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

The Secretary of State for Transport

and

First MTR South Western Trains 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) **First MTR South Western Trains Limited** (company number 07900320), whose registered office is at 4th Floor, Capital House, 25 Chapel Street, London NW1 5DH (the "**Franchisee**"),
- each a "**Party**" and together, the "**Parties**".

RECITALS:

- (A) The Secretary of State and the Franchisee entered into a franchise agreement dated 7 April 2017 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 3 of this EMA.
- (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 2.1(b), the terms of this EMA shall prevail.
- (c) Save as expressly provided for in this EMA the Franchise Agreement shall continue in full force and effect.
- (d) Any reference to the "term" or "duration" of the EMA shall mean the Term and any Extended Term (if applicable) in accordance with clause 3 of this EMA.

2. PURPOSE OF THIS EMA

2.1 The Parties acknowledge that:

- (a) this EMA is based on the following overriding principles:
 - (i) the Parties recognising the exceptional circumstances presented by COVID-19;
 - (ii) the Parties seeking to ensure that, as far as possible, operational performance and the provision of Passenger Services is maintained;
 - (iii) the Parties seeking to ensure the 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 3.2, this EMA shall take effect from 1 April 2020 ("**EMA Start Date**") and shall continue until the earlier of:

- (a) 1.59 a.m. on 20 September 2020; or
- (b) the date the Parties mutually agree to terminate this EMA,
(the "**Term**").

- 3.2 Notwithstanding clause 3.1, the provisions of Appendix 2 to Schedule 8.A, included in schedule 1 to this EMA (Schedule 8.A (Franchise Payments)) shall apply retrospectively from 1 March 2020.
- 3.3 Subject to clause 3.4, the Parties may, by mutual agreement, extend the variations to the Franchise Agreement imposed by this EMA by a further period ("**Extended Term**") and upon such agreement to extend, this EMA shall remain in full force and effect until the expiry of the Extended Term.
- 3.4 The Secretary of State shall have an unfettered discretion in proposing, accepting or refusing any extensions to the Term.
- 3.5 The amendments to the Franchise Agreement pursuant to this EMA shall, unless otherwise required by the Secretary of State or pursuant to this EMA, cease to have effect on the later of the expiry of the Term or the Extended Term (as applicable).
- 3.6 At the expiry of the EMA the variations imposed on the Franchise Agreement by this EMA shall cease and the Franchise Agreement, with certain limited exceptions, shall continue on the terms and conditions operating before entry into this EMA.
- 3.7 The limited exceptions referred to in clause 3.6 generally consist of amendments to expunge the impact of the period the EMA was in place from certain of the Franchise Agreement performance metrics and to recalibrate such metrics and amounts (the "**Recalibration Items**") to take account of their temporary suspension for the duration of the EMA (see clause 17).

4. **AMENDMENTS TO THE FRANCHISE AGREEMENT**

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

5. **COOPERATION**

- 5.1 The 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 1 to schedule 1 to this EMA.

7. MEETINGS

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

8. 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, Action Plans, NRPS Action Plans or Remedial Agreements 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, Action Plans, NRPS Action Plans or Remedial Agreements 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

The Parties acknowledge and agree that 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, but the Franchisee and the Guarantors (as defined in the Funding Deed) have entered into a letter of variation of the Funding Deed on or about the date of this EMA to reflect the provisions of this Clause 11.
- 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 11.4, the Franchisee shall not during the term of the EMA repay any part of any Agreed Funding Commitment (whether by way of a Scheduled Repayment or Additional Repayment) or PCS Facility Loan (each 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 8.A 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 any PCS Advance 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; and
 - (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 12.4(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 13.1 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 and of the obligations comprised in Schedule 6.1 (Franchise Specific Obligations) ("the Franchise Specific Obligations") will be:
- (a) continued "as is";
 - (b) delayed;
 - (c) suspended; or
 - (d) reduced in scope or application.
- 14.2 In the event that a Committed Obligation or Franchise Specific Obligation involves Capital Expenditure the default assumption will be that the Committed Obligation or Franchise Specific Obligation (as the case may be) 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 or a Franchise Specific 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 schedule 1 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 the 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 8.A of the Franchise Agreement defines the parameters on the basis of which the compensation payment for discharging the public service obligations is to be calculated. In accordance with Articles 4(1) and 6(1) of Regulation (EC) N° 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road, these parameters have been determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the Train Operator and a reasonable profit. At the end of the EMA, the Secretary of State will carry out an ex-post check to ensure that there has been no overcompensation for the discharge of the public service obligations over the duration of the EMA. The Secretary of State will recover – in accordance with the EU State aid rules – any overcompensation in relation to the

provision of the management role over the duration of the EMA or any other financial advantage that is identified as having been granted as a result of the EMA in violation of the EU State aid rules, whether such overcompensation or other advantage has been identified by the Secretary of State or by the European Commission and the 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 (“the Proposed Budget”) is a true and valid reflection of the budget assumed by the Franchisee at 1st March 2020 (“the 1st March Budget”) provided that the Franchisee shall not be in breach of this warranty if and to the extent that:

(i) the written warranty provided by the Franchisee pursuant to this clause 18.1 explains the differences between the 1st March Budget and the Proposed Budget; and

(ii) the Franchisee is able to justify to the reasonable satisfaction of the Secretary of State (1) that the differences between the 1st March Budget and the Proposed Budget arise from genuine differences in the circumstances in which the budgets were prepared; and (2) the extent and nature of the variations (including by reference to the Franchisee’s previous forecasts); and

(b) in the preparation of the Proposed 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 provided that this paragraph (b)(ii) shall not apply to any reallocation which: (1) has been undertaken in the Franchisee's accounting standards and practice required to be used under the Franchise Agreement and reflected in the Financial Model and the Record of Assumptions; and (2) is a reallocation which the Franchisee is able to demonstrate, to the reasonable satisfaction of the Secretary of State, has been for genuine reasons unconnected with the anticipation of this EMA; 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 19 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

20. **COUNTERPARTS**

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

21. **COSTS**

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

22. **GOVERNING LAW**

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

23. **RIGHTS OF THIRD PARTIES**

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

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

SIGNED FOR AND ON BEHALF OF) **[REDACTED¹]**
THE SECRETARY OF STATE FOR TRANSPORT)
)
)
)

[REDACTED]

Print Name of Authorised Signatory:
Position:
Date:

¹ 9 June 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.

SIGNED FOR AND ON BEHALF OF
FIRST MTR SOUTH WESTERN TRAINS LIMITED

) [REDACTED²]

)

)

)

Print Name of Authorised Signatory:

[REDACTED]

Position:

Date:

² 9 June 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 clauses / Schedules/ paragraphs; and
- any text that appears in red and is struck-out shall be deleted from existing clauses / Schedules/ paragraphs.

REFERENCE (CLAUSE / SCHEDULE)	AMENDMENT
Main Body	
1.1	<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><u>"Initial Budget"</u> <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 SoS;</i></p> <p>The following existing definitions shall be amended as follows:</p> <p><u>"Franchise Payment"</u> <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><u>"Payment Date"</u> <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</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>16 – Entire Agreement</p>	<p>Clause 16.1 shall be amended as follows:</p> <p><i>"This Agreement and the Conditions Precedent Agreement contain the entire agreement between the Parties, <u>except as amended</u>, in relation to the subject matter of the Franchise Agreement 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></p>
<p>Schedule 1: Passenger Service Obligations</p>	
<p>1.1 – Franchisee Services and Service Development</p>	<p>The text in each of paragraphs 7(c), 7(d), 7(e) and 7(k) shall be deleted and replaced with "not used".</p> <p>Paragraph 4.2(d) shall be amended as follows:</p> <p><i>"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 <u>(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)</u>; and</i></p> <p>A new paragraph 7(r) shall be inserted as follows:</p> <p><i><u>"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:</u></i></p> <p><i><u>(i) _____ 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</u></i></p>

