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Emergency Measures Agreement ("**EMA**")

The Secretary of State for Transport

and

M40 Trains Limited

and

The Chiltern Railway Company Limited

31 March 2020

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THIS AGREEMENT is made the 31 March 2020

BETWEEN:

- (1) **Secretary of State for Transport**, whose principal place of business is at Great Minster House, 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
- (2) **M40 Trains Limited** (company number 3005018), whose registered office is at 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP (the "**Franchisee**"); and
- (3) **The Chiltern Railway Company Limited** (company number 3007939), whose registered office is as 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP (the "**Franchise Operator**"),

each a "**Party**" and together, the "**Parties**".

RECITALS:

- (A) The Strategic Rail Authority, the Franchisee and the Franchise Operator entered into a franchise agreement dated 1 March 2002 in respect of certain railway passenger services designated by the Strategic Rail Authority (the "**Franchise Agreement**").
- (B) The functions of the Strategic Rail Authority transferred to the Secretary of State in accordance with the Railways Act 2005.
- (C) On 11 March 2020 the World Health Organisation declared the coronavirus disease 2019 ("**COVID-19**") a pandemic. It is anticipated that COVID-19 will have a significant impact on the operation of rail services in the United Kingdom.
- (D) The Secretary of State wishes to amend the Franchise Agreement to address the impact of the COVID-19 outbreak on Train Operators by suspending or amending the operation of specific provisions, and introducing additional requirements, under the terms of the Franchise Agreement for the duration of the Term and any Extended Term (if applicable) in accordance with clause 3 of this EMA.
- (E) The Parties now wish to record their agreement regarding the amendments to the Franchise Agreement to address the impacts of COVID-19 by entering into this Emergency Measures Agreement ("**EMA**").
- (F) The Franchise Operator acknowledges that this EMA is entered into pursuant to article 5(5) of Regulation (EC) 1370/2007.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION AND CONSTRUCTION**

1.1 **Interpretation**

In this EMA (unless the context otherwise requires):

- (a) words and expressions defined under the Franchise Agreement and the Act shall have the same meanings when used in this EMA;
- (b) words and expressions defined in the Interpretation Act 1978 shall have the same meanings when used in this EMA;

- (c) the words "including", "include" and "in particular" are to be construed without limitation;
- (d) references to a person include its successors, transferees and assignees;
- (e) references in this EMA to clauses and schedules are to clauses and schedules of this EMA unless expressly specified to the contrary;
- (f) headings and references to headings shall be disregarded in construing this EMA;
- (g) references to an agreement or other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated; and
- (h) words importing the masculine gender include the feminine gender and vice versa and words in singular include the plural and vice versa.

1.2 **Construction**

- (a) This EMA is supplemental to and shall be read and construed together with the Franchise Agreement and this EMA and the Franchise Agreement shall together constitute one and the same document.
- (b) In the event of conflict between the terms of this EMA and the terms of the Franchise Agreement, subject to clause 2.1(b), the terms of this EMA shall prevail.
- (c) Save as expressly provided for in this EMA the Franchise Agreement shall continue in full force and effect.
- (d) Any reference to the "term" or "duration" of the EMA shall mean the Term and any Extended Term (if applicable) in accordance with clause 3 of this EMA.

2. **PURPOSE OF THIS EMA**

2.1 The Parties acknowledge that:

- (a) this EMA is based on the following overriding principles:
 - (i) the Parties recognising the exceptional circumstances presented by COVID-19;
 - (ii) the Parties seeking to ensure that, as far as possible, operational performance and the provision of Passenger Services is maintained;
 - (iii) the Parties seeking to ensure the Franchise Operator is insulated as far as is reasonable from the severe financial impacts of COVID-19 whilst not being overcompensated; and
 - (iv) the Parties cooperating with an overall goal of acting in the national interest;
- (b) this EMA has been prepared as an emergency measure in a circumstance of extreme emergency. To the extent that there are any anomalies or inconsistencies within this EMA or with the terms of the Franchise Agreement as a result of the variations imposed by this EMA, the Parties shall discuss such matters in good faith and work towards a practical and sensible solution, to further amend the Franchise Agreement to reflect the intention of this EMA.

3. COMMENCEMENT AND TERM

- 3.1 Subject to clause 3.2, this EMA shall take effect from 1 April 2020 ("**EMA Start Date**") and shall continue until the earlier of:
- (a) 1.59 a.m. on 20 September 2020; or
 - (b) the date the Parties mutually agree to terminate this EMA,
- (the "**Term**").
- 3.2 Notwithstanding clause 3.1, the provisions of Appendix 2 to Schedule 6.A, included in schedule 1 to this EMA (Schedule 6.A (Franchise Payments)) shall apply retrospectively from 1 March 2020.
- 3.3 Subject to clause 3.4, the Parties may, by mutual agreement, extend the variations to the Franchise Agreement imposed by this EMA by a further period ("**Extended Term**") and upon such agreement to extend, this EMA shall remain in full force and effect until the expiry of the Extended Term.
- 3.4 The Secretary of State shall have an unfettered discretion in proposing, accepting or refusing any extensions to the Term.
- 3.5 The amendments to the Franchise Agreement pursuant to this EMA shall, unless otherwise required by the Secretary of State or pursuant to this EMA, cease to have effect on the later of the expiry of the Term or the Extended Term (as applicable).
- 3.6 At the expiry of the EMA the variations imposed on the Franchise Agreement by this EMA shall cease and the Franchise Agreement, with certain limited exceptions, shall continue on the terms and conditions operating before entry into this EMA.
- 3.7 The limited exceptions referred to in clause 3.6 generally consist of amendments to expunge the impact of the period the EMA was in place from certain of the Franchise Agreement performance metrics and to recalibrate such metrics and amounts (the "**Recalibration Items**") to take account of their temporary suspension for the duration of the EMA (see clause 17).

4. AMENDMENTS TO THE FRANCHISE AGREEMENT

With effect from the EMA Start Date until the expiry of the Term or the Extended Term (as applicable), the Franchise Agreement shall be varied as set out in schedule 1 to this EMA and by clauses 5 to 18 below.

5. COOPERATION

- 5.1 The Franchise Operator agrees to coordinate and cooperate with other Train Operators, Network Rail and other rail industry bodies, to ensure the continuation of Passenger Services across the network in a coordinated manner, and in line with the priorities and directions as may be set out by the Secretary of State from time to time, including, but not limited to:
- (a) coordinating with other Train Operators to ensure consistency of coverage to all communities across the national network, including changes to Franchise Services to assist where other Train Operators are unable to operate their own Franchise 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.

6. **ADDITIONAL SERVICES**

- 6.1 The Franchise Operator acknowledges that the Secretary of State may require special measures, in the form of increased cooperation or additional services, to be implemented while COVID-19 subsists and the Franchise Operator shall use its best endeavours to accommodate such requests and act in the national interests.
- 6.2 The Franchise Operator, if requested by the Secretary of State, shall use its best endeavours to provide additional services, such as enhanced cleaning regimes to a standard reasonably proposed by the Secretary of State.
- 6.3 The reasonable and proper costs incurred in carrying out such additional services shall be recoverable from the Secretary of State as part of the Actual Costs subject to the provisions of Schedule 6.A of the Franchise Agreement, as set out in Appendix 2 to schedule 1 to this EMA.

7. **MEETINGS**

- 7.1 Where the Franchise Agreement refers to a "meeting" of the Parties or the Parties and other third parties, such meetings may be conducted by conference call or other remote link as mutually agreed between the Parties.

8. **ACTION PLANS AND RECOVERY PLANS**

- 8.1 The requirement to submit an action plan under clause 8.4 of the Franchise Agreement or a recovery plan under Schedule 15 (Targets and Performance Reviews) of the Franchise Agreement shall be suspended for the duration of the EMA.
- 8.2 Any actions plans or recovery plans that are in place at the start of the EMA will be reviewed by the Secretary of State within thirty (30) Weekdays and the Secretary of State shall determine (acting in its absolute discretion) and confirm in writing whether the plan will be:
 - (a) continued "as is";
 - (b) delayed;
 - (c) suspended; or
 - (d) reduced in scope or application.

9. **FARES**

- 9.1 The Franchise Operator shall remain responsible for the collection of fare revenue using the same degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator using all reasonable endeavours to maximise revenue, whilst giving consideration to appropriate customer service in light of the prevailing circumstances and any guidance from the Secretary of State, Public Health England or other relevant authority in relation to public interaction.
- 9.2 To the extent a ticket is sold which relates partially to the term of the EMA and partially to the period before 1 March 2020 or after the expiry of the EMA, this shall be accounted for using the same principles that apply on the transfer of a franchise.

10. TREATMENT OF ANNUAL MECHANISMS AND OTHER REGIMES

- 10.1 The Parties acknowledge and agree that certain mechanisms and other relevant regimes under the Franchise Agreement, including but not limited to the Annual Benefit Share mechanism in Part 4 of Schedule 6 (Franchise Payments) of the Franchise Agreement, are prescribed in annual terms and that, for the Franchise Operator Year commencing 1 January 2020, the Parties shall be required to expunge the impact of the period the EMA was in place from those mechanisms and regimes and to adjust them to take account of the temporary suspension for the duration of the EMA.
- 10.2 Accordingly, the Parties shall, on a date to be notified to the Franchise Operator by the Authority before the anticipated expiry of the EMA, meet (either in person or remotely) and with both Parties acting reasonably and in good faith, seek to agree the adjustments required.
- 10.3 In the event the Parties are unable to agree on the approach to the adjustments required within twenty (20) Weekdays of that meeting, the Secretary of State shall reasonably determine the adjustments.

11. PERFORMANCE BOND

- 11.1 The Franchise Operator shall procure that the Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Authority in full in London on first written demand by the Authority on the Bond Provider, certifying as to any one or more of the following:
- (a) the Franchise Agreement has terminated and the Franchise Operator has failed to perform or comply with its obligations under any Supplemental Agreement or Part V or Clauses 12.2, 12.3(a) or (c), 12.4(a) or (b), 12.5(a), 12.6(a), 12.7 (a), 12.11 or 13.4 of the Franchise Agreement;
 - (b) termination of the Franchise Agreement as a result of an Event of Default;
 - (c) the making of a railway administration order in relation to the Franchise Operator pursuant to sections 60 to 62 of the Act; or
 - (d) the Franchise Agreement has either terminated or expired and, in either case, in circumstances where there are liabilities or obligations outstanding from the Franchise Operator to the Authority including where the Franchise Period has terminated or expired but provisions of the Franchise Agreement remain in operation and effect (including Schedule 6.A (Franchise Payments)).

12. CHANGE

- 12.1 The provisions of Schedule 9 (Change Assessment Procedures and Accounting) of the Franchise Agreement shall be suspended for the duration of the EMA.
- 12.2 Unless otherwise specifically agreed by the Secretary of State, the impacts of COVID-19 shall not be considered, and such impact shall be excluded, in relation to any of the limbs of the definition of "Net Loss" or "Net Gain" for the duration of the EMA and the Franchise Operator shall not raise a claim under Schedule 9 (Change Assessment Procedures and Accounting) of the Franchise Agreement that arises from the impact of COVID-19 for the duration of the EMA.
- 12.3 Any Net Loss or Net Gain that is suffered or made during the EMA and does not relate to the impacts of COVID-19 during the EMA shall be evaluated in accordance with the provisions in Schedule 9 (Change Assessment Procedures and Accounting) of the Franchise Agreement of the Franchise Agreement after the expiry of the EMA.

- 12.4 In relation to any Net Loss or Net Gain that is suffered or made before the EMA:
- (a) the processing of the Net Loss or Net Gain shall continue and be treated on the terms of the Franchise Agreement that existed before the entry into this EMA, taking into account the fact that the EMA has been in place since the execution of this EMA;
 - (b) any payments in respect of the relevant Net Loss or Net Gain that are agreed or determined in accordance with that process shall be made as and when determined; and
 - (c) notwithstanding clauses 12.4(a) and (b), any interim adjustments pursuant to Schedule 9 (Change Assessment Procedures and Accounting) of the Franchise Agreement shall cease, and shall not be payable, from 1 March 2020 until the expiry of the EMA.

13. **PERFORMANCE BENCHMARKS**

- 13.1 Where the Franchise Operator's performance in the Reporting Periods prior to the EMA triggers a Call-In, Breach or Default Threshold, or results in non-achievement of a Target, this shall be disregarded for the duration of the EMA and the Secretary of State shall determine (acting in its absolute discretion) the course of action, after the expiry of the EMA.
- 13.2 Any course of action determined by the Secretary of State in accordance in clause 13.1 shall in no circumstances be more advantageous to the Secretary of State than the position prior to the EMA.

14. **FRANCHISE PLAN**

- 14.1 Following execution of this EMA, the Parties shall within thirty (30) Weekdays of the EMA Start Date, meet and consider, acting reasonably and in good faith, whether the completion of the Franchise Plan will be:
- (a) continued "as is";
 - (b) delayed;
 - (c) suspended; or
 - (d) reduced in scope or application.
- 14.2 In the event, and to the extent, that the Franchise Plan involves capital expenditure the default assumption will be that the Franchise Plan shall, to that extent, continue unaffected during the period of the EMA.
- 14.3 In the event the Parties are unable to agree the approach to completion of the Franchise Plan within sixty (60) Weekdays of the EMA Start Date, the Secretary of State shall reasonably determine the approach.
- 14.4 If a delay, suspension or reduction agreed or determined in accordance with this clause 14 is such that it is reasonably likely to have an impact on the Franchise Operator's financial position or performance of the relevant obligation following the expiry of the EMA, then the Parties will also agree (or if they are unable to agree, the Secretary of State will reasonably determine) how that impact will be addressed (whether by way of a Variation or some other mechanism).

15. COVID-19 RELATED SUPPORT

- 15.1 The Franchise Operator shall use all reasonable endeavours to avail itself of, including applying for, any UK Government support that is offered in relation to the impact of COVID-19, including for example tax relief.
- 15.2 To the extent the Franchise Operator is successful in receiving such support, this shall be taken into account in relation to the application of the mechanisms in Schedule 6.A of the Franchise Agreement, as set out in Appendix 2 to schedule 1 to this EMA, such that the Franchise Operator does not benefit from double recovery.

16. STATE AID

- 16.1 The Franchise Operator acknowledges and agrees that the EMA must not result in any financial advantage being granted to the Franchise Operator that is incompatible with the EU rules on State aid and, in particular, Articles 107 and 108 of the Treaty on the Functioning of the European Union. In that regard, it is noted in particular that the replacement Schedule 6.A of the Franchise Agreement defines the parameters on the basis of which the compensation payment for discharging the public service obligations is to be calculated. In accordance with Articles 4(1) and 6(1) of Regulation (EC) N° 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road, these parameters have been determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the Train Operator and a reasonable profit. At the end of the EMA, the Secretary of State will carry out an ex-post check to ensure that there has been no overcompensation for the discharge of the public service obligations over the duration of the EMA. The Secretary of State will recover – in accordance with the EU State aid rules - any overcompensation in relation to the provision of the management role over the duration of the EMA or any other financial advantage that is identified as having been granted as a result of the EMA in violation of the EU State aid rules, whether such overcompensation or other advantage has been identified by the Secretary of State or by the European Commission and the Franchise Operator agrees to repay such monies promptly.

17. EXPIRY OF THE EMA – RECALIBRATION ITEMS

- 17.1 The Parties shall, at least forty (40) days before the anticipated expiry of the EMA, meet (either in person or remotely) and with both Parties acting reasonably and in good faith, seek to agree the recalibration required to the Recalibration Items.
- 17.2 The sole factor to be considered in recalibrating the Recalibration Items shall be the fact that an alternative contractual regime has applied for the duration of the EMA and no other factor shall be taken into account.

18. WARRANTIES

- 18.1 The Franchise Operator shall, within ten (10) days of the execution of this EMA, provide a warranty in writing, from a statutory director of the Franchise Operator to the Secretary of State confirming that:
- (a) the budget submitted by the Franchise Operator prior to the EMA Start Date is a true and valid reflection of the budget assumed by the Franchise Operator at 1 March 2020; and
 - (b) in the preparation of such budget no measures have been undertaken to:
 - (i) suppress revenue and/or increase costs during the term of the EMA;
 - (ii) reallocate costs to, or revenues from the period when the EMA is in place; or

- (iii) act in a way that is contrary to the principles of the EMA by using the existence or cessation of the EMA to increase profitability.

19. ENTIRE AGREEMENT

- 19.1 This EMA contains all the terms which the Parties have agreed in relation to the subject matter of this EMA and supersedes any prior written or oral agreements, representations or understandings between the Parties in relation to such subject matter.
- 19.2 The Franchise Operator acknowledges that this EMA has not been entered into wholly or partly in reliance on, nor has the Franchise Operator been given any warranty, statement, promise or representation other than as expressly set out in this EMA. To the extent that any such warranties, statements, promises or representations have been given the Franchise Operator unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.
- 19.3 Nothing in this clause 19 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

20. COUNTERPARTS

This EMA may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

21. COSTS

Each Party shall bear its own legal, accountancy and other costs and expenses incurred in connection with the preparation, execution and implementation of this EMA and all documents ancillary to it.

22. GOVERNING LAW

This EMA (and any non-contractual obligations arising out of or in connection with it) shall be governed 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 EMA except as specified to the contrary.

23. RIGHTS OF THIRD PARTIES

No person who is not a Party to this EMA shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

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

SIGNED FOR AND ON BEHALF OF)	[REDACTED ¹]
The Secretary of State for Transport)	
)	
)	

¹ 29 May 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.

Print Name of Authorised Signatory: [REDACTED]

Position: [REDACTED]

SIGNED FOR AND ON BEHALF OF) [REDACTED²]
M40 Trains Limited)
)
)

Print Name of Authorised Signatory: [REDACTED]

Position: [REDACTED]

SIGNED FOR AND ON BEHALF OF) [REDACTED³]
The Chiltern Railway Company Limited)
)
)

Print Name of Authorised Signatory: [REDACTED]

Position: [REDACTED]

² 29 May 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.

³ 29 May 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.

SCHEDULE 1

Amendments to the Franchise Agreement

The Franchise Agreement shall be amended as set out in the table below.

For the avoidance of doubt:

- any reference to "N/A" in the table below shall mean that the existing clause / paragraph / Schedule remains unamended and continues to apply;
- any text that appears in blue and is underlined shall be added to existing clauses / paragraphs / Schedules; and
- any text that appears in blue and is struck-out shall be deleted from existing clauses / paragraphs / Schedules.

