current Business Plan, the Secretary of State may require LNER 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 LNER shall use all reasonable endeavours to implement such Financial Action Plan; and
  - (vii) **NOT USED.**

### 9.3 Quarterly Financial Information

- (a) Within twenty (20) Weekdays after the end of the third (3<sup>rd</sup>), sixth (6<sup>th</sup>) and ninth (9<sup>th</sup>) Reporting Periods in each Service Year, LNER shall deliver to the Secretary of State the following information:
  - (i) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 10.1(iv) together with a detailed and comprehensive written explanation as to any changes in such forecast from the

previous forecast provided pursuant to the provisions of this Schedule 11.2, for each of the following thirteen (13) Reporting Periods; and

- (ii) **NOT USED.**
- (b) Where any Reporting Period falls partly within one Service Year and partly within another, the results for each section of such Reporting Period falling either side of such Service Year end shall be prepared on an accruals basis for each such section of such Reporting Period.

#### 9.4 Annual Financial Information

- (a) Within fifteen (15) Weekdays of the end of each Service Year, LNER shall deliver to the Secretary of State its Annual Management Accounts for that Service Year .
- (b) <sup>369</sup> x **Within four (4) Reporting Periods after the end of each Service Year, LNER shall deliver to the Secretary of State the following information:**
  - (i) **its Annual Management Accounts for that Service Year;**
  - (ii) **certified true copies of its annual report and Annual Audited Accounts for that Service Year, together with copies of all related directors' and auditors' reports;**
  - (iii) **a reconciliation to the Management Accounts for the same period in a format to be agreed with the Secretary of State;**
  - (iv) **a reconciliation of the costs and revenues in the Annual Management Accounts to the Annual Audited Accounts;**
  - (v) **NOT USED;**
  - (vi) **NOT USED; and**
  - (vii) **NOT USED.**

#### 9.5 Accounting Standards and Practices

- (a) Each set of Management Accounts and Annual Management Accounts shall:
  - (i) be in the formats as the Secretary of State may reasonably specify from time to time;
  - (ii) be prepared consistently in accordance with LNER's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
  - (iii) identify to the reasonable satisfaction of the Secretary of State, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cashflow

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<sup>369</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

projection and the balance sheet contained in the Financial Model Placed in Escrow on the date of this Agreement.

- (b) The Annual Audited Accounts shall:
- (i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
  - (ii) give a true and fair view of:
    - (A) the state of affairs, profits and financial condition of LNER for the period covered by such accounts; and
    - (B) **NOT USED;**
    - (C) **NOT USED.**

#### 9.6 <sup>370</sup>DOHL Accounts

**LNER 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 DOHL together with copies of all related directors' and auditors' reports.**

#### 9.7 **NOT USED.**

#### 10. **Business Plans**

##### 10.1 **Initial Business Plan**

- (a) <sup>371</sup>**By 31 October 2018, LNER shall deliver to the Secretary of State its Initial Business Plan, describing its planned activities for each Service Year during the Service Term, which shall include:**
- (i) **a description as to how LNER will meet its obligations under this Agreement for the Service Term, supported by operational plans demonstrating this;**
  - (ii) **details of any investments proposed to be made or procured by LNER in relation to the Services during the Service Term;**
  - (iii) **a summary of LNER's plans for marketing and developing the Services; and**
  - (iv) **a profit and loss forecast, cash flow forecast and forecast balance sheet for each of first thirteen (13) Reporting Periods following the Service Commencement Date and each subsequent Service Year of the Service Period, together with a list of assumptions on the basis of which each such forecast has been prepared.**

<sup>370</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>371</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

## 10.2 Annual Business Plans

- (a) Within 20 Weekdays of the start of the twelfth Reporting Period in each Service Year deliver to the Secretary of State LNER's business plan for the forthcoming Service Year (the "**Annual Business Plan**"). The Annual Business Plan shall be a detailed and comprehensive description of LNER's planned activities for such Service Year and the manner in which LNER will meet its obligations under this Agreement in respect of that Service Year and include:
- (i) a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the thirteen (13) Reporting Periods in the relevant Service Year and each subsequent Service Year of the Service Period;
  - (ii) **NOT USED**; and
  - (iii) an annual improvement plan providing:
    - (A) details of any new technologies, processes, developments and/or proposals which could improve the provision of the Services, reduce the cost of providing the Services or enable the Services to be provided more efficiently;
    - (B) an analysis of the impact of any technologies, processes, developments and/or proposals that are proposed in relation to the Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of the Services;
    - (C) details of those technologies, processes, developments and/or proposals which LNER proposes to implement during the relevant Service Year; and
    - (D) an analysis of the technologies, processes, developments and/or proposals which LNER implemented in the previous Service Year including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for that previous Service Year;
  - (iv) <sup>372</sup>**a statement from each of, a statutory director of LNER and, a statutory director of DOHL confirming that the Annual Business Plan has been provided to, considered and endorsed by the board of directors of DOHL and that the board of directors of DOHL is not aware of any other plan which may alter, vary of impact on the Business Plan and shall at any time during the following 12 months notify the Secretary of State should any of them become aware of any such plan.**
- (b) <sup>373</sup>**If at any time during a Service Year LNER produces any other annual business plan or periodic plan which is delivered to DOHL it**

<sup>372</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>373</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.



**shall at the same time as delivering such plan to DOHL notify the Secretary of State of all such plans and shall explain to the Secretary of State how (if at all) such further plan alters, amends or otherwise varies or impacts on the applicable Annual Business Plan or Initial Business Plan. The Secretary of State shall be entitled to copies of such further plans as he shall reasonably determine.**

### 10.3 **Business Action Plan**

- (a) The Secretary of State may at any time require LNER to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
  - (i) timetable and service pattern development;
  - (ii) Station facility improvement;
  - (iii) performance management improvement;
  - (iv) customer service improvement; and
  - (v) improvements in the quality of service delivery or the efficiency of delivery of the Services.
- (b) LNER shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.
- (c) Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which he may impose.

## 11. **Safety Information**

### 11.1 **Safety**

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

## 12. **Further Information**

### 12.1 LNER 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 LNER's performance of this Agreement; and

- (b) procure that each Affiliate of LNER complies with paragraph 12.1(a) in respect of any information, records or documents that relate to its dealings with LNER in connection with LNER's performance of its obligations under this Agreement.

12.2 The information referred to in paragraph 12.1 shall include:

- (a) any agreement, contract or arrangement to which LNER is a party in connection with any rolling stock vehicles used in the operation of Passenger Services;
- (b) in so far as LNER has or is able to obtain the same, any agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock vehicles;
- (c) any agreement for or any documents associated with the manufacture or supply of any rolling stock vehicles; or
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

12.3 The Secretary of State may require LNER to provide:

- (a) the information required to be provided under this Schedule 11.2 more frequently than set out in this Schedule 11.2;
- (b) the information required to be provided under this Schedule 11.2, or, in the Secretary of State's discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise; and
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time.

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

13.1 LNER 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 LNER 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 this Agreement.

13.2 LNER 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 LNER is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.

13.3 The obligations of LNER under this Schedule 11.2 to provide information to the Secretary of State shall not apply if the Secretary of State notifies LNER that he has received the relevant information directly from any other person (including Network Rail or RSP). LNER shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.

13.4 LNER 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 LNER, materially affect the continuity of any of the records that are provided pursuant to this Schedule 11.2. Any such advice shall include an assessment of the materiality of the relevant change.

14. **Compatibility of Information**

14.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under this 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 Service Commencement Date, as modified from time to time in accordance with paragraph 3 of Schedule 13.1 (Rail Industry Initiatives and Co-operation).

14.2 LNER shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under this Agreement will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.

15. **Environmental Information monitoring, data collection and contractual targets**

15.1 LNER shall on or as soon as reasonably practicable after the Service Commencement Date (but in any event no later than 14 days after the Service Commencement Date), submit to the Secretary of State the report previously provided to the Secretary of State by the Previous Franchisee pursuant to paragraph 17.1 of Schedule 13 (Information and Industry Initiatives) of the Previous Franchise Agreement, setting out:

- (a) which measures included in the Dataset LNER is unable to provide, despite using reasonable endeavours to do so ("**Excluded Data**");
- (b) for each item of Excluded Data, the technical, operational or commercial reason why LNER is unable to provide the Excluded Data; and
- (c) a plan ("**Environmental Data Implementation Plan**") detailing, in relation to each item of Excluded Data, the actions which LNER would need to take in order to be able to provide such Excluded Data, LNER's best estimate of the cost of taking such action and the date by which, if such actions were taken, LNER 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 LNER is, despite using reasonable endeavours, unable to provide, shall be referred to as the "**Initial Dataset**".

15.2 The Secretary of State may require:

- (a) LNER to implement the Environmental Data Implementation Plan in whole or in part; and/or
- (b) LNER to take such other actions as, in the reasonable opinion of the Secretary of State, would enable LNER to provide any item of Excluded Data,

following which the relevant item of Excluded Data will form part of the Initial Dataset.

15.3 Where LNER 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 LNER to provide any items of Excluded Data in a cost effective manner,

LNER will use reasonable endeavours to do so in a manner which would enable LNER to provide any relevant item of Excluded Data (and any item of Excluded Data which LNER becomes able to provide as a result will, with effect from the date on which LNER becomes able to provide the same, form part of the Initial Dataset).

- 15.4 With effect from the Service Commencement Date, LNER shall measure and collect and provide to the Secretary of State in accordance with this paragraph 15, that data included in the Initial Dataset.
- 15.5 LNER may, in its discretion, measure and collect additional data provided that the minimum required under the Initial Dataset is adhered to and LNER 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.
- 15.6 LNER shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated periodic or annual usage figure to the Secretary of State as specified for each measure in paragraph 1 of Appendix 1 (Environmental Information) to this Schedule 11.2.
- 15.7 LNER shall submit to the Secretary of State a report setting out the result of the data collection of the Initial Dataset required by this paragraph 15 in accordance with the applicable granularity and regularity specified in paragraph 1 of Appendix 1 (Environmental Information) to this Schedule 11.2 (the "**Environmental Impact Monitoring Report**") by no later than 31 August in each Service Year.
- 15.8 **NOT USED.**
- 15.9 LNER shall submit the report required by paragraph 15.7 above to the Secretary of State in such format as the Secretary of State may (acting reasonably) from time to time specify. Such a report will include:
- (a) the actual period or annual results (as applicable); and
  - (b) in respect of each Reporting Period to which the report applies, a moving annual average of the results for each such Reporting Period and twelve Reporting Periods preceding each such Reporting Period. For the purpose of this paragraph 15.9(b), Reporting Period shall include a "Reporting Period" as defined in the Previous Franchise Agreement and falling prior to the Service Commencement Date.

With effect from the first Reporting Period which commences at least 12 months after the date on which LNER first became obliged to report against any measure which, as a result of an amendment to the Initial Dataset, LNER subsequently becomes obliged to report against, LNER shall additionally include within any reports to which this paragraph 15.9 applies, a moving annual average of the results for that measure for each relevant Reporting Period in accordance with paragraph 15.9(b).

- 15.10 LNER shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an annual independent audit of the data provided and the collection methodology in respect of each Service Year.
- 15.11 LNER shall procure that the independent audit report contains:
- (a) a retrospective assessment (covering the Service Year to which the audit relates) of LNER's data collection methodology and level of data granularity carried out in accordance with this paragraph 15;
  - (b) a verification of the accuracy of past data submissions made in accordance with paragraph 15.7 above; and
  - (c) an assessment of LNER's proposed data collection methodology and level of data granularity for the following Service Year 's data collection, and
- in each case, where the independent audit report states that there are errors or concerns with any of the items described in paragraphs 15.11(a) to 15.11(c) above, LNER shall procure that the independent auditor specifies whether these are material or minor errors or concerns.
- 15.12 LNER shall submit a copy of the independent audit report covering the relevant Service Year to the Secretary of State at the same time as the Environmental Impact Monitoring Report is submitted in accordance with paragraph 15.7.
- 15.13 Where the independent audit report highlights errors or concerns with any of the items described in paragraphs 15.11(a) to 15.11(c) above, LNER shall:
- (a) in the case of minor errors within past data which are capable of rectification without significant resource or significant expenditure, rectify those flaws and resubmit the relevant report to the Secretary of State as soon as reasonably practicable following submission of the independent audit report so that there is a complete and accurate record of the data in question;
  - (b) in the case of material errors within past data which are capable of rectification, rectify those flaws and resubmit the relevant report to the Secretary of State as soon as reasonably practicable following submission of the independent audit report so that there is a complete and accurate record of the data in question; and
  - (c) in the case of concerns in relation to LNER's proposed data collection methodology and level of data granularity for the forthcoming Service Year's data collection, make such changes to that proposed methodology so as to address those concerns.
- 15.14 Within eighteen months following the Service Commencement Date, LNER shall propose to the Secretary of State annual targets for future years against the measures listed below or, if such measures are Excluded Data, against such alternate measures included in the Initial Dataset as the Secretary of State may specify, that demonstrate a reasonable improvement compared with the first Moving Annual Average which is reported in line with paragraph 15.7 and take account of the environmental benefits to be realised from the introduction into passenger service of the IEP Fleet:
- (a) Carbon emissions:

- (i) Traction (kg CO2) and
  - (ii) Non traction (kg CO2)
- (b) Water consumption: Water consumption (m3)
- 15.15 LNER must as soon as reasonably practicable following notification of the annual targets described in paragraph 15.14 above produce an implementation plan which, in the opinion of the Secretary of State, is capable of achieving the annual targets notified to the Secretary of State in accordance with paragraph 15.14. LNER shall use all reasonable endeavours to implement that plan.
- 15.16 In the event that an annual target is not met, LNER must as soon as reasonably practicable produce a revised implementation plan, which, in the reasonable opinion of the Secretary of State, is capable of achieving the annual targets. LNER shall use all reasonable endeavours to implement that plan.
- 15.17 **NOT USED.**
- 15.18 LNER shall publish any annual targets agreed with the Secretary of State pursuant to paragraph 15.14 above and LNER's performance against those targets in widely accessible forms including, as a minimum, publishing them on its website.
- 15.19 LNER shall, from the Service Commencement Date and for the duration of the Service Term, meet a target of zero waste to landfill. If by the end of the first Service Year:
- (a) LNER believes it has met the target of zero waste to landfill, LNER shall procure, within three Reporting Periods of the end of the first Service Year, that a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) undertakes an audit to confirm whether the zero waste to landfill annual target has been met; and/or
  - (b) LNER has not met the zero waste to landfill target, paragraph 15.16 shall apply, and
- the Secretary of State may require LNER, at any time, to procure an audit of its performance as described in paragraph 15.19(a) above.
16. **NOT USED.**

**APPENDIX 1 TO SCHEDULE 11.2****Environmental Information****1. Environmental Impact Monitoring Dataset**

<b>Table 1</b>			
<b>Subject</b>	<b>Unit</b>	<b>Granularity</b>	<b>Regularity</b>
<b>TRACTION</b>	EC4T (kWh)	Breakdown per distinct fleet - metered	Four (4) week period
	EC4T (kWh)	Breakdown per distinct fleet - unmetered	Four (4) week period
	Gas-oil (litres)	Breakdown per distinct fleet	Four (4) week period
<b>NONTRACTION</b>	Electricity (kWh)	Total	Four (4) week period or monthly
	Gas (kWh)	Total	Four (4) week period or monthly
	Gas-oil (litres)	Total	Four (4) week period or monthly
<b>CARBON</b>	Scope 1 emissions (tonnes)	Total	Annual
	Scope 2 emissions (tonnes)	Total	Annual
	Embodied carbon in new infrastructure projects over the amount set out in paragraph 10.3(b) (Sustainable Construction) of Schedule 13.1 (Rail Industry Initiatives)	Total	Per project
<b>WATER</b>	Mains Water consumption (m <sup>3</sup> )	Total	Annual
	Water recycling initiatives	Narrative	Annual
<b>WASTE</b>	Waste generated (tonnes)	Total	Annual
	Waste recycled (tonnes)	Total	Annual
	Waste subject to other recovery (tonnes)	Total	Annual
	Waste to landfill (tonnes)	Total	Annual
	Hazardous waste	Total	Annual
<b>ENVIRONMENTAL MANAGEMENT SYSTEM (EMS)</b>	Enforcement/information Notices	Total	Annual
	Environmental fines or prosecutions	Total	Annual
	Environmental incidents reported through the EMS	Total	Annual
	Environmental training records % personnel briefed/trained	Total	Annual

**2. NOT USED.**

**APPENDIX 2 TO SCHEDULE 11.2**

**Operational Performance Information**

**1. Information about the operational performance of LNER**

1.1 LNER shall at all times during the Service Term maintain records in relation to its operational performance under this Agreement, covering the areas and the information described in this Appendix 2. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in LNER's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.