	<p><u>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);</u></p> <p><u>(ii) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:</u></p> <p><u>(A) 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</u></p> <p><u>(B) one per cent (1%) of any other Franchise Employees as at the Start Date,</u></p> <p><u>provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 7(a) to 7(b) inclusive and paragraphs 7(f)-(j) inclusive, 7.1(l)- (p) inclusive, paragraph 7(r)(i) or paragraphs 7(r)(iii) to (v) inclusive or engaged in any other activity which is permitted under this Schedule 1.1;</u></p> <p><u>(iii) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the following Depot(s), 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:</u></p> <p><u>(A) not used;</u></p> <p><u>(iv) 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</u></p> <p><u>(v) assisting altered or additional freight services to operate on the national rail network and, where appropriate, enabling certain essential goods (such as medical equipment or other urgent items) to be carried on Passenger Services.”</u></p>
<p>1.2 – Operating Obligations</p>	<p>Paragraph 3.4 shall be amended to read as follows:-</p> <p><i>“Where the actual or proposed omission or rescheduling of Passenger Services is one which may, in the reasonable opinion of the Secretary of State or the Franchisee, materially prejudice the Franchisee’s ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan, the Franchisee agrees shall promptly notify the Secretary of State and the</i></p>

	<p><u>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) (unless the Secretary of State specifically agrees instructs the Franchisee accordingly, in which case the Franchisee shall otherwise) to exercise its rights under the Track Access Agreement (including the Network Code) to:</u></p> <p>(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);</p> <p>(b) make representations; and</p> <p>(c) withhold consent,</p> <p><i>in respect of any such actual or proposed omission or rescheduling of Passenger Services by Network Rail”</i></p> <p>Paragraph 3.7 shall be amended to read:-</p> <p><i>“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 <u>or the Secretary of State</u>, as those provisions apply to Network Rail.”</i></p> <p>New paragraphs 4.4, 4.5, 4.6 and 4.7 shall be inserted as follows:</p> <p><u>“4.4 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.</u></p> <p><u>4.5 The Franchisee shall ensure that any proposals to Network Rail submitted pursuant to paragraphs 4.1 or 4.4:</u></p> <p><u>(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</u></p>
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	<p><u>without limitation any guidance published by Public Health England, and any Legislation, direction or instruction issued by any relevant local, governmental or other competent authority in the United Kingdom from time to time);</u></p> <p><u>(b) utilise an appropriate number of Franchise Employees to support the likely passenger demand (as determined having taken into consideration the matters referred to in paragraph 4.5(a); and</u></p> <p><u>(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.</u></p> <p><u>4.6 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 4.4 or any emergency timetables proposed by other Train Operators to ensure that a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated or first trains or last trains are involved, taking account of the likely fluctuations in passenger demand as a result of COVID-19 and the time needed to make any such Connection).</u></p> <p><u>4.7 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 4.4."</u></p> <p>The word "and" shall be deleted at the end of existing paragraph 7.2(f), the full stop at the end of existing paragraph 7.2(g) shall be deleted and replaced with a semicolon and the word "and" shall be added the end of existing paragraph 7.2(g).</p> <p>A new paragraph 7.2(h) shall be inserted as follows</p> <p><u>"(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."</u></p>
<p>1.3 – NOT USED</p>	
<p>1.4 – Passenger Facing Obligations</p>	<p>The words <u>"Subject to paragraph 2A.2 of this Schedule 1.4"</u> shall be inserted at the beginning of paragraphs 1.2, 1.3, 1.4, 1.6 and 2.</p>

	<p>A new paragraph 2A shall be inserted after paragraph 2.5 as follows:-</p> <p><u>"2A Communicating Emergency Timetables</u></p> <p><u>2A.1 The Franchisee shall publish:</u></p> <p><u>(a) any amendments to the Timetable made pursuant to paragraphs 4, 5 or 6 of Schedule 1.2 as soon as reasonably practicable:</u></p> <p><u>(i) at each Station, by displaying the relevant information on information displays;</u></p> <p><u>(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);</u></p> <p><u>(iii) on the Franchisee's website;</u></p> <p><u>(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</u></p> <p><u>(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</u></p> <p><u>(b) as far and as soon as is reasonably practicable, any emergency timetables of other Train Operator's where the railway passenger services of such other Train Operator are scheduled to call or in respect of which Connections to such other Train Operators railway passenger services can be made from that Station:</u></p> <p><u>(i) at each Station, by displaying the relevant information on information displays; and</u></p> <p><u>(ii) on the Franchisee's website</u></p> <p><u>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</u></p>
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	<u>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).</u>
1.5 – Information about Passengers	N/A
1.6 – The Rolling Stock	N/A
1.7 – Stations	N/A
Schedule 2: Assets, Leases, Other Franchisees and 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 Ticketing	
5.1 – Purpose, Structure and Construction	N/A
5.2 – Franchisee's Obligations 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	<p>In paragraph 20 (<i>Gauging Risk</i>) a new paragraph 20.12 shall be added at the end as follows:</p> <p><u>"20.12 This paragraph 20 is subject to paragraph X of this Schedule 6.1."</u></p> <p>In paragraph 23 (<i>Waterloo International Lease Charge Franchise Payment Adjustments</i>) a new paragraph 23.7 shall be added at the end as follows:-</p> <p><u>"23.7 This paragraph 23 is subject to paragraph X of this Schedule 6.1."</u></p> <p>In paragraph 24 (<i>Island Line Future Operation Priced Option</i>) a new paragraph 24.22 shall be added at the end as follows:-</p> <p><u>"24.22 This paragraph 24 is subject to paragraph X of this Schedule 6.1"</u>.</p> <p>A new paragraph X (<i>EMA Relevant Provisions</i>) shall be added to the end of Schedule 6.1 (as the final paragraph in the Schedule) as follows:</p> <p><u>" X EMA Relevant Provisions</u></p>

	<p><u>X.1 Without limiting any other provision of this Franchise Agreement or the EMA, the following provisions of this paragraph X shall apply in relation to each of paragraphs 20 (Gauging Risk), 23 (Waterloo International Lease Charge Franchise Payment Adjustments), and 24 (Island Line Future Operation Priced Option) of this Schedule 6.1 and to paragraph 32 (Delayed Rolling Stock Franchise Payment Adjustment) of Part 1 of Schedule 6.2 (Committed Obligations) (together the "EMA Relevant Provisions"):</u></p> <p><u>X.2 it is acknowledged that the EMA Relevant Provisions each make provision for the potential adjustment of Franchise Payments to take account of specific outcomes and that the intention of the Parties is that there shall be no double recovery by either of them in respect of the operation of any EMA Relevant Provision in association with Schedule 8.A (Franchise Payments);</u></p> <p><u>X.3 the Secretary of State shall be entitled to make such adjustments to the Franchise Payments as are reasonably required in order to give effect to the principle in paragraph X.2; and</u></p> <p><u>X.4 the Franchisee shall provide such reports, analysis and/or any other information whatsoever in order for the Secretary of State to be satisfied that there is no double recovery by either Party (including any such which might be required to reconcile cash payments/receipts and P&L account recognition and accruals in respect of any period before, during or after the term of the EMA)."</u></p>
6.2 – Committed Obligations	<p>In paragraph 32 (Delayed Rolling Stock Franchise Payment Adjustment) a new paragraph shall be added at the end as follows:-</p> <p><u>"32.3 This paragraph is subject to paragraph X of Schedule 6.1 (Franchise Specific Obligations)".</u></p>
6.3 –Not Used	N/A
Schedule 7: Performance Benchmarks	
7.1 – Operational Performance	<p>The text in paragraph 18 shall be deleted and replaced with "not used".</p> <p>The text in paragraphs 26 and 27 shall be deleted and replaced with "not used".</p>
7.2 – National Rail Passenger Surveys, Customer Report and CCI Scheme	<p>Unless otherwise instructed by the Secretary of State, Schedule 7.2 shall not apply for the duration of the EMA.</p>

7.3 – Not Used	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 1; and (ii) the new Schedule 8.B attached at Appendix 2.
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 Adjustment Payments	Unless otherwise instructed by the Secretary of State, Schedule 8.4 shall not apply for the duration of the EMA.
8.5 – CLE Adjustment Payments	Unless otherwise instructed by the Secretary of State, Schedule 8.5 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	Unless otherwise instructed by the Secretary of State, Schedule 9.4 shall not apply for the duration of the EMA.