REFERENCE (CLAUSE / PARAGRAPH / SCHEDULE)	AMENDMENT
PART I - PRELIMINARY	
1 – Definitions and Interpretation	<p>The following new definitions shall be inserted into clause 1.1:</p> <p><u>"Annual Management Accounts"</u> <i>means the management accounts of the Franchise Operator which:</i></p> <p><i>(a) comply with paragraph 9.5(a) of Schedule 6.C (Management Information); and</i></p> <p><i>(b) are delivered to the Authority by the Franchise Operator in accordance with paragraph 9.4(a) of Schedule 6.C (Management Information);</i></p> <p><u>"COVID-19"</u> <i>means the coronavirus disease 2019;</i></p>

	<p><u>"EMA"</u> <i>means the Emergency Measures Agreement entered into by the Parties on or around 1 April 2020 to deal with the impacts of COVID-19;</i></p> <p><u>"Initial Budget"</u> <i>means the Budget (as defined in Schedule 6.A (Franchise Payments)) to be agreed between the Parties within 10 Weekdays of the EMA Start Date or, if the Parties are unable to agree, as reasonably determined by the Authority;</i></p> <p><u>"Lock-up Period"</u> <i>has the meaning given in paragraph 18.2 of Schedule 6.A (Franchise Payments);</i></p> <p><u>"Management Accounts"</u> <i>means, in relation to any Reporting Period, the Franchise Operator's management accounts which:</i></p> <p><i>(a) comply with paragraph 9.5(a) of Schedule 6.C (Management Information); and</i></p> <p><i>(b) are required to be delivered to the Authority by the Franchise Operator in accordance with paragraphs 9.2(a) and 9.2(b) of Schedule 6.C (Management Information);</i></p> <p><u>"Network Rail"</u> <i>means in respect of:</i></p> <p><i>(a) the network or any relevant facility:</i></p> <p><i>(i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587</i></p>
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	<p><u>whose registered office is 1 Eversholt Street, London NW1 2DN; and</u></p> <p><u>(ii) any successor in title to the network or any relevant railway facility; or</u></p> <p><u>(b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);</u></p> <p><u>"Remedial Plan"</u> <u>has the meaning given in paragraph 1 of Schedule 6.B (Performance Payment);</u></p> <p>The following existing definition shall be amended as follows:</p> <p>"Franchise Payment" means a payment either by the Authority to the Franchise Operator or by the Franchise Operator to the Authority, as the case may be, which is determined, subject to adjustment in accordance with the other terms of this Franchise Agreement, in accordance with paragraph 1 of Part 2 of Schedule 6.A.</p> <p>Clause 1.2 shall be amended by deleting the word "and" from the end of clause (r), replacing the full stop at the end of clause (s) with "<u>; and</u>" and inserting the following new clause (t):</p>
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	<p><u>"(t) a reference to a sum being calculated in accordance with Schedule 6 (including references to RPI having the meaning given in Schedule 6, or references to amounts or costs being varied or indexed as amounts or costs are indexed in Schedule 6) shall be interpreted as a reference to Schedule 6 in the form which applied immediately prior to the EMA Start Date."</u></p>
2 – Conditions Precedent	N/A
3 – Warranty	N/A
PART II – OPERATION OF THE FRANCHISE	
4 – The Franchisee	N/A
5 – Passenger Service Requirement	<p>Clause 5.2(d) shall be amended as follows:</p> <p><i>"Without limiting Clause 5.1, the Franchise Operator shall use all reasonable endeavours to ensure that:</i></p> <ul style="list-style-type: none"> <i>(i) its ability to comply with its obligations under Clause 5.1 at any time will not be affected; and</i> <i>(ii) the passenger timetable of the Franchise Operator will not be required to be amended between any two consecutive Passenger Change Dates such that, if such amendment had been made in connection with the setting of the Timetable in effect on the preceding Passenger Change Date, would have resulted in non-compliance with Clause 5.1</i> <p><i>in either case, by virtue of any of the matters referred to in Clause 5.2(c). Unless otherwise expressly agreed by the Authority in advance, the Franchise Operator shall accordingly, whether requested by the Authority or not, <u>promptly notify the Authority under Clause 5.2(c) and the Franchise Operator agrees to cooperate with Railtrack and / or LUL in relation to such proposal, unless and until: (i) the Franchise Operator reasonably believes that the relevant proposal from Railtrack and / or LUL would be likely to materially detrimental to the interests of passengers on railway passenger services in Great Britain; or (ii) the Authority specifically instructs the Franchisee accordingly, in which case the Franchisee shall,</u> and subject always to Clause 5.2(f), exercise all relevant rights it may have under any relevant agreement (including any rights under the Railtrack Track Access Conditions or the LUL Track Access Conditions) to object and not to consent to <u>any such</u> act or omission, or proposed act or omission, of Railtrack, LUL or any relevant other person <u>(except, for the avoidance of doubt, the Authority)</u> which might result in it being</i></p>

unable to comply with its obligations under Clause 5.1, whether at the relevant time or in the future, or in its passenger timetable being so amended between two Passenger Change Dates. For the avoidance of doubt, the exercise of such rights may require the Franchise Operator to dispute any act or omission or proposed act or omission of Railtrack or LUL, to submit such dispute to any relevant dispute resolution arrangements or procedures and to appeal against any relevant award or determination under such arrangements or procedures, including to the Regulator."

Clause 5 shall be amended by inserting new clauses 5.2A and 5.2B as follows:

5.2A Timetable changes proposed by the Franchise Operator

- (a) The Franchise Operator agrees, subject to paragraph 5.2A(c), not to propose to Railtrack or LUL:
- (i) the addition to the Applicable Timetable of any railway passenger services which are not included in the Timetable;
 - (ii) the omission from the Applicable Timetable of any Passenger Services included in the Timetable; or
 - (iii) the rescheduling in the Applicable Timetable of any Passenger Services from their scheduling in the Timetable,
- without the Authority's prior consent.
- (b) The Franchise Operator shall submit to the Authority an amended Train Plan in respect of each Timetable change proposal.
- (c) If, in the opinion of the Franchise Operator (acting reasonably), it would not be reasonably practicable to obtain the Authority's consent prior to proposing any of the items referred to in paragraphs 5.2A(a)(i), (ii) or (iii) to Railtrack or LUL (as the case may be), the Franchise Operator shall be entitled to propose such items to Railtrack or LUL without the Authority's prior consent provided that the Franchise Operator shall inform the Authority of such proposals as soon as is reasonably practicable.
- (d) The Franchise Operator shall ensure that any proposals to Railtrack or LUL submitted pursuant to paragraphs 5.2A(a) or (c):
- (i) take full and proper account of the likely passenger demand (including a reasonable assessment of key workers) considering any known or anticipated impacts of

	<p><u>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);</u></p> <p><u>(ii) utilise an appropriate number of Franchise Employees to support the likely passenger demand (as determined having taking into consideration the matters referred to in paragraph (i)); and</u></p> <p><u>(iii) 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.</u></p> <p><u>(e) The Franchise Operator shall use all reasonable endeavours to co-operate with other Train Operators in respect of the Franchise Operator's proposals to Railtrack or LUL pursuant to paragraphs 5.2A(a) and (c) 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).</u></p> <p><u>(f) The Franchise Operator shall use reasonable endeavours to take into account the requirements of operators of rail freight services in respect of the Franchise Operator's proposals to Railtrack or LUL pursuant to paragraphs 5.2A(a) and (c)."</u></p> <p><u>5.2B Communicating Emergency Timetables</u></p> <p><u>(a) The Franchise Operator shall publish:</u></p> <p><u>(i) any amendments to the Timetable made pursuant to paragraphs 5.2A or otherwise as soon as reasonably practicable:</u></p> <p><u>(a) at each Station, by displaying the relevant information on information displays;</u></p> <p><u>(b) at each other station at which any train calls as part of the Passenger Services, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station</u></p>
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	<p><u>and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraph (a);</u></p> <p>(c) <u>on the Franchise Operator's website;</u></p> <p>(d) <u>via the Franchise Operator's social media accounts (through which the Franchise Operator shall in any event publish any such amendments to the Timetable no later than 2 hours following agreement of such amendments); and</u></p> <p>(e) <u>via any other direct means of communication with passengers available to the Franchise Operator including but not limited to email and/or text messaging services; and</u></p> <p>(ii) <u>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:</u></p> <p>(i) <u>at each Station, by displaying the relevant information on information displays; and</u></p> <p>(ii) <u>on the Franchise Operator's website.</u></p> <p><u>(b) To the extent that this clause 5.2B requires the Franchise Operator to undertake activities that it would otherwise be obliged to perform pursuant to clause 7.1 or 7.2, and there are any discrepancies between the timescales or other requirements relating to such activities between this clause 5.2B and clauses 7.1 or 7.2, the relevant requirements of this clause shall take precedence over those in clause 7.1 or 7.2 (as applicable). "</u></p> <p>Clause 5.3(b)(i) shall be amended by inserting a new clause (f) as follows:</p> <p><u>"(f) the impact, and emerging projections relating to the likely or potential impact, from time to time, of COVID-19 on the Franchise Operator's ability to provide the Passenger Services and/or the level of passenger demand or reasonably expected passenger demand for the Passenger Services;"</u></p>
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	<p>The text in clause 5.3(f) shall be deleted and replaced with "<u>NOT USED</u>".</p> <p>Clause 5.4(c)(vi)(c) shall be amended by deleting the word "or" at the end; and clause 5.4(c)(vi)(d) shall be amended by adding the word "<u>or</u>" at the end.</p> <p>Clause 5.4(c)(vi) shall be amended by inserting a new clause 5.4(c)(vi)(e) as follows:</p> <p style="padding-left: 40px;"><u>"(e) for the duration of the EMA, the occurrence and impact, whether direct or indirect, of COVID-19; and"</u></p> <p>Clause 5.4(c) shall be amended by inserting the following text at the end of the clause:</p> <p style="padding-left: 40px;"><u>"The definition of "Force Majeure Event" shall for the duration of the EMA exclude the occurrence and impact, whether direct or indirect, of COVID-19."</u></p> <p>Clause 5.4 shall be amended by inserting the following new clause 5.4(e):</p> <p style="padding-left: 40px;"><u>"(e) Notwithstanding any other provision of this Agreement, the Franchise Operator agrees that it shall not for the duration of the EMA be entitled to further relief from obligations pursuant to the Force Majeure provisions as a direct or indirect impact of COVID-19."</u></p> <p>Clause 5.9(a)(iv) shall be amended as follows:</p> <p style="padding-left: 40px;"><u>"the Train Mileage of the Passenger Services so delegated or subcontracted does not exceed 5 per cent. of the aggregate scheduled Train Mileage of the Franchise Operator 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 aggregate scheduled Train Mileage being delegated or subcontracted in advance of subcontracting or delegating the provision of such Passenger Services, the Franchisee may subcontract or delegate the provision of such Passenger Services provided that the Secretary of State receives notification of any such subcontracting or delegation)."</u></p>
<p>6 – Provision of Capacity</p>	<p>N/A</p>
<p>7 – The Timetable</p>	<p>Clause 7 shall be amended by inserting the following new clause 7.A before clause 7.1:</p> <p style="padding-left: 40px;"><u>"7.A The obligations in clauses 7.1 and 7.2 are subject to clause 5.2B."</u></p>

8 – Passengers	The text in clauses 8.4(i) and (j) shall each be deleted and replaced with " NOT USED ".
9 – Fares and Fare Schemes	N/A
10 – Stations and Depots	N/A
11 – PSR/ASC Changes	N/A
12 – Industry Arrangements	N/A
13 – Pensions	In clauses 13.5.4 and 13.5.5 the references to "Part III –Financial Provisions" shall be deleted and replaced with " Schedule 6.A ".
14 – Other Covenants	<p>Clause 14.3 shall be amended by inserting the following new clause (g):</p> <p style="text-align: center;"><i>"(g) The Parties acknowledge and agree that the Franchise Operator shall under no circumstances be entitled to reimbursement, pursuant to Schedule 6.A (Franchise Payments) or otherwise, in respect of any additional costs or expenses incurred by the Franchise Operator in procuring any new Performance Bond where required to do so pursuant to clause 14.3(f)."</i></p>
15 – Monitoring and Provision of Information	<p>Schedule 6.C (Management Information) attached at Appendix 3 shall apply in addition to the obligations in clause 15.</p> <p>Notwithstanding that, the Parties shall within thirty (30) Weekdays of the EMA Start Date meet and consider, acting reasonably and in good faith, whether there is any unnecessary duplication between Schedule 6.C and clause 15 and, where there is, to disapply the relevant obligation in clause 15.</p> <p>In the event the Parties are unable to agree on the approach to disapplying any relevant obligation in clause 15 within sixty (60) Weekdays of the EMA Start Date, the Secretary of State shall reasonably determine the approach.</p>
PART III – FINANCIAL PROVISIONS	

16 – Franchise Payments	In clauses 16.1 and 16.2 the references to "Schedule 6" shall be deleted and replaced with " Schedule 6.A ". The text in clause 16.A shall be deleted and replaced with " NOT USED ".
17 – Incentive Payments	The text in clause 17 shall be deleted and replaced with " NOT USED ".
18 – Financial Review	N/A
19 – Franchise Viability	N/A
PART IV – TERM AND TERMINATION	
20 – Franchise Term	N/A
21 – Events of Default	The text in clause 21.7 shall be deleted and replaced with " NOT USED ". The text in clause 21.8(d) shall be deleted and replaced with " NOT USED ". A new clause 21.17 shall be inserted as follows: "21.17 Disallowable Costs <i>The Franchise Operator's Disallowable Costs exceed the maximum value for Aggregated Costs and Revenues Liabilities as specified in paragraph 5.8A of Schedule 6.A (Franchise Payments) to this Agreement.</i>
22 – Consequences of Events of Default	N/A
23 – Consequences of Termination	N/A
PART V – OBLIGATIONS ASSOCIATED WITH CHANGE OF FRANCHISE OPERATOR	
24 – Reletting of Franchise	N/A
25 – Maintenance of Franchise	N/A

26 – Restrictions on Activities	N/A
27 – Key Contracts	N/A
28 – [Intentionally Not Used]	N/A
29 – Franchise Employees	<p>Clause 29.1(a) shall be amended by inserting the words "during the term of the EMA or" before the words "in the last twelve months".</p> <p>Clause 29.3 shall be amended by inserting the words "during the term of the EMA or" before the words "in the last twelve months" and by deleting the words "of twelve months" at the end.</p>
30 – Fares	<p>Clause 30.2(a) shall be amended as follows:</p> <p><i>"During the term of the EMA or during the last thirteen months of the Franchise Period the Franchise Operator shall not, without the consent of the Authority (not to be unreasonably withheld), set the Price or Child Price of, or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price, as the case may be, of a Fare being set by another person), any Fare which would entitle the purchaser thereof to travel on all or any of the Passenger Services after the term of the EMA or after the Franchise Period (as applicable) for an amount which is less than the Price or the Child Price, as the case may be, of that Fare immediately before the commencement of the term of the EMA or such thirteen month period (as applicable) or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period."</i></p> <p>Clauses 30.3(a) and 30.3(b) shall be amended by inserting the words "during the term of the EMA or" before the words "in the last thirteen months".</p>
31 – Inter-Operator Schemes	Clauses 31.1 shall be amended by inserting the words " during the term of the EMA or " before the words "during the last twelve months".
32 – Franchise Assets	N/A
33 – Spares	N/A
34 – Intellectual Property	N/A

<p>35 – Transfer of Primary Franchise Assets</p>	<p>Clause 35.5(b)(iv) shall be amended by deleting "." and inserting "<u>; or</u>".</p> <p>Clause 35.5 shall be amended by inserting the following new clauses 35.5(b)(v) and (vi) and additional un-numbered clause:</p> <p><u>"(v) any of the following amounts which, in respect of any Performance Period, the Authority has not offset against MFPP in accordance with paragraph 11 of Schedule 6.A (Franchise Payments):</u></p> <p><u>(a) SoS Claims; and</u></p> <p><u>(b) any other sums which the Authority has the right in accordance with Schedule 6.A (Franchise Payments) to offset against MFPP; and/or</u></p> <p><u>(vi) any amount of the Final Working Capital Adjustment not paid to the Authority in accordance with paragraph 10.4 of Schedule 6.A (Franchise Payments),</u></p> <p><u>which, in the case of the amounts in (i) and (ii), are not otherwise recovered by the Authority."</u></p> <p>Clause 35 shall be amended by inserting the following new clause 35.6:</p> <p><u>"35.6 No reimbursement</u></p> <p><u>The Parties acknowledge and agree that the Franchise Operator shall under no circumstances be entitled to reimbursement, pursuant to Schedule 6.A (Franchise Payments) or otherwise, of any losses, liabilities, costs or expenses incurred by the Franchise Operator arising out of or in connection with any lawful demand made by the Authority under the Performance Bond pursuant to clause 35.5."</u></p>
<p>36 – Associated Obligations on Termination</p>	<p>N/A</p>
<p>PART VI – GENERAL PROVISIONS</p>	
<p>37 – Compliance with Laws</p>	<p>N/A</p>
<p>38 – Exclusion of Liability</p>	<p>Clause 38.3(a) shall be amended as follows:</p>

	<i>"This Franchise Agreement contains the entire agreement between the parties, <u>except as amended</u>, in relation to the subject matter of this Franchise Agreement and supersedes all prior agreements and arrangements other than such confidentiality agreements or undertakings as the Franchisee may have entered into in connection with its proposal to secure the provision of the Passenger Services under this Franchise Agreement."</i>
39 – Confidentiality	N/A
40 – Notices	N/A
41 – Assignment	N/A
42 – Delegation	N/A
43 – Settlement of Disputes	N/A
44 – Miscellaneous Provisions	N/A
45 – Governing Law	N/A
SCHEDULES	
Schedule 1 – Conditions Precedent and Other Documents	N/A
Schedule 2 – Franchise Services	The amendments to Part 4 are set out below.
Part 1 – Passenger Services	N/A
Part 2 – Station Services	N/A
Part 3 – Light Maintenance Services	N/A
Part 4 – Ancillary Services	Part 4 shall be amended as follows: "Part 4 – Ancillary Services

