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

The Secretary of State for Transport

and

Abellio East Anglia 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) **Abellio East Anglia Limited** (company number 07861414), whose registered office is at 2nd Floor, St Andrews House, 18-20 St Andrew Street, London, EC4A 3AG (the "**Franchisee**"),
- each a "**Party**" and together, the "**Parties**".

RECITALS:

- (A) The Secretary of State and the Franchisee entered into a franchise agreement dated 23 August 2016 in respect of certain railway passenger services designated by the Secretary of State as eligible for provision under franchise agreements (the "**Franchise Agreement**").
- (B) 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.
- (C) 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 0 of this EMA (as defined below).
- (D) 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**").
- (E) The Franchisee 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 0, 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 0 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 Franchisee 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 0, 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 0, the provisions of Appendix 2 to Schedule 8A, included in 0 to this EMA (Schedule 8.A (Franchise Payments)) shall apply retrospectively from 1 March 2020.
- 3.3 Subject to clause 0, 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 0 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 0).

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 0 to this EMA and by clauses 0 to 0 below.

5. **COOPERATION**

- 5.1 The Franchisee 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 Franchisee 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 Franchisee shall use its best endeavours to accommodate such requests and act in the national interests.

6.2 The Franchisee, 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 8.A of the Franchise Agreement, as set out in Appendix 2 to 0 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. REMEDIAL PLANS

8.1 Subject to the provisions of Schedule 10.1 of the Franchise Agreement, as amended by this EMA, the requirement to submit a Remedial Plan shall be suspended for the duration of the EMA.

8.2 Any Remedial 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 Remedial Plan will be:

- (a) continued "as is";
- (b) delayed;
- (c) suspended; or
- (d) reduced in scope or application.

9. FARES

9.1 The Franchisee 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 REVENUE AND PROFIT SHARE MECHANISMS

10.1 The Parties acknowledge and agree that the revenue risk-sharing mechanisms, the profit share mechanism and any other relevant regimes that are prescribed in annual terms under the Franchise Agreement (prior to the implementation of the EMA) shall be treated for the Franchisee Year beginning in April 2019 as if that Franchisee Year had ended at the end of the twelfth Reporting Period in the same manner as may be provided for in the Franchise Agreement for an early termination and/or exercising part of a year in an optional extension period. If and to the extent that the Franchise Agreement does not already otherwise pro rate or otherwise make an allocation in relation to a part year, the Secretary of State will, acting reasonably, determine the appropriate pro rating for the relevant figures or metric.

11. FUNDING DEED

- 11.1 The Funding Deed shall remain in force and shall not be amended by this EMA.
- 11.2 The Franchisee will not pay any interest accruing in relation to any loans provided under the Funding Deed during the term of the EMA. Such interest shall remain due at the expiry of the EMA.
- 11.3 Subject to clause 0, the Franchisee shall not during the term of the EMA repay any part of the PCS Facility (as defined in the Funding Deed) that has been advanced pursuant to the Funding Deed.
- 11.4 The Franchisee shall be entitled to use a sum equivalent to the payment made by the Secretary of State pursuant to Appendix 2 of Schedule 8A of the Franchise Agreement in relation to the Reporting Period starting on 1 March 2020 (less any element of that payment which consists of Management Fee), to repay the PCS Facility which was made to the Franchisee between 1 March 2020 and 31 March 2020, provided such repayment occurs before 30 April 2020.

12. CHANGE

- 12.1 Save as specified in Schedule 1 to this EMA, the provisions of Schedule 9 (Changes and Variations) 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 "Change" for the duration of the EMA and the Franchisee shall not raise a claim for Change that arises from the impact of COVID-19 for the duration of the EMA.
- 12.3 Any Change event that arises 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 (Changes and Variations) of the Franchise Agreement after the expiry of the EMA.
- 12.4 In relation to Change events triggered before the EMA:
- (a) the processing of the Change 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 Change that are agreed or determined in accordance with that process shall be made as and when determined; and
 - (c) notwithstanding clauses 0(a) and (b), any Estimated Revisions shall cease, and shall not be payable, from 1 March 2020 until the expiry of the EMA.

13. PERFORMANCE BENCHMARKS

- 13.1 Where the Franchisee's performance in the Reporting Periods prior to the EMA results in a breach or is at "default level", 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 0 shall in no circumstances be more advantageous to the Secretary of State than the position prior to the EMA.

14. COMMITTED OBLIGATIONS

- 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 Committed Obligations will be:
- (a) continued "as is";
 - (b) delayed;
 - (c) suspended; or
 - (d) reduced in scope or application.
- 14.2 In the event that the Committed Obligation involves Capital Expenditure the default assumption will be that the Committed Obligation shall continue unaffected during the period of the EMA.
- 14.3 In the event the Parties are unable to agree the approach to completion of a Committed Obligation 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 Franchisee'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 Franchisee 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 Franchisee is successful in receiving such support, this shall be taken into account in relation to the application of the mechanisms in Schedule 8.A of the Franchise Agreement, as set out in Appendix 2 to 0 to this EMA, such that the Franchisee does not benefit from double recovery.

16. STATE AID

- 16.1 The Franchisee acknowledges and agrees that the EMA must not result in any financial advantage being granted to Franchisee 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 8A 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 Franchisee 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 Franchisee shall, within ten (10) days of the execution of this EMA, provide a warranty in writing, from a statutory director of the Franchisee to the Secretary of State confirming that:

- (a) the budget submitted by the Franchisee prior to the EMA Start Date is a true and valid reflection of the budget assumed by the Franchisee 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 Franchisee acknowledges that this EMA has not been entered into wholly or partly in reliance on, nor has the Franchisee been given any warranty, statement, promise or representation other than as expressly set out in this EMA. To the extent that any such warranties, statements, promises or representations have been given the Franchisee unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.

19.3 Nothing in this clause 0 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 the day and year first before written:

SIGNED FOR AND ON BEHALF OF **The Secretary of State for Transport**

)
)
)

[REDACTED¹]

Print Name of Authorised Signatory:

Position:

SIGNED FOR AND ON BEHALF OF **Abellio East Anglia Limited**

)
)
)

[REDACTED²]

¹ 20 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.

² 20 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 Schedule remains unamended and continues to apply;
- any text that appears in blue and is underlined shall be added to existing paragraphs / Schedules; and
- any text that appears in blue and is struck-out shall be deleted from existing paragraphs / Schedules.

REFERENCE (PARAGRAPH / SCHEDULE)	AMENDMENT
Main Body	
1.1 - Interpretation	<p>The following new subclause (ab) shall be inserted into clause 1.1:</p> <p style="text-align: center;"><u><i>"(ab) a reference to a sum being calculated in accordance with Schedule 8.1 or 8.2 (including references to RPI having the meaning given in Schedule 8.1 or 8.2, or references to amounts or costs being varied or indexed as amounts or costs are indexed in Schedule 8.1 or Schedule 8.2) shall be interpreted as a reference to Schedule 8.1 and 8.2 in the form which applied immediately prior to the EMA Start Date."</i></u></p> <p>The full stop at the end of clause 1.1(aa) shall be deleted and replaced with "<u><i>; and</i></u>".</p> <p>The word "and" at the end of clause 1.1(z) shall be deleted.</p>

<p>3 – Definitions</p>	<p>The following new definitions shall be inserted into clause 3.1:</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>"Initial Budget" <i>means the Budget (as defined in Schedule 8.A) 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 Secretary of State;</i></p> <p>The following existing definitions shall be amended as follows:</p> <p>"Franchise Payment" <i>means, in relation to any Reporting Period, the amount determined in accordance with paragraph 1.1 of Schedule 8.A1 (Franchise Payments);</i></p> <p>"Payment Date" <i>means the date for the payment of Franchise Payments in accordance with paragraph 3.3 2-3 of Schedule 8.A1 (Franchise Payments);</i></p>
<p>11.3 – Disputed under Schedule 8 (Payments) of this Agreement</p>	<p>Clause 11.3 shall be amended as follows:</p> <p>"11.3 Disputes under Schedule 8 (Payments) of this Agreement</p> <p>The Parties shall comply with the terms of paragraph 3.74 of Schedule 8.A1 (Franchise Payments) of this Agreement."</p>
<p>15 – Entire Agreement</p>	<p>Clause 15.1 shall be amended as follows:</p> <p><i>"This Agreement, the Conditions Precedent Agreement, the Rolling Stock Substitution Side Letter and the Multiplicative Modelling Side Letter (each as amended from time to time) contain the entire agreement between the Parties in relation to the subject matter of the Franchise Agreement</i></p>

	<i>and supersede all prior agreements and arrangements between the Parties other than any confidentiality agreements or undertakings which the Franchisee may have entered into with the Secretary of State in connection with his proposal to secure the provision of the Passenger Services under the Franchise Agreement."</i>
Schedule 1: Passenger Service Obligations	
1.1 – Franchisee Services and Service Development	Schedule 1 shall be replaced with the new Schedule 1 attached at Appendix 1.
1.2 – Operating Obligations	
1.3 – NOT USED	
1.4 – Passenger Facing Obligations	
1.5 – Information about Passengers	
1.6 – The Rolling Stock	
1.7 – Stations	
Schedule 2: Assets, Leases, Other Franchisees’ Schemes	
2.1 – Asset Vesting and Transfer	N/A
2.2 – Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases	N/A
2.3 – Other Franchisees	N/A
2.4 – Not Used	N/A
2.5 – Transport, Travel and Other Schemes	N/A
Schedule 3: Not Used	

-	N/A
Schedule 4: Accessibility and Inclusivity	
-	N/A
Schedule 5: Fares and Smart Ticketing	
5.1 – Purpose, Structure and Construction	N/A
5.2 – Franchisee's Obligation to Create Fares	N/A
5.3 – Allocation of Fares to Fares Baskets	N/A
5.4 – Regulation of Fares Basket Values	N/A
5.5 – Regulation of Individual Fares	N/A
5.6 – Exceeding the Regulated Value, Regulated Price or Regulated Child Price	N/A
5.7 – Changes to Fares and Fares Regulation	N/A
5.8 – Fares Regulation Information and Monitoring	N/A
5.9 – Smart Ticketing	N/A
Schedule 6: Franchise Specific Obligations and Committed Obligations	
6.1 – Franchise Specific Obligations	N/A
6.2 – Committed Obligations	N/A
6.3 – Not Used	N/A

Schedule 7: Performance Benchmarks	
7.1 – Performance Benchmarks	Unless otherwise instructed by the Secretary of State, Schedule 7.1 shall not apply for the duration of the EMA.
7.2 – National Rail Passenger Surveys, Customer Report and CCIF Scheme	Unless otherwise instructed by the Secretary of State, Schedule 7.2 shall not apply for the duration of the EMA.
7.3 – Customer Experience Performance	Unless otherwise instructed by the Secretary of State, Schedule 7.3 shall not apply for the duration of the EMA.
Schedule 8: Payments	
8.1 – Franchise Payments	Schedule 8.1 shall be replaced with (together): (i) the new Schedule 8.A attached at Appendix 2; and (ii) the new Schedule 8.B attached at Appendix 3.
8.2 – Profit Share Mechanism	Unless otherwise instructed by the Secretary of State, Schedule 8.2 shall not apply for the duration of the EMA.
8.3 – Track Access Adjustments and Station Charge Adjustments	Unless otherwise instructed by the Secretary of State, Schedule 8.3 shall not apply for the duration of the EMA.
8.4 – GDP & CLE Adjustment Payments	Unless otherwise instructed by the Secretary of State, Schedule 8.4 shall not apply for the duration of the EMA.
Schedule 9: Changes and Variations	
9.1 – Financial and Other Consequences of Change	Unless otherwise instructed by the Secretary of State, Schedule 9.1 shall not apply for the duration of the EMA.
9.2 – Identity of the Financial Model	N/A

9.3 – Variations to the Franchise Agreement and Incentivising Beneficial Changes	N/A
9.4 – Secretary of State Risk Assumptions	N/A
Schedule 10: Remedies, Events of Default and Termination Events	
10.1 – Procedure for Remediating a Contravention of the Franchise Agreement	<p>Paragraph 2 shall be deleted and replaced with the following new paragraph:</p> <p><u><i>"If:</i></u></p> <p><u><i>(a) the Secretary of State is satisfied that the Franchisee is operating at a level that would, or would likely, be scored "1"; or</i></u></p> <p><u><i>(b) the Franchisee has received a score of "1",</i></u></p> <p><u><i>in relation to any of the EMA Criteria, for a particular EMA Performance Period, in accordance with the EMA Review process set out in Schedule 8.B, the Secretary of State may serve a notice on the Franchisee requiring it to address and overcome the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant EMA Criterion (a "Remedial Plan Notice")."</i></u></p> <p>Paragraph 3.1(a) shall be deleted and replaced with the following new paragraph:</p> <p><u><i>(a) the specific EMA Criterion under the EMA Review Scorecard that the Secretary of State is satisfied that the Franchisee is likely to score, or has scored, "1" in ("Relevant Term"); and</i></u></p> <p>Paragraph 4.2(b) shall be amended as follows:</p> <p>"4.2 <i>Each Remedial Plan shall set out:</i></p> <p><i>(a) the Relevant Term which has caused such Remedial Plan to be required;</i></p> <p><i>(b) an explanation of the reasons for the <u>Franchisee receiving, or being likely to receive, a score of "1" with respect to contravention or likely contravention of</u> the Relevant Term;</i></p>

	<p>(c) <i>the steps proposed for the purposes of <u>addressing and overcoming the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the Relevant Term securing or facilitating compliance with the Relevant Term</u>; and</i></p> <p>(d) <i>the time period within which the Franchisee proposes to implement those steps."</i></p>
<p>10.2 – Events of Default and Termination Events</p>	<p>The text in paragraph 1.6 shall be deleted and replaced with "<u>not used</u>".</p> <p>The text in paragraph 1.8 shall be deleted and replaced with "<u>not used</u>".</p> <p>A new paragraph 1.17 shall be inserted as follows:</p> <p><u>"1.17 Disallowable Costs</u></p> <p><i><u>The Franchisee's Disallowable Costs exceed the maximum value for Aggregated Costs and Revenues Liabilities as specified in paragraph 5.8A of Schedule 8.A to this Agreement."</u></i></p>
<p>10.3 – Force Majeure and Business Continuity</p>	<p>Paragraph 1(e)(iii) shall be amended by replacing the word "and" with "or".</p> <p>Paragraph 1(e) shall be amended by inserting a new paragraph as follows:</p> <p><i><u>"(iv) for the duration of the EMA, the occurrence and impact, whether direct or indirect, of COVID-19; and"</u></i></p> <p>Paragraph 1 shall be amended by inserting the following text at the end of the paragraph:</p> <p><i><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></i></p> <p>Paragraph 3 shall be amended by inserting the following new paragraph:</p> <p><i><u>"3.3 Notwithstanding any other provision of this Agreement, the Franchisee agrees that it shall not for the duration of the EMA be entitled to further relief from obligations pursuant to the Force Majeure provisions under this Schedule 10.3 as a direct or indirect impact of COVID-19."</u></i></p>

10.4 – Liability	N/A
Schedule 11: Franchise Performance Meetings and Management Information	
11.1 – Franchise Performance Meetings	N/A
11.2 – Management Information	Schedule 11.2 shall be replaced with the new Schedule 11.2 attached at Appendix 4.
Schedule 12: Financial Covenants and Bonds	
Financial Covenants and Bonds	<p>Paragraph 1 shall be amended by:</p> <p>deleting the word "or" at the end of paragraph (c);</p> <p>amending subparagraph (d) as follows:</p> <p>"(d) <i>create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank; <u>or</u></i>"</p> <p>inserting a new subparagraph (e) as follows:</p> <p><u>"(e) borrow any sum, or enter into any loan or lending agreement for the purpose of borrowing from any person."</u></p> <p>The text in paragraph 2 shall be deleted and replaced with "not used".</p> <p>Paragraph 3.2 shall be replaced with the following:</p> <p><u>3.2 "Lock-up Period" means the period commencing on the EMA Start Date and expiring on the date which the Secretary of State confirms by notice in writing to the Franchisee that:</u></p> <p><u>(a) the Secretary of State considers that all the obligations of the Parties to account to each other pursuant to Schedule 8.A (Franchise Payments) have been fully performed and discharged (such confirmation not to be unreasonably withheld or delayed); and</u></p>

	<p><u>(b) by virtue of such notice, the Lock-Up Period has expired.</u></p> <p><u>No such notice shall constitute a waiver of any rights which the Secretary of State may have under or in respect of Schedule 8.A."</u></p> <p>Paragraph 3.3 is deleted.</p> <p>A new paragraph 3A shall be added as follows:</p> <p><u>"3A. The Franchisee 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."</u></p> <p>Paragraph 4.3(c) shall be amended by inserting the following text at the end of the subparagraph:</p> <p><u>"The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.A (Franchise Payments) or otherwise, in respect of any additional costs or expenses incurred by the Franchisee in procuring any new Performance Bond where required to do so pursuant to this paragraph 4.3(c)."</u></p> <p>Paragraph 4.5(a)(i)(A) shall be amended as follows:</p> <p><u>"either terminated or expired and, in either case, in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State including where the Franchise Period has terminated or expired but provisions of the Franchise Agreement remain in operation and effect (including Schedule 8.A (Franchise Payments)); and/or</u></p> <p>The subparagraphs in paragraph 4.5(b) shall be amended as follows:</p> <ul style="list-style-type: none"> <u>"(i) early termination of the Franchise Agreement; and/or</u> <u>(ii) any failure by the Franchisee to perform or comply with any of its obligations to the Secretary of State under the Franchise Agreement or to a Successor Operator under the Supplemental Agreement-;</u> <u>(iii) without prejudice to the generality of paragraph 4.5(b)(i), any of the following amounts which (a), in respect of any Performance Year, the Secretary of State has not offset</u>
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	<p><u>against MFPP in accordance with paragraph 11 of Schedule 8.A (Franchise Payments); or (b) which are not taken into account in any payment received by the Secretary of State pursuant to the Funding Deed:</u></p> <p><u>(A) SoS Claims; and</u></p> <p><u>(B) any other sums which the Secretary of State has the right in accordance with Schedule 8.A (Franchise Payments) to offset against MFPP; and/or</u></p> <p><u>(iv) any amount of the Final Working Capital Adjustment not paid to the Secretary of State in accordance with paragraph 10.4 of Schedule 8.A (Franchise Payments)."</u></p> <p>A new subparagraph 4.5(e) shall be added as follows:</p> <p><u>"The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.A (Franchise Payments) or otherwise, of any losses, liabilities, costs or expenses incurred by the Franchisee arising out of or in connection with any lawful demand made by the Secretary of State under the Performance Bond pursuant to this paragraph 4."</u></p> <p>A new paragraph 7 shall be inserted as follows:</p> <p><u>"7. Survival</u></p> <p><u>For the avoidance of doubt this Schedule 12 and any other provisions of the Franchise Agreement reasonably required for the purpose of giving this Schedule full effect shall survive the termination or expiry of the Franchise Term (however arising) and continue in full force and effect in accordance with its terms."</u></p>
<p>Schedule 13: Rail Industry Initiatives and Innovation Obligations</p>	
<p>13.1 – Rail Industry Initiatives</p>	<p>N/A</p>
<p>13.2 – Innovation Obligations</p>	<p>N/A</p>
<p>Schedule 14: Preservation of Assets</p>	

14.1 – Maintenance of Franchisee	N/A
14.2 – Maintenance of Operating Assets	N/A
14.3 – Key Contracts	N/A
14.4 – Designation of Franchise Assets	N/A
14.5 – Dealing with Franchise Assets	N/A
14.6 – Residual Value Mechanism	N/A
14.7 – Incentivising Long Term Investment	N/A
Schedule 15: Obligations Associated with Termination	
15.1 – Reletting Provisions	N/A
15.2 – Last 12 or 13 months of Franchise Period and Other Conduct of Business Provisions	N/A
15.3 – Handover Package	N/A
15.4 – Provisions Applying on and After Termination	N/A
Schedule 16: Pensions	
16.1 – Railways Pension Scheme	<p>New paragraphs 5.3 and 5.4 shall be inserted as follows:</p> <p><i>"5.3 For the term of the EMA, the Franchisee shall not lower the rate of contributions payable under the Schedule of Contributions relating to the Anglia Railways Shared Cost Section, even if those contribution rates are ordinarily due to be lowered at some point under the Schedule of Contributions.</i></p> <p><i>5.4 It is acknowledged that where the Franchisee's current Schedule of Contributions would ordinarily lead to a reduction in the rate of contributions payable in respect of the Anglia</i></p>

	<p><u><i>Railways Shared Cost Section during the term of the EMA, that the Franchisee shall use all reasonable endeavours to agree a new Schedule of Contributions with the Trustee in respect of the Anglia Railways Shared Cost Section that would allow the Franchisee to comply with paragraph 5.3. The Franchisee shall obtain the consent of the Secretary of State in accordance with paragraph 4.2(e) in respect of any such changes and the Secretary of State shall act reasonably in consenting to any such amendment which is required to comply with paragraph 5.3."</i></u></p> <p>In paragraphs 6.4 and 6.5, the references to "Schedule 8 (Payments)" shall be deleted and replaced with "Schedule 8.A (Franchise Payments)".</p>
16.2 – Not used	N/A
Schedule 17: Confidentiality, Freedom of Information and Data Protection	
-	N/A

SCHEDULE 1

Passenger Service Obligations

Schedule 1.1:	Franchise Services and Service Development Part 1 - FRANCHISE SERVICES Part 2 - SERVICE DEVELOPMENT
Schedule 1.2:	Operating Obligations
Schedule 1.3:	NOT USED
Schedule 1.4:	Passenger Facing Obligations
Schedule 1.5:	Information about Passengers
Schedule 1.6:	The Rolling Stock
	Appendix to Schedule 1.6
Schedule 1.7:	Stations
	Appendix 1 to Schedule 1.7: List of Stations with Secure Stations Accreditation
	Appendix 2 to Schedule 1.7: Information about Station Improvement Measures

Schedule 1.1**Franchise Services and Service Development****Part 1 - FRANCHISE SERVICES****1. Franchise Services**

- 1.1 The Franchisee may at all times during the Franchise Term provide and operate the Franchise Services specified in this Schedule 1.1.
- 1.2 The Franchisee shall not directly or indirectly, without the prior written consent of the Secretary of State, carry on any business or activity other than the provision and operation of the Franchise Services.
- 1.3 Nothing in this Schedule 1.1 shall restrict any Affiliate of the Franchisee from having an interest in or participating in any business or activity.

2. Restrictions relating to Franchise Services

- 2.1 The Franchisee shall not without the prior written consent of the Secretary of State operate Passenger Services other than on the following routes (and in the event of disruption, any reasonable diversionary route):
 - (a) Great Eastern Main Line between London Liverpool Street and Norwich, and branches to Braintree, Colchester Town, Clacton-on-Sea, Walton-on-the-Naze; and Harwich Town;
 - (b) Marks Tey to Sudbury;
 - (c) London Liverpool Street to Southend Victoria;
 - (d) Wickford to Southminster;
 - (e) West Anglia routes between London Liverpool Street and Stratford to Hertford East; Stansted Airport, Cambridge, and Kings Lynn;
 - (f) Ipswich to Felixstowe, Lowestoft, Cambridge, Ely and Peterborough;
 - (g) Norwich to Cambridge, Great Yarmouth, Lowestoft, Cromer and Sheringham; and
 - (h) Cambridge to Stansted Airport.
- 2.2 It is acknowledged that a Passenger Service to be operated by the Franchisee on the routes specified above in paragraph 2.1 may be operated throughout the route, on part of the route or any combination of the whole or part of any two or more of the routes specified above.
- 2.3 The Secretary of State may impose such conditions to his consent as he considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the Franchise Term.
- 2.4 The Franchisee shall not during the Franchise Term, without the consent of the Secretary of State:
 - (a) provide or operate any railway passenger services other than the Passenger Services or Charter Services;
 - (b) operate any stations or light maintenance depots other than the Stations and Depots;
or

- (c) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:
 - (i) Network Rail; or
 - (ii) owned directly or indirectly by another participant in the railway industry and the holding is incidental to the Franchisee's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

2.5 The Franchisee shall not engage any Franchise Employee in any activity or business which it may not conduct or engage in under this paragraph 2.