1.2 LNER 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, LNER shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:

- (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
- (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.

1.4 The following key shall apply to the table in this Appendix 2:

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

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

**Table 1 - Operational Performance Information**

<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</b>
<b>Number of Passenger Services</b>		
Number of Passenger Services in the Timetable	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day	[number]	B
<b>Number of Cancellations and Partial Cancellations</b>		
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation	[number]	B



<b>Table 1 - Operational Performance Information</b>		
<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</b>
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation attributable to LNER'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 LNER's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and LNER	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since LNER's previous report including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to LNER	[number]	B
Where there is a difference between the Timetable and the Plan of the Day on any day the following: (a) the fact of such difference; and (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day	[number]	B
Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day: (a) the fact of such difference; (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Plan of the Day had been the same as the Enforcement Plan of the Day	[number]	B

<b>Table 1 - Operational Performance Information</b>		
<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</b>
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
<b>Number of Short Formations</b>		
<b>Short Formations All Day</b>		
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to LNER's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services scheduled (excluding Cancellations or Partial Cancellations)	[number]	B
Number of Passenger Services scheduled (excluding Cancellations or Partial Cancellations)	[number]	B
<b>Minutes Delay</b>		
Number of Minutes Delay attributable to LNER	[number]	B
Number of Minutes Delay attributable to Network Rail;	[number]	B
Number of Minutes Delay attributable to any other Train Operator	[number]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and LNER	[number]	B
Number of Minutes Delay for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and LNER	[number]	B
Number of Minutes Delay from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since LNER's previous report and the number of such Minutes Delay attributed to each of LNER and Network Rail as a result of such resolution or determination	[number]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[number]	B
<b>NOT USED</b>		
<b>Train Mileage</b>		
Planned Train Mileage	[mileage]	A

<b>Table 1 - Operational Performance Information</b>		
<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</b>
Actual Train Mileage	[mileage]	B

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

This Appendix contains a non-exhaustive summary of the obligations on LNER throughout this Agreement in respect of the provision of information to the Secretary of State which are not set out in this Schedule 11.2. This summary is for guidance only. If there are any inconsistencies with the other contents of the Schedules mentioned below (including any Appendix), those other contents shall apply.

Reference	Summary of Obligation
Schedule 1.1 (Services and Service Development), paragraph 11.3(a) (Consultation on Significant Alterations to the Timetable)	Requirement for LNER to provide a comprehensive summary of the proposed changes from the Timetable then in force.
Schedule 1.1 (Services and Service Development), paragraphs 11.3(e) and 11.3(f) (Consultation on Significant Alterations to the Timetable)	Requirement for LNER to publish a report containing a summary of the main issues raised by respondents to the consultation.
Schedule 1.1 (Services and Service Development), paragraph 12.2(a) (Timetable Development Rights)	Requirement to provide proposals seeking amendments to the then current Train Service Requirement.
Schedule 1.1 (Services and Service Development), paragraph 13.1 (Certification and Notification by LNER of Exercising Timetable Development Rights)	Requirement for LNER to provide a certificate addressed to the Secretary of State signed by a statutory director in respect of the exercise of timetable development rights.
Schedule 1.1 (Services and Service Development), paragraph 13.3(a) (Certification and Notification by LNER of Exercising Timetable Development Rights)	Requirement for LNER to provide copies to the Secretary of State of correspondence in respect of discussions with Network Rail.
Schedule 1.1 (Services and Service Development), paragraph 14.4 (Finalising the Train Plan)	Requirement for LNER to provide the Train Plan certified as true and accurate by a statutory director.
Schedule 1.1 (Services and Service Development), paragraph 15.1 (Capacity Mitigation Proposal)	Requirement for LNER to provide a Capacity Mitigation Proposal if required by the Secretary of State.
Schedule 1.1 (Services and Service Development), paragraph 16.1 (New or amended Train Service Requirement by Secretary of State and LNER's Informed Opinion)	Requirement for LNER to provide informed opinion in respect of a new or amended Train Service Requirement.
Schedule 1.2 (Operating Obligations), paragraph 7.7	Provide evidence to the Secretary of State of the steps taken under Paragraph 7 (Obligation to use all reasonable endeavours under this Schedule 1.2).

Reference	Summary of Obligation
Schedule 1.4 (Passenger Facing Obligations), paragraph 8 (Publication of Performance Data)	Requirements to publish performance data.
Schedule 1.4 (Passenger Facing Obligations), paragraph 9 (Publication of Complaints and Faults Handling Data) of	Requirements to publish complaints and fault handling data.
Schedule 1.5 (Information about Passengers), paragraph 1 (Passenger Numbers Information)	Requirement to provide Secretary of State information about the use by passengers of the Passenger Services.
Schedule 1.7 (Stations), paragraph 7 (Information about Station Improvement Measures)	Requirement to maintain and provide records regarding Station improvement measures and measures taken to improve Station environments.
Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases), paragraph 2.2 (Rolling Stock Related Contracts and Insurance Arrangements)	Obligation to provide a copy of all draft Rolling Stock Related Contracts and all executed Rolling Stock Related Contracts and any agreements amending the Rolling Stock Related Contracts including such other information as required by the Secretary of State together with a justification of LNER's proposed rolling stock maintenance strategy and provision of analysis of whole life costs.
Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases), paragraph 3.9(b) (Cascaded Rolling Stock and Delayed Cascade Mitigation Plan)	Requirement to produce a Delayed Cascade Mitigation Plan.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 1.5 (Local Authority Concessionary Travel Schemes)	Requirement to provide information about Local Authority Concessionary Travel Schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 2.6 (Multi-Modal Fares Schemes)	Requirement to provide information about multi-modal fares schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 3.3 (Discount Fares Schemes)	Requirement to provide information about Discount Fares Schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 4.4 (Inter-Operator Schemes)	Requirement to provide information about Inter-Operator Schemes.

Reference	Summary of Obligation
Schedule 4 (Accessibility and Inclusivity), paragraph 4 (Specific additional obligations relating to persons with disabilities)	Recording of obligations relating to persons with disabilities.
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 1 (Information) of	Requirement to provide a summary of the Prices of Commuter Fares and Protected Fares to the Secretary of State no later than week twelve (12) of each Fares Setting Round.
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 2.1 (Monitoring) of	Requirement to provide information relating to the Prices of Commuter Fares and Protected Fares to the Secretary of State and information relating to the Gross Revenue of LNER in relation to the any particular Fare or Fares or any particular period.
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 2.2 (Monitoring) of	Requirement to provide written confirmation to the Secretary of State from a statutory director whether LNER has complied with the obligations under Schedule 5 (Fares and Smart Ticketing) during each Fares Setting Round.
Part 2 to Schedule 6.2 (Special Terms related to the Committed Obligations), paragraph 5 (Review of Compliance)	Requirement to provide such evidence of compliance with Committed Obligations as the Secretary of State may request.
Schedule 6.4 (Alliance Framework Agreement), paragraph 3.2 (Alliance Framework Agreement with Network Rail)	Requirement to notify the Secretary of State if it receives a termination notice from Network Rail relating to the Alliance Framework Agreement or if Network Rail takes any steps to terminate the Alliance Framework Agreement or warns LNER in writing of termination.
Schedule 6.4 (Alliance Framework Agreement), paragraph 4 (Reporting on the Alliance Framework Agreement)	Requirement to report in writing each quarter on activities undertaken pursuant to the Alliance Framework Agreement.
Schedule 7.1 (Operational Performance), paragraph 2 (Reporting Requirements)	Reporting requirements relating to the operational performance information set out in Appendix 2 ( <i>Operational Performance Information</i> ) of Schedule 11.2 ( <i>Management Information</i> ).
Schedule 7.1 (Operational Performance), paragraph 17 (Service Recovery Plans and Force Majeure)	Requirement to provide comprehensive records relating to the implementation of a Service Recovery Plan.
Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Investment Scheme), paragraph 2.3	Requirement to publish NRPS scores achieved by LNER.

Reference	Summary of Obligation
(Conduct of National Rail Passenger Surveys)	
Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Investment Scheme), paragraph 4.4 (Performance Results/ Improvement Plan)	Requirement to produce an NRPS Improvement Proposal to secure any NRPS Improvement for submission to the Secretary of State.
Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Investment Scheme), paragraph 11.1 (Customer and Communities Investment Scheme)	Requirement to deliver to the Secretary of State proposals for CCI Schemes applicable to the relevant CCI Period.
Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Investment Scheme), paragraph 9.1(b) (Customer and Stakeholder Engagement Strategy and Customer Report)	Requirement to provide to the Secretary of State any proposed revisions to the Customer and Stakeholder Engagement Strategy.
Schedule 7.2 (National Rail Passenger Surveys and Customer and Communities Investment Scheme), paragraph 10 (Customer and Stakeholder Engagement Strategy and Customer Report)	Requirement to produce and publish a Customer Report.
Schedule 10.3 (Force Majeure and Business Continuity), paragraph 4 (Business Continuity)	Requirement to provide a Business Continuity Plan.
Schedule 11.1 (Franchise Performance Meetings), paragraph 1.3 (Franchise Performance Meetings)	Requirement to prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably requests.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 2 (Community Rail Partnerships)	Requirement to provide a Community Rail Report.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 8 (Small and Medium-sized Enterprises)	Requirement to provide breakdown of Small and Medium-sized Enterprises.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9 (Apprenticeships)	Requirement to provide the information relating to Apprenticeships as set out in paragraphs 9.1 and 9.2.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9.5 (Apprenticeships)	Requirement to submit a draft Skills and Leadership Strategy.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9.6 (Apprenticeships)	Requirement to submit the revised Skills and Leadership Strategy and Apprenticeships Data Collection Form.

Reference	Summary of Obligation
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9.8 (Apprenticeships)	Requirement to submit the Apprenticeships Data Collection Form to Rail Delivery Group.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(d)	Requirement to submit a copy of the assessment report produced by an independent body in respect of performance against the Rail Safety and Standard's Board's Sustainable Development Self-Assessment Framework.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(f)	Obligation to produce an improvement plan in respect of the targets against the Sustainable Development Strategy.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(h)	Obligation to provide a report identifying progress in respect of delivering a sustainable franchise and revisions to the Sustainable Development Strategy.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(j)	Requirement on LNER to publish its Sustainable Development Strategy on the request of the Secretary of State.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.2	Requirement to provide copies of the certification audit reports and a copy of the ISO50001 Energy Review.
Schedule 14.5 (Dealing with Service Assets), paragraph 5 (Miscellaneous)	Obligation to provide such information as the Secretary of State requires in respect of Security Interests.
Schedule 15.1 (Reletting Provisions), paragraphs 2 (Preparation for Reletting) and 3 (Data Site Information)	Obligation to provide certain information to the Secretary of State in respect of a reletting of the Services.
Schedule 15.4 (Provisions applying on and after Termination), paragraph 9 (Information about Passengers)	Requirement to provide passenger numbers information, CRM Data and Yield Management Data on expiry of the Service Period.
Schedule 16 (Pensions), paragraph 6 (Discharge of Obligations)	Obligation to provide a certificate signed by the Trustee in relation to the Franchise Sections stating that LNER has fully complied with its obligations under the Railways Pensions Scheme.



**SCHEDULE 12**  
**FINANCIAL COVENANTS**

Schedule 12:	Financial Covenants
	Appendix 1: <b>NOT USED</b>
	Appendix 2: <b>NOT USED</b>

## Schedule 12

**Financial Covenants****1. Obligations**

Except to the extent that the Secretary of State may otherwise agree from time to time, LNER shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the 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 (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 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. **NOT USED**

3. **NOT USED**

4. **NOT USED**

5. **NOT USED**

6. **NOT USED**

**APPENDIX 1 TO SCHEDULE 12**

**NOT USED**

**APPENDIX 2 TO SCHEDULE 12**

**NOT USED**

**SCHEDULE 13****RAIL INDUSTRY INITIATIVES AND INNOVATION OBLIGATIONS**

Schedule 13.1:	Rail Industry Initiatives and Co-operation
	Appendix 1: Community Rail Partnerships
Schedule 13.2:	Innovation Obligations
	Appendix 1: <b>NOT USED</b>
Schedule 13.3:	<b>NOT USED</b>

## Schedule 13.1

**Rail Industry Initiatives and Co-operation****1. British Transport Police**

1.1 LNER 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 LNER under any contract or arrangement entered into between the British Transport Police and LNER.

1.2 LNER shall:

(a) work with the British Transport Police to:

(i) reduce crime and anti-social behaviour on the railway;

(ii) reduce minutes lost to police-related disruption;

(iii) increase passenger confidence with personal security on train and on station;

(b) work in partnership with the British Transport Police and conduct an annual assessment of the security and crime risk at all Stations and across the Services generally;

(c) co-operate with the British Transport Police to provide it with access to records and/or systems maintained by LNER which relate to lost property to enable the British Transport Police to have access to such information when dealing with items reported to them as lost; and

(d) <sup>374</sup> **consult with the British Transport Police as to its requirements in relation to records and/or systems and shall ensure that the British Transport Police has access to such records and/or systems by no later than 31 December 2020 and thereafter and in any event within five (5) Weekdays of the notification of a crime by the British Transport Police.**

1.3 LNER shall consult with the British Transport Police in relation to plans to develop any part of the land within a Property Lease which could affect staff or customers and give the British Transport Police an opportunity to advise on and/or provide comments on any opportunities for the enhancement of safety and reduction in crime.

**2. Community Rail Partnerships**

2.1 LNER shall become a member of and shall continue to participate in the Community Rail Partnerships relevant to the Passenger Services, including but not limited to the Community Rail Partnerships listed in the table in Appendix 1 to this Schedule 13.1 (and any successor Community Rail Partnerships). As part of such

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<sup>374</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

participation LNER shall identify a senior Franchise Employee whose duties shall include:

- (a) supporting the Community Rail Partnerships;
- (b) ensuring managerial focus within LNER's organisation to enable LNER to meet its Community Rail Partnership obligations; and
- (c) leading on LNER's development of community rail projects.