<p>9.5 – Specified Infrastructure and Rolling Stock Change</p>	<p>Unless otherwise instructed by the Secretary of State, Schedule 9.5 shall not apply for the duration of the EMA.</p>
<p>Schedule 10: Remedies, Events of Default and Termination Events</p>	
<p>10.1 – Procedure for Remediating a Contravention of the Franchise Agreement</p>	<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><i>"4.2 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</u> contravention or likely contravention of the Relevant Term;</i></p> <p><i>(c) 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</u></i></p>

	<p><i>of "1" with respect to the Relevant Term securing or facilitating compliance with the Relevant Term; 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 "not used".</p> <p>The text in paragraph 1.8 shall be deleted and replaced with "not used".</p> <p>A new paragraph 1.16 shall be inserted as follows:</p> <p><u>"1.16 Disallowable Costs</u></p> <p><u><i>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."</i></u></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><u><i>"(iv) for the duration of the EMA, the occurrence and impact, whether direct or indirect, of COVID-19; and"</i></u></p> <p>Paragraph 1 shall be amended by inserting the following text at the end of the paragraph:</p> <p><u><i>"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."</i></u></p> <p>Paragraph 3 shall be amended by inserting the following new paragraph:</p> <p><u><i>"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."</i></u></p>
<p>10.4 – Liability</p>	<p>N/A</p>

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 3.
Schedule 12: Financial Covenants and Bonds	
Financial Covenants and Bonds	<p>Paragraph 1 shall be amended by:</p> <ul style="list-style-type: none"> - deleting the word “or” at the end of paragraph (c) - amending subparagraph (d) as follows: <ul style="list-style-type: none"> “(d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank; or” - inserting a new subparagraph (e) as follows: <ul style="list-style-type: none"> <u>“(e) borrow any sum, or enter into any loan or lending agreement for the purpose of borrowing from any person;”</u> <p>The text in paragraph 2 shall be deleted and replaced with "<u>not used</u>".</p> <p>Paragraph 3.1 shall be amended to read as follows:-</p> <p>“The Franchisee shall not during any Lock-up Period, do any of the following without the Secretary of State’s consent:</p> <ul style="list-style-type: none"> (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchisee, without the prior written consent of the Secretary of State;

	<p>(b) pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan; or</p> <p>(c) make payment under any intra-group borrowings <u>during the EMA only as explicitly permitted by Clause 10 of the EMA.</u></p> <p>provided that, during the Lock-up Period, the Franchisee may repay any borrowing and/or make any payment in respect of interest accrued on such borrowing, in each case relating to the Agreed Funding Commitment in accordance with the AFC Plan (each as defined in the Funding Deed).</p> <p>Paragraph 3.2 shall be deleted and replaced with the following new paragraph:</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 style="padding-left: 40px;"><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 style="padding-left: 40px;"><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 shall be deleted and replaced with "<u>not used</u>".</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</u></p>
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	<p><u>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>"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 <u>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))</u>; and/or</p> <p>The subparagraphs in paragraph 4.5(b) shall be amended as follows:</p> <p>"(i) early termination of the Franchise Agreement; and/or</p> <p>(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,</p> <p><u>and which are not otherwise recovered by the Secretary of State;</u></p> <p><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 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>In paragraph 4.5(c), the reference to "Schedule 8" shall be deleted and replaced with "Schedule 8.A".</p>
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	<p>A new paragraph 4.5(e) shall be inserted as follows:</p> <p><i><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></i></p> <p>A new paragraph 7 shall be inserted as follows:</p> <p><i><u>"7. Survival</u></i></p> <p><i><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></i></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>	
<p>14.1 – Maintenance of Franchise</p>	<p>N/A</p>
<p>14.2 – Maintenance of Operating Assets</p>	<p>N/A</p>
<p>14.3 – Key Contracts</p>	<p>N/A</p>
<p>14.4 – Designation of Franchise Assets</p>	<p>N/A</p>
<p>14.5 – Dealing with Franchise Assets</p>	<p>N/A</p>

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 twelve (12) or thirteen (13) months of Franchise Period and other conduct of business provisions	<p>A new paragraph 1.3 shall be inserted as follows:</p> <p><u>1.3</u> <u>EMA Period</u></p> <p><u>"Notwithstanding paragraphs 1.1 and 1.2 above, the Parties agree that paragraphs 2 to 7 of this Schedule 15.2 shall apply for the duration of the EMA."</u></p> <p>Paragraph 2.1(a) shall be amended as follows:</p> <p>"(a) takes effect <u>during the term of the EMA or</u> in the last twelve (12) months of the Franchise Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the following formula:"</p> <p>The last paragraph in 2.1 shall be amended as follows:</p> <p>"It is agreed that the Franchisee will be permitted to make a decrease in the remuneration of any Franchise Employee that takes effect <u>during the term of the EMA or</u> in the last twelve (12) months of the Franchise Period without first obtaining the consent of the Secretary of State in circumstances where such decrease is in the ordinary course of business and when aggregated with any other variation which takes effect during such period, represents a decrease in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the formula contained in paragraph 2.1(a) where a calculation pursuant to such formula gives rise to a negative percentage. In any other circumstances the prior consent of the Secretary of State will be required to any decrease in the remuneration of a Franchise Employee <u>during the term of the EMA or</u> in the last twelve (12) months of the Franchise Period."</p> <p>Paragraph 4.1 shall be amended as follows:</p>

	<p>"Subject to and excluding any increase in the remuneration of Franchise Employees permitted under paragraph 2.1, the Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State (which shall not be unreasonably withheld) increase or decrease <u>during the term of the EMA or</u> in the last twelve (12) months of the Franchise Period the number of Franchise Employees such that:</p> <ul style="list-style-type: none"> (a) the total number of Franchise Employees or the total cost per annum to the Franchisee and each other relevant employer of employing all Franchise Employees is increased; or (b) the total number of Franchise Employees is decreased <p>in each case, by more than five per cent (5%) during such <u>term of the EMA or</u> period of twelve (12) months provided that where the last twelve (12) or thirteen (13) months of the Franchise Period has been deemed to have commenced under paragraph 1.1 and the period of the restriction contemplated by this paragraph 4 lasts longer than twelve (12) months such restriction shall apply in respect of the longer period."</p> <p>Paragraph 5.1(a) shall be amended as follows:</p> <p>"(a) During <u>the term of the EMA or</u> the last thirteen (13) months of the Franchise Period the Franchisee shall not, without the prior written consent of the Secretary of State (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the <u>term of the EMA or the</u> Franchise Period <u>(as applicable)</u> for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement of <u>the term of the EMA or</u> such thirteen (13) month period <u>(as applicable)</u> or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period."</p> <p>Paragraph 5.1(b)(i) shall be amended as follows:</p> <p>"(i) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the commencement of <u>the term of the EMA or</u> such thirteen (13) month</p>
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	<p>period and to which the purchaser would have been entitled before the commencement of such period;"</p> <p>Paragraph 5.2(a) and (b) shall be amended by inserting the words "<u>during the term of the EMA or</u>," before the words "in the last thirteen (13) Reporting Periods".</p> <p>Paragraph 6.1 shall be amended by inserting the words "<u>during the term of the EMA or</u>" before the words "during the last twelve (12) months".</p>
15.3 – Handover Package	N/A
15.4 – Provisions Applying on and after Termination	N/A
Schedule 16: Pensions	
Pensions	In paragraph 6.4 and 6.5, the reference to "Schedule 8 (Payments)" shall be deleted and replaced with "Schedule 8.A (Franchise Payments)".
Schedule 17: Confidentiality and Freedom of Information	
Confidentiality and Freedom of Information	N/A

APPENDIX 1 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 5.7 of Schedule 8.A (Franchise Payments);
"Accrued Disallowable Costs"	has the meaning given in paragraph 5.7 of Schedule 8.A (Franchise Payments);
"Accrued Revenue Foregone"	has the meaning given in paragraph 5.7 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 5.8 of Schedule 8.A (Franchise Payments);
"Base Cash Position"	means [REDACTED ³] 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);

³ 9 June 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 and relating to the Franchisee's Performance of the EMA;

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

"Ceiling Cash Position"	means [REDACTED⁴] or such other value as the Secretary of State may determine in accordance with paragraph 9.8 of Schedule 8.A (Franchise Payments);
"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 9.5 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 [REDACTED⁵] 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;

⁴ 9 June 2020 (Date of Redactions Approval) - Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵ 9 June 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.