	<p>(a) <i>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 or phone cards.</i></p> <p>(b) <i>The provision of any service at any station served by the Passenger Services which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph (a) of this Part 4 of Schedule 2, or which, if provided at a Station, would fall within Part 2 of Schedule 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 by the Franchise Operator in the provision of the Passenger Services.</i></p> <p>(c) <i>In any Reporting Period, the subleasing, hiring or licensing of up to 15 per cent. of the rolling stock used by the Franchise Operator from time to time in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock is sub-let, hired or licensed and the aggregate period of time for which it is used in the provision of the Passenger Services). NOT USED.</i></p> <p>(d) <i>The lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:</i></p> <p style="padding-left: 40px;"><i>(i) up to one per cent. of the number of employees of the Franchise Operator during such Reporting Period (or, if greater, on the Franchise Commencement Date) for over 90 per cent. of their normal working hours during such Reporting Period (including on a full-time basis); and</i></p> <p style="padding-left: 40px;"><i>(ii) up to one per cent. of any other employees of the Franchise Operator during such Reporting Period (such percentage to be determined on the basis of the aggregate number of hours in such Reporting Period for which each employee is employed by the Franchise Operator (or, if greater, such aggregate number of hours in the first Reporting Period under this Franchise Agreement pro rata to the number of days in the relevant Reporting Period) and the aggregate number of hours in such Reporting Period for which any such employee is so lent, seconded, hired or contracted out)</i></p>
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	<p>(provided that no employee lent, seconded, hired or contracted out under any other paragraph of this Part 4 and, for the avoidance of doubt, no employee who is engaged in any other activity which is permitted under this Schedule 2 shall constitute an employee who is lent, seconded, hired or contracted out under this paragraph).</p> <p>For the purpose of Clause 26 of the Franchise Agreement, the Authority consents to the seconding of up to a further three per cent of the number of employees of the Franchise Operator during such Reporting Period subject to the following conditions:-</p> <p>(A) such employees are seconded to the Franchisee to undertake work in relation to:</p> <p>(i) bidding for; and/or</p> <p>(ii) carrying out of developments in respect of</p> <p>franchised passenger rail services included or intended to be included in one or more franchise agreements other than this Franchise Agreement;</p> <p>(B) the Authority shall be entitled, from time to time, to give notice to the Franchise Operator withdrawing such consent in whole or in part if, in the opinion of the Authority, some or all of such number of employees are reasonably required for the provision of the Franchise Services, in accordance with this Agreement; and</p> <p>(C) the activities referred to in sub-paragraph (A) are not included in the "Franchise Services" for the purpose of this Franchise Agreement, and accordingly:-</p> <p>(i) except to the extent that such employees are, at the expiry of the Franchise Period, engaged in the provision of the Franchise Services, the contract of employment and/or liabilities arising from a contract of employment or employment relationship in respect of any of such employees is not intended by the parties to transfer to a Successor Operator following the expiry of the Franchise Period by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended, replaced or substituted from time to time)); and</p> <p>(ii) except as aforesaid, if any such contract of employment or liability shall, notwithstanding (i) above, transfer to a Successor Operator, then such employees shall not be "Relevant Employees" and shall be regarded as "Undisclosed Employees" for the purposes of the Supplemental Agreement, with the intention and effect that the</p>
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	<p><i>Franchise Operator shall indemnify the Successor Operator in accordance with the Supplemental Agreement in respect of liabilities incurred by the Successor Operator in relation to such employees. The Authority shall be entitled to amend the Supplemental Agreement to the extent necessary to give effect to this sub-paragraph (C).</i></p> <p><i>The restrictions set out in this paragraph (d) or paragraph (bb) below shall not be applicable to employees of the Franchise Operator who are lent, seconded, hired or contracted out to the Franchisee provided that such employees remain exclusively engaged in the provision of such services as are necessary to enable the Franchise Operator to perform its obligations under this Franchise Agreement.</i></p> <p>(e) <i>The heavy maintenance of rolling stock and other railway vehicles on behalf of any other person at the following light maintenance depots:</i></p> <p><i>Aylesbury Maintenance Depot</i></p> <p><i>subject to the number of persons engaged or employed in such activity in relation to rolling stock and other railway vehicles which are not operated by the Franchise Operator not exceeding by more than 10 per cent. the numbers so engaged or employed on the Previous Franchise Commencement Date. NOT USED.</i></p> <p>(f) <i>The selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchise Operator on or before the date of signature of this Franchise Agreement or at any new location provided that the majority of Fares sold at any such new location shall be Fares which are valid, in whole or in part, on the Passenger Services.</i></p> <p>(g) <i>The selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:</i></p> <ul style="list-style-type: none"> (iii) <i>travel on any other train within Great Britain; or</i> (iv) <i>travel on any shipping or ferry service within or from within Great Britain; or</i> (v) <i>travel on any train whose journey commences or ends within the European Union; or</i>
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	<ul style="list-style-type: none"> (vi) <i>travel on any bus whose journey commences or ends at, or at a location reasonably proximate to, a station served by the Passenger Services;</i> (vii) <i>attend any event or attraction or enter any location which is situated reasonably proximate to the end of an intended journey by train within Great Britain.</i> (h) <i>The lending, seconding, hiring or contracting out of employees of the Franchise Operator to other train operators in order to enable such persons to provide services at the Stations to passengers travelling on their trains.</i> (i) <i>The provision of telephone information relating to railway passenger services within Great Britain to passengers.</i> (j) <i>The supervision, management and training of train crew of other train operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Franchise Operator.</i> (k) <i>The subleasing, hiring, licensing, lending, selling of any rolling stock or other assets of the Franchise Operator or the lending, hiring or contracting out of any employees of the Franchise Operator or the provision of any other services to Railtrack or any other train operator on an emergency basis—NOT USED</i> (l) <i>The licensing or permitting of any other person (including Affiliates of the Franchise Operator) to carry out any activity or business, in connection with the provision of the Franchise Services or otherwise, on any train operated by the Franchise Operator, 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).</i> (m) <i>Such other activity or business as may be reasonably necessary for the purpose of providing the other Franchise Services specified in this Schedule 2 or complying with this Franchise Agreement provided that it could not reasonably be carried out by or through an Affiliate of the Franchise Operator.</i> (mm) <i>The On-Train Wi-Fi Services.</i>
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	<p>(n) <i>The provision or operation of Charter Services, subject to the Train Mileage of such Charter Services not exceeding in any Reporting Period 2 per cent. of the scheduled Train Mileage of Passenger Services provided by the Franchise Operator in such Reporting Period.</i></p> <p>(o) <i>Any services or activity not falling within Parts 1 to 3 of this Schedule 2 or paragraphs(a) to (n) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding £50,000 per annum each and in aggregate no more than £250,000 per annum in each Franchise Operator Year, provided that in the second and each subsequent Franchise Operator Year these amounts will be increased by RPI where RPI is the quotient of the Retail Prices Index for the month falling two months before the relevant Franchise Operator Year divided by the Retail Prices Index for the month falling two months before the first Franchise Operator Year.</i></p> <p><u>The Franchise Operator may, and (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:</u></p> <p><u>(aa) In any Reporting Period, the subleasing, hiring or licensing of up to 15 per cent. of the rolling stock used by the Franchise Operator from time to time in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock is sub-let, hired or licensed and the aggregate period of time for which it is used in the provision of the Passenger Services).</u></p> <p><u>(bb) The lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:</u></p> <p><u>(i) up to one per cent. of the number of employees of the Franchise Operator during such Reporting Period (or, if greater, on the Franchise Commencement Date) for over 90 per cent. of their normal working hours during such Reporting Period (including on a full-time basis); and</u></p> <p><u>(ii) up to one per cent. of any other employees of the Franchise Operator during such Reporting Period (such percentage to be determined on the basis of the aggregate number of hours in such Reporting Period for which each employee is employed by the Franchise Operator (or, if greater, such aggregate number of hours in the first Reporting Period under this Franchise Agreement pro rata to the number of days in the relevant Reporting Period).</u></p>
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	<p><u>and the aggregate number of hours in such Reporting Period for which any such employee is so lent, seconded, hired or contracted out)</u></p> <p><u>(provided that no employee lent, seconded, hired or contracted out under any other paragraph of this Part 4 and, for the avoidance of doubt, no employee who is engaged in any other activity which is permitted under this Schedule 2 shall constitute an employee who is lent, seconded, hired or contracted out under this paragraph).</u></p> <p><u>(cc) The heavy maintenance of rolling stock and other railway vehicles on behalf of any other person at the following light maintenance depots:</u></p> <p><u>Aylesbury Maintenance Depot</u></p> <p><u>subject to the number of persons engaged or employed in such activity in relation to rolling stock and other railway vehicles which are not operated by the Franchise Operator not exceeding by more than 10 per cent. the numbers so engaged or employed on the Previous Franchise Commencement Date.</u></p> <p><u>(dd) The subleasing, hiring, licensing, lending, selling of any rolling stock or other assets of the Franchise Operator or the lending, hiring or contracting out of any employees of the Franchise Operator or the provision of any other services to Railtrack or any other train operator on an emergency basis.</u></p> <p><u>(ee) 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.</u></p>
<p>Schedule 3 – Passenger Services Requirement</p>	<p>N/A</p>
<p>Schedule 4 – Station Standards</p>	<p>N/A</p>
<p>Schedule 5 – Fares</p>	<p>N/A</p>

Schedule 6 – Franchise Payments	Schedule 6 shall be replaced with (together) the new Schedule 6.A attached at Appendix 1, the new Schedule 6.B attached at Appendix 2 and the new Schedule 6.C attached at Appendix 3.
Schedule 7 – Incentive Regime	Unless otherwise instructed by the Secretary of State, Schedule 7 shall not apply for the duration of the EMA.
Schedule 8 – Franchise Records	N/A
Schedule 9 – Change Assessment Procedures and Accounting	Unless otherwise instructed by the Secretary of State, Schedule 9 shall not apply for the duration of the EMA.
Schedule 10 – Financial Covenants	The amendments to Parts 1 and 2 are set out below.
Part 1 – Liquidity Maintenance	The text in paragraphs 2.1 and 2.5 shall be deleted and replaced with " NOT USED ".
Part 2 – Other Obligations	Paragraph 1 shall be amended by inserting the following new paragraph (vii): <i>"(vii) borrow any sum, or enter into any loan or lending agreement for the purpose of borrowing from any person;"</i>
Schedule 11 – Franchise Assets and Key Contracts	N/A
Schedule 12 – Handover Packages	N/A
Schedule 13 – Franchise Plan	N/A
Schedule 14 – Passenger Service Output Plans and Updates	N/A
Schedule 15 – Targets and Performance Reviews	The amendments to Part 2 are set out below.
Part 1 – Definitions	N/A

<p>Part 2 – Operation of Targets and Performance Review Provisions</p>	<p>Paragraph 2.2 shall be deleted and replaced with "NOT USED".</p> <p>Paragraph 3.2 shall be amended by deleting the word "or" at the end; and paragraph 3.1 shall be amended by adding the word "or" at the end.</p> <p>Paragraph 3.3 shall be deleted and replaced with "NOT USED".</p> <p>Paragraph 4.5 shall be deleted and replaced with "NOT USED".</p>
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Appendix 1 to Schedule 1
Schedule 6.A (Franchise Payments)

Schedule 6.A

FRANCHISE PAYMENTS

1. Definitions

For the purposes of this Schedule 6.A (Franchise Payments) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

"Accrued Claims"	has the meaning given in paragraph 5.7 of Schedule 6.A (Franchise Payments);
"Accrued Disallowable Costs"	has the meaning given in paragraph 5.7 of Schedule 6.A (Franchise Payments);
"Accrued Revenue Foregone"	has the meaning given in paragraph 5.7 of Schedule 6.A (Franchise Payments);
"Actual Capex"	means the actual Capital Expenditure of the Franchise Operator in the relevant period;
"Actual Costs"	means the actual Costs of the Franchise Operator in the relevant period;
"Actual Revenue"	means the actual Revenue of the Franchise in the relevant period;
"Aggregated Costs and Revenues Liabilities"	has the meaning given in paragraph 5.8 of Schedule 6.A (Franchise Payments);
"Base Cash Position"	means [REDACTED⁴] cash at hand (excluding the value of amounts on deposit as notified by the Franchise Operator to the Authority on 25 March 2020) or such other value as the Authority may determine in accordance with paragraph 9.8 of this Schedule 6.A (Franchise Payments);
"Budget"	means together: <ul style="list-style-type: none"> (a) the periodic cost and revenues budget; and (b) the periodic capex budget, as such budget may be updated from time to time in accordance with paragraph 4 of Schedule 6.A (Franchise Payments);
"Budgeted Capex"	means the Capital Expenditure budgeted to be incurred by the Franchise Operator in a Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 4 of this Schedule 6.A (Franchise Payments);

⁴ 29 May 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.

- “Budgeted Costs”** means the Costs budgeted to be incurred by the Franchise Operator in each Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 4 of this Schedule 6.A (Franchise Payments);
- “Capital Expenditure”** means costs of creating non-current or fixed assets which are not Costs (as defined in this Schedule 6.A) and which are properly accrued:
- (a) in relation to Reporting Period 13, during Reporting Period 13 and relating to the Franchise Operator's performance of the Franchise Agreement during Reporting Period 13; or
 - (b) in relation to the term of the EMA, during such term and relating to the Franchise Operator's Performance of the EMA;
- “Ceiling Cash Position”** means [REDACTED⁵] cash at hand (excluding the value of amounts on deposit as notified by the Franchise Operator to the Authority on 25 March 2020) or such other value as the Authority may determine in accordance with paragraph 9.8 of this Schedule 6.A (Franchise Payments);
- “Costs”** means costs and expenses properly accrued:
- (a) in relation to Reporting Period 13, during Reporting Period 13 and relating to the Franchise Operator's performance of the Franchise Agreement during Reporting Period 13; or
 - (b) in relation to the term of the EMA, during such term and relating to the Franchise Operator's Performance of the EMA;
- and stated in the Franchise Operator's profit and loss account but excluding:-
- Franchise Payments (which shall include (for the avoidance of doubt) the value of any Management Fee and Performance Payment);
- (c) corporation tax and deferred tax charge in the Franchise Operator's profit and loss account;
 - (d) any accounting transaction which does not require the Franchise Operator to make a cash payment including notional pensions accounting adjustments and the accounting impact of financial instrument revaluations, other than depreciation where that depreciation is not a Disallowable Cost;
 - (e) Capital Expenditure;
- provided that:
- (i) if the Franchise Operator's profit and loss account includes any cost(s) in respect of right of use assets treated in accordance with IFRS16 (the “**IFRS16 Cost**”), then for the purpose of this definition the amount for each IFRS16 Cost

⁵ 29 May 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.

shall be deemed to be replaced (for the purposes of this definition and all related consequential purposes under this Agreement) with the amount which would have applied if the cost had been treated on a cash basis, as such cost is incurred in accordance with the relevant contractual arrangements, rather than in accordance with IFRS16; and

- (ii) for the avoidance of doubt, any liability of the Franchise Operator to the Authority arising under or in connection with the Franchise Agreement prior to 1 March 2020 shall not be treated as or give rise to a cost or expense for the purpose of the Franchise Operator's profit and loss account;

"Disallowable Costs"	means any Costs or Capital Expenditure which are described within Appendix 1 (Disallowable Costs) to this Schedule 6.A (Franchise Payments);
"EMA Start Date"	means 1 April 2020;
"Emergency Working Capital Payment"	has the meaning given in paragraph 9.5 of this Schedule 6.A (Franchise Payments);
"Estimated Capital Expenditure"	means the Capital Expenditure estimated by the Authority using available resources as is practicable at the time of the estimation;
"Estimated Costs"	means the Costs reasonably estimated by the Authority using available resources as is practicable at the time of the estimation;
"Estimated Residual Components"	means the Residual Components estimated by the Authority using available resources as is practicable at the time of the estimation;
"Estimated Revenue"	means the Revenue reasonably determined by the Authority using available resources as is practicable at the time of the determination;
"Extended Performance Period"	means, in the event that the term of the EMA is extended in accordance with clause 3.3 of the EMA, each further period following the end of the preceding Performance Period, comprising six (6) additional Reporting Periods (or less in the event that the EMA is terminated prior to the expiry of the relevant Extended EMA Performance Period);
"Final Reviewed Accounts"	means the audited accounts provided pursuant to paragraph 16 of Schedule 6.A (Franchise Payments);
"Floor Cash Position"	means [REDACTED ⁶] cash at hand (excluding the value of amounts on deposit as notified by the Franchise Operator to the Authority on 25 March 2020) or such other value as the Authority may determine in accordance with paragraph 9.8 of this Schedule 6.A (Franchise Payments);
"Forecast Closing Cash Position"	means, with respect to a Reporting Period, the Franchise Operator's forecast working capital position (excluding the aggregate of the Periodic Franchise Payment and Periodic Budgeted Capex Payment made in the following Reporting Period and excluding the value of

⁶ 29 May 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.

amounts on deposit as notified by the Franchise Operator to the Authority on 25 March 2020) as at the last day of that Reporting Period and taking into account the Franchise Operator's latest Management Accounts;

"Franchise Payment Component"

means:

- (a) each of the components of "FP" as described in paragraph 2.1 of this Schedule 6.A (Franchise Payments); and
- (b) any component or element, described in the relevant provisions of this Schedule 6.A (Franchise Payments) and Schedule 6.B (Performance Payment), as the case may be, which is used in determining or calculating the value of those components described in paragraph (a) above;

"Good and Efficient Operator"

means in the context of all other relevant provisions of this Agreement, a notional train operator, having the same commercial, regulatory and operational arrangements as the Franchise Operator and being subject to the same operational circumstances (which, for the avoidance of doubt, shall recognise the extraordinary impact of COVID-19, the existence of the EMA and the requirement for operators to act in the national interest in response to COVID-19), which is a party to a franchise agreement in equivalent terms to the Franchise Agreement, with performance targets and standards equivalent to those set out in Schedule 6.B (Performance Payment) of the Franchise Agreement, which complies with its obligations under such franchise 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 franchise;

"Initial Budget"

means the Budget as at the EMA Start Date;

"Management Fee and Performance Payment" or "MFPP"

means the Franchise Payment Component calculated in accordance with paragraph 11 of this Schedule 6.A (Franchise Payments);

"Payment Date"

has the meaning given in paragraph 3.3 of this Schedule 6.A (Franchise Payments);

"Performance Period"

means each of:

- (a) the period commencing on the EMA Start Date and ending at 1.59 a.m. on 20 September 2020, or such earlier date of termination of the EMA; and
- (b) where the Term is extended in accordance with clause 3.3 of the EMA, each Extended Performance Period;

"Periodic Adjustment"

has the meaning given in paragraph 6.2 of Schedule 6.A (Franchise Payments);

"Periodic Budgeted Capex Payment" or "PBCP"

means the Franchise Payment Component calculated in accordance with paragraph 2.1 of this Schedule 6.A (Franchise Payments);