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

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

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

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

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

4. Subcontracting any Passenger Services

4.1 Subject to paragraph 4.2, the Franchisee may not subcontract or delegate the provision of the Passenger Services without the prior written consent of the Secretary of State.

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

- (a) the Secretary of State receives prior written notice of any such subcontracting or delegation;
- (b) the Franchisee continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;
- (c) the Franchisee continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;
- (d) the Planned Train Mileage of the Passenger Services so delegated or subcontracted does not exceed five per cent (5%) of the Planned Train Mileage of the Franchisee in any Reporting Period (provided that, if as a result of the impact of COVID-19 it is not reasonably practicable to obtain the prior written consent of the Secretary of State to a higher percentage of the Planned Train Mileage being delegated or subcontracted in advance of subcontracting or delegating the provision of such Passenger Services, 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); and

- (e) the Franchisee continues to perform its obligations under this Schedule 1.1 in respect of any subcontracted or delegated services.

4.3 Any such subcontracting or delegation shall not relieve the Franchisee from any of its obligations under the Franchise Agreement, including its obligations under this paragraph 4 and Schedule 14 (Preservation of Assets).

5. **Station Services**

5.1 The Station Services shall comprise:

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

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

6. **Light Maintenance Services**

6.1 Light Maintenance Services shall comprise:

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

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

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

7. **Ancillary Services**

7.1 The Franchisee may carry out the following Ancillary Services:

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials information or materials targeted at tourists and other leisure passengers (such as maps) or phone cards;
- (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 7.1(a) or which, if provided at a Station, would fall within paragraph 5 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;
- (c) NOT USED;
- (d) NOT USED;
- (e) NOT USED;
- (f) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchisee on or before the date of the Franchise Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
- (g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (i) travel on any other train or light rail service;
 - (ii) travel on any aircraft;
 - (iii) travel on any shipping or ferry service;
 - (iv) travel on any bus; or
 - (v) attend any event or attraction or enter any location;
- (h) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on any such operator's trains;
- (i) the provision of information relating to railway passenger services within Great Britain to passengers through telephone, internet, mobile data services or other appropriate means;
- (j) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger

Services and could not reasonably be carried out by or through an Affiliate of the Franchisee;

- (k) NOT USED;
- (l) the licensing or permitting of any other person (including an Affiliate of the Franchisee) to carry out any activity or business, in connection with the provision of the Franchise Services, or otherwise, on any rolling stock vehicle operated by the Franchisee, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);
- (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with the Franchise Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (n) the subleasing to any other person of the following property which is not comprised in a Station or Depot:
 - Suite C, First Floor, The Octagon, Middleborough, Colchester, Essex
 - Suite D, First Floor, The Octagon, Middleborough, Colchester, Essex
- (o) the provision or operation of Charter Services, subject to the Planned Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent (2%) of the Planned Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;
- (p) the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services; and
- (q) any services or activity not falling within paragraphs 5, 6, 7.1(a) to 7.1(p) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding twenty five thousand pounds (£25,000) per annum in each Franchisee Year, per item and in aggregate, two hundred and fifty thousand pounds (£250,000) per annum in each Franchisee Year provided that in the second and each subsequent Franchisee Year, these amounts will be increased by RPI.

7.2 The Franchisee 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:

- (a) in any Reporting Period, the subleasing, hiring or licensing of up to ten per cent (10%) of the rolling stock vehicles used in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock vehicles are sub-let, hired or licensed and the aggregate period of time for which they are used in the provision of the Passenger Services);
- (b) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:
 - (i) up to one per cent (1%) of the number of Franchise Employees as at the Start Date, for over ninety per cent (90%) of their normal working hours during such Reporting Period (including on a full-time basis); and
 - (ii) one per cent (1%) of any other Franchise Employees as at the Start Date,

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 7.1(a) to 7.1(b) inclusive, paragraphs 7.1(f) to 7.1(j) inclusive, 7.1(l) to (p) inclusive, paragraph 7.2(a) or paragraph 7.2(c)

to (e) inclusive, or engaged in any other activity which is permitted under this Schedule 1.1;

- (c) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the following Depot(s), subject to the number of persons engaged or employed in such activity not exceeding by more than ten per cent (10%) the number so engaged or employed on the Start Date:

Norwich Crown Point;

- (d) the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Franchisee or the lending, hiring or contracting out of any employees of the Franchisee or the provision of any other services to Network Rail or any other Train Operator on an emergency basis; and
- (e) 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.

8. **Royal Train**

8.1 The Franchisee shall, if and to the extent requested by any person (including DB Schenker Rail (UK) Limited) and subject to the payment by such person of any reasonable costs of the Franchisee, co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them.

8.2 The provision of railway services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them may include:

- (a) running a “**sweeper**” train in front of the royal train;
- (b) having spare locomotives on standby as rescue traction; and/or
- (c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.

Part 2 - SERVICE DEVELOPMENT

- 9.** Train Service Requirement - Purpose and Responsibility
- 9.1 The Train Service Requirement is the minimum specification of the Passenger Services and capacity to be provided by the Franchisee during the Franchise Term.
- 9.2 The Train Service Requirement as at the date of the Franchise Agreement is comprised in the following, all in the agreed terms marked as follows:
- (a) **TSR1** being the Train Service Requirement applicable from the Start Date until the Passenger Change Date in May 2019; and
 - (b) **TSR2** being the Train Service Requirement applicable from the Passenger Change Date in May 2019 until the Passenger Change Date in May 2020;
 - (c) **TSR3** being the Train Service Requirement applicable from the Passenger Change Date in May 2020 until the end of the Franchise Term.
- 9.3 For the purposes of this Schedule 1.1, the Train Service Requirement shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1.
- 9.4 The Train Service Requirement does not in any way limit the Franchisee's obligations pursuant to paragraph 14 of this Schedule 1.1.
- 9.5 The Franchisee is required to seek Train Slots from Network Rail in accordance with the Train Service Requirement with the intention that the working timetable issued by Network Rail is consistent with such Train Service Requirement. With regard to capacity, the Franchisee is required to include in the Train Plan the minimum capacity specified in the Train Service Requirement.
- 9.6 The Train Service Requirement may be expressed in whole or in part at any level of generality or to any level of detail the Secretary of State considers appropriate.
- 9.7 The Secretary of State and the Franchisee agree that replacements of:
- (a) TSR1 by TSR2; and
 - (b) TSR2 by TSR3,
- at the time and for the period specified in this paragraph 1.2 shall not constitute a Change for the purpose of paragraph (d) of the definition of Change.
- 10. Train Plan**
- 10.1 Subject to paragraph 10.2, for the purposes of this Agreement, the **"Train Plan"** shall be the plan or diagram (including sub-plans or sub-diagrams) prepared by the Franchisee for the operation of trains and train formations under the Timetable that best matches available capacity to Forecast Passenger Demand as amended from time to time during the Franchise Period in accordance with this Agreement;
- 10.2 For the purposes of Schedule 7 (Performance Benchmarks), references to **"Train Plan"** shall be construed as the latest version of the Train Plan which includes any amendments thereto pursuant to paragraphs 3, 4 and/or 5 of Schedule 1.2 (Operating Obligations):
- (a) where such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement;

- (b) where such amendments proposed by the Franchisee have prior approval from the Secretary of State; or
 - (c) where such amendments are requested by the Secretary of State.
- 10.3 The Franchisee shall submit to the Secretary of State a Train Plan in respect of each Timetable in accordance with this Schedule 1.1.
- 10.4 In preparing any Train Plan, the Franchisee shall do so by reference to the Timetable that it envisages operating in order to comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1.
- 10.5 Each Train Plan shall set out for each railway passenger service in the Timetable to which it relates:
- (a) its start point and departure time;
 - (b) its terminating point and arrival time;
 - (c) the number and class of rolling stock vehicles allocated to each such railway passenger service;
 - (d) the Passenger Carrying Capacity that each such railway passenger service, as formed, is to have; and
 - (e) its Forecast Passenger Demand and, where this has been requested by the Secretary of State and is capable of calculation, Actual Passenger Demand.
- 10.6 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.
- 10.7 At the Start Date, Network Rail will have issued the applicable working timetable on which the Timetable is to be based. Accordingly the Franchisee shall confirm to the Secretary of State that it intends:
- (a) to adopt, from the Start Date until the next Passenger Change Date, the Train Plan prepared by the Train Operator under the Previous Franchise Agreement; or
 - (b) to prepare its own Train Plan in accordance with this Schedule 1.1,
- such Train Plan shall become the document in the agreed terms marked TP as at the Start Date.

11. Consultation on Significant Alterations to the Timetable

- 11.1 Notwithstanding any consultation the Secretary of State might separately undertake in respect of any amended or new draft Train Service Requirement issued pursuant to paragraph 16, the Franchisee shall where:
- (a) it intends that any future Timetable shall contain Significant Alterations compared to the Timetable then in force; and
 - (b) such Significant Alterations are likely to have, in the reasonable opinion of the Franchisee, a materially adverse effect on:
 - (i) the ability of passengers using any station served by the Passenger Services to make journeys relating to work or education at reasonably convenient times; and/or

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

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

11.2 Accordingly the Franchisee shall where the circumstances described in paragraph 0 apply:

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

12. Timetable Development Rights

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

12.2 Prior to exercising any Timetable Development Rights to secure a Timetable the Franchisee shall make an informed estimate of Forecast Passenger Demand and in doing so shall make reasonable assumptions based on available evidence (making proper use of recognised railway industry systems and forecasting tools as these may develop over the Franchise Period) with the estimate being in such format and to such level of disaggregation as the Secretary of State may reasonably require.

12.3 The Franchisee shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Train

Service Requirement and paragraph 14 of this Schedule 1.1 in accordance with its obligations under paragraph 17 of this Schedule 1.1.

- 12.4 Where the Franchisee proposes to exercise its Timetable Development Rights so that the Timetable in force after the relevant Passenger Change Date contains Significant Alterations to that in force prior to such Passenger Change Date the Franchisee shall, without prejudice to its obligation to consult pursuant to paragraph 11, act reasonably with the intention of obtaining a Timetable which enables paragraphs 14.1(b) and 14.1(c) of this Schedule 1.1 to be achieved in relation to each Passenger Service in the Timetable to the greatest extent reasonably practicable. It is agreed that in acting reasonably the Franchisee shall take full and proper account of its informed estimate of Forecast Passenger Demand made pursuant to paragraph 12.2 above.
- 12.5 Unless the Secretary of State otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Train Service Requirement and paragraph 14 of this Schedule 1.1, exercise its rights under the Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights.
- 12.6 Subject to the Franchisee complying with its obligations under paragraph 12.5 above, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1, to the extent that such failure is caused by:
- (a) the Franchisee's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Franchisee has exercised and, unless otherwise agreed by the Secretary of State, is continuing to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.3 above;
 - (b) Network Rail exercising its flexing rights from time to time under the Track Access Agreement or the Network Code in respect of such Train Slots;
 - (c) Network Rail exercising its other rights from time to time under the Track Access Agreement or the Network Code; or
 - (d) the exercise by the ORR of its powers pursuant to Section 22C of the Act.
- 12.7 **TDR Amendments**
- (a)
 - (i) If and to the extent that the Franchisee is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Train Service Requirement as a result of it not being able to obtain the timetable development rights that it requires for that purpose, then the Secretary of State shall (subject to paragraphs 12.7(b) and 12.7(c) below) issue to the Franchisee such amendments to the Train Service Requirement ("**TDR Amendment**") as the Secretary of State considers necessary such that the Franchisee is able to secure a Timetable in compliance with the Train Service Requirement as amended by the TDR Amendment by exercise of the Timetable Development Rights that the Franchisee does have.
 - (ii) The Secretary of State shall have an unfettered discretion as to whether or not to issue a TDR Amendment in circumstances where the Franchisee:
 - (A) has failed to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.3 above; and

- (B) is not relieved by paragraph 12.6 above from liability for such failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement.
- (iii) Where the Secretary of State reasonably considers that the failure to secure a Timetable that enables the Franchisee to operate the Train Service Requirement is partly due to the default of the Franchisee in not properly complying with its obligations under the Franchise Agreement in relation to securing Timetable Development Rights any TDR Amendment shall not relieve the Franchisee of the obligation to comply with the Train Service Requirement to the extent that the Secretary of State determines that the failure is due to such default of the Franchisee and the Franchisee may be in contravention of the Franchise Agreement accordingly.
- (b) Following issue of any TDR Amendment pursuant to paragraph 12.7(a) the Franchisee shall, unless otherwise agreed by the Secretary of State, continue to use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the Timetable Development Rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without such TDR Amendment.
- (c) Any TDR Amendment issued pursuant to paragraph 12.7(a) unless otherwise required by the Secretary of State, shall cease to have effect on the date (if any) on which the first Timetable comes into effect after the Franchisee has obtained the Timetable Development Rights to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without any such TDR Amendment.
- (d) With effect from the date on which any TDR Amendment ceases to have effect in accordance with paragraph 12.7(c) the Train Service Requirement without such TDR Amendment shall thereafter apply.

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

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

14. Planning to meet Target Passenger Demand

14.1 Capacity and Timetable Planning

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

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

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

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

14.3 Preparation of Timetable and Train Plan

- (a) Subject to paragraph 14.3(b), the Franchisee shall in preparing its Timetable and its Train Plan take full and proper account of its calculation of Forecast Passenger Demand and use all reasonable endeavours to ensure that the Train Fleet is deployed in an optimal manner for the purposes of complying with its obligations under paragraphs 14.1 and 14.2 above.
- (b) The Franchisee shall in preparing its Timetable and Train Plan deploy the entire Train Fleet (excluding reasonable planning requirements for the allocation of Hot Standbys or other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reason agreed with the Secretary of State

(such agreement not to be unreasonably withheld or delayed)) in delivering the Passenger Services:

- (i) during each Peak; and
- (ii) at such times during each Off-Peak where such deployment of the entire Train Fleet is reasonably required to meet the Franchisee's obligations pursuant to paragraphs 14.1 and 14.2 above.

14.4 Finalising the Train Plan

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

15. Capacity Mitigation Plan

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

15.2 The Capacity Mitigation Plan may, without limitation, include measures to be implemented by the Franchisee to:

- (a) remedy the circumstances leading to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1; and/or
- (b) minimise, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
- (c) ensure, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
- (d) minimise, so far as is possible, the extent to which passengers are required to stand:
 - (i) on boarding any Off-Peak Passenger Service; and
 - (ii) 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) on any Regional Peak Passenger Service or London Peak Passenger Service,

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

15.3 Where the Secretary of State reasonably believes that future circumstances may lead to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1 at any time within the next four (4) years (including after

the end of the Franchise Term) the Secretary of State shall have the right to serve notice on the Franchisee specifying those future circumstances and the date that the Franchisee should assume that they will arise from and requiring it to produce a Capacity Mitigation Plan to remedy or mitigate such future circumstances on the basis of assumptions provided by the Secretary of State.

- 15.4 The Capacity Mitigation Plan shall (unless the Secretary of State specifies to the contrary) include the Franchisee's informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require. Without limitation such specification may require the Franchisee to present options to address relevant issues through:
- (a) alterations to the Train Service Requirement;
 - (b) modification of rolling stock or the acquisition of additional or replacement rolling stock;
 - (c) alterations to Fares; and/or
 - (d) alterations or enhancements to any track, signalling, station, depot or other relevant railway infrastructure.
- 15.5 The Capacity Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (b) the implications (if any) for the Benchmarks and/or Annual Benchmarks; and
 - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- 15.6 The Franchisee shall meet with the Secretary of State to discuss the Capacity Mitigation Plan and provide such further information or analysis and further iterations of the Capacity Mitigation Plan as the Secretary of State shall reasonably require.
- 16. New or amended Train Service Requirement by the Secretary of State and Franchisee Informed Opinion**
- 16.1 Prior to issuing any amended or new Train Service Requirement the Secretary of State shall provide to the Franchisee his draft of any proposed amended or new Train Service Requirement stating the date upon which he proposes that such amended or new Train Service Requirement should take effect along with the Secretary of State's view as to the changes (if any) that he proposes to make to the Benchmarks and/or Annual Benchmarks.
- 16.2 On receipt of any proposed amended or new Train Service Requirement from the Secretary of State the Franchisee shall provide (if so requested) its informed opinion:
- (a) with supporting reasons as to the impact of the proposed amended or new Train Service Requirement on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 14.1;
 - (b) with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amended or new Train Service Requirement;
 - (c) with supporting reasons as to changes (if any) to the Benchmarks and/or Annual Benchmarks;

- (d) of the process to be required to implement the proposed amendment to the Train Service Requirement together with a plan for the implementation of the amendment to the Train Service Requirement (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such amended or new Train Service Requirement) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 17; and
 - (e) with supporting reasons of the likely impact of the proposed amended or new Train Service Requirement on existing and future passenger journeys and journey opportunities.
- 16.3 There may be iterations of drafts of the proposed amended or new Train Service Requirement and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 16 in respect of all such iterations.
- 16.4 Processes contained in this paragraph 16 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2.
- 16.5 The Secretary of State may issue to the Franchisee any amended or new Train Service Requirement that he requires the Franchisee to operate and notice of the amendments (if any) to the Benchmarks and/or Annual Benchmarks. Such amended or new Train Service Requirement will be issued prior to the commencement of the timetable development process of Network Rail for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Train Service Requirement.
- 16.6 In the absence of the Secretary of State issuing any amended or new Train Service Requirement the existing Train Service Requirement will remain in full force and effect. The degree of variation from any Train Service Requirement specified at the date the Franchise Agreement was entered into in respect of any particular period and brought about by any amended or new Train Service Requirement issued pursuant to this paragraph 16 shall (where relevant) be of a magnitude no greater than that contemplated in the Invitation to Tender.
- 16.7 At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Train Service Requirement pursuant to paragraph 16.1, the Secretary of State shall also provide to the Franchisee his opinion of any amendments (if any) that are required to the Benchmarks and/or the Annual Benchmarks.
- 17. Procedural Arrangements and Timescales**
- 17.1 The Franchisee agrees that the effective operation of the provisions of this Schedule 1.1, and of provisions addressing the same or similar matters in other franchise agreements, will require certain procedural arrangements and timescales to be followed to a common timescale by the Secretary of State, the Franchisee, Network Rail and others.
- 17.2 The Franchisee agrees that the Secretary of State may stipulate any reasonable procedural arrangements and timescales that are to be followed by the Secretary of State and the Franchisee for these purposes (which shall be consistent with any relevant standard railway industry processes for the development of the Timetable and the resultant Train Plan) and that the Secretary of State may amend any such stipulation from time to time.
- 17.3 The Secretary of State agrees to consult the Franchisee as far as reasonably practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 17.2.
- 17.4 Any stipulation by the Secretary of State pursuant to paragraph 17.2:
 - (a) shall be at the reasonable discretion of the Secretary of State;

- (b) may contain procedural arrangements and timescales to be followed by the Franchisee in relation to other changes to the Franchise Services (pursuant to paragraph 1 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes)) in conjunction with the Train Service Requirement; and
 - (c) may provide for iterations of drafts of any amended or new Train Service Requirement, Train Plan or Timetable.
- 17.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2 shall have contractual effect between the Franchisee and the Secretary of State in accordance with the terms of such stipulation.

18. Obligations in relation to other Train Operators

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

19. Provisions relating to Access Agreements and Property Leases

- 19.1 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under the Franchise Agreement, or any other franchise agreement, or for the better achievement by him of any of his duties, functions and powers in relation to railways, or the implementation of the Crossrail Programme and the operation of the Crossrail Services by the Crossrail Operator, the Secretary of State may require the Franchisee:
- (a) to exercise or refrain from exercising any or all of its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Secretary of State may specify; and/or
 - (b) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.
- 19.2 Except to the extent that the Secretary of State otherwise indicates from time to time, the Franchisee shall notify the Secretary of State of its intention to enter into or amend any Access Agreement:
- (a) where the approval of the ORR is required under the Act, not less than ten (10) Weekdays before the submission to the ORR; and
 - (b) where no such approval is required, not less than ten (10) Weekdays prior to entering into such amendment or Access Agreement.

- 19.3 The Franchisee shall comply with its obligations under any Access Agreement or any Property Lease to which it is a party from time to time:
- (a) to notify or consult with the Secretary of State on any matter or proposal relating to that Access Agreement or Property Lease; and
 - (b) which are contingent on a particular course of action being taken by the Secretary of State or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of the Secretary of State.
- 19.4 If and to the extent that:
- (a) the Secretary of State exercises his rights pursuant to paragraph 19.1;
 - (b) the Franchisee's compliance with the Secretary of State's requirements pursuant to paragraph 19.1 would lead to the unavoidable consequence of the Franchisee contravening any other terms of the Franchise Agreement or the occurrence of an Event of Default; and
 - (c) the Franchisee duly complies with such requirements,
- no such contravention of the Franchise Agreement or Event of Default shall have occurred.

20. The Timetable and Network Rail's Working Timetable

- 20.1 Any specification of Passenger Services in the Train Service Requirement shall (unless the Secretary of State states to the contrary) be regarded as relating to how those Passenger Services are to be provided for in the National Rail Timetable that Network Rail publishes for passengers.
- 20.2 The Franchisee shall ensure, for each period between two (2) consecutive Passenger Change Dates during the Franchise Term that the Timetable for such period is, in its reasonable opinion, not materially different from the relevant working timetable issued by Network Rail.

SCHEDULE 1.2**Operating Obligations****1. Daily Operating Obligations**

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

2. Timetabling and Train Planning Compliance Investigation

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

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

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

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

2.3 **Contravention of the Franchise Agreement**

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

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

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

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

4. Timetable changes proposed by the Franchisee

- 4.1 The Franchisee agrees, subject to paragraph 4.3, not to propose to Network Rail:
- (a) the addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;
 - (b) the omission from the Plan of the Day of any Passenger Services included in the Timetable; or
 - (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable,
- without the Secretary of State's prior consent.
- 4.2 The Franchisee shall submit to the Secretary of State an amended Train Plan in respect of each Timetable change proposal.
- 4.2A If, in the opinion of the Franchisee (acting reasonably), it would not be reasonably practicable to obtain the Secretary of State's consent prior to proposing any of the items referred to in paragraphs 4.1(a), 4.1(b) or 4.1(c) to Network Rail, the Franchisee shall be entitled to propose such items to Network Rail without the Secretary of State's prior consent provided that the Franchisee shall inform the Secretary of State of such proposals as soon as is reasonably practicable.
- 4.2B The Franchisee shall ensure that any proposals to Network Rail submitted pursuant to paragraphs 4.1 or 4.2A:

- (a) take full and proper account of the likely passenger demand (including a reasonable assessment of key workers) considering any known or anticipated impacts of COVID-19 (including without limitation any guidance published by Public Health England, and any Legislation, direction or instruction issued by any relevant local, governmental or other competent authority in the United Kingdom from time to time);
 - (b) utilise an appropriate number of Franchise Employees to support the likely passenger demand (as determined having taking into consideration the matters referred to in paragraph 4.2B(a)); and
 - (c) ensure that the Train Fleet is deployed in an optimal manner taking account of all relevant circumstances, including the latest available official guidance relating to social distancing.
- 4.2C The Franchisee shall use all reasonable endeavours to co-operate with other Train Operators in respect of the Franchisee's proposals to Network Rail pursuant to paragraphs 4.1 and 4.2A 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).
- 4.2D The Franchisee shall use reasonable endeavours to take into account the requirements of operators of rail freight services in respect of the Franchisee's proposals to Network Rail pursuant to paragraphs 4.1 and 4.2A.
- 4.3 The Franchisee shall use all reasonable endeavours to operate adequate railway passenger services to or from any special events which are not already provided for in the Plan of the Day to meet the passenger demand that is reasonably likely to arise from such special events. In meeting such demand, the Franchisee shall consider the effects upon the operation of the railway passenger services including through additions to and omissions from the Plan of the Day or rescheduling in the Plan of the Day where appropriate.