“Franchise Payment Component”	means:
	(a) each of the components of “FP” as described in paragraph 2.1 of this Schedule 8.A (Franchise Payments); and
	(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:
	(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:

- (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 the 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 =	$PFP + PBCP + PADJ + WCP - WCR + FADJ + MFPP - FWCA + RCP$
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where:

PFP (Periodic Franchise Payment)	means an amount equal to:	
	$PFP_n = BC_n - ER_{n-1}$	
	Where:	
	BC_n	means the Budgeted Costs for the current Reporting Period (if any). BC _n may only be a positive number.
	ER_{n-1}	means the Estimated Revenue for Reporting Period _(n-1) (if any) provided such Reporting Period occurs after the EMA Start Date. ER _{n-1} may only be a positive number.
PFP may be a positive or negative number.		
PBCP (Periodic Budgeted Capex Payment)	means an amount equal to the Budgeted Capex for the current Reporting Period (if any). PBCP may only be a positive number.	
PADJ	means any Periodic Adjustment, determined in accordance with paragraph 6 of Schedule 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 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 17 (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 8.A 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 [REDACTED⁶]; 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 5.4 and paragraphs 5.6A to 5.6C. The Franchisee shall provide

⁶ 9 June 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 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 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 [REDACTED]; 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 the Franchisee or (if agreed by the Secretary of State) of an 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

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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 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
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 =	$(\text{TotalAC} - \text{TotalAR}) + \text{TotalACAP} - (\text{TotalPFP} + \text{TotalPBCP}) - \text{TotalPADJ}$
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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(b) and 9.4(c) 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.
FCCP	the Forecast Closing Cash Position applicable to the preceding Reporting Period.

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 ⁸] (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:

⁸ 9 June 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.

	<p>(a) calculated on the basis of the Franchisee’s Final Reviewed Accounts; and</p> <p>(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.</p> <p>Without limiting paragraph 11.2 of Schedule 8.A (Franchise Payments), PPADC may only be a positive number.</p>
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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(c) of Schedule 11.2 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 in to in paragraph (b) or paragraph (c) of this Appendix shall not in any circumstance be considered appropriate for the delivery of the Franchise or of a reasonable scale given the requirement for delivery of the Franchise);
 - (ii) costs that do not reflect the contracted position under existing contracts as at the EMA Start Date unless such change has been agreed by the Secretary of State (such agreement not to be unreasonably withheld or delayed);
 - (iii) new contracts entered in to 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, Remedial Agreement, Action Plan or NRPS Action Plan 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 First Group or MTR Corporation 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, Remedial Agreement, Action Plan or NRPS Action Plan 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 and/or of “Franchise Specific Obligations” comprised in Schedule 6.1 (Franchise Specific Obligations) which are in excess of the amounts a Good and Efficient Operator would ordinarily have expended on discharging the Committed Obligation or Franchise Specific 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; and

- (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 (Financial Covenants and Bonds).

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 =	$((\text{TotalACRA} - \text{TotalARRA}) + \text{TotalACERA}) + (\text{RC13RA} - \text{AAP}) - \text{ERP13} - \text{IRP13}$
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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 2 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 5 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 ⁹]
	2	[REDACTED]
	1	[REDACTED]
Customer experience	3	[REDACTED]
	2	[REDACTED]
	1	[REDACTED]
Acting as a Good and Efficient Operator	3	[REDACTED]
	2	[REDACTED]
	1	[REDACTED]

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

⁹ 9 June 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 days 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 30 days 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) days 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 3.1 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) days of receiving such notice, provide written confirmation to the Franchisee of whether the Secretary of State considers such matters to be relevant to the EMA Review.
- 3.3 As soon as reasonably practicable after the end of an EMA Performance Period, and in any event no later than 10 days after the end of an EMA Performance Period, the 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 3.3 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 3.1 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 3.2 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 3.4 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) days prior to the EMA Review Meeting.

4. **EMA REVIEW MEETING**

4.1 The EMA Review Meeting shall take place at the date, time and location notified by the Secretary of State in accordance with paragraph 2.1 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 3.3 and 3.4 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 3.5 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) days 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 5.1 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 3.3 and 3.4 of Appendix 1 to this Schedule 8.B;
- (b) any commentary provided to the Franchisee by the Secretary of State in accordance with paragraph 3.5 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 3 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, either Parent or either 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);
 - (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 (Operational Performance);
- (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 Budget, the Final Reviewed Accounts and the provision of other financial data to 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 a Parent or an Affiliate) within seven (7) days of the date of this Agreement. Such director’s responsibilities include overseeing, at a strategic level, the 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 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 the schedule of Key Personnel and the organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update the schedule and organisation chart (and provide copies to the Secretary of State promptly thereafter) as and when any changes occur.

4. Operational Performance Information

4.1 The Franchisee shall provide to the Secretary of State the information specified in Appendix 2 (Operational Performance Information) to this Schedule 11.2 at the times specified therein.

5. Maintenance of Records

5.1 The Franchisee shall at all times create and maintain true, up to date and complete records, books and other materials relating to the:

- (a) operation and maintenance of Franchise Assets; and
- (b) operation of the Franchise Services; and
- (c) financial performance of the Franchise,

in each case, in exercising that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would reasonably be expected from a prudent and leading Train Operator and in order to fulfil the requirements of the Franchise Agreement including in relation to maintenance of the Franchise as a going concern in accordance with paragraph 1 of Schedule 14.1 (Maintenance of Franchise).

5.2 Unless otherwise agreed by the Secretary of State, all records, books and materials required to be maintained by the Franchisee in accordance with this Schedule 11.2 shall be held in a

form that is capable of audit for a period of not less than six (6) years following the Expiry Date or the date of any earlier termination of this Agreement.

5.3 References to records, books and materials in this Schedule 11.2 shall include records, books and materials maintained under any Previous Franchise Agreement to the extent that such records relate to services equivalent to the Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure). Notwithstanding the requirements of paragraphs 5.2 and 5.4, the Franchisee shall only be required to hold such records, books and materials created under any Previous Franchise Agreement for a period of six (6) years following the date of this Agreement.

5.4 The Franchisee shall not be responsible for any records, books or materials maintained under any Previous Franchise Agreement, as referred to in paragraph 5.3, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records, books or materials are not true, complete and up to date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records, books or materials in accordance with paragraph 5.1.

6. **Right to Inspect**

6.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and the Secretary of State's representatives and advisers:

- (a) to inspect and copy any records referred to in this Schedule 11.2 or Schedule 8.A and the Secretary of State may verify any such records; and/or
- (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the 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, the Secretary of State's representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, the Secretary of State's 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, the Secretary of State's representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.

6.4 If any inspection reveals that information previously supplied to the 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 prepare and submit to the Secretary of State a periodic report in each Reporting Period which shall:

- (a) contain updates on the Franchisee’s progress in complying with its Committed Obligations together with any other information as the Secretary of State may specify from time to time;
- (b) relate to the period preceding the date of the report, unless another period is reasonably required by the Secretary of State; and
- (c) be disaggregated to the extent required by the Secretary of State.

8.2 Where, as part of the periodic report referred to in paragraph 8.1, the Secretary of State requires the Franchisee to provide information and/or details in addition to those required pursuant to paragraph 8.1, the Franchisee shall ensure that the periodic report includes such additional information and/or details subject to the Franchisee having received at least twenty eight (28) days' notice of the additional information and/or details required by the Secretary of State.