"Periodic Franchise Payment" or "PFP"	means the Franchise Payment Component calculated in accordance with paragraph 2.1 of this Schedule 6.A (Franchise Payments);
"Periodic Finance Review Meeting"	has the meaning given in paragraph 5.1 of Schedule 6.A (Franchise Payments);
"Reporting Period Budget Forecast Review Meeting"	has the meaning given in paragraph 4.1 of Schedule 6.A (Franchise Payments);
"Reporting Period 13"	means 1 March 2020 to 31 March 2020 (inclusive);
"Residual Components"	<p>means the net value of the components of the Franchise Payments, and of all other similar and equivalent payments to be made (including, but not limited to, SCPF and FIAP on a pro-rated per-Reporting Period basis), under Schedule 6 which:</p> <ul style="list-style-type: none"> (a) relate to any periods prior to Reporting Period 13; and (b) become payable during the relevant period, <p>For the purposes of this Schedule 6.A (Franchise Payments), such net value shall be:</p> <ul style="list-style-type: none"> (i) if payable by the Authority to the Franchise Operator, a positive number; or (ii) if payable by the Franchise Operator to the Authority, a negative number;
"Revenue"	<p>means the gross total revenue of the Franchise Operator received or receivable and properly accrued:</p> <ul style="list-style-type: none"> (a) in relation to Reporting Period 13, during Reporting Period 13 and relating to the Franchise Operator's performance of the Franchise Agreement during Reporting Period 13; or (b) in relation to the term of the EMA, during such term and relating to the Franchise Operator's performance of the EMA; <p>as stated in the Franchise Operator's profit and loss account but excluding:</p> <ul style="list-style-type: none"> (i) Franchise Payments (which shall include (for the avoidance of doubt) the value of any Performance Payment and/or Management Fees (if applicable));and (ii) any accounting transaction included in the Management Accounts, Annual Management Accounts or Annual Audited Accounts but which does not result in the Franchise Operator receiving a cash payment including notional pensions accounting adjustments and the accounting impact of financial instruments revaluations;
"Revenue Foregone"	means an amount equal to the amount of revenue or other value which was not received or receivable by the Franchise Operator including:

- (a) the:
 - (i) debts or other receivables waived, not collected or written off; and/or
 - (ii) value of any other asset not realised in whole or in part,

but which would have been receivable and received or otherwise realised by the Franchise Operator if it had acted as a Good and Efficient Operator; and
- (b) subject always to paragraph 3.8 (No Double Recovery) of Schedule 6.A (Franchise Payments), the amount by which the Purchase Price (as defined in Clause 2.1 of the Supplemental Agreement) receivable by the Franchise Operator is lower than it would have been but for the Franchise Operator:
 - (i) incurring Disallowable Costs; and/or
 - (ii) otherwise acting other than as Good and Efficient Operator;

save where, in respect of both (a) and (b) above, such revenue is not received or receivable as a result of the Franchise Operator acting in accordance with the instructions of the Authority;

“Reviewed 2019/20 Accounts”

has the meaning given to it in paragraph (g) of Appendix 2 to this Schedule 6.A (Franchise Payments);

“SoS Claim”

means all losses, liabilities, costs, damages and expenses that the Authority does or will incur or suffer (including any such losses, liabilities, costs, damages and expenses that are unliquidated or which are contingent):-

- (a) as a consequence of any breach, negligence or other default of the Franchise Operator under or in connection with the Franchise Agreement and/or any agreement ancillary to this Agreement, including the Supplemental Agreement, and/or
- (b) in respect of any matter for which the Franchise Operator is to indemnify the Authority pursuant to this Agreement or any agreement ancillary to this Agreement, including the Supplemental Agreement

“Supporting Materials”

means any materials explaining or supporting the Budget which have been produced by the Franchise Operator and serve as a Supporting Materials;

“Working Capital Payment”

means the Franchise Payment Component calculated in accordance with paragraph 9.3 of this Schedule 6.A (Franchise Payments); and

“Working Capital Repayment”

means the Franchise Payment Component calculated in accordance with paragraph 10.2 of this Schedule 6.A (Franchise Payments).

2. **Franchise Payments**

2.1A The Parties acknowledge and agree that the provisions of Schedule 6 of the Franchise Agreement shall be suspended during the term of the EMA. Any Residual Components relating to Reporting Periods prior to the term of the EMA shall be dealt with in accordance with paragraph 2.1 and Appendix 2 of this Schedule 6.A (Franchise Payments).

2.1 The Franchise Payment for any Reporting Period during the term of the EMA shall be an amount equal to:

£FP =	$PFP + PBCP + PADJ + WCP - WCR + FADJ + MFPP - FWCA + RCP$
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where:

PFP (Periodic Franchise Payment)	means an amount equal to: $PFP_n = BC_n - ER_{n-1}$ Where:	
	BC_n	means the Budgeted Costs for the current Reporting Period (if any). BC_n may only be a positive number.
	ER_{n-1}	means the Estimated Revenue for Reporting Period _(n-1) (if any) provided such Reporting Period occurs after the EMA Start Date. ER_{n-1} may only be a positive number.
	PFP may be a positive or negative number.	
PBCP (Periodic Budgeted Capex Payment)	means an amount equal to the Budgeted Capex for the current Reporting Period (if any). PBCP may only be a positive number.	
PADJ	means any Periodic Adjustment, determined in accordance with paragraph 6 of Schedule 6.A (Franchise Payments), to be made on that Reporting Period's Payment Date. PADJ may be a positive or negative number.	
WCP	means any Working Capital Payment to be made on that Reporting Period's Payment Date. WCP may only be a positive number.	
WCR	means any Working Capital Repayment to be made on that Reporting Period's Payment Date. WCR may only be a positive number.	
FADJ	means any Final Adjustment, determined in accordance with paragraph 7 of Schedule 6.A (Franchise Payments), to be made on that Reporting Period's Payment Date. FADJ may be a positive or negative number.	
MFPP	means the Management Fee and Performance Payment for the term of the EMA (and, in the case of the Management Fee, for Reporting Period 13), determined in accordance with paragraph 11.1 of Schedule 6.A (Franchise Payments) and to be paid on the first Payment Date following the determination of the Management Fee and Performance Payment in accordance with Paragraph 11 of Schedule 6.A (Franchise Payments) which	

	the Parties acknowledge will be after the expiry of the term of the EMA. Subject to paragraph 11.2, MFPP may only be a positive number.
FWCA	means the Final Working Capital Adjustment, determined in accordance with paragraph 10.3 of Schedule 6.A (Franchise Payments), to be made on that Reporting Period’s Payment Date. FWCA may be a positive or negative number.
RCP	means an amount equal to the Residual Components for the preceding Reporting Period, other than any amounts which are payable under Appendix 2 to this Schedule 6.A (Franchise Payments) relating to Residual Components for Reporting Period 13. RCP may be a positive or negative number.

2.2 Not Used.

2.3 Not Used.

2.4 The Parties agree that:

- (a) where **£FP is a positive number**, the Authority shall pay that amount to the Franchise Operator on the Payment Date for that Reporting Period;
- (b) where **£FP is a negative number**, the Franchise Operator shall pay the corresponding positive amount to the Authority on the Payment Date for that Reporting Period.

3. Payment of Franchise Payments

3.1 The Authority shall notify the Franchise Operator, no less than seven (7) days prior to the start of each Reporting Period (or, in the case of the first Reporting Period following the EMA Start Date, as soon as reasonably practicable), of the amount of the Franchise Payment payable in respect of that Reporting Period.

3.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.

3.3 The **Payment Date** for a Reporting Period shall be the first Weekday of that Reporting Period.

3.4 Each Franchise Payment shall be payable by the Franchise Operator or, as the case may be, the Authority in the amount notified by the Authority in accordance with paragraph 3.1 on the Payment Date of the Reporting Period to which it relates.

3.5 Each Franchise Payment shall be made:

- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
- (b) so that cleared funds are received in that account on or before the due date for payment.

Interest

3.6 If:

- (a) the Franchise Operator fails to pay any amount to the Authority on its due date; or

- (b) the Authority fails to pay to the Franchise Operator the Franchise Payment on its due date,

that Party which has failed to pay 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.

Disputes under Schedule 6

- 3.7 If either the Franchise Operator or the Authority disputes the amount of a Franchise Payment, the dispute shall, unless the Franchise Operator and the Authority otherwise agree, be resolved in accordance with the provisions of clause 45 (Governing Law) of the Franchise Agreement. Any such dispute shall not affect the obligation of either party to pay a Franchise Payment notified in accordance with this Schedule 6.A.

No Double Recovery

- 3.8 Neither Party shall be entitled to recover (by way of an adjustment to Franchise Payments or otherwise) more than once in respect of the same amount. In particular, no amount shall be categorised as both Capital Expenditure and as a Cost for the purpose of this Schedule 6.A, or inconsistently with the accounting treatment assumed for the same capital expenditure in calculating the Franchise Payments under the Franchise Agreement prior to and after the implementation of the EMA.
- 3.8A In the event that the Franchise Operator is successful in obtaining any UK Government support that is offered in relation to the impact of COVID-19, this shall be taken into account in relation to the relevant payment and adjustments in this Schedule 6.A such that the Franchise Operator does not benefit from double recovery or double counting.

Force Majeure and Payments

- 3.9 Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue to be calculated in accordance with this Schedule 6.A (Franchise Payments) and the payment of such Franchise Payments shall continue unaffected.

4. Revisions to the Budget

- 4.1 Without limiting the requirement for any other meeting, the Parties shall, subject to paragraph 5.10, hold a forecast Budget review meeting in each Reporting Period (a "**Reporting Period Budget Forecast Review Meeting**") at a time and location notified to the Franchise Operator by the Authority following provision of the information referred to in paragraph 4.2. The purpose of the meeting shall be to review and seek to agree:
- (a) revisions (if any) to the then current Budget for the remaining Reporting Periods of the Budget;
 - (b) the content of any necessary or desirable corresponding addendum to the Supporting Materials; and
 - (c) any new contracts which the Franchise Operator proposes to enter into with an Affiliate.

The Franchise Operator shall ensure that the representatives of the Franchise Operator at the Reporting Period Budget Forecast Review Meeting shall include the Finance Director of the Franchise Operator or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Authority.

- 4.2 The Franchise Operator shall, prior to the date of each Reporting Period Budget Forecast Review Meeting have provided to the Authority the relevant information required pursuant to paragraph 9.2 of Schedule 6.C in relation to the previous Reporting Period together with

- a draft periodic budget prepared using the cost and revenue categories required by the Authority from time to time, updated to reflect Actual Costs and Actual Revenues as reflected in the latest Management Accounts and revised Budgeted Costs for the remainder of the term of the EMA, in accordance with the timescales set out therein, and shall provide the Authority with all further information as the Authority may request from time to time for the purposes of the operation of this paragraph 4, within such time as the Authority may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which the Authority may make is not limited).
- 4.3 If the Parties fail to agree the matters referred to in paragraphs 4.1(a) to 4.1(c) the relevant Reporting Period Budget Forecast Review Meeting, the Authority shall reasonably determine such matters.
- 4.4 Such revisions to the Budget and addenda to the Supporting Materials as agreed or determined shall take effect from the first day of the Reporting Period immediately following the date on which the Reporting Period Budget Forecast Review Meeting (at which such matters were discussed) took place provided that, if such revisions or addenda are not agreed by the first day of that Reporting Period, the relevant revisions and addenda shall take effect from the first day of the Reporting Period which falls at least 10 Weekdays after those revisions and addenda are agreed or determined.
- 4.5 Each revision to the Budget and/or addendum to the Supporting Materials 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 definitions of Costs, Capital Expenditure and Revenue or which represent Disallowable Costs or Revenue Foregone or liabilities in respect of SoS Claims (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 Authority to take account of changes to GAAP in the United Kingdom); and
 - (d) otherwise facilitate easy comparison with the definitions of Costs, Capital Expenditure, Revenue, Disallowable Costs and Revenue Foregone and with the information reported in the Management Accounts, Annual Management Accounts and the Audited Annual Accounts.
- 4.6 Each time it is agreed or determined that the Budget is to be revised and/or an addendum is to be added to the Supporting Materials, the Authority shall be entitled to:-
- (a) make the agreed or determined revisions to the Budget and/or Supporting Materials himself (or procure this is done on his behalf) and provide copies of those revised documents to the Franchise Operator; or
 - (b) require the Franchise Operator to provide the agreed or determined revisions to the Budget and/or Supporting Materials for approval by the Authority, which the Franchise Operator shall do and provide revised versions to the Authority within such time as the Authority shall specify for this purpose.
- 4.7 The Franchise Operator shall not enter into any contract with an Affiliate unless the Authority has, in his absolute discretion first consented to the terms of such contract and to it being entered into on those terms, whether at or following a Reporting Period Budget

Forecast Review Meeting (where such contract forms part of the agenda for that meeting) or otherwise.

- 4.8 For the purpose of this paragraph 4, the Authority shall be entitled to consider any information provided to the Authority by the Franchise Operator and any other sources of information which the Authority considers to be relevant and the Authority shall be entitled to request such information from the Franchise Operator as the Authority requires in connection with the matters referred to in this paragraph 4. Without prejudice to the generality of the foregoing, in considering any revisions to the Budget, regard shall be had to the definitions of Costs, Revenue, Capital Expenditure, Good and Efficient Operator, Disallowable Costs and Revenue Foregone, so as to ensure that the revisions to the Budget are consistent with those definitions.
- 4.9 Subject to the Authority's rights set out in paragraph 4.7, 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 and any addendum to the Supporting Materials.

5. **Review of Franchise Operator's performance against Budget**

Finance Review Meeting

- 5.1 Without limiting the requirement for any other meeting, the Parties shall, subject to paragraph 5.10, hold a finance review meeting in every Reporting Period ("**Periodic Finance Review Meeting**") at such time(s) and location(s) notified to the Franchise Operator by the Authority following provision of the information referred to in paragraph 5.2 and:
- (a) the purpose of the Periodic Finance Review Meeting shall be to review the financial performance of the Franchise Operator. This shall include:
 - (i) a review and discussion of variances arising in the preceding Reporting Period between Actual Costs, Actual Capex and Actual Revenue and Budgeted Costs, Budgeted Capex and Estimated Revenue respectively and confirmation of the value of the Periodic Adjustment to be applied to the Franchise Payment to be paid in the Reporting Period following the Reporting Period in which the Periodic Finance Review Meeting is taking place;
 - (ii) a review and discussion regarding any Actual Costs with respect to payments made by the Franchise Operator under contracts with Affiliates which exceed either the Budgeted Costs stated in the then current Budget or the level of payments made under the contracts with Affiliates for equivalent periods prior to the EMA Start Date;
 - (iii) a review of fees and payments (including bonuses) actually paid by the Franchise Operator to its directors and officers during the preceding Reporting Period as against the Budgeted Costs for such fees and payments as stated in the then current Budget;
 - (iv) a review and discussion of the Franchise Operator's management of its working capital and the Franchise Operator's Forecast Closing Cash Position for that Reporting Period in which the Periodic Finance Review Meeting is taking place and any Working Capital Payment or Working Capital Repayment to be applied to the Franchise Payment to be paid in the Reporting Period following the Reporting Period in which the Periodic Finance Review Meeting is taking place;

- (v) actions to be taken in respect of the Franchise Operator's financial performance;
 - (vi) identification of any potential Disallowable Costs, Revenue Foregone and SoS Claims that may have been incurred within the preceding or current Reporting Period; and
 - (vii) confirmation and valuation of any Disallowable Costs, Revenue Foregone and SoS Claims (and/or in accordance with paragraph 5.9, relevant Initial SoS Claim Amounts, as applicable) which have been identified pursuant to (vi) above in previous Report Period Finance Review Meetings.
- (b) the Franchise Operator shall ensure that the representatives of the Franchise Operator at the meeting shall include the Finance Director of the Franchise Operator or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Authority; and
 - (c) the Authority shall ensure that the representatives of the Authority shall include a senior civil servant where the confirmation and valuation of any Disallowable Costs, Revenue Foregone and/or SoS Claims (and/or in accordance with paragraph 5.9, relevant Initial SoS Claim Amounts, as applicable) are to be considered as part of any Reporting Period Finance Review Meeting,

and, for the avoidance of doubt, the purpose of the Periodic Finance Review Meeting held in the first Reporting Period of the term of the EMA shall be to discuss the financial performance of the Franchise Operator during Reporting Period 13.

- 5.2 The Franchise Operator shall, prior to the date of each Periodic Financial Review Meeting have provided to the Authority the relevant information required pursuant to paragraph 9.2 of Schedule 6.C in relation to the previous Reporting Period together with a statement of the Franchise Operator's Forecast Closing Cash Position applicable to that Reporting Period, in accordance with the timescales set out therein, and shall provide the Authority with all further information as the Authority may request from time to time for the purposes of the operation of paragraph 5.1, within such time as the Authority may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which the Authority may make is not limited).
- 5.3 NOT USED.
- 5.4 The Authority shall be entitled to consider any information provided to him by the Franchise Operator and any other sources of information which the Authority considers to be relevant and the Authority shall be entitled to request such information from the Franchise Operator as the Authority requires for the purposes of the operation of this paragraph 5. The Franchise Operator shall provide the information within such time as the Authority may reasonably specify for the purpose (and this paragraph shall continue to apply such that the number of requests which the Authority may make is not limited).
- 5.4A If, within 10 Weekdays following the relevant Reporting Period Finance Review Meeting:
- (a) the Parties have failed to agree the matters referred to in paragraph 5.1(a)(vii); and
 - (b) such matters either individually or in the aggregate exceed **[REDACTED⁷]**; then
- each Party will respectively procure that such matter or matters (as the case may be) will be escalated to any senior civil servant within the Department for Transport's Rail Group

⁷ 29 May 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.

(excluding the Passenger Services Group) on behalf of the Authority and any statutory director of any Affiliate of the Franchise Operator on behalf of the Franchise Operator. Those representatives will meet at the earliest convenient time and in any event within 20 Weekdays of the date of the relevant Reporting Period Finance Review Meeting and negotiate in good faith and attempt to agree the relevant matters.

- 5.5 If:
- (a) the Parties fail to agree the matters referred to in paragraph 5.1(a) at the relevant Reporting Period Finance Review Meeting, in circumstances where paragraph 5.4A does not apply;
 - (b) the representatives of the Parties fail to agree the matters referred to in paragraph 5.1(a)(vii) within 10 Weekdays of first meeting to agree such matters in accordance with paragraph 5.4A, in circumstances where that paragraph applies; or
 - (c) the Franchise Operator fails to provide the relevant information required pursuant to Schedule 6.C (Management Information), in accordance with the timescales set out therein, or otherwise in accordance with this paragraph 5,

the Authority shall (without prejudice to his other rights) be entitled (but not obliged) to determine the relevant matters in accordance with this paragraph 5 and all other applicable provisions of this Schedule 6.A but by reference to the relevant information available to the Authority at the time of such determination.