5. Timetable changes requested by the Secretary of State

- 5.1 The Franchisee agrees, as and when requested by the Secretary of State, to use all reasonable endeavours to seek and to obtain:
- (a) the addition to the Plan of the Day of any railway passenger services that are not included in the Timetable;
 - (b) the omission from the Plan of the Day of any Passenger Services that are included in the Timetable; and/or
 - (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable.
- 5.2 The Franchisee shall submit to the Secretary of State an amended Train Plan in respect of the requested changes in paragraph 5.1 above.

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

- 6.1 In the event of any planned or unplanned disruption to railway passenger services operated on the Routes, or on other parts of the network which are reasonably local to the Routes, the Franchisee shall:
- (a) without prejudice to any other provision of this Schedule 1.2, notify the Secretary of State promptly where such disruption would materially (having regard to both

duration and scale) prejudice the Franchisee's ability to deliver the Timetable or deliver the Timetable in accordance with the Train Plan;

- (b) co-operate with Network Rail and other Train Operators to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:
 - (i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
 - (ii) is reasonably necessary as a result of the cause or the location of the disruption; and
- (c) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2.

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

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

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

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

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

- (c) actively manage the performance by Network Rail of its contractual relationship with the Franchisee (and provide appropriate management resources for this purpose) so as to secure the best performance reasonably obtainable from Network Rail by these means (including taking the steps referred to in paragraph 7.4), having regard to all the circumstances.
- 7.2 The matters to which the Franchisee is to have regard pursuant to paragraph 7.1(b) shall include:
- (a) variations in weather and operating conditions (including Network Rail's infrastructure not being available for any reason), which may in either case include seasonal variations;
 - (b) default by, or restrictions imposed by, suppliers to the Franchisee;
 - (c) shortages of appropriately skilled or qualified Franchise Employees;
 - (d) disputes with Franchise Employees;
 - (e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
 - (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew and the servicing or cleaning of any rolling stock vehicles;
 - (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction); and
 - (h) the impact, and emerging projections relating to the likely or potential impact, from time to time, of COVID-19 on the Franchisee's ability to provide the Passenger Services and/or the level of passenger demand or reasonably expected passenger demand for the Passenger Services.
- 7.3 For the purpose of taking measures in respect of any disruption to the Franchise Services in accordance with paragraph 7.1(b) and assessing the extent of any risk referred to in paragraph 7.1(b) and any such risk's reasonable foreseeability, regard shall be had both:
- (a) to the historical levels of incidence of disruption in the operation of:
 - (i) the Franchise Services;
 - (ii) similar services both by the Franchisee and/or its predecessors; and
 - (iii) other services of a type similar to the Franchise Services; and
 - (b) to potential changes in circumstances which may affect those levels.
- 7.4 The steps to which paragraph 7.1(c) refers include:
- (a) co-operating with Network Rail in the development, agreement and implementation of:
 - (i) a five (5) year (rolling) Performance Strategy Plan; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Performance Strategy Plan;
 - (b) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and the Franchisee from time to time;

- (c) undertaking regular reviews of:
 - (i) the most common and most detrimental causes of PPM attrition and delay to the Passenger Services; and
 - (ii) the causes of the 10 delays to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 7.4(c)(i)),

which have occurred during a defined review period (e.g. weekly/four (4) weekly/quarterly) and which have been caused by the Franchisee, any other Train Operator, any other train operator licensed under the Act or Network Rail;
 - (d) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 7.4(c)(i) and 7.4(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
 - (e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the Parties;
 - (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail in the Performance Strategy Plan and derived delivery plans and using reasonable endeavours to specify and develop such delivery plans;
 - (g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains (and data collected from train systems), other facilities and/or information;
 - (h) co-operating with Network Rail in other delay management initiatives and ongoing quarterly reviews of the Performance Strategy Plan;
 - (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
 - (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
 - (k) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing the Franchisee's rights under such Track Access Agreement.
- 7.5 The Franchisee undertakes to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules.
- 7.6 To the extent not already provided for in the Franchise Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by the Secretary of State, enforcing its rights against Network Rail under any such agreement.
- 7.7 When and to the extent reasonably requested by the Secretary of State, the Franchisee shall provide to the Secretary of State evidence of the steps taken by it in order to comply with its obligations under this paragraph 7.

SCHEDULE 1.3

NOT USED

SCHEDULE 1.4**Passenger Facing Obligations****1. Publishing the Timetable****1.1 The First Timetable**

The Franchisee shall publish on the Start Date:

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

1.2 Timetable Revisions and Alterations

Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall publish updates or replacements to the Timetable at the locations specified in paragraph 1.1 to the extent necessary to reflect any changes which come into effect on a Passenger Change Date:

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

1.3 Subject to paragraph 2A.2 of this Schedule 1.4, in addition, the Franchisee shall:

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

1.4 Other Train Operators' Timetables

Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall also comply with the requirements of paragraphs 1.1 to 1.3 inclusive by making available booklets and displaying information in information displays and otherwise displaying posters in respect of any other Train Operator's timetable at each Station where the railway passenger services of such other Train Operator are scheduled to call or in respect of which Connections to such other Train Operators railway passenger services can be made from that Station:

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

1.5 National Rail Timetable and National Rail Enquiry Scheme

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

1.6 Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall use all reasonable endeavours to procure that information in relation to:

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

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

2. Communicating Late Timetable Changes

2.1 Subject to paragraph 2A.2 of this Schedule 1.4, save in respect of Significant Alterations, for which the provisions of paragraphs 1.3 and 1.6 shall apply, the Franchisee shall inform passengers, so far as possible on not less than seven (7) days' prior notice, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.

2.2 Such information shall be provided by:

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

2.3 The Franchisee shall revise or add to the information displays at the Stations promptly on receipt of any equivalent information relating to the railway passenger services of other Train Operators whose services call at the Stations.

2.4 Where the Franchisee is unable to provide the information specified in paragraph 2.1 because the relevant revisions are made on an emergency basis, the Franchisee shall notify passengers and publish the relevant revisions by way of the means contemplated by paragraph 2.2 as soon as reasonably practicable.

- 2.5 The Franchisee shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), passengers making enquiries regarding the Passenger Services are informed of the revised Timetable and any revised travel arrangements of the Franchisee as far in advance as is reasonably practicable.

2A Communicating Emergency Timetables

2A.1 The Franchisee shall publish:

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

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

3. Fares Selling Restrictions

3.1 Restrictions on Sales

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

- (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;

- (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the Price or Child Price (as the case may be) of such Commuter Fare or Protected Fare (as the case may be) and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as the Franchisee may reasonably require; and
- (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Commuter Fare or Protected Fare (as the case may be) on a Passenger Service.

3.2 The Franchisee shall procure that for any:

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

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

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

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

3.4 The Franchisee shall not sell or offer to sell:

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

3.5 Agents of the Franchisee

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

- (a) for Fares in respect of which the:
 - (i) Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), sell or offer to sell at prices no greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares); and
 - (ii) Child Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), sell or offer to sell at prices no greater than the Child Prices set for such Fares from time to time in accordance with Schedules 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares);
- (b) for Fares in respect of which the Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (Franchisee's Obligation to Create Fares), sell or offer to sell such Fares to any person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a 16 to 25 Railcard with no minimum fare (as amended or replaced from time to time) and whose purchase was made without condition; and
- (c) for all Fares:
 - (i) do not sell or offer to sell any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld); and
 - (ii) comply with the provisions of paragraph 5 of Schedule 15.2 (Last Twelve (12) or Thirteen (13) months of Franchise Period and other conduct of business provisions) to the extent they apply to the selling of Fares by the Franchisee.

3.6 Additional Ancillary Services

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

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

3.7 Sale of Fares for travel on Bank Holidays

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

4. Passenger's Charter

4.1 Content

The Franchisee shall:

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

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

4.3 Publishing the Passenger's Charter

The Franchisee shall publicise its Passenger's Charter by:

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

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

4.4 The Franchisee shall also provide at each staffed Station the then current passenger's charter of any other Train Operator whose trains call there, subject to the provision of such passenger's charter to the Franchisee by such other Train Operator.

4.5 The Franchisee shall provide copies of its Passenger's Charter to the operators of Franchisee Access Stations to enable such operators to publish it.

4.6 Passenger's Charter Payments and Other Obligations

The Franchisee shall:

- (a) make all payments which passengers may reasonably expect to be made or provided from time to time under the terms of the Passenger's Charter (whether or not the Franchisee is legally obliged to do so);

- (b) use all reasonable endeavours to make passengers aware of their right to claim compensation pursuant to the Passenger's Charter including by:
 - (i) displaying the relevant information on trains and at Stations;
 - (ii) making appropriate announcements to passengers on trains and at Stations when the circumstances giving rise to that right occur;
 - (iii) making compensation claim forms readily available to passengers at Stations and on the Franchisee's website; and
 - (iv) any other reasonable means to reflect future advancements in technology proposed in writing either by the Franchisee or the Secretary of State and agreed by both Parties (acting reasonably); and
- (c) use all reasonable endeavours:
 - (i) to comply with any other obligations, statements and representations; and
 - (ii) to meet any other standards or targets of performance, as are comprised in its Passenger's Charter from time to time.

5. End to End Journeys and Cycles

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

6. Statutory Notices

If requested by the Secretary of State, the Franchisee shall publish and display at Stations (and shall use all reasonable endeavours to procure the publication and display at Franchisee Access Stations of) such statutory notices as the Secretary of State may wish to publish from time to time in the exercise of his functions (including in relation to Closures or any enforcement or penalty orders).

7. Train and Station Cleaning

The Franchisee shall:

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

8. Publication of Performance Data

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

- (a) Cancellations Figures;
- (b) PPM Figures;
- (c) Right Time Figures;
- (d) CaSL Figures; and
- (e) Short Formation Figures.

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

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

- (a) in relation to all Passenger Services;
- (b) disaggregated by reference to Service Groups;
- (c) on a periodic and/or on an average basis (as applicable); and
- (d) include details of:
 - (i) the number of Passenger Services operated by the Franchisee during each relevant Reporting Period which are late in arriving at their final scheduled destination in the Plan of the Day:
 - (A) by between 30 minutes and 59 minutes;
 - (B) by between 60 minutes and 119 minutes; and
 - (C) by 120 minutes or more,and the percentage that each such category of delayed Passenger Services represents of the total number of Passenger Services scheduled to be provided in the Plan of the Day during such Reporting Period; and
 - (ii) the number of Passenger Services formed with less Passenger Carrying Capacity than specified in the Train Plan during such Reporting Period and the percentage that this represents of all Passenger Services scheduled in the Train Plan to be operated in that Reporting Period.

8.3 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 10.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme), the Franchisee shall publish (in such format as the Secretary of State may reasonably require):

- (a) the mean average of each of the Cancellations Figures and the Short Formation Figures for the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report (or, in the case of the first (1st) Customer Report, since the Start Date);

- (b) the latest PPM Figures, CaSL Figures and Right Time Figures for the last Reporting Period before publication of the relevant Customer Report;
- (c) from the third (3rd) Customer Report onwards, a summary comparison of the statistics produced pursuant to paragraphs 8.3(a) and (b) as against the equivalent statistics provided for the same Reporting Period(s) in the previous Franchisee Year;
- (d) an update on the key activities undertaken by the Franchisee to improve its performance in relation to the measures referred to in paragraphs 8.3(a) and (b); and
- (e) a summary of the key activities planned to be undertaken by the Franchisee in the period in relation to which the next Customer Report will report to improve its performance in relation to the measures referred to in paragraphs 8.3(a) and (b).

9. Publication of Complaints and Faults Handling Data

9.1 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 10.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme), the Franchisee shall publish (in such format as the Secretary of State may reasonably require) in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first Customer Report, since the Start Date:

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

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

SCHEDULE 1.5**Information about Passengers****1. Passenger Numbers Information**

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

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

(i) on each Passenger Service;

(ii) on each Route; and/or

(iii) at any station or between any stations;

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

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

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

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

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

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

(i) in the case of data collected automatically by the Count Equipment and capable of being transmitted directly and automatically to the RPC Database or the Preliminary Database (as appropriate), within 48 hours of its collation;

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

(iii) in the case of data collected by manual count, within one (1) calendar month of its collation;

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

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

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

2. Manual Passenger Counts

- 2.1 The Secretary of State shall have the right to require the Franchisee to carry out manual counts in relation to some or all of the Passenger Services at such times as may be required and in such manner (including as to levels of accuracy and the number of days) as may be specified from time to time by the Secretary of State including if, exceptionally, the Franchisee is unable to comply with its obligations to provide data generated by the equipment specified in paragraph 0.
- 2.2 The Secretary of State shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by him or otherwise). In the event that such audit reveals, in the reasonable opinion of the Secretary of State, a material error, or a reasonable likelihood of material error, in such counts, the Secretary of State may require the counts to be repeated or the results adjusted as he considers appropriate, and in these circumstances the Franchisee shall pay to the Secretary of State the costs of any such audits.

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

- 3.1 The technology to be used for the purpose of paragraph 1.2 shall be infra-red sensors or camera based door sensors.
- 3.2 The technology to be used for the purposes of paragraph 1.2 shall be fitted to:
- (a) in the case of any brand new rolling stock which is admitted to the Train Fleet, 100% of it from the date that such rolling stock is properly admitted; and
 - (b) in the case of all other rolling stock, by 1 January 2020, to every vehicle comprised within no less than 35% of such rolling stock units included in the Train Fleet from time to time in aggregate.
 - (i) Without limiting the Secretary of State's rights under paragraph 1.1 of this Schedule 1.5, the technology specified in paragraph 3.1 above shall be used to provide counts in respect of, in any period of not less than twelve (12) weeks, at least two of each of the Timetabled Services, and each count

shall be carried out on each rolling stock unit comprising a particular train. The Franchisee may only use a method of extrapolation and use extrapolated data to provide a reliable estimate of a full train's count with the Secretary of State's prior written approval of the use of extrapolated data and the method of extrapolation (such approval not to be unreasonably withheld or delayed).

- (ii) The Franchisee shall comply with its obligation under this paragraph 3 from the date(s) such rolling stock is incorporated into the Train Fleet.

3.3 The Parties acknowledge that the information supplied under paragraph 1.1 above, and any product of it created by the RPC Database or the Preliminary Database (as appropriate), may constitute Confidential Information to which Schedule 17 (Confidentiality and Freedom of Information) applies.

4. CRM Data

4.1 The Franchisee shall ensure that any CRM System is the property of the Franchisee or is licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and that any CRM Data obtained by or on behalf of the Franchisee shall be:

- (a) obtained on terms such that the Franchisee shall be the Data Controller of such data; and

- (b) the property of the Franchisee.

4.2 In relation to any CRM Data obtained by or on behalf of the Franchisee, the Franchisee shall ensure or procure that at the same time as the Franchisee seeks consent to process such CRM Data, the consent of the Data Subject is also sought to such CRM Data being disclosed to any Successor Operator and/or the Secretary of State and processed by any Successor Operator for the same purposes as the Franchisee sought consent to process such CRM Data.

4.3 Any consent referred to in paragraph 4.2 shall be sought in such manner as shall from time to time be approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and shall be on terms such as shall permit, in each case in compliance with the Data Protection Act:

- (a) the Franchisee to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and

- (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 4.2.

4.4 The Franchisee shall not be required to:

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

- (b) provide access to any CRM System,

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

5. Yield Management Data

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

6. Personal Data - General Provisions

- 6.1 In respect of any Personal Data processed by the Franchisee, including CRM Data, the Franchisee agrees that it shall (i) comply with the Data Protection Act and all other legislation relating to the protection and use of personal information (including the Privacy and Electronic Communications (EC Directive) Regulations 2003) (all such legislation collectively being the "Personal Data Legislation") to the extent that such legislation applies to it and (ii) procure that its agents or sub-contractors shall do the same to the extent that such legislation applies to any of them.
- 6.2 Pursuant to paragraph 6.1, the Franchisee agrees to comply with the Personal Data Legislation in respect of its processing of CRM Data and in particular, but without limitation, the Franchisee shall:
- (a) ensure that CRM Data is processed fairly and lawfully (in accordance with Part 1 of Schedule 1 of the Data Protection Act);
 - (b) ensure that CRM Data is obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes (in accordance with Part 2 of Schedule 1 of the Data Protection Act); and
 - (c) obtain and maintain all appropriate notifications as required under the Data Protection Act.
- 6.3 In accordance with its capacity as Data Controller of CRM Data and in accordance with the ensuing obligations under the Data Protection Act:
- (a) the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (i) prior to any disclosure of CRM Data to the CRM Data Processor, enter into written terms between itself and the Franchisee which are equivalent to those contained in this paragraph 6.3; and
 - (ii) process CRM Data only on behalf of the Franchisee, only for the purpose(s) as defined by the Franchisee and only in accordance with instructions received from the Franchisee from time to time;
 - (b) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times have in place appropriate technical and organisational measures against unauthorised or unlawful processing of CRM Data and against accidental loss or destruction of, or damage to, CRM Data and that such measures shall:
 - (i) reflect the level of harm, damage and/or distress that might be suffered by the Data Subject to whom the CRM Data relates in the event of a breach of the measures as set out herein;

- (ii) ensure that only authorised personnel have access to CRM Data and that any persons authorised to have access to CRM Data will respect and maintain all due confidentiality; and
 - (iii) (in the case of the CRM Data Processor) include compliance with a schedule of minimum security measures pursuant to the written terms between the Franchisee and the CRM Data Processor;
- (c) the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (i) promptly notify the Franchisee of any actual or suspected, threatened or 'near miss' incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access to the CRM Data or other breach of this paragraph 6.3(c) ("**Security Breach**") and, pursuant to this the Franchisee shall promptly notify the Secretary of State of all Security Breaches by itself or by the CRM Data Processor (the Franchisee hereby acknowledges that whilst the Secretary of State is not Data Controller in respect of the CRM Data, the Secretary of State's legitimate interests given its duties under the Act may be affected in the event of a Security Breach and as such the Secretary of State wishes to be notified of the same); and
 - (ii) promptly provide the Franchisee on request with all reasonable information, assistance and co-operation in relation to its use of the CRM Data, including in relation to any audit by the Franchisee or by any person appointed on its behalf to permit an accurate and complete assessment of compliance with this paragraph 6;
- (d) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times take reasonable steps to ensure the reliability of its/their personnel who have access to the CRM Data and ensure they are aware of the obligations of the Franchisee or the CRM Data Processor (as appropriate) in relation to the same; and
- (e) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, not cause or permit the CRM Data to be transferred to any location outside the European Economic Area (as defined in the Data Protection Act or otherwise as appropriate) without the prior written permission of:
 - (i) (in the case of the Franchisee) the Secretary of State; or
 - (ii) (in the case of any Data Processor appointed by the Franchisee) the Franchisee provided that the Franchisee shall not give any such consent without the prior written permission of the Secretary of State;

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

7. Rail Passenger Counts Database

- 7.1 Subject to compliance by the Franchisee with its obligations set out in this Schedule 1.5, the Secretary of State shall as soon as reasonably practicable following the date of this Agreement:
- (a) use reasonable endeavours to set up and thereafter maintain the RPC Database;
 - (b) use reasonable endeavours to populate the RPC Database with such Actual Passenger Demand information as the Franchisee shall provide pursuant to the

Franchisee's obligations contained elsewhere in the Franchise Agreement and any other information that the Secretary of State shall desire; and

- (c) use reasonable endeavours to provide the Franchisee with log-in details to the RPC Database in order to allow the Franchisee to access Actual Passenger Demand information that has been provided by the Franchisee, any Network Rail Data, any Third Party Data and to generate reports from the RPC Database.

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

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

7.3

- (a) The Secretary of State is not liable for:
 - (i) any inaccuracy, incompleteness or other error in Actual Passenger Demand information, Network Rail Data, Third Party Data or product of the above provided to the Secretary of State by the Franchisee, NR or a third party;
 - (ii) any failure of the RPC Database to achieve any particular business result for the Franchisee. For the avoidance of doubt, it is the responsibility of the Franchisee to decide the appropriateness of using the RPC Database to achieve its own business results;
 - (iii) any loss, destruction, corruption, degradation, inaccuracy or damage of or to the Actual Passenger Demand information following its submission to the RPC Database;
 - (iv) any loss or damage to the property or assets of the Franchisee (tangible or intangible) as a result of a breach of paragraph 7.1 of this Schedule 1.5; or
 - (v) any indirect, special or consequential loss or damage.
- (b) The Secretary of State's total liability for the duration of the Franchise Agreement in respect of a breach of its obligations under paragraph 7.1 of this Schedule 1.5 for all other heads of loss or damage which can lawfully be limited shall be limited to the extent to which the Secretary of State is successful in recovering the equivalent loss from such entity to whom the Secretary of State subcontracts its obligations under paragraph 7.1 of this Schedule 1.5 (the "Subcontractor"), subject to the following provisions:
 - (i) if reasonably requested by the Franchisee within three (3) months of incurring such loss or damage, the Secretary of State shall use reasonable endeavours to recover the equivalent losses from the Subcontractor;
 - (ii) it shall not be reasonable for the Franchisee to make a request pursuant to paragraph 7.3(b)(i) above if the value of the Franchisee's losses does not exceed ten thousand pounds (£10,000) x RPI;
 - (iii) prior to accounting to the Franchisee for any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b), the Secretary of State shall

be entitled to deduct and retain any reasonable costs and expenses incurred in pursuing such a claim which he does not successfully recover from the Subcontractor; and

- (iv) the Secretary of State shall be entitled to deduct from any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b) such sum as he reasonably deems appropriate to take account of the Secretary of State's actual or potential liability to other train operating companies pursuant to equivalent arrangements with them, with a view to distributing any sums received from the Subcontractor fairly between the various operators.
 - (c) The Franchisee shall use all reasonable endeavours to mitigate any losses incurred by it as a result of a breach by the Secretary of State of its obligations contained in paragraph 7.1 of this Schedule 1.5.
- 7.4 The Parties acknowledge that it is intended that the RPC Database will also contain actual passenger demand information relating to franchisees other than the Franchisee but a franchisee will have access only to information relating to its own franchise (in the case of the Franchisee, via the log on details provided pursuant to paragraph 7.1(c)). For the avoidance of doubt, the licence granted at paragraph 8.6 shall only permit the usage of the RPC Database, Derivative Output and Intellectual Property Rights related to the Actual Passenger Demand information supplied by the Franchisee.
- 7.5 Without prejudice to Schedule 14.4 (Designation of Franchise Assets), paragraphs 2.1 and 3 of Schedule 15.1 (Reletting Provisions), Schedule 15.4 (Provisions Applying on and after Termination) or any other rights of the Secretary of State, the Franchisee agrees that, following the expiry or termination by whatever means of the Franchise Agreement and any Continuation Document, the Secretary of State shall be entitled to allow access to the Franchisee's Actual Passenger Demand information by way of granting access to that area of the RPC Database or otherwise to any future operator of the Passenger Services (whether or not in direct succession to the Franchisee) or to such part of the Actual Passenger Demand information as relates to the part of the franchise which is being taken over by such future operator.