9. Financial Information

9.1 Accounting Records

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 cash flow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date ensuring that:
 - (A) the profit and loss account shall adopt the same format and structure as either (a) the Financial Formats; or (b) the P&L2 tab of the Financial Model (whichever format and structure is has the more detailed breakdown of costs and revenues) except to the extent expressly agreed otherwise by the Secretary of State from time to time for this purpose; and
 - (B) in particular, Costs, Capital Expenditure and Revenues shall be allocated consistently to the level of disaggregation required by the Financial Formats or the P&L2 tab of the Financial Model and there shall be no netting off between those disaggregated areas;
 - (ii) written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the Franchisee, contain a true and accurate reflection of the current revenues, costs, 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) written confirmation from a statutory director of the Franchisee that the Franchisee has complied with the restrictions applicable during the Lock-up Period pursuant to paragraph 3 of Schedule 12 (Financial Covenants and Bonds).

- (b) The Management Accounts shall also set out:
- (i) the Franchisee's available cash balance on the final day of the Reporting Period to which the Management Accounts relate;
 - (ii) the Franchisee's forecast of:
 - (A) the Franchisee's daily cash balance for the period of thirteen (13) weeks following the Reporting Period to which the Management Accounts relate;
 - (B) the amount of Working Capital Payment (if any) that the Franchisee forecasts that it will require pursuant to paragraph 9 of Schedule 8A in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate;
 - (C) payments to and from Affiliates of the Franchisee; and
 - (D) profit and loss, cash flow and balance sheet provided in accordance with the Initial Budget (together with a detailed and comprehensive written explanation as to any changes in such forecasts from the previous such forecasts provided pursuant to the provisions of paragraph 9.2(b) of this Schedule 11.2) for each of the following thirteen (13) Reporting Periods;
 - (iii)
 - (A) a comparison of the Franchisee's financial performance during such period against the forecast provided by the Franchisee in the Initial Budget;
 - (B) a comparison on a line by line basis of Actual Costs and Actual Revenue of the Franchisee compared to the Budgeted Costs and Estimated Revenue for that Reporting Period; and
 - (C) a detailed statement and a detailed and comprehensive written explanation of any material differences between the actual payments to and from Affiliates of the Franchisee and the forecast of such payments as referred to in paragraph 9.2(b)(ii)(C);
 - (iv) 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);
 - (v) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Management Accounts and the forecast referred to in paragraph 9.2(b)(ii) and a detailed explanation of the variances between Actual Costs and Budgeted Costs and Actual Revenues and Estimated Revenue and a description of (1) the steps which have been taken by the Franchisee to address and mitigate any Costs in excess of Budgeted Costs and/or Estimated Revenue shortfall and/or (2) which could otherwise be taken for that purpose;
 - (vi) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the 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

- (vii) a detailed statement and explanation of any PCS Advances (as defined in the Funding Deed) provided during such Reporting Period and any repayments made during such Reporting Period in respect of PCS Advances;
 - (viii) separate identification of payments to or from any Affiliate of the Franchisee; and
 - (ix) **NOT USED.**
- (c) Within five (5) Weekdays after receipt of the Management Accounts for each Reporting Period in accordance with paragraphs (a) and (b) above, the Secretary of State shall notify the Franchisee of any further information, explanation or analysis which the Secretary of State requires in relation to the Management Accounts (including information in relation to the calculation of the Franchise Payment under the provisions of Schedule 8.A (Franchise Payments)) and the Franchisee shall promptly provide such further information or analysis.

9.3 Not used

9.4 **Annual Financial Information**

- (a) Within fifteen (15) Weekdays of the end of each 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) 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 (if any), 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(b)(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
- (c) 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 format as the Secretary of State may reasonably specify from time to time;
 - (ii) be prepared:
 - (A) in accordance with the Franchisee's obligations in clause 6.1 (General Obligations); and

- (B) 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 cash flow projection and the balance sheet used for the purposes of preparing the Budget.
- (b) The Annual Audited Accounts shall:
- (i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
 - (ii) give a true and fair view of:
 - (A) the state of affairs, profits and financial condition of the 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 Affiliate 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 each Parent and any Affiliate, together with copies of all related directors' and auditors' reports. If any of the Parents or any Affiliate is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the relevant Parent or Affiliate (as applicable) shall be delivered to the Secretary of State.

9.7 Secretary of State Audit

- (a) Without prejudice to any other rights of the Secretary of State under the Franchise Agreement, the Secretary of State and his representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to:
 - (i) the Franchisee's obligations under paragraph 9 of Schedule 8.A; 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).
- (c) 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 the Annual Audited Accounts then:
 - (i) the Secretary of State may exercise its rights as described in 12.1 or 12.2 of Schedule 8A (*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.

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

The Franchisee shall promptly notify the Secretary of State as soon as it becomes aware of any requirement to adjust or restate the Annual Audited Accounts or Final Reviewed Accounts and shall deliver to the Secretary of State any such adjusted or restated Annual Audited Accounts or Final Reviewed Accounts as soon as such accounts are available.

10. **Business Plans**

10.1 **Initial Business Plan**

- (a) Within one (1) Reporting Period of the Start Date, the Franchisee shall deliver to the Secretary of State its Initial Business Plan, describing its planned activities for each Franchisee Year during the Franchise Term, which shall include:
 - (i) a description as to how the Franchisee will meet its obligations under the Franchise Agreement for the Franchise Term, supported by operational plans demonstrating this;
 - (ii) details of any investments proposed to be made or procured by the Franchisee in relation to the Franchise Services during the Franchise Term;
 - (iii) a summary of the Franchisee's plans for marketing and developing the Franchise Services; and
 - (iv) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the first twenty six (26) Reporting Periods following the Start Date, together with a list of assumptions on the basis of which each such forecast has been prepared

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 Parents (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 Parents. 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, within twenty (20) Weekdays of the start of the first Reporting Period in 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 the relevant Franchisee Year and, if and to the extent required by the Secretary of State, each subsequent Franchisee Year of the Franchise Period;
 - (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; and
 - (v) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- (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 the Secretary of State 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 SCHEDULE 11.2**Environmental Information****1. 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) (Sustainable Construction) 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

Traction Carbon Emissions	Non-Traction Energy Use	Waste	Mains Water
<p>A reduction of fifty six per cent (56%) in kg CO2E per vehicle km against the 2015/16 baseline figure of 0.8462 CO2E per vehicle km over the Franchise Term, such reduction to be achieved in accordance with the Sustainable Development Strategy referred to in paragraph 10.2 (Sustainable Development Strategy) of Schedule 13.1 (Rail Industry Initiatives), which will contain a target for each Franchisee Year for this purpose.</p>	<ol style="list-style-type: none"> 1. By the Expiry Date, an overall reduction in kilowatt hours (kWh) of an amount expressed as a percentage equal to at least forty one per cent (41%), against the 2015/16 baseline figure of 39,875,115 kWh (the "Overall kWh Reduction"). 2. By 31 December 2020, a reduction in kWh of an amount equal to not less than fifty per cent (50%) of the Overall kWh Reduction. 3. By 30 September 2022, a reduction in kWh of an amount equal to not less than seventy five per cent (75%) of the Overall kWh Reduction. 	<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. 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. The Franchisee shall develop a target to reduce water consumption against the agreed baseline referred to above of at least eighteen point eight per cent (18.8%) by the end of the Franchise Term.</p>

APPENDIX 2 TO SCHEDULE 11.2

Operational Performance Information

1. Information about the operational performance of the Franchisee

1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under the Franchise Agreement, covering the areas and the information described in this Appendix 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.

1.2 The Franchisee shall, subject to paragraph 1.3, provide to the Secretary of State the information set out in the following tables at the frequency specified in the Column of each such table headed "**When information to be provided**".

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

- (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
- (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.