Accrued Disallowable Costs, Accrued Revenue Foregone and Accrued SoS Claims

- 5.6 Without prejudice to paragraphs 5.4 to 5.5, if subsequent to any Reporting Period Finance Review Meeting the Authority later identifies any item (applicable to that period to which the relevant Reporting Period Finance Review Meeting relates) which the Authority considers is or may be a Disallowable Cost or an instance of Revenue Foregone or any SoS Claims (whether following a review of the Franchise Operator's Annual Audited Accounts or Final Reviewed Accounts or otherwise) the Authority shall within 28 days of identifying such item be entitled to:-
- (a) notify the Franchise Operator in writing, identifying the item concerned; and
 - (b) request further information from the Franchise Operator in connection with the item for the purposes of the operation of this paragraph 5.4 and paragraphs 5.6A to 5.6C. The Franchise Operator shall provide the information within such time as the Authority may reasonably specify for the purpose.
- 5.6A The parties shall seek to agree the value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 5.9, relevant Initial SoS Claim Amounts, as applicable) identified by the Authority pursuant to paragraph 5.6 within 20 Weekdays of the later of the Authority's notice referred to in paragraph 5.6(a) and the date specified by the Authority for the delivery of further information in accordance with paragraph 5.6(b) (the "**Escalation Trigger Date**").
- 5.6B If:
- (a) the parties fail to agree the matters referred to in paragraph 5.6A; and

(b) such matters either individually or in the aggregate exceed [REDACTED⁸]; then each Party will respectively procure that such matter or matters (as the case may be) will be escalated to any senior civil servant within the Department for Transport's Rail Group (excluding the Passenger Services Group) on behalf of the Authority and any statutory director of any Affiliate of the Franchise Operator on behalf of the Franchise Operator. Those representatives will meet at the earliest convenient time and in any event within 20 Weekdays of the Escalation Trigger Date and negotiate in good faith and attempt to agree the relevant matters.

5.6C If:

- (a) the Parties fail to agree the matters referred to in paragraph 5.6A in circumstances where paragraph 5.6B does not apply;
- (b) the representatives of the Parties fail to agree the matters referred to in paragraph 5.6A within 10 Weekdays of first meeting to agree such matters in accordance with paragraph 5.6B, in circumstances where that paragraph applies; or
- (c) the Franchise Operator fails to provide the relevant information required pursuant to paragraph 5.6(b) in accordance with the specified timescales, then

the Authority shall reasonably determine the value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 5.9, relevant Initial SoS Claim Amounts, as applicable).

5.7 The value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 5.9, relevant Initial SoS Claim Amounts as applicable) as agreed or determined whether pursuant to paragraph 5.4A, paragraph 5.5, paragraph 5.6A, paragraph 5.6B, paragraph 5.6C or paragraph 5.9 shall be referred to as "**Accrued Disallowable Costs**" and "**Accrued Revenue Foregone**" and "**Accrued Claims**" (as applicable).

5.8 Subject to paragraph 5.8A, the value of any Accrued Disallowable Costs and/or Accrued Revenue Foregone and/or Accrued Claims on each occasion accumulated pursuant to paragraph 5.7 shall be aggregated with the total of all Disallowable Costs, Revenue Foregone and SoS Claims which have been previously accumulated, such aggregated value from time to time being the "**Aggregated Costs and Revenues Liabilities**".

5.8A The value of the Aggregated Costs and Revenues Liabilities shall be limited to:

- (a) in the event that there has been no extension to the term of EMA, the sum of (i) maximum potential Management Fee payable for the term of the EMA (which, for the avoidance of doubt, shall take account of any early expiry or termination of the EMA) calculated pursuant to paragraph 11.1; and (ii) the sum of all of the Performance Payments for the term of the EMA calculated in accordance with Schedule 6.B (Performance Payment); or
- (b) in the event that there has been an extension to the term of the EMA, the sum of (i) the maximum potential Management Fee payable for the term of the EMA (which, for the avoidance of doubt, shall take account of any early expiry or termination of the EMA) calculated pursuant to paragraph 11.1; and (ii) the sum of all of the Performance Payments for the term of the EMA calculated in accordance with Schedule 6.B (Performance Payment).

⁸ 29 May 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.

5.9 To the extent that any SoS Claim is a contingent or unliquidated claim (a “**Contingent SoS Claim**”), the parties shall, pursuant to paragraph 5.4A, paragraph 5.6A or paragraph 5.6B (as applicable) seek to agree (or in the absence of agreement, the Authority may for the purposes of paragraph 5.5 and shall for the purposes of paragraph 5.6C, reasonably determine) an initial value for such Contingent SoS Claim (the “**Initial SoS Claim Amount**”) and the Initial SoS Claim Amount shall be deemed to be an Accrued Claim for the purposes of paragraph 5.7. If the value of Contingent SoS Claim once fully liquidated (that is, being agreed or determined through dispute resolution) is:

(a) in excess of the Initial SoS Claim Amount the Authority shall be entitled to claim such amount in excess of the Initial SoS Claim Amount from the Franchise Operator:

(i) as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of MFPP, where Franchise Payments in favour of the Authority remain to be paid after the date on which the Contingent SoS Claim has become fully liquidated; and/or

(ii) as an adjustment to the Franchise Payment payable after the expiry of the term of the EMA;

(iii) as a debt from the Franchise Operator which the Authority shall be entitled to claim in accordance with the Funding Deed or from the Performance Bond on expiry or termination of this Franchise Agreement; or

(b) is less than the Initial SoS Claim Amount the Authority shall repay to the Franchise Operator the difference between the actual liquidated value of the relevant SoS Claim and the Initial SoS Claim Amount either:

(i) as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of MFPP, where Franchise Payments remain to be paid after the date on which the Contingent SoS Claim has become fully liquidated; or

(ii) where no Franchise Payment is payable after the date on which the Contingent SoS Claim becomes fully liquidated as a payment to the Franchise Operator.

5.10 The Authority shall have the discretion (acting reasonably) to decrease (and subsequently increase) the required frequency of the Reporting Period Budget Forecast Review Meetings and/or the Periodic Finance Review Meetings, provided they shall be no more frequent than once a Reporting Period.

5.11 Any Reporting Period Budget Forecast Review Meeting or Period Finance Review Meeting (or part thereof) may be held remotely with the prior agreement of the Parties.

6. Periodic Adjustments

6.1 The value of PADJ for the current Reporting Period (n) shall be equal to the following

PADJ for Reporting Period(n) =	$(ACRP_{n-2} - BCRP_{n-2}) + (ACAP_{n-2} - BCAP_{n-2}) - (ARRP_{n-2} - ERRP_{n-2})$
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Where:

ACRP_{n-2}	means the total Actual Costs in the second preceding Reporting Period (n-2) as set out in the Management
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	Accounts for that preceding Reporting Period, provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. $ACRP_{n-2}$ may only be a positive number
BCRP_{n-2}	means the total Budgeted Costs in respect of the second preceding Reporting Period (n-2) based on the version of the Budget which applied for the purpose of the calculation of the Franchise Payment for that preceding Reporting Period (n-2), provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. $BCRP_{n-2}$ may only be a positive number.
ACAP_{n-2}	means the total Actual Capex for the second preceding Reporting Period (n-2), provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. $ACAP_{n-2}$ may only be a positive number
BCAP_{n-2}	means the Budgeted Capex in respect of the second preceding Reporting Period (based on the version of the Budget which applied for the purpose of the calculation of the Franchise Payment for that preceding Reporting Period (n-2)), provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. $BCAP_{n-2}$ may only be a positive number
ARRP_{n-2}	means the total Actual Revenue for the second preceding Reporting Period (n-2), provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. $ARRP$ may only be a positive number.
ERRP_{n-2}	means the total Estimated Revenue in respect of the second preceding Reporting Period (n-2), provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. $ERRP$ may only be a positive number.

6.2 The value of PADJ in respect of a Reporting Period shall be made as an adjustment to the next Franchise Payment payable after that calculation of PADJ is determined (“**Periodic Adjustment**”). For the avoidance of doubt a Periodic Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3.6 of this Schedule 6.A.

6.3 The Authority agrees that, provided the Management Accounts (in a form consistent with the obligations of the Franchise Operator under Schedule 6.C (Management Information)) are received from the Franchise Operator within the timescale specified in paragraph 9.2(a) of Schedule 6.C (Management Information), the Authority will provide the Franchise Operator with the value of PADJ in sufficient time for the Periodic Adjustment to be included in the Franchise Payment for the Reporting Period immediately following the Reporting Period to which the Periodic Adjustment relates.

6.4 If the Franchise Operator fails to provide the Management Accounts in accordance with its obligations under Schedule 6.C (Management Information), the Authority shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of any Periodic Adjustment in accordance with this paragraph 6 but by reference to the relevant information available to the Authority at the time of such determination.

7. **Final Adjustments**

7.1 FADJ shall be equal to the following:

FADJ for the EMA =	$(TotalAC - TotalAR) + TotalACAP - (TotalPFP + TotalPBCP) - TotalPADJ$
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Where:

TotalAC	means the total Actual Costs of the Franchise Operator for the term of the EMA as set out in the Final Reviewed Accounts for the term of the EMA. TotalAC may only be a positive number.
TotalAR	means the total Actual Revenue for the term of the EMA as set out in the Final Reviewed Accounts for the term of the EMA. TotalAR may only be a positive number.
TotalACAP	means the total Actual Capex for the term of the EMA as set out in the Final Reviewed Accounts for the term of the EMA. TotalACAP may only be a positive number.
TotalPFP	means the aggregate value of all of the Periodic Franchise Payments paid to the Franchise Operator during the term of the EMA. TotalPFP may be positive or negative.
TotalPBCP	means the aggregate value of all of the Periodic Budgeted Capex Payments paid to the Franchise Operator during the term of the EMA. TotalPBCP may only be a positive number.
TotalPADJ	means the total net value of PADJ paid in respect of each Reporting Period during the term of the EMA. TotalPADJ may be positive or negative.

7.2 The value of FADJ in respect of the term of the EMA (whether negative or positive) shall be made as an adjustment to the next Franchise Payment payable after the calculation of FADJ is determined (the "**Final Adjustment**") and the Parties acknowledge this will be payable as part of the Franchise Payments following the completion of the term of the EMA. For the avoidance of doubt the Final Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3.6 of this Schedule 6.A.

7.3 If the Franchise Operator fails to provide the information required by paragraph 9.4(b) and 9.4(c) of Schedule 6.C (Management Information) including Annual Audited Accounts, Final Reviewed Accounts and a reconciliation to the Management Accounts by the date specified in that paragraph the Authority shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of any Final Adjustment in accordance with this paragraph 7 but by reference to the relevant information available to the Authority at the time of such determination, including any information contained in the latest cumulative, year to date Management Accounts or in the Annual Management Accounts.

8. **NOT USED**

9. **Working Capital Payments**

9.1 A Working Capital Payment shall become payable to the Franchise Operator as part of a Reporting Period's Franchise Payment where the Forecast Closing Cash Position for the preceding Reporting Period is less than the Floor Cash Position. The value of the Working Capital Payment shall be calculated in accordance with paragraph 9.3.

9.2 The Franchise Operator shall provide the Authority with a statement of the Franchise Operator's Forecast Closing Cash Position prior to each Periodic Finance Review Meeting in accordance with paragraph 5.2.

9.3 The Working Capital Payment, if payable in any Reporting Period, shall be equal to the following:

WCP =	BCP – FCCP
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Where:

BCP	the Base Cash Position.
FCCP	the Forecast Closing Cash Position applicable to the preceding Reporting Period.

9.4 If during a Reporting Period, the Franchise Operator becomes aware that in its reasonable opinion prior to the payment of the Franchise Payment in respect of the following Reporting Period the Franchise Operator’s available Available Assets will be insufficient to meets its liabilities that will fall due prior to the payment of the Franchise Payment applicable to that Reporting Period (the “**Working Capital Shortfall**”), the Franchise Operator shall immediately:

- (a) notify the Authority that a Working Capital Shortfall is likely to occur during that Reporting Period; and
- (b) provide in or with that notice supporting information (including relevant accounts and calculations) evidencing the likely Working Capital Shortfall and the amount of additional working capital that the Franchise Operator considers it will require to ensure that the Working Capital Shortfall is remedied; and
- (c) provide such further supporting information as the Authority shall reasonably require.

9.5 The Parties shall agree or where the parties fail to agree, the Authority shall reasonably determine the amount required to remedy the Working Capital Shortfall (an “**Emergency Working Capital Payment**”) and when such Emergency Working Capital Payments are required to be paid for that purpose.

9.6 The Authority shall pay to the Franchise Operator any Emergency Working Capital Payment in accordance with the timescales agreed or determined in accordance with paragraph 9.5.

9.7 If the Franchise Operator fails to provide any information required by this paragraph 9, or any information in accordance with its obligations in Schedule 6.C (Management Information) to enable the Authority to calculate the amount of any Working Capital Payment or Emergency Working Capital Payment the Authority shall (without prejudice to the Authority’s other rights) be entitled (but not obliged) to determine the amount of WCP in accordance with this paragraph 9 but by reference to the relevant information available to the Authority at the time of such determination.

9.8 The Authority shall at any time on reasonable prior notice to the Franchise Operator be entitled to adjust the value of the Ceiling Cash Position, the Base Cash Position and/or the Floor Cash Position provided that the Authority shall have first consulted the Franchise Operator as to any such adjustments as the Authority is considering making.

10. Working Capital Repayment

10.1 Subject to paragraph 10.4, a Working Capital Repayment shall become payable by the Franchise Operator as part of a Reporting Period’s Franchise Payment where the Franchise Operator’s Forecast Closing Cash Position in the preceding Reporting Period is greater than the Ceiling Cash Position. The value of the Working Capital Repayment shall be calculated in accordance with paragraph 10.2.

10.2 A Working Capital Repayment, if payable in any Reporting Period, shall be equal to the following:

WCR =	FCCP – BCP
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Where:

FCCP	the Forecast Closing Cash Position applicable to the preceding Reporting Period.
BCP	the Base Cash Position.

Final Working Capital Adjustment

10.3 The value of FWCA shall equal:

FWCA =	TotalWCP – TotalWCR
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Where:

TotalWCP	the aggregate of all Working Capital Payments and all Emergency Working Capital Payments paid to the Franchise Operator during the term of the EMA
TotalWCR	the aggregate of all Working Capital Repayments paid by the Franchise Operator during the term of the EMA

10.4 The value of FWCA shall be payable as an adjustment to the Franchise Payment payable in the Reporting Period immediately following the expiry of the term of the EMA. FWCA may be positive or negative.

10.5 If the Franchise Operator fails to provide any information in accordance with its obligations in Schedule 6.C (Management Information) to enable the Authority to calculate any Working Capital Repayment or the Final Working Capital Adjustment the Authority shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of WCR or FWCA (as the case may be) in accordance with this paragraph 10 but by reference to the relevant information available to the Authority at the time of such determination.

11. Management Fee and Performance Payment

11.1 Subject to paragraphs 11.2 to 11.5 (inclusive), the value of MFPP shall equal:

MFPP =	MF+PP – PPADC
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Where:

MF	means the Management Fee for the term of the EMA and Reporting Period 13 which shall be [REDACTED ⁹] (exclusive of VAT) multiplied by the sum of the number of Reporting Periods in the term of the EMA and one.
PP	means the sum of all of the Performance Payments for the term of the EMA calculated in accordance with Schedule 6.B (Performance Payment). PP may only be a positive number.
PPADC	means the sum of the total value of the Aggregated Costs and Revenues Liabilities: (a) calculated on the basis of the Franchise Operator's Final Reviewed Accounts; and (b) as agreed or reasonably determined (in accordance with paragraphs 5.4 to 5.6 of Schedule 6.A (Franchise Payments)) at the Payment Date for MFPP pursuant to paragraph 11.3. Without limiting paragraph 11.2 of Schedule 6.A (Franchise Payments), PPADC may only be a positive number.

11.2 If the value of MFPP is a negative amount:

- (a) for the purposes of paragraph 2.1, MFPP shall be deemed to equal zero; and
- (b) the Authority shall be entitled to claim the value of MFPP (expressed as a positive value) from the Franchise Operator as an adjustment to the Franchise Payments in the period following expiry of the Performance Period.

11.3 Subject to paragraph 11.4, the value of MFPP shall be made as an adjustment to the next Franchise Payment payable after:

- (a) the value of the Performance Payment has been finally calculated pursuant to Schedule 6.B (Performance Payment); and
- (b) the value of the Aggregate Costs and Revenue Liabilities have been agreed or determined for the purposes of this paragraph 11.

For the avoidance of doubt MFPP shall be calculated on the basis that no interest is due pursuant to paragraph 3.6 of this Schedule 6.A.

The Parties acknowledge that the adjustment referred to in 11.3 will occur following the expiry of the Performance Period and may occur after the expiry of the EMA.

11.4 Nothing in this paragraph 11 shall limit the rights and remedies of the Authority in respect of any Disallowable Costs, Revenue Foregone and/or SoS Claims not taken into account in the calculation of PPADC.

12. Further Authority's rights in relation to accounting matters

⁹ 29 May 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.

- 12.1 Where the Authority reasonably considers that in calculating any matter which impacts the calculation of a Franchise Payment Component, any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) and having regard to all circumstances, including GAAP (as may be amended from time to time), the Authority shall be entitled to require it to be accounted for on such other basis as the Authority may reasonably determine and notify to the Franchise Operator provided that the Authority shall not be entitled pursuant to this paragraph to alter the accounting policies of the Franchise Operator from those set out in the Supporting Materials.
- 12.2 Where the Final Reviewed Accounts are subject to adjustment or restatement the Authority shall have a discretion to require the recalculation of any affected Franchise Payment Component for the relevant Franchise Operator Year and to require that the Franchise Operator shall pay to the Authority the amount which is the difference between:
- (a) any amount actually paid to the Authority or adjusted in favour of the Authority and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally calculated on the basis that such adjustment or revision was included in the Final Reviewed Accounts; and/or
 - (b) any amount actually paid by the Authority or adjusted in favour of the Franchise Operator and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally calculated on the basis that such adjustment or revision was included in the Final Reviewed Accounts.
- 12.3 Any payment due to the Authority shall be paid by the Franchise Operator within thirty (30) days of the Authority notifying the Franchise Operator that the Authority requires a payment to be made pursuant to this paragraph.

13. **Indexation**

For the avoidance of doubt, it is agreed that the Franchise Payments and any sum shown in any Budget for any given Franchise Operator Year (or other period) shall not be subject to automatic indexation or adjustment to take into account the effect of inflation provided that this paragraph 13 is without prejudice to the adjustment of the Budget in accordance with paragraph 4 and/or the adjustment of the Franchise Payments in accordance with paragraphs 6 and 7 of this Schedule 6.A.