8. Intellectual Property Rights and General Provisions

- 8.1 All Intellectual Property Rights in the RPC Database and Derivative Output shall at all times remain owned by the Secretary of State and to the extent that any rights in the RPC Database vest in the Franchisee by operation of law, the Franchisee hereby assigns such rights to the Secretary of State.
- 8.2 Subject to Schedule 14.4 (Designation of Franchise Assets) and Schedule 15.4 (Provisions Applying on and after Termination), all Intellectual Property Rights in the Actual Passenger Demand information will at all times remain owned by the Franchisee and (subject as previously stated) to the extent that any rights in the Actual Passenger Demand information vest in the Secretary of State by operation of law, the Secretary of State hereby assigns such rights to the Franchisee.
- 8.3 All Intellectual Property Rights in the Network Rail Data will at all times remain owned by the relevant NR entity and to the extent that any rights in the Network Rail Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the Franchisee (as applicable) will enter into a separate agreement with the relevant Network Rail entity to assign such rights to it.
- 8.4 All Intellectual Property Rights in the Third Party Data will at all times remain owned by the third party from whom they have been obtained and to the extent that any rights in the Third Party Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the Franchisee (as applicable) will enter into a separate agreement with the relevant Third Party to assign such rights to it.

- 8.5 Subject to Schedule 14.4 (Designation of Franchise Assets) and Schedule 15.4 (Provisions Applying on and after Termination), each Party:
- (a) acknowledges and agrees that it shall not acquire or claim any title to any of the other Party's Intellectual Property Rights (or those of the other Party's licensors) by virtue of the rights granted to it under this Agreement or through its use of such Intellectual Property Rights; and
 - (b) agrees that it will not, at any time, do, or omit to do, anything which is likely to prejudice the other Party's ownership (or the other Party's licensors' ownership) of such Intellectual Property Rights.
- 8.6 The Secretary of State hereby grants, for the duration of the Franchise Period, the Franchisee a non-exclusive, non-transferrable licence to use:
- (a) the RPC Database;
 - (b) any Derivative Output; and
 - (c) all Intellectual Property Rights in the same
- in the United Kingdom for the purposes of accessing the Actual Passenger Demand information by using the functionality of the RPC Database.
- 8.7 Without limiting any other rights the Secretary of State may have, the Franchisee hereby grants the Secretary of State a perpetual, non-terminable, non-exclusive licence (which is transferrable and/or capable of being sub-licensed in the circumstances set out in this paragraph 8.7 to use the Actual Passenger Demand information and all Intellectual Property Rights in the same:
- (a) by including them in the RPC Database; and/or
 - (b) by including them in the Preliminary Database; and/or
 - (c) whether included in the RPC Database, the Preliminary Database or in any other format for such purposes as he may reasonably require including for the purposes of assisting his decision making on future train service requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding; and/or
 - (d) to the extent permitted by the other provisions of the Franchise Agreement to share, disclose, or publish the same and transfer and/or sub-licence and permit the use and sharing, disclosing or publishing for the purposes it is shared or disclosed; and/or
 - (e) to allow a future operator of the Passenger Services (whether or not in direct succession to the Franchisee) to view and access such Actual Passenger Demand information (whether via the RPC Database or otherwise) as directly relates to the services that it will be running,
- and such rights to use the Actual Passenger Demand information and all Intellectual Property Rights pursuant to this paragraph 8.7 shall continue following expiry or termination of this Agreement.
- 8.8 Paragraphs 7.2, 7.3, 8.1, 8.2 and 8.7 of this Schedule 1.5 shall continue in force after expiry or termination of the Franchise Agreement or any Continuation Document, together with any other provisions which expressly or impliedly continue in force after the expiry or termination of the Franchise Agreement or any Continuation Document.

- 8.9 The Parties intend that the provisions of The Contract (Rights of Third Parties) Act 1999 will apply to allow the relevant NR entity to rely on and enforce against a third party the provisions of paragraph 8.3 of this Schedule 1.5.

SCHEDULE 1.6**The Rolling Stock****1. Purpose**

- 1.1 The Original Rolling Stock is set out in Table 1 of the Appendix to this Schedule 1.6.
- 1.2 The Specified Additional Rolling Stock is set out in Table 2 of the Appendix to this Schedule 1.6.

2. The Composition of the Train Fleet

- 2.1 The Train Fleet consists of:
- (a) from the Start Date until the lease expiry dates referred to in Column 6 of Table 1 in the Appendix to this Schedule 1.6 the rolling stock vehicles set out in Table 1 in the Appendix to this Schedule 1.6 ("**Original Rolling Stock**") with the Passenger Carrying Capacity per unit referred to in Column 3 of Table 1 in the Appendix to this Schedule 1.6;
 - (b) from the dates set out in Column 6 of Table 2 in the Appendix to this Schedule 1.6, until the lease expiry dates referred to in Column 7 of Table 2 in the Appendix to this Schedule 1.6 with the Passenger Carrying Capacity per unit, the rolling stock vehicles ("**Specified Additional Rolling Stock**") set out in Table 2, in the Appendix to this Schedule 1.6 with the Passenger Carrying Capacity per unit referred to in Column 4 of Table 2;
 - (c) Not Used;
 - (d) following any lease expiry dates referred to in paragraph 2.1(a) or 2.1(b), substitute rolling stock vehicles having (unless otherwise agreed by the Secretary of State and subject to compliance with all other relevant provisions of this Agreement including in relation to Rolling Stock Related Contracts):
 - (i) at least the capacity specified in respect of the rolling stock vehicles being substituted;
 - (ii) reliability, capability and quality that is at least equal to the reliability, capability and quality of the rolling stock vehicles being substituted; and
 - (iii) an aggregate total capacity which is at least equal to the aggregate total capacity of the rolling stock vehicles being substituted or such higher amount of aggregate capacity as is specified by this Agreement.
- 2.2 In addition to paragraph 2.1(d), the Franchisee may at any time substitute rolling stock vehicles for any Additional Rolling Stock provided that any such substitute rolling stock vehicles comply (unless otherwise agreed by the Secretary of State and subject to compliance with all other relevant provisions of this Agreement including in relation to Rolling Stock Related Contracts) with paragraph 2.1(d).
- 2.3 Not Used.
- 2.4 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 in the Appendix to this Schedule 1.6 or as determined by the Secretary of State in accordance with paragraph 3.4 of this Schedule 1.6 (as applicable).
- 2.5 Without limiting paragraphs 2 and 3 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases) or Schedule 14.3 (Key Contracts), the Franchisee shall, in respect of any Rolling Stock Lease which is to expire at any time during the Franchise

Period, not less than one (1) year prior to such expiry date, enter into a new Rolling Stock Lease in respect of substitute rolling stock vehicles which meet the requirements of paragraph 2.1(d).

3. Changes to the Train Fleet

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

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

of any rolling stock vehicles specified in the Train Fleet.

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

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

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

4. Rolling Stock Testing and Commissioning

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

4.2 The co-operation referred to in paragraph 4.1 shall not unreasonably disrupt the provision and operation of the Franchise Services and may include:

- (a) the movement of test trains within and around depots;
- (b) making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;
- (c) making Train Slots available for such purposes;
- (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
- (e) the delivery of rolling stock vehicles to specific locations.

5. Controlled Emission Toilets

- 5.1 By no later than 31 December 2019, the Franchisee shall ensure that each Rolling Stock Unit comprised in the Train Fleet and used for the provision of the Passenger Services which has on board toilet facilities, and any new rolling stock vehicles procured by the Franchisee which are to be used for the provision of the Passenger Services shall be fitted with Controlled Emission Toilets.
- 5.2 The Franchisee shall ensure that the contents of the toilet retention tanks relating to each Controlled Emission Toilet fitted on Rolling Stock Units in accordance with the requirements of paragraph 5.1 are disposed of in a safe and hygienic manner at suitable facilities at Depots and stabling points.
- 5.3 Pending installation of the Controlled Emission Toilets, the Franchisee shall use reasonable endeavours to stop toilets fitted to existing Rolling Stock Units emptying whilst the Rolling Stock Unit is stationary within a station.
- 5.4 The provisions of paragraphs 1 and 5 of Part 2 of Schedule 6.2 (Committed Obligations) shall apply in respect of the obligations of the Franchisee specified in paragraph 5.1.

6. Baby Changing Facilities

For Rolling Stock Units that have on board toilet facilities, a baby changing facility shall be provided by the Franchisee which shall be compliant with the requirements of the PRM TSI.

7. Metered Train Operator Status

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

APPENDIX TO 0

The Composition of the Train Fleet

1. Original Rolling Stock

Table 1 (Original Rolling Stock)								
Column 1	Column 2	Column 3				Column 4	Column 5	Column 6
Class of vehicle / unit	Number of vehicles in fleet and unit configuration	Passenger Carrying Capacity per unit				Total Wheel-chair(s) per unit	Owner / Lessor	Lease expiry date(s)
		Standard Class (Std)			First Class Seats			
		Seats	Standing	Total				
153	5 vehicles 5 x 1 cars	72	23	95	0	0	Porterbrook	30/06/2019
156	18 vehicles 9 x 2 cars	146	72	218	0	0	Porterbrook	29/12/2019
170	8 vehicles 4 x 2 cars	119	56	175	9	2	Porterbrook	26/05/2019
170	24 vehicles 8 x 3 cars	180	84	264	7	2	Porterbrook	26/05/2019
Intercity CI90, Mk3 & DVT (CI90;FO;FOD;TSO B;5x TSO;DVT)	30 vehicles 3 x 8 car sets	475	307	782	86	2	Porterbrook	31/12/2019
Intercity CI90, Mk3 & DVT (CI90;FO;FOD;TSO B;6 x TSO;DVT)	88 vehicles 8 x 9 car sets	528	341	869	86	2	Porterbrook	31/12/2019
Spare MK3 vehicles to support above service sets	30 vehicles 4 x CI90 4 x DVT 3 x FO 3 x FOD 2 x TSOB 14 x TSO						Porterbrook	31/12/2019
317 / 5	60 vehicles 15 x 4 cars	270	129	399	22	0	Angel	31/05/2020
317 / 6	96 vehicles 24 x 4 cars	234	116	350	24	0	Angel	31/12/2019

Table 1 (Original Rolling Stock)								
Column 1	Column 2	Column 3				Column 4	Column 5	Column 6
Class of vehicle / unit	Number of vehicles in fleet and unit configuration	Passenger Carrying Capacity per unit				Total Wheel-chair(s) per unit	Owner / Lessor	Lease expiry date(s)
		Standard Class (Std)			First Class Seats			
		Seats	Standing	Total				
317/7 Demonstrator	4 vehicles 1 x 4 car	204	180	384	22	2	Angel	31/12/2019
317/ 8	24 vehicles 6 x 4 cars	243	120	363	20	0	Angel	31/12/2019
321/3	224 vehicles 56 x 4 cars	292	122	414	16	0	Eversholt	30/11/2019
321/4	112 vehicles 28 X 4 cars	283	122	405	12	0	Eversholt	30/11/2019
321 Renatus	40 vehicles 10 x 4 cars	265	116	381	16	2	Eversholt	31/12/2019
360	84 vehicles 21 x 4 cars	264	108	372	16	2	Angel	31/12/2020
379	120 vehicles 30 x 4 cars	189	136	325	20	2	Macquarie	01/08/2020

The Franchisee shall provide the cycle carrying capacity as specified in paragraph 21 of Part 1 to Schedule 6.2 (Committed Obligations).

2. Specified Additional Rolling Stock

Table 2 (Specified Additional Rolling Stock)									
Column 1	Column 2	Column 3				Column 4	Column 5	Column 6	Column 7
Class of vehicle / unit	Number of vehicles in fleet and unit configuration	Passenger Carrying Capacity per unit				Total Wheel-chair(s) per unit	Owner/ Lessor	Lease start date(s)	Lease expiry date(s)
		Standard Class (Std)			First Class Seats				
		Seats	Stand- ing	Total					
317 / 3	48 vehicles 12 x 4 cars	270	129	399	22	0	Angel	01/01/2017	31/05/2020

Table 2 (Specified Additional Rolling Stock)									
Column 1	Column 2	Column 3				Column 4	Column 5	Column 6	Column 7
Class of vehicle / unit	Number of vehicles in fleet and unit configuration	Passenger Carrying Capacity per unit				Total Wheel-chair(s) per unit	Owner/ Lessor	Lease start date(s)	Lease expiry date(s)
		Standard Class (Std)			First Class				
		Seats	Stand- ing	Total	Class Seats				
321 / 4	24 vehicles 6 x 4 cars	283	122	405	12	0	Eversholt	16 /10 /2016	30/11/2019
IC 12	120 vehicles 10 x 12 cars	672	245	917	80	3	ROCK	Mar 2019 to Aug 2019	17/10/2026
Air12	120 vehicles 10 x 12 cars	748	381	1129	0	3	ROCK	Feb 2019 to Oct 2019	17/10/2026
OS 12	276 vehicles 23 x 12 cars	1125	356	1481	0	3	Angel	Sep 2019 to Aug 2020	17/10/2026
OS 6	534 vehicles 89 x 6 cars	527	184	711	0	2	Angel	Feb 19 to Jan 2020	17/10/2026
Bi-Mode (HYB4)	96 vehicles 24 x 4 car	224	111	335	0	2	ROCK	Jan 2019 to May 2019	17/10/2026
Bi-Mode (HYB3)	42 vehicles 14 x 3cars	166	61	227	0	2	ROCK	Jun 2019 to Oct 2019	17/10/2026
321 / 4	8 vehicles 2 x 4 cars	283	122	405	12	0	Eversholt	01/01/2017	31/10/2019
321 / 4	8 vehicles 2 x 4 cars	283	122	405	12	0	Eversholt	01/01/2017	14/02/2018

SCHEDULE 1.7**Stations****1. Station Asset Management**

1.1 The Franchisee shall implement and comply with:

- (a) the Previous Franchisee's Station Asset Management Plan until the date of approval of the Station Asset Management Plan in accordance with paragraph 1.2; and
- (b) from such date, the Station Asset Management Plan.

1.2 By no later than the end of the first Franchisee Year (or such later date as the Secretary of State may reasonably determine) the Franchisee shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Station Asset Management Plan. Where the Secretary of State does not approve the draft Station Asset Management Plan submitted to it, the Franchisee shall make:

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

1.3 The Station Asset Management Plan shall:

- (a) include the information set out in paragraph 1.4; and
- (b) meet the requirements of paragraph 1.5,

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

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

- (a) the details of all maintenance, repair and renewal activity undertaken by the Franchisee since the Start Date;
- (b) the details of any maintenance, repair and renewal activity which the Franchisee has not completed or not completed within the specified time frame set out in any Station Asset Management Plan (or the Previous Franchisee's Station Asset Management Plan, as the case may be) together with reasons;
- (c) the maintenance (including the Franchisee's approach to identifying and dealing with reactive maintenance), repair and renewal activity planned by the Franchisee including such activities the Franchisee plans to undertake in order to ensure that the condition and capability of Station Assets are maintained and comply with the Standard of Repair;
- (d) the maintenance, repair and renewal activity undertaken since the Start Date or planned by Network Rail, any Local Authority, any Community Rail Partnership and any other relevant stakeholder, which the Franchisee is aware of;
- (e) the assumptions the Franchisee has made about the current state and future degradation of assets at the Station at the Start Date or, if an asset becomes an asset at the Station on a later date, the assumptions of the Franchisee about the current state and future degradation of each relevant asset on the date that it becomes such an asset at the Station;

- (f) under and over provision of assets at the Station at the Start Date given current and projected future customer volumes and reasonable customer demands and planned enhancements or removals to accommodate changing customer volumes and reasonable customer demands;
 - (g) plans for improving the environmental performance of Stations, including where appropriate, plans for:
 - (i) energy metering and data management, including measurement and verification plans for measures adopted;
 - (ii) lighting and lighting controls;
 - (iii) heating and heating controls;
 - (iv) auxiliary power uses;
 - (v) other energy efficiency measures;
 - (vi) renewable energy generation; and
 - (vii) water efficiency measures;
 - (h) the plans to ensure that delivery of Station Services is resilient to periods of extreme weather and minimises disruption to passengers;
 - (i) how the Principles of Inclusive Design will be taken into account in the maintenance, repair and renewal of the Station; and
 - (j) details of compliance with railway safety obligations, including a programme of structural assessments in line with the requirements detailed in the Network Rail Standard NR/SP/CIV/035 or such other equivalent standard adopted by the Franchisee.
- 1.5 In addition, the Franchisee shall ensure that the Station Asset Management Plan:
- (a) shall cover a period of no less than forty (40) years from the date that it is created or revised and updated in accordance with this Schedule 1.7, as if the Franchisee was to operate each of the Stations for such forty (40) year period;
 - (b) fully reflects the principles and approach to asset management set out in the Station Asset Management Principles;
 - (c) includes an indicative volume and level of spend of funds to be deposited in the Station Condition Account for five (5) years following the date of the Station Asset Management Plan in relation to those planned activities described in accordance with paragraph 1.4; and
 - (d) is developed in accordance, and complies, with guidance and policies (including the guidance documents known as "Subject Specific Guidelines" published by the Institute of Asset Management (or such appropriate replacement guidance) which are commensurate with those that would be referred to by a competent, skilled and experienced train operator using an asset management planning approach, in particular in respect of the balance of maintenance and renewal of each asset type.
- 1.6 Any amendments to the Station Asset Management Plan must be agreed by the Secretary of State (such consent not to be unreasonably withheld or delayed).
- 1.7 By the date three (3) months prior to the end of the second Franchisee Year and on each subsequent anniversary of the such date the Franchisee shall have reviewed the Station

Asset Management Plan and shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) a draft updated version of the Station Asset Management Plan.

- 1.8 The updated draft Station Asset Management Plan shall include and reflect the following:
- (a) a schedule of any revisions to the current Station Asset Management Plan and a brief summary of the rationale supporting any change for review and approval by the Secretary of State;
 - (b) any changed and developing circumstances and the requirements of the Station Asset Management Plan Accreditation;
 - (c) where relevant, the outcomes of, and the Franchisee's responses to the stakeholder consultation process described in paragraph 8; and
 - (d) the information required in accordance with paragraphs 1.4 and 1.5 of this Schedule 1.7 save that the reference to the "Start Date" in paragraph 1.4(a) shall be read as the date on which the Station Asset Management Plan is reviewed and updated by the Franchisee in accordance with paragraph 1.8 of this Schedule 1.7.
- 1.9 If:
- (a) the Secretary of State approves an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 0, such document shall become the then current Station Asset Management Plan; or
 - (b) the Secretary of State does not approve an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 0, then the Franchisee shall make:
 - (i) such amendments to it as the Secretary of State shall reasonably direct; and
 - (ii) provide such additional information as the Secretary of State may reasonably require.
- 1.10 The Franchisee shall put in place such arrangements as are necessary (to the reasonable satisfaction of the Secretary of State) to ensure that the Station Asset Management Plan is (and continues to be maintained) in a format acceptable to the Secretary of State which is capable of being transferred to a Successor Operator as part of the Handover Package so that the Successor Operator is able to access, use and amend the Station Asset Management Plan using the same format.
- 1.11 The Franchisee shall:
- (a) ensure that it applies for and obtains the Station Asset Management Plan Accreditation by no later than the end of the second Franchisee Year;
 - (b) promptly upon receipt by the Franchisee, provide to the Secretary of State a certificate of accreditation issued by an organisation accredited by the United Kingdom Accreditation System (UKAS) which has been signed by a director of the Franchisee and which confirms that the Station Asset Management Plan Accreditation has been obtained (the "**Station Asset Management Plan Accreditation Certificate**"); and
 - (c) maintain the Station Asset Management Plan Accreditation from the date that it is required to be achieved in accordance with paragraph 1.11 (a) for the remainder of the Franchise Period.
- 1.12 If the Station Asset Management Plan Accreditation is at any time lost or the Franchisee fails to secure such then the Franchisee shall report that fact to the Secretary of State as soon

as reasonably practicable and in any event within ten (10) Weekdays of the Franchisee becoming aware of such fact.

- 1.13 From the date upon which the Franchisee notified the Secretary of State pursuant to paragraph 1.12 (or should have notified the Secretary of State having complied with the provisions of this Agreement), the Franchisee shall:
- (a) re-secure such accreditation as soon as reasonably practicable and in any case within three (3) months; and
 - (b) report to the Secretary of State every Reporting Period on the measures it is proposing to take, and is taking, to achieve such restoration of the Station Asset Management Plan Accreditation.
- 1.14 Where the Franchisee fails to secure the Station Asset Management Plan Accreditation pursuant to paragraph 1.13 within three (3) months of the date of such accreditation being lost or failed to be secured (as the case may be) such failure shall constitute a contravention of the Franchise Agreement and the Secretary of State may issue a Remedial Plan Notice pursuant to Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement) and the provisions of Schedule 10 (Remedies, Events of Default and Termination Events) shall apply.
- 1.15 The Franchisee shall calculate the Station Stewardship Measure defined by NR/ARM/M17PR for each Station, providing validated scores for each Station to Network Rail or ORR on an annual basis at such time specified by the ORR and Network Rail, and assisting Network Rail and/or the ORR in the any future development of such measure.

2. Station Maintenance Obligations

- 2.1 Subject to paragraph 2.4, the Franchisee shall ensure that the Asset Remaining Life in relation to each of the Station Asset Groups specified in Column 1 of the Minimum Asset Remaining Life Table (on a basis averaging such Asset Remaining Life across all relevant assets from each of the Station Asset Groups at all Stations) is not less than the corresponding Minimum Asset Remaining Life specified in column 2 of the Minimum Asset Remaining Life Table (the "**Standard of Repair**").
- 2.2 Within thirty (30) days of the start of each Franchisee Year (other than the first Franchisee Year) the Franchisee shall deliver a written report based on the requirements of ORR Mandate AO/24 (as such may be updated or replaced from time to time) to the Secretary of State that complies with the following requirements:
- (a) it has been prepared by a reputable firm of surveyors who have carried out inspections of the Stations for the purposes of the preparation of the Station Stewardship Measure report no more than sixty (60) days prior to the end of the previous Franchisee Year;
 - (b) it is addressed to the Secretary of State (but may also be addressed to other parties at the discretion of the Franchisee);
 - (c) it contains a fair summary of the extent to which the Franchisee has complied with its obligations to achieve the Standard of Repair during the preceding twelve (12) months;
 - (d) it contains the calculation of the Franchisee (as a percentage) of the average Asset Remaining Life of each Station Asset Group (in accordance with standard "NR/ARM/M17PR" or such other standard as may be notified to the Franchisee by the Secretary of State from time to time);
 - (e) it identifies separately any Stations where a Station Asset has an asset life that is less than:

- (i) 47.50% in relation to platforms;
 - (ii) 49.91% in relation to footbridges;
 - (iii) 45.99% in relation to canopies; and
 - (iv) 39.38% in relation to buildings at Stations;
- (f) it contains a copy of the Station Stewardship Measure report issued by the Franchisee to ORR and/or Network Rail; and
- (g) it contains such other details as may be specified in writing by the Secretary of State from time to time.
- 2.3 It is agreed by the Secretary of State and the Franchisee that:
- (a) the methodology to be adopted by the Secretary of State for the purposes of monitoring the Franchisee's compliance with its obligations in paragraph 2.1 shall, subject to paragraph 2.3(b), be as described in the document entitled NR/ARM/M17PR Network Rail Asset Reporting Manual - Procedures for the Reporting of the Station Stewardship Measure" in the agreed terms marked "SCM" (the "**Stations Conditions Methodology**");
 - (b) the Stations Conditions Methodology can be amended by the Secretary of State; and
 - (c) if, at any time during the Franchise Period, the Stations Conditions Methodology is amended as envisaged under paragraph 2.3(b) and the Secretary of State reasonably determines that it is appropriate to amend the Minimum Asset Remaining Life of any Station Assets to take account of the alteration to the Stations Conditions Methodology then the Secretary of State shall make such amendment to column 2 of the Minimum Asset Remaining Life Table as he reasonably considers appropriate to take account of the alterations to the Stations Conditions Methodology and such amendment shall be a Change.
- 2.4 Where the Franchisee fails to achieve the Minimum Asset Remaining Life in respect of any Station Asset Group and:
- (a) the Franchisee is not acting as a reasonable ISO 55001 accredited asset manager in relation to its management of a Station Asset Group; or
 - (b) the Asset Remaining Life of such Station Asset Group is more than three (3) percentage points lower than the Minimum Asset Remaining Life,
- such failure to achieve the Minimum Asset Remaining Life in respect of such Station Asset Group shall be treated as a contravention of the Franchise Agreement.
- 2.5 The Franchisee shall maintain appropriate, accurate, readily accessible and transferable information about the asset at the Stations, including their condition and function.
- 2.6 The Franchisee shall provide to the Secretary of State such information as the Secretary of State may reasonably require for the purposes of monitoring the obligations of the Franchisee in relation to Stations.
- 2.7 At the Secretary of State's request, the Franchisee shall commission and pay for an independent audit of any information submitted to the Secretary of State under paragraph 2.6 and shall provide a copy of the audit report to the Secretary of State.