2.2 LNER shall, at the request of the Secretary of State:

- (a) co-operate with the Secretary of State, Network Rail, ACoRP, local transport authorities and/or any other person as the Secretary of State may nominate for the purposes of developing and furthering the success of the Community Rail Partnerships;
- (b) co-operate with, establish and/or participate in any Community Rail Partnership;
- (c) provide technical support in respect of timetable specification for the Community Rail Partnerships, including providing appropriate journey and revenue data; and
- (d) co-operate in the development of the Secretary of State's initiatives to examine:
  - (i) options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route (such options to include changes in working practices of the relevant Franchise Employees, reducing rolling stock lease costs and maximising opportunities for obtaining local funding of development at relevant stations and developing new ways of maintaining and renewing relevant railway infrastructure); and
  - (ii) the actual costs incurred in operating, maintaining and renewing the infrastructure relevant for such Community Rail Route.

2.3 LNER shall use reasonable endeavours to develop and implement the Community Rail Partnership's initiatives in order to increase the use of the Passenger Services by non-users of the Passenger Services and tourists including, where appropriate, the development of and implementation of marketing strategies.

2.4 The Secretary of State may at any time, by proposing a variation pursuant to clause 17 (Variations in Writing), require LNER to develop and/or implement any changes to the Services and/or the transfer of any Services to another Train Operator in order to deliver either of the initiatives that were examined pursuant to paragraph 2.2(d).

2.5 LNER shall become a member and shall continue to participate in the National Community Rail Steering Group.

2.6 Within three (3) months of the Service Commencement Date in respect of the first Service Year and no later than three (3) months before the start of each subsequent Service Year, LNER shall provide to the Secretary of State a report ("**Community Rail Report**") setting out the distribution of the CRP Amount in full amongst the Community Rail Partnerships identified in paragraphs 2.1 and 2.2.

- 2.7 The Community Rail Report shall contain the following information:
- (a) a statement confirming that LNER's distribution of funds to the Community Rail Partnerships takes account of the Secretary of State's then current published Community Rail Strategy;
  - (b) a statement confirming that LNER has discussed the funding of the Community Rail Partnerships with ACoRP and has taken sufficient account of ACoRP's views;
  - (c) confirmation that LNER has discussed with all Community Rail Partnerships the aims and needs of such partnerships and the funding required to achieve these;
  - (d) a table setting out the relevant portions of the CRP Amount which are to be paid to each Community Rail Partnership (on a non-indexed basis) over the next three (3) years (it being acknowledged that these amounts are likely to be different for each Community Rail Partnership);
  - (e) the activities undertaken by LNER pursuant to paragraph 2.3 of this Schedule 13; and
  - (f) such further information as the Secretary of State may from time to time request.
- 2.8 Within twenty-eight (28) days of the signature date of this Agreement, LNER shall notify the Community Rail Partnerships of the CRP Amount which shall be distributed to such partnerships during the Service Term. LNER shall within thirty (30) days of the commencement of each Service Year, make the relevant payments totalling the CRP Amount to each of the Community Rail Partnerships identified in the Community Rail Report for that year.
- 2.9 LNER shall hold an annual conference for the Community Rail Partnerships' officers and station adopters in conjunction with ACoRP to encourage the spread of best practice and to communicate plans for franchise development. The first such conference shall be held within six (6) months of the Service Commencement Date.
- 2.10 LNER shall devise and implement, in collaboration with the relevant Community Rail Partnership, a "**station adopters scheme**" under which members of the local community can "**adopt**" a local Station and engage in activities such as:
- (a) promotion of the Passengers Services calling at the Station;
  - (b) monitoring and reporting faults, damage and anti-social and criminal behaviour;
  - (c) carrying out minor Station cleaning and maintenance tasks and the development and cultivation of station gardens.
- 2.11 LNER shall take reasonable steps to promote the station adopters scheme and provide safety and other training and support to participants.
- 2.12 In collaboration with the relevant Community Rail Partnership and other Stakeholders LNER shall use reasonable endeavours to identify sources of third party funding for the Community Rail Partnerships and encourage such third parties to make funding commitments.



### 3. **Development of Industry Systems**

LNER shall fully and effectively co-operate, in a manner consistent with it being a responsible Train Operator, 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.

### 4. **Co-operation with Industry Schemes**

LNER shall co-operate (in good faith) with the Secretary of State, the relevant Local Authority and/or any other affected railway industry parties in the development and the implementation of initiatives relating to its participation in multi-modal fares schemes and Traveline (the "**Industry Schemes**"), where such Industry Schemes relate to the Services.

### 5. **Co-operation with Local Authorities**

#### 5.1 **General co-operation with Local Authority in respect of schemes**

(a) LNER shall co-operate in good faith with any Local Authority that seeks to promote a scheme for the provision of additional or varied Passenger Services including by attending meetings, contributing to feasibility schemes and project plans and liaising with relevant industry participants including Network Rail.

(b) Paragraph 5.1 does not oblige LNER to incur any cost in the actual provision of the revised Passenger Services.

#### 5A. <sup>375</sup>**Co-operation with Williams Rail Review**

##### 5A1. **Definitions**

5A1.1 **In this paragraph 5A, unless the context requires otherwise, the following words and expressions have the following meanings:**

**"Franchise WRR Contact" means a Franchise Employee with appropriate seniority to oversee and facilitate LNER's compliance with its obligations pursuant to paragraph 5A2 below; and**

**"Williams Rail Review" means the root and branch review of Britain's railway, independently chaired by Keith Williams.**

##### 5A2. **Preparation for Potential Outcomes of the Williams Rail Review**

###### 5A2.1 **NOT USED.**

5A2.2 **LNER shall (at the request of the Secretary of State) fully and effectively co-operate with the Secretary of State in connection with matters associated with the conclusions of the Williams Rail Review (including the identification and consideration of options, the provision of relevant information, advice and/or analysis) for the purposes of informing future**

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<sup>375</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**decisions which the Secretary of State may make in respect of the Intercity East Coast franchise.**

- 5A2.3 **In consultation with the Secretary of State, LNER shall assign a Franchise WRR Contact and shall confirm the identity of such Franchise WRR Contact to the Secretary of State by no later than 25 July 2020.**
- 5A2.4 **The Franchise WRR Contact will act as LNER’s primary point of contact with the Secretary of State in relation to all matters contemplated by this paragraph 5A2.**
- 5A2.5 **LNER shall procure that the Franchise WRR Contact shall be supported from time to time by such other Franchise Employees as shall be reasonably required to ensure LNER’s compliance with this paragraph 5A2.**
- 5A2.6 **LNER’s obligations pursuant to this paragraph 5A2 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, feasibility studies, business cases, comments, commentary and analysis reasonably required by the Secretary of State (the cost of any such externally commissioned documents to be agreed as between the Parties); and**
  - (c) (where applicable) reviewing and commenting on implementation timetables and programmes for changes proposed by the Secretary of State,**

**in each case as may be required as a result of or in connection with the conclusions of the Williams Rail Review.**

6. **NOT USED.**

7. <sup>376</sup>**NOT USED**

8. **Small and Medium-sized Enterprises**

8.1 LNER shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Services.

8.2 By no later than 31 January in each year (and within one (1) month of the end of the Service Period) LNER shall deliver to the Secretary of State a breakdown of the number of SMEs used by LNER in providing the Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Service Period (as applicable).

9. <sup>377</sup>**Apprenticeships**

9.1 **LNER shall at all times keep accurate and complete records of the Apprenticeships (and the training provided to apprentices) offered by**

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<sup>376</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>377</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**LNER and (if applicable) its immediate UK based supply chain in delivering the Services on a basis which is at all times compliant with Data Protection Legislation. In particular, in relation to each Reporting Period LNER shall record:**

- (a) the number of new Apprenticeships created, continuing and concluding in that Reporting Period;**
- (b) the date of commencement and conclusion of each Apprenticeship; and**
- (c) in relation to each Franchise Employee that commences an Apprenticeship in such Reporting Period:**
  - (i) the level of such Apprenticeship as described in the Regulated Qualifications Framework;**
  - (ii) the skills category (as described in the Standard Occupational Classification Codes) within which Apprenticeship falls;**
  - (iii) the month and year of birth of that Franchise Employee;**
  - (iv) the current occupation of that Franchise Employee;**
  - (v) the gender of that Franchise Employee (except in relation to those Franchise Employees who do not permit disclosure);**
  - (vi) whether that Franchise Employee is of BAME origin (except in relation to those Franchise Employees who do not permit disclosure);**
  - (vii) the postcode of the location at which that Franchise Employee is principally employed at (e.g. the relevant train crew depot of train crew); and**
  - (viii) the first half of that Franchise Employee's residential postcode.**

**9.2 Subject to paragraph 9.2A, LNER shall provide an Apprenticeships Data Collection Form to the Rail Delivery Group containing the information set out in paragraph 9.1 for the purpose of enabling the Secretary of State to monitor the achievement of the apprenticeship targets set out in the Transport Infrastructure Skills Strategy and check for any duplication of records.**

**9.2A <sup>378</sup>In respect of information relating to each Franchise Employee who commences an Apprenticeship and which is included in the Apprenticeships Data Collection Form:**

- (a) LNER shall not cause or permit any Personal Data whatsoever which relates to any Franchise Employee who commences an Apprenticeship to be included in any Apprenticeships Data**

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<sup>378</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Collection Form or otherwise shared with the Secretary of State or the Rail Delivery Group (whether in written form, on the telephone, or otherwise) and, accordingly, LNER shall convert into anonymised aggregated form all Personal Data that is in the first instance included in the Apprenticeships Data Collection Form prior to sharing the Apprenticeships Data Collection Form with the Rail Delivery Group for the purpose described in paragraph 9.2 (and LNER hereby acknowledges and agrees that if it should be possible in any way to identify any Franchise Employee from the anonymised aggregated data there would be a disclosure of Personal Data by LNER and, accordingly, LNER would be in contravention of this paragraph 9.2A(a) in that event); and

- (b) the Parties acknowledge that, notwithstanding the requirements of paragraph 9.2A(a) including the absolute obligation that is imposed on LNER to effect the anonymised aggregation of the Personal Data comprised in information relating to each Franchise Employee who commences an Apprenticeship, it may still be possible from time to time to identify the Franchise Employee from the Apprenticeships Data Collection Form and that there will be processing of Personal Data inherent in that circumstance, and accordingly, LNER shall in preparation for that possibility ensure that:
- (i) the Franchise Employee who commences an Apprenticeship is made aware that their Personal Data may be shared with the Rail Delivery Group (and onward to the Secretary of State) for the purpose described in paragraph 9.2;
  - (ii) the Personal Data is collected and processed by or on behalf of LNER in accordance with the Data Protection Legislation;
  - (iii) the fairness principle of the Data Protection Legislation is satisfied including by issuing all relevant privacy notices in relation to the collecting and processing of the Personal Data by LNER, and for the disclosure to and subsequent processing by the Rail Delivery Group (and the Secretary of State) for the purpose described in paragraph 9.2;
  - (iv) there is a lawful basis for the collection and processing of the Personal Data by LNER, and for the disclosure to and subsequent processing by the Rail Delivery Group (and the Secretary of State) for the purpose described in paragraph 9.2; and
  - (v) the Franchise Employee is made aware that their Personal Data shall be retained by the Secretary of State for a period of seven (7) years following its receipt of the same from the Rail Delivery Group.

- 9.2B <sup>379</sup> **Nothing in paragraph 9.2A(b) is intended by the Parties to absolve LNER from its obligations under paragraph 9.2A(a).**
- 9.3 <sup>380</sup> **By no later than 31 January each year (and within one (1) month of the end of the Service Period) LNER shall deliver to the Rail Delivery Group the breakdown of the information recorded pursuant to paragraph 9.1, and (subject to the requirements of paragraphs 9.2) it shall do this during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Service Period (as applicable), and that information is to be transmitted via the completed Apprenticeships Data Collection Form and submitted to the Rail Delivery Group for onward transmission to the Secretary of State on an annual basis or at such other time as the Secretary of State may specify.**
- 9.4 LNER shall ensure that the number of Franchise Employees who begin an Apprenticeship in any Service Year shall constitute 2.5% of the total number of Franchise Employees (the "**Apprenticeships Requirement**"), provided that:
- (a) <sup>381</sup> **the Apprenticeships Requirement shall not apply to the first Service Year; and**
- (b) the Apprenticeships Requirement shall be subject to a pro rata reduction in respect of the Final Service Year in the event that the Final Service Year consists of less than thirteen (13) Reporting Periods,
- and LNER shall provide evidence of the satisfaction of the Apprenticeships Requirement to the Secretary of State within ten (10) days of the end of each Service Year.
- 9.5 <sup>382</sup> **LNER shall submit a draft Skills and Leadership Strategy to the Secretary of State by no later than three (3) months after the Service Commencement Date. Such draft Skills and Leadership Strategy shall set out the comprehensive, robust and deliverable strategy of LNER for providing an appropriately skilled and trained workforce of Franchise Employees based on a skills gap analysis including through the delivery of the Apprenticeships specified in the Apprenticeships Data Collection Form. The draft Skills and Leadership Strategy shall take into account the likely short, medium and long term requirements of LNER and any Successor Operator including in the context of expected change to the Services (including as a result of technological change) and the age profile of the Franchise Employees. The draft Skills and Leadership Strategy shall include a management/leadership maturity model to help target and improve investment in developing leadership and management. LNER shall meet with the Secretary of State to discuss the draft Skills and Leadership Strategy and shall have due regard to the opinions of the Secretary of State. The Skills and Leadership Strategy shall be finalised and adopted by LNER within eight (8) months of the Service Commencement Date and**

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<sup>379</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>380</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>381</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>382</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**LNER shall implement it in accordance with its terms from the date that it is adopted.**

9.6 LNER shall:

- (a) undertake and complete a review of its Skills and Leadership Strategy and compliance with the Apprenticeships Data Collection Form during each Service Year; and
- (b) provide the Secretary of State with any proposed revisions to the Skills and Leadership Strategy and the Apprenticeships Data Collection Form arising out of such review by no later than the end of each such Service Year .

9.7 The aim of such review shall be to update the Skills and Leadership Strategy by reference to an updated skills gap analysis and to ensure that the Skills and Leadership Strategy continues to effectively achieve its purposes to the greatest extent reasonably practicable. The review shall check compliance with the targets contained in the Apprenticeships Data Collection Form and if they have not been met shall propose robust and effective strategies and methodologies to be contained in the revised Skills and Leadership Strategy to ensure delivery in future. The review may propose amendments to the Apprenticeships Data Collection Form that are consistent with any proposed revisions to the Skills and Leadership Strategy. Any revisions to the Skills and Leadership Strategy (including the Apprenticeships Data Collection Form) shall require the consent of the Secretary of State (such consent not to be unreasonably withheld or delayed). LNER shall implement any revised Skills and Leadership Strategy in accordance with its terms from the date that the Secretary of State consents to the relevant revisions.