14. **Further obligations of the Franchise Operator**

- 14.1 Except to the extent otherwise agreed by the Authority, the Franchise Operator will act as a Good and Efficient Operator in all respects in connection with the operation of this Schedule 6.A (Franchise Payments) and shall not act in a way that is contrary to the principles of the EMA by using the existence or cessation of the EMA to increase the profitability of the Franchise Operator.
- 14.2 The Franchise Operator warrants on a continuing basis and shall, if requested at any time by the Authority, provide written confirmation from a statutory director of the Franchise Operator confirming that the Franchise Operator is not party to any arrangement of any kind whatsoever under which:
- (a) any amounts which the Franchise Operator might otherwise have received from a third party are reduced, waived or otherwise suppressed; and/or
 - (b) any amounts which the Franchise Operator might otherwise be properly obliged to pay or be liable are increased; and/or
 - (c) any amounts required to be paid or accounted for by the Franchise Operator become or are recorded as paid or accounted for during the term of the EMA or Reporting Period 13 (as relevant), which might otherwise be paid or accounted

for in the periods preceding or following the term of the EMA or Reporting Period 13 (as relevant);

- (d) any amounts which the Franchise Operator might otherwise have received from a third party during the term of the EMA or Reporting Period 13 (as relevant) are recovered or accounted for in the periods preceding or following the term of the EMA or Reporting Period 13 (as relevant); and/or
 - (e) Revenue is accounted for in the periods preceding or following the term of the EMA or Reporting Period 13 (as relevant) which should have been accounted for during the term of the EMA or Reporting Period 13 (as relevant).
- 14.3 Without limiting any other constraints which operate by virtue of any other part of the Franchise Agreement or otherwise, no application shall be made or other step taken by or on behalf of the Franchise Operator in respect of the winding up or striking off of the Franchise Operator (or any similar or analogous process) and nor shall the Franchise Operator permit or facilitate the same:
- (a) until all the adjustments and payments for which this Schedule 6.A provides have been made and discharged in full; and/or
 - (b) without the prior written consent of the Authority.
- 14.4 The Authority shall be entitled to notify the Franchise Operator of any future initiatives or proposals that the Authority considers may have the potential to reduce certain Actual Costs below the applicable Budgeted Costs and the Franchise Operator shall, acting reasonably and in good faith discuss with the Authority all such matters as are relevant to the possible implementation of such initiatives.

15. **Survival**

For the avoidance of doubt this Schedule 6.A (Franchise Payments) and Schedule 6.B (Performance Payment) and any other provisions of the Franchise Agreement reasonably required for the purpose of giving such Schedules full effect shall survive the termination or expiry of the EMA and the Franchise Term (however arising) and continue in full force and effect in accordance with their terms.

16. **Review and Audit**

The "**Final Reviewed Accounts**" are a set of financial statements prepared in accordance with GAAP and delivered to the Authority in accordance with the requirements in paragraph 9.4(c) of Schedule 6.C (Management Information) which comprise, as a minimum, a profit and loss account, balance sheet and a cashflow statement containing only transactions properly accounted for which relate to the term of the EMA and Reporting Period 13, to a level of disaggregation which the Authority may reasonably require.

Following the expiry of the term of the EMA, the Franchise Operator will commission an exercise to review the Final Reviewed Accounts, to a standard equivalent to a statutory audit to the extent that statutory audit procedures would reasonably be applied to a profit and loss account, balance sheet and cash flow statement, and will:

- (a) if required by the Authority, use an external auditor;
- (b) if required by the Authority, allow full access by their officials and/or representatives on an "open book" basis; and
- (c) if required by the Authority, allow full access by the National Audit Office or other equivalent body on an "open book" basis.

17. Capex Review

At the end of the term of the EMA, the Authority will review the funding of capital expenditure assumed for the calculation of the contracted Annual Franchise Payments. To the extent that the funding of such assumed capital expenditure through the Franchise Payments under Schedule 6.A (Franchise Payments) has been distorted by the implementation of the EMA, including by the implementation of the EMA in a part of the Franchise Operator Year in which the term of the EMA comes to an end, the Parties shall seek to agree an appropriate compensating amount. This amount may be payable either by the Authority or by the Franchise Operator. In the event that this amount cannot be agreed, the Authority will reasonably determine the amount and direction of this payment.

18. Lock-up Period

18.1 The Franchise Operator shall not during the Lock-up Period do any of the following without the Authority's consent:

- (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchise Operator, without the prior written consent of the Authority;
- (b) pay management charges to any of its Affiliates in excess of those specified in the Initial Budget; or
- (c) make payment under any intra-group borrowings.

18.2 "**Lock-up Period**" means the period commencing on the EMA Start Date and expiring on the date which the Authority confirms by notice in writing to the Franchise Operator that:

- (a) the Authority considers that all the obligations of the Parties to account to each other pursuant to this Schedule 6.A (Franchise Payments) have been fully performed and discharged (such confirmation not to be unreasonably withheld or delayed); and
- (b) by virtue of such notice, the Lock-Up Period has expired.

No such notice shall constitute a waiver of any rights which the Authority may have under or in respect of Schedule 6.A (Franchise Payments).

19. Forecast Closing Cash Position

The Franchise Operator shall use reasonable endeavours to plan its business activities and working capital position such that the Forecast Closing Cash Position as does not fall below the Floor Cash Position.

APPENDIX 1 TO SCHEDULE 6.A**Disallowable Costs**

Any references in this Appendix 1 to Schedule 6.A to costs, payments, expenses, fees, liabilities or other amounts shall be deemed to refer to Costs and/or Capital Expenditure as the context may require.

- (a) Any costs that were incurred otherwise than in accordance with those expected to be incurred by a Good and Efficient Operator. Variations between Actual Costs and Budgeted Costs and/or Actual Capex and Budgeted Capex (as the case may be) likely to be considered to be inconsistent with those expected of a Good and Efficient Operator include but are not limited to:-
- (i) staff, director or officer costs in excess of the Budget (except where evidenced by the Franchise Operator as appropriate for delivery of the Franchise or of reasonable scale given the requirement for delivery of the Franchise provided that any costs referred in to in paragraph (b) or paragraph (c) of this Appendix shall not in any circumstance be considered appropriate for the delivery of the Franchise or of a reasonable scale given the requirement for delivery of the Franchise);
 - (ii) costs that do not reflect the contracted position under existing contracts as at the EMA Start Date unless such change has been agreed by the Authority (such agreement not to be unreasonably withheld or delayed);
 - (iii) new contracts entered in to by the Franchise Operator which have not been procured in compliance with the Franchise Operator's usual procurement procedures; or
 - (iv) variations to existing contracts which have not been made in accordance with the Franchise Operator's usual procurement procedures;
- (b) Any bonuses, rewards or discretionary benefits paid to any staff, directors or officers under any schemes which have not previously been approved by the Authority (in his absolute discretion) in writing;
- (c) Any expenses, disbursements or equivalent costs (to which the Franchise Operator's Expenses Policy would apply) which are incurred other than in compliance with the Franchise Operator's expenses policy;
- (d) Costs incurred or to be incurred by the Franchise Operator:
- (i) in relation to any Remedial Plan or agreements unless such costs are specifically approved in writing by the Authority;
 - (ii) in removing branding or Marks under clause 34 except for branding or Marks whose removal from particular assets the Authority has explicitly agreed for the purpose of this provision should be an allowable cost;
 - (iii) in relation to the inspection costs referred to in paragraph 6.4 of Schedule 6.C (Management Information);
 - (iv) in meeting the Franchise Operator's owning group audit requirements to the extent these are additional to audit costs which would otherwise be incurred by the Franchise Operator;
 - (v) in relation to any reasonable enforcement costs incurred by the Authority pursuant to any provision of the Franchise Agreement;
- (e) Any cost that the Franchise Operator may incur as a result of:

- (i) it failing to comply with its obligations under or in connection with the Franchise Agreement (including the grant thereof) save in respect of any failures which result from the Franchise Operator acting as a Good and Efficient Operator;
 - (ii) it failing to comply with its obligations under or in connection with any agreements which are ancillary to the Franchise Agreement save in respect of any failures which result from the Franchise Operator acting as a Good and Efficient Operator;
 - (iii) it failing to comply with any applicable Laws, to the extent this gives rise to a criminal liability. Paragraph (a) above shall apply in respect of any other consequence of a failure by the Franchise Operator to comply with any applicable Laws; or
 - (iv) indemnifying the Authority for any matter which the Franchise Operator is obliged to indemnify the Authority pursuant to the Franchise Agreement or any agreements which are ancillary to the Franchise Agreement;
- (f) NOT USED;
- (g) Any costs incurred by the Franchise Operator arising out of or in connection with a lawful demand by the Authority under the Performance Bond or Season Ticket Bond;
- (h) Any payments, costs or other liabilities owed to Affiliates save in respect of such payments costs or other liabilities which have been incurred by the Franchise Operator acting as a Good and Efficient Operator;
- (i) Costs of developing and protecting any intellectual property rights which are not owned by the Authority or the Franchise Operator or are so owned, but where the costs are not ancillary to an activity included in the Budget;
- (j) Marketing or advertising costs incurred substantially to the benefit of wider group products or group brand recognition and which are not primarily for the benefit of Franchise Services;
- (k) Fines from government or regulatory bodies;
- (l) Costs of financial hedging, or gains/losses from hedging activity except with prior agreement from the Authority or where such costs or gains/losses arise from the Franchise Operator's participation in an industry recognised hedging scheme or activity which has been agreed by the Authority or which the Authority reasonably considers have been made in good faith on an arm's length basis to any Affiliate in connection with fuel hedging instruments to help manage the exposure of the Franchise Operator to diesel fuel costs;
- (m) The amount by which the Purchase Price payable by the Franchise Operator to the successor operator under the Supplemental Agreement at the end of the Franchise Period is higher than it would have been but for the Franchise Operator:
- (i) incurring Disallowable Costs; or
 - (ii) otherwise acting other than as Good and Efficient Operator;
- (n) Third party costs in relation to the development and preparation of any Remedial Plan, or other plans to remedy performance shortfalls including but not limited to improvement, recovery or action plans, required by this Agreement, excluding such costs as approved by the Authority, in the Authority's absolute discretion, prior to such costs being incurred by the Franchise Operator;
- (o) The amount of any interest payable by the Franchise Operator to the Authority in accordance with paragraph 3.6 of Schedule 6.A (Franchise Payments);

- (p) Any costs incurred by the Franchise Operator in pursuing or defending any claim against the Authority in respect of or in connection with the Franchise Agreement or otherwise;
- (q) Any costs incurred in relation to the period prior to the EMA Start Date which a Good and Efficient Operator would have usually have discharged in the period prior to the EMA Start Date;
- (r) Any costs incurred in relation to the period prior expiry of the term of the EMA which a Good and Efficient Operator would have usually have discharged in the period following the expiry of the term of the EMA;
- (s) Any costs incurred in relation to the discharge of the Franchise Plan which are in excess of the amounts a Good and Efficient Operator would ordinarily have expended on discharging the Franchise Plan in accordance with the contractual programme and to minimum specification contractually required;
- (t) Where costs are incurred during the term of the EMA as the result of an obligation to incur expenditure from a fund required to be maintained pursuant to the Franchise Agreement such expenditure shall be a Disallowable Cost except and to the extent that it relates to expenditure required to be incurred in relation to Franchise Operator Years beginning after 31st March 2020;

After the expiry of the EMA, the Parties shall agree or the Authority shall determine the remaining amounts in such funds with reference to the amounts available to be expended in the funds and the aggregate amount of expenditure incurred since the EMA Start Date in relation to obligations related to those funds;

- (u) NOT USED;
- (v) Except with the prior agreement of the Authority (not to be unreasonably withheld), any costs, charges, penalties, compensation or similar payments that the Franchise Operator may incur as a result of the termination of any contract or other arrangement;
- (w) Except with the prior agreement of the Authority, losses on disposals of Fixed or Non-Current Assets;
- (x) Maintenance costs where the maintenance activity was previously scheduled to be undertaken prior to or after the term of the EMA or where (and to the extent that) it would have been reasonable and/or prudent for the maintenance to have been carried out prior to or after the term of the EMA;
- (y) Depreciation or Capital Expenditure to the extent that the capital cost of acquisition of the relevant assets was to be funded by a third party;
- (z) Costs of any audit pursuant to paragraph 9.7(c)(ii) of Schedule 6.C (Management Information);
- (aa) Legal, accountancy and other costs and expenses incurred in connection with the preparation and implementation of the EMA and its associated heads of terms; and
- (bb) Additional costs or expenses incurred by the Franchise Operator in procuring any new Performance Bond where required to do so pursuant to clause 14.3.

APPENDIX 2 TO SCHEDULE 6.A

Reporting Period 13 Payment

- (a) As soon as reasonably practicable following the EMA Start Date, the Authority will make an "Estimated Reporting Period 13 Payment" to the Franchise Operator which shall be equal to:

ERP13 =	$((EC - ER) + ECE) + (ERC13 - AAP)$
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Where:

EC	means the Estimated Costs for Reporting Period 13. EC may only be a positive number.
ER	means the Estimated Revenue for Reporting Period 13. ER may only be a positive number.
ECE	means the Estimated Capital Expenditure for Reporting Period 13. ECE may only be a positive number.
ERC13	means an amount equal to the Estimated Residual Components for Reporting Period 13. ERC13 may be positive or negative.
AAP	means any amounts already paid in relation to the Franchise Payment for Reporting Period 13 under the Franchise Agreement prior to the implementation of the EMA. AAP may be positive or negative.

- (b) On the first day of the second Reporting Period of the term of the EMA, the "Initial Reporting Period 13 Payment" shall be payable to either the Authority or the Franchise Operator and shall be equal to:

IRP13 =	$((TotalACMA - TotalARMA) + TotalACEMA) + (RC13MA - AAP) - ERP13$
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Where:

TotalACMA	means the total Actual Costs of the Franchise Operator for Reporting Period 13 as set out in the Management Accounts for Reporting Period 13. TotalACMA may only be a positive number.
TotalARMA	means the total Actual Revenue of the Franchise Operator for Reporting Period 13 as set out in the Management Accounts for Reporting Period 13. TotalARMA may only be a positive number.
TotalACEMA	means the total Actual Capex of the Franchise Operator for Reporting Period 13 as set out in the Management Accounts for

	Reporting Period 13. TotalACEMA may only be a positive number.
RC13MA	means an amount equal to the Residual Components for Reporting Period 13 as set out in the Management Accounts for Reporting Period 13. RC13MA may be positive or negative.
AAP	means any amounts already paid in relation to the Franchise Payment for Reporting Period 13 under the Franchise Agreement prior to the implementation of the EMA. AAP may be positive or negative.
ERP13	means the Estimated Reporting Period 13 Payment calculated pursuant to paragraph (a) of this Appendix 2 to Schedule 6.A (Franchise Payments). ERP13 may be positive or negative.

(c) As soon as reasonably practicable after receipt by the Authority of the Reviewed 2019/20 Accounts, the "Final Reporting Period 13 Payment" shall be payable to either the Authority or the Franchise Operator and shall be equal to:

FRP13 =	$((\text{TotalACRA} - \text{TotalARRA}) + \text{TotalACERA}) + (\text{RC13RA} - \text{AAP}) - \text{ERP13} - \text{IRP13}$
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Where:

TotalACRA	means the total Actual Costs of the Franchise Operator for Reporting Period 13 as set out in the Reviewed 2019/20 Accounts. TotalACRA may only be a positive number.
TotalARRA	means the total Actual Revenue of the Franchise Operator for Reporting Period 13 as set out in the Reviewed 2019/20 Accounts. TotalARRA may only be a positive number.
TotalACERA	means the total Actual Capex of the Franchise Operator for Reporting Period 13 as set out in Reviewed 2019/20 Accounts. TotalACERA may only be a positive number.
RC13RA	means an amount equal to the Residual Components for Reporting Period 13 as set out in the Reviewed 2019/20 Accounts. RC13RA may be positive or negative.
AAP	means any amounts already paid in relation to the Franchise Payment for Reporting Period 13 under the Franchise Agreement prior to the implementation of the EMA. AAP may be positive or negative.
ERP13	means the Estimated Reporting Period 13 Payment calculated pursuant to paragraph (a) of this Appendix 2 to Schedule 6.A (Franchise Payments). ERP13 may be positive or negative.

IRP13	means the Initial Reporting Period 13 Payment calculated pursuant to paragraph (b) of this Appendix 2 to Schedule 6.A (Franchise Payments). IRP13 may be positive or negative.
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- (d) Where:
- (i) **£ERP13, £IRP13 or £FRP13 (as applicable) is a positive number**, the Authority shall pay that amount to the Franchise Operator on the date set out in the relevant paragraph above;
 - (ii) **£ERP13, £IRP13 or £FRP13 is a negative number**, the Franchise Operator shall pay the corresponding positive amount to the Authority on the date set out in the relevant paragraph above.
- (e) The Parties acknowledge and agree that in determining either the Initial Reporting Period 13 Payment or the Final Reporting Period 13 Payment, the Authority shall be entitled to review any relevant Franchise Operator information for the purpose of ensuring that costs accrued in Reporting Period 13 for the purposes the Management Accounts properly relate to that Reporting Period.
- (f) As soon as reasonably practicable following the EMA Start Date, the Parties shall agree a methodology for determining how any adjustments required to the Management Accounts in preparing the Annual Audited Accounts would be identified and allocated to Reporting Period 13. The procedures agreed shall include a reconciliation of the Franchise Operator's net assets at the start of the Reporting Period 13 and at the end of the Reporting Period 13; and
- (g) The Management Accounts incorporating the adjustments identified for Reporting Period 13 pursuant to paragraph (f) of this Appendix 2 to Schedule 6.A (Franchise Payments) shall be the "Reviewed 2019/20 Accounts" for the purposes of this Schedule 6.A. If required by the Authority, the Franchise Operator shall allow full access by their officials and/or representatives on an "open book" basis for the purposes of reviewing the incorporation of such adjustments.

Appendix 2 to Schedule 1
Schedule 6.B (Performance Payment)

SCHEDULE 6.B**Performance Payment**1. **DEFINITIONS**

For the purposes of this Schedule 6.B (Performance Payment) only, the following words and expressions shall have the following meanings unless otherwise specified:

"EMA Criterion"	means each of the criteria set out in Appendix 3 of this Schedule 6.B, in respect of which the Franchise Operator's performance shall be measured in an EMA Review and for which a score shall be awarded in the EMA Review Scorecard (and "EMA Criteria" means the plural of EMA Criterion);
"EMA Performance Period"	means: <ul style="list-style-type: none"> (a) the period commencing on the EMA Start Date and ending at 1.59 a.m. on 20 September 2020, or such earlier date of termination of the EMA; and (b) where the term of the EMA is extended in accordance with clause 3.3 of the EMA, each Extended EMA Performance Period;
"EMA Review"	means a review carried out (or to be carried out) in accordance with Appendix 1 of this Schedule 6.B;
"EMA Review Checklist"	means, in respect of an EMA Review, a checklist completed (or, as the case may be, to be completed) substantially in the form of that set out in Appendix 2 of this Schedule 6.B;
"EMA Review Meeting"	means, in respect of the EMA Review, a meeting held between the Parties to discuss the performance of the Franchise Operator during the relevant EMA Performance Period;
"EMA Review Scorecard"	means, in respect of an EMA Review, a scorecard completed (or, as the case may be, to be completed) by the Authority in accordance with paragraph 5 of Appendix 1 to this Schedule 6.B;
"Extended EMA Performance Period"	means, in the event that the term of the EMA is extended in accordance with clause 3.3 of the EMA, each further period following the end of the preceding EMA Performance Period, comprising six (6) additional Reporting Periods (or less in the event that the EMA is terminated prior to the expiry of the relevant Extended EMA Performance Period);
"Remedial Plan"	has the meaning given in paragraph 6.2(b) of this Schedule 6.B.