3. Station Condition Account

- 3.1 The Franchisee will set up a separate, dedicated interest bearing bank account by the Start Date ("Station Condition Account") with a reputable bank and will notify the Secretary of State of the identity of such bank and the account number of the Station Condition Account.
- 3.2 The sums standing to the credit of the Station Condition Account (including accrued interest) (the "Station Condition Fund") shall be held on trust by the Franchisee on behalf of the Secretary of State on the terms of the Trust Deed for the purpose of discharging the entitlements of the Secretary of State and/or the Franchisee to payments from the Station Condition Account as and when they fall due in accordance with this paragraph 3 and the Station Condition Account will accordingly be set up so as to ensure that in the event of the insolvency of the Franchisee, monies standing to credit of the Station Condition Account are not at risk of being applied for the benefit of creditors or otherwise applied for a different purpose to that intended to the reasonable satisfaction of the Secretary of State. For the avoidance of doubt the obligations of the Franchisee in relation to the maintenance, repair and renewal of Stations whether pursuant to its obligations under this Agreement or otherwise are in no way limited by reference to the availability of funds in the Station Condition Fund.
- 3.3 Prior to the first date upon which any monies are required to be deposited in the Station Condition Account under this paragraph 3, the Franchisee will procure that the bank with whom the Station Condition Account is held undertakes to the Secretary of State (on terms satisfactory to the Secretary of State) that:
 - (a) it acknowledges that the credit balance from time to time on the Station Condition Account does not belong solely to the Franchisee but is held on trust for the Secretary of State on the terms of the Trust Deed; and
 - (b) such bank will not set-off sums standing to the credit of the Station Condition Account against any amount owing from the Franchisee or any other person to such bank.
- 3.4 The Franchisee will operate the Station Condition Account in accordance with the provisions of this paragraph 3.
- 3.5 On each Payment Date, the Franchisee shall pay the Station Condition Amount calculated as follows into the Station Condition Account:

$SCA = ((RPD/FYD) \times ASCA)$ Where:	
SCA	means the Station Condition Amount for such Reporting Period;
FYD	is equal to 365, or if February 29 falls during the Franchisee Year in which that Reporting Period falls, 366;
RPD	means the number of days in that Reporting Period; and
ASCA	means the Annual Station Condition Amount for the Franchisee Year in which that Reporting Period falls determined as follows: $(CA \times RPI)$ where: CA is the amount shown in the respect of the relevant Franchisee Year in column 2 of the table set out in Appendix 4 (Figures for

	<p>Calculation of Annual Station Condition Amount) of this Schedule 1.7; and</p> <p>RPI has the meaning given to such term in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).</p>
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3.6 During the Franchise Period the Franchisee may withdraw the funds properly required to meet Actual Station Condition Expenditure that has properly fallen due for payment by the Franchisee as set out in the Station Asset Management Plan (or the Previous Franchisee’s Asset Management Plan, as the case may be) and in respect of which funds have not previously been withdrawn from the Station Condition Account without the consent of the Secretary of State provided that:

- (a) the Franchisee may not make any withdrawal from the Station Condition Account pursuant to this paragraph 3.6 that would reduce the Station Condition Fund to less than zero (0);
- (b) the Franchisee shall not make any withdrawal from the Station Condition Account pursuant to this paragraph 3.6 where the amount to be withdrawn is in relation to expenditure not provided or planned for under the Station Asset Management Plan (or the Previous Franchisee’s Asset Management Plan, as the case may be) without the prior written consent of the Secretary of State;
- (c) where the Franchisee requires such consent pursuant to paragraph 3.6(b) it shall provide to the Secretary of State with its request for consent a written confirmation from a director of the Franchisee certifying that the information provided to the Secretary of State is, in all material respects, true, accurate, complete and not misleading and identifying the amount proposed to be withdrawn, the purpose of the proposed withdrawal from the Station Condition Account and that such proposed expenditure will be properly expended for satisfying the Standard of Repair in respect of the Stations; and
- (d) if requested by the Secretary of State the Franchisee agrees to demonstrate to the reasonable satisfaction of the Secretary of State that the written confirmation is true and accurate. It shall be a contravention of the Franchise Agreement if any such written confirmation is, in any material respect, found to be untrue, inaccurate and/or misleading.

3.7 The Franchisee shall maintain records of the following:

- (a) a breakdown in relation to each Reporting Period of all Actual Station Condition Expenditure actually incurred in the Reporting Period together with such further details of each relevant item of expenditure as the Secretary of State may reasonably require;
- (b) a breakdown of all funds withdrawn from the Station Condition Account in each Reporting Period and the reason for that withdrawal;

and provide such records to the Secretary of State as may reasonably be requested from time to time together with:

- (c) written confirmation from a director of the Franchisee certifying that:
 - (i) the information provided to the Secretary of State is, in all material respects, true, accurate, complete and not misleading;
 - (ii) all Actual Station Condition Expenditure has been properly expended for satisfying the Standard of Repair in respect of the Stations; and

- (iii) all withdrawals from the Station Condition Account made by the Franchisee were properly due to the Franchisee under paragraph 3.6 and have been applied for the purposes for which they were withdrawn.
- 3.8 If requested by the Secretary of State the Franchisee agrees to demonstrate to the reasonable satisfaction of the Secretary of State that the written confirmation is a true and accurate confirmation of the Franchisee's compliance with its relevant obligations. It shall be a contravention of the Franchise Agreement if any such written confirmation is, in any material respect, found to be untrue, inaccurate and/or misleading.
- 3.9 In the event that the Secretary of State determines that any monies have been withdrawn from the Station Condition Account improperly he shall notify the Franchisee of the same specifying the relevant amount and requiring the Franchisee to repay the relevant amount into the Station Condition Account on or prior to such Weekday as the Secretary of State shall notify to the Franchisee.
- 3.10 On expiry or early termination of the Franchise Agreement, the Secretary of State shall be entitled to all sums then standing to the credit of the Station Condition Account. The Franchisee shall take all steps as may be necessary so as to authorise any sums then standing to the credit of the Station Condition Account to be paid to the Secretary of State to such account as the Secretary of State shall, at that time, notify to the Franchisee (which may be the account of a Successor Operator).
- 3.11 If:
 - (a) any revised Station Asset Management Plan delivered by the Franchisee pursuant to paragraphs 1.6 or 1.7 provides for the bringing forward of any works intended to ensure that the Franchisee complies with its obligation in relation to the Standard of Repair;
 - (b) the additional cost incurred by the Franchisee in the Franchisee Year in which such costs are now to be incurred exceeds the amount that the Franchisee is required to pay into the Station Condition Account in such Franchisee Year by more than 10%; and
 - (c) the Franchisee can demonstrate to the reasonable satisfaction of the Secretary of State that the effect of bringing forward such works is to achieve the Standard of Repair in a more efficient or cost effective manner or to otherwise achieve real and demonstrable whole rail industry or passenger benefits in either case in a way that has no adverse financial or other impacts on the Secretary of State,

then the Secretary of State shall reasonably determine the reprofiling of the amounts specified in Appendix 4 (Figures for Calculation of Annual Station Condition Amount) to this Schedule 1.7 to reasonably take account of the bringing forward of the relevant works provided that the total of the amounts specified in Appendix 4 (Figures for Calculation of Annual Station Condition Amount) to this Schedule 1.7 shall not reduce overall as a result of such reprofiling.

4. Uninsured Events and Latent Defects Liability

- 4.1 If any Station and/or Equipment comprised in a Station is (1) damaged or destroyed due to the occurrence of an Uninsured Event (2) any Station and/or Equipment comprised in a Station is discovered to contain a Latent Defects Liability or (3) an Environmental Liability arises at a Station (each such event to be known as a "**Special Event**") then the Secretary of State may (at his absolute discretion) elect to:
 - (a) require the Franchisee to undertake the works necessary to repair, reinstate or make good to his satisfaction such Station or Equipment which is the subject of a Special Event (the "**Reinstatement Works**"). Any such requirement by the Secretary of

State to carry out Reinstatement Works shall be a Qualifying Change and in these circumstances:

- (i) notwithstanding the Qualifying Change, the Franchisee shall be liable for the first [REDACTED³] of any Reinstatement Costs (the "**Franchisee Excess Amount**") in respect of each Special Event that occurs at each Station provided that the Franchisee's maximum liability in relation to Reinstatement Costs shall not exceed [REDACTED⁴] in aggregate (the "**Franchisee Excess Amount Cap**") for the duration of the Franchise Period;
 - (ii) where Reinstatement Works or the effects of the Special Event pending completion of the Reinstatement Works result in the Franchisee not being able to operate the Station (or part thereof) or provide Passenger Services which call at such Station, any such Qualifying Change pursuant to this paragraph 4.1 shall take account of any costs savings made by the Franchisee as a result of it not being able to provide Passenger Services which call at such Station or operate such Station (or part thereof) (including as a result of it not being required to maintain and repair such Station (or any part thereof) or any Equipment pending its repair, reinstatement or making good (the "**Cost Savings**"));
 - (iii) the Franchisee shall: (1) consult on and agree with the Secretary of State the Reinstatement Works and the programme for the carrying out of the Reinstatement Works; and (2) carry out the Reinstatement Works in accordance with the programme as agreed (or on failing to agree, as reasonably determined by the Secretary of State) and the Franchise Agreement shall be amended to reflect the carrying out of such Reinstatement Works, if required; and
 - (iv) the Franchisee shall ensure that the Reinstatement Cost is as low as reasonably practicable and shall use all reasonable endeavours to minimise any Environmental Liability;
- (b) require the Franchisee not to undertake the Reinstatement Works (including because he would require a Successor Operator to undertake such works) and in these circumstances a Qualifying Change shall occur;
 - (c) require the Franchisee to use all reasonable endeavours to secure other sources of grant funding, such as Local Authority grants, for the purposes of carrying out the Reinstatement Works; and/or
 - (d) seek to utilise other alternative funding mechanisms for the purposes of the release of the funds required for carrying out the Reinstatement Works by:
 - (i) requiring the Franchisee, to source the funds for carrying out such works through an adjustment to the Franchisee's Integrated Station Asset Management Plan; and/or
 - (ii) requiring the Franchisee not to undertake certain Committed Obligations at Stations such that any capital expenditure allocated to such Committed Obligations can be utilised by the Franchisee for the purposes of undertaking the Reinstatement Works. In these circumstances, a Qualifying Change shall occur and there shall be an amendment to the Franchise Agreement to reflect the fact that the Franchisee would no longer be required to carry out

³ 20 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.

⁴ 20 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.

the affected Committed Obligations but would instead be required to utilise any capital expenditure so released in undertaking the Reinstatement Works.

- 4.2 If the Secretary of State elects that the funding of the Reinstatement Works should be undertaken using any of the alternative funding mechanisms set out in paragraph 4.1(d) then any such funding shall be on the basis that the Franchisee shall be liable for the Franchisee Excess Amount after the deduction of any Cost Savings and subject to the Franchisee Excess Amount Cap.
- 4.3 In respect of the second and each subsequent Franchisee Year, the Franchisee Excess Amount and the Franchisee Excess Amount Cap shall be adjusted in accordance with the following formula:

FA x RPI	
Where:	
FA	is the Franchisee Excess Amount or the Franchisee Excess Amount Cap (as the case may be);
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

5. Registration of Title

The Franchisee shall as soon as reasonably practicable upon receipt of the relevant documentation from the Train Operator party to the Previous Franchise Agreement, lodge, procure the lodging of properly completed applications for the registration of Station Leases at HM Land Registry in accordance with the required time limits for making such applications. The Franchisee shall use all reasonable endeavours to ensure that registration of the title is obtained in relation to each Station as soon as reasonably practicable and to the highest standard reasonably obtainable.

6. Grey Assets

- 6.1 The Franchisee shall use all reasonable endeavours to agree with Network Rail by no later than two (2) years following the Start Date the allocation of responsibility under the relevant Station Leases of all the Grey Assets which have been identified during the first eighteen (18) months following the Start Date.
- 6.2 The Franchisee shall, where it discovers any Grey Assets not covered by paragraph 6.1:
 - (a) consult with Network Rail and, where reasonably necessary and agreed by Network Rail, carry out a joint inspection of the Grey Asset; and
 - (b) use all reasonable endeavours to agree with Network Rail the allocation of responsibility under the relevant Station Lease of such Grey Asset as soon as reasonably practicable.
- 6.3 Where the Franchisee is unable to agree with Network Rail the allocation of responsibility under the relevant Station Lease of any Grey Asset pursuant to paragraph 6.1 or paragraph 6.2 (b), the Franchisee shall refer such matter to the dispute resolution process under the terms of the relevant Station Lease.

7. Station Social and Commercial Development Plan

- 7.1 From the Start Date, the Franchisee shall implement and comply with the Station Social and Commercial Development Plan for the Franchise Period.

- 7.2 Any amendments to the Station Social and Commercial Development Plan must be agreed by the Secretary of State in accordance with this paragraph 7.
- 7.3 The Franchisee shall revise the Station Social and Commercial Development Plan by no later than the end of the first Franchisee Year and on each subsequent anniversary of this date by submitting to the Secretary of State an updated version of the Station Social and Commercial Development Plan for approval.
- 7.4 Subsequent updated versions of the Station Social and Commercial Development Plan shall:
- (a) incorporate a schedule of any revisions to the Station Social and Commercial Development Plan and a brief summary of the rationale supporting any change for review and approval by the Secretary of State;
 - (b) reflect changed and developing circumstances where relevant; and
 - (c) reflect the outcomes of, and the Franchisee's responses to, the stakeholder consultation process described in paragraph 8.
- 7.5 The Franchisee shall ensure that the Station Social and Commercial Development Plan shall be updated so that following each update it continues to cover at least a period of ten (10) years from the date of the update.
- 7.6 If:
- (a) the Secretary of State approves an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 7.3, such document shall become the then current Station Social and Commercial Development Plan; or
 - (b) the Secretary of State does not approve an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 7.3, then the Franchisee shall:
 - (i) make such amendments to it as the Secretary of State shall reasonably direct; and
 - (ii) provide such additional information as the Secretary of State may reasonably require,it being agreed that it will be unreasonable for the Secretary of State to make amendments that increase cost and risk to the Franchisee beyond parameters specified in the Record of Assumptions.

8. Consultations

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

9. Principles of Inclusive Design

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

10. Security at Stations

10.1 The Franchisee shall during the Franchise Period, monitor and record all reported and observed incidents of:

- (a) anti-social behaviour; and
- (b) criminality (including assaults on passengers and Franchise Employees, theft, criminal damage to railway property and graffiti vandalism),

which occur at Stations, and shall use all reasonable endeavours to address, minimise and avoid future instances of anti-social behaviour and criminality at Stations taking account of such data. The Franchisee may comply with its obligations to monitor and record incidents under this paragraph by providing copies of relevant information provided by the Franchisee to the British Transport Police where such information is relevant.

10.2 The Franchisee shall provide to the Secretary of State upon request such information as the Secretary of State may reasonably require from time to time in respect of the Franchisee's compliance with the requirements of paragraph 10.1.

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

10.4 In this paragraph 10:

- (a) **"Secure Stations Accreditation"** and means Stations which have achieved accreditation under the Secure Stations Scheme; and
- (b) **"Secure Stations Scheme"** means the certification scheme which is managed by the Department for Transport and British Transport Police and sets station design and management safety standards for crime reduction at railway stations.

11. Information about Station Improvement Measures

11.1 The Franchisee shall at all times during the Franchise Period maintain records in relation to the measures taken by it to improve the Station environment at each of the Stations, covering the areas and the information set out in Table A of Appendix 2 to this Schedule 1.7.

11.2 The Franchisee shall, subject to paragraph 11.3, provide to the Secretary of State the information set out in Appendix 2 to this Schedule 1.7 within one Reporting Period of each anniversary of the Start Date during the Franchise Period.

11.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:

- (a) such level of disaggregation as is reasonably specified by the Secretary of State; and
- (b) any particular Station as is reasonably specified by the Secretary of State.

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

12. Termination

12.1 On the date that is the earlier of eighteen (18) months prior to the end of the Franchise Period or the date upon which a Termination Notice is served upon the Franchisee, the Secretary of State and the Franchisee shall agree (or the Secretary of State shall reasonably

determine) the amendments to be made to the Statement of Condition (as such term is defined in the Station Lease) so as to ensure that the Statement of Condition accurately evidences the state of repair and condition of each Station as at that date.

- 12.2 At the end of the Franchise Period and, upon the assignment, transfer or novation of the Station Leases to a Successor Operator (whether pursuant to a Transfer Scheme or otherwise) the Franchisee shall ensure that the condition of each Station so transferred, assigned or novated is in a state of repair and condition which is no worse than that evidenced in the Statement of Condition as amended pursuant to paragraph 12.1.

Appendix 1 to 0**List of Stations with Secure Stations Accreditation****1. Secure Stations Accreditation**

Audley End	Saxmundham
Billericay	Shenfield
Bishops Stortford	Silver Street
Brimsdown	Southend Victoria
Broxbourne	St Margarets
Bury St Edmunds	Stansted Airport
Cambridge	Stansted Mountfitchet
Chelmsford	Stowmarket
Cheshunt	Tottenham Hale
Clacton-on-Sea	Waltham Cross
Colchester	Ware
Colchester Town	Wickford
Diss	Woodbridge
Elsenham	Ipswich
Ely	
Enfield Lock	
Halesworth	
Harlow Town	
Harwich International	
Hatfield Peverel	
Hertford East	
Ingatestone	
Kelvedon	
Lowestoft	
Manningtree	
Marks Tey	
Newport	
Northumberland Park	
Norwich	
Ponders End	
Rayleigh	
Rye House	
Sawbridgeworth	

APPENDIX 2 TO 0

Information about Station Improvement Measures

Information to be provided as per paragraph 11.2 but subject to paragraph 11.3.

Information to be provided			Information format													
Dashboard category	Delivery element	Performance indicator	Output measure	Station level	Category level	Committed?	Targets for Year (Y)									
							Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10
Customer Experience																
Pass Satisfaction	CEPM	Cleanliness of the station	% score	y	y	✓	88.6	89.2	89.8	90.4	91	91	91	91	91	91
		Upkeep & repair station	% score	y	y	✓	79.8	80.8	81.4	82.2	83	83	83	83	83	83
		NRPS	% score	y	y	✓	66.2	67.4	68.6	69.8	71	72.2	72.2	72.2	72.2	72.2
	Customer Feedback	Complaints	#	y	y	✓	base line	-3%	-4%	-4%	-5%	-5%	-5%	-5%	-5%	-5%
Station Facilities																
Facilities & services	Seating	Additional	#	y	y	✓		531	1062		1167					
	Waiting room	Upgrades/ new	#	y	y	✓		8	16							
	Shelters	Additional	#	y	y	✓		7	13		16					
	Toilets	Additional	#	y	y	✓		3	5		9					
	AEA standards	Compliance	% stations	y	y	✓				100	100	100	100	100	100	100

Information to be provided			Information format													
Dashboard category	Delivery element	Performance indicator	Output measure	Station level	Category level	Committed?	Targets for Year (Y)									
							Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10
	Major schemes	Progress against plan	5 schemes	y	y	✓	0	0	4	5	5	review	tba	tba	tba	tba
Community																
Community needs	Community uses	Number of occupations	Community tenants	n	y		Baseline	tba	tba	tba	tba	tba	tba	tba	tba	tba
	Community needs	CCIF spend pa	£m	n	y	✓					tba	tba	tba	tba	tba	tba
Cost & Revenue																
Retail Activity	Station advertising	Total revenue	£k	y	y	✓	[REDACTED ⁵]	[REDACTED ⁵]	[REDACTED ⁵]	[REDACTED ⁵]	[REDACTED ⁵]	[REDACTED ⁵]	[REDACTED ⁵]	[REDACTED ⁵]	[REDACTED ⁵]	[REDACTED ⁵]
	Retail & Catering	Total revenue	£m	y	y	✓	[REDACTED ⁶]	[REDACTED ⁶]	[REDACTED ⁶]	[REDACTED ⁶]	[REDACTED ⁶]	[REDACTED ⁶]	[REDACTED ⁶]	[REDACTED ⁶]	[REDACTED ⁶]	[REDACTED ⁶]

⁵ 20 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.

⁶ 20 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.

Information to be provided			Information format															
Dashboard category	Delivery element	Performance indicator	Output measure	Station level	Category level	Committed?	Targets for Year (Y)											
							Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10		
Cost of services	Car parking	Additional spaces	#	y	y	✓			1081	1782								
	Car parking	ANPR systems	Total revenue	n	y	✓		[REDACTED ⁷]	[REDACTED ⁸]									
	Station presentation	Cleaning cost/pax	Total cost	y	y	✓	Baseline	0%	-5%	-5%	Review	tbc	tbc	tbc	tbc	tbc	tbc	tbc
	Maintenance	Reactive callouts	Number	y	y	✓	Baseline	0%	-2%	-5%	Review	tbc						
	Renewals	Renewals	Total cost £ k/m	n	y	✓	[REDACTED ⁹]	[REDACTED ⁹]	[REDACTED ⁹]	[REDACTED ⁹]	[REDACTED ⁹]	[REDACTED ⁹]	[REDACTED ⁹]	[REDACTED ⁹]	[REDACTED ⁹]	[REDACTED ⁹]	[REDACTED ⁹]	[REDACTED ⁹]
Inclusivity & Accessibility																		

⁷ 20 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.

⁸ 20 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.

⁹ 20 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.