9.8 <sup>383</sup> **Not Used.**

**9A1.** <sup>384</sup> **NOT USED**

**9A2.** <sup>385</sup> **NOT USED**

**9A3.** <sup>386</sup> **Diversity and Inclusion**

**9A3.1 Definitions**

**In this paragraph 9A3, unless the context requires otherwise, the following words and expressions have the following meanings:**

**“Diversity KPIs”** has the meaning given to it in paragraph 9A3.4(a) of this Schedule 13.1;

**“D&I Annual Report”** means a report produced by LNER developed in accordance with paragraph 9A3.4(e) of this Schedule 13.1 in respect of the previous

<sup>383</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>384</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>385</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>386</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

twelve (12) months or, if shorter, the period since 1 May 2021;

<b>“D&amp;I Annual Reporting Date”</b>	means the date on which LNER must provide the D&I Annual Report to the Secretary of State as stated in the D&I Strategy, provided that if this date, in any Service Year, occurs after the expiry of the Service Term then the D&I Annual Reporting Date shall be one (1) month before the expiry of Service Term;
<b>“D&amp;I Champion”</b>	means the director or senior executive that is accountable and responsible for implementing the D&I Strategy and ensuring that LNER complies with its obligations relating to diversity and inclusion (excluding the obligations in paragraph 9A3.5 of this Schedule 13.1);
<b>“D&amp;I Characteristics KPIs”</b>	means the KPIs set out in LNER’s D&I Strategy used to assess the impact of LNER’s initiatives on diversity at different levels of the workforce and in connection with different characteristics (including gender, age, ethnicity and disability) compared to the region and/or nationally;
<b>“D&amp;I Improvement Plan”</b>	has the meaning given to it in paragraph 9A3.8 of this Schedule 13.1;
<b>“D&amp;I Initiatives KPIs”</b>	means the KPIs set out in LNER’s D&I Strategy used to measure its performance against diversity initiatives and policies, which may include KPIs along the following lines: <ul style="list-style-type: none"> <li>(a) the number of positive action initiatives implemented and maintained by LNER;</li> <li>(b) the number of adverts in targeted publications;</li> <li>(c) membership of diversity and inclusion networks and forums;</li> <li>(d) the percentage of staff trained annually in diversity and inclusion;</li> <li>(e) the number of line managers completing diversity and inclusion training;</li> <li>(f) the number of members of the board of directors completing diversity and inclusion training; and</li> </ul>

- (g) the number of diversity and inclusion training sessions;

**“D&I Strategy”** means LNER’s diversity and inclusion strategy developed in accordance with paragraph 9A3.2 of this Schedule 13.1 (substantially in the form set out in Appendix 2 (D&I Strategy) to this Schedule 13) and references to the D&I Strategy shall include the Approved D&I Strategy;

**“Recognised Accreditation Scheme”** means any of the following diversity accreditation schemes:

- (a) Investors in Diversity;
- (b) Clear Assured;
- (c) National Equality Standards;
- (d) Diversity Development Standard;
- (e) Inclusive Employers; and/or

such other scheme as the Secretary of State may designate as a Recognised Accreditation Scheme from time to time;

**“Recruitment Objectives”** has the meaning given to it in paragraph 9A3.6(d) of this Schedule 13.1;

**“Recruitment Targets”** has the meaning given to it in paragraph 9A3.6(a) of this Schedule 13.1; and

**“Workforce Diversity Data”** means data on the diversity of LNER’s workforce including statistics showing:

- (a) the gender, race, disability, sexual orientation and working pattern breakdown for specific jobs, categories and levels;
- (b) religion and gender reassignment across the whole workforce;
- (c) the proportion of LNER’s workforce that fall into the following groups: marriage and civil partnership; pregnancy and maternity; social mobility; and parental leave and caring responsibilities; and
- (d) such other data as the Secretary of State may notify LNER in accordance with paragraph 9A3.7(b)(ii) of this Schedule 13.1.



**9A3.2 Diversity and Inclusion Strategy**

- (a) By no later than 1 July 2021, LNER shall prepare a draft of its D&I Strategy and submit it to the Secretary of State.**
- (b) The draft shall include details of:**
  - (i) the diversity and inclusion principles that LNER maintains and/or will establish within its organisation, including but not limited to, in relation to recruitment practices, working environments and procedures;**
  - (ii) the activities, policies and procedures that LNER will employ (for example, including in relation to targeted recruitment policies, promotion of flexible working, mentoring programmes, school visits and annual staff diversity and inclusion surveys) that will demonstrate that it is an inclusive employer;**
  - (iii) how LNER will evidence compliance with its diversity principles, policies and procedures against the Diversity KPIs (as defined in paragraph 9A3.4);**
  - (iv) how it will achieve and/or maintain diversity accreditation in accordance with a Recognised Accreditation Scheme in accordance with paragraph 9A3.3; and**
  - (v) how LNER will comply with its Recruitment Objectives.**
- (c) The Secretary of State may provide comments on the draft D&I Strategy to LNER and the Parties shall use all reasonable endeavours to agree the form of D&I Strategy within four (4) months of the date on which it was provided to the Secretary of State pursuant to paragraph 9A3.2(a).**
- (d) If the Parties are unable to agree a D&I Strategy within the period set out in paragraph 9A3.2(c) the Secretary of State may reasonably determine the D&I Strategy.**
- (e) The Secretary of State may, from time to time, recommend such changes to the Approved D&I Strategy as it considers reasonable.**
- (f) LNER shall use all reasonable endeavours to implement and comply with the Approved D&I Strategy.**
- (g) In respect of any new contract or arrangements it enters into with third parties during the Service Term, LNER shall use all reasonable endeavours to ensure it obliges its counterparty to comply with and implement suitable diversity and inclusion policies.**
- (h) To the extent LNER is entering into any material amendments to any existing contracts or arrangements with third parties, it shall use all reasonable endeavours to ensure that the contract or arrangement**

**(as amended) does not materially adversely affect LNER's ability to comply with its D&I Strategy.**

### **9A3.3 Diversity Accreditation**

**LNER shall use all reasonable endeavours to attain and/or maintain at least one diversity accreditation from a Recognised Accreditation Scheme within such timeframe as may be set out in its D&I Strategy which shall comply with the timescales set by the relevant Recognised Accreditation Scheme or as otherwise agreed between the Parties.**

### **9A3.4 Performance Reporting**

- (a) LNER shall develop D&I Initiatives KPIs and D&I Characteristics KPIs (together, the "Diversity KPIs").**
- (b) LNER shall design its Diversity KPIs with a focus on such areas as the Secretary of State may notify to it and in accordance with any guidance as the Secretary of State may provide.**
- (c) LNER shall collect suitable data to evidence its performance against the Diversity KPIs of which it shall:
 
  - (i) provide details on as part of the D&I Annual Report; and**
  - (ii) make available, in an orderly fashion, to any Successor Operator.****
- (d) LNER shall submit a D&I Annual Report to the Secretary of State on the D&I Annual Reporting Date.**
- (e) The Parties acknowledge and agree that LNER's D&I Annual Report shall be provided substantially in the same form as the Secretary of State may request and shall include:
 
  - (i) evidence of LNER's performance against, and impact of implementing, its D&I Strategy;**
  - (ii) evidence of LNER's performance against the Diversity KPIs;**
  - (iii) evidence of LNER working towards achieving and maintaining diversity accreditation in accordance with paragraph 9A3.3;**
  - (iv) evidence of LNER establishing diversity in its procurement process and using a diverse supply chain;**
  - (v) evidence of LNER's performance against its Recruitment Objectives;**
  - (vi) a record of any other diversity data collected by LNER in respect of its workforce; and**
  - (vii) such other information and data as the Secretary of State may reasonably request at least three (3) months prior to the D&I Annual Reporting Date.****

### **9A3.5 Diversity and Inclusion Champion**

- (a) **As soon as reasonably practicable and by no later than 1 May 2021, LNER shall (to the extent that LNER has not already done so) nominate a board director of LNER or a member of the senior executive team of LNER to act as D&I Champion.**
- (b) **LNER shall ensure that the D&I Champion role is filled as soon as reasonably practicable after such role becomes vacant throughout the term of this Services Agreement.**

#### **9A3.6 Recruitment Targets and Objectives**

- (a) **LNER shall set out suitable recruitment targets and associated timeframes from time to time in respect of all new recruits across all grades, jobs, positions and roles (the "Recruitment Targets") in its D&I Strategy which, amongst other things, shall include:**
  - (i) **gender equality targets, including a target of fifty per cent (50%) female new recruits across all grades, jobs, positions and roles; and**
  - (ii) **targets specifying the percentage of new recruits across all grades, jobs, positions and roles which will be ethnic minorities.**
- (b) **The Secretary of State shall consider the proportionality of the Recruitment Targets by reference to:**
  - (i) **the demographics of the workforce in each region as indicated by the most recent Labour Force Survey produced by the Office for National Statistics;**
  - (ii) **the individual circumstances of LNER; and**
  - (iii) **any other information the Secretary of State reasonably determines to be relevant.**
- (c) **LNER shall provide to the Secretary of State all evidence to allow the Secretary of State to reasonably determine whether any Recruitment Target is proportionate, as reasonably requested by the Secretary of State.**
- (d) **LNER shall use all reasonable and lawful endeavours to:**
  - (i) **be objective, transparent and fair in its recruitment processes;**
  - (ii) **meet Recruitment Targets; and**
  - (iii) **improve retention rates of underrepresented groups**

**(together, the "Recruitment Objectives").**
- (e) **LNER shall report on its performance against its Recruitment Objectives as part of its D&I Annual Report, together with relevant supporting evidence. Such supporting evidence may include details of LNER policies and procedures such as: advertising across a variety of channels to reach a broad range of candidates; blind**

sifting applications; engaging in CV blind interviewing; engaging in outreach programmes; establishing a returners policy; and/or establishing mentoring schemes.

- (f) The Secretary of State shall review LNER's performance against LNER's Recruitment Objectives as part of LNER's D&I Annual Report.
- (g) The Secretary of State shall keep the Recruitment Targets under review and may adjust and/or suspend any Recruitment Target the Secretary of State reasonably determines to no longer be proportionate.
- (h) Nothing in this paragraph 9A3.6 or this Schedule 13.1 is intended to impose or require any quota.

#### **9A3.7 Data – Collecting, Monitoring and Reporting**

- (a) During the Service Term, LNER shall monitor the diversity profile of its workforce and collect Workforce Diversity Data.
- (b) Within six (6) weeks of 1 May 2021, the Secretary of State may notify LNER of any further data requirements it may have, including:
  - (i) any additions to the scope of the Workforce Diversity Data LNER is required to monitor and collect;
  - (ii) the frequency in which it shall be measured or collected; and
  - (iii) the form in which LNER is required to deliver this to the Secretary of State via such data hub as the Secretary of State may direct.
- (c) LNER shall use reasonable endeavours to collect and submit this data in accordance with the Secretary of State's data requirements.
- (d) LNER acknowledges and agrees that the Secretary of State may use any data provided to it by LNER pursuant to this Schedule 13.1 for analytical and policy development purposes.
- (e) LNER shall provide a summary report to the Secretary of State of its Workforce Diversity Data by no later than 1 October 2021.
- (f) LNER shall provide a detailed report to the Secretary of State of its Workforce Diversity Data by no later than 1 April 2022 and on each anniversary of this date thereafter.
- (g) LNER shall organise the detailed report in accordance with the characteristics listed in the definition of Workforce Diversity Data.

#### **9A3.8 Improvement and Remedial Plans**

- (a) If and to the extent that the Secretary of State considers that LNER has not adequately:
  - (i) delivered its D&I Strategy;

- (ii) **achieved accreditation in accordance with its D&I Strategy or has otherwise lost its accreditation;**
- (iii) **used all reasonable and lawful endeavours to deliver against its Recruitment Objectives; or**
- (iv) **collected, monitored and reported on data pursuant to paragraph 9A3.7,**

**it may notify LNER that it requires it to deliver a plan for how it will improve its performance in the relevant area (a "D&I Improvement Plan") for its approval. The D&I Improvement Plan shall include LNER's proposed timeline for implementing any changes or actions.**

- (b) **If the Parties cannot agree the D&I Improvement Plan within twenty (20) Weekdays from the Secretary of State's notification pursuant to paragraph 9A3.8(a), the Secretary of State may impose such D&I Improvement Plan as it considers reasonable.**
- (c) **NOT USED.**

## 10. **Sustainability and other related initiatives**

### 10.1 **Sustainable Development Strategy**

- (a) **NOT USED.**
- (b) <sup>387</sup>**LNER shall by no later than 30 September 2019, submit a draft Sustainable Development Strategy to the Secretary of State for the Secretary of State's approval (such approval not to be unreasonably withheld or delayed). The Secretary of State shall respond with any proposed amendments by 30th November 2019. LNER shall agree a final version of the Sustainable Development Strategy with the RSSB and the Secretary of State.**
- (c) <sup>388</sup>**The Sustainable Development Strategy shall be adopted by LNER as soon as reasonably practicable after it is agreed with the Secretary of State and in any event by 31st January 2020. LNER shall implement the Sustainable Development Strategy in accordance with its terms from the date that it is adopted. Any amendments to the Sustainable Development Strategy must be agreed by the Secretary of State.**
- (d) <sup>389</sup>**LNER shall by no later than October in each year provide to the Secretary of State a report showing:**
  - (i) **progress against the outcomes in key priority sustainable development areas;**

<sup>387</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>388</sup> 24 July 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>389</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (ii) progress on development of Franchise Employees to ensure they have the skills and knowledge required to deliver a sustainable business; and
  - (iii) LNER's proposed revisions to the Sustainable Development Strategy (such revisions to include those revisions reflecting feedback and advice from Stakeholders, and which have been consulted on with the RSSB).
- (e) LNER shall obtain the Secretary of State's consent to any amendments to the Sustainable Development Strategy proposed pursuant to paragraph 10.1(d)(iii) before such amendments are adopted and the Sustainable Development Strategy updated.
- (f) On request by the Secretary of State, LNER shall publish (in such form as the Secretary of State may reasonably determine):
- (i) all or any part of its Sustainable Development Strategy;
  - (ii) all or any of the information described in paragraphs 10.1(d)(i) to (d)(iii) (inclusive).

## 10.2 Environmental Management and Sustainability Accreditation

- (a) LNER shall, by no later than the date which is eighteen (18) months after the Service Commencement Date, attain and, at all times thereafter, maintain certification pursuant to ISO14001:2015 and ISO50001:2011 or equivalent standards.
- (b) LNER shall provide the Secretary of State with copies of the certification audit reports and a copy of their ISO50001 Energy Review within four (4) weeks of their certification and each subsequent recertification during the Service Period.

## 10.3 Sustainable Construction

For construction projects (including building refurbishment or fit out):

- (a) which are either being funded by LNER or in respect of which LNER has design responsibility; and
- (b) <sup>390</sup> **in respect of which the total capital cost exceeds £1,000,000 (pounds sterling one million) (indexed by the RPI),**

LNER shall use reasonable endeavours to achieve at least an "excellent" rating from an accredited assessor using BREEAM (or a rating equivalent to "excellent" in an equivalent recognised standard such as the SKA Rating Standard as appropriate) at both the design stage and the post-construction stage unless the Secretary of State (acting reasonably) agrees that the relevant project is not of a suitable scale or type to be so assessed and LNER shall provide to the Secretary of State such information in relation to any construction project as the Secretary of State may reasonably request.