1.4 The following key shall apply to the table in this Appendix 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.

1.5 This Appendix 2 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day	[number]	B
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

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations for the 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 including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee	[number]	B
Where there is a difference between the Timetable and the Plan of the Day on any day the following: (a) the fact of such difference; and (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day	[number]	B
Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day: (a) the fact of such difference; (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Plan of the Day had been the same as the Enforcement Plan of the Day	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Short Formations		
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services scheduled (excluding Cancellations or Partial Cancellations)	[number]	B
Minutes Delay		
Number of Minutes Delay attributable to the Franchisee	[number]	B
Number of Minutes Delay attributable to Network Rail;	[number]	B
Number of Minutes Delay attributable to any other Train Operator	[number]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee	[number]	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	[number]	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 and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination	[number]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[number]	B
CaSL and PPM		
Number of Passenger Services in the Plan of the Day	[number]	B
Number of Passenger Services cancelled.	[number]	B
For these purposes, "cancelled" shall have the same meaning as adopted by Network Rail for the calculation of PPM.		
Number of Passenger Services as specified in the Plan of the Day which arrive at their scheduled terminating station 30 minutes or more late	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Passenger Services as specified in the Plan of the Day which arrive at their terminating station on time. For these purposes, "on time" shall have the same meaning as adopted by Network Rail for the calculation of PPM.	[number]	B
Train Mileage		
Planned Train Mileage	[mileage]	A
Actual Train Mileage	[mileage]	B

APPENDIX 3 TO SCHEDULE 11.2**Summary of Reporting and Other Requirements**

This Appendix contains a non-exhaustive summary of the obligations on the Franchisee throughout this Agreement in respect of the provision of information to the Secretary of State which are not set out in this Schedule 11.2. This summary is for guidance only. If there are any inconsistencies with the other contents of the Schedules mentioned below (including any Appendix), those other contents shall apply.

Reference	Summary of Obligation
Paragraph 11.3(a) (Consultation on Significant Alterations to the Timetable) of Schedule 1.1 (Franchise Services and Service Development)	Requirement for Franchisee to provide a summary of the Significant Alterations in the future timetable.
Paragraph 11.3(c) (Consultation on Significant Alterations to the Timetable) of Schedule 1.1 (Franchise Services and Service Development)	Obligation to provide copies to the Secretary of State of correspondence received in respect of notices or consultation given to all consultees in respect of the proposed Timetable changes.
Paragraph 13.1 (Certification and Notification by Franchisee of Exercising Timetable Development Rights) of Schedule 1.1 (Franchise Services and Service Development)	Obligation on the Franchisee to provide a certificate addressed to the Secretary of State, signed by a statutory director of the Franchisee before exercising any Timetable Development Right to bid for Train Slots.
Paragraph 13.3(a) (Certification and Notification by Franchisee of Exercising Timetable Development Rights) of Schedule 1.1 (Franchise Services and Service Development)	Requirement to keep the Secretary of State fully informed of any discussions with Network Rail in relation to the matters referred to in Schedule 1.1.
Paragraph 15.1 (Capacity Mitigation Plan) 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 16.1(a) (New or amended Train Service Specification by Secretary of State and Franchisee's Informed Opinion) of Schedule 1.1 (Franchise Services and Service Development)	Requirement for Franchisee to provide informed estimate of Forecast Passenger Demand.
Paragraph 16.1(b) (New or amended Train Service Specification by Secretary of State and Franchisee's Informed Opinion) of Schedule 1.1 (Franchise Services and Service Development)	Requirement to provide informed opinion as to changes to the current Train Service Specification.
Paragraph 16.1(c) (New or amended Train Service Specification by Secretary of State and Franchisee's Informed Opinion) of Schedule 1.1 (Franchise Services and Service Development)	Requirement to provide informed opinion as to changes to the current Train Service Specification.
Paragraph 16.1(d) (New or amended Train Service Specification by Secretary of State and Franchisee's Informed Opinion) of Schedule 1.1 (Franchise Services and Service Development)	Requirement to provide a draft Train Plan in respect of each set of proposed changes.
Paragraph 16.3 (New or amended Train Service Specification by Secretary of State and Franchisee's Informed Opinion) 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 Specification.

Reference	Summary of Obligation
Paragraph 7.7 of Schedule 1.2 (Operating Obligations)	Provide evidence to the Secretary of State of the steps taken under Paragraph 7 (Obligation to use all reasonable endeavours under this Schedule 1.2).
Paragraph 8 (Publication of Performance Data) of Schedule 1.4 (Passenger Facing Obligations)	Requirements to publish performance data.
Paragraph 9 (Publication of Complaints and Faults Handling Data) of Schedule 1.4 (Passenger Facing Obligations)	Requirements to publish complaints and fault handling data.
Paragraph 1 (Passenger Numbers Information) of Schedule 1.5 (Information about Passengers)	Requirement to provide Secretary of State information about the use by passengers of the Passenger Services.
Paragraph 7 (Information about Station Improvement Measures) 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 (Rolling Stock Related Contracts and Insurance Arrangements) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases)	Obligation to provide a copy of all draft Rolling Stock Related Contracts and all executed Rolling Stock Related Contracts and any agreements amending the Rolling Stock Related Contracts including such other information as required by the Secretary of State together with a justification of the Franchisee's proposed rolling stock maintenance strategy and provision of analysis of whole life costs.
Paragraph 3.5(b) (Cascaded Rolling Stock and Delayed Cascade Mitigation Plan) 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 (Local Authority Concessionary Travel Schemes) of Schedule 2.5 (Transport, Travel and Other Schemes)	Requirement to provide information about Local Authority Concessionary Travel Schemes.
Paragraph 2.6 (Multi-Modal Fares Schemes) of Schedule 2.5 (Transport, Travel and Other Schemes)	Requirement to provide information about Multi-Modal Fares Schemes.
Paragraph 3.3 (Discount Fares Schemes) of Schedule 2.5 (Transport, Travel and Other Schemes)	Requirement to provide information about Discount Fares Schemes.
Paragraph 4.4 (Inter-Operator Schemes) of Schedule 2.5 (Transport, Travel and Other Schemes)	Requirement to provide information about Inter-Operator Schemes.
Paragraph 4 (Specific additional obligations relating to persons with disabilities) of Schedule 4 (Accessibility and Inclusivity)	Recording of obligations relating to persons with disabilities.
Paragraph 1 (Information) of Schedule 5.8 (Fares Regulation Information and Monitoring)	Requirement to provide a summary of the Prices and Child Prices of Commuter Fares and

Reference	Summary of Obligation
	Protected Fares to the Secretary of State no later than week twelve (12) of each Fares Setting Round.
Paragraph 2.1 (Monitoring) of Schedule 5.8 (Fares Regulation Information and Monitoring)	Requirement to provide information relating to the Prices or Child Prices of Commuter Fares and Protected Fares to the Secretary of State and information relating to the Gross Revenue of the Franchisee in relation to the any particular Fare or Fares or any particular period.
Paragraph 2.2 (Monitoring) of Schedule 5.8 (Fares Regulation Information and Monitoring)	Requirement to provide written confirmation to the Secretary of State from a statutory director whether the Franchisee has complied with the obligations under Schedule 5 (Fares and Ticketing) during each Fares Setting Round.
Paragraph 6 (Island Line CCI Scheme) of Schedule 6.1 (Franchise Specific Obligations)	Requirement to provide details of any Island Line CCI Scheme proposed by the Franchisee.
Paragraph 11 (Report on optimisation of passenger services on Specified Routes) of Schedule 6.1 (Franchise Specific Obligations)	Requirement to provide a report setting out the Franchisee's view as to how the provision of passenger services by both the Franchisee and other Train Operators can be optimised in relation to the Specified Routes, and any updates or revisions to such report as may be required by the Secretary of State.
Paragraph 13.2 (TSS Enhancement Services) of Schedule 6.1 (Franchise Specific Obligations)	Requirement to provide reports containing such information and analysis as the Secretary of State may reasonably request in relation to any Relevant Service.
Paragraph 14.4 (Infrastructure Projects) of Schedule 6.1 (Franchise Specific Obligations)	Requirement to provide reports describing progress in relation to matters relating to each Infrastructure Project.
Paragraph 15.1 (Boxing Day Services) of Schedule 6.1 (Franchise Specific Obligations)	Requirement to provide reports setting out proposals for operation of Additional Boxing Day Services.
Paragraph 19.3 (Introduction into Passenger Service of CP5 Rolling Stock) of Schedule 6.1 (Franchise Specific Obligations)	Requirement to provide updates on any CP5 RS Unavailability.
Paragraph 20.2 (Gauging Risk) of Schedule 6.1 (Franchise Specific Obligations)	Requirement to provide report explaining the nature of relevant CP5 Gauging Works.
Paragraph 20.4 (Gauging Risk) of Schedule 6.1 (Franchise Specific Obligations)	Requirement to provide report on (a) the progress made; and (b) all costs incurred in the performance of the CP5 Gauging Works, including a detailed breakdown of all proposed and actual expenditure.
Paragraph 21.4 (Project Management) of Schedule 6.1 (Franchise Specific Obligations)	Requirement to provide copies of CP5 RS Project Plans.