Information to be provided			Information format													
Dashboard category	Delivery element	Performance indicator	Output measure	Station level	Category level	Committed?	Targets for Year (Y)									
							Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10
Levels of accessibility	Accessibility	% step-free platforms	% accessible	y	y		base line	tba	tba	tba	tba	tba	tba	tba	tba	tba
		Secure cycle facilities	Capacity	y	y	✓		500	1000	1500	2000					
		Multimodal CIS	Number	y	y	✓		30								
	Security	Stations with HD CCTV	Number	y	y	✓		558	1253	1809						
		Reported crimes	No. crimes	y	y		base line	tba	tba	tba	tba	tba	tba	tba	tba	tba
	STPs	STPs full + lite	Number	y	y	✓	10	25	13	8						
Environmental																
Environmental	Non traction energy	Total energy consumption	kwh	n	y	✓	base line	-2%	-2%	-2%	-2%	-2%	-2%	-2%	-2%	-2%
	Waste	Waste recycled	% recycled	n	y	✓		90%	90%	90%	90%	90%	90%	90%	90%	90%

APPENDIX 3 TO 0

Minimum Asset Remaining Life Table

Column 1	Column 2
Category of Station Asset Group	Minimum Asset Remaining Life (calculated as a percentage in accordance with NR/ARM/M17PR or such other standards as may be notified from time to time) as an average of asset remaining life across each Station Asset Group at all Stations (%)
Platforms	47.50
Footbridges	49.91
Canopies	45.99
Buildings	39.38

APPENDIX 4 TO 0

Figures for Calculation of Annual Station Condition Amount

Column 1	Column 2
Year 1	[REDACTED ¹⁰]
Year 2	[REDACTED]
Year 3	[REDACTED]
Year 4	[REDACTED]
Year 5	[REDACTED]
Year 6	[REDACTED]
Year 7	[REDACTED]
Year 8	[REDACTED]
Year 9	[REDACTED]
Year 10	[REDACTED]

¹⁰ 20 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 2 to Schedule 1

Schedule 8.A

Franchise Payments

1. Definitions

For the purposes of this Schedule 8.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 0 of Schedule 8.A (Franchise Payments);
"Accrued Disallowable Costs"	has the meaning given in paragraph 0 of Schedule 8.A (Franchise Payments);
"Accrued Revenue Foregone"	has the meaning given in paragraph 0 of Schedule 8.A (Franchise Payments);
"Actual Capex"	means the actual Capital Expenditure of the Franchisee in the relevant period;
"Actual Costs"	means the actual Costs of the Franchisee in the relevant period;
"Actual Revenue"	means the actual Revenue of the Franchisee in the relevant period;
"Aggregated Costs and Revenues Liabilities"	has the meaning given in paragraph 0 of Schedule 8.A (Franchise Payments);
"Base Cash Position"	means [REDACTED¹¹] or such other value as the Secretary of State may determine in accordance with paragraph 9.8 of Schedule 8.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 8.A (Franchise Payments);
"Budgeted Capex"	means the Capital Expenditure budgeted to be incurred by the Franchisee in a Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 4 of this Schedule 8.A (Franchise Payments);
"Budgeted Costs"	means the Costs budgeted to be incurred by the Franchisee in each Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 4 of this Schedule 8.A (Franchise Payments);

¹¹ 20 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.

“Capital Expenditure”

means costs of creating non-current or fixed assets which are not Costs (as defined in this Schedule 8.A) and which are properly accrued:

- (a) in relation to Reporting Period 13, during Reporting Period 13 and relating to the Franchisee's performance of the Franchise Agreement during Reporting Period 13; or
- (b) in relation to the term of the EMA, during such term of the EMA and relating to the Franchisee's Performance of the EMA;

“Ceiling Cash Position”

means [REDACTED¹²] or such other value as the Secretary of State may determine in accordance with paragraph 9.8 of Schedule 8.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 Franchisee'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 Franchisee's Performance of the EMA;

and stated in the Franchisee's profit and loss account but excluding:-

- (a) Franchise Payments (which shall include (for the avoidance of doubt) the value of any Management Fee and Performance Payment);
- (b) corporation tax and deferred tax charge in the Franchisee's profit and loss account;
- (c) any accounting transaction which does not require the Franchisee 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;
- (d) Capital Expenditure;

provided that:

- (i) if the Franchisee'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 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 Franchisee to the Secretary of State arising under or in connection with the Franchise Agreement prior to 1 March 2020 shall not be

¹² 20 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.

treated as or give rise to a cost or expense for the purpose of the Franchisee's profit and loss account;

"Disallowable Costs"	means any Costs or Capital Expenditure which are described within Appendix 1 (Disallowable Costs) to this Schedule 8.A (Franchise Payments);
"EMA Start Date"	means 1 April 2020;
"Emergency Working Capital Payment"	has the meaning given in paragraph 0 of Schedule 8.A (Franchise Payments);
"Estimated Capital Expenditure"	means the Capital Expenditure estimated by the Secretary of State using available resources as is practicable at the time of the estimation;
"Estimated Costs"	means the Costs reasonably estimated by the Secretary of State using available resources as is practicable at the time of the estimation;
"Estimated Residual Components"	means the Residual Components estimated by the Secretary of State using available resources as is practicable at the time of the estimation;
"Estimated Revenue"	means the Revenue reasonably determined by the Secretary of State using available resources as is practicable at the time of the determination;
"Extended Performance Period"	means, in the event that the Term 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 8.A (Franchise Payments);
"Floor Cash Position"	means [REDACTED ¹³] or such other value as the Secretary of State may determine in accordance with paragraph 9.8 of Schedule 8.A (Franchise Payments);
"Forecast Closing Cash Position"	means, with respect to a Reporting Period, the Franchisee'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 Season Ticket suspense liabilities) as at the last day of that Reporting Period and taking into account the Franchisee's latest Management Accounts;
"Franchise Payment Component"	means: <ul style="list-style-type: none"> (a) each of the components of "FP" as described in paragraph 2.1 of this Schedule 8.A (Franchise Payments); and

¹³ 20 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.

- (b) any component or element, described in the relevant provisions of this Schedule 8.A (Franchise Payments) and Schedule 8.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 Franchisee 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 8.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;
“Management Fee and Performance Payment” or “MFPP”	means the Franchise Payment Component calculated in accordance with paragraph 11 of this Schedule 8.A (Franchise Payments);
“Performance Period”	means each of: <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 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 8.A (Franchise Payments);
“Periodic Budgeted Capex Payment” or “PBCP”	means the Franchise Payment Component calculated in accordance with paragraph 2.1 of this Schedule 8.A (Franchise Payments);
“Periodic Franchise Payment” or “PFP”	means the Franchise Payment Component calculated in accordance with paragraph 2.1 of this Schedule 8.A (Franchise Payments);
“Periodic Finance Review Meeting”	has the meaning given in paragraph 5.1 of Schedule 8.A (Franchise Payments);
“Reporting Period 13”	means 1 March 2020 to 31 March 2020 (inclusive);
“Reporting Period Budget Forecast Review Meeting”	has the meaning given in paragraph 4.1 of Schedule 8.A (Franchise Payments);
“Residual Components”	means the net value of the components of the Franchise Payments under Schedule 8.1 which: <ul style="list-style-type: none"> (a) relate to any periods prior to Reporting Period 13; and

- (b) become payable during the relevant period,

For the purposes of this Schedule 8.A (Franchise Payments), such net value shall be:

- (a) if payable by the Secretary of State to the Franchisee, a positive number; or
- (b) if payable by the Franchisee to the Secretary of State, a negative number;

“Revenue”

means the gross total revenue of the Franchisee received or receivable and properly accrued:

- (a) in relation to Reporting Period 13, during Reporting Period 13 and relating to the Franchisee’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 Franchisee’s performance of the EMA;

as stated in the Franchisee’s profit and loss account but excluding:

- (a) Franchise Payments (which shall include (for the avoidance of doubt) the value of any Performance Payment and/or Management Fees (if applicable)); and
- (b) any accounting transaction included in the Management Accounts, Annual Management Accounts or Annual Audited Accounts but which does not result in the Franchisee 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 Franchisee 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 Franchisee if it had acted as a Good and Efficient Operator; and

- (b) subject always to paragraph 3.8 (No Double Recovery) of Schedule 8.A (Franchise Payments), the amount by which the Purchase Price (as defined in Clause 2.1 of the Supplemental Agreement) receivable by the Franchisee is lower than it would have been but for the Franchisee:
 - (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 Franchisee acting in accordance with the instructions of the Secretary of State;

“Reviewed 2019/20 Accounts”

has the meaning given to it in paragraph (g) of Appendix 2 to this Schedule 8.A (Franchise Payments);

“SoS Claim”

means all losses, liabilities, costs, damages and expenses that the Secretary of State 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 Franchisee 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 Franchisee is to indemnify the Secretary of State 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 Franchisee and serve as a Supporting Materials;

“Working Capital Payment”

means the Franchise Payment Component calculated in accordance with paragraph 9.3 of this Schedule 8.A (Franchise Payments); and

“Working Capital Repayment”

means the Franchise Payment Component calculated in accordance with paragraph 10.2 of this Schedule 8.A (Franchise Payments).

2. Franchise Payments

2.1A The Parties acknowledge and agree that the provisions of Schedule 8.1 of the Franchisee 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 8.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 =	$PFP + PBCP + PADJ + WCP - WCR + FADJ + MFPP - FWCA + RCP$
--------------	--

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 8.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 8.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 8.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 8.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 8.A (Franchise Payments), to be made on that Reporting Period's Payment Date. FWCA may be a positive or a 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 8.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 Secretary of State shall pay that amount to the Franchisee on the Payment Date for that Reporting Period;
- (b) where **£FP is a negative number**, the Franchisee shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period.

3. Payment of Franchise Payments

- 3.1 The Secretary of State shall notify the Franchisee, 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 Franchisee or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 3.1 on the Payment Date of the Reporting Period to which it relates.
- 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 Franchisee fails to pay any amount to the Secretary of State on its due date; or
 - (b) the Secretary of State fails to pay to the Franchisee 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 8

3.7 If either the Franchisee or the Secretary of State disputes the amount of a Franchise Payment, the dispute shall, unless the Franchisee and the Secretary of State otherwise agree, be resolved in accordance with the provisions of clause 16 (Governing Law and Jurisdiction) of the Franchise Agreement. Any such dispute shall not affect the obligation of either party to pay a Franchise Payment notified in accordance with this Schedule 8.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 8.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 Franchisee 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 8A such that the Franchisee 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 8.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 Franchisee by the Secretary of State 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 Franchisee proposes to enter into with an Affiliate.

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

4.2 The Franchisee shall, prior to the date of each Reporting Period Budget Forecast Review Meeting have provided to the Secretary of State the relevant information required pursuant to paragraph 9.2 of Schedule 11.2 in relation to the previous Reporting Period, together with a draft periodic budget prepared using the cost and revenue categories within P&L2 of the Financial Model, 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 Secretary of State with all further information as the Secretary of State may request from time to time for the purposes of the operation of this paragraph 4, within such time as the Secretary of State may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which the Secretary of State 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 Secretary of State 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 Secretary of State to take account of changes to GAAP in the United Kingdom); and
 - (d) otherwise facilitate easy comparison with the definitions of Costs, 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 Secretary of State 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 Franchisee; or
 - (b) require the Franchisee to provide the agreed or determined revisions to the Budget and/or Supporting Materials for approval by the Secretary of State, which the Franchisee shall do and provide revised versions to the Secretary of State within such time as the Secretary of State shall specify for this purpose.

- 4.7 The Franchisee shall not enter into any contract with an Affiliate unless the Secretary of State has, in his absolute discretion (and for this purpose Clause 6.4 of the Franchise Agreement shall not apply) 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 Secretary of State shall be entitled to consider any information provided to the Secretary of State by the Franchisee and any other sources of information which the Secretary of State considers to be relevant and the Secretary of State shall be entitled to request such information from the Franchisee as the Secretary of State 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 Secretary of State’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 Franchisee’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 Franchisee by the Secretary of State 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 Franchisee. 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 Franchisee 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 Franchisee 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 Franchisee’s management of its working capital and the Franchisee’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 Franchisee’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 Franchisee shall ensure that the representatives of the Franchisee at the meeting shall include the Finance Director of the Franchisee or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Secretary of State; and
- (c) the Secretary of State shall ensure that the representatives of the Secretary of State 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 Franchisee during Reporting Period 13.

5.2 The Franchisee shall, prior to the date of each Periodic Financial Review Meeting have provided to the Secretary of State the relevant information required pursuant to paragraph 9.2 of Schedule 11.2 in relation to the previous Reporting Period together with a statement of the Franchisee’s Forecast Closing Cash Position applicable to that Reporting Period, in accordance with the timescales set out therein, and shall provide the Secretary of State with all further information as the Secretary of State may request from time to time for the purposes of the operation of paragraph 5.1, within such time as the Secretary of State may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which the Secretary of State may make is not limited).

5.3 Not used.

5.4 The Secretary of State shall be entitled to consider any information provided to him by the Franchisee and any other sources of information which the Secretary of State considers to be relevant and the Secretary of State shall be entitled to request such information from the Franchisee as the Secretary of State requires for the purposes of the operation of this paragraph 5. The Franchisee shall provide the information within such time as the Secretary of State may reasonably specify for the purpose (and this paragraph shall continue to apply such that the number of requests which the Secretary of State 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 [REDACTED¹⁴]; 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 Secretary of State and any statutory director of any Affiliate of the Franchisee on behalf of the Franchisee. 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 Franchisee fails to provide the relevant information required pursuant to Schedule 11.2 (Management Information), in accordance with the timescales set out therein, or otherwise in accordance with this paragraph 5,

the Secretary of State 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 8.A but by reference to the relevant information available to the Secretary of State 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 Secretary of State later identifies any item (applicable to that period to which the relevant Reporting Period Finance Review Meeting relates) which the Secretary of State considers is or may be a Disallowable Cost or an instance of Revenue Foregone or any SoS Claims (whether following a review of the Franchisee's Annual Audited Accounts or Final Reviewed Accounts or otherwise) the Secretary of State shall within 28 days of identifying such item be entitled to:-

(a) notify the Franchisee in writing, identifying the item concerned; and

(b) request further information from the Franchisee in connection with the item for the purposes of the operation of this paragraph 0 and paragraphs 5.6A to 5.6C. The Franchisee shall provide the information within such time as the Secretary of State 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 Secretary of State pursuant to paragraph 5.6 within 20 Weekdays of the later of the

¹⁴ 20 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.

Secretary of State's notice referred to in paragraph 5.6(a) and the date specified by the Secretary of State 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 [REDACTED¹⁵]; 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 Secretary of State and any statutory director of any Affiliate of the Franchisee on behalf of the Franchisee. 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 Franchisee fails to provide the relevant information required pursuant to paragraph 5.6(b) in accordance with the specified timescales, then

the Secretary of State 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) 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 8.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

¹⁵ 20 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.

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 8.B (Performance Payment).

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 Secretary of State 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 Secretary of State shall be entitled to claim such amount in excess of the Initial SoS Claim Amount from the Franchisee:
 - (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 Secretary of State 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 Franchisee which the Secretary of State 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 Secretary of State shall repay to the Franchisee 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 Franchisee.

5.10 The Secretary of State 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 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.
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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 8.A.

6.3 The Secretary of State agrees that, provided the Management Accounts (in a form consistent with the obligations of the Franchisee under Schedule 11.2 (Management Information)) are received from the Franchisee within the timescale specified in paragraph 9.2(a) of Schedule 11.2 (Management Information), the Secretary of State will provide the Franchisee 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 Franchisee fails to provide the Management Accounts in accordance with its obligations under Schedule 11.2 (Management Information), the Secretary of State 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 Secretary of State at the time of such determination.

7. **Final Adjustments**

7.1 FADJ shall be equal to the following:

FADJ for the EMA =	$(\text{TotalAC} - \text{TotalAR}) + \text{TotalACAP} - (\text{TotalPFP} + \text{TotalPBCEP}) - \text{TotalPADJ}$
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Where:

TotalAC	means the total Actual Costs of the Franchisee 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 Franchisee 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 Franchisee 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 8.A.

7.3 If the Franchisee fails to provide the information required by paragraph 9.4(c) and 9.4(d) of Schedule 11.2 (Management Information) including Annual Audited Accounts, Final Reviewed Accounts and a reconciliation to the Management Accounts by the date specified in that paragraph the Secretary of State 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 Secretary of State at the time of such determination, including any information contained in the latest cumulative, year to date Management Accounts or in the Annual Management Accounts.

8. **NOT USED**

9. **Working Capital Payments**

9.1 A Working Capital Payment shall become payable to the Franchisee 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 Franchisee shall provide the Secretary of State with a statement of the Franchisee'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.
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FCCP	the Forecast Closing Cash Position applicable to the preceding Reporting Period.
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- 9.4 If during a Reporting Period, the Franchisee becomes aware that in its reasonable opinion prior to the payment of the Franchise Payment in respect of the following Reporting Period the Franchisee’s available Cash Balance 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 Franchisee shall immediately:
- (a) notify the Secretary of State 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 Franchisee considers it will require to ensure that the Working Capital Shortfall is remedied; and
 - (c) provide such further supporting information as the Secretary of State shall reasonably require.
- 9.5 The Parties shall agree or where the parties fail to agree, the Secretary of State 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 Secretary of State shall pay to the Franchisee any Emergency Working Capital Payment in accordance with the timescales agreed or determined in accordance with paragraph 9.5.
- 9.7 If the Franchisee fails to provide any information required by this paragraph 9, or any information in accordance with its obligations in Schedule 11.2 (Management Information) to enable the Secretary of State to calculate the amount of any Working Capital Payment or Emergency Working Capital Payment the Secretary of State shall (without prejudice to the Secretary of State’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 Secretary of State at the time of such determination.
- 9.8 The Secretary of State shall at any time on reasonable prior notice to the Franchisee be entitled to adjust the value of the Ceiling Cash Position, the Base Cash Position and/or the Floor Cash Position provided that the Secretary of State shall have first consulted the Franchisee as to any such adjustments as the Secretary of State is considering making.

10. Working Capital Repayment

10.1 Subject to paragraph 10.4, a Working Capital Repayment shall become payable by the Franchisee as part of a Reporting Period’s Franchise Payment where the Franchisee’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 Franchisee during the term of the EMA
TotalWCR	the aggregate of all Working Capital Repayments paid by the Franchisee 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 Franchisee fails to provide any information in accordance with its obligations in Schedule 11.2 (Management Information) to enable the Secretary of State to calculate any Working Capital Repayment or the Final Working Capital Adjustment the Secretary of State 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 Secretary of State 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 ¹⁶] (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 8.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 Franchisee’s Final Reviewed Accounts; and (b) as agreed or reasonably determined (in accordance with paragraphs 5.4 to 5.6 of Schedule 8.A (Franchise Payments)) at the Payment Date for MFPP pursuant to paragraph 11.3.

¹⁶ 20 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.

	Without limiting paragraph 11.2 of Schedule 8.A (Franchise Payments), PPADC may only be a positive number.
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- 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 Secretary of State shall be entitled to claim the value of MFPP (expressed as a positive value) from the Franchisee 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 8.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 8.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 Secretary of State in respect of any Disallowable Costs, Revenue Foregone and/or SoS Claims not taken into account in the calculation of PPADC.

12. Further Secretary of State’s rights in relation to accounting matters

- 12.1 Where the Secretary of State 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 Secretary of State shall be entitled to require it to be accounted for on such other basis as the Secretary of State may reasonably determine and notify to the Franchisee provided that the Secretary of State shall not be entitled pursuant to this paragraph to alter the accounting policies of the Franchisee from those set out in the Supporting Materials and applied through the Financial Model.
- 12.2 Where the Final Reviewed Accounts are subject to adjustment or restatement the Secretary of State shall have a discretion to require the recalculation of any affected Franchise Payment Component for the relevant Franchisee Year and to require that the Franchisee shall pay to the Secretary of State the amount which is the difference between:
- (a) any amount actually paid to the Secretary of State or adjusted in favour of the Secretary of State 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 Secretary of State or adjusted in favour of the Franchisee 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 Secretary of State shall be paid by the Franchisee within thirty (30) days of the Secretary of State notifying the Franchisee that the Secretary of State requires a payment to be made pursuant to this paragraph.

13. Indexation

For the avoidance of doubt, it is agreed that the Franchise Payments and any sum shown in any Budget for any given Franchisee 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 8.A.

14. Further obligations of the Franchisee

14.1 Except to the extent otherwise agreed by the Secretary of State, the Franchisee will act as a Good and Efficient Operator in all respects in connection with the operation of this Schedule 8.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 Franchisee.

14.2 The Franchisee warrants on a continuing basis and shall, if requested at any time by the Secretary of State, provide written confirmation from a statutory director of the Franchise confirming that the Franchisee is not party to any arrangement of any kind whatsoever under which:

- (a) any amounts which the Franchisee might otherwise have received from a third party are reduced, waived or otherwise suppressed; and/or
- (b) any amounts which the Franchisee 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 Franchisee 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 Franchisee 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 Franchisee in respect of the winding up or striking off of the Franchisee (or any similar or analogous process) and nor shall the Franchisee permit or facilitate the same:

- (a) until all the adjustments and payments for which this Schedule 8.A provides have been made and discharged in full; and/or
- (b) without the prior written consent of the Secretary of State.

14.4 The Secretary of State shall be entitled to notify the Franchisee of any future initiatives or proposals that the Secretary of State considers may have the potential to reduce certain Actual Costs below the applicable Budgeted Costs and the Franchisee shall, acting reasonably and in good faith discuss with the Secretary of State all such matters as are relevant to the possible implementation of such initiatives.

15. Survival

For the avoidance of doubt this Schedule 8.A (Franchise Payments) and Schedule 8.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 Secretary of State in accordance with the requirements in paragraph 9.4(d) of Schedule 11.2 (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 Secretary of State may reasonably require.

Following the expiry of the term of the EMA, the Franchisee 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 Secretary of State, use an external auditor;
- (b) if required by the Secretary of State, allow full access by their officials and/or representatives on an "open book" basis; and
- (c) if required by the Secretary of State, 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 Secretary of State will review the funding of capital expenditure assumed for the calculation of the contracted Annual Franchise Payments in the Financial Model that is held in escrow. To the extent that the funding of such assumed capital expenditure through the Franchise Payments under Schedule 8.1 has been distorted by the implementation of the EMA, including by the implementation of the EMA in a part of the Franchisee 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 Department or by the Franchisee. In the event that this amount cannot be agreed, the Secretary of State will reasonably determine the amount and direction of this payment.

APPENDIX 1 TO SCHEDULE 8.A**Disallowable Costs**

Any references in this Appendix 1 to Schedule 8.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 Franchisee as appropriate for delivery of the Franchise or of reasonable scale given the requirement for delivery of the Franchise provided that any costs referred 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 Secretary of State (such agreement not to be unreasonably withheld or delayed);
 - (iii) new contracts entered into by the Franchisee which have not been procured in compliance with the Franchisee's usual procurement procedures; or
 - (iv) variations to existing contracts which have not been made in accordance with the Franchisee'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 Secretary of State (in his absolute discretion) in writing;
- (c) Any expenses, disbursements or equivalent costs (to which the Franchisee's Expenses Policy would apply) which are incurred other than in compliance with the Franchisee's expenses policy;
- (d) Costs incurred or to be incurred by the Franchisee:
- (i) in relation to any Remedial Plan and/or other remedial, improvement or actions plans or agreements unless such costs are specifically approved in writing by the Secretary of State;
 - (ii) in removing branding or Marks under paragraph 2.2 of Schedule 14.2 (Maintenance of Operating Assets) except for branding or Marks whose removal from particular assets the Secretary of State 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 11.2 (Management Information);
 - (iv) in meeting NS Groep N.V. and Mitsui & Co Ltd audit requirements to the extent these are additional to audit costs which would otherwise be incurred by the Franchisee;
 - (v) in relation to any reasonable enforcement costs incurred by the Secretary of State pursuant to clause 14.7;

- (e) Any cost that the Franchisee 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 Franchisee 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 Franchisee 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 Franchisee to comply with any applicable Laws; or
 - (iv) indemnifying the Secretary of State for any matter which the Franchisee is obliged to indemnify the Secretary of State pursuant to the Franchise Agreement or any agreements which are ancillary to the Franchise Agreement;
- (f) Any Facilitation Fee or Administration Fee pursuant to clause 8 (Change of Control and Facilitation Fee);
- (g) Any costs incurred by the Franchisee arising out of or in connection with a lawful demand by the Secretary of State under the Performance Bond or Season Ticket Bond or under the Funding Deed or under the PCS Bond (as defined in the Funding Deed);
- (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 Franchisee acting as a Good and Efficient Operator;
- (i) Costs of developing and protecting any intellectual property rights which are not owned by the Secretary of State or the Franchisee 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 Secretary of State or where such costs or gains/losses arise from the Franchisee's participation in an industry recognised hedging scheme or activity which has been agreed by the Secretary of State or which the Secretary of State 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 Franchisee to diesel fuel costs;
- (m) The amount by which the Purchase Price payable by the Franchisee 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 Franchisee:
- (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 and/or other remedial, improvement or actions plans, required by this Agreement,

excluding such costs as approved by the Secretary of State, in the Secretary of State's absolute discretion, prior to such costs being incurred by the Franchisee;

- (o) The amount of any interest payable by the Franchisee to the Secretary of State in accordance with paragraph 3.6 of Schedule 8.A (Franchise Payments);
- (p) Any costs incurred by the Franchisee in pursuing or defending any claim against the Secretary of State 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 to the 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 Committed Obligations which are in excess of the amounts a Good and Efficient Operator would ordinarily have expended on discharging the Committed Obligation 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 (including, but not limited to, Minor Works and the CCI Amount) such expenditure shall be a Disallowable Cost except and to the extent that it relates to expenditure required to be incurred in relation to Franchisee Years beginning after 31st March 2020;

After the expiry of the EMA, the Parties shall agree or the Secretary of State 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) Interest paid or payable on PCS Advances (as defined in the Funding Deed);
- (v) Except with the prior agreement of the Secretary of State (not to be unreasonably withheld), any costs, charges, penalties, compensation or similar payments that the Franchisee may incur as a result of the termination of any contract or other arrangement;
- (w) Except with the prior agreement of the Secretary of State, 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 (or was assumed in the Financial Model) to be funded by a third party;
- (z) Costs of any audit pursuant to paragraph 9.7(c)(ii) of Schedule 11.2 (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;

- (bb) Additional costs or expenses incurred by the Franchisee in procuring any new Performance Bond where required to do so pursuant to paragraph 4.3(c) of Schedule 12.1 (Financial Covenants and Bonds); and
- (cc) Any payments, costs or other liabilities owed by the Franchisee to third parties in respect of any short term loans.