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<sup>390</sup> 10 June 2020 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

11. **NOT USED.**

**11A.** <sup>391</sup>**Digital Signalling**

**11A.1 LNER shall co-operate in good faith acting reasonably and with each of the Department for Transport, Network Rail, any relevant ROSCO and any other third party in connection with the development, implementation and operational introduction on the routes of any system which is intended to provide European Train Control System ("ETCS").**

**11A.2 In accordance with paragraph 11A.1 of this Schedule 13.1, LNER shall use all reasonable endeavours to provide reasonable assistance to the Secretary of State, Network Rail, any relevant ROSCO and any other relevant third party, which may, amongst other things, include:**

- (a) providing advice to the Secretary of State in respect of any ETCS proposals and plans;**
- (b) supporting planning activities alongside other key stakeholders;**
- (c) ensuring that suitable equipment is fitted to rolling stock;**
- (d) developing driver training programmes and procuring that drivers are suitably trained; and**
- (e) other associated amendments or variations.**

12. **NOT USED.**

**13.** <sup>392</sup>**HS2 Project**

**13.1 LNER shall fully and effectively co-operate and engage constructively with all relevant parties responsible for the delivery of the HS2 Project with the intention of assisting in the timely, efficient and cost effective implementation and delivery of the HS2 Project in a manner which provides the best overall solution for the network. To the extent that the HS2 Project leads to LNER having rights under railway industry procedures including Network Change or Station Change LNER shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of the HS2 Project and LNER shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change. It is acknowledged that LNER may make reasonable objections with a view to mitigating the impact of the HS2 Project and their implementation on passengers and the Services, while recognising the need for the HS2 Project to be able to be undertaken in a reasonable manner.**

**13.2 LNER shall provide such information in respect of the HS2 Project as the Secretary of State may reasonably request from time to time.**

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<sup>391</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>392</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

13.3 **NOT USED.**14. **Suicide Prevention Strategy**

## 14.1

- (a) As soon as reasonably practicable after the Service Commencement Date LNER shall, in consultation with the British Transport Police and the wider cross-industry suicide prevention group, develop a draft suicide prevention plan that fully delivers and complies with the Suicide Prevention Strategy and the Suicide Prevention Duty Holders' Group's 9 Point Plan and submit it to the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) for approval.
- (b) LNER shall make such amendments to the draft suicide prevention plan as:
- (i) the British Transport Police shall require for the purposes of ensuring that it fully delivers and complies with the Suicide Prevention Strategy; and
  - (ii) the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) shall require for the purposes of ensuring that it fully delivers and complies with the Suicide Prevention Duty Holders' Group's 9 Point Plan.
- (c) LNER shall submit a completed suicide prevention plan (the "**Plan**") to the Secretary of State together with written confirmation from the British Transport Police that the Plan complies with the requirements of the Suicide Prevention Strategy and from the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) that the Plan complies with the Suicide Prevention Duty Holders' Group's 9 Point Plan as reasonably practicable and in any event within twelve (12) months of the Service Commencement Date.
- (d) LNER shall review and update the Plan:
- (i) at least every twelve (12) months; and
  - (ii) immediately following any amendment to, or replacement of, the Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan.

Such review and any updating shall be by reference to changing circumstances, new relevant information and any amended or replaced Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan with the intention that it is kept as up to date and effective as reasonably possible. LNER shall consult with the British Transport Police and wider cross-industry suicide prevention group (as appropriate) in relation to any such review and update of the Plan. LNER shall deliver a copy of any revised and/or updated Plan to the Secretary of State as soon as is reasonably practicable together with written confirmation from the British Transport Police that the Plan complies with the requirements of the Suicide Prevention Strategy and the Suicide Prevention Duty Holders' Group's 9 Point Plan and accordingly remains approved by it.



14.2 LNER shall implement the Plan as it may be revised and/or updated pursuant to paragraph 14.1 in accordance with its then prevailing provisions.

15. **Safeguarding Strategy**

15.1 As soon as reasonably practicable after the Service Commencement Date, LNER shall, in consultation with the British Transport Police and such other relevant groups as LNER and/or the British Transport Police consider appropriate, develop a draft safeguarding strategy.

15.2 The draft safeguarding strategy shall be submitted to the British Transport Police for its approval that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit and LNER shall take into account any comments or amendments proposed by:

- (a) the British Transport Police; and
- (b) such other relevant groups as LNER and/or the British Transport Police consider appropriate,

as are required to ensure that such draft safeguarding strategy complies with the Safeguarding on Rail Audit.

15.3 LNER shall deliver a copy of the Safeguarding Strategy to the Secretary of State together with written confirmation of the approval issued by the British Transport Police that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit as soon as reasonably practicable following such approval and in any event within twelve (12) months of the Service Commencement Date.

15.4 LNER shall review and, as necessary, update the Safeguarding Strategy:

- (a) at least every (twelve) 12 months; and
- (b) within one (1) month following the publication of any amendment to, or replacement of the Safeguarding on Rail Audit.

15.5 Any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 15.4 shall take into account any changes to, or replacement of the Safeguarding on Rail Audit and any other relevant circumstances that would reasonably be considered to impact the objectives contained in the Safeguarding on Rail Audit and shall ensure that the Safeguarding Strategy remains up-to-date and appropriate for delivering the objectives contained in the Safeguarding on Rail Audit.

15.6 LNER shall undertake any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 15.4 in consultation with the British Transport Police and such other relevant groups as LNER and/or the British Transport Police consider appropriate. LNER shall submit such updated Safeguarding Strategy to the British Transport Police within one (1) month of such review for its approval that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit and LNER shall take into account any comments or amendments proposed by:

- (a) the British Transport Police; and

- (b) such other relevant groups as LNER and/or the British Transport Police consider appropriate,

as are required to ensure that the Safeguarding Strategy remains up-to-date and appropriate for delivering the objectives contained in the Safeguarding on Rail Audit.

- 15.7 LNER shall deliver a copy of any updated Safeguarding Strategy to the Secretary of State together with written confirmation of the approval issued by the British Transport Police as soon as reasonably practicable following such approval.
- 15.8 LNER shall implement the approved Safeguarding Strategy as it may be revised and/or updated pursuant to this paragraph 15 from time to time.

16. <sup>393</sup>**Incident Response Plan**

- 16.1 **For the purposes of this paragraph 16, the following definitions shall have the following meanings unless the context requires otherwise:**

<b>"Incident Response Plan"</b>	<b>means the plan created by LNER pursuant to this paragraph 16 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>) which contains (as a minimum) the information set out in paragraph 16.3 of Schedule 13.1;</b>
<b>"RDG Guidance on Emergency Planning, Knowledge, Understanding and Responsibilities"</b>	<b>means the guidance that sets out industry best practice for planning for responses to major incidents and emergencies entitled "<i>Emergency Planning, Knowledge, Understanding and Responsibilities</i>" dated April 2015 and published by RDG, as amended or updated from time to time, or other relevant guidance as reasonably specified by the Secretary of State during the Service Term.</b>

- 16.2 **By no later 31 December 2020 LNER shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Incident Response Plan.**

16.3 **The Incident Response Plan shall:**

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

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

- 16.4 **Where the Secretary of State does not approve the draft Incident Response Plan submitted to it, LNER shall make:**

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<sup>393</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (a) such amendments to it as the Secretary of State shall reasonably direct; and
- (b) provide such additional information as the Secretary of State may reasonably require.
- 16.5 From the date of approval, LNER shall implement and comply with the Incident Response Plan.
- 16.6 The Incident Response Plan shall be updated by LNER on an annual basis and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).
- 16.7 Each updated version of the Incident Response Plan shall incorporate a schedule of revisions to the Incident Response Plan compared to the previous version and a brief summary of the rationale supporting each such revision.
- 16.8 If:
- (a) the Secretary of State approves an updated draft Incident Response Plan submitted to it pursuant to paragraph 16.6, such document shall become the then current Incident Response Plan; or
- (b) the Secretary of State does not approve an updated draft Incident Response Plan submitted to it pursuant to paragraph 16.6, the provisions of paragraph 16.4 shall apply.
17. <sup>394</sup> **Cyber Security Information Sharing Strategy**
- 17.1 For the purposes of this paragraph 17, the following definitions shall have the following meanings unless the context requires otherwise:
- “Cyber Information Sharing Platform”** means the government and industry partnership operated by the National Cyber Security Centre to facilitate the sharing of information and intelligence in relation to cyber security threats;
- “Cyber Security Information Sharing Strategy” or “CSISS”** means the strategy created by LNER pursuant to this paragraph 17 of Schedule 13.1 which contains (as a minimum) the information set out in paragraph 17.3 of Schedule 13.1;
- “National Cyber Security Centre”** means the National Cyber Security Centre, which is a part of Government Communications Headquarters established to protect UK critical services from cyber attacks, manage major incidents, and improve the underlying security of the UK Internet through technological

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<sup>394</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**improvement and advice to citizens and organisations.**

- 17.2 **By no later than 31 December 2020 LNER shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Cyber Security Information Sharing Strategy.**
- 17.3 **The Cyber Security Information Sharing Strategy shall:**
- (a) detail how LNER shall share information regarding cyber security threats and incidents with the Department for Transport, British Transport Police, Police Scotland (where relevant), the National Cyber Security Centre and other industry partners; and**
  - (b) reflect the latest Secretary of State's cyber incident reporting guidance including detailing how LNER shall use the Cyber Information Sharing Platform,**
- and it shall be reasonable for the Secretary of State to not approve a plan which does not include such information or meet such requirements.**
- 17.4 **Where the Secretary of State does not approve the draft Cyber Security Information Sharing Strategy submitted to it, LNER shall make:**
- (a) such amendments to it as the Secretary of State shall reasonably direct; and**
  - (b) provide such additional information as the Secretary of State may reasonably require.**
- 17.5 **From the date of approval, LNER shall implement and comply with the Cyber Security Information Sharing Strategy.**
- 17.6 **The Cyber Security Information Sharing Strategy shall be updated by LNER on an annual basis and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).**
- 17.7 **Each updated version of the Cyber Security Information Sharing Strategy shall incorporate a schedule of revisions to the Cyber Security Information Sharing Strategy compared to the previous version and a brief summary of the rationale supporting each such revision.**
- 17.8 **If:**
- (a) the Secretary of State approves an updated draft Cyber Security Information Sharing Strategy submitted to it pursuant to paragraph 17.6, such document shall become the then current Cyber Security Information Sharing Strategy; or**
  - (b) the Secretary of State does not approve an updated draft Cyber Security Information Sharing Strategy submitted to it pursuant to paragraph 17.6, the provisions of paragraph 17.4 shall apply.**

18. <sup>395</sup> **CCTV**

- 18.1 **LNER shall ensure that any installation of, or upgrade to CCTV at any Station shall be undertaken in accordance with the CCTV Guidance.**
- 18.2 **LNER shall ensure that any installation of, or upgrade to, CCTV in the areas accessible by passengers of any vehicle that is operated as part of the Train Fleet shall be undertaken in accordance with the CCTV Guidance.**

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<sup>395</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

**APPENDIX 1 TO SCHEDULE 13.1****Community Rail Partnerships**

	<b>Community Rail Partnership</b>	<b>Community Rail Route</b>
1.	Grantham - Skegness Community Rail Partnership	The Poacher Line
2.	Bishop Line Community Rail Partnership	The Bishop Line
3.	Yorkshire Coast Community Rail Partnership	The Yorkshire Wolds Coast Line
4.	Tyne Valley Community Partnership	The Tyne Valley Line
5.	Leeds - Morecambe Community Rail Partnership	The Bentham Line
6.	Settle Carlisle Railway Development Company	The Settle-Carlisle Line
(and any successor Community Rail Partnerships)		

<sup>396</sup> APPENDIX 2 TO SCHEDULE 13.1**Diversity and Inclusion Strategy****Diversity and Inclusion Strategy Framework**

The Department requires a train operator who will develop and implement a tailored Diversity and Inclusion Strategy, the goal of which is to deliver a more diverse workforce, reflective of the communities that it serves, by increasing representation of under-represented groups at all levels and grades.

**Requirement from LNER**

The train operator shall prepare and submit a Diversity and Inclusion Strategy in accordance with the guidance and templates contained in this framework. However, it should be noted that this is not a comprehensive framework and should only be used as a guide.

The train operator shall submit a strategic Diversity and Inclusion action plan including the steps that they will take to ensure a more diverse workforce. The train operator shall also set out the methods they propose to monitor and report on the implementation of the policy and its effectiveness.

**Strategic Diversity and Inclusion Action Plan**

The Diversity and Inclusion Strategy shall include the following:

- plans to implement a range of recruitment and retention policies and procedures to ensure they recruit and retain a diverse group of candidates;
- a set of recruitment targets which is fifty per cent (50%) female with BAME composition reflective of the local area;
- plans to address gaps in representation in all job types and levels to meet recruitment targets on gender and BAME;
- a list of specific KPIs to measure progress/success of implementing diversity action plan;
- plans for achieving, maintaining and progressing within a specific diversity accreditation scheme;
- plans to collect, monitor and report diversity data of its workforce.

**Plans to implement recruitment and retention policies and procedures**

This is an example below of what a general diversity plan might look like:

Goal	Objective	Current position/ baseline	Actions	Accountability	By when	Measure of success
Increase workforce diversity	Recruit from a diverse group of candidates	Some advertisement in different publications	Work with local employment agencies and JCP	HR	Q4	Workforce is increasingly reflective  Internal targets

<sup>396</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Goal	Objective	Current position/ baseline	Actions	Accountability	By when	Measure of success
Retain a diverse workforce	Create an inclusive culture that encourages collaboration and increases retention	Employee engagement survey	Inclusive leadership training for managers	HR	Q3	All leaders to have D&I training Engagement results should increase
Monitoring diversity data	Monitor diversity data to implement a range of recruitment policies	Data is collected on gender and age but there is no action Data is not collected on other protected characteristics	Collect diversity data on all groups Monitor data every 6 months	HR	Q2	Recruitment policies are reviewed and updated

The Diversity and Inclusion Strategy should also cover most of the protected characteristics, as well as looking at caring responsibilities, social mobility and issues affecting parents returning to work. Below are some examples of what this could look like depending at what point of the journey the train operator is at:

Goal	Objective	Actions	Measure of success
BAME	Improve representation of people from a BAME background in leadership and across the business. Seek to undertake and publish ethnicity pay gap report and activities.	Programme of mentoring and activities	Increase in BAME representation in leadership/ across organisation 10% employees from BAME Reduction in pay gap
Disability	Develop appropriate environment for people.	Train managers to deliver reasonable adjustment	Increase number of disabled employees Disability Confident Leader
Gender	Improve gender diversity across workforce and in leadership positions.	Set targets Programme of activities	25% of employees to be women Reduction in gender pay gap
LGBT+	Be an inclusive employer of LGBT+ employees	Provide specific LGBT+ awareness/ confidence training for managers	Stonewall Inclusive Employers
Carers	Support carers in the workplace	Review family-friendly policies to support carers Increase awareness amongst managers of carers' needs	Level 1 Carer Confident Benchmark Carer Positive award
Faith and belief	Be an employer where people of different faiths and beliefs feel equally valued and respected	Provide series of briefings for employees Faith spaces for employees	Inclusive Employer status



Goal	Objective	Actions	Measure of success
Age	Transfer skills between generations	Develop inter-generational mentoring between older and younger employees	Recognised as an employer for all ages
Social Mobility	Make sure everyone can succeed and make the most of their talents, whatever the circumstances	Promote work with ex-offenders and lone parents  Collect data on social mobility	The Social Mobility Employer Index

### KPIs Example

The plan should be supported by an appropriate set of key performance indicators to measure progress. For example, this could include:

- Number of positive action initiatives in employment.
- Number of adverts in targeted publications to reach BAME and women.
- Membership of networks and forums.