Reference	Summary of Obligation
Paragraph 21.6 (Project Management) of Schedule 6.1 (Franchise Specific Obligations)	Requirement to provide update reports covering the information set out in paragraphs 21.6(a) to (e) (inclusive).
Paragraph 3 (Performance Monitoring) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to make available to the Secretary of State a range of data through an electronic data portal which shall be continuously updated by the Franchisee.
Paragraph 6.4 (Industrial Action Mitigation Plan) (Committed Obligations)	Requirement to provide the Secretary of State with an Industrial Action Mitigation Plan (which is to be reviewed and updated at least once every Reporting Period) within a reasonable period upon receipt of request.
Paragraph 9.2 (Assessment Framework) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide the Secretary of State with the identity of the independent body and a copy of its detailed self assessment.
Paragraph 12.1 (Water Consumption) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to report annually on the progress towards achieving the water consumption reduction target set out in Appendix 1 to Schedule 11.2.
Paragraph 13.4(b) (Peer review) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide a report to the Secretary of State by no later than 30 June 2020 setting out the feedback received from the Associated Train Operator regarding the Customer and Stakeholder Engagement Strategy.
Paragraph 13.7 (Stakeholder Satisfaction) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to conduct a Stakeholder Satisfaction Survey within three Reporting Periods of the Start Date and to report to the Secretary of State by the end of the following Reporting Period the percentage figure to be used as the baseline for establishing Stakeholder satisfaction.
Paragraph 13.7 (Stakeholder Satisfaction) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to conduct a Stakeholder Satisfaction Survey in the final Reporting Period of each Franchisee Year and report its results to the Secretary of State within one Reporting Period of the end of each Franchisee Year.
Paragraph 13.12(b) (HackTrain Event) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide a report to the Secretary of State setting out specific details for an event with Hack Partners Limited.
Paragraph 14.3 (Establishing the South Western Transport Partnership) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide the Secretary of State with a summary of the activities of the South Western Transport Partnership at the same frequency as the quarterly financial information required under paragraph 9.3(a) of Schedule 11.2.

Reference	Summary of Obligation
Paragraph 16.2 (Future Operation of the Island Line) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide the Secretary of State with a fully developed priced option in relation to the future operation of the Island Line by no later than 31 March 2018.
Paragraph 16.3 (Future Operation of the Island Line) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide any further information as necessary pursuant to paragraph 16.2 Part 1 of Schedule 6.2.
Paragraph 16.6 (Island Line Business Plan) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide the Secretary of State promptly with a copy of the Island Line Business Plan once agreed, which is to be reviewed and updated annually.
Paragraph 17.1(a) (Production of a devolution toolkit) of Part 1 of Schedule 6.2	Requirement for the executive board of directors of the Franchisee to review the risk register at least once a month.
Paragraph 17.1(c) (Production of a "devolution toolkit") of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide a copy of the Devolution Toolkit to the Secretary of State upon request, to keep it updated and to inform the Secretary of State of any updates as soon as reasonably practicable.
Paragraph 20 (Journey time improvements review) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to report the findings of the review to the Secretary of State.
Paragraph 21.3 (Reduced station dwell times) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide the Secretary of State with a report in relation to the First Dwell Time Report Period and the Second Dwell Time Report Period within four (4) weeks of the end of the First Dwell Time Report Period or the Second Dwell Time Report Period as the case may be (or as otherwise may be reasonably required by the Secretary of State).
Paragraph 22.2 (Investment of station infrastructure enhancements) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to write to the Secretary of State setting out the specification and cost, risks to delivery and output in relation to any proposed Station Infrastructure Improvement Scheme before incurring any expenditure.
Paragraph 22.4 (Investment of station infrastructure enhancements) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to notify the Secretary of State of the completion of each approved Station Infrastructure Improvement Scheme as soon as reasonably practicable.
Paragraph 23.1(c) (Innovative and responsive train planning) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to deliver a report to the Secretary of State by no later than 31 March 2020 on the Franchisee's recommendations for amending the relevant Network Rail "Timetable Planning Rules".

Reference	Summary of Obligation
Paragraph 24.5 (Infrastructure Feasibility and Implementation Fund) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to notify the Secretary of State if there is likely to be a delay in implementing any approved Capacity and Line Enhancement Scheme or if it will be delivered in a way inconsistent with its specification.
Paragraph 24.6 (Infrastructure Feasibility and Implementation Fund) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to notify the Secretary of State of the completion of each approved Capacity and Line Enhancement Scheme as soon as reasonably practicable.
Paragraph 25 (Working together with Network Rail) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to report the outcomes of any workshops and/or meetings between the Franchisee and Network Rail in relation to train service planning.
Paragraph 29.1 (The Yeovil Junction – Yeovil Pen Mill Service) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to submit a report to the Secretary of State by no later than 31 December 2018 analysing the commercial and operational performance of the Yeovil Junction - Yeovil Pen Mill Service and to make a recommendation as to whether it should be continued until the end of the Franchise Term.
Paragraph 30.1 (Expansion of the Train Fleet) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to notify the Secretary of State within 14 days of the end of the applicable Reporting Period with an explanation for the shortfall in the fleet and report on the implementation of any plan within 14 days of each Reporting Period thereafter on the progress towards achieving the required Available Percentage.
Paragraph 32.1 (Delayed Rolling Stock Franchise) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide the Secretary of State with all information necessary for him to identify the net financial effect of not introducing the New Five Car EMUs or New Ten Car EMUs by the required date.
Paragraph 35.2 (New depot and stabling facilities) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide a statement to the Secretary of State confirming whether or not the New Feltham Depot Conditions Precedent have been satisfied by no later than the CP Date.
Paragraph 35.5 (New depot and stabling facilities) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to submit project status reports to the Secretary of State at four weekly intervals.
Paragraph 43.1-2 (Feasibility study) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to present a written report to the Secretary of State once completed relating to the Conversion Concept and sigle vehicle trial respectively.

Reference	Summary of Obligation
Paragraph 51.1 (Improving the reliability of the Passenger Services) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide a report to the Secretary of State on whether the trial of the real-time depot movements optimisation tool has been successful and whether it will be developed into an operational system.
Paragraph 51.3 (Improving the reliability of the Passenger Services) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide a report to the Secretary of State on remedial actions based on the depot movement simulation exercises.
Paragraph 75.3 (Ticket Gating) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide the Secretary of State with full details of the findings of the ticketless travel survey.
Paragraph 75.4 (Ticket Gating) of Part 1 of Schedule 6.2 (Committed Obligations)	After submission of the findings above there is an annual requirement to conduct ticket surveys and to provide the results of them to the Secretary of State.
Paragraph 75.5 (Ticket Gating) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide a plan to the Secretary of State if the required 1.8% reduction has not been achieved, or is not likely to be achieved, within 36 months after the Start Date. Requirement to then report to the Secretary of State on the progress of implementing such plan.
Paragraph 77.4 (Customer Experience Review Group) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to report the outputs of the Customer Experience Strategy Group to the Secretary of State at least every six months.
Paragraph 97 (Delay Repay Awareness) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to report to the Secretary of State every six months on how unclaimed Delay Report amounts have been reinvested.
Paragraph 98.1 (Stations Performance Dashboard) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to consult with the Secretary of State regarding the Stations Performance Dashboard and agree metrics to measure the Franchisee's performance against it.
Paragraph 98.2 (Stations Performance Dashboard) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide a report biannually setting out the Franchisee's performance against the Stations Performance Dashboard.