APPENDIX 2 TO SCHEDULE 8.A

Reporting Period 13 Payment

- (a) As soon as reasonably practicable following the EMA Start Date, the Secretary of State will make an "Estimated Reporting Period 13 Payment" to the Franchisee 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 Secretary of State or the Franchisee 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 Franchisee 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 Franchisee 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 Franchisee 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 8.A (Franchise Payments). ERP13 may be positive or negative.

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

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

Where:

TotalACRA	means the total Actual Costs of the Franchisee 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 Franchisee 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 Franchisee 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 8.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 8.A (Franchise Payments). IRP13 may be positive or negative.

(d) Where:

- (i) **£ERP13, £IRP13 or £FRP13 (as applicable) is a positive number**, the Secretary of State shall pay that amount to the Franchisee on the date set out in the relevant paragraph above;
 - (ii) **£ERP13, £IRP13 or £FRP13 is a negative number**, the Franchisee shall pay the corresponding positive amount to the Secretary of State 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 Secretary of State shall be entitled to review any relevant Franchisee 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 Franchisee's net assets at the start of the Reporting Period 13 and at the end of the Reporting Period 13.
- (g) The Management Accounts incorporating the adjustments identified for Reporting Period 13 pursuant to paragraph (f) of this Appendix 2 to Schedule 8.A (Franchise Payments) shall be the "Reviewed 2019/20 Accounts" for the purposes of this Schedule 8.A. If required by the Secretary of State, the Franchisee 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; and
- (h) Any PCS up to the amount drawn down during Reporting Period 13 may be repayable from the amounts paid to the Franchisee pursuant to this Appendix 2 of Schedule 8.A (Franchise Payments).

Appendix 3 to Schedule 1

SCHEDULE 8.B

Performance Payment

1. DEFINITIONS

For the purposes of this Schedule 8.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 8.B, in respect of which the Franchisee'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:

- (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 8.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 8.B;

"EMA Review Meeting" means, in respect of the EMA Review, a meeting held between the Parties to discuss the performance of the Franchisee 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 Secretary of State in accordance with paragraph 0 of Appendix 1 to this Schedule 8.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).

2. CALCULATION OF THE PERFORMANCE PAYMENT (PP)

2.1 The Performance Payment (PP) shall be the sum of the three amounts corresponding to the Franchisee'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 ¹⁷]
	2	[REDACTED]
	1	[REDACTED]
Customer experience	3	[REDACTED ¹⁸]
	2	[REDACTED]
	1	[REDACTED]
Acting as a Good and Efficient Operator	3	[REDACTED ¹⁹]
	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.

¹⁷ 20 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.

¹⁸ 20 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.

¹⁹ 20 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 8.B**EMA Review****1. PURPOSE OF THE EMA REVIEW**

- 1.1 The purpose of an EMA Review is for the Secretary of State to undertake a review of the Franchisee'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 Secretary of State 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 Secretary of State will carry out an EMA Review with respect to each EMA Performance Period.
- 1.4 At each periodic Franchise Performance 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 8.B.

2. NOTICE OF EMA REVIEW MEETING

- 2.1 The Secretary of State shall notify the Franchisee 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 Weekdays after the end of the relevant EMA Performance Period.
- 2.2 For the avoidance of doubt, nothing in this Schedule 8.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 thirty (30) Weekdays prior to the end of the relevant EMA Performance Period, the Secretary of State, acting reasonably, shall notify the Franchisee in writing of any additional information that the Franchisee shall be required to submit at the same time as the completed EMA Review Checklist.
- 3.2 Not less than fifteen (15) Weekdays prior to end of the EMA Performance Period, the Franchisee shall notify the Secretary of State in writing of any matters in addition to those set out in the EMA Review Checklist or the information notified to the Franchisee by the Secretary of State in accordance with paragraph 0 of Appendix 1 to this Schedule 8.B, which the Franchisee considers to be relevant for the EMA Review. The Secretary of State shall, within ten (10) Weekdays of receiving such notice, provide written confirmation to the Franchisee of whether the Secretary of State 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 ten (10) Weekdays after the end of an EMA Performance Period, the Franchisee shall deliver to the Secretary of State 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 Franchisee in accordance with paragraph 0 of Appendix 1 to this Schedule 8.B shall include written commentary from the Franchisee 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 Secretary of State to the Franchisee in accordance with paragraph 0 of Appendix 1 to this Schedule 8.B; and
 - (c) any other matter which the Secretary of State has confirmed as relevant for the EMA Review in accordance with paragraph 0 of Appendix 1 to this Schedule 8.B.
- 3.5 The Secretary of State shall provide the Franchisee with:
- (a) written commentary on the completed EMA Review Checklist (including any commentary provided by the Franchisee under paragraph 0 of Appendix 1 to this Schedule 8.B); and
 - (b) any information additional to that contained in the EMA Review Checklist which the Secretary of State has used or intends to use to assess the Franchisee's performance,
- in each case, no later than ten (10) Weekdays 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 Secretary of State in accordance with paragraph 0 of Appendix 1 to this Schedule 8.B and shall be attended by representatives of each of the Secretary of State and the Franchisee.
- 4.2 The Franchisee shall ensure that the representatives of the Franchisee at the EMA Review Meeting include such:
- (a) appropriate and qualified personnel of the Franchisee;
 - (b) directors and/or senior managers of the Franchisee; and
 - (c) directors and/or senior managers of the Parent,
- as the Secretary of State may reasonably require.

- 4.3 At the EMA Review Meeting the Parties shall discuss the Franchisee's performance by reference to the EMA Review Checklist, together with any supporting commentary, documents or evidence submitted by the Franchisee to the Secretary of State in accordance with paragraphs 0 and 0 of Appendix 1 to this Schedule 8.B and any commentary and/or information provided by the Secretary of State to the Franchisee in accordance with paragraph 0 of Appendix 1 to this Schedule 8.B.

5. **EMA REVIEW SCORING**

- 5.1 The Secretary of State shall provide to the Franchisee, no later than ten (10) Weekdays following the EMA Review Meeting, a duly completed EMA Review Scorecard setting out the Franchisee's performance in each of the EMA Criteria for the EMA Performance Period.
- 5.2 The Franchisee shall be scored 3, 2 or 1 in relation to each EMA Criterion.
- 5.3 The EMA Review shall be complete once the Secretary of State has sent a duly completed EMA Review Scorecard to the Franchisee in accordance with paragraph 0 of Appendix 1 to this Schedule 8.B.

- 5.4 Scores in the EMA Review Scorecard shall be awarded by the Secretary of State 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 Secretary of State's assessment of the Franchisee'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 Secretary of State by the Franchisee in accordance with paragraphs 0 and 0 of Appendix 1 to this Schedule 8.B;
 - (b) any commentary provided to the Franchisee by the Secretary of State in accordance with paragraph 0 of Appendix 1 to this Schedule 8.B; and
 - (c) any discussions between the Franchisee and the Secretary of State at the EMA Review Meeting.
- 5.5 The Franchisee shall receive a Performance Payment, in accordance with Schedule 8.A (Franchise Payments), if the Franchisee scores 2 or above with respect to one or more of the EMA Criteria.
- 5.6 The Franchisee shall not receive a Performance Payment if the Franchisee scores 1 in relation to all three of the EMA Criteria.
- 5.7 If the Franchisee:
- (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 Secretary of State may require a Remedial Plan and the provisions of Schedule 10.1 of the Franchise Agreement shall apply.

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

A report on the Franchisee's operational performance, by reference to the Plan of the Day, including:

- (a) the level of performance achieved against the Plan of the Day, and an explanation of the level of performance achieved relative to the Plan of the Day;
- (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 Franchisee, 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 Franchisee has acted as a Good and Efficient Operator, including:

- (a) evidence of any ways in which the Franchisee 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 Franchisee 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 Franchisee has delivered the Passenger Services in accordance with the applicable Plan of the Day (with minor exceptions only).</p>	<p>The Franchisee has provided high levels of cleanliness at Stations and on trains.</p> <p>The Franchisee 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 Franchisee 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 Franchisee 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 Franchisee has worked collaboratively with other Train Operators and/other rail industry bodies (including Network Rail) to provide an appropriate service to passengers, ensuring that passengers have as much choice as desirable, whilst taking into account demand.</p> <p>The Franchisee 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 Franchisee has been responsive to the Secretary of State's requests and fully cooperated in dealing with national emergencies.</p>
2: Acceptable	<p>The Franchisee has delivered the</p>	<p>The Franchisee has ensured that trains</p>	<p>The Franchisee has sought to operate the</p>

	<p>Passenger Services in accordance with the applicable Plan of the Day (with some exceptions).</p>	<p>and Stations have continued to be cleaned to an acceptable standard.</p> <p>The Franchisee 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 Franchisee has provided an acceptable level of journey experience for passengers including providing information at Stations and trains at all times, where possible.</p>	<p>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 Secretary of State.</p>
<p>1: Below acceptable standard</p>	<p>The Franchisee has materially failed to deliver the Passenger Services in accordance with the applicable Plan of the Day.</p>	<p>The Franchisee has failed to maintain cleanliness of trains and Stations to an acceptable level.</p> <p>The Franchisee has failed to deploy staff in a way to enable Stations and services to be maintained for passengers.</p> <p>The Franchisee has failed to maintain the trains and Stations at an acceptable level.</p> <p>The Franchisee has failed to provide an acceptable level of journey experience for passengers and/or has failed to provide information at Stations and trains.</p>	<p>The Franchisee has failed to mitigate nugatory costs or manage revenue loss throughout the term of the EMA in accordance with the prevailing advice from the Secretary of State.</p> <p>The Franchisee has failed to respond to the Secretary of State's requests and/or failed to cooperate in dealing with national emergencies.</p>

Appendix 4 to Schedule 1**Schedule 11.2****Management Information****1. Corporate Information**

1.1 The Franchisee shall provide the following information to the Secretary of State on the Start Date and shall notify the Secretary of State of any change to such information within twenty one (21) days of such change:

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

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

2. Information about Assets used in the Franchise

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

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

3. Identification of Key Personnel and Provision of Organisation Chart

- 3.1 The Franchisee shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Franchisee in the performance of the Franchise Agreement. This shall include but not be limited to the following persons:
- (a) a managing director whose role will include the overall management of the operation of the Franchise Services;
 - (b) a train service delivery director, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1 (Performance Benchmarks);
 - (c) a safety director, whose role will include responsibility for ensuring that the Franchisee complies with its legal obligations in relation to the Franchise Services including the Safety Certificate; and
 - (d) a finance director, whose role will include responsibility in relation to the Financial Model, the Final Reviewed Accounts and the provision of other financial data to the Secretary of State.
- 3.2 The Franchisee shall nominate a board level director of the Franchisee (or at the Secretary of State's discretion, a director of the Parent or an Affiliate) within seven (7) days of the date of this Agreement. Such director's responsibilities include overseeing, at a strategic level, the Franchisee's interface with the Secretary of State in relation to Sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of the Franchisee in connection with the Franchisee's compliance with relevant instructions issued by the Secretary of State under Section 119 of the Act from time to time. Such board level director shall be identified by job title in the organisation chart referred to in paragraph 3.3 and shall be deemed part of the Key Personnel.
- 3.3 On or before the Start Date the Franchisee shall provide to the Secretary of State an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update such chart (and provide a copy to the Secretary of State promptly thereafter) as and when any changes occur.

4. Operational and Performance-related Information to be provided by the Franchisee

- 4.1 The Franchisee shall provide to the Secretary of State the information specified in Appendix 2 (Operational Information) to this Schedule 11.2 at the times specified therein.
- 4.2 Appendix 2 (Operational Information) to this Schedule 11.2 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

5. Maintenance of Records

- 5.1 The Franchisee shall maintain true, up to date and complete records of all of the information required to be provided by the Franchisee under the Franchise Agreement.
- 5.2 Each record required to be maintained by the Franchisee in accordance with this Schedule 11.2 shall be held for a period of six (6) years following the date on which such record was required to be created.
- 5.3 References to records in this Schedule 11.2 shall include records maintained under any Previous Franchise Agreement to the extent that such records relate to services equivalent to the Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure).
- 5.4 The Franchisee shall not be responsible for any records maintained under any Previous Franchise Agreement, as referred to in paragraph 5.3, being true, complete and up to date.

As soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 5.1.

6. Right to Inspect

- 6.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and his representatives and advisers:
- (a) to inspect and copy any records referred to in this Schedule 11.2 or Schedule 8A and the Secretary of State may verify any such records; and
 - (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services.
- 6.2 The Franchisee shall make available to the Secretary of State, his representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, his representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 6.2 shall include an obligation on the Franchisee to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 6.1 is kept by or on behalf of the Franchisee.
- 6.3 The Secretary of State, his representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.
- 6.4 If any inspection reveals that information previously supplied to the Secretary of State was, in the reasonable opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchisee's obligations under the Franchise Agreement which the Secretary of State considers to be material, the costs of any such inspection shall be borne by the Franchisee and which, for the avoidance of doubt, shall be Disallowable Costs pursuant to Appendix 1 to Schedule 8.A.

7. Information to the Passengers' Council and Local Authorities

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

8. Periodic Update Reports

- 8.1 The Franchisee shall (including in accordance with the requirements of paragraph 5.1 of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations)) prepare and submit to the Secretary of State a periodic report in each Reporting Period containing such information as the Secretary of State may reasonably specify on or after commencement of this Agreement or from time to time in accordance with paragraph 8.2 below for the previous quarter, or such other period as may be reasonably required and disaggregated to the extent that the Secretary of State shall require.
- 8.2 The Franchisee's obligations under this paragraph 8.2 are subject to the Franchisee receiving at least twenty eight (28) days' notice of:
- (a) the requirement to prepare any such report; and
 - (b) any amendments required to the contents of such report.

9. Financial and Operational Information

9.1 Accounting Records

The Franchisee shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under Section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period. In particular, the Franchisee 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 Franchisee shall deliver to the Secretary of State, within ten (10) Weekdays of the end of each Reporting Period:

- (i) Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date;
- (ii) Written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the Franchisee, contain a true and accurate reflection of the current assets and liabilities of the Franchisee (including contingent assets or liabilities and known business risks and opportunities) and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further information that the Secretary of State shall reasonably require in relation; and
- (iii) In circumstances where the Franchisee was in a Lock-up Period during such Reporting Period, written confirmation from a statutory director of the Franchisee that the Franchisee has complied with the restrictions applicable during a Lock-up Period pursuant to paragraph 3 of Schedule 12 (Financial Covenants and Bonds).

(b) The Management Accounts shall also set out:

- (i) sufficient information to enable the Secretary of State to calculate Actual Operating Costs and Modified Revenue on a cumulative basis for the previous thirteen (13) Reporting Periods;
- (ii) the ratio of the Franchisee's:
 - (A) Total Modified Revenue to its Total Actual Operating Costs; and
 - (B) Total Forecast Modified Revenue to its Total Forecast Operating Costs,

together with supporting information showing how the Franchisee has calculated such ratios including a breakdown of the Modified Revenue, Forecast Modified Revenue, Actual Operating Cost and Forecast Operating Costs for each of the Reporting Periods used for the purposes of the calculation of the ratios pursuant to this paragraph 9.2(b);

- (iii) the Franchisee's forecast of profit and loss, cash flow and balance sheet provided in accordance with the 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 this paragraph 9.2(b)) for each of the following thirteen (13) Reporting Periods;

- (iv) a comparison of the Franchisee's financial performance during such period against the forecast provided by the Franchisee in the then current Business Plan;
- (v) a comparison of the Franchisee's cumulative financial performance during the Franchisee Year in which such period occurs against the forecast referred to in paragraph 9.2(b)(ii);
- (vi) 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);
- (vii) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Secretary of State, materially worse than forecast by the Franchisee in its current Business Plan, the Secretary of State may require the Franchisee to prepare and submit to him, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan; and
- (viii) a detailed statement and explanation of any Agreed Funding Commitment and PCS Advances (each as defined in the Funding Deed) provided during such Reporting Period and any repayments made during such Reporting Period in respect of (i) previously provided Agreed Funding Commitments as against the Funding Plan (as defined in the Funding Deed) and (ii) PCS Advances.

9.3 **Not used**

9.4 **Annual Financial Information**

- (a) Within fifteen (15) Weekdays of the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State its Annual Management Accounts for that Franchisee 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) NOT USED.
- (c) Within four (4) Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
 - (i) certified true copies of its annual report and Annual Audited Accounts for that Franchisee Year, together with copies of all related directors' and auditors' reports;
 - (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, reconciled to:
 - (1) each of the periodic Management Accounts within the term of the EMA within that Franchisee Year;
 - (2) periodic Management Accounts in relation to all other Reporting Periods in that Franchisee Year (if any);
 - (3) Annual Management Accounts in relation to the term of the EMA within that Franchisee Year; and
 - (4) Annual Management Accounts in relation to all other Reporting Periods within that Franchisee Year, all in a format to be from time to time reasonably specified by the Secretary of State (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 Franchisee's auditors (in a format to be reasonably specified by the Secretary of State from time to time, on the basis of providing the Secretary of State with reasonable assurance) that the disaggregation required by the Audited Accounts Reconciliation in accordance with paragraph 9.4(c)(ii) has been undertaken accurately;
- (iv) not used;
- (v) a statement from the Franchisee's auditors confirming that GAAP has been applied in a fair and consistent manner; and
- (vi) not used.
- (d) Within two (2) Reporting Periods after the end of the last EMA Performance Period, the Franchisee shall deliver to the Secretary of State 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 8.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 Secretary of State (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 Budget;
 - (iii) a statement from the Franchisee's auditors (in a format to be reasonably specified by the Secretary of State from time to time, on the basis of providing the Secretary of State 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 Franchisee'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 formats set out in the document in the agreed terms marked FF or in such other format as the Secretary of State may reasonably specify from time to time;
 - (ii) be prepared consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
 - (iii) identify to the reasonable satisfaction of the Secretary of State, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cashflow projection and the balance sheet contained in the Financial Model Placed in Escrow on the date of the Franchise Agreement.
- (b) Each set of Annual Audited Accounts shall:
- (i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
 - (ii) give a true and fair view of:
 - (A) the state of affairs, profits and financial condition of the Franchisee for the period covered by such accounts; and
 - (B) the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee, such revenue to be disaggregated by reference to revenue derived by the Franchisee from:
 - (i) the sale of tickets;
 - (ii) income received from 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 Franchisee shall not, without the express written consent of the Secretary of State, make any alteration to its accounting policies or basis of preparation in relation to its Management Accounts, Annual Management Accounts, Annual Audited Accounts or Final Reviewed Accounts.

9.6 Parent and Guarantor Accounts

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

9.7 Secretary of State Audit of calculations provided pursuant to paragraph 9.2(b)(ii)

- (a) Without prejudice to any rights of the Secretary of State under the Franchise Agreement, the Secretary of State and his representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to:
 - (i) the Franchisee's obligations under paragraph 9 of Schedule 8.A (Franchise Payments); and
 - (ii) the calculation of the Franchise Payment (and each component thereto) in accordance with Schedule 8.A (Franchise Payments) and/or Schedule 8.B (Performance Payments).
- (b) The Franchisee shall make available to the Secretary of State and his representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 9.7(a). If any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts, the Annual Management Accounts and/or Annual Audited Accounts then:
 - (i) the Secretary of State may exercise its rights as described in paragraphs 12.1 or 12.2 of Schedule 8.A (Franchise Payments); and
 - (ii) the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 7.4 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement) which shall, for the avoidance of doubt, be treated as Disallowable Costs pursuant to Appendix 1 to Schedule 8.A.

10. Business Plans**10.1 NOT USED****10.2 Annual Business Plans**

- (a) The Franchisee shall, at all times during the Franchise Term, provide to the Secretary of State any annual business plan (in written or electronic form) that it provides to its Parent (or any other document or documents which individually or collectively can reasonably be considered to be an annual business plan) in relation to a Franchisee Year (other than the first Franchisee Year) and which describes the Franchisee's planned activities for such Franchisee Year or describes the manner in which the Franchisee will meet its obligations under the Franchise Agreement in respect of that Franchisee Year (the "**Annual Business Plan**"). Any such Annual Business Plan shall be provided to the Secretary of State within one month of submission of same to the Parent. Where the Franchisee does not produce an annual business plan it shall notify the Secretary of State of all the periodic plans that it does produce and:
 - (i) the Secretary of State shall be entitled to copies of such periodic plans as he shall reasonably determine; and
 - (ii) any such periodic plans shall be deemed to be Annual Business Plans for the purposes of this paragraph 10.2.
- (b) The Franchisee shall, at the same time as it submits the Annual Business Plan to the Secretary of State in accordance with paragraph 10.2 (or to the extent that no Annual Business Plan is submitted to the Parent in any Franchisee Year, not more

than three (3) Reporting Periods and not less than one (1) Reporting Period prior to the start of each Franchisee Year), provide to the Secretary of State:

- (i) a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the thirteen (13) Reporting Periods in each Franchisee Year during the Franchise Term; and
- (ii)
 - (A) a forecast of the Franchisee'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 Franchisee intends to ensure that at the end of each of the following thirteen (13) Reporting Periods it will have an 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 Franchisee proposes to implement during that Franchisee Year; and
 - (D) an analysis of the technologies, processes, developments and/or proposals which the Franchisee implemented in the previous Franchisee Year including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for the previous Franchisee Year.
- (c) The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
 - (i) timetable and service pattern development;
 - (ii) Station facility improvement;
 - (iii) performance management improvement;
 - (iv) customer service improvement;
 - (v) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services; and
 - (vi) introduction of new rolling stock.
- (d) The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.

- (e) Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which he may impose.

11. Safety Information

11.1 Safety

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

12. Further Information

12.1 The Franchisee shall:

- (a) deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as he may request within such period as he may reasonably require and which relate to or are connected with the Franchisee's performance of the Franchise Agreement; and
- (b) procure that each Affiliate of the Franchisee complies with paragraph 12.1(a) in respect of any information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of its obligations under the Franchise Agreement.