<sup>397</sup>Schedule 13.2**Innovation Obligations**

- 1. Innovation Strategy**
- 1.1 By 31 March 2022, LNER shall submit its Innovation Strategy to the Secretary of State for approval (such approval not to be unreasonably withheld).**
- 1.2 Thereafter every one (1) year, LNER shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld) a revised Innovation Strategy updated in accordance with the requirements of paragraph 1.3.**
- 1.3 Each Innovation Strategy submitted in accordance with this paragraph 1 must have regard to the following core requirements:**
  - (a) how LNER has developed, and proposes to develop during the Service Term, its innovation capability, including leadership, employees, systems and processes, and how progress is measured;**
  - (b) how LNER has utilised, and proposes to utilise during the Service Term, effective techniques for capturing ideas from employees, passengers, the community, industry partners and the supply chain; and**
  - (c) how, during the Service Term, LNER shall partner and collaborate with other organisations and seek third party funding (where appropriate) in order to assist bringing new technologies, processes, business models and products to the rail market, that are viable for implementation during the Contract Term.**
- 1.4 LNER shall at all times comply with its Innovation Strategy.**
- 2. NOT USED.**

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<sup>397</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**APPENDIX 1 TO SCHEDULE 13.2**

**NOT USED**

Schedule 13.3

**NOT USED**

**APPENDIX 1 TO SCHEDULE 13.3**

**NOT USED**

**APPENDIX 2 TO SCHEDULE 13.3**

**NOT USED**

**SCHEDULE 14**  
**PRESERVATION OF ASSETS**

Schedule 14.1:	Maintenance as a going concern
Schedule 14.2:	Maintenance of Operating Assets and Branding
Schedule 14.3:	Key Contracts
	Appendix 1: List of Key Contracts
Schedule 14.4:	Service Assets
Schedule 14.5:	Dealing with Service Assets
Schedule 14.6:	<b>NOT USED</b>
Schedule 14.7:	<b>NOT USED</b>

## Schedule 14.1

**Maintenance as a Going Concern****1. Maintenance as a going concern**

- 1.1 LNER shall maintain and manage the business of providing the Services so that, to the greatest extent possible and practicable:
- (a) LNER is able to perform its obligations under this Agreement; and
  - (b) a Successor Operator would be able to take over the business of providing the Services immediately at any time.
- 1.2 LNER's obligation under paragraph 1.1 shall include an obligation to ensure that any computer and information technology systems of LNER shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a standalone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of this 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 LNER to obtain consent to such arrangements relating to sharing computer and information technology systems from the Secretary of State).
- 1.3 LNER shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Service Assets for such purpose.
- 1.4 LNER shall maintain and manage the business of providing the Services on the basis that such business will be transferred, in the manner contemplated under this Agreement, as a going concern at the end of the Service Period to, and continued immediately thereafter by, a Successor Operator.
- 1.5 LNER 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 Service Period and in so doing shall plan for the recruitment and training of Franchise Employees to continue up until the end of the Service Term.
- 1.6 LNER shall comply with all reasonable requirements of the Secretary of State to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Service Term.

**2. Post-Franchise Timetables**

- 2.1 Both prior to and following the selection of a Successor Operator (whether a franchisee or otherwise and whether or not subject to the satisfaction of any conditions), LNER shall:
- (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State;
  - (b) take such steps as may reasonably be requested by the Secretary of State;



- (c) unless otherwise directed by the Secretary of State, participate in all timetable development processes that take place during the Service Period but which relate to any timetable period applying wholly or partly after the expiry of the Service Term:
- (i) for the purpose of bidding for and securing suitable rights for a Successor Operator to operate Passenger Services in accordance with the Successor Operator Timetable; and
  - (ii) whether or not:
    - (A) the Successor Operator has been identified; or
    - (B) <sup>398</sup> **there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated**

**and for this purpose, the “Successor Operator Timetable” means such train service requirement(s) for such period(s) as the Secretary of State may specify for this purpose from time to time, so as to ensure the continuity of, and orderly handover of control over of the Services and to accommodate the Secretary of State’s future plans for the services to be operated by any Successor Operator.**

2.2 The steps that the Secretary of State may reasonably request LNER to take pursuant to paragraph 2.1 include:

- (a) NOT USED.
- (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 Service 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 LNER 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 Agreement pursuant to clause 10 (Transfer of Property rights and liabilities on Expiry) of this Agreement.

2.3 <sup>399</sup> **NOT USED.**

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<sup>398</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>399</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

## Schedule 14.2

**Maintenance of Operating Assets and Branding****1. Operating Assets**

- 1.1 LNER shall maintain, protect and preserve the Operating Assets in good standing or good working order, subject to fair wear and tear.
- 1.2 LNER shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Service Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Services.
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, LNER shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. LNER 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 this Agreement.
- 1.4 The Secretary of State may at any time require LNER 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, LNER shall comply with the Secretary of State's requirements in respect of such schedule of condition.

**2. Spares**

The obligation of LNER to maintain, preserve and protect the Operating Assets under this Schedule 14.2 shall, in respect of Spares, include the obligation to replace any Spare which is a Service Asset and which subsequent to it being a Service Asset ceases to be part of the stock of Spares available to LNER for use in the provision of the Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

**3. Brand Licence and Branding****3.1 Brand Licences**

LNER shall comply with its obligations under each of the Brand Licences.

**3.2 <sup>400</sup> Branding**

**Subject to any applicable obligations or restrictions on LNER (including the terms of the Rolling Stock Leases), LNER:**

- (a) **may apply registered or unregistered trade marks (including company names, livery and other distinctive get-up) to any assets**

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<sup>400</sup> 10 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**owned or used by it in the operation and provision of the Services;  
and**

- (b) shall not apply any other Mark (other than the Azuma Mark) to the IEP Fleet unless otherwise approved by the Secretary of State.**
- (c) shall:**
  - (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.**
- (d) Any such licence or undertaking under paragraph 3.2(c) 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).**

**Appendix 1**

## Schedule 14.3

**Key Contracts****1. Key Contracts**

1.1 This Schedule sets out the rights of the Secretary of State to:

- (a) designate certain contracts or categories of contracts as Key Contracts where the Secretary of State considers that such contracts or categories of contract are necessary for the purposes of securing continuity of the Services by a Successor Operator on expiry of the Service Period; and
- (b) in accordance with paragraph 5, require LNER to procure that a counterparty to a Key Contract enters into a Direct Agreement with the Secretary of State.

This Schedule 14.3 shall apply to all contracts designated as Key Contracts from time to time.

1.2

- (a) The Key Contracts as at the date of this Agreement are set out in Appendix 1 (List of Key Contracts) to this Schedule 14.3.
- (b) LNER shall enter into any and all Key Contracts which are necessary for this Agreement to continue in accordance with clause 5 (Term and Termination).
- (c) Where at any time after the date of this Agreement LNER proposes to enter into any agreement, contract, licence or other arrangement which falls within one of the categories listed in Appendix 1 (List of Key Contracts) to this Schedule 14.3 LNER shall:
  - (i) inform the Secretary of State from time to time of any such agreement, contract, licence or other arrangement which it may be intending to enter into; and
  - (ii) comply with the provisions of paragraph 5.1 in respect of any such agreement, contract, licence or other arrangement.

1.3 Without prejudice to the provisions of paragraphs 2, 3 and 4 of this Schedule 14.3, Appendix 1 (List of Key Contracts) to this Schedule 14.3 shall be amended as considered necessary from time to time to take account of any:

- (a) designation by the Secretary of State of any actual or prospective agreement, contract, licence or other arrangement or any category of agreement, contract, licence or other arrangement, to which or under which LNER 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 Services or the provision of services similar to the Services by a Successor Operator in accordance with this 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 LNER, 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 LNER 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 LNER 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 LNER, 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 LNER, 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, LNER 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 this Agreement; or
    - (iii) **NOT USED.**

- 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 LNER is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where LNER 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,

LNER 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 LNER 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 LNER as a result of, or in connection with:
- (a) any breach by LNER of the terms of the Key Contract to which the relevant Direct Agreement relates; or
  - (b) any unsuccessful claim being brought by LNER against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

## 6. **Emergencies**

- 6.1 Where any emergency may arise in connection with the provision and operation of the Services, LNER:
- (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**

LNER 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**

LNER 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**

LNER shall, to the extent so requested by the Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.



**APPENDIX 1 TO SCHEDULE 14.3****List of Key Contracts**

Subject to any de-designations by the Secretary of State under paragraph 3 of Schedule 14.3 (Key Contracts), the following items have as at the date of this Agreement been agreed between the Parties to be Key Contracts:

1. any Access Agreement to which LNER is a party other than in its capacity as a Facility Owner;
2. any Property Lease and all side agreements relating to such relevant Property Lease;
3. any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 (*Original Rolling Stock*), Table 2 (*Specified Rolling Stock*) and Table 3 (*Unspecified Additional Rolling Stock*) of Appendix 1 (*The Composition of the Train Fleet*) to Schedule 1.6 (*The Rolling Stock*);
4. **NOT USED;**
5. any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator or other third party of any train drivers, conductors or other train crew used by LNER in the provision of the Passenger Services;
6. any contract or arrangement for the subcontracting or delegation to another Train Operator or other third party of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 8 (*Subcontracting any Passenger Services*) of Schedule 1.1 (*Services and Service Development*));
7. any contract or arrangement with a Train Operator or other third party (other than an Access Agreement) for the provision to LNER of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
8. any contract or arrangement with a Train Operator or other third party for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services;
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 (including the Azuma Marks) to LNER;
12. any contract or arrangement for the procurement, implementation, processing and/or operation of the STNR System (including Intellectual Property Rights (or licence to use the same) relating to the STNR System);
13. any licence of any CRM System or Yield Management System;

- 14. any contract or arrangement for the provision or lending of Computer Systems (other than the CRM System and Yield Management System) that the Secretary of State reasonably considers is essential for the delivery of the Services; and
- 15. <sup>401</sup>**any contract or arrangement relating to the operation of smart ticketing.**

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<sup>401</sup> 10 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

## Schedule 14.4

**Service Assets****1. Service Assets**

- 1.1 Subject to paragraph 1.2, all property, rights and liabilities of LNER from time to time during the Service Period shall be Service Assets and the provisions of paragraph 4 of Schedule 14.5 (dealing with Service Assets) shall apply to all Service Assets.
- 1.2 The rights and liabilities of LNER in respect of the following items shall not be Service Assets and the provisions of paragraph 4 of Schedule 14.5 (dealing with Service Assets) shall not apply to such rights and liabilities:
- (a) any contracts of employment;
  - (b) this Agreement and any Transfer Agreement;
  - (c) the Ticketing and Settlement Agreement;
  - (d) any sums placed on deposit with a bank or any financial institution; and
  - (e) any Rolling Stock Leases.

**APPENDIX 1 TO SCHEDULE 14.4**

**NOT USED**

## Schedule 14.5

**Dealing with Service Assets**

1. **NOT USED**

2. **NOT USED**

3. **NOT USED**

4. **Prohibition on Other Security Interests**

4.1 Except with the prior written consent of the Secretary of State, LNER:

- (a) shall not transfer or agree to transfer, create or agree to create a Security Interest over, any Service Asset (or any interest in or rights over any Service Assets; or
- (b) shall not create or extinguish or agree to create or extinguish any interest in, or rights over, any Service Asset; or
- (c) if and to the extent that the Service Assets are liabilities, shall not enter into any agreement under which any such liability is released or discharged or transferred to some other person.

5. **Miscellaneous**

LNER 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 14.6

**NOT USED**

Schedule 14.7

**NOT USED**

**SCHEDULE 15**

**OBLIGATIONS ASSOCIATED WITH TERMINATION**

Schedule 15.1:	Reletting Provisions
Schedule 15.2:	<b>NOT USED</b>
Schedule 15.3:	<b>NOT USED</b>
Schedule 15.4:	Provisions applying on and after Termination
	Appendix 1: Form of Transfer Agreement



## Schedule 15.1

**Reletting Provisions****1. Reletting of Franchise**

1.1 LNER acknowledges that the Secretary of State may wish, at or before the expiry of the Service Period, either to invite persons to tender for the right to provide all or some of the Passenger Services under a franchise agreement or alternatively to enter into a franchise agreement in respect of all or some of the Passenger Services without having gone through a tendering process.

1.2 **NOT USED.**

**2. Preparation for Reletting**

2.1 LNER 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 LNER connection with the Services (including electronic or magnetic records, any CRM System and any Yield Management System) for the purpose of assisting such representatives and advisers:

- (a) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Services;
- (b) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
- (c) to enter into any franchise agreement or other agreement relating to the services equivalent to the Services, without undergoing a tendering process,

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 Services by LNER.

**3. Data Site Information**

3.1 LNER shall, at the request of the Secretary of State, make available to the Secretary of State and his representatives and advisers:

- (a) the information relating to the Services as specified in the document in the agreed terms marked **DSMI** (the "**Data Site Monitor and Index**"); and
- (b) such other information as they shall reasonably require in connection with the matters referred to in paragraph 2.1,

in each case, by no later than three (3) months after the date of any such request. For the purposes of this paragraph 3 the information referred to in paragraphs 3.1(a) and 3.1(b) shall be the "**Data Site Information**".

3.2 The Data Site Monitor and Index shall be amended and updated by the Secretary of State from time to time. Such amended and updated Data Site Monitor and Index shall, from the date that LNER receives notification from the Secretary of State of

any such amendment or update, be the applicable Data Site Monitor and Index for the purposes of this paragraph 3.2.

3.3 LNER shall prepare and present the Data Site Information in such manner and in such format (including in disaggregated form) as the Secretary of State may specify in the Data Site Monitor and Index or otherwise require, and shall provide such assistance as the Secretary of State may require in connection with the verification and the updating of such Data Site Information.

3.4 LNER shall provide such confirmation in relation to the accuracy of:

- (a) the contents of the documents referred to in paragraph 2.1; and
- (b) any Data Site Information uploaded to such electronic data site as the Secretary of State may require pursuant to paragraph 3.4,

in each case, as the Secretary of State shall require from time to time.

3.5 LNER shall upload the Data Site Information to such electronic data site as the Secretary of State may specify and shall make a sufficient number of appropriate staff available for that purpose. LNER shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Secretary of State).

3.6 LNER shall:

- (a) comply with its obligations under paragraph 2.1 and this paragraph 3 promptly and in any case in accordance with any reasonable timetable with which the Secretary of State requires LNER by notice in writing to comply;
- (b) where the Secretary of State raises with LNER any query in relation to any Data Site Information, make a full and substantive response to such query within five (5) Weekdays. Such response shall include any further information requested by the Secretary of State in relation to such query; and
- (c) nominate a person to whom:
  - (i) all queries or requests for information pursuant to paragraph 3.6(b);
  - (ii) requests for access to premises pursuant to paragraph 5; and
  - (iii) requests for access to employees,

shall be addressed and who shall be responsible for complying with any such queries or requests for information and such requests for access to employees and premises. LNER shall notify the Secretary of State (his representatives and advisers) of the name and contact details of such person.