Reference	Summary of Obligation
Paragraph 99.1 (Secure Stations Accreditation) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide the Secretary of State with details of the Community Stations and Neighbourhood Stations the Franchisee wants to obtain accreditation for.
Paragraph 100 (Secure Car Parks Accreditations) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide the Secretary of State with details of the Secure Car Parks the Franchisee wants to obtain accreditation for.
Paragraph 101 (Secure Car Parks Accreditations) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide the Secretary of State with details of the Stations it proposes to introduce "Station Watch" at together with such supporting and/or associated information as the Secretary of State may reasonably require.
Paragraph 10.2.3 (Platform Management Trials) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide the Secretary of State with a report detailing the measures adopted by the Franchisee during the Platform Management Trials.
Paragraph 107.1(a)(i) (Investment in Station facility improvements) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to notify the Secretary of State no later than one year after the Start Date regarding the Stations which are to receive the enhanced Wi-Fi service.
Paragraph 107.2(b) (Application of Committed Station Improvement Activity Underspend) of Part 1 of Schedule 6.2 (Committed Obligations)	The Franchisee shall be entitled to notify the Secretary of State if it can achieve the stated objective of the Committed Station Improvement Activity without incurring the full amount of the proposed expenditure.
Paragraph 108.2 (a) (Station Travel Plans) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to identify to the Secretary of State by no later than 31 March 2019 of a further thirty Stations for which it proposes to develop station travel plans.
Paragraph 108.3 (b) (Access and Integration Fund) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide the Secretary of State with appropriate details of each proposed STP Improvement Scheme (together with such supporting and/or associated information as the Secretary of State may reasonably require).

Reference	Summary of Obligation
Paragraph 109.2 (Recording costs) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide the Secretary of State, on demand, with the Station Costs and Revenue Information and such supporting information as is reasonably required.
Paragraph 110.1 (Investment in stations) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to submit such business case proposals in respect of the Development Projects to the Secretary of State so that all such business cases are submitted by no later than the fourth anniversary of the Start Date.
Paragraph 110.6 (Investment in stations) of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to provide such reports and updates in relation to the Development Projects as the Secretary of State may reasonably require.
Paragraph 2 (Installation of new CIS Screens) of Appendix 3 to Part 1 of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to notify the Secretary of State of the identity of the stations to receive CIS Screens by no later than one year after the Start Date.
Paragraph 3 (Enhanced Functionality of CIS Screens) of Appendix 3 to Part 1 of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to notify the Secretary of State of the identity of the applicable interchange stations no later than one year after the Start Date.
Paragraph 4 (CIS improvements) of Appendix 3 to Part 1 of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to notify the Secretary of State of the identity of the locations of the stations at which the implementation measures are to be introduced by no later than one year after the Start Date.
Paragraph 5 (Installation of new CIS Screens at station car parks) of Appendix 3 to Part 1 of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to notify the Secretary of State of the identity of the car parks to receive CIS Screens by no later than one year after the Start Date.
Paragraph 10 (Installation of rainbow boards) of Appendix 3 to Part 1 of Part 1 of Schedule 6.2 (Committed Obligations)	Requirement to notify the Secretary of State of the identity of the locations of the stations which are to receive rainbow boards by no later than one year after the Start Date.

Reference	Summary of Obligation
Paragraph 5 (Review of Compliance) 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 (Reporting Requirements) of Schedule 7.1 (Operational Performance)	Reporting requirements relating to the operational performance information set out in Appendix 2 (Operational Performance Information) of Schedule 11.2 (Management Information).
Paragraph 26.2 (Action Plans) of Schedule 7.1 (Operational Performance)	Requirement to produce an Action Plan to secure a Required Performance Improvement.
Paragraph 5 (Required Improvement and NRPS Action Plans) of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme)	Requirement to produce a NRPS action plan to secure any Required Improvement for submission to the Secretary of State.
Paragraph 9 (Customer and Stakeholder Engagement Strategy) of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme)	Requirement to provide to the Secretary of State any proposed revisions to the Customer and Stakeholder Engagement Strategy.
Paragraph 10 (Customer Report) of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme)	Requirement to produce and publish a Customer Report.
Paragraph 11 (CCI Scheme) of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme)	Requirement to provide details of any CCI Scheme proposed by the Franchisee.
Paragraph 12.1 (Customer Service and Satisfaction Data) of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI 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 12.2 and 12.3 (Customer Service and Satisfaction Data) of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCI Scheme)	Requirement to publish NRPS scores achieved by the Franchisee.
Paragraph 2 (Relevant Profit Report) of Schedule 8.2 (Profit Share Mechanism)	Reporting requirements relating to Relevant Profit Reports.
Paragraph 11 (Information) 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 (Franchisee's Obligations) of Schedule 9.2 (Identity of Financial Model)	Requirement to provide the Financial Model and the Escrow Documents.
Paragraphs 3 (Remedial Plan Notices) and 4 (Remedial Plans) of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement)	Obligation to provide certain information in a Remedial Plan Notices/Remedial Plans.

Reference	Summary of Obligation
Paragraph 4 (Business Continuity) of Schedule 10.3 (Force Majeure and Business Continuity)	Requirement to provide a Business Continuity Plan.
Paragraph 1.3 (Franchise Performance Meetings) of Schedule 11.1 (Franchise Performance Meetings)	Requirement to prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably requests.
Paragraph 2 (Community Rail Partnerships) of Schedule 13.1 (Rail Industry Initiatives)	Requirement to provide a Community Rail Report.
Paragraph 8 (Small and Medium-sized Enterprises) of Schedule 13.1 (Rail Industry Initiatives)	Requirement to provide breakdown of Small and Medium-sized Enterprises.
Paragraph 9 (Apprenticeships) of Schedule 13.1 (Rail Industry Initiatives)	Requirement to provide the information relating to Apprenticeships as set out in paragraphs 9.1 and 9.2.
Paragraph 9.4 (Apprenticeships) of Schedule 13.1 (Rail Industry Initiatives)	Requirement to submit a draft Skills and Leadership Strategy.
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.
Paragraph 10.1(f) of Schedule 13.1 (Rail Industry Initiatives)	Obligation to produce 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 a report identifying progress in respect of delivering a sustainable franchise and revisions to the Sustainable Development Strategy.
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 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 (Minimum Wi-Fi Service on Train) of Schedule 13.1 (Rail Industry Initiatives)	Requirement to provide the Secretary of State with the MCS Report.
Paragraph 12.12 MCS Route Signal Survey of Schedule 13.1 (Rail Industry Initiatives)	Requirement to provide the Secretary of State with the MCS Route Signal Survey.
Paragraph 9 (Provision of Information to the Secretary of State) 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.

Reference	Summary of Obligation
Paragraph 5 (Miscellaneous) 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 (Process for issue of a Certificate of Completion for RV Assets) of Schedule 14.6 (Residual Value Mechanism)	Obligation to provide such information as the Secretary of State requires in respect of RV Assets.
Paragraph 2 (Maintenance Requirements for RV Assets) of Schedule 14.6 (Residual Value Mechanism)	Obligation to provide a schedule of condition in respect of RV Assets.
Paragraphs 2 (Preparation for Reletting) and 3 (Data Site Information) 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 (Handover Package Status) of Schedule 15.3 (Handover Package)	Requirement to produce and maintain the Handover Package.
Paragraph 2 (Director's Certificate) of Schedule 15.3 (Handover Package)	Requirement to provide a director's certificate in each Franchise Year.
Paragraph 9 (Information about Passengers) 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.
Paragraph 2.2 (Net Asset Statement) of Appendix 2 (Form of Supplemental Agreement) of Schedule 15.4 (Provisions Applying on and after Termination)	Obligation to prepare and provide a net asset statement under the supplemental agreement.
Paragraph 6 (Discharge of Obligations) 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 (Redactions) 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.