12.2 The information referred to in paragraph 12.1 shall include:

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

12.3 The Secretary of State may require the Franchisee to provide:

- (a) the information required to be provided under this Schedule 11.2 more frequently than set out in this Schedule 11.2;
- (b) the information required to be provided under this Schedule 11.2, or, in the Secretary of State's discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise; and

- (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time.

13. Information from Third Parties

- 13.1 The Franchisee shall, if the Secretary of State so requests, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Franchisee which is or are maintained by third parties and to which the Secretary of State is entitled to have access, or of which the Secretary of State is entitled to receive a copy under the Franchise Agreement.
- 13.2 The Franchisee shall, if the Secretary of State so requests, procure the provision by RSP to the Secretary of State of such information, data and records as the Franchisee is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.
- 13.3 The obligations of the Franchisee under this Schedule 11.2 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that he has received the relevant information directly from any other person (including Network Rail or RSP). The Franchisee shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.
- 13.4 The Franchisee shall promptly advise the Secretary of State of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the Franchisee, materially affect the continuity of any of the records that are provided pursuant to this Schedule 11.2. Any such advice shall include an assessment of the materiality of the relevant change.

14. Compatibility of Information

- 14.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under the Franchise Agreement shall be provided, if so requested by the Secretary of State, in a form compatible with the Secretary of State's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraph 3 of Schedule 13.1 (Rail Industry Initiatives).
- 14.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under the Franchise Agreement will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.

15. Environmental Information

15.1 Environmental Information Data Collection Plan

- (a) The Franchisee shall, by no later than three (3) months after the Start Date, provide a report to the Secretary of State setting out:
- (i) which measures included in the Dataset the Franchisee is unable to provide, despite using reasonable endeavours to do so ("**Excluded Data**");
 - (ii) for each item of Excluded Data, the technical, operational or commercial reason why the Franchisee is unable to provide the Excluded Data; and
 - (iii) a plan ("**Environmental Data Collection Plan**") detailing, in relation to each item of Excluded Data, the actions which the Franchisee would need to take in order to be able to provide such Excluded Data, the Franchisee's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Franchisee would be able to begin providing such Excluded Data to the Secretary of State.

- (b) The Dataset, excluding any measures which the Secretary of State agrees, acting reasonably, that the Franchisee is, despite using reasonable endeavours, unable to provide, shall be referred to as the **"Initial Dataset"**.
- (c) The Secretary of State may require:
 - (i) the Franchisee to implement the Environmental Data Collection Plan in whole or in part; and/or
 - (ii) the Franchisee to take such other actions as, in the reasonable opinion of the Secretary of State, would enable the Franchisee to provide any item of Excluded Data,

following which the relevant item of Excluded Data will form part of the Initial Dataset.

- (d) Where the Franchisee is:
 - (i) undertaking works, whether at a Station or Depot or in respect of rolling stock;
 - (ii) procuring rolling stock; or
 - (iii) taking any other action which could enable the Franchisee to provide any items of Excluded Data in a cost effective manner,

the Franchisee will use reasonable endeavours to do so in a manner which would enable the Franchisee to provide any relevant item of Excluded Data (and any item of Excluded Data which the Franchisee becomes able to provide as a result will, with effect from the date on which the Franchisee becomes able to provide the same, form part of the Initial Dataset).

- (e) With effect from the Start Date the Franchisee shall measure and collect the data included in the Initial Dataset.
- (f) The Franchisee may, in its discretion, measure and collect additional data provided that the minimum required under the Initial Dataset is adhered to and the Franchisee will co-operate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.
- (g) The Franchisee shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated periodic or annual usage figure to the Secretary of State as specified for each measure in paragraph 1 of Appendix 1 (Environmental Information) to this Schedule 11.2.

15.2 **Environmental Impact Monitoring Report and Environmental Impact Monitoring Audit**

- (a) The Franchisee shall submit to the Secretary of State a report setting out the result of the data collection of the Initial Dataset required by this paragraph 15 in accordance with the applicable granularity and regularity specified in paragraph 1 of Appendix 1 (Environmental Information) to this Schedule 11.2 (the **"Environmental Impact Monitoring Report"**) within three (3) months following the end of each Franchisee Year.
- (b) The Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an annual independent written audit of the data provided in the Environmental Impact Monitoring Report and the collection methodology of the Initial Dataset in respect of each Franchisee Year (the **"Environmental Impact Monitoring Audit"**).

- (c) The Franchisee shall procure that the independent body appointed pursuant to paragraph 15.2(b) includes in the Environmental Impact Monitoring Audit:
- (i) a retrospective assessment (covering the Franchisee Year to which the audit relates) of the Franchisee's data collection methodology and level of data granularity carried out in accordance with this paragraph 15.2 and any recommendations by the independent body in respect of such methodology;
 - (ii) a verification of the accuracy of past data submissions made in respect of the Initial Dataset and as summarised in the Environmental Impact Monitoring Report; and
 - (iii) an assessment of the Franchisee's proposed data collection methodology and level of data granularity for the following Franchisee Year's data collection, and
 - (iv) where the independent body has identified as part of its audit any errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, whether these are, in the reasonable opinion of the independent body undertaking the audit material or minor errors, discrepancies or concerns.
- (d) The Franchisee shall submit a copy of the Environmental Impact Monitoring Audit to the Secretary of State at the same time as Environmental Impact Monitoring Report is submitted in accordance with paragraph 15.2(a) above.
- (e) Where the Environmental Impact Monitoring Audit highlights errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, the Franchisee shall:
- (i) **in the case of minor errors, discrepancies or concerns which are capable of rectification without material additional expenditure** - rectify such minor errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays, following the date of the submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question;
 - (ii) **in the case of material errors, discrepancies or concerns which are capable of rectification** - rectify such material errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays, following the date of submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question; and
 - (iii) **in the case of concerns in relation to the Franchisee's data collection methodology and level of data granularity for the forthcoming Franchisee Year's data collection** - make such amendments to such methodology as recommended in the Environmental Impact Monitoring Audit so as to address those concerns.

16. Environmental Impact Targets

16.1 Environmental Impact Targets set by the Secretary of State

The Secretary of State sets out in paragraph 2 of Appendix 1 (Environmental Information) of this Schedule 11.2 the targets for improving the environmental performance of the

Franchise (the "**Environmental Impact Targets**"), and the Franchisee shall meet such Environmental Impact Targets during the Franchise Period.

16.2 Performance against the Environmental Impact Targets

- (a) For each Franchisee Year the Secretary of State shall determine the Franchisee's performance against each Environmental Impact Target on an annual basis (within two (2) Reporting Periods of receipt of the Environmental Impact Monitoring Report) by comparing:
- (i) **for traction carbon emissions:** the Franchisee's performance set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Target for the relevant Franchisee Year, in accordance with the annual trajectory specified in the Sustainable Development Strategy;
 - (ii) **for non-traction energy use:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;
 - (iii) **for waste:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;
 - (iv) **for mains water:** for the second (2nd) Franchisee Year, the number of automatic water meters installed against the total number of water meters. These details shall be reported by the Franchisee within three (3) months of the end of the second (2nd) Franchisee Year. For subsequent Franchisee Years, the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets.
- (b) For the purposes of undertaking the comparison pursuant to paragraph 16.2(a), the results referred to in paragraphs 16.2(a)(i) to (iii) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).
- (c) As soon as reasonably practicable following the Start Date and in any event within six (6) months of the Start Date, the Franchisee shall produce and provide to the Secretary of State for approval an implementation plan for the duration of the Franchise Period which is capable of achieving each of the Environmental Impact Targets each Franchisee Year (as such implementation plan may be revised in accordance with paragraph 16.3 (the "**Environmental Impact Targets Plan**")).
- (d) Following the Secretary of State's approval, the Franchisee shall use all reasonable endeavours to implement the Environmental Impact Targets Plan (including any such plan which is revised in accordance with paragraph 16.2(e)) in order to achieve the Environmental Impact Targets.
- (e) Notwithstanding the requirements of this paragraph 16.2, the Franchisee shall review its then current Environmental Impact Targets Plan and revise such plan as necessary by the end of the fifth (5th) Franchisee Year to ensure that such plan, in the reasonable opinion of the Secretary of State, is capable of achieving each Environmental Impact Target in each Franchisee Year.

16.3 Remedial Actions

- (a) In the event that an Environmental Impact Target is not met in any Franchisee Year, the Franchisee shall as soon as reasonably practicable produce and provide to the Secretary of

State a revised Environmental Impact Targets Plan which, in the reasonable opinion of the Secretary of State, is capable of achieving the Environmental Impact Targets.

- (b) The Franchisee shall use all reasonable endeavours to implement the revised Environmental Impact Targets Plan, which shall be the Environmental Impact Targets Plan for the purposes of the Franchise Agreement.

16.4 **Publication**

The Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of its performance against the Environmental Impact Targets in widely accessible forms including, as a minimum, publishing them on its website and in each Customer Report.

APPENDIX 1 TO 0

Environmental Information

1. Environmental Impact Monitoring Dataset

Environmental Impact Monitoring Dataset SUBJECT (UNIT)		GRANULARITY	REGULARITY
TRACTION	EC4T (kWh)	Breakdown per distinct fleet - metered	Four (4) week period
	EC4T (kWh)	Breakdown per distinct fleet - unmetered	Four (4) week period
	Gas-oil (litres)	Breakdown per distinct fleet	Four (4) week period
NONTRACTION	Electricity (kWh)	Total	Four (4) week period or monthly
	Gas (kWh)	Total	Four (4) week period or monthly
	Gas-oil (litres)	Total	Four (4) week period or monthly
CARBON	Scope 1 emissions (tonnes)	Total	Annual
	Scope 2 emissions (tonnes)	Total	Annual
	Embodied carbon in new infrastructure projects over the amount set out in paragraph 10.3(b) of Schedule 13.1 (Rail Industry Initiatives)	Total	Per project
WATER	Mains Water consumption (m ³)	Total	Annual
	Water recycling initiatives	Narrative	Annual
WASTE	Waste generated (tonnes)	Total	Annual
	Waste recycled (tonnes)	Total	Annual
	Waste subject to other recovery (tonnes)	Total	Annual
	Waste to landfill (tonnes)	Total	Annual
	Hazardous waste	Total	Annual
ENVIRONMENTAL MANAGEMENT SYSTEM (EMS)	Enforcement/information Notices	Total	Annual
	Environmental fines or prosecutions	Total	Annual
	Environmental incidents reported through the EMS	Total	Annual
	Environmental training records % personnel briefed/trained	Total	Annual

2. Environmental Impact Targets

Targets	Traction Carbon Emissions	Non-Traction Energy Use	Waste	Mains Water
	<p>Meet the Annual Traction Carbon Trajectory for CO2E per vehicle/km.</p>	<p>For the first (1st) Franchisee Year is a reduction in kilowatt hours (kWh) of two point five per cent (2.5%) against the 2014 baseline figure of 32,714,742 kWh.</p> <p>For each subsequent Franchisee Year, a reduction in kilowatt hours (kWh) of two point five per cent (2.5%) against the preceding Franchisee Year.</p>	<p>From the end of the second (2nd) Franchisee Year, the Franchisee must send zero waste to landfill and must recycle or prepare for re-use, ninety per cent (90%) of waste (by weight) per Franchisee Year.</p>	<p>By the end of the second (2nd) Franchisee Year, the Franchisee must install automatic meter readings (AMR) for all water meters, where practicable.</p> <p>The Franchisee shall determine a baseline of water consumption by the end of the third (3rd) Franchisee Year, such baseline to be agreed with the Secretary of State.</p> <p>The Franchisee shall develop a target to reduce water consumption against the agreed baseline referred to above by the end of the fourth (4th) Franchisee Year, such target to be agreed with the Secretary of State.</p>

APPENDIX 2 TO 0

Operational Information

Information about the Performance of the Franchisee

1. The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under the Franchise Agreement, covering the areas and the information described in this Appendix 2. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
2. The Franchisee shall, subject to paragraph 3, provide to the Secretary of State the information set out in the following tables at the frequency specified in the Column of each such table headed "**When information to be provided**".
3. When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
 - (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
 - (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.
4. The following key shall apply to the table in this Appendix 2:

A = Information to be provided on or before any Passenger Change Date;

B = Information to be provided for every Reporting Period within ten (10) Weekdays of the last day of each Reporting Period; and

C = Information to be provided annually within ten (10) Weekdays of the last day of each Franchisee Year.

Table 1 - Operational Information

Information to be provided	Information (format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B

Information to be provided	Information (format)	When information to be provided
Number of Passenger Services in the Enforcement Plan of the Day	[number]	B
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 2.1 of Schedule 7.1 (Performance Benchmarks) including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee	[number]	B

Information to be provided	Information (format)	When information to be provided
<p>Where there is a difference between the Timetable and the Plan of the Day on any day the following:</p> <ul style="list-style-type: none"> (a) the fact of such difference; and (b) the number of: <ul style="list-style-type: none"> (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day 	[number]	B
<p>Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day:</p> <ul style="list-style-type: none"> (a) the fact of such difference; (b) the number of: <ul style="list-style-type: none"> (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Plan of the Day had been the same as the Enforcement Plan of the Day 	[number]	B
<p>Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event</p>	[number]	B
<p>Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event</p>	[number]	B
Short Formation		
<p>Number of Short Formation Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan</p>	[number]	B

Information to be provided	Information (format)	When information to be provided
Number of Short Formation Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Short Formation Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Short Formation Peak Passenger Services scheduled (excluding Cancellations or Partial Cancellations)	[number]	B
Minutes Delay and Punctuality		
Number of Minutes Delay attributable to the Franchisee	[minutes]	B
Number of Minutes Delay attributable to Network Rail;	[minutes]	B
Number of Minutes Delay attributable to any other Train Operator	[minutes]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 9.1 of Schedule 7.1 (Performance Benchmarks) and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination	[minutes]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[minutes]	B
Train Mileage		
Planned Train Mileage	[mileage]	A
Actual Train Mileage	[mileage]	B

Information to be provided	Information (format)	When information to be provided
[REDACTED ²⁰]	[mileage]	B

²⁰ 20 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 3 TO 0

Summary of Reporting and Other Requirements

This Appendix contains a non-exhaustive summary of the obligations on the Franchisee throughout this Agreement in respect of the provision of information to the Secretary of State. This summary is for guidance only. If there are any inconsistencies with the other contents of the Schedules mentioned below (including any Appendix), those other contents shall apply.

Reference	Summary of Obligation
Paragraph 11.3(a) of Schedule 1.1 (Franchise Services and Service Development).	Requirement for the Franchisee to provide a comprehensive summary of the proposed changes from the Timetable then in force.
Paragraph 11.2(e) of Schedule 1.1 (Franchise Services and Service Development).	Requirement for the Franchisee to publish a report containing a summary of the main issues raised by respondents to the consultation.
Paragraph 13.1 of Schedule 1.1 (Franchise Services and Service Development).	Requirement for Franchisee to provide a certificate addressed to the Secretary of State signed by a statutory director in respect of the exercise of timetable development rights.
Paragraph 13.3(a) of Schedule 1.1 (Franchise Services and Service Development).	Requirement for Franchisee to provide copies to the Secretary of State of correspondence in respect of discussions with Network Rail.
Paragraph 14.4 of Schedule 1.1 (Franchise Services and Service Development).	Requirement for Franchisee to provide the Train Plan, certified as true and accurate by a statutory director.
Paragraph 15.1 of Schedule 1.1 (Franchise Services and Service Development).	Requirement for Franchisee to provide a Capacity Mitigation Plan if required by the Secretary of State.
Paragraph 16.2 of Schedule 1.1 (Franchise Services and Service Development).	Requirement for Franchisee to provide informed opinion in respect of a new or amended Train Service Requirement.
Paragraph 17.2 of Schedule 1.1 (Franchise Services and Service Development).	Requirement for Franchisee to provide informed opinion in respect of a new or amended Train Service Requirement.
Paragraph 7.4 of Schedule 1.2 (Operating Obligations).	Reporting requirements in respect of the requirement to actively manage NR's performance of its contractual relationship with the Franchisee i.e. reviewing delivery of local output commitment by NR and co-operating with NR in the development of a Performance Strategy Plan and any recovery plans necessary.
Paragraph 7.7 of Schedule 1.2 (Operating Obligations).	Obligation to provide evidence to the Secretary of State of the steps taken under paragraph 7.
Paragraphs 8 and 9 of Schedule 1.4 (Passenger Facing Obligations).	Requirements to publish performance data and complaints and handling data.

Reference	Summary of Obligation
Paragraph 1 of Schedule 1.5 (Information about Passengers).	Requirement to provide the Secretary of State with information about the use by passengers of the Passenger Services.
Paragraph 11 of Schedule 1.7 (Stations).	Requirement to maintain and provide records regarding Station improvement measures and measures taken to improve Station environments.
Paragraph 2.2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases).	Obligation to provide a copy of all draft and all executed Rolling Stock Related Contracts and any agreements amending the Rolling Stock Related Contracts as well as such other information required by the Secretary of State together with justification of the Franchisee's proposed rolling stock maintenance strategy and provision of analysis of whole life costs.
Paragraph 3.5(b) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases).	Requirement to produce a Delayed Cascade Mitigation Plan.
Paragraph 1.5 of Schedule 2.5 (Transport, Travel and Other Schemes).	Requirement to provide information about concessionary travel schemes.
Paragraph 2.6 of Schedule 2.5 (Transport, Travel and Other Schemes).	Requirement to provide information about multi-modal fares schemes.
Paragraph 3.3 of Schedule 2.5 (Transport, Travel and Other Schemes).	Requirement to provide information about Discount Fares Schemes.
Paragraph 4 of Schedule 4 (Accessibility and Inclusivity).	Recording of obligations relating to persons with disabilities.
Paragraphs 1 and 2 of Schedule 5.8 (Fares Regulation Information and Monitoring).	Requirement to record and monitor Prices and Child Prices of Commuter Fares and Protected Fares.
Paragraph 1.5 of Schedule 5.9 (Smart Ticketing).	Requirement to provide a detailed explanation of delays under the terms of the SEFT Deed.
Paragraph 5 of Schedule 6.2 (Committed Obligations) Part 2 (Special Terms related to Committed Obligations).	Requirement to provide such evidence of compliance with Committed Obligations as the Secretary of State may request.
Paragraph 2 of Schedule 7.1 (Performance Benchmarks).	Reporting requirements relating to Cancellations Benchmarks and Annual Cancellations Benchmarks.
Paragraph 9 of Schedule 7.1 (Performance Benchmarks).	Reporting requirements relating to TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks.
Paragraph 15 of Schedule 7.1 (Performance Benchmarks).	Reporting requirements relating to Short Formation Benchmarks and Annual Short Formation Benchmark.

Reference	Summary of Obligation
Paragraph 18.6 of Schedule 7.1 (Performance Benchmarks).	Reporting requirements relating to the implementation of a Service Recovery Plan.
Paragraph 19.9 of Schedule 7.1 (Performance Benchmarks).	Requirement to produce an Action Plan to secure a Required Performance Improvement.
Paragraph 3 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme).	Requirement to provide to the Secretary of State any proposed revisions to the Customer and Stakeholder Engagement Strategy.
Paragraph 4.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme).	Requirement to produce and publish a Customer Report.
Paragraph 5.1-5.3 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme).	Requirement to provide details of any CCIF Scheme proposed by the Franchisee.
Paragraph 6.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme).	Requirement to publish details of the Franchisee's level of adherence to scheduled ticket office opening hours and performance in respect of Passenger Assistance service.
Paragraph 6.2 and 6.3 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme).	Requirement to publish NRPS scores achieved by the Franchisee.
Paragraph 2 of Schedule 8.2 (Profit Share Mechanism).	Requirements relating to Relevant Profit Reports.
Paragraph 11 of Schedule 9.1 (Financial and Other Consequences of Change).	Requirement to provide information in respect of obligations under Schedule 9.1 as the Secretary of State may request.
Paragraph 1 of Schedule 9.2 (Identity of the Financial Model).	Requirement to provide the Financial Model and the Escrow Documents.
Paragraphs 3 to 4.2 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement).	Obligation to provide certain information in a Remedial Plan/Remedial Plan Notice.
Paragraph 4 of Schedule 10.3 (Force Majeure and Business Continuity).	Requirement to provide a Business Continuity Plan.
Paragraph 2.6 of Schedule 13.1 (Rail Industry Initiatives).	Requirement to provide a Community Rail Report.
Paragraph 8 of Schedule 13.1 (Rail Industry Initiatives).	Requirement to provide breakdown of SMEs.
Paragraph 9 of Schedule 13.1 (Rail Industry Initiatives).	Requirement to provide record of apprenticeships offered.
Paragraph 10.1(d) of Schedule 13.1 (Rail Industry Initiatives).	Requirement to submit a copy of the assessment report produced by an independent body in respect of performance against the Rail Safety and Standard's Board's Sustainable Development Self-Assessment Framework.

Reference	Summary of Obligation
Paragraph 10.1(f) of Schedule 13.1 (Rail Industry Initiatives).	Obligation to provide an improvement plan in respect of the targets against the Sustainable Development Strategy.
Paragraph 10.1(h) of Schedule 13.1 (Rail Industry Initiatives).	Obligation to provide progress reports in respect of delivering a sustainable franchise.
Paragraph 10.1(j) of Schedule 13.1 (Rail Industry Initiatives).	Requirement on the Franchisee to publish its Sustainable Development Strategy on the request of the Secretary of State.
Paragraph 10.2(b) of Schedule 13.1 (Rail Industry Initiatives).	Requirement to provide copies of the certification audit reports and a copy of the ISO50001 Energy Review
Paragraph 11.1(d) of Schedule 13.1 (Rail Industry Initiatives).	Requirement to provide a Franchisee ERTMS Plan.
Paragraph 12.6 of Schedule 13.1 (Rail Industry Initiatives).	Requirement to provide the Secretary of State with a report on the performance of the Mobile Communications Services.
Paragraph 12.12 of Schedule 13.1 (Rail Industry Initiatives).	Requirement to provide the Secretary of State with a report of, and the data relating to, the MCS Route Signal Survey.
Paragraph 9 of Schedule 14.4 (Designation of Franchise Assets).	Obligation to provide such information as the Secretary of State requires in respect of Primary Franchise Assets including details of Security Interests.
Paragraph 5 of Schedule 14.5 (Dealing with Franchise Assets).	Obligation to provide such information as the Secretary of State requires in respect of Security Interests.
Paragraph 1.3 of Schedule 14.6 (Residual Value Mechanism).	Obligation to provide such information as the Secretary of State requires in respect of RV Assets.
Paragraph 1.6 of Schedule 14.6 (Residual Value Mechanism).	Obligation to provide a schedule of condition in respect of RV Assets.
Paragraphs 2.1 and 3 of Schedule 15.1 (Reletting Provisions).	Obligation to provide certain information to the Secretary of State in respect of a reletting of the franchise.
Paragraph 1.1 of Schedule 15.3 (Handover Package).	Requirement to produce and maintain the Handover Package
Paragraph 2 of Schedule 15.3 (Handover Package).	Requirement to provide a director's certificate in each Franchisee Year
Paragraph 9 of Schedule 15.4 (Provisions Applying on and after Termination).	Requirement to provide passenger numbers information, CRM Data and Yield Management Data on expiry of the Franchise Period.

Reference	Summary of Obligation
Paragraph 2.2 of Appendix 2 (Form of Supplemental Agreement) to Schedule 15.4 (Provisions Applying on and after Termination).	Obligation to prepare and provide a net asset statement under the supplemental agreement.
Paragraph 6 of Schedule 16 (Pensions).	Obligation to provide a certificate signed by the Trustee in relation to the Franchise Sections stating that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme.
Paragraph 10 of Schedule 17 (Confidentiality and Freedom of Information).	Obligation to provide details of provisions of the Franchise Documents or any such variations which the Franchisee believes are exempt from the Freedom of Information Act, Environmental Information Regulations or the Act.