2. **CALCULATION OF THE PERFORMANCE PAYMENT (PP)**

2.1 The Performance Payment (PP) shall be the sum of the three amounts corresponding to the Franchise Operator's EMA Review score for the EMA Criteria as set out below:

EMA Criterion	EMA Review Scorecard score for relevant EMA Criterion	PP £
Operational performance	3	[REDACTED ¹⁰]
	2	[REDACTED]
	1	[REDACTED]
Customer experience	3	[REDACTED]
	2	[REDACTED]
	1	[REDACTED]
Acting as a Good and Efficient Operator	3	[REDACTED]
	2	[REDACTED]
	1	[REDACTED]

2.2 The Performance Payment for each EMA Performance Period assumes an EMA Performance Period of six (6) Reporting Periods. If the actual duration of an EMA Performance Period is less than six (6) Reporting Periods, the Performance Payment with respect to such EMA Performance Period shall be calculated on a pro rata basis.

¹⁰ 29 May 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.

APPENDIX 1 TO SCHEDULE 6.B**EMA Review****1. PURPOSE OF THE EMA REVIEW**

- 1.1 The purpose of an EMA Review is for the Authority to undertake a review of the Franchise Operator's performance in relation to the Franchise Services over the course of the relevant EMA Performance Period.
- 1.2 The Parties agree that more than one EMA Review may be undertaken by the Authority where the variations to the Franchise Agreement imposed pursuant to the EMA are extended in accordance with clause 3.3 of the EMA.
- 1.3 The Authority will carry out an EMA Review with respect to each EMA Performance Period.
- 1.4 At each quarterly review meeting, progress against the three EMA Criteria shall be discussed and reviewed by the Parties.
- 1.5 Each EMA Review shall be carried out in accordance with the process set out in this Schedule 6.B.

2. NOTICE OF EMA REVIEW MEETING

- 2.1 The Authority shall notify the Franchise Operator of the date, time and location for the relevant EMA Review Meeting by no later than the end of the relevant EMA Performance Period, provided always that the EMA Review Meeting shall take place no earlier than the last day in the relevant EMA Performance Period and no later than 60 days after the end of the relevant EMA Performance Period.
- 2.2 For the avoidance of doubt, nothing in this Schedule 6.B shall prevent the Parties from discussing any matter relevant to an EMA Review outside of the relevant EMA Review Meeting.

3. EMA REVIEW CHECKLIST

- 3.1 Not less than 30 days prior to the end of the relevant EMA Performance Period, the Authority, acting reasonably, shall notify the Franchise Operator in writing of any additional information that the Franchise Operator shall be required to submit at the same time as the completed EMA Review Checklist.
- 3.2 Not less than fifteen (15) days prior to end of the EMA Performance Period, the Franchise Operator shall notify the Authority in writing of any matters in addition to those set out in the EMA Review Checklist or the information notified to the Franchise Operator by the Authority in accordance with paragraph 3.1 of Appendix 1 to this Schedule 6.B, which the Franchise Operator considers to be relevant for the EMA Review. The Authority shall, within ten (10) days of receiving such notice, provide written confirmation to the Franchise Operator of whether the Authority considers such matters to be relevant to the EMA Review.
- 3.3 As soon as reasonably practicable after the end of an EMA Performance Period, and in any event no later than 10 days after the end of an EMA Performance Period, the Franchise Operator shall deliver to the Authority a duly completed copy of the EMA Review Checklist in respect of the EMA Performance Period.
- 3.4 The EMA Review Checklist delivered by the Franchise Operator in accordance with paragraph 3.3 of Appendix 1 to this Schedule 6.B shall include written commentary from the Franchise Operator in respect of the EMA Performance Period covering:

- (a) each of the matters listed in the EMA Review Checklist;
- (b) any other such matter notified by the Authority to the Franchise Operator in accordance with paragraph 3.1 of Appendix 1 to this Schedule 6.B; and
- (c) any other matter which the Authority has confirmed as relevant for the EMA Review in accordance with paragraph 3.2 of Appendix 1 to this Schedule 6.B.

3.5 The Authority shall provide the Franchise Operator with:

- (a) written commentary on the completed EMA Review Checklist (including any commentary provided by the Franchise Operator under paragraph 3.4 of Appendix 1 to this Schedule 6.B); and
- (b) any information additional to that contained in the EMA Review Checklist which the Authority has used or intends to use to assess the Franchise Operator's performance,

in each case, no later than ten (10) days prior to the EMA Review Meeting.

4. **EMA REVIEW MEETING**

4.1 The EMA Review Meeting shall take place at the date, time and location notified by the Authority in accordance with paragraph 2.1 of Appendix 1 to this Schedule 6.B and shall be attended by representatives of each of the Authority and the Franchise Operator.

4.2 The Franchise Operator shall ensure that the representatives of the Franchise Operator at the EMA Review Meeting include such:

- (a) appropriate and qualified personnel of the Franchise Operator;
- (b) directors and/or senior managers of the Franchise Operator; and
- (c) directors and/or senior managers of the Parent,

as the Authority may reasonably require.

4.3 At the EMA Review Meeting the Parties shall discuss the Franchise Operator's performance by reference to the EMA Review Checklist, together with any supporting commentary, documents or evidence submitted by the Franchise Operator to the Authority in accordance with paragraphs 3.3 and 3.4 of Appendix 1 to this Schedule 6.B and any commentary and/or information provided by the Authority to the Franchise Operator in accordance with paragraph 3.5 of Appendix 1 to this Schedule 6.B.

5. **EMA REVIEW SCORING**

5.1 The Authority shall provide to the Franchise Operator, no later than ten (10) days following the EMA Review Meeting, a duly completed EMA Review Scorecard setting out the Franchise Operator's performance in each of the EMA Criteria for the EMA Performance Period.

5.2 The Franchise Operator shall be scored 3, 2 or 1 in relation to each EMA Criterion.

5.3 The EMA Review shall be complete once the Authority has sent a duly completed EMA Review Scorecard to the Franchise Operator in accordance with paragraph 5.1 of Appendix 1 to this Schedule 6.B.

5.4 Scores in the EMA Review Scorecard shall be awarded by the Authority having regard to the matters set out in the EMA Review Scorecard. One single, integer, overall score shall be awarded in relation to each EMA Criterion based on the Authority's assessment of the

Franchise Operator's performance in respect of that EMA Criterion against the EMA Review Scorecard and taking into account:

- (a) the EMA Review Checklist provided to the Authority by the Franchise Operator in accordance with paragraphs 3.3 and 3.4 of Appendix 1 to this Schedule 6.B;
- (b) any commentary provided to the Franchise Operator by the Authority in accordance with paragraph 3.5 of Appendix 1 to this Schedule 6.B; and
- (c) any discussions between the Franchise Operator and the Authority at the EMA Review Meeting.

5.5 The Franchise Operator shall receive a Performance Payment, in accordance with Schedule 6.A (Franchise Payments), if the Franchise Operator scores 2 or above with respect to one or more of the EMA Criteria.

5.6 The Franchise Operator shall not receive a Performance Payment if the Franchise Operator scores 1 in relation to all three of the EMA Criteria.

5.7 If the Franchise Operator:

- (a) is operating at a level that would, or would likely, be scored "1"; or
- (b) has received a score of "1",

in relation to any of the EMA Criteria during an EMA Performance Period, then the Authority may require a Remedial Plan and the provisions of paragraph 6 of this Schedule 6B shall apply.

6. **REMEDIAL PLANS**

6.1 Where paragraph 5.7 applies, the Authority may serve a notice on the Franchise Operator requiring it to address and overcome the shortfalls or failures that have led to the Franchise Operator receiving, or being likely to receive, a score of "1" with respect to the relevant EMA Criterion (a "**Remedial Plan Notice**").

6.2 Each Remedial Plan Notice shall specify the following:

- (a) the specific EMA Criterion under the EMA Review Scorecard that the Authority is satisfied that the Franchise Operator is likely to score, or has scored, "1" in ("**Relevant Term**"); and
- (b) the time period ("**Remedial Plan Period**") within which the Authority requires the Franchise Operator to provide an appropriate plan for the purpose of facilitating or securing compliance with such Relevant Term (a "**Remedial Plan**").

6.3 If the Authority issues a Remedial Plan Notice, the Franchise Operator shall submit (at its own cost) a Remedial Plan to the Authority within the Remedial Plan Period.

6.4 Each Remedial Plan shall set out:

- (a) the Relevant Term which has caused such Remedial Plan to be required;
- (b) an explanation of the reasons for the Franchise Operator receiving, or being likely to receive, a score of "1" with respect to the Relevant Term;
- (c) the steps proposed for the purposes of addressing and overcoming the shortfalls or failures that have led to the Franchise Operator receiving, or being likely to receive, a score of "1" with respect to the Relevant Term; and

- (d) the time period within which the Franchise Operator proposes to implement those steps.
- 6.5 If the Authority is satisfied that the matters within such Remedial Plan referred to in paragraphs 6.4(c) and 6.4(d) are appropriate (with or without further modification as the Parties may agree) the Authority may require the Franchise Operator to enter into a supplemental agreement (the "**Remedial Agreement**") with the Authority to implement those matters.
- 6.6 It is a term of this Agreement that the Franchise Operator (at its own cost) complies with each Remedial Agreement in accordance with its terms.
- 6.7 Without prejudice to the operation of clause 5.4, the following provisions shall apply in relation to Force Majeure Events affecting the Franchise Operator's performance of their obligations pursuant to a Remedial Agreement:
 - (a) the Franchise Operator shall give written notice to the Authority promptly after the Franchise Operator becomes aware (and in any event within twenty-four (24) hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchise Operator's ability to comply with a Remedial Agreement within the period specified therein;
 - (b) each notice submitted in accordance with paragraph (a) shall state the extent or likely extent of the relevant Force Majeure Event and in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Franchise Operator considers it likely to occur;
 - (c) the Franchise Operator shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
 - (d) subject to the Franchise Operator having complied with its obligations under paragraphs (a) to (c) (inclusive) the Franchise Operator shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with that Remedial Agreement.

7.

APPENDIX 2 TO SCHEDULE 8.B**EMA Review Checklist****1. OPERATIONAL PERFORMANCE**

A report on the Franchise Operator's operational performance, by reference to the Applicable Timetable, including:

- (a) the level of performance achieved against the Applicable Timetable, and an explanation of the level of performance achieved relative to the Applicable Timetable;
- (b) an explanatory note setting out, if relevant, any act, omission or failure of a third party which has impacted performance and the extent of that impact, along with supporting evidence (except for where the impact exclusively relates to COVID-19); and
- (c) details and supporting evidence of any actions undertaken to mitigate any impacts on performance, including work with Network Rail regarding infrastructure.

2. CUSTOMER EXPERIENCE

A report on the customer experience delivered by the Franchise Operator, including:

- (a) evidence of train and Station cleaning schedules;
- (b) details of complaints received relating to quality of service including cleanliness and upkeep of Stations and the trains, staff presence/helpfulness, accessibility and information provision; and
- (c) details of staff presence, including evidence of staffing rosters having been adhered to as far as possible.

3. GOOD AND EFFICIENT OPERATOR

A report detailing the extent to which the Franchise Operator has acted as a Good and Efficient Operator, including:

- (a) evidence of any ways in which the Franchise Operator has sought to identify ways to run the Franchise more efficiently and avoid nugatory costs, acting as a Good and Efficient Operator, including details of the level of supporting evidence to those proposals;
- (b) evidence of appropriate revenue protection being applied in the interests of the taxpayer and/or otherwise evidence that the Franchise Operator has followed government guidance prevailing at the time regarding revenue collection; and
- (c) evidence of plans in place to return the operations and business to pre-COVID-19 levels of operation, including encouraging the public to travel on public transport where appropriate.

APPENDIX 3 TO SCHEDULE 8.B

EMA Review Scorecard

	Operational Performance	Customer Experience	Good and Efficient Operator
3: Good	<p>The Franchise Operator has delivered the Passenger Services in accordance with the applicable Applicable Timetable (with minor exceptions only).</p>	<p>The Franchise Operator has provided high levels of cleanliness at Stations and on trains.</p> <p>The Franchise Operator has ensured that all Stations and trains have been staffed as required to enable service to continue at a good or very good standard.</p> <p>Trains and Stations have been maintained as appropriate.</p> <p>The Franchise Operator has provided a high quality journey experience for all passengers including providing information at all Stations and trains at all times, where possible.</p>	<p>The Franchise Operator has continued to make every effort to grow the business, offering incentives for appropriate travel (for example, ensuring those who have a legitimate need to travel are encouraged to use the train where it is appropriate to do so).</p> <p>The Franchise Operator has worked collaboratively with other Train Operators and/other rail industry bodies (including Network Rail and LUL) to provide an appropriate service to passengers, ensuring that passengers have as much choice as desirable, whilst taking into account demand.</p> <p>The Franchise Operator has proactively made suggestions and developed plans for restoring service, operations and business to pre-COVID-19 levels as soon as possible after the expiry of the EMA.</p> <p>The Franchise Operator has been responsive to the Authority's requests and fully cooperated in dealing with national emergencies.</p>

	Operational Performance	Customer Experience	Good and Efficient Operator
2: Acceptable	<p>The Franchise Operator has delivered the Passenger Services in accordance with the applicable Applicable Timetable (with some exceptions).</p>	<p>The Franchise Operator has ensured that trains and Stations have continued to be cleaned to an acceptable standard.</p> <p>The Franchise Operator has deployed staff on the same or similar basis as usual, with an emphasis on provision of customer service throughout the period.</p> <p>Trains and Stations have been maintained to an acceptable level.</p> <p>The Franchise Operator has provided an acceptable level of journey experience for passengers including providing information at Stations and trains at all times, where possible.</p>	<p>The Franchise Operator has sought to operate the Franchise as far as possible as if they were still on revenue/cost risk, avoiding nugatory costs including ensuring revenue is protected throughout the duration of the EMA in accordance with the prevailing advice from the Authority.</p>
1: Below acceptable standard	<p>The Franchise Operator has materially failed to deliver the Passenger Services in accordance with the applicable Applicable Timetable.</p>	<p>The Franchise Operator has failed to maintain cleanliness of trains and Stations to an acceptable level.</p> <p>The Franchise Operator has failed to deploy staff in a way to enable Stations and services to be maintained for passengers.</p> <p>The Franchise Operator has failed to maintain the trains and Stations at an acceptable level.</p> <p>The Franchise Operator has failed to provide an acceptable level of journey</p>	<p>The Franchise Operator has failed to mitigate nugatory costs or manage revenue loss throughout the term of the EMA in accordance with the prevailing advice from the Authority.</p> <p>The Franchise Operator has failed to respond to the Authority's requests and/or failed to cooperate in dealing with national emergencies.</p>

	Operational Performance	Customer Experience	Good and Efficient Operator
		experience for passengers and/or has failed to provide information at Stations and trains.	

Appendix 3 to Schedule 1
Schedule 6.C (Management Information)

SCHEDULE 6.C**Management Information****1. CORPORATE INFORMATION**

1.1 The Franchise Operator shall notify the Authority of any change to the following information within twenty one (21) days of such change:

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names; and
- (f) to the best of the Franchise Operator's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than twenty per cent (20%) of the votes at general meetings of the Franchise Operator.

1.2 The Franchise Operator shall inform the Authority of any material change or proposed material change in its business (including the employment or the termination of employment of any Key Personnel, the termination of any Key Contract and any litigation or other dispute which may have a material effect on its business) and any material change in or restructuring of the capitalisation or financing of the Franchise Operator or Parent.

2. INFORMATION ABOUT ASSETS USED IN THE FRANCHISE

The Franchise Operator shall at all times during the Franchise Term maintain (and shall provide copies to the Authority when requested to do so from time to time) records covering the following information:

- (a) for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:
 - (i) the progress and completion of all work described in the maintenance schedules and manuals;
 - (ii) all operating manuals (including any safety related regulations);
 - (iii) all permits, licences, certificates or other documents required to operate such asset; and
 - (iv) a printed or electronic list of all assets owned by the Franchise Operator from time to time (excluding, unless otherwise requested by the Authority, any office furniture and consumable items); and
- (b) each capital asset acquired by the Franchise Operator during the term of the EMA with a value of over £50,000, including the Franchise Operator's source of funding for such asset.

3. IDENTIFICATION OF KEY PERSONNEL AND PROVISION OF ORGANISATION CHART

3.1 The Franchise Operator shall identify and provide to the Authority a schedule of Key Personnel who shall be employed by the Franchise Operator in the performance of the Franchise Agreement. This shall include but not be limited to the following persons:

- (a) a managing director whose role will include the overall management of the operation of the Franchise Services;
 - (b) a train service delivery director, whose role will include responsibility for ensuring compliance by the Franchise Operator with Part 3 (Operational Information) of Schedule 8 (Franchise Records);
 - (c) a safety director, whose role will include responsibility for ensuring that the Franchise Operator complies with its legal obligations in relation to the Franchise Services including the Safety Certificate; and
 - (d) a finance director, whose role will include responsibility in relation to the Costs, Budget, the Final Reviewed Accounts and the provision of other financial data to Authority.
- 3.2 The Franchise Operator shall nominate a board level director of the Franchise Operator (or at the Authority's discretion, a director of a Parent or an Affiliate) within seven (7) days of the date of this Agreement. Such director's responsibilities include overseeing, at a strategic level, the Franchise Operator's interface with the Authority in relation to Sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of the Franchise Operator in connection with the Franchise Operator's compliance with relevant instructions issued by the Authority under Section 119 of the Act from time to time. Such director shall be identified by job title in the organisation chart referred to in paragraph 3.3 and shall be deemed part of the Key Personnel.
- 3.3 On or before the Start Date the Franchise Operator shall provide to the Authority the schedule of Key Personnel and the organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update the schedule and organisation chart (and provide copies to the Authority promptly thereafter) as and when any changes occur.
4. **OPERATIONAL PERFORMANCE INFORMATION**
- 4.1 The Franchise Operator shall provide to the Authority the information specified in Part 3 (Operational Information) of Schedule 8 (Franchise Records) at the times specified therein.
5. **MAINTENANCE OF RECORDS**
- 5.1 The Franchise Operator shall at all times create and maintain true, up to date and complete records, books and other materials relating to the:
- (a) operation and maintenance of Franchise Assets; and
 - (b) operation of the Franchise Services; and
 - (c) financial performance of the Franchise,
- in each case, in exercising that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would reasonably be expected from a prudent and leading Train Operator and in order to fulfil the requirements of the Franchise Agreement including in relation to maintenance of the Franchise as a going concern in accordance with clause 25.1.
- 5.2 Unless otherwise agreed by the Authority, all records, books and materials required to be maintained by the Franchise Operator in accordance with this Schedule 6.C 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 NOT USED.
- 5.4 NOT USED.