3.7 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of services equivalent to the Services (whether or not together with other railway passenger services) at or following the end of the Service Period, LNER agrees and acknowledges that the Secretary of State may require:

- (a) that LNER provides the Secretary of State with additional information and reports and analysis in respect of such Service Groups as the Secretary of State may specify. This may include:
- (i) information relating to the operational and financial performance of LNER in relation to such Service Groups; and
  - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
- (b) subject to paragraph 3.8, that LNER reorganises the business of providing services equivalent to the Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:
- (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or
  - (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Services within that Service Group; and
- (c) that LNER uploads Data Site Information to more than one data site.
- 3.8 Subject to paragraph 3.9, the Secretary of State shall reimburse any reasonable out of pocket expenses that LNER may incur in complying with its obligations under this paragraph 3.
- 3.9 Without prejudice to any other rights the Secretary of State may have (under this Agreement or otherwise) in respect of any contravention by LNER of its obligations under this paragraph 3, if the Secretary of State is of the reasonable opinion that LNER does not have sufficient resources to enable its compliance with its obligations under this paragraph 3 he may:
- (a) require LNER to employ; or
  - (b) after notification to LNER, employ,
- such suitable additional resource as may be required to ensure that LNER can comply with its obligations under this paragraph 3. LNER shall reimburse to the Secretary of State, by way of adjustment to the Fixed Service Payments, any proper costs (including staff costs) incurred by him in the employment of any such additional resource pursuant to paragraph 3.9(b).
- 3.10 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 3.9, the Secretary of State shall allow LNER a reasonable opportunity to make representations to him concerning the exercise by the Secretary of State of his rights under paragraph 3.9 but the Secretary of State shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 3.9.

4. **Non-Frustration of Transfer to Successor Operator**

4.1 LNER shall take no action or steps which is or are designed, directly or indirectly:

- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Services at the end of the Service Period to a Successor Operator; or
- (b) to avoid, frustrate or circumvent any provision of this 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.

4.2 **NOT USED.**

5. **Inspection Rights during the Tendering/Reletting Process**

5.1 Without limiting any other rights of the Secretary of State under this Agreement and subject to paragraph 5.3, LNER shall permit the undertaking of inspections (including the taking of inventories) or surveys of:

- (a) trains;
- (b) Stations;
- (c) Depots;
- (d) sidings; and/or
- (e) other premises owned or occupied by LNER or any of its Affiliates or used in connection with the provision of the Services by LNER or any of its Affiliates,

("Inspections") by 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 Services, and who carry suitable identification and evidence of authorisation ("**Nominee**") as the Secretary of State may reasonably require in connection with any Tendering/Reletting Process.

5.2 LNER shall provide a travel permit(s) which will allow the Secretary of State or a Nominee to travel free of charge on the Routes in order to carry out the Inspections.

5.3 The Secretary of State shall use reasonable endeavours to ensure that any Inspections shall be undertaken so as not to unduly interfere with the continuing provision and operation of the Services by LNER.

Schedule 15.2

**NOT USED**

Schedule 15.3

**NOT USED**

**APPENDIX 1 TO SCHEDULE 15.3**

**NOT USED**

## Schedule 15.4

**Provisions applying on and after Termination**

1. **Novation of Access Agreements on Termination of this Agreement**
  - 1.1 <sup>402</sup>**LNER shall, to the extent so requested by the Secretary of State on termination of this Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Network Rail Collateral Agreement) to the Secretary of State or as he may direct.**
  - 1.2 <sup>403</sup>**Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Network Rail 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 LNER 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 of the relevant agreement referred to in paragraph 1.3(a),

but shall not, unless LNER otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to LNER arising prior to the date of such novation.
  - 1.4 LNER shall, on the occurrence of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which LNER 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 LNER shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require LNER to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

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<sup>402</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>403</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.



## 2. **Co-operation with Successor Operator**

2.1 In order to ensure the continuity of, and an orderly handover of control over, the Services, LNER 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, LNER shall 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:

- (a) those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:
  - (i) Access Agreements;
  - (ii) Property Leases;
  - (iii) agreements in relation to Shared Facilities;
  - (iv) Rolling Stock Leases;
  - (v) Rolling Stock Related Contracts;
  - (vi) any other Key Contract; and
- (b) without prejudice to the Secretary of State's rights under this Schedule 15.4, those rights and liabilities as may be specified in any Transfer Agreement.

## 3. **NOT USED**

## 4. **Associated Obligations on Termination**

### 4.1 **Assistance in Securing Continuity**

- (a) In order to facilitate the continuity of the Services on expiry of the Service Period, LNER shall take such steps, both before and after the expiry of the Service Period, as the Secretary of State may reasonably require, to assist and advise any Successor Operator in providing and operating the Services.
- (b) In particular, LNER shall provide any Successor Operator with such records and information relating to or connected with the Services as the Secretary of State may reasonably require (other than confidential financial information but including all records relating to the Franchise Employees).

### 4.2 **Access**

On the expiry of the Service Period, LNER 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 LNER at such time, for the purpose of facilitating the continued provision of the Services.

#### 4.3 **Key Contracts**

- (a) LNER shall provide such assistance to any Successor Operator as the Secretary of State may reasonably require in ensuring that 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), LNER 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 LNER to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Service Period.

#### 4.4 **Change of Name**

LNER shall cease to use any trademarks which are licensed to LNER under any of the Brand Licences forthwith upon expiry of the Service Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

#### 4.5 **Property Leases**

- (a) LNER shall, on the expiry of the Service 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 LNER 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 LNER 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) LNER 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 LNER 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) LNER shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require LNER 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 LNER shall immediately on the expiry of the Service 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 LNER 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 Services where a procurement or bidding process has been initiated.

5.2 LNER 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 Services).

## 6. **Maintenance Records**

6.1 LNER shall immediately on expiry of the Service 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 Service Asset,

including the extent of completion of examinations and the modification status of each such rolling stock vehicle

## 7. **Ticketing Arrangements**

7.1 LNER shall provide immediately on expiry of the Service 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. LNER's Intellectual Property

8.1 On the expiry of the Service Period, LNER will grant to any Successor Operator licences of any Intellectual Property Rights which:

- (a) are owned by or licensed to LNER;
- (b) were not owned by or licensed to it immediately prior to the Services Commencement Date;
- (c) **NOT USED**;
- (d) do not represent or constitute a Mark; and
- (e) may, in the reasonable opinion of the Secretary of State, be necessary for any Successor Operator to operate the Services on an efficient and economic basis after the expiry of the Service Period.

8.2 When agreeing the terms on which Intellectual Property Rights are to be licensed to it, LNER shall use all reasonable endeavours to ensure that such terms include the right to sub-license such Intellectual Property Rights in accordance with this paragraph 8. LNER shall not enter into a licence that does not include such a provision without first obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld).

8.3 Any licence of any Intellectual Property Rights shall be granted to the relevant Successor Operator for such period as the Secretary of State may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Services. Such licence shall be free of charge and royalty-free for a minimum of three (3) months.

8.4 If the licence of any Intellectual Property Rights is for a period in excess of three (3) months, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Service Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such Intellectual Property Rights. If LNER and the relevant Successor Operator are unable to agree such royalty, LNER shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.

8.5 Any such licence shall be in such form as the Secretary of State shall reasonably determine and shall:

- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Services and will not provide for any right to use such Intellectual Property Rights for any other purpose (including its marketing or exploitation for any other purpose);
- (b) be terminable on material breach by the Successor Operator;

- (c) contain an indemnity from LNER to the effect that to the best of its knowledge and belief it owns the relevant Intellectual Property Rights or has the right to license them and the licensing of such Intellectual Property Rights and the subsequent use of the Intellectual Property Rights will not infringe any third party Intellectual Property Rights; and
- (d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by LNER provided that it shall not be reasonable for LNER to require any such trade mark to be used in a manner materially different from its use during the Service Period.

9. **Information about Passengers**

9.1 LNER shall immediately on the expiry of the Service 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**

**FORM OF TRANSFER AGREEMENT**

Dated \_\_\_\_\_ 20[•]

**LONDON NORTH EASTERN RAILWAY LIMITED**

and

**[SUCCESSOR OPERATOR]**

**TRANSFER AGREEMENT**

in respect of  
certain property rights and liabilities of  
LONDON NORTH EASTERN RAILWAY Limited

**THIS TRANSFER AGREEMENT** is made on [\_\_\_\_\_] 20[•]

**BETWEEN**

- (1) **LONDON NORTH EASTERN RAILWAY LIMITED** (Company no: 046559712), whose registered office is at Great Minster House, 33 Horseferry Road, London SW1P 4DR (the **Transferor**); and
- (2) [**SUCCESSOR OPERATOR**] (Company no: [ ]), whose registered office is at [registered office] (the **Transferee**).

**WHEREAS**

- (A) The Transferor has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots (the "**Services**") pursuant to an agreement dated [•] and entered into between the Secretary of State and the Transferor pursuant to the Secretary of State's duty under Section 30 of the Act (the "**Services Agreement**").
- (B) The Transferee has been selected by the Secretary of State for Transport (the "**Secretary of State**") to continue the provision of all or part of the Services pursuant to a franchise agreement with the Secretary of State dated [•].
- (C) The Secretary of State has requested the Transferor, and the Transferor has agreed, to transfer to the Transferee certain property, rights and liabilities of the Transferor.
- (D) This Agreement sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities.

**IT IS AGREED THAT**

1. Definitions and Interpretation

**Definitions**

- 1.1 The following words and expressions shall have the following meaning:

**Act** means the Railways Act 1993 as amended from time to time (including by the Transport Act 2000 and the Railways Act 2005);

**Assets and Liabilities Letter** means the letter dated on or about the Transfer Date to be issued by the Secretary of State to the Transferor and Transferee confirming the property, rights and liabilities of the Transferor that will transfer from the Transferor to the Transferee in accordance with the terms of this Agreement;

**Business** means such of the undertaking or part of the undertaking of the Transferor that consists of the provision of the Services and which is continued by the Transferee after the Transfer Date;

**Completion Payment** has the meaning given to that term in clause 2.5

**Credit** has the meaning given to that term under the Ticketing and Settlement Agreement;

**Debit** has the meaning given to that term under the Ticketing and Settlement Agreement;

**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 Transferor and Transferee, determine from time to time);

**Law** means any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including (without limitation) 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);

**Net Asset Statement** means the statement to be drawn up pursuant to clause 2.6;

**Net Asset Value** means the aggregate of the amounts of the Relevant Assets, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement;

**Purchase Price** means an amount equal to the Net Asset Value;

**Relevant Assets** means the property, rights and liabilities of the Transferor which are or are to be transferred to the Transferee, as listed in the Assets and Liabilities Letter;

**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 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);

**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;

**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;



**Security Interests** 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;

**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 [●];

**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(a);

**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;

**Undisclosed Employee** has the meaning assigned to that term in clause 7.1(d).

## Construction and Interpretation

1.2 In this Agreement:

- (a) terms and expressions defined under the Terms shall have the same meaning where used in this Agreement unless the context otherwise implies;
- (b) the terms "contract of employment", "collective agreement", "employee representatives" and "trade union" shall have the same meanings respectively as in the Transfer Regulations;
- (c) 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;
- (d) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement;
- (e) the words "include", "including" and "in particular" are to be construed without limitation;
- (f) references to any person include its successors, transferees or assignees;
- (g) headings and references to headings shall be disregarded in construing this Agreement;

- (h) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it; and
- (i) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa.

## 2. Agreement to Transfer and Transfer Price

### Agreement to Transfer

- 2.1 As of and with effect from the Transfer Date and to the extent not transferring by virtue of the operation of Law (including the Transfer Regulations):
- (a) the Transferor transfers, assigns and conveys to the Transferee each of:
    - (i) the Relevant Assets;
    - (ii) the Relevant Debits and Credits; and
    - (iii) the Relevant Employee Liabilities,
 (together, the ***Transferring Assets and Liabilities***); and
- 2.2 the Transferee accepts such assets and assumes such rights, liabilities and obligations, in each case, on the terms set out in this Agreement.
- 2.3 Each of the Transferor and the Transferee agrees that the Secretary of State will issue the Assets and Liabilities Letter to the Transferor and the Transferee which will set out the list of the Transferor's property, rights and liabilities that will:
- (a) subject to clause 2.4, transfer to the Transferee under this Agreement; and
  - (b) not transfer to the Transferee under this Agreement.
- 2.4 The Transferor and the Transferee agree to:
- (a) enter into, execute and deliver, and procure that any third party enters into, executes and delivers, in each case with effect from the Transfer Date, such further instruments (including, without limitation, any novation agreements); and
  - (b) obtain, on or before the Transfer Date, such third party consents, agreements and approvals,
- in each case, as shall be necessary or expedient to give effect to the transfer referred to in clause 2.1. Nothing in this clause 2.4 shall require the Transferor to assume any additional liabilities.

## Amount and Payment

- 2.5 The price for the transfer of the Transferring Assets and Liabilities shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value of which the sum of £[amount], as determined by the Secretary of State (the **Completion Payment**) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor on the Transfer Date and the balance (if any) shall be paid in accordance with clause 2.9.

## Net Asset Statement

- 2.6 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.
- 2.7 The Net Asset Statement shall be:
- (a) drawn up in the manner described in Schedule 2 (*Net Asset Statement*);
  - (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 Schedule 1; and
  - (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.
- 2.8 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

- 2.9 If the Purchase Price exceeds or is less than the 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

- 3.1 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) <sup>404</sup> **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 Assets are, to the extent they are property or rights, transferring to the Transferee, free and clear of all Security Interests.

#### 5. **Interest**

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<sup>404</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

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 Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities are 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 Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee 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 Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee 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 <sup>405</sup> **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 of such direction may be chargeable on the transfer of the Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee 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

<sup>405</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

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 Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, clauses 6.3 to 6.6 inclusive shall apply *mutatis mutandis* to such payment substituting "Transferor" for "Transferee" and vice versa.
- 6.8 All of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- (a) preserve those records in such manner and for such periods as may be required by law; and
  - (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and allow the Transferee 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 of 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 Clause 25.2 of this Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee ("**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; and
  - (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(ii) and 7.1(iii) above; 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 Indemnity**

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 this 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;
- (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 authority 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; or
- (e) any breach of Clause 7.5.

### **Details of Relevant Employees**

7.3 Without prejudice to the Transferor's duties under the Transfer Regulations to provide Employee Liability Information, the Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Clause 25.2 of this 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 of 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 of the Transfer Date including the Transfer Date.

7.4 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).

#### **Transferor's Indemnity**

7.5 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 Regulations 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

#### **7.6 Pensions**

The Transferee shall comply with the Pensions Regulations in respect of the Relevant Employees.

#### **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 and the Secretary of State.

##### **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) <sup>406</sup> **in the case of the Transferor to London North Eastern Railway Limited at:**

**[address]**

**[Email address]**

**Attention: [name]**

(b) **in the case of the Transferee to [name of Transferee] at:**

**[address]**

**[Email address]**

**Attention: [name]**

8.5 <sup>407</sup> **Any such notice or other communication shall be delivered by hand or sent by courier, by email transmission 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 business days 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 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement except to the extent set out in clause 8.8.

8.8 The Secretary of State may, to the same extent as if he were a party, enforce and rely on any provision of this Agreement where he is expressed to have a right in respect of any such provision.

**Governing Law**

8.9 <sup>408</sup> **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**

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<sup>406</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>407</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>408</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**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  
**LONDON NORTH EASTERN RAILWAY  
LIMITED**

DIRECTOR: }

DIRECTOR/SECRETARY:

SIGNED FOR AND ON  
BEHALF OF THE  
[**TRANSFEREE**]

DIRECTOR: }

DIRECTOR/SECRETARY:

**SCHEDULE 1**  
**NET ASSET STATEMENT**

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B} + E$$

where:

C equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:

- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;
- (b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
- (c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
- (d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

$\frac{A}{B}$  equals:

- (a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);
- (b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent

that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or

(c) in the case of any other Fare, zero; and

E 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 Service Commencement 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 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 and paragraph 7) 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:

<b>RIGHTS AND LIABILITIES</b>	<b>VALUE</b>
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

6. Any other property, rights or liabilities (excluding the property rights and liabilities specified in paragraph 7, where the value shall be as specified in that paragraph) shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.
7. The values in respect of the property, rights and liabilities specified in the column 1 of the following table shall be as specified in the column 2 of the table:

<b>Column 1 Description</b>	<b>Column 2 Value (£000)</b>

**SCHEDULE 16**

**PENSIONS**

Schedule 16:	Pensions
	Appendix 1: List of Shared Costs Sections

## Schedule 16

**Pensions****1. Definitions**

Unless otherwise defined in this Agreement, terms used in this Schedule 16 shall have the meanings given to them in the Railways Pension Scheme.