6. RIGHT TO INSPECT

- 6.1 The Franchise Operator shall, if requested by the Authority, allow the Authority and the Authority's representatives and advisers:
- (a) to inspect and copy any records referred to in this Schedule 6.C or Schedule 6.A and the Authority may verify any such records; and/or
 - (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchise Operator and/or its auditors and any assets (including the Franchise Assets) used by the Franchise Operator in connection with the Franchise Services.
- 6.2 The Franchise Operator shall make available to the Authority, the Authority's representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Authority, the Authority's representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchise Operator under this paragraph 6.2 shall include an obligation on the Franchise Operator to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 6.1 is kept by or on behalf of the Franchise Operator.
- 6.3 The Authority, the Authority's representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.
- 6.4 If any inspection reveals that information previously supplied to the Authority was, in the reasonable opinion of the Authority, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchise Operator's obligations under the Franchise Agreement which the Authority considers to be material, the costs of any such inspection shall be borne by the Franchise Operator and which, for the avoidance of doubt, shall be Disallowable Costs pursuant to Appendix 1 to Schedule 6.A.

7. INFORMATION TO THE PASSENGERS' COUNCIL AND LOCAL AUTHORITIES

The Franchise Operator shall comply with any reasonable requests and guidance issued by the Authority from time to time in respect of the provision of information to and co-operation and consultation with the Passengers' Council and Local Authorities.

8. PERIODIC UPDATE REPORTS

- 8.1 The Franchise Operator shall prepare and submit to the Authority a periodic report in each Reporting Period which shall:
- (a) contain updates on the Franchise Operator's progress in complying with the Franchise Plan together with any other information as the Authority 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 Authority; and
 - (c) be disaggregated to the extent required by the Authority.
- 8.2 Where, as part of the periodic report referred to in paragraph 8.1, the Authority requires the Franchise Operator to provide information and/or details in addition to those required pursuant to paragraph 8.1, the Franchise Operator shall ensure that the periodic report includes such additional information and/or details subject to the Franchise Operator having received at least twenty eight (28) days' notice of the additional information and/or details required by the Authority.

9. FINANCIAL INFORMATION

9.1 Accounting Records

The Franchise Operator shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period. In particular, the Franchise Operator shall ensure that such accounting records are produced and maintained in a form which distinguishes between transactions which reasonably and properly relate, on the accruals basis, to the period during which the EMA is in force, and those which do not.

9.2 Reporting Period Financial Information

- (a) The Franchise Operator shall deliver to the Authority, 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 Franchise Operator Year to date ensuring that:
 - (A) the profit and loss account shall adopt the format and structure as expressly agreed by the Authority from time to time for this purpose; and
 - (B) in particular, Costs, Capital Expenditure and Revenues shall be allocated consistently to the level of disaggregation required by the Authority from time to time and there shall be no netting off between those disaggregated areas;
 - (ii) written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the Franchise Operator, contain a true and accurate reflection of the current revenues, costs, assets and liabilities of the Franchise Operator (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 Authority shall reasonably require in relation; and
 - (iii) written confirmation from a statutory director of the Franchise Operator that the Franchise Operator has complied with the lock-up restrictions in paragraph 17 of Schedule 6.A (Franchise Payments).
- (b) The Management Accounts shall also set out:
- (i) the Franchise Operator's available cash balance on the final day of the Reporting Period to which the Management Accounts relate;
 - (ii) the Franchise Operator's forecast of:
 - (A) the Franchise Operator's daily cash balance for the period of thirteen (13) weeks following the Reporting Period to which the Management Accounts relate;
 - (B) the amount of Working Capital Payment (if any) that the Franchise Operator forecasts that it will require pursuant to paragraph 9 of Schedule 6.A (Franchise Payments) in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate; and
 - (C) payments to and from Affiliates of the Franchise Operator;

- (D) profit and loss, cash flow and balance sheet provided in accordance with the Initial Budget (together with a detailed and comprehensive written explanation as to any changes in such forecasts from the previous such forecasts provided pursuant to the provisions of paragraph 9.2(b) of this Schedule 6.C) for each of the following thirteen (13) Reporting Periods;
 - (iii)
 - (A) a comparison of the Franchise Operator's financial performance during such period against the forecast provided by the Franchise Operator in the then current Business Plan;
 - (B) a comparison on a line by line basis of Actual Costs and Actual Revenue of the Franchise Operator compared to the Budgeted Costs and Estimated Revenue for that Reporting Period; and
 - (C) a detailed statement and a detailed and comprehensive written explanation of any material differences between the actual payments to and from Affiliates of the Franchise Operator and the forecast of such payments as referred to in paragraph 9.2(b)(ii)(C);
 - (iv) a comparison of the Franchise Operator's cumulative financial performance during the Franchise Operator Year in which such period occurs against the forecast referred to in paragraph 9.2(b)(ii);
 - (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)(ii) and a detailed explanation of the variances between Actual Costs and Budgeted Costs and Actual Revenues and Estimated Revenue and a description of (1) the steps which have been taken by the Franchise Operator to address and mitigate any Costs in excess of Budgeted Costs and/or Estimated Revenue shortfall and/or (2) which could otherwise be taken for that purpose;
 - (vi) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Authority, materially worse than forecast by the Franchise Operator in its current Business Plan, the Authority may require the Franchise Operator to prepare and submit to him, as soon as reasonably practicable, a financial action plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchise Operator shall use all reasonable endeavours to implement such financial action plan; and
 - (vii) NOT USED;
 - (viii) separate identification of payments to or from any Affiliate of the Franchise Operator; and
 - (ix) NOT USED.
- (c) Within five (5) Weekdays after receipt of the Management Accounts for each Reporting Period in accordance with paragraphs (a) and (b) above, the Authority shall notify the Franchise Operator of any further information, explanation or analysis which the Authority requires in relation to the Management Accounts (including information in relation to the calculation of the Franchise Payment under the provisions of Schedule 6.A (Franchise Payments)) and the Franchise Operator shall promptly provide such further information or analysis.

9.3 NOT USED

9.4 Annual Financial Information

- (a) Within fifteen (15) Weekdays of the end of each Franchise Operator Year, the Franchise Operator shall deliver to the Authority its Annual Management Accounts for that Franchise Operator Year, divided between Reporting Periods within the term of the EMA and Reporting Periods not within the term of the EMA. For Reporting Periods within the term of the EMA, line items should be disaggregated between a section in relation to Actual Costs and a section in relation to Actual Revenues, and Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs and Accrued Revenue Foregone.
- (b) Within four (4) Reporting Periods after the end of each Franchise Operator Year, the Franchise Operator shall deliver to the Authority the following information:
- (i) certified true copies of its annual report and Annual Audited Accounts for that Franchise Operator Year, together with copies of all related directors' and auditors' reports;
 - (ii) a detailed reconciliation, disaggregating Actual Costs and Actual Revenues, and Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs and Accrued Revenue Foregone in the annual audited accounts (as required to be provided under clause 15.2), reconciled to: (1) each of the periodic Management Accounts in relation to the term of the EMA within that Franchise Operator Year; (2) periodic Management Accounts in relation to all other Reporting Periods in that Franchise Operator Year (if any); (3) Annual Management Accounts in relation to the term of the EMA within that Franchise Operator Year; and (4) Annual Management Accounts in relation to all other Reporting Periods within that Franchise Operator Year (if any), all in a format to be from time to time reasonably specified by the Authority (the "**Audited Accounts Reconciliation**"). The Audited Accounts Reconciliation shall:
 - (A) disaggregate the costs and revenues in the Annual Audited Accounts so as to report against (and show in a format consistent with that used in) the Management Accounts and Annual Management Accounts; and
 - (B) facilitate the identification of Actual Costs and Actual Revenues as reported in the Management Accounts and easy comparison of Actual Costs with the Budget;
 - (iii) a statement from the Franchise Operator's auditors (in a format to be reasonably specified by the Authority from time to time, on the basis of providing the Authority with reasonable assurance) that the disaggregation required by the Audited Accounts Reconciliation in accordance with paragraph 9.4(b)(ii) has been undertaken accurately;
 - (iv) NOT USED;
 - (v) a statement from the Franchise Operator's auditors confirming that GAAP has been applied in a fair and consistent manner; and
 - (vi) NOT USED.
- (c) Within two (2) Reporting Periods after the end of the last EMA Performance Period, the Franchise Operator shall deliver to the Authority the following information:
- (i) certified true copies of its Final Reviewed Accounts for the EMA Performance Periods in aggregate, together with copies of all related reports provided by auditors or other reviewers (if any) pursuant to paragraph 16 of Schedule 6.A;

- (ii) a detailed reconciliation disaggregating Actual Costs and Actual Revenues, and Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs and Accrued Revenue Foregone of the Final Reviewed Accounts reconciled to the Management Accounts in relation to the period of the term of the EMA, in a format to be from time to time reasonably specified by the Authority (the **"Final Reviewed Accounts Reconciliation"**). The Final Reviewed Accounts Reconciliation shall:
 - (A) disaggregate the costs and revenues in the Final Reviewed Accounts so as to report against (and show in a format consistent with that used in) the Management Accounts within the EMA Performance Period(s); and
 - (B) facilitate the identification of Actual Costs and Actual Revenues as reported in the Management Accounts within the EMA Performance Period(s) and easy comparison of Actual Costs with the Cost Budget;
- (iii) a statement from the Franchise Operator's auditors (in a format to be reasonably specified by the Authority from time to time, on the basis of providing the Authority with reasonable assurance) that the disaggregation required by the Final Reviewed Accounts Reconciliation in accordance with paragraph 9.4(c)(ii) has been undertaken accurately; and
- (iv) a statement from the Franchise Operator's auditors confirming that GAAP has been applied in a fair and consistent manner.

9.5 Accounting Standards and Practices

- (a) Each set of Management Accounts and Annual Management Accounts shall:
 - (i) be in the format as the Authority may reasonably specify from time to time;
 - (ii) be prepared:
 - (A) in accordance with the Franchise Operator's obligations in clause 15.2; and
 - (B) consistently in accordance with the Franchise Operator's normal accounting policies, details of which shall be supplied on request to the Authority; and
 - (iii) identify to the reasonable satisfaction of the Authority, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cash flow projection and the balance sheet used for the purposes of preparing the Budgeted Costs and the Estimated Revenue.
- (b) The Annual Audited Accounts shall:
 - (i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
 - (ii) give a true and fair view of:
 - (A) the state of affairs, profits and financial condition of the Franchise Operator for the period covered by such accounts; and
 - (B) the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchise Operator, such revenue to be disaggregated by reference to revenue derived by the Franchise Operator from:

- (i) the sale of tickets;
 - (ii) income received from Network Rail pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement;
 - (iii) car park revenue; and
 - (iv) other income;
- (C) NOT USED.

9.5A **Changes to accounting policies**

The Franchise Operator shall not, without the express written consent of the Authority, make any alteration to its accounting policies or basis of preparation in relation to its Management Accounts, Annual Management Accounts, annual audited accounts (as required to be provided under clause 15.2) or Final Reviewed Accounts.

9.6 **Parent and Affiliate Accounts**

The Franchise Operator shall, upon the request of the Authority, promptly deliver to, or procure delivery to, the Authority, certified true copies of the annual reports and audited accounts of each Parent and any Affiliate, together with copies of all related directors' and auditors' reports. If any of the Parents or any Affiliate is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the relevant Parent or Affiliate (as applicable) shall be delivered to the Authority.

9.7 **Authority Audit**

- (a) Without prejudice to any other rights of the Authority under the Franchise Agreement, the Authority and his representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchise Operator in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to:
 - (i) the Franchise Operator's obligations under paragraph 9 of Schedule 6.A (Franchise Payments); and
 - (ii) the calculation of the Franchise Payment (and each component thereto) in accordance with Schedule 6.A (Franchise Payments) and/or Schedule 6.B (Performance Payments).
- (b) The Franchise Operator shall make available to the Authority and his representatives such information and grant such access or procure the grant of such access including electronic access (and including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 9.7(a).
- (c) If any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Authority, any material inaccuracy in the Management Accounts, the Annual Management Accounts and/or the Annual Audited Accounts then:
 - (i) the Authority may exercise its rights as described paragraph 12.1 or 12.2 of Schedule 6.A (Franchise Payments); and
 - (ii) the Franchise Operator shall pay all reasonable costs of any such audit as a monitoring cost pursuant to clause 15.10(a) which shall, for the avoidance of doubt, be treated as Disallowable Costs pursuant to Appendix 1 to Schedule 6.A.

9.8 **Adjustment and Restatement of the Annual Audited Accounts**

The Franchise Operator shall promptly notify the Authority as soon as it becomes aware of any requirement to adjust or restate the Annual Audited Accounts or Final Reviewed

Accounts and shall deliver to the Authority any such adjusted or restated Annual Audited Accounts or Final Reviewed Accounts as soon as such accounts are available.

10. **BUSINESS PLANS**

10.1 NOT USED.

10.2 **Annual Business Plans**

- (a) Within twenty (20) Weekdays of the start of the first Reporting Period in each Franchise Operator Year the Franchise Operator shall deliver to the Authority the Franchise Operator's business plan for the forthcoming Franchise Operator Year (the "**Annual Business Plan**"). The Annual Business Plan shall be a detailed and comprehensive description of the Franchise Operator's planned activities for such Franchise Operator Year and the manner in which the Franchise Operator will meet its obligations under the Franchise Agreement in respect of that Franchise Operator 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 each Franchise Operator Year during the Franchise Term;
 - (ii)
 - (A) a forecast of the Franchise Operator's Forecast Closing Cash Position for the last day of each of the following thirteen (13) Reporting Periods; and
 - (B) a statement demonstrating how the Franchise Operator intends to ensure that at the end of each of the following thirteen (13) Reporting Periods it will have available Forecast Closing Cash Position which is not less than the Floor Cash Position;
 - (iii) an annual improvement plan providing:
 - (A) details of any new technologies, processes, developments and/or proposals which could improve the provision of the Franchise Services, reduce the cost of providing the Franchise Services or enable the Franchise Services to be provided more efficiently;
 - (B) an analysis of the impact of any technologies, processes, developments and/or proposals that are proposed in relation to the Franchise Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of the Franchise Services;
 - (C) details of those technologies, processes, developments and/or proposals which the Franchise Operator proposes to implement during that Franchise Operator Year; and
 - (D) an analysis of the technologies, processes, developments and/or proposals which the Franchise Operator implemented in the previous Franchise Operator Year including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for the previous Franchise Operator Year;
 - (iv) a statement from each of, a statutory director of the Franchise Operator and, a statutory director of the Parent confirming that the Annual Business Plan has been provided to, considered and endorsed by the board of directors of each Parent and that the board of directors of each Parent 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 Authority should any of them become aware of any such plan.

- (b) If at any time during a Franchise Operator Year the Franchise Operator produces any other annual business plan or periodic plan which is delivered to its Parents it shall at the same time as delivering such plan to its Parents notify the Authority of all such plans and shall explain to the Authority how (if at all) such further plan alters, amends or otherwise varies or impacts on the applicable Annual Business Plan or Initial Budget. The Authority shall be entitled to copies of such further plans as the Authority shall reasonably determine.

10.3 Business Action Plan

- (a) The Authority may at any time require the Franchise Operator to produce a business action plan in respect of any aspect of the Business Plan. Such business action plan may include steps relating to:
 - (i) timetable and service pattern development;
 - (ii) Station facility improvement;
 - (iii) performance management improvement;
 - (iv) customer service improvement; and
 - (v) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- (b) The Franchise Operator shall comply with any guidance issued by the Authority 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 Authority decides it is appropriate to do so and subject to any conditions which the Authority may impose.

11. SAFETY INFORMATION

11.1 Safety

- (a) The Franchise Operator shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.
- (b) The Franchise Operator shall notify the Authority as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from the ORR. Immediately upon receipt of such notification or notice, the Franchise Operator shall provide the Authority with a copy of such notification or notice.
- (c) The Franchise Operator shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

12. FURTHER INFORMATION

12.1 The Franchise Operator shall:

- (a) deliver to the Authority, or procure the delivery to the Authority of, such information, records or documents as he may request within such period as he may reasonably require and which relate to or are connected with the Franchise Operator's performance of the Franchise Agreement; and

- (b) procure that each Affiliate of the Franchise Operator complies with paragraph 12.1(a) in respect of any information, records or documents that relate to its dealings with the Franchise Operator in connection with the Franchise Operator's performance of its obligations under the Franchise Agreement.

12.2 The information referred to in paragraph 12.1 shall include:

- (a) any agreement, contract or arrangement to which the Franchise Operator is a party in connection with any rolling stock vehicles used in the operation of the Passenger Services;
- (b) in so far as the Franchise Operator has or is able to obtain the same, any other agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock vehicles;
- (c) any agreement for the manufacture or supply of any rolling stock vehicles; or
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

12.3 The Authority may require the Franchise Operator to provide:

- (a) the information required to be provided under this Schedule 6.C more frequently than set out in this Schedule 6.C;
- (b) the information required to be provided under this Schedule 6.C, or, in the Authority'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 Authority, acting reasonably, from time to time.

13. **INFORMATION FROM THIRD PARTIES**

13.1 The Franchise Operator shall, if the Authority so requests, use all reasonable endeavours to ensure that the Authority has direct access to any information, data or records relating to the Franchise Operator which is or are maintained by third parties and to which the Authority is entitled to have access, or of which the Authority is entitled to receive a copy under the Franchise Agreement.

13.2 The Franchise Operator shall, if the Authority so requests, procure the provision by RSP to the Authority of such information, data and records as the Franchise Operator is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Authority may specify from time to time.

13.3 The obligations of the Franchise Operator under this Schedule 6.C to provide information to the Authority shall not apply if the Authority notifies the Franchise Operator that he has received the relevant information directly from any other person (including Network Rail or RSP). The Franchise Operator shall, if the Authority so requests, confirm or validate any such information which is received from any such other person.

13.4 The Franchise Operator shall promptly advise the Authority of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the Franchise Operator, materially affect the continuity of any of the records that are provided pursuant to this Schedule 6.C. 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 Authority under the Franchise Agreement shall be provided, if so requested

by the Authority, in a form compatible with the Authority's electronic data and records systems as notified by the Authority to the Franchise Operator from time to time.

- 14.2 The Franchise Operator shall ensure that the interconnection of such systems or the provision of such information, data and records to the Authority under the Franchise Agreement will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.