**2. Franchise Sections**

LNER shall participate in and become the Designated Employer in relation to the Shared Cost Sections of the Railway Pension Scheme as specified in Appendix 1 to this Schedule 16 (together the "**Franchise Sections**") in respect of the Services. Subject to paragraphs 3 and 4.2(d) membership of a Franchise Section will be offered to each employee of LNER only.

**3. Closed Schemes**

3.1 Subject to any requirements of Her Majesty's Revenue and Customs, LNER 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 Service Period.

3.2 For the purposes of this paragraph 3, "**Closed Scheme Employees**" means such of the employees of LNER who were, immediately prior to the commencement of their employment with LNER, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

**4. Variations in benefits, contributions and investment**

4.1 If LNER is considering making a proposal that falls within the scope of paragraphs 4.2(a) to 4.2(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. LNER must otherwise consult in good time with the Secretary of State in relation to any proposal falling within the scope of paragraphs 4.2(a) to 4.2(g) inclusive.

4.2 Separately and in addition to complying with its obligations under paragraph 4.1, LNER 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 LNER in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the rules of the Railways Pension Scheme applicable to any Franchise Section (the "**Franchise Section Rules**") 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 LNER 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 the Franchise Section Rules in the ordinary day to day running of the business, 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 Sections 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 3;
  - (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, LNER shall not under this Schedule 16 be obliged for the purposes of this Agreement to offer such benefits to any employee employed on a fixed term contract of twelve (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 LNER as Designated Employer arising out of any actuarial valuation of a Franchise Section, and varying or providing different or additional benefits under the Franchise Sections 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.
- 4.3 LNER 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 LNER or its employees under a new schedule of contributions for the Franchise Section.
- 4.4 With respect to any proposal falling within the scope of paragraph 4.3(a) or 4.3(b), LNER 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.
- 5. Funding Liabilities**
- 5.1 LNER 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 Service Term subject to the provisions of paragraph 5.2 below.

5.2 Where, during the Service Term, 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 LNER 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 LNER has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise Sections' 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.

## 6. Discharge of Obligations

6.1 The Secretary of State may at any time during the Service Term seek information from the Trustee with a view to satisfying himself that LNER 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.

6.2 LNER 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.

6.3 LNER shall, in respect of the Service Term, use all reasonable endeavours to provide to the Secretary of State:

- (a) within one (1) month of the expiry of each Service 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 Sections stating either that LNER has fully complied with its obligations under the Railways Pensions Scheme, including its obligation to contribute to the Franchise Sections 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 6.3(a), it shall cover the relevant Service Year . Where the certificate has been given pursuant to paragraph 6.3(b), it shall cover such period as the Secretary of State shall specify.

**6.4 <sup>409</sup>If the Trustee does not certify under paragraph 6.3 in relation to the Franchise Sections that LNER has fully complied with its obligations under the Railways Pension Scheme or if the Secretary of State otherwise reasonably considers that LNER has not complied with such obligations then, without prejudice to the other duties and obligations of LNER and to any other rights the Secretary of State may have, it is acknowledged that the provisions in Schedule 8.1 (Fixed Service Payments) will operate to adjust the Fixed Service Payments payable under Schedule 8.1 to take account of any contribution or payment that LNER has failed to make or avoided making.**

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<sup>409</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

**6.5 NOT USED.****7. Termination of Franchise**

The Secretary of State shall at the end of the Service Period ensure that LNER has no liability for any deficit in the Franchise Sections (other than for contributions due and payable by LNER to the Franchise Sections for any period prior to the end of the Service Term) and shall have no right to benefit from any surplus which may exist in the Franchise Sections. For the avoidance of doubt, this paragraph 7 shall apply where the Services are either aggregated or disaggregated (for example, as a result of remapping).

**8. <sup>410 411</sup> LNER obligations to participate in any Investigation and reform****8.1 In this Schedule:**

- (a) **“Investigation” means any investigation, threatened use, or use of any statutory powers by the Pensions Regulator in relation to a section of the Railways Pension Scheme which has or had as its designated employer LNER or another Train Operator (including a Successor Operator). For the avoidance of doubt, this includes any powers under section 231 of the Pensions Act 2004 or any other power which could affect the contributions payable by the employer or the liabilities of any other person in respect of that section; and**
- (b) **“Reasonable Commercial Manner” means:**
- (i) **acting in the long-term interests of the franchise taking into account the long-term affordability, sustainability and financial robustness of the Franchise Section(s) as if LNER and its employees (as appropriate) were solely responsible for the funding of the Franchise Section(s) and, at all times, disregarding the actual allocation of cost risk as between LNER and the Secretary of State in this Services Agreement;**
- (ii) **or (at the option of the Secretary of State) acting in such other manner as the Secretary of State directs.**

**8.2 LNER shall:**

- (a) **act in good faith and in a Reasonable Commercial Manner at all times; and**
- (b) **engage appropriately with the RDG, the Pensions Regulator and the relevant trade unions,**

**in discharging its obligations under paragraph 8.3 of this Schedule 16.**

**8.3 LNER shall take all reasonable steps to participate in:**

<sup>410</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>411</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (a) the development and implementation of the RDG's response to the current and any future Investigation and the associated concerns raised by the Pensions Regulator regarding those sections of the Railways Pension Scheme for which a Train Operator is the designated employer;
- (b) any Investigation concerning one or more of the Franchise Sections, in which case LNER shall use all reasonable endeavours to achieve an outcome from that Investigation with which a reasonable franchisee, who was in the position of LNER and acting in a Reasonable Commercial Manner, would be satisfied; and
- (c) any industry wide efforts to reform the pension arrangements or benefits payable under the Railways Pension Scheme or offered to employees of Train Operators, recognising the need for the British passenger rail industry to be affordable and offer value for money in the interests of relevant stakeholders including taxpayers.

9. <sup>412 413</sup> Information Powers

Where required by the Secretary of State, LNER agrees to allow the Secretary of State or the Secretary of State's representatives to attend any meeting between LNER and the Trustee and/or the Pensions Regulator where the meeting in whole or part relates to matters to which paragraph 8 or 10 of this Schedule 16 applies.

10. <sup>414</sup> Pension Directions by the Secretary of State

10.1 The Secretary of State may, at any time, by written notice to LNER, direct that LNER take such action in relation to pensions for employees and workers of LNER as the Secretary of State may in the Secretary of State's sole discretion determine. The Secretary of State may consult with LNER before issuing any such direction under this paragraph. The Secretary of State may issue more than one direction to LNER under this paragraph.

10.2 Without limiting the generality of paragraph 10.1, such directions may include:

- (a) directing LNER to propose a schedule of contributions or recovery plan to the Trustee of the Railways Pension Scheme incorporating such employer and employee contributions and over such period as the Secretary of State may determine;
- (b) directing LNER to offer such alternative pension arrangements to employees or workers of LNER as the Secretary of State may determine; and

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<sup>412</sup> 25 June 2020 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

<sup>413</sup> 27 May 2021 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>414</sup> 27 May 2021 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (c) directing LNER to make proposals to the Trustee of the Railways Pension Scheme in relation to benefits, contributions or investments.
- 10.3** Where LNER receives a direction under paragraph 10.1, LNER will use all reasonable endeavours to implement the direction and to work in good faith and act in a Reasonable Commercial Manner with other parties to give effect to the direction.
- 10.4** To the extent that the terms of any direction given under paragraph 10.1 conflict with any of the other terms of this Schedule 16, the terms of the direction shall prevail to the extent of that inconsistency.
- 10.5** LNER will provide the Secretary of State with any documents or information which it may reasonably request in connection with any matter which is relevant to the subject of any direction given under paragraph 10.1 or its implementation.
- 10.6** Nothing in this paragraph 10 shall require LNER to breach any legal obligation to which it is subject. Where LNER reasonably considers that the implementation of any aspect of the direction will cause it to breach any legal obligation of LNER the Secretary of State shall work in co-operation with LNER with a view to agreeing an approach to discuss changes to avoid or otherwise mitigate the risk of such breach.

**APPENDIX 1 TO SCHEDULE 16**

**List of Shared Costs Sections**

<b>Shared Costs Sections</b>
East Coast Mail Line Shared Cost Section

**SCHEDULE 17<sup>415</sup>****Data Protection**

1. **NOT USED**
2. **NOT USED**
3. **NOT USED**
4. **NOT USED**
5. **NOT USED**
6. **NOT USED**
7. **NOT USED**
8. **NOT USED**
9. **NOT USED**
10. **NOT USED**
11. **Data Protection**
  - 11.1 **In respect of any Personal Data processed by LNER, including CRM Data and Personal Data relating to Franchise Employees, LNER agrees that it shall:**
    - (a) **comply with the Data Protection Legislation; and**
    - (b) **procure that its agents and sub-contractors, including the Franchise Data Processors, shall comply with the Data Protection Legislation.**
  - 11.2 **LNER shall promptly:**
    - (a) **notify the Secretary of State of any Franchise Data Breach, upon LNER's awareness of the same, including all relevant details, whether the Franchise Data Breach is by itself or by a Franchise Data Processor;**
    - (b) **provide the Secretary of State on request with all reasonable information, assistance and co-operation in relation to its processing of the CRM Data and the Personal Data relating to Franchise Employees, and procure that any Franchise Processor<sup>416</sup> which it appoints shall provide LNER with all reasonable information, assistance and co-operation in relation to the processing of the CRM Data and the Personal Data relating to Franchise Employees by the Franchise Data Processor, in each case in order to permit the Secretary of State to make an accurate and**

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<sup>415</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

<sup>416</sup> 25 June 2020 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

complete assessment of compliance by LNER with this paragraph 11; and

- (c) provide the Secretary of State on request with all reasonable information, assistance and co-operation in relation to any audit of LNER in relation to its processing of the CRM Data and the Personal Data relating to Franchise Employees, and procure that any Franchise Data Processor which it appoints shall submit itself to audits by LNER of the Franchise Data Processor (whether those audits are by LNER or by any person appointed on its behalf), in each case in order to permit the Secretary of State to make an accurate and complete assessment of compliance by LNER with this paragraph 11.

11.3 LNER shall and shall procure that any Franchise Data Processor which it appoints shall:

- (a) notify (in the case of LNER) the Secretary of State and (in the case of any Franchise Data Processor) LNER in writing of the full names and registered office addresses of the entities which are from time to time carrying out any storage, hosting and/or other processing of the CRM Data and/or the Personal Data relating to Franchise Employees, together with the storage, hosting and/or other processing location(s);
- (b) ensure that in cases where the storage, hosting and/or other processing location(s) are outside of the United Kingdom the notification shall include details of the relevant country(ies) or territory(ies); and
- (c) ensure that in cases where the storage, hosting and/or other processing locations(s) are in a third country (which has the meaning given in the Data Protection Legislation) the notification shall include a description of the appropriate safeguards which are in place under the Data Protection Legislation in respect of the same including that there is in force a European Commission decision that the country or territory to which the transfer is made ensures an adequate level of protection for processing of Personal Data, that there is in place the standard contractual clauses approved by the European Commission decision for the transfer of personal data to processors established in third countries, or that the transfer is to the United States of America and there exists a current and appropriate certification under the EU-US Privacy Shield framework (or such other framework as may replace the EU-US Privacy Shield framework during the Service Term) in each case in relation to the transfer.

11.4 With reference to paragraphs 11.1 to 11.3 inclusive, LNER hereby acknowledges that whilst the Secretary of State is not the Controller in respect of the CRM Data or Personal Data relating to Franchise Employees, the Secretary of State's legitimate interests given its duties under the Act, and its reputation, may be adversely affected in the event of any unlawful processing of CRM Data and/or Personal Data relating to Franchise Employees, or in the event of any Franchise Data Breach. In addition, LNER hereby acknowledges that the Secretary of State legitimately wishes to have knowledge of the locations in which the CRM Data and the Personal Data relating to Franchise Employees is stored, hosted or otherwise



**processed from time to time (whether inside or outside of the United Kingdom) given that all such information would be relevant in the event of any transfer of all or any of the Services to a Successor Operator.**

**SCHEDULE 18**

**NOT USED**

**DEROGATIONS/WAIVERS - POST CONTRACT SIGNATURE DATE****This page is intentionally blank.**

<sup>i</sup> 11 December 2020 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 9.3(b) of Part 2 of Schedule 1.1 (Train Service Requirement - Purpose and Responsibility) because Network Rail have been unable to build a cross-over or install the necessary bi-directional signalling at Harrogate station which impacts the Timetable.

**Original Due Date:**

**Revised Due Date:**

<sup>ii</sup> 26 March 2021 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 1.2 of Schedule 1.4 (Timetable Revisions and Alterations) in order to remove the obligation for operators to provide printed timetable information at their stations.

**Original Due Date:** 1 March 2021

**Revised Due Date:** 31 August 2021

<sup>iii</sup> 11 November 2021 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 1.2 of Schedule 1.4 (Timetable Revisions and Alterations) in order to remove the obligation for operators to provide printed timetable information at their stations and other Operators stations for the December 2021 timetable change.

**Original Due Date:** 12/12/2021

**Revised Due Date:** 14/05/2022

<sup>iv</sup> 26 March 2021 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 1.3 of Schedule 1.4 (Timetable Revisions and Alterations) in order to remove the obligation for operators to provide printed timetable information at their stations.

**Original Due Date:** 1 March 2021

**Revised Due Date:** 31 August 2021

<sup>v</sup> 11 November 2021 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 1.3 of Schedule 1.4 (Timetable Revisions and Alterations) in order to remove the obligation for operators to provide printed timetable information at their stations and other Operators stations for the December 2021 timetable change.

**Original Due Date:** 12/12/2021

**Revised Due Date:** 14/05/2022

<sup>vi</sup> 22 November 2021 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 4.1(b) of Schedule 1.4 (Passenger's Charter).

**Original Due Date:** 30/11/2021

**Revised Due Date:** 30/04/2022

vii 15 September 2021 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 9.1 of Schedule 4 (Enhanced Disability Awareness Training) so that the deadline for the managers e-learning can be extended due to COVID-19.

**Original Due Date:** 28 June 2021

**Revised Due Date:** 31 December 2021

viii 01 October 2021 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 31.2(b) and (c) of Part 1 of Schedule 6.2 (Wavelength).

**Original Due Date:** 19 September 2021

**Revised Due Date:** 31 March 2022

ix 22 April 2020 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 6.2 of Schedule 6.4 (Amendments to the Alliance Framework Agreement) so that LNER has time to receive the relevant results of the Balance Scorecard from Network Rail.

**Original Due Date:** 28 April 2020

**Revised Due Date:** 12 June 2020

x 25 August 2020 (Date of Derogation Letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 9.4(b) of Schedule 11.2 (Annual Financial Information) in order to facilitate the simultaneous sign-off of the OLR and LNER accounts.

**Original Due Date:** 25 July 2020

**Revised Due Date:** 31 July